



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

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Gary L. Albertson  
Project Manager  
Vico Construction Corporation  
4001 South Military Highway  
Chesapeake, VA 23321

APR 04 2011

Re: Notice of Proposed Assessment of a Civil Penalty  
Docket No. CWA-03-2011-0083

Dear Mr. Albertson:

Enclosed is a document titled Administrative Penalty Complaint, and Notice of Opportunity to Request a Hearing (the "Complaint"), filed by the United States Environmental Protection Agency ("EPA") against Vico Construction Corporation under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. §1319(g).

EPA alleges that you have violated the Act and its implementing regulations, and the terms of the Virginia Pollutant Discharge Elimination System permit, VAR10, issued by the Virginia Department of Conservation & Recreation ("VA DCR") under authority of the Act. The alleged violations are specifically set out in Section II of the Complaint.

Unless you elect to resolve the proceeding as set forth in Section VI of the Complaint, an Answer addressing each allegation in the Complaint must be filed within thirty (30) days, or the allegations will be deemed admitted according to the rules governing this case, *Consolidated Rules of Practice governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22 (enclosed). Failure to respond may result in the issuance of a Default Order imposing the proposed penalty without further administrative hearings.

You have a right to request a hearing regarding the violations alleged in the Complaint and the proposed civil penalty. Such request should be included with the Answer to this Complaint and must also be made within thirty (30) days.

Whether or not a hearing is requested, we invite you to confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. You may represent yourself or be represented by an attorney at any conference, whether in person or by telephone. An attorney from the EPA Office of Regional Counsel will normally be present at any informal conference.



EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement through an informal conference. A request for a settlement conference may be included in your Answer or you may contact the attorney assigned to this case:

Pamela Lazos  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
215-814-2658

A request for an informal conference does not extend thirty (30) day period by which you must request or waive a hearing on the proposed penalty assessment, and the two procedures can be pursued simultaneously.

To the extent you may be a "small business" under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), please see the enclosed information sheet, which provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also information on compliance assistance. As noted in the enclosure, any decision to participate in such a program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or the enforcement action, does not create any new rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement actions.

In addition, your company may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against your company under Federal, State or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company is subject to it.

EPA urges your prompt attention to this matter. Please contact Rebecca Crane, U.S. EPA Region III, NPDES Enforcement Branch, 215-814-2389 if you wish to discuss this matter, or have your counsel contact Pamela Lazos, Senior Assistant Regional Counsel, 215-814-2658.

Sincerely,



Jon Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection Agency, Region III

Enclosure

cc: Anne Crosier, Stormwater Enforcement & Compliance Manager, VA DCR  
Tom Crawford, Subdivision Construction, City of Chesapeake, Virginia

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

**IN THE MATTER OF:**

Vico Construction Corporation  
4001 South Military Highway  
Chesapeake, VA 23321

Project known as  
Jolliff Landing Commercial Center

Jolliff Road and Portsmouth Blvd.  
Chesapeake, VA 23321

Respondent

Proceeding Under Class II  
Section 309(g) of the  
Clean Water Act

**Docket No. CWA-03-2011-0083**

**ADMINISTRATIVE COMPLAINT  
and  
NOTICE OF OPPORTUNITY FOR  
HEARING**

RECEIVED  
EPA REGION III  
PHILADELPHIA, PA  
OCT 11 2011 11:31

**I. STATUTORY AUTHORITY**

1. This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g)(1)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(1)(A). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who has further delegated this authority to the Director of the Water Protection Division of EPA Region III ("Complainant") pursuant to Delegation No. 2-52-A, September 1, 2005.

**II. FACTUAL ALLEGATIONS AND FINDING OF VIOLATIONS**

2. Vico Construction Corporation ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
3. At all times relevant to this Complaint, upon information and belief, the Respondent was the owner and/or operator of a 61 acre parcel, approximately 32 acres of which was disturbed further identified on the map attached hereto as Exhibit "A". The property is known as Jolliff Landing Commercial Center ("Site"), located in the northern side of Portsmouth Blvd. between Jolliff Rd. and the Chesapeake/Suffolk city limits in Chesapeake, Virginia, further identified on the map attached hereto as Exhibit "B".

