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CERTIFIED MAIL NO. 7015 0640 0007 7829 3805

Administrator Gina McCarthy
U.S .Environmental Protection Agency
Washington, D.C. 20460

Re: Notice Pursuant to 40 C.F .R. Part 54 Prior to Filing of Civil Action under 42 U.S .C. § 7604(a) (2) for Failure to Take Nondiscretionary Actions

Dear Administrator McCarthy:

This notice is written on behalf of my client, Value Recovery Inc., a New Jersey corporation to give you notice pursuant to 40 C.F.R. Part 54, prior to the institution of a citizen's civil action under 42 U.S.C. § 7604(a)(2), of the failure of the U.S. Environmental Protection Agency ("EPA") to fulfill nondiscretionary duties and take nondiscretionary actions to name a stationary major source category that includes the hazardous air pollutant, Methyl Bromide.

METHYL BROMIDE USE

Bromomethane, commonly known as **methyl bromide,** (CAS No. 74-83-9) is an alkyl halide formula CH3Br. This colorless, odorless, nonflammable gas is produced both industrially and biologically. Prior to WWII it was used as a flame retardant. Methyl Bromide, first introduced as a pesticide in 1932, is a fumigant as well as a pesticide. As a fumigant, methyl bromide is used on both soil and inside structures to destroy insect pests. In addition, fumigants are used to control fungi, nematodes, insects, weeds and unwanted seed variants. In and prior to the year 2000, approximately 36,000 metric tons of Methyl Bromide was used annually in the United States. Of this, about 75% was used for soil fumigation.

Most of the remaining 25% was used for structural fumigations and imports and exports termed Quarantine and Preshipment (Q/PS). It is highly effective and to date, no adequate substitute exists because methyl bromide has one carbon, is highly reactive, very volatile and lethal. Thus it does its job quickly, cheaply, completely and leaves hastily. Methyl Bromide is essential to quarantine and preshipment applications (Q/PS) to control insect infestation and

contaminants in imports and exports and without its use hundreds of millions of dollars of agricultural imports and exports would not be available for trade. Q/PS standards are governed by the phytosanitary regulations of the Unites States Department of Agriculture ("USDA") through their treatment manual. The USDA has a very specific treatment schedule for methyl bromide for each of the goods that enter or exit US ports but the USDA regulations concern primarily the specific commodities to be treated, methods for treatment under tarpaulins, in champers or structures. The amount of the chemical use and the period of time at specific temperatures is driven by the phytosanitary schedule that is the product of years of research into the efficacy of destroying insects.

THE CLEAN AIR ACT

Since it's inception in the late 1950's the Clean Air Act (CAA) has been focused on reducing threats to human health through the control of air pollution. In 1990 the Clean Air Act Title I (Air Pollution Prevention and Control) Sec. 112 (42 USC 7412 et. seq.) was amended to list as hazardous air pollutants (HAP's) 188 chemicals including methyl bromide. Methyl bromide is a hazardous pollutant in part due to its extreme deleterious effects on the nervous system upon inhalation. While the EPA was mandated to complete a schedule of the major area sources see: CAA 112 (a)(2) defined as any **stationary source** of hazardous air pollutant starting in 1990 and no later than the year 2000 under CAA 112(c)(1)), all efforts were focused on chemical factories, steel mills, coal plants, refrigerants and other major sources of hazardous air pollutants.

Fumigation (of warehouses, shipping containers and bulk volumes under large tarps) is the *major source* category for the use of methyl bromide and at no time was or is fumigation listed as a source as required under the act. Fumigation meets the definition of major source because at many locations across the United States more than 10 tons/year of methyl bromide is vented directly into the atmosphere.

Congress similarly ruled (see CAA 112(d)(1)(2)) the EPA, through its Administrator was obligated to issue *emission standards* 'requiring the maximum degree of reduction in emissions of the hazardous pollutants ....through application of measures, processes, methods, systems or techniques which among other options would reduce the volume of, or eliminate emissions of such pollutants through process changes...etc. 112(d)(2)(A-D). At no time during the period was any emission standard promulgated for Methyl Bromide as a chemical sourced from fumigation.

