

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Cynthia Catri 1/7/20  
Name of Case Attorney Date

in the ORC (RAA) at 918-1115  
Office & Mail Code Phone number

Case Docket Number TSCA-01-2020-0013

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Eric Gerstenberg  
Clean Harbors of Connecticut, Inc.  
51 Broderick Road  
Bristol, CT 06010

Total Dollar Amount of Receivable \$ 58,338 Due Date: 2/30/20

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

\_\_\_\_\_ Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

RECEIVED

JAN 7 2020  
EPA ORC 105  
Office of Regional Hearing Clerk

**BY HAND**

January 7, 2020

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
5 Post Office Square, Suite 100  
Mail Code : 04-6  
Boston, MA 02109-3912

Re: In the Matter of: Clean Harbors of Connecticut, Inc.  
Docket No. TSCA 01-2020-0013

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

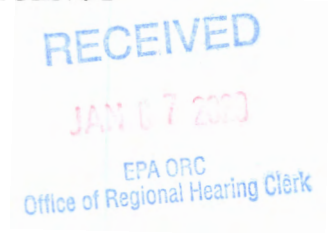
*Cynthia Catri*

Cynthia Catri  
Senior Enforcement Counsel  
EPA Region 1

Enclosure

cc: Eric Gerstenberg, President, CHCI  
William Connors, Sr. Vice President, Compliance  
Clean Harbors, Safety-Kleen, Emerald and Thermo Fluids  
Donald A. Smith, P.E., Sr. Compliance Manager, CHCI

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**



In the Matter of: )  
)  
Clean Harbors of Connecticut, Inc. )  
51 Broderick Road )  
Bristol, CT 06010 )  
)  
Respondent )  
)  
)  
Proceeding under Section 16(a) )  
of the Toxic Substances Control )  
Act, 15 U.S.C. § 2615(a). )

**Docket No.  
TSCA-01-2020-0013**

**CONSENT AGREEMENT AND  
FINAL ORDER**

**CONSENT AGREEMENT**

**I. Introduction**

1. Complainant, the United States Environmental Protection Agency (“EPA”), Region 1, alleges that Respondent, Clean Harbors of Connecticut, Inc., (“Clean Harbors,” or the “Respondent”) has failed to comply with Section 6 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2614, and EPA’s regulations promulgated under this statutory provision at 40 C.F.R. Part 761.

2. Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this Consent Agreement and Final Order (“CAFO”) as provided under 40 C.F.R § 22.13(b) of EPA’s “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits”

(“Consolidated Rules of Practice”). Respondent consents to the terms and issuance of this CAFO without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

## **II. Statutory and Regulatory Authority**

3. Complainant takes this action under the authority of Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for alleged violations of Section 15 of TSCA and 40 C.F.R. Part 761.

4. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), makes it unlawful for any person to fail to comply with any rule promulgated under Section 6 of TSCA, 15 U.S.C. § 2605. Section 15(3) of TSCA, 15 U.S.C. § 2614(3), makes it unlawful for any person to fail to establish or maintain records, or to fail to submit reports, notices, or other information required by this chapter or a rule thereunder.

5. The Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" (the "PCB Regulations"), 40 C.F.R. Part 761, were promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. 2605(e).

6. The PCB Regulations establish “prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.” See 40 C.F.R. § 761.1(a).

7. Pursuant to 40 C.F.R. § 761.1(b)(5), “No person may avoid any provision specifying a PCB concentration by diluting the PCBs, unless otherwise specifically provided.”

8. Forty C.F.R. § 761.207 sets forth the general requirements for manifesting PCB

waste.

9. Forty C.F.R. §§ 761.50 and 761.61 set forth the requirements for the disposal of PCBs, PCB waste, and PCB Items.

### **III. Factual Allegations**

10. Respondent is a corporation incorporated under the laws of the State of Delaware.

11. Respondent owns and operates a facility located at 51 Broderick Road, Bristol, Connecticut (the “facility”).

12. At all times relevant to this CAFO, Respondent is a "person" as defined in 40 C.F.R. § 761.3 and is subject to certain prohibitions set forth in TSCA and the PCB Regulations.

