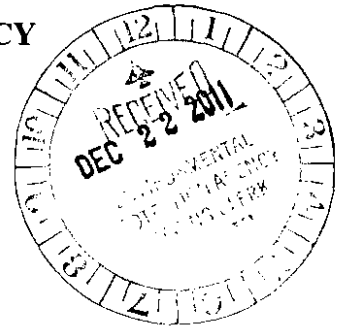


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III



In The Matter of: :  
: CONSENT AGREEMENT  
: :  
: :  
**Portsmouth Boating Center, Inc.** : Proceeding to Assess Class II  
: Civil Penalties Under Section  
: 311(b)(6)(B) of the Clean Water Act, as  
1244 Bay Street : amended, 33 U.S.C. § 1321(b)(6)(B).  
Portsmouth, Virginia 23704, :  
: :  
: Docket No. CWA-03-2011-0099  
: :  
Respondent. :  
:

**CONSENT AGREEMENT**

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and under the authority provided by Section 22.18(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Part 22 Rules"), 40 C.F.R. Part 22. The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region's Hazardous Site Cleanup Division ("Complainant").

**Statutory and Regulatory Basis**

For the purposes of this proceeding only, the parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate to the following findings of facts and conclusions of law.

1. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. In Section 311(j)(1)(C) of the CWA, Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.
2. By Executive Order 12777, the President delegated to EPA the authority of Section 311(j)(1)(C) to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.
3. EPA promulgated the Oil Pollution Prevention Regulations, which are codified at 40 C.F.R. Part 112 Subparts A, B, and C, pursuant to the delegated statutory authorities referred to above, and pursuant to its authorities under the CWA,

which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

**Allegations**

Complainant has made, and except as set forth in Paragraph 23, Respondent neither admits nor denies the following allegations:

4. Respondent is a corporation organized under the laws of the Commonwealth of Virginia, with a place of business located at 1244 Bay Street in Portsmouth, Virginia.
5. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
6. Respondent is engaged in storing, transferring, or distributing oil or oil products at its full service marina located at 1244 Bay Street in Portsmouth, Virginia (“Facility”).
7. Respondent is the owner or operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
8. Respondent has owned and operated the Facility since at least the year 1984.
9. The Facility has a total aboveground oil storage capacity of approximately 16,800 gallons.
10. The Facility is less than sixty (60) feet from Scotts Creek.
11. Scotts Creek is a navigable water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.
12. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
13. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 and Appendix A of 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.
14. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or its adjoining shoreline.

15. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112.
16. Pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and 40 C.F.R. §§ 112.1 and 112.3, the Facility is subject to the Spill Prevention, Control and Countermeasure (“SPCC”) requirements of 40 C.F.R. § 112.3 because the Facility’s 16,800-gallon oil storage capacity exceeds the 1,320-gallon aboveground capacity threshold of the Oil Pollution Prevention Regulations and the Facility is an onshore non-transportation-related facility that could be reasonably expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.
17. EPA conducted a compliance inspection at the Facility on October 21, 2009 (“the Inspection”).
18. At the time of the Inspection, the Facility was unable to produce a prepared or implemented SPCC plan.
19. Pursuant to 40 C.F.R. § 112.3, the Respondent must prepare and implement an SPCC plan.
20. EPA determined, based on discussions with Facility personnel during and after the Inspection and its review of documentation provided by Respondent, that Respondent had not adequately prepared and implemented an SPCC plan. Respondent, therefore, violated 40 C.F.R. § 112.3.
21. On March 23, 2011, the Complainant issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), Docket No. CWA-03-2011-0099, alleging that Respondent was in violation of the SPCC regulations and proposing a civil penalty of \$29,542. Specifically, the Complainant alleged that Respondent failed to prepare and implement an SPCC plan, in violation of 40 C.F.R. § 112.3.
22. Complainant incorporates the Administrative Complaint by reference, and except as set forth in Paragraph 23, Respondent neither admits nor denies the allegations of the Administrative Complaint.