MONTREAL PROTOCOL

Methyl bromide also poses a threat to the ozone layer. In the mid-1980's scientists discovered that when gaseous emissions of methyl bromide rise into the upper atmosphere, they are decomposed by sunlight and reduced to by-products which thin and destroy the ozone layer thus allowing harmful radiation from the sun to reach the earth's surface resulting in increased incidences of skin cancer. In 1987 the United States along with 162 countries, signed the Montreal Protocol, an international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances that included chlorofluorocarbons, commonly known as CFCs, and methyl bromide. The U.S. ratified the Montreal Protocol in

1988. Congress then enacted, and President Bush signed into law, an order to make the Clean Air Act comply with the Montreal Protocol, the Clean Air Amendments of 1990 that included Clean Air Act Title VI entitled Stratospheric Ozone Protection, Sections 601 through 618. Sections 604 deals specifically with the phase-out of class I substances as outlined in the Clean Air Act Section 112 (b).

Under the Montreal Protocol the original phase out of the "production, use and consumption" of methyl bromide was to be eliminated, under a graduated schedule of reduction using as a baseline the United States' 1991 consumption of 25,000 metric tons of methyl bromide, with 100% phase-out to occur by 2005. In 1998 an amendment to the Clean Air Act (P.L. 105-178, Title VI) conformed the Clean Air Act phase out date for methyl bromide with that of the January 1, 2005 date under the Montreal Protocol *and* Methyl bromide was re-categorized under Title VI as a Class I Group IV Ozone-Depleting substance.

TWO EXEMPTIONS TO THE MONTREAL PROTOCOL PHASEOUT

Title VI of the Clean Air Act provided for two exceptions to the 2005 phase-out date under the Montreal Protocol: The first was for 'Critical Use Exemptions' (CUE's) which are allowable where there is no technologically or economically alternatives for pest control and are designed for major agricultural growers of fruits, vegetable crops, ornamentals and the owners of stored food commodities. In 2006 alone the EPA authorized Critical uses of methyl bromide for production and import critical use exemptions for 2007 of 6,230,000 kilograms (6,230 metric tons or 24.4% of historic 1991 baseline). Critical exemptions have continued to be issued annually, the United States will be allowed to continue the exemptions and the use of methyl bromide until the current phase out date of 2017.

The second exemption was for the use of Methyl Bromide for Sanitation and food protection *(CAA Title VI 604(d)(5))* which pertains to the fumigation of commodities "To the extent consistent with the Montreal Protocol's quarantine and pre-shipment provisions, the *Administrator* ***shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities*** entering or leaving the United States or any State..

METHYL BROMIDE PHASEOUT

The Clean Air Act and the Montreal Protocol have developed extensive rules for the decreased use and phase out of methyl bromide for "pre-plant" and "post-harvest" use of methyl bromide through the CUE process: CAA 604(h) subchapter heading "Methyl Bromide". Notwithstanding subsections (b) and (d)...the Administrator shall not terminate production of methyl bromide prior to January 1, 2005. The Administrator shall promulgate rules for reductions in, and terminate the production under a schedule that is in accordance with but not more stringent then, the phase-out schedule of the Montreal Protocol Treaty as in effect on October 21, 1998.

However, neither the Montreal Protocol nor the Clean Air Act require any technology or method to reduce emissions of methyl bromide for Q/PS use. The Montreal Protocol does encourage emissions reductions by using less methyl bromide or, for soil fumigation, applying Virtually Impermeable Films (VIFs) that leak less methyl bromide during use as ozone protection strategies. These have shown to be minor improvement in reducing emissions. This is because 75% of methyl bromide is used by agricultural industries for-soil fumigation and there is no commercially available technology to date that can eliminate or even sufficiently reduce methyl bromide emissions from soil fumigation from entering the atmosphere.

Obliquely, however, the Montreal Protocol refers to emission destroying technologies and encourages the parties to the treaty to use them but does not require them. The definition of "Production" in the context of the Montreal Protocol the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the parties and minus the amount used as feedstock in the manufacture of other chemicals. The amount destroyed by the parties means feed-stocks of inventory chemicals and not after being used which would be encountered in emissions controls. The amount recycled and reused is not to be considered as "production" and that reduced by emissions control after use is not mentioned anywhere and is thus plainly ignored.

