

**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: Coffman 8/6/09  
Name of Contact person Date

in the ORC at 20618  
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

RAY COPE  
The Total Dollar Amount of Receivable \$ 9,500.

(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number TSCA-03-2009-0180

The Site-Specific Superfund Acct. Number \_\_\_\_\_

The Designated Regional/HQ Program Office ORC

**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. U.S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-002)  
Cincinnati, OH 45268  
Attn: Lori Weidner
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

via Certified Mail, Return Receipt Requested

Benjamin M. Cohan  
Office of Regional Counsel  
(215) 814-2618 (tel.)  
(215) 814-2603 (fax)

August 6, 2009

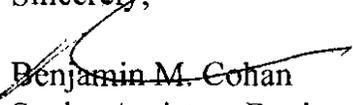
Mr. Ray Cope  
Cope Floor and Wall Covering  
302 Sumner Ave.  
Allentown, PA 18102

Re:IN RE: Ray Cope d/b/a Cope Floor and Wall Covering  
EPA Docket No. TSCA-03-2009-0180

Dear Mr. Cope:

Enclosed please find a certified copy of the above captioned Consent Agreement and Final Order, along with related enclosures. Penalty payment instructions are provided in Section III of the Consent Agreement. If you have any questions pertaining thereto, please feel free to call me. Payment is due within 30 days from the effective date which is August 6, 2009 (i.e. the date it is filed with the Regional Hearing Clerk). Thank you for your cooperation in settling this matter.

Sincerely,

  
Benjamin M. Cohan  
Senior Assistant Regional Counsel

Enclosures  
cc: Richard Ponak (3WC32)

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

IN RE: :  
: DOCKET NO: TSCA-03-2009-0180  
Ray Cope d/b/a Cope Floor and Wall Covering :  
302 Sumner Ave. :  
Allentown, PA 18102 :  
Respondent. :

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III (“EPA”, “Agency” or “Complainant”) and Ray Cope d/b/a/ Cope Floor and Wall Covering (“Cope” or the “Respondent”) pursuant to Sections 16(a) and 207(g) of the Toxic Substances Control Act (“TSCA” or the “Act”), as amended, 15 U.S.C. §§ 2615(a) and 2647(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, (with specific reference to the Consolidated Rules of Practice set forth at 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”) address violations by Respondent of sections 206(a)(3), 207(g) and 15(1) of the Act.

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

3. Except as provided for in paragraph 2, above, Respondent neither admits nor denies the specific finding of facts and conclusions of law set forth in this CAFO.

4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution and enforcement of this CAFO or the issuance of the accompanying Final Order.

5. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

6. Respondent consents to the issuance of the CAFO and agrees to comply with the terms of the CAFO.

7. Respondent shall bear its own costs and attorney's fees.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8. Complainant has determined that Respondent violated applicable requirements of section 206(a)(3) and 207(g) of TSCA, 15 U.S.C. §§ 2646(a)(3) and 2647(g). In accordance with the Consolidated Rules of Practice as set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law.

9. Cope, located at 302 Sumner Avenue, in Allentown, Pennsylvania, is a contractor that specializes in the installation of retail floor coverings, including tile, linoleum and rugs.

10. Pursuant to section 202(10) of the Act, "public and commercial building" means "any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units".

11. Lehigh Valley Hospital, located at 17<sup>th</sup> and Chew Streets, in Allentown,

Pennsylvania is a public and commercial building within the meaning of the Act.

12. Pursuant to section 202(4) of the Act, “Asbestos-containing material” (ACM) means “any material which contains more than 1 percent asbestos by weight.”

13. Pursuant to section 202(6) of the Act, “Friable asbestos-containing material” (Friable ACM) means any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which when dry may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable asbestos-containing material after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.”

14. Pursuant to section 202(11) of the Act, “response action” means a method, including removal, encapsulation, enclosure, repair, and operation and maintenance, “that protects human health and the environment from asbestos-containing material”.

15. On or about December 3, 2007, EPA received a complaint concerning an asbestos renovation and flooring replacement project at the Lehigh Valley Hospital, located at 17<sup>th</sup> and Chew Streets, in Allentown, Pennsylvania (the “Facility”).

