

4. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
5. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
7. Complainant and Respondent shall bear their own costs and attorney's fees.

III. Findings of Fact and Conclusions of Law

8. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the findings of fact and conclusions of law set forth below.
9. As used herein, the terms "PCB," "PCB Container," "PCB Item," "PCB Transformer," "Disposal," "Commercial Storer of PCB Waste," and "Disposer of PCB Waste" shall have the definition and meaning set forth in 40 C.F.R. § 761.3.
10. 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.
11. 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.
12. Respondent is a Delaware Corporation authorized to do business in the Commonwealth of Pennsylvania.
13. Respondent is a "person" as defined in 40 C.F.R. § 761.3.
14. Respondent is, and at all times relevant to this Consent Agreement was, the owner and operator of the facility located at 300 Frankfort Road, Monaca, Pennsylvania ("Facility").
15. On February 8, 2012, a duly authorized representative of EPA Region III conducted a compliance evaluation inspection ("Inspection") at the Facility pursuant to the authority of Section 11 of TSCA, 15 U.S.C. § 2610.
16. At the time of the Inspection, Respondent was the owner and operator of six PCB Transformers at the Facility. These six PCB Transformers are located at the Facility power plant. In addition, the Facility maintained a PCB storage area and three drained

PCB-Contaminated Transformers in long-term storage, which Respondent has since removed and properly disposed of.

COUNT I

(Failure to Maintain Designated Storage Area Requirements)

17. The preceding paragraphs are incorporated by reference.
18. 40 C.F.R. § 761.65(b) requires, *inter alia*, owners or operators of facilities used for the storage of PCBs and PCB Items designated for disposal must comply with certain storage unit requirements, including a requirement that such storage facility have an adequate roof and walls to prevent rain water from reaching the stored PCBs and PCB Items.
19. 40 C.F.R. § 761.65(b) requires owners or operators of facilities used for the storage of PCBs and PCB Items designated for disposal to comply with certain storage unit requirements, including a requirement that such storage facility have an adequate floor that has continuous curbing with a minimum six inch high curb. The floor and curbing must provide a containment volume equal to at least two times the internal volume of the largest PCB Article or PCB Container or 25 percent of the total internal volume of all PCB Articles or PCB Containers stored there, whichever is greater.
20. At the time of the Inspection, the EPA Inspector observed one 55-gallon container of PCB oil in "storage for disposal" as that term is defined in 40 C.F.R. § 761.3, in Respondent's storage area at the Facility.
21. At the time of the Inspection, the PCB storage area at the Facility had an opening in the rear wall which allowed snow melt and liquid to enter the PCB storage area.
22. At the time of the Inspection, the PCB storage area did not have containment because the concrete berms forming the containment had large gaps that were not continuous.
23. Respondent violated Section 15 of TSCA, and the requirements of 40 C.F.R. § 761.65(b), by failing to provide adequate walls and containment for the PCB storage area at the Facility as required by 40 C.F.R. § 761.65(b).

COUNT II

(Failure to Date PCB Items Placed in Storage)

24. The preceding paragraphs are incorporated by reference.
25. 40 C.F.R. § 761.65(c)(8) requires PCB storage containers to have a record on the container indicating the date on which each batch of PCBs is added to such storage container.
26. At the time of the Inspection, the label on the PCB storage container described in Paragraph 20, above, did not recite the dates indicating when batches of PCB transformer

oil had been added to the PCB storage container, as required by 40 C.F.R. § 761.65(c)(8).

27. Respondent violated Section 15 of TSCA, and the requirements of 40 C.F.R. § 761.65(c)(8) by failing to have a record on its PCB storage container which indicated the dates that batches of PCB transformer oil had been added to such PCB storage container, as required by 40 C.F.R. § 761.65(c)(8).

COUNT III

(Failure to Maintain Records of Inspections of PCB Items Placed in Storage for Disposal)

28. The preceding paragraphs are incorporated by reference.
29. 40 C.F.R. § 761.65(c)(5) requires all PCB Items in storage for disposal at a facility be inspected for leaks at least once every thirty days.
30. 40 C.F.R. § 761.180(a)(1)(iii) requires that the records of inspections conducted pursuant to 40 C.F.R. § 761.65(c)(5) be maintained as part of the Facility's annual PCB records as described in 40 C.F.R. § 761.180(a).
31. 40 C.F.R. § 761.180(a)(1)(iii) requires that annual PCB records, including records of inspections of PCB Items in storage for disposal conducted pursuant to 40 C.F.R. § 761.65(c)(5), be retained at the Facility for a period of three years.
32. At the time of the Inspection, Respondent failed to have records of inspections conducted at the Facility for PCB Items in storage for disposal at the Facility.
33. Respondent violated Section 15 of TSCA, and the requirements of 40 C.F.R. § 761.180(a)(1)(iii) by failing to retain records of inspections of PCB Items in storage for disposal conducted at the Facility pursuant to 40 C.F.R. § 761.65(c)(5).

