
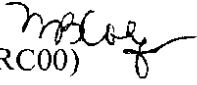


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**ENFORCEMENT CONFIDENTIAL**

Subject: Consent Agreement and Final Order  
**In the Matter of: Borough of Norristown**  
U.S. EPA Docket No. **TSCA-3-2010-0130**  
Facility - Municipal Building, Norristown, Pennsylvania

From: **Abraham Ferdas**, Director   
Land and Chemicals Division (3LC00)

**Marcia E. Mulkey**   
Regional Counsel (3RC00)

To: **Renée Sarajian**  
Regional Judicial Officer (3RC00)

We recommend that you sign the Final Order associated with the attached Consent Agreement (collectively the "CA/FO") which was negotiated in settlement of an Administrative Complaint issued to the Respondent, the Borough of Norristown, a Pennsylvania governmental entity ("Respondent" or "Borough") and return them to this office for service. The case involves violations of the Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions, 40 C.F.R. Part 761 ("PCB regulations"), promulgated pursuant to Section 6(e) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2605(e). The violations occurred at Respondent's facility, the Municipal Building, located at 235 East Street, Norristown, Pennsylvania, ("the Facility").

The agreement requires Respondent to pay a civil penalty of Fifteen Thousand Dollars (\$15,000.00) within 30 days of the CA/FO's effective date and to perform the supplemental environmental project ("SEP") set forth in the CA/FO. This settlement is consistent with Sections 15 and 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2614 and 2615, and EPA's April 9, 1990 Polychlorinated Biphenyls (PCB) Penalty Policy ("PCB Penalty Policy").

We concur with the terms of the enclosed CA/FO that requires Respondent to pay a civil penalty of Fifteen Thousand Dollars (\$15,000.00) and to perform the SEP set forth in the CA/FO. Please sign the Final Order where indicated and return it and the attached document to the Office of Regional Counsel for filing with the Regional Hearing Clerk.

cc: David Sander, Esq.  
Friedman-Schuman P.C.

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

IN THE MATTER OF:

**Borough of Norristown**  
235 East Airy Street  
Norristown, Pennsylvania 19401

**Respondent**

**Municipal Building**  
235 East Airy Street  
Norristown, Pennsylvania 19401

**Facility**

**CONSENT AGREEMENT**

**Docket No. TSCA-03-2010-130**

**Issued pursuant to the  
Toxic Substances Control  
Act ("TSCA") Sections 15 and 16,  
15 U.S.C. §§ 2614 and 2615**

**I. PRELIMINARY STATEMENT**

1. On June 30, 2010, pursuant to 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"), the U.S. Environmental Protection Agency, Region III, issued an Administrative Complaint and Notice of Right to Request a Hearing ("the Complaint") against the Borough of Norristown, a Pennsylvania governmental entity ("Respondent" or "Borough") for violations of TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, and the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth at 40 C.F.R. Part 761.
2. This Consent Agreement is entered into by the parties hereto in settlement of Complainant's civil claims for penalties under Section 6(e) and 15 of TSCA based upon the violations alleged in the Complaint.

**II. TERMS OF THE SETTLEMENT**

3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations set

forth in the Complaint and this Consent Agreement.

4. Except as provided in Paragraph 3, above, Respondent neither admits nor denies the Findings of Fact contained in the Complaint and in this Consent Agreement.
5. Except as provided in Paragraph 3, above, Respondent neither admits nor denies the Conclusions of Law contained in the Complaint and in this Consent Agreement.
6. This Consent Agreement and attached Final Order ("CA/FO") resolve only those claims for civil penalties for the violations of TSCA that are alleged in the Complaint or in this Consent Agreement. This Consent Agreement is binding upon, and shall inure to the benefit of, Complainant and Respondent. Nothing herein shall be construed to create any private rights of action in any third party.
7. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest any allegation forth in the Complaint or this Consent Agreement and any right to appeal the Final Order.
8. The settlement terms agreed to by the parties to this Consent Agreement reflect the desire of the parties to resolve this matter without litigation.
9. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement thereof.
10. EPA reserves the right to commence an 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 Regional Hearing Clerk
11. Nothing in this CA/FO shall alter or otherwise affect Respondent's obligation to comply

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

12. Each party shall bear its own costs and attorneys fees in connection with this proceeding.

### III. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. EPA's Findings of Fact and Conclusions of Law set forth in the Complaint are hereby incorporated into this Consent Agreement as if set forth fully herein, subject to Paragraphs 4 and 5, above.

