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

NewChem, Inc. :
7743 Ohio River Blvd.
New Cumberland, West Virginia 26047, : U.S. EPA Docket No.
Respondent. : TSCA-03-2009-0280

NewChem, Inc. :
Route 2
New Cumberland, West Virginia 26050. :
Facility.

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is filed pursuant to Sections 15 and 16 of the Toxic Substances and 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"). This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") 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") by NewChem, Inc., a subsidiary of Deltech Resins Co. ("Respondent"). The Complainant is the Director, Land and Chemicals Division, United States Environmental Protection Agency, Region III ("Complainant").
2. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules, this CAFO commences and

concludes an administrative proceeding brought by EPA to address alleged violations of TSCA at Respondent's facility located at Route 2, New Cumberland, West Virginia (the "Facility").

3. 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.
4. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this Consent Agreement.
5. Respondent neither admits nor denies the Findings of Fact contained in this Consent Agreement, except as provided in Paragraph 4, above.
6. Respondent neither admits nor denies the Conclusions of Law contained in this Consent Agreement, except as provided in Paragraph 4, above.
7. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in the Findings of Fact and Conclusions of Law, and any right to appeal the accompanying Final Order.
8. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of the Consent Agreement, the issuance of the attached Final Order, or the enforcement thereof.
10. Nothing in this CAFO shall alter or otherwise affect Respondent's obligation to comply

with all applicable federal, state or local environmental statutes and regulations.

11. 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.
12. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter. As provided in Paragraphs 5 and 6 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 8, above.
14. As used herein, the terms "PCB", "PCB Item" and "PCB Transformer" shall have the definitions and meanings for such terms as set forth in 40 C.F.R. § 761.3.
15. 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.
16. Respondent is an Ohio corporation and is a "person" as defined in 40 C.F.R. § 761.3.

17. Respondent is, and at all times relevant to this Consent Agreement was, the owner and operator of a manufacturing facility located at 7743 Ohio River Blvd., New Cumberland, West Virginia 26050.
18. Since at least July 31, 1997, Respondent owned and operated a PCB Transformer, Serial Number 78174 WD 780B17300, which was located in the Custom Building at the Facility.
19. On the basis of information provided by Respondent, Complainant has determined that Respondent has violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614.

Count I

20. Pursuant to 40 C.F.R. § 761.20(a), no person may use any PCB, or any PCB item, in any manner other than in a totally enclosed manner, unless authorized under 40 C.F.R. § 761.30, with exceptions not here relevant. Pursuant to 40 C.F.R. § 761.30(a), PCB Transformers may be used only if in compliance with the conditions set forth in 40 C.F.R. § 761.30(a)(1). 40 C.F.R. § 761.30(a)(1)(vi)(A) provides, in relevant part, that “[no later than December 28, 1998 all owners of PCB Transformers, including those in storage for reuse, must register their transformers with the Environmental Protection Agency” Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(D), “[a] transformer owner must comply with all requirements of [40 C.F.R. § 761.30(a)(1)(vi)(A)] to continue the PCB-Transformer’s authorization for use, or storage for reuse, pursuant to [40 C.F.R. § 761.30] and TSCA section 6(e)(2)(B).”
21. The PCB Transformer in use in the Custom Building at the Facility as of July 31, 1997 had been in use at the Facility from at least July 31, 1998 until September 11, 2009. This

PCB Transformer was not registered with EPA until August 20, 2001. As a result of the failure to comply with the registration deadline of December 28, 1998, as set forth in 40 C.F.R. § 761.30(a)(1)(vi)(A), this PCB Transformer was not authorized for use, or storage for reuse, at any time after December 28, 1998.

22. Respondent violated Section 15 of TSCA, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.30(a)(1)(vi)(D), subsequent to December 28, 1998, through the unauthorized and continued use of the PCB Transformer at the Facility after failing to comply with the PCB Transformer registration deadline set forth at 40 C.F.R. § 761.30(a)(1)(vi)(A).

III. CIVIL PENALTY

23. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of One Thousand Nine Hundred Dollars (\$1,900.00), 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 CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
24. 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, *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) to calculate the civil penalty amount set forth in the preceding paragraph of this Consent Agreement. Complaint has also considered the *Adjustment of Civil Monetary Penalties for Inflation*, as set forth in 40 C.F.R. Part 19, as amended by 73 Fed. Reg. 75340 (Dec. 11, 2008).

