

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

In the Matter of: )  
)  
)  
**Lafarge North America, Inc.** )  
**12950 Worldgate Drive** ) **U.S. EPA Docket Number**  
**Suite 500** ) **TSCA-03-2011-0005**  
**Herndon, VA 20170** )  
) **Consent Agreement**  
**RESPONDENT** )  
) **Proceeding Under Section 16(a)**  
) **of the Toxic Substances Control Act,**  
**Lafarge North America, Inc.** ) **15 U.S.C. § 2615**  
**Whitehall Cement Plant** )  
**5160 Main Street** )  
**Whitehall, PA 18052** )  
)  
**FACILITY** )

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**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement is filed pursuant to 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"). Pursuant to Section 22.13(b) of the Consolidated Rules, this Consent Agreement and the attached Final Order (collectively referred to herein as the "CAFO") both commence and conclude an administrative proceeding against Lafarge North America, Inc. ("Respondent") to resolve alleged violations of TSCA and of the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth in 40 C.F.R. Part 761 (the "PCB regulations"). The Complainant is the Director, Land and

Chemicals Division, United States Environmental Protection Agency, Region III  
("Complainant").

2. This Consent Agreement is entered into by Complainant and Respondent to resolve EPA's claims for civil penalties based upon the violations alleged in the Findings of Fact, as set forth below.
3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this Consent Agreement.
4. Respondent neither admits nor denies the Findings of Fact contained in this Consent Agreement, except as provided in Paragraph 3, above.
5. Respondent neither admits nor denies the Conclusions of Law contained in this Consent Agreement, except as provided in Paragraph 3, above.
6. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in the Findings of Fact and Conclusions of Law, and any right to appeal the accompanying Final Order.
7. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.
8. Respondent consents to the issuance of this Consent Agreement and to the attached Final Order and agrees to comply with their terms. Respondent agrees not to contest Complainant's jurisdiction with respect to: (1) the execution of this Consent Agreement; (2) the issuance of the attached Final Order; or (3) the enforcement thereof.
9. Nothing in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations.

10. 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.
11. 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 Consent Agreement and Final Order, following its filing with the Regional Hearing Clerk. Respondents reserve all available rights and defenses they may have to defend themselves in any such action.
12. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.
13. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

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

14. Complainant has determined that Respondent has violated TSCA § 6(e), and adopts the following findings of fact and conclusions of law in accordance with 40 C.F.R. §§ 22.18(b)(2) and .14(a)(2) and (3).
15. As used herein, the terms "PCB", "PCB Item" and "PCB Transformer" shall each have the definition and meaning for such terms set forth in 40 C.F.R. § 761.3.

16. TSCA Section 15(1)(B), 15 U.S.C. § 2614(1)(B), provides that it shall be unlawful for any person to fail or refuse to comply with any requirement prescribed by TSCA Sections 5 or 6, 15 U.S.C. §§ 2604 or 2605. TSCA Section 15(1)(C), 15 U.S.C. § 2614(1)(C), provides that it shall be unlawful for any person to fail or refuse to comply with any rule promulgated or order issued under TSCA Sections 5 or 6.
17. Respondent is a Delaware corporation, with headquarters in Virginia, and is a "person" as defined in 40 C.F.R. § 761.3.
18. Respondent is, and at all times relevant to this Consent Agreement was, the owner and operator of a cement plant located at 5160 Main Street, Whitehall, Pennsylvania (the "Facility").
19. On December 18, 2009, two inspectors from the United States Environmental Protection Agency ("EPA") conducted a compliance inspection (the "Inspection") at the Facility pursuant to the authority of Section 11 of 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), 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.
20. From at least 2005 until at least December 18, 2009, Respondent was using three PCB Transformers in different substation enclosures, including a transformer with Serial Number H882741B (in "Substation #9"), another with Serial Number H882741A (in "Substation #10"), and the third with Serial Number H887765 (in "Substation #11").

Counts 1-2

21. 40 C.F.R. § 761.30(a)(1)(viii) provides that, “[a]s 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 ... or, if unenclosed (unpartitioned), within 5 meters of a PCB Transformer.”
22. At the time of the Inspection, the following items of combustible material were being stored within two of the transformer substations and within 5 meters of the two respective PCB Transformers in those substations at the Facility:
- a. Within Substation #9:
    - (i) a yellow wooden spill box situated about six feet from the PCB Transformer;
    - (ii) a wooden plank located behind the wooden spill box;
    - (iii) a wooden brown table located next to the wooden spill box;
    - (iv) two wooden spools of wire or cable, one immediately adjacent to the transformer and another located in the rear of the substation about eight feet from the PCB Transformer.
  - b. Within Substation #10:
    - (i) a plastic covering located about five feet from the PCB transformer.
23. Respondent violated Section 15 of TSCA, and the requirements of 40 C.F.R. § 761.30(a)(1)(viii), by storing the combustible materials identified in Paragraph 22, above, within 5 meters of the PCB transformers in Substation #9 (Count 1) and Substation #10 (Count 2).

