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

**In the Matter of:** : **U.S. EPA Docket No. TSCA-03-2008-0335**  
:  
**Lehigh Heavy Forge Corporation** :  
**1275 Daly Avenue** : **Proceeding under Sections 15 and 16**  
**Bethlehem, Pennsylvania 18015** : **of the Toxic Substances Control Act,**  
: **15 U.S.C. §§ 2614 and 2615**  
**Respondent.** :

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Waste and Chemicals Management Division, U. S. Environmental Protection Agency, Region III (“Complainant”), and Lehigh Heavy Forge Corporation (“Respondent” or “Lehigh”) 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 “CA/FO”) 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 Respondent’s 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, use, disposal, storage and marking of polychlorinated biphenyls (“PCBs”) and PCB Items at its facility located at 1275 Daly Avenue, Bethlehem, PA 18015 (“Facility”).

**II. GENERAL PROVISIONS**

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CA/FO.
4. Except as provided in Paragraph 3, above, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in Section III (“Findings of Fact and

Conclusions of Law”) of this CA/FO.

5. Respondent agrees 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 CA/FO.
6. For purposes of this proceeding only, Respondent hereby expressly waives 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. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms and conditions.
8. Each Party shall bear its own costs and attorney’s fees.

**III. 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 the findings of fact and conclusions of law set forth immediately below.
10. As used herein, the terms “PCB”, “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 is a “person” as defined in 40 C.F.R. § 761.3.
14. Respondent is, and at all times relevant to this Consent Agreement was, the owner and operator of a facility located at 1275 Daly Avenue, Bethlehem, PA 18015 (“Facility”).
15. On September 11, 2007, during normal business hours, duly authorized representatives (“Inspectors”) of EPA Region III conducted a compliance evaluation inspection (the “Inspection”) at the Respondent’s 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.

16. At the time of the Facility Inspection, there were present and in use at the Facility six PCB Transformers that were owned and operated by the Respondent:
  - a. Three PCB Transformers (serial numbers D589463, D589464, and D589465) housed in a fenced enclosure in an area known as the Car Dumper Substation, each containing 677 gallons of Pyranol PCB fluid ("Substation Transformers");
  - b. One PCB Transformer (serial number D578924) housed inside a fenced enclosure immediately outside of the building known as the Forge 3 Building, containing 880 gallons of 10C PCB fluid ("Forge 3 Transformer #1");
  - c. One PCB Transformer (serial number F957697), unenclosed and located on the second floor of the Forge 3 Building containing 810 gallons of Pyranol PCB Fluid ("Forge 3 Transformer #2"); and
  - d. One PCB Transformer (serial number D590367) housed inside a fenced enclosure on the first floor of the Forge 3 Building containing 442 gallons of Pyranol PCB Fluid ("Forge 3 Transformer #3).
17. On the basis of the Inspection and additional information collected subsequent thereto, Complainant has determined that Respondent has violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614.

**COUNTS I and II**

**Violation of 40 C.F.R. § 761.40(j)(1)**

**(Failure to Label Means of Access to PCB Transformers with PCB Label)**

18. The allegations of Paragraphs 1 through 17 of this Consent Agreement are incorporated herein by reference.
19. 40 C.F.R. § 761.40(j)(1) requires, with an exception not relevant to this matter, that the vault door, machinery room door, fence, hallway, or means of access, other than grates or manhole covers, to a PCB Transformer must be marked with the mark M. ("PCB Label") as required by 40 C.F.R. § 761.40(a).
20. At the time of the Inspection, the fenced enclosure surrounding the Substation

Transformers was not marked with a PCB Label as required by 40 C.F.R. §§ 761.40(a) and 761.40(j)(1).

21. At the time of the Inspection, the fenced enclosure surrounding Forge 3 Transformer #3 was labeled with a warning statement regarding the presence of PCBs inside the enclosure, but this label was not the approved PCB Label required by 40 C.F.R. § 761.40(a).
22. Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. §§ 761.40(a) and 761.40(j)(1), by failing to mark the means of access to the Substation Transformers and Forge 3 Transformer #3 with the required PCB Label.

**COUNTS III, IV, and, V**  
**Violation of 40 C.F.R. § 761.30(a)(1)(viii)**  
***(Improper Storage of Combustible Materials)***

23. The allegations of Paragraphs 1 through 22 of this Consent Agreement are incorporated herein by reference.
24. 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 (i.e., in a transformer vault or in a partitioned area housing a transformer); within five meters of a transformer enclosure, or, if unenclosed (unpartitioned), within 5 meters of a PCB Transformer."
25. At the time of the Inspection, Respondent was storing combustible materials, including a wooden foot stool, twigs, and several oil cans, inside or within five meters of the enclosure surrounding the Substation Transformers.
26. At the time of the Inspection, Respondent was storing combustible materials, including two wooden ladders, a rag, paper towels, a lightbulb carton, plastic wrapping, and a paper roll, inside or within five meters of the enclosure surrounding Forge 3 Transformer #2.
27. At the time of the Inspection, Respondent was storing combustible materials, including a wooden pallet, three cardboard boxes, a wooden plank, cellophane wrapping, and a large piece of plywood, inside or within five meters of the enclosure surrounding Forge 3 Transformer #3.
28. Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.30(a)(1)(viii), by storing the combustible materials identified in Paragraphs 25, 26, and 27, inside or within 5 meters of the enclosure surrounding the Substation

Transformers, the enclosure surrounding the Forge 3 Transformer #2, and the enclosure surrounding Forge 3 Transformer #3.

