



REGION 3
PHILADELPHIA, PA 19103

FILED
Mar 08, 2024
2:45 pm
U.S. EPA REGION 3
HEARING CLERK

In the Matter of:	:	
	:	
	:	
City of Petersburg	:	EPA Docket No. CWA-03-2024-0076DN
135 North Union Street	:	
Petersburg, Virginia 23803	:	
	:	
Respondent	:	Administrative Order on Consent
	:	Pursuant to 33 U.S.C. § 1319(a)
	:	
	:	
City of Petersburg, VA	:	
Municipal Separate Storm	:	
Sewer System	:	
	:	
Facility	:	
	:	
	:	

I. STATUTORY AUTHORITY AND JURISDICTION

1. The United States Environmental Protection Agency (“EPA”) makes the following findings of fact and conclusions of law, below, and issues this Administrative Order on Consent (“Order”) pursuant to the authority vested in the EPA Administrator under Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). The Administrator delegated this authority to the Regional Administrator of EPA Region 3, who further delegated it to the Director, Enforcement & Compliance Assurance Division, EPA Region 3.
2. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available, the Administrator finds that any person is in violation of Section 301 of the Act, 33 U.S.C. § 1311, or any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, the Administrator shall issue an order requiring such person to comply with such section or requirement.
3. EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and

2 above.

4. The City of Petersburg, Respondent, has agreed to the issuance of this Order.
5. EPA has consulted with the Virginia Department of Environmental Quality (“VADEQ”) regarding this action and, subsequent to the Effective Date, EPA will provide a copy of this fully executed Order to the appropriate VADEQ representative.

II. STATUTORY AND REGULATORY BACKGROUND

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States except in compliance with, *inter alia*, 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. 40 C.F.R. § 122.2 defines “the discharge of a pollutant” as: “a) any addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source,’ ... This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.”
8. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. Sections 122.2 and 122.26 provide that, with some exceptions not relevant here, stormwater discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
9. 40 C.F.R. § 122.26(b)(13) defines the term “Storm water” as “storm water runoff, snow melt runoff, and surface runoff and drainage.”
10. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA, or a state upon approval by EPA, may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States, to ensure compliance with the requirements of the CWA. The discharges are subject to specific terms and conditions, as prescribed in the permit. *See also* 33 U.S.C. § 1311.
11. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA authorized VADEQ to issue NPDES permits in the Commonwealth of Virginia on March 31, 1975.
12. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), with some exceptions not relevant here, small municipal separate storm sewer systems (“MS4”s) require a NPDES permit.
13. 40 C.F.R. § 122.26(b)(8)(i) defines the term “municipal separate storm sewer [system]”

or “MS4” as a system, inter alia, “[o]wned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.”

14. 40 C.F.R. § 122.26(b)(16) defines the term “small municipal separate storm sewer system” as “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough ... or other public body (created by or pursuant to State law) having jurisdiction over disposal of ... storm water...”; and “(ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems... .”
15. Under 40 C.F.R. § 122.34(a), “[f]or any permit issued to a regulated small MS4, the NPDES permitting authority must include permit terms and conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Terms and conditions that satisfy the requirements of this section must be expressed in clear, specific, and measurable terms. Such terms and conditions may include narrative, numeric, or other types of requirements (e.g., implementation of specific tasks or best management practices (BMPs), BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions).”
16. Pursuant to its authority under the CWA and the NPDES program approval, VADEQ authorized discharges from the small MS4 located in the City of Petersburg, VA, (the “MS4”), under Virginia Pollutant Discharge Elimination System (“VPDES”) General Permit for Discharges of Stormwater from Small MS4s, Permit No. VAR040013 (the “MS4 Permit”). The MS4 Permit was initially issued by VADEQ on October 29, 2018, and was effective from November 1, 2018, until October 31, 2023. The MS4 permit was reissued on November 1, 2023 and will expire on October 31, 2028.

III. GENERAL PROVISIONS

17. For the purpose of this proceeding only, Respondent admits each jurisdictional allegation set forth in this Order.
18. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this Order.
19. The provisions of this Order shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of the Respondent.

