

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

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
Montgomery Chemicals, LLC,
Docket No: TSCA-03-2018-0039

FROM: Mary B. Coe
Regional Counsel (3RC00) *12/12/17*
Martha Shimkin, Acting Director
Land and Chemicals Division (3LC00) *12-19-17*

TO: Joseph J. Lisa *12-20-2017*
Regional Judicial Officer (3RC00)

REGIONAL HEARING CLERK
EPA REGION III, PHIL. A. PA.

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The attached Consent Agreement and Final Order (“CAFO”) have been negotiated with Montgomery Chemicals, LLC. (“Respondent”) in settlement of a actionable Toxic Substances Control Act (“TSCA”) violation. The CAFO resolves a violation of Section 8(a) of TSCA, 15 U.S.C. § 2607(a) and the regulations promulgated at 40 C.F.R. § 711.20 (“Chemical Data Reporting Requirements” or “CDR”), and Section 15(3) of TSCA, 15 U.S.C. § 2614(3), which subject Respondent to civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

The litigation team calculated a civil penalty of Five Thousand Dollars (\$5,000.00) in accordance with the statutory factors 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 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, and with EPA’s *Enforcement Response Policy for the Toxic Substances Control Act Sections 8, 12 and 13*, dated March 31, 1999 (ERPP). Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*, including the *Transmittal of the 2017 Annual Civil Monetary Penalty Information Adjustment Rule* dated January 1, 2017 from Susan Shinkman, Director, Office of Civil Enforcement.

We recommend that you sign the attached Final Order assessing in civil penalty in the amount of Five Thousand Dollars (\$5,000.00) against Respondent. After you execute the Final Order, please return the documents to Louis F. Ramalho of the Office of Regional Counsel for further processing.

Attachments

cc: James McStravick
Elliott Greenleaf
925 Harvest Drive, Suite 300
Blue Bell, PA 19422
(215) 977-1020
jwm@elliottgreenleaf.com

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Philadelphia, Pennsylvania 19103-2029

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:)
)
Montgomery Chemicals, LLC.)
901 Conshohocken Road)
Conshohocken, PA 19428)
)
RESPONDENT.)
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)

TSCA-03-2018-0039

Proceeding Under Section 16(a) of the
Toxic Substances Control Act, 15 U.S.C.
Section 2615(a)

CONSENT AGREEMENT

This Consent Agreement is entered into by the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Montgomery Chemicals, LLC. (“Respondent”) pursuant to Sections 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 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. Complainant alleges that Respondent violated Section 8(a) of TSCA, 15 U.S.C. § 2607(a), and the regulations promulgated under the authority of TSCA, set forth at 40 C.F.R. § 711.15(b)(3)(iii) (“Chemical Data Reporting Requirements” or “CDR”), and that Respondent has thereby violated Section 15(3) of TSCA, 15 U.S.C. § 2614(3).

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, as part of the settlement set forth herein, EPA’s civil claims alleged in Sections III and IV of this Consent Agreement.

I. JURISDICTION

1. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Sections 16(a) and 15(3) of TSCA, 15 U.S.C. §§ 2615(a) and 2614(3), and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

II. GENERAL PROVISIONS

2. 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.”
3. Except as provided in Paragraph 1, above, the Respondent neither admits nor denies Complainant’s specific factual allegations and legal conclusions set forth in this Consent Agreement.
4. 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.
5. 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.
6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
7. Each party to this Consent Agreement shall bear its own costs and attorney’s fees.

III. COMPLAINANT’S FACTUAL ALLEGATIONS
AND CONCLUSIONS OF LAW

8. 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 factual allegations and conclusions of law set forth immediately below.
9. Pursuant to Section 15(3) of TSCA, 15 U.S.C. § 2614(3), it is unlawful for any person to fail or refuse to establish or maintain records, submit reports or information, or permit access to or allow copying of records including but not limited to records and reports required by Section 8(a) of TSCA, 15 U.S.C. § 2607(a).

