

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

IN RE: : DOCKET NO. CAA-03-2011-0313
: :
Koppers Inc. : PROCEEDING UNDER:
100 Koppers Road, Follansbee, WV : :
Respondent. : Section 113(d) of the Clean Air Act,
: 42 U.S.C. §7413(d)

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CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Complainant, which is the Director of the Air Protection Division, U.S. Environmental Protection Agency, Region III ("EPA" or "the Agency"), and Koppers Inc. ("Koppers" or "Respondent"), pursuant to Section 113(d) of the Clean Air Act ("CAA" or "Clean Air Act"), as amended, 42 U.S.C. §7413(d), and the Consolidated Rules of Practice governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination of Permits ("Consolidated Rules") found at 40 C.F.R. Part 22, with specific reference to 40 C.F.R. §22.18(b)(2) and (3). This Consent Agreement and the Accompanying Final Order (collectively referred to herein as the "CAFO") addresses the violations alleged by EPA in an administrative complaint, dated September 29, 2011, filed in this matter.

II. GENERAL PROVISIONS

2. This Consent Agreement makes reference to other documents, *e.g.*, a Title V Permit and a West Virginia consent order, which speak for themselves. If there is any conflict or inconsistency between the terms of the other documents as described in this CAFO, and

the terms of the document to which it refers, the terms of the underlying document shall apply unless explicitly changed by the Consent Agreement.

3. By this CAFO, Respondent and EPA are agreeing to amend the administrative complaint filed in this matter and dated September 29, 2011 (the "Complaint"), in order to account for facts and information affecting the allegations in the Complaint which have been obtained since the filing of the Complaint.
4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint and this CAFO.
5. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in the Complaint or this Consent Agreement, except as provided in Paragraph 4, above.
6. Respondent agrees not to contest EPA's jurisdiction with respect to the execution and enforcement of this Consent Agreement or the issuance of the accompanying Final Order
7. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of the CAFO and agrees to comply with the terms of the CAFO.
9. Respondent shall bear its own costs and attorneys' fees.

III. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Section 110 of the CAA, 42 U.S.C. §7410, requires that each State adopt and submit to EPA for approval a plan providing for implementation, maintenance, and enforcement of each National Ambient Air Quality Standard ("NAAQS") in the State, and that such plan be adopted as law by the State following reasonable notice and public hearings. *See* CAA §110(a). West Virginia's EPA-approved SIP is set forth at 40 C.F.R. Part 52, Subpart XX.
11. Section 502 of the CAA requires that major sources obtain a Title V operating permit. 42 U.S.C. §7661a. West Virginia has an approved Title V operating permit program (*See* 66 Fed. Reg. 50325, Oct. 3, 2001), which is found at WV 45 CSR 30.
12. Section 112 of the Act, 42 U.S.C. §7412, establishes a list of hazardous air pollutants ("HAPs") and directs EPA to define the categories of sources that are required to control emissions of HAPs. Section 112(d) of the Act, 42 U.S.C. §7412(d), directs EPA to establish national emissions standards for hazardous air pollutants ("NESHAPs") for sources in each category.
13. Pursuant to Section 112 of the Act, EPA promulgated the "National Emissions Standards for Benzene Emissions from Coke by-Product Recovery Plants" found at 40 C.F.R. Part 61, Subpart L. *See* 54 Fed. Reg. 38073 (Sep. 14, 1989).
14. Pursuant to Section 112 of the Act, in 1984 EPA promulgated the National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene, found at 40 C.F.R. Part 61, Subpart J. These regulations apply to certain sources intended to operate

in benzene service, such as pumps, compressors, connectors, etc., but do not apply to sources located in coke by-product recovery plants. *See* 40 C.F.R. §61.110(a), (b).

These provisions generally require, among other things, that the source comply with the emission standards in 40 C.F.R. Part 61, Subpart V, the National Emission Standards for Equipment Leaks.