**Waiver of Rights**

23. For purposes of this proceeding, the Respondent admits to the jurisdictional allegations in the Complaint and waives the right to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and to appeal the Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C.

§ 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

### Settlement

24. In full and final settlement and resolution of all allegations referenced in the foregoing Allegations, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), as set forth above, in the amount of **\$2,793**. The proposed penalty was calculated after consideration of the applicable statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the seriousness of the violation; the economic benefit to the violator; the degree of culpability; the nature, extent, and degree of success of the Respondent's mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require.
25. In addition to the payment of the civil penalty in the preceding paragraph, Respondent agrees to fully perform a Supplemental Environmental Project ("SEP"), as set forth below.

### Supplemental Environmental Project

26. The following SEP is consistent with applicable EPA policy and guidelines, specifically EPA's Supplemental Environmental Projects Policy, effective May 1, 1998.
27. Respondent agrees to undertake an Oyster Restoration SEP on Scotts Creek of the Elizabeth River. The SEP is described further in the SEP Proposal ("SEP Proposal"), attached hereto as Attachment A and incorporated herein by reference.
- a. The parties agree that the SEP is intended to restore and protect 3,850 square feet of new oyster reef on Scotts Creek. The parties expect and intend that the SEP will improve the ecosystem in Scotts Creek by providing structure, food sources, spawning sites, and nursery grounds for commercial and recreation fish species and by creating a substrate to support invertebrates and plants, which serve as food sources for fish.
  - b. On or before March 15, 2012, Respondent shall purchase 160 cubic yards of *Crassostrea virginica* oyster shell.
  - c. Within seven (7) days after making the purchase required in Paragraph 27.b., immediately above, Respondent shall notify Anne Gilley at the address noted in Paragraph 34, that such purchase has been completed.

- d. On or before September 18, 2012, Respondent shall complete installation of the 160 cubic yards of oyster shell in Scotts Creek, offshore of Trafton Jordan's shoreline, across the creek from the Facility.
28. Respondent's total expenditure for installation of the SEP shall not be less than \$9,508, in accordance with the specifications set forth in the SEP Proposal. The SEP has been valued at \$9,207, pursuant to EPA's Project Model. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 34 below.
29. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulations; 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.
30. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
31. EPA may grant Respondent an extension of time to fulfill its SEP obligations if EPA determines, in its sole and unreviewable discretion, that, through no fault of Respondent, Respondent is unable to complete the SEP obligations within the time frame required by Paragraph 27 and, if extensions are granted, by this Paragraph. Requests for any extension must be made in writing within 48 hours of any event, such as an unanticipated delay in obtaining governmental approvals, the occurrence of which renders the Respondent unable to complete the SEP within the required time frame, and prior to the expiration of the allowed SEP Completion Deadline. Any such requests should be directed to Anne Gilley at the address noted in Paragraph 34 below or by electronic mail to [gilley.anne@epa.gov](mailto:gilley.anne@epa.gov).
32. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of 33 U.S.C. §1321(j)."
33. This CAFO shall not relieve Respondent of its obligations with respect to all applicable provisions of federal, state, or local law, nor shall it be construed to be ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

34. SEP Completion Report

a. Respondent shall submit to EPA a Completion Report for the SEP, c/o Anne Gilley, U.S. EPA Region III, 1650 Arch Street (Mail Code 3HS61), Philadelphia, PA 19103, within fourteen (14) days of completing the implementation of the SEP, as set forth in Paragraph 27. The SEP Completion Report shall contain the following information:

- i. a detailed description of the SEP as implemented,
- ii. a description of any installation problems encountered and the solution thereto,
- iii. itemized costs,
- iv. certification that the SEP has been fully implemented pursuant to the provisions of this CAFO, and
- v. a description of the environmental and public health benefits resulting from implementation of the SEP.

b. Respondent shall sign the SEP Completion Report required by this Paragraph and certify under penalty of law that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

c. Respondent agrees that failure to submit the SEP Completion Report required by this Paragraph shall be deemed a violation of this CAFO and, in such an event, Respondent shall be liable for stipulated penalties pursuant to Paragraph 37 below.

d. In itemizing its 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 Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled 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.