### IV. CIVIL PENALTY

14. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty in the amount of **Fifteen Thousand Dollars (\$ 15,000.00)** in accordance with the provisions set forth below, and to perform the Supplemental Environmental Project (hereinafter "SEP"), as described in Section V ("Supplemental Environmental Project"). The 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.

15. The civil penalty in the amount of **Fifteen Thousand Dollars (\$15,000.00)** has been calculated on the basis of EPA's consideration of the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 7 U.S.C. § 2615(a)(2)(B), including, specifically, Respondent's ability to pay a civil penalty and the effect of any such civil penalty on Respondent's ability to continue to operate as a viable government entity. EPA also has considered the *Adjustment of Civil Monetary Penalties for Inflation* ("Inflation Rule"), 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* ("2004 Skinner Memorandum"). Pursuant to the Inflation Rule, as revised at 69 Fed. Reg. 7121

(February 13, 2004), violations occurring after January 30, 1997 and on or before March 15, 2004 are subject to an increased statutory maximum penalty of \$27,500 per violation (adjusted upwards by 10%). For violations occurring from March 15, 2004 through January 12, 2009 the statutory maximum penalties have been raised to \$32,500 per violation. For violations occurring after January 12, 2009 the statutory maximum penalties have been raised to \$32,500 per violation

#### **V. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

16. As a condition of this settlement, Respondent shall perform a SEP in the manner and within the time periods described in this Section.
17. The Respondent shall provide funds for, and enter into one or more appropriate contracts with independent individuals and/or firms to perform and to complete, within the deadlines specified in this Consent Agreement, the removal of its PCB Transformer from its facility, the Municipal Building, located at 235 East Street, Norristown, Pennsylvania (the "Facility").
18. Respondent shall ensure that all of the SEP activities performed under this CA/FO shall be conducted exclusively by individuals and firms qualified to conduct such activities under all applicable federal, State and local laws and/or regulations.
19. Respondent shall expend a sum of at least One Hundred and Thirty Thousand Dollars (\$130,000.00) to complete the SEP (hereinafter, the "Required SEP Expenditure") in accordance with the requirements and provisions of this Section.
20. If the Respondent does not complete fully the SEP or, in the alternative, if the Respondent fails to incur and spend at least One Hundred and Thirty Thousand Dollars (\$130,000.00) in the performance of the SEP, as determined by EPA pursuant to the provisions within Section V of this Consent Agreement, on or before December 31, 2011, as set forth in Paragraph 22 herein, then the Respondent shall be subject to the assessment of additional civil penalties in accordance with the requirements and provisions of Section IX ("Penalties for Noncompliance and Delay"), below.

21. Pursuant to this Consent Agreement, Respondent shall incur and spend at least the Required SEP Expenditure amount in performance of SEP activities and in fulfillment of all SEP requirements and obligations set forth in Section V of this Consent Agreement. In addition, the Respondent also shall remain obligated to submit a SEP Project Completion Report required pursuant to this Section, regardless of whether Respondent has met or exceeded the Required SEP Expenditure.

22. **SEP Milestone Deadlines and Completion Date** - Respondent, in accordance with each of the requirements set forth in this Section V, shall complete fully the SEP and each of the requirements of this Consent Agreement on or before December 31, 2011 (the "SEP Completion Deadline").

23. **Maintenance of Required SEP Expenditure Invoices, Receipts and Payment Records** - Respondent shall maintain 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 Respondent in the performance of the SEP set forth in this Section.

24. **Required SEP Expenditure Eligible Costs** - Costs incurred and paid by the Respondent in the performance of the SEP activities described herein shall be applied toward the Required SEP Expenditure provided that the requirements and conditions set forth in this Consent Agreement are met.

## VI. **REQUIRED REPORTS, NOTICES AND SUBMISSIONS**

25. During the period beginning upon the effective date of this CA/FO and continuing through the December 31, 2011 SEP Completion Deadline (i.e., the "Reporting Period") the Respondent shall submit to EPA for review, in accordance with the requirements and provisions of this Section and each of the additional requirements and provisions of Sections X ("Certification") and XI ("Submission Requirements") of this Consent Agreement, each of the reports, notices and other submissions herein specified.