13. On June 17, 2019, Clean Harbors Environmental Services, Inc., (“CHES”) notified the Connecticut Department of Energy and Environmental Protection (“CTDEEP”) and EPA of an “Instance of Non-compliance” at Respondent’s Broderick Road facility. (Letter dated June 17, 2019, to Robert Isner, Director, Waste Engineering and Enforcement Division, CTDEEP, from Donald A. Smith, Sr. Environmental Compliance Manager, CHES). The facility has been issued a RCRA Part B/Non-RCRA Permit Renewal by CTDEEP (Permit No. DEEP/HWM-017-004 and a TSCA PCB Commercial Storage Exemption permit. Conditions of the RCRA permit requires Respondent to report all instances of non-compliance. Significant statements in the June 17, 2019, letter include the following:

- a. On April 13, 2019, CHES, through its field service division (Clean Harbors Field Service), responded to an Eversource transformer spill cleanup in Lee,

Massachusetts (hereinafter referred to as the “Lee spill”) (Note: This cleanup location is also referred to as 14 Park Street, Lee, MA in manifest No. 011905558 FLE, dated April 13, 2019, which is Attachment I to the June 17, 2019 letter). Oil from the leaking transformer at the spill location was tested for PCBs using a Dexsil Clor-N-Oil field testing kit. The oil passed the field screening test. In addition to the field screening test, Tighe & Bond, the environmental consultant for Eversource, collected a sample of the transformer oil for laboratory analysis by Con-Test Analytical Laboratory (“Con-Test”). Based on the results of the field screening test, but prior to receiving the laboratory results, Clean Harbors Field Service began the cleanup.

- b. Approximately 3,558 pounds of soil impacted from the transformer spill was excavated into the Clean Harbors Field Service truck at the Lee spill. Eversource then requested that Clean Harbors Field Service respond to another transformer spill (described in the June 17, 2019 letter as 70 gallons of dielectric fluid) in Springfield, Massachusetts (the “Springfield spill”), that had occurred after the response actions for the Lee spill had begun. The Clean Harbors Field Service truck responding to the Lee spill, which contained the 3,558 pounds of impacted soil, was sent directly from the Lee spill location to Springfield spill location (Lee spill Eversource manifest No. 011905558FLE, Non DOT Regulated Material, (Oily Solids 2-49 ppm), dated April 13, 2019, Attachment I to the June 17, 2019

letter). An additional 8,302 pounds of impacted soil, excavated during the Springfield spill, was added to the 3,558 pounds of excavated soil already in the truck from the Lee spill cleanup. (Springfield spill Eversource manifest No. 011905557FLE, Non DOT Regulated Material, (Oily Solids 2-49 ppm), dated April 14, 2019, Attachment I to the June 17, 2019 letter.)

- c. On April 15, 2019, the combined impacted soil in the Clean Harbors Field Service truck was shipped to Respondent's facility, where, upon arrival, a composite sample of the combined load was collected for analysis at the facility lab. The analytical data did not indicate the presence of PCBs. (Attachment II to the June 17, 2019, letter.) Respondent off-loaded the material into a mix tub at its facility, and the comingled material, approximately 17 tons, was shipped by Respondent on NON-HAZARDOUS SPECIAL WASTE & ASBESTOS MANIFEST No. 5223561, dated April 15, 2019, to its ultimate disposal destination, Allied Waste Niagara Falls Landfill LLC, in New York. (Attachment II to the June 17, 2019 letter.)
- d. On April 16, 2019, Respondent was notified by Clean Harbors Field Service that the Con-Test laboratory analytical results for the transformer oil collected on April 13, 2019, at the Lee spill, as described in subparagraph a. above, indicated PCBs were present at a concentration of 350 ppm. (Attachment III to the June 17, 2019 letter.)

14. Forty C.F.R. § 761.50(b)(3)(ii) states that spilled PCB waste, where the concentration of PCBs in the spill was over 50 ppm (“>50 ppm”), must be disposed of in accordance with either 40 C.F.R. § 761.61 or the PCB Spill Cleanup Policy, found at 40 C.F.R. Part 761, Subpart G.

