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ENVIRONMENTAL PROTECTION AGENCY
REGION III

2013 APR 17 PM 5:40

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EPA REGION III, PHILA. PA

IN THE MATTER OF:

Mr. James Ganoë
HC 64 Box 3300
(Romney, West Virginia 26757)

U.S. EPA Docket No. TSCA-03-2012-0226
CONSENT AGREEMENT

Mr. Thomas Ganoë
26 Oates Avenue
Winchester, VA 22601

Proceeding under Sections 409 and 16(a)
of the Toxic Substances Control Act
15 U.S.C. §§ 2689 and 2615(a)

RESPONDENTS

521 W. Main Street
Romney, West Virginia, 26757

420 West Gravel Lane
Romney, West Virginia, 26757

HC 78, Box138
Kirby, West Virginia, 26755

TARGET HOUSING

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III (“Complainant” or “EPA” or “Agency”) and James Ganoë and Thomas Ganoë (“Respondents”), pursuant to Sections 409 and 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2689 and 2615(a), the federal regulations set forth at 40 C.F.R. Part 745, 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 accompanying Final Order (collectively referred to as the “CA/FO”), address violations by Respondents which occurred at Respondents’ properties, and were alleged in the Administrative Complaint, Compliance Order and Notice of Right to Hearing (“Complaint”) issued by Complainant to Respondents on August 17, 2012.

2. The violations cited herein pertain to the Respondents' alleged failure, as owner and lessor of certain housing, to comply with requirements of 40 C.F.R. Part 745, Subpart F, Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act ("RLBPHRA"), 42 U.S.C. § 4852d(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.
3. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby resolves, as part of the settlement set forth herein, EPA's civil claims alleged in the Complaint.

II. JURISDICTION

4. The U.S. Environmental Protection Agency and the Office of Administrative Law Judges of EPA have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, Section 1018 of Title X of the RLBPHRA, 42 U.S.C. § 4852d, 40 C.F.R. Part 745, Subpart F, and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

5. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5 of this Consent Agreement, for purposes of this proceeding, Respondents neither admit nor deny the factual allegations and legal conclusions set forth in this Consent Agreement.
7. Respondents agree not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondents hereby expressly waive 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.
9. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.
10. Each Party to this Consent Agreement shall bear its own costs and attorney's fees in connection with this proceeding.

11. Respondents are aware that the submission of false or misleading information to the United States government may subject Respondents to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondents to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. The Findings of Fact and Conclusions of Law as set forth in the Complaint are incorporated into this Consent Agreement as if fully set forth at length therein, subject to Paragraphs 5 and 6, above.

V. CIVIL PENALTY

13. Section 1018 of RLBPHRA authorizes the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615(a), in the maximum amount of \$10,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. For purposes of determining the amount of any civil penalty to be assessed, TSCA § 16 requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, 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. EPA also takes into account the Enforcement Response and Penalty Policy for actions taken under the Residential Lead-Based Paint Hazard Reduction Act of 1992 dated December 20, 2007 ("ERPP").
14. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000.00). The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO. If Respondent pays the entire civil penalty of Fifteen Thousand Dollars (\$15,000.00) within thirty (30) calendar days of the date on which this CA/FO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. §13.11(a)(1).
15. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs 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.
16. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CA/FO begins to accrue on the date that a copy of the CA/FO is mailed or hand-delivered

CA/FO begins to accrue on the date that a copy of the CA/FO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such 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).

17. In accordance with 40 C.F.R. § 13.11(b), the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 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.
18. Pursuant to 40 C.F.R. § 13.11(c), a late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. In accordance with 31 C.F.R. § 901.9(d), should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent.
19. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements of TSCA and the Residential Lead-Based Paint Hazard Reduction Act of 1992.
20. Respondent shall pay a civil penalty of Fifteen Thousand Dollars (\$15,000.00) in twenty four (24) installments and pay interest at the rate of one percent (1.00%) per annum on the outstanding principal balance. The initial 23 payments shall be in the amount of \$631.44. Payments 2 through 24 shall include both principal and interest. The last payment shall be in the amount of \$631.24. The payments shall be made in accordance with the following schedule:
 - 1st Payment- The first payment in the amount of \$631.44 shall be paid within thirty days (30) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
 - 2nd Payment- The second payment in the amount of \$631.44 shall be paid within sixty days (60) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
 - 3rd Payment- The third payment in the amount of \$631.44 shall be paid within ninety days (90) of the date on which this CA/FO was mailed or hand-delivered to Respondent.

