

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

First Capital Insulation, Inc.  
1355 South George Street  
York, PA 17403,

and

The School District of the City of York  
31 North Pershing Avenue  
York, PA 17403

Respondents,

The School District of the City of York  
Former Administration Building  
327 South Lindberg, Avenue  
York, PA 17403,

Facility.

Docket No. CAA-03-2010-0111

**PROCEEDING UNDER:**

Section 113(a)(3) and (d) of the Clean  
Air Act, 42 U.S.C. § 7413(a)(3) and (d)

**ADMINISTRATIVE COMPLAINT AND  
NOTICE OF OPPORTUNITY FOR  
HEARING**

**I. INTRODUCTION**

1. Complainant, the Division Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region III ("EPA" or the "Agency") initiates this administrative action against First Capital Insulation, Inc., and the School District of the City of York, (hereinafter referred to as "Respondents"), for violations of Section 112 of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. § 7412, as alleged below. The authority for issuance of this Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") is set forth in Section 113(a)(3) and (d) of the

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CAA, 42 U.S.C. § 7413(a)(3) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), set forth at 40 C.F.R. Part 22. The authority to issue this Complaint has been duly delegated to the signatory below.

## **II. APPLICABLE STATUTES AND REGULATIONS**

2. Section 112 of the CAA, 42 U.S.C. § 7412, requires the Administrator of EPA to publish a list of air pollutants determined to be hazardous and to promulgate regulations establishing emission standards or, where necessary, design, equipment, work practice, or operational standards for each listed hazardous air pollutant.
3. Section 114 of the CAA, 42 U.S.C. § 7414, authorizes the Administrator of EPA to require any person who owns or operates any emission source or who is otherwise subject to the requirements of the CAA to, among other things, establish and maintain such records, make such reports and provide such information as the Administrator might reasonably require to develop or determine compliance with emission standards.
4. EPA listed asbestos as a hazardous air pollutant under the authority of Section 112 of the CAA, 42 U.S.C. § 7412. Pursuant to Sections 112 and 114 of the CAA, 42 U.S.C. §§ 7412 and 7414, EPA promulgated a National Emission Standard for Asbestos ("the asbestos NESHAP"), codified at 40 C.F.R Part 61, Subpart M, Sections 61.140 - 61.157. The asbestos NESHAP includes regulations governing, inter alia, the emission, handling,

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and disposal of asbestos by the owner or operator of a demolition or renovation activity at an affected facility. Pursuant to Section 112(q) of the CAA, 42 U.S.C. § 7412(q), the above referenced standards and provisions remain in full force and effect, notwithstanding the November 15, 1990 Clean Air Act Amendments.

5. Sections 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), authorize the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any rule, plan, order, waiver, or permit promulgated, issued, or approved under, inter alia, Section 112 of the CAA, 42 U.S.C. § 7412.

### **III. DEFINITIONS**

6. Pursuant to 40 C.F.R. § 61.141, "asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.
7. Pursuant to 40 C.F.R. § 61.141, "asbestos-containing waste materials" means, in pertinent part, mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of the asbestos NESHAP, including friable asbestos waste material and materials contaminated with asbestos including disposable equipment and clothing.

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8. Pursuant to 40 C.F.R. § 61.141, "Category I nonfriable asbestos-containing material ("ACM")" means asbestos containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 C.F.R. Part 763, section 1, Polarized Light Microscopy.
9. Pursuant to 40 C.F.R. § 61.141, "facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building.
10. Pursuant to 40 C.F.R. § 61.141, "friable asbestos material" means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 C.F.R. Part 763, section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.
11. Pursuant to 40 C.F.R. § 61.141, "glove bag" means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials.
12. Pursuant to 40 C.F.R. § 61.141, "owner or operator of a demolition or renovation activity" means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

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13. Pursuant to 40 C.F.R. § 61.141, “remove” means to take out regulated asbestos-containing material (“RACM”) or facility components that contain or are covered with RACM from any facility.
14. Pursuant to 40 C.F.R. § 61.141, “renovation” means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component.
15. Pursuant to 40 C.F.R. § 61.141, “regulated asbestos-containing material (“RACM”)” means, in pertinent part, friable asbestos material or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.
16. Pursuant to 40 C.F.R. § 61.141, “strip” means to take off RACM from any part of a facility or facility components.
17. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include “an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, (or) department.”