15. Pursuant to 40 C.F.R. Subpart G - PCB Spill Cleanup Policy § 761.125(a)(2), disposal of cleanup debris and materials (which includes PCB remediation waste) must be done in accordance with subpart D. The disposal of PCB remediation waste is regulated in subpart D under § 761.61. Under § 761.61, there are three cleanup options for PCB remediation waste, including the self-implementing disposal requirements of § 761.61(a) for low impact releases, the performance-based disposal requirements of § 761.61(b), and the risk-based approval option of § 761.61(c).

16. At all times relevant to this CAFO, Respondent did not seek to conduct the Lee spill cleanup described in paragraph 13 above pursuant to the requirements of 40 C.F.R. § 761.61(a) – Self-implementing regulations or 40 C.F.R. § 761.61(c) – Risk-based regulations.

17. A cleanup under the 40 C.F.R. Subpart G - PCB Spill Cleanup Policy or under 40 C.F.R. § 761.61(b) would require the PCB remediation waste to be manifested as PCB regulated waste  $\geq$  50 ppm and disposed of at a TSCA PCB disposal facility. See 40 C.F.R. § 761.207(a).

18. Pursuant to 40 C.F.R. § 761.61(b), PCB remediation waste must be disposed of by one of the following methods: in a high temperature incinerator approved under § 761.70(b), an alternate disposal method approved under § 761.60(e), a chemical waste landfill approved under



§761.75, or a facility with a coordinated approval issued under §761.79.

19. Allied Waste Niagara Falls Landfill LLC, Niagara Falls, New York is not an approved TSCA PCB disposal facility.

**Failure to Properly Manifest**

20. At all times relevant to this CAFO, the soils impacted by the transformer oil containing PCB concentrations of 350 ppm at the Lee spill (“the Lee Soils”) met the definition of “PCB remediation waste” as defined at 40 C.F.R. § 761.3. As described in paragraph 13(b), the Lee Soils were then diluted by being mixed with other collected soils, in violation of the anti-dilution prohibition of 40 C.F.R. § 761.1(b)(5).

21. As identified in paragraph 17 above, the PCB remediation waste was required to be manifested as PCB regulated waste  $\geq$  50 ppm.

22. Forty C.F.R. § 761.207 provides, in part, that a generator who relinquishes control over PCB wastes by transporting or offering to transport by his/her own vehicle or by the vehicle owned by another person, PCB waste for commercial off-site storage or disposal must prepare a manifest on EPA Form 8700-22 on which such generator specifies, for each bulk load of PCBs, the identify of such waste, the earliest date of removal from service for disposal, and the weight in kilograms of the PCB waste.

23. On April 15, 2019, Respondent shipped approximately 17 tons of PCB waste, including the soil containing PCB concentrations of 350 ppm from the Lee spill (collectively the “PCB Waste Load”) from its facility on NON-HAZARDOUS SPECIAL WASTE &

ASBESTOS MANIFIEST No. 5223561 for offsite disposal and not on EPA Manifest Form 8700-22.

24. Accordingly, Respondent's failure to prepare an EPA Manifest Form 8700-22 for the PCB Waste Load in accordance with the specifications and requirements of 40 C.F.R. § 761.207(a) is a violation of section 15 of TSCA and 40 C.F.R. § 207(a).

#### **Improper Disposal**

25. Pursuant to 40 C.F.R § 761.3, PCB waste(s) is defined to mean those PCBs and PCB Items that are subject to the disposal requirements of subpart D of 40 CFR Part 761.

26. Pursuant to 40 C.F.R. § 761.50(b)(3)(ii), PCB remediation waste spilled after July 3, 1979, where the concentration of the spill or release is >50 ppm, must be disposed of in accordance with the PCB Spill Cleanup Policy or 40 C.F.R. § 761.61. As set out in paragraph 15, above, the Spill Cleanup Policy specifies that disposal of cleanup debris and materials shall be disposed of pursuant to subpart D (i.e., § 761.61 for remediation wastes).

27. As identified in paragraph 17 above, the PCB Waste Load was required to be disposed of as PCB regulated waste  $\geq 50$  ppm.

