

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
TOWN OF SELBYVILLE	:	U.S. EPA Docket No. CWA-03-2022-0042DN
1 W. CHURCH STREET	:	
SELBYVILLE, DE 19975-0106	:	
	:	ADMINISTRATIVE ORDER ON CONSENT
Respondent.	:	PURSUANT TO 33 U.S.C. § 1319(a)
	:	
WASTEWATER TREATMENT FACILITY :	:	
37619 WASTEWATER LANE	:	
SELBYVILLE, DE 19975	:	
	:	
Facility.	:	
	:	
	:	

I. STATUTORY AUTHORITY AND JURISDICTION

1. This Administrative Order on Consent (“AOC” or “Order”) for compliance is issued to the Town of Selbyville (“Selbyville” or “Respondent”), under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). The Administrator delegated this authority to the Regional Administrator of EPA Region III, who further delegated it to the Director of the Enforcement & Compliance Assurance Division, EPA Region III.

2. Section 309(a) of the Act provides, *inter alia*, that: “Whenever, on the basis of information available to [EPA], [EPA] finds that any person is in violation of any condition or limitation [implementing section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title] in a permit issued under section 1342 ... of this title, ... [EPA] shall issue an order requiring such person to comply with such condition or limitation ...” *See* 33 U.S.C. § 1319(a)(3).

3. EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and 2, above.

4. EPA has consulted with the Delaware Department of Natural Resources and Environmental Control (“DNREC”) regarding this action and, subsequent to the Effective Date, EPA will provide a copy of this fully executed AOC to the appropriate DNREC representative.

II. GENERAL PROVISIONS

5. For purposes of this proceeding, Respondent admits the jurisdiction allegations set forth in this AOC
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this AOC.
7. The provisions of this AOC shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of the Respondent.
8. Respondent shall bear its own costs and attorneys' fees in connection with this proceeding and associated with the implementation or enforcement of this AOC, including any costs related to resolution of any dispute arising regarding this AOC.
9. Issuance of this AOC is intended to address the violations described herein. 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. EPA also reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this AOC, following the Effective Date, as defined below.
10. This AOC does not constitute a waiver or modification of the terms or conditions of any permit issued to either Respondent. Nothing in this Order shall relieve either Respondent of its obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Order does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.
11. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
12. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
13. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this AOC and to execute and legally bind the party.

14. By signing this AOC, Respondent acknowledges that this AOC may be available to the public and represents that, to the best of Respondent's knowledge and belief, this AOC does not contain any confidential business information or personally identifiable information from Respondent.
15. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission, true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by either Respondent to the EPA regarding matters relevant to this AOC are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents 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.

III. STATUTORY AND REGULATORY BACKGROUND

16. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act.
17. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System ("NPDES") program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
18. "Discharge of a pollutant" means "[a]ny addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'." 40 C.F.R. § 122.2 *See also* 33 U.S.C. § 1362(12).
19. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized DNREC to administer the NPDES program in the State of Delaware.

IV. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

20. As a municipality, Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
21. At all times relevant to this AOC, Respondent owned and operated the Wastewater Treatment Facility ("WWTF" or "Facility"), a municipal wastewater treatment facility that treats wastewater from the Town of Selbyville located in Selbyville, Delaware. The WWTF discharges domestic wastewater into the Atlantic Ocean in the Delaware coast.

22. At all times relevant to this AOC, the operation of the WWTF has been subject to Delaware NPDES Discharge Permit No. DE0020010 (“Permit”), which was issued by DNREC on September 28, 2017, and became effective November 1, 2017. The Permit will expire on October 31, 2022.
23. Respondent is authorized to discharge pollutants, in the form of domestic wastewater from the WWTF, to waters of the United States only in accordance with the terms and conditions of the Permit.
24. The Atlantic Ocean at the discharge point is a “water(s) of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
25. At all times relevant to this AOC, the WWTF discharged wastewater into the Atlantic Ocean through a “point source,” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
26. On November 9, 2020, representatives of EPA inspected the WWTF for purposes of determining compliance with the Permit (“Inspection”).
27. On December 13, 2021, EPA received Discharge Monitoring Reports (“DMRs”) from the DNREC including a noncompliance notification report dated June 24, 2021.