**A. Reports and Notices to be Submitted**

26. **Project Completion Report** - Upon Respondent's Completion of the SEP, and no later than January 31, 2012, Respondent shall submit to EPA a "Project Completion Report" for the SEP. The Project Completion Report shall contain a clear and concise description of the SEP as implemented, including the following:

1. A description of the activities undertaken during the SEP period.
2. A full and complete itemization of the costs of the SEP which the Respondent seeks to have applied toward the Required SEP Expenditure, including copies of all written invoices, bills, payment receipts, cancelled checks and other records documenting the performance of, and payment for, such work by the Respondent.

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

27. **Project Completion Review** - EPA will review the Respondent's Project 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 CA/FO and in compliance with all applicable federal, state and local laws and regulations, and that the Respondent has demonstrated to EPA's satisfaction that it has incurred those expenses and spent those funds which the Respondent seeks to have applied toward the Required SEP Expenditure, EPA will issue a written notification to the Respondent accepting the Project Completion Report and approving the SEP Expenditures documented therein, in accordance with Paragraph 31 below.

**b. EPA Rejection** - If EPA determines that the SEP was not conducted and completed in accordance with the requirements and provisions of this CA/FO and in compliance with all applicable federal, state and local laws and regulations, that the Project Completion Report does not contain the information required by this Consent Agreement or that the Respondent has not demonstrated to EPA's satisfaction that it has incurred those expenses and spent those funds which it seeks to have applied toward the Required SEP Expenditure, EPA will issue a written Notification of Disapproval (the "NOD") to the

Respondent rejecting the Project Completion Report, providing EPA's reasons therefor, identifying the deficiencies in the Project Completion Report and/or in the Respondent's performance of the SEP and any costs that EPA has determined are not eligible as Required SEP Expenditures, and granting the Respondent a reasonable time from receipt of such notice within which to correct any such deficiencies which are amenable to correction and obtain SEP Expenditure approval.

28.

**Respondent's Opportunity to Submit Objection Notification** - Respondent may object in writing to an NOD by submitting a written "Objection Notification" to EPA within seven (7) calendar days of Respondent's receipt of such NOD. The Objection Notification must state the basis for the Respondent's 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 Respondent.

- a. ***No Objection by Respondent*** - In the event Respondent elects not to object to an NOD by submitting a written "Objection Notification" to EPA in accordance with the requirements herein, but thereafter fails to correct the deficiencies identified in the NOD in a timely manner, the Respondent shall be subject to additional penalties in accordance with this Consent Agreement.
- b. ***Objection Raised by Respondent*** - In the event that the Respondent timely submits a written Objection Notification to EPA in accordance with the requirements herein, EPA and the Respondent 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 Respondent, which decision shall be final and binding upon the Respondent. Respondent 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 Respondent shall be subject to additional penalties in accordance



with this Consent Agreement.

#### **VII. SATISFACTION OF SETTLEMENT CONDITIONS**

29. EPA shall determine the Respondent's compliance with the requirements and provisions set forth in this Consent Agreement.

30. 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 Respondent to EPA pursuant to the requirements and provisions of Section VI ("Required Reports, Notices and Submissions") of this Consent Agreement and any inspections that EPA may perform.

31. If EPA determines that the Respondent has complied fully with the SEP requirements and provisions set forth herein and the additional requirements and provisions of this CA/FO, then EPA, through the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, shall issue a written notification entitled "Letter of Remittance" which shall state that the Respondent has performed the SEP in accordance with this CA/FO.

#### **VIII. FORCE MAJEURE**

32. If any event occurs which causes or may cause delays in the completion of any SEP requirements within the deadlines set forth in this Consent Agreement, Respondent shall notify EPA in writing within seven (7) calendar days of the date on which Respondent 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 Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall implement all reasonable and feasible measures to avoid or minimize any such delay. Failure by the Respondent to comply with the notice requirements of this paragraph shall render application of the "force majeure" terms and provisions of this Section VIII ("Force Majeure") void and of no effect as to the particular event involved and shall constitute a

waiver of the Respondent's right to request an extension of time to fulfill any obligation under this CA/FO affected by such event. Increased costs or expenses associated with the implementation of actions required by this CA/FO shall not, in any circumstance or event, be a basis for the assertion or finding of a "force majeure" event pursuant to this Section of the Consent Agreement or for the extension of any deadline herein.

