



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007

APR 10 2018

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Article Number 7011 0470 0002 3745 4409

Mr. Thomas Batterbee, Vice President and General Manager
Vulcraft of New York, Inc.
621 Main Street,
Chemung, New York 14825

Re: In the Matter of Vulcraft of New York, Inc.
TRI Facility ID.: 14825VLCRF5362R
Docket No. EPCRA-02-2018-4203

Dear Mr. Batterbee:

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, Region 2.

Please note that the thirty (30) day period for the 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 the company's payment check to the Complainant, as detailed in the Consent Agreement.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John Gorman".

John Gorman, Chief
Pesticides and Toxic Substances Branch

Enclosure

cc: Mr. Henry Wilkie
Manifest & Reporting
Bureau of Program Management
Division of Environmental Remediation
NY State Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, New York 12233-7252

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
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In the Matter of :
:
Vulcraft of New York, Inc. :
:
Respondent. :
:
:
Proceeding under Section 325(c) of Title III :
of the Superfund Amendments and Reauthorization Act :
-----X

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NUMBER
EPCRA-02-2018-4203

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 (hereinafter, "Consolidated Rules") 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 ("CAFO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that Vulcraft of New York, Inc. ("Respondent" or "Vulcraft") located at 621 Main Street,

Chemung, New York 14825 (hereinafter, "Respondent's facility"), 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 Vulcraft agree that settling this matter by entering into this 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 Complainant's findings of fact and conclusions of law based upon information EPA obtained subsequent to an inspection letter of inquiry issued January 12, 2017 in lieu of an on-site inspection.

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1. Respondent is Vulcraft of New York, Inc. (TRI FACILITY ID: 14825VLCRF5362R).
2. At all times relevant hereto, Respondent has maintained a facility located at 621 Main Street, Chemung, New York 14825, which is the subject of this Consent Agreement and Final Order.
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 332312 (Fabricated Structural Metal Manufacturing).
8. Respondent 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. Certain Glycol Ethers (Chemical Abstract No.: N230) is a listed chemical category under 40 C.F.R. § 372.65.
10. Respondent was required to submit a timely, complete, and correct TRI Form R report for Certain Glycol Ethers for calendar year 2015 on or before July 1, 2016 to the Administrator of the EPA and to the State of New York.
11. Respondent submitted a Form R report for Certain Glycol Ethers for calendar year 2015 on January 17, 2017. The TRI Form R report was 200 days late.
12. Respondent's failure to submit a timely TRI Form R report for Certain Glycol Ethers for 2015 to the EPA constitutes a failure to comply with Section 313 of EPCRA 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

13. Lead (Chemical Abstract No.: 7439-92-1) is a listed chemical under 40 C.F.R. § 372.65.

14. Respondent was required to submit a timely, complete, and correct TRI Form R report for Lead for calendar year 2015 on or before July 1, 2016 to the Administrator of the EPA and to the State of New York.

15. Respondent submitted a Form R report for Lead for calendar year 2015 on January 17, 2017. The Form R report was 200 days late.

16. Respondent's failure to submit a timely TRI Form R report for Lead to the EPA 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 at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms.

1. Respondent certifies herein that the EPA Toxic Release Inventory Form R reports 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 each facility as set forth in the "Findings of Fact and Conclusions of Law" section, above, and (b) neither admits nor denies the specific factual allegations and assertions set forth in the "Findings of Fact and Conclusions of Law" section, above.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **SIX THOUSAND EIGHT HUNDRED FIFTY DOLLARS (\$6,850.00)** 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 the following.

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

Alternatively, payment may be made electronically by Fedwire directed to the Federal Reserve Bank of New York. 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: 68010727;
- 4) ABA number: 021030004;
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency";
- 6) Name of Respondent; and
- 7) Docket Number.

Payment must be received at the above address (or account of EPA) on or before **30 calendar days** from the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the "due date").