15. Pursuant to Section 112 of the Act, in 1994 EPA promulgated 1) the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (the "SOCMI"), 2) the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, and 3) the National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks, found at 40 C.F.R. Part 63, subparts F, G, and H, respectively. These three subparts are collectively referred to as the "NESHAP HON."

16. Pursuant to Section 112 of the Act, in 1999 EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production (the "NESHAP PAI"), found at 40 C.F.R. Part 63, Subpart MMM. With certain exceptions at §63.1360(d), affected sources subject to MMM include the "facility-wide collection of pesticide active ingredient manufacturing process units (PAI process units) that process, use, or produce HAP," and are located at a plant site that is a "major source" under Section 112(a) of the Act. 40 C.F.R. §63.1360(a).

17. Pursuant to Section 112(f)(4) of the Act, 42 U.S.C. §7412(f)(4), no hazardous air pollutant may be emitted from any stationary source in violation of the standard established under Section 112(d) of the Act that applies to that source.
18. Section 113 of the CAA, 42 U.S.C. §7413, authorizes EPA to issue an administrative penalty order under Section 113(d) upon a finding that any person has violated the requirements of a SIP (§113(a)(1)), and/or violated any provision of a rule promulgated under Section 112 of the Act, or violated the term of any permit issued under Title V of the Act (§113(a)(3)).
19. Under the authority of Section 114 of the Act, 42 U.S.C. §7414, representatives of EPA Region III conducted an on-site inspection of the Koppers Follansbee Facility on March 10, 2009. A representative of the West Virginia Department of Environmental Protection (WVDEP) was also present during the inspection.
20. At the time of inspection, the Koppers Follansbee Facility was owned by Koppers Inc., which is a wholly-owned subsidiary of Koppers Holdings Incorporated.
21. The Koppers Follansbee Facility manufactures various grades of coal tar pitch, chemical oils and refined tars from crude coke oven tar. Koppers Follansbee also produces naphthalene from refined chemical oil and blends different coal tar distillates to produce creosote.
22. Respondent is a "person" within the meaning of Sections 113(a) and 502 of the Act, 42 U.S.C. §§7413(a) and 7661a, and as defined in Section 302(e) of the Act, 42 U.S.C. §7602(e).

23. The Koppers Follansbee Facility is classified as a major stationary source, as defined in Section 302(e) of the CAA, because it has the potential to emit more than 100 tons per year of certain air pollutants, including the air pollutants NO_x, SO₂, and CO.
24. On June 23, 1992 Koppers entered into Consent Order CO-R27-92-16 with the WVDEP wherein Koppers Follansbee agreed to install equipment to control benzene emissions. As required by the Consent Order, Koppers Follansbee installed a debenzolizer unit on or about August 9, 1999. The debenzolizer unit removes benzene from the Refined Chemical Oil ("RCO"). The reduced-benzene RCO is further processed into naphthalene and the concentrated benzene is transferred to tank 11 for storage and used as fuel for the boilers. The overhead or concentrated benzene from the debenzolizer is subject to 40 C.F.R. Part 61, Subpart J.
25. On August 17, 1994, Koppers Follansbee submitted to EPA an Initial Notification for the NESHAP HON applicability, and on July 15, 2002, it submitted to EPA a Supplement to the Notification of Compliance Status Report. Koppers Follansbee produces naphthalene from benzene-free Refined Chemical Oil which is recovered at the bottom of the debenzolizer. The naphthalene distillation process unit (NDU) is subject to Part 63, Subparts F, G and H (NESHAP HON).
26. Under WVDEP Consent Order CO-R13-E2005-4, issued on February 7, 2005, Koppers agreed to conduct leak detection and repair on equipment subject to 40 C.F.R. Part 61, Subpart J (National Emission Standards for Equipment Leaks of Benzene) in accordance with procedures outlined in an Appendix to the Consent Order. Notwithstanding the exemption in 40 C.F.R. §61.110(b), and without Koppers admitting the applicability of

Subpart H, the leak detection and repair procedures outlined in the Appendix were based on 40 C.F.R. Part 63, Subpart H (National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks).