COUNT IV

(Failure to Dispose of PCB Waste Within One Year of Waste Determination)

34. The preceding paragraphs are incorporated by reference.
35. 40 C.F.R. § 761.65(a)(1) requires that all PCB waste at the Facility must be disposed of within one year of the determination that the PCB material is waste.
36. On December 12, 2000, Respondent removed a 125-gallon PCB regulator at the Facility from service, which was not subsequently returned to service. Respondent sent the 125-gallon PCB regulator for proper disposal on October 19, 2009.
37. Respondent violated Section 15 of TSCA, and the requirements of 40 C.F.R. § 761.65(a)(1), by failing to dispose of its PCB regulator at the Facility within one year of determining that the PCB regulator was PCB waste, as required by 40 C.F.R. § 761.65(a)(1).

IV. Civil Penalty

38. Respondent agrees to pay a civil penalty in the amount of **\$7,253.00** for the above cited violations, in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a copy of this CAFO 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 CAFO, Respondent must pay the entire civil penalty no later than thirty (30) calendar days after the date on which a copy of the signed CAFO is mailed or hand-delivered to Respondent.
39. The aforesaid civil penalty is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), i.e., the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, and such other factors as justice may require. These factors were applied to the particular facts and circumstances of this case in the manner described in EPA's *Polychlorinated Biphenyls (PCB) Penalty Policy* (April 9, 1990). To determine the penalty amount Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, and EPA's *Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009* (April 6, 2010).
40. Payment of the civil penalty amount shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:
- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, i.e., TSCA-03-2013-0007;
 - B. All checks shall be made payable to "**United States Treasury**";
 - C. All payments made by check and sent by regular mail shall be addressed to:

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

Customer service contact: 513-487-2105
 - D. All payments made by check and sent by overnight delivery service shall be addressed for delivery 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

Contact: 314-418-1028

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

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

Federal Reserve Bank of New York
ABA = 021030004
Account 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"

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

- H. On-Line Payment Option:

WWW.PAY.GOV/paygov/

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

- I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/payment_instructions.htm

- J. Payment by Respondent shall reference Respondent’s name and address, and the EPA Docket Number of this CAFO.

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

Joyce A. Howell
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

And

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

41. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess additional interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent’s failure to make timely payment by the dates specified in Paragraph 38, above, shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
42. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
43. The costs of the Agency’s administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPAs *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative

costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

44. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). 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).
45. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

V. Certification

46. Respondent certifies to Complainant, by its signature hereto, to the best of Respondent's knowledge and belief, that the Facility is currently in compliance with all relevant provisions of TSCA and 40 C.F.R. Part 761.

VI. Scope of Settlement

47. The settlement set forth in this CAFO shall constitute full and final satisfaction of Complainant's civil claims for penalties for the specific violations alleged herein. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VII. Other Applicable Laws

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

VIII. Reservation of Rights

49. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations of TSCA alleged herein. 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. Further, EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the EPA Regional Hearing Clerk.

IX. Parties Bound

50. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, Respondent and its officers, directors, employees, successors, agents and assigns.

X. Execution

51. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

XI. Effective Date

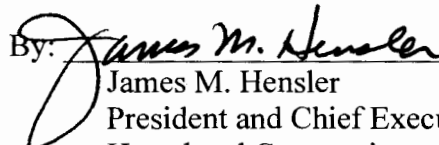
52. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XII. Entire Agreement

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

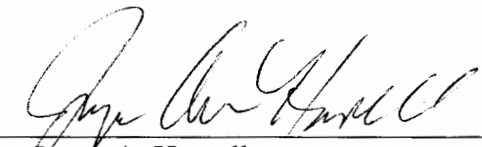
For Horsehead Corporation:

Date: 1/22/13

By: 
James M. Hensler
President and Chief Executive Officer
Horsehead Corporation

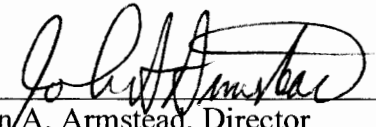
For Complainant:

Date: 1-24-2015

By: 
Joyce A. Howell
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 2.6.13

By: 
John A. Armstead, Director
Land and Chemicals Division

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

In the Matter of:

Horsehead Corporation
4955 Steubenville Pike
Pittsburgh, PA 15205

RESPONDENT

Horsehead Corporation
300 Frankfort Road
Monaca, Pennsylvania 15061

FACILITY

Docket No. TSCA-03-2013-0007

2013 FEB 14 AM 9:33
REGIONAL HEARING CLERK
EPA REGION III, PHIL A. PA

RECEIVED

FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Horsehead Corporation, have executed a document entitled "Consent Agreement" which I hereby ratify 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 into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO the Toxic Substances Control Act, 15 U.S.C. § 2615(a)(2)(A), and the Consolidated Rules of Practice, and having determined, on the basis

of the parties' representations in the Consent Agreement, that the penalty agreed to therein by the parties is based on a consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), it is hereby ordered that Respondent pay \$7,253.00 in accordance with the Consent Agreement and comply with the terms and conditions of this Consent Agreement.

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

2/13/13
Date

Renee Sarajian
Renee Sarajian
Regional Judicial Officer

