

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	:	Proceeding to Assess Class II
Chesterfield County, Virginia	:	Administrative Penalty Under
9800 Government Center Parkway	:	Section 309(g) of the Clean Water Act
Chesterfield, VA 23832	:	Docket No. CWA-03-2011-0151
Respondent.	:	ADMINISTRATIVE PENALTY COMPLAINT
	:	AND NOTICE OF OPPORTUNITY TO
	:	REQUEST HEARING

I. STATUTORY AUTHORITY

1. Pursuant to Section 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g), 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 Water Protection Division Director (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, Consolidated Rules), a copy of which is enclosed.

II. FACTUAL AND LEGAL ALLEGATIONS

3. Chesterfield County, Virginia (Respondent) is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
4. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system (MS4) as that term is defined in 40 C.F.R. § 122.26(b)(8).
5. Respondent's MS4 is located within the geographic boundaries of Chesterfield County, Virginia.

6. The County of Chesterfield is located in Central Virginia and encompasses a total area of 426 square miles. Chesterfield County is bordered by the James River and the Appomattox River. Stormwater from the County drains to "water 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.
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.
8. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
9. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
10. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
11. The term "municipal separate storm sewer system" (MS4) includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
12. A NPDES permit is required for discharges from an MS4 serving a population of 250,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p)(2)(C); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
13. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Virginia Department of Environmental Quality ("VADEQ") to issue NPDES permits on May 20, 1991. On December 30, 2004, EPA approved the Commonwealth of Virginia's request to transfer the permitting program for construction and MS4 storm water discharges from VADEQ to the Virginia Department of Conservation and Recreation.

14. The Virginia Department of Environmental Quality (VADEQ) issued to Respondent an NPDES MS4 Discharge Permit No. VA0088609 on March 24, 2003 (hereinafter the "MS4 Permit"). The MS4 Permit expired on March 23, 2008, and has been administratively extended to the present.
15. On April 21 and 22, 2010, a compliance inspection team comprised of authorized representatives of EPA inspected Respondent's MS4 program.

III. FINDINGS OF VIOLATION

Count 1

16. Pursuant to Part I.C.2 of the MS4 Permit, "[t]he permittee shall effectively prohibit non-storm water discharges into the municipal separate storm sewer system."
17. Upon review of the Respondent's outfall field sheets, the EPA inspection team noted that an illicit discharge consisting of grease and oil was identified during an inspection of Outfall 760-701-01 on August 13, 2009. The County did not reinspect Outfall 760-701-01 at any time between August 13, 2009 and April 21, 2010 nor did the County take any action during this time to prohibit the discharge.
18. Respondent failed to comply with Part I.C.2 of the MS4 Permit by failing to effectively prohibit non-storm water discharges into the MS4.

Count 2

19. Pursuant to Part I.B.1.c.(1) of the MS4 Permit, "[t]he permittee shall implement the industrial inspection procedures outlined in the Storm Water Management Program section of the VPDES Permit Reissuance Application."
20. Page 12 of Respondent's MS4 Permit Reissuance Storm Water Management Program (SWMP) states "using the Industrial Inspection Forms developed during the first Permit Term and the new inspection protocol, inspect the priority industries on an annual basis."
21. Chesterfield County developed a list of 334 facilities subject to industrial inspection in accordance with its Industrial Inspection Protocol. In 2009, nine inspections were conducted in response to citizen complaints. The County is not completing all industrial facility inspections that it has identified as necessary.
22. Respondent failed to comply with Parts I.B.1.(c).1 of the MS4 Permit by failing to implement the industrial inspection procedures outlined in the SWMP.

Count 3

23. Pursuant to Part I.C.4 of the MS4 Permit, “[t]he permittee shall provide adequate finances, staff, equipment, and support capabilities to implement all parts of the Storm Water Management Program required by Part I.B of this permit.”
24. The County eliminated the industrial inspector position in 2005 as a result of budget constraints, and industrial inspections are now only conducted in response to citizen complaints, as described in paragraph 21. The elimination of the inspection staff due to budget deficiencies precludes the County’s ability to perform inspections required by the MS4 Permit.
25. Respondent failed to comply with Part I.C.4 by failing to provide adequate support capabilities to implement all parts of the SWMP in violation of the Permit.

