

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

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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)

Proceeding to Assess Class I Penalty
Under Section 309(g)(2)(A) of the Clean Water
Act, 33 U.S.C. § 1319(g)(2)(A)

Docket No. CWA-03-2012-0127

**CONSENT AGREEMENT
AND FINAL ORDER**

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order ("CAFO") is issued pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (*Consolidated Rules*), 40 C.F.R. Part 22.

II. STIPULATIONS AND FINDINGS

1. The Director, Environmental Services Division, U.S. EPA, Region III ("Complainant") initiated this proceeding for assessment of a Class II Administrative Penalty pursuant to Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), by issuing an Administrative Complaint ("Complaint"), to Marion Docks, Inc., and Hanover Resources, LLC ("Respondents") on or about April 11, 2012.
2. Respondent, Marion Docks filed an Answer on May 10, 2012, and Respondent, Hanover Resources filed an Answer on May 11, 2012, denying the majority of the allegations and requesting a hearing.
3. Respondents consent to the issuance of this CAFO, and agree to undertake all actions

required by its terms and conditions.

4. Respondents neither admit nor deny the factual allegations made by EPA in the Complaint and consent to assessment of the stated civil penalty.
5. Respondents admit the jurisdictional allegations in the Complaint and agree not to contest EPA's jurisdiction to issue and enforce this CAFO in any action by EPA to enforce the terms of the CAFO.
6. Respondents hereby expressly waive their right to a hearing under Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and waive their right to appeal this Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).
7. Each party to this agreement will pay its own costs and attorney's fees.
8. The parties agree that settlement of this matter without further litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

III. FINDINGS OF FACT

9. This Consent Agreement incorporates by reference the allegations contained in Section II, Paragraphs 1 through 18 of the Complaint, and adopts them as the Findings of Fact, herein.

IV. CONCLUSIONS OF LAW

10. EPA concludes that Respondents have violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and shall be liable to the United States for a civil penalty in accordance with Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

V. FINAL ORDER

11. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the alleged violation(s), Respondents' prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, ability to pay, and such other matters as justice may require, and under the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondents HEREBY CONSENT to pay a civil penalty of fifteen thousand dollars (\$15,000) in settlement of the civil violations alleged in EPA Docket No. CWA-3-2001-0013.
12. Respondents shall pay the total administrative civil penalty of fifteen thousand dollars (\$15,000) (the "Civil Penalty") for the violations alleged in the Complaint pursuant to 40 C.F.R. § 22.31(c), within thirty (30) days of the effective date of the CAFO, by cashier's or

certified check, payable to the "Treasurer, United States of America." Payment shall be mailed to the following address:

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 Clearinghouse (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

Respondents shall send notice of such payment, including a copy of the check, to

the Regional Hearing Clerk at the following address:

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

-and-

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

13. The provisions of this CAFO shall be binding upon Respondents, their successors and assigns.
14. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, or any regulations promulgated thereunder.
15. This CAFO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
16. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents' failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of this CAFO. However, EPA will not seek to recover interest on any amount of the civil penalty where the debt is paid within thirty (30) calendar days of the effective date. Interest will be assessed at the rate of the United States

Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each such subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

17. This CAFO resolves only the civil claims for the specific violations alleged in the Complaint issued in the above-captioned action. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
18. EPA reserves the right to institute a new action should Respondents fail to comply with the terms of this CAFO. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondents' violation of any other applicable provision of law.
19. The penalty specified in Paragraph 12, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
20. Entry of this CAFO is a final settlement of all civil violations alleged in the Complaint. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint if the EPA obtains evidence that the information and/or representations of the Respondents are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or

criminal, the EPA may have under law or equity in such event.

21. The undersigned representative of Respondents certify that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
22. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO or one or more of its terms and conditions is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

VI. EFFECTIVE DATE

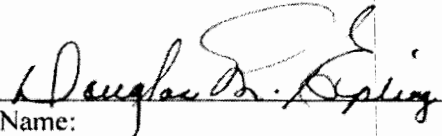
23. This CAFO shall become final and effective thirty (30) days after it is lodged with the Regional Hearing Clerk pursuant to pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

FOR RESPONDENT MARION DOCKS, INC.

H. J. ...
Name: _____
Title: *President*

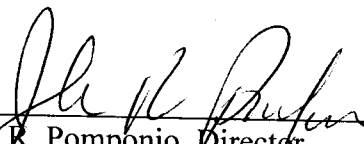
9-31-12
Date

FOR RESPONDENT HANOVER RESOURCES, INC.:


Name: _____
Title DOUGLAS M. EPLING

9/12/12
Date

It is so ORDERED:



John R. Pomponio, Director
Water Protection Division

9/25/12
Date

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be sent the original of the attached Consent Agreement and Final Order, delivered by hand to the:

Regional Hearing Clerk, Region III,
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

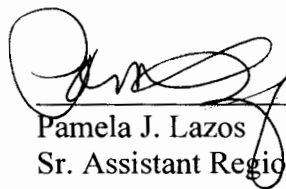
with copies to the following at the address listed below, via regular, First Class mail:

Marion Docks, Inc.
200 Chapel Brook Drive
Bridgeport, WV 26330

Hanover Resources, LLC
476 Ragland Road
P.O. Box 2268
Beckley, WV 25801

Date: _____

9/26/12



Pamela J. Lazos
Sr. Assistant Regional Counsel