25. Payment of the civil penalty amount required under the terms of Paragraph 24, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference its name and address and the Docket Number of this action (TSCA-03-2009-0280).
- b. All checks shall be made payable to "**United States Treasury**".
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Eric Volck, 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 West M. L. King Drive
Cincinnati, Ohio 45268-0001

- f. 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”.

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

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706,

Account No.: 310006, U.S. Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical Location of U.S. Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jesse White, 301-887-6548, or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV

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

i. Additional payment guidance is available at:

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

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO. A copy of Respondent's check or electronic fund transfer shall be sent simultaneously to:

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

and

Ms. Cheryl Jamieson
Associate Regional Counsel for Regulatory Enforcement
Office of Regional Counsel (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

26. 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. Accordingly, Respondent's 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.

27. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. 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).
28. The costs of the EPA'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.
29. A late payment 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).

30. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

IV. EFFECT OF SETTLEMENT

31. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations alleged in Section II (“Findings of Fact and Conclusions of Law”), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

V. OTHER APPLICABLE LAWS

32. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

VI. CERTIFICATION OF COMPLIANCE

33. Respondent certifies to Complainant, upon investigation, to the best of its knowledge and belief, that Respondent, in its capacity as the owner and operator of the NewChem, Newell, WV Facility, presently is complying with the provisions of TSCA, and the regulations promulgated thereunder, that are referenced in this Consent Agreement.

VII. RESERVATION OF RIGHTS

34. This Consent Agreement and the accompanying Final Order resolve only EPA’s claims for civil monetary penalties for the specific violations alleged in Section II (“Findings of Fact and Conclusions of Law”) herein. 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 § 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 EPA Regional Hearing Clerk.

VIII. PARTIES BOUND

35. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and its officers, directors, employees, successors, agents and assigns.

IX. EFFECTIVE DATE

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

X. ENTIRE AGREEMENT

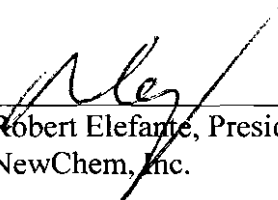
37. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XI. EXECUTION

30. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

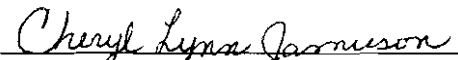
For Respondent, NewChem, Inc.:

Date: 9/17/09

By: 
Robert Elefante, President
NewChem, Inc.

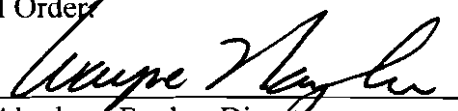
For Complainant:

Date: 9/24/09

By: 
Cheryl Lynn Jamieson
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: 9/24/09

By: 
Abraham Ferdas, Director
Land and Chemicals Division

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

In the Matter of:	:	U.S. EPA Docket No. TSCA-03-2009-0280
	:	
NewChem, Inc.	:	
7743 Ohio River Blvd.	:	Proceeding under Sections 15 and 16
New Cumberland, West Virginia 29047	:	of the Toxic Substances Control Act,
	:	15 U.S.C. §§ 2614 and 2615
	:	
Respondent,	:	
	:	
NewChem, Inc.	:	
Route 2	:	
New Cumberland, West Virginia 29050	:	
	:	
Facility.	:	

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency ("EPA"), Region III, and Respondent, NewChem, Inc., have executed a document entitled "Consent Agreement", which I ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("*Consolidated Rules of Practice*"), published at 40 C.F.R. Part 22, with specific reference to §§ 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

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 One Thousand Nine Hundred Dollars (\$1,900.00) in the manner set forth in the Consent Agreement and in accordance with the provisions, terms and conditions thereof.

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 U.S. 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: 9/28/09

By: Renee Sarajian
Renee Sarajian
Regional Judicial Officer
United States Environmental Protection Agency
Region III

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

In the Matter of: :
NewChem, Inc. : **U.S. EPA Docket Number**
7743 Ohio River Blvd. : **RCRA-03-2009-0280**
New Cumberland, West Virginia 26047 :
Respondent :

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by Overnight Delivery Service, true and correct copies of the Consent Agreement and Final Order: *In Re: NewChem Inc. Docket No. RCRA-03-2009-0280*, to the person and address listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region III.

Christopher Gulan
NewChem, Inc.
7743 Ohio River Blvd.
New Cumberland, West Virginia 26047

Date: 9/28/09

Cheryl L. Jamieson
Cheryl L. Jamieson
Sr. Asst. Regional Counsel
Office of Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103