UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837-3679

MAR 22 2010

CERTIFIED MAIL -RETURN RECEIPT REQUESTED

Mr. Edward Galaimo, Ph.D.
President and CEO
New York Institute of Technology
Office of the President – Tower House
Old Westbury, New York 11568

Re: In the Matter of New York Institute of Technology
Docket No. TSCA-02-2010-9206

Dear Mr. Galaimo:

Enclosed for your review and signature is an Administrative Consent Agreement and Final Order intended to resolve the above-referenced proceeding under Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a).

Please sign the Consent Agreement and return the signed original document to my attention for further processing within 10 days of your receipt of this package. A fully executed copy of this document will be mailed to you upon issuance.

Please feel free to contact me at (732) 321-6798 if you have any questions regarding this matter.

Sincerely,

Vickie A Pane

Vickie Pane
Toxics Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837-3679

MAY 26 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Edward Galaimo, Ph.D.
President and CEO
New York Institute of Technology
Office of the President – Tower House
Old Westbury, New York 11568

Re: In the Matter of the New York Institute of Technology
Docket No. TSCA-02-2010-9206

Dear Mr. Galaimo:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2.

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Judicial Officer. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement." Furthermore, please ensure that a copy of your payment check is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Vickie Pane of my staff at (732) 321-6798, should you have any questions regarding this matter.

Sincerely,

Daniel J. Kraft, Acting Chief
Pesticides and Toxic Substances Branch

Enclosure

In the Matter of New York Institute of Technology
Docket Number TSCA-02-2010- 9206

CERTIFICATE OF SERVICE

This is to certify that on the 26 day of May 2010, I served a true and correct copy of the foregoing fully executed Consent Agreement and Final Order bearing Docket Number TSCA-02-2010-9206, by certified mail, return receipt requested, to:

Mr. Edward Galaimo, Ph.D.
President and CEO
New York Institute of Technology
Office of the President – Tower House
Old Westbury, New York 11568

On the same date, I mailed via EPA internal mail to the Region 2 Regional Hearing Clerk at 290 Broadway, New York, New York 10007 the original and one copy of the foregoing Consent Agreement and Final Order.

Gail Kohn

MAY 26 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Edward Galaimo, Ph.D.
President and CEO
New York Institute of Technology
Office of the President – Tower House
Old Westbury, New York 11568

Re: In the Matter of the New York Institute of Technology
Docket No. TSCA-02-2010-9206

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Please contact Vickie Pane of my staff at (732) 321-6798, should you have any questions regarding this matter.

Sincerely,

Daniel J. Kraft, Acting Chief
Pesticides and Toxic Substances Branch

Enclosure

**CONCURRENCES**

Name: Init: Date: March 2, 2010 Filename: F:\VPane\Inspections\2009\NYIT\Enforcement\1stLetter.doc

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| | PANE | | KRAFT | | | | | |
| Surname | | | | | | | | |
| Date | 5-26-10 | | 5-26-10 | | | | | |

bcc: William Sawyer, 2ORC-AWTS
Karen Maples, RHC
Linda Hall, 2DECA-PTS
Barbara McGarry, 2DECA
Blake Edwards, Cincinnati Finance Center (CFC)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

| | |
|---|---|
| In the Matter of<br>New York Institute of Technology,<br><br>Respondent.<br><br>Proceeding under Section 16(a) of<br>the Toxic Substances Control Act. | CONSENT AGREEMENT<br>AND<br>FINAL ORDER<br><br>Docket No.<br>TSCA-02-2010-9206 |

## PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22 (July 1, 2000) (hereinafter "Consolidated Rules of Practice") provide in 40 C.F.R. § 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (hereinafter "EPA" or "Complainant"), alleges that the New York Institute of Technology (hereinafter "Respondent") violated Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 761, relating to polychlorinated biphenyls ("PCBs") and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

CONCURRENCES

Name: Init: Date: March 2, 2010 Filename: F:\ VPANE\INSPECTIONS\2009\NYIT\ENFORCEMENT\CAFO

| Symbol | DECA-PTS | DECA-PTS | DECA-PTS | DECA | DECA | DECA | CSO | DRA | RA |
|---|---|---|---|---|---|---|---|---|---|
| Surname | PANE | KRAFT | GORMAN | DURACK | LAPOSTA | LAPOSTA | Plevin | Pavlou | Enck |
| Date | 3/8/10 | | 3/16/10 | | 3/17/10 | 3/18/10 | | 3/25/14 | 5/14 |

3/17

EPA and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO"), pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation, and to that end the parties met on January 11, 2010 to discuss settlement. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made.

## FINDINGS OF FACT

1. Respondent is the New York Institute of Technology.

2. Respondent owns, operates, and/or controls the facility in and around 300 Carleton Avenue in Central Islip, New York (hereinafter "Respondent's facility").

3. On or about May 19, 2009, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility (hereinafter "the inspection").

4. As a result of the inspection, EPA determined that Respondent had in use three PCB Transformers which were not registered by the deadline of December 28, 1998 in accordance with the requirements of 40 C.F.R. § 761.30(a)(1)(vi)(A).

5. As a result of the inspection, EPA determined that the Respondent had failed to dispose of PCB Items within one year of removal from service in accordance with the specifications and requirements of 40 C.F.R. § 761.65(a)(1).

6. As a result of the inspection, EPA determined that the Respondent failed to develop and maintain annual documents on the disposition of PCBs and PCB Items in accordance with the specifications and requirements of 40 C.F.R. § 761.180(a) for at least the years 2004 through 2007.

