



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP. 03 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard Martin, Jr.
General Counsel
TCOM, L.P.
7115 Thomas Edison Drive
Columbia, Maryland 21046

RE: TCOM, L.P.
Consent Agreement and Final Order (CAFO)
Docket No. TSCA-04-2013-2903(b)

Dear Mr. Martin:

Enclosed please find a copy of the executed CAFO as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC.

Also enclosed, please find a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts TCOM in Elizabeth City, North Carolina on notice of its potential duty to disclose to the Securities Exchange Commission any environmental actions taken by the United States Environmental Protection Agency.

If you have any questions or concerns, please contact Kris Lippert, of my staff, at (404) 562-8605.

Sincerely,

A handwritten signature in blue ink that reads "CÉSAR A. ZAPATA".

César A. Zapata
Chief

RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

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2013 SEP -3 AM 9:01

HEARING CLERK

In the Matter of:)
)
TCOM, L.P.)
Manufacturing & Flight Test Facility)
190 TCOM Drive)
Elizabeth City, North Carolina 27909)
)
Respondent)
_____)

Docket No. TSCA-04-2013-2903(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of Action

1. This is a civil administrative proceeding for the assessment of a civil penalty pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has redelegated this authority to the Director of the Resource Conservation and Recovery Act (RCRA), Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRA Division has the authority to commence an enforcement action as the Complainant in this matter and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondent. TCOM, L.P. (TCOM), is the Respondent for this Consent Agreement and Final Order.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. Under Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to, among other things, fail or refuse to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605, or any rule promulgated or order issued under Section 6 of TSCA, 15 U.S.C. § 2605.
4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of the EPA promulgated rules in 40 C.F.R. Part 761 pertaining to polychlorinated biphenyls (PCBs). Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$32,500 for each such violation occurring between March 15, 2004, and January 12, 2009, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
5. “The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection.” Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C).
6. Section 6(e)(2) of TSCA, 15 U.S.C. § 2605(e)(2), states that “no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner” unless authorized by the EPA.
7. “Person” is defined in 40 C.F.R. § 761.3 as “any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision

thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.”

8. The PCB regulations establish “prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.” See 40 C.F.R. § 761.1(a).
9. “PCB” is defined under 40 C.F.R. § 761.3 as “any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance.”
10. Under 40 C.F.R. § 761.20(a), “no persons may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under §761.30, except that: (1) An authorization is not required to use those PCBs or PCB Items which consist of excluded PCB products as defined in §761.3. . . .”
11. The term “excluded PCB products” is defined to mean “PCB materials which appear at concentrations less than 50 ppm . . .” 40 C.F.R. §761.3.

III. EPA Finding of Fact - Specific Allegations

12. Respondent is a limited partnership, organized under the laws of Delaware, authorized to conduct business in North Carolina.
13. Respondent is a “person” as defined in 40 C.F.R. § 761.3, and is subject to the provisions of TSCA and the PCB regulations.
14. Respondent is the current owner and operator of a former U.S. Navy blimp hangar (Hangar) located in Elizabeth City, North Carolina where it manufactures, tests and repairs lighter than air balloon products, including aerostat systems that are principally but not solely used in military applications. Respondent is the major supplier of this lighter than air (LTA) technology to the U.S. Department of Defense, its allies and other government agencies. TCOM states there is no other company with lighter than air technical capabilities and facilities equivalent to those of TCOM. TCOM’s Hangar is a unique facility that allows the U.S. Department of Defense, its allies, and other

government agencies to quickly procure and receive vital LTA products when conflicts appear. TCOM needs to use the Hangar because aerostats and other LTA products are very large and their production requires both an expansive floor area for layout, and also a high volume for final assembly and inflation inside. To the best of EPA's knowledge, there is no other existing suitable facility located in the United States where Respondent could conduct its business operations that support U.S. Department of Defense, its allies and other government agencies.