27. On its Notification of Compliance Status (NOC), dated November 1, 1999, Koppers Follansbee identified the equipment in benzene service associated with the debenzolizer unit that would be monitored using 40 C.F.R. Part 63, Subpart H. The following equipment was identified in benzene service:

- (a) Debenzolizer column
- (b) Tank 11
- (c) Boiler #2 feed/return lines
- (d) Boiler #3 feed/return lines
- (e) Close vent system to the reboiler/flare.

28. On September 4, 2007, the Koppers Follansbee Facility submitted to WVDEP a permit application (R13-2274E) to become a synthetic minor source of VOCs and HAPs.

29. Respondent proposed the following changes to its operation in the synthetic minor source permit application number R13-2274E:

- (a) To remove #31 Tube Heater as an air pollution control device and replace it with either the existing flare or a new thermal oxidizer. The #31 tube heater will remain as only a process heater.
- (b) To use new feedstock, namely Petro Tar, at the #1, #2 and #4 distillation columns for the production of petroleum pitch. This included the construction of a new tank 808 to store petroleum pitch, while existing tanks would be used to store the raw material and distillate fraction.
- (c) Implementation of a plant-wide leak detection and repair (LDAR) program for use of the USEPA Correlation Method.¹
- (d) Controlling the Pavement Sealer Base (PSB) storage tanks and Modified PSB (MPSB) and Refined Tar (RT) blending tanks by at least 98% (Tanks I3, 14, 251, 252, 253, 254, 406 and 407).
- (e) Controlling the PSB, MPSB and RT product loading by at least 98%.
- (f) Controlling the creosote product tanks by at least 98% (tanks 221, 222, 223 and 224).
- (g) Controlling the creosote product loading by at least 98%.
- (h) Controlling the distillate tanks (middle and heavy fractions from the tar refining columns, Tanks I7 and 382) by at least 98%.

¹ Attachment O to this application further explains that the monitoring results from the LDAR program will be used to calculate VOC emissions, using the "EPA Correlation Approach" contained in EPA's "Protocol for Equipment Leaks Emission Estimates", EPA-4537R-95-017, November 1995.

30. On May 8, 2008, WVDEP issued permit number R13-2274E to the Koppers Follansbee Facility to construct, modify, relocate, and/or operate in accordance with the permit application number R13-2274E.
31. On May 20, 2004 the Koppers Follansbee Facility submitted a Notice of Compliance Status (NOC) for the NESHAP PAI. This NOC described six (6) creosote blend tanks (i.e. tanks 221, 222, 223, 224, 126 and 127). The NOC also included a summary of the composition of the material contained in these tanks and further identified the equipment (pumps, compressor, pressure relief devices, agitators, sampling collection system open ended valve or line, valves and connectors and instrumentation system) subject to Leak Detection and Repair (LDAR) provisions of the NESHAP PAI.

Count I

32. This Consent Agreement incorporates by reference the allegations of paragraphs 25 through 28 of the Complaint.
33. Respondent's failure to properly identify these components as part of its LDAR program was a violation of 40 C.F.R. §63.162(c) for valve number 55 and 40 C.F.R. §63.1363(a)(7) for the 138 components associated with tanks 221 through 224.

Count II

34. Around 2004 or 2005, Koppers Follansbee agreed, as part of Consent Order CO-R13-E2005-4 with the WVDEP, to conduct leak detection and repair on its debenzolizer unit in accordance with procedures outlined in an Appendix to the Consent Order, which notwithstanding the exception for coke by-product recovery plants in 40 C.F.R. Part 61.110(b), were based on 40 C.F.R. Part 63, Subpart H, the National Emission Standards

for Organic Hazardous Air Pollutants for Equipment Leaks. This agreement has been incorporated into Koppers Follansbee's Title V permit, # R30-009-00001-2006, at page 54, as a federally-enforceable requirement.

35. This Consent Agreement incorporates by reference the allegations contained in paragraphs 31 and 32 of the Complaint filed in this matter.

