

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

In the Matter of:	:	Administrative Complaint,
	:	Compliance Order and Notice of
	:	Opportunity to Request a Hearing
Ross Transport Co., Inc. and Arnold Steinman	:	U.S. EPA Docket No. RCRA-03-2010-0268
Respondents,	:	Proceeding under Section 9006
	:	of the Resource Conservation and
4220 Almond Street Philadelphia, PA 19137	:	Recovery Act, as amended, 42 U.S.C. § 6991e
Facility.	:	

**I. GENERAL ALLEGATIONS**

This Administrative Complaint, Compliance Order, and Notice of Opportunity For Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively "RCRA"), 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), a copy of which is enclosed with this Complaint. The authority vested in the Administrator was delegated to the Regional Administrators by EPA Delegation No. 8-25 dated May 11, 1994. The authority was redelegated to the Director of the Land and Chemicals Division.

The Director of the Land and Chemicals Division of U.S. EPA Region III hereby notifies Ross Transport Co., Inc., and Arnold Steinman, individually, (collectively, "Respondents") that EPA has reason to believe that Respondents have violated Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Pennsylvania's federally authorized underground storage tank program with respect to a certain underground storage tank at Respondents' facility located at 4220 Almond Street, Philadelphia, Pennsylvania, 19137 (the "Facility"). Section 9006(a) - (d) of RCRA, 42 U.S.C. § 6991e(a) - (d), authorizes EPA to take an enforcement action including the issuance of a compliance order and/or the assessment of a civil penalty whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state underground storage tank program which has been authorized by EPA.

Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Pennsylvania was granted final authorization to administer a state underground storage tank management program ("Pennsylvania Authorized UST Management Program") *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. This authorization was effective on September 11, 2003. *See 68 Fed. Reg. 53520* (September 11, 2003) and 40 C.F.R. § 282.88. Through this final authorization, the provisions of the Pennsylvania Authorized UST Management Program became requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The Pennsylvania Authorized UST Management Program, as set forth in Chapter 245 of Title 25 of the Pennsylvania Code, will be cited herein as 25 PA Code §§ 245.1 *et seq.*, a copy of which is enclosed with this Complaint.

EPA has given the Commonwealth of Pennsylvania notice of the issuance of this Order in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

In support of this Complaint, the EPA makes the following findings of fact and conclusions of law:

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).
2. Ross Transport Co., Inc. ("Ross Transport") is a Pennsylvania corporation doing business in the Commonwealth of Pennsylvania, and is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5) and 25 Pa. Code § 245.1.
3. Arnold Steinman is, upon information and belief, a "person" residing in the Commonwealth of Pennsylvania and the President and sole shareholder of Ross Transport.
4. At all times relevant to this Complaint, Respondents have been the "owners" and/or "operators," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 25 PA Code § 245.1, of the "underground storage tank" ("UST") and "UST system" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 25 PA Code § 245.1, located at 4220 Almond Street, Philadelphia, Pennsylvania.
5. On April 21, 2009, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
6. At the time of the April 21, 2009 CEI, and at all times relevant to the applicable violations

alleged herein, one UST was located at the Facility.

7. The UST at the Facility is a ten thousand (10,000) gallon fiberglass tank that was installed in or about January 1, 2003 and that, at all times relevant hereto, routinely contained diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991 (7), and 25 PA Code § 245.1.
8. At all times relevant to the applicable violations alleged herein, the UST at the Facility has been a "petroleum system" and a "new tank system" as these terms are defined in 25 PA Code § 245.1.
9. The UST at the Facility is and was, at all times relevant to applicable violations alleged in this Complaint, used to store "regulated substance(s)" at Respondents' Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 25 PA Code § 245.1, and have not been "empty" as that term is defined at 25 PA Code § 245.451.

### **COUNT I**

(Failure to perform release detection)

10. The allegations of Paragraphs 1 through 9 of this Complaint are incorporated herein by reference.
11. Pursuant to 25 PA Code § 245.441(a) and (c), owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
12. 25 PA Code § 245.442(1) provides, in pertinent part, that USTs shall be monitored at least every 30 days for releases using one of the methods listed in 25 PA Code § 245.444(4)-(9), except that:
  - (i) UST systems that meet the performance standards in 25 Pa Code §§ 245.421 (Performance Standards for New UST Systems) and .422 (Upgrading of Existing UST Systems), and the monthly inventory control requirements in 25 PA Code § 245.444(1) or (2) (Inventory Control or Manual Tank Gauging) may use tank tightness testing, conducted in accordance with 25 PA Code § 245.444(3) (Tank Tightness Test), at least every 5 years until December 22, 1998, or until 10 years after the UST is installed or upgraded under 25 PA Code § 245.422(b) (Tank Upgrading Requirements); and
  - (ii) UST systems that do not meet the performance standards in 25 PA Code §§ 245.421 (Performance Standards for New UST Systems) and .422 (Upgrading of Existing UST Systems), may use monthly inventory controls, conducted in accordance with 25 PA Code § 245.444(1) or (2)

