



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

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Michael Costello  
Mr. Ronald Carter  
d/b/a Carter and Costello Tree Professionals  
3724 West Neck Road  
Virginia Beach, VA 23456-3821

Re: Notice of Proposed Assessment of a Civil Penalty  
EPA Docket No. CWA-03-2006-0104

Dear Messrs. Costello and Carter:

Enclosed please find an Administrative Complaint and Notice of Opportunity to Request a Hearing ("Complaint") filed against Carter and Costello Tree Professionals ("Carter and Costello" or "Respondents") under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. Section 1319(g). The Complaint alleges that Carter and Costello have violated Section 308 of the Act. The violations alleged by EPA are specifically set out in Section II of the Complaint.

Unless you elect to resolve the proceeding by paying the penalty proposed in the Complaint, an Answer must be filed within thirty (30) days of receipt of the Complaint in accordance with 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. § 22, a copy of which is enclosed. The Answer must respond specifically to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice with specific answers within the thirty (30) days will constitute an admission of the allegations made. Failure to Answer may result in the entry of a Default Order imposing the proposed penalties without further proceedings.

You have the right to request a hearing to contest any matter set forth in the Complaint. Such request must be included with your Answer to this Complaint. Whether or not you request a hearing, you may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in your Answer or you may contact the attorney assigned to this case:

Pamela J. Lazos  
Sr. Asst. Regional Counsel (3RC20)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
215/814-2658

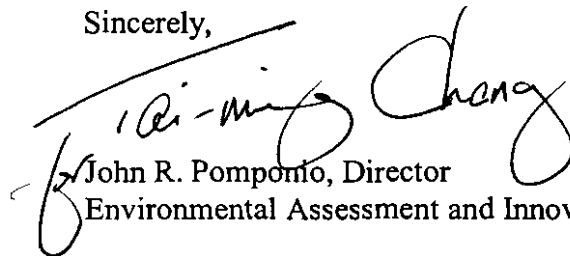
*Customer Service Hotline: 1-800-438-2474*

Please note that requesting a settlement conference does not affect in any way the obligation to file an answer within thirty (30) days.

In addition, your company may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against your company under Federal, State or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company is subject to it.

To the extent that Carter and Costello may be a "small business" under the Small Business Regulatory Enforcement and Fairness Act (SBREFA), please see the information sheet included in this package. That sheet provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or the enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Pomponio", is written over a horizontal line. The signature is cursive and somewhat stylized.

John R. Pomponio, Director  
Environmental Assessment and Innovation Division

Enclosure

cc: Michael Dowd, VADEQ, Central Office  
Catherine Harold, VADEQ, WPP  
Robert J. Hume, US Army Corps of Engineers

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

1650 Arch Street  
Philadelphia, Pennsylvania 19103

In The Matter of	)	Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)
Mr. Michael Costello	)	
Mr. Ronald Carter	)	EPA Docket No. CWA-03-2006-0104
d/b/a Carter and Costello Tree	)	
Professionals	)	
3724 West Neck Road	)	
Virginia Beach, VA 23456-3821	)	<b>ADMINISTRATIVE COMPLAINT</b>
	)	<b>and NOTICE OF OPPORTUNITY</b>
Respondents	)	<b>TO REQUEST HEARING</b>
	)	

**I. STATUTORY AUTHORITY**

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(A) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g)(2)(A). 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 Environmental Assessment and Innovation Division ("Complainant") pursuant to Delegation No. 2-13 (8/26/02).
2. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and in accordance with the enclosed *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22, Complainant hereby requests that the Regional Administrator or his delegatee assess a civil penalty of ten thousand dollars (\$10,000.00) against Carter and Costello Tree Professionals ("Respondents" or "Carter and Costello") for violations of the Clean Water Act. Pursuant to 40 C.F.R. § 22.14(a)(6), Respondents are hereby notified that the procedures set forth at 40 C.F.R. Subpart I (40 C.F.R. § 22.50-.52) apply to this proceeding.

