

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

Philadelphia, Pennsylvania 19103-2029

In the Matter of:	:	U.S. EPA-REGION 3-RHC
	:	FILED-25JUL2019AM10:41
	:	Proceeding to Assess Class I
	:	Administrative Penalty Under
	:	Section 309(g) of the Clean Water Act
Librandi's Plating	:	
93 Airport Drive	:	Docket No. CWA-03-2019-0088
Middletown, PA 17057	:	
	:	CONSENT AGREEMENT
	:	AND FINAL ORDER
Respondent.	:	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III ("Complainant" or "EPA") and Librandi's Plating ("Respondent" or "Librandi's"), pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), 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 Code of Federal Regulations ("C.F.R.") Part 22, including Subpart I. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against Respondent under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

II. JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

III. GENERAL PROVISIONS

5. For the purpose of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5, Respondent neither admits nor denies the specific factual allegations 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 the purpose of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(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.
13. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the assessment of administrative penalties against any person who violates any pretreatment standard issued under Section 307 for the introduction of pollutants into a treatment work in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$25,000.

14. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), for any person who violates any pretreatment standard issued under Section 307 of the CWA, 33 U.S.C. § 1317, for the introduction of pollutants into a treatment work, where the violation occurs after November 2, 2015, and the penalty is assessed on or after January 15, 2019, the maximum administrative penalty per day for each day of violation is up to \$21,933, up to a total penalty amount of \$54,833. (Part 19 also specifies the maximum penalties applicable to other time periods.)

15. Section 301(a) of the Act, 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant by any person, except in compliance with the Act, including Section 307 of the Act.

16. Sections 307(b) and (c) of the Act, 33 U.S.C. § 1317(b) and (c), direct the EPA Administrator to promulgate regulations establishing pretreatment standards for the introduction of pollutants into publicly-owned treatment works (POTWs).

17. Section 307(d) of the Act, 33 U.S.C. § 1317(d), prohibits the operation of a source of pollutants in violation of the pretreatment standards.

18. Sections 403.3(i) and (j) of Title 40 of the C.F.R. define industrial user as a non-domestic source that introduces pollutants into a POTW.

19. Section 403.3(m) of Title 40 of the C.F.R. defines a new source as a building, structure, or facility from which there is or may be a discharge of pollutants, where the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act).

20. Section 433.17 of Title 40 of the C.F.R. establishes Pretreatment Standards for new source metal finishing operations discharging process wastewater into POTWs.

21. The Pretreatment Standards for new source metal finishing operations were first proposed on August 31, 1982 (47 Federal Register 38462).

22. The Pretreatment Standards for new source metal finishing operations, 40 C.F.R. § 433.17, set limits for the following pollutants, among others:

Pollutant	Daily Maximum (mg/l)	Monthly Average (mg/l)
Chromium	2.77	1.71
Nickel	3.98	2.38
Zinc	2.61	1.48
Cyanide	1.20	0.65

23. Sections 403.12(e) and (g) of Title 40 of the C.F.R. require that any industrial user subject to Pretreatment Standards submit reports twice a year on the nature and concentrations of the pollutants in its effluent and to include the results of any sampling.
24. Section 403.12(g)(2) of Title 40 of the C.F.R. requires that if sampling by an industrial user indicates a violation of the Pretreatment Standards, the industrial user must notify the Control Authority within 24 hours of becoming aware of the violation.
25. Section 403.12(g)(2) of Title 40 of the C.F.R. also requires that the industrial user repeat sampling and analysis within 30 days after becoming aware of the violation.
26. Where process effluent subject to Pretreatment Standards is mixed with wastewaters other than those from the regulated process, the Control Authority may derive alternative discharge limits that account for dilution. The industrial user must comply with the alternative limits fixed by the Control Authority. 40 C.F.R. § 403.6(e).
27. The Control Authority for industrial users discharging to POTWs without approved POTW pretreatment programs, in a state without an approved state pretreatment program, is the appropriate Regional Administrator. 40 C.F.R. § 403.3(d) and (f).
28. Only POTWs with a total design flow greater than 5 million gallons per day are required to establish a POTW pretreatment program. 40 C.F.R. § 403.8(a).
29. The Susquehanna Area Regional Airport Authority (SARAA) owns and operates a wastewater treatment works at or near the Harrisburg Airport.
30. SARAA is a municipality as defined in Section 502(4) of the Act, 33 U.S.C § 1362(4), and thus its treatment works is a POTW as defined in Section 403.3(q) of Title 40 of the C.F.R.
31. The SARAA POTW discharges to an unnamed tributary of the Susquehanna River, which is a water of the United States.
32. The SAARA POTW discharges less than 1 million gallons per day.
33. The SAARA POTW does not have an approved POTW pretreatment program.
34. Pennsylvania does not have an approved state pretreatment program.
35. The Regional Administrator of EPA Region III is the Control Authority for the SAARA POTW.
36. At the times relevant to this matter, the authority to act as the Control Authority in Region III when the POTW does not have an approved pretreatment program had been delegated to the

Associate Director of the Office of NPDES Permits and Enforcement, of the Water Protection Division.

