

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II

2012 AUG -6 P 4:19

REGIONAL HEARING  
CLERK

-----X	:	
<b>In the Matter of</b>	:	<b><u>CONSENT AGREEMENT</u></b>
	:	<b><u>AND</u></b>
<b>Rust-Oleum Corporation</b>	:	<b><u>FINAL ORDER</u></b>
	:	
<b>Respondent</b>	:	<b>DOCKET NUMBER</b>
	:	<b>EPCRA-02-2012-4106</b>
	:	
Proceeding under Section 325(c) of Title III	:	
of the Superfund Amendments	:	
and Reauthorization Act	:	
-----X	:	

**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 Rust-Oleum Corporation, located at 173 Belmont Drive, Somerset, New Jersey 08873-1218, 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 Rust-Oleum Corporation 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 December 19, 2011.

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

1. Respondent is Rust-Oleum Corporation (TRI Facility No.: 08873WMZNS39BEL).
2. At all times relevant hereto, Respondent has maintained a facility located at 173 Belmont Drive in Somerset, New Jersey 08873-1218, 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 325510 (Paint and Coatings Manufacturing).

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. Acrylic Acid, CAS No.: 79-10-7, is listed under 40 C.F.R. §372.65.

10. Ammonia, CAS No. 7664-41-7, is listed under 40 C.F.R. §372.65.

11. Butyl Acrylate, CAS No. 141-32-2, is listed under 40 C.F.R. §372.65.

12. Certain Glycol Ethers, is a chemical category listed under 40 C.F.R. §372.65.

13. Ethyl Acrylate, CAS No. 140-88-5, is listed under 40 C.F.R. §372.65.

14. Ethylene Glycol, CAS No. 107-21-1, is listed under 40 C.F.R. §372.65.

15. Methyl Methacrylate, CAS No. 80-62-6, is listed under 40 C.F.R. §372.65.

16. Sodium Nitrate, CAS No. 7632-00-0, is listed under 40 C.F.R. §372.65.

17. Styrene, CAS No. 100-42-5, is listed under 40 C.F.R. §372.65.

18. Zinc Compounds is a chemical category listed under 40 C.F.R. §372.65.

19. Respondent was required to submit a complete and correct Form A or Form R report for each of the chemicals listed in paragraphs 9 through 18, inclusive, above, for calendar year 2009 to the Administrator of the EPA and to the State of New Jersey by July 1, 2010.

20. Respondent submitted a Toxic Release Inventory Form A or Form R report for each of the chemicals listed in paragraphs 9 through 18, inclusive, above, on November 1, 2010 for calendar year 2009. The reports were submitted 123 days late.

21. Each of Respondent's failure to submit a timely Form A or Form R report for each of the chemicals listed in paragraphs 9 through 18, inclusive, above for calendar year 2009 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 21, 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 **SIXTY THOUSAND DOLLARS FIVE HUNDRED FIFTY (\$60,550)**. 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 Rust-Oleum Corporation** and shall bear thereon the **Docket Number EPCRA-02-2012-4106**. 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: **Rust-Oleum Corporation**
- 7) Case Number: **EPCRA-02-2012-4106**.

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:

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

and

John Gorman, 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"), under the "Final EPA Supplemental Environmental Projects Policy Issued," 63 Federal Register 86 (May 5, 1998), pp.24796-24804, which the parties agree is intended to secure significant environmental or public health protection and improvements:

##### **a. Pollution Reduction Project**

**Vessel Pressure Wash System and Wash Water Recycle Tank** - Rust-Oleum Corporation shall undertake and complete a Pollution Reduction SEP. The SEP involves installing a vessel pressure wash system and wash water recycle tank to reduce water use and the discharge of suspended solids such as clay, titanium dioxide, talc, zinc oxide and calcium carbonate resulting from cleaning the process tanks at product changeover. The tank will collect and equilibrate the process tank flush water for reuse resulting in reduced water consumption and the reduction of

suspended solid contaminants in the sewer effluent. The company currently uses up to 100 gallons of water per wash which is discharged to the sanitary sewer. With the addition of the wash system spray head, water usage would be reduced by approximately 50%; thus, reducing the total sewer effluent by approximately 100,000 gallons of water annually, assuming ten washes per day. Suspended solids would be reduced by a minimum of 50% (about 10,000 pounds per year), thus allowing at least 25% of the process water (about 50,000 gallons per year) to be recycled back into the process. Discharge of the TRI chemical, zinc compounds, would be reduced by 1,000 pounds annually.

