



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

**OVERNIGHT MAIL**  
**CONFIRMATION OF RECEIPT REQUESTED**

JUN 20 2011

Alan S. Miller, Esquire  
Picadio Sneath Miller & Norton, P.C.  
4710 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219-2702

Re: Consent Agreement and Final Order  
In Re M&D Partners d.b.a. M&D Realty, Docket No. TSCA-03-2011-0146

Dear Mr. Miller:

The enclosed Consent Agreement signed by the parties and Final Order signed by the Regional Judicial Officer settle violations of the Estate Notification and Disclosure Rule for Lead-Based Paint, 40 C.F.R. Part 745, Subpart F. This document also settles the corresponding violations of Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d(b)(5), and Section 409 of the Toxic Substances Control Act, 15 U.S.C. § 2689. Respondent M&D Partners, d.b.a. M&D Realty, allegedly violated these provisions when leasing properties in Pittsburg, Pennsylvania.

This Agreement is governed by §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, 40 C.F.R. Part 22. Please refer to the CAFO for further details.

Sincerely,

A handwritten signature in black ink, appearing to read "Wojciech Jankowski".

Wojciech Jankowski  
Office of Regional Counsel

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

<b>IN THE MATTER OF:</b>	:	<b>CONSENT AGREEMENT AND FINAL ORDER</b>
	:	
	:	
<b>M&amp;D PARTNERS, D.B.A. M&amp;D REALTY P.O. Box 81538 Pittsburgh, PA 15217</b>	:	<b>U.S. EPA Docket No.: TSCA-03-2011-0146</b>
	:	
	:	
	:	<b>Proceeding under Sections 409 and 16(a) of the Toxic Substances Control Act, 15 U.S.C. §§ 2689 and 2615(a)</b>
	:	
	:	
<b>Respondent.</b>	:	
	:	

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant" or "EPA" or "Agency") and M&D Partners, d.b.a. M&D Realty ("Respondent"), pursuant to Sections 409 and 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2689 and 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).
2. The violations cited herein pertain to the Respondent's alleged failure, as an owner and lessor of certain housing, to comply with requirements of 40 C.F.R. Part 745, Subpart F, Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act ("RLBPHRA"), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.
3. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA's civil claims alleged in Section IV ("Findings of Fact and Conclusions of Law") of this Consent Agreement.

**II. JURISDICTION**

4. The U.S. Environmental Protection Agency and the Office of Administrative Law Judges of the EPA have jurisdiction over the above-captioned matter pursuant to Sections 16 and

409 of TSCA, 15 U.S.C. §§ 2615 and 2689, Section 1018 of Title X of the RLBPHRA, 42 U.S.C. § 4852d, 40 C.F.R. Part 745, Subpart F, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the Consolidated Rules of Practice.

### **III. GENERAL PROVISIONS**

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO".
6. Except as provided in Paragraph 5 of this Consent Agreement, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
9. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
10. Each Party to this Consent Agreement shall bear its own costs and attorney's fees.

### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Pursuant to RLBPHRA Section 1004(27), 42 U.S.C. § 4851b(27), TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term "target housing" means "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling."
13. Pursuant to RLBPHRA Section 1004(23), 42 U.S.C. § 4851b(23), TSCA Section 401(14), 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term "residential dwelling" means either a single family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

14. Respondent at all times relevant to the violations alleged in this Consent Agreement, was an "owner" and the "lessor" of the following "residential dwellings", as those terms are defined at 40 C.F.R. § 745.103, located in Pittsburgh, Pennsylvania at:

- (1) 5851 Morrowfield Ave, Apt 2, leased on 3/28/2008
- (2) 5851 Morrowfield Ave, Apt 8, leased on 7/29/2004
- (3) 5851 Morrowfield Ave, Apt 11, leased on 10/1/2006
- (4) 5600 Fifth Ave, Apt A-313, leased on 3/17/2008
- (5) 5600 Fifth Ave, A-213, leased on 4/30/1991
- (6) 5600 Fifth Ave, Apt D-107, leased on 6/6/2007
- (7) 5600 Fifth Ave, Apt D-207, leased on 1/9/2006
- (8) 5600 Fifth Ave, Apt D-2, leased on 6/12/2008
- (9) 5604 Fifth Ave, Apt B-100, leased on 5/28/2008
- (10) 5604 Fifth Ave, Apt B-202, leased on 7/31/1993
- (11) 5604 Fifth Ave, Apt C-104, leased on 4/7/2009
- (12) 5604 Fifth Ave, Apt C-305, leased on 6/1/1993
- (13) 5604 Fifth Ave, Apt C-106, leased on 4/28/2008
- (14) 5604 Fifth Ave, Apt C-306, leased on 4/28/2008
- (15) 5640 Hobart St, # 4, leased on 1/28/2002
- (16) 5640 Hobart St, #8, leased on 6/16/2008

15. Each lease transaction identified above is hereinafter referred to as "Lease Transaction X," where X is the corresponding subsection of Paragraph 14.

