



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

In Reply Refer To Mail Code: 3RC50

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gene Scherrer
Scherrer Engineering and Construction, Inc.
5 Ridgecrest Road
Wheeling, West Virginia 26003

DEC 23 2014

Re: Consent Agreement and Final Order
EPA Docket No.: TSCA-03-2015-0039

Dear Mr. Scherrer:

Enclosed is a copy of the CONSENT AGREEMENT AND FINAL ORDER filed today with the Regional Hearing Clerk settling the matter referenced above. For your file, I am also enclosing a copy of the supporting memorandum from Environmental Protection Agency management to the Regional Judicial Officer. Should you have any questions or concerns, please feel free to contact me at (215) 814-2066.

Sincerely,

Jennifer M. Abramson
Senior Assistant Regional Counsel

Enclosures

cc: Demian Ellis, EPA

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EPA REGION III, PHILA. PA

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

| | | |
|--------------------------|---|---|
| In the Matter of: |) | DOCKET NO.: TSCA-03-2015-0039 |
| |) | |
| Scherrer Engineering and |) | Proceeding Under Section 16(a) of the |
| Construction, Inc. |) | Toxic Substances Control Act, 15 U.S.C. |
| 5 Ridgcrest Road |) | Section 2615(a) |
| Wheeling, WV 26003 |) | |
| |) | |
| Respondent, |) | |
| |) | |
| 2 Arlington Drive |) | |
| Wheeling, WV 26003 |) | |
| |) | |
| Facility. |) | |

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CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Scherrer Engineering and Construction, Inc. (“Respondent”) pursuant to Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, 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)). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant's civil penalty claims against Respondent under TSCA arising from the violations of the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the 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.

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear its own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

Findings of Fact and Conclusions of Law

8. 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.
9. Pursuant to 40 C.F.R. § 745.83, the term "firm" means "a company, partnership, corporation, sole proprietorship or individual doing business, association or other business entity; a Federal, State, Tribal or local government agency; or a nonprofit organization."
10. Pursuant to 40 C.F.R. § 745.83, the term "renovation" means "the modification of any existing structure, or portion thereof that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223."
11. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), 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."
12. Respondent, at all times relevant to the violations alleged in this Consent Agreement, was a "firm" who performed a "renovation," as those terms are defined at 40 C.F.R. § 745.83, at the property located at 2 Arlington Drive in Wheeling, West Virginia 26003 ("Renovation Property").
13. The Renovation Property was constructed prior to 1978 and is "target housing" as that term is defined in Section 401(17) of TSCA, 15 U.S.C. § 2681(17).
14. Pursuant to 40 C.F.R. § 745.82(a), Respondent performed a renovation for compensation at the Renovation Property and was subject to the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E.
15. On April 3, 2013, a duly designated representative of the U.S. Environmental Protection Agency ("EPA") Administrator observed and took photographs of the renovation being performed at the Renovation Property.
16. On April 15, 2013, a duly designated representative of the EPA Administrator conducted a records inspection at Respondent's office located at 5 Ridgecrest Road in Wheeling, West Virginia 26003 to determine Respondent's level of compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E.

Alleged Violations

Count 1 – Failure to Provide Owner with EPA-Approved Lead Hazard Pamphlet

17. The allegations contained in Paragraphs 1 through 16 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

18. Pursuant to 40 C.F.R. § 745.84(a), firms are required to provide EPA's *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers* pamphlet to owners of dwelling units before beginning renovation activities.

19. Respondent failed to provide the owner with EPA's *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers* pamphlet prior to beginning renovation activities at the Renovation Property.

20. Respondent's acts or omissions described in paragraph 19 immediately above constitute a violation of 40 C.F.R. § 745.84(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 2 – Failure to Obtain Initial Firm Certification

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. § 745.81(a)(2), firms are required to be EPA certified under § 745.89 prior to performing renovations at target housing.

