

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for William Chin 7/8/16
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number TSCA-01-2016-DD40

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Collin G. Van Dyke
General Dynamics - OTS, Inc.
291 North Street
Saco, Maine

Total Dollar Amount of Receivable \$ 8,500 Due Date: 8/8/16

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1ST \$ _____ on _____
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



U.S. Environmental Protection Agency

Region 1
5 Post Office Square – Suite 100
Boston, MA 02109-3912

July 8, 2016

VIA HAND DELIVERY

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

RECEIVED

JUL 08 2016

EPA ORC WS
Office of Regional Hearing Clerk

Re: In the Matter of: General Dynamics - OTS, Inc.
Docket No. TSCA 01-2016-0040

Dear Ms. Santiago,

Please find enclosed the original and one copy of a Consent Agreement and Final Order (“CAFO”) that will simultaneously commence and settle the above-referenced action.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "William D. Chin".

William Chin
Enforcement Counsel
U.S. EPA, Region 1

Enclosure

cc: Colin G. Van Dyke, Esq.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

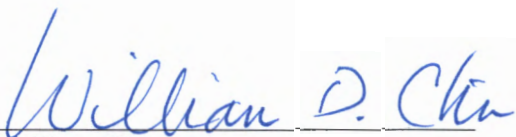
Original and one copy,
By Hand Delivery:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested

Colin G. Van Dyke, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Dated: 7/8/16



William Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (OES04-4)
Boston, MA 02109-3912
Tel (617) 918-1728
Fax (617) 918-0728

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	
)	Docket No.
General Dynamics - OTS, Inc.)	TSCA-01-2016-0040
291 North Street)	
Saco, Maine)	CONSENT AGREEMENT AND
)	FINAL ORDER
Respondent)	
_____)	

CONSENT AGREEMENT

Introduction

1. Complainant, the United States Environmental Protection Agency (“EPA”), Region 1, alleges that Respondent, General Dynamics - OTS, Inc. (“GD-OTS” or the “Respondent”), has failed to comply with Section 6 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2614, and EPA’s regulations promulgated under this statutory provision at 40 C.F.R. Part 761.

2. Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this Consent Agreement and Final Order (“CAFO”) as provided under 40 C.F.R. § 22.13(b) of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” 40 C.F.R. Part 22. Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set forth in this CAFO. However, Respondent neither admits nor denies any of the specific legal or factual allegations contained in this CAFO.

Statutory and Regulatory Authority

3. Complainant takes this action under the authority of Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for alleged violations of Section 15 of TSCA and 40 C.F.R. Part 761.

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JUL 08 2016

EPA ORC **WS**
Office of Regional Hearing Clerk

4. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), makes it unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605. Section 15(3) of TSCA, 15 U.S.C. § 2614(3), makes it unlawful for any person to fail to establish or maintain records, or to fail to submit reports, notices, or other information required by this chapter or a rule thereunder.

5. The Polychlorinated Biphenyls (“PCBs”) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions (the “PCB Regulations”), 40 C.F.R. Part 761, were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e).

6. The PCB Regulations establish “prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.” See 40 C.F.R. § 761.1(a).

7. Forty C.F.R. § 761.30 authorizes certain non-totally enclosed PCB activities, including the use of PCB Transformers, subject to certain specified conditions (such as the need to register PCB Transformers).

8. Forty C.F.R. § 761.180(a) sets forth recordkeeping and reporting requirements that apply to PCBs and PCB Items (such as PCB Transformers and PCB Capacitors).

Factual Allegations

9. Respondent is a corporation incorporated under the laws of the State of Delaware and is a subsidiary of General Dynamics Ordnance and Tactical Systems, Inc., which in turn is a subsidiary of General Dynamics Corporation (“General Dynamics”). Respondent operates a manufacturing facility located at 291 North Street in Saco, Maine (the “Facility”). Respondent has operated the Facility since it was acquired by General Dynamics in 2000.

10. In the summer of 2013 while developing plans to replace PCB equipment, Respondent identified deficiencies in the Facility's recordkeeping requirements pursuant to the PCB Regulations. Respondent communicated these deficiencies to Complainant in a letter dated November 25, 2013. Additional information regarding these deficiencies were provided to Complainant in a letter dated January 28, 2014.