35. Respondent agrees that EPA may inspect the locations at which the SEP is implemented at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein and as required by this CAFO.
36. EPA Acceptance of SEP Completion Reports
- a. Upon receipt of the SEP Completion Report described in Paragraph 34 above, EPA will exercise one of three options:
- i. notify Respondent in writing of any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
  - ii. notify the Respondent in writing that EPA has concluded that the project has been satisfactorily completed; or
  - iii. notify the Respondent in writing that EPA has concluded that the project has not been satisfactorily completed, and seek stipulated penalties in accordance with Paragraph 37 herein.
- b. In the event that Respondent fails to comply with any of the terms or provisions of the SEP, the SEP is not completed as required herein, or the SEP Completion Report is not submitted to EPA, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 37 herein.
37. Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-on Amount
- a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in Paragraph 27 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP required by Paragraph 28 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- (i) Except as provided in subparagraph (iii), (iv), and (v) below, if the SEP has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to EPA in the amount of \$9,207.
  - (ii) If the SEP is not completed in accordance with Paragraph 27, but the Complainant determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 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 Paragraph 27, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of \$921.
  - (iv) If the SEP is completed in accordance with Paragraph 27, 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 34, above, Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due until the report is submitted.
- b. The determination of whether the SEP has been satisfactorily implemented and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Stipulated penalties for subparagraph (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.
- d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties, in accordance with the provisions of Paragraph 40, below. Interest and late charges shall be paid as set forth in Paragraphs 42 through 46, below.
- e. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

#### **Payment Terms**

38. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, Respondent shall pay the civil penalty of **\$2,793** plus interest of **\$13.97**. The civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true copy of this CAFO. Respondent agrees to pay the civil penalty in full by remitting installment payments, in accordance with Paragraph 39 below.
39. Payment of the civil penalty assessed herein, which includes any accrued interest, shall be made in the manner and over the time period specified below:



<u>Schedule</u>	<u>Principal</u>	<u>1% Interest</u>	=	<u>Payment</u>
1 <sup>st</sup> payment due within 30 calendar days of the Effective Date	\$1,396.50	+ \$0	=	\$1,396.50
2 <sup>nd</sup> payment due within 90 calendar days of the Effective Date	\$1,396.50	+ \$13.97	=	\$1,410.47
<b>TOTAL:</b>				<b>\$2,806.97</b>

40. Payment shall be made by a cashier's or certified check, by an electronic funds transfer ("EFT"), or by on-line payment.
- a. If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF-311." If paying by check, Respondent shall note on the check the title and docket number (CWA-03-2011-0099) of this case.
  - b. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:  
  
U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000
  - c. If Respondent sends payment by a private delivery service, the payment shall be addressed to:  
  
U.S. Environmental Protection Agency  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Attn: Craig Steffen (513/487-2091)
  - d. If paying by EFT, the Respondent shall make the transfer to:  
  
Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
33 Liberty Street  
New York, NY 10045

- e. If paying by EFT, field tag 4200 of the Fedwire message shall read: “(D 68010727 Environmental Protection Agency).” In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.
  - f. If paying through the Department of Treasury's Online Payment system, please access “www.pay.gov,” and enter sfo 1.1 in the search field. Open the form and complete the required fields and make payments. Note that the type of payment is “civil penalty,” the docket number “CWA-03-2011-0099” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.
41. The penalty specified in Paragraph 24, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
  42. 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 payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.
  43. Interest on the civil penalty should begin to accrue on the date that this CAFO is mailed or hand-delivered to the Respondent. EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).
  44. 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). Pursuant to Appendix 2 of EPA’s Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
  45. A penalty charge of six percent per year will be assessed monthly on any portion of an installment payment that 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).

46. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth above. In order to avoid the assessment of late payment penalty charges, as described above, Respondent must remit all installment payments no later than 90 days after the date each such payment is due.
47. Respondent shall submit a copy of the check (or, in the case of an EFT transfer, a copy of the EFT confirmation) to the following persons:
- |  |  |
|--|--|
| Lydia Guy (3RC00)<br>Regional Hearing Clerk<br>U.S. EPA, Region III<br>1650 Arch Street<br>Philadelphia, PA 19103-2029 | Suzanne M. Parent (3RC42)<br>Associate Regional Counsel<br>U.S. EPA, Region III<br>1650 Arch Street<br>Philadelphia, PA 19103-2029 |
|--|--|
48. Failure by Respondent to pay the penalty assessed by the Final Order in full by the due date set forth herein may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

#### **General Provisions**

49. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind the Respondent and its successors or assigns to the terms of this Consent Agreement.
50. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
51. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
52. The Effective Date of this Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk.
53. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), the Complainant has provided public notice of and reasonable opportunity to

comment on the proposed issuance of an order assessing an administrative penalty against the Respondent. The period for public comment has expired.

**For the Respondent, Portsmouth Boating Center, Inc.**

Date:

12/14/2011

By:

Michael K Davis VP

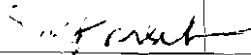
Name: Michael K. Davis

Title: Vice President

Portsmouth Boating Center, Inc.

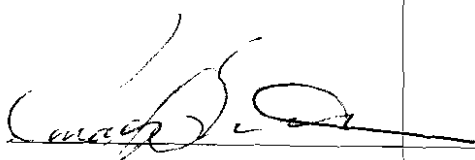
**For the Complainant, U.S. Environmental Protection Agency, Region III**

Date: 12/19/11

By:   
Suzanne M. Parent  
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Hazardous Site Cleanup Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: December 20, 2011

By:   
Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division  
EPA Region III

**In Re: Portsmouth Boating Center, Inc.**

Docket No. CWA-03-2011-0099

APPENDIX A

to the

CONSENT AGREEMENT



## Oyster Restoration on Scotts Creek of the Elizabeth River

Revised Draft 12-14-11

This project will restore and protect up to 3,850 square feet of new oyster reef on Scotts Creek, a tributary of the Elizabeth River. The site, owned by the Commonwealth of Virginia, across from Portsmouth Boating Center will provide a key restoration link to a 13-acre two dimensional reef established by the Living River Restoration Trust, a sister organization to The Elizabeth River Project.

### High hopes for new oyster reef

The proposed oyster reef on Scotts Creek will provide a critical link to the largest reef on the river - a 13-acre two-dimensional reef at the mouth of the creek created by The Elizabeth River Project and its sister organization, the Living River Restoration Trust.



Elizabeth River Project staff view of the proposed oyster reef site on Scotts Creek. The reef will be located on the left side of the creek, adjacent to the Portsmouth Boating Center. The reef will be located on the left side of the creek, adjacent to the Portsmouth Boating Center. The reef will be located on the left side of the creek, adjacent to the Portsmouth Boating Center.

Elizabeth River site, now complete, to provide habitat in polluted waterway

By [Name]

PORTSMOUTH — A new oyster reef, now complete, will provide habitat in a polluted waterway on the Elizabeth River. The reef, located on Scotts Creek, a tributary of the river, will be located on the left side of the creek, adjacent to the Portsmouth Boating Center. The reef will be located on the left side of the creek, adjacent to the Portsmouth Boating Center. The reef will be located on the left side of the creek, adjacent to the Portsmouth Boating Center.

