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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING OFFICE

IN THE MATTER OF:)
)
Philips Lumileds Lighting Company)
370 West Trimble Road)
San Jose, CA 95131)
)
Respondent)
)
)
_____)

Docket No. EPCRA-09-2012- 0001
CERCLA-09-2012- 0001

**CONSENT AGREEMENT
AND FINAL ORDER PURSUANT
TO 40 CFR §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. **PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action initiated pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609; Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045; and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent, Philips Lumileds Lighting Company is an active limited liability corporation organized under the laws of the state of Delaware.
2. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 CFR §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated the following statutes and their implementing regulations: Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1).

B. **STATUTORY AND REGULATORY FRAMEWORK**

3. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6 require the owner or operator of a vessel or an offshore or onshore facility to immediately notify the National Response Center ("NRC") as soon as he or she has knowledge of a release of a hazardous substance that exceeds the reportable quantity ("RQ") during a 24-hour period.

in quantity and rate, a reduced reporting option is available under Section 103(f)(2) of CERCLA, 42 U.S.C. § 9603(f)(2), and 40 CFR § 302.8.

4. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), and 40 CFR § 355.40 require the owner or operator of a facility that produces, uses, or stores hazardous chemicals to immediately notify the appropriate state and local emergency planning and response agencies when (1) an RQ of an extremely hazardous substance or CERCLA hazardous substance is released from the facility. The owner or operator must immediately provide the required notice to the community emergency coordinator for the local emergency planning committee ("LEPC") for any area that is likely to be affected by the release and to the state emergency response commission ("SERC") for any state that is likely to be affected by the release. In California, the Certified Unified Program Agency ("CUPA") has been delegated as the administering agencies for the requirement to report releases to the LEPC. For facilities that release an extremely hazardous substance or CERCLA hazardous substance in a manner that is continuous and stable in quantity and rate, a reduced reporting option is available under 40 CFR § 355.40(a)(2)(iii).

C. GENERAL ALLEGATIONS

5. Section 109(a)(1)(A) of CERCLA, 42 U.S.C. § 9609(a)(1)(A), authorizes EPA to assess civil penalties for any violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
6. The Administrator of EPA delegated enforcement authority under Section 109 of CERCLA, 42 U.S.C. § 9609, to the Regional Administrators with EPA delegation 14-31, dated May 11, 1994. The Regional Administrator, EPA Region IX, in turn, re delegated that authority to the Director of the Superfund Division, Region IX, with delegation R9 1290.16.
7. Section 325(b)(1)(A) of EPCRA, 42 U.S.C. § 11045(b)(1)(A), authorizes EPA to assess civil penalties for any violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).
8. The Administrator of EPA delegated enforcement authority under EPCRA to the Regional Administrators with EPA delegation 22-3-A, dated May 11, 1994. The Regional Administrator, EPA Region IX, re delegated the authority to enforce Sections 302, 303, 304, 311, 312, 322, and 323 of EPCRA, 42 U.S.C. §§ 11002, 11003, 11004, 11021, 11022, and 11043, to the Director of the Superfund Division, Region IX, with delegation R9 1290.18.
9. Respondent owns and operates the Philips Lumileds Lighting Company (the "Facility"), a manufacturing facility. Respondent's business is located at 370 West Trimble Road, in San Jose, California.

D. ALLEGED VIOLATIONS

COUNT I

(Failure to immediately notify the NRC)

10. Paragraphs 1 through 9 above are incorporated herein by this reference as if they were set forth here in their entirety.
11. At all times relevant to this CA/FO, Respondent has been a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
12. The Facility is an "onshore facility" as defined by Sections 101(18) and 101(9) of CERCLA, 42 U.S.C. §§ 9601(18) and 9601(9).
13. At all times relevant to this CA/FO, Respondent has been in charge of the Facility.
14. Ammonia is designated as a "hazardous substance" in Sections 101(14) and 102(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9602(a), and 40 CFR § 302.4, Table 302.4, and Appendix A to Section 302.4. The RQ for ammonia is 100 pounds.
15. From September 29, 2009, through November 14, 2009, approximately 170 pounds of anhydrous ammonia within each 24-hour period as a result of their normal operations was emitted into the environment from the Facility. The emitting of ammonia from the Facility was a "release" as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
16. Respondent had actual or constructive knowledge the releases exceeded the RQ in approximately October 26, 2009.
17. On November 11, 2009, Respondent notified the NRC, the State, the CUPA and EPA that during a review of analytical data developed during an environmental compliance audit, it was discovered that releases of approximately 170 pounds of anhydrous ammonia 24-hour period had occurred from September 29, 2009 through November 14, 2009, that should have been reported under Section 103 of CERCLA.
18. The release was determined to be continuous and stable in quantity and rate, as defined in 40 CFR § 302.8(b).
19. Respondent's failure to immediately notify the NRC of these releases from the Facility is in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 302.6.

