



400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000 (304) 933-8183 Fax
www.steptoe-johnson.com

Writer's Contact Information
(304) 933-8186
hank.lawrence@steptoe-johnson.com

May 10, 2012

VIA FEDERAL EXPRESS

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

RECEIVED
2012 MAY 11 AM 11:46
REGIONAL HEARING CLERK
EPA REGION III, PHIL. A. PA

Re: EPA Docket No. CWA-03-2012-00127;
Complaint Against Marion Docks, Inc. and Hanover Resources, LLC

Dear Ms. Guy:

I enclose for filing the original and one copy of the "Answer of Marion Docks, Inc. to USEPA's Complaint." Please mark these documents "filed" and place them in the appropriate file.

Thank you for your assistance in this regard. Should you have questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. Lawrence'.

W. Henry Lawrence

WHL/cee
Enclosures
cc (w/encl): Pamela J. Iazos, Esquire
James R. Christie, Esquire

6003939

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

In the Matter of)
)
Marion Docks, Inc.)
200 Chapel Brook Drive)
Bridgeport, WV 26330)
)
Hanover Resources, LLC)
476 Ragland Road)
P.O. Box 2268)
Beckley, WV 25801)
)
Property Located At:)
)
Ward No. 2 Highwall Mine)
Barbour County, US 119 N)
Volga, West Virginia)

Docket No.: CWA-03-2012-0127

2012 MAY 11 AM 11:45
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

RECEIVED

ANSWER OF MARION DOCKS, INC. TO USEPA'S COMPLAINT

Comes now Marion Docks, Inc. ("Marion Docks"), by counsel, and responds to the United States Environmental Protection Agency's ("EPA") Complaint as follows:

Answer

For its specific responses to the numbered paragraphs in the complaint, Marion Docks states as follows:

1. Paragraph numbered 1 of the complaint asserts legal conclusions and opinions to which no response is required.
2. Paragraph numbered 2 of the complaint asserts legal conclusions and opinions to which no response is required.

3. To the extent that paragraph numbered 3 of the complaint asserts legal conclusions and opinions, no response is required. Marion Docks admits the remaining allegations set forth in paragraph numbered 3 of the complaint.

4. To the extent that paragraph numbered 4 of the complaint asserts legal conclusions and opinions, no response is required. Marion Docks is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph numbered 4 of the complaint.

5. Marion Docks admits the allegations set forth in paragraph numbered 5 of the complaint.

6. Marion Docks admits that Hanover Resources, LLC conducted operations in the area designated as “the Site” on Exhibit A to the EPA’s complaint.

7. Paragraph numbered 7 of the complaint asserts legal conclusions and opinions to which no response is required.

8. Marion Docks admits that, on May 8, 2009, it applied for a permit from the West Virginia Department of Environmental Protection (“DEP”) to create a mine opening to access the Pittsburgh coal seam for highwall mining purposes and that, in its application, Marion sought approval to disturb 2,413 linear feet of stream. Marion Docks admits that its initial application did not identify any impacts to wetlands.

9. Marion Docks admits that the U.S. Army Corps of Engineers, Pittsburgh District (“Corps”), conducted a site inspection on July 1, 2009 and that the Corps determined that the unnamed tributary to Big Run and the wetlands on the Site were jurisdictional waters. To the extent that the remaining allegations set forth in paragraph numbered 9 assert legal conclusions, no response is required.

10. Marion Docks admits the allegations set forth in paragraph numbered 10 of the complaint.

11. Marion Docks admits that, beginning in mid-November 2009, its contract miner, Hanover Resources, LLC, conducted operations in the area depicted on Exhibit A to the EPA complaint, and that activities at this location included relocating a stream and eliminating the original channel by mining through it. Marion Docks is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph numbered 11 of the complaint.

12. Marion Docks admits the allegations set forth in paragraph numbered 12 of the complaint.

13. Paragraph numbered 13 of the complaint asserts legal conclusions and opinions to which no response is required.

14. Paragraph numbered 14 of the complaint asserts legal conclusions and opinions to which no response is required.

15. Paragraph numbered 15 of the complaint asserts legal conclusions and opinions to which no response is required.

16. To the extent that paragraph numbered 16 of the complaint asserts legal conclusions and opinions, no response is required. Marion Docks admits that it was operating under the mistaken belief that a Section 404 permit had been issued.

17. Marion Docks denies the allegations contained in paragraph numbered 17 of the complaint.

18. To the extent that paragraph numbered 18 of the complaint asserts legal conclusions and opinions, no response is required. Marion Docks is without knowledge or

information sufficient to form a belief as to the truth of the allegations set forth in paragraph numbered 18 of the complaint.

19. Paragraph numbered 19 of the complaint asserts legal conclusions and opinions to which no response is required.

20. Paragraph numbered 20 of the complaint asserts legal conclusions and opinions to which no response is required.

21. To the extent that paragraph numbered 21 of the complaint asserts legal conclusions and opinions, no response is required. Marion Docks denies that the proposed penalty for the alleged violation, in the amount of \$37,500.00, is proper.

