

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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:  
**In the Matter of** :  
:  
**Losurdo Foods Inc.** :  
:  
:  
**Respondent.** :  
:  
:  
:  
Proceeding under Section 325(c) of Title III :  
of the Superfund Amendments and Reauthorization Act :  
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CONSENT AGREEMENT  
AND  
FINAL ORDER  
DOCKET NUMBER  
EPCRA-02-2014-4202

21/SEP 18 PM 2:59  
REGIONAL HEARING  
CLERK  
U.S. Environmental  
Protection Agency-Reg 2

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 *et seq.* [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].

Pursuant to 40 C.F.R. § 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (40 C.F.R. Part 22 (July 1, 2000)) where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2, ("EPA" or "Complainant") alleges that Losurdo Foods Inc. ("Losurdo Foods Inc." or "Respondent") located at 34 Union Street, Heuvelton, New York 13654 (County: St. Lawrence) New York 13202, violated the requirements of Section 313 of EPCRA (42 U.S.C. § 11023) and the regulations promulgated pursuant to that Section, codified at 40 C.F.R. Part 372.

Under Section 313 of EPCRA and 40 C.F.R. § 372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a complete and correct Toxic Chemical Release Inventory Reporting Form R report, EPA Form 9350-1 (hereinafter, "TRI Form R report") for each toxic chemical listed under 40 C.F.R. § 372.65 and/or 40 C.F.R. § 372.28 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. Each required TRI Form R report must be submitted to the Regional Administrator of the Environmental Protection Agency and to the State in which the subject facility is located.

As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. § 11023(f)(2)), and 40 C.F.R. § 372.27, owners or operators of a facility subject to the requirements of Section 313(b) with respect to the "manufacture, process or otherwise use" of a toxic chemical may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. § 372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a TRI Form R report, therefore, may submit an "Alternate Threshold Certification Statement" ("TRI Form A report") pursuant to 40 C.F.R. § 372.27(b). Pursuant to 40 C.F.R. § 372.27(e), EPA has excluded the Persistent Bioaccumulative Toxic Chemicals listed in 40 C.F.R. § 372.28 from eligibility for the Alternate Thresholds described in 40 C.F.R. § 372.27(a). [59 FR 61502, Nov. 30, 1994, as amended at 64 FR 58750, Oct. 29, 1999; as amended at 71 FR 76944, Dec. 22, 2006; as amended at 74 FR 19005, Apr. 27, 2009]

EPA and Losurdo Foods Inc. agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO"), pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitutes EPA's Findings of Fact and Conclusions of Law based upon information EPA obtained thru June 12, 2014 subsequent to a letter of inquiry emailed to the company on December 10, 2013.

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

1. Respondent is Losurdo Foods Inc. (TRI Facility ID.: 13654LSRDF3454U).
2. At all times relevant hereto, Respondent has maintained a facility located at 34 Union Street, Heuvelton, (County: St. Lawrence) New York 13654 which is the subject of this Consent Agreement and Final Order (hereinafter, "Respondent's facility").

3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. § 11049(7)).
4. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
5. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
6. Respondent's facility has ten (10) or more "full time employees" as that term is defined by 40 C.F.R. § 372.3.
7. Respondent's facility is in North American Industry Classification System "NAICS" code 311513 (Cheese Manufacturing).
8. Respondent's facility is subject to the requirements of Section 313(b) of EPCRA (42 U.S.C. § 11023(b)) and 40 C.F.R. § 372.22.
9. Nitric acid is a listed chemical under 40 C.F. R. § 372.65.
10. Respondent was required to submit a timely, complete and correct TRI Form R report for nitric acid for calendar year 2012 on or before July 1, 2013 to the Administrator of the EPA and to the State of New York.
11. Respondent submitted the required TRI Form R report for nitric acid for calendar year 2012 on December 12, 2013.
12. Nitrate compounds are a listed chemical category under 40 C.F.R. § 372.65.
13. Respondent was required to submit a timely, complete and correct TRI Form R report for calendar year 2011 on or before July 1, 2012 to the Administrator of the EPA and to the State of New York.
14. Respondent submitted the required TRI Form R report for nitrate compounds for calendar year 2011 on May 27, 2014.
15. Nitrate compounds are a listed chemical category under 40 C.F.R. § 372.65.
16. Respondent was required to submit a timely, complete and correct TRI Form R report for calendar year 2010 on or before July 1, 2011 to the Administrator of the EPA and to the State of New York.
17. Respondent submitted the required TRI Form R report for nitrate compounds for calendar year 2010 on May 27, 2014.
18. Each of Respondent's failures to submit to the EPA a timely TRI Form R report for nitric acid and nitrate compounds, as described in paragraphs 9 through 17 above, constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

**TERMS OF CONSENT AGREEMENT**

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. § 22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees, as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms submitted for the above-described violations comply with the requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.

