



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

APR 30 2018

REPLY TO THE ATTENTION OF:

LC-17J

**CERTIFIED MAIL 7017 0530 0000 1268 0035**  
**RETURN RECEIPT REQUESTED**

Mr. Paul Wernke  
Federal Bureau of Prisons  
Duluth Federal Prison Camp  
4464 Ralston Drive  
PO Box 1400  
Duluth, Minnesota 55814


RE: Federal Facility Compliance Agreement In the Matter of: Federal Bureau Of Prisons  
**TSCA-05-2018-0004**

Dear Mr. Wernke:

Enclosed please find a copy of a fully executed Federal Facility Compliance Agreement in resolution of the above case. This document was filed on April, 30 2018 with the Regional Hearing Clerk.

Thank you for your cooperation in resolving this matter.

Sincerely,

  
Kenneth Zolnierczyk  
Pesticides and Toxics Compliance Section

Enclosure

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V  
77 W. Jackson Boulevard  
Chicago, Illinois 60604



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IN THE MATTER OF :  
 :  
**FEDERAL BUREAU OF PRISONS** :  
 :  
 Respondent :  
 :  
**FEDERAL PRISON CAMP, DULUTH** :  
4464 Ralston Drive :  
PO Box 1400 :  
Duluth, MN 55814 :  
 :  
 Facility :  
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Docket #  
**TSCA-05-2018-0004**  
FEDERAL FACILITY  
COMPLIANCE AGREEMENT  
  
Issued pursuant to the  
Toxic Substances Control  
Act ("TSCA") Sections 15 and 16,  
15 U.S.C. §§ 2614 and 2615

**FEDERAL FACILITY COMPLIANCE AGREEMENT  
BETWEEN THE FEDERAL BUREAU OF PRISONS AND THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**I. SCOPE AND PURPOSE**

1. The express purpose of the undersigned Parties in entering into this Federal Facility Compliance Agreement ("FFCA" or "Agreement") is to address violations of Sections 6(e) and 15 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2605(e) and 2614, and the regulations implementing TSCA Section 6(e), as set forth at 40 C.F.R. Part 761, at the Federal Prison Camp, Duluth facility ("Facility") located at 4464 Ralston Drive, Duluth, Minnesota and to further the goals of TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614.
2. It is the objective of all provisions and obligations of this Agreement to cause the Federal Bureau of Prisons to come into and remain in full compliance with TSCA at the Federal Prison Camp, Duluth.

## II. JURISDICTION

3. The United States Environmental Protection Agency, Region V ("EPA") and the Federal Bureau of Prisons ("BOP" or "Respondent") enter into this Agreement pursuant to TSCA and Executive Order No. 12088. This agreement contains a "plan," as described in 1-601 of E.O. No. 12088, to achieve and maintain compliance with TSCA.

## III. PARTIES

4. The Parties to this FFCA are EPA and BOP.
5. BOP will take all necessary steps to ensure compliance with the provisions of this FFCA. BOP shall give written notice of this FFCA to any prospective successor in interest. At least NINETY (90) DAYS prior to transfer of ownership or operation of the Facility, BOP shall give written notice of such transfer or change in ownership or operation to EPA at the address given below. No change in ownership of any property covered by this FFCA, or in the status of BOP, shall in any way alter, diminish or otherwise affect BOP's obligations and responsibilities under this FFCA.
6. The undersigned representative of each Party to this Agreement certifies that s/he is fully authorized by the Party whom s/he represents to enter into the terms and conditions of the Agreement and to execute and legally bind that Party to it.

## IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The facts related herein shall not be considered admissions by any Party. This section contains findings of fact determined solely by the Parties and shall not be used by any person related or unrelated to this FFCA for purposes other than determining the basis of this FFCA.

7. EPA has jurisdiction over this matter pursuant to TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614.
8. TSCA Section 15(1)(B), 15 U.S.C. § 2614(1)(B), provides that it shall be unlawful for any person to fail or refuse to comply with any requirement prescribed by TSCA Section 6, 15 U.S.C. § 2605.
9. TSCA Section 6(e)(2)(A), 15 U.S.C. § 2605(e)(2)(A), provides that, except as provided under TSCA Section 6(e)(2)(B), 15 U.S.C. § 2605(e)(2)(B), effective one year after January 1, 1977, no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl ("PCB") in any manner other than a totally enclosed manner. A "totally enclosed manner" is any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs. 40 C.F.R. § 761.3.

10. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "PCB" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance.
11. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "PCB-Contaminated" means a liquid material containing PCBs at concentrations  $\geq 50$  ppm but  $< 500$  ppm.
12. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "PCB Container" means any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.
13. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "PCB Article" means any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes capacitors, transformers, electric motors, pumps, pipes and any other manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.
14. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "PCB Transformer" means any transformer that contains PCBs at concentrations equal to, or greater than, 500 parts per million ("ppm").
15. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
16. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "PCB waste(s)" means those PCBs and PCB Items that are subject to the disposal requirements of subpart D of Part 761.
17. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "person" means any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.
18. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "generator of PCB waste" means any person whose act or process produces PCBs that are regulated for disposal under subpart D of this part, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of subpart D of this part.

19. 40 C.F.R. § 761.3 provides, in pertinent part, that the term “facility” means all contiguous land, and structures, other appurtenances, and improvements on the land, used for the treatment, storage, or disposal of PCB waste. A facility may consist of one or more treatment, storage, or disposal units.
20. BOP currently is, and at the time of the violations alleged in this FFCA was, a Department of the United States Government.
21. BOP currently is, and at the time of the violations alleged in this FFCA was, a “person” within the meaning of that term as defined by 40 C.F.R. § 761.3.
22. BOP owns and operates, and at the time of the violations alleged in this FFCA owned and operated, the Facility.
23. BOP’s Facility currently is, and at the time of the violations alleged in this FFCA was, a “facility” within the meaning of that term as defined by 40 C.F.R. § 761.3.
24. At the time of the violations alleged in this FFCA, BOP was an owner of “PCB Items” within the meaning of that term as defined by 40 C.F.R. § 761.3.
25. At the time of the violations alleged in this FFCA, BOP was a “generator of PCB waste” within the meaning of that term as defined by 40 C.F.R. § 761.3.
26. The Minnesota Pollution Control Agency (MPCA) conducted PCB compliance inspections at the Facility on August 15, 2013 and September 23, 2013.
27. The Facility has a Metal Recycling building, a maintenance garage with a used oil storage area, and an oil containment building behind the maintenance garage.
28. In late 2012, two inmates working in the Metal Recycling building emptied used oil from an electrical transformer into a 55-gallon drum (Drum 1) to prepare the transformer and the oil for disposal. Drum 1 was kept on a containment platform that was later judged inadequate to hold the weight of that drum. Drum 1 was brought into the maintenance garage and a 30-gallon drum (Drum 4) replaced it on the containment platform. It appears that inmates, before or after moving Drum 4 to the containment platform, contaminated Drum 4 with PCBs via a PCB-contaminated funnel. Subsequently, the used oil in Drum 1 was transferred to another 55-gallon drum (Drum 3) located in the used oil storage area of the maintenance garage. Drum 1, the original, contaminated drum, was then stored in the oil containment building located behind the maintenance garage. In May 2013, Drum 3 was moved from the maintenance garage to the oil containment building. Drum 1, which was empty, was moved to the maintenance garage to replace Drum 3.
29. On June 20, 2013, Safety Kleen, a used oil processing company, removed 110 gallons of used oil from the Facility for disposal.

30. On July 8, 2013, Safety Kleen representative Tim Lilla notified Lisa Henrickson, Garage Foreman at the Facility, that oil removed from the Facility was believed to be contaminated with PCBs.
31. On July 9, 2013, Safety Kleen collected used oil samples from the Facility to test for PCBs.
32. On July 16, August 5, and August 9, 2013, the Facility submitted oil samples from heavy equipment and drums identified as potentially containing PCB or PCB-Contaminated oil to Twin Ports Testing for PCB tests.
33. An additional drum, Drum 2, located in the oil containment building, was also found to have been contaminated with PCBs. Drum 2 is thought to have been contaminated during used oil pickup.
34. In total, used oil samples from four drums tested positive for PCBs:

	<b>Drum 1</b>	<b>Drum 2</b>	<b>Drum 3</b>	<b>Drum 4</b>
<b>Drum size/contents</b>	55 gallons used oil	55 gallons used oil	55 gallons used oil	30 gallons used oil
<b>Location of drum</b>	Metal recycling building; subsequently drained and moved to used oil storage area of maintenance garage	Oil containment building	Used oil storage area of maintenance garage; subsequently moved to oil containment building	Metal recycling building
<b>Description of contamination</b>	Original drum into which PCB oil was transferred	Thought to be contaminated during oil pickup	Drum into which PCB oil from Drum 1 was transferred	Thought to be contaminated via funnel
<b>PCB content</b>	13,000 ppm	62 ppm	190,000 ppm	160 ppm

35. Based on the timeline of events and interviews with inmates who had worked in the Facility's scrap yard, Respondent identified an electrical transformer sent through the Facility's Metal Recycling building as the likely source of the PCB oil.
36. The suspect electrical transformer was sent to Azcon Corporation, a scrap processor, for disposal in February 2013. Azcon Corp. is not an authorized PCB disposal company.

**COUNT I**

**(Failure to Register a PCB Transformer)**

37. 40 C.F.R. § 761.30(a)(1)(vi)(A) provides, in pertinent part, that no later than December 28, 1998 all owners of PCB Transformers, including those in storage for reuse, must register their transformers with the Environmental Protection Agency, National Program Chemicals Division, Office of Pollution Prevention and Toxics ("OPPT").
38. 40 C.F.R. § 761.30(a)(1)(vi)(D) provides, in pertinent part, that a transformer owner must comply with all requirements of 40 C.F.R. § 761.30(a)(1)(vi)(A) to continue the PCB Transformer's authorization for use, or storage for reuse, pursuant to 40 C.F.R. § 761.30 and TSCA Section 6(e)(2)(B).
39. In or before 2012 through February 2013, Respondent owned and stored a PCB Transformer that was not registered with OPPT.
40. Respondent's failure to register its PCB Transformer constitutes a violation of 40 C.F.R. § 761.30(a)(1)(vi)(A), § 761.30(a)(1)(vi)(D), and TSCA Section 15, 15 U.S.C. § 2614.

**COUNT II**

**(Improper Disposal of PCB Transformer)**

41. 40 C.F.R. § 761.60(b)(1) provides, in pertinent part, that PCB Transformers shall be disposed of in accordance with either of the following:
  - (A) In an incinerator that complies with § 761.70; or
  - (B) In a chemical waste landfill approved under § 761.75; provided that all free-flowing liquid is removed from the transformer, the transformer is filled with a solvent, the transformer is allowed to stand for at least 18 continuous hours, and then the solvent is thoroughly removed.
41. Respondent sent its PCB Transformer to Azcon Corp. for disposal.
42. Azcon Corp. is not, and was not at the time of the violations alleged in this FFCA, an approved incinerator under § 761.70 nor an approved chemical waste landfill under § 761.75.
43. Respondent's failure to dispose of its PCB Transformer in an approved TSCA incinerator or chemical waste landfill constitutes a violation of § 761.60(b)(1) and TSCA Section 15, 15 U.S.C. § 2614.

COUNT III

**(Failure to Prepare and Maintain PCB Transformer Quarterly Inspection Reports)**

44. 40 C.F.R. § 761.30(a)(1)(ix) provides, in pertinent part, that a visual inspection of each PCB Transformer in use or stored for reuse shall be performed at least once every three months, as described in that section.
45. 40 C.F.R. § 761.30(a)(1)(xii) provides, in pertinent part, that records of such inspections and the maintenance history of each PCB Transformer shall be maintained at least three years after disposing of such PCB Transformer and shall be made available for inspection, upon request by EPA. Such records must contain the following information for each PCB Transformer:
- (A) Its location.
  - (B) The date of each visual inspection and the date that any leak was discovered, if different from the inspection date.
  - (C) The person performing the inspection.
  - (D) The location of any leak(s).
  - (E) An estimate of the amount of dielectric fluid released from any leak.
  - (F) The date of any cleanup, containment, repair, or replacement.
  - (G) A description of any cleanup, containment, or repair performed.
  - (H) The results of any containment and daily inspection required for uncorrected active leaks.
  - (I) Record of the registration of PCB Transformer(s).
  - (J) Records of transfer of ownership in compliance with § 761.180(a)(2)(ix).
46. Respondent failed to prepare quarterly visual inspection reports for its PCB Transformer in use or stored for reuse at the Facility in or before 2012 through February 2013.
47. Respondent's failure to prepare quarterly visual inspection reports for its PCB Transformer for the four quarters of calendar year 2012 and for the first quarter of calendar year 2013 constitutes five separate violations of 40 C.F.R. § 761.30(a)(1)(xii) and TSCA Section 15, 15 U.S.C. § 2614.