Historically, the native oyster *Crassostrea virginica* inhabited the Elizabeth River in great numbers; however, oyster populations have declined more than 99 percent in the Chesapeake Bay in the last century due to habitat loss and disease. Virginia Marine Resources Commission (VMRC) and Elizabeth River Project have had an ongoing successful and

encouraging oyster reef restoration program in the Elizabeth River. The program has employed a strategy of establishing both two-dimensional and three-dimensional oyster reef sanctuaries. Currently there are 12 oyster reef sanctuaries in the Elizabeth River watershed with the Western and the Eastern branches each possessing one reef. Two reefs are located in the Lafayette River and five oyster reefs were built in the Southern Branch. Two are also located on the main stem – one of them at the mouth of Scotts Creek. Monitoring of these reefs in the Elizabeth River has shown some of the highest survivorship of oysters anywhere in the Chesapeake Bay watershed. Thus, the creation of an oyster reef at Scotts Creek will restore essential habitat types once found there. This reef will provide structure, food sources, spawning sites, and nursery grounds for commercial and recreational fish species. Moreover, this habitat will also provide a firm substrate for many sessile invertebrates and plants that function as an active food base for many ecologically, commercially and recreationally important fish species.



The goal of the project would be to create up to 3,850 square feet of oyster reef on Scotts Creek offshore of Trafton Jordan's shoreline across from Portsmouth Boating Center. The design would be 12 inches of shell over most of the project area with mounding of shell of 24 inches near shore to protect the shoreline. It is estimated that for 12 inch depth of shell over the project area, 125 cubic yards of shell would be needed, with an additional 25 cubic yards of shell for mounding near shore for a total of 150 cubic yards.

Elizabeth River Project's current oyster shell supplier does not have enough shell to complete the project this year. Trafton Jordan's and Portsmouth Boating Center's oyster source does not have shell available until spring of 2012 and since shell should dry out for up to six months, the timeline for this project will be mid to late 2012.



Trafton Jordan's shoreline across from Portsmouth Boating Center on Scotts Creek is an ideal location for an oyster reef, due to the hard sandy bottom and proximity to the river's largest oyster reef at the mouth of the creek.



## **DRAFT BUDGET for 3,850 square feet of oyster reef\***

Oyster shell and delivery (160 cy x \$40/yd)	\$6,400.
Barge for placement of shell (2 days @ \$160/day)	320.
Rental of Bobcat with operator (3 days @ \$250/day)	750.
Rental of boat (4 hours x \$150/hr)	600.
Permit fee and public advertisement cost*	550.
Elizabeth River Project Logistics and oversight (up to 10%)	<u>888.</u>
<b>Draft total budget for oyster reef</b>	<b>\$9,508.00</b>

*\* Assumes that the fee for state bottom rental from Virginia Marine Resources Commission is waived (\$2.00 per square foot)*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

In The Matter of:

**Portsmouth Boating Center, Inc.**

1244 Bay Street  
Portsmouth, Virginia 23704,

Respondent.

:  
: FINAL ORDER  
:  
:  
: Proceeding to Assess Class II  
: Civil Penalties Under Section  
: 311(b)(6)(B) of the Clean Water Act, as  
: amended, 33 U.S.C. § 1321(b)(6)(B).  
:  
: Docket No. CWA-03-2011-0099  
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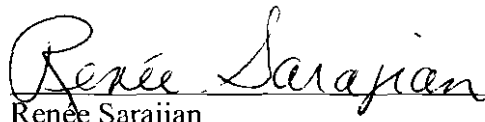
**FINAL ORDER**

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Nothing in the foregoing Consent Agreement relieves Respondent from otherwise complying with the applicable requirements set forth in the Clean Water Act.

Respondent is ordered to comply with the terms of the foregoing Consent Agreement.

Date: 12/21/11

  
\_\_\_\_\_  
Renee Sarajian  
Regional Judicial Officer/Presiding Officer