33. If EPA, in its sole discretion, determines that the delay or anticipated delay in complying with this CA/FO has been or will be caused by circumstances entirely beyond the control of the Respondent 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.

34. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CA/FO has been or will be caused by a force majeure EPA, in its sole discretion, will notify the Respondent in writing of its decision. Any such delay shall not be the basis for any extension of time for the performance of Respondent's obligations under this CA/FO and the Respondent may be subject to the payment of additional penalties for such delays as described in Section IX ("Penalties for Noncompliance and Delay"), below.

35. The burden of proving that any delay is caused by a "force majeure" event shall rest with Respondent.

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

36. ***Additional Penalties*** - In the event that the Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP described herein, or if the SEP Expenditures approved by EPA pursuant to Paragraph 27, above, for the SEP do not equal the Required SEP Expenditure amount, the Respondent shall be liable for additional penalties, as provided below:

- a. ***Timely and Satisfactory Completion of SEP without Required SEP Expenditure***  
Except as otherwise provided in 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"), Respondent shall pay an additional civil penalty up to, but not to exceed, that amount which equals Seventy-Five percent (75%) of the difference between the actual SEP expenditure and the Required SEP Expenditure (i.e., the "SEP Penalty Mitigation Percentage"), according to the following mathematical formula:

$$(\$ 130,000.00 - [\text{minus}] \text{ the Actual SEP Expenditures}) \times [\text{times}] 0.75 \\ = [\text{equals}] \text{ Additional Penalty Amount.}$$

- b. **Exception to Penalty for Completion of SEP without Required SEP Expenditure** - If the SEP has not been satisfactorily completed, but the Respondent has:
- i. Made timely and good faith efforts to complete the SEP;
  - ii. Fully complied with its obligations under Section V of this Consent Agreement; and
  - iii. Certified, with supporting documentation, and demonstrated to EPA's satisfaction pursuant to Paragraph 23 of this Consent Agreement, that at least ninety-five percent (95 %) of the Required SEP Expenditure amount was expended on the SEP, then Respondent shall not pay any additional penalty for failure to complete satisfactorily the SEP.
- c. **Penalty for Failure to Complete SEP Activities Timely and/or Properly** - If the Respondent fails to complete the SEP activity in accordance with the applicable requirements of this Consent Agreement, on or before an applicable deadline set forth in Paragraph 22 of this Consent Agreement, Respondent shall pay an additional penalty of one-hundred dollars (\$100.00) for each day that completion of such activity is delayed beyond the established deadline.
- d. **Penalty for Failure to Submit Project Completion Report Timely and/or Properly** - If Respondent fails to submit the required Project Completion Report to EPA, in accordance with the deadline and each of the requirements of Section V of this Consent Agreement, Respondent shall pay an additional penalty of one-

hundred dollars (\$100.00) for each day that the Project Completion Report is late and/or deficient.

e. ***Reasonable Exercise of EPA Discretion*** - In exercising its discretion or making determinations under this CA/FO, EPA will be reasonable, considering all of the relevant circumstances. However, all determinations required to be made by EPA under this CA/FO, 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 CA/FO, no action or decision by EPA pursuant to this CA/FO 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 CA/FO. Additional penalties for Noncompliance and Delay, as set forth in this Section IX ("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.

f. ***Additional Penalties Due and Payable Upon Receipt of Written Demand*** - Additional penalties for Noncompliance and Delay, as set forth in this Section IX ("Penalties for Noncompliance and Delay"), shall become due and payable immediately upon the Respondent's 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.

37. 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.

38. In accordance with 40 C.F.R. § 13.11(a), interest on the civil penalty assessed in this CA/FO begins to accrue on the date that a copy of this Consent Agreement and the

accompanying Final Order are mailed or hand-delivered to 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).

39. 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.

40. 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).

