

3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities with stormwater discharges associated with industrial activity are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
4. The term “industrial activity” includes, among others, “[c]onstruction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more[.]” 40 C.F.R. § 122.26(b)(14)(x).
5. Operators who discharge stormwater associated with industrial activities to waters of the United States are required to seek NPDES permit coverage. 40 C.F.R. § 122.26(c).
6. The Commonwealth of Virginia has been approved by EPA to administer the NPDES program in the Commonwealth of Virginia. Pursuant to the authority of the Act, and the NPDES program approval, and the Virginia State Water Control Law, Virginia has issued Virginia Pollutant Discharge Elimination System (“VPDES”) Permit No. VAR10 [Virginia Stormwater Management Program (“VSMP”) General Permit for Discharges of Stormwater from Construction Activities] (“Permit”). The effective date of the Permit is July 1, 2009 and the expiration date is June 30, 2014.
7. VPDES Permit No. VAR10 authorizes discharges of stormwater associated with construction activities to waters of the United States (including discharges to, or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit and the Storm Water Pollution Prevention Plan (“SWPPP”) required by the permit.
8. Eric C. Anderson, Dominion Boulevard Partners, LLC and Lakeside Construction Corporation (collectively “Respondents”) are “persons” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2. Mr. Anderson is both the Manager of Dominion Boulevard Partners and the President of Lakeside Construction.
9. At all times relevant to this Order, upon information and belief, Respondents were the owners and/or operators of a site known as Equestrian Estates North (“Site”), located in Chesapeake, Virginia.
10. At the Site, the Respondents have been at all relevant times engaged in construction activity that discharges stormwater from a point source to Lindsey Canal. The construction activity at the Site has disturbed or will disturb approximately 94.1 acres of land.
11. Lindsey Canal is a tributary of New Mill Creek, which in turn is a tributary of the Southern Branch of the Elizabeth River. Both New Mill Creek and the Southern Branch of the Elizabeth River are “waters of the United States” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2, and Lindsey Canal is

therefore a water of the United States. In the alternative, Lindsey Canal is a point source discharging into New Mill Creek, which is a water of the U.S.

12. Pursuant to Sections 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1342(a) and (p), and VPDES Permit No. VAR10, Eric C. Anderson submitted a VSMP General Permit Registration Statement on or about May 6, 2009, and received approval, effective July 1, 2009, for the discharge of stormwater from construction activities at the Site under VPDES Permit No. VAR10-10-100499.
13. On June 14, 2010, representatives of EPA Region III and the Virginia Department of Conservation and Recreation ("VA DCR") conducted an inspection at the Site.

Failure to amend the SWPPP

14. Paragraph II(A)(1) of the Permit states that "A stormwater pollution prevention plan (SWPPP) shall be developed prior to submission of a registration statement and implemented for the construction activity covered by this permit."
15. Paragraph II(C)(1) of the Permit states that "The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP."
16. The Respondents' SWPPP incorporates by reference the Erosion and Sedimentation Control Plan ("E&S Plan") prepared by Engineering Resources Group, LLC dated April 20, 2009.
17. The E&S Plan identifies a single "area of staging and stockpile" approximately 2,800 square feet in size located at the north end of Section 2 of the stormwater pond.
18. At the time of the June 2010 inspection, EPA representatives did not observe any stockpile at the north end of Section 2 of the stormwater pond.
19. At the time of the June 2010 inspection, EPA representatives observed a large stockpile of sand approximately 46,000 square feet in size located to the south of Section 2 of the stormwater pond ("Stockpile") and drop pipes were installed between the Stockpile and Section 2 of the stormwater pond.
20. Photographs of the Site show that the Stockpile has been in the same place to the south of the stormwater pond as early as January 26, 2010, and was still there during an EPA visit to the area on January 25, 2011.
21. At the time of the June 2010 inspection, and in the materials submitted by Mr. Anderson and Lakeside Construction to EPA on December 7, 2010, EPA representatives observed that neither the E&S Plan nor the SWPPP were amended to include the Stockpile or the drop pipes.

Failure to implement the SWPPP: No stabilization

22. Paragraph II(A)(7) of the Permit states that "The operator must implement the SWPPP as written and updated in accordance with Section II C from commencement of construction activity until final stabilization is complete."
23. The SWPPP states that "No areas shall be left denuded for any period longer than seven (7) days."
24. At the time of the June 2010 inspection, EPA representatives observed that the Stockpile was not stabilized.
25. Neither was the Stockpile stabilized during a DCR inspection on December 14, 2010, and during the January 25, 2011, EPA visit to the area.

Failure to remove off-site sediment

26. The E&S Plan identifies a single stormwater discharge point at the southern end of Section I of the stormwater pond into a ditch along the southern edge of the Site ("South Ditch") which then discharges into Lindsey Canal.
27. Paragraph II(D)(2)(b)(3) of the Permit states that "If sediment escapes the construction site, off-site accumulations of sediment must be removed as soon as practicable to minimize off-site impacts."
28. At the time of the June 2010 inspection, EPA representatives observed evidence of stormwater discharges from the Stockpile to a ditch along the eastern edge of the Site ("East Ditch"), including channels leading from the Stockpile to the East Ditch and sediment accumulation in the channels and in the East Ditch.
29. At the time of the June 2010 inspection, EPA representatives observed sediment from the Stockpile that had accumulated in the East Ditch and had not been removed by Site representatives. The amount of sediment in the East Ditch was more than would be expected after a single rain event.