28. Pursuant to 40 C.F.R. § 761.61(b) (which applies because Respondent did not avail itself of the other cleanup options in § 761.61), PCB remediation waste must be disposed of by one of the following methods: in a high temperature incinerator approved under § 761.70(b), an alternate disposal method approved under § 761.60(e), a chemical waste landfill approved under §761.75, or a facility with a coordinated approval issued under §761.77.

29. Respondent's disposal of PCB remediation waste at Allied Waste Niagara Falls Landfill, LLC, a non-TSCA approved facility, was not effected in accordance with 40 C.F.R. § 761.61(b).

30. Disposal of PCB remediation waste in a manner not authorized under 40 C.F.R. § 761.61(b) is a violation of 40 C.F.R. § 761.50(b)(3).

31. At all times relevant to this CAFO, Respondent did not properly dispose of PCB remediation waste in accordance with the requirements of 40 C.F.R. § 761.50(b)(3).

#### **IV. Terms of Consent Agreement**

32. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, successors and assigns.

33. For the purposes of this CAFO, Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the CAFO and also waives any defenses it may have as to jurisdiction and venue.

34. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.

35. Respondent also hereby waives its right to appeal the Final Order accompanying this Consent Agreement.

36. Without admitting or denying the specific factual allegations in this CAFO, Respondent hereby consents to the terms and the issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set forth in this CAFO.

37. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), together with the Civil Monetary Penalty Inflation Rule (40 C.F.R. Part 19) authorizes the assessment of a civil administrative penalty of up to \$39,873 per day for each violation. EPA has compromised the maximum civil penalty of \$39,873 per day per violation authorized in this matter, applying the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and the 1990 Polychlorinated Biphenyls (PCB) Penalty Policy” (April 9, 1990) (“PCB Penalty Policy”), issued by EPA. Pursuant to TSCA § 16(a)(1)(C), 15 U.S.C. § 2615(a)(1)(C), EPA may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. In light of the particular facts and circumstances of this matter, with specific reference to the statutory factors of Section 15(a) of TSCA, 15 U.S.C. § 2615(a), and considering the nature, circumstances, extent, and gravity of the violations, Respondent’s cooperative attitude, and such other matters as justice requires, EPA has determined that it is fair and proper to assess a civil penalty for violations alleged in this Agreement in the total amount of **\$58,338**. Respondent agrees to pay the civil penalty of **\$58,338** (“EPA Penalty”) within 30 calendar days of the Effective Date of this Agreement.

Penalty Payment

38. Respondent shall pay the total penalty amount of **\$58,338** in the manner described below:

- a. The payment shall be made in a single payment of **\$58,338** due within **30** calendar days of the Effective Date of this CAFO. This CAFO shall become

effective on the day it is filed with the Regional Hearing Clerk. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day.

- b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference “*In the Matter of: Clean Harbors of Connecticut, Inc. Consent Agreement and Final Order, EPA Region 1,*” Respondent’s name and address, and the EPA Docket Number of this action (“TSCA-01-2020-0013”), and shall be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

**If remitted by regular U.S. mail:**

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

**If remitted by any overnight commercial carrier:**

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

**If remitted by wire transfer:** any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

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 "D68010727  
Environmental Protection Agency"

**If remitted on-line with a debit card, credit card, or bank account transfer:**

No user name, password, or account number is necessary for this option. On-line payment can be accessed via [WWW.PAY.GOV](http://WWW.PAY.GOV), entering 1.1 in the form search box on the left side of the screen to access the EPA's Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting "submit data," entering the relevant debit card, credit card, or bank account information.

39. At the time of payment, a copy of the check (or notification of any other type of payment) shall also be sent to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
One Post Office Square  
Suite 100 (ORC 04-6)  
Boston, MA 02109-3912

and

Cynthia Catri  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
One Post Office Square  
Suite 100 (Mail Code 04-2)  
Boston, MA 02109-3912

40. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on the civil penalty if it is not paid within 30 calendar days of the effective date of this CAFO. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees in accordance with 31 C.F.R. § 901.9(c). In addition, a penalty charge of six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due in accordance with 31 C.F.R. § 901.9(d). Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day that payment is due.

