

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

<b>In the Matter of:</b>	:	
	:	
<b>Voith Hydro, Inc.</b>	:	<b>U.S. EPA Docket No. TSCA-03-2019-0009</b>
<b>760 East Berlin Road</b>	:	
<b>York, PA 17405</b>	:	
	:	
<b>Respondent</b>	:	<b>U.S. EPA-REGION 3-RHC</b>
	:	FILED-6DEC2018pm4:02
	:	
<b>Voith Hydro, Inc.</b>	:	<b>Proceeding under Sections 15 and 16</b>
<b>760 East Berlin Road</b>	:	<b>of the Toxic Substances Control Act,</b>
<b>York, PA 17405</b>	:	<b>15 U.S.C. §§ 2614 and 2615</b>
	:	
<b>Facility</b>	:	
	:	

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by: the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III (“Complainant”); and by Voith Hydro, Inc. (“Respondent”) 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 “CAFO”) 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, entitled “Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions” (“PCB regulations”).
2. The alleged 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, and use of polychlorinated biphenyls (“PCBs”) and PCB Items at a facility located at 760 East Berlin Road, York, PA 17405.

## **II. GENERAL PROVISIONS**

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
4. Except as provided in Paragraph 3 above, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.
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 CAFO.
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 CAFO and agrees to comply with its terms and conditions.
8. Each Party shall bear its own costs and attorney's fees.

## **III. EPA'S 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 and adopts the findings of fact and conclusions of law set forth immediately below.
10. As used herein, the terms "PCB", "PCB Article", "PCB Capacitor", "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. Voith Hydro, Inc. is a Delaware corporation that does business in Pennsylvania and maintains an office at 760 East Berlin Road, York, PA 17405.
14. Respondent is a "person" as defined in 40 C.F.R. § 761.3.

15. Voith Hydro, Inc. is and has been, at all times relevant to this to this CAFO, the owner and operator of a manufacturing plant located at 760 East Berlin Road, York, PA 17405 ("Facility").
16. On April 21, 2017, the United States Environmental Protection Agency ("EPA") Region III sent a letter to Respondent inquiring into reports of un-manifested PCB waste from Cycle Chem Inc.'s Lewisberry disposal facility ("CCI"). The purpose of EPA's April 21, 2017 letter 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 and use of polychlorinated biphenyls ("PCBs"), PCB Items and PCB Transformers at the Facility. On May 22, 2017, Respondent sent a letter to EPA stating that it had corrected the manifests and was investigating the cause of its failure to include proper manifests for PCB waste.
17. On the basis of the EPA letter, Respondent's reply letter and subsequent discussions with Respondent, EPA has determined that Respondent violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, and the applicable PCB regulations thereunder.

**COUNT I**

**Violations of 40 C.F.R. § 761.207**

***(Failure to Properly Manifest PCB Waste for Shipment)***

18. The allegations of paragraphs 1 through 17 of this Consent Agreement are incorporated herein by reference.
19. 40 C.F.R. § 761.207 provides, in pertinent part, that a generator who transports, or offers for transport PCB waste for commercial off-site storage or off-site disposal, must prepare a manifest on EPA Form 8700-22.
20. The term "PCB" is defined to mean "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance," 40 C.F.R. § 761.3.
21. On January 27, 2017, CCI, a treatment, storage, and disposal facility for hazardous and non-hazardous waste, received 11,700 pounds of sandblast media waste from Respondent. The shipment did not include an EPA Form 8700-22. CCI determined via waste analysis that the sandblast media received from Respondent, on January 27, 2017, contained TSCA regulated PCBs at 56 ppm.

22. On February 24, 2017, CCI, a treatment, storage, and disposal facility for hazardous and non-hazardous waste, received 7,200 pounds of sandblast media waste from Respondent. The shipment did not include an EPA Form 8700-22. CCI determined via waste analysis that the sandblast media received from Respondent, on February 24, 2017, contained TSCA regulated PCBs at 185 ppm.
23. On March 30, 2017, CCI, a treatment, storage, and disposal facility for hazardous and non-hazardous waste, received 13,900 pounds of sandblast media waste from Respondent. The shipment did not include an EPA Form 8700-22. CCI determined via waste analysis that the sandblast media received from Respondent, on March 30, 2017, contained TSCA regulated PCBs at 35 ppm.
24. Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.207, on January 27, 2017, February 24, 2017 and March 30, 2017, by offering for transport PCB waste for commercial off-site storage or off-site disposal without preparing and providing a manifest on EPA Form 8700-22 identifying the PCB content.

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

25. 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, Respondent agrees to pay a civil penalty in the amount of **TWENTY THOUSAND FOUR HUNDRED AND SEVENTY DOLLARS (\$20,470.00)**, in accordance with the provisions set forth below. The civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO, fully executed by the parties, approved by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
26. 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

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considered the appropriate Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, and the January 11, 2018 memorandum by EPA Assistant Administrator Susan Parker Bodine, entitled *Amendments to the EPA's Civil Penalty Policies to Account for Inflation and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule*.