16. EPA inspected the Facility on December 4, 2007, and found that from approximately November 20, 2007 through December 18, 2007, Respondent removed at least 160 square feet of vinyl asbestos containing floor tile (VAT), which was stuck or glued to the back of the carpeting removed by Respondent. The VAT was tested by EPA and found to contain between 3%-10% chrysotile asbestos, and was determined to be friable ACM pursuant to the definitions provided in paragraphs 12 and 13, above.

17. During the December 4, 2007 EPA inspection, EPA inspector Richard Ponak surveyed the project site at the Facility and observed Friable ACM in a storage area on the fifth floor, mechanical room #3. The Friable ACM which had been subject to removal was in the form of crumbled VAT debris strewn about the room, on the backs of carpeting, and in the shopvac that was on-site.

18. The asbestos abatement activities observed by EPA inspector Rich Ponak on December 4, 2007 constituted a “response action” at a “public and commercial building” within the meaning of the Act.

19. Pursuant to §§ 206(a)(3) and 207(g)(2) of the Act, all contractors who design or conduct response actions with respect to friable ACM in a public or commercial building must first obtain accreditation pursuant to §§ 206(b) or 206 (c) of the Act .

20. Pursuant to §§ 206(a)(3) and 207(g)(3) of the Act, Respondent’s employees/workers who design or conduct response actions with respect to friable ACM in a public or commercial building must also obtain accreditation pursuant to §§ 206(b) or 206 (c) of the Act .

21. At the time of the December 4, 2007 inspection, EPA official Rich Ponak discovered that Cope and it’s employees/workers were conducting the subject response action with respect to friable ACM at the Facility without having obtained the requisite accreditation pursuant to section 206(a)(3) of the Act.

22. By failing to obtain the requisite contractor and employee accreditation with respect to the subject response action at the Facility on December 4, 2007, Cope violated the statutory

requirements set forth in §§ 206 (a-c), 207 (g), and 15(1) of the Act.

### **III. CIVIL PENALTY**

In settlement of the specific violations alleged in paragraphs 21 and 22, above, Respondent agrees to pay a civil penalty in the amount of nine thousand, five hundred dollars (\$9,500) in the manner described below in satisfaction of the aforementioned claims for civil penalties which Complainant may have under the Sections 16(a) and 207(g) of the Act, 15 U.S.C. §§ 2615(a) and 2647(g). The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty assessment criteria in Section 16(a)(2)(B) of the Act, 15 U.S.C. § 2615(a)(2)(B), the Asbestos Model Accreditation Plan (MAP) Enforcement Response Policy, the Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (as amended), and the Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act (the "PCB Penalty Policy"). Respondent shall pay the aforesaid penalty within thirty (30) days after the effective date of the accompanying Final Order, but in no case prior to the effective date of the Final Order.

Payment of the civil penalty, above, shall be made by either cashier's check, certified check or electronic wire transfer. All checks shall be made payable to "United States Treasury" and shall be sent either by regular U.S. Postal Service mail to the attention of U.S. EPA, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000, or by overnight delivery to U.S. EPA, Fines and Penalties, U.S. Bank, 1005 Convention Plaza, Mail Station SL-MO-C2GL, St. Louis, MO 63101. All payments made by check also shall reference

Respondent's name and address and the above case caption and docket number (DOCKET NO: TSCA-03-2009-0180). All electronic wire transfer payments 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 wire transfer message should read: "D 68010727 Environmental Protection Agency"). At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Chief, Pesticides and Asbestos Programs Branch (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

Respondent's failure to make timely payment of the civil penalty provided herein or to comply with the conditions in the accompanying Consent Agreement and this Final Order may result in referral of this matter to the United States Attorney for enforcement of the accompanying Consent Agreement and this Final Order in the appropriate United States District Court.

Additionally, Respondent's failure to make timely payments of the civil penalty provided herein or to comply with the conditions in the accompanying Consent Agreement and this Final Order may result in the assessment of additional interest, penalties and/or late payment penalty charges.