Count 4

26. Pursuant to Part I.C.1 of the MS4 Permit, Chesterfield County shall ensure that “[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.B of this permit.”
27. On April 21, EPA and EPA representatives inspected the Chesterfield County Fleet Maintenance Facility located at 9700 Lori Lane, Chesterfield VA. Inspectors observed an undermined silt fence with sediment accumulation beyond the silt fence in an MS4 drainage channel.
28. Respondent failed to comply with Part I.C.1 of the MS4 Permit by failing to reduce pollutants discharged from the MS4 to the maximum extent practicable.

Count 5

29. Pursuant to Part I.B.1.d of the MS4 Permit, the permit requires “[a] program to continue implementation and maintenance of structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites.”
30. The EPA inspection team observed that the County differentiates between what it considers to be a violation of local code and a deficiency. The County does not consider construction site operators to be in violation of local code until the operator has been issued a notice to comply, and the operator fails to meet the time frame for corrective action. The utilization of this procedure creates an unnecessary delay in the County’s ability to reduce pollutants in storm water runoff from construction sites.

31. On April 22, 2010, EPA and EPA representatives conducted a site visit at Clover Hill High School located on Genito Road. Inspectors observed a storm water control, consisting of silt fence and stone, which had failed resulting in a discharge of sediment from the construction site boundary through a drainage culvert. The County inspector did not identify this as a deficiency or violation while on site, thus allowing the deficiency to exist uncorrected.
32. Respondent failed to comply with Part I.B.1.d of the MS4 Permit, as described above, by failing to implement and maintain structural best management practices to reduce pollutants in storm water runoff from construction sites.

Count 6

33. Pursuant to Part I.C.2 of the MS4 Permit, “[t]he permittee shall effectively prohibit non-storm water discharges into the municipal separate storm sewer system.”
34. On April 22, 2010, EPA and EPA representatives conducted a site visit at the above-mentioned Clover Hill High School and Swift Creek Middle School Auditorium Addition. Inspectors observed non-sediment pollutants, such as construction chemicals, fertilizers, and fuels, exposed to precipitation. The Respondent’s SWMP, including its inspection checklist and Program Administration Status System, does not contain program components to address non-sediment pollutant sources.
35. Respondent failed to comply with Part I.C.2 of the MS4 Permit by failing effectively prohibit non-storm water discharges into the municipal separate storm sewer system.

Count 7

36. Pursuant to Part I.B.1.d.(1) of the MS4 Permit, “[t]he permittee shall continue to implement the requirements of the Erosion and Sediment Control Ordinance for land disturbing activities.”
37. Section 8-7 of the Chesterfield County Erosion and Sediment Control Ordinance states “an approved [ESC] plan may be changed by the plan-approving authority when: (a) an inspection reveals that the plan is inadequate to control erosion and sedimentation to satisfy applicable laws and/or regulations; or (b) the responsible land disturber finds that because of changed circumstances or other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the plan-approving authority.”
38. On April 22, EPA and EPA representatives conducted a site visit at the Magnolia Lakes construction site. Inspectors observed a sediment basin that had not achieved final stabilization with permanent vegetation before being removed and/or filled in, in accordance with the County-approved erosion and sediment control plan. The change in the County-

approved erosion and sediment control plan to remove the sediment basin before it had achieved final stabilization violated Section 8-7 of the Chesterfield County Erosion and Sediment Control Ordinance.

39. Section 8-6(d) of the Chesterfield County Erosion and Sediment Control Ordinance states “the [county] environmental engineer shall require all erosion and sediment control plans to comply with the conservation standards and specifications contained in the Virginia Erosion and Sediment Control Handbook before they are approved.”
40. According to the Virginia Erosion and Sediment Control Handbook, turbidity curtains are applicable “where intrusion into the watercourse by construction activities and subsequent sediment movement is unavoidable.”
41. At the above-mentioned Magnolia Lakes construction site, inspectors also observed that two turbidity curtains had been installed in the receiving waterbody referred to as Sportsman Lake. Site conditions observed by the EPA indicated that additional BMPs could have been maintained in order to prevent sediment intrusion into Sportsman Lake. As a result, the County-approved Erosion and Sediment Control Plan was not in accordance with the Chesterfield County Erosion and Sediment Control Ordinance.
42. Respondent failed to comply with Part I.B.1.d(1) of the MS4 Permit by failing to operate in accordance with the Chesterfield County Erosion and Sediment Control Ordinance for the Magnolia Lakes construction site.