**II. ALLEGATIONS**

3. Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), authorizes EPA to, among other things, require owners and/or operators of point sources to make such reports and provide such information as the Administrator (or his appropriate delegatee) shall

reasonably require in order to carry out the requirements of the Clean Water Act, including determining whether such person is in violation of the Act.

4. Respondents are "persons" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
5. Property identified as 1315-1317 Mill Landing Road, Virginia Beach, Virginia, GPIN# 23197926290000 (the "Site") contains wetlands which constitute "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2, and 40 C.F.R. § 122.2.
6. Upon information and belief, Respondents used equipment to discharge fill material into wetlands on the Site.
7. The equipment referenced in paragraph 6, above, which discharged fill material to "waters of the United States" constitutes a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
8. Respondents are owners and/or operators of a point source.
9. On August 5, 2005, Complainant sent a Section 308 Demand for Information to Respondents requesting information about work performed at the Site ("August 5 Demand for Information"). The August 5 Demand for Information required that Respondents reply to the questions therein within fourteen (14) days of the date of the letter. The August 5 Demand for Information is attached hereto as Exhibit "A".
10. Service of the August 5 Demand for Information on Respondents was not completed because Respondents did not accept delivery and the letter was returned by the post office as unclaimed. A copy of the unclaimed receipt is attached hereto as Exhibit "B."
11. On August 22, 2005, Complainant resent the August 5 Demand for Information via Federal Express. A copy of the FedEx airbill is attached hereto as Exhibit "C".
12. On August 23, 2005, FedEx left the package at the front door. A copy of the tracking results are attached hereto as Exhibit "D".
13. As no response was received, on September 13, 2005, Ms. Carol Petrow, US EPA Region III, spoke with Respondent Costello who advised Ms. Petrow that their offices had relocated. By cover letter dated September 12, 2005, Ms. Petrow resent a copy of the August 5 Demand for Information via certified mail. The September 12 Letter gave

Respondents ten (10) days within which to reply to the original August 5 Demand for Information. A copy of the September 12 Letter is attached hereto as Exhibit "E".

14. Respondent Costello signed the green card for the September 12 Letter, thereby completing service of the August 5 Demand for Information Letter. A copy of the signed green card is attached hereto as Exhibit "F".
15. On September 30, 2005 and November 4, 2005, Ms. Carol Petrow, a Biologist for EPA Region III and the person assigned to investigate the underlying violations at the Site identified in Paragraph 5 left messages on the answering machine for Respondents requesting a response to EPA's original August 5 Demand for Information.
16. On December 12, 2005 (December 12 Letter), Complainant sent a letter advising Respondents that Respondents' failure to respond immediately to the August 5 Demand for Information may result in an enforcement action against Respondents. A copy of the December 12 Letter is attached hereto as Exhibit "G".
17. The package mailed on December 12, 2005 containing the December 12 Letter was returned unclaimed. Ms. Petrow left a message on Respondents' answering machine regarding the need for an immediate response to the August 5 Demand for Information and asking Respondents to contact her regarding the outstanding request. To date, no response has been received.
18. Respondents' continued failure to respond to these demands for information is a violation of Section 308 of the Clean Water Act.
19. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19, violations of the Act, such as these, which occurred subsequent to January 30, 1997 subject the violator to civil penalties in an amount not to exceed \$11,000 per violation, up to a maximum of \$32,500.
20. EPA has consulted with the Commonwealth of Virginia regarding this action as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), by mailing a copy of this document to the appropriate State official and offering an opportunity for the State to consult further with EPA on the proposed penalty assessment.

### **III. PROPOSED CIVIL PENALTY**

21. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondents in the amount of ten thousand dollars (\$10,000). This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
22. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondents’ prior compliance history, Respondents’ ability to pay, the degree of culpability for the cited violations, and any economic benefit or savings to Respondents because of the violations, all factors identified at Section 309(g)(3) of the Clean Water Act, 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
23. The Regional Administrator may issue the Final Order Assessing Administrative Penalties after thirty (30) days and without further proceedings following Respondents’ receipt of this Complaint, unless Respondents, within that time, either pay the penalty or respond to the allegations in the Complaint and requests a hearing according to the terms of Section IV, below.