COUNT IV

**(Failure to Mark PCBs and PCB Items)**

48. 40 C.F.R. § 761.40(a) provides, in pertinent part, that each of the following items in existence on or after July 1, 1978 must be marked with an M<sub>L</sub> mark as described in § 761.45(a):
- (A) PCB Containers, 40 C.F.R. § 761.40(a)(1);
  - (B) Each storage area used to store PCBs and PCB Items for disposal, 40 C.F.R. § 761.40(a)(10).



49. 40 C.F.R. § 761.40(e) provides, in pertinent part, that PCB Items encompassed in § 761.40(a)(1) containing PCBs in concentrations of 50 to 500 ppm shall be marked with the M<sub>L</sub> mark as described in § 761.45(a).
50. 40 C.F.R. § 761.40(h) provides, in pertinent part, that all marks required by § 761.40 be placed in a position on the exterior of the PCB Items or storage units so that the marks can be easily read by any persons inspecting or servicing the marked PCB Items or storage units.
51. Four PCB Containers, the drums listed in the table in paragraph 34, at the Facility were not marked with the M<sub>L</sub> mark as described in § 761.45(a) on or before the August 15, 2013 MPCA inspection.
52. The Facility's oil containment building behind the maintenance garage was not marked with the M<sub>L</sub> mark as described in § 761.45(a) on or before the August 15, 2013 MPCA inspection.
53. The four unmarked PCB Containers and unmarked oil containment building constitute five separate violations of 40 C.F.R. § 761.40(a) and TSCA Section 15, 15 U.S.C. § 2614.

**COUNT V**  
**(Unmanifested Waste)**

54. 40 C.F.R. § 761.207 requires a generator of PCB waste who offers PCB waste for transport for off-site disposal to prepare a manifest on EPA Form 8700-22 in accordance with the specifications set out in § 761.207.
55. Respondent failed to prepare manifests for the PCB Transformer and PCB oil the Facility offered for transport to Azcon Corp. and Safety Kleen, respectively, for off-site disposal.
56. Respondent's failure to prepare manifests for the PCB Transformer and PCB oil offered for off-site disposal constitutes two separate violations of 40 C.F.R. § 761.207 and TSCA Section 15, 15 U.S.C. § 2614.

**V. COMPLIANCE TASKS**

57. Respondent asserts that it has taken the following actions to achieve compliance with TSCA since being notified of PCB violations at the Facility:
  - (A) Respondent identified and tested potential sources of contamination. Respondent stored contaminated items in the oil containment building until properly disposing of them.

- (B) PCB Containers and the PCB containment building were marked in accordance with 40 C.F.R. § 761.40, and were photographed as such on the September 23, 2013 inspection by MPCA.
- (C) On October 8, 2013, Veolia Environmental Services removed all contaminated drums from the Facility and properly disposed of them. Respondent has on file a manifest of the items removed and disposed of.
- (D) Locks were changed on the used oil containment areas to permit access only to the Hazardous Waste Coordinator, Facility Manager, and Safety Manager.
- (E) The permeable concrete floor of the storage shed where PCB containers were located and where small amounts of PCB oil had leaked was removed, crushed, contained, and replaced with new concrete.
- (F) All workers, including inmates, who may come in contact with PCB fluids received training, which included PCB description, sources, health effects, and safety precautions.
- (G) The locked used oil storage area in the maintenance garage now has a log book, which is to be used to immediately document all fluid disposals and drum movement. Each entry will include the type of fluid, quantity, origin, and date.
- (H) According to a BOP letter dated October 10, 2013, following its responsive actions, remaining items on site identified as potentially being PCB or PCB-Contaminated tested negative for PCBs. Respondent conducted a visual search of all Facility buildings, and did not identify any other potentially contaminated items.

58. Respondent agrees to the following terms pursuant to TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614.

- (A) By signing this Agreement, Respondent certifies that the actions listed in paragraph 57 as having been taken at the Facility are true and complete, and no further action is required to bring the Facility into full compliance with TSCA and 40 C.F.R. Part 761.
- (B) By signing this Agreement, Respondent further certifies that it has developed and is maintaining at the Facility, or a central facility, annual records and the written annual document log of the disposition of PCBs and PCB Items located at the Facility pursuant to 40 C.F.R. §761.180(a).