The CUE program was designed to allow for a transition to zero use of methyl bromide once the program had run its course. On the other hand, Q/PS use was not intended by the Montreal Protocol to go to zero and criticism of the Montreal Protocol has centered around the increase use of Methyl Bromide for Q/PS because the volume of it used is not addressed. Thus, this leaves the Clean Air Act, as the only basis to control methyl bromide emissions because if the original intention of the Clean Air Act to control **all major sources of HAPs.** To go on with the assumption that fumigation is not a major source of HAPs and was not intended to be controlled by the full implementation of the Clean Air Act defies the intent of the Congress.

VALUE RECOVERY, INC.

Since 2006 Value Recovery has offered systems and the technology to remove and destroy methyl bromide from fumigation vent streams from Quarantine and Preshipment fumigation enclosures up to 300,000 cubic feet. This is the equivalent of 100 (the average size) shipping containers. An independent Source Test has validated the removal of over 90% of the methyl bromide used in fumigation using this technology and new data show that this can be improved to remove up to 98% of the emissions. Although Value Recovery on a number of occasions provided the EPA with its technology for reducing emissions, the EPA has failed to even consider emissions control technology, from either Value Recovery or other providers, as a means to keep methyl bromide out of the atmosphere in light of its continued use.

The EPA has to date not listed fumigations as a source category to ensure the evaluation and eventual reduction of emissions of Methyl Bromide nor has it otherwise taken the action required by Clean Air Act- Under section 112(c) (l). This has left the annual reductions of Methyl Bromide for CUE applications as the only way to reduce levels of methyl bromide while Q/PS applications were completely untouched.

TECHNOLOGY SUMMARY

Value Recovery has developed "scrubbing technology" to economically remove and destroy methyl bromide from fumigation ventilation streams common to Q/PS (Quarantine and Pre shipment) operations. The technology was developed early in the last decade and demonstrated on a small scale at the Port of Wilmington, DE (2004), and in Westville, IN (2006).

More recently, the technology has been installed at two commercial operations – one in California and the other in Florida. Between them, they are responsible for destroying the methyl bromide from more than 600 commercial fumigations using more than 25 tons of methyl bromide.

Below is a brief description of these current commercial operations:

Guadalupe Cooling, Nipomo CA

Guadalupe Cooling of Nipomo, CA fumigates broccoli with methyl bromide for export to Taiwan. Guadalupe Cooling entered into a licensing contract with Value Recovery in March 2010 and was permitted for and installed the Value Recovery's Methyl Bromide Emissions Control scrubber system and has performed over 400 fumigations and scrubbed more than 20 tons of methyl bromide. The system was started up on April 12, 2013. The efficiency of the system is at 94% destruction of methyl bromide that has been independently verified through two California source tests.

South Florida Logistics Services, Port of Miami

South Florida Logistics Services (SLFS) operates warehouses within one mile of the Miami Airport that fumigates imports for distribution. These are mainly, grapes, blueberries, asparagus and other commodities requiring fumigation sourced from South America. SLFS (who are owned by Florida East Coast Industries) entered into a licensing contract for installing the Value Recovery Methyl Bromide Scrubbing system in July 2013. The fumigation volumes are 40% larger than at Guadalupe Cooling, approximately 70,000 ft3. The system started up on February 1, 2014 and has run continuously ever since. Methyl bromide from over 200 fumigations totaling more than 5 tons has been destroyed using Value Recovery's Scrubbing System.

Port Hueneme, CA

The Ricon group of Oxnard, CA entered into a licensing contract with Value Recovery, Inc. on April 5, 2015 for the use of the Value Recovery technology at the Port of Hueneme. The Port of Hueneme has a stated public goal of attracting more fruit imports into its facilities and alleviating the traffic jams evident at the Los Angeles ports and thus looks to fumigate mainly grapes and blueberries and from South America. The system would be 13 times larger than the one at Guadalupe Cooling and use 50 tons/yr annually with the potential to double that use in 5 years. The project is currently in the design phase. It is scheduled to start up in mid - 2016.

All of these projects represent displacement of methyl bromide use from fumigations that vented methyl bromide directly into the atmosphere to facilities where the methyl bromide is being controlled thus the savings to earth's environment and the ozone layer is unambiguously real.