### **IV. QUICK RESOLUTION**

24. In accordance with 40 C.F.R. § 22.18(a) and 22.45, Respondents may resolve this proceeding ten (10) days after the close of the public comment period by paying the specific penalty proposed in this Complaint. If Respondents pay the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.
25. If Respondents wish to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondents may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that Respondents agree to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the

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

and a copy shall be provided to

Pamela Lazos (3RC20)  
Sr. Asst. Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

Within sixty (60) days of receiving the Complaint, Respondents shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondents to default pursuant to 40 C.F.R. § 22.17.

26. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), and after the completion of the public comment period described at 40 C.F.R. 22.45, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondents shall constitute a waiver of Respondents' rights to contest the allegations and to appeal the final order.
27. Payment of the penalty shall be made by sending a certified or cashier's check made payable to the Treasurer of the United States of America, in care of:

EPA Region III  
Regional Hearing Clerk  
P. O. Box 371099M  
Pittsburgh, PA 15251

Copies of the check shall be mailed at the same time payment is made to:

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

and to:

Pamela Lazos (3RC20)  
Sr. Asst. Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029.

**V. OPPORTUNITY TO REQUEST HEARING**

28. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondents may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
29. At the hearing, Respondents may contest any material fact contained in the Allegations listed in Section II, above, and the appropriateness of the penalty amount in Section III, above.
30. The procedures for hearings are set out in the *Consolidated Rules* 40 C.F.R. Part 22, a copy of which is enclosed. Pursuant to 40 C.F.R. § 22.14(a)(6), Respondents are hereby notified that the procedures set forth at 40 C.F.R. Subpart I (40 C.F.R. § 22.50-.52) apply to this proceeding.
31. Any Request for Hearing and Answer to this Complaint Respondents wish to file must be filed within thirty (30) days of receiving this Complaint with the following:

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

32. Copies of the Request for Hearing and the Answer along with other documents filed in this action should also be sent to the following:

Pamela Lazos  
Sr. Asst. Regional Counsel (3RC20)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Failure to file an Answer may result in entry of a default judgment against Respondents. Upon issuance of a default judgment, the civil penalty proposed herein shall become due



and payable. Respondents' failure to fully pay the entire penalty, assessed by the Default Order, by its due date may result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9).

In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

33. Any Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which the Respondents have any knowledge, or clearly state the Respondents have no knowledge as to particular factual allegations in the Complaint. The Answer shall also state the following:
- a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
  - b. the facts which Respondents dispute;
  - c. Respondents' basis for opposing the proposed relief; and
  - d. whether a hearing is requested.

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

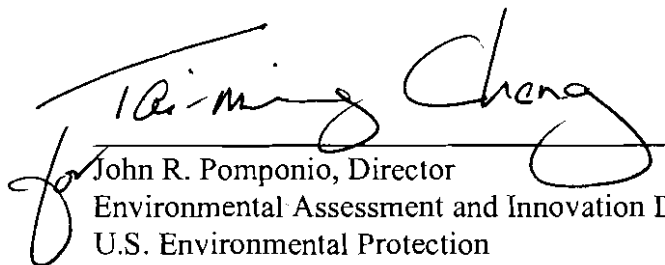
34. If Respondents request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), to be heard and to present evidence on the appropriateness of the penalty assessment. If Respondents do not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.
35. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondents' continuing obligation to

comply with the Clean Water Act, any other Federal or State laws, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

36. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Environmental Assessment and Innovation Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that 40 C.F.R. § 22.8, prohibits any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: \_\_\_\_\_

5/1/06

  
John R. Pomponio, Director  
Environmental Assessment and Innovation Division  
U.S. Environmental Protection  
Agency, Region III



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

AUG 05 2003

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Michael Costello  
Mr. Ronald Carter  
Carter & Costello Tree Professionals  
3829 North Landing Road  
Virginia Beach, VA 23456

Re: Demand for Information regarding Site off of Mill Landing Road

Dear Messrs. Carter and Costello:

This letter and the enclosed Demand For Information formally request information that will assist the United States Environmental Protection Agency Region III (EPA) in determining whether discharges of pollutants associated with activities at a Site off of Mill Landing Road in Virginia Beach, Virginia, are in compliance with the Federal Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1251, et seq.