Counts 3-6

24. Pursuant to 40 C.F.R. § 761.180(a), in relevant part, the owner or operator of a facility using one or more PCB Transformers must develop and maintain at the facility a written annual document log by July 1 covering the previous calendar year (January through December). The annual document log must be maintained for at least 3 years after the facility ceases using or storing PCBs and PCB Items in the quantities prescribed, and must contain, among other things, the information required in 40 C.F.R. § 761.180(a)(2)(iv), including the total weight of PCBs in kilograms (kg) contained in transformers remaining in service at the end of the calendar year.
25. At the time of the Inspection, Respondent had not prepared and maintained annual document logs for the Facility for calendar years 2005 through 2008, but rather had prepared and maintained logs for the following time periods: between September 2005 and July 2006; between September 2006 and July 2007; between September 2007 and July 2008; and, between July 2008 and July 2009.
26. The logs referred to in Paragraph 25, above, did not state the correct total weight in kilograms of PCBs in each transformer at Respondent's Facility, as required by 40 C.F.R. § 761.180(a)(2)(iv). The logs for the periods ending July 2006, July 2007, and July 2008 state that the total weight of PCBs contained in the transformers with Serial Numbers B979661, H882741B, H882741A, and H887765 was approximately 8,170 kg, however, the correct total weight of the PCBs in these transformers during such periods was approximately 6,098 kg. The log for the period ending July 2009 reported that the total weight of PCBs contained in the transformers with Serial Numbers H882741B, H882741A, and H887765 was approximately 5,091 kg, however, the correct total weight

of the PCBs in these transformers during such periods was approximately 3,019 kg.

Furthermore, all of the logs state erroneously that the transformer with Serial Number H882741B contained 520 gallons, however, the actual volume of dielectric fluid in that transformer during such periods was 170 gallons.

27. Respondent violated Section 15 of TSCA and the requirements of 40 C.F.R. § 761.180(a) by failing to prepare and maintain annual document logs, for the years 2005 (Count 3), 2006 (Count 4), 2007 (Count 5), and 2008 (Count 6), that state the correct weight of PCBs in use at the Facility and that cover the full previous calendar year, as alleged in Paragraphs 26 and 25, respectively.

### **III. CERTIFICATION OF COMPLIANCE AND SETTLEMENT CONDITIONS**

28. As to all relevant provisions of TSCA and the PCB regulations allegedly violated as described above in Counts 1 through 6 of the Findings of Fact and Conclusions of Law, above, Respondent certifies to EPA, by its signature hereto, that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is in compliance with all such relevant provisions and regulations. Specifically, Respondent certifies that it is in compliance with the requirements of 40 C.F.R. § 761.30(a)(1)(viii), which provides that "combustible materials, including, but not limited to paints, solvents, plastics, paper, and sawn wood must not be stored within a PCB Transformer enclosure ... or, if unenclosed (unpartitioned), within 5 meters of a PCB Transformer." Respondent also certifies that it is in compliance with the requirements of 40 C.F.R. § 761.180(a), which requires that owners and operators of facilities where PCB transformers are used in prescribed quantities (including, in relevant part, the use of one or more PCB Transformers) develop

and maintain a written annual document log by July 1 covering the previous calendar year (January through December).

#### IV. CIVIL PENALTY

29. Respondent agrees to pay a civil penalty in the amount of **Eight Thousand Two Hundred Sixty Dollars (\$8,260.00)** for the above cited violations, in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a copy of this Consent Agreement and Final Order fully executed by all parties. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this Consent Agreement and Final Order, Respondent must pay the entire civil penalty no later than thirty (30) calendar days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
30. The aforesaid civil penalty is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors 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 in the manner described in EPA's *Polychlorinated Biphenyls (PCBs) Penalty Policy* (April 9, 1990). To determine the penalty amount set forth in Paragraph 29, above Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19; *Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule*, Stephanie P. Brown (June 5,



2006), p. 9-B; and, *Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009*, Rosemarie A. Kelley (April 6, 2010), p. 9-B Insert (TSCA § 6 (PCB) Gravity Based Penalty Matrix).

31. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

- a. Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar days 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).
- b. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Chapter 9, *Receivables and Billings*, of EPA's *Resource Management Directives System* (No. 2540-09), 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.
- c. A penalty charge of six percent per year will be assessed monthly on any portion

of the civil penalty which remains delinquent more than ninety (90) calendar days.  
40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be  
required, it shall accrue from the first day payment is delinquent. 31 C.F.R.  
§ 901.9(d).