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

42. Payment of the civil penalty amount described in Paragraph 14, 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, *i.e.*, TSCA-03-2010-0130;
- 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. Bank  
Government Lockbox 979077  
U.S. EPA, Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 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 W. M. L. King Drive  
Cincinnati, OH 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:

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: 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.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

J. Payment by the Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO (TSCA-03-2010-0130). A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Rodney Travis Carter  
Senior 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

**X. CERTIFICATION**

43. Any notice, report, certification, data presentation, or other document submitted by the Respondent pursuant to this CAFO which discusses, describes, demonstrates, supports any finding or makes any representation concerning the

Respondent's compliance or noncompliance with any requirement of this CA/FO shall be signed and certified by one or more persons who have the authority to represent and to legally bind each of the Respondent. 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): \_\_\_\_\_

#### **XI. SUBMISSION REQUIREMENTS**

44. All documents, reports, notices and correspondence to be submitted or sent pursuant to or concerning this CA/FO 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)  
 United States Environmental Protection Agency, Region III  
 1650 Arch Street  
 Philadelphia, PA 19103-2029;

and

Rodney T. Carter  
 Senior Assistant Regional Counsel (3RC50)  
 United States Environmental Protection Agency, Region III  
 1650 Arch Street



Philadelphia, PA 19103-2029.

If to the Respondent:

David Forrest, *Municipal Administrator*  
235 East Airy Street  
Norristown, Pennsylvania 19401-5003

and

David Sander Esq.  
101 Greenwood Ave.  
Jenkinstown, PA 19046

**XII. OTHER APPLICABLE LAWS**

45. Nothing in this CA/FO shall relieve the Respondent of any duties otherwise imposed upon any of them by applicable federal, state or local laws and/or regulations.

**XIII. NO RELEASES**

46. Nothing in this CA/FO shall constitute or be construed as a release of any of the Respondent from any claim, cause of action, or demand in law or equity by any person, firm, partnership, or corporation not bound by this CA/FO for any liability relating the SEP activities which are the subject of this CA/FO.

**XIV. LIABILITY OF EPA**

47. EPA shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondent 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 Respondent in carrying out the terms of this CA/FO.

**XV. INDEMNIFICATION AND HOLD HARMLESS**

48. Respondent agrees 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 Respondent 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 CA/FO.

**XVI. NO REIMBURSEMENTS: TAXATION**

49. Respondent certifies that it has 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 it incurred to fulfill the terms of this CA/FO.
50. For Federal Income Tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

**XVII. NON-TRANSFERABILITY**

51. Respondent shall have sole responsibility for the legal obligations created by this CA/FO to finance and enter into appropriate contracts to perform the SEP described herein. Any act by the Respondent to transfer such responsibility shall constitute abandonment and cause the Respondent to be liable for additional penalties as specified in Section IX of this Consent Agreement.

**XVIII. DISTRIBUTION OF CA/FO**

52. Respondent shall provide a copy of the CA/FO to all contractors, subcontractors, supervisory personnel, laboratories, and consultants retained by the Respondent to conduct any portion of the SEP required to be performed pursuant to this CA/FO.

**XIX. PUBLIC STATEMENTS BY RESPONDENT**

53. Any public statement, oral or written, in print, film, or other media, made by the Respondent 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 Respondent's alleged violations of TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, and the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth at 40 C.F.R. Part 761.

**XX. ACCESS TO INFORMATION**

54. In addition to the information and documents otherwise required by this CA/FO, Respondent 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 Respondent's 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.
55. EPA and its employees and authorized representatives shall have the authority to enter and freely move about the location where any SEP is being performed pursuant to this CA/FO, for the purposes of, among other things, inspecting abatement records, operating logs, and contracts related to this CA/FO; reviewing the progress of the Respondent in carrying out the terms of this CA/FO; conducting such sampling, monitoring, or other tests as EPA deems necessary to ensure compliance with the CA/FO; and verifying the data and information

submitted to EPA by the Respondent. Respondent 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 CA/FO. EPA's authorized representatives may use a camera, recording, or other equipment to record its observations during such access.

#### **XXI. CLAIM OF CONFIDENTIALITY**

56. Respondent may make a claim of business confidentiality for any information provided to EPA pursuant to this CA/FO 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 Respondent.

#### **XXII. RESERVATION OF RIGHTS**

57. EPA reserves the right to commence action against any person or persons, including the 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. This CA/FO 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. In addition, EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which it has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.

**XXIII. FULL AND FINAL SATISFACTION**

58. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged in the Consent Agreement.

**XXIV. FULL AND FINAL SATISFACTION**

59. Payment of the civil penalty amount set forth in Paragraph 14 of this Consent Agreement shall constitute full and final satisfaction of all civil claims for penalties which EPA may have under Sections 15 and 16 of TSCA, 7 U.S.C. §§ 2614 and 2615, for the specific violations alleged in the Complaint and herein. Compliance with this CA/FO shall not be a defense to any action commenced at any time for any other violation of the federal laws or regulations administered by EPA.