Section 308 of the CWA, 33 U.S.C. § 1318, authorizes EPA to obtain information necessary to carry out the purposes of the CWA. The requirement to submit information upon request pursuant to Section 308 of the CWA is mandatory. Compliance with this requirement does not relieve you or your contractors or subcontractors of the duty to comply with any of the existing requirements under the CWA, nor does it operate to resolve any liability for violations of the CWA. Failure to provide the requested information is a violation of the CWA and may subject the violator to civil or criminal sanctions, including but not limited to, a civil penalty of up \$32,500 for each day of violation. Each day beyond the required deadline that you fail to provide a complete response to the request for information will constitute a separate violation. Please be further advised that the submission of false, fictitious or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. §1001. The information you provide may be used by EPA in administrative, civil or criminal proceedings.

Accordingly, pursuant to Section 308 of the CWA, you are directed to provide EPA with the information requested in the enclosure in accordance with the attached instructions within fourteen (14) days of receiving this Request for Information. The answers to this information request should be provided to:

Jeffrey D. Lapp (3EA30)  
Wetlands and Oceans Program Manager  
United States Environmental Protection Agency

Customer Service Hotline: 1-800-438-2474

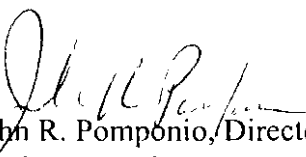
Exhibit "A"

Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Although the information requested must be submitted to EPA, you are entitled to assert a business confidentiality claim covering all or part of the information requested herein in the manner described in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the information requested herein when it is received by EPA, it may be made available to the public by EPA without further notice to you.

Thank you for your cooperation. Should you have any questions pertaining to this matter, please contact Ms. Carol Petrow at (215) 814-2789.

Sincerely,

  
John R. Pomponio, Director  
Environmental Assessment and Innovation Division

cc: Mr. Randy Steffey - US Army Corps of Engineers, Norfolk District  
Mr. John Brandt - Virginia Department of Environmental Quality  
Mr. Bert Parolari - Virginia Department of Environmental Quality

## **INFORMATION REQUEST**

This information is requested pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318. The Instructions and Definitions for responding to this Information Request are as follows:

### **A. Instructions & Definitions**

1. A separate narrative response must be made for each question set forth below, and for each subpart of each question.
2. Precede each answer with the corresponding number of the question and subpart to which it responds.
3. Provide all documents in your possession which relate to the responses given. With respect to each document, identify the date, author, addressee, current location, and custodian and identify the question or subpart to which it relates.
4. The term "document" refers to "writings", "recordings" and "photographs" as those terms are defined in Rule 1001 of the Federal Rules of Evidence. Documents should be produced as they are kept in the usual course of business.
5. If any question cannot be answered in full, answer to the extent possible along with an explanation of why the question cannot be answered in full. If your responses are qualified in any manner, please explain.
6. If information or documents not known or not available to you as of the date of submission of your response to this request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide a corrected response.
7. The terms "you" and "your" refers to Messrs. Michael Costello and Ronald Carter and/or Carter & Costello Tree Professionals.
8. The term "Site" refers to the property (GPIN#: 23197926290000) owned by Mr. Cody Bedford and/or Bedford Tree & Well Drilling Service and/or Bedford Services/A-1 Tree Services located off of Mill Landing Road in Virginia Beach, Virginia.

9. The term "work" refers to land disturbing activity, including but not limited to construction, clearing, grading, filling, or excavating.
10. The following certification must accompany each submission pursuant to this request and must be signed by Messrs. Michael Costello and Ronald Carter or a person authorized to respond on behalf of Messrs. Michael Costello and Ronald Carter and/or Carter & Costello Tree Professionals:

"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this 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."