20. Respondent shall bear its own costs and attorney's fees in connection with this proceeding and associated with the implementation or enforcement of this Order, including any costs related to resolution of any dispute arising regarding this Order.
21. Issuance of this Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. EPA also reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Order, following the Effective Date, as defined below.
22. This Order does not constitute a waiver or modification of the terms or conditions of any permit issued to Respondent. Nothing in this Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Order does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.
23. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
24. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
25. 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 Order and to execute and legally bind the Respondent.
26. By signing this Order, Respondent acknowledges that this Order may be available to the public and represents that, to the best of Respondent's knowledge and belief, this Order does not contain any confidential business information or personally identifiable information from Respondent.
27. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission, true, accurate, and complete

and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA, regarding matters relevant to this Order, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

28. Notwithstanding any other provisions of this AOC, no action or decision by EPA, including, without limitation, decisions of the Chief, Water Branch, Enforcement & Compliance Assurance Division ("ECAD"), or Director, ECAD, EPA, Region 3, shall constitute a final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel either, or both, Respondent's compliance with, or otherwise enforce, this AOC.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. Respondent is a "municipality" within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).
30. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
31. At all times relevant herein, upon information and belief, Respondent has owned or operated, and continues to own and operate, a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains), i.e., the MS4, that discharges to waters of the United States.
32. At all times relevant herein, upon information and belief, Respondent owned or operated, and continues to own or operate, the MS4, which meets the definition of: a) "municipal separate storm sewer"; and b) a "municipal separate storm sewer system" or c) "MS4"; and, d) "small municipal separate storm sewer system" or e) "small MS4", as those terms are defined at 40 C.F.R. § 122.26(b)(8), (16), (17), (18) and (19).
33. At all times, relevant to this Order, the Respondent has discharged stormwater into the MS4, which discharges into the Appomattox River.
34. The Appomattox River is a "water of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

35. On July 19th and July 22nd, 2022, representatives from EPA, Region 3 conducted a site visit and inspection of the Respondent's Post-Construction Stormwater Management ("PCSWM") facilities (the "July 2022 Inspection"). By email dated September 12, 2022, EPA issued an Inspection Report, dated September 8, 2022, (the "MS4 Inspection Report") to the Respondent.
36. On June 13, 2023, EPA sent a Notice of Potential Violations and Opportunity to Confer letter ("NOPVOC letter") to the Respondent, summarizing certain alleged violations of the CWA and the MS4 Permit observed during the July 2022 Inspection.

COUNT 1

Failure to Timely Submit Annual Reports

37. The allegations in the preceding paragraphs are incorporated by reference.
38. Subsection D(1) of the MS4 Permit requires that Respondent "submit an annual report to the department no later than October 1 of each year in a format as specified by the department. The report shall cover the previous year from July 1 to June 30."
39. Respondent was required to submit annual reports covering the periods from: a) July 1, 2019 through June 30, 2020, and b) July 1, 2020, through June 30, 2021, to VADEQ no later than October 1, 2020, and October 1, 2021, respectively.
40. Respondent did not certify or submit the before referenced annual reports to VADEQ until August 31, 2022.
41. By failing to submit timely annual reports, Respondent violated subsection (D)(1) of the MS4 Permit, issued under Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311.

COUNT 2

Failure to Ensure Adequate Operation and Maintenance of all Post-Construction Stormwater Management BMPS

42. The allegations in the preceding paragraphs are incorporated herein by reference.
43. Subsection (E)(5) of the MS4 Permit provides that the Respondent shall: "(1) Implement an inspection and enforcement program for stormwater management facilities not owned by the [Respondent] (i.e., privately owned) that includes: ... (b) Adequate long-term operation and maintenance by the owner of the stormwater management facility by requiring the owner to develop and record a maintenance agreement, including an inspection schedule to the extent allowable under state or local law or other legal mechanism...."

44. During the July 2022 Inspections, EPA inspectors observed several PCSWM facilities at Bon Secours Medical Center and Hospital Road where swales, inlets or outlets were partially or completely blocked by sediment or vegetation.
45. Deficient maintenance at the Bon Secours Medical Center and Hospital Road PCSWM facilities demonstrate that the Respondent failed to implement an inspection and enforcement program for PCSWM facilities not owned by the Respondent as prescribed under subsection (E)(5) of the MS4 Permit.
46. In failing to implement an inspection and enforcement program for PCSWM facilities not owned by the Respondent, Respondent violated subsection (E)(5) of the MS4 Permit, issued under Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311.

COUNT 3

Failure to Maintain Accurate Information on Privately Owned PCSWM Facilities

47. The allegations in the preceding paragraphs are incorporated herein by reference.
48. Subsection (E)(5) of the MS4 Permit states that the Respondent shall “maintain an electronic database or spreadsheet of all known [Respondent]-owned or [Respondent]-operated and privately owned stormwater management facilities that discharge into the MS4....A database shall include the following information as applicable: (1) The stormwater management facility or BMP type; (2) The stormwater management facility or BMPs (sic) locations as latitude and longitude; (3) The acres treated by the stormwater management facility or BMP, including total acres, pervious acres, and impervious acres; (4) The date the facility was brought online....”
49. During the July 2022 Inspection, EPA inspectors observed that the PCSWM design plans and location for the Boars Head Facility recorded by the Respondent in its electronic PCSWM database did not appear to match the as-built design or location of the PCSWM facility encountered onsite at the Boars Head Facility.
50. By email dated August 4, 2023 and in a follow-up meeting occurring on January 31, 2024, Respondent confirmed that construction of the Boars Head Facility was not approved by the Respondent and that development of the PCSWM facility did not occur. Accordingly, initial information on the design and location of the Facility recorded in the PCSWM database and provided to EPA was not accurate.
51. Respondent violated subsection (E)(5) of the MS4 Permit, issued under Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311, by failing to maintain accurate information regarding the Boars Head Facility.

