

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

IN THE MATTER OF )  
)  
Meherrin Agricultural & Chemical Company) )  
413 Main Street )  
Severn, NC 27877 )  
)  
Respondent. )  
)  
18441 Wesley Church Road )  
Bridgeville, DE 19933 )  
)  
Facility )  
\_\_\_\_\_ )

DOCKET NO: FIFRA-03-2011-0302  
CONSENT AGREEMENT

RECEIVED  
2011 SEP 29 PM 6:29  
REGIONAL HEARING CLERK  
EPA REGION III PHILA, PA

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and by Meherrin Agricultural & Chemical Company ("Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .18(b) of 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. §§ 22.13(b) and .18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against Respondent under FIFRA arising from the violations of FIFRA 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 his own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

EPA's Findings of Fact and Conclusions of Law

8. In accordance with the Consolidated Rules of Practice at Sections 22.13(b) and .18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:
9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
10. Respondent is a North Carolina corporation with a principle place of business located at 413 Main Street, Severn, NC 27877. Respondent also has branch locations throughout the United States, including 18441 Wesley Church Road, Bridgeville, DE 19933.
11. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
12. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 define "pesticide", in pertinent part, to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant.
13. 40 C.F.R. § 152.3 defines "pesticide product", in pertinent part, to mean a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold.
14. Respondent produces the following brand name pesticides which were registered with EPA as follows: 1) *Roundup Power Max*, EPA Reg. No. 524-549 (Registered 3/9/05); and 2) *Paraquat Concentrate*, EPA Reg. No. 82542-3 (Registered 10/11/07).

15. Respondent's *Roundup Power Max* (EPA Reg. No. 524-549) and *Paraquat Concentrate* (EPA Reg. No. 82542-3) products are both "pesticides" and "pesticide products" as those terms are defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
16. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3, define "produce", in pertinent part, to mean to manufacture, prepare, propagate, compound, or process any pesticide, or to package, repack, label, relabel or otherwise change the container of any pesticide.
17. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3, define "producer", in pertinent part, to mean any person who produces any pesticide, active ingredient or device (including packaging, repackaging, labeling and relabeling).
18. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. §167.3, define "establishment", in pertinent part, to mean any site where a pesticide product is produced.
19. Respondent produced its *Roundup Power Max* (EPA Reg. No. 524-549) and *Paraquat Concentrate* (EPA Reg. No. 82542-3) products by repackaging and relabeling *Roundup Power Max* and *Paraquat Concentrate* purchased from different suppliers at its facility located at 18441 Wesley Church Road, Bridgeville, DE.
20. By repackaging and relabeling *Roundup Power Max* and *Paraquat Concentrate*, and offering to sell it as *Roundup Power Max* (EPA Reg. No. 524-549) and *Paraquat Concentrate* (EPA Reg. No. 82542-3), Respondent "produced", and is a "producer" of, pesticides, as those terms are defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3.
21. With respect to the production of *Roundup Power Max* (EPA Reg. No. 524-549) and *Paraquat Concentrate* (EPA Reg. No. 82542-3), Respondent's facility located at 18441 Wesley Church Road, Bridgeville, DE is an "establishment" as that term is defined by 40 C.F.R. 167.3, bearing establishment No. 4139-DE-001.

**COUNT I: MISBRANDING OF ROUNDUP POWER MAX**

22. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it shall be unlawful for any person in any State to *distribute or sell* to any person any pesticide which is misbranded.
23. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), defines "distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

24. Since at least 7/23/08, Respondent distributed or sold its *Roundup Power Max* product, EPA Reg. No. 524-549, to various individuals, partnerships, associations, corporations and/or organized groups of persons.
25. Pursuant to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is misbranded if its label does not bear the registration number, assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, of the establishment at which it was produced.
26. On or about May 2, 2003, EPA assigned Respondent's facility located at 18441 Wesley Church Road, Bridgeville, DE the establishment number EPA Est. No.004139-DE-001.
27. Since at least 7/23/08, Respondent distributed or sold *Roundup Power Max* product, EPA Reg. No. 524-549, with labels that bore incorrect EPA establishment numbers, and therefore, Respondent's *Roundup Power Max* product, EPA Reg. No. 524-549, was misbranded as defined by Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).
28. Therefore, Respondent distributed or sold misbranded pesticides, constituting unlawful acts in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