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#### **IV. GENERAL ALLEGATIONS**

18. First Capital Insulation, Inc., (“First Capital”), is a commercial/industrial asbestos removal, lead abatement and mold remediation contractor, located at 1355 South George Street, York, PA 17403.
19. First Capital is a corporation organized under the laws of the Commonwealth of Pennsylvania, and is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).
20. The School District of the City of York (the “District”), is a non-profit organization chartered under the laws of the Commonwealth of Pennsylvania, which provides public elementary and secondary school education services to the City of York.
21. The School District of the City of York is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).
22. The former Administration Building for the School District of the City of York, (the “Facility”), located at 327 South Lindberg Avenue, York, PA 17403, at all times relevant to this Complaint, is a “facility” as that term is defined by 40 C.F.R. § 61.141.
23. At all times relevant to this Complaint, the District owned the Facility.

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24. On February 10, 2009, a duly authorized representative of EPA (the "Inspector") conducted an inspection at the Facility.
25. The February 10, 2009 inspection (the "Inspection"), was conducted at the Facility in response to an Asbestos Abatement and Demolition Notification Form (the "Notification"), received by EPA on January 29, 2009.
26. The Notification indicated that a "renovation" as that term is defined by 40 C.F.R. § 61.141, would be conducted at the Facility.
27. The Notification indicated that the renovation would "remove" as that term is defined by 40 C.F.R. § 61.141, 1215 linear feet of friable asbestos containing pipe insulation, 250 square feet of nonfriable floor tile, and 25 square feet of friable plaster ceiling.
28. Pursuant to 40 C.F.R. § 61.145(a)(4), all of the requirements of paragraphs (b) and (c) of 40 C.F.R. § 61.145 apply to the owner or operator of a renovation activity if the combined amount of RACM to be stripped, removed dislodged, cut, drilled, or similarly disturbed is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components.
29. At all times relevant to this Complaint, the Respondent First Capital was the "owner or operator" of a "demolition or renovation activity" as those terms are defined at 40 C.F.R. § 61.141.

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30. At all times relevant to this Complaint, the District was the "owner or operator" of a "demolition or renovation activity" as those terms are defined at 40 C.F.R. § 61.141.
31. During the Inspection, the Inspector entered the work area at the Facility where the asbestos-containing material was being removed.
32. During the Inspection, the Inspector observed workers installing glovebags onto pipes located in the basement work area of the Facility.
33. During the Inspection, the Inspector observed several open glovebags filled with suspect asbestos containing material that had been removed from pipes in the basement work area of the Facility.
34. During the Inspection, the Inspector also observed several open glovebags inside an open black asbestos bag in the basement work area at the Facility.
35. During the Inspection, the Inspector observed all the glovebags were filled with many feet of suspect asbestos-containing pipe insulation.
36. During the Inspection, the Inspector observed that all of the open glovebags containing the suspect asbestos-containing material were dry.
37. During the Inspection, the Inspector took twenty (20) photographs of the work area at the Facility, including the open glovebags containing the dry suspect asbestos-containing pipe insulation.

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38. During the Inspection, the Inspector took five (5) samples of the dry suspect asbestos-containing pipe insulation in the work area at the Facility.
39. The five (5) samples of the dry suspect asbestos-containing pipe insulation were sent to Criterion Laboratories, Inc. ("Criterion"), 3370 Progress Drive, Bensalem, Pennsylvania for analysis to determine the percentage of asbestos in each sample.
40. Criterion is certified by the National Institutes of Standards and Technology, National Voluntary Laboratory Accreditation Program ("NVLAP").
41. Criterion analyzed the samples collected during the Inspection using Polarized Light Microscopy with Dispersion Staining in accordance with 40 C.F.R. Part 763, Appendix E.
42. Analysis on the five (5) samples taken during the Inspection showed that all five (5) samples contained asbestos above 1 percent.
43. All of the asbestos material referred to in paragraphs 33 and 35 through 38 above, observed in the basement work area at the Facility during the Inspection, constitutes "regulated asbestos-containing material (RACM)" as that term is defined at 40 C.F.R. § 61.141.
44. The asbestos-containing material referred to above was observed by the Inspector, during the Inspection at the Facility to be "friable" as that term is defined at 40 C.F.R. § 61.141.

