

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: JEFFREY S. NAST 5/17/11
Name of Contact person Date

in the REG. COUNSEL (REG. III) at 215-814-2652
Office Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS Administrative Order/ Consent Agreement FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Person and/or Company/Municipality making the payment
OX PAPERBOARD, LLC.

The Total Dollar Amount of Receivable 30,600.⁰⁰
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number (TSCA-03-2011-0109)

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office LAND & CHEMICALS DIV.

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____
If you have any questions call: _____
Name of Contact Date
in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005
- 2. Originating Office (ORC)
- 3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- 1. Originating Office
- 2. Designated Program Office
- 3. Regional Hearing Clerk
- 3. Regional Counsel

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)	
)	
Ox Paperboard, LLC)	
164 Eyster Road)	U.S. EPA Docket Number
Halltown, WV 25423)	TSCA-03-2011-0109
)	
RESPONDENT)	Consent Agreement
)	
Ox Paperboard, LLC)	
Old Route 340, Halltown Road)	
Halltown, WV 25423)	
)	
)	
FACILITY)	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is filed pursuant to 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"). Pursuant to Section 22.13(b) of the Consolidated Rules, this Consent Agreement and the attached Final Order (collectively referred to herein as the "CAFO") both commence and conclude an administrative proceeding against Ox Paperboard, LLC ("Respondent") to resolve alleged 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

(the "PCB regulations"). The Complainant is the Director, Land and Chemicals Division, United States Environmental Protection Agency, Region III ("Complainant").

2. This Consent Agreement is entered into by Complainant and Respondent to resolve EPA's claims for civil penalties based upon the violations alleged in the Findings of Fact, as set forth below.
3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this Consent Agreement.
4. For the purposes of this proceeding, Respondent neither admits nor denies the Findings of Fact contained in this Consent Agreement, except as provided in Paragraph 3, above.
5. For the purposes of this proceeding, Respondent neither admits nor denies the Conclusions of Law contained in this Consent Agreement, except as provided in Paragraph 3, above.
6. For the purposes of this proceeding, Respondent hereby waives any right to contest the allegations and its right to appeal the accompanying Final Order.
7. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.
8. Respondent consents to the issuance of this Consent Agreement and to the attached Final Order and agrees to comply with their terms. Respondent agrees not to contest Complainant's jurisdiction with respect to: (1) the execution of this Consent Agreement; (2) the issuance of the attached Final Order; or (3) the enforcement thereof.

9. Nothing in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.
10. EPA reserves the right to commence action against any person, including Respondent, 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.
11. 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 Consent Agreement and Final Order, following its filing with the Regional Hearing Clerk. Except as provided otherwise herein, Respondent reserves all available rights and defenses it may have to defend itself in any such action.
12. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.
13. Each party shall bear its own costs and attorneys fees in connection with this proceeding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter. As provided in Paragraphs 4 and 5 above, Respondent neither admits nor denies these Findings of Fact and Conclusions of Law, but agrees to this settlement to avoid further litigation, as set forth in Paragraph 7, above.
15. As used herein, the terms "PCB", "PCB Item" and "PCB Transformer" shall each have the definition and meaning for such terms set forth in 40 C.F.R. § 761.3.
16. 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. 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.
17. Respondent is a Pennsylvania corporation, with headquarters in West Virginia, and is a "person" as defined in 40 C.F.R. § 761.3.
18. Respondent is, and at all times relevant to this Consent Agreement was, the owner and operator of a manufacturing facility located at Old Route 340, Halltown Road, Halltown, WV (the "Facility").
19. On July 17, 2008, an inspector from the United States Environmental Protection Agency ("EPA") conducted a compliance 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 Respondent's 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, use, disposal, storage and marking of polychlorinated biphenyls ("PCBs") and PCB Items at the Facility.

20. At the time of the Inspection, and throughout calendar years 2005, 2006, and 2007 (at which time the PCB Transformers remained in service), Respondent had in use/in service two mineral oil PCB Transformers in two separate outdoor substations adjacent to the main facility building. Each substation had a wood frame roof and concrete floor. The PCB Transformers were labeled as Units A and E, serial numbers 21-113990 and 21-254176, respectively.
21. In the late 1990s, Units A and E were retrofilled and reclassified to Non-PCB status.
22. In June 2004, Units A and E were tested and subsequently reclassified as PCB Transformers as they were found to have PCB concentrations over 500 ppm.
23. On the basis of the Inspection, Complainant has determined that Respondent has violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, as described below.