16. Each of the residential dwellings referred to above was constructed prior to 1978 and is "target housing" as that term is defined at 40 C.F.R. § 745.103. Each such residential dwelling is hereinafter referred to as the "Target Housing."

17. Pursuant to 40 C.F.R. § 745.103, the term "lead-based paint" means "paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter [mg/cm<sup>2</sup>] or 0.5 percent by weight."

18. None of the lease agreements associated with the Target Housing involved:

- (1) a "[s]ale[]" of target housing at foreclosure," as provided at 40 C.F.R. § 745.101(a);
- (2) a "[l]ease[]" of target housing . . . found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program," as provided at 40 C.F.R. § 745.101(b);
- (3) a "[s]hort-term lease[]" of 100 days or less, where no lease renewal or extension can occur," as provided at 40 C.F.R. § 745.101 (c); or
- (4) a "[r]enewal[]" of [an] existing lease[] . . . in which the lessor has previously disclosed all information required under § 745.107 and where no new information described in § 745.107 has come into the possession of the lessor," as provided at 40 C.F.R. § 745.101(d).

19. Lessees moved into, and resided at, each Target Housing unit during the term of the lease agreement for each such Target Housing.
20. At the time that the relevant lease agreement for each Target Housing was executed, and at all times relevant to the violations alleged herein, the lessees of such Target Housing units were "lessees" of the Target Housing, as those terms are defined in 40 C.F.R. § 745.103.

#### **COUNTS 1-16**

21. The allegations contained in Paragraphs 1 through 20 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
22. Pursuant to 40 C.F.R. § 745.113(b)(1), the lessor is required to include, either as an attachment to or within the contract for lease, a Lead Warning Statement in accordance with language provided therein.
23. The contract for Lease Transactions 1-16 did not include, as an attachment to or within such contract, a Lead Warning Statement containing the language set forth in, and required by, 40 C.F.R. § 745.113(b)(1).
24. Respondent's failure to perform the activities required of a lessor under 40 C.F.R. § 745.113(b)(1) in regards to Lease Transactions 1-16 constitutes sixteen separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

#### **COUNTS 17-31**

25. The allegations contained in Paragraphs 1 through 24 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
26. Pursuant to 40 C.F.R. § 745.113(b)(2), the lessor is required to include, either as an attachment to or within the contract for lease, a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or lessor's lack of knowledge of such presence.
27. The contracts for Lease Transactions 1-10 and 12-16 did not include, as an attachment to or within such contracts, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards in the Target Housing or a statement indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards in the Target Housing.
28. Respondent's failure to perform the activities required of a lessor under 40 C.F.R. § 745.113(b)(2) in regards to Lease Transactions 1-10 and 12-16, constitutes fifteen separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

### COUNTS 32-46

29. The allegations contained in Paragraphs 1 through 28 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
30. Pursuant to 40 C.F.R. § 745.113(b)(3), the lessor is required to include, either as an attachment to or within the contract for lease, a list of records or reports which were available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee or to indicate that no such records or reports were available.
31. The contracts for Lease Transactions 1-10 and 12-16 did not include, as an attachment to or within each such contract, a list of records or reports which were available to the lessor pertaining to lead-based paint or lead-based paint hazards in the Target Housing that were provided to the lessees or did not indicate that no such records or reports were available.
32. Respondent's failure to perform the activities required of a lessor under 40 C.F.R. § 745.113(b)(3) in regards to Lease Transactions 1-10 and 12-16, constitutes fifteen separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

### COUNTS 47-61

33. The allegations contained in Paragraphs 1 through 32 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
34. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor is required to provide the lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA #747-K- 94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.
35. Respondent did not provide the required lead hazard pamphlet to the lessees in Lease Transactions 1-10 and 12-16 before the lessees were obligated under a contract to lease the target housing.
36. Respondent's failure to perform the activities required of a lessor under 40 C.F.R. § 745.107(a)(1) in regards to Lease Transactions 1-10 and 12-16, constitutes fifteen separate violations of RLBPHRA Section 1018(b)(5), 42 U.S.C. § 4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.

