

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

2014 DEC 29 PM 2:51  
REGIONAL HEADQUARTERS  
EPA REGION III  
15-0069 DAB

RECEIVED

In the Matter of:

City of Norfolk, Virginia  
810 Union Street  
Norfolk, Virginia 23510

Respondent

Proceeding to Assess Class II  
Administrative Penalty and Notice of  
Opportunity to Request Hearing Under  
Section 309(g) of the Clean Water Act  
Docket No. CWA-03-2012-0167  
CONSENT AGREEMENT  
AND FINAL ORDER

**I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY**

1. This Consent Agreement and Final Order (CAFO) is entered into by the Water Protection Division, United States Environmental Protection Agency, Region III (EPA or Complainant) and the City of Norfolk, Virginia (Norfolk or Respondent), pursuant to Section 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g), and 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. The parties having agreed to settlement of violations of the CWA by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b) (2) and (3).
2. Pursuant to Section 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g), the Administrator of the EPA is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.
3. Pursuant to the Debt Collection Improvement Act of 1996, codified at 28 U.S.C. § 2461, any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.
4. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), 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 day of violation occurring after March 15, 2004 up to a total penalty amount of \$157,500. <sup>15-0069 JH'S</sup>

5. 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 day of violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

## **II. EPA'S FINDINGS OF FACT and CONCLUSIONS OF LAW**

6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) by any person 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.
7. 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.
8. Section 402(p) of the Act, 33 U.S.C. § 1342(p)(2)(D) and 40 C.F.R. §§121.1 and 122.26(a)(iv) provide that discharges from a municipal separate storm sewer system (MS4) serving a population of 100,000 but less than 250,000 are subject to NPDES permitting requirements.
9. Section 402(p) of the Act, 33 U.S.C. § 1342(p) and 40 C.F.R. §§121.1 and 122.26(a)(9)(i)(B) provide that storm water discharges associated with construction activity as defined in 40 C.F.R. § 122.26(b)(14)(x) and storm water discharges associated with small construction activity, as defined by 40 C.F.R. § 126(b)(15) are subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
10. In relevant part "storm water discharges associated with construction activity" are defined as "Construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area... 40 C.F.R. § 122.26(b)(14)(x).
11. In relevant part, "storm water discharges associated with small construction activity are defined as " the discharge of storm water from: (1) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres..." 40 C.F.R. § 122.26(b)(15).

12. 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 (VADCR). 13-0069 2873
13. Pursuant to Section 402(i) of the Act, 33 U. S. C. §1342(i), EPA retains its authority to take enforcement action in Virginia for NPDES permit violations.
14. The term "discharge" when used without qualification includes discharge of a pollutant and a discharge of pollutants. CWA Section 502 (16), 33 U.S.C. §1362(16). "Discharge of a pollutant" or "discharge of pollutants" is "any addition of any pollutant or combination of pollutants to waters of the United States from any point source..." See Section 502(12) of the CWA, 33 U. S. C. §1362 and 40 C.F.R. § 122.2.
15. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
16. The term "municipal separate storm sewer" means: "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains); (i) owned or operated by a State, city, town, borough, City, 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; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. 122.2." 40 C.F.R. § 122.26(b)(8)(i).
17. A "medium municipal separate storm sewer system" (MS4) includes all municipal separate storm sewers that are located in an incorporated place with a population of 100,000 or more but less than 250,000. See 40 C.F.R. § 122(b) (7).
18. Respondent is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
19. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer as that term is defined in 40 C.F.R. § 122.26(b)(8).
20. The Respondent has a population of approximately 242,800.
21. Storm water from the Respondent drains to the Elizabeth River which is a "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

