

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 JUL 2 AM 11:33
REGIONAL HEARING
CLERK

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In the Matter of	:	
	:	
U.S. Pipe & Foundry Company	:	<u>CONSENT AGREEMENT</u>
	:	<u>AND</u>
	:	<u>FINAL ORDER</u>
	:	
	:	
Respondent.	:	DOCKET NUMBER
	:	EPCRA-02-2007-4105
	:	
Proceeding under Section 325(c) of	:	
Title III of the Superfund	:	
Amendments and Reauthorization Act	:	
-----X	:	

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")]. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc." (40 C.F.R. Part 22 (July 1, 2000)), provide in 40 C.F.R. §22.13(b) that when the parties agree to settle 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 Respondent, U.S. Pipe & Foundry Company ("Respondent") 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 Toxic Chemical Release Inventory Reporting Form R, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. §372.65 and/or 40 C.F.R. §372.28 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. The completed and correct Form R is required to be submitted to the Regional Administrator of the EPA 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. Pursuant to 40 C.F.R. §372.27(b), if the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a Form R therefore, may submit "EPA Toxic Chemical Release Inventory Form A" (EPA Form 9350-2) (formerly the "Certification Statement"; see 59 Fed. Reg. 61488; November 30, 1994).

EPA and Respondent 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, and to that end the parties conducted an informal settlement conference over the telephone on August 23, 2006 and subsequently discussed settlement several times thereafter. 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 constitute Complainant's Findings of Fact and Conclusions of Law based upon information EPA had obtained through May 11, 2007.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Respondent is U.S. Pipe & Foundry Company (TRI Facility ID No.:08016SPPFNEASTP).
2. At all times relevant hereto, Respondent has maintained a facility located at 1101 East Pearl Street, Burlington Township, New Jersey which is the subject of this Consent Agreement and Final Order (hereinafter, "Respondent's facility").

3. Respondent is a corporation organized pursuant to the laws of the State of Alabama.
4. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. §11049(7)).
5. 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.
6. 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.
7. Respondent's facility has 10 or more "full time employees" as that term is defined by 40 C.F.R. §372.3.
8. Respondent's facility is in Standard Industrial Classification (SIC) Code 3321.
9. Respondent's facility is in the North American Industry Classification System (NAICS) Code 331511, Iron Foundries.
10. Respondent's facility is subject to the requirements Section 313(b) of EPCRA (42 U.S.C. §11023(b)) and 40 C.F.R. §372.22.
11. On or about October 4, 2006, authorized representatives of EPA conducted an inspection of Respondent's facility to determine whether Respondent was in compliance with the Toxic Chemical Release Reporting requirements (hereinafter, "the Inspection").
12. A review of the Toxic Release Inventory Envirofacts Database indicated that Respondent submitted a Toxic Chemical Release Inventory Form R to the EPA for zinc compounds for each of the calendar years 2001, 2002 and 2003 on December 5, 2006.
13. Zinc compounds are listed under 40 C.F.R. §372.65.
14. Respondent "manufactured" or "processed"(as defined in 40 C.F.R. §372.3) more than the 25,000 pound threshold amount, established pursuant to 40 C.F.R. §372.25(a), of zinc compounds during each of the calendar years 2001, 2002 and 2003.
15. Respondent was required to submit a Form R for zinc compounds for calendar year 2001 by July 1, 2002, for calendar year 2002 by July 1, 2003, and for calendar year 2003 by July 1, 2004 to the Administrator of EPA and to the State of New Jersey.
16. The postmark date of Respondent's Form R reports for zinc compounds for calendar years 2001, 2002 and 2003 was December 5, 2006. The Form R reports were greater than a year late.

17. Respondent failed to submit in a timely manner a Toxic Chemical Release Inventory Form R or Form A report for zinc compounds for each of the calendar years 2001, 2002 and 2003.

18. The failures to submit Form R or Form A reports, in a timely manner, constitute violations of Section 313 of the Emergency Planning and Community Right-to-Know-Act (EPCRA), 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act (42 U.S.C. §11001 et seq.) and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, etc. (40 C.F.R. §22.18 (July 1, 2000)), it is hereby agreed by and between the parties hereto, and knowingly accepted by U.S. Pipe & Foundry Company, U.S. Pipe & Foundry Company, for purposes of this Consent Agreement: a) admits that EPA has jurisdiction pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act (42 U.S.C. §11001 et seq.) to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section, above; b) neither admits nor denies the specific factual allegations contained in the Findings of Fact and Conclusions of Law section above; c) consents to the performance a Supplemental Environmental Project (SEP); d) consents to the assessment of the civil penalty as set forth below; and e) consents to the issuance of the Final Order accompanying this Consent Agreement.

