

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**TO BE FILLED OUT BY ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Ben Fields 9/30/09
 Name of Contact person Date

in the Office of Regional Counsel at 215-814-2629
 Office Phone number

Non-SF Jud. Order/Consent
 Decree. DOJ COLLECTS

Administrative Order/
 Consent Agreement
 FMD COLLECTS PAYMENT

SF Jud. Order/Consent
 Decree. FMD COLLECTS

This is an original debt

This is a modification

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

Del Star Technologies, Inc.

The Total Dollar Amount of Receivable \$35,000 plus interest (see attached)
 (If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number TSCA-03-2009-0247

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office TSCA**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number _____

If you have any questions call:

Name of Contact _____

Date _____

in the Financial Management Office. phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- | | | | |
|----|--------------------------------------------------------------------------------------------------------------------------------------|----|---------------------------|
| 1. | U.S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-002)
Cincinnati, OH 45268 | 2. | Originating Office (ORC) |
| | Attn: Lori Weidner | 3. | Designated Program Office |

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- | | | | |
|----|------------------------|----|---------------------------|
| 1. | Originating Office | 2. | Designated Program Office |
| 3. | Regional Hearing Clerk | 3. | Regional Counsel |

RECEIVED
MAY 23 1989 P. 5:54

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

In the Matter of:)	
)	
DelStar Technologies, Inc.)	
601 Industrial Road)	U.S. EPA Docket Number
Middletown, Delaware 19709-1083)	TSCA-03-2009-0247
)	
RESPONDENT)	Consent Agreement
)	
DelStar Technologies, Inc.)	
601 Industrial Road)	
Middletown, Delaware 19709-1083)	
)	
FACILITY)	

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 DelStar Technologies, 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. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter. 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 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 601 Industrial Road, Middletown, Delaware (the "Facility").
19. On April 30, 2008 an inspector from the United States Environmental Protection Agency ("EPA") conducted a compliance inspection (the "April 30, 2008 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 April 30, 2008 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 April 30, 2008 Inspection, Respondent had in use two PCB Transformers, housed in an electrical room, including a transformer with Serial Number YCR8203 (“ITE Transformer”) and a transformer with Serial Number 14324 (“Westinghouse Transformer”).
21. On the basis of the Inspection and additional information collected subsequent thereto, Complainant has determined that Respondent has violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614.

Count 1

22. Pursuant to 40 C.F.R. § 761.20(a), no person may use any PCB, or any PCB item, in any manner other than in a totally enclosed manner, unless authorized under 40 C.F.R. § 761.30, with exceptions not here relevant. EPA has formally determined that the use of PCB electrical equipment, including PCB Transformers, may not be categorized as use in a totally-enclosed manner. *See, 47 Fed. Reg.* 174430 (April 22, 1982), *47 Fed. Reg.* 37344 (August 25, 1982). 40 C.F.R. § 761.30 contains authorizations for certain “non-totally enclosed” PCB activities. Pursuant to 40 C.F.R. § 761.30(a), PCB Transformers may be used only if in compliance with the conditions set forth in 40 C.F.R. § 761.30(a)(1). 40 C.F.R. § 761.30(a)(1)(vi)(A) provides, in relevant part, that “[n]o later than December 28, 1998 all owners of PCB Transformers, including those in storage for

reuse, must register their transformers with the Environmental Protection Agency”

Pursuant to 40 C.F.R. § 761.30(a)(1)(vi)(D), “[a] transformer owner must comply with all requirements of [40 C.F.R. § 761.30(a)(1)(vi)(A)] to continue the PCB-Transformer’s authorization for use, or storage for reuse, pursuant to [40 C.F.R. § 761.30] and TSCA section 6(e)(2)(B).”