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

penalties on debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest will begin to accrue on any unpaid amount if it is not paid within thirty (30) calendar days of the due date as described in the Consent Agreement. Interest will be assessed at the rate of the United States Treasury tax and loan account rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged on all debts. 40 C.F.R. § 13.11(b). Pursuant to EPA's Resources Management Directives System, Chapter 9, EPA will assess a \$15.00 handling charge for administrative costs on unpaid penalties for the first 30-day period after a payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid. In addition, a penalty will be assessed on any portion of the debt which remains delinquent more than ninety (90) calendar days after payment is due. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due pursuant to 31 C.F.R. § 901.9(d).

To avoid the assessment of interest and penalties, Respondent must pay the civil penalty described above according to the terms provided herein.

#### **IV. OTHER APPLICABLE LAWS**

Nothing in this Consent Agreement and the accompanying Final Order shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable federal, state or local laws and/or regulations.

**V. RESERVATION OF RIGHTS**

This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in paragraphs 21 and 22, above. 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. Further, EPA reserves any rights and remedies available to it under the CAA, 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.

**VI. FULL AND FINAL SATISFACTION**

Payment of the penalty specified above constitutes full and final satisfaction of Complainant's civil claims as set forth in this Consent Agreement.

**VII. PARTIES BOUND**

This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the employees, contractors, successors and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized to enter into this Consent

Agreement and to bind the Respondent to the terms and conditions of this Consent Agreement.

**VIII. EFFECTIVE DATE**

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 U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

**IX. ENTIRE AGREEMENT**

This Consent Agreement and the accompanying Final Order constitute 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 Consent Agreement and the accompanying Final Order.

**X. EXECUTION**

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

For the Respondent:

Ray Cope d/b/a Cope Floor and Wall Covering

Date 7/22/09

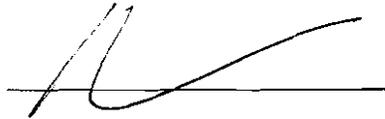


Ray Cope, CEO  
Cope Floor and Wall Covering

For the Complainant:

United States Environmental Protection Agency  
Region III

Date: 8/3/09



Benjamin M. Cohan  
Sr. Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency -  
Region III, recommends that the Regional Judicial Officer of U.S. EPA Region III issue the  
accompanying Final Order.

Date: 8/4/09



Abraham Ferdas, Director  
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

IN RE: :  
:  
Ray Cope d/b/a Cope Floor and Wall Covering :DOCKET NO: TSCA-03-2009-0180  
302 Sumner Ave. :  
Allentown, PA 18102 :  
:  
Respondent. :

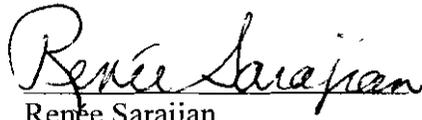
**FINAL ORDER**

The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

Now, **THEREFORE, IT IS HEREBY ORDERED THAT**, pursuant to Section 16 of TSCA and Section 207 of TSCA AHERA, 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was 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), Respondent is hereby ordered to comply with the terms and conditions of the accompanying Consent Agreement, including payment of a civil penalty in the amount of Nine Thousand, Five Hundred Dollars (\$9,500) in settlement of the civil claims alleged in Section II of the Consent Agreement.

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

Date: 8/5/09

  
Renee Sarajian  
Regional Judicial Officer

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

IN RE: : Docket No: TSCA-03-2009-0180  
: :  
Ray Cope d/b/a Cope Floor and Wall Covering :  
302 Sumner Ave. :  
Allentown, PA 18102 :  
: Consent Agreement  
: :  
**Respondent** :

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the above captioned United States Environmental Protection Agency's Consent Agreement, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement, along with its enclosures and/or attachments, were sent by certified mail, return receipt requested, to:

Mr. Ray Cope d/b/a Cope Floor and Wall Covering  
302 Sumner Ave.  
Allentown, PA 18102

Date: 8/6/09

Sincerely,  
  
Benjamin M. Cohan  
Senior Assistant Regional Counsel