### V. CIVIL PENALTY

37. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of fifty five thousand two hundred sixty five dollars (\$55,265) which Respondent shall be liable to pay in accordance with the terms set forth below. To avoid the assessment of interest, administrative costs and late payment penalties described in

Paragraphs 40-43, Respondent must timely pay the civil penalty in two half installments: the FIRST at THIRTY DAYS and the SECOND at SIXTY DAYS after the date on which a copy of the signed and executed CAFO is mailed or hand-delivered to Respondent.

38. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), i.e., the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent's, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's Section 1018 — Disclosure Rule Enforcement Response and Penalty Policy ("December 2007 ERPP"). EPA also has considered the Adjustment of Civil Monetary Penalties for Inflation, as set forth in 40 C.F.R. Part 19, and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule ("2004 Skinner Memorandum"). Pursuant to 40 C.F.R. Part 19, penalties for Disclosure Rule violations occurring after January 30, 1997 were increased by 10% to account for inflation, thereby adjusting the statutory maximum penalty to \$11,000. While the statutory maximum penalty for Disclosure Rule violations remains at \$11,000, 40 C.F.R. Part 19 and the 2004 Skinner Memorandum provide that penalties for Disclosure Rule violations occurring after March 15, 2004, are to be increased by an additional 17.23% to account for subsequent inflation, not to exceed the aforementioned \$11,000 limitation. The December 2007 ERPP recognizes and incorporates the above penalty inflation adjustment requirements in its penalty calculation methodology, guidance and appended matrices.

39. Payment of the civil penalty amount described in Paragraph 37 above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference its name and address, and the Docket Number of this action, i.e., TSCA-03-2011-0146;
- b. All checks shall be made payable to "United States Treasury";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Eric Volck 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
U.S. EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer 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"

- g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US 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: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV



Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

- j. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty described in Paragraph 37 shall be sent simultaneously to:

Wojciech Jankowski  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
and  
Ms. Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

40. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
41. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
42. The costs of EPA's administrative handling of overdue debts is charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

43. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11 (c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

44. Respondent agrees not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

#### **VI. EFFECT OF SETTLEMENT**

45. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA and/or the RLBPHRA for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

#### **VII. OTHER APPLICABLE LAWS**

46. Nothing in this CAFO shall relieve Respondent of his obligation to comply with all applicable federal, state, and local laws and regulations.

#### **VIII. CERTIFICATION OF COMPLIANCE**

47. Respondent certifies to Complainant, upon investigation, to the best of his knowledge and belief, that Respondent is currently in compliance with the provisions of TSCA, the RLBPHRA and 40 C.F.R. Part 745, Subpart F at the Target Properties.

#### **IX. RESERVATION OF RIGHTS**

48. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18 (c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA, the RLBPHRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the EPA Regional Hearing Clerk.

#### **X. PARTIES BOUND**

49. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent, and Respondent's officers and directors (in their official capacity), successors and assigns. By his signature below, the person signing this Consent Agreement on behalf of Respondent acknowledges that he is fully authorized to enter into

this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

**XI. EFFECTIVE DATE**

50. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

**XII. ENTIRE AGREEMENT**

51. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

M&D Partners, d.b.a. M&D Realty

Date:

5-23-2011

Jocelyn Lehman

Jocelyn Lehman,  
General Partner

For Complainant

U.S. Environmental Protection Agency, Region 3

Date:

5/26/2011

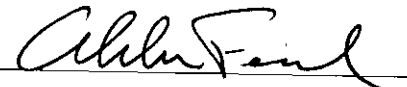


Wojciech Jankowski  
Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date:

6/3/11



Abraham Ferdas, Director  
Land and Chemicals Division  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029





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

JUN 20 2011 5:01

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*In re: M&D Partners d.b.a. M&D Realty*  
Docket No. TSCA-03-2011-0146

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 20, 2011, the original of the Consent Agreement and Final Order for this matter was filed with the Regional Hearing Clerk, EPA Region III, and that on June 21, 2011, a true and correct copy of the Consent Agreement and Final Order was sent via UPS Next Day Air to the following person at the address shown below:

Alan S. Miller, Esquire  
Picadio Sneath Miller & Norton, P.C.  
4710 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219-2702

Date:

6/21/2011

Wojciech Jankowski  
Assistant Regional Counsel  
EPA Region III