WILSON ELSER
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

January 20, 2017

Barbara Hopkinson Kelly
973.735.5765 (direct)
609.213.8589 (mobile)
Barbara.Kelly@wilsonelser.com

VIA EMAIL & OVERNIGHT MAIL

Ms. Alice Yeh
Remedial Project Manager
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007

Re: Supplemental Letter Report: Covanta Essex Company Nexus and Request for *De Minimis* Settlement Lower Passaic River Study Area Operable Unit of the Diamond Alkali Superfund Site - Lead is the Only COC Identified in the ROD That Appears in the Covanta Nexus Documents on Six Occasions. This Sup plemental Evaluation Documents that the Lead Exceedances are Attributable to Off-Site Sources.

Dear Ms. Yeh:

Please accept the attached Apex report as a supplement to Covanta's August 26, 2016 letter ("the Letter") regarding Covanta Essex Company Nexus and Request for *De Minimis* Settlement Lower Passaic River Study Area Operable Unit of the Diamond Alkali Superfund Site ("the LPRSA"). Please add this letter and attached Apex Report to the administrative record for the LPRSA.

As noted in the L etter, Covanta's alleged nexus to the Contaminants of Concern ("COC") at the LPRSA consists entirely of six exceedances of a New Jersey Pollution Discharge Elimination System permit limit for lead in storm water discharge d to a common ditch between July 1989 and August 1993. Covanta stated in the Letter that the lead was attributable to offsite sources, not Covanta's operations. The exact source of the lead in the discharge was unclear at that point. Covanta has now completed a review of New Jersey Department of Environmental Protection ("NJDEP") files regarding the Covanta site and adjoining properties. A review of these file s indicates that the former E agle Pitcher Lead Company ("Eagle Pitcher") site is the source of the lead exceedances.

Importantly, Eagle Pitcher operated a lead pulverizing and processing facility immediately west of and adjacent to the Covanta site from at least 1931 until 1956. The Western Ditch, where the exceedances occurred, forms the boundary between the two sites. The NJDEP files show that from 1993, the time of the last exceedance, the Eagle Pitcher site was the subject of many investigations and remedial actions addressing lead contamination on the Eagle Pitcher

Ms. Alice Yeh
January 20, 2017

site. Deed restrictions were entered in 2007 and 2009 to prevent future contact with the remaining lead on the site and in groundwater and to limit the site to non-residential use.

These facts show that there is no nexus between Covanta and the LPRSA COCs. As such, Covanta cannot be liable for LPRSA Response Costs. The NJDEP documents reviewed in the Apex Report eliminate any doubt that Covanta is liable for LPRSA response costs.

Covanta has already overpaid its fair share of LPRSA response costs. Covanta operates a zero discharge facility and there is no evidence that it has any connection to any LPRSA COC. Despite its lack of liability, Covanta is still willing to discuss and negotiate a *de minimis* settlement with USEPA to avoid further transaction costs for the LPRSA matter. Covanta understands that a small party settlement is being considered and strongly believes EPA should include Covanta in this early buy-out process.

By copy of this letter, we will plan to touch base with Ms. Flanagan for further discussion as to Covanta's status in this regard.

Sincerely,

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP

Barbara Hopkinson Kelly

Attachment

cc: Sarah Flanagan, Esq. (USEPA Region 2) (w/attachment) (via email)
Juan Fajardo, Esq. (USEPA Region 2) (w/attachment) (via email)
Nancy Tammi, Esq. (Covanta) (USEPA Region 2) (w/attachment) (via email)
Gary P. Gengel, Esq. (Latham & Watkins) (USEPA Region 2) (w/attachment) (via email)