22. VADEQ issued to Respondent NPDES MS4 Discharge Permit No. VA0088650 on March 8, 2001 (MS4 Permit). The MS4 Permit expired on March 8, 2006 and has been administratively extended, pending issuance of a new permit. The administratively extended permit remains in full force and effect pursuant to 9 VAC 25-31-70.
23. Part I.A.1.a.(1) of the MS4 permit includes a requirement that "The permittee is responsible for obtaining any required State or federal permits necessary to complete maintenance activities, including permits for land disturbance, wetlands disturbance, dredging, etc...."
24. Pursuant to the Virginia Storm Water Management Program (VSMP) Permit Regulations, VSMP at 4 VAC 50-60-380.B.1, land-disturbing activities that are greater than one acre (consistent with federal requirements), or that exceed an area of 2,500 square feet in jurisdictions subject to the Virginia Chesapeake Bay Preservation Act and regulations, must obtain coverage under the VSMP General Permit for Discharges of Storm Water from Construction Activities set forth at 4 VAC 50-60-1170 (VAR10).
25. VAR10 authorizes discharges of storm water associated with construction activity, but only in accordance with the conditions of the permit.
26. On June 2, 2011 the VADCR inspected a Norfolk-owned property known as the Southampton Avenue Streetscape Project, located at 850 Southampton Avenue, Norfolk, Virginia 23502. The inspection, as well as subsequent information submitted to VADCR on behalf of Norfolk revealed that construction activity was taking place at the site.
27. The June 2, 2011 VADCR inspection and the subsequent information submitted by or on behalf of Norfolk revealed that:
  - a. the disturbed area at the site was 1.83 acres;
  - b. the site was owned by the Respondent;
  - c. the construction activity commenced on or about April 1, 2011;
  - d. as of the date of the inspection, the site was not permitted under VAR10; and
  - e. on May 26, 2011 the site discharged sediment-laden water into the Elizabeth River.
28. On March 26, 2009 the VADCR inspected a Norfolk-owned property known as the Lambert's Point Community Center, located at 1251 West 42<sup>nd</sup> Street, Norfolk, Virginia, 23508. The inspection, as well as subsequent information submitted to VADCR on behalf of Norfolk revealed that construction activity was taking place at the site.
29. The March 26, 2009 VADCR inspection and the subsequent information submitted by or on behalf of Norfolk revealed that:
  - a. the disturbed area at the site was approximately 2.49 acres;
  - b. the site was owned by the Respondent;

- c. the construction activity commenced on or about July 21, 2008; and
  - d. as of the date of the inspection, the site was not permitted under VAR10.
30. On March 24, 2009 the VADCR inspected a Norfolk-owned property known as the Town Point Park Improvements, located at 113 Waterside Drive, Norfolk, Virginia, 23510. The inspection, as well as subsequent information submitted to VADCR on behalf of Norfolk revealed that construction activity was taking place at the site.
31. The March 24, 2009 VADCR inspection and the subsequent information submitted by or on behalf of Norfolk revealed that:
- a. the disturbed area at the site was approximately 7.5 acres;
  - b. the site was owned by the Respondent;
  - c. the construction activity commenced on or about October 2008; and
  - d. as of the date of the inspection, the site was not permitted under VAR10.
32. On December 9, 2010 the VADCR inspected a Norfolk-owned property known as the Richmond & Surry Crescents Drainage Improvement Project, located at Richmond Crescent, Myrtle Park and Surry Crescent in, Norfolk, Virginia, 25302. The inspection, as well as subsequent information submitted to VADCR on behalf of Norfolk revealed that construction activity was taking place at the site.
33. The December 9, 2010 VADCR inspection and the subsequent information submitted by or on behalf of Norfolk revealed that:
- a. the disturbed area at the site was approximately .75 acres;
  - b. the site was owned by the Respondent;
  - c. the site was subject to the Chesapeake Bay Preservation Act;
  - d. the construction activity commenced on or about June 14, 2010; and
  - e. as of the date of the inspection, the site was not permitted under VAR10.
34. Rainfall data for the time periods when the city-owned construction sites were not permitted under VAR10, indicates that each of these sites would have discharged storm water during those time periods.

