

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

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**In the Matter of:** : **U.S. EPA Docket No. TSCA-03-2011-0288**  
:  
**1500 Walnut Enterprises, LLC** :  
**123 S. Broad Street, Suite 850** :  
**Philadelphia, PA 19109** :  
:  
**and** : **Proceeding under Sections 15 and 16**  
:  
:  
:  
**SSH Management, LLC** :  
**123 S. Broad Street, Suite 850** :  
**Philadelphia, PA 19109,** :  
:  
:  
**Respondents.** :  
:  
**1500 Walnut Street** :  
**Philadelphia, PA 19102,** :  
:  
:  
**Facility.** :

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by: the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant"); and by 1500 Walnut Enterprises, LLC and SSH Management, LLC (collectively, "Respondents") pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Sections 15 and 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2614 and 2615, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") resolve violations of TSCA and of the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth in 40 C.F.R. Part 761, entitled "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" (hereinafter, the "PCB regulations").
  
2. The violations cited herein pertain to the Respondents' alleged failure to comply with PCB regulations promulgated pursuant to TSCA Section 6(e), 15 U.S.C. § 2605(e), governing the prohibition of, and the requirements for, the manufacture, processing,

distribution in commerce, and use of polychlorinated biphenyls ("PCBs") and PCB Items at a facility located at 1500 Walnut Street, Philadelphia, PA 19102.

## **II. GENERAL PROVISIONS**

3. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth in this CAFO.
4. Respondents neither admit nor deny the factual allegations and legal conclusions set forth in Section III ("EPA Findings of Fact and Conclusions of Law") of this CAFO.
5. Respondents agree not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
6. For purposes of this proceeding only, Respondents hereby expressly waive any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
7. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.
8. Each Party shall bear its own costs and attorney's fees.

## **III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

9. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the findings of fact and conclusions of law set forth immediately below.
10. As used herein, the terms "PCB", "PCB Article", "PCB Capacitor", "PCB Item" and "PCB Transformer" each shall have the definition and meaning set forth in 40 C.F.R. § 761.3.
11. TSCA Section 15(1)(C), 15 U.S.C. § 2614(1)(C), provides that it shall be unlawful for any person to fail or refuse to comply with any rule promulgated or order issued under TSCA Sections 5 or 6, 15 U.S.C. §§ 2604 or 2605.
12. TSCA Section 15(1)(B), 15 U.S.C. § 2614(1)(B), provides that it shall be unlawful for any person to fail or refuse to comply with any requirement prescribed by TSCA Sections 5 or 6, 15 U.S.C. §§ 2604 or 2605.

13. Respondent 1500 Walnut Enterprises, LLC is a Delaware limited liability corporation that does business in Pennsylvania and maintains an office at 123 S. Broad Street, Suite 850, Philadelphia, PA 19109.
14. Respondent SSH Management, LLC is a Pennsylvania limited liability corporation doing business in Pennsylvania with a headquarters office located at 123 S. Broad Street, Suite 850, Philadelphia, PA 19109 and with an additional office at 1500 Walnut Street, Suite 200, Philadelphia, PA 19102.
15. Each of the Respondents is a "person" as defined in 40 C.F.R. § 761.3.
16. Respondent 1500 Walnut Enterprises, LLC is, and at all times relevant to this Consent Agreement was, the owner and operator of a commercial office building located at 1500 Walnut Street, Philadelphia, PA 19102 (hereinafter, the "Facility").
17. Respondent SSH Management LLC is, and at all times relevant to this Consent Agreement was, an operator of the Facility that provided various management services to the building owner.
18. On or about May 6, 2009, during normal business hours, duly authorized representatives ("Inspectors") of the United States Environmental Protection Agency ("EPA") Region III conducted a compliance evaluation inspection (the "Inspection") at the Facility pursuant to the authority of Section 11 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2610. The purpose of the Inspection was to evaluate Respondents' compliance with regulations promulgated pursuant to TSCA Section 6(e), 15 U.S.C. § 2605(e), governing the prohibition of, and/or the requirements for, the manufacture, processing, distribution in commerce and use of polychlorinated biphenyls ("PCBs"), PCB Items and PCB Transformers at the Facility.
19. At the time of the May 6, 2009 Facility Inspection referenced in paragraph 18, above, five large PCB Capacitors and the following three PCB Transformers were in use at the Facility.

Serial No.	Manufacturer	Quantity of PCB Dielectric Fluid	Prim./Sec. Voltage	Location
7028253	Westinghouse	280 Gallons	13200/480	Basement
7027950	Westinghouse	191 Gallons	13200/2400	Basement
797806	Westinghouse	172 Gallons	13200/420	11 <sup>th</sup> Floor

20. On April 8, 2011, EPA Region III issued a TSCA Subpoena (No. 467) to Respondent 1500 Walnut Enterprises, LLC, therein seeking additional information pertaining to the three PCB Transformers identified in Paragraph 19, immediately above.
21. On or about May 11, 2011, Respondent 1500 Walnut Enterprises, LLC provided EPA Region III with a written and certified response to TSCA Subpoena No. 467 (hereinafter, "Subpoena Response").
22. In its Subpoena Response, Respondent 1500 Walnut Enterprises, LLC stated that records and information in its possession and control indicated that: each of the three PCB Transformers identified in paragraph 19, above, was flushed and had its existing dielectric fluid retrofilled with silicone on four separate occasions subsequent to manufacture; the latter two flush/retrofill events occurred on August 6, 1989 and on April 21, 1990; the dielectric fluid of Facility PCB Transformers was tested for PCB concentration levels on November 3, 2007 and on March 26, 2010 and the results of such testing can be summarized as follows:

Facility PCB Transformer Serial No.	Location	Quantity of PCB Dielectric Fluid	11/3/2007 PCB Concentration of Dielectric Fluid in parts per million (ppm)	3/26/2010 PCB Concentration of Dielectric Fluid in parts per million (ppm)
7028253	Basement	280 Gallons	N/A	879 ppm
7027950	Basement	191 Gallons	1437 ppm	1980 ppm
797806	11 <sup>th</sup> Floor	172 Gallons	535 ppm	968 ppm

23. On the basis of the Facility Inspection and additional information collected subsequent thereto, Complainant has determined that Respondents have violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614.