Count I

Permittee Discharged Water to Outlet No. 001 in Exceedance of Permit Effluent Discharge Limitations

28. Part I.B.1 of the Permit defines effluent limitations and monitoring requirements for Outfall 001 discharges.
29. From January 1, 2018 to June 30, 2021, Respondent has discharged wastewater from Outlet No. 001 in exceedance of its Permit’s effluent discharge limitations on approximately 8 occasions. A summary of the exceedances identified are set forth in Table 1.

Table 1. Effluent Exceedances (January 1, 2018 to June 30, 2021)

Perm Feature ID	Parameter Description	Limit Value	Statistical Base Code	DMR Value	Units	Monitoring Period End Date
001	Enterococci: group D, MF trans, M-E, EIA	104	DAILY MX	= 770.1	CFU/100mL	1/31/2018
001	Enterococci: group D, MF trans, M-E, EIA	104	DAILY MX	> 160	CFU/100mL	7/31/2018
001	Enterococci: group D, MF trans, M-E, EIA	104	DAILY MX	= 114	CFU/100mL	8/31/2018
001	BOD, 5-day, 20 deg. C	23	DAILY MX	= 30.5	mg/L	12/31/2018
001	BOD, 5-day, 20 deg. C	130.6122449	DAILY MX	= 135.8730159	kg/d	12/31/2018
001	Enterococci: group D, MF trans, M-E, EIA	104	DAILY MX	> 160	CFU/100mL	3/31/2019
001	Enterococci: group D, MF trans, M-E, EIA	104	DAILY MX	> 160	CFU/100mL	12/31/2019

001	Enterococci: group D, MF trans, M-E, EIA	104	DAILY MX	> 160	CFU/100mL	6/30/2021
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30. Based on the above assertions and allegations, EPA concludes that Respondent violated the effluent limitations set forth in Part I.B.1 of the Permit during the monitoring periods stated in Table 1, above.

Count II
Respondent was not Operating and Maintaining
the WWTF as required by the Permit

- 31. Permit Part II.A.3. requires that “The Permittee shall at all times maintain in good working order and operate as efficiently as possible all collection and treatment facilities and systems (and related appurtenances) installed or used by the Permittee for water pollution control and abatement to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, effective performance (based upon the facilities' design), adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, when necessary, to achieve compliance with the terms and conditions of this permit.”
- 32. At the time of the Inspection, EPA inspectors saw that the grit removal system was off-line because Respondent was evaluating the grit removal system that had signs of damage to the pipes and extensive rust, particularly in the collection trough. The Respondent stated that they were evaluating the system prior to and at the time of the Inspection.
- 33. At the time of the Inspection, EPA inspectors saw that clarifier #2 showed signs of ashing in the wastewater, and EPA inspectors saw amounts of solids floating on the surface of the wastewater and in the effluent of the clarifier.
- 34. Based on the above assertions and allegations in Paragraphs 32 and 33, above, EPA concludes that Respondent violated Permit Part II.A.3. of the Permit on at least November 9, 2020.

Count III
Respondent failed to maintain all mapping requirements in the SWP as required by the Permit

- 35. Permit Part III.A.10. states, “The permittee shall continue to implement and maintain a Storm Water Plan (SWP) that is designed to limit the exposure of industrial materials and activities to precipitation and to minimize the discharge of contaminated storm water from the Permittee's facility. The SWP shall be implemented and maintained in accordance with the requirements in the State of Delaware's Regulations Governing the Control of Water Pollution, “Storm Water Plan (SWP)”.
- 36. Section 9.1.5.7.2.2. of the State of Delaware's Regulations Governing the Control of Water Pollution states, in pertinent part, that all markings, delineations and designations on the map shall be clearly identifiable such as buildings, drainage areas, conveyance systems and

appurtenances, structural stormwater inlets, controls and flow direction, and outfalls. A narrative description of the markings, delineations and designations shall accompany the facility map.