10. Pursuant to 40 C.F.R. § 711.8(a)(1), for the 2012 submission period between February 1, 2012 and August 13, 2012, any person who manufactured (including imported) for commercial purposes 25,000 pounds or more of a chemical substance described in 40 C.F.R. § 711.5 (“reportable chemical substance”) at any single site owned or controlled by that person during the principal reporting year (*i.e.*, calendar year 2011) is subject under 40 C.F.R. § 711.15 to requirements for certain reporting (“Chemical Data Reporting” or “CDR”).
11. Pursuant to 40 C.F.R. § 711.20 (7-1-12 Edition), provided in pertinent part, the 2012 CDR submission period is from February 1, 2012 to August 13, 2012.
12. Respondent owns and/or controls a facility which manufactures certain reportable chemical substances at a single site located at 901 Conshohocken Road, Conshohocken, Pennsylvania (the “Facility”).
13. On October 27, 2016, an authorized agent of the EPA conducted an inspection at Respondent’s Facility pursuant to Section 11(a) of TSCA, 15 U.S.C. § 2610(a).
14. During and subsequent to the October 27, 2016 inspection, Respondent provided to the EPA documentation of its import of a chemical hereinafter referred to as Chemical A, B, C and D at the Facility, including its 2011 chemical import records. The chemical identity of Chemical A, B, C, and D have been claimed as Confidential Business Information by Respondent pursuant to 40 C.F.R. § 711.30.
15. Respondent manufactured 25,000 pounds or more of Chemical A, B, C, and D in 2011.
16. On October 24, 2016, Respondent submitted its 2012 CDR to the EPA for reportable chemical substances that were manufactured at its Facility in 2011.
17. At all relevant times to the alleged violations in this CAFO, Chemical A, B, C, and D were “reportable chemical substances” and listed in the “Master Inventory File,” as those terms are defined at 40 C.F.R. § 711.3.
18. Respondent is a “person” and a “manufacturer” within the meaning of 40 C.F.R. § 704.3.
19. In its role as a manufacturer, Respondent is and, at all times relevant to the alleged violation in this CAFO, was the “manufacturer” of a “reportable chemical substance” at the Facility during calendar year 2011, as those terms are defined in 40 C.F.R. § 711.3, in an amount exceeding the 25,000 pounds reporting threshold set forth in 40 C.F.R. § 711.8.

20. "Principal reporting year" means the latest complete calendar year preceding the submission period as described in 40 C.F.R. § 711.3.
21. "Submission period" means the period in which the manufacturing, processing, and use data are submitted to EPA as described in 40 C.F.R. § 711.3.
22. Respondent does not meet any of the exemptions from the reporting requirements of 40 C.F.R. § 711.8(a)(1) as set forth at 40 C.F.R. §§ 704.5, 711.6, 711.9, 711.10 or elsewhere.
23. Respondent was required to submit to EPA its CDR for the principal reporting year 2011 by the submission period ending on August 13, 2012.
24. On August 8, 2017, EPA and Respondent entered into a Tolling Agreement stipulating that the period commencing on August 12, 2017 and ending December 30, 2017 (the "Tolling Period") would not be included in computing the running of any statute of limitations applicable to any action brought by EPA pursuant to Section 16(a) of TSCA.

IV. VIOLATION ALLEGED

Counts 1-4

25. The allegations contained in Paragraphs 1 through 24 of this Consent Agreement incorporated by reference herein as though fully set forth at length.
26. Pursuant to 40 C.F.R. § 711.15(b), for the 2012 submission period, manufacturers (including importers) of a reportable chemical substance in an amount of 25,000 pounds or more at a site during the principal reporting year (*i.e.*, 2011) must report the information described in 40 C.F.R. § 711.15(b)(1), (b)(2), and (b)(3).
27. 40 C.F.R. § 711.20 (7-1-12 Edition) provides, in pertinent part, that the 2012 CDR submission period is from February 1, 2012 to August 13, 2012.
28. Respondent manufactured 25,000 pounds or more of Chemical A, B, C, and D in 2011 at its Facility for commercial purposes.
29. On October 24, 2016, Respondent reported its 2012 CDR for Chemical A, B, C, and D that were manufactured in 2011 at its Facility for commercial purposes.
30. Respondent did not submit its 2012 CDR report for Chemical A, B, C, and D timely by the submission period ending on August 13, 2012 as required by 40 C.F.R. § 711.20 (7-1-12 Edition).

31. Pursuant to Section 15(3) of TSCA, Respondent's failure to report its 2011 import of Chemical A, B, C, and D timely by the submission period ending on August 13, 2012, as required by 40 C.F.R. § 711.20, constitutes four violations of 40 C.F.R. § 711.20 and Section 15(3) of TSCA.