**COUNTS I and II**

**Violations of 40 C.F.R. § 761.30(a)(1)(viii)**

***(Improper Storage of Combustible Materials in 2 PCB Transformer Enclosures)***

24. The allegations of paragraphs 1 through 23 of this Consent Agreement are incorporated herein by reference.

25. 40 C.F.R. § 761.30(a)(1)(viii) provides that, as of December 1, 1985, “. . . combustible materials, including, but not limited to paints, solvents, plastics, paper, and sawn wood must not be stored within a PCB Transformer enclosure . . . or, if unenclosed (unpartitioned), within 5 meters of a PCB Transformer.”
26. At all times herein relevant, the Facility PCB Transformers bearing Serial Numbers 7028253 and 7027950 were located inside of an electrical vault, or PCB Transformer enclosure, approximately four feet apart, in the Facility basement (hereinafter, the “Basement PCB Transformer Enclosure”).
27. At all times herein relevant, the Facility PCB Transformer bearing the Serial Number 797806 was located inside of a vault, or PCB Transformer enclosure, on the 11th floor of the Facility (hereinafter, the “11th Floor PCB Transformer Enclosure”).
28. At the time of the May 6, 2009 Facility Inspection referenced in paragraph 18, above, the the following combustible materials were being stored inside of the Basement PCB Transformer Enclosure:
  - (a) two cardboard boxes located immediately inside the Basement PCB Transformer Enclosure entrance;
  - (b) a broom, piece of cardboard and two wooden spools of wire/cable located on the floor in front of the Facility PCB Transformer bearing the Serial Number 7028250;
  - (c) four cardboard boxes located in the back of the Basement PCB Transformer Enclosure; and
  - (d) a one-quart can of APAC cement brush grade lacquer bearing a warning statement reading, "DANGER! EXTREMELY FLAMMABLE!" situated between the two PCB Transformers in the Basement PCB Transformer Enclosure.
29. At the time of the May 6, 2009 Facility Inspection referenced in paragraph 18, above, the the following combustible materials were being stored inside of the 11th Floor PCB Transformer Enclosure:
  - (a) several cardboard boxes, ceiling tiles and a roll of bathroom tissue located immediately inside the front entrance to the 11th Floor PCB Transformer Enclosure;

- (b) a one gallon can of Minwax Wood Finish bearing the warning, "DANGER! . . . COMBUSTIBLE!" located in the front of the 11th Floor PCB Transformer Enclosure;
  - (c) a wooden square frame, some additional cardboard boxes and ceiling tiles located in the rear of the 11th Floor PCB Transformer Enclosure; and
  - (d) a one quart can of Minwax Wood Finish bearing the warning, "DANGER! . . . COMBUSTIBLE!" also situated in the rear of the 11th Floor PCB Transformer Enclosure.
30. Respondents twice violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.30(a)(1)(viii), by storing combustible materials within each of the Facility's two PCB Transformer enclosures.

**COUNTS III - V**

**Violations of 40 C.F.R. § 761.30(a)(1)(xii)  
(Failure to Maintain Records of Annual PCB Transformer  
Visual Inspections & Maintenance History)**

31. The allegations of paragraphs 1 through 30 of this Consent Agreement are incorporated herein by reference.
32. 40 C.F.R. § 761.30(a)(1)(ix) provides, in relevant part, that "[a] visual inspection of each PCB Transformer . . . in use or stored for reuse shall be performed at least once every 3 months. These inspections may take place at any time during the 3-month periods: January - March, April - June, July - September, and October - December as long as there is a minimum of 30 days between inspections. The visual inspection must include investigation for any leak of dielectric fluid on or around the transformer."
33. 40 C.F.R. § 761.30(a)(1)(xiii) allows for a reduction in the frequency of the 3-month PCB Transformer visual inspections otherwise required pursuant to 40 C.F.R. § 761.30(a)(1)(ix) with respect to PCB Transformers that utilize specified risk reduction measures. 40 C.F.R. § 761.30(a)(1)(xiii) specifically provides, in relevant part, that: "A reduced visual inspection frequency of at least once every 12 months applies to PCB Transformers that utilize either of the following risk reduction measures. These inspections may take place any time during the calendar year as long as there is a minimum of 180 days between inspections. . . . (B) A PCB Transformer which has been tested and found to contain less than 60,000 ppm PCBs (after 3 months of in service use if the transformer has been serviced for purposes of reducing the PCB concentration)."

34. 40 C.F.R. § 761.30(a)(1)(xii) provides, in relevant part, that “[r]ecords of inspection and maintenance history shall be maintained at least three (3) years after disposing of a PCB Transformer, shall be made available for inspection, upon request by EPA. Such records shall contain the following information for each PCB Transformer: (A) Its location. (B) The date of each visual inspection and the date that [any] leak was discovered, if different from the inspection date. (C) The person performing the inspection. (D) The location of any leak(s). (E) An estimate of the amount of dielectric fluid released from any leak. (F) The date of any cleanup, containment, repair or replacement. (G) The results of any containment and daily inspection required for uncorrected active leaks. (H) The results of any containment and daily inspection required for uncorrected active leaks. . . .”
35. Each of the three Facility PCB Transformers had been tested, found to contain less than 60,000 ppm PCBs (after 3 months of in service use after being serviced for the purposes of reducing the PCB concentration) and utilized the risk reduction measure identified in 40 C.F.R. § 761.30(a)(1)(xiii)(B) at all times herein relevant.
36. For the reasons set forth in paragraph 35. immediately above, each of the three Facility PCB Transformers was, at all times herein relevant, subject to the 12 month reduced visual inspection requirement set forth at 40 C.F.R. § 761.30(a)(1)(xiii).
37. At the time of the May 6, 2009 Facility Inspection, the EPA Inspectors requested copies of all Facility PCB Transformer visual inspection records performed over the prior three years.
38. At the time of the May 6, 2009 Facility Inspection, representatives of Respondent SSH management, LLC advised the EPA Inspectors that no Facility PCB Transformer visual inspection records had been prepared over the prior three year period for any of the three Facility PCB Transformers other than general written inspection log entries pertaining to inspections performed on April 23, 2009, April 25, 2009 and May 5, 2009, which did not contain any of the information required pursuant to 40 C.F.R. § 761.30(a)(1)(xii), other than the date that each inspection was performed.
39. Respondents thrice violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.30(a)(1)(xii), by failing to prepare and maintain at the Facility, and make available for EPA inspection during normal business hours, visual inspection and maintenance history records containing the information required pursuant to 40 C.F.R. § 761.30(a)(1)(xii), for each Facility PCB Transformer, for each of the three years immediately preceding the date of the May 6, 2009 Facility Inspection.