15. The Hangar was constructed in 1942 and encloses approximately nine (9) acres. The original design and use of the Hangar was for U.S. Navy blimp operations and maintenance, similar to the current activities, and is therefore uniquely focused on this specific industry.
16. In 2002, TCOM completed a maintenance project which coated the exterior of the Hangar with a closed cell polyurethane foam to extend the life of the structure. TCOM did not perform any sampling of the Hangar's interior or exterior building surfaces at that time.
17. In 2007, TCOM evaluated a maintenance project to encapsulate the interior of the Hangar (walls, and structural members) to extend the life of the Hangar for the current use.
18. At that time, TCOM identified that the metal siding used in the construction of the Hangar was Galbestos panels.
19. Galbestos is corrugated galvanized metal sheeting bonded to layers of asbestos felt and impregnated with an asphaltic coating containing PCBs. Galbestos panels, as manufactured by the H. H. Richardson Company, consisted of corrugated metal panels with a coating bonded on some sides to provide insulation and fire protection properties. The coating consisted of asbestos fibers impregnated with a tar binder that contained low but variable concentration levels of PCBs used as a plasticizer.
20. TCOM notified EPA of the presence of PCBs in the Hangar building materials in correspondence dated September 29, 2008.
21. TCOM tested the Galbestos panels and identified the presence of low levels of PCBs bound within the coating on the Galbestos panels. The sampling and analysis results are presented in the document entitled "Building Materials Assessment, Hangar 1", dated

October 17, 2008, prepared by Environmental Resources Management, Inc. (ERM) and are summarized as follows:

- a. Low levels of PCBs were present in the Galbestos panels at concentrations ranging from non-detect up to 100 ppm based on 95 sampling locations throughout the Hanger, including 24 grab samples identified at levels above 50 ppm PCB. No location sampled exceeded 100 ppm of PCBs. The average concentration of total PCBs in the Galbestos panels was 37.9 ppm. The Galbestos panels are a manufactured product rather than a contaminated medium, and as such, the concentration of PCBs detected is based on manufacturing variables. The PCBs in the Galbestos panels do not present an exposure to workers because they are bound within the coating.
 - b. Low levels of PCB dust are present on horizontal surfaces (beams, floors, and inside ceilings), ranging from non-detect to 10 µg/100cm² in High Occupancy areas and 3.9 to 43 µg/100cm² in Low Occupancy areas.
 - c. The Galbestos panels are intact and are not accessible to facility workers or visitors; accordingly, a pathway is not available to pose a risk to workers or visitors. Further, dust sample results are within the appropriate PCB screening values established for High and Low Occupancy areas. These sample results do not demonstrate an unacceptable risk to workers or visitors in the Hangar.
22. An evaluation of numerous alternative encapsulating materials for the interior surface was initiated in 2008 as a Pilot Test to assess adherence to the Galbestos panels, application techniques and long-term integrity. The Pilot Test used various product manufacturers, types of coatings, and application layers, and included a pull-test for each application to evaluate adhesion to the existing panels. The test sites were along the south wall near the base, where the deterioration of the Galbestos panels was greatest. The encapsulant that demonstrated superior service during this test was a two-part application of closed cell polyurethane foam (Staycell ONE STEP® 255 manufactured by Preferred Solutions, Inc, Cleveland, Ohio) with a final paint coating. A similar encapsulant was applied effectively to the exterior roof of the Hangar in 2002 and has remained intact through high winds and rains associated with hurricanes. This material was subsequently

used in the Demonstration Project, described in Paragraph 24, below.

23. The conclusions of the Pilot Test for the application of the Staycell polyurethane foam encapsulant to the interior of the Hangar are summarized in the "Industrial Hygiene Survey Report", dated May 4, 2010, prepared by Quality Environmental, LLC, and are as follows:
 - a. The Pilot Test performed in the most deteriorated area of the Galbestos panels using the proposed encapsulant, met the National Institute for Occupational Safety and Health (NIOSH) recommended sampling procedure for PCBs.
 - b. Analytical results for the samples collected outside and inside of the work area were below 70 Structures per square Millimeter (S/MM²). Based on the process observations, and the air monitoring survey results performed, it is not necessary to build an enclosure prior to spraying the encapsulant on the Galbestos panels.
24. In April 2010, TCOM encapsulated a portion of the Galbestos panels that exhibited the greatest degree of deterioration with the Staycell polyurethane foam (Demonstration Project). The purpose of this Demonstration Project was to refine the application techniques for the Staycell polyurethane foam, monitor the potential for releasing asbestos fibers and PCBs into the atmosphere, and to determine whether the encapsulation process would require evacuation of the Hangar during application. The Demonstration Project results were documented in the "INDUSTRIAL HYGIENE, PILOT PROJECT STUDY REPORT," dated May 2010 and prepared by Quality Environmental, LLC.
25. A meeting was held with representatives of the EPA Region 4, RCRA Division to discuss the process for managing the identified materials on March 1, 2011. Then and now, TCOM maintains that LTA technologies give the U.S. Department of Defense, its allies, or other government agencies, valuable strategic assets in the time of conflict; and that the Hangar is a unique facility that allows the production and delivery of this key defense item in a short period of time after any individual order by the U.S. Department of Defense, its allies or other government agencies.
26. EPA reviewed the data provided by TCOM for the Hangar and conducted a site visit and