37. EPA's Inspection report dated November 9, 2020 stated that Respondent's facility site maps contained in Respondent's SWP, which was provided to EPA inspectors by Respondent on October 26, 2020, did not identify all the facility buildings, secondary stormwater containment structures, stormwater inlets, conveyances and outfalls as required by Section 9.1.5.7.2.2. of Delaware's Regulations Governing the Control of Water Pollution.
38. Based on the above assertions and allegations in Paragraph 37, above, EPA concludes that Respondent violated Part III.A.10. of the Permit on at least October 26, 2020.

V. COMPLIANCE ORDER

Therefore, Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to conduct, and consents to conduct, the following activities:

39. Within 30 days of the Effective Date of the AOC, the Respondent shall provide to EPA an updated SWP facility map that includes and identifies all facility buildings, secondary containment structures, stormwater inlets, conveyances, outfalls, and any other required information pursuant to Section 9.1.5.7.2.2. of the State of Delaware's Regulations Governing the Control of Water Pollution.
40. Within ninety (90) days of the Effective Date of the AOC, the Respondent shall provide to EPA for review an Engineering Evaluation of the WWTF grit removal system. The Engineering Evaluation must be completed by a certified Professional Engineer. This evaluation must include an analysis of the causes, and responsive recommendations, including repairs and upgrades to or replacement of the WWTF grit removal system.
41. EPA will review the Engineering Evaluation and make a determination of completeness, based on the requirements described in Paragraphs 40, above. If EPA determines that the Engineering Evaluation is not complete or adequate, EPA shall notify Respondent in writing and Respondent shall resubmit an updated Engineering Evaluation within sixty (60) days of Respondent's receipt of EPA's notice.
42. Within ninety (90) days of receiving written notification that EPA has completed its review of the submitted Engineering Evaluation, the Respondent shall provide to EPA for review a Corrective Action Plan ("CAP"). The CAP shall include, at a minimum, a plan and a schedule that includes interim milestones for implementing the upgrades, repairs, or installation of a new grit removal system for WWTF, to be completed within twenty-four (24) months of the effective date of this AOC.
43. After review of the CAP:

- a. EPA will in writing: (a) accept the submission; (b) accept the submission upon specified conditions; (c) accept part of the submission and request resubmission of the remainder; or (d) request a new submission.
 - b. If the submission is accepted pursuant to Paragraph 41(a) (above), Respondent shall take all actions required by the CAP, in accordance with the schedule and requirements of the CAP, as approved. If the CAP is conditionally accepted or accepted only in part, pursuant to Paragraph 43.a.(b) or (c) (above), Respondent shall, upon written direction from EPA, take all actions required by the accepted CAP that EPA determines are technically severable from any unacceptable portions.
 - c. If the CAP is unacceptable in whole or in part, Respondent shall, within 30 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the CAP, or any unacceptable portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is accepted in whole or in part, Respondent shall proceed in accordance with the preceding Paragraph.
 - d. CAP Deadlines. No later than 20 Days from EPA's acceptance of the CAP, Respondent shall submit to EPA for review a list of deadlines included in the CAP. The list shall be submitted in an electronic format (e.g., unlocked spreadsheet or similar format agreed to by the Parties). Within 10 Days of modification of any deadline under the CAP, Respondent shall provide an updated list reflecting changes to the future schedule.
44. Respondent shall submit a notice to EPA within thirty (30) days of completing a scheduled event in the CAP until all work as identified in and required by the CAP has been completed.
45. Within 180 days of the Effective Date of the AOC, Respondent shall submit to EPA a Preventative Maintenance Plan ("PMP"). This PMP will detail the specific preventative maintenance requirements for each primary treatment, secondary treatment, and disinfection process or other equipment critical for optimal plant operation. As part of the preventative maintenance for each treatment process, include daily, weekly, or monthly schedules to be followed by the plant operator that prescribe Preventative Maintenance procedures, including, at a minimum, calibration, lubrication, cleaning and replacement of equipment. Each item identified in Paragraph 40, above, that has a corrective action shall have a corresponding preventative action described in the PMP. The PMP shall also include a process for regularly inspecting and correcting any issues identified at Outfall No. 001 for any prohibited characteristics which may be present due to the facility's discharges.
46. EPA will review the PMP and make a determination of completeness, based on the requirements described in Paragraph 45, above. Upon a determination of completeness as provided in writing by EPA to the Respondent, Respondent will begin implementation of the PMP.