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 or the U.S. Department of the Treasury 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 the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. Execution of this Consent Agreement shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents

to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

5. Respondent agrees to undertake the following Supplemental Environmental Project ("SEP"), pursuant to the "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 – Emergency Planning and Preparedness SEP

Respondent agrees to undertake the following Emergency Planning and Preparedness SEP, which the parties agree is intended to improve the Chemung Volunteer Fire Company's ability to respond to hazardous materials emergencies in the surrounding communities. Respondent will donate a 2011 Chevrolet Silverado 3500 HD Crew Cab 4-wheel drive pickup truck (VIN: 1GC4K1C85BF157073) with an independently-appraised value of at least \$28,911 to the fire company located at 679 Main Street, Chemung, NY for responding to hazardous materials releases. Vulcraft shall provide documentation to EPA of this vehicle donation.

Based on a 75% cost mitigation factor (SEP cost of \$28,911 x 0.75), the SEP has a mitigation value of \$21,683. The cash portion of the proposed penalty is required by the policy to be at least 25% of the adjusted gravity based cash penalty of \$27,400. Therefore, \$27,500 x 0.25 = \$6,850 cash penalty in addition to the SEP donation.

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 donate the above-listed equipment within three months of the date of signature of the Final Order at the end of this document. If additional time is needed, Respondent will contact EPA for approval of an extension of time.

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.

6. Respondent shall submit a SEP Completion Report to EPA. The report shall contain the following information.

- (i) Respondent shall submit a SEP Completion Report three months after the truck donation to the Chemung Volunteer Fire Company.
- (ii) The SEP Completion Report will include a list of all items and their costs or values, and documentation of completion of the SEP.

7. Respondent agrees that failure to submit 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 10, below.

8. 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.

9. a. Following receipt of the report described in paragraph 6, 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 10 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.

10. 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 5, 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 5, 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 10, Respondent shall pay a stipulated penalty to the United States in the amount of \$21,683. This penalty amount is based on the Respondent being granted a 75% 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 such that at least \$21,683 was spent plus 25%.

- (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 report is acceptable shall be at the sole discretion of EPA.

c. A stipulated penalty under subparagraph 10.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.

11. Complainant, at their discretion, may waive any stipulated penalties specified above.

12. 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."

13. 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.

14. 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.

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 hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions or allegations contained in the "Findings of Fact and Conclusions of Law" section, above.

17. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action brought: a) by the United States, including EPA, to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this Consent Agreement and Final Order, and may subject Respondent to a civil judicial action by the United States to enforce the

provisions of this Consent Agreement and Final Order. Respondent further waives any right it may have to appeal this Consent Agreement and the accompanying Final Order.

18. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. 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 terms and conditions set forth in this Consent Agreement.

20. Each party shall bear its own costs and fees in this matter.

21. Any responses, documentation, and other communications submitted to EPA in connection with this Consent Agreement shall be sent to the following.

James Crossmon, TRI Coordinator
U.S. Environmental Protection Agency, Region 2
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-225
Edison, New Jersey 08837

Unless the above-named EPA contact is later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following.

Mr. Thomas Batterbee, Vice President and General Manager
Vulcraft of New York, Inc.
621 Main Street,
Chemung, New York 14825

22. 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:

Vulcraft of New York, Inc.

BY: Thomas J. Batterbee
Authorizing Signature

NAME: THOMAS J. BATTERBEE
(PLEASE PRINT)

TITLE: VP AND GENERAL MGR

DATE: 3/16/2018

COMPLAINANT:

Dore LaPosta

Dore LaPosta, Director

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

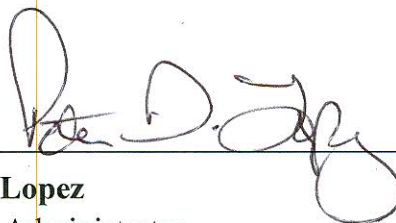
DATE: 3/30/18

In the Matter of Vulcraft of New York, Inc.

Docket Number EPCRA-02-2018-4203

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 Vulcraft of New York, Inc., bearing Docket No. EPCRA-02-2018-4203. 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).



Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

DATE: _____

4/4/18

In the Matter of Vulcraft of New York, Inc.

Docket No. EPCRA-02-2018-4203

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:

Thomas Batterbee, Vice President and General Manager
Vulcraft of New York, Inc.
621 Main Street,
Chemung, New York 14825

Copy by Mail:

Mr. Henry Wilkie
Manifest & Reporting
Bureau of Program Management
Division of Environmental Remediation
NY State Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, New York 12233-7252

Dated: 4/10/2018



Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-225)
Edison, New Jersey 08837-3679