Technology Description

At the heart of Value Recovery technology is the ability to chemically destroy methyl bromide from air streams encountered in fumigation operations. Methyl bromide is a highly reactive chemical. This reactivity is the basis for its being banned through the Montreal Protocol because it reacts with ozone in the upper atmosphere and destroys the ozone layer. Methyl bromide also is very volatile and will vacate a fumigation enclosure upon aeration or passing air through it. This combination of reactivity, volatility and relative inexpensiveness has not been replicated by those charged with finding its replacement and that is why methyl bromide is still being used today.

A. Aeration of Fumigation Enclosures

After the fumigation process is complete, the fumigated enclosure is aerated with large volumes of fresh air to "sweep" the methyl bromide away from the produce being fumigated. The Value Recovery process intercepts this methyl bromide containing air stream by forcing it through a "scrubber" that removes the methyl bromide (see www.valuerecovery.net)

After a fumigation is complete, the fumigation air volume is "aerated" with forced air that carries the methyl bromide out of the chamber Initially, the concentration of the methyl bromide is close to 1.6 volume % (also expressed as 64 g/m3 or 64 oz/1,000 ft3 or ~ 16,000 ppm) and the concentration falls off rapidly to less than 10% of these concentrations within 20 minutes and less than 1% after 40 minutes demonstrating the ease of clearing methyl bromide from goods

B. Scrubber System

The scrubber consists of a large tank filled with a chemical solution of potassium thiosulfate and polyethylene glycol in water that destroys the methyl bromide. Air containing methyl bromide is forced into this tank with air blowers (fans). As the air enters the tank it is broken up into very small bubbles that allow the fumigated air to come into intimate contact with the scrubbing thiosulfate liquid solution.

C. Addition of Carbon Bed for Large Scale Fumigations

If the fumigation volume is relatively small then the air stream can be sent directly to the scrubber for chemical destruction of the methyl bromide without using a carbon bed. Here "small" means 20,000 ft3 or less which is approximately equivalent to the volume in 6 shipping containers. Above 20,000 ft3 fumigation volume a carbon bed is also used in the process to concentrate the air stream before its being fed to the scrubber. The common terminology for this process step is "Temperature Swing Adsorption" and has been used in the chemical industry for over 60 years.

D. Economics of the Value Recovery Scrubbing Process

Four independent companies have executed license agreements to pay for use of the technology to make money themselves. The published cost detail for the process is put in terms of an annual emissions control cost that combines the operating cost with amortized capital cost to arrive at a cost per ton of methyl bromide emissions reduction. The target is to offer the technology at $17,500/ton of methyl bromide removed. The $17,500/ton was a standard set in California in 1995 for VOC (Volatile Organic Carbon) emissions reduction cost threshold and is written into their cost evaluation VOC regulations and has not been updated for inflation for over 20 years. If it were updated then the VOC cost/ton in 2015 dollars would be $29,500/ton. Value Recovery has supplied the EPA Region II office with cost estimates of its technology ranging from $17,500 to $21,500/ton for its process and is based on actual cost experience from Guadalupe Cooling and South Florida Logistics installations. The range is the result of the customer's desire for a "turn-key" project or not plus the desired rate of produce throughput. In the case of bulk produce being unloaded from ships, the fumigation would have to be sized to process 6,000 pallets in 48 hours which requires very large facilities that may not be used year round. This requirement drives up the capital cost.

Third Party Source Test Validation- As a condition of their permit, Guadalupe Cooling has undergone two California State sanctioned/required independent source tests to confirm the efficiency of the scrubber system. These tests are done over three days each and are strictly set up to meet permit conditions. The first was done in May of 2013. The overall methyl bromide removal efficiency was documented at 92.4% the second test was done by a different test company in October 2014, who documented the emissions control efficiency of 95.5%.