23. The two PCB Transformers in use at the Facility as of the date of the April 30, 2008 Inspection had been in use in a non-totally enclosed manner at the Facility since prior to December 28, 1998. These two PCB Transformers were not registered with EPA until April 5, 1999, several months after the registration deadline. As a result of the failure to comply with the registration deadline set forth in 40 C.F.R. § 761.30(a)(1)(vi)(A), these two PCB Transformers were not authorized for use, or storage for reuse at any time after December 28, 1998. Respondent has represented to EPA that it plans to remove and dispose of the two PCB Transformers no later than January 31, 2010.
24. Respondent has violated Section 15 of TSCA, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. §§ 761.20(a) and 761.30(a)(1)(vi)(D), through the unauthorized and continued use of two PCB Transformers at the Facility which were not registered by the PCB Transformer registration deadline set forth at 40 C.F.R. § 761.30 (a)(1)(vi)(A).

Count 2

25. 40 C.F.R. § 761.30(a)(1)(viii) provides that, as 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.”

26. At the time of the April 30, 2008 Inspection, combustible material was being stored within the transformer enclosures and within 5 meters of each the two PCB Transformers at the Facility, including the following:
- a. A number of wooden spools, stored on the floor within 1 to 6 feet (0.3 to 1.8 meters) from the ITE Transformer;
 - b. A number of wooden spools, located on a metal rack approximately 5 feet (1.5 meters) from the ITE Transformer;
 - c. A rack with cardboard boxes on wooden shelves, located approximately 4 feet (1.2 meters) from the Westinghouse Transformer;
 - d. A number of additional cardboard boxes stored on shelves, located between 4 to 6 feet (1.2 to 1.8 meters) from the Westinghouse Transformer;
 - e. Additional racks with wooden shelves, holding cardboard and wooden boxes and a brown paper bag, located approximately 12 feet (3.7 meters) from the Westinghouse Transformer;
 - f. A wooden board fastened to the wall, located approximately 4 feet (1.2 meters) from the Westinghouse Transformer; and
 - g. Wooden framing located on the wall between 6 and 10 feet (1.8 to 3 meters) from the Westinghouse Transformer.

27. Respondent violated Section 15 of TSCA, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.30(a)(1)(viii), by storing the combustible materials identified in Paragraph 25, above, within the transformer enclosures and within 5 meters of an unenclosed PCB Transformer.

Count 3

28. 40 C.F.R. § 761.30(a)(1)(ix) provides, in relevant part, that “[a] visual inspection of each PCB Transformer . . . in use or stored for reuse shall be performed at least once every 3 months. These inspections may take place at any time during the 3-month periods: January - March, April - June, July - September, and October - December as long as there is a minimum of 30 days between inspections. The visual inspection must include investigation for any leak of dielectric fluid on or around the transformer.” 40 C.F.R. § 761.30(a)(1)(xii) requires that records of inspection and maintenance history shall be maintained at least three (3) years after disposing of a PCB Transformer, shall be made available for inspection upon request by EPA and shall contain certain information for each PCB Transformer, including, in relevant part, certain information regarding the visual inspection of PCB Transformers.
29. At the time of the April 30, 2008 Inspection, Respondent was maintaining records of visual inspections of PCB Transformers only for inspections dated September 6, 2007, February 11, 2008 and April 11, 2008. Respondent was not maintaining records of the visual inspections performed on any other dates. Respondent was thus not maintaining

records for visual inspections conducted during, at a minimum, 2004, 2005, 2006, and the first, second and fourth quarters of 2007.

30. Respondent violated Section 15 of TSCA, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.30(a)(1)(xii), by failing to maintain visual inspection records pursuant to 40 C.F.R. § 761.30(a)(1)(xii) for each required visual inspection performed at each of the two PCB Transformers at the Facility.

Count 4

31. Pursuant to 40 C.F.R. § 761.180(a), in relevant part, owners and operators of facilities where PCBs are stored in prescribed quantities (including, in relevant part, the storage of one or more PCB Transformers) must develop and maintain a written annual document log by July 1 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, and must contain the information required in 40 C.F.R. § 761.180(a)(2).
32. At the time of the April 30, 2008 Inspection, Respondent had neither prepared nor maintained annual document logs for the Facility for the years 2004, 2005 or 2006.
33. Respondent violated Section 15 of TSCA, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(a), by failing to develop and maintain annual document logs for the years 2004, 2005 and 2006.

