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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY: 49
REGION III

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Philadelphia, Pennsylvania 19103-2019 REGION III, PHILA. PA

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA Region III
1650 Arch St.
Philadelphia, PA 19103

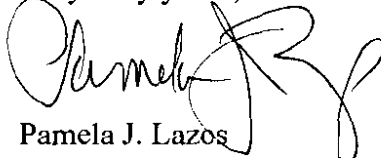
APR 11 2012

Re: In the Matter of Marion Docks, Inc., et al.,
EPA Docket No. CWA-03-2012-0127

Dear Ms. Guy:

Enclosed for filing please find a Class I Administrative Complaint and Opportunity to Request a Hearing pursuant to Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), for the unlawful discharge of a pollutant to waters of the U.S. in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Very truly yours,



Pamela J. Lazos
Sr. Asst. Regional Counsel
U.S. EPA Region III

Cc: Kevin Bealko, President, Marion Docks
Douglas Epling, President, Hanover Resources



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street
Philadelphia, Pennsylvania 19103-2039

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2012 APR 11 PM 4:49

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APR 11 2012

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

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

Re: Notice of Proposed Assessment of a Civil Penalty
Docket No. CWA-03-2012-0127

Dear Sirs or Madames:

Enclosed please find an Administrative Complaint and Notice of Opportunity to Request a Hearing ("Complaint") filed against Marion Docks, Inc. and Hanover Resources, LLC ("Respondents") under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. Section 1319(g). The Complaint alleges that Respondents have violated Section 301(a) of the Act. The violations alleged by the Director, Environmental Assessment and Innovation Division, United States Environmental Protection Agency, ("Complainant" or "EPA") are specifically set out in Section II of the Complaint.

An Answer must be filed within thirty (30) days of receipt of the Complaint in accordance with the *"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,"* 40 C.F.R. Part 22, a copy of which is enclosed. The Answer must respond specifically to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice with specific answers within the thirty (30) days will constitute an admission of the allegations made. Failure to Answer may result in the entry of a Default Order imposing the proposed penalties without further proceedings.

You have the right to request a hearing to contest any matter set forth in the Complaint. Such request must be included with your Answer to this Complaint. Whether or not you request a hearing, you may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in your Answer or you may contact the attorney assigned to this case:



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

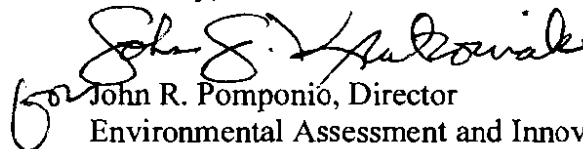
Please note that requesting a settlement conference does not affect in any way the obligation to file an Answer within thirty (30) days.

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.

Finally, to help you determine whether your company is a "small business" under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), enclosed is a copy of the SBREFA Fact Sheet. This Fact 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 Fact Sheet, 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 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 your legal rights, you must comply with all the rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement actions.

A copy of the regulations governing the procedures for assessing an administrative penalty are enclosed.

Sincerely,



John R. Pomponio, Director
Environmental Assessment and Innovation Division

Enclosure

cc: Jon Coleman, U.S. Army Corps of Engineers, Pittsburgh District
Lyle Bennett, WV Department of Environmental Protection

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

In The Matter of)	
)	
Marion Docks, Inc.)	Proceeding to Assess Class I Penalty
200 Chapel Brook Drive)	Under Section 309(g)(2)(A) of the Clean Water
Bridgeport, WV 26330)	Act, 33 U.S.C. § 1319(g)(2)(A)
)	
Hanover Resources, LLC)	
476 Ragland Road)	
P.O. Box 2268)	
Beckley, WV 25801)	
)	Docket No.: CWA-03-2012-0127
Property Located At:)	
)	
Ward No. 2 Highwall Mine)	ADMINISTRATIVE PENALTY
Barbour County, US 119 N)	COMPLAINT AND NOTICE OF
Volga, West Virginia)	OPPORTUNITY TO REQUEST
)	HEARING

I. STATUTORY AUTHORITY

1. Pursuant to Section 309(g)(2)(A) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g)(2)(A), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Director, Environmental Assessment and Innovation Division (“Complainant”).
2. This action is governed by the “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 (hereinafter, Part 22 Procedural Rules), a copy of which is enclosed.