(Inventory Control or Manual Tank Gauging) and annual tank tightness testing, conducted in accordance with 25 PA Code § 245.444(3) (Tank Tightness Test) until December 22, 1998, when the tank must be upgraded under 25 PA Code § 245.422 (Tank Upgrading Requirements) or permanently closed under 25 PA Code § 245.452; and

(iii) Tanks with a capacity of 550 gallons or less may use manual tank gauging, conducted in accordance with 25 PA Code § 245.444(2).

13. Upon information and belief, from June 30, 2005 until the date of this Complaint, the method of release detection selected by Respondents for the UST at the Facility has been automatic tank gauging in accordance with 25 PA Code § 245.444(4).
14. Upon information and belief, from June 30, 2005 until the date of this Complaint, Respondents failed to perform automatic tank gauging for the UST at the Facility in accordance with 25 PA Code § 245.444(4).
15. Upon information and belief, Respondents did not use any of the other release detection methods specified in 25 PA Code § 245.442(1)(i)-(iii) and/or 25 PA Code § 245.444(5)-(9) on the UST located at the Facility during the periods of time indicated in Paragraphs 13 and 14.
16. Respondents' acts and/or omissions as alleged in Paragraphs 13 through 15 above constitute violations by Respondents of 25 PA Code §§ 245.441 and .442.

## COUNT II

(Failure to perform line tightness testing or monthly monitoring on piping)

17. The allegations of Paragraphs 1 through 16 of this Complaint are incorporated herein by reference.
18. 25 PA Code § 245.442(2)(ii) provides, in pertinent part, that underground piping that conveys regulated substances under suction shall either have a line tightness test conducted at least every 3 years and in accordance with 25 PA Code 245.445(2), or use a monthly monitoring method conducted in accordance with 25 PA Code 245.445(3).
19. Upon information and belief, the piping associated with the UST at the Facility is not designed and constructed to meet the standards necessary to allow for no release detection in accordance with 25 PA Code 245.445(2)(ii)(A)-(D).
20. Respondents have never performed a line tightness test every three years in accordance with 25 PA Code § 245.445(2) or have monthly monitoring conducted in accordance with 25 PA Code § 245.445(3) for the underground piping associated with the UST at the Facility as

required by 25 PA Code § 245.442(2)(ii).

21. Respondents' acts and/or omissions as alleged in Paragraph 19 and 20 above, constitute violations by Respondents of 25 PA Code § 245.442(2)(ii).

### **COUNT III**

(Failure to Provide Financial Assurance)

22. The allegations in Paragraphs 1 through 21 of this Complaint are incorporated herein by reference as though fully set forth at length herein.
23. 25 PA Code § 245.703 provides, in pertinent part, that owners and operators of petroleum UST systems are required, with exceptions not relevant hereto, to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
24. 25 PA Code § 245.704 provides, in pertinent part, that owners and operators of petroleum UST systems shall continuously participate in the Underground Storage Tank Insurance Fund ("USTIF"), unless the Department has determined that the UST is an exempt UST.
25. Upon information and belief, from June 1, 2005 until the date of this Complaint, Respondents' UST at the Facility was not an exempted UST and therefore Respondents were and are obligated to participate in the USTIF as required by 25 Pa Code § 245.704.
26. Upon information and belief from June 1, 2005 until the date of this Complaint, Respondents have not participated in the USTIF.
27. Respondents' acts and/or omissions as alleged in Paragraphs 25 and 26, above, constitutes a violation by Respondents of 25 PA Code § 245.703 and 25 PA Code § 245.704.

### **III. COMPLIANCE ORDER**

Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondents are hereby ordered to:

28. Within thirty (30) days of the effective date of this Compliance Order, comply with the release detection requirements of 25 PA Code § 245.442(1) for the UST system located at the Facility subject to this Complaint or close such UST system in accordance with 25 PA Code §§ 245.451 and 452.