COUNT II

(Failure to immediately notify the SERC)

20. Paragraphs 1 through 9 above are incorporated herein by this reference as if they were set forth here in their entirety.

21. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 1049(4).
22. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility.
23. At all times relevant to this CA/FO, Respondent has been a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
24. Ammonia is designated as an “extremely hazardous substance” in Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 CFR § 355, Appendices A and B. The RQ for ammonia is 100 pounds.
25. Ammonia is a “hazardous chemical” as defined by Sections 329(5) and 311(e) of EPCRA, 42 U.S.C. §§ 11049(5) and 11021(e).
26. At all times relevant to this CA/FO, Respondent “produced, used, or stored” ammonia at the Facility.
27. From September 29, 2009, through November 14, 2009, approximately 170 pounds of anhydrous ammonia within each 24-hour period was emitted into the environment from the Facility. The emitting of ammonia from the Facility was a “release” as defined by Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).
28. The release was determined to be continuous and stable in quantity and rate, as defined in 40 CFR §§ 302.8(b) and 355.40(a)(2)(iii).
29. The approximately 170 pounds of ammonia per 24-hour period released from the Facility entered the ambient air outside the boundaries of the Facility.
30. Respondent was required to report the releases to the SERC under 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), and 40 CFR § 355.40(b).
31. On November 11, 2009, Respondent reported the releases to the SERC.
32. Respondent’s failure to immediately notify the SERC of the releases, which began on September 29, 2009, from the Facility is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

COUNT III

(Failure to immediately notify the LEPC)

33. Paragraphs 1 through 9 above are incorporated herein by this reference as if they were set forth here in their entirety.
34. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 1049(4).

35. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility.
36. At all times relevant to this CA/FO, Respondent has been a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
37. Ammonia is designated as an “extremely hazardous substance” in Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 CFR § 355, Appendices A and B. The RQ for ammonia is 100 pounds.
38. Ammonia is a “hazardous chemical” as defined by Sections 329(5) and 311(e) of EPCRA, 42 U.S.C. §§ 11049(5) and 11021(e).
39. At all times relevant to this CA/FO, Respondent “produced, used, or stored” ammonia at the Facility.
40. From September 29, 2009, through November 14, 2009, approximately 170 pounds of anhydrous ammonia within each 24-hour period was emitted into the environment from the Facility. The emitting of ammonia from the Facility was a “release” as defined by Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).
41. The release was determined to be continuous and stable in quantity and rate, as defined in 40 CFR §§ 302.8(b) and 355.40(a)(2)(iii).
42. The approximately 170 pounds of ammonia per 24-hour period released from the Facility entered the ambient air outside the boundaries of the Facility.
43. Respondent was required to report the releases to the LEPC/CUPA under 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), and 40 CFR § 355.40(b).
44. On November 11, 2009, Respondent reported the releases to the LEPC/CUPA.
45. Respondent’s failure to immediately notify the LEPC/CUPA of the releases, which began on September 29, 2009, from the Facility is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

E. CIVIL PENALTY

46. Section 109(a)(1)(A) of CERCLA, 42 U.S.C. § 9609(a)(1)(A), as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) per day for each day a violation of CERCLA Section 103 occurs after January 12, 2009. *See* Table I of 40 CFR § 19.4, 69 Fed. Reg. 75340, 75346 (Dec. 11, 2008).
47. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), as adjusted by the Debt Collection

Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) per day for each day a violation of EPCRA Section 304 occurs after March 15, 2004 and before January 12, 2009. *See* Table I of 40 CFR § 19.4, 69 Fed. Reg. 75340, 75346 (Dec. 11, 2008).