23. Respondent was not an EPA certified firm at the time it performed the renovation at the Renovation Property.

24. Respondent's acts or omissions described in paragraph 23 immediately above constitute a violation of 40 C.F.R. § 745.81(a)(2) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 3 – Failure to Ensure a Certified Renovator is Assigned

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. § 745.89(d)(2), firms are required to ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

27. Respondent did not ensure that a certified renovator was assigned to the renovation it performed at the Renovation Property.

28. Respondent's acts or omissions described in paragraph 27 immediately above constitute a violation of 40 C.F.R. § 745.89(d)(2) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 4 – Failure to Post Warning Signs

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. § 745.85(a)(1), firms are required to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

31. Respondent did not post signs clearly defining the work area during the renovation it performed at the Renovation Property.

32. Respondent's acts or omissions described in paragraph 31 immediately above constitute a violation of 40 C.F.R. § 745.85(a)(1) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 5- Failure to Contain Waste

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. § 745.85(a)(4), firms are required to contain waste from renovation activities to prevent releases of dust and debris as required by 40 C.F.R. § 745.85(a)(4)(i), (ii) and (iii).

35. Respondent did not contain the waste collected from the renovation activities performed at the Renovation Property so to prevent releases of dust and debris.

36. Respondent's acts or omissions described in paragraph 35 immediately above constitute a violation of 40 C.F.R. § 745.85(a)(4) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Count 6 –Failure to Retain Records Demonstrating Compliance with Work Practices

37. The allegations contained in Paragraphs 1 through 36 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

38. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations are required to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E, for a period of 3 years following completion of the renovation.

39. Section 40 C.F.R. §745.86(b) specifies the types of records required to be retained pursuant to 40 C.F.R. § 745.86(a) and includes, but is not limited to, records documenting

compliance with the work practice standards of 40 C.F.R. § 745.85(a) and post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b). 40 C.F.R. § 745.86(b)(6).

40. At the time of the April 15, 2013 inspection, Respondent had not retained records documenting compliance with 40 C.F.R. § 745.85(a) and (b) as required by 40 C.F.R. § 745.86(b)(6) for the renovation performed at the Renovation Property.

41. Respondent's acts or omissions described in paragraph 40 immediately above constitute a violation of 40 C.F.R. § 745.86(b) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Civil Penalty

42. 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 twenty two thousand five hundred dollars (\$22,500), which Respondent shall be liable to pay in accordance with paragraph 43, below. The Parties represent that the settlement terms 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 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 August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* ("LBP Consolidated ERPP"), revised April 2013.

43. Pursuant to this Consent Agreement, the Respondent's twenty two thousand five hundred dollar (\$22,500) civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO; however, Respondent may pay such civil penalty amount, and an interest assessment of one percent (1%) per annum on the outstanding principal, in four (4) installment payments, in the following amounts and according to the following schedule:

| Payment | Payment Amount Due | Principal | Interest | Total Amount |
|----------------|---|--------------------|-----------------|---------------------|
| 1 | 30 days after CAFO is mailed or hand-delivered to the Respondent | \$5,625.00 | \$0.00 | \$5,625.00 |
| 2 | Six (6) months after the CAFO is mailed or hand-delivered to the Respondent | \$5,625.00 | \$84.37 | \$5,709.37 |
| 3 | Twelve (12) months after the CAFO is mailed or hand-delivered to the Respondent | \$5,625.00 | \$56.25 | \$5,681.25 |
| 4 | Eighteen (18) months after the CAFO is mailed or hand-delivered to the Respondent | \$5,625.00 | \$28.12 | \$5,653.12 |
| Total: | | \$22,500.00 | \$168.74 | \$22,668.74 |

44. Notwithstanding Respondent's agreement to pay the civil penalty in accordance with the installment payment provisions of paragraph 43, immediately above, Respondent may pay the entire twenty two thousand five hundred dollar (\$22,500) civil penalty within **thirty (30) calendar days** after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the incurrence and payment of interest pursuant to 40 C.F.R. § 13.11(a)(1), as described in paragraphs 47 and 48, below.

