

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

**IN THE MATTER OF**

Eco Product Group LLC  
 5700 Corporate Drive  
 Pittsburgh, PA 15237

Respondent

DOCKET NO: FIFRA-03-2015-0175

CONSENT AGREEMENT

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III (“EPA” or “Complainant”) and by Eco Product Group LLC (“Respondent”) pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. §§ 22.13(b) and .18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant's civil penalty claims against Respondent under FIFRA arising from the violations of FIFRA alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.

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

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CERTIFIED MAIL  
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JUL 21 2015

Michael T. Novak, Esq.  
Keller and Heckman LLC  
1001 G Street NW, Suite 500 West  
Washington, DC 20001

Re: Consent Agreement and Final Order  
EPA Docket No. FIFRA-03-2015-0175

Dear Mr. Novak:

Enclosed is a copy of the CONSENT AGREEMENT AND FINAL ORDER (CAFO) filed today with the Regional Hearing Clerk settling the matter referenced above, with respect to you client Eco Product Group LLC. For your file, I am also enclosing a copy of the supporting memorandum from Environmental Protection Agency management to the Regional Judicial Officer. Should you have any questions or concerns, please feel free to contact me at (215) 814-2066.

Sincerely,

Jennifer M. Abramson  
Senior Assistant Regional Counsel

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

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Enclosures

cc: Christine Convery, EPA

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4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear its own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

Factual and Legal Background

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
9. Eco Product Group LLC is a Pennsylvania company, with a principal place of business located at 5700 Corporate Drive in Pittsburgh, Pennsylvania, that sells products under the brand "SilverSport".
10. Eco Product Group LLC is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
11. During the time period between February 2011 and February 2012, Respondent distributed or sold multiple products under its Silversport brand, including but not limited to:
  - a. SilverSport 20"x 60" Fitness Towel,
  - b. SilverSport 20"x30" Fitness Towel,
  - c. SilverSport SilverMat Hot Fitness Mat,
  - d. SilverSport Silver Prenatal Fit Kit, and
  - e. SilverSport SilverShaper Massaging Fitness Roller Cover.

Collectively, these products will be referred to as the "five (5) SilverSport products".

12. The product labels for each of the five (5) SilverSport products include one or more of the following statements: "*Registered with the EPA, 83587*", "*Anti-Microbial Silver Nano-Technology*", "*Anti-Microbial Shaper*", and "*Your Extra Layer of Protection*".
13. Respondent's website at [www.silversport.com](http://www.silversport.com) included the following statements in connection with the distribution or sale of the five (5) SilverSport products during the timeframe between February 2011 and February 2012:

- a. "These ions create what we call a Silver Clean Zone™ - an area of protection in your home, at the gym, or wherever..."
- b. "The resulting Silver Clean Zone helps protect the user from unseen germs, effectively managing 'hot spots' of bacteria."
- c. "The resulting Silver Clean Zone provides an extra layer of protection against germs."
- d. "Terra Silver is a cutting edge, antimicrobial nanotechnology, which uses natural silver particles as an antimicrobial agent."

14. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 define "pesticide", in pertinent part, to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant or desiccant, with exceptions not relevant to this case.

15. Pursuant to 40 C.F.R. § 152.15, "[a] substance is considered to be intended for a pesticidal purpose . . . if: (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose."

16. Based on the statements, claims and implications on the product labels and on its website at [www.silversport.com](http://www.silversport.com) described in paragraphs 12 and 13, above, each of Respondent's five (5) SilverSport products are considered to be intended for pesticidal purpose under 40 C.F.R. § 152.15.

17. Each of Respondent's five (5) SilverSport products are "pesticide[s]" and "pesticide product[s]" as those terms are defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.

#### Alleged Violations

#### COUNT I – VIOLATIONS OF SECTION 12(A)(1)(a) of FIFRA

18. Section 12(a)(1)(A) of FIFRA, 7 U.S.C § 136j(a)(1)(A), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C § 136a, except to the extent that distribution or sale otherwise has been authorized.

19. Section 3(a) of FIFRA, 7 U.S.C § 136a(a), and 40 C.F.R. § 152.15 provide, in pertinent part, that no person may distribute or sell any pesticide product that is not registered under FIFRA, except as provided in 40 C.F.R. § 152.25 or in other regulations not relevant to this matter.