### **III. EPA'S FINDINGS OF VIOLATION**

35. Respondent failed to comply with Part I.A.1.a (1) of the MS4 Permit and 4 VAC 50-60-380.B.1 by failing to obtain permit coverage prior to commencement of construction activity at these construction sites owned by the Respondent:
- a. Southampton Avenue Streetscape Project
  - b. Lambert's Point Community Center
  - c. Town Point Park Improvements

## d. Richmond and Surry Crescents Drainage Improvement Project

36. Respondent's failure to comply with the MS4 Permit violates Section 301(a) of the Act, 33 U.S.C. § 1311(a).
37. The May 26, 2011 discharge from the Southampton Avenue Streetscape Project was a discharge without a permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
38. On information and belief discharges from Lambert's Point Community Center, Town Point Park Improvements, and Richmond and Surry Drainage Improvement Project occurred during the periods where those sites were not permitted under VAR10, and therefore were discharges without a permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

**IV. CONSENT AGREEMENT AND FINAL ORDER**

39. For purposes of this proceeding Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise and its right to appeal the proposed final order accompanying the consent agreement.
40. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
41. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
42. Each party to this action shall bear its own costs and attorney fees.
43. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
44. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
45. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Commonwealth of Virginia regarding this action, and will mail a copy of this document to the appropriate Commonwealth official.
46. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the

violations, and such other matters as justice may require, AND Respondent's agreement to perform a Supplemental Environmental Projects (SEP), pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

47. Respondent shall pay the total administrative civil penalty for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury":

By regular mail:

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

Contact: Craig Steffen (513/487-2091)

By overnight delivery:

U.S. Bank  
Government Lock Box 979077  
US EPA, Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: Craig Steffen (513/487-2091)

By Wire Transfer:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

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

Contact for ACH: John Schmid (202-874-7026)

On-Line Payments:

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed from the information below:

WWW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

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

-and-

Deane H. Bartlett, Esquire  
Mail Code 3RC20  
Office of Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

48. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:



Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

49. The Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protection and improvements. Not more than thirty (30) days after receiving a copy of this CAFO signed by the Regional Administrator, Respondent shall undertake the following SEP: restore approximately one hundred fifty (150) linear feet of shoreline along the Lafayette River – the Lavalette Shoreline Restoration. The SEP is more fully described, including a schedule for completion, in Exhibit A to this CAFO, which is incorporated herein by reference.
50. The total expenditures for the SEP shall be no less than ninety thousand dollars (\$90,000). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report referenced in paragraph 53, below.
51. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop this SEP by any federal, state or local law or regulation, nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received and is not presently negotiating to receive credit in any other enforcement action for the SEP.
52. Respondent hereby certifies that: 1) it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 49, above, and 2) it has inquired of any and all contractors involved in

implementation of the SEP whether they are a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by any and all such contractors that none is a party to such a transaction. 15-0069 DAS

53. Respondent shall submit a SEP Completion Report for the SEP to EPA within sixty (60) days of the date for SEP completion set forth in Attachment A. The SEP Completion Report shall contain the following information:
- a. A detailed description of the SEP as implemented;
  - b. A description of any problems encountered and the solutions implemented;
  - c. Itemized costs;
  - d. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
  - e. A description of how the SEP will be maintained over time; and
  - f. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
54. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 61 below.
55. In itemizing costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this CAFO, "eligible SEP costs" include capital costs and costs for labor and materials. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual cost of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
56. All documents required by paragraphs 53 and 55 above, shall be accompanied by a certification signed by a responsible corporate officer or official, as defined in 40 CFR § 122.22(d), that reads as follows:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Signed \_\_\_\_\_  
Title \_\_\_\_\_

All documents required herein shall be submitted to:

Andrew Dinsmore  
Environmental Engineer  
NPDES Enforcement Branch  
Mail Code 3WP42  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

57. Respondent agrees that EPA may inspect the areas where the SEP is to be implemented at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
58. Respondent shall maintain legible copies of documentation of the underlying information for the SEP Completion Report submitted to EPA pursuant to this CAFO and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information.
59. After receipt of the SEP Completion Report described in paragraph 53 above, EPA will notify the Respondent, in writing, regarding: i) any deficiencies in the SEP Report itself, along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or ii) indicate that EPA concludes that the project has been completed satisfactorily, or iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 60 herein.