III. CERTIFICATION OF COMPLIANCE AND SETTLEMENT CONDITIONS

34. As to all relevant provisions of TSCA and the PCB regulations allegedly violated in Counts 2 through 4 of the Findings of Fact and Conclusions of Law, above, Respondent certifies to EPA that, upon investigation, to the best of Respondent's knowledge and belief, Respondent is currently in compliance with all such relevant provisions and regulations, except as to records required to be generated and maintained prior to EPA's April 30, 2008 inspection.
35. With regard to the provisions of TSCA and the PCB regulations allegedly violated in Count 1, above, Respondent agrees to remove and dispose of the two PCB Transformers at the Facility, identified by Serial Number YCR8203 ("ITE Transformer") and Serial Number 14324 ("Westinghouse Transformer"), in compliance with all applicable requirements of 40 C.F.R. Part 761, including, but not limited to, the Storage and Disposal requirements found in 40 C.F.R. Part 761, Subpart D, and the PCB Waste Disposal Records and Reports requirements found in 40 C.F.R. Part 761, Subpart K.
36. Respondent shall remove from service the two PCB Transformers identified in Paragraphs 20 and 35, above, and ship such Transformers off-site for disposal, no later than January 31, 2010.
37. Respondent shall obtain a Certificate of Disposal for the two PCB Transformers identified in Paragraph 20 and 35, above, pursuant to 40 C.F.R. § 761.218, no later than January 31, 2011.

38. No later than February 28, 2010, Respondent shall submit to EPA a Preliminary Report documenting the removal and disposal of the two PCB Transformers identified in Paragraphs 20 and 34, above. This Preliminary Report must include the following:
- a. A copy of the contract between Respondent and each contractor hired by Respondent to perform the removal and disposal of the PCB Transformers, together with a written statement of work prepared by each such contractor for such activities, to the extent that a statement of work is not included in the contract itself;
 - b. A written statement describing the nature of the actual work performed by each contractor, and specifying the date on which work to remove the PCB Transformers commenced and the date on which off-site transport of the PCB Transformers for disposal commenced.
 - c. A copy of the Uniform Hazardous Waste Manifest documenting the transport of the PCB Transformers and arrival at the designated disposal facility.
 - d. In the event that any leak or spill of PCBs occurs during the removal and transport of the PCB Transformers, a statement documenting compliance with EPA's PCB Spill Cleanup Policy, 40 C.F.R. Part 761, Subpart G, and including the documentation required by 40 C.F.R. §§ 761.125(b)(3) or 761.125(c)(5), as applicable.
39. Within 30 days after receiving a Certificate of Disposal from the disposal facility, but in no event later than February 28, 2011, Respondent shall submit to EPA a Final Report

updating any information contained in the Preliminary Report which has changed or been superseded since the submission of the Preliminary Report, and including a copy of the Certificate of Disposal for each of the PCB Transformers.

40. The Reports submitted by Respondent pursuant to this Compliance Order, or any other certification, data presentation, or other document submitted by Respondent pursuant to this Consent Agreement which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Agreement Order shall be certified by a responsible corporate officer of Respondent, as defined in 40 C.F.R. § 270.11(a), which includes (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The certification of the responsible corporate officer required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information

submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

- 41. The Reports specified in Paragraphs 38 and 39, above, shall be submitted via certified mail, return receipt requested; first class mail; overnight mail (Express or Priority); hand-delivery or any reliable commercial delivery service to the following:

Craig Yussen
Chemical Engineer
Land and Chemicals Division (3LC61)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Benjamin D. Fields
Senior Assistant Regional Counsel (3RC30)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- 42. If Respondent does not properly complete the removal and shipment off-site for disposal of the two PCB Transformers identified in Paragraphs 20 and 35, above, by January 31,