RACT/BACT/LAER Fumigation Source Designation

As part of their regulatory obligations, the State of California determined that this technology meets the criteria for RACT/BACT/LAER and thus lists the M&L Commodity's facility and Guadalupe Cooling within their state database under the source category fumigation. In fact, Value Recovery is the **only** company in this database that has achieved this source category designation. Section 173d of the Clean Air Act requires that states publish their data on new emissions control technology for use by other states. The database is accessible at:

http://www.arb.ca.gov/bact/bactnew/rptpara.htm

Source category; fumigation

- RACT - Reasonably Achievable Control Technology
- BACT - Best Available Control Technology
  LAER - Lowest Allowable Emissions Release

LEGAL JURISDICTION

A complaint seeking enforcement of the Clean Air Act may be filed only in the U.S. Court of Appeals for the District of Columbia Circuit. This Court has exclusive jurisdiction over petitions that challenge:
Any national primary or secondary ambient air quality standard;
Any emission standard or requirement under 42 U.S.C. § 7412 (hazardous air pollutants);
Any standard of performance or requirement under 42 U.S.C. § 7411 (standard of Performance for new stationary sources).
Any other nationally applicable regulations promulgated, or final action taken, by the Administrator under the CAA.

Therefore, it is the intent of VR to file its complaint in the aforesaid jurisdiction for the reasons stated here-in.

THE EPA HAS FAILED TO TAKE NONDISCRETIONARY ACTION AS PRESCRIBED BY STATUTE

The United States Environmental Protection Agency (EPA) has failed to perform the following non-discretionary duties and acts under the Clean Air Chapter 85 of Title 42 of the United States Code, 42 U.S.C. §§ 7401, et seq. Specifically, the EPA has failed to carry out its affirmative duty to include fumigation emissions from stationary sources as a major source of Hazardous Air Pollutants (HAPs) as called for in section 112c(l) of the Clean Air Act (CAA) passed by the United States Congress in 1990 with final revisions in 2004. Many stationary fumigation sources emit and have the potential to omit well over 10 tons/year of methyl bromide which meets the definition of a major source of HAPs. The duty arises from the fact that methyl bromide is a listed "hazardous material" under 42 USC SS 7412(b)(l) CAS # 74-83-9 and therefore is subject to provisions of section 112c(l) of the CAA:

"The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section..." The use of the directing word "shall" in the statute creates an absolute duty for the EPA promulgate such regulations, within the scope and limitations of the statute as stated in Section 304a(2) of the act: SEC. 304. 1 (a) except as provided in subsection (b), any person may commence a civil action on his own behalf-(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

If the EPA fails to comply with a non-discretionary duty, such as acting on a proposed State Implementation Plan (SIP) revision within the Clean Air Act deadlines or promulgating a FIP within the statutorily mandated timeframe, the Clean Air Act allows any person to bring suit to compel EPA to perform its duty. 42 U.S.C. § 7604(a) (2).

The fundamental responsibility of the EPA to enforce statutory requirements is spelled out the in the case Massachusetts et. al. v. EPA, 200 U.S. 321, (2006). In that case, the Supreme Court considered the affirmative duty of the EPA to issue emissions regulations for certain gases that Congress has determined are harmful to the environment. Specifically, the Court considered whether the EPA abused its discretionary powers in failing to act despite the Clean Air Act explicit requirements to regulate environmentally damaging gases (in this case, greenhouse gases).

Just as importantly, the court considered the limits of the EPA's grounds for discretion in promulgating and issuing regulations. The court stated:

"Under the Act's clear terms, EPA can avoid promulgating regulations only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do. The EPA has refused to do so, offering instead a laundry list of reasons not to regulate, if the scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment, it must say so. The statutory question is whether sufficient information exists for it to make an endangerment finding. Instead, EPA rejected the rule-making petition based on impermissible considerations. Its action was therefore "arbitrary, capricious, or otherwise not in accordance with law," §7607(d) (9). On remand, EPA must ground its reasons for action or inaction in the statute. Pp. 30--32."

In other words, where the Congress has made a policy determination to treat certain gases as pollutants, as in Hazardous Air Pollutants like methyl bromide, the EPA cannot make its own determination or fail to make a determination; rather, it has an affirmative duty to institute actions which carry out the congress's instructions. And if the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, US.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842-43 (1984). But "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843.