If EPA elects to exercise option i) above (i.e. if the SEP Report is determined to be deficient, but EPA had not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from receipt by EPA of such notification of objection to reach agreement on changes necessary to the SEP Report. IF agreement cannot be reached on any such issue within this thirty (30) day period. EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event that the SEP is not completed as contemplated in this CAFO, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 60 herein.

60. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of SEP described in this CAFO and or to the extent that the actual expenditures of the SEP do not equal or exceed the cost of the SEP as described, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of twenty three thousand seven hundred dollars (\$23,700);
  - (ii) If the SEP is not completed as required by paragraph 49 but EPA determines that the Respondent: a) made a good faith and timely effort to complete the project; and b) certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;
  - (iii) If the SEP is completed in accordance with this CAFO, but the Respondent spent less than ninety (90) percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of (10-25 percent of mitigation amount).
  - (iv) If the SEP is completed in accordance with paragraphs and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
  - (v) For failure to submit the SEP Completion Report required by paragraph 49 above, Respondent shall pay a stipulated penalty in the amount of one hundred dollars (\$100.00) for each day until the report is submitted.

The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

Stipulated penalties for paragraph (v) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 47 above. Interest and late charges shall be paid as stated in paragraph 47 herein.

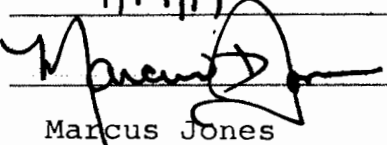
61. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or any regulations promulgated thereunder.

62. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present and 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 Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, 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.
63. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.
64. The penalty specified in Paragraph 46, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
65. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
66. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
67. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

**V. EFFECTIVE DATE**

68. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded. This CAFO will become final 30 days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT, City of Norfolk, Virginia:

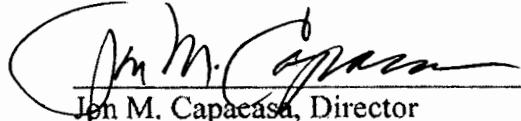
Date: 9/19/14  
By:   
Name: Marcus Jones  
Title: City Manager

Approved as to form and correctness:

  
Cynthia B. Hall, Deputy City Attorney


FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10 | 28 | 14

  
\_\_\_\_\_  
John M. Capacasa, Director  
Water Protection Division

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 12<sup>th</sup> day of December, 2014



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Shawn M. Garvin  
Regional Administrator  
U.S.EPA Region III



**CERTIFICATE OF SERVICE**

I hereby certify that on the date listed below, I filed the original attached Consent Agreement and Final Order with the Regional Hearing Clerk, and directed that a copy thereof be sent to the following person via certified mail, return receipt requested:

Cynthia B. Hall  
Deputy City Attorney  
Office of the City Attorney  
Suite 900  
810 Union Street  
Norfolk, VA 23510