4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
5. Owners and/or operators who discharge stormwater associated with construction activities to waters of the United States must comply with a NPDES permit.
6. The Commonwealth of Virginia has been authorized by EPA to administer the NPDES program in Virginia. Pursuant to the authority of the CWA, the NPDES program, and the Virginia State Water Control Law, Virginia issues the Virginia Pollutant Discharge Elimination System ("VPDES") Permit No. VAR10 (General Permit for Discharges of Storm Water from Construction Activities) to applicants on behalf of the EPA.
7. Upon information and belief, at all times relevant to this Complaint, the Respondent was engaged in construction activity at the Site. Stormwater discharges from this operation drains from the site, a point source, into Bailey Creek which is a tributary of the Western Branch of the Elizabeth River. The Western Branch of the Elizabeth River is listed as impaired by Virginia's Department of Environmental Quality's 2006 List of Impaired (Category 5) Waters. The Elizabeth River, an estuary to the Chesapeake Bay, is a "water of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
8. VPDES Permit No. VAR10 authorizes discharges of storm water associated with construction activities to waters of the United States (including discharges to, or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit, the Stormwater Pollution Prevention Plan ("SWPPP"), and an approved final Erosion and Sediment Pollution Control ("E&S") Plan.
9. Pursuant to Sections 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1342(a) and (p), and VPDES Permit No. VAR10, Vico Construction Corporation received approval, effective September 24, 2008, for the discharge of storm water under VPDES Permit No. VAR10-10-101027 from construction activities at the Site.
10. Pursuant to VPDES Permit No. VAR10-10-101027 and the E&S Plan for the Site, the Respondent must, among other things, provide inspection logs, install and maintain a construction entrance, install and maintain sediment traps and basins, stabilize stockpiles, and install and maintain silt fences.
11. On June 14, 2010, representatives of EPA, Region III conducted an inspection at the Site.

**Failure to install proper inlet protection**

12. The E&S Plan, Pages CE 101 and 104, requires that ponds #1-3 have inlet protection in the form of a temporary riser pipe. Plan page CE-501 contains details to the design of the inlet protection.
13. At the time of the inspection, EPA representatives observed that the three ponds did not have the proper inlet protection installed. The existing inlet protection did not meet requirements of the E&S Plan.
14. The Respondent failed to comply with the Permit, SWPPP, and E&S Plan by not installing the proper inlet protection devices in ponds #1-3.
15. The E&S Plan, Page CE 502. Management Strategies and Sequence of Erosion Control Measures. 7.a., requires storm sewer inlets that are used for drainage during construction be protected with gravel inlet protection so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.
16. At the time of the inspection, EPA representatives observed inlet protection that did not meet the specifications of the E&S plan. The inlet protection was not properly maintained.
17. The Respondent failed to comply with the Permit and E&S Plan by not installing and maintaining the proper inlet protection.

**Failure to install proper outlet protection**

18. The E&S Plan, Pages CE 101 and 104, requires that ponds #1-3 have outlet protection for the two outlets in each pond. Plan page CE-502 contains details to the design of the outlet protection.
19. At the time of the inspection, EPA representatives observed that the three ponds did not have the proper outlet protection installed. The existing outlet protection did not meet requirements of the SWPPP and E&S Plan.
20. The Respondent failed to comply with the Permit and E&S Plan by not installing the proper outlet protection in ponds #1-3.

**Failure to install proper soil stabilization measures**

21. The E&S Plan, Page CE-502. Management Strategies and Sequence of Erosion Control Measures. 6.a, requires that permanent soil stabilization be applied to denuded areas within seven (7) days after final grade is reached on any portion of the site. Temporary

soil stabilization shall be applied within 7 days to denuded areas that may not be at final grade but will remain dormant (undisturbed) for longer than 30 days.

22. At the time of the inspection, EPA representatives observed erosion of the slopes into pond #2 due to failing erosion control blanket BMPs. Denuded areas without soil stabilization were observed on Site.
23. The Respondent failed to comply with the Permit and E&S Plan by not applying soil stabilization to unstablized areas on Site.
24. The E&S Plan, Page CE-502, Management Strategies and Sequence of Erosion Control Measures.6.b., requires that soil stockpiles be stabilized or protected with sediment trapping measures during construction of the project. The applicant is responsible for the temporary protection and permanent soil stabilization of all soil stockpiles on site as well as soil intentionally transported from the project site.
25. At the time of the inspection, EPA Representatives observed stockpiles that did not receive temporary soil stabilization. There was evidence of erosion of sediment off of the stockpiles.
26. The Respondent failed to comply with the Permit and E&S Plan by not applying temporary soil stabilization to stockpiles on site.

**Failure to install, maintain and replace sediment barriers and sediment trapping devices**

27. The Permit, Section II.D.2.b.(3), requires that off-site accumulations of sediment must be removed as soon as practicable to minimize off-site impacts when sediment escapes the construction site.
28. The SWPPP, Section VII.B, requires that sediment barriers be inspected and, if necessary, they must be enlarged or cleaned in order to provide additional capacity. All material excavated from behind sediment barriers will be stockpiled on the up slope side of the barrier. Additional sediment barriers must be constructed as needed. Sediment must be removed from sediment traps and sediment basins when the design capacity has been reduced by 50%.
29. The E&S Plan, Pages CE-101-104, indicates where sediment barriers in the form of silt fences are to be installed on site.
30. At the time of the inspection, EPA representatives observed falling, undermined, punctured, downed, improperly wrapped, sediment stained, and improperly installed silt fences on site. Incomplete silt fence perimeters were observed around stockpile areas. Sediment was observed to be escaping off site.