Failure to properly install or maintain control measures: Silt fences/check dams

30. Paragraph II(A)(7) of the Permit states that "The operator must implement the SWPPP as written and updated in accordance with Section II C from commencement of construction activity until final stabilization is complete."
31. Paragraph II(D)(2)(a)(2) of the Permit states that "All control measures required by the [E&S] plan shall be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and regulations (4VAC50-30)."

32. The E&S Plan identifies that the "area of staging and stockpile" shall be surrounded on all sides by silt fence.
33. At the time of the June 2010 inspection, EPA representatives observed that there was not any silt fence surrounding the Stockpile. Silt fencing was also missing from around the Stockpile as early as January 26, 2010.
34. At the time of the June 2010 inspection, EPA representatives observed that silt fences around the perimeter of the Site and check dams on site had not been properly designed, installed, or maintained.
35. During a December 14, 2010 inspection conducted by DCR, the inspectors observed that there was silt fencing around the Stockpile, but the fencing had not been properly maintained.
36. During a visit to the area by EPA on January 25, 2011, sections of the silt fencing around the Stockpile were missing.

Failure to conduct inspections after runoff storm events

37. Paragraph II(D)(4)(a) of the Permit states that "Inspections shall be conducted (i) at least every seven calendar days; or (ii) at least once every 14 calendar days and within 48 hours following any runoff producing storm event."
38. The SWPPP states that "Inspections shall be conducted at least once every fourteen (14) calendar days and within 48 hours of the end of a storm event that is 0.5 inch or greater."
39. Self-inspection reports submitted to EPA by Site representatives after the June 2010 inspection indicate that inspections were not conducted within 48 hours of several 0.5-inch or greater storm events, including but not limited to storm events on March 26, 2010 and May 12, 2010.

Failure to post notice

40. Paragraph II(B)(4) of the Permit states that "A sign or other notice must be posted conspicuously near the main entrance of the construction site. The sign or other notice must contain the following information: a. A copy of the permit coverage letter that includes the registration number for the construction activity; and b. The internet address at which a copy of the SWPPP may be found or the location of a hard copy of the SWPPP and name and telephone number of a contact person for scheduling viewing times."
41. At the time of the June 2010 inspection, EPA representatives did not observe any sign or notice posted near the main entrance of the Site.

Failure to include all required information in the SWPPP

42. Paragraph II(D)(1)(i) of the Permit states that the SWPPP shall include, among other things, "Directions of stormwater flow and approximate slopes anticipated after major grading activities," "Areas of soil disturbance and areas of the site which will not be disturbed," "Locations where concentrated stormwater discharges," "Locations of off-site material, waste, borrow or equipment storage areas covered by the SWPPP," "Locations of other potential pollutant sources, such as vehicle fueling, storage of chemicals, concrete wash-out areas, sanitary waste facilities, including those temporarily placed on the construction site, etc."
43. At the time of the June 2010 inspection and in the materials submitted by Mr. Anderson and Lakeside Construction to EPA on December 7, 2010, EPA representatives observed that the Site's SWPPP did not include directions of stormwater flow and approximate slopes anticipated after major grading activities; areas of disturbance and areas of the site which will not be disturbed; locations where concentrated stormwater discharges; locations of off-site material, waste, borrow or equipment storage areas covered by the SWPPP; and locations of other potential pollutant sources, such as vehicle fueling, storage of chemicals, concrete wash-out areas, and sanitary waste facilities, including those temporarily placed on the construction site.
44. By violating the conditions of the VPDES Permit No. VAR10-10-100499, Respondents are violating the Act and are liable under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

III. PROPOSED CIVIL PENALTY

45. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and 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 Act, and in accordance with the enclosed "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), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondents in the amount of **seventy-five thousand dollars (\$75,000)**. 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, Respondents' prior compliance history, Respondents' ability to pay, the degree of culpability for the cited violations, and any economic benefit

or savings to Respondents because of the violations, all of which are factors identified at Section 309(g)(3) of the Clean Water Act, 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant 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. The Regional Administrator or his delegate may issue a Final Order Assessing Administrative Penalties after thirty (30) days and without further proceedings following Respondents' receipt of this Complaint, unless Respondents, within that time, either pay the penalty or respond to the allegations in the Complaint and requests a hearing according to the terms of Section IV, below.
49. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondents' continuing obligation to comply with the Act, any other Federal or State laws, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

IV. ANSWER TO COMPLAINT AND OPPORTUNITY TO REQUEST HEARING

50. Respondents must file an Answer to this Complaint; failure to file an Answer may result in entry of a Default Judgment against Respondents.
51. Upon issuance of a Default Judgment, the civil penalty proposed herein shall become due and payable.
53. Respondents' failure to fully pay the entire penalty, assessed by the Default Order, by the due date may 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).
54. In addition, the 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.
55. 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.
56. The Answer shall also state the following:
 - a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
 - b. the specific facts that Respondents dispute;

- c. Respondents' basis for opposing the proposed penalty; and
- d. whether Respondents request a hearing.