Date: 12/29/14

  
Ms. Deane H. Bartlett  
Senior Assistant Regional Counsel

Attachment A

Lavalette Shoreline Restoration

Supplemental Environmental Project

## Lavalette Shoreline Restoration Project Schedule

July 2014 – October 2014: Survey, design, and permitting

October 2014: Advertise for Bid

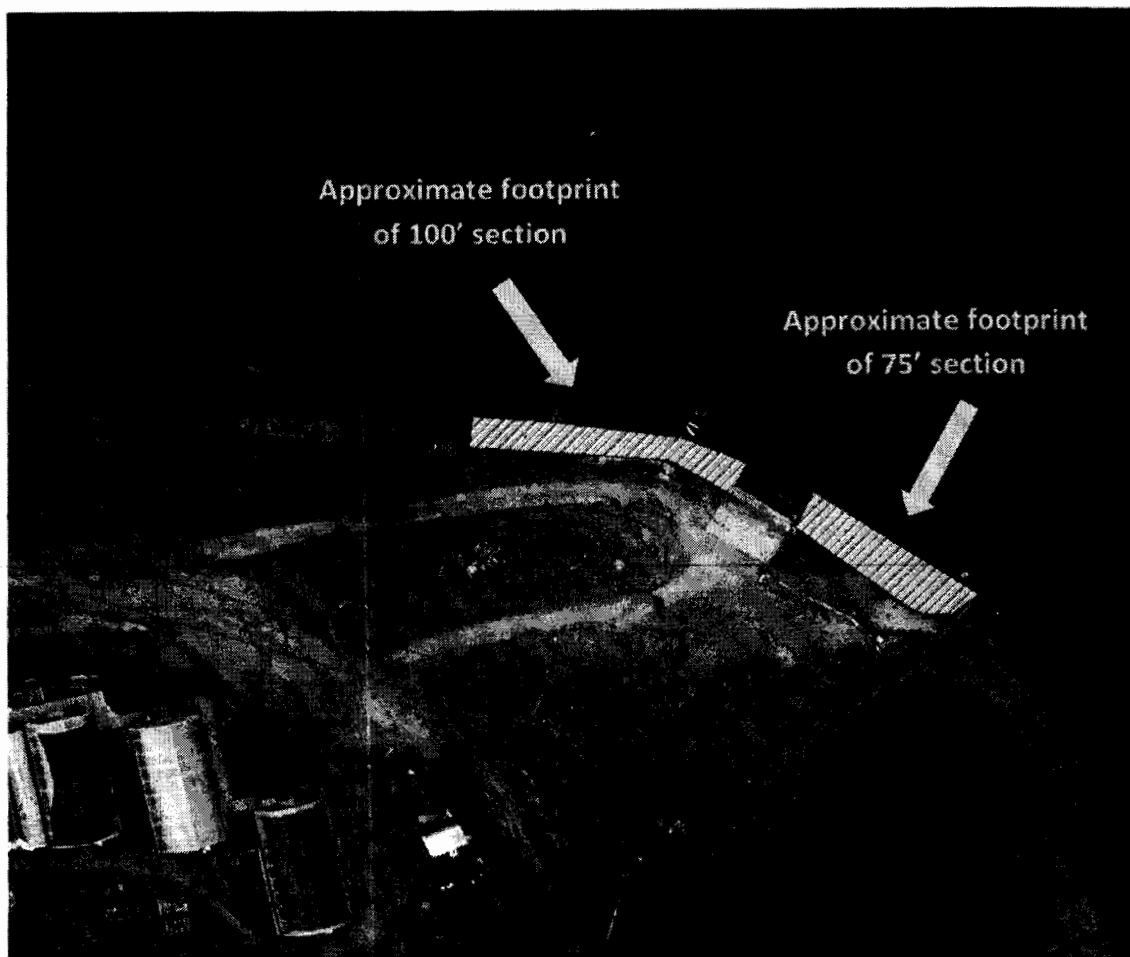
November 2014: Bid Opening

November 2014 - February 2015: Execution of contract

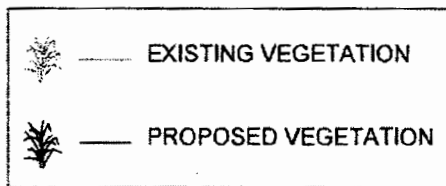
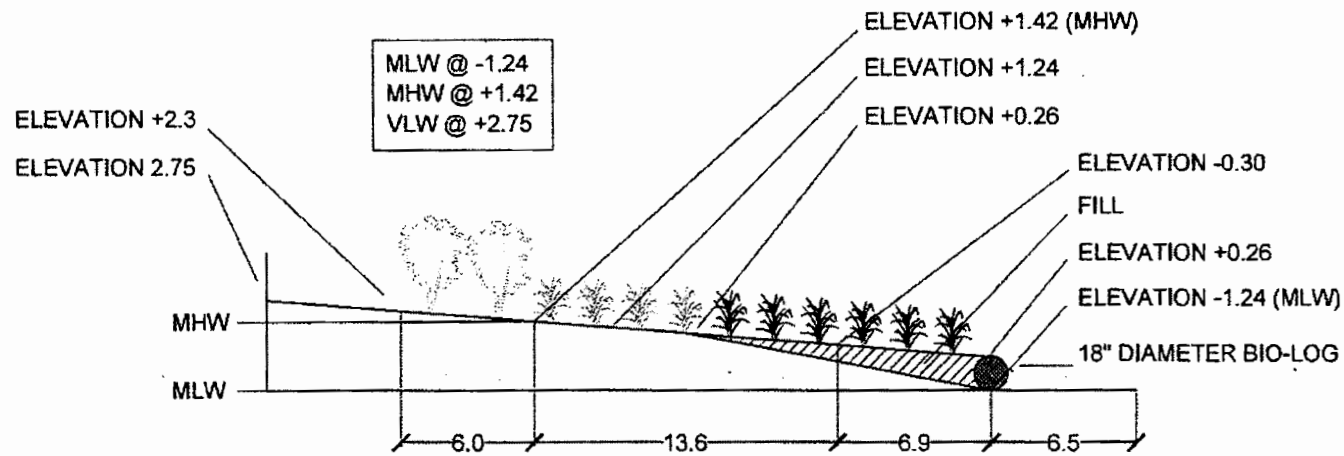
February 2015: Notice to Proceed