29. Within thirty (30) days of the effective date of this Compliance Order, conduct a line tightness test in accordance with 25 PA Code § 245.445(2) or have monthly monitoring conducted in accordance with 25 PA Code § 245.445(3) for the UST at the Facility, thereafter remain in compliance with line leak detector testing requirements of 25 PA Code § 245.442(2)(ii).
30. Within thirty (30) days of the effective date of this Compliance Order, demonstrate compliance with the financial responsibility requirements in accordance with 25 PA Code §§ 245.703 and 245.704 for the UST system located at the Facility.
31. If Respondents elect to close the UST subject to this Compliance Order, Respondents must submit to EPA, within fifteen (15) calendar days after the effective date of this Compliance Order, a notice of intent to permanently close the UST at the Facility. Such notice shall be sent to Marie Owens, UST Enforcement Team Leader, and to PADEP at the addresses set forth in Paragraph 34, below.
32. Within forty-five (45) days of the effective date of this Compliance Order, submit to EPA a report which documents and certifies Respondents' compliance with the terms of this Compliance Order.
33. Any notice, report, certification, data presentation, or other document submitted by each Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning each Respondent's compliance or noncompliance with any requirement of this Compliance Order shall be certified by each Respondent.

The certification required above shall be in the following form:

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 that 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.

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

34. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

Documents to be submitted to EPA shall be sent certified mail, return receipt requested to the attention of:

Marie Owens  
UST Enforcement Team Leader  
RCRA Compliance and Enforcement Branch (3LC70)  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Joyce Howell  
Senior Assistant Regional Counsel (3RC30)  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

1. One copy of all documents submitted to EPA shall also be sent by regular mail to the attention of:

Walt Nagel  
Bureau of Waste Management  
Pennsylvania Dept. of Environmental Protection  
Rachel Carson State Office Building  
400 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 18101-2301

35. If activities undertaken by the Respondents in connection with this Compliance Order or otherwise indicate that a release of a regulated substance from the UST at the Facility may have occurred, Respondents may be required to undertake corrective action pursuant to applicable regulations in 25 PA Code § 245.301 *et seq.*

36. Respondents are hereby notified that failure to comply with any of the terms of this Compliance Order may subject it to imposition of a civil penalty of up to \$37,500 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e (a)(3), the Debt Collection Improvement Act of 1996 ("DCIA"), and the subsequent Civil Monetary Penalty Inflation Adjustment Rules codified at 40 C.F.R. Part 19.

37. The term "days" as used herein shall mean calendar days unless specified otherwise.

#### **IV. PROPOSED CIVIL PENALTY**

Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), provides, in relevant part, that any owner or operator of an underground storage tank who fails to comply with any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991c, or that is part of an authorized state underground storage tank program shall be liable for a civil penalty not to exceed \$10,000 for each tank for each day of violation. In accordance with the Adjustment of Civil Monetary Penalties for Inflation, promulgated pursuant to the Debt Collection Improvement Act of 1996 and codified at 40 C.F.R. Part 19, all violations occurring after March 15, 2004 are subject to a civil penalty not to exceed \$11,000 per violation per day, and all violations occurring on or after January 12, 2009 are subject to a civil penalty not to exceed \$16,000 per violation per day. For purposes of determining the amount of any penalty to be assessed, Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), requires EPA to take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements, the compliance history of the owner/operator and any other appropriate factors.

Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty at this time, but will do so at a later date after an exchange of information has occurred. *See* 40 C.F.R. § 22.19(a)(4).

To develop a proposed penalty for the violations alleged in this Complaint, EPA will take into account the particular facts and circumstances of this case with specific reference to EPA's November 1990 U.S. EPA Penalty Guidance for Violations of UST Regulations ("UST Penalty Guidance") (Enclosure "C"), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19 (Enclosure "D"). These policies provide a rational, consistent and equitable methodology for applying the statutory penalty factors enumerated above to particular cases. As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will also consider, among other factors, Respondents' ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with each Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of this Complaint become known after the Complaint is issued, such facts and circumstances may also be considered as a basis for adjusting a civil penalty.

This Complaint does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number and severity of the violations alleged in this Complaint is set forth below.



## Penalty Explanation

### **Failure to provide release detection for a UST**

The "potential for harm" for this violation is "major." Given that the UST is, by definition, underground, it is critically important that facility owners and operators utilize effective methods of detecting releases from such UST. The prevention and detection of leaks are the cornerstones of the UST regulatory program. Respondents' failure to use an acceptable method of release detection created the possibility of a leak going undetected and harming human health or the environment.

The "extent of deviation" for this violation is "major." Failure to monitor an UST for releases at least every 30 days using an allowable method of release detection is a "major" deviation from the requirements of the RCRA regulatory program.

### **Failure to perform triennial line tightness testing or monthly monitoring.**

The "potential for harm" for this violation is moderate. It is critically important that facility owners and operators utilize effective methods of detecting releases from the UST and its associated piping. Respondents' failure to perform a triennial line tightness test or monthly monitoring of underground piping associated with the UST at the Facility presents a substantial risk to human health or the environment from a leak going undetected.

