



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

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 EPA REGION III, PHILA. PA

In the Matter of:)
)
 Boar's Head Provisions Company, Inc.)
 1819 Main Street, Suite 800)
 Sarasota, Florida 34236,)
 Respondent.)
)
 Boar's Head Provisions Co, Inc.)
 2230 Wyatts Mill Road)
 Jarratt, Virginia 23867,)
 Facility.)
 _____)

EPA Docket Nos.: CERCLA-03-2014-0273
 EPCRA-03-2014-0273

Proceedings Pursuant to Sections 103 and 109
 of the Comprehensive Environmental
 Response, Compensation, and Liability Act,
 42 U.S.C. §§ 9603, 9609, and Sections 311, 312
 and 325 of the Emergency Planning and
 Community Right-to-Know Act, 42 U.S.C.
 §§ 11021, 11022, 11045

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has redelegated this authority to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant"). This Consent Agreement is also proposed and entered into pursuant to the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, delegated to the Regional Administrator by EPA Delegation No. 22-3-A, and redelegated to Complainant by EPA Region III Delegation No. 22-3-A. Further, this Consent Agreement is proposed and entered into under the authority provided by 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.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. §§ 22.13(b) and

22.18(b)(2), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(7) and 22.1(a)(8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent Boar's Head Provisions Company, Inc. admits the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Agreement.

EPA'S FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

EPA'S FINDINGS OF FACT

5. Respondent Boar's Head Provisions Company, Inc. ("Boar's Head" or "Respondent") is a corporate entity with offices located at 1819 Main Street, Suite 800, Sarasota, Florida.
6. Beginning in 1966, and at all times relevant to this CA/FO, Respondent has been in charge of the facility located at 2230 Wyatts Mill Road in Jarratt, Virginia ("the Facility"), within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6. At all times relevant to this CA/FO, Respondent has also been the owner and operator of the Facility, within the meaning of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022.
7. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and their respective regulations, 40 C.F.R. § 302.3 and 40 C.F.R. § 370.66.
8. On January 9, 2014, EPA conducted an inspection of the Facility to determine the Facility's compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of EPCRA, 42 U.S.C. §§ 11002-11022.
9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the

environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

10. Section 311 of EPCRA, 42 U.S.C. § 11021, as implemented by 40 C.F.R. Part 370, requires an owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical in accordance with the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility is present at any one time a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous chemical ("EHS")) in a quantity equal to or greater than its applicable minimum threshold level for reporting ("MTL") or threshold planning quantity ("TPQ") established by 40 C.F.R. § 370.10, to submit either MSDSs for, or a list identifying, those hazardous chemicals to the appropriate state emergency response commission ("SERC"), local emergency planning committee ("LEPC"), and local fire department with jurisdiction over the facility, on or before October 17, 1990, or within three months after meeting the MTL or TPQ.

11. Respondent is engaged in a business where chemicals are either used, distributed, or are produced for use or distribution.

12. Respondent is an "employer" as that term is defined at 29 C.F.R. § 1910.1200(c).

13. Respondent is required to have an MSDS at its Facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).

14. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available an MSDS for a hazardous chemical in accordance with OSHA's Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable MTL or TPQ to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form") identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

15. The findings of fact contained in paragraphs 5 through 14 of this CA/FO are incorporated by reference herein as though fully set forth at length.

16. On April 12, 2013, at or about 7:05 a.m., an estimated 1883 pounds of sodium hydroxide, Chemical Abstracts Service ("CAS") No. 1310-73-2, was released from the Facility when a forklift carrying a 330-gallon tote containing sodium hydroxide slipped, dropping the tote, which ruptured upon impact with the ground (the "Release").

17. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

18. Sodium hydroxide is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 1000 pounds, as listed in 40 C.F.R. § 302.4.

19. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

20. The Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

21. Respondent knew or should have known of the Release of sodium hydroxide from the Facility, in a quantity equal to or exceeding its RQ, at or about 8:00 a.m. on April 12, 2013.

22. Respondent did not notify the NRC of the Release until approximately 12:06 p.m. on April 12, 2013.

23. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding its applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

24. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA**

25. The findings of fact and conclusions of law contained in paragraphs 5 through 24 of this CA/FO are incorporated by reference herein as though fully set forth at length.

26. A-342 and A-222 are "hazardous chemicals" as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66.

27. Respondent is the owner or operator of a facility that is required to prepare or have available MSDSs for the hazardous chemicals listed above under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

28. Pursuant to 40 C.F.R. § 370.10, the MTL for A-342 and A-222 is 10,000 pounds.

29. According to information submitted to EPA by Respondent, A-342 was present at the Facility on May 22, 2012 in a quantity of 10,000 pounds and that A-222 was present at the Facility on August 21, 2012 in a quantity of 50,000 pounds.

30. Respondent had present at the Facility A-342 and A-222 in quantities equal to or exceeding their respective MTLs.

31. Respondent was required to submit to the SERC, LEPC and local fire department either the MSDSs for A-342 and A-222, or a list of hazardous chemicals identifying A-342 and A-222 as being present at the Facility, no later than three (3) months after A-342 and A-222 were present at the Facility in an amount equal to or greater than their respective MTLs.

32. According to information provided to EPA by Respondent, Respondent provided an annual chemical inventory form to the appropriate SERC, LEPC, and local fire department with jurisdiction over the Facility at the end of February 2013, which included A-342 and A-222 in the list of hazardous chemicals present at the Facility.

