

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

RECEIVED

2012 MAR 28 AM 10:11

REGIONAL HEARING OFFICE
EPA REGION III PHILADELPHIA, PA

In the Matter of: : **CONSENT AGREEMENT**

:
: **XSYS Print Solutions US, LLC** : Proceedings Pursuant to Sections 103 and 105 of
: d.b.a. Flint Group Pigments : the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42
: 14909 North Beck Road : U.S.C. §§ 9603 and 9609, and Sections 312 and 325 of the Emergency Planning and Community
: Plymouth, Michigan 48170, : Right-to-Know Act, 42 U.S.C. §§ 11022 and 11045
: Respondent. :
: **Flint Group Pigments** : Docket No.: CERCLA-03-2012-0118
: 2401 5th Avenue : Docket No.: EPCRA-03-2012-0118
: Huntington, West Virginia 25703. :
: Facility. :
:

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, as well as under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (collectively "CAFO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and, having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.

PRELIMINARY STATEMENT

1. The implementing regulations for the hazardous chemical reporting requirements in Section 312 of EPCRA, 42 U.S.C. § 11022, are codified at 40 C.F.R. Part 370. On November 3, 2008, EPA issued a final rule, 73 Fed. Reg. 65451 (Nov. 3, 2008), *inter alia*, to make these regulations easier to read by presenting them in a plain language format. The amendments resulted in a re-numbering of 40 C.F.R. Part 370, which became effective on December 3, 2008.

This CAFO references the newly effective numbering, but includes the pre-2008 numbering in parentheses since those regulations were in effect at the time of the violations alleged herein.

EPA'S FINDINGS OF FACT

2. Respondent, XSYS Print Solutions US, LLC, d.b.a. Flint Group Pigments ("Flint" or "Respondent") is a limited liability company with its principal place of business located at 14909 North Beck Road in Plymouth, Michigan.

3. As a limited liability company, Flint is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 370.66 (370.2).

4. At all times relevant to this CAFO, Respondent was the owner or operator of a facility located at 2401 5th Avenue in Huntington, West Virginia (hereinafter the "Facility"), within the meaning of Section 312 of EPCRA, 42 U.S.C. §§ 11022, and was in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.

5. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 312 of EPCRA, 42 U.S.C. § 11022, and their respective regulations, 40 C.F.R. §§ 302.3 and 370.66 (370.2).

6. On or about June 30, 2010, EPA conducted an inspection of the Facility to determine the Facility's compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11002-11022.

7. On or about December 20, 2011, EPA issued a Show Cause letter to Respondent indicating that EPA was considering the assessment of penalties against Respondent for alleged violations of Section 103 of CERCLA, 42 U.S.C. § 9603 and Sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004 and 11022.

FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 103 OF CERCLA

8. The findings of fact contained in paragraphs 2 through 7 of this CAFO are incorporated by reference herein as though fully set forth at length.

9. On September 8, 2009, at or about 9:00 a.m., Eastern Standard Time, an estimated 44,350 pounds of aniline, Chemical Abstracts Service ("CAS") No. 62-53-3, were released from the Facility (the "Release").

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, any person in charge of a facility, as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to, or greater than, the reportable quantity ("RQ"), to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), of such release.

11. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present a substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

12. Aniline is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 5,000 pounds, as listed in 40 C.F.R. § 302.4.

13. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

14. The Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

15. Respondent knew or should have known of the Release of aniline from the Facility, in a quantity equal to or exceeding its RQ, at or about 9:40 a.m. on September 8, 2009.

16. Respondent did not notify the NRC of the Release until approximately 7:12 p.m. on September 8, 2009.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

17. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding its applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

18. Respondent's failure to immediately notify the NRC as soon as the Respondent knew or should have known of the Release from the Facility in an amount equal to or in excess of its applicable RQ, is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603. Therefore,

Respondent is subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007**

19. The findings of fact and conclusions of law contained in paragraphs 2 through 18 are incorporated by reference herein as though fully set forth at length.

20. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility where hazardous chemicals (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous chemical) are present during a calendar year in a quantity equal to or greater than its applicable minimum threshold limit (“MTL”) or equal to or greater than its threshold planning quantity (“TPQ”), who are in turn required to prepare or have available a Material Safety Data Sheet for a hazardous chemical in accordance with the Occupational Safety and Health Administration Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, to submit by March 1st of the following year, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”). The Chemical Inventory Form must identify the hazardous chemicals and provide the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate State Emergency Response Commission (“SERC”), the Local Emergency Planning Committee (“LEPC”), and the local fire department with jurisdiction over the facility.

21. The SERC for the Facility is, and has been at all times relevant to this CAFO, the West Virginia Division of Homeland Security and Emergency Management located at 1900 Kanawha Boulevard E, Building 1, Room EB-80 in Charleston, West Virginia 25305.