31. The Respondent failed to comply with the Permit, SWPPP, and E&S Plan by not installing, maintaining, and replacing sediment barriers in the form of silt fences on Site. The Respondent failed in removing accumulated sediment that escaped off site through incomplete silt fence perimeters and impaired silt fences.
32. The SWPPP, Section V.B.2, requires that effluent from de-watering activities must be filtered or passed through an approved sediment trapping device, or both, before being discharged from the site.
33. At the time of the inspection, EPA Representatives observed dewatering operations north of Pond #3. A pump hose was draining directly into a ditch without any filtration. Later on in the inspection, EPA Representatives observed an improperly installed dewatering bag connected to the same pump hose.
34. The Respondent failed to comply with the Permit and SWPPP by not filtering water from de-watering activities through a sediment trapping device. The Respondent failed to comply with the Permit and SWPPP by not properly installing the sediment trapping device.

**Failure to properly quantify area of disturbance**

35. According to the Virginia Stormwater Management Program (VSMP) General Permit Registration Statement the disturbed acres on the site is 21 acres, further identified on the document attached hereto as Exhibit "C".
36. At the time of the inspection, EPA Representatives observed disturbed areas that were not illustrated on E&S Plan pages CE-101 through 104. These areas did not have erosion and sedimentation control measures. EPA Representatives estimate the actual Disturbed area to be approximately 32 acres.
37. The Respondent failed to comply with the Permit and E&S plan by disturbing more than the permitted area and for having construction activity outside the limit of disturbance.
38. By discharging pollutants in violation of the E&S Plan, SWPPP, and VPDES Permit No. VAR10-10-101027, Respondent is violating Section 301(a) of the Act, 33 U.S.C. § 1311(a).

**III. PROPOSED CIVIL PENALTY**

39. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to

exceed \$16,000 per day for each such violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

40. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, and in accordance with the enclosed "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule", 40 C.F.R. Part 22), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of one hundred and twelve thousand dollars (\$112,000) for the violations alleged herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
41. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations. 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
42. The Regional Administrator may issue the Final Order Assessing Administrative Penalties after the thirty (30) day comment period unless Respondent either respond to the allegations in the Complaint and request a hearing according to Section V below or pays the civil penalty in accordance with Section VI below.
43. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.

#### **IV. SETTLEMENT CONFERENCE**

44. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CWA. Whether or not a hearing is requested, the Respondent may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.**
45. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final



Order signed by the Regional Administrator. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

46. If you wish to arrange a settlement conference or if you have any questions related to this proceeding, please contact the attorney assigned to this case, as indicated in Paragraph 50 below, following your receipt of this Complaint. **Such a request for a settlement conference does not relieve the Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.**

**V. OPPORTUNITY TO REQUEST HEARING**

47. At the hearing, Respondent may contest any material fact contained in the violations listed in Section II, above, and the appropriateness of the penalty amount in Section III.
48. Hearing procedures are described in the "*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*," 40 C.F.R. Part 22, a copy of which is enclosed.
49. A Request for Hearing and the Answer to this Complaint must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

50. Copies of the Request for Hearing and the Answer, along with other documents filed in this action, should also be sent to the following:

Pamela Lazos  
Senior Assistant Regional Counsel (Mail Code 3RC20)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2658

51. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly state the Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state the following:
- a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
  - b. the facts which Respondent disputes;
  - c. the basis for opposing any proposed relief; and
  - d. whether a hearing is requested.

**Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.**

52. Failure to file an Answer may result in entry of a default judgment against Respondent. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable. Respondent's failure to pay the entire penalty assessed by the Default Order by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.
53. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act, any other Federal or State laws, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

**VI. QUICK RESOLUTION**

54. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations of 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.
55. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within twenty (20) days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1).

Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to the attorney assigned to this matter, Pamela Lazos (3RC20), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

56. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of that Respondent's rights to contest the allegations and to appeal the final order. Payment of the penalty shall be made by mailing a cashier's check or certified check for the penalty to "Treasurer, United States of America":

By Regular Mail:

Regional Hearing Clerk  
U.S. EPA Region III  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, MO 63197-9000

By Overnight Delivery:

U.S. Bank, Government Lock Box 979077  
US EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

By Automated Clearing House (ACH):

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Respondent shall send notice of such payment, including copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
Mail Code 3RC00  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Pamela J. Lazos  
Mail Code 3RC20  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

**VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

56. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel; the Region III Water Protection Division; the Office of the EPA Assistant Administrator for the Office of Water; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice, 40 C.F.R. Part 22, prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date:

3/31/11



Jon M. Capacasa, Director  
Water Protection Division

U.S. Environmental Protection Agency, Region III

CERTIFICATE OF SERVICE

I certify that the enclosed Administrative Complaint and Notice of Opportunity for Hearing was delivered to the following persons in the manner indicated:

Hand Delivery

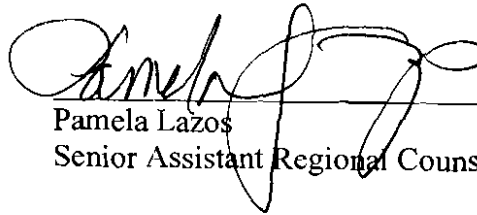
Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

By Certified Mail, Return Receipt Requested

Vico Construction Corporation  
4001 South Military Highway  
Chesapeake, VA 23321

Date:

4/4/11



Pamela Lazos  
Senior Assistant Regional Counsel