II. FACTUAL AND LEGAL ALLEGATIONS

3. Respondent Marion Docks, Inc., is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. Respondent Hanover Resources, LLC, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
5. Respondent, Marion Docks, Inc. ("Marion" or "Respondent"), was incorporated in the State of West Virginia on September 21, 1984, and is the permittee for a mining permit on the property known as Ward No. 2 Highwall Mine, located on US 119 N at approximately 39 degrees 05.945' N and 80 degrees 10.0267' W, in Volga, Barbour County, West Virginia, as further identified on the attached map labeled as Exhibit "A", (hereinafter "the Site"). Marion Docks, and later its contract miner, Hanover Resources, LLC, were authorized to mine the Pittsburgh seam of coal by the highwall mining method at the Site pursuant to mining permit S-2005-09 from the West Virginia Department of Environmental Protection (WVDEP).
6. Respondent, Hanover Resources, LLC, utilized equipment and conducted work in an unnamed tributary of Big Run located on US 119 North in Barbour County, Volga, West Virginia, and further identified as "the Site" on the attached map labeled Exhibit "A".
7. Big Run, which is a tributary to Buckhannon River which flows to the Tygart River, is a navigable-in-fact body of water. Therefore, Big Run area is considered "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
8. On May 8, 2009, pursuant to Article 3, Chapter 22 of the Code of West Virginia, Marion applied for a permit to create a mine opening to access the Pittsburgh coal seam for highwall mining purposes. In its application, Marion sought approval to disturb 2413 linear feet of stream. There was no discussion in the application of impacts to wetlands. *See*, the Pittsburgh District Short Application Form attached as Exhibit "B".
9. As a result of this request, the U.S. Army Corps of Engineers, Pittsburgh District, reviewed the delineation for the Site on July 1, 2009. Based upon the field verification and review of the information submitted by Respondent, the Corps determined that both the unnamed tributary to Big Run and the wetlands on Site were jurisdictional waters as a result of an in-line connection. The Corps' delineation remains valid for a period of five years. *See*, Exhibit "C".
10. On or about September 25, 2009, Respondent revised and resubmitted its application to the Corps. This time, the application included a characterization of the area to be disturbed as a linear or in-line wetland, totaling 1.662 acres, 2413' of length by 30' width. *See*, Exhibit "D".
11. Commencing in or after September 2009, Respondents, or persons acting on behalf of Respondents, operated equipment which discharged dredged and/or fill material to waters of the United States described in Paragraph 7, above, and further depicted on Exhibit "A". Respondents' activities included relocating the stream and eliminating the original channel and in-line wetland by mining through it. Respondents' activities have impacted approximately 1.8 acres of emergent wetlands and 2,742 linear feet of stream.

12. On January 14, 2010, West Virginia Department of Environmental Protection (WVDEP) inspected the Site and found Respondent had violated WVDEP regulations by failing to procure Section 401 certification as well as a Section 404 permit, 33 U.S.C. §§ 1341 and 1344. *See*, Exhibit "E".
13. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces portions of "waters of the United States" with dry land or which changes the bottom elevation of any portion of a water of the United States for any purpose.
14. The equipment referenced in Paragraph 11, above, which has discharged dredged and/or fill material to "waters of the United States", constitutes a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
15. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of dredged and/or fill material by any person from point sources to "waters of the United States" except in compliance with a permit issued by the Secretary of the Army under Section 404 of the Act, 33 U.S.C. § 1344.
16. On information and belief, at no time during the discharge of dredged and/or fill material to the "waters of the United States" located on the Site did Respondents have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.
17. Respondent, by discharging dredged and/or fill material to the "waters of the United States" without authorization, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).
18. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA is providing public notice and an opportunity to comment on this Complaint. In addition, pursuant to Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), EPA has consulted with the State of West Virginia Department of Environmental Protection ("WVDEP") regarding this action, and in addition, EPA will mail a copy of this document to the appropriate WVDEP official and offer an opportunity for WVDEP to consult further with EPA on this proposed penalty assessment.

III. PROPOSED CIVIL PENALTY

19. Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), provides that any person who has violated *inter alia*, Section 301 of the CWA, 33 U.S.C. 1311, is liable for an administrative penalty not to exceed \$10,000 per day for each such violation, up to a total penalty amount of \$25,000.
20. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), which adjusted, *inter alia*, the maximum amount of administrative penalties assessable for violations described in CWA § 309(g)(2)(A), any person who has violated Section 301 of the CWA, 33 U.S.C. 1311, 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 \$37,500.

21. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A) and 40 C.F.R. Part 19, and in accordance with the Part 22 Procedural Rules, Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of Thirty-Seven Thousand Five Hundred dollars (\$37,500) 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.
22. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondents’ prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondents because of the violations. 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant or EPA 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.
23. EPA may issue the Final Order Assessing Administrative Penalties after a thirty (30) day comment period unless Respondents either respond to the allegations in the Complaint and request a hearing according to the terms of Section IV, below, or pay the civil penalty in accordance with Section V, herein (Quick Resolution).
24. 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 Respondents’ ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondents.
25. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondents’ continuing obligation to comply with the Clean Water Act, any other Federal or State laws, and/or with any separate Compliance Order issued under Section 309 of the Act, 33 U.S.C. § 1319, for the violations alleged herein.