11. All information shall be submitted within fourteen (14) days of receipt of this Request for Information to:

Jeffrey D. Lapp (3EA30)  
Wetlands & Oceans Program Manager  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

#### **B. Request for Information**

Messrs. Michael Costello and Ronald Carter and/or Carter & Costello Tree Professionals is hereby required, pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318, to submit the following information pursuant to the Instructions set forth above:

1. State the name, address, telephone number, and occupation of each person providing responses, or contributing information to the responses, to these demands for information.
2. Identify any businesses in which you have a share/interest. Submit a list of all partners, officers, directors, managers, and/or agents of said business. If a corporation, please give the corporation(s) date and state of incorporation, the name and address of its agent for service of process, its address and the nature of its business.
3. Have you or anyone acting on your behalf performed work at the Site or entered into any

contract or agreement to perform work at the Site? If so, identify the entities who are party to such contract(s); provide the name(s), address(es) and telephone numbers of the individual(s) or contractor(s) responsible for conducting the work. Provide details of any and all agreements, or parts thereof reduced to writing; describe any oral agreements relating to your response(s) to the first sentence of this paragraph.

4. State each instance when work was performed at the Site. State the start date, frequency and duration of such work. Provide an accurate account of the total amount of material transported to and disposed of at the Site. Identify when and where the material was disposed of onsite. State the reason any such work was undertaken. State who ordered, directed, supervised, and funded, and/or accomplished the work, or any part thereof. Provide the name(s), address(es) and telephone numbers of the individual(s) or entity (or entities) where the fill material originated. Provide documentation of all compensation paid for fill material brought to the Site.
5. Provide copies of all documents related to any and all work performed at the Site. Such documents should include but not be limited to plans, drawings, specifications, permits, agreements, contracts, receipts, invoices, checks, and other documents which relate to work at the Site or billing or compensation for work at the Site. State the amount of compensation paid for each instance of work performed at the Site. Provide documentation of all compensation paid for work performed at the Site.
6. State the name(s), address(es) and telephone number(s) of all persons, including paid consultants, with whom you discussed work at the Site.
7. Did you or anyone acting on your behalf have any communications, either verbally or in writing, with any representatives of the U.S. Army Corps of Engineers (Corps) or the Virginia Department of Environmental Quality (DEQ) with regard to work at the Site or compliance with the Clean Water Act? If so, state the name and telephone number of the person(s) with whom you communicated or with whom communications were made on your behalf. Provide copies of any and all written communications between you and anyone acting on your behalf and any representatives of the Corps or DEQ, including all notes, memoranda, transcriptions, permits or other documents memorializing any conversations by and between you and anyone acting on your behalf and any representatives of the Corps or DEQ.
8. At all times what were the intended uses of the Site? Provide any applications, plans, and any other documents that relate to the intended uses of the Site, including but not limited to tax maps, zoning requests, appraisals, plats or plots, permits and engineering drawings. Provide the dates of any and all meetings with the City of Virginia Beach regarding any such uses or intended uses. Provide copies of any records or notes of meetings with city

and/or county officials as well as a description of what was discussed at each meeting.

9. Provide copies of all documents, or parts thereof, that assess the extent of any wetlands at the Site, or that determine or investigate any parameter used by the U.S. Army Corps of Engineers to determine the existence of wetlands.
10. What is the area of land disturbance for each instance of work performed at the Site? Describe how you calculated the area of land disturbance and provide copies of all documents relating to your calculation.
11. Have erosion and sediment controls been implemented in connection with any work performed at the Site? Identify all persons responsible for construction and maintenance of erosion and sediment controls implemented at the Site. Describe the construction and maintenance (including sequencing) of all erosion, sediment and storm water controls implemented at the Site. Provide copies of all documents related to implementation of erosion and sediment controls at the Site, including but not limited to copies of all erosion, sediment and storm water control inspections and maintenance records and copies of all inspections.
12. Provide any and all information related to the work previously conducted on the Site by others including Mr. Jack Taylor. Identify the exact location(s) and size of cleared area(s), road(s) and/or any other potentially non-jurisdictional area(s) or disturbed area(s) that may have been present before the recent land disturbance activities were conducted.
13. State your reason for performing work on the Site without authorization from the US Army Corps of Engineers.
14. Identify any and all efforts by you or anyone acting on your behalf to comply with the Clean Water Act with respect to any work performed at the Site.