11. At all times relevant to this CAFO, Respondent is a "person," as defined at 40 C.F.R. § 761.3, and is subject to certain prohibitions set forth in TSCA and the PCB Regulations.

12. At all times relevant to this CAFO, Respondent was using 14 transformers and 56 capacitors at the Facility. The serial numbers of the transformers at the Facility were 5398042, 5398044, 5398043, PAV2371-01, PAV2371-02, B326662, 8109889, G854971, 7527602, B326659, B326660, 8112849, B326661 and 8112850.

13. At all times relevant to this CAFO, the 14 transformers identified in paragraph 12 above were "PCB Transformers," "PCB Articles," and "PCB Items," as defined at 40 C.F.R. § 761.3.

14. At all times relevant to this CAFO, the 56 capacitors identified in paragraph 12 above were "PCB Large Capacitors," "PCB Articles," and "PCB Items," as defined at 40 C.F.R. § 761.3.

Unauthorized Use of PCB Transformers

15. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(A), an owner of a PCB Transformer, including those in storage for reuse, must register their transformer with EPA by no later than December 28, 1998.

16. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(A)(2), a person who takes possession of a PCB Transformer after December 28, 1998 is not required to register or re-register the transformer with EPA. However, any person who takes possession of a PCB Transformer after December 28, 1998 should assure that the transformer was registered as required; PCB Transformers that have not been registered as required are not authorized for use and must be disposed of. See 63 Fed. Reg. 35394 (June 29, 1998).

17. Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(D), a transformer owner must comply with all requirements of § 761.30(a)(1)(vi)(A) to continue the PCB Transformer's authorization for use or storage for reuse.

18. In the November 25, 2013 letter, Respondent stated that it had not found any documentation that the 14 PCB Transformers identified in paragraph 12 above had been registered with EPA on or before December 28, 1998.

19. Since Respondent could not document that the 14 PCB Transformers identified in paragraph 12 above had not been registered with EPA on or before December 28, 1998, Respondent was unauthorized to use the transformers since it acquired the Facility in 2000.

20. Respondent's unauthorized use of the 14 PCB Transformers identified in paragraph 12 above since it acquired the Facility in 2000 violates Section 15 of TSCA and 40 C.F.R. §§ 761.30(a)(1)(vi)(A) and (D).

Failure to Develop and/or Maintain Annual PCB Records

21. Pursuant to 40 C.F.R. § 761.180(a), the owner or operator of a facility, other than a commercial storer or disposer of PCB waste, using or storing at any one time at least 45 kilograms of PCBs contained in PCB Containers(s), or one or more PCB Transformers, or 50 or

more PCB Large High or Low Voltage Capacitors, shall develop and maintain at the facility, all annual records and the written annual document log of the disposition of PCBs and PCB Items.

22. At all times relevant to this CAFO, Respondent is not a commercial storer or disposer of PCB waste.

23. In the November 25, 2013 letter, Respondent stated that it did not have any annual records or written annual document logs for the 14 PCB Transformers and 56 PCB Large Capacitors identified in paragraph 12 above since it acquired the Facility in 2000.

24. Respondent's failure to develop and/or maintain all annual records and the written annual document logs for the PCB Transformers and PCB Large Capacitors identified in paragraph 12 above since it acquired the Facility in 2000 violates Section 15 of TSCA and 40 C.F.R. § 761.180(a).

Terms of Settlement

25. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, successors and assigns.

26. For purposes of this CAFO, Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and also waives any defenses it may have as to jurisdiction and venue.

27. Respondent acknowledges that it has been informed of its right to request a hearing in this proceeding, and hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.

28. Respondent also hereby waives its right to appeal the Final Order accompanying this Consent Agreement.

29. Without admitting or denying the specific factual allegations in this CAFO, Respondent hereby consents to the terms and the issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set forth in this CAFO.