**COUNT VI - VIII**

**Violations of 40 C.F.R. §§ 761.180(a)  
(Failure to Generate and Maintain PCB Annual Documents)**

40. The allegations of paragraphs 1 through 39 of this Consent Agreement are incorporated herein by reference.
41. 40 C.F.R. § 761.180(a) provides, in relevant part, that, “[b]eginning February 5, 1990, each owner and operator of a facility, other than a commercial storer or a disposer of PCB waste, using . . . at any one time . . . one or more PCB Transformers . . . shall develop and maintain at the facility . . . all annual records and the written annual document log of the disposition of PCBs and PCB Items. The written annual document log must be prepared for each facility by July 1 covering the previous calendar year (January through December). The annual document log shall be maintained for at least 3 years after the facility ceases using or storing PCBs and PCB Items in the quantities prescribed. . .” and must contain the information required in 40 C.F.R. § 761.180(a)(2).
42. 40 C.F.R. § 761.180(a)(2) further provides, in relevant part, that: The written annual document log shall include the following:
- (i) The name, address, and EPA identification number of the facility covered by the annual document log and the calendar year covered by the annual document log.
  - (ii) The unique manifest number of every manifest generated by the facility during the calendar year. . .  

\* \* \*
  - (iii) The total number by specific type of PCB Articles and the total weight in kilograms of PCBs in PCB Articles, the total number of PCB Article Containers and total weight in kilograms of the contents of PCB Article Containers, the total number of PCB Containers and the total weight in kilograms of the contents of PCB Containers, and the total weight in kilograms of bulk PCB waste that was placed into storage for disposal or disposed during the calendar year.
  - (iv) The total number of PCB Transformers and total weight in kilograms of PCBs contained in the transformers remaining in service at the end of the calendar year.
  - (v) The total number of Large High or Low Voltage PCB Capacitors remaining in service at the end of the calendar year.
  - (vi) The total weight in kilograms of any PCBs and PCB Items in PCB Containers,



including the identification of container contents, remaining in service at the facility at the end of the calendar year.

\* \* \*

43. At all times herein relevant, each of the Respondents is, and has been, the owner and/or the operator of a facility (*i.e.*, the Facility) using or storing, at any one time, at least 45 kilograms (99.4 pounds) of PCBs contained in 5 Large PCB Capacitors and three PCB Transformers.
44. At no time herein relevant has either of the Respondents been a “commercial storer of PCB waste” or a “disposer of PCB waste” at the Facility, as those terms are defined at 40 C.F.R. § 761.3.
45. At the time of the May 6, 2009 Facility Inspection, the EPA Inspectors requested for review copies of the written annual document log of the inventory and disposition of PCBs and PCB Items at or from the Facility for each of the 2005, 2006 and 2007 calendar years, which were required to be prepared by July 1, 2006, July 1, 2007 and July 1, 2008, respectively.
46. A representative of Respondent SSH Management LLC advised the EPA Inspectors that no written annual document logs of the inventory and disposition of PCBs and PCB Items at or from the Facility had been prepared for any of the 2005, 2006 and 2007 calendar years and no such written annual document logs were produced or made available to the EPA Inspectors for their review at the time of the May 6, 2009 Facility Inspection or at any time thereafter.
47. Respondents thrice violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(a), by failing to develop, maintain and have available for inspection by authorized representatives of EPA upon request, during normal business hours, calendar year 2005, 2006 and 2007 annual written document logs of the disposition of PCBs and PCB Items from the Facility that included the information required pursuant to 40 C.F.R. § 761.180(a)(2).

#### **IV. CIVIL PENALTY**

48. In satisfaction of all civil claims for penalties which Complainant may have under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged in this Consent Agreement, Respondents agree to pay a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00), in accordance with the provisions set forth below, and to perform the PCB Transformer Removal Supplemental Environmental Project (hereinafter “SEP”) described in Section V (“Supplemental Environmental Project”), below. The civil penalty shall become due and payable immediately upon Respondents’ receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest,

administrative costs and late payment penalties in connection with such civil penalty, Respondents must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondents. The Respondents further agree that they shall be jointly and severally liable for the payment of such civil penalty amount, and for the performance of the SEP, in accordance with the provisions of this Consent Agreement.

