

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

In the Matter of:)	
)	
American Hardwood Industries, LLC)	U.S. EPA Docket Number
567 North Charlotte Road)	TSCA-03-2015-0024
Waynesboro, VA 22980)	
)	Consent Agreement
RESPONDENT)	
)	Proceeding under TSCA Sections 15
567 North Charlotte Road)	and 16, 15 U.S.C. §§ 2614 and 2615
Waynesboro, VA 22980)	
)	
FACILITY)	

RECEIVED
 2014 DEC 30 PM 4: 17
 REGIONAL HEARING OFFICE
 EPA REGION III, PHILA. PA

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 American Hardwood Industries, LLC (“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 of the 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. For the purposes of this proceeding, Respondent neither admits nor denies the Findings of Fact contained in this Consent Agreement, except as provided in Paragraph 3, above.
5. For the purposes of this proceeding, 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, Respondent hereby waives any right to contest the allegations and its 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. Except as provided otherwise herein, Respondent reserves all available rights and defenses it may have to defend itself 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. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter in accordance with the Consolidated Rules of Practice at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). As provided in Paragraphs 4 and 5 above, Respondent neither admits nor denies these Findings of Fact and Conclusions of Law, but agrees to this settlement to avoid further litigation, as set forth in Paragraph 7, above.
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, 15 U.S.C. §§ 2604 or 2605.
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 manufacturing facility located at 567 North Charlotte Road, Waynesboro Virginia, 22980 (the “Facility”).
19. On April 10, 2013, an inspector 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 the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2610. The purpose of the Inspection was to evaluate Respondent’s compliance with regulations promulgated pursuant to TSCA Section 6(e), 15 U.S.C. § 2605(e), governing the prohibition of, and/or the requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage and marking of polychlorinated biphenyls (“PCBs”) and PCB Items at the Facility.
20. At the time of the Inspection, and throughout calendar years 2009, 2010, and 2011 (at which time the PCB Transformers remained in service), Respondent had in use/in service three mineral oil PCB Transformers. Two of these Transformers were located on a metal grating platform on the mezzanine level above the maintenance office. The first of these Transformers was labeled with a serial number G-858698A; the second Transformer was not labeled. The third Transformer was located on a separate metal grating platform, in the north end of the Facility above the production floor. This Transformer was labeled with the serial number G-858698C.
21. On the basis of the Inspection, Complainant has determined that Respondent has violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, as described below.

Counts 1–2

Storage of Combustible Materials within a PCB Transformer Enclosure or Within Five Meters of a PCB Transformer

22. The allegations of paragraphs 1 through 21 of this Consent Agreement are incorporated herein by reference.
23. 40 C.F.R. § 761.30(a)(1)(viii) prohibits the storage of combustible materials including, but not limited to paints, solvents, plastics, paper, and sawn wood, within a PCB Transformer enclosure or, if unenclosed, within five (5) meters of a PCB Transformer.
24. At the time of the Inspection, Respondent stored combustible materials including paper trash, rags and cardboard, from the metal grating platform within five meters of the two PCB Transformers located on the mezzanine level above the maintenance office.
25. At the time of the Inspection, Respondent stored combustible materials including numerous pieces of cut lumber, paper trash and gloves, from the metal grating platform within five meters of the PCB Transformer located at the north end mezzanine above the production floor.
26. At the time of the Inspection, Respondent stored a layer of sawdust accumulated on the outside surfaces of the PCB Transformer located at the north end mezzanine above the production floor.
27. Respondent committed two violations of Section 15 of TSCA, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.30(a)(1)(viii), by storing combustible materials from the metal grating platforms within five meters of the PCB Transformers located on the mezzanine level above the maintenance office and of the PCB Transformer located on the mezzanine level above the production floor.

