



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 20 2007

REPLY TO THE ATTENTION OF

(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John Stibrick, President  
Products Chemical Company  
6400 Herman Avenue  
Cleveland, Ohio 44102

Dear Mr. Stibrick:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which commences and concludes the administrative enforcement action against Products Chemical Company for violations of the Clean Air Act. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 21 2007.

Pursuant to paragraph 32 of the CAFO, Products Chemical Company must pay the civil penalty in three installments, with the first installment due within 30 days of SEP 21 2007. Your check must display the case docket number, CAA-05-2007-0028, and the billing document number, 2750760A002. The second installment will be due within 1 year from the filing date. The third installment will be due within 2 years from the filing date. You are obligated to make these payments and will not receive payment notices for these installments.

Please direct any questions regarding this case to Mony Chabria, Associate Regional Counsel at (312) 886-6842.

Sincerely yours,

William MacDowell, Chief  
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	<b>Docket No. CAA-05-2007-0028</b>
	)	
<b>STRIB Industries, Inc., d/b/a Products Chemical Company Cleveland, Ohio,</b>	)	<b>Proceeding to Assess a Civil Penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)</b>
	)	
<b>Respondent.</b>	)	

**RECEIVED  
REGIONAL HEARING CLERK  
US EPA REGION V  
2007 SEP 21 AM 10:17**

**Consent Agreement and Final Order**

**I. Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b), and 22.18(b).
2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).
3. Respondent is STRIB Industries, Inc., doing business as Products Chemical Company, (Respondent) a corporation located and operating in Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).

## **II. Statutory and Regulatory Background**

5. Section 183(e) of the Act, 42 U.S.C. § 7511b(e), authorizes U.S. EPA to promulgate regulations establishing requirements regarding the manufacture of certain consumer or commercial products, the use of which may result in the release of volatile organic compounds (VOCs).

6. Pursuant to Section 183(e) of the Act, 42 U.S.C. § 7511b(e), on September 11, 1998, U.S. EPA promulgated the National VOC Emission Standards for Architectural Coatings at 40 C.F.R. Part 59, Subpart D (the Architectural Coatings Rule).

7. The Architectural Coatings Rule applies to each “architectural coating,” as that term is defined at 40 C.F.R. § 59.401, manufactured on or after September 13, 1999, for sale or distribution in the United States.

8. The Architectural Coatings Rule, at 40 C.F.R. § 59.401, defines “manufacturer” as a person that produces, packages, or repackages architectural coatings for sale or distribution in the United States.

9. The Architectural Coatings Rule, at 40 C.F.R. § 59.408(b), requires each manufacturer of any architectural coating subject to the Architectural Coatings Rule to submit an initial notification report no later than September 13, 1999, or within 180 days after the date that the first architectural coating is manufactured, whichever is later.

10. The Architectural Coatings Rule, at 40 C.F.R. § 59.402(a), requires each manufacturer of any architectural coating subject to the Architectural Coatings Rule to ensure that the VOC content of the coating does not exceed the applicable limit in Table 1 of the Architectural Coatings Rule, except as provided in Sections 59.403 and 59.404.

11. The Architectural Coatings Rule, at 40 C.F.R. § 59.403, states that each

manufacturer of architectural coatings may exceed the applicable VOC content limit in Table 1 of the Architectural Coatings Rule if the manufacturer pays an annual exceedance fee.

12. The Architectural Coatings Rule, at 40 C.F.R. § 59.408(d), states that each manufacturer of architectural coatings that uses the exceedance fee provisions of Section 59.403 must submit the report and exceedance fee payment by March 1 following the calendar year in which the coating was manufactured.

13. The Architectural Coatings Rule, at 40 C.F.R. § 59.404, states that each manufacturer of architectural coatings may designate a limited quantity of coatings to be exempt from the VOC content limits in Table 1 of the Architectural Coatings Rule and the exceedance fee provisions of Section 59.403.

14. The Architectural Coatings Rule, at 40 C.F.R. § 59.408(e), states that each manufacturer of architectural coatings for which a tonnage exemption under Section 59.404 is claimed shall submit a report no later than March 1 of the year following the calendar year in which the exemption was claimed.

15. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of the Architectural Coatings Rule that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

16. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

17. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violation alleged in this CAFO.

### **III. Factual Allegations**

18. Respondent is located at 6400 Herman Avenue, Cleveland, Ohio.

19. From 2000 through 2005, Respondent manufactured and distributed at least 10 coatings, including, but not limited to, those listed in Table A.

Table A.