VI. PROCEDURES FOR SUBMISSIONS

47. All documents required to be submitted by this Order and any Request for Termination shall be accompanied by a certification signed by a responsible officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision 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 fine and imprisonment for knowing violations.

Signed 

Title: Wastewater Commissioner

Date: 3/17/22

48. Respondent may assert a business confidentiality claim covering part or all of the information which this AOC requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If, at the time any information is submitted to EPA, the Respondent submitting such information does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to either Respondent.
49. Unless otherwise directed in writing, Respondent shall submit any submission or written communication, including any accompanying data, relating to this AOC via email to:

Email: Pruzinsky.Amanda@epa.gov
 Ms. Amanda Pruzinsky
 NPDES Enforcement
 Enforcement and Compliance Assurance Division
 U.S. EPA, Region III

Any information submitted electronically shall be submitted in a widely recognized electronic format.

VII. CERTIFICATION OF COMPLIANCE AND REQUEST FOR TERMINATION OF AOC

50. Upon completion of all items required by the CAP and a determination of completeness of each item, and after two (2) years' implementations of the PMP, Respondent shall submit to EPA a Certification of Compliance and Request for Termination of this AOC. Such certification and request shall include:

- a. a certification that Respondent has maintained compliance with this AOC for the term of this AOC; and
 - b. all necessary documentation, including photo documentation as appropriate, to support a finding that Respondent has complied with Section V (Compliance Order) of this AOC.
51. If, following review of any Certification of Compliance and Request for Termination of this AOC, EPA agrees that Respondent has adequately complied with all requirements of this AOC, then EPA may, in its unreviewable discretion, provide written notification of termination of this AOC.

VIII. AOC MODIFICATIONS

52. Any request to modify the terms of, or parties to, this AOC shall be submitted, in writing, by Respondent to EPA and shall be subject to review and approval by EPA, in its sole and unreviewable discretion. Respondent's submission of a written request for modification of this AOC shall not relieve Respondent of any obligation under this AOC and shall have no effect on EPA's statutory or regulatory authority to enforce the terms of this AOC, in its sole and unreviewable discretion.

IX. CHANGE OF OWNERSHIP OR OPERATION OF THE WWTF

53. Until or unless this AOC is modified or terminated, in accordance with the terms of this AOC, Respondent shall remain responsible for compliance with the terms of this AOC following any transfer of ownership or operation of the WWTF.
54. At least ninety (90) days prior to any transfer of ownership or operation of the WWTF, Respondent shall submit a written notification to EPA of any such anticipated change in ownership or operation of the WWTF (Notification of Change of Ownership or Operation). Each such Notification of Change of Ownership or Operation shall include, at a minimum, a detailed summary of the anticipated change in ownership or operation, contact information for the proposed new owner or operator of the WWTF and a schedule for such anticipated change.
55. Respondent shall condition any sale or transfer of ownership or operation of the WWTF, in whole or in part, upon the execution by such Prospective Third-Party Purchaser, or Transferee, of an agreement, which creates an obligation that shall survive the closing of such sale or transfer, of the WWTF, whereby such Prospective ThirdParty Purchaser or Transferee agrees to comply with and be bound by the terms of this AOC.