inspection of the Hangar on December 8, 2011.

27. After careful consideration of the available information, EPA finds that encapsulation in accordance with the terms and conditions of this CAFO should result in no exposure to humans or the environment to PCBs from the encapsulated areas of the Hangar. Asbestos has been addressed through the State of North Carolina asbestos abatement program and the results are consistent with encapsulation as the preferred remedy.

IV. EPA Conclusions of Law

28. Respondent is subject to the regulations, including the prohibitions and requirements pertaining to PCBs, promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, and the implementing regulations at 40 C.F.R. Part 761.
29. Respondent's investigations revealed the presence of PCBs at concentrations greater than or equal to 50 ppm in the Galbestos panels comprising the interior walls in the Hangar.
30. The continued use in Respondent's Hangar, of Galbestos panels with PCB concentrations greater than or equal to 50 ppm, constitutes a continued use of PCBs under Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and the implementing regulations at 40 C.F.R. Part 761.
31. Respondent's continued use in its Hangar, of Galbestos panels with PCBs at concentrations greater than or equal to 50 ppm, in any manner other than a totally enclosed manner, is prohibited under, and constitutes violations of: [a] 40 C.F.R. § 761.20(a), which are violations of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C); and, [b] Section 6(e) of TSCA, 15 U.S.C. § 2605(e), which are violations of Section 15(1)(B) of TSCA, 15 U.S.C. § 2614(1)(B).
32. Each day a violation of Section 15 of TSCA, 15 U.S.C. § 2614 continues constitutes a separate violation, and is subject to a civil penalty not to exceed \$37,500 per violation. 15 U.S.C. § 2615(a). Each day from July 24, 1996, to present, of Respondent's continued use of the Galbestos panels in its Hanger, constitutes a separate violation of Section 15 of TSCA, and 40 C.F.R. § 761.20(a), and subjects Respondent to civil penalties of not more than \$37,500 per day per violation. 15 U.S.C. § 2615(a).

V. Consent Agreement
A. General Terms of Settlement

33. Based on the foregoing, and pursuant to Section 16 of TSCA, 15 U.S.C. § 2615 and 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), the parties have agreed to settlement terms as set forth herein.
34. Respondent neither admits nor denies the factual allegations contained in this CAFO, 40 C.F.R. Section 22.18(b), and nothing herein shall be construed as an admission of liability by Respondent.
35. Respondent stipulates and agrees that EPA has jurisdiction over the subject matter of this CAFO. For the purposes of this CAFO, including any further action to enforce the terms of this CAFO, Respondent waives any defenses it might have as to jurisdiction.
36. Respondent acknowledges it has been informed of its right to request a hearing in this proceeding. Respondent hereby waives any right to a judicial or administrative hearing.
37. Respondent waives any right to appeal this CAFO, or any part thereof. Respondent reserves all rights it may have under Federal, State or Local statute, regulation or common law, except those rights expressly waived in this CAFO.
38. All parties shall bear their own costs and fees in this proceeding.
39. The terms, conditions and compliance requirements of this CAFO may not be modified or amended except upon written agreement of both parties, and approval of a Regional Judicial Officer, unless a) agreement by the parties without approval of a Regional Judicial Officer is allowed by another provision of this CAFO; or b) the modification agreed to by the parties is either to: i) a schedule in the Conditions for Use; or ii) persons and/or addresses for notification.
40. Each undersigned representative of the parties to this CAFO certifies that she or he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to it.
41. The provisions of this CAFO shall apply to and be binding on Respondent, its partners, officers, successors and assigns.
42. Respondent consents to the assessment of the civil penalty proposed by the EPA and

agrees to pay the civil penalty as set forth in this CAFO.