2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of this Consent Agreement as applied to the facility as set forth in paragraphs 1 through 18, inclusive, and (b) neither admits nor denies the Findings of Fact and Conclusions of Law section, above.

3. Respondent shall pay a civil penalty totaling **FOUR THOUSAND FIVE HUNDRED TWENTY-FIVE DOLLARS (\$4,525)**. Payment should be made by cashier's or certified check or by electronic fund transfer (EFT). If the payment is made by check, then the check should be made payable to the "Treasurer, United States of America," and mailed to:

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

The check should be identified with a notation thereon listing the following: In The Matter of Losurdo Foods Inc. and the Docket Number EPCRA-02-2014-4202. Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Losurdo Foods Inc.**
- 7) Case Number: **EPCRA-02-2014-4202.**

Such EFT must be received on or before each due date of this CAFO. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Karen Maples, Regional Hearing Clerk  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16th Floor (1631)  
New York, NY 10007-1866

and

John Gorman, Chief  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue (MS-105)  
Edison, NJ 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling fee of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

#### SUPPLEMENTAL ENVIRONMENTAL PROJECT

4. Respondent agrees to undertake the following Supplemental Environmental Project ("SEP"), "Final EPA Supplemental Environmental Projects Policy Issued," 63 Federal Register 86 (May 5, 1998), pp. 24796-24804, which the parties agree is intended to secure significant environmental or public health protection and improvements:

##### **a. Project Summary – Pollution Reduction**

Losurdo Foods Inc. will replace its current cheese manufacturing equipment with a Milky Lab cooker stretcher lab 11B15, a molder lab 24/40 and a cooling line RF. Installation of this equipment will result in a 68.5% reduction in the amount of nitric acid used to clean the process lines on a daily basis. Nitric acid and nitrates are both toxic chemicals. Nitrates at high levels can cause significant environmental damage to streams, lakes, and rivers. The new equipment will

result in an estimated reduction of 3308 pounds of nitric acid and 4524 pounds of nitrate compounds entering the waste stream per year. Nitrates are toxic chemicals that can pose serious risks to human health and significant environmental damage to streams, lakes, and rivers. Losurdo discharges its wastewater to the Heuvelton (Village) Water Pollution Control Plant located in Heuvelton (St. Lawrence County), New York. [SPDES Number: NY0027146] The receiving water is the Oswegatchie River. The amount of water used in the new equipment will be reduced by 452,400 gallons per year from the nearly 780,000 gallons of water previously used per year in the manufacturing/cleaning/neutralization process. Thus, the company will be discharging about 50% less wastewater from this process line, containing residual nitric acid and nitrate compounds, to the Heuvelton POTW

The total one-time expenditure for the purchase and installation of this updated equipment will be at least \$378,585. The equipment has a life span of ten years and the company commits to the process change for at least five years. EPA's Enforcement Economic Model PROJECT estimates the projected value of the SEP over a 5-year period to be \$367,510. Respondent shall include documentation of the expenditures made in connection with the SEP and will try to capture any quantifiable pollution reduction in the SEP Interim and Completion Report.

b. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent was not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP, and that it will not receive reimbursement for any portion of the SEP from any other person.

c. Respondent will purchase and install the above-listed equipment within two months of the date of signature of the Final Order at the end of this document.

d. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through implementation of the SEP project, as herein required, shall be the sole determination of EPA.

5. Respondent shall submit a SEP Report to EPA as follows: The report shall contain the following information:

- (i) Respondent shall submit an interim SEP Progress report to EPA on or by two months of the date the Regional Administrator signed the Consent Agreement and Final Order at the end of this document.

- (ii) The Progress Report will include a description of all activities conducted regarding implementation of the proposed SEP, monies spent on and any quantifiable results of the proposed SEP.
- (iii) Respondent shall submit a SEP Completion Report one year after the system is operational, but not more than 15 months after the date the Regional Administrator signed the Consent Agreement and Final Order at the end of this document.
- (iv) The SEP Completion Report will include a description of all pollution reduction activities (quantifiable results) resulting from implementation of the SEP and any other successes / issues concerning full implementation of the proposed SEP over the preceding year and going forward.

6. Respondent agrees that failure to submit the SEP Progress Report and/or the SEP Completion Report shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 9, below.

7. Respondent shall maintain legible copies of documentation for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and Final Order, and Respondent shall provide the documentation of any such data to EPA within seven days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement and Final Order, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law 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 that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

8. a. Following receipt of either reports described in paragraph 5, above, EPA will do one of the following:

- (i) Accept the report,
- (ii) Reject the report, notify Respondent in writing of deficiencies in the SEP report and grant Respondent an additional 30 days in which to correct any deficiencies or

- (iii) Reject the report and seek stipulated penalties in accordance with paragraph 9 herein.

b. If EPA elects to exercise option (ii) or (iii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the receipt by EPA of the notification of objection to reach agreement. If agreement is not reached on any such issue within this 30-day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Final Order.