**XXV. FAILURE TO COMPLY**

60. Failure by the Respondent to comply with the requirements of this Consent Agreement may subject the Respondent to an additional enforcement action, including an action to collect any outstanding penalties or interest.

**XXVI. PARTIES BOUND**

61. This CA/FO shall apply to and be binding upon EPA, the Respondent and its partners, employees, agents, successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent represents that he or she is fully authorized by Respondent to execute this Consent Agreement and legally bind Respondent to the terms and conditions of this CA/FO.

the Regional Administrator of EPA - Region III, or his designee, is filed with the Regional Hearing Clerk, pursuant to the Consolidated Rules.

**XXVIII. ENTIRE AGREEMENT**

63. This CA/FO 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 CA/FO.

**XXIX. SEP CERTIFICATION**

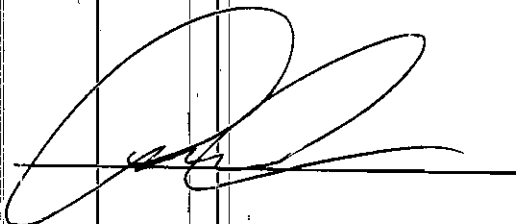
64. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any agreement, grant or as injunctive relief in this or any other case.

For Respondent:

**David Forrest, Municipal Administrator**  
Borough of Norristown

Date: 1/23/10

By:

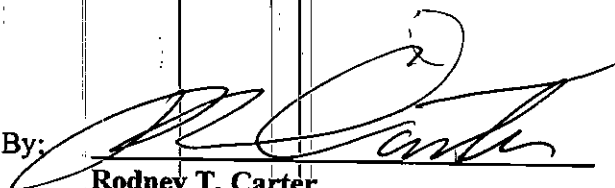


For Complainant, United States Environmental Protection Agency, Region III:

Date:

1/4/11

By:



**Rodney T. Carter**  
Senior Assistant Regional Counsel

After reviewing the Findings of Fact and Conclusions of Law within the Consent Agreement and other pertinent matters, the Director of the Land and Chemicals Division, EPA Region III, recommends that the Regional Judicial Officer or the Regional Administrator issue the Final Order attached hereto.

Date:

1/13/11

By:



**Abraham Ferdas, Director**  
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103

IN THE MATTER OF:

**Borough of Norristown  
235 East Airy Street  
Norristown, Pennsylvania 19401**

**Respondent.**

**Municipal Building  
235 East Airy Street  
Norristown, Pennsylvania 19401**

**Facility**

**FINAL ORDER**

**Docket No. TSCA-03-2010-130**

**Issued pursuant to the  
Toxic Substances Control  
Act ("TSCA") Sections 15 and 16,  
15 U.S.C. §§ 2614 and 2615**

**FINAL ORDER**

The Director of the Land and Chemicals Division, U.S. Environmental Protection Agency- Region III ("Complainant"), and Respondent, the Borough of Norristown, a Pennsylvania governmental entity ("Respondent" or "Borough") have executed a document entitled "Consent Agreement," which I hereby 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

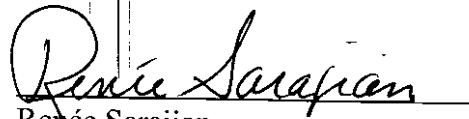
NOW, THEREFORE, PURSUANT TO the Consolidated Rules of Practice, and



having determined, based on the representations in the Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth 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 amount of Fifteen Thousand Dollars (\$15,000.00) and comply with the terms and conditions of the Consent Agreement.

This **FINAL ORDER** and the accompanying **CONSENT AGREEMENT** shall become effective upon filing with the Regional Hearing Clerk.

Date: 12/18/11

  
Renée 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-03-2010-0130, 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:

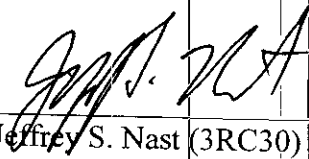
Borough of Norristown  
235 East Airy Street  
Norristown, PA 19401

and

David Sander, Esq.  
Friedman-Schuman P.C.  
101 Greenwood Ave, 5th Flr.  
Jenkintown, PA 19046

1/18/11

Date

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