43. This CAFO resolves Respondent's liability for federal civil penalties pursuant to Section 16(a) of TSCA and 40 C.F.R. § 22.18(c), for the specific violations alleged herein, through the effective date of this CAFO. This CAFO shall not in any case affect the right of the EPA or the United States to pursue injunctive or other equitable relief or criminal sanctions for any violations of law, including but not limited to, injunctive relief to compel compliance with TSCA laws and regulations prohibiting the use of PCBs, other than in a totally enclosed manner. 40 C.F.R. § 22.18(c).
44. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

B. Conditions of Use

45. For purposes of this CAFO, Respondent will consider all Galbestos panels, before and after encapsulation, to contain 50 ppm or greater of PCBs. Upon termination of use of the Hangar for support of the U.S. Department of Defense and its allies as subsequently described in Paragraph 54, all Galbestos panels will be considered PCB bulk product waste (defined in 40 C.F.R. § 761.3), containing concentrations greater than or equal to 50 ppm PCBs at the time of designation for disposal, provided no modifications are approved by the Regional Judicial Officer based upon future revisions to the regulations altering this designation. Respondent shall dispose of all Galbestos panels as PCB bulk product waste, in accordance with 40 C.F.R. § 761.62 "Disposal of PCB bulk product waste," and all other applicable statutory and regulatory requirements, including but not limited to the National Emission Standards for Hazardous Air Pollutants for asbestos 40 C.F.R. Part 61, Subpart M. However, Respondent shall have the option to demonstrate to EPA through separation, sampling and testing that certain Galbestos panels do not contain concentrations greater than or equal to 50 ppm PCBs, and thus do not constitute PCB bulk product waste. Respondent shall dispose of Galbestos panels shown not to be PCB bulk product waste in accordance with all applicable statutory and regulatory requirements, including but not limited to the National Emission Standards for Hazardous

Air Pollutants for asbestos 40 C.F.R. Part 61, Subpart M.

46. Within ninety (90) days after the effective date of the CAFO, Respondent must submit for EPA approval, a written Closure Plan for the Hangar containing:
 - a. a detailed plan and schedule for closure of the Hangar, including disassembly and proper disposal of all Galbestos panels and any other PCBs that may be present at the Hangar, in accordance with 40 C.F.R. § 761.62, and all other applicable statutory and regulatory requirements;
 - b. monitoring to ensure any post-closure releases of PCBs will not present any unreasonable risks to human health or the environment;
 - c. a Closure Cost Estimate in accordance with 40 C.F.R. § 761.65(f) (replacing “PCB storage facility” with “Hangar” and “commercial storer of PCB waste” with “Respondent”);
 - d. Financial Assurance for Closure in accordance with 40 C.F.R. § 761.65(g) (replacing “PCB storage facility” with “Hangar” and “commercial storer of PCB waste” with “Respondent”); and,
 - e. an estimate of the expected year of closure, if a trust fund is opted for as the financial mechanism;
47. Respondent must adjust the Closure Cost Estimate for inflation annually in accordance with 40 C.F.R. § 761.65(f)(2), and this adjustment must be reflected in the financial assurance mechanism selected by Respondent in its Financial Assurance for Closure, in accordance with 40 C.F.R. § 761.65(g).
48. In the event that regulatory changes arise in the future which permit an alternative resolution than contained in the Closure Plan, the parties may seek approval to modify the appropriate terms of this CAFO.
49. No later than 60 days after EPA’s approval of Respondent’s written Closure Plan, TCOM shall complete an assessment of all materials and equipment, except for the Galbestos panels, potentially containing PCBs in the Hangar.
 - a. The assessment shall include but not be limited to inspection and sampling as appropriate of motors and other hydraulic systems, electrical equipment, paints and other coatings to determine if PCBs are present in sufficient concentrations to

trigger remediation or monitoring, inspection, storage, and disposal requirements under the PCB regulations.