37. Librandi's is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

38. Librandi's owns and/or operates a metal finishing facility located on or near 93 Airport Drive, Middletown, Pennsylvania.

39. Librandi's is an industrial user as defined in Section 403.3 of Title 40 of the C.F.R., because its facility discharges pollutants into the collection system of the SARAA POTW.

40. Librandi's facility began operations on or about 1995.

41. Librandi's facility is subject to the new source pretreatment standards for metal finishing facilities.

42. On May 30, 2007, the Control Authority set pollutant discharge limits for Librandi's for the pollutants listed in Section 433.17 of Title 40 of the C.F.R., including for cyanide, nickel, silver and zinc as follows:

Pollutant	Daily Maximum (mg/l)	Monthly Average (mg/l)
Chromium	1.42	0.88
Nickel	2.04	1.22
Zinc	1.34	0.76
Cyanide	0.61	0.33

43. The Control Authority set the discharge limits based on information provided by Librandi's and on the combined waste formula specified in Section 403.6(e) of Title 40 of the C.F.R.

44. The Control Authority required that Librandi's sample its effluent for cyanide, nickel, and chromium every three months, and zinc every six months.

45. The Control Authority also required Librandi's to notify EPA within 24 hours of becoming aware of any violations, and to resample for those pollutants and resubmit the results within 30 days of becoming aware of the violation.

Count I: Discharge of pollutants exceeding applicable limits

46. The allegations of Paragraphs 1 through 45 of this Consent Agreement are incorporated herein by reference.

47. From at least January 2015 to the present, Librandi's has sampled its effluent and submitted reports to the Control Authority regularly.

48. Based on the reports submitted by Librandi's, its effluent exceeded the applicable discharge limits as specified in Table A below:

Table A

Date of collection	Pollutant	Reported amount	Other measurements in the same month	Limit(s) Exceeded
1/13/2015	Nickel	2.4	no	daily maximum and monthly average
7/15/2015	Zinc	1.5	no	daily maximum and monthly average
7/20/2016	Chromium	1.1	no	monthly average
"	Zinc	2.1	no	daily maximum and monthly average
8/23/2016	Zinc	1.3	no	monthly average
11/16/2016	Cyanide	1.9	no	daily maximum and monthly average
1/25/2017	Cyanide	1.7	no	daily maximum and monthly average
"	Zinc	1.5	no	daily maximum and monthly average
3/1/2017	Cyanide	1.4	0.054	daily maximum and monthly average (monthly average=0.727)
"	Zinc	0.88	no	monthly average
5/17/2017	Chromium	0.9	no	monthly average
7/20/2017	Zinc	1	no	monthly average
10/13/2017	Chromium	4	no	daily maximum and monthly average
"	Nickel	2.1	no	daily maximum and monthly average
11/29/2017	Chromium	5.1	no	daily maximum and monthly average

49. These exceedances are violations of Section 307 of the Act, 33 U.S.C. § 1317, specifically 10 instances of daily maximum violations and 15 instances of monthly average violations, in the dates specified in the table.

Count II: Failure to notify EPA of discharge limit exceedances

50. The allegations of Paragraphs 1 through 49 of this Consent Agreement are incorporated herein by reference.

51. Librandi's failed to notify EPA within 24 hours of becoming aware of violations of the Pretreatment Standard for each of the violations in the date of collection listed in Table B below.

52. EPA first learned of the violations when the Respondent submitted the analysis reports to EPA. Table B lists the dates in which or about Librandi's notified EPA of the exceedances:

Table B

Date of collection	Date of Analytical Report	Date of Submittal of Report to EPA
1/13/2015	1/22/2015	3/6/2015
7/15/2015	7/30/2015	9/25/2015
7/20/2016	8/12/2016 (2 exceedances)	9/16/2016
11/16/2016	11/29/2016	1/10/2017
1/25/2017	2/14/2017 (2 exceedances)	4/14/2017
10/13/2017	11/15/2017 (2 exceedances)	1/5/2018

53. Respondent's failures to notify EPA within 24 hours of learning of the exceedances are violations of Section 307 of the Act, 33 U.S.C §1317, specifically 9 instances of violations.