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45. All of the asbestos-containing material referred to above was observed by the Inspector during the Inspection at the Facility, to be dry (neither wet nor encapsulated).

46. None of the asbestos material referred to above was enclosed in leak-tight bags.

## **V. VIOLATIONS**

### **Count I**

#### **FAILURE TO KEEP WET**

47. Complainant realleges the allegations contained in paragraphs 1 through 46 above.

48. Pursuant to 40 C.F.R. § 61.145(c)(6)(i), owners and operators of demolition or renovation activities must adequately wet all RACM, including material that has been removed or stripped, and ensure the RACM remains wet until collected and contained or treated in preparation for disposal.

49. At the time of the Inspection, the Inspector determined that the Respondents had stripped RACM from the Facility and had failed to keep the RACM wet until it was collected for disposal.

50. At the time of the Inspection the Inspector observed that the asbestos-containing material that had been stripped and deposited in the open glove bags at the Facility was dry.

51. Respondents' failure to comply with the requirements of 40 C.F.R. § 61.145(c)(6)(i) at the Facility on February 10, 2009 constitutes a violation of Section 112 of the CAA, 42 U.S.C. § 7412.

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**VI. PROPOSED CIVIL PENALTY**

Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize a penalty of not more than \$37,500 for each violation of the CAA that occurred on or after January 12, 2009. EPA proposes to assess a civil penalty of nine thousand nine hundred fourteen dollars (\$9,914.00) against Respondents. The proposed penalty does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. The proposed penalty is as follows:

**A. Gravity Component**

Count I:

Failure to keep RACM wet  
while stripping (< 10 units)  
40 C.F.R. § 61.145(c)(6)(i).

\$ 5,000.00

Size of violator:

\$ 2,000.00

Subtotal:

\$ 7,000.00

Inflation adjustment 1.4163 x Subtotal

\$ 2,914.00

**TOTAL PROPOSED PENALTY:**

**\$ 9,914.00**

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The proposed civil penalty has been determined in accordance with Section 113 of the CAA, 42 U.S.C. § 7413; 40 C.F.R. Part 19; U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1992 ("CAA Penalty Policy"), and Appendix III thereto ("Asbestos Penalty Policy"); Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Improvement Act of 1996), dated May 9, 1997 ("Inflation Policy"); and the most recent Inflation Policy dated September 21, 2004, which applies to violations occurring after March 15, 2004. Copies of the CAA Penalty Policy, Asbestos Penalty Policy, and the December 29, 2008 Inflation Policy are enclosed with this Complaint. In determining the amount of any penalty to be assessed, Section 113(e) of the CAA, 42 U.S.C. § 7413(e), requires EPA to take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. To develop the proposed penalty herein, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's Asbestos Penalty Policy as well as the CAA Penalty Policy, both of which were indexed for inflation in keeping with 40 C.F.R. Part 19.

EPA will consider, among other factors, Respondents' ability to pay to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption

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of Respondents' ability to pay the penalty and to continue in business based on the size of the business and the economic impact of the proposed penalty on the business. The burden of raising and demonstrating an inability to pay rests with Respondents. In addition, to the extent that facts or circumstances unknown to Complainant at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

EPA's applicable penalty policy represents an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed.

The gravity component of the penalty accounts for the substantive nature of the violation. No further adjustment of the penalty appears warranted under the applicable penalty policies at this time. If appropriate, further penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

#### **VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Respondents have the right to request a hearing to contest any matter of law or material fact set forth in the Complaint or the appropriateness of the proposed penalty. To request a

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hearing, Respondents must file a written Answer to this Complaint with the Regional Hearing Clerk, U.S. EPA Region III (3RC00), 1650 Arch Street, Philadelphia, PA 19103-2029 within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondents have any knowledge. If Respondents have no knowledge of a particular factual allegation, the Answer should so state. That statement will be deemed a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondents dispute; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. All material facts not denied in the Answer will be considered as admitted. A copy of the Answer and all other documents filed with the Regional Hearing Clerk related to this Complaint must be sent to Russell S. Swan (3RC10), Assistant Regional Counsel, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103-2029.