- b. Dust and permeable surfaces shall also be evaluated through sampling to determine whether historical releases to these surfaces may have resulted in detectible PCB concentrations or releases of PCBs that may require remediation.
50. No later than 90 days after EPA's approval of Respondent's written Closure plan, Respondent shall submit a Facility Report to EPA for approval. The Facility Report shall include the following:
- a. the results of TCOM's assessment under Paragraph 49, along with a detailed plan describing additional activities needed to address all such PCBs, in a manner consistent with all applicable or relevant statutory and regulatory requirements
 - b. a detailed Work Plan for encapsulation of all of the Galbestos panels at the Hangar, including a schedule
 - i. The encapsulation shall consist of applying a two part, closed cell polyurethane foam insulation (Staycell ONE STEP® 255 manufactured by Preferred Solutions, Inc, Cleveland, Ohio) utilizing an EPA approved, zero-ozone depleting blowing agent and containing no VOCs to completely encapsulate all Galbestos panels, inside the Hangar.
 - ii. The application process shall be in accordance with the procedures determined during the Pilot Test and Demonstration Project.
 - iii. EPA, at its discretion, may oversee the application process, including on-site inspections and requests for information, among other things.
 - c. a Sampling and Monitoring Plan
 - i. Respondent's Sampling and Monitoring Plan shall contain procedures for performing background air and wipe sampling and analysis, along with annual air and wipe sampling and analysis until the Hangar is closed in accordance with Closure Plan (Paragraph 46).
 - ii. Respondent's Sampling and Monitoring Plan must identify and require sampling of representative locations where TCOM found the most deterioration and/or the high worker-traffic-areas, in accordance with

appropriate EPA methods, such as EPA Method TO-4A, or EPA Method TO-10A, to achieve a limit of quantification for PCBs of 0.1 microgram per cubic meter ($0.1\mu\text{g}/\text{m}^3$) or less.

- iii. Respondent's Sampling and Monitoring Plan shall include, at a minimum, annual visual inspections of the condition of all encapsulated areas until the Hangar is closed in accordance with Closure Plan (Paragraph 46).
- iv. The results of all monitoring, inspection and sampling shall be provided to EPA in a report, within 30 days after receipt of all laboratory results for such activities. If the results of any monitoring, inspection or sampling indicate an increase in risk to on-site workers or the general public, or establish a statistically-significant increasing trend, EPA, in its sole discretion, may require supplemental activities.
- v. EPA shall be provided a minimum of 30 days prior notice of all monitoring, inspection and/or sampling events.

d. a time frame for commencement and completion of all activities mentioned in the Facility Report.

51. Respondent shall begin encapsulation of the Galbestos panels no earlier than the date of EPA's written approval of the Facility Report, and no later than sixty (60) days after such approval.
52. Within thirty days of completion of the encapsulation project, Respondent shall submit to EPA a report describing the work performed, and certifying that the encapsulation project has been completed consistent with this Section V.B, including the EPA-approved Work Plan (Paragraph 50). The certification required shall be provided by Respondent's designated Project Coordinator (Paragraph 59).
53. The continuing presence of PCB-containing building materials and equipment in the Hangar shall be communicated to all employees, subcontractors and visitors through placarding and notation in the Hangar employment manuals, O&M manuals, and Hangar Health & Safety Plan, as well as posted at the entrances and exits to the Hanger.
54. Upon termination of use of the Hangar for support of the U.S. Department of Defense, its allies or other government agencies, the Hangar shall be closed in accordance with the

Closure Plan (Paragraph 46). The termination of use of the Hangar shall be defined as the act of TCOM or any successor, ending the business line associated with LTA technologies. As long as TCOM or any successor retains the intellectual property and manufacturing capability for LTA products, the Hangar shall be considered in use under this CAFO.

