



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
2890 WOODBRIDGE AVENUE  
EDISON, NEW JERSEY 08837-3679

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Article Number: 7001 0320 0004 7790 3575

Mr. Robert Fardella, Esq.  
Attorney at Law  
33 Walt Whitman Road – Suite 310  
Huntington Station, New York 11746

Re: In the Matter of Gasser & Sons, Inc.  
TRI Facility ID No.: 11725GSSRS440MO  
Docket No. EPCRA-02-2011-4201

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
2011 MAY 13 A 11:51  
REGIONAL CLERK

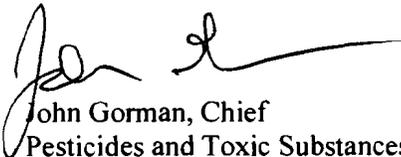
Dear Mr. Fardella:

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.

Please note that the forty-five (45) day period for the payment of the first installment 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 in the Consent Agreement (see “Terms of Consent Agreement”). Please remember to send a copy of the company’s payment check to the Complainant, as detailed in the Consent Agreement.

If you have any questions regarding this matter, please contact me at (732) 321-6765, [gorman.john@epa.gov](mailto:gorman.john@epa.gov) or contact Ms. Mary Ann Kowalski of my staff at (732) 906-6815, [kowalski.mary@epa.gov](mailto:kowalski.mary@epa.gov).

Sincerely,



John Gorman, Chief  
Pesticides and Toxic Substances Branch

Enclosure

cc: Mr. Richard Gasser, President  
Gasser & Sons, Inc.  
440 Moreland Road  
Commack, New York 11725

Ms. Suzanne Wither  
Division of Environmental Remediation  
NYS Department of Environmental Conservation  
625 Broadway – 11<sup>th</sup> Floor  
Albany, New York 12233

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

-----	X	
<b>In the Matter of</b>	:	
	:	<b><u>CONSENT AGREEMENT</u></b>
	:	<b><u>AND</u></b>
<b>Gasser &amp; Sons, Inc.</b>	:	<b><u>FINAL ORDER</u></b>
	:	
<b>Respondent</b>	:	<b>DOCKET NUMBER</b>
	:	<b>EPCRA-02-2011-4201</b>
	:	
Proceeding under Section 325(c) of Title III	:	
of the Superfund Amendments and Reauthorization Act	:	
-----	X	

U.S. ENVIRONMENTAL PROTECTION AGENCY  
2011 MAY 13 A 11:51  
REGIONAL HEARINGS SECTION

**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")]. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Etc." (40 C.F.R. Part 22 (July 1, 2000)) provide in 40 C.F.R. §22.13(b) that when the parties agree to settle 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 pursuant to 40 C.F.R. §§22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2, ("EPA or Complainant") alleges that Gasser & Sons, Inc., located at 440 Moreland Road, Commack, New York 11725, 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 Toxic Chemical Release Inventory Reporting Form R, EPA Form 9350-1 (hereinafter, "Form R") for each toxic chemical listed under 40 C.F.R. §372.65 and/or 40 C.F.R. §372.28 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. A complete and correct Form R is required to be submitted to the Regional Administrator of the Environmental Protection Agency and to the State in which the subject facility is located.

EPA and Gasser & Sons, Inc. agree that settling this matter by entering into this Consent Agreement and Final Order ("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 EPA's Findings of Fact and Conclusions of Law based upon information EPA obtained through January 19, 2011.

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

1. Respondent is Gasser & Sons, Inc. (TRI Facility No.: 11725GSSRS440MO).
2. At all times relevant hereto, Respondent has maintained a facility located at 440 Moreland Road, Commack, New York 11725, which is the subject of this Consent Agreement and Final Order (hereinafter, "Respondent's facility").
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. §11049).
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 the North American Industry Classification System (NAICS) Code 332116 (Metal Stamping).

8. Respondent's facility 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. Trichloroethylene, CAS No.: 79-01-6, is listed under 40 C.F.R. §372.65.
10. Respondent processed approximately 13,860 pounds of trichloroethylene in calendar year 2008.
11. Respondent was required to submit a complete and correct Form R report for trichloroethylene for calendar year 2008 to the Administrator of the EPA and to the State of New York by July 1, 2009.
12. Respondent submitted a Form R report for trichloroethylene to the EPA for calendar year 2008 on February 21, 2010. The Form R report was submitted 235 days late.
13. Respondent's failure to submit a timely, complete and correct Form R report for trichloroethylene for calendar year 2008 constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. §11023, and with 40 C.F.R. Part 372.
14. Respondent processed approximately 12,540 pounds of trichloroethylene in calendar year 2007.
15. Respondent was required to submit a complete and correct Form R report for trichloroethylene for calendar year 2007 to the Administrator of the EPA and to the State of New York by July 1, 2008.
16. Respondent submitted a Form R report for trichloroethylene to the EPA for calendar year 2007 on April 29, 2009. The Form R report was submitted 302 days late.
17. Respondent's failure to submit a timely, complete and correct Form R report for trichloroethylene for calendar year 2007 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 of Practice Governing the Administrative Assessment of Civil Penalties, Etc., 40 C.F.R. §22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms 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 the facility as set forth in paragraphs 1 through 17, inclusive; and (b) neither admits nor denies the Findings of Fact and Conclusions of Law section, above.

3. Respondent shall pay a civil penalty totaling **TEN THOUSAND SEVEN HUNDRED FORTY-FIVE DOLLARS (\$10,745)**. Payment shall be made by cashier's or certified check or by electronic fund transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

The check shall be identified with a notation thereon listing the following: **In The Matter of Gasser & Sons, Inc.** and shall bear thereon the **Docket Number EPCRA-02-2011-4201**.

Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). If Respondent chooses to make the payment by EFT, then 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 Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Gasser & Sons, Inc.**
- 7) Case Number: **EPCRA-02-2011-4201**.

Such EFT must be received on or before 45 calendar days after the date of signature of the Final Order at the end of this document. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

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

Dr. Dennis J. McChesney, Ph.D., M.B.A., Acting Chief  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue (Bldg. 10, MS-105)  
Edison, New Jersey 08837

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 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 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling fee of \$15 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

#### **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

4. Respondent agrees to undertake the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements:

**a. Project Summary – Emergency Response and Preparedness**

Gasser & Sons, Inc. will commit to spending a minimum of \$19,731 on an Emergency Response and Preparedness Supplemental Environmental Project (SEP). The company has agreed to purchase two MSA Altair #10094740 multi-gas meters for the Commack Fire District located at 6309 Jericho Turnpike, Commack, New York 11725. (Attachment 1)

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. Gasser and Sons will purchase the above-described gas meters within three (3) months of date of signature of the Final Order at the end of this document.

d. Gasser and Sons will donate the gas meters to the Commack Fire District within four (4) months of signature of the Final Order at the end of this document.

e. 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.

5. Respondent shall submit a SEP Completion Report to EPA as follows: The report shall contain the following information:

- (i) The SEP completion report will be submitted within five (5) months of the date the Regional Administrator signed the Consent Agreement and Final Order at the end of this document.
- (ii) The report will include a description of all activities conducted regarding implementation of the proposed SEP.
- (iii) The report will also include itemized costs, documented by copies of purchase orders and receipts or canceled checks of costs incurred and documentation of receipt of the gas meters by the Commack Fire District.

6. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by paragraph 5, above, shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 9, below.

7. 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 (7) 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.

8. a. Following receipt of the SEP Completion Report described in paragraph 5, above, EPA will do one of the following:

- (i) Accept the report;

- (ii) Reject the SEP Completion Report, notify Respondent in writing of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or
- (iv) Reject the SEP Completion Report and seek stipulated penalties in accordance with paragraph 9 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 (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (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. In the event that the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 9, herein.

9. 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 9, Respondent shall pay a stipulated penalty to the United States in the amount of **\$15,785**.
- (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 in the amount determined as follows:

(iv) Stipulated penalty =  $[1 - \frac{(\$ \text{ amount SEP cost expended})}{\$15,785}] \times \$15,785$

(iv) If the SEP is satisfactorily completed, and Respondent spent at least 90% of the amount of money which was required to be expended on the SEP, Respondent shall not pay any stipulated penalty.

b. The determinations 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 completion report is acceptable shall be the sole discretion of EPA.

c. A stipulated penalty under subparagraph a.(iii), shall begin to accrue on the day after the completion report is due.

d. Respondent shall pay any stipulated penalties within fifteen (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.

10. Complainant, at her discretion, may waive any stipulated penalties specified above.

11. 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."

12. 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.

13. 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.

14. This Consent Agreement and Final Order is being voluntarily and knowingly entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach, or might have attached, as a result of the Findings of Fact and Conclusions of Law set out above.

15. Respondent explicitly and knowingly consents to the assessment of the civil penalty, as set forth in this Consent Agreement and Final Order, and agrees to pay the penalty in accordance with the terms of this Consent Agreement and Final Order.

16. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

17. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or

communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

18. 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 and Final Order certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and Final Order and all the terms and conditions set forth in this Consent Agreement and Final Order.

20. Each party hereto agrees to bear its own costs and fees in this matter.

21. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**RESPONDENT:**

Gasser & Sons, Inc.

BY: \_\_\_\_\_

Authorizing Signature

NAME: \_\_\_\_\_

Richard T. Gasser  
(PLEASE PRINT)

TITLE: \_\_\_\_\_

President

DATE: \_\_\_\_\_

April 19, 2011

**COMPLAINANT:**

\_\_\_\_\_  
Dore LaPosta, Director

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

DATE: \_\_\_\_\_

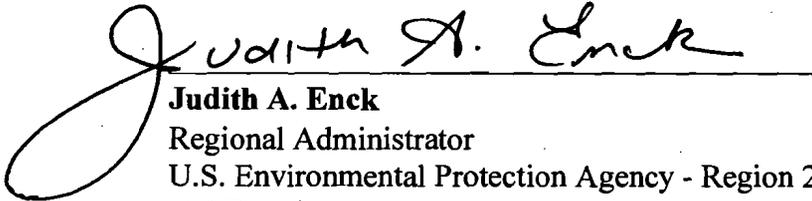
MAY 3, 2011

**In the Matter of Gasser & Sons, Inc.**  
**Docket Number EPCRA-02-2011-4201**

**FINAL ORDER**

The Regional Administrator of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement (including Attachment A) in the case of **In the Matter of Gasser & Sons, Inc.**, bearing **Docket No. EPCRA-02-2011-4201**. 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).

DATE: May 9 2011

  
**Judith A. Enck**  
Regional Administrator  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

**In the Matter of Gasser & Sons, Inc.**

Docket No. EPCRA-02-2011-4201

**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:

Mr. Richard Gasser, President,  
Gasser & Sons, Inc.  
440 Moreland Road  
Commack, NY 11725

Copy by Mail:

Mr. Robert Fardella, Esq.  
Attorney at Law  
33 Walt Whitman Road – Suite 310  
Huntington Station, New York 11746

Ms. Suzanne Wither  
Division of Environmental Remediation  
NYS Department of Environmental Conservation  
625 Broadway - 11th Floor  
Albany, New York 12233

Dated: 5-11-11



Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency - Region 2  
2890 Woodbridge Avenue (MS-105)  
Edison, New Jersey 08837-3679