- 4th Payment- The fourth payment in the amount of \$631.44 shall be paid within one hundred and twenty days (120) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 5th Payment- The fifth payment in the amount of \$631.44 shall be paid within one hundred and fifty days (150) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 6th Payment- The sixth payment in the amount of \$631.44 shall be paid within one hundred and eighty days (180) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 7th Payment- The seventh payment in the amount of \$631.44 shall be paid within two hundred and ten days (210) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 8th Payment- The eighth payment in the amount of \$631.44 shall be paid within two hundred and forty days (240) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 9th Payment- The ninth payment in the amount of \$631.44 shall be paid within two hundred and seventy days (270) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 10th Payment- The tenth payment in the amount of \$631.44 shall be paid within three hundred days (300) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 11th Payment- The eleventh payment in the amount of \$631.44 shall be paid within three hundred and thirty days (330) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 12th Payment- The twelfth payment in the amount of \$631.44 shall be paid within three hundred and sixty five days (365) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 13th Payment- The thirteenth payment in the amount of \$631.44 shall be paid within three hundred and ninety five days (395) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 14th Payment- The fourteenth payment in the amount of \$631.44 shall be paid within four hundred and twenty five days (425) of the date on which this CA/FO was mailed or hand-delivered to Respondent.

- 15th Payment- The fifteenth payment in the amount of \$631.44 shall be paid within four hundred and fifty five days (455) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 16th Payment- The sixteenth payment in the amount of \$631.44 shall be paid within four hundred and eighty five days (485) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 17th Payment- The seventeenth payment in the amount of \$631.44 shall be paid within five hundred and fifteen days (515) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 18th Payment- The eighteenth payment in the amount of \$631.44 shall be paid within five hundred and forty five days (545) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 19th Payment- The nineteenth payment in the amount of \$631.44 shall be paid within five hundred and seventy five days (575) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 20th Payment- The twentieth payment in the amount of \$631.44 shall be paid within six hundred and five days (605) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 21st Payment- The twenty first payment in the amount of \$631.44 shall be paid within six hundred and thirty five days (635) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 22nd Payment- The twenty second payment in the amount of \$631.44 shall be paid within six hundred and sixty five days (665) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 23rd Payment- The twenty third payment in the amount of \$631.44 shall be paid within six hundred and ninety five days (695) of the date on which this CA/FO was mailed or hand-delivered to Respondent.
- 24th Payment- The twenty fourth and final payment in the amount of \$631.24 shall be paid within seven hundred and thirty days (730) of the date on which this CA/FO was mailed or hand-delivered to Respondent.

21. Pursuant to the above schedule, Respondent will remit payments for the principal of the civil penalty in the amount of Fifteen Thousand Dollars (\$15,000.00) plus the interest amount totaling One Hundred and Fifty Four Dollars and Thirty Six cents (\$154.36), for a

grand total of Fifteen Thousand, One Hundred and Fifty Four Dollars and Thirty Six cents (\$15,154.36).

22. Payment of the civil penalty amount assessed in paragraph 14 and set forth in paragraphs 20 and 21 above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference its name and address, and the Docket Number of this action, i.e., **TSCA-03-2012-0226**;

b. All checks shall be made payable to **“United States Treasury”**;

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: 513-487-2105

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

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

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

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV

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

- i. Additional payment guidance is available at:

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

- j. Payment by Respondent shall reference Respondent's name and address, and EPA Docket Number of this CAFO (Docket No. TSCA-03-2012-0226). A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Rodney T. Carter
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency

Region III (Mail Code 3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029;

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029.

23. 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, Respondents' failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
24. 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 the Respondents. 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).
25. The costs of EPA's administrative handling of overdue debts is 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.
26. Respondents agree not to deduct for federal tax purposes the civil penalty specified in this Consent Agreement and the accompanying Final Order.

VI. EFFECT OF SETTLEMENT

27. The settlement set forth in this CAFO shall constitute full and final satisfaction of

all civil claims for penalties which Complainant may have under TSCA and/or the RLBPHRA for the specific violations alleged in Section IV (“Findings of Fact and Conclusions of Law”), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VII. OTHER APPLICABLE LAWS

28. Nothing in this CAFO shall relieve their obligation to comply with all applicable federal, state, and local laws and regulations.

VIII. CERTIFICATION OF COMPLIANCE

29. Respondents certify to Complainant, upon investigation, to the best of their knowledge and belief, that such Respondents, as an “owner(s)” and “lessor(s)” of the aforementioned Target Housing, are currently in compliance with the provisions of TSCA, the RLBPHRA and 40 C.F.R. Part 745, Subpart F, that are referenced in this Consent Agreement.

IX. RESERVATION OF RIGHTS

30. This Consent Agreement and the accompanying Final Order resolve only EPA’s claims for civil monetary penalties for the specific violations alleged in Section IV (“Findings of Fact and Conclusions of Law”) herein. EPA reserves the right to commence action against any person, including Respondents, 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 RLBPHRA, 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 EPA Regional Hearing Clerk.