Counts 1-3

Failure to Develop and Maintain Annual Document Log

24. The allegations of paragraphs 1 through 23 of this Consent Agreement are incorporated herein by reference.
25. Pursuant to 40 C.F.R. § 761.180(a), in relevant part, owners and operators of facilities where PCBs are used or stored in prescribed quantities (including, in relevant part, the

storage of one or more PCB Transformers) must develop and maintain at the facility or a central facility by July 1, a written annual document log of the disposition of PCBs and PCB Items 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.

- 26. At the time of the Inspection, Respondent had not prepared or maintained any annual document logs for the PCB transformers at the Facility for the time period covering calendar years 2005, 2006, and 2007, for which annual document logs were required to be developed and maintained by July 1, 2006, July 1, 2007, and July 1, 2008, respectively.
- 27. Respondent committed three violations of Section 15 of TSCA, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(a), by failing to prepare and maintain annual document logs for the calendar years 2005-2007 for PCB Transformers Units A and E.

Counts 4-6
**Failure to Maintain Annual PCB Transformer
Inspection Records For Calendar Years 2005-2007**

- 28. The allegations of paragraphs 1 through 27 of this Consent Agreement are incorporated herein by reference.
- 29. 40 C.F.R. § 761.30(a)(1)(ix) requires, in relevant part, that a visual inspection of each PCB Transformer in use or stored for reuse shall be performed at least once every three (3) months and that these inspections may take place any time during the three (3) month periods of January - March, April - June, July - September and October - December as long as there is a minimum of thirty (30) days between inspections. The visual inspection

must include investigation for any leak of dielectric fluid on or around the transformer.

30. 40 C.F.R. § 761.30(a)(1)(xii) further requires that records of inspection and maintenance history shall be maintained at least three (3) years after disposing of the transformer and 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 a leak was discovered; (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) a description of any cleanup, containment, or repair performed; (H) the results of any containment and daily inspection required for uncorrected active leaks; (I) a record of the registration of PCB Transformer(s); and (J) records of transfer of ownership in compliance with 40 C.F.R. § 761.180(a)(2)(ix).
31. 40 C.F.R. § 761.30(a)(1)(xiii) provides that a reduced visual inspection frequency of at least once every twelve months applies to PCB Transformers that utilize either of the following risk reduction measures and that these inspections may take place at any time during the calendar year as long as there is a minimum of 180 days between inspections: (A) a PCB Transformer which has impervious, un-drained, secondary containment capacity of at least 100 percent of the total dielectric fluid volume of all transformers so contained; or (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).

32. Although Respondent visually inspected PCB Transformer Units A and E daily, Respondent failed to maintain and, at the time of the referenced July 17, 2008 Facility Inspection, Respondent failed to make available for inspection, upon request by EPA, records containing the information, required pursuant to 40 C.F.R. § 761.30(a)(1)(xii), regarding the inspection and maintenance of such Transformers for the 2005-2007 calendar years.
33. Respondent committed three violations of TSCA Section 15, 42 U.S.C. Section 2614, and the requirements of 40 C.F.R. § 761.30(a)(1)(xii), by failing to maintain and make available, upon request, for EPA inspection during the course of the July 17, 2008 Facility Inspection or thereafter, records of the inspection and maintenance history of PCB Transformers Units A and E for the 2005-2007 calendar years.

Counts 7-8

Failure to Mark the Fences with Access to the PCB Transformers

34. The allegations of paragraphs 1 through 33 of this Consent Agreement are incorporated herein by reference.
35. 40 C.F.R. § 761.30(a)(1)(xv) provides that, "In the event a mineral oil transformer, assumed to contain less than 500 ppm of PCBs as provided in § 761.2 is, tested and found to be contaminated at 500 ppm or greater PCBs, it will be subject to all the requirements of this Part 761. In addition, efforts must be initiated immediately to bring the transformer into compliance in accordance with the following schedule: * * * (C) Mark the vault door, machinery room door, fence, hallway or other means of access to the PCB Transformer within 7 days after discovery."

- 36. 40 C.F.R. § 761.40(j) provides, in pertinent part, that PCB Transformer locations shall be marked as follows: the vault door, machinery room door, fence, hallway, or means of access, other than grates and manhole covers, to a PCB Transformer must be marked with the mark ML as required by 40 C.F.R. § 761.40(a).
- 37. 40 C.F.R. § 761.40(a) requires the use of the "ML" mark illustrated in 40 C.F.R. § 761.45, Figure 1.
- 38. At the time of the Inspection, the chain link access gates to the PCB substations for Units A and E were not marked as required by 40 C.F.R. § 761.30(a)(1)(xv)(C) and .40(j) in the manner and within the time frame required by such provisions.
- 39. Respondent committed two violations of Section 15 of TSCA, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.30(a)(1)(xv)(C) and .40(j), by failing to mark the access gates to the PCB Transformer substations with PCB labels for Units A and E.