IV. PROPOSED CIVIL PENALTY

43. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), provides that any person who has violated any NPDES permit condition or limitation is liable for an administrative penalty not to exceed \$10,000 per day for each such violation, up to a total penalty amount of \$125,000.
44. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after March 15, 2004, is liable for an administrative penalty not to exceed \$11,000 per day for each such violation occurring after March 15, 2004 through January 11, 2009), up to a total penalty amount of \$157,500.
45. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation 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 \$177,500.

46. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules, Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of One Hundred Thirty One Thousand dollars (\$131,000.00) 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.
47. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent 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.
48. EPA may issue the Final Order Assessing Administrative Penalties after a thirty (30) day comment period unless Respondent either responds to the allegations in the Complaint and requests a hearing according to the terms of Section V, below, or pays the civil penalty in accordance with Section VI herein (Quick Resolution).
49. 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 Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.
50. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the CWA, 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.

**V. ANSWER TO COMPLAINT AND
OPPORTUNITY TO REQUEST HEARING**

51. Respondent must file an Answer to this Complaint; failure to file an Answer may result in entry of a Default Judgment against Respondent. Respondent's default constitutes a binding admission of all allegations made in the Complaint and waiver of Respondent's right to a Hearing under the CWA. The civil penalty proposed herein shall then become due and payable upon issuance of the Default Order.
52. Upon issuance of a Default Judgment, the civil penalty proposed herein shall become due and payable.

53. Respondent's 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.
54. 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 Respondent has any knowledge, or clearly and directly state that the Respondent has 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 Respondent disputes;
 - d. Respondent's basis for opposing the proposed penalty; and
 - e. Whether Respondent requests a hearing.

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

55. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
56. 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.
57. If Respondent requests 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.
58. If Respondent does 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 an additional thirty (30) days 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.

59. Any hearing that Respondent requests will be held and conducted in accordance with the Consolidated Rules.
60. At such a hearing, Respondent may contest any material fact contained in the Factual and Legal Allegations listed in Section II above, the Findings listed in Section III, above, and the appropriateness of the amount of the proposed civil penalty in Section IV, above.
61. 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

62. 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:

Andy Duchovnay
Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

63. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. 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

VI. QUICK RESOLUTION

64. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.
65. If Respondent pays 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.
66. If Respondent wishes 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), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees 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:

Andy Duchovnay (3RC20)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

If Respondent files such a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint, Respondent 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 Respondent to default pursuant to 40 C.F.R. § 22.17.

67. 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 Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

68. Payment of the penalty shall be made by one of the following methods below. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of the Administrative Penalty Complaint. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to Lydia Guy, Regional Hearing Clerk, and the case attorney.

Payment by check to "United States Treasury"

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

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

- ii. 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

- b. 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"

- c. 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) Jesse White: 301-887-6548
2) John Schmid: 202-874-7026
3) REX (Remittance Express) 866-234-5681

69. 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:


Andy Duchovnay (3RC20)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

70. 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 Consolidated 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:

4/6/11


Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection
Agency, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

Chesterfield County, Virginia
9800 Government Center Parkway
Chesterfield, VA 23832

Docket No. CWA-03-2011-0151DN

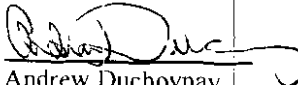
Respondent

CERTIFICATE OF SERVICE

I certify that on this date I filed the Original and one copy of this Administrative Penalty complaint, and Notice of Opportunity to Request a Hearing with the Regional Hearing Clerk and directed that copies be mailed to the following persons by First Class Mail, Return Receipt Requested:

Mr. Art Warren
Chairman
Board of Supervisors
9901 Fort Road
Chesterfield, VA 23832

Date: 7/6/11


Andrew Duchovnay
Sr. Asst. Regional Counsel