- 2010, Respondent shall be liable for additional penalties of \$500.00 for each day past January 31, 2010, until proper removal and shipment is completed.
43. If disposal of each of the two PCB Transformers identified in Paragraphs 20 and 35, above, is not completed by January 31, 2011, and/or Respondent does not obtain a Certificate of Disposal by such date, Respondent shall be liable for additional penalties of \$500.00 for each day past January 31, 2011, until proper disposal is completed and Certificates of Disposal are obtained.
44. If Respondent does not submit a complete Preliminary Report, as specified in Paragraph 38, above, by February 28, 2010, Respondent shall be liable for additional penalties of \$250.00 for each day past February 28, 2010 until a complete Preliminary Report is submitted.
45. If Respondent does not submit a complete Final Report, as specified in Paragraph 39, above, by February 28, 2011, Respondent shall be liable for additional penalties of \$250.00 for each day past February 28, 2011 until a complete Final Report is submitted.
46. *Force Majeure*
- a. If any event occurs which causes or may cause a delay in the completion of any of the tasks required under this Section III of this Consent Agreement by the assigned deadline, Respondent shall notify EPA in writing within 20 days of such event or within 20 days of Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be

taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall implement all reasonable and feasible measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Section shall render this Section void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

- b. If the parties agree that the delay or anticipated delay in complying with this Consent Agreement has been or will be caused by circumstances entirely beyond the control of Respondent which could not or cannot be overcome by due diligence (i.e., a "*force majeure*"), the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate in writing to such extension of time.
- c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement has been or will be caused by a *force majeure*, EPA, in its sole discretion, will notify Respondent in writing of its decision. Such delays shall not be the basis for any extension of time for the performance of Respondent's obligations under this Consent Agreement.
- d. The burden of proving that any delay is caused by a *force majeure* shall rest with Respondent. Increased costs or expenses associated with the implementation of

actions required by this Consent Agreement shall not, in any event, be a basis for extensions of time, hereunder.

47. Pursuant to 40 C.F.R. § 2.203, Respondent may submit a claim of confidentiality for any document or information submitted under this Consent Agreement. Failure to make a confidentiality claim at the time the document is submitted shall constitute a waiver of such claim. Respondent shall not assert a claim of confidentiality with respect to any sampling, monitoring or analytical data.

IV. CIVIL PENALTY

48. Respondent agrees to pay a civil penalty in the amount of thirty-five thousand dollars (\$35,000.00), 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. Respondent agrees to pay the above civil penalty in full plus accrued interest by remitting installment payments in accordance with Paragraph 51, below.
49. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined 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.

50. 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). Accordingly, interest payments on the outstanding portion of the civil

penalty to be paid in installments as set forth in the payment schedule, to which Respondent agrees, are shown in Paragraph 51, below.

- 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 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.
- 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).
- d. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth in Paragraph 51, below. In order to avoid the assessment of late payment penalty charges, as described above, Respondent must remit all payments not later than 90 days after they become delinquent.

51. The civil penalty of thirty-five thousand dollars (\$35,000.00) set forth in Paragraph 48, above, shall be paid in three (3) installments with interest at the rate of three percent (3%) per annum on the outstanding principal balance in accordance with the following schedule:

- a. 1st Payment: The first payment in the amount of five thousand dollars (\$5,000.00), consisting of a principal payment of \$5,000.00 and an interest payment of \$0.00 shall be paid within thirty (30) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- b. 2nd Payment: The second payment in the amount of fifteen thousand one hundred forty-seven dollars and ninety-four cents (\$15,147.94), consisting of a principal payment of \$15,000.00 and an interest payment of \$147.94, shall be paid no later than sixty (60) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.
- c. 3rd Payment: The third payment in the amount of fifteen thousand one hundred forty-seven dollars and ninety-four cents (\$15,147.94), consisting of a principal payment of \$15,000.00 and an interest payment of \$147.94, shall be paid no later than one hundred eighty (180) days after the date on which a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent.