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

29. Respondent agrees to pay the amount of **Fifty-Five Thousand Dollars (\$55,000.00)**, 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. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CA/FO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CA/FO is mailed or hand-delivered to Respondent.
30. 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 *Adjustment of Civil Monetary Penalties for Inflation*, as set forth in 40 C.F.R. Part 19, and 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"). Pursuant to 40 C.F.R. Part 19, and as provided in the Skinner Memorandum, penalties for TSCA PCB violations occurring after January 30, 1997 were increased by 10% to account for inflation, not to exceed a \$27,500.00 per violation statutory maximum penalty, and penalties for such violations occurring after March 15, 2004 have been increased by an additional 17.23% to account for subsequent inflation, not to exceed a current \$32,500.00 per violation statutory maximum penalty.
31. Payment of the civil penalty as required by Paragraph 29, above, shall be made via one of the following methods:
  - a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, TSCA-03-2008-0335;

- 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: Natalie Pearson, 314-418-4087

- 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  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- 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:

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank

*In the Matter of:  
Lehigh Heavy Forge Corporation*

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808 17th Street, NW  
Washington, DC 20074  
Contact: Jesse White 301-887-6548

ABA = 051036706  
Transaction Code 22 - Checking  
Environmental Protection Agency  
Account 310006  
CTX Format

g. On-Line Payment Option:

WWW.PAY.GOV

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

h. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)  
800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

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

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

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

and

Ms. Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency

Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

32. 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.
33. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such 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).
34. 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.
35. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a 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 a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
36. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

#### **V. EFFECT OF SETTLEMENT**

37. Payment of the penalty specified in Paragraph 29, above, in the manner set forth in Paragraph 31, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations alleged against Respondent in Section III ("Findings of Fact and Conclusions of Law"), above. Compliance with the requirements and provisions of this CA/FO 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.

**VI. OTHER APPLICABLE LAWS**

38. Nothing in this CA/FO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

**VII. RESERVATION OF RIGHTS**

39. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations of TSCA alleged in Section III ("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 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 CA/FO, following its filing with the EPA Regional Hearing Clerk.

**VIII. PARTIES BOUND**

40. 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**

41. 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**

42. 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 CA/FO.

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Lehigh Heavy Forge Corporation


Docket No. ~~TSCA-03-2008-0335~~  
Consent Agreement

**XI. EXECUTION**

43. 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.

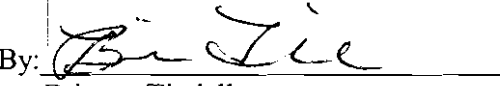
For Respondent, Lehigh Heavy Forge Corporation:

Date: 6/15/08

By:   
Robert J. Peterson  
Vice President

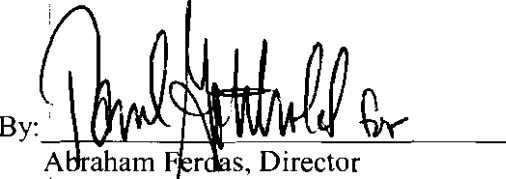
For Complainant:

Date: 6/20/08

By:   
Brianna Tindall  
Assistant Regional Counsel

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

Date: 6-24-08

By:   
Abraham Ferdas, Director  
Waste and Chemicals Management Division

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

In the Matter of: : U.S. EPA Docket No. TSCA-03-2008-0335  
: :  
Lehigh Heavy Forge Corporation :  
1275 Daly Avenue : Proceeding under Sections 15 and 16  
Bethlehem, Pennsylvania 18015 : of the Toxic Substances Control Act,  
: 15 U.S.C. §§ 2614 and 2615  
Respondent. :

**FINAL ORDER**

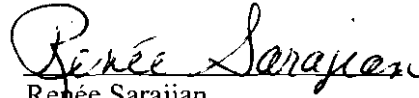
Complainant, the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III, and Respondent, Lehigh Heavy Forge Corporation, have executed a document entitled "Consent Agreement" which I ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are incorporated herein by reference.

NOW, THEREFORE, pursuant to Sections 15 and 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2614 and 2615, and based upon the representations of the parties set forth in the Consent Agreement that the civil penalty amount agreed to by the parties in settlement of the above-captioned matter is based upon a consideration of the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), IT IS HEREBY ORDERED THAT Respondent shall pay a civil penalty in the amount of **Fifty-Five Thousand Dollars (\$55,000.00)** as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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

Date: 10/25/08

BY:



Renée Sarajian

Regional Judicial Officer

United States Environmental Protection Agency

Region III

REC'D

SEP 16 2008

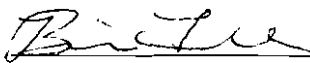
**CERTIFICATE OF SERVICE**

I certify that on the date noted below, I sent by Overnight Delivery Service, a copy of the Consent Agreement and Final Order, **In the Matter of: Lehigh Heavy Forge Corporation, U.S. EPA Docket Number TSCA-03-2008-0335**, to the persons and addresses listed below. The original Consent Agreement and Final Order were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

**Robert J. Peterson  
Park Corporation  
6200 Riverside Drive  
Cleveland, OH 44135**

**R. Timothy Weston  
Kirkpatrick & Lockhart Preston Gates Ellis LLP  
17 North Second Street  
18<sup>th</sup> Floor  
Harrisburg, PA 17101-1507**

Dated: 6/24/08

  
\_\_\_\_\_  
Brianna Tindall  
Assistant Regional Counsel  
Office of Regional Counsel  
EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029