***COUNT II: MISBRANDING OF PARAQUAT CONCENTRATE***

29. As stated above, and pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it shall be unlawful for any person in any State *to distribute or sell* to any person any pesticide which is misbranded.
30. Since at least 4/28/09, Respondent "*distributed or sold*" (as these italicized terms are defined pursuant to Section 2(gg) of FIFRA) *Paraquat Concentrate* (EPA Reg. No. 82542-3), to various individuals, partnerships, associations, corporations and/or organized groups of persons.
31. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), and in relevant part only, a pesticide is misbranded if any words, statements, or other information required by the Act are not prominently placed on the label or labeling in such a way as to make it readable or understandable.
32. Pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), and in relevant part only, a pesticide is misbranded if the label or labeling does not contain directions for use necessary to make the product effective and to adequately protect health and the environment.
33. Pursuant to Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), and in relevant part only, a pesticide is misbranded if the label does not contain a warning or caution statement (i.e. precautionary statements) adequate to protect health and the environment.

34. Pursuant to Section 2(q)(2)(D) of FIFRA, 7 U.S.C. § 136(q)(2)(D), and in relevant part only, a pesticide is misbranded if the label does not contain, *inter alia*: 1) a skull and cross bones; 2) the word "poison", prominently in red on a background of distinctly contrasting color; and 3) a statement of practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

35. According to inspection evidence originally gathered by the State of Delaware Department of Agriculture on or about August 25, 2009, EPA determined that all or some of the above listed required information and mandatory labeling requirements set forth in paragraphs 31-34, above, was missing from two net content 265 gallon mini-bulk containers of *Paraquat Concentrate* (EPA Reg. No. 82542-3), in violation of Section 2(q)(1)(E-G) and 2(q)(2)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(E-G), and 7 U.S.C. § 136(2)(q)(2)(D),

36. Therefore, Respondent distributed or sold misbranded pesticides, constituting unlawful acts in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

37. Respondent is a "distributor" or "retailer" subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

#### Civil Penalty

38. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of FOUR THOUSAND, TWO HUNDRED DOLLARS(\$4,200), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully-executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

39. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act*, May 2010 *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements*, and 40 C.F.R. Part 19.

40. Payment of the civil penalty amount required under the terms of Paragraph 38, above, 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  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO, 63197-9000.

Contact: Craig Steffen 513-487-2091  
Eric Volck 513-487-2105

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. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
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://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

All payments shall also reference the above case caption and docket number, DOCKET NO.: FIFRA-03-2011- 0302. 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 Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Christine Convery (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

41. 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 also to assess 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 CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

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

The cost of the Agency'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.

A penalty charge of six percent 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).

#### Certifications

42. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 et seq.

#### Other Applicable Laws

43. 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

44. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA 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 FIFRA, the regulations promulgated there under, 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

45. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), 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

46. This CAFO shall apply to and be binding upon EPA, Respondent, and the successors and assigns of Respondent. 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

47. 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.

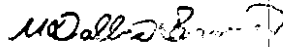
Entire Agreement

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

For Respondent:

9-27-11

Date



Dallas Barnes, President and CEO  
Meherrin Agricultural & Chemical Company

For Complainant:

9/28/11

Date

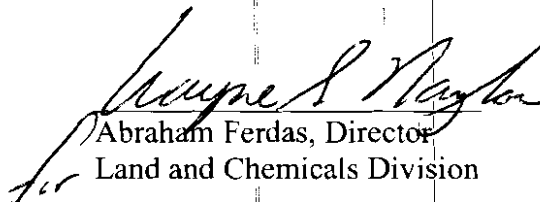


Benjamin M. Cohan  
Sr. Assistant Regional Counsel  
U.S. EPA, Region III

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

9/29/11

Date



Abraham Ferdas, Director  
Land and Chemicals Division

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

**IN THE MATTER OF**

Meherrin Agricultural & Chemical Company)  
413 Main Street )  
Severn, NC 27877 )

DOCKET NO: FIFRA-03-2011-0302

CONSENT AGREEMENT

Respondent.