20. EPA regulations at 40 C.F.R. § 152.25 identify pesticides or classes of pesticides that have been determined to be of a character not requiring regulation of FIFRA, and therefore exempt from all provisions of FIFRA when intended for uses, and used, only in manners specified. Section 152.25(a) exempts articles or substances treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use. Articles or substances meeting the 40 C.F.R. § 152.25(a) criteria are referred to as “treated articles”.

21. At all times relevant to violations alleged in this CAFO, none of Respondent’s five (5) SilverSport products qualify as treated articles under 40 C.F.R. § 152.25(a). Although the five (5) SilverSport products contained an EPA-registered silver preservative, Respondent’s product labels and website at [www.silversport.com](http://www.silversport.com) described in paragraphs 12 and 13, above, claimed, stated or implied antimicrobial properties that extended beyond the protection of the Silversport products (i.e., articles or substances) themselves. At all times relevant to violations alleged in this CAFO, none of Respondent’s five (5) SilverSport products were registered with EPA as pesticides pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, nor had they ever been so registered.

22. Respondent distributed or sold one or more of its five (5) SilverSport products to individuals, partnerships, associations, corporations and/or organized groups of persons on approximately one hundred and fifty-six (156) separate occasions during the time period between February 2011 and February 2012, in violation of Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

23. Each occasion that Respondent distributed or sold one or more of its five (5) SilverSport products constitutes a “distribution or sale” of a “pesticide” and “pesticide product” to a “person” as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3 and constitutes a separate unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136l(a)(1)(A), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

24. Respondent is a “wholesaler, dealer, retailer or other distributor” subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

#### Civil Penalty

25. In settlement of EPA’s claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of eight thousand two hundred dollars (\$8,200), which Respondent shall be liable to pay in

accordance with paragraph 26, below. The Parties represent that the settlement terms are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act* and 40 C.F.R. Part 19.

26. Pursuant to this Consent Agreement, Respondent's eight thousand two hundred dollar (\$8,200) civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO; however, Respondent may pay such civil penalty amount, and an interest assessment of one percent (1%) per annum on the outstanding principal, in twenty-four (24) installment payments, in the following amounts and according to the following schedule:

<b>Payment</b>	<b>Principal</b>	<b>Interest</b>	<b>Total Amount</b>	<b>Number of Days Payment Due after CAFO is mailed or hand-delivered to the Respondent</b>
1	\$341.66	\$0.00	\$341.66	30
2	\$338.38	\$13.32	\$351.70	60
3	\$338.67	\$6.48	\$345.15	90
4	\$339.17	\$5.98	\$345.15	120
5	\$339.26	\$5.89	\$345.15	150
6	\$339.73	\$5.42	\$345.15	180
7	\$339.84	\$5.31	\$345.15	210
8	\$340.14	\$5.01	\$345.15	240
9	\$340.72	\$4.43	\$345.15	270
10	\$340.73	\$4.42	\$345.15	300
11	\$341.15	\$4.00	\$345.15	330
12	\$341.31	\$3.84	\$345.15	360
13	\$341.72	\$3.43	\$345.15	390
14	\$341.90	\$3.25	\$345.15	420
15	\$342.19	\$2.96	\$345.15	450
16	\$342.57	\$2.58	\$345.15	480
17	\$342.78	\$2.37	\$345.15	510
18	\$343.14	\$2.01	\$345.15	540
19	\$343.37	\$1.78	\$345.15	570
20	\$343.67	\$1.48	\$345.15	600

21	\$344.08	\$1.07	\$345.15	630
22	\$344.26	\$0.89	\$345.15	660
23	\$344.58	\$0.57	\$345.15	690
24	\$344.98	\$0.17	\$345.15	720
<b>Total:</b>	<b>\$8,200.00</b>	<b>\$86.66</b>	<b>\$8,286.66</b>	

27. Notwithstanding Respondent's agreement to pay the civil penalty in accordance with the installment payment provisions of paragraph 26, immediately above, Respondent may pay the entire eight thousand two hundred dollar (\$8,200) civil penalty within **thirty (30) calendar days** after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the incurrence and payment of interest pursuant to 40 C.F.R. § 13.11(a)(1), as described in paragraph 31, below.