X. PARTIES BOUND

31. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA and the Respondents.

XI. EFFECTIVE DATE

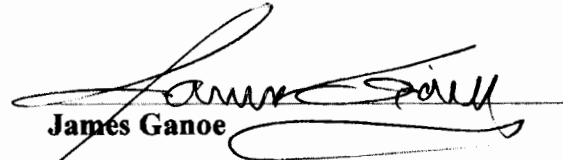
32. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules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

XII. ENTIRE AGREEMENT

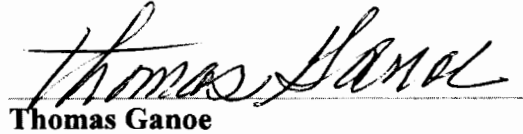
33. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondents:

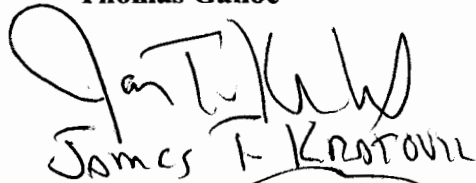
Date: 4/4/13


James Ganoe

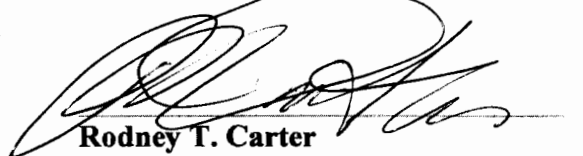
Date: 4/1/13


Thomas Ganoe

For Complainant:

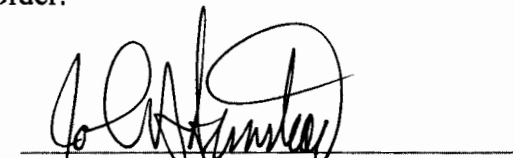

James T. Krotovill

Date: 4/16/13


Rodney T. Carter
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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

Date: 4.16.13


John A. Armstead, Director
Land and Chemicals Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Mr. James Ganoe
HC 64 Box 3300
(Romney, West Virginia 26757

U.S. EPA Docket No. TSCA-03-2012-0226

FINAL ORDER

Mr. Thomas Ganoe
26 Oates Avenue
Winchester, VA 22601

**Proceeding under Sections 409 and 16(a)
of the Toxic Substances Control Act
15 U.S.C. §§ 2689 and 2615(a)**

RESPONDENTS

521 W. Main Street
Romney, West Virginia, 26757

420 West Gravel Lane
Romney, West Virginia, 26757

HC 78, Box138
Kirby, West Virginia, 26755

TARGET HOUSING

FINAL ORDER


Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and the above-captioned Respondents 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.

WHEREFORE, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA"), 42 U.S.C. §§ 4851 *et seq.*, and 40 C.F.R. Part 745, Subpart F, authorize the assessment of a civil penalty under Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615, for violations of the RLBPHRA, and having determined, based on the representations of the parties to the attached Consent Agreement, that the agreed-upon Fifteen Thousand Dollars (\$15,000.00) civil penalty 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 Respondents pay a civil penalty of Fifteen Thousand Dollars (\$15,000.00) in accordance with the payment provisions set forth in the attached Consent Agreement.

The effective date of the foregoing Consent Agreement and this **FINAL ORDER** is the date on which this **FINAL ORDER** is filed with the EPA Regional Hearing Clerk.

Date: 4/17/13


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

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CERTIFICATE OF SERVICE

2013 APR 17 PM 5: 39

I hereby certify that the original and one copy of the foregoing **CONSENT** REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

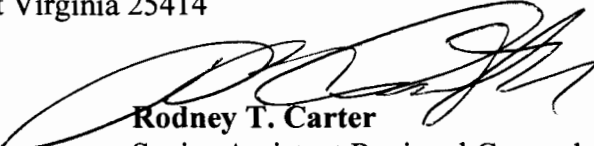
AGREEMENT AND FINAL ORDER, Docket No. **TSCA-03-2012-0226**, has been filed with the EPA Region III Regional Hearing Clerk and that I caused copies to be sent via first class, inter-office, electronic transmission or express mail, return receipt requested to:

Honorable Susan L. Biro (1900R)
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Avenue, S.W.
Washington, D.C. 20460

Honorable M. Linda Buschmann (1900R)
U.S. Environmental Protection Agency
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Avenue, S.W.
Washington, D.C. 20460

James T. Kratovil, Esquire
Kratovil & Amore
21 W. Washington St.
Charles town
West Virginia 25414

4/17/13 Date


Rodney T. Carter
Senior Assistant Regional Counsel
United States
Environmental Protection Agency
Region III