<b>Product Description</b>	<b>Products Chemical Product Number</b>	<b>Subpart D Coating Category</b>	<b>Actual VOC Content (grams/liter)</b>	<b>Applicable VOC Content Limit (grams/liter)</b>	<b>Years Produced</b>
Stone/ Terazzo Seal	3202	Quick-dry Sealers	767.7	400	2003
R B Enamel White	3328	Swimming Pool Coatings	610.0	600	2001, 2003, 2004
Poly Sealer 1028	8200	Sanding Sealers	620.9	550	2000 - 2002
Oil Modified Sealer 1035	8408	Sanding Sealers	555.7	550	2001 - 2005
Epoxy Finish 9050	3211	Varnish	473.07	450	2003
Poly Finish 1040	8410	Varnish	520.9	450	2000 - 2005
Epoxy Finish 9040	3201	Varnish	572.5	450	2002
Epoxy Finish 9040	3201	Varnish	527.6	450	2004, 2005
Epoxy Ester Seal	3207	Industrial Maintenance Coatings	527.5	450	2003
RBE Non Skid-Grey	3305	Industrial Maintenance Coatings	467.6	450	2002, 2003

20. The coatings listed in Table A above were "architectural coatings," as defined in 40 C.F.R. § 59.401.

21. Respondent did not submit an initial notification report until May 16, 2006.

22. On February 28, 2007, Respondent submitted exceedance fee and tonnage

exemption reports to U.S. EPA for each year from 1999 through 2005 for the architectural coatings listed in Table A, above.

23. On December 20, 2006, U.S. EPA issued a Finding of Violation to Respondent citing the violations addressed in this CAFO.

#### **IV. Alleged Violations**

24. As set forth above, Respondent failed to timely submit an initial notification report, constituting a violation of 40 C.F.R. § 59.408(b) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

25. As set forth above, Respondent exceeded the VOC content limits for the coatings listed in Table A without reporting and paying the exceedance fees and without submitting tonnage exemption reports for 2000, 2001, 2002, 2003, 2004, and 2005, by March 1 of each subsequent year, constituting a violation of 40 C.F.R. § 59.402(a) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

#### **V. Stipulations**

26. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations and the alleged violations set out in this CAFO.

27. Respondent consents to issuance of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

28. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

29. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

**VI. Civil Penalty**

30. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to other factors as justice may require) the size of Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payments by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

31. Based on an analysis of the above factors, including Respondent's cooperation and prompt return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action would be \$33,911.

32. Respondent must pay the \$33,911 civil penalty plus interest in installments due 30 days, 1 year, and 2 years from the effective date of this CAFO on the following schedule:

<u>Payment Due Date</u>	<u>Penalty</u>	<u>Interest</u>	<u>Payment Due</u>
30 days from effective date	\$11,311	\$0	\$11,311
1 year from effective date	\$11,300	\$904	\$12,204
2 years from effective date	\$11,300	\$452	\$11,752

Each payment must be made by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraphs 33 and 34 below, within the schedule above.

33. Respondent must send the checks to:

Attn: Patricia McKaveney  
U.S. Environmental Protection Agency  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

34. A transmittal letter, stating Respondent's name, complete address, the case docket

number, and the billing document number, must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check.

Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Mony Chabria, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

35. This civil penalty is not deductible for federal tax purposes.
36. If Respondent does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action, under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.
37. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Respondent will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10

percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

### **VII. General Provisions**

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Alleged Violations section of this CAFO.

39. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

40. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations. Except as provided in paragraph 38 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA.

41. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

42. The terms of this CAFO bind Respondent, its successors, and assigns.

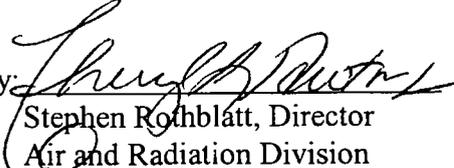
43. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorneys' fees in this action.

45. This CAFO constitutes the entire agreement between the parties.

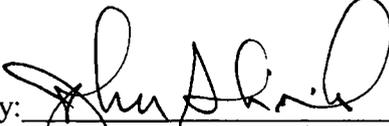
**U.S. Environmental Protection Agency, Complainant**

Date: 9/18/07

By:   
Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

**STRIB Industries, Inc., d/b/a Products Chemical Company, Respondent**

Date: 9-12-07

By:   
Name: STIBKIC  
Title: President

**CONSENT AGREEMENT AND FINAL ORDER**

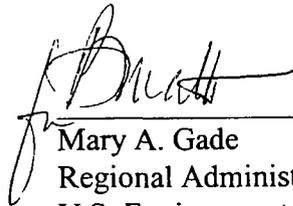
STRIB Industries, Inc., d/b/a Products Chemical Company, Cleveland, Ohio

Docket No. **CAA-05-2007-0028**

**Final Order**

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order concludes this proceeding pursuant to 40 C.F.R. § 22.18.

Date: 9-20-07

  
\_\_\_\_\_  
Mary A. Gade  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**CERTIFICATE OF SERVICE**

I, Loretta Shaffer, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2007-0028 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Products Chemical Company by placing them in the custody of the United States Postal Service addressed as follows:

John Stibrick, President  
Products Chemical Company  
6400 Herman Avenue  
Cleveland, Ohio 44102

on the 21<sup>ST</sup> day of September, 2007.

  
Loretta Shaffer  
AECAS (MN/OH)

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