

E-MAILED AUG 28 2013

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

With Changes By Philip Yeaney

In the Matter of: Consent Agreement and Final Order
Par Mar Oil Company #36: U.S. EPA Docket Number RCRA-03-2013-0142
2207 8th Avenue
Huntington, WV 25701
and: Proceeding Under Section 9006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6991e
Par Mar Oil Company #37:
3217 Washington Blvd.
Huntington, WV 25701,
Facilities,
Par Mar Oil Company:
114-A Westview Avenue
Marietta, Ohio 45750,
Respondent.

RECEIVED 2013 OCT 18 AM 9:45 REGIONAL HEARING CLERK EPA REGION III, PHIL A. PA

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III ("Complainant" or "EPA" or "Agency") and Par Mar Oil Company ("Respondent"), pursuant to Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3)).

2. This CA and the Final Order resolve Respondent's violations of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the State of West Virginia's federally authorized Underground Storage Tank ("UST") Program that occurred at the Respondent's Facilities located at Par Mar Oil Company #36 ("Par Mar #36"), 2207 8th Avenue, Huntington, WV 25701, and Par Mar Oil Company #37 ("Par Mar #37"), 3217 Washington Blvd., Huntington, WV 25701 (after this together referred to as the "Facilities").

3. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3), Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA's civil claims alleged in Section III ("Findings of Fact and Conclusions of Law") of this Consent Agreement.

## II. GENERAL PROVISIONS

4. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without litigation.

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

6. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the "CAFO."

7. Except as provided in Paragraph 6 of this Consent Agreement, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement.

8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

9. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

10. Each Party to this Consent Agreement shall bear its own costs and attorney's fees in connection with this proceeding.

11. The person signing this Consent Agreement on behalf of Respondent certifies to EPA by his or her signature herein that, to the best of their knowledge, Respondent, as of the date of this CA, is in compliance with the provisions of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, and the State of West Virginia's UST Management Program regulations set forth at W. Va. Code § 33-30-1, *et seq.* at the Facilities referenced in this Consent Agreement.

12. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the Respondent, Respondent's officers and directors, directors, employees, and Respondent's successors and assigns.

13. This CAFO shall not relieve Respondent of its 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, nor does this CAFO constitute a waiver, suspension or modification of the requirements of Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.

14. Respondent Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and attached Final Order.

15. The Respondent is aware that the submission of false or misleading information to the United States government may subject the Respondent to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by the Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

17. Pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, a state may administer a state UST management program in lieu of the Federal Underground Storage Tank Management Program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. Effective February 10, 1998, EPA granted the State of West Virginia final authorization to administer a state underground storage tank management program ("West Virginia Authorized UST Management Program") in lieu of the Federal underground storage tank management program established under Subtitle I. See 62 Fed. Reg. 49620 (September 23, 1997) and 63 Fed. Reg. 6667 (February 10, 1998). Through this final authorization, the provisions of the West Virginia Authorized UST Management Program became requirements of RCRA Subtitle I and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

18. The factual allegations and legal conclusions in this CAFO are based upon the provisions of the West Virginia Authorized UST Management Program, as set forth in Title 33, Series 30 of West Virginia's Hazardous Waste Management Regulations, which incorporates by reference the federal underground storage tank program regulations, including the definitions, set forth at 40 C.F.R. Part 280 (1995 edition), with some modifications. These regulations, the West Virginia authorized underground storage tank regulations ("WVUSTR"), will hereinafter be cited as WVUSTR, §§ 33-30-1, *et seq.* All references to the provisions of 40 C.F.R. Part 280 which are incorporated by reference in the WVUSTR are to such regulations as set forth in the 1995 edition of the Code of Federal Regulations.

19. On March 7, 2012, EPA gave the State of West Virginia notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

20. Respondent is a "person" as defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and in 40 C.F.R. § 280.12.

21. At all times relevant to this CAFO, Respondent has been the "owner" and "operator" of "underground storage tanks" ("USTs") and "UST systems," as those terms are defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, located at the Facilities.