III. CERTIFICATION OF COMPLIANCE AND SETTLEMENT CONDITIONS

- 40. As to all relevant provisions of TSCA and the PCB regulations allegedly violated as described above in Counts 1 through 8 of the Findings of Fact and Conclusions of Law, above, Respondent certifies to EPA, by its signature hereto, that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is in compliance with all such relevant provisions and regulations.

IV. CIVIL PENALTY

- 41. Respondent agrees to pay a civil penalty in the amount of for **THIRTY THOUSAND SIX HUNDRED DOLLARS (\$30,600.00)**, which Respondent agrees to pay in

accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this Consent Agreement and Final Order fully executed by all parties. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this Consent Agreement and Final Order, Respondent must pay the entire civil penalty no later than thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.

42. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined after consideration of the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), including 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, EPA hereby agrees and acknowledges that payment of the civil penalty shall be in full and final 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 violations alleged in this Consent Agreement and Final Order.

43. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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.

- a. Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent. 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 on the portion of the civil penalty not paid within 30 calendar days 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).
- b. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.
- c. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R.

§ 901.9(d).

44. Respondent shall remit the full penalty, and/or any interest, administrative fees and late payment penalties, in accordance with this Section IV, via one of the following methods:

a. All payments made by check and sent by U.S Postal Service regular mail shall be addressed to:

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

The customer service contact for this address may be reached at 513-487-2105

b. All payments made by check and sent by UPS, FedEx, or overnight mail delivery service (except as noted in section c, below) shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The U.S. Bank customer service contact for overnight delivery is 314-418-1028.

c. All payments made by check in any currency drawn on banks with no branches in the United States shall be addressed for delivery to the following address:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. All payments made by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York

ABA No. 021030004
Account No. 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"

The Federal Reserve customer service contact may be reached at 212-720-5000.

- e. 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

Customer service contact: John Schmid, at 202-874-7026, or REX at 1-866-234-5681

- f. On-line payment option

WWW.PAY.GOV

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

- g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/payment_instructions.htm

45. All payments by Respondent shall include Respondent's full name and address and the
EPA Docket Number of this Consent Agreement (TSCA-03-2011-0109).

46. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Jeffrey S. Nast
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

47. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

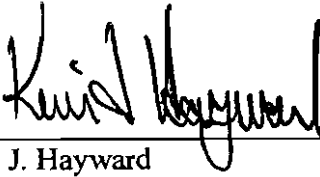
V. PARTIES BOUND

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


VI. EFFECTIVE DATE

49. The effective date of this Consent Agreement and Final Order is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

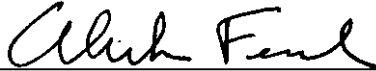
For Respondent Ox Paperboard, LLC:

Date: 05/13/11 By: 
Kevin J. Hayward
President

For Complainant United States Environmental Protection Agency, Region III:

Date: 5/17/11 By: 
Jeffrey S. Nast
Sr. Assistant Regional Counsel

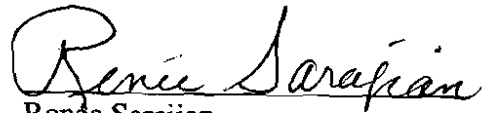
After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

6/2/11
Date By: 
Abraham Ferdas, Director
Land and Chemicals Division

set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), Respondent Ox Paperboard, LLC is hereby ordered to pay a civil penalty of **THIRTY THOUSAND SIX HUNDRED DOLLARS** (\$30,600.00), as set forth in Section IV of the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: 6/6/11


Renee Sarajian
Regional Judicial Officer
U.S. EPA, Region III

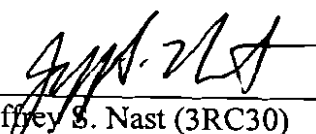
In re: Borough of Norristown

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the Consent Agreement/Final Order, Docket No. TSCA-03-2011-0109, and associated enclosures, have been hand delivered and filed with the EPA Region III Regional Hearing Clerk on the date below, and that copies of the same were sent via express delivery to the following:

Kevin J. Hayward, President
Ox Paperboard, LLC
164 Eyster Road
Halltown, WV 25423

6/7/2011
Date



Jeffrey S. Nast (3RC30)
Sr. Asst. Regional Counsel
U.S. EPA , Region III
(215) 814-2652