X. EXTENSION OF TIME BASED ON FORCE MAJEURE

56. "Force Majeure Event", for purposes of this AOC, is defined as any event arising from causes beyond the control of either Respondent, of any entity controlled by either Respondent or any contractor of either Respondent, that delays or prevents the performance of any obligation under this AOC subsequent to Respondent exercising best efforts to fulfill the obligation(s) at issue. The requirement that Respondent exercises "best efforts to fulfill

the obligation" includes using best efforts to anticipate any Force Majeure Event and best efforts to address the effects of any such event: (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay. Unanticipated or increased costs or expenses associated with the performance of Respondent's obligations under this AOC or Respondent's financial inability to perform any obligation under this AOC shall not constitute circumstances beyond Respondent's control nor serve as the basis for an extension of time under this AOC.

57. If at any time during the implementation of this AOC, any Force Majeure Event occurs that may delay the performance of any obligation under this AOC, including implementation of an EPA-approved plan or schedule, Respondent shall, within seven (7) calendar days of determining that such event may delay the performance of such obligation, provide to EPA a written request for an extension of time to comply with any such obligation (Force Majeure Extension of Time Request). Such Extension of Time Request shall include, at a minimum, the following information for each specific obligation(s) for which an extension of time is sought.
- i. The specific obligation(s) for which an extension of time is sought, including each applicable deadline.
 - ii. A detailed explanation and description of the Force Majeure Event at issue and the reasons for the requested extension of time, including all supporting documentation.
 - iii. The amount of time for which an extension of time is sought.
 - iv. A detailed description of all actions taken to prevent or minimize the amount of time for which an extension of time is sought, including a detailed description of each Respondent's best efforts to fulfill the obligation.
 - v. A detailed description, including a schedule for implementation, of all actions to be taken to prevent or mitigate the amount of time for which an extension is sought and the effect of any delay on any other obligation pursuant to this AOC.
 - vi. A statement as to whether, in the opinion of each Respondent, the Force Majeure Event at issue may cause or contribute to an endangerment to public health, welfare, or the environment.
58. Respondent shall be deemed to know of the occurrence of, or reasonable likelihood of an occurrence of, any circumstance or event that may delay the performance of any obligation under this AOC of which either Respondent, any entity controlled by either Respondent, or any contractor of either Respondent knew or reasonably should have known.
59. Any Force Majeure Extension of Time Request shall be submitted in accordance with this AOC and EPA may, in its unreviewable discretion, approve or disapprove any Extension of Time Request.

- 60. EPA's approval, including conditional approval, of any Force Majeure Extension of Time Request shall not, of itself extend the time for performance of any other obligation not explicitly addressed in such approval.
- 61. Failure to comply with the above requirements may preclude Respondent from asserting any claim of Force Majeure or other related defense for non-compliance with the terms of this AOC for the time period such non-compliance is related to a reportable event.

XI. EFFECTIVE DATE

- 62. This AOC will become effective upon the Respondent's receipt of a fully-executed copy of this AOC.

TOWN OF SELBYVILLE

Date: 3/17/22

By: Clifton C Murray
Clifton C. Murray, Mayor

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

By: _____

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103

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37619 WASTEWATER LANE	:	
SELBYVILLE, DE 19975	:	
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Facility.	:	
	:	
	:	
	:	

CERTIFICATE OF SERVICE

I certify that by the date of signature the foregoing Administrative Order on Consent, was filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via UPS to:

Clifton C. Murray, Mayor
Town of Selbyville
1 W. Church Street
Selbyville, DE 19975-0106

Copies served via email to:

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. EPA, Region III
Ramalho.Louis@epa.gov

Amanda Pruzinsky
NPDES Enforcement – Water Branch Enforcement and Compliance Assurance Division
U.S. EPA, Region III
Pruzinsky.Amanda@epa.gov

Sharon Oras Morgan, Esq.
Fox Rothschild LLP
919 N. Market Street
Suite 300
Wilmington, DE 19899-2323
SMORGAN@foxrothschild.com

[Digital Signature and Date]
Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA, Region III