COUNT 4

Failure to Implement a High Priority Facility Site Specific Stormwater Pollution Prevention Plan

52. The allegations in the preceding paragraphs are incorporated herein by reference.
53. Subsection E(6)(c) of the MS4 Permit provides that “[w]ithin 12 months of state permit coverage, the [Respondent] shall identify which of the high- priority facilities have a high potential of discharging pollutants. The [Respondent] shall maintain and implement a site specific stormwater pollution prevention plan (SWPPP) for each facility identified....”
54. Pursuant to subsection E(6)(c) of the MS4 Permit, Respondent maintains a SWPPP for a Public Utilities Yard, one of Respondent’s high-priority facilities, which requires that the Respondent “... not leave spill/leak without cleaning it up.... [c]over the spill with absorbent material such as kitty litter, saw dust, or absorbent pads [and]....[s]weep up granules and dispose of properly.”
55. During the July 2022 Inspection, EPA inspectors observed that the Respondent failed to address areas in the Public Utilities Yard where spills or leaks had occurred and failed to remove absorbent materials covering areas where past spills or leaks had occurred in the Respondent’s Public Utilities Yard.
56. By neglecting to implement sections of Respondent’s Public Utilities Yard SWPPP, Respondent violated subsection (E)(6)(c) of the MS4 Permit, issued under Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311.

V. ORDER

Therefore, Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to conduct the following activities:

57. The Respondent shall take all actions necessary to comply with the Clean Water Act, including, but not limited to, complying with all requirements of the MS4 Permit, along with any subsequent permit or permit modifications.
58. Respondent shall continue to submit an annual report to VADEQ no later than October 1 of each year in accordance with subsection D(1) of the MS4 Permit.
59. Respondent shall continue to implement all high priority facility SWPPPs in accordance with subsection E(6)(c) of the MS4 Permit and the specific terms of each individual SWPPP.
60. Respondent shall continue addressing deficient maintenance at the Bon Secours Medical Center and Hospital Road PCSWM facilities through corrective actions with the

facilities' owners and use of private contractors and municipal personnel to implement requirements in Subsection (E)(5) of the MS4 Permit.

- 61. Respondent shall ensure that each PCSWM BMP identified in Respondent's PCSWM BMP Inventory is inspected at a frequency consistent with subsection (E)(5) of the MS4 Permit and that the findings of such inspections are appropriately documented.
- 62. For two years from the Effective Date of this Order, Respondent shall submit to EPA on a quarterly basis the documented findings of Respondent's PCSWM BMP Inventory inspections referenced in Paragraph 61 along with all enforcement and monitoring actions taken. The first submission shall be due by ninety (90) calendar days after the Effective Date of this Order, and subsequent submissions shall be due by the final calendar day of every third calendar month thereafter. Each submission should include the name and location of all PCSWM BMPs, the most recent inspection for each PCSWM BMP, the findings of each recent PCSWM BMP inspection, the corrective actions required (if any) following recent inspections, and the implementation date of any corrective and/or enforcement actions.
- 63. Respondent shall remove the Boars Head Facility from the electronic PCSWM database due to the absence of any developed PCSWM facility.
- 64. Respondent shall update the City's PCSWM database to include the Boars Head Facility in accordance with Subsection (E)(5) of the MS4 Permit should development of the proposed PCSWM facility occur.

VI. PROCEDURES FOR SUBMISSIONS

- 65. All documents required to be submitted by this Order and any Request for Termination shall be accompanied by a certification signed by a responsible officer, as defined in 40 C.F.R. § 122.22(a), 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.

Signature _____

Printed Name _____

Title _____

Date _____

66. Any submission or communication relating to this Order shall be submitted (via electronic transmission) to:

Peter Gold (3ED32)
Enforcement and Compliance Assurance Division
U.S. EPA, Region 3
Philadelphia, PA 19103
gold.peter@epa.gov

and

Elliott Adler
Assistant Regional Counsel (3RC40)
U.S. EPA, Region 3
Philadelphia, PA 19103
adler.elliott@epa.gov
R3_ORC_mailbox@epa.gov

67. For each submission required pursuant to this Order, EPA will review the submission. If EPA comments on a submission, Respondent agrees to respond in writing via email within 30 calendar days.
68. Respondent may assert a business confidentiality claim covering part or all of the information which this Order requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. Information which is effluent data or a standard or limitation is not eligible for confidential treatment pursuant to 40 C.F.R. § 2.302(e). If Respondent does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent.