33. Respondent failed to submit to the SERC, LEPC, and local fire department either MSDSs for A-342 and A-222, or a list of hazardous chemicals identifying A-342 and A-222 as present at the Facility in quantities equal to or exceeding their respective MTLs, no later than

three (3) months after the chemicals were present at the Facility in an amount equal to or greater than their respective MTLs.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA**

34. Respondent's failure to submit to the SERC, LEPC, and local fire department either MSDSs for A-342 and A-222, or a list of hazardous chemicals identifying A-342 and A-222 as present at the Facility in quantities equal to or exceeding their respective MTLs, no later than three (3) months after the chemicals were present at the Facility in an amount equal to or greater than their respective MTLs constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA**

35. The findings of fact and conclusions of law contained in paragraphs 5 through 34 of this CA/FO are incorporated by reference herein as though fully set forth at length.

36. Lead acid battery is a "hazardous chemical" as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and is subject to Section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

37. Sulfuric acid, CAS No. 7664-03-9, is a component of lead acid battery. Sulfuric acid is an EHS, pursuant to 40 C.F.R. § 355, Appendices A and B.

38. Pursuant to 40 C.F.R. § 370.10, the MTL for lead acid battery is 10,000 pounds and the MTL for sulfuric acid is 500 pounds.

39. Respondent submitted to the SERC, LEPC, and local fire department, an Emergency and Hazardous Chemical Inventory Form for calendar years 2010, 2011, and 2012, annually by March 1 of the following year, identifying lead acid battery as present at the Facility in quantities equal to or greater than the MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d). Respondent's annual Emergency and Hazardous Chemical Inventory Form for calendar years 2010, 2011, and 2012 indicated that 1,800 pounds of lead acid battery was present at the Facility during the previous year.

40. According to information submitted to EPA by Respondent, 1,800 pounds represented the quantity of sulfuric acid within the lead acid battery, not the total quantity of lead acid battery. Based on information submitted by Respondent, EPA calculated the quantity of lead acid battery present at the Facility during calendar years 2010, 2011, and 2012 to be approximately 16,363 pounds.

41. Respondent failed to submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar years 2010, 2011, and 2012 identifying the total quantity of lead acid battery present at the Facility during the previous calendar year.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA**

42. Respondent's failure to submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar years 2010, 2011, and 2012 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

43. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, set forth above, in the amount of **\$7,974.00** ("CERCLA civil penalty"), and for the violations of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, set forth above, in the amount of **\$16,281.00** ("EPCRA civil penalty").

PAYMENT TERMS

44. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the CERCLA civil penalty of \$7,974.00 and EPCRA civil penalty of \$16,281.00, no later than thirty (30) days after the effective date of the Final Order (the "final due date") by either cashier's check, certified check, or electronic wire transfer. Payment of the CERCLA civil penalty and EPCRA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Numbers of this action;
- b. All checks for the CERCLA civil penalty shall be made payable to **EPA-Hazardous Substances Superfund**; all checks for the EPCRA civil penalty shall be made payable to **United States Treasury**;
- c. Payment for the CERCLA civil penalty made by check and sent by regular mail shall be addressed to:

U.S. EPA
ATTN: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

- d. Payment for the EPCRA civil penalty made by check and sent by regular mail shall be addressed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- e. Payment for the CERCLA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

- f. Payment for the EPCRA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

- g. 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

- h. Payment made by electronic wire transfer shall be directed to:

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 the Fedwire message should read:
D 68010727 Environmental Protection Agency

- i. Electronic payment made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- j. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- k. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

45. The Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

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

and

Suzanne Parent (3RC42)
Associate Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

46. The CERCLA civil penalty and EPCRA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and are consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

47. 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 by the final due date or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

48. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will waive interest on any amount of the civil penalty that is paid by the final due date. 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).

49. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 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 final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

50. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 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, in accordance with 31 C.F.R. § 901.9(d).

51. Failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

52. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

53. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

54. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

55. Each party to this action shall bear its own costs and attorney's fees.

In re: Boar's Head Provisions Company, Inc.

CERCLA-03-2014-0273
EPCRA-03-2014-0273

FOR BOAR'S HEAD PROVISIONS COMPANY, INC.



Signature

9/20/14

Date

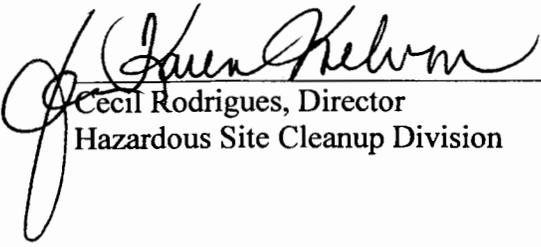
Name *Kevin Mackinnon*

Title *General Counsel*

In re: Boar's Head Provisions Company, Inc.

CERCLA-03-2014-0273
EPCRA-03-2014-0273

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Cecil Rodrigues, Director
Hazardous Site Cleanup Division

SEP 26 2014

Date

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

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Boar's Head Provisions Co, Inc.) §§ 11021, 11022, 11045
2230 Wyatts Mill Road)
Jarratt, Virginia 23867,)
)
Facility.)
_____)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via Overnight Mail

Kevin MacKinnon
General Counsel
Boar's Head Brand
1819 Main Street, Suite 800
Sarasota, FL 34236

9/30/14
Date

Suzanne M. Parent
Suzanne M. Parent
Associate Regional Counsel