32. Respondent shall remit the full penalty assessed by this CAFO, plus any interest,  
administrative fees and late payment penalties owed, by cashier's check, certified check,  
or electronic wire transfer, in accordance with this Section IV, via one of the following  
methods:

- a. All payments made by check and sent by U.S Postal Service regular mail shall be  
addressed to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

*The customer service contact for this address is Eric Volck, who may be reached at 513-487-2105*

- b. All payments made by check and sent by UPS, FedEx, or overnight mail delivery  
service (except as noted in section c, below) shall be addressed to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

*The U.S. Bank customer service contact for overnight delivery is 314-418-1028.*

- b. All payments made by check in any currency drawn on banks with no branches in  
the United States shall be addressed for delivery to the following address:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- d. All payments made by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 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"

*The Federal Reserve customer service contact may be reached at 212-720-5000.*

- e. 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

*Customer service contact: John Schmid, at 202-874-7026, or REX at 1-866-234-5681*

- f. On-line payment option

[WWW.PAY.GOV](http://WWW.PAY.GOV)

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

- g. 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)

33. All payments by Respondent shall include Respondent's full name and address and the EPA Docket Number of this Consent Agreement (TSCA-03-2011-0005).
34. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

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

35. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.

**V. SCOPE OF SETTLEMENT**

36. Payment by Respondent of the civil penalty, plus any interest and fees, assessed in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations cited herein. Compliance with this CAFO shall not be a defense to any action commenced by the United States at any time for any other violation of the federal laws and regulations administered by EPA.

**VI. PARTIES BOUND**


37. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official

capacities) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he or she is fully authorized to enter into this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.


**VII. EFFECTIVE DATE**

38. The effective date of this Consent Agreement and Final Order is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

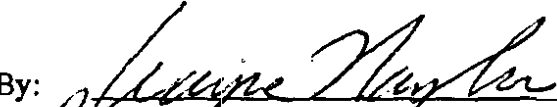
**For Respondent Lafarge North America, Inc.:**

Date: Dec 20<sup>th</sup> By:   
Name Scott Morken  
Title Vp of Manufacturing

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

Date: Feb 7, 2011 By:   
John Ruggero  
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

2/18/11  
Date By:   
Abraham Ferdas, Director  
for Land and Chemicals Division

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

**In the Matter of:** )

**Lafarge North America Inc.** )  
**12950 Worldgate Drive** )  
**Suite 500** )  
**Herndon, VA 20170** )

**U.S. EPA Docket Number**  
**TSCA-03-2011-0005**

**Final Order**

**RESPONDENT** )

**Lafarge North America, Inc.** )  
**Whitehall Cement Plant** )  
**5160 Main Street** )  
**Whitehall, PA 18052** )

**FACILITY** )

**FINAL ORDER**

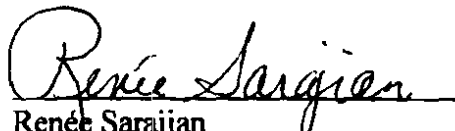
The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Lafarge North America Inc. ("Respondent"), have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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 Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615, and the Consolidated Rules of Practice, and based upon representations in the Consent Agreement that the penalty agreed to therein is based upon a consideration of, among other things, 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 pay a civil penalty of **Eight Thousand Two Hundred Sixty Dollars (\$8,260.00)**, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date:

2/28/11

  
Renee Sarajian  
Regional Judicial Officer  
U.S. EPA, Region III

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

IN THE MATTER OF:

Lafarge North America, Inc.  
12950 Worldgate Drive  
Suite 500  
Herndon, VA 20170

RESPONDENT

Lafarge North America, Inc.  
Whitehall Cement Plant  
5160 Main Street  
Whitehall, PA 18052

FACILITY

) CERTIFICATE OF SERVICE  
)  
)  
) U.S. EPA Docket Number  
) TSCA-03-2011-0005  
)  
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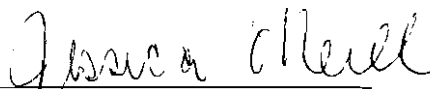
) Proceeding under Section 16(a)  
) of the Toxic Substances Control  
) Act, 15 U.S.C. § 2615  
)  
)  
)  
)

I certify that on the date noted below, I sent by UPS, a copy of the Consent Agreement and Final Order, In the Matter of: Lafarge North America, Inc., U.S. EPA Docket Number TSCA-03-2011-0005, to the persons and addresses listed below.

Steven Smith  
Environmental Manager  
Lafarge North America, Inc.  
Whitehall Cement Plant  
5160 Main Street  
Whitehall, PA 18052

The original Consent Agreement and Final Order, plus one copy, were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III.

3/11/11  
DATE

  
\_\_\_\_\_  
Jessica O'Neill  
Assistant Regional Counsel  
Office of Regional Counsel  
EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029