55. If any encapsulated Galbestos panels requires repair or replacement, the existing Galbestos panels shall be removed and disposed in accordance with all applicable statutory and regulatory requirements. Replacement materials shall not contain any PCBs.
56. No transfer of ownership or operation of the Hanger, shall relieve TCOM of its obligation to ensure complete performance of all terms and conditions of this CAFO, unless: (1) the transferee agrees in writing to undertake the obligations required by this CAFO and to be substituted for TCOM as a Party to the CAFO and thus be bound by the terms thereof; (2) EPA approves the substitution in writing; and (3) the modified CAFO, with the substituted party, is approved by the Region 4 Regional Judicial Officer or the Region 4 Regional Administrator.
 - a. At least thirty (30) days prior to such transfer, or such other period agreed to by the Parties in writing, TCOM shall provide a copy of this CAFO to the proposed transferee and shall simultaneously provide written notice to EPA of the prospective transfer, together with a copy of the proposed written agreement transferring obligations to the transferee.
 - b. EPA's agreement whether to approve the transferee's substitution for TCOM under this CAFO will take into account, among other things, whether the transferee can demonstrate Financial Assurance for closure in accordance with the terms set forth herein; that it possesses the technical capability to comprehend and carry out the requirements of this CAFO; and, that the transferee needs the Hanger as discussed in Paragraph 46.
 - c. Any transfer of ownership or operation of the Hanger without complying with this Paragraph constitutes a material violation of this CAFO.
57. Any reports required to be submitted by Respondent pursuant to this CAFO shall be transmitted to EPA by an officer of the Respondent, with authority to sign and certify as

follows:

I certify under penalty of perjury that I have examined and am familiar with the information submitted in this document and all attachments, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information set forth in this document is true, accurate and complete. I am aware that there are significant penalties for submitting materially false information, including the possibility of fines and imprisonment.

58. The officer of the Respondent referenced in the preceding paragraph shall send all communications or required reports concerning this CAFO to:

Chief
North RCRA and OPA Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-8579

59. Respondent shall name a Project Coordinator and supply his or her name and contact information to EPA within ten (10) days after the effective date of this CAFO. Respondent shall notify EPA at least ten (10) days before changing its Project Coordinator.
60. Respondent shall retain, and shall instruct their contractors and agents to preserve, for ten years from creation, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their possession or their contractors' or agents' possession or control, that relate in any manner to Respondent's performance of its obligations under this CAFO. This information-retention requirement shall apply regardless of any shorter retention period under institutional policies or procedures, or federal, state, or local law. At any time during this information-retention period, upon request by EPA, Respondent shall provide copies of any documents, records, or other information required to be maintained under this CAFO.

C. Dispute Resolution

61. The parties shall use their best efforts informally and in good faith to resolve disputes and differences of opinion, which may arise concerning this CAFO. Notwithstanding the above, if Respondent disagrees, in whole or in part, with any decision made by EPA pursuant to this CAFO with respect to the following: (1) rejection, modification or substitution of the Conditions for Use (Section V.B); or (2) an EPA determination to issue a non-remittance Order (Paragraph 76), Respondent shall notify EPA in writing of such objections and the basis (bases) therefore within twenty (20) calendar days of receipt of EPA's disapproval, modification, decision, or directive. The notice shall set forth the specific points of the dispute, the position Respondent maintains, the basis (bases) for Respondent's position, and any matters the Respondent considers necessary for EPA's determination. Following EPA's receipt of such written notice, EPA will provide Respondent with its final determination in writing on a pending dispute, which decision shall be binding. The parties may continue to confer and to use informal efforts to resolve the dispute during the period that EPA's final determination is pending.

D. Force Majeure

62. Respondent shall perform all the requirements of this CAFO within the time limits set forth, approved, or established herein, unless the performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Respondent which could not be overcome by due diligence and which delays or prevents performance by a date required by this CAFO. Such events do not include unanticipated or increased costs of performance, normal precipitation events, or failure to obtain federal, state, or local permits.
63. Respondent shall notify EPA in writing within twenty (20) calendar days after becoming aware of any event, which Respondent knows or should know constitutes a force majeure. Such notice shall detail the estimated length of delay, including necessary

demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondent shall adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall constitute a waiver of Respondent's right to assert a force majeure.