It is further hereby agreed by and between the parties hereto, and knowingly accepted by Respondent, that it accepts and shall comply with the following terms and conditions:

1. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Thirteen Thousand One Hundred Twenty-Five Dollars (\$13,125)**, payable to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

Region 2 - Regional Hearing Clerk
United States Environmental Protection Agency
P.O. Box 360188M
Pittsburgh, PA 15251

Respondent shall also send a copy of the payment and the fully executed Consent Agreement and Final Order ("CAFO") to each of the following:

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

and

Kenneth S. Stoller, P.E., QEP, DEE, Chief
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency - Region 2
2890 Woodbridge Avenue, Bldg. 10, MS-105
Edison, New Jersey 08837

2. The 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").

a. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of The Treasury for collection.

b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall 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 date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period, following the date the payment was to have been made, in which payment of the amount remains in arrears. In addition, 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

3. Respondent agrees to undertake the following Supplemental Environmental Project ("SEP") which the parties agree is intended to secure significant environmental or public health protection and improvements:

a. Not more than twelve (12) months after receiving a copy of this Consent Agreement signed by the Regional Administrator, Respondent shall commence operating a treatment unit which will filter the water discharged

from the existing stormwater basin, via a pump, through a series of filters to remove total suspended solids and other environmental pollutants prior to discharge into the Delaware River. See Attachment A.

- b. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is 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.
- c. The total expenditure for the SEP shall be not less than \$105,500.
- 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.

4. Respondent shall submit a SEP Completion Report to EPA on or by fourteen months of receiving a copy of this Agreement signed by the Regional Administrator. The SEP Completion Report shall contain the following information:

- a. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- b. Certification that the purchased equipment was installed and tested pursuant to the provisions of this Consent Agreement and Final Order.

5. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsections (a) above shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 10, below.

6. Respondent agrees that EPA may contact the above cited organizations at any time in order to confirm that the SEP was carried out as agreed above.

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. Following receipt of the SEP Completion Report described in paragraph 4, above, EPA will do one of the following:

- a. Accept the report;
- b. Reject the SEP Report, notify Respondent in writing of deficiencies in the SEP Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or
- c. Reject the SEP Report and seek stipulated penalties in accordance with paragraph 10 herein.

9. If EPA elects to exercise option (b) 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 (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (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. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 10 herein.

10. 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 3, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 3 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (b) 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 \$39,375.
- b. If the SEP is not completed satisfactorily, but Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.
- c. 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 determined as follows:

$$\text{Stipulated penalty} = [1 - \frac{\text{\$amount SEP cost expended}}{\text{\$105,500 cost of SEP}}] \times \$39,375$$

- d. If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.
- e. The determinations of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith timely effort to implement the SEP and/or whether the reason for submitting a late completion report is acceptable shall be in the sole discretion of EPA.
- f. Stipulated penalties begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

- g. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions above.
- 11. Complainant at its discretion may waive any stipulated penalties specified above.
- 12. Any public statement, oral or written, made by Respondent making reference to the 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.
- 13. Delays in the completion of SEP:
 - a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify EPA in writing within 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 Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
 - c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Agreement 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 Agreement shall not, in any event, be a basis for changes in this Agreement 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.

14. This Consent Agreement is being 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 as a result of the allegations and assertions contained in the “Findings of Fact and Conclusions of Law” section, above.

15. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) on the “Findings of Fact” or the “Conclusions of Law” or the provisions of the Consent Agreement and Final Order in this matter.

16. Respondent has read the Consent Agreement, understands its terms, and 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 or any remedy it has or might have pursuant to 40 C.F.R. §22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

18. 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 party shall bear its own costs and fees.

20. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms,

conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

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

RESPONDENT:

U.S. Pipe & Foundry Company

DATE: 6/14/07

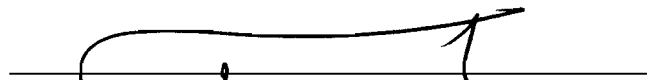
BY: 
Authorizing Signature

NAME: JAMES CAPORALETTI
(PLEASE PRINT)

TITLE: PLANT MANAGER

COMPLAINANT:

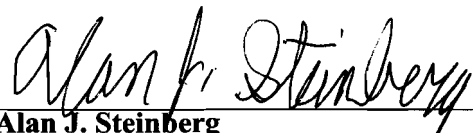
DATE: JUNE 23, 2007


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

In the Matter of U.S. Pipe & Foundry Company
Docket Number EPCRA-02-2007-4105

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties in full settlement In the Matter of U.S. Pipe & Foundry Company bearing Docket Number EPCRA-02-2007-4105, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.



Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

DATED: 6-29-07

Attachment A



UNITED STATES PIPE AND FOUNDRY COMPANY

1101 EAST PEARL STREET
BURLINGTON, NEW JERSEY 08016

Supplemental Environmental Project

US Pipe and Company has agreed to a pollution reduction Supplemental Environmental Project (SEP) to install and operate a treatment unit at the facility which will filter the water discharged from the existing stormwater basin, via a pump, through a series of filters to remove total suspended solids and other environmental pollutants (including PCBs and zinc compounds) prior to discharge into the Delaware River.

The estimated cost of the SEP is \$105,500. The basis is provided below.

	Equipment List (100 GPM UNIT)	cost each	Total cost
2	Pumps, 100 gpm w/ motor	2,472	4,944
2	Pumps MCC, 5HP NEMA	1,191	2,382
1	Filter Package (prefilter, carbon filter)	12,000	12,000
1	Heater, 40000 Btu/hr	500	500
1	Misc. (piping, insulation, electric)	3,000	3,000
2	Freight	850	1,700
	Subtotal		
1	Prefab Building (12 x 20)	32,000	32,000
	Installation	49,052	49,052
	Total		105,578

In the Matter of U.S. Pipe & Foundry Company
Docket No. EPCRA-02-2007-4105

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. Scot Aler, Environmental Director
U. S. Pipe & Foundry Company LLC
3300 1st Avenue North
Birmingham, AL 35202

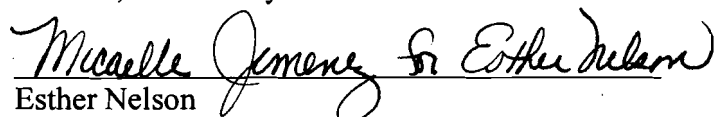
and

Mr. James Caproletti, Plant Manager
U.S. Pipe & Foundry Company
1101 East Pearl Street
Burlington Township, New Jersey 08016

Copy by Mail:

Mr. Andrew Opperman, EPCRA Section 313
New Jersey Department of Environmental Protection
Division of Environmental Safety and Health
Office of Pollution Prevention and Right-To-Know
22 S. Clinton Avenue, 3rd Floor
P.O. Box 443
Trenton, New Jersey 08625-0443

Dated: 7/10/07


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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837-3679

ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 JUL 12 AM 11:33
REGIONAL HEARING
CLERK

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Mr. James Caproletti, Plant Manager
U.S. Pipe & Foundry Company
1101 East Pearl Street
Burlington Township, New Jersey 08016

Re: In the Matter of U.S. Pipe & Foundry Company
Docket No. EPCRA-02-2007-4105; EPA TRI Facility ID: 08016SPPFNEASTP

Dear Mr. Caproletti:

Enclosed is a copy of the Consent Agreement and Final Order in the above referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency.

Please note that the forty five (45) day period for payment of the civil penalty commences as of the date this Final Order is signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in the Consent Agreement (see "Terms of Consent Agreement"). Specifically, please remember to send a copy of your payment check to the Complainant, as detailed in the Consent Agreement.

Sincerely yours,

Kenneth S. Stoller, P.E., QEP, DEE
Chief
Pesticides and Toxic Substances Branch

Enclosure

cc: Mr. Andrew Opperman, EPCRA Section 313
New Jersey Department of Environmental Protection
Division of Environmental Safety and Health
Office of Pollution Prevention and Right-To-Know
22 S. Clinton Avenue, 3rd Floor
P.O. Box 443
Trenton, New Jersey 08625-0443