THE INTENT OF THE CLEAN AIR ACT

In developing the legislation for the Clean Air Act, the Congress sought to quantify emissions from similar source categories so that those categories could be the basis for compliance for industries and emissions of similar economic base. For instance NO emissions from cement kilns and NO emissions from coal fired plants may have the same impact on the environment but, from a regulatory perspective, were put into separate categories so that the regulatory burden would fall evenly on all those of similar sources who are derived from the same industry. Furthermore, for stationary sources of the same category, differing approaches

were mandated for existing sources, section 112 (j) and for new sources 112 (g). Existing sources were set up to follow the MACT standard for Maximum Achievable Control Technology. New sources, whose definition is quite involved, were set up to follow one of three standards of RACT/BACT or LAER whose acronyms mean Reasonably Achievable Control Technology, Best Available Control Technology and Lowest Achievable Emission Rates. The three new source criteria were set up to ensure that the applicable technology for emissions controls was assigned in a pragmatic manner. At no time, and under no circumstances, was a major source of hazardous air pollutants meant to escape one of these two considerations meaning MACT for existing sources and RACT/BACT/LAER for new sources.

In some parts of these federal statutes, what is "achievable," must take into consideration "the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements." 42 U.S.C. § 7412 (d) (2).

However, whether a determination is made applying MACT standards for existing sources or RACT/BACT/LAER standards for new sources, the fact that fully functioning, commercially viable methyl bromide fumigation emissions control technology now exist is a reality that cannot be ignored or explained away by EPA and that not naming fumigation as a major source category was not the intention of the Congress. The requirements of the Mass v EPA case are absolutely clear: when the Congress requires an unambiguous duty of the EPA, ("shall" language in section 304(a)(2) regulation), the EPA has an affirmative duty to carry out its responsibilities (in this case of naming fumigation as a major source category as defined in section 112(c)(1) and to ignore the congressional requirement would constitute an "arbitrary and capricious" act be the EPA. The relative importance of considering the economic impact and commercial viability of emission standards and following the CAA was emphasized by the Supreme Court in the very recent Michigan, et al., v. EPA, et al, No 14-46, decided June 29, 2015. In that case the court emphasized the importance of the economic feasibility in calculating emission standards, and that the very fact that the EPA had failed to initially consider these factors constituted unreasonable behavior on the part of the EPA. In the matter we put before the court, the commercial viability of viable emission standards for methyl bromide are demonstrated by the very fact that there are two commercial (not test) facilities now operating in the United States treating methyl bromide emissions arising from fumigation facilities and yet the EPA fails to consider this development if this were the reason for holding back listing fumigation as a major source category. Regardless, the EPA has offered no reason for not listing fumigation as a major source category.

The arrival of this technology in the marketplace is now fully mature. On June 26, 2008 the San Joaquin Valley Air Quality Control Board permit issued an "Authority to Construct" permit for a fumigation facility incorporating the Value Recovery, Inc. methyl bromide emissions control technology. Similarly, on February 14, 2014, the San Luis Obispo County Air Quality District issued a permit for the use of the Value Recovery emissions control technology in a fumigation facility located in Nipomo CA. The portion of the facility at the Port of Miami that uses Value Recovery emissions control technology does not require a permit because NO methyl

bromide air emissions are produced. This is a modification of the existing technology and shows the potential for 99.9% emissions control of methyl bromide.

The issuance of these permits and the fact that one does not require a permit at all, conclusively demonstrates that there does exist technology which meets both the BACT/RACT/LAER for new sources and stricter MACT standards for existing sources or can eliminate the emissions altogether. The technology is listed in the California Air RACT/BACT/LAER database. There exists no reasonable, or indeed, rational basis for the EPA to refuse to consider stationary fumigation as a source category for methyl bromide use in a fumigation capacity. Based on the existing case law, this failure of the EPA to include fumigation as a source category is indeed "arbitrary and capricious" and thwarts the specific and detailed intent of the Congress.

CONCLUSION

On the basis of the above we believe that the Environmental Protection Agency is required by Federal Statute by the Clean Air Act to list fumigation as a stationary source category for emissions of the listed hazardous material Methyl Bromide arising out import/export fumigation facilities and for other activities not covered by Quarantine Pre-shipment but are major sources of methyl bromide HAPs.

Sincerely,

Daniel P. Bernstein, Esq.