49. The aforesaid settlement amount is consistent with the provisions and objectives of TSCA and 40 C.F.R. Part 761. Complainant has determined the appropriate penalty for the violations identified and described in this Consent Agreement based upon consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), *i.e.*, the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, and such other factors as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Polychlorinated Biphenyls Penalty Policy* (April 9, 1990). Complainant also has considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* ("Skinner Memorandum") and the November 16, 2009 Memorandum by EPA Office of Civil Enforcement, Waste and Chemical Enforcement Division Director Rosemarie A. Kelley, entitled *Adjusted Penalty Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule*.
50. Payment of the civil penalty as required by paragraph 48, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:
- a. All payments, by either or both Respondents, shall reference the name and address of each Respondent and the Docket Number of this action (***Docket No. TSCA-03-2011-0288***).
  - b. All checks shall be made payable to "United States Treasury".
  - c. All payments made by check and sent by Regular U.S. Postal Service Mail shall be addressed and mailed to:

*In the Matter of:*  
*1500 Walnut Enterprises, LLC and SSH Management, LLC*

*Docket No. TSCA-03-2011-0288*  
*Consent Agreement*

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact: Craig Steffen - (513-487-2091)  
Erik Volck - (513-487-2105)

- d. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Craig Steffen - (513-487-2091)  
Erik Volck - (513-487-2105)

- e. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency")

- f. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format  
Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact for ACH: John Schmid - (202-874-7026)

- g. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

- h. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open form and complete the form.

51. At the time of payment, Respondents simultaneously shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

Ms. Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029;

and

A.J. D'Angelo  
Sr. Assistant Regional Counsel (3RC30)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

52. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents' failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

53. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
54. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
55. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
56. The Respondents each agree not to deduct for federal tax purposes the civil monetary penalty, or any portion thereof, specified in this CAFO.

**V. PCB TRANSFORMER REMOVAL SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**A. SEP Description**

57. Respondents agree to remove and properly dispose of the 191 gallon PCB Transformer at the Facility, Serial Number 7027950, located in the Basement PCB Transformer Enclosure at the Facility and initially identified in Paragraph 19, above, of this Consent Agreement (hereinafter "PCB Transformer 7027950") in accordance with all requirements and provisions of Section V of this Consent Agreement and in compliance with all applicable requirements of 40 C.F.R. Part 761, including, but not limited to, the Storage and Disposal requirements found in 40 C.F.R. Part 761, Subpart D, and the PCB Waste Disposal Records and Reports requirements found in 40 C.F.R. Part 761, Subpart K.

**B. General SEP Requirements and Obligations**

58. As a part of the required SEP, the Respondents, among other things, shall remove PCB Transformer 7027950 from service, transport PCB Transformer 7027950 off-site from the Facility for proper disposal at a "designated facility," as that term is defined at 40 C.F.R. § 761.3, and obtain a Certificate of Disposal, pursuant to 40 C.F.R. § 761.218, evidencing the disposal of PCB Transformer 7027950.
59. Respondents shall expend a sum of at least Thirty-Eight Thousand Six Hundred Dollars (\$38,600.00) to complete the "SEP Performance Requirements and Obligations" set forth in Section V, Subsection C, of this Consent Agreement (hereinafter, the "Required SEP Expenditure") in accordance with the requirements and provisions of Section V ("PCB Transformer Removal Supplemental Environmental Project") of this Consent Agreement.
60. For the purpose of demonstrating Respondents' compliance with the obligation set forth in the preceding Paragraph (*i.e.*, the fulfillment of Respondent's \$38,600.00 Required SEP Expenditure obligation), Respondents shall maintain and submit to EPA copies of all invoices, bills, payment receipts, cancelled checks and other cost and payment information, documentation and records related to the costs incurred and the payments made by the Respondents in the performance of all SEP Performance Requirements and Obligations set forth in Section V, Subsection C ("SEP Performance Requirements and Obligations"), of this Consent Agreement.
61. If the Respondents do not complete fully the SEP Tasks delineated in Paragraphs 63.a. through 63.e. of this Consent Agreement or, in the alternative, if the Respondents fail to incur and spend at least Thirty-Eight Thousand Six Hundred Dollars (\$38,600.00) in the performance of the SEP, as determined by EPA pursuant to the applicable provisions of Paragraph 65a. of this Consent Agreement, on or before the applicable deadlines set forth therein, then the Respondents shall be subject to the assessment of additional civil penalties in accordance with the requirements and provisions of Section VIII ("Penalties for Noncompliance and Delay"), below.

**C. SEP Performance Requirements and Obligations**

62. **Contracts** - No later than October 31, 2011, Respondents shall provide funds for, and enter into one or more appropriate contracts with one or more individuals, firms and/or contractors, to perform and to complete the SEP Tasks set forth in Paragraph 63 of this Consent Agreement within the deadlines specified therein.
63. **SEP Tasks** - Respondents, in accordance with each of the requirements and conditions set forth in Section V of this Consent Agreement, shall perform timely the following SEP Tasks:

- a. No later than January 30, 2012, Respondents shall remove PCB Transformer 7027950 from service and properly clean up, in compliance with EPA's PCB Spill Cleanup Policy, 40 C.F.R. Part 761, Subpart G, all PCB liquid spills and/or leaks, if any, that occur during such activity and prior to delivery of PCB Transformer 7027950, and any associated PCB liquid, to an authorized transporter of PCB waste.
- b. No later than January 31, 2012, Respondents shall ensure that PCB Transformer 7027950 and any associated PCB liquid have been transported off-site from the Facility: (i) by an authorized transporter of PCB waste; (ii) for disposal at a designated facility, in accordance with 40 C.F.R. § 761.60(b); and (iii) with the accompaniment of a properly completed and signed Uniform Hazardous Waste Manifest, in accordance with 40 C.F.R. § 761.208.
- c. No later than February 28, 2012, Respondents shall submit to EPA a Preliminary SEP Report documenting the removal and off-site transport for disposal of PCB Transformer 7027950 and including:
  - (i) A copy of the contract between Respondents and each contractor hired by Respondents to remove and dispose of PCB Transformer 7027950, together with a written statement of work prepared by each such contractor for such activities, to the extent that a statement of work is not included in the contract itself;
  - (ii) A written statement describing the nature of the actual work performed by each contractor, and specifying the date on which work to remove PCB Transformer 7027950 commenced and the date on which off-site transport of the PCB Transformer for disposal commenced;
  - (iii) A copy of the Uniform Hazardous Waste Manifest documenting the off-site transport from the Facility of PCB Transformer 7027950 and all associated PCB liquid, and their arrival at the designated disposal facility; and
  - (iv) In the event that any leak or spill of PCBs occurs during the removal and/or transport of such PCB Transformer, a statement documenting compliance with EPA's PCB Spill Cleanup Policy, 40 C.F.R. Part 761, Subpart G, and including the documentation required by 40 C.F.R. §§ 761.125(b)(3) or 761.125(c)(5), as applicable.