7. On or about November 24, 2009, Complainant sent to Respondent a "Notice of Opportunity with Respect to Action Under The Toxic Substances Control Act," which alleged that Respondent committed violations of the PCB regulations at 40 C.F.R. Part 761.

8. On January 11, 2010, the parties met for an informal settlement conference.

## CONCLUSIONS OF LAW

1. Respondent, as the owner and/or operator of the facility which is the subject of this CAFO, is subject to the regulations and requirements pertaining to PCBs and PCB Items promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and set forth at 40 C.F.R. Part 761.

2. Respondent is a "person" within the meaning of 40 C.F.R. § 761.3.

3. Use of PCB Transformers that were not registered on or before December 28, 1998 is a violation of 40 C.F.R. §761.30, which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e), 2614(1)(C).

4. Failure to dispose of PCB Items within one year of removal from service is a violation of 40 C.F.R. § 761.65, which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e), 2614(1)(C).

5. Failure to develop and maintain annual documents on the disposition of PCBs and PCB Items is a violation of 40 C.F.R. § 761.180, which is a violation of Section 6(e) and Section 15(1)(C) of TSCA, 15 U.S.C. §§ 2605(e), 2614(1)(C).

## TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.

2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual allegations contained in the"Findings of Fact"

section, above; and (c) neither admits nor denies the assertions set forth in the "Conclusions of Law" section, above.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **TEN THOUSAND ONE HUNDRED FIFTEEN DOLLARS ($10,115)** to the "Treasurer of the United States of America." The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Alternatively, payment may be by Electronic Fund Transfer directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

1) Amount of Payment
2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
3) Account: 68010727
4) ABA number: 021030004
5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
6) Name of Respondent
7) Docket Number

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the "due date"). Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

and

Ms. Vickie Pane
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, New Jersey 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Furthermore, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of $15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.

4. Respondent agrees to complete the following transformer removal action (the "Removal Action"):

a. By September 30, 2010, Respondent will properly remove from service and transport off the Respondent's facility for disposal, the following three General Electric PCB Transformers located in the basement of Building Number 7:

i. a transformer identified with serial number H295219P71A,

ii. a transformer identified with serial number H295220P71A, and

iii. a transformer identified with serial number H295221P71A.

b. By September 30, 2010, Respondent will properly remove from service and transport off the Respondent's facility for disposal, the following four General Electric PCB Transformers located in the Pump House:

i. a transformer identified with serial number C788915,

ii. a transformer identified with serial number C782495,

iii. a transformer identified with serial number C782796, and

iv. a transformer identified with serial number C782797.

5. Respondent shall continue conducting monthly inspections of each of the PCB Transformers identified in Paragraph 4, above, and preparing written reports thereof, until the transformers are removed from service and transported off Respondent's facility for disposal.

6. Pursuant to 40 C.F.R. § 761.180(a), Respondent shall continue to prepare and maintain an annual document log on the disposition of PCBs and PCB Items.

7. Respondent shall submit a Transformer Removal Completion report to EPA within 60 days from the date that the last PCB Transformer described in paragraph 4, above, is disposed, or within 21 months of the date of this Agreement, whichever is earlier. This report shall contain at least the following information:

a. A brief description of the removal, disposal and/or replacement as implemented,

b. Copies of all manifests, etc. , describing transportation of the PCB Transformers and any related PCB waste to a TSCA-approved facility for proper disposal; and

c. Copies of all Certificates of Disposal describing the proper disposal of the PCB Transformers and any related PCB waste at a TSCA-approved facility.

8. EPA may grant an extension of the date of performance or such other dates as are established in this Consent Agreement with regard to any of the Removal Action components, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than fourteen (14) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. EPA may grant such extension in its discretion, and any such extension (or denial thereof) shall be in writing.

9. Nothing herein is meant to waive Respondent's responsibility to ensure that all PCBs and PCB Items are properly disposed of within one year of the date they are removed from service for disposal, as required under 40 C.F.R. Part 761.

10. a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the Action described in paragraph 4, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i. If the Action is not undertaken, Respondent shall pay a stipulated penalty to the United States of $24,000.

ii. If the Action is not completed satisfactorily, but Respondent can document that it made good faith and timely efforts to undertake the project, Respondent shall pay a stipulated penalty to the United States in the amount of $2,000 for each PCB Transformer that was not removed and disposed within the time frame described herein.

iii. For failure to submit the Transformer Removal Completion report and all supporting documentation required by paragraph 7, above, Respondent shall pay a stipulated penalty in the amount of $100 for each day after the report was originally due, until the report is submitted.

b. The determinations of whether the Action has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the Action shall be in the sole discretion of EPA, which shall be exercised in a reasonable manner.

c. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 3, above. Interest and late charges shall be paid as stated in paragraph 3 herein.

11. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under TSCA, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder at 40 C.F.R. Part 761, that attach or might have attached as a result of the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent

consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

12. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

13. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the above "Findings of Fact" section and the allegations contained in the above "Conclusions of Law" section, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

14. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

15. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

16. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

17. Each party shall bear its own costs and attorney's fees in this matter.

18. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT: BY: _____
New York Institute of Technology

NAME: _____
**(PLEASE PRINT)**

TITLE: _____

DATE: _____

COMPLAINANT: _____
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

DATE: _____

In the Matter of New York Institute of Technology

Docket Number TSCA-02-2010-9206

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement, entered into by the parties in full settlement of EPA's Complaint bearing Docket No. TSCA-02-2010-9206, issued in the matter of New York Institute of Technology, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE:_____

_____

Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007