41. Conditions: As a condition of settlement, Respondent certifies that it is operating in compliance with the requirements of TSCA and 40 C.F.R. Part 761.

42. All penalties, interest, and other charges imposed in this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for federal tax purposes.

43. Compliance with this CAFO, including payment of any penalties, interest, or other charges, shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and does not waive, suspend, or modify the responsibility of Respondent to comply with such laws and regulations.

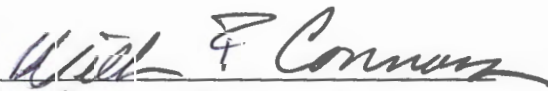
44. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties pursuant to Section 16 of TSCA for the specific violations alleged in this CAFO. Nothing in this CAFO shall prevent EPA from taking any necessary action to address conditions at Respondent's facility which may present an imminent and substantial endangerment to public health or the environment nor shall this CAFO be construed to, nor is it intended to operate in any way to resolve any criminal liability or any other civil liability of Respondent.

45. Except as described in paragraph 40, each party shall bear its own costs and fees in this proceeding, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

46. Each undersigned representative of a party to this CAFO certifies that she or he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to it.

THE UNDERSIGNED enter into this CAFO on behalf of her/his respective party for: In The Matter of Clean Harbors of Connecticut, Inc., Docket No. TSCA-01-2020-0013.

For Clean Harbors of Connecticut, Inc.:

  
Name: *William F. Connors*  
Title: *Sr. Vice President, Compliance*  
Company: *Clean Harbors of Connecticut, Inc.*

12/20/2019  
Date

*In the Matter of Clean Harbors of  
Connecticut, Inc.  
EPA Docket No. TSCA-01-2020-0013*

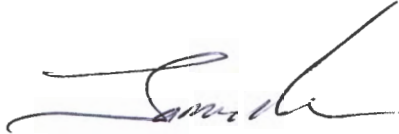
*Consent Agreement and Final Order*

Page 14 of 17



THE UNDERSIGNED enter into this CAFO on behalf of her/his respective party for: In The Matter of Clean Harbors of Connecticut, Inc., Docket No. TSCA-01-2020-0013

For U.S. EPA, Region I:



\_\_\_\_\_  
for  
Karen McGuire  
Director, Enforcement and Compliance Assurance Division  
U.S. EPA, Region I

12/26/19

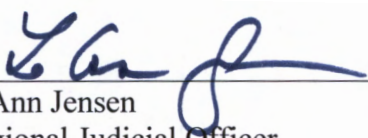
\_\_\_\_\_  
Date

**FINAL ORDER**

47. Pursuant to 40 C.F.R. § 22.18(b)(3) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

48. Respondent, as specified in the Consent Agreement, is hereby ordered to comply with the terms of the Consent Agreement, effective on the date on which it is filed with the Regional Hearing Clerk.

SO ORDERED THIS 6<sup>th</sup> DAY OF January 2020

  
\_\_\_\_\_  
LeAnn Jensen  
Regional Judicial Officer  
U.S. EPA, Region 1

**CERTIFICATE OF SERVICE**

I certify that the foregoing "Consent Agreement" and "Final Order", in the Matter of Clean Harbors of Connecticut, Inc., Docket No. TSCA 01-2020-0013, were sent to the following persons on the date noted below:

Original and One Copy  
(Hand-Delivered):

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square  
Suite 100, ORC 04-6  
Boston, MA 02109-3912

Copy, including  
(First-class mail)

Mr. Donald A. Smith, P.E.  
Senior Compliance Manager  
Clean Harbors Environmental Services, Inc.  
Clean Harbors of Connecticut, Inc.  
51 Broderick Road  
Bristol, CT 06010

William F. Connors,  
Sr. Vice President, Compliance  
Clean Harbors  
42 Longwater Drive  
Norwell, MA 02061

Eric Gerstenberg, President  
Clean Harbors of Connecticut, Inc.  
42 Longwater Drive  
Norwell, MA 02061

Dated: 1/7/2020

Cynthia Catri  
Cynthia Catri  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square  
Suite 100, Mail Code 04-2  
Boston, MA 02109-3912