- d. No later than January 31, 2013, Respondents shall obtain a Certificate of Disposal for PCB Transformer 7027950 and all associated PCB liquid, pursuant to 40 C.F.R. § 761.218.
- e. Within 30 days after receiving a Certificate of Disposal from the designated facility, but in no event later than March 2, 2013, Respondents shall submit to EPA a Final SEP Completion Report in which Respondents shall:
  - (i) update any information contained in the Preliminary SEP Report which has changed or been superseded since the submission of the Preliminary Report;
  - (ii) include a copy of the Certificate of Disposal for for PCB Transformer 7027950 and all associated PCB liquid; and
  - (iii) include a full and complete accounting, summarization and itemization of all costs of the SEP which the Respondents seek to have applied toward the Thirty-Eight Thousand Six Hundred Dollar (\$38,600.00) Required SEP Expenditure in accordance with the provisions of Section V, Subsection B ("General SEP Requirements and Obligations") of this Consent Agreement along with associated copies of all written invoices, bills, payment receipts, cancelled checks and other records documenting the performance of, and payment for, such work by the Respondents.

**D. EPA Review of Reports, Notices and Submissions**

64. **Review of Preliminary SEP Report** - EPA will review the Preliminary SEP Report submitted by the Respondents and will notify the Respondents, in a written Notice of Deficiency, of any deficiency(ies) identified therein. Respondents shall correct any such identified deficiencies within such time period(s) as provided by EPA in the Notice of Deficiency.
65. **Final SEP Completion Report Review** - EPA will review the Respondents' Final SEP Completion Report. Following such review, EPA will do one of the following:
  - a. **EPA Acceptance** - If EPA determines that the SEP was conducted and completed in accordance with the requirements and provisions of this CAFO and in compliance with all applicable federal, state and local laws and regulations, and that the Respondents have demonstrated to EPA's satisfaction that they have incurred and spent at least Thirty-Eight Thousand Six Hundred Dollars (\$38,600.00) to complete the "SEP Performance Requirements and Obligations" set forth in Section V, Subsection C, of this Consent Agreement, EPA will issue a



written notification to the Respondents accepting the Final SEP Completion Report and approving the Required SEP Expenditure documented therein (“Approved SEP Expenditures”).

- b. ***EPA Rejection*** - If EPA determines that: (i) the SEP was not conducted and completed in accordance with all requirements and provisions of this CAFO and in compliance with all applicable federal, state and local laws and regulations; or (ii) that the Final SEP Completion Report does not contain the information described in Paragraph 63.e of this Consent Agreement; or (iii) that the Respondents have not demonstrated to EPA’s satisfaction that they have incurred and spent at least Thirty-Eight Thousand Six Hundred Dollars (\$38,600.00) to complete the “SEP Performance Requirements and Obligations” set forth in Section V, Subsection C, of this Consent Agreement, EPA will issue a written Notification of Disapproval (the “NOD”) to the Respondents rejecting the Final SEP Completion Report, providing EPA’s reasons therefor, identifying the deficiencies in the Final SEP Completion Report and/or in the Respondents’ performance of the SEP and any costs that EPA has determined are not eligible as Required SEP Expenditures, and granting the Respondents a reasonable time from receipt of such notice within which to correct any such deficiencies which are amenable to correction and obtain Required SEP Expenditure approval pursuant to Paragraph 65.a, above, of this Consent Agreement.
66. ***Respondents’ Opportunity to Submit Objection Notification*** - Respondents may object in writing to a NOD by submitting a written “Objection Notification” to EPA within seven (7) calendar days of Respondents’ receipt of such NOD. The Objection Notification must state the basis for the Respondents’ objection to the NOD, clearly and concisely identify the issue(s) forming the basis of any such objection and provide a supporting rationale for any alternate position advocated by the Respondents.
- a. ***No Objection by Respondents*** - In the event Respondents elect not to object to an NOD by submitting a written “Objection Notification” to EPA in accordance with the requirements herein but thereafter fail to correct the deficiencies identified in the NOD in a timely manner, the Respondents shall be subject to additional penalties in accordance with Paragraph 74.a of this Consent Agreement.
- b. ***Objection Raised by Respondents*** - In the event that the Respondents timely submit a written Objection Notification to EPA in accordance with the requirements herein, EPA and the Respondents shall have thirty (30) calendar days from EPA’s receipt of the Objection Notification to reach agreement on the matter(s) in dispute (the “Dispute Resolution Period”). If written agreement cannot be reached on any such matter within the Dispute Resolution Period, EPA shall provide a written statement of its decision (“SOD”) to the Respondents,

which decision shall be final and binding upon the Respondents. Respondents thereafter shall correct those deficiencies identified in any SOD within such reasonable time period therein identified by EPA or timely comply with the requirements of any written agreement between the Parties resolving the matter(s) in dispute, or the Respondents shall be subject to additional penalties in accordance with Paragraph 74.a. of this Consent Agreement.

#### **VI. SATISFACTION OF SETTLEMENT CONDITIONS**

67. EPA will determine the Respondents' compliance with the requirements and provisions set forth in this Consent Agreement.
68. A determination of compliance with the SEP requirements and provisions set forth herein will be based upon, among other things, records, reports, and other submissions made by the Respondents to EPA pursuant to the requirements and provisions of Section V of this Consent Agreement and any inspections that EPA may perform.
69. If EPA determines that the Respondents have complied fully with the requirements and obligations of this CAFO, then EPA, through the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, shall issue a "Letter of Remittance" which shall state that the Respondents have performed the SEP in accordance with this CAFO and have paid all civil penalty amounts due pursuant to the terms of this CAFO.