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

- 57. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondents may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
 - 58. At the hearing, Respondents may contest any material fact contained in the Findings listed in Section II, above, and the appropriateness of the amount of the proposed civil penalty in Section III, above.
 - 59. The procedures for hearings are set out in 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*, (Consolidated Rules), 40 C.F.R. Part 22, a copy of which is enclosed.
 - 60. 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
- 61. Copies of any Answer to this Complaint and any Request for Hearing, along with any and all other documents filed in this action, shall also be sent to the following:

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

V. SETTLEMENT CONFERENCE

- 62. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act.
- 63. Whether or not a hearing is requested, the Respondents may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount

of the proposed civil penalty. **However, a request for a settlement conference does not relieve the Respondents of the responsibility to file a timely Answer to the Complaint.**

64. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his delegatee.
65. The execution of such a Consent Agreement shall constitute a waiver of Respondents' right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.
66. If you wish to arrange a settlement conference or if you have any questions related to this proceeding, please contact the Ms. Nina Rivera, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, at (215) 814-2667 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal counsel, you must have your counsel contact Ms. Rivera on your behalf. **Once again, however, such a request for a settlement conference does not relieve the Respondents of the responsibility to file an Answer within 30 days following Respondent's receipt of this Complaint.**

VI. QUICK RESOLUTION

67. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations of 40 C.F.R. § 22.45, Respondents may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.
68. 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.
69. If Respondents wish to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but need additional time (more than thirty (30) days) 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 thirty (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) but need additional time in which to do so.
70. Such written statement need not contain any response to, or admission of, the allegations in the Complaint.

71. Such statement shall be filed with the:

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

and a copy shall be provided to:

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

Upon filing such a written statement, Respondents will receive an additional thirty (30) days in which to pay the proposed penalty; thus, Respondents must pay the full amount of the proposed penalty within sixty (60) days of receiving this Complaint.

72. **If Respondents choose to proceed pursuant to 40 C.F.R. § 22.18(a)(2) instead of filing an answer, but then fail to pay in full the proposed penalty within thirty (30) days of receipt of this Complaint, or within sixty (60) days of receipt of this Complaint should Respondents file a written statement with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.18(a)(2), the Respondents may be subject to default pursuant to 40 C.F.R. § 22.17.**

73. Payment of the penalty shall be made by one of the following methods and shall reference Respondents' names and addresses and the Docket number of this action Docket No. CWA-03-2011-0089:

a. Via certified or cashier's check drawn on a bank with branches in the United States, made payable to "United States Treasury."

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

U.S. Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck 513-487-2105

ii. If sent via UPS, Federal Express, or Overnight Mail, 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

b. Via certified check or cashier's check in any currency drawn on a bank with no branches in the United States, made payable to "United States Treasury" and addressed for delivery to:

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

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
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

d. Via electronic payment made through the ACH (Automated Clearing House), also known as Remittance Express (REX), directed to:

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

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

Finance Center Contacts:
John Schmid: 202-874-7026, or
REX: 866-234-5681

74. These payment instructions are also available online at
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

75. 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 (3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and to:

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

76. 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 of the penalty by Respondents shall constitute a waiver of Respondents' rights to contest the allegations and to appeal the final order.

VII. PUBLIC PARTICIPATION

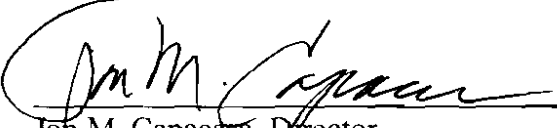
77. EPA is obligated, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to give members of the public notice of and an opportunity to comment on this proposed penalty assessment.

78. 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.

79. If Respondents do not request a hearing, EPA may issue a Final Order Assessing Administrative Penalties, in which case those members of the public who submitted timely comments on this proposed penalty assessment 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.

MAR 31 2011

Date: _____


Jon M. Capacasa, Director
Water Protection Division

CERTIFICATE OF SERVICE

I certify that the enclosed Administrative Penalty Complaint with Notice of Opportunity to Request Hearing was delivered to the following persons:

Delivery by Certified Mail Return Receipt Requested:

Eric C. Anderson
5299 Greenwich Boulevard
Virginia Beach, Virginia 23462

and

Dominion Boulevard Partners, LLC
5299 Greenwich Boulevard
Virginia Beach, Virginia 23462

and

Lakeside Construction Corporation
5299 Greenwich Boulevard
Virginia Beach, Virginia 23462

Delivery by hand (original and one copy):

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

Date: MAR 31 2011



Ms. Nina Rivera
Assistant Regional Counsel