45. If Respondent elects to pay the civil penalty in accordance with the installment payment procedure described in paragraph 43, above, but fails to make any installment payment in accordance with the requirements and schedule set forth in paragraph 43, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent immediately shall pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in paragraphs 49 and 50 below, in the event of any such failure or default.

46. Payment of the civil penalty amount required under the terms of paragraph 42 above, or each installment payment pursuant to paragraph 43 above, thereof, shall be made as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO, 63197-9000.
Contact: Craig Steffen 513-487-2091
Molly Williams 513-487-2076

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

c. All payment 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
Cincinnati, OH 45268-0001

- d. By electronic funds transfer (“EFT”) to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

(Field tag 4200 of Fedwire message should read “D 68010727
Environmental Protection Agency”)

- e. By automatic clearinghouse (“ACH”) to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 – checking

Contact: John Schmid
202-874-7026

- f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1”
in the search field, and opening the form and completing the required fields.

- g. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

Each payments shall also reference the above case caption and docket number (Docket No.: FIFRA-03-2015-0039). At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

Lydia A. Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Jennifer M. Abramson (3RC50)
Senior Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

47. 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.

48. 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 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 account rate in accordance with 40 C.F.R. § 13.11(a).

49. 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.

50. 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).

Certification

51. Respondent certifies that it is currently in compliance with all applicable requirements of TSCA, 15 U.S.C. §§ 2601 *et seq.*

Other Applicable Laws

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

Reservation of Rights

53. This CAFO resolves only EPA's civil claims for penalties for the specific violations of TSCA alleged in this Consent Agreement. 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 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 Regional Hearing Clerk.

Full and Final Satisfaction

54. This settlement shall constitute full and final satisfaction of all claims for civil penalties which Complainant may have under Sections 16(a) and 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615(a) and 2689, for the specific violations alleged in this CAFO. 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.

Parties Bound

55. This CAFO shall apply to and be binding upon Complainant, Respondent, and Respondent's officers, directors, successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date

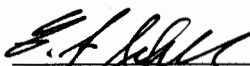
56. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

57. This CAFO constitutes the entire agreement and understanding of the Complainant and Respondent concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between Complainant and Respondent other than those expressed herein.

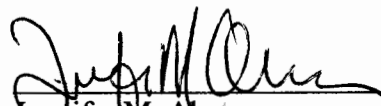
For Respondent:

11-18-2014
Date


Gene Scherrer, President
Scherrer Engineering and Construction, Inc.


For Complainant:

11/25/14
Date


Jennifer M. Abramson
Counsel for Complainant

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.

12.19.14
Date


John A. Armstead, Director
Land and Chemicals Division
U.S. EPA, Region III

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

In the Matter of:)
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) DOCKET NO.: TSCA-03-2015-0039
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) Proceeding Under Section 16(a) of the
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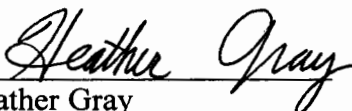
FINAL ORDER

The Complainant, the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Scherrer Engineering and Construction, Inc., 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 violations of the Residential Property Renovation regulations promulgated at 40 C.F.R. 745, Subpart E, 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 twenty two thousand five hundred dollars (\$22,500) in accordance with the payment provisions set forth 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: 12-23-14


Heather Gray
Regional Judicial Officer
U.S. EPA, Region III

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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| 5 Ridgecrest Road |) | Section 2615(a) |
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| |) | |
| Respondent, |) | |
| |) | |
| 2 Arlington Drive |) | |
| Wheeling, WV 26003 |) | |
| |) | |
| Facility. |) | |

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and one copy by hand-delivery:

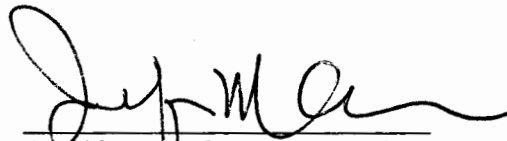
Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail

Gene Scherrer
Scherrer Engineering and Construction, Inc.
5 Ridgecrest Road
Wheeling, West Virginia 26003

DEC 23 2014

Date


Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III

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