#### **VII. FORCE MAJEURE**

70. If any event occurs which causes or may cause delays in the completion of any SEP requirements within the deadlines set forth in Paragraph 63 of this Consent Agreement, Respondents shall notify EPA in writing within seven (7) calendar days of the date on which Respondents knew or should have known of such event, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondents to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondents shall implement all reasonable and feasible measures to avoid or minimize any such delay. Failure by the Respondents to comply with the notice requirements of this paragraph shall render application of the "force majeure" terms and provisions of this Section VII ("Force Majeure") void and of no effect as to the particular event involved and shall constitute a waiver of the Respondents' right to request an extension of time to fulfill any obligation under this CAFO affected by such event. Increased costs or expenses associated with the implementation of actions required by this CAFO shall not, in any circumstance or event, be a basis for the assertion or finding of a "force majeure" event pursuant to this Section VII of the Consent Agreement or for the extension of any deadline herein.

71. If EPA, in its sole discretion, determines that the delay or anticipated delay in complying with this CAFO has been or will be caused by circumstances entirely beyond the control of the Respondents which could not or cannot be overcome by due diligence (*i.e.*, a “force majeure”), the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate in writing to such extension of time.
72. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by a force majeure EPA, in its sole discretion, will notify the Respondents in writing of its decision. Any such delay shall not be the basis for any extension of time for the performance of Respondents’ obligations under this CAFO and the Respondents may be subject to the payment of additional penalties for such delays as described in Section VIII (“Penalties for Noncompliance and Delay”), below.
73. The burden of proving that any delay is caused by a “force majeure” event shall rest with Respondents.

#### **VIII. PENALTIES FOR NONCOMPLIANCE AND DELAY**

74. **Additional Penalties** - In the event that the Respondents fail to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described herein, or if the Approved SEP Expenditures for the SEP do not equal the Thirty-Eight Thousand Six Hundred Dollar (\$38,600.00) Required SEP Expenditure amount, the Respondents shall be liable for additional penalties, as provided below:
- a. ***Penalty for Failure to Satisfactorily Complete SEP*** - Except as provided in Paragraph 74.b. of this Consent Agreement, if the SEP has not been timely and satisfactorily completed pursuant to the requirements and provisions of Section V (“Supplemental Environmental Project”), Respondents shall pay an additional civil penalty up to, but not to exceed, the difference between the Approved SEP Expenditures and the Thirty-Eight Thousand Six Hundred Dollar (\$38,600.00) Required SEP Expenditure, according to the following mathematical formula:
- $$\$ 38,600.00 - [\textit{minus}] \textit{ the Approved SEP Expenditures} = [\textit{equals}] \textit{ Additional Penalty.}$$
- b. ***Exception to Penalty for Satisfactory Completion of SEP without Required SEP Expenditure*** - If the SEP has been satisfactorily completed and the Respondents have spent at least Ninety percent (90%) of the Required SEP Expenditure amount, Respondents shall not be liable for any additional penalty.

- c. ***Penalty for Failure to Complete SEP Activities Timely and/or Properly*** - If the Respondents fail to complete any SEP activity identified in Paragraph 63.a, 63.b or 63.d of this Consent Agreement in accordance with the applicable requirements and on or before an applicable deadline set forth therein, Respondents shall pay an additional penalty of one-hundred dollars (\$100.00) for each day that proper completion of such activity is delayed beyond the established deadline.
- d. ***Penalty for Failure to Submit Preliminary SEP Report Timely and/or Properly*** - If the Respondents fail to submit the Preliminary SEP Report in accordance with the deadline and each of the requirements of Paragraph 63.c of this Consent Agreement, Respondents shall pay an additional penalty of one-hundred dollars (\$100.00) for each day that any such Preliminary SEP Report is late and/or deficient.
- e. ***Penalty for Failure to Submit Final SEP Completion Report Timely and/or Properly*** - If Respondents fail to submit the required Final SEP Completion Report to EPA, in accordance with the deadline and each of the requirements of Paragraph 63.e of this Consent Agreement, Respondent shall pay an additional penalty of two-hundred and fifty dollars (\$250.00) for each day that the Final SEP Completion Report is late and/or deficient.
- f. ***Penalty for Failure to Correct Deficiency*** - If the Respondents fail to correct any deficiency identified by EPA in a written Notice of Deficiency issued pursuant to Paragraph 64 of this Consent Agreement within such reasonable time period as therein identified by EPA. Respondents thereafter shall pay an additional penalty of two-hundred dollars (\$200.00) for each day of continued deficiency.
- g. ***Penalty for Failure to Correct Deficiency in NOD or SOD or to Comply with Requirements of Written Agreement Resolving Dispute*** - If the Respondents fail to correct timely any deficiency identified by EPA in a written NOD, issued pursuant to Paragraph 65.b of this Consent Agreement, that is not the subject of a pending Dispute Resolution pursuant to a written Objection Notification timely and properly submitted by Respondents in accordance with the provisions of Paragraph 66.b of this Consent Agreement, and if the Respondents fail to correct timely any deficiency identified by EPA in a written SOD, issued pursuant to Paragraph 66.b of this Consent Agreement, or to comply with the requirements of any written agreement between the Parties resolving any matter(s) in dispute. Respondents thereafter shall pay an additional penalty of two-hundred dollars (\$200.00) for each day of deficiency or noncompliance.