18441 Wesley Church Road )  
Bridgeville, DE 19933 )

Facility )  
\_\_\_\_\_ )

FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Meherrin Agricultural & Chemical Company ("Respondent") 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 herein as if set forth at length.

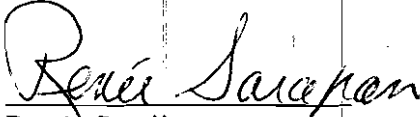
**NOW THEREFORE**, pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. § 136l(a), and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is

based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C.

§ 136l(a)(4), Respondent is hereby ordered to pay a civil penalty of FOUR THOUSAND TWO HUNDRED DOLLARS (\$4,200), as set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: 9/29/11

  
Renée Sarajian  
Regional Judicial Officer  
U.S. EPA, Region III

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

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DOCKET NO: FIFRA-03-2011-0302  
CONSENT AGREEMENT

CERTIFICATE OF SERVICE

I hereby 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.

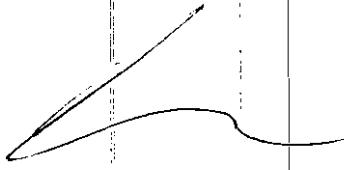
**Original and one copy by hand-delivery:**

Lydia Guy, Regional Hearing Clerk

**Copy by Certified Mail**

Dallas Barnes, President and CEO  
Meherrin Agricultural & Chemical Company  
413 Main Street  
Severn, NC 27877

9/29/14  
Date

  
\_\_\_\_\_  
Benjamin M. Cohan (3RC50)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III

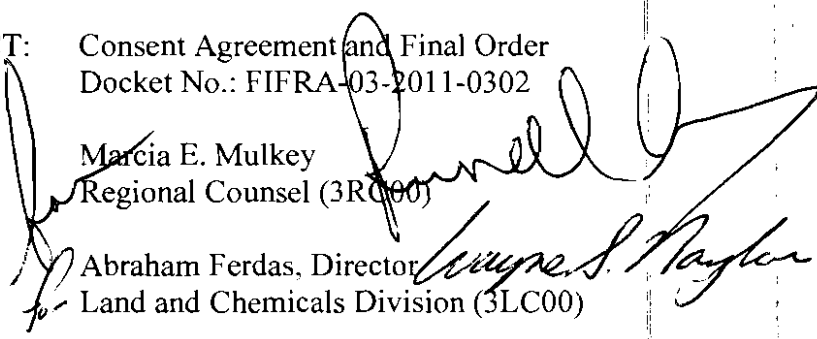


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

MEMORANDUM

SUBJECT: Consent Agreement and Final Order  
Docket No.: FIFRA-03-2011-0302

FROM: Marcia E. Mulkey  
Regional Counsel (3RC00)



Abraham Ferdas, Director  
Land and Chemicals Division (3LC00)

TO: Renée Sarajian  
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order ("CAFO") have been negotiated with Meherrin Agricultural & Chemical Company ("Respondent") in settlement of actionable Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") violations. The compliance issues addressed in the CAFO involve producing pesticides that are misbranded, which constitute unlawful acts under Sections 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

The litigation team calculated a civil penalty of four thousand two hundred dollars (\$4,200) in accordance with the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), i.e., the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violations. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *Enforcement Response Policy for Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA)*.

We recommend that you sign the attached Final Order assessing four thousand two hundred dollars (\$4,200) in civil penalties against Respondent. After you execute the Final Order, please return the documents to Benjamin Cohan of the Office of Regional Counsel for further processing.

Attachments

cc: Dallas Barnes