If either Respondent(s) fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint as to such Respondent and a waiver of the right to a hearing under Section 113 of the CAA, 42 U.S.C. § 7413. Failure to Answer may result in the filing of a Motion for Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 554, and the Consolidated Rules set forth at 40 C.F.R.

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Part 22. A copy of these rules is enclosed. Hearings will be held in a location to be determined at a later date pursuant to 64 Fed. Reg. 40,138 (see 40 C.F.R. § 22.21(d)).

### **VIII. SETTLEMENT CONFERENCE**

EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CAA. Whether or not a hearing is requested, Respondents may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed civil penalty.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

The attorney assigned to this case is Russell S. Swan, Assistant Regional Counsel. If you have any questions or desire to arrange an informal settlement conference, please contact Mr. Swan at (215) 814-5387 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal counsel, you must have your counsel contact Mr. Swan on your behalf. Please be advised that the Consolidated Rules at 40 C.F.R. § 22.8 prohibit any unilateral discussion of the merits of a case with the Administrator, members of the Environmental Appeals Board, Regional Administrator or the Regional Judicial Officer after the issuance of a Complaint.

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## **IX. QUICK RESOLUTION**

In accordance with 40 C.F.R. § 22.18(a) of the Consolidated Rules, Respondents may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's prehearing exchange. If Respondents pay the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the Consolidated Rules, no Answer need be filed.

If either Respondent(s) wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the Consolidated Rules, the Respondent(s) may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that Respondent(s) agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Russell S. Swan (3RC10), Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules.

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Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the Consolidated Rules, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent(s) shall constitute a waiver of Respondent's right to contest the allegations and to appeal the final order.

Payment of the penalty shall be made by cashier's check, certified check, electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments also shall reference the above case caption and docket number.

All checks shall be made payable to Treasurer, United States of America and shall be mailed to the attention of:

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

Contact: Craig Steffen 513-487-2091  
Eric Volck 515-487-2105

Overnight delivery of a certified or cashiers check, made payable to the United States Treasury, shall be sent to:

U.S. Bank  
Government Lockbox 979077  
Us EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101.

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All payment 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

All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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"

Payments through ACH (also known as REX or remittance express) shall be directed to:

U.S 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: John Schmid 202-8747026  
or REX, 10866-234-5681

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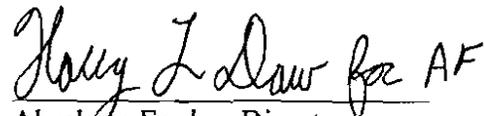
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In addition, there is now an on line, internet payment option, available through the United States Department of Treasury. This payment option can be accessed from [www.pay.gov](http://www.pay.gov). Enter sfo 1.1 in the search field. Open the form and complete required fields.

All payments made by check also shall reference the above case caption and docket number, CAA-03-2010-0111. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Russell S. Swan (3RC10), Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

1/29/2010  
Date

  
Abraham Ferdas, Director  
Land and Chemicals Management Division



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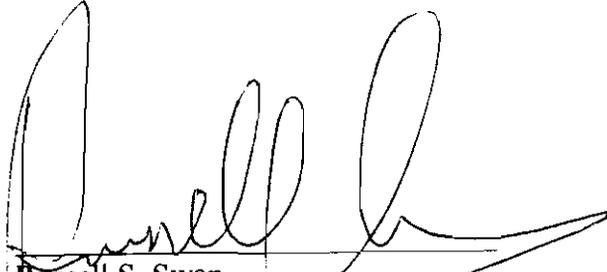
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and

Ms. Sharon Miller, Superintendent  
The School District of the City of York  
31 North Pershing Avenue  
York, PA 17403

Date:

2/1/2010



Russell S. Swan  
Assistant Regional Counsel  
U.S. EPA - Region III