# BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

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PAPÉ TRUCK LEASING, INC.

Respondent

I.

DOCKET NO. TSCA-10-2009-0011

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HEAR ISS CLERK EP-- REGION 10

### STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part VI of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

 Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,"
 C.F.R. Part 22, EPA hereby issues, and Papé Truck Leasing, Inc. hereby agrees to issuance of the Final Order contained in Part VI of this CAFO.

CONSENT AGREEMENT AND FINAL ORDER - 1 DOCKET NO. TSCA-10-2009-0011

U.S. Environmental Protection Agency 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101

#### II. <u>PRELIMINARY STATEMENT</u>

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) & (3), issuance of this CAFO commences this proceeding which will conclude when the Final Order contained in Part VI of this CAFO becomes effective.

5 2.2. Part III of this CAFO contains a concise statement of the statutory and factual
6 basis for the alleged violation of TSCA. Part IV of this CAFO contains the specific provisions
7 of TSCA that the Respondent is alleged to have violated.

8 2.3. On July 31, 2008, the EPA entered into a Tolling Agreement with Respondent
9 which established a period from August 1, 2008, and ending on January 31, 2009, which shall
10 not be used in computing the running of any statute of limitations potentially applicable to any
11 civil or administrative action brought by the United States on the Tolled Claims.

### III. <u>ALLEGATIONS</u>

3.1. TSCA Section 15 prohibits any person from failing or refusing to comply with
any rule promulgated under TSCA "regulating any manner or method of disposal" of substances
subject to TSCA regulation. 15 U.S.C. § 2614. See also TSCA Sec. 6, 15 U.S.C. § 2605 (EPA
authority to promulgate regulations under TSCA). Under authority of TSCA, EPA has
promulgated regulations respecting the manner and method of storage and disposal of
polychlorinated biphenyls ("PCBs"). These regulations are codified generally at 40 C.F.R. Part
761.

3.2. Among other requirements, the TSCA PCBs "Storage for disposal" regulations
set limits on the length of time that PCBs or PCB Items may be stored prior to disposal. In
general, any PCB waste with concentrations greater than 50 parts per million (ppm) must be
disposed within one year from the date the PCBs are removed from service. These regulations
are codified at 40 C.F.R. § 761.65(a)(1).

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3.3. Respondent Papé is the successor of Industrial Finance Company ("IFCO"). 1 2 3.4. Respondent (as IFCO) owned a facility located at 3350 National Way SW in Albany, Oregon. Parties who first engage in PCB waste handling activities after February 5, 3 1990, are required to notify the EPA of storage of PCB waste in a Storage for Disposal Facility 4 5 and receive an EPA PCB activity identification number under 40 C.F.R. §§ 761.202(b)(2) and 761.205(a). 6 3.5. Respondent (as IFCO) owned and stored PCB waste in the form of capacitors 7 8 and transformers at its facility located at 3350 National Way SW in Albany, Oregon. EPA 9 received no notice of PCB waste at this facility as required by 40 C.F.R. § 761.205(a) and did 10 not issue a PCB activity identification number under 40 C.F.R. § 761.202(b). 11 3.6. Respondent is a "person" as defined by TSCA PCBs regulations. 40 C.F.R. § 761.3. 12 13 IV. **VIOLATIONS** 4.1. Respondent's failure to notify EPA prior to its PCB waste handling activities 14 15 constitutes a violation of 40 C.F.R. § 761.205(a). 4.2. Respondent's storage of PCB waste at the facility at 3350 National Way S.W. 16 17 located in Albany, Oregon without obtaining an EPA PCB identification number constitutes a 18 violation of 40 C.F.R. § 761.202(b). 19 4.3. Under TSCA Section 16, 15 U.S.C. § 2615(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty not to exceed \$32,500 per violation against "any person who 20 21 violates" certain requirements of TSCA, including those respecting the storage and disposal of PCBs. 22 23 24 25 CONSENT AGREEMENT AND FINAL ORDER - 3 **U.S. Environmental Protection Agency** DOCKET NO. TSCA-10-2009-0011 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101