64. After receiving notice that Respondent is invoking a the force majeure provisions of this CAFO, EPA will respond in writing indicating either EPA's agreement that the event constitutes a force majeure or its disagreement and the reasons therefore.
65. If the Parties agree that a force majeure has occurred, the time for performance may be extended, upon EPA's written approval modifying the schedule for particular task(s) under the CAFO, for a period equal to the delay resulting from such circumstances. Such an extension or modification will not alter the schedule for performance or completion of any other tasks required by this CAFO.

E. Effect of Settlement and Reservation of Rights

66. Pursuant to 40 C.F.R. § 22.31(b), the effective date of this CAFO shall be the date when such document is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 4. After such filing, EPA will notify Respondent's Project Coordinator of the effective date.
67. Respondent's obligations under this CAFO are severable. If a court of competent jurisdiction enters a final judgment holding invalid any material provision of this CAFO, the remainder of Respondent's obligations under the CAFO shall remain in force and shall be fully enforceable.
68. Compliance with this CAFO resolves Respondent's liability for federal civil penalties pursuant to Section 16(a) of TSCA and 40 C.F.R. § 22.18(c), for the specific violations alleged herein, through the effective date of this CAFO. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, EPA does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for

imminent and substantial endangerment, or to pursue criminal enforcement.

69. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of TSCA, the PCB regulations, and all other federal, state, and local laws, regulations, permits, or other requirements. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by the EPA, (except for actions for federal civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein through the effective date of this CAFO), and it is Respondent's responsibility to comply with said laws and regulations. EPA reserves all its rights to bring enforcement actions against Respondent for alleged violation of this CAFO.
70. After careful consideration of the available information, EPA finds that encapsulation in accordance with the terms and conditions of this CAFO should result in no exposure to humans or the environment to PCBs from the encapsulated areas of the Hangar. If EPA determines this finding is incorrect, EPA reserves all rights to bring enforcement actions against Respondent for alleged PCB violations under TSCA, except for actions for federal civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein through the effective date of this CAFO. Other than set forth in this CAFO, EPA reserves all its rights to bring enforcement actions against Respondent for alleged PCB violations under TSCA and any other applicable laws or regulations.
71. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Chief
North RCRA and OPA Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-8579

VI. Final Order

A. Penalty

72. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and EPA's "Polychlorinated Biphenyls (PCB) Penalty Policy," dated April 9, 1990, EPA considered the nature, circumstances, extent, and gravity of the alleged violations; Respondent's ability to pay; the effect of the penalty on Respondent's ability to continue operations; Respondent's history of prior violations; Respondent's degree of culpability; any economic benefit gained; and such other matters as justice requires. After consideration of the foregoing factors, EPA determined that a civil penalty in the amount of one hundred eighty-seven thousand dollars (\$187,000.00) is assessed against Respondent for the TSCA violations alleged herein. Respondent agrees to the assessment and payment of such penalty as described herein.
73. Pursuant to Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), and 40 C.F.R. § 22.31, Respondent and EPA agree that payment of such civil penalty by Respondent is remitted on the conditions set forth in this CAFO.
74. EPA agrees to remit the entire civil penalty of one hundred eighty-seven thousand dollars (\$187,000.00), for the TSCA violations alleged herein through the effective date of this CAFO, conditioned upon Respondent's compliance with all the terms and conditions set forth in Section V (Consent Agreement), to EPA's satisfaction. Remission is granted, among other reasons, on the basis of the cooperation of Respondent in identifying, reporting, proactively investigating, and seeking remedial solutions to the alleged violations, which were previously unknown to Respondent, and the anticipation of continued full cooperation with the EPA in the execution of this CAFO.
75. Prior to making a determination that Respondent has failed to comply with any term or condition set forth in Section V (Consent Agreement), EPA will give Respondent written notice or notices of deficiencies, and provide Respondent at least thirty (30) days, or other reasonable time(s) to cure such deficiencies.
76. If EPA determines that Respondent has failed to comply with any term or condition set forth in Section V (Consent Agreement), fully and satisfactorily, EPA may issue a non-remittance Order requiring Respondent to pay the civil penalty of one hundred eighty-

seven thousand dollars (\$187,000.00), plus interest accrued from the effective date of this CAFO. Respondent waives its right to a hearing under 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), or any other law. Respondent further agrees to be bound by EPA's determination under this paragraph, or, if Respondent invokes Dispute Resolution (Section V.C), Respondent agrees to be bound by EPA's determination in Dispute Resolution.