## VI. REPORTING

59. Respondent shall notify EPA immediately by phone and within FIFTEEN (15) DAYS in writing if it identifies additional TSCA violations not enumerated in this FFCA at the Facility.
60. Within FIFTEEN (15) DAYS of the 15-day notification deadline described in paragraph 59, Respondent shall submit to EPA a certification that Respondent has remedied the violations identified and has returned to compliance with TSCA. If returning to compliance takes more than 30 days from discovery of the violation, Respondent shall, within FIFTEEN (15) DAYS of the 15-day notification deadline described in paragraph 59, submit to EPA a plan identifying how it will return to compliance. Once the plan is executed and Respondent has come into compliance with TSCA, Respondent shall provide to EPA a certification of its return to compliance.
61. Unless specified otherwise, when written notification to or communication with EPA is required by the terms of this Agreement, it shall be addressed as follows:

Kenneth Zolnierczyk (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

62. Each notification or communication to EPA shall be deemed submitted on the date it is postmarked, and shall be sent by certified mail, return receipt requested. Respondent shall maintain records of each notification or communication for the duration of the Agreement.
63. All certifications and compliance plans provided pursuant to paragraph 60 of this Agreement shall be signed by a duly authorized representative of Respondent who has personal knowledge of the submission's contents. Each submission shall be admissible as evidence in any proceeding to enforce this Agreement. Each submission shall include the following certification:

"I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

#### VII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

64. Compliance with the terms of this FFCA in no way affects or relieves Respondent of its obligation to comply with all applicable requirements of TSCA and regulations promulgated thereunder, or other applicable requirements of Federal, state, or local law.

#### VIII. RIGHT OF ENTRY

65. US EPA, its contractors, and other authorized representatives shall have the right to enter the Facility to conduct any inspection, including but not limited to records inspection, sample testing, or monitoring in accordance with TSCA Section 11, 15 U.S.C. § 2610, they believe is necessary to determine Respondent's compliance with this FFCA.

#### IX. GENERAL PROVISIONS

66. The Parties agree that the terms and conditions of this Agreement are enforceable as appropriate by any person pursuant to TSCA Section 20, 15 U.S.C. § 2619. Terms and conditions of this Agreement changed by an agreed upon modification shall be enforceable as changed. Nothing in this Agreement shall be deemed to waive the sovereign immunity of the United States.
67. This Agreement was negotiated and executed by the Parties in good faith to ensure compliance with the law. No part of this Agreement constitutes or should be interpreted or construed as an admission of fact or of liability under federal, state or local laws, regulations, ordinances, or common law or as an admission of any violations of any law, regulations, ordinances, or common law. By entering into this Agreement, Respondent does not waive, other than as to the enforcement of this Agreement pursuant to the terms contained herein, any claim, right, or defense that it might raise in any other proceeding or action.
68. If any provision or authority of this Agreement or the application of this Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Agreement shall remain in force and shall not be affected thereby.
69. The effective date of this Agreement shall be the date on which it is signed by the last signatory, which will be EPA.
70. In computing any period of time described as “days” herein, all references to “days” refer to calendar days. The last day of a time period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

71. This Agreement shall terminate once EPA notifies Respondent in writing that it has met all of its obligations herein.

4/24/2018  
Date

Michael D. Harris  
Michael Harris, Acting Director  
Land and Chemicals Division  
US EPA Region V

4/13/18  
Date

Warden M. Rios  
Warden M. Rios, Chief Executive Officer  
Federal Prison Camp, Duluth  
Federal Bureau of Prisons

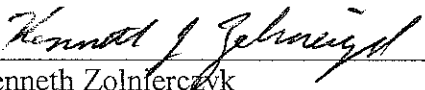
In the matter of:  
Docket Number: TSCA-05-2018-0004

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Federal Facility Compliance Agreement**, which was filed on April 30, 2018, this day in the following manner to the addressees:

Copy by certified mail  
return-receipt requested: Paul Wernke  
Duluth Federal Prison Camp  
4464 Ralston Drive  
PO Box 1400  
Duluth, Minnesota 55814

Dated: April 30, 2018

  
\_\_\_\_\_  
Kenneth Zolnerczyk  
Enforcement Officer  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7017 0530 0000 1268 0042