



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103-2852



**VIA UNITED STATES POST OFFICE #70182290000053038145
and BY ELECTRONIC MAIL**

Mr. Gary Powers & Ms. Angie Powers
P.O. Box 285
Cowen, West Virginia 26206
[REDACTED]

Re: EPA Docket No. CWA-03-2023-0104
Administrative Complaint and Notice of Opportunity to Request a Hearing

Dear Mr. and Ms. Powers:

Enclosed is a document entitled “Administrative Complaint and Notice of Opportunity to Request Hearing,” hereinafter referred to as the “Complaint.” The United States Environmental Protection Agency Region III (“EPA” or the “Agency”) has filed this Complaint against you seeking \$150,000 (One-Hundred, Fifty-Thousand Dollars) under the authority of Section 309(g) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(g). In the Complaint, EPA alleges that Respondents have violated the Clean Water Act by discharging fill material without a CWA permit into waters of the United States located along Route 20 at approximately 38.401286° N, -80.56485° W, near Cowen, Webster County, West Virginia.

You may elect to resolve the penalty proceeding by paying the penalty as set forth in the enclosed Complaint. Otherwise, a response addressing each allegation in the Complaint must be filed with EPA’s Regional Hearing Clerk within 30 days of receipt or, according to the rules governing this case (enclosed), the allegations will be deemed admitted. Failure to respond may result in the issuance of a Default Order and Respondents’ preclusion from participating in further administrative hearings. You may file your response at:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2852

-OR-

By electronic mail to r3_hearing_clerk@epa.gov.

Pursuant to the enclosed May 7, 2020 Standing Order: Designation of EPA Region III Part 22 Electronic Filing System and May 20, 2020 Standing Order: Order Authorizing Electronic Service of Certain Part 22 Documents, you have the ability to file by electronic mail to r3_hearing_clerk@epa.gov in lieu of hard copy. If you choose to file by electronic mail, the transmittal email must identify the case name and docket number above and contact information for yourselves or for your attorney if you have one, including name, telephone number, mailing address and email address. The response must be in .pdf format and signed either by wet signature (i.e., pen and ink) or by a valid electronic signature. Other instructions related to filing by electronic mail are set forth in the enclosed May 7, 2020 and May 20, 2020 Standing Orders. Regardless of whether you file by mail or email, you must also include a certificate of service demonstrating that you have sent a copy to the attorney assigned to this matter, Stefania D. Shamet, at shamet.stefania@epa.gov.

You have the right to request a Hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Such request should be included with the response to this Complaint and must also be made within 30 days of receipt of this Complaint.

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

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. If such a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement and Final Order signed by Respondents and by the Director of the Enforcement and Compliance Assurance Division, EPA, Region III. The issuance of such a Consent Agreement and Final Order shall constitute a waiver by Respondents of their right to a hearing on, and a judicial appeal of, the agreed upon civil penalty.

A request for an informal conference does **not** extend the 30-day period by which Respondents must request or waive a Hearing on the proposed penalty assessment and the two procedures can be pursued simultaneously. A copy of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, is enclosed for your reference.

The following is for Respondents' information, to the extent that one or more Respondents may qualify as a small business under the Small Business Regulatory Enforcement and Fairness Act (SBREFA). Enclosed is a copy of the SBREFA Information Sheet. This Information Sheet provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the Information Sheet, any decision to participate in such program or to seek compliance assistance does not relieve Respondents of their obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses

under law and will not affect EPA's decision to pursue this enforcement action. To preserve Respondents' legal rights, Respondents 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 action.

If you wish to discuss the possibility of settlement of this matter, please contact Stefania D. Shamet of the Office of Regional Counsel, at shamet.stefania@epa.gov or 215-814-2682.

Sincerely,

**KAREN
MELVIN**

Digitally signed by
KAREN MELVIN
Date: 2023.09.11
07:33:11 -04'00'

Karen Melvin, Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Jeremy Bandy – WVDEP (Jeremy.W.Bandy@wv.gov)
Susan Porter – USACE (Susan.A.Porter@usace.army.mil)
Jeremy Cochenour – USACE (Jeremy.D.Cochenour@usace.army.mil)
Danny Bennett – WVDNR (Danny.A.Bennett@wv.gov)