b. The total capital expenditure for the SEP shall not be less than \$95,000 to purchase and install the equipment. EPA has agreed to value the SEP at \$95,000. In order to receive credit of \$71,250 for the SEP, Respondent must fully and timely complete the SEP project within four months of issuance of the CAFO and provide documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

c. 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.

d. Respondent will purchase and install a minimum a vessel pressure wash system and wash water recycle tank within four (4) months of the date 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 Reports to EPA as follows: The reports shall contain the following information:

- (i) A SEP Completion report will be submitted within one (1) month of completion of the SEP described above.
- (ii) The report shall include an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

- (iii) The Completion Report will include a description of all activities conducted regarding implementation of the proposed SEP, monies spent and any quantifiable results of the proposed SEP such as gallons of water usage reduced and pounds of suspended solids reduced, by chemical type, if possible; and
- (iv) Copies of appropriate documentation, including invoices and receipts, showing that a total expenditure of at least NINETY FIVE THOUSAND DOLLARS (\$95,000) was spent to install the vessel pressure wash system and wash water recycle tank as described in paragraph 4 (a), above. Upon request, Respondent shall send EPA any additional documentation requested by EPA pertaining to the installation, implementation and/or operation of the SEP.
- (v) The report shall be sent to:

Ms. Mary A. Kowalski, MPH,  
R2 TRI Enforcement Coordinator  
United States Environmental Protection Agency  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue  
Edison, New Jersey 08837

6. Respondent agrees that failure to submit the SEP Completion 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
- (iii) 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 paragraphs 4 and 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 4, 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 **\$71,250**.
- (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 =  $[1 - \frac{\text{\$ amount SEP cost expended}}{\$95,000}] \times \$71,250$
- (v) 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.

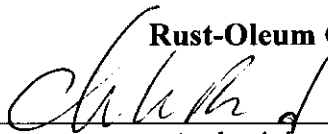
18. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated there under.

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.

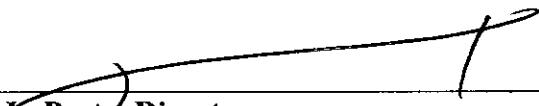
20. Each party hereto agrees to bear its own costs and fees in this matter.

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:**

**Rust-Oleum Corporation**  
BY:   
Authorizing Signature  
NAME: CHRISTOPHER K BOND  
(PLEASE PRINT)  
TITLE: PLANT MANAGER  
DATE: July 9/ 2012

**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: JULY 17, 2012

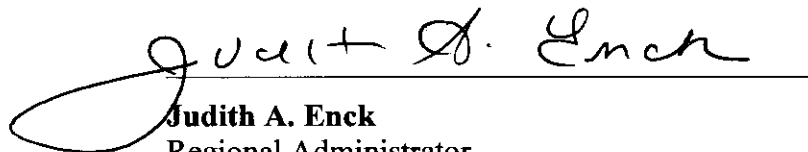
**In the Matter of Rust-Oleum Corporation**

**Docket Number EPCRA-02-2012-4106**

**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 Rust-Oleum Corporation**, hearing **Docket No. EPCRA-02-2012-4106**. 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: 7-31-12



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

**In the Matter of Rust-Oleum Corporation**

Docket No. EPCRA-02-2012-4106

**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

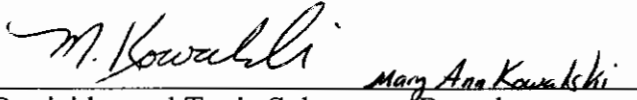
Copy by Certified Mail,  
Return Receipt Requested:

Ms. Therese Perrette, CIH, CSP  
Manager – Health and Safety  
Rust-Oleum Corporation  
173 Belmont Drive  
Somerset, New Jersey 08875

Copy by Mail:

Mr. Andrew Oppermann, EPCRA Section 313  
New Jersey Department of Environmental Protection  
Division of Environmental Safety and Health  
Office of Pollution Prevention and Right-To-Know  
22 S. Clinton Avenue, 3rd Floor  
P.O. Box 443  
Trenton, New Jersey 08625-0443

Dated: AUG 03 2012

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