March 2015: Final Completion

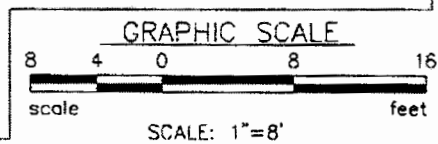
## Proposed LaValette Ave Shoreline Restoration



**LaValette Shoreline Restoration:** The LaValette shoreline restoration is a proposed project that would include restoration of approximately 175 linear feet of living shoreline, in two sections. Starting at the eastern edge of the existing boat ramp, the approximately 75 linear foot eastern section would tie into an existing wetland shoreline on the adjacent Virginia Zoo property to the southeast and integrate landward with a planned buffer restoration. The approximately 100 linear foot western section of shoreline would begin at the western-most side of the existing boat ramp and extend around a corner to the west where it would tie into an existing wetland shoreline. This section would be planted up to adjacent the short seawall, with further buffer plantings planned above the seawall. The cost of the project is estimated to be \$90,000 for design, permitting, and construction. Timing of the construction would be based on phasing of the overall site development and on timing for ideal plant survivorship, likely late spring 2014 or fall 2014 to winter 2015.



Lavallette Boat Ramp Wetland Restoration Section 1  
 Scale - 1" = 8'



**Lavallette Boat Ramp Wetland Restoration**  
 Department of Recreation, Parks and Open Space  
 City of Norfolk

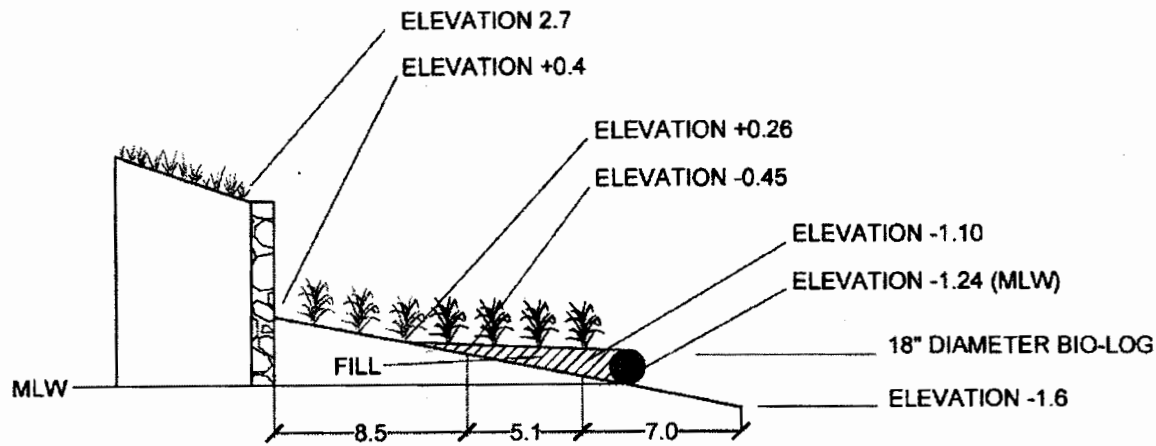




17 SEPTEMBER 2012


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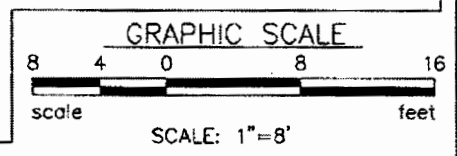
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	EXISTING VEGETATION
	PROPOSED VEGETATION