9. a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement and Final Order relating to the performance of the SEP described in paragraph 4, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP as described in paragraph 4, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to paragraph 9, Respondent shall pay a stipulated penalty to the United States in the amount of \$15,000. This penalty amount is based on the Respondent only being granted a 3.7% penalty mitigation for the proposed SEP.
- (ii) If the SEP is not completed satisfactorily, but Respondent: a) made in good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90% of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.
- (iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$15,000.
- (iv) If the SEP is satisfactorily completed, and Respondent spent at least 90% of the amount of money that was required to be expended on the SEP, Respondent shall not pay any stipulated penalty.



b. The determination of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith timely effort to implement the SEP, whether specific expenditures that have been made are creditable toward the required SEP expenditures and/or whether the reason for submitting a late reports is acceptable shall be at the sole discretion of EPA.

c. A stipulated penalty under subparagraph 9.a.(iii), shall begin to accrue on the day after the Completion Report is due.

d. Respondent shall pay any stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 3, herein. Interest and late charges shall be paid as stated in paragraph 3, herein.

10. Complainant, at her discretion, may waive any stipulated penalties specified above.

11. Any public statement, oral or written, made by Respondent making reference to this SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 313 of EPCRA, 42 U.S.C. § 11023 and regulations pursuant to that Section, 40 C.F.R. Part 372."

12. a. If any event occurs, which causes or may cause delays in the completion of the SEP as required under this Consent Agreement and Final Order, Respondent shall notify EPA in writing within ten (10) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this Agreement based on such incident.

b. If the parties agree that the delay, or anticipated delay, in compliance with this Consent Agreement and Final Order has been, or will be, caused by circumstances entirely beyond the control of Respondent, the time for performance of the SEP may be extended for a period no longer than the delay resulting from such circumstances. In such an event, the parties shall negotiate the extension of time.

c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Final Order has been, or will be, caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision, and any delays in completion of the SEP shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of actions called for by this Consent Agreement and Final Order shall not, in any event, be a basis for changes in this Consent Agreement and Final Order or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

13. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred, in the performance of the SEP.

14. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach or might have attached as a result of the Findings of Fact and Conclusions of Law set out above.

15. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

16. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

17. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

19. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

19. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

20. Each party hereto agrees to bear its own costs and fees in this matter.

21. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**RESPONDENT:**

Losurdo Foods Inc  


BY: \_\_\_\_\_

Authorizing Signature

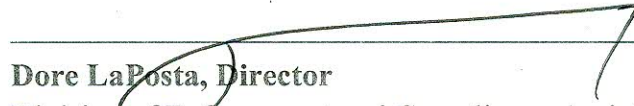
NAME: MARC JX LOSURDO

(PLEASE PRINT)

TITLE: CEO / PRESIDENT

DATE: 9/2/14

**COMPLAINANT:**

  
**Dore LaPosta, Director**  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

DATE: SEPTEMBER 10, 2014

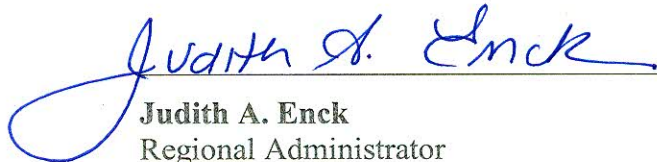
In the Matter of:  
Losurdo Foods Inc.

Docket Number EPCRA-02-2014-4202

FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of **In the Matter of Losurdo Foods Inc.** bearing **Docket No. EPCRA-02-2014-4202**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) and shall constitute an order issued under authority of Section 325(c) of EPCRA 42 U.S.C. § 11045(c).

DATE: 9/15/14



**Judith A. Enck**  
Regional Administrator  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

**In the Matter of Losurdo Foods Inc.**

Docket No. EPCRA-02-2014-4202

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy  
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency -Region 2  
290 Broadway, 16th Floor (1631)  
New York, New York 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Mr. J. Greg Leach, Director of Quality Assurance  
Losurdo Foods Inc.  
20 Owens Road,  
Hackensack, New Jersey 07601

Copy by Mail:

Mr. Andrew Oppermann, Research Scientist, M. Sc.  
New Jersey Department of Environmental Protection  
Office of Pollution Prevention and Right To Know  
Mail Code 22-03C, 401 E. State St., 7<sup>th</sup> Floor  
Trenton, NJ 08625-0420

**SEP 17 2014**

Dated: \_\_\_\_\_



\_\_\_\_\_  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue (MS-105)  
Edison, New Jersey 08837-3679