48. Under EPA's Final Policy Statement on *Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations*, 65 Fed. Reg. 19618, ("Audit Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially reduce the gravity component of a penalty if it determines that a respondent has satisfied the nine conditions set forth in the Audit Policy.
49. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic discovery of the violation through an environmental audit or a compliance management system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure independent of government or third party plaintiff; (5) correction and remediation; (6) prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.
50. Under the "Expanded Options for Discovery of violations" as described in the *Small Business Compliance Policy of May 11, 2000*, a disclosure may include a violation discovered via "any means."
51. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit Policy will not face any gravity-based civil penalties. If the regulated entity meets all but the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties by 75%. EPA reserves the right to collect any economic benefit realized as a result of the violation disclosed.
52. EPA has concluded that Respondent has, as described herein, satisfied the nine conditions outlined in the Audit Policy and therefore will not face gravity-based civil penalties.
53. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance Management System or (per the Small Business Compliance Policy of May 11 2000) "any means". Respondent discovered the violations on October 26, 2009, following analysis of samples during an environmental audit of the Facility conducted by the Company.
54. Voluntary Discovery. Respondent's discovery of the violations was voluntary and did not result from any legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement.
55. Prompt Disclosure. Respondent fully disclosed the violations to EPA within 21 days after it discovered the violations had, or may have, occurred. The violations were discovered on October 26, 2009, and were disclosed verbally to the EPA on November 11, 2009, in a telephone call. On December 7, 2009, Respondent was able to complete a written disclosure online at eDisclosure with the assistance of EPA. The Respondent

reported the release to NRC and SERC/LEPC as a continuous release on November 11, 2009, pursuant to 40 CFR §§ 302.8(b) and 355.40(a)(2)(iii)..

56. Discovery and Disclosure Independent of Government or Third Party Plaintiff. Respondent discovered and disclosed the violations to EPA prior to any federal, state, or local agency inspection or investigation, notice of citizen suit, the filing of a third-party complaint, the reporting of the violations by a "whistle-blower," or imminent discovery by a regulatory agency.
57. Correction and Remediation. Respondent reported the releases to the NRC and the SERC and LEPC/CUPA as a continuous release on November 11, 2009, pursuant to 40 CFR §§ 302.8(b) and 355.40(a)(2)(iii).
58. Prevent Recurrence. Respondent has told EPA that it plans to take the following steps to prevent a recurrence of any violation of Section 304 of EPCRA, 42 U.S.C. § 11004(a): Respondent has implemented a procedure for conducting formal, documented, routine audits of its environmental compliance, and developed a compliance calendar identifying required compliance events.
59. No Repeat Violations. Respondent has not had any other occurrence of these specific violations at the Facility within the past three years or at any other facility owned or operated by Respondent within the past five years.
60. Other Violations Excluded. The violations did not result in serious actual harm, present an imminent and substantial endangerment to public health or the environment, or violate the specific terms of any judicial or administrative order or consent agreement.
61. Cooperation. Respondent has fully cooperated with EPA in determining the applicability of the Audit Policy.
62. In signing this CA/FO, Respondent certifies under penalty of law that the information submitted to EPA in the letter dated March 9, 2010, disclosing violations of EPCRA Section 304, 42 U.S.C. § 11004(a), and the information in paragraphs 50-61 of this CA/FO are based upon true, accurate, and complete information that the signatory can verify personally, or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.
63. EPA has determined that the violations resulted in an insignificant amount of economic benefit.
64. For the reasons set forth above, all penalties based on the gravity of the violations and the savings of economic costs related to the failure to timely submit the Inventory Forms are waived.

F. ADMISSIONS AND WAIVERS

65. For purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609; Section 325 of EPCRA, 42 U.S.C. § 11045; and 40 CFR §§ 22.4 and 22.39. Further, for the purposes of this proceeding, Respondent admits to the general allegations of facts and law set forth in Sections B and C of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO or to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
66. Respondent neither admits nor denies any allegations of fact or law set forth in Section D of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, or Section 325 of EPCRA, 42 U.S.C. § 11045, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

67. This CA/FO shall apply to and be binding upon Respondent and its agents, successors, and assigns and upon all persons acting under or for Respondent.
68. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO and to execute and legally bind Respondent to it.