22. The LEPC for the Facility is, and has been at all times relevant to this CAFO, the Cabell/Wayne Joint Local Emergency Planning Committee located at 750 5th Avenue, Suite 300 in Huntington, West Virginia 25701.

23. The local fire department for the Facility is, and has been at all times relevant to this CAFO, the City of Huntington Fire Department located at 839 7th Avenue in Huntington, West Virginia 25701.

24. By March 1, 2008, Respondent was required to submit to the SERC, LEPC, and local fire department Chemical Inventory Forms identifying aniline, CI pigment blue 61, and hydrochloric acid, as present at the Facility during calendar year 2007 in quantities greater than their respective MTLs or TPQs, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about those chemicals.

25. Aniline CAS No. 62-53-3 is an extremely hazardous substance for purposes of Section 312(c) of EPCRA, 42 U.S.C. § 11022(c), 40 C.F.R. § 370.66 (370.2). CI pigment blue 61, CAS No. 1324-76-1, and hydrochloric acid, CAS No. 7647-01-0, are hazardous chemicals

for purposes of Section 312(c) of EPCRA, 42 U.S.C. § 11022(c), 40 C.F.R. § 370.66 (370.2), and 29 C.F.R. § 1910.1200(c).

26. Pursuant to 40 C.F.R. § 370.10 (370.20), the MTL for aniline is 500 pounds.

27. Pursuant to 40 C.F.R. § 370.10 (370.20), the MTL for CI pigment blue 61 is 10,000 pounds.

28. Pursuant to 40 C.F.R. § 370.10 (370.20), the MTL for hydrochloric acid is 10,000 pounds.

29. At all times relevant to this CAFO, Respondent was a person engaged in a business where chemicals were used, distributed, or produced for use or distribution.

30. At all times relevant to this CAFO, Respondent was an "employer" as that term is defined at 29 C.F.R. § 1910.1200(c).

31. During calendar year 2007, Respondent had present at its Facility aniline, CI pigment blue 61, and hydrochloric acid in quantities greater than their respective MTLs or TPQs.

32. On or about February 25, 2008, Respondent submitted Chemical Inventory Forms for calendar year 2007 to the SERC, the LEPC, and the local fire department, as required by Section 312 of EPCRA, 42 U.S.C. § 11022.

33. Respondent's Emergency and Hazardous Chemical Inventory Forms submitted to the SERC, the LEPC, and the local fire department for calendar year 2007 did not identify aniline, CI pigment blue 61, and hydrochloric acid, as present at the Facility in quantities equal to or greater than their respective MTLs or TPQs, and failed to provide the required information concerning the hazardous chemicals.

34. Respondent failed to timely submit to the SERC, the LEPC, and the local fire department by March 1, 2008, a complete and accurate Chemical Inventory Form for the Facility for calendar year 2007.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007**

35. Respondent's failure to submit to the SERC, the LEPC, and the local fire department by March 1, 2008, a complete and accurate Chemical Inventory Form identifying aniline, CI pigment blue 61, and hydrochloric acid as present at the Facility in quantities greater than their respective MTLs or TPQs at any one time during calendar year 2007, and providing the required information concerning those chemicals, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

36. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, set forth above, in the amount of **\$17,708**, and Section 312 of EPCRA, 42 U.S.C. § 11022, set forth above, in the amount of **\$1,200**.

PAYMENT TERMS

37. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the effective date of the Final Order (the "final due date"). A payment of \$17,708 shall be made for the CERCLA portion of the penalty. An additional payment of \$1,200 shall be made for the EPCRA portion of the penalty.

38. Payment shall be made as follows:

a. If payment is to be made by cashier's check, separate cashier's checks for the CERCLA and EPCRA payments shall be made as follows:

(i) The CERCLA portion of the penalty shall be made payable to "EPA-Hazardous Substances Superfund" and sent to:

U.S. EPA, Region III
ATTN: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000
Contact: Richard Rice, (513) 487-2057

If the cashier's check is sent via overnight mail, it should be sent to:

U.S. Environmental Protection Agency
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station FL-MO-C2GL
St. Louis, MO 63101
Contact: Richard Rice, (513) 487-2057

The Respondent shall note on the CERCLA penalty-payment cashier's check the title and docket number of this case.

(ii) The EPCRA portion of the penalty, payable to "United States Treasury" in care of:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell, (513) 487-2044

If check is sent via overnight mail, it should be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station FL-MO-C2GL
St. Louis, MO 63101
Contact: Heather Russell, (513) 487-2044

The Respondent shall note on the EPCRA penalty-payment cashier's check the title and docket number of this case.

b. Payment may be made via EFT (wire transfer) 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"

c. Payment may be made via Automated Clearinghouse (ACH), also known as Remittance Express (REX), to:

US Treasury REX/Cashlink
ACH Receiver
ABA = 051036706
Account No.: 310006, EPA
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

- d. On-Line Payment Option:
www.pay.gov/paygov
Enter sfo 1.1 in the search field. Open and complete the form.