**Lavallette Boat Ramp Wetland Restoration Section 2**  
 Scale - 1" = 8'



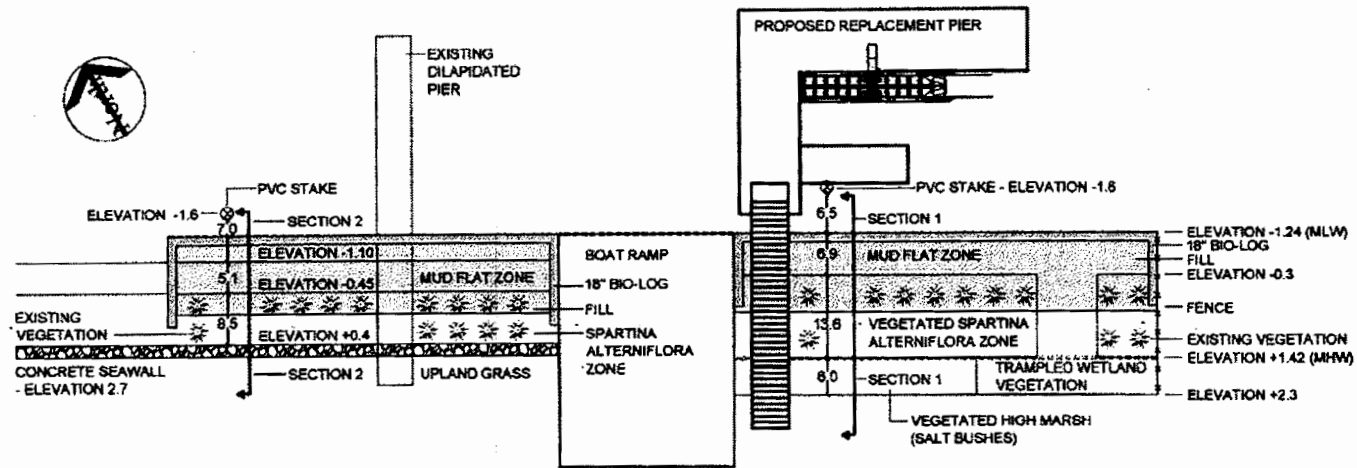
**Lavallette Boat Ramp Wetland Restoration**  
 Department of Recreation, Parks and Open Space  
 City of Norfolk




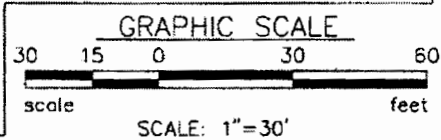
12 SEPTEMBER 2012

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**Lavallette Boat Ramp Wetland Restoration Plan View**  
 Scale - 1" = 30'



**Lavallette Boat Ramp Wetland Restoration**  
 Department of Recreation, Parks and Open Space  
 City of Norfolk



17 SEPTEMBER 2012

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1" = 400'  
 1" = 100'  
 1" = 500'



**Lavalette Avenue - Canoe / Kayak Launch and Fishing Dock**  
 Department of Recreation, Parks and Open Space  
 City of Norfolk



- PROPOSED DOCK
- PROPOSED WALKWAY
- EXISTING CONCRETE WALKWAY
- EXISTING WALKWAY
- EXISTING GRASSY AREA
- EXISTING PAVED AREA
- EXISTING ASPHALT DRIVE
- EXISTING ASPHALT DRIVE

PROPOSED DOCK  
PROPOSED WALKWAY  
EXISTING CONCRETE WALKWAY  
EXISTING WALKWAY  
EXISTING GRASSY AREA  
EXISTING PAVED AREA  
EXISTING ASPHALT DRIVE  
EXISTING ASPHALT DRIVE



**Lavalette Avenue - Canoe / Kayak Launch and Fishing Dock**  
Department of Recreation, Parks and Open Space  
City of Norfolk

14 JUN 2012  
SIX  
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