VII. CERTIFICATION OF COMPLIANCE AND TERMINATION

69. Upon Respondent's determination that Respondent has completed all tasks required pursuant to this Order and no earlier than twenty-four (24) calendar months following the Effective Date of this Order, Respondent shall submit to EPA a Certification of Compliance and Request for Termination of this Order. Such certification and request shall include:
- a. a certification that Respondent has maintained compliance with this Order for the term of this Order; and

- b. all necessary documentation, including photo documentation as appropriate, to support a finding that Respondent has complied with Section V of this Order.
70. If, following review of any Certification of Compliance and Request for Termination of this Order, the EPA determines that any requirement has not been completed and implemented in accordance with this Order, the EPA will notify Respondent in writing, provide a written summary of deficiencies, and require Respondent to modify its actions as appropriate to correct such deficiencies. If so required, EPA may also require Respondent to submit a revised Certification of Compliance and Request for Termination of this Order.
71. If, following review of any Certification of Compliance and Request for Termination of this Order, EPA agrees that Respondent has adequately complied with all requirements of this Order, then EPA may, in its unreviewable discretion, provide written notification of termination of this Order.
72. EPA, at all times, reserves the right to unilaterally terminate this Order in its unreviewable discretion.
73. EPA shall provide Respondent with written notification of termination of this Order.

VIII. ORDER MODIFICATIONS

74. Any request to modify the terms of, or parties to, this Order shall be submitted, in writing, by Respondent to EPA and shall be subject to review and approval by EPA, in its sole and unreviewable discretion. Respondent's submission of a written request for modification of this Order shall not relieve Respondent of any obligation under this Order and shall have no effect on EPA's statutory or regulatory authority to enforce the terms of this Order, in its sole and unreviewable discretion.

IX. EFFECTIVE DATE

75. This Order is effective after receipt by Respondent, or Respondent's counsel, of a fully executed copy of this Order.

SO ORDERED:

**KAREN
MELVIN**

Digitally signed by
KAREN MELVIN
Date: 2024.03.01
11:59:42 -05'00'


Karen Melvin

[Digitally signed and dated]

Director, Enforcement and Compliance Assurance Division

U.S. EPA Region 3

AGREED TO FOR THE RESPONDENT



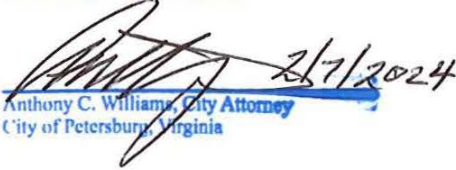
Name: John M. Altman, Jr.,
Title: City Manager
City of Petersburg



Name: Darryl Walker
Title: Stormwater Manager
City of Petersburg



APPROVED AS TO FORM:



Anthony C. Williams, City Attorney
City of Petersburg, Virginia



REGION 3

PHILADELPHIA, PA 19103

In the Matter of:	:	
	:	
City of Petersburg	:	EPA Docket No. CWA-03-2024-0076DN
135 North Union Street	:	
Petersburg, Virginia 23803	:	
	:	
Respondent	:	Administrative Order on Consent
	:	Pursuant to 33 U.S.C. § 1319(a)
	:	
	:	
City of Petersburg, VA	:	
Municipal Separate Storm	:	
Sewer System	:	
	:	
Facility	:	
	:	
	:	
	:	
	:	
	:	
	:	

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order on Consent was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the Administrative Order on Consent. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing Administrative Order on Consent to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email and UPS to:

John M. Altman, Jr., City Manager
CITY OF PETERSBURG, VIRGINIA
maltman@petersburg-va.org
135 N. Union Street
Petersburg, VA 23803

Anthony C. Williams, City Attorney
CITY OF PETERSBURG, VIRGINIA
awilliams@petersburg-va.org
135 N. Union Street
Petersburg, VA 23803

Darryl Walker, Stormwater Manager
CITY OF PETERSBURG, VIRGINIA
dwalker@petersburg-va.org
144 N. Sycamore St.
Petersburg, VA 23803

Copies served via email to:

Elliott Adler
Assistant Regional Counsel
U.S. EPA, Region 3
adler.elliott@epa.gov

Peter Gold
Environmental Scientist
U.S. EPA, Region 3
gold.peter@epa.gov

BEVIN ESPOSITO Digitally signed by BEVIN ESPOSITO
Date: 2024.03.08 14:47:37 -05'00'

[Digital Signature and Date]
Regional Hearing Clerk, 3RC00
U.S. Environmental Protection Agency,
Region 3