22. On June 1, 2011, an EPA representative conducted Compliance Evaluation Inspections ("CEIs") of the Facilities pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.

23. At the time of the June 1, 2011 CEIs, and at all times relevant to the applicable violations alleged herein, five USTs, as described in the following subparagraphs, were located at the Par Mar #36:

A. Two eight thousand (8,000) gallon steel tanks ("Tanks One and Two") that were installed on or about October 1987, and that, at all times relevant hereto, routinely contained respectively regular or plus gasoline;

B. One six thousand (6,000) gallon steel tank ("Tank Three") that was installed on or about October 1987, and that, at all times relevant hereto, routinely contained premium gasoline;

C. One two thousand (2,000) gallon steel tank ("Tank Four") that was installed on or about October 1987, and that, at all times relevant hereto, routinely contained diesel fuel; and.

D. One two thousand (2,000) gallon fiberglass tank ("Tank Five") that was installed on or about December 1993, and that, at all times relevant hereto, routinely contained kerosene.

24. At the time of the June 1, 2011 CEIs, and at all times relevant to the applicable violations alleged herein, four USTs, as described in the following subparagraphs, were located at the Par Mar #37:

A. Two eight thousand (8,000) gallon steel tanks ("Tanks One and Two") that were installed on or about May 1987, and that, at all times relevant hereto, routinely contained respectively regular or plus gasoline;

B. One four thousand (4,000) gallon steel tank ("Tank Three") that was installed on or about May 1987, and that, at all times relevant hereto, routinely contained premium gasoline; and

C. One steel tank ("Tank Four") divided into two parts that was installed on or about May 1987, one part of which was a two thousand (2,000) gallon vessel that, at all times relevant hereto, routinely contained diesel fuel, and another part of which was a one thousand (1,000) gallon vessel that, at all times relevant hereto, routinely contained kerosene.

25. At all times relevant to the applicable violations alleged in this CA, the tanks at the Facilities have been used to store three grades of gasoline, diesel fuel, and kerosene which are petroleum products. These liquids are "regulated substances" as that term is defined in Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12. The tanks at the Facilities and their associated piping therefore constitute "petroleum UST systems" as that term is defined in 40 C.F.R. § 280.12.

26. During the CEI of Par Mar #36, the inspector found that the last cathodic protection testing took place on October 15, 2010.

27. During the CEI of Par Mar #37, the inspector found that Par Mar #37 did not have records of the last cathodic protection testing.

28. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on September 15, 2011, EPA issued an Information Request Letter ("September IRL") to Respondent concerning its UST systems at the Facilities.

29. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on January 23, 2012, EPA issued an Information Request Letter ("January IRL") to Respondent concerning its UST systems at the Facilities.

30. In a response to the January IRL, the Respondent stated that it had not performed cathodic protection testing at Par Mar #36 from November 8, 2006 to October 15, 2010.

31. In the response to the January IRL, the Respondent confirmed that Tank No. 4 at Par Mar #36 had failed the cathodic protection test on October 15, 2010.

32. In a response to the September IRL, the Respondent provided test results for cathodic protection testing performed at Par Mar #37 on November 9, 2006, and November 3, 2011.

33. In the response to the September IRL, the Respondent confirmed that the flex piping at Par Mar #37 did not have cathodic protection.

Counts 1-8

34. Paragraphs 1 through 33 of this Consent Agreement are incorporated by reference as if fully set forth herein.

35. Pursuant to 40 C.F.R. § 280.31(b)(1), as incorporated by reference into WVUSTR by § 33-20-2.1, all owners and operators of steel UST systems equipped with cathodic protection used to store regulated substances must test the cathodic protection every three years to make sure that the cathodic protection is operating properly.

36. "Cathodic protection" is, as that term is defined in 40 C.F.R. § 280.12, a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

37. Tanks One through Four at Par Mar #36 and the four tanks at Par Mar #37 are and were, at the time of the violations alleged herein, "steel UST systems equipped with cathodic protection" and were used to store regulated substances and, as a result, subject to the requirements of 40 C.F.R. § 280.31, as incorporated by reference into WVUSTR by § 33-20-2.1,

38. At Par Mar #36, from on or about November 8, 2006, to October 15, 2010, and at Par Mar #37, from on or about November 9, 2006, to November 3, 2011, Respondent did not perform cathodic protection testing for the steel tanks at the Facilities.