V. CIVIL PENALTY

32. 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 Five Thousand Dollars (\$5,000) which Respondent shall be liable to pay in accordance with the terms set forth below. If Respondent pays the entire penalty of Five Thousand Dollars (\$5,000) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against the Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
33. 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 *Revisions to the TSCA Section 8, 12, and 13 Enforcement Response Policy* ("TSCA ERP"), dated August 5, 1996. Complainant has also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*, including the *Transmittal of the 2017 Annual Civil Monetary Penalty Inflation Adjustment Rule* dated January 1, 2017 from Susan Shinkman, Director, Office of Civil Enforcement.
34. Respondent has asserted that it will not be able to pay the civil penalty amount in full within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered. As a result, the Respondent has agreed to pay the civil penalty in the amount of **Five Thousand Dollars (\$5,000.00)** in five (5) equal monthly installments with interest at the rate of 1% per annum on the outstanding principal balance according to the following schedule:

1st payment is due within 30 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$1,004.11;

2nd payment is due within 60 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$1,003.29;

3rd payment is due within 90 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$1,002.47;

4th payment is due within 120 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$1,001.64; and

5th payment is due within 150 days of the date on which the CAFO is mailed or hand-delivered to the Respondent = \$1,000.82.

35. Under this proposed repayment schedule, Respondent will pay the civil penalty of \$5,000.00 plus interest of \$12.33 as further outlined in the chart below:

Payment	Principal	Interest	Payment Amount Due
1	\$1,000.00	\$4.11	\$ 1,004.11
2	\$1,000.00	\$3.29	\$ 1,003.29
3	\$1,000.00	\$2.47	\$ 1,002.47
4	\$1,000.00	\$1.64	\$ 1,001.64
5	\$1,000.00	\$0.82	\$1,000.82
TOTAL:	\$5,000.00	\$12.33	\$5,012.33

36. Payment of the civil penalty amount 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 Respondent's name and address, and the Docket Number of this action, *i.e.*, **TSCA-03-2018-0039**;
 - 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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen (513) 487-2091
Secondary Contact: Heather Russel (513) 487-2044

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

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza 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
US EPA, MS-NWD
26 W. M.L. King Drive, MS-002
Cincinnati, OH 45268-0001

37. Respondent may also pay the amount described in Paragraph 35 above, electronically or on-line as follows:

- a. 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 wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. 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 Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid (202) 874-7026 or
Remittance Express (REX): 1-866-234-5681

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Louis Ramalho (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

38. 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 the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

39. The costs of the EPA's administrative handling of overdue debts will be 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.
40. A late penalty payment of six percent (6%) 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).
41. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VI. EFFECT OF SETTLEMENT

42. 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 for the specific violations alleged in Section III and IV (Complainant's Factual Allegations and Conclusions of Law", and "Violations Alleged"), 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

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

VIII. CERTIFICATION OF COMPLIANCE

44. Respondent certifies to EPA, upon investigation and to the best of its knowledge and belief, that it is currently compliant with Section 8(a) of TSCA and 40 C.F.R. Part 711.

IX. RESERVATION OF RIGHTS

45. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged against the Respondent in this CAFO. 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, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under TSCA 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

46. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the Respondent's successors, agents and assigns.

XI. EFFECTIVE DATE

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

XII. ENTIRE AGREEMENT


48. 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.

XIII. EXECUTION

49. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his signature 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 the accompanying Final Order.

For Respondent:


Date:



Montgomery Chemicals, LLC
James McStravick, Managing Member

For Complainant:

Date:

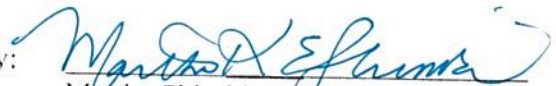


US EPA, Region III
Louis Ramalho, 3RC50
Sr. Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 12-19-2017

By:



Martha Shimkin, Acting Director
Land and Chemicals Division,
U.S. EPA, Region III

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

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RESPONDENT.)
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TSCA-03-2018-0039

Proceeding Under Section 16(a) of the
Toxic Substances Control Act, 15 U.S.C.
Section 2615(a)


FINAL ORDER

The Complainant, the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III and Respondent, Montgomery Chemicals, LLC., 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth fully herein.

WHEREFORE, pursuant to the authority of Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, for a violation of Section 8(a) of TSCA, 15 U.S.C. § 2607(a), and the regulations promulgated under the authority of TSCA, set forth at 40 C.F.R. Part 711 ("Chemical Data Reporting Requirements" or "CDR"), and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Five Thousand Dollars (\$5,000.00) in accordance with the payment provisions set forth in the attached Consent Agreement, including payment of any applicable interest, and complying with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the CAFO is filed with the EPA Regional Hearing Clerk.

Date: 12-20-2017



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


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, a true and correct copy of the attached Consent Agreement and Final Order, Docket No. TSCA-03-2018-0039, was filed today with the Regional Hearing Clerk, and a copy sent by electronic e-mail and a hard copy mailed overnight via UPS, confirmation of receipt requested to:

James McStravick
Elliott Greenleaf
925 Harvest Drive, Suite 300
Blue Bell, PA 19422
(215) 977-1020
jwm@elliottgreenleaf.com

Date

12/21/17



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

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