- h. **Cap on Total Amount of Respondents' Approved SEP Expenditures and Any Additional Penalties** - Notwithstanding the foregoing, the Approved SEP Expenditures plus any additional penalties incurred and paid by the Respondents under this Section VIII ("Penalties for Noncompliance and Delay") shall not exceed a total amount of Thirty-Eight Thousand Six Hundred Dollars (\$38,600.00), except that, in any event, the Respondents shall remain obligated to complete fully all SEP Performance Requirements and Obligations set forth in Section V, Subsection C ("SEP Performance Requirements and Obligations"), of this Consent Agreement.
- i. **Reasonable Exercise of EPA Discretion** - In exercising its discretion or making determinations under this CAFO, EPA will be reasonable, considering all of the relevant circumstances. However, all determinations required to be made by EPA under this CAFO, including the determination as to whether the SEP has been completed satisfactorily, shall be at the sole discretion of EPA. Notwithstanding any other provision of this CAFO, no action or decision by EPA pursuant to this CAFO shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this CAFO. Additional penalties for Noncompliance and Delay, as set forth in this Section VIII ("Penalties for Noncompliance and Delay"), shall begin to accrue on the first day of non-compliance with the specified provision or deadline and shall continue to accrue through the final day of the completion of the activity.
- j. **Additional Penalties Due and Payable Upon Receipt of Written Demand** - Additional penalties for Noncompliance and Delay, as set forth in this Section VIII ("Penalties for Noncompliance and Delay"), shall become due and payable immediately upon the Respondents' receipt of a written demand by EPA for such penalties. The method of payment and the assessment of interest, administrative costs and late payment penalties in connection with the late payment of such additional penalties shall be in accordance with the requirements for the payment of a civil penalty as specified in Section IV ("Civil Penalty") of this Consent Agreement.

#### **IX. CERTIFICATION**

75. Any notice, report, certification, data presentation, or other document submitted by the Respondents pursuant to this CAFO which discusses, describes, demonstrates, supports any finding or makes any representation concerning the Respondents' compliance or noncompliance with any requirement of this CAFO shall be signed and certified by one or more persons who have the authority to represent and to legally bind each of the Respondents. Such certification shall be in the following form:

I certify under penalty of law that I have personally examined and am familiar with the information submitted to EPA under this certification. I believe that the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information to EPA including the possibility of fine and/or imprisonment for knowing violations.

Signature(s): \_\_\_\_\_  
Title(s): \_\_\_\_\_  
Name(s): \_\_\_\_\_

**X. SUBMISSION REQUIREMENTS**

76. All documents, reports, notices and correspondence to be submitted or sent pursuant to or concerning this CAFO shall be sent by: certified mail, return receipt requested; overnight delivery (*by Federal Express or other non-U.S. Postal Service Express mail*) or by hand delivery, as follows:

If to EPA:

Craig Yussen  
Chemical Engineer (3LC61)  
Toxics Programs Branch  
United States Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029;

and

A.J. D'Angelo  
Sr. Assistant Regional Counsel (3RC30)  
Office of Regional Counsel  
United States Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

If to the Respondents:

Chet Thompson, Esq.  
Crowell & Moring, LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004.

**XI. OTHER APPLICABLE LAWS**

77. Nothing in this CAFO shall relieve the Respondents of any duties otherwise imposed upon any of them by applicable federal, state or local laws and/or regulations.

**XII. NO RELEASES**

78. Nothing in this CAFO shall constitute or be construed as a release of any of the Respondents from any claim, cause of action, or demand in law or equity by any person, firm, partnership, or corporation not bound by this CAFO for any liability relating in any way to the presence of PCBs at the Facility.

**XIII. LIABILITY OF EPA**

79. EPA shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondents or of their employees, agents, servants, receivers, successors, or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants in carrying out the SEP, nor shall EPA be held out as a party to any contract entered into by the Respondents in carrying out the terms of this CAFO.

**XIV. INDEMNIFICATION AND HOLD HARMLESS**

80. Respondents agree to indemnify and hold harmless EPA and its agents, employees, and authorized representatives from any and all causes of action arising from any acts or omissions of the Respondents or of any of their employees, agents, servants, receivers, successors, or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants, in carrying out the terms of this CAFO.

**XV. NO REIMBURSEMENTS**

81. Respondents certify that they have not received and will not seek to receive reimbursement in the form of a credit in any other federal, state, or local enforcement action, or a grant, rebate, or any other payment or financial assistance from any governmental source for any of the expenses that they incur to fulfill the terms of this CAFO.
82. For Federal Income Tax purposes, the Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

**XVI. NON-TRANSFERABILITY**

83. Respondents shall have sole responsibility for the legal obligations created by this CAFO to finance and enter into appropriate contracts to perform the SEP described herein. Any act by the Respondents to transfer such responsibility shall constitute abandonment and cause the Respondents to be liable for additional penalties as specified in Paragraph 74.a. of this Consent Agreement.

**XVII. DISTRIBUTION OF CAFO**

84. Respondents shall provide a copy of the CAFO to all contractors, subcontractors, supervisory personnel, laboratories, and consultants retained by the Respondents to conduct any portion of the SEP required to be performed pursuant to this CAFO.

**XVIII. PUBLIC STATEMENTS BY RESPONDENTS**

85. Any public statement, oral or written, in print, film, or other media, made by the Respondents in reference to the above SEP shall include language indicating that this project was undertaken in connection with the settlement of an enforcement action initiated by the United States Environmental Protection Agency for Respondents' alleged violations of TSCA Section 6(e), 15 U.S.C. § 2605(e), and its implementing PCB regulations.

**XIX. ACCESS TO INFORMATION**

86. In addition to the information and documents otherwise required by this CAFO, Respondents shall provide to EPA, upon written request, any and all information and/or documents in their possession, custody or control which relate to the SEP described herein including, but not limited to, operational logs, copies of waste manifests, the identity of the transporter(s) of wastes generated by the SEP, the identity of any contractors, subcontractors and supervisory personnel used, and information and documents concerning the Respondents' compliance with state and local requirements. Nothing in this Consent Agreement shall be interpreted as limiting the inspection and information-gathering authority of EPA under any law or regulation.
87. EPA and its employees and authorized representatives shall have the authority to enter and freely move about the Facility, where any SEP is being performed, pursuant to this CAFO, for the purposes of, among other things, inspecting abatement records, operating logs, and contracts related to this CAFO; reviewing the progress of the Respondents in carrying out the terms of this CAFO; conducting such sampling, monitoring, or other tests as EPA deems necessary to ensure compliance with the CAFO; and verifying the data and information submitted to EPA by the Respondents. Respondents shall permit such



persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to the CAFO. EPA's authorized representatives may use a camera, recording, or other equipment to record its observations during such access.