22. Marion Docks is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph numbered 22 of the complaint.

23. Paragraph numbered 23 of the complaint asserts legal conclusions and opinions to which no response is required.

24. Paragraph numbered 24 of the complaint asserts legal conclusions and opinions to which no response is required.

25. Paragraph numbered 25 of the complaint asserts legal conclusions and opinions to which no response is required.

26. Marion Docks denies each and every allegation set forth in the complaint that is not specifically admitted herein.

27. Marion Docks denies all liability asserted by the EPA in its complaint.

Grounds for Defense

1. Marion Docks asserts that all mining occurred under the belief that a Section 404 permit was approved prior to the DEP's issuance of Permit No. S-2005-09 on October 20, 2009.
2. Without waiving the defenses stated above and without admitting liability, Marion Docks asserts that any violation that may have occurred resulted from the Corps' inaction.
3. All or a portion of the proposed penalty should be removed due to Marion Docks' cooperation with the EPA's investigation and Marion Docks' efforts to mitigate damages to the environment by immediately halting all production upon notice of violation.

Specific Disputed Facts and Basis for Opposing the Proposed Penalty

1. Marion Docks is the permittee for a mining permit on the property known as Ward No. 2 Highwall Mine, located at U.S. 119 N in Volga, Barbour County, West Virginia.
2. Marion Docks and later its contract miner, Hanover Resources, LLC, were authorized to mine the Pittsburgh seam of coal by highwall mining along the valley floor for approximately 2,090 feet by the DEP under Permit No. S-2005-09.
3. Initial estimates provided for recovery of 340,000 tons of Pittsburgh coal from these operations. In addition, Marion Docks intended to remove approximately 440,000 tons of Pittsburgh coal, located at the head of the hollow, upon completion of the highwall mining.
4. The confusion in this matter surrounds the ongoing development of rules relating to the issuance of individual Section 404 permits by the Corps.

5. On May 8, 2009, Marion Docks submitted its Request for Determination to the Corps. During its pre-inspection visit on May 12, 2009, the DEP noted that the stream bed in the valley bottom was not consistent with a wetland. Then, on July 1, 2009, representatives from the Corps conducted a site inspection and determined that Marion Docks needed to supplement its Request for Determination with additional information.

6. Marion Docks complied with this request on September 25, 2009.

7. Upon this additional submission, Jon T. Coleman said that the Corps' supervisor should sign off on the request within a few weeks, leading Marion Docks to believe that the Corps would transmit approval of the Section 404 permit directly to the DEP. In addition, Marion Docks believed that the DEP would delay issuance of a permit until after the Corps approved the Section 404 permit.

8. On October 20, 2009, Marion Docks received notification of permit approval by the DEP and was issued Permit No. S-2005-09. Believing that this was notification that all necessary permits were in place, Marion Docks' contractor began mining in mid-November 2009.

9. Unfortunately, Marion Docks was mistaken in believing that the Corps had approved the Section 404 application.

10. In January 2010, Marion Docks and the DEP learned that the Section 404 permit had not yet been issued.

11. The DEP then issued a notice of violation for mining prior to Section 404 permit approval. As the DEP stated on the notice, "This issue was a result of a mix up in the permitting process with DEP and the Corps of Engineers on whether the permit should have been processed."

12. After learning of the Corps' delay from the DEP, Marion Docks immediately ceased all mining activity and fully complied with all of the Corps' requests.

13. As a result of the mix up created by the Corps, Marion Docks never received the Section 404 permit and was never able to mine the area. This resulted in the loss of an estimated 550,000 tons of Pittsburgh coal from this area. This loss represents more than 70% of the available coal.

14. Marion Docks asks the EPA to consider how it has already been adversely impacted by the inaction of the Corps regarding the Section 404 permit approval and asks that the damages already suffered mitigate the EPA's proposed penalty. These facts clearly indicate the confusion surrounding the implementation of the Section 404 permit, which was created by the Corps and the DEP. While mistaken as to the issuance of the Section 404 permit, Marion Docks complied with what it believed to be the Corps' approval at all times. Marion Docks should not be penalized for attempting to follow convoluted instructions as it has already suffered significant losses. Accordingly, Marion Docks requests that the proposed penalty be dismissed.

Request for a Hearing

Marion Docks respectfully requests that a hearing on the proposed civil penalty be held in accordance with 40 C.F.R. § 22 procedural rules, pursuant to 33 U.S.C. § 1319(g)(2)(A).

Request for an Informal Settlement Conference

Marion Docks requests that an informal settlement conference be scheduled to discuss resolution of this matter.

WHEREFORE, respondent Marion Docks, Inc. prays that the complaint and proposed civil penalty be dismissed.

STEPTOE & JOHNSON PLLC
Of Counsel



W. Henry Lawrence, W. Va. Bar #2156
400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000
Attorney for Respondent,
Marion Docks, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2012, I served the foregoing "Answer of Respondent Marion Docks, Inc. to USEPA's Complaint" upon the following counsel, by depositing true copies thereof by certified mail in the United States mail, postage prepaid, in envelopes addressed as follows:

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

Pamela J. Lazos, Esquire
Senior Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

James R. Christie, Esquire
P.O. Box 1133
Bridgeport, WV 26330