7004 1160 0007 0184 2575



*[Handwritten scribble]*

*Notified 8/8/08*

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Michael Costello  
 Mr. ~~Ronald~~ Carter  
 Carter & Costello Tree Professionals  
 3829 North Landing Road  
 Virginia Beach, VA 23456

2. Article Number  
(Transfer from service label)

7004 1160 0007 0184 2575

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

**X**

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

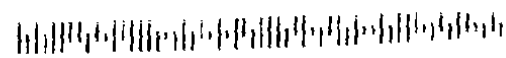
3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

*[Handwritten signature]*  
*8/8*

*Exhibit "B"*





FedEx Tracking Number

855 4722 0500

0715

**1 From** Please print and print hard.

Date 8-22-05 Sender's FedEx Account Number 1509-0196-0

Sender's Name Carol Perrow (3EA30) Phone (215) 814-2789

Company EPA

Address 1650 ARCH ST 12th Floor EAID  
Dept./Floor/Suite/Room

City PHILADELPHIA State PA ZIP 19103-2029

**2 Your Internal Billing Reference**  
Fit 24 characters and appear on invoice

**3 To**

Recipient's Name Michael Costello/Ronald Carter Phone (757) 646-3086

Company Carter and Costello Tree Professionals

Address 3829 North Landing Road  
We cannot deliver to P.O. boxes or P.O. ZIP codes

Address \_\_\_\_\_ Dept./Floor/Suite/Room \_\_\_\_\_

City Virginia Beach State VA ZIP 23456

**4a Express Package Service** Packages up to 150 lbs. Delivery commitment may be later in some areas.

FedEx Priority Overnight Next business morning

FedEx Standard Overnight Next business afternoon

FedEx First Overnight Earliest next business morning delivery to select locations

FedEx 2Day Second business day FedEx Envelope rate not available. Minimum charge \$10.00 per order.

FedEx Express Saver Third business day

**4b Express Freight Service** Packages over 150 lbs. Delivery commitment may be later in some areas.

FedEx 1Day Freight\* Next business day

FedEx 2Day Freight\* Second business day

FedEx 3Day Freight\* Third business day

\* Call for Confirmation

**5 Packaging** \* See back for details and FEED

FedEx Envelope\*

FedEx Pak\* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sure Pak

Other

**6 Special Handling** include email address in Section 3

**SATURDAY Delivery** Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 2Day Freight to select ZIP codes.

**HOLD Weekday at FedEx Location** NOT Available for FedEx First Overnight

**HOLD Saturday at FedEx Location** Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods?  
One box must be checked.

No  Yes AS per attached Shipper's Declaration

Yes Shipper's Declaration not required

Dry Ice Dry Ice, 9, UN 1845

Dangerous Goods (including Dry Ice) cannot be shipped in FedEx packaging

Cargo Aircraft Only

**7 Payment Bill to:** Enter FedEx Acct. No. or Credit Card No. below

Sender Acct. No. in Section 1 will be billed

Recipient  Third Party  Credit Card  Cash/Check

Total Packages	Total Weight	Total Declared Value*
		\$ 00

\*Our liability is limited to \$100 unless you declare a higher value. See back for details. FedEx Use Only

**8 Release Signature** Sign to authorize delivery without obtaining signature

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims

447

0268150367

05/2005 (Rev. 03/04) FedEx Tracking Form 1294 ©2005 FedEx Corporation IN U.S.A.

**Try online shipping at fedex.com**

By using this Airbill you agree to the service conditions on the back of this Airbill and in our current Service Guide, including terms that limit our liability.

**Questions? Visit our Web site at fedex.com**

or call 1.800.Go.FedEx® 800.463.3339.

Exhibit "C"



Search  Go!