Counts 3–5

Failure to Maintain Annual PCB Transformer Inspection Records For Calendar Years 2009–2011

28. The allegations of paragraphs 1 through 27 of this Consent Agreement are incorporated herein by reference.
29. Pursuant to 40 C.F.R. § 761.180(a), in relevant part, owners and operators of facilities where PCBs are used or stored in prescribed quantities (including, in relevant part, the storage of one or more PCB Transformers) must develop and maintain at the facility or a central facility by July 1, a written annual document log of the disposition of PCBs and PCB Items covering the previous calendar year (January through December). The annual document log shall be maintained for at least 3 years after the facility ceases using or storing PCBs and PCB Items in the quantities prescribed.
30. At the time of the Inspection, Respondent had not prepared or maintained any annual

document logs for the PCB Transformers at the Facility for the time period covering calendar years 2009, 2010, and 2011, for which annual document logs listing the facility name and address, the calendar year covered by the document log, the total number of PCB Transformers at the Facility, and the total weight in kilograms of PCBs contained in the Transformers were required to be developed and maintained by July 1, 2010, July 1, 2011, and July 1, 2012, respectively.

31. Respondent committed three violations of Section 15 of TSCA, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(a), by failing to prepare and maintain annual document logs for the calendar years 2009–2011 for all three PCB Transformers at the Facility.

Counts 6–17

Failure to Maintain Quarterly PCB Transformer Inspection Records

32. The allegations of paragraphs 1 through 31 of this Consent Agreement are incorporated herein by reference.
33. 40 C.F.R. § 761.30(a)(1)(ix) requires, in relevant part, that a visual inspection of each PCB Transformer in use or stored for reuse shall be performed at least once every three (3) months and that these inspections may take place any time during the three (3) month periods of January–March, April–June, July–September and October–December as long as there is a minimum of thirty (30) days between inspections. The visual inspection must include investigation for any leak of dielectric fluid on or around the transformer.
34. 40 C.F.R. § 761.30(a)(1)(xii) further requires that records of inspection and maintenance history shall be maintained at least three (3) years after disposing of the transformer and shall be made available for inspection, upon request by EPA. Such records shall contain the following information for each PCB Transformer: (A) its location; (B) the date of each visual inspection and the date that a leak was discovered; (C) the person performing the inspection; (D) the location of any leak(s); (E) an estimate of the amount of dielectric fluid released from any leak; (F) the date of any cleanup, containment, repair, or replacement; (G) a description of any cleanup, containment, or repair performed; (H) the results of any containment and daily inspection required for uncorrected active leaks; (I) a record of the registration of PCB Transformer(s); and (J) records of transfer of ownership in compliance with 40 C.F.R. § 761.180(a)(2)(ix).
35. Although Respondent visually inspected the three PCB Transformers sporadically, Respondent failed to maintain and, at the time of the referenced April 10, 2013 Facility Inspection, Respondent failed to make available for inspection, upon request by EPA, records containing the information, required pursuant to 40 C.F.R. § 761.30(a)(1)(xii), regarding the inspection and maintenance of such Transformers for the 2011–2013 calendar years.
36. Respondent committed twelve violations of TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.30(a)(1)(xii), by failing to maintain and make available,

upon request, for EPA inspection during the course of the April 10, 2013 Facility Inspection or thereafter, records of the inspection and maintenance history of all three PCB Transformers 2009–2011.

III. CERTIFICATION OF COMPLIANCE AND SETTLEMENT CONDITIONS

37. As to all relevant provisions of TSCA and the PCB regulations allegedly violated as described above in Counts 1 through 9 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.

IV. CIVIL PENALTY

38. Respondent agrees to pay a civil penalty in the amount of for **SIXTY-FIVE THOUSAND DOLLARS** (\$65,000.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct 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.
39. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined in accordance with the April 9, 1990 Polychlorinated Biphenyls Penalty Policy, as amended, and after consideration of the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), including 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, EPA hereby agrees and acknowledges that payment of the civil penalty shall be in full and final 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 violations alleged in this Consent Agreement and Final Order.
40. Payment of the civil penalty amount assessed in paragraph 38, 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 Respondent's name and address, and the Docket Number of this action, *i.e.* TSCA-03-2015-0024;
 - 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

Contact: Craig Steffen 513-487-2091

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

United States Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 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"

- F. 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: John Schmid 202-874-7026 OR REX, 1-866-234-5681

G. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

H. Point Of Contact regarding payment questions (i.e. how to make payment via wire, ACH, check, pay.gov):
Craig Steffen, 513-487-2091, steffen.craig@epa.gov

Additional payment guidance is available at:
<http://www2.epa.gov/financial/makepayment>.

I. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Jeffrey S. Nast
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

41. 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 shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
42. 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, fully executed by the parties, signed by the Regional

Administrator or the Regional Judicial Officer, and filed with the Regional Hearing Clerk, 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).

43. 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.
44. A late payment penalty of six percent (6%) 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). The late payment penalty on any portion of the civil penalty that remains delinquent for more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
45. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

V. PARTIES BOUND

46. 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.

VI. EFFECTIVE DATE

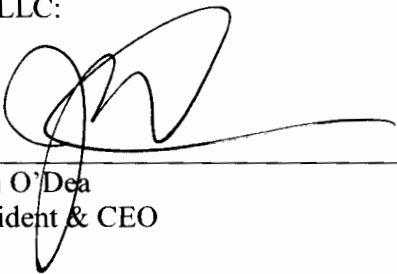
47. The effective date of this Consent Agreement and Final Order is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer or Regional Administrator.

VII. ENTIRE AGREEMENT

48. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violation alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent American Hardwood Industries, LLC:

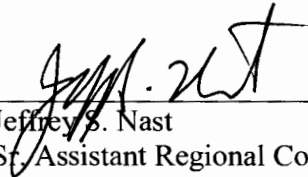
Date: 11/25/14

By: 

John O'Dea
President & CEO

For Complainant United States Environmental Protection Agency, Region III:

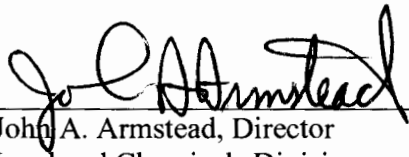
Date: 12/9/14

By: 

Jeffrey S. Nast
Sr. 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.

12.23.14
Date

By: 

John A. Armstead, Director
Land and Chemicals Division

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

In the Matter of:)
)
 American Hardwood Industries, LLC)
 567 North Charlotte Road)
 Waynesboro, VA 22980)
)
RESPONDENT)
)
 567 North Charlotte Road)
 Waynesboro, VA 22980)
)
FACILITY

**U.S. EPA Docket Number
 TSCA-03-2015-0024**
Consent Agreement
**Proceeding under TSCA Sections 15
 and 16, 15 U.S.C. §§ 2614 and 2615**

REGIONAL HEARING CLERK
 EPA REGION III, PHILADELPHIA, PA

2014 DEC 30 PM 4: 17

RECEIVED


FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and American Hardwood Industries, LLC ("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 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), and the Consolidated Rules of Practice, Respondent American Hardwood Industries, LLC is hereby ordered to pay a civil penalty of **Sixty-Five Thousand Dollars** (\$65,000.00), 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 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: 12-30-14



 Heather Gray
 Regional Judicial Officer
 U.S. EPA, Region III

In re: American Hardwood Industries, LLC

CERTIFICATE OF SERVICE

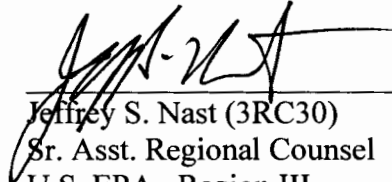
I hereby certify that the original and one copy of the Consent Agreement/Final Order, Docket No. TSCA-03-2015-0024, and associated enclosures, have been hand delivered and filed with the EPA Region III Regional Hearing Clerk on the date below, and that copies of the same were sent via express delivery to the following:

Richard M. Cornelius, Esq.
729 Northwood Ave.
Charlottesville, VA 22902

and

Robert Adams, Maintenance Project Coordinator
American Hardwood Industries, LLC
567 N. Charlotte Road
Waynesboro, VA 22980

12/30/14
Date



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