Count III: Failure to repeat sampling and analysis within 30 days after exceedances

54. The allegations of Paragraphs 1 through 53 of this Consent Agreement are incorporated herein by reference.

55. Librandi's failed to repeat sampling and analysis, and submit those results to EPA, within 30 days after becoming aware of an exceedance on at least the following occasions:

Table C

Parameter Exceeded	Date of Original Collection	Date of Analytical Report Showing an Exceedance	Date of Next Collection for Sampling
Chromium	7/20/16	8/20/16	11/16/16
Zinc	8/23/16	9/14/16	1/25/17
Zinc	3/1/2017	3/16/2017	7/20/17
Chromium	5/17/17	5/25/17	7/20/17
Zinc	7/20/17	8/2/2017	1/24/18

56. Respondent's failures to repeat sampling of a parameter within 30 days of becoming aware of an exceedance of the limits are violations of Section 307 of the Act, 33 U.S.C. §1317, specifically 5 instances of violations.

V. CIVIL PENALTY

57. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of Thirty Thousand dollars (\$30,000), which Respondent shall be liable to pay in accordance with the terms set forth below.

58. The civil penalty amount is based on a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require, pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g). These factors were applied to the particular facts and circumstances of this case.

59. Respondent shall pay the civil penalty, and any associated interest, administrative fees, and late payment penalties owed, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the docket number of this action, CWA-03-2019-0088;
- 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 to:

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

d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Nina Rivera
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
1650 Arch Street
Philadelphia, PA 19103-2029

60. 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 as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

61. Payment of the civil penalty is due and payable immediately upon the effective date of this CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt, as of the effective date of this CAFO or the date of receipt, whichever is later, of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

62. INTEREST: Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of this CAFO. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after 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 40 C.F.R. § 13.11(a).

63. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives – Case 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.

64. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that 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).

65. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

VI. GENERAL SETTLEMENT CONDITIONS

66. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.

67. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

VII. CERTIFICATION OF COMPLIANCE

68. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

V. OTHER APPLICABLE LAWS

69. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

VI. RESERVATION OF RIGHTS

70. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this CAFO. EPA reserves the right to commence an 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations to enforce the terms of this CAFO after its effective date.

VII. PARTIES BOUND

71. This CAFO shall apply to and be binding upon the EPA, Respondent and the officers, directors, employees, contractors, agents, successors and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

IX. EFFECTIVE DATE

72. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued only after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it signed by the Regional Administrator or his delegate, filed with the Regional Hearing Clerk, and served on the Respondent by certified mail, or ten (10) days after conclusion of a public notice and comment period described in 40 C.F.R. § 22.45(b), whichever is later.

X. ENTIRE AGREEMENT

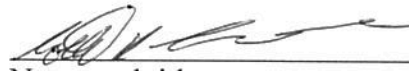
73. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

In Re: Librandi's Plating
EPA Docket No. CWA-03-2019-0088

FOR RESPONDENT,

LIBRANDI'S PLATING:

Date: May 7, 2019



Name and title

Todd A. Librandi, President

In Re: Librandi's Plating
EPA Docket No. CWA-03-2019-0088

FOR Complainant U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III:

After reviewing the Consent Agreement and other pertinent matters, the Enforcement & Compliance Assurance Division of the U.S. Environmental Protection Agency, Region III, recommends that the Regional Administrator or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: JUN 11 2019



Karen Melvin
Director
Enforcement
& Compliance Assurance Division
US EPA Region III

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

In the Matter of:

Librandi's Plating,

Respondent.

U.S. EPA-REGION 3-RHC
FILED-25JUL2019AM10:41

EPA Docket No. CWA-03-2019-0088

FINAL ORDER

**Proceeding under Section 309(g) of the
Clean Water Act**

FINAL ORDER

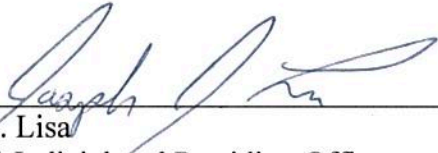
Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Librandi's Plating, have executed a document entitled Consent Agreement, which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules 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 Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 309(d) of the Clean Water Act ("CWA"), 33 U.S.C. § 309(d).

NOW, THEREFORE, PURSUANT TO Section 309 of the CWA, 33 U.S.C. Section 309(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of *Thirty Thousand dollars (\$30,000)*, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after this Final Order is filed with the Regional Hearing Clerk and served on the Respondent, pursuant to 33 U.S.C. §1319(g)(5).

July 24, 2019
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

Philadelphia, Pennsylvania 19103-2029

In the Matter of: : Proceeding to Assess Class I
: Administrative Penalty Under
Librandi's Plating : Section 309(g) of the Clean Water Act
93 Airport Drive :
Middletown, PA 17057 :
: Docket No. CWA-03-2019-0088
: Respondent. :
_____ :

CERTIFICATE OF SERVICE

I certify that on JUL 25 2019, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, was filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**,
to:

Mitchell E. Burack
Burack Environmental Law Office
Two Bala Plaza Suite 300
Bala Cynwyd, PA 19004

Copy served via **Hand Delivery or Inter-Office Mail** to:

Nina Rivera
Senior Assistant Regional Counsel Office of Regional Counsel (3RC 40)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dated: JUL 25 2019 Beverly Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 70151520000308962687