**Package / Envelope Services**

Home / International Services

Freight Services

Expedited Services

Ship

**Track**

Manage My Account

International Tools

**IMPORTANT!**

For information on Hurricane Katrina, please click here.

Track Shipments

Printable Version Quick Help

**Detailed Results**

**Tracking number** 845547220500 **Service type** Priority Envelope  
**Signed for by** Signature release on file  
**Ship date** Aug 23, 2005  
**Delivery date** Aug 24, 2005 10:17 AM  
**Status** Delivered

**You can also track:**

- By TCN
- FedEx Trade Networks shipments
- By Email Track
- By FedEx Wireless Solutions

Date/Time	Activity	Location	Details
<b>Aug 24, 2005</b> 10:17 AM	<b>Delivered</b>		Left at front door. No signature required - release waiver on file
8:14 AM	On FedEx vehicle for delivery	VIRGINIA BEACH, VA	
7:51 AM	At dest sort facility	VIRGINIA BEACH, VA	
7:50 AM	At local FedEx facility	VIRGINIA BEACH, VA	
3:48 AM	Departed FedEx location	MEMPHIS, TN	
12:03 AM	Departed FedEx location	MEMPHIS, TN	
<b>Aug 23, 2005</b> 10:49 PM	Arrived at FedEx location	MEMPHIS, TN	
9:23 PM	Left origin	PHILADELPHIA, PA	
4:51 PM	Picked up	PHILADELPHIA, PA	

**Wrong Address?**  
Reduce future mistakes by using FedEx Address Checker.

**Shipping Freight?**  
FedEx has LTL, air freight, surface and air expedited freight, multi piece package deliveries, and ocean freight.

Signature proof | Email results | Track more shipments

Subscribe to tracking updates (optional)

Your Name:

Your Email Address:

Email address

Language

Exception updates

Delivery updates

<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>

Select format:  HTML  Text  Wireless

Add personal message:

Not available for Wireless or non-English characters.

*Exhibit "D"*



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

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Michael Costello  
Mr. Ronald Carter  
Carter & Costello Tree Professionals  
3724 West Neck Road  
Virginia Beach, VA 23456

*~ Sept. 12, 2005*

Re: Section 308 Demand for Information  
Property located Mill Landing Road, Virginia Beach

Dear Messrs. Costello and Carter;

On August 5, 2005, EPA forwarded to you a Section 308 Information Request which required that you provide information regarding the above-named property. Your response to this request was due within fourteen (14) days of receipt the letter. To date, we have received nothing from you. However, based on a conversation this morning between Carol Petrow and Mr. Costello, EPA is granting you additional time to respond.

This letter serves to advise you that a response to EPA's August 5, 2005 Section 308 Information Request is due in our office within ten (10) days of the date of this letter. Please be sure to submit with your response all supporting documentation including, but not limited to, orders, bills of lading, and invoices. Your failure to respond may result in, among other things, initiation of an enforcement action. Should EPA prevail in such an action, you face penalties for failure to comply up to \$32,500 a day.

Your anticipated cooperation in this matter is greatly appreciated. Should you have any questions, please contact Carol Petrow at (215) 814-2789.

Sincerely,

Jeffrey D. Lapp  
Wetlands and Oceans Program Manager

cc: Mr. Randy Steffey - U.S. Army Corps of Engineers, Norfolk District  
Mr. John Brandt - Virginia Department of Environmental Quality

*Exhibit E*

Mr. Bert Parolari - Virginia Department of Environmental Quality

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Mr. Michael Costello  
 Mr. Ronald Carter  
 Carter & Costello Tree Professionals  
 3724 West Neck Road  
 Virginia Beach, VA 23456

2. Article Number  
 (Transfer from service label)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 Agent  
 Addressee

B. Received by (Printed Name)  
 Michael Costello

C. Date of Delivery  
 7/12/05

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

7004 1160 0007 0184 3831

7004 1160 0007 0184 3831

**U.S. Postal Service™  
 CERTIFIED MAIL™ RECEIPT  
 (Domestic Mail Only; No Insurance Coverage Provided)**

For delivery information visit our website at [www.usps.com](http://www.