39. The Respondent's failure to perform cathodic protection testing every three years for each of the four cathodically regulated tanks at Par Mar #36 and the four cathodically regulated tanks at Par Mar #37 constitutes separate violations of 40 C.F.R. § 280.31(b)(1), as incorporated by reference into WVUSTR by § 33-20-2.1, for each day past the three year deadline.

#### Counts 9 and 10

40. Paragraphs 1 through 39 of this Consent Agreement are incorporated by reference as if fully set forth herein.

41. Pursuant to 40 C.F.R. § 280.31(a), as incorporated by reference into WVUSTR by § 33-20-2.1, all owners and operators of steel UST systems equipped with corrosion protection and used to store regulated substances must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank that routinely contain regulated substances and are in contact with the ground.

42. From on or about October 15, 2010, until March 9, 2012, Respondent failed to continuously provide corrosion protection by cathodic protection for Tank Four at Par Mar #36 as required. From on or about November 3, 2011, until April 13, 2012, Respondent failed to continuously provide corrosion protection by cathodic protection for flex piping at Par Mar #37 as required.

43. Respondent's failure to continuously provide corrosion protection to Tank Four at Par Mar #36 and to the flex piping at Par Mar #37 constitute separate violations of 40 C.F.R. § 280.31(a), as incorporated by reference into WVUSTR by § 33-20-2.1, for each UST system for each day that portions of the tank and piping that routinely contain regulated substances were in contact with the ground.

#### IV. CIVIL PENALTY

44. Section 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2), authorizes the Administrator of EPA to assess a penalty not to exceed \$ 10,000 for each tank for each day of violation of any requirement or standard promulgated by EPA under Section 9003 of RCRA, 42 U.S.C. § 6991b, or that is part of an authorized state underground storage tank program that EPA has approved by pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended, and its implementing regulation, the *Adjustment of Civil Monetary Penalties for Inflation Rule*, codified at 40 C.F.R. Part 19, EPA has subsequently raised the maximum civil penalty not to exceed \$11,000 for each tank for each day of violation for all violations occurring from March 15, 2004 through January 12, 2009, and to \$ 16,000 for each tank for each day of violation for all violations occurring after January 12, 2009 and to the present.

45. In this matter, in settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of thirty thousand, eight hundred and fifty-five dollars (\$30,855.00) which Respondent shall be liable to pay in accordance with the terms set forth below.

46. An initial payment of fifteen thousand four hundred and twenty eight dollars (\$ 15,428.00) becomes due and payable within thirty (30) days after Respondent's receipt of a true and correct copy of this CAFO.

47. A final payment of fifteen thousand five hundred four dollars (\$ 15, 504.00), which is fifteen thousand four hundred and twenty seven dollars (\$ 15,427.00) for the penalty plus seventy-seven dollars (\$ 77.00) in interest, becomes due and payable within one hundred and eighty (180) days after Respondent's receipt of a true and correct copy of this CAFO.

48. The Parties represent that the settlement terms are reasonable and are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), i.e., the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Section 9006(e) of RCRA, 42 U.S.C. § 6991e(e) authorizes EPA to also take into consideration the compliance history of the owner or operator and any other factors that EPA considers appropriate. EPA applied these factors to the particular facts and circumstances of this case with specific reference to EPA's *Penalty Guidance for Violations of UST Regulations ("UST Penalty Guidance")*. In applying these factors, EPA took into account that the last amendment to 40 C.F.R. Part 19 (See 73 Fed. Reg. 75340 (2008)) and the December 29, 2008, memorandum by EPA Assistant Administrator Granta Y. Nakayama entitled, *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule*, which modified the *UST Penalty Guidance* and authorized EPA to assess penalties using penalty matrix values larger than those stated in the *UST Penalty Guidance*.