28. If Respondent elects to pay the civil penalty in accordance with the installment payment procedure described in paragraph 26, above, but fails to make any installment payment in accordance with the requirements and schedule set forth in paragraph 26, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent immediately shall pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in paragraph 31 below, in the event of any such failure or default.

29. The Parties acknowledge and represent that the aforesaid settlement is based, in part, upon a written claim by Respondent of an ability to pay the civil penalty in a more timely manner. By his signature below, Respondent's representative certifies that this claim of undue hardship is accurate and not misleading. Respondent and its officers and directors are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the representations made by Respondent to Complainant regarding Respondent's claim of financial hardship, or regarding any other matter herein at issue, are materially false, fictitious or fraudulent.

30. Payment of the civil penalty amount required under the terms of paragraph 26 above, or each installment payment pursuant to paragraph 26 above, thereof, shall be made as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address

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

Contact: Craig Steffen 513-487-2091  
Molly Williams 513-487-2076

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

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

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

d. 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  
NY, NY 10045  
(Field tag 4200 of Fedwire message should read "D  
68010727 Environmental Protection Agency")



e. By automatic clearinghouse (“ACH”) to the following account:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA 051036706  
Account No. 310006  
Environmental Protection Agency  
CTX Format  
Transaction Code 22 - checking

Contact: John Schmid  
202-874-7026

f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

Each payment shall also reference the above case caption and docket number (Docket No.: FIFRA-03-2015-0175). At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

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

Jennifer M. Abramson (3RC50)  
Senior Asst. Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

31. 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 also to assess 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.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. 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).

The cost of the Agency'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.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent 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).

#### Certifications

32. Respondent certifies that, to the best of its knowledge, all claims, statements and implications made in connection with the distribution or sale of its SilverSport products are currently in compliance with the requirements of FIFRA, 7 U.S.C. §§ 136 *et seq.*, and with EPA's PR Notice 2000-1.

#### Other Applicable Laws

33. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

#### Reservation of Rights

34. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated there under, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

#### Full and Final Satisfaction

35. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Parties Bound

36. This CAFO shall apply to and be binding upon EPA, Respondent, and the 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 by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date

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

Entire Agreement

38. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For Respondent:

7/11/2015  
Date

  
Thomas Davis, Principal  
Eco Product Group LLC

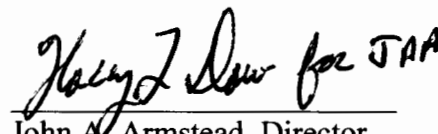
For Complainant:

7/14/2015  
Date

  
Christine Convery  
U.S. EPA, Region III

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

7/15/2015  
Date

  
John A. Armstead, Director  
Land and Chemicals Division

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

**IN THE MATTER OF**

Eco Product Group LLC  
5700 Corporate Drive  
Pittsburgh, PA 15237

Respondent

DOCKET NO: FIFRA-03-2015-0175

FINAL ORDER

FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Eco Product Group LLC ("Respondent") have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

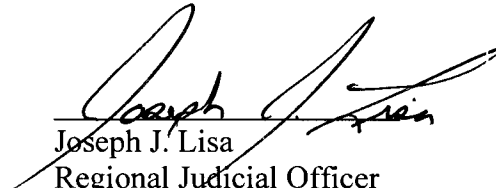
**NOW THEREFORE**, pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. § 136l(a), and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C.

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§ 136(a)(4), Respondent is hereby ordered to pay a civil penalty of eight thousand two hundred dollars (\$8,200), in accordance with the payment provisions set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: July 21, 2015

  
Joseph J. Lisa  
Regional Judicial Officer  
U.S. EPA, Region III

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

IN THE MATTER OF )

Eco Product Group LLC )  
5700 Corporate Drive )  
Pittsburgh, PA 15237 )

Respondent )  
\_\_\_\_\_ )

DOCKET NO: FIFRA-03-2015-0175

CONSENT AGREEMENT

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

**Original and one copy by hand-delivery:**

Lydia Guy, Regional Hearing Clerk

**Copy by Certified Mail**

Michael T. Novak, Esq.  
Keller and Heckman LLC  
1001 G Street NW, Suite 500 West  
Washington, DC 20001

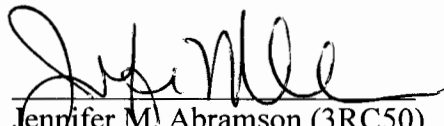
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Jennifer M. Abramson (3RC50)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III

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