IV. ANSWER TO COMPLAINT AND OPPORTUNITY TO REQUEST HEARING

26. Respondents must file an Answer to this Complaint; failure to file an Answer may result in entry of a Default Judgment against Respondents. Respondents’ default constitutes a binding admission of all allegations made in the Complaint and waiver of Respondents’ right to contest such factual allegations.
27. The civil penalty proposed herein shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final under 40 C.F.R. § 22.27(c).
28. Respondents’ 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, a 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.

29. Any Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint with respect to which the Respondents have any knowledge, or clearly and directly state that the Respondents have no knowledge as to particular factual allegations in the Complaint.
 - a. The Answer shall also indicate the following:
 - b. Specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
 - c. Specific facts that Respondents dispute;
 - d. Respondents' basis for opposing the proposed penalty; and
 - e. Whether Respondents request a hearing.

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

30. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondents may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
31. EPA is obligated, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to give members of the public notice of and an opportunity to comment on this proposed penalty assessment.
32. If Respondents request a hearing on this proposed penalty assessment, members of the public who submitted timely comments on this proposed penalty assessment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to not only be notified of the hearing but also to be heard and to present evidence at the hearing on the appropriateness of this proposed penalty assessment.
33. If Respondents do not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have thirty (30) days after the issuance of such Final Order to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.
34. Any hearing that Respondents request will be held and conducted in accordance with the Part 22 Procedural Rules.

35. At such a hearing, Respondents may contest any material fact contained in the Factual and Legal Allegations listed in Section II above, and the appropriateness of the amount of the proposed civil penalty in Section III, above.

36. Any Answer to this Complaint, and any Request for Hearing, 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

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

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

38. The Answer and any subsequent documents filed in this action should be sent to:

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

V. QUICK RESOLUTION

39. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondents may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.

40. If Respondents pay 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.

41. If Respondents wish 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), Respondents may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondents agree 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 following:

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

and a copy shall be provided to:

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

If Respondents file such a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint, Respondents shall pay the full amount of the proposed penalty within 60 days of receiving the Complaint. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondents to default pursuant to 40 C.F.R. § 22.17.

42. 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 Respondents shall constitute a waiver of Respondents' rights to contest the allegations and to appeal the Final Order.
43. Payment of the penalty shall be made by one of the following methods below. Payment by respondent shall reference Respondents' name and address, and the EPA Docket Number of this Complaint.

Payment by check shall be made to "United States Treasury"

- a. If sent via first-class mail, to:

U.S. EPA, Region III
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

- b. If sent via UPS, Federal Express, or Overnight Mail, to:

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

- c. Via wire transfer, sent to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Attn: "D 68010727 Environmental Protection Agency"

- d. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Finance Center Contacts:

- 1) John Schmid: 202-874-7026
- 2) REX (Remittance Express) 866-234-5681

- e. On-Line Payment Option:

www.pay.gov/paygov

enter sfo 1.1 in the search field, open form and completed required fields.

44. At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

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

and to:

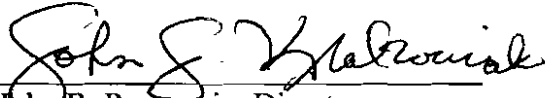
Pamela J. Lazos, Esq. (3RC20)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

VI. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

45. 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 Part 22 Procedural Rules 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: 4/11/12


for John R. Pomponio, Director
Environmental Assessment and Innovation Division
U.S. Environmental Protection
Agency, Region III

CERTIFICATE OF SERVICE

I, hereby certifies that on this day, I filed with the Regional Hearing Clerk an original and one copy of the Administrative Penalty Complaint, EPA Docket No. CWA-03-2012-0127, with copies sent to the Respondents by Certified Mail, Return Receipt Requested, at the following addresses:

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

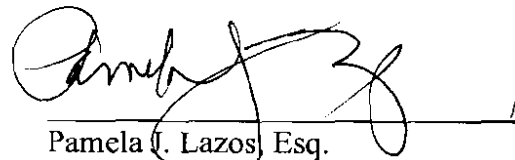
And

Douglas Epling, President
Hanover Resources, LLC
476 Ragland Road
P.O. Box 2268
Beckley, WV 25802

with copies to:

Randy C. Huffman, Secretary
West Virginia Division of Natural Resources
601 57th St., SE
Charleston, WV 25304

Date: 4/11/12


Pamela J. Lazos, Esq.
Senior Assistant Regional Counsel
US EPA Region III