B. Stipulated Penalties

77. If Respondent fails to comply with any term of the CAFO, Respondent shall be liable for stipulated penalties of: five hundred dollars (\$500) for each day that the violation occurs or continues for day one (1) through day thirty (30); one thousand dollars (\$1,000) for each day the violation continues for day thirty-one (31) through day sixty (60); one thousand five hundred dollars (\$1,500) for each day the violation continues for day sixty-one (61) through day one hundred twenty (120); and two thousand dollars (\$2,000) for each day the violation continues beyond day one hundred twenty one (121). A separate stipulated penalty shall apply and accrue for each provision of this CAFO that is violated.
78. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of completion of the activity. In the case of a force majeure claim by Respondent, stipulated penalties shall not begin to accrue unless and until EPA denies the force majeure claim.
79. Payment of stipulated penalties shall be made within thirty (30) days of receipt of written demand by EPA.
80. Payment of stipulated penalties shall be in addition to any other relief available under federal law. EPA may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO.

C. Instructions Relating to Payment of Penalties

81. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States as well as a

charge to cover the cost of processing and handling a delinquent claim. Interest therefore will begin to accrue on stipulated penalties or non-remitted civil penalty assessed that have not been paid within thirty (30) days from the written demand by EPA. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees in accordance with 31 C.F.R. § 901.9(c). In addition, a penalty charge of six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due in accordance with 31 C.F.R. § 901.9(d). Should assessment of the penalty charge on the debt be required, it will be assessed as the first day that payment is due.

82. Payment of any stipulated penalty, interest, or other charges does not wave, suspend, or modify the responsibility of Respondent to comply with requirements of all of the federal laws and regulations administered by EPA and shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.
83. Respondent shall remit the civil penalty and/or stipulated penalties under this CAFO by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

**The check shall reference on its face the name of the
Respondent and Docket Number of this CAFO.**

For payment submittal by any overnight mail service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101
Contact: Natalie Pearson (314) 418-4087

84. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960

and

Chief
North RCRA and OPA Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

85. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment, stipulated penalties, interest or other charges made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO. All penalties, stipulated penalties, interest, and other charges shall represent penalties assessed by EPA, and shall not be deductible for purposes of federal taxes.
86. Failure to pay the amount in full within the time period set forth in this CAFO may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

AGREED AND CONSENTED TO:

Respondent: TCOM, L.P.

Docket No.: TSCA-04-2013-2903(b)

By:  (Signature) Date: 8/26/13

Name: RICHARD MARTIN JR. (Typed or Printed)

Title: V.P. & GENERAL COUNSEL (Typed or Printed)

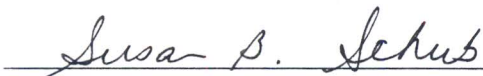
Complainant: U.S. Environmental Protection Agency

Docket No.: TSCA-04-2013-2903(b)

By:  (Signature) Date: 8-28-13

G. Alan Farmer, Director
RCRA Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 29 day of August, 2013.

By:  (Signature)
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), for TCOM, L.P., Docket Number: TSCA-04-2013-2903(b), on ~~SEP 03 2013~~ and on ~~SEP 03 2013~~ served the parties listed below in the manner indicated:

Valerie Nowell (Via EPA Internal Mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

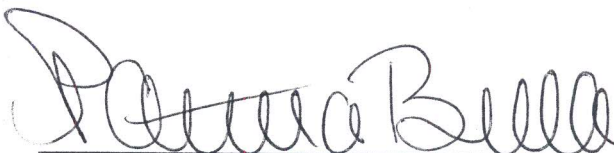
Kris Lippert (Via EPA Internal mail)
RCRA and OPA Enforcement
and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Quantindra Smith (Via EPA Internal mail)
RCRA and OPA Enforcement
and Compliance Branch
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Richard Martin, Jr., General Counsel (Via Certified Mail – Return Receipt Requested)
TCOM, L.P.
7115 Thomas Edison Drive
Columbia, Maryland 21046

Date:

9-3-13



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511