**XX. CLAIM OF CONFIDENTIALITY**

88. Respondents may make a claim of business confidentiality for any information provided to EPA pursuant to this CAFO in the manner described in 40 C.F.R. Section 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. Section 2.204(c)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to the Respondents.

**XXI. CERTIFICATIONS**

89. Respondents each certify to Complainant, by their respective signatures hereto, to the best of their knowledge and belief, that they and the Facility currently are in compliance with all relevant provisions of TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, and of 40 C.F.R. Part 761, for which violations are alleged in this Consent Agreement.

**XXII. OTHER APPLICABLE LAWS**

90. Nothing in this CAFO shall relieve the Respondents of any duties otherwise imposed upon them by applicable federal, state, or local law and/or regulation.

**XXIII. RESERVATION OF RIGHTS**

91. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any persons, including the Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the Regional

Hearing Clerk. This CAFO is not intended, and shall not be construed, to resolve any claim for criminal sanctions now pending or that may be sought in the future, and shall not limit the right of the United States to pursue criminal sanctions for any violation of law.

**XXIV. FULL AND FINAL SATISFACTION**

92. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under TSCA Section 6(e), 15 U.S.C. § 2605(e), for the violations alleged in this CA. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

**XXV. PARTIES BOUND**

93. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondents, Respondents' officers and directors (in their official capacity) and Respondents' successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of each Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind that Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

**XXVI. EFFECTIVE DATE**

94. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

**XXVII. ENTIRE AGREEMENT**

95. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

*In the Matter of:  
1500 Walnut Enterprises, LLC and SSH Management, LLC*

*Docket No. TSCA-03-2011-0288  
Consent Agreement*

**For Respondent 1500 Walnut Enterprises, LLC:**

Date: 9/13/11

By: Adrian Alexandru

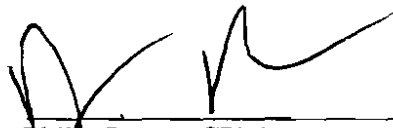
Adrian Alexandru  
Managing Member  
1500 Walnut Enterprises, LLC

*In the Matter of:  
1500 Walnut Enterprises, LLC and SSH Management, LLC*

*Docket No. TSCA-03-2011-0288  
Consent Agreement*

**For Respondent SSH Management, LLC:**

Date: 9/13/11

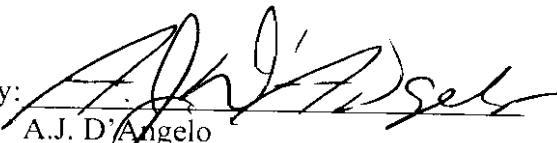
By:   
Philip Rosen, CPM  
President  
SSH Management, LLC

*In the Matter of:*  
*1500 Walnut Enterprises, LLC and SSH Management, LLC*

*Docket No. TSCA-03-2011-0288*  
*Consent Agreement*

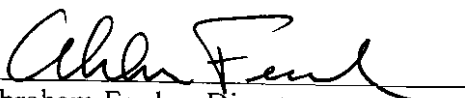
**For Complainant:**

Date: 9/13/2011

By:   
A.J. D'Angelo  
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9/14/11

By:   
Abraham Ferdas, Director  
Land and Chemicals Division



*In the Matter of:*  
*1500 Walnut Enterprises, LLC and SSH Management, LLC*

*Docket No. TSCA-03-2011-0288*  
*Final Order*

**NOW, THEREFORE**, pursuant to Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615, and the *Consolidated Rules of Practice*, and upon representations in the Consent Agreement that the penalty agreed to therein is based upon a consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Twenty Thousand Dollars (\$20,000.00) in the manner set forth in the Consent Agreement and comply with each of the additional terms and provisions thereof, in settlement of the civil claims contained therein.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or by his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

Date: \_\_\_\_\_

9/19/11

By: \_\_\_\_\_

*Renée Sarajian*

Renée Sarajian  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region III

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

<b>In the Matter of:</b>	:	<b>U.S. EPA Docket No. TSCA-03-2011-0288</b>
	:	
<b>1500 Walnut Enterprises, LLC</b>	:	
<b>123 S. Broad Street, Suite 850</b>	:	
<b>Philadelphia, PA 19109</b>	:	
	:	
<b>and</b>	:	<b>Proceeding under Sections 15 and 16</b>
	:	<b>of the Toxic Substances Control Act,</b>
	:	<b>15 U.S.C. §§ 2614 and 2615</b>
	:	
<b>SSH Management, LLC</b>	:	
<b>123 S. Broad Street, Suite 850</b>	:	
<b>Philadelphia, PA 19109,</b>	:	
	:	
<b>Respondents.</b>	:	
	:	
	:	
<b>1500 Walnut Street</b>	:	
<b>Philadelphia, PA 19102,</b>	:	
	:	
	:	
<b>Facility.</b>	:	

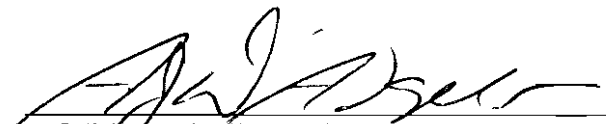
**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5<sup>th</sup> Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order. I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Certified Mail, Return Receipt Requested, Postage Prepaid (Article No. 7004 2890 0000 5075 7248), to the following person at the following address:

*Chet Thompson, Esquire  
Crowell & Moring, LLP  
1001 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2595  
(Counsel for Respondents)*

**SEP 19 2011**

Date

  
A.J. D'Angelo (3RC30)  
Sr. Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Tel. (215) 814-2480