52. **If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 51, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall *immediately* pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraph 50, above, in the event of any such failure or default.**
53. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with Paragraph 51, above, Respondent may pay the entire civil penalty of thirty-five thousand dollars (\$35,000.00) within 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 and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a)(1), as described in Paragraph 50.a, above. Further, in lieu of any of the payments set forth in the payment schedule in Paragraph 51, above, Respondent may pay the entire remaining principal together with the accrued interest as of the date of the payment.
54. Respondent shall remit the full penalty, and/or any interest, administrative fees and late payment penalties, in accordance with this Section IV, via one of the following methods:
- a. All payments made by check and sent by regular mail (except as noted in Paragraph 54.c., below) 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 overnight delivery service (except as noted in Paragraph 54.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.

- c. 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: Jesse White, at 301-887-6548, or REX, 1-866-234-5681

- f. On-line payment option

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

55. All payments by Respondent shall include Respondent's full name and address and the
EPA Docket Number of this Consent Agreement (TSCA-03-2009-0247).
56. 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

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

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

V. PARTIES BOUND

58. 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

59. 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.

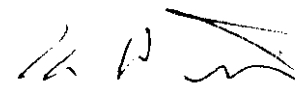
For Respondent DelStar Technologies, Inc.:

Date: _____

By: _____
Name
Title

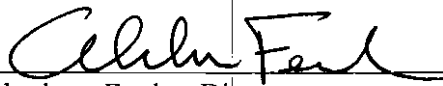
For Complainant United States Environmental Protection Agency, Region III:

Date: 9/30/09

By: 
Benjamin D. Fields
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.

9/30/09
Date

By: 
Abraham Ferdas, Director
Land and Chemicals Division

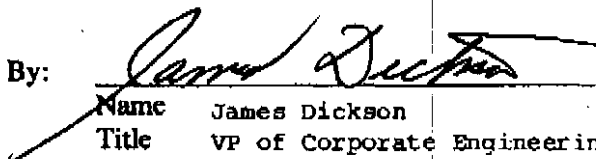
TSCA-03-2009-0247

24

For Respondent DelStar Technologies, Inc.:

Date: 9/30/09

By:



Name James Dickson
 Title VP of Corporate Engineering & Technology

For Complainant United States Environmental Protection Agency, Region III:

Date: _____

By:

 Benjamin D. Fields
 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.

Date

By:

 Abraham Ferdas, Director
 Land and Chemicals Division

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

In the Matter of:)	
)	
DelStar Technologies, Inc.)	
601 Industrial Road)	U.S. EPA Docket Number
Middletown, Delaware 19709-1083)	TSCA-03-2009-0247
)	
RESPONDENT)	Consent Agreement
)	
DelStar Technologies, Inc.)	
601 Industrial Road)	
Middletown, Delaware 19709-1083)	
)	
FACILITY)	

FINAL ORDER

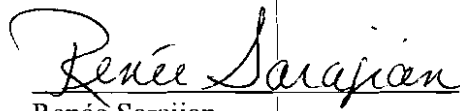
The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and DelStar Technologies, Inc. ("Respondent"), have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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 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 DelStar

Technologies, Inc. is hereby ordered to pay a civil penalty of thirty-five thousand dollars (\$35,000.00), 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: 9/30/09



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

CERTIFICATE OF SERVICE

I hereby certify that on the date below I hand-delivered the original and one copy of the attached Consent Agreement and Final Order to the Regional Hearing Clerk, and caused a true and correct copies to be sent via FedEx to:

James Dickson
Vice-President of Corporate Engineering & Technology
DelStar Technologies, Inc.
601 Industrial Road
Middletown, Delaware 19709-1083

Todd Coomes
Richards, Layton & Finger
One Rodney Square
920 North King Street
Wilmington, Delaware 19801

9/20/09
Date



Benjamin D. Fields
Senior Assistant Regional Counsel