36. Respondent's failure to monitor valves 168 and 169 at all times prior to February 2011 was a violation of 40 C.F.R. §63.168 and Koppers Follansbee's Title V permit.

Count III

37. This Consent Agreement incorporates by reference the allegations contained in paragraph 34 of the Complaint filed in this matter.

38. During the 2009 inspection, the EPA inspectors found that valve number 910g was not equipped with a second valve, cap, plug or blind flange. Valve 910g is located on top of tank 7, which is part of the Napthalene Distillation Unit and therefore subject to Part 63, subparts F, G, and H. Respondent therefore violated 40 C.F.R. §63.167(a)(1).

Count IV

39. Complainant EPA hereby withdraws the allegations contained in paragraphs 36 through 39 of the Complaint filed in this matter.

Count V

40. Complainant EPA hereby withdraws the allegations contained in paragraphs 40 through 43 of the Complaint filed in this matter.

Count VI

41. This Consent Agreement incorporates by reference the allegations in paragraph 44 of the Complaint filed in this matter.

42. Koppers Follansbee did not use a 1000 ppm calibration gas to calibrate its monitoring instrument when monitoring pumps in light liquid service during the following months: May and April 2006; and June, July, August, September and November 2007. Instead, Koppers Follansbee used a calibration gas of zero (0) and 10,000 ppm. Respondent therefore violated 40 C.F.R. §63.180 by failing to follow the requirements of Method 21.

IV. CIVIL PENALTY

43. In settlement of all violations alleged in the complaint, as amended by this CAFO, Respondent agrees to pay a civil penalty in the amount of \$75,000, according to the instructions set forth in paragraphs 44 through 46 below. This settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty assessment criteria set forth in Section 113(e) of the Act, 42 U.S.C. §7413(e), which include the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment of previous penalties for the same violations, the seriousness of the violations and the economic benefit of noncompliance, as well as the Clean Air Act Stationary Source Civil Penalty Policy.

44. Payment of the civil penalty of \$75,000 shall be made by Respondent in accordance with this CAFO no later than thirty (30) days after the effective date of this CAFO.

45. Such civil penalty amount shall become due and payable in accordance with this CAFO upon Respondent's receipt of a copy of this CAFO signed by the Regional Judicial Officer or her designee. In order to avoid the assessment of additional 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 the date set forth in this CAFO. Payment of the civil penalty amount shall be made by either cashier's check, certified check or electronic transfer. All checks shall be made payable to "Treasurer, United States of America" and shall be remitted using one of the following methods:

(a) Via regular U.S. Postal Service Mail 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: Eric Volck (513) 487-2105

(b) Via commercial Overnight Delivery to the following address:

U.S. Bank
Government Lockbox 979077
U.S. Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: (314) 418-1028

(c) Respondent's civil penalty payment also may be made 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
New York, NY 10045
Field tag 4200 of Fedwire message should read "D 68010727 Environmental
Protection Agency"

- (d) Respondent's civil penalty payment also may be made by automated clearinghouse (ACH), also known as Remittance Express (REX) to the following account:

U.S Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
5700 Rivertech Court
Riverdale, MD 20737
(866)234-5681

46. All payments made by check also shall reference the above case caption and docket number, CAA-03-2011-0313. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Zelma Maldonado, Air Protection Division (3AP12), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.
47. Respondent's failure to make timely payment of the civil penalty provided herein or to comply with the conditions in the CAFO may result in referral of this matter to the United States Attorney for enforcement of the accompanying Consent Agreement and this Final Order in the appropriate United States District Court. Additionally, Respondent's failure to make timely payment of the civil penalty provided herein or to comply with the conditions in the CAFO may result in the assessment of additional interest, penalties and/or late payment penalty charges, as described below.

48. Pursuant to 31 U.S.C. §3717 and 40 C.F.R. §13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
49. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this executed CAFO is mailed or hand-delivered to 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).
50. The cost of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
51. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for 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).

52. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

V. RESERVATION OF RIGHTS

53. This Consent Agreement and the accompanying Final Order resolve only those violations alleged in the Complaint, as amended by this Consent Agreement, and are subject to all limits on the scope of resolution and reservation of rights set forth in 40 C.F.R. §22.18(c). Nothing in this Consent Agreement or the accompanying Final Order shall be construed to limit the authority of the EPA and/or the United States to undertake action against any person, including Respondent, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare or the environment, nor shall anything in this Consent Agreement or the accompanying Final Order be construed to resolve any claims for criminal sanctions now pending or that may be sought in the future, and the United States reserves its authority to pursue criminal sanctions.
54. Furthermore, EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations of which Complainant has jurisdiction, to enforce the provisions of this CAFO, the CAA and its implementing provisions, and of any other federal laws or regulations for which it has jurisdiction, following entry of this CAFO.

VI. PARTIES BOUND

55. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the employees, contractors, 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 to enter into this Consent Agreement and to bind legally the Respondent to the terms and conditions of this Consent Agreement and accompanying Final Order.

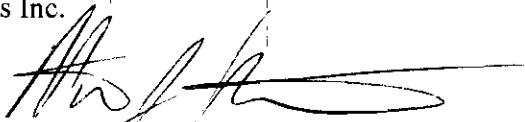
VII. EFFECTIVE DATE

56. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, having been signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk of U.S. EPA Region III.

For the Respondent:

Date: 3/20/12

Koppers Inc.

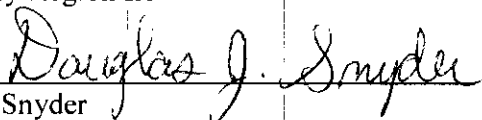


Michael J. Mancione, Vice-President,
North American Carbon Materials and
Chemicals

For the Complainant:

Date: 3/21/12

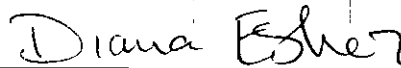
United States Environmental Protection
Agency Region III



Doug Snyder
Assistant Regional Counsel

The Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of U.S. EPA Region III or his designee issue the accompanying Final Order.

Date: 3/22/12



Diana Esher, Director
Air Protection Division

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

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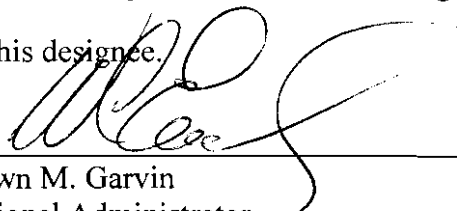
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FINAL ORDER

The Preliminary Statement, Findings of Fact and Conclusions of Law, and all other sections and terms of the foregoing Consent Agreement are accepted by the undersigned and are incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 113 of the Clean Air Act ("CAA"), as amended, 42 U.S.C. §7413, and 40 C.F.R. Part 22, Respondent Koppers Inc., is hereby ordered to pay a civil penalty in the amount of seventy-five thousand (\$75,000) dollars, as set forth in the Consent Agreement. Payment of this civil penalty shall be made in accordance with paragraphs 44 through 46 of the attached Consent Agreement.

The effective date of the accompanying Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk of U.S. EPA Region III, following signature by the Regional Administrator or his designee.

Date: 3/23/12 _____

Shawn M. Garvin
Regional Administrator

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

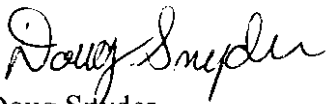
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Respondent. : 42 U.S.C. §7413(d)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 23, 2012, the original of a Consent Agreement and Final Order in this matter was filed with the Regional Hearing Clerk, EPA Region III, and that on the date shown below, true and correct copies were sent via Certified Mail, Return Receipt Requested, to the following person:

Kenneth Komoroski, Esq.
Fulbright & Jaworski
370 Southpointe Boulevard, Suite 100
Canonsburg, PA 15317

Date: 3/26/12


Doug Snyder
Assistant Regional Counsel