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2	V. <u>CONSENT AGREEMENT</u>
3	5.1. For purposes of this proceeding, Respondent stipulates that EPA has jurisdiction
4	over the subject matter alleged herein.
5	5.2. For purposes of this proceeding, Respondent expressly waives any right to
6	contest the allegations and to appeal the Final Order set forth in Part VI, below.
7	5.3. For purposes of this proceeding, Respondent neither admits nor denies the
8	specific factual allegations contained in Parts III and IV of this CAFO.
9	5.4. As required under Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B),
10	EPA has taken into account the nature, circumstances, extent, and gravity of the alleged
11	violation; the Respondent's ability to pay, history of prior such violations, and degree of
'12	culpability; the effect on Respondent's ability to continue to do business; and such other
13	matters as justice may require. After considering all of these factors, EPA has determined and
14	Respondent Papé agrees that an appropriate penalty to settle this action is in the amount of
15	twenty thousand dollars (\$20,000).
16	5.5. Respondent consents to issuance of the Final Order set forth in Part VI, below,
17	and agrees to pay the total civil penalty set forth in Paragraph 5.4, above, within 30 days of the
18	effective date of this Final Order.
19	5.6. Payment under this CAFO shall be made by cashier's check or certified check,
20	payable to the order of "Treasurer, United States of America" and delivered to the following
21	address:
22	U.S. Environmental Protection Agency Fines and Penalties
23	Cincinnati Finance Center
24	P.O. Box 979077 St. Louis, MO 63197-9000
25	
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Respondent shall note on the check the title and docket number of this action.

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5.7. Along with payment, a transmittal letter shall be provided which sets forth the information contained in the caption of this case, including the case title and docket number, together with a description of the obligation being satisfied by the payment. At the time of payment, a copy of the check and transmittal letter shall also be provided to Daniel Duncan, EPA Region 10 Office of Compliance and Enforcement, and to Carol Kennedy, Regional Hearing Clerk. The mailing address for Mr. Duncan is 1200 Sixth Ave., Suite 900, OCE-084, Seattle, WA 98101. The address for Ms. Kennedy is 1200 Sixth Ave., Suite 900, ORC-158, Seattle, WA 98101.

5.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under TSCA. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

5.9. Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall be responsible for payment of interest on any unpaid portion of the assessed penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein. The penalty described in Paragraph 5.4, above, including any additional costs incurred under this Paragraph 5.9, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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1 5.10. The undersigned representative of Respondent certifies that he/she is fully 2 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this 3 document. 4 5.11. Unless otherwise specified in this CAFO, each party shall bear its own costs in 5 bringing or defending this action. 6 5.12. The provisions of this CAFO shall bind Respondent and its agents, servants, 7 employees, successors, and assigns. 8 5.13. The above provisions are STIPULATED AND AGREED upon by Respondent 9 and EPA. 10 DATED: PAPÉ TRUCK LEASING, INC: 11 09 12 13 14 15 DATED: **U.S. ENVIRONMENTAL PROTECTION AGENCY:** 16 17 18 19 CLIFFORD J. VITI Assistant Regional Counsel 20 For Complainant 21 22 23 24 25 **CONSENT AGREEMENT AND FINAL ORDER - 6 U.S. Environmental Protection Agency** DOCKET NO. TSCA-10-2009-0011 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101

1	VI. <u>FINAL ORDER</u>
2	6.1. The terms of the foregoing Parts I-V are hereby ratified and incorporated by
3	reference into this Final Order. Respondent is hereby ordered to comply with the foregoing
4	terms of the settlement.
5	6.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties
6	pursuant to TSCA for the violation alleged in Parts III and IV, above. In accordance with 40
7	C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to
8	pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations
9	of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to
10	comply with all applicable provisions of TSCA and regulations issued thereunder.
11	6.3. This Final Order shall become effective upon filing.
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13	SO ORDERED this day of (MUary 2009.
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16	RICHARD G. McALLISTER Regional Judicial Officer
17	U.S. Environmental Protection Agency
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## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached CONSENT AGREEMENT AND FINAL ORDER in In the Matter of: PAPÉ, Inc., DOCKET NO.: TSCA-10-2009-0011 was filed with the Regional Hearing Clerk on January 30, 2009.

On January 30, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Cliff Villa, Esquire US Environmental Protection Agency 1200 Sixth Avenue, ORC-158 Suite 900 Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on January 30, 2009, to:

Mr. Robert Riecke Papé Truck Leasing, Inc. 355 Goodpasture Island Road P.O. Box 10052 Eugene, Oregon 97440

DATED this 30<sup>th</sup> day of January 2009.

Carol Kennedy Regional Hearing Clerk EPA Region 10