H. CERTIFICATION OF COMPLIANCE

69. Upon signing this CA/FO, Respondent certifies to EPA that, to the best of its knowledge, Respondent has fully complied with the requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004(a), that formed the basis for the violations alleged in Section D above.
70. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. PAYMENT OF CIVIL PENALTY

73. Because EPA has concluded that Respondent has, as described herein, satisfied the nine conditions set forth in the Audit Policy, Complainant has not sought gravity-based penalties for the violations alleged.
74. Based on Complainant's determination that any economic benefit derived from the violations was insignificant, Complainant has not sought to collect any economic benefit penalty for the violations alleged.
75. Complainant and Respondent hereby consent to the assessment of a civil penalty in the amount of ZERO DOLLARS (\$0) in settlement of the violations set forth in Section D above. This CA/FO constitutes a settlement of the civil and administrative penalty claims of the United States for the violations of Section 103 of CERCLA and Section 304(a) of EPCRA specifically alleged in Section D above.
76. The effect of the settlement described above is conditional upon the accuracy of Respondent's representations to EPA as memorialized in paragraphs 50-61 of this CA/FO and Respondent's self-disclosures, made verbally on November 11, 2009, and on-line on December 7, 2009.

K. RESERVATION OF RIGHTS

77. EPA expressly reserves all rights and defenses that it may have.
78. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform legally required tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.
79. This CA/FO shall not be construed as a covenant not to sue, a release, waiver or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under CERCLA, EPCRA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.
80. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
81. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise

preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted, except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this CA/FO.

L. OTHER CLAIMS

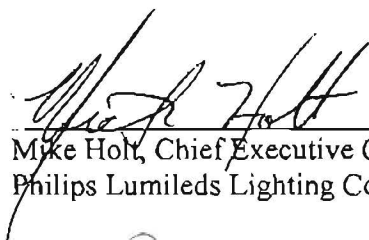
82. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

M. MISCELLANEOUS

83. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
84. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
85. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
86. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

IT IS SO AGREED.

SEPT. 15, '11
Date



Mike Holt, Chief Executive Officer
Philips Lumileds Lighting Company

6 October 2011
Date




Jane Diamond, Director
Superfund Division
U.S. EPA, Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. EPCRA-09-2012-0001 , CERCLA-09-2012-0001) be entered, and that Respondent pay a civil penalty in the amount of **ZERO DOLLARS (\$0)**.

10-12-11


for Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order against **Philips Lumileds Lighting Company (Docket #: EPCRA-09-2012-0001/CERCLA-09-2012-0001)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Mitch Cole
Environmental Engineer
Philips Lumileds Lighting Company
370 West Trimble Road
San Jose, CA 95131

CERTIFIED MAIL NUMBER: 7000-1670-0009-3120-5573

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Joshua Wirtschafter, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

10/14/11
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

CERTIFIED MAIL NO.: 7000 1670 0009 3120 5573
RETURN RECEIPT REQUESTED

In Reply Refer to:
Philips Lumileds Lighting Company

OCT 14 2011

Mitch Cole
Environmental Engineer
Philips Lumileds Lighting Company
370 West Trimble Road
San Jose, CA 95131

Re: Philips Lumileds Lighting Company

Dear Mr. Cole:

Please find enclosed the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Philips Lumileds Lighting Company ("Philips").

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning the outstanding Emergency Planning and Community Right-to-Know Act ("EPCRA") and Comprehensive Environmental Response, Compensation and Liability Act ("CAFO") compliance matters between Philips and EPA as alleged in the CA/FO.

If you have any questions regarding the EPCRA requirements governing operations at Philips, or which concern the proceedings terminated by the enclosed documents, please contact Michael Hingerty at (415) 972-3927.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Diamond", written over a circular stamp that contains the text "FOR".

Jane Diamond
Director
Superfund Division

Enclosures