27. Payment of the civil penalty amount set forth in Paragraph 25, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 28 through 31, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action (*Docket No. TSCA-03-2019-0009*);
  - 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 to:  
  
U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
  
Primary Contact: Craig Steffen (513) 487-2091  
Secondary Contact: Molly Williams (513) 487-2076
  - d. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:  
  
U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
  
Primary Contact: Craig Steffen (513) 487-2091  
Secondary Contact: Molly Williams (513) 487-2076
  - e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:  
  
Cincinnati Finance  
US EPA, MS-NWD

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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 Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Beneficiary: US 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 Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - checking

Physical location of US Treasury Facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact: (866)-234-5681

- h. On-Line Payment Option:

<https://www.pay.gov/public/home>

Enter **SFO 1.1** in the search field, open and complete the form.

- i. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

- j. At the time of payment, Respondent shall simultaneously send a notice of payment, *including a copy of the check or electronic wire transfer, as applicable*, to:

T. Chris Minshall, Esq.  
Sr. Assistant Regional Counsel

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Waste and Chemical Law Branch (3RC30)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Bevin Esposito  
Acting Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

28. 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. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
29. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, 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 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).
30. 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.
31. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that 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 agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

**V. OTHER APPLICABLE LAWS**

33. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

**VI. CERTIFICATIONS**

34. Respondent certifies to Complainant to the best of its knowledge and belief, that Respondent's Facility, presently is complying with the provisions of TSCA, and the regulations promulgated thereunder, that are alleged by EPA to have been violated as referenced in this CAFO.

**VII. RESERVATION OF RIGHTS**

35. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any 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. 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 CAFO following its filing with the Regional Hearing Clerk. This CAFO 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.

**VIII. FULL AND FINAL SATISFACTION**

36. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under TSCA Section 6(e), 15 U.S.C. § 2605(e), for the violations alleged in this CA. Compliance with the requirements and provisions of this CAFO 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.

**IX. PARTIES BOUND**

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



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capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the 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.

#### **X. EFFECTIVE DATE**

38. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, pursuant to the Consolidated Rules of Practice.

#### **XI. ENTIRE AGREEMENT**

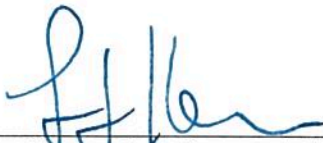
39. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

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For the Respondent:

Date: 10/24/2018

By:   
Stan Kocou, President and CEO  
Voith Hydro, Inc.


For the Complainant:

Date: 10/30/2018

By:   
T. Chris Minshall, Sr. Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III

After reviewing the EPA Findings of Fact, Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 12.4.18

By:   
John A. Armstead, Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency, Region III

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

<b>In the Matter of:</b>	:	
	:	
<b>Voith Hydro, Inc.</b>	:	<b>U.S. EPA Docket No. TSCA-03-2019-0009</b>
<b>760 East Berlin Road</b>	:	
<b>York, PA 17405</b>	:	
	:	<b>U.S. EPA-REGION 3-RHC</b>
<b>Respondent</b>	:	<b>FILED-6DEC2018PM4:02</b>
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<b>Voith Hydro, Inc.</b>	:	<b>Proceeding under Sections 15 and 16</b>
<b>760 East Berlin Road</b>	:	<b>of the Toxic Substances Control Act,</b>
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	:	
<b>Facility</b>	:	
	:	

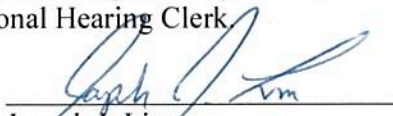
**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Voith Hydro, Inc., 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 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW THEREFORE, pursuant to Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615, and the Consolidated Rules of Practice, and upon representations in the Consent Agreement that the penalty agreed to therein is based upon a consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), Respondent Voith Hydro, Inc. is hereby ordered to pay a civil penalty of **\$20,470.00** as set forth in Section IV of the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Dec. 6, 2018

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial Officer  
U.S. EPA, Region III

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

In the Matter of: :  
: :  
Voith Hydro, Inc. : Docket No. TSCA-03-2019-0009  
760 East Berlin Road : :  
York, PA 17405 : :  
: :  
RESPONDENT. : Proceeding under Sections 15 and 16  
: of the Toxic Substances Control Act,  
: 15 U.S.C. §§ 2614 and 2615

**CERTIFICATE OF SERVICE**

I certify that on DEC 06 2018, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Scott A. Gould  
McNees, Wallace & Nurick, LLC  
100 Pine Street  
Harrisburg, PA 17108-1166

Copy served via **Hand Delivery or Inter-Office Mail** to:

T. Chris Minshall  
Senior Assistant Regional Counsel  
Office of Regional Counsel (3RC30)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(Attorney for Complainant)

Dated: DEC 06 2018

Beverly Esposito  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 7015 1520 0003 0896 2656