49. Payment of the civil penalty amount assessed in Paragraphs 45-47, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, i.e., RCRA-03-2013-0142;
- B. All checks shall be made payable to "United States Treasury";
- C. All payments made by check and sent by regular mail shall be addressed for delivery to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

In Re: Par Mar Oil Company #36 and #37  
RCRA-03-2013-0142

Contact: Heather Russell 513-487-2044

D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 314-418-1028

E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 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"

G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681



H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at the following internet address:  
[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

J. Payment by Respondent shall reference the Respondent's name and address, and the EPA Docket Number of this CAFO. A copy of the Respondent's check or a copy of the Respondent's electronic fund transfer shall be sent simultaneously to:

Philip Yeany  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029;

and

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

#### V. EFFECT OF SETTLEMENT

50. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the violations alleged in this Consent Agreement. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

#### VI. RESERVATION OF RIGHTS

This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section III ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition that 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 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under RCRA, 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.

#### VII. AUTHORITY TO BIND THE PARTIES

51. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondent hereto.

#### VIII. EFFECTIVE DATE

52. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, and this Consent Agreement are filed with the EPA Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

#### IX. ENTIRE AGREEMENT

53. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

In Re: Par Mar Oil Company #36 and #37  
RCRA-03-2013-0142

For Respondent:

AUG 28 2013

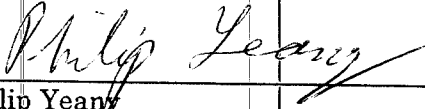
Date: \_\_\_\_\_

*Sandra M. Morgenstern*  
SANDRA MORGENSTERN  
President and CEO

In Re: Par Mar Oil Company #36 and #37  
RCRA-03-2013-0142

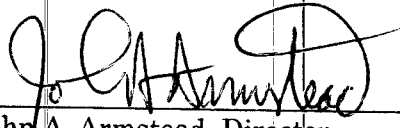
For Complainant:

Date: 9/30/13

  
Philip Yeany  
Senior Assistant  
Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9.30.13

  
John A. Armstead, Director  
Land and Chemicals Division  
U.S. EPA Region III

In Re: Par Mar Oil Company #36 and #37  
RCRA-03-2013-0142

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

In the Matter of:	:	Consent Agreement and
	:	Final Order
Par Mar Oil Company #36	:	
2207 8th Avenue	:	U.S. EPA Docket Number
Huntington, WV 25701	:	RCRA-03-2012-0142
	:	
and	:	Proceeding Under Section 9006 of the
	:	Resource Conservation and Recovery
Par Mar Oil Company #37	:	Act, as amended, 42 U.S.C. § 6991e
3217 Washington Blvd.	:	
Huntington, WV 25701,	:	
	:	
Facilities,	:	
	:	
Par Mar Oil Company	:	
114-A Westview Avenue	:	
Marietta, Ohio 45750,	:	
	:	
Respondent.	:	

FINAL ORDER

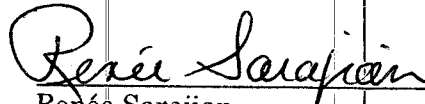
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and the above-captioned Respondent have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO 40 C.F.R. § 22.18(b)(3) and Section 9006(c) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(c), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Sections 9006(c) and (d) of RCRA, 42 U.S.C. §§ 6991e(c) and (d), IT IS HEREBY ORDERED that Respondent pay a civil penalty of thirty thousand, eight hundred and fifty-five dollars (\$30,855.00) in accordance with the payment provisions set forth in the attached Consent Agreement and comply with each of the additional terms and conditions as specified in the attached Consent Agreement. The effective date of the

In Re: Par Mar Oil Company #36 and #37  
RCRA-03-2013-0142

foregoing Consent Agreement and this FINAL ORDER is the date on which the Consent Agreement and this FINAL ORDER are filed with the EPA Regional Hearing Clerk.

Date: 10/17/13



Renée Sarajian  
Regional Judicial Officer  
U.S. EPA · Region III