39. The Respondent shall submit copies of the checks, or verification of wire transfer or ACH, to the following persons:

Lydia Guy (3RC00) Regional Hearing Clerk U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029	and	Suzanne Parent (3RC42) Senior Assistant Regional Counsel U.S. EPA Region III 1650 Arch Street Philadelphia, PA 19103-2029
--	-----	---

40. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed 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).

41. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to 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 final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

42. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) days in accordance with 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, in accordance with 31 C.F.R. § 901.9(d).

43. Failure by the Respondent to pay the penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

General Provisions

44. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

45. For the purpose of this proceeding, Respondent agrees not to contest EPA's jurisdiction with respect to the execution and enforcement of the CAFO.

46. For the purpose of this proceeding, with the exception of paragraph 44 above, Respondent neither admits nor denies the factual allegations set forth in this CAFO, but expressly waives its rights to contest said allegations.

47. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

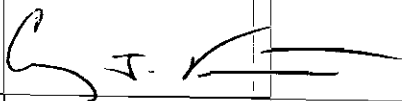
48. The provisions of the CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

49. The CAFO does not constitute a waiver, suspension or modification of the requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of EPCRA, 42 U.S.C. § 11004, or any regulations promulgated thereunder.

50. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to CERCLA and EPCRA for all violations alleged in the Complaint. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions.

51. Each party to this action shall bear its own costs and attorney's fees.

FOR XSYS PRINTING SOLUTIONS US, LLC
d.b.a. Flint Group Pigments



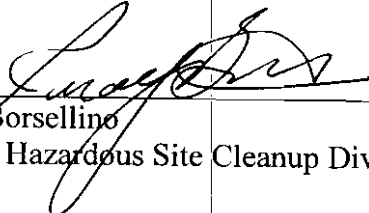
Craig Foster
President, PCR and Print Media Operations
XSYS Print Solutions US, LLC

23 Feb 2012

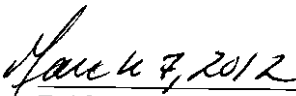
DATE

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald Borsellino
Director, Hazardous Site Cleanup Division



(DATE

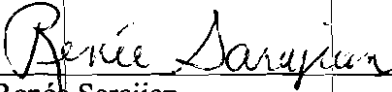
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	FINAL ORDER
	:	
XSYS Print Solutions US, LLC	:	Proceedings Pursuant to Sections 103 and 109 of
d.b.a. Flint Group Pigments	:	the Comprehensive Environmental Response,
14909 North Beck Road	:	Compensation, and Liability Act, as amended, 42
Plymouth, Michigan 48170,	:	U.S.C. §§ 9603 and 9609 and Sections 312 and
	:	325 of the Emergency Planning and Community
Respondent.	:	Right-to-Know Act, 42 U.S.C. §§ 11022 and 11045
	:	
Flint Group Pigments	:	Docket No.: CERCLA-03-2012-0118
2401 5 th Avenue	:	Docket No.: EPCRA-03-2012-0118
Huntington, West Virginia 25703,	:	
	:	
Facility.	:	
	:	

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.


Renée Sarajian
Regional Judicial Officer
EPA, Region III

3/22/12
DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:

CONSENT AGREEMENT

XSYS Print Solutions US, LLC
d.b.a. Flint Group Pigments
14909 North Beck Road
Plymouth, Michigan 48170

Proceedings Pursuant to Sections 103 and 109
of the Comprehensive Environmental Response,
Compensation, and Liability Act, as amended,
U.S.C. §§ 9603 and 9609, and Sections 101 and
325 of the Emergency Planning and Community
Right-to-Know Act, 42 U.S.C. §§ 1101 and 11045

Respondent,

Flint Group Pigments
2401 5th Avenue
Huntington, West Virginia 25703

Docket No.: CERCLA-03-2012-0118
Docket No.: EPCRA-03-2012-0118

Facility.

2012 MAR 28 AM 10:45
REGIONAL HEARING CLERK
EPA REGION III PHILA, PA

RECEIVED

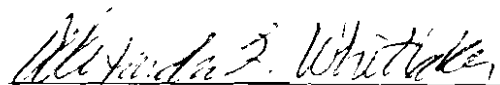
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that copies of the CAFO were sent via UPS to:

Babst, Calland, Clements and Zomnir, P.C.
Attention: Colleen Donofrio
380-A Tylers Mill Road
Sewell, New Jersey 08080

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's Counsel, Colleen Donofrio, on this day.

3/28/12
Date



Alexandra L. Whittaker
U.S. Environmental Protection
Agency, Region III