The "extent of deviation" for this violation is also major because it presents a substantial deviation from the requirements of the RCRA regulatory program.

### **Failure to comply with financial responsibility requirements.**

The "potential for harm" for this violation is "major." Financial assurances are a key element of the UST regulatory system, ensuring that there are adequate resources available to properly address any releases which have occurred or will occur in the future that may cause significant adverse effects to the environment and the regulatory program.

The "extent of deviation" for this violation is "moderate." Under the UST Penalty Policy, the failure to provide financial assurances is a substantial deviation from the regulatory program.

## **V. NOTICE OF RIGHT TO REQUEST A HEARING**

Respondents may request a hearing before an EPA Administrative Law Judge and at such hearing may contest any material fact upon which the Complaint is based, contest the appropriateness of any compliance order or proposed penalty, and/or assert that Respondents are entitled to judgment as a matter of law. To request a hearing, each Respondent must file a written answer ("Answer") within thirty (30) days after service of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this

Complaint of which Respondents have any knowledge. Where each Respondent has no knowledge of a particular factual allegation and so states, such a statement is deemed to be a denial of the allegation. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which each Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered to be admitted.

Failure of each Respondent to admit, deny or explain any material allegation in the Complaint shall constitute an admission by such Respondent of such allegation. Failure to Answer may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested and granted will be conducted in accordance with the Consolidated Rules, a copy of which has been enclosed with this Complaint (Enclosure "A"). Respondents must send any Answer and request for a hearing to the attention of:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

In addition, please send a copy of any Answer and/or request for a hearing to the attention of:

Joyce Howell  
Sr. Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street MC3RC30  
Philadelphia, PA 19103-2029.

#### **VI. SETTLEMENT CONFERENCE**

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondents may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty.

**A REQUEST FOR A SETTLEMENT CONFERENCE DOES NOT RELIEVE THE RESPONDENTS OF THEIR RESPONSIBILITY TO FILE A TIMELY ANSWER.**

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver by each Respondent of its/his right to contest the allegations

of the Complaint and its/his right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference, please contact Joyce Howell, Sr. Assistant Regional Counsel, at (215) 814-2644 prior to the expiration of the thirty (30) day period following service of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondents of their responsibility to file Answer(s) within thirty (30) days following service of this Complaint.

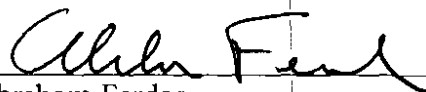
Please note that the Quick Resolution settlement procedures set forth in 40 C.F.R. § 22.18 do not apply to this proceeding because the Complaint seeks a compliance order. See 40 C.F.R. § 22.18(a)(1).

### **VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as the party in this case: the Region III Office of Regional Counsel, the Region III Land and Chemicals Division, and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules prohibit any *ex parte* discussion of the merits of a case with, among others, the Administrator, members of the Environmental Appeals Board, Presiding Officer, Judicial Officer, Regional Administrator, Regional Judicial Officer, or any other person who is likely to advise these officials on any decision in this proceeding after issuance of this Complaint.

Dated:

8/3/10



Abraham Ferdas  
Director, Land and Chemicals Division  
U.S. EPA Region III

Enclosures:

- A. Consolidated Rules of Practice, 40 C.F.R. Part 22
- B. 25 PA Code §§ 245.1 *et seq.*
- C. UST Penalty Guidance
- D. Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19

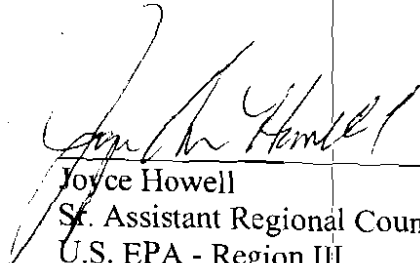
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on June , 2010, the original and one true and correct copy of the foregoing Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing was hand-delivered to and filed with the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, and that a true and correct copies of the Administrative Complaint and its enclosures were sent via UPS Express Service, signature confirmation requested, upon the following:

Mr. Arnold Steinman  
Ross Transport Company, Inc.  
4220 Almond Street  
Philadelphia, PA 19137

Mr. Arnold Steinman  
518 Parlin Street  
Philadelphia, PA 19116

*Aug 3 2010*  
August 3, 2010

  
Joyce Howell  
Sr. Assistant Regional Counsel  
U.S. EPA - Region III

PHILADELPHIA, PA  
AUG 3 2010