30. Section 16(a) of TSCA, together with the Civil Monetary Penalty Inflation Rule (40 C.F.R. Part 19), authorize the assessment of a civil administrative penalty of up to \$37,500 per day for each violation. Pursuant to Section 16 of TSCA, and taking into account the facts and alleged in this CAFO as well as EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy" (April 9, 1990) ("PCB Penalty Policy") and EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (April 11, 2000) ("Audit Policy"), Complainant has determined that it is fair and proper that Respondent pays a civil penalty in the amount of \$8,500 in settlement of this matter.

Penalty Payment

31. Respondent shall pay the total penalty amount of \$8,500 in the manner described below:

a. The payment shall be made in a single payment of \$8,500 due within 30 calendar days of the effective date of this CAFO. This CAFO shall become effective on the day it is filed with the Regional Hearing Clerk. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day.

b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference "*In the Matter of: General Dynamics-OTS, Inc., Consent Agreement and Final Order, EPA Region 1,*" Respondent's name

and address, and the EPA Docket Number of this action (“TSCA-01-2016-0040”), and shall be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

If remitted on-line with a debit card, credit card, or bank account transfer:

No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering 1.1 in the form search box on the left side of the screen to access the EPA’s Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting “submit data,” entering the relevant debit card, credit card, or bank account information.

c. At the time of payment, a copy of the check (or notification of any other type of payment) shall also be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Post Office Square
Suite 100 (ORA18-1)
Boston, MA 02109-3912

and

William Chin
Enforcement Counsel
U.S. EPA, Region 1
One Post Office Square
Suite 100 (OES04-4)
Boston, MA 02109-3912

32. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on the civil penalty if it is not paid within 30 calendar days of the effective date of this CAFO. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney=s fees in accordance with 31 C.F.R. § 901.9(c). In addition, a penalty charge of six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due in accordance with 31 C.F.R. § 901.9(d). Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day that payment is due.

Additional Provisions

33. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service on behalf of EPA:

William Chin
Enforcement Counsel
U.S. EPA, Region 1
One Post Office Square
Suite 100 (OES04-4)
Boston, MA 02109-3912

34. All penalties, interest, and other charges imposed in this CAFO shall represent civil penalties assessed by EPA, and shall not be deductible for federal tax purposes.

35. Compliance with this CAFO, including payment of any penalties, interest, or other charges, shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and does not waive, suspend, or modify the responsibility of Respondent to comply with such laws and regulations.


36. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties pursuant to Section 16 of TSCA for the specific violations alleged in this CAFO. Nothing in this CAFO shall prevent EPA from taking any necessary action to address conditions at Respondent's facility which may present an imminent and substantial endangerment to public health or the environment nor shall this CAFO be construed to, nor is it intended to operate in any way to resolve any criminal liability or any other civil liability of Respondent.

37. Except as described in paragraph 32, each party shall bear its own costs and fees in this proceeding, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

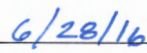
38. Each undersigned representative of a party to this CAFO certifies that she or he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to it.

THE UNDERSIGNED enter into this CAFO on behalf of her/his respective party for:
In the Matter of: General Dynamics - OTS, Inc., Docket No. TSCA-01-2016-0040

For General Dynamics - OTS, Inc.:



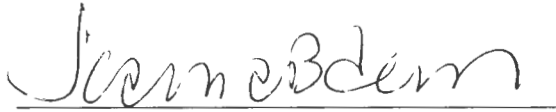
Name: Del S. Dameron
Title: Vice President and Assistant Secretary
Company: General Dynamics - OTS, Inc.



Date

THE UNDERSIGNED enter into this CAFO on behalf of her/his respective party for:
In the Matter of: General Dynamics - OTS, Inc., Docket No. TSCA-01-2016-0040

For U.S. EPA, Region 1:



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

7/6/14
Date

FINAL ORDER

39. Pursuant to 40 C.F.R. § 22.18(b)(3) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

40. Respondent, as specified in the Consent Agreement, is hereby ordered to comply with the terms of the Consent Agreement, effective on the date on which it is filed with the Regional Hearing Clerk.

SO ORDERED THIS 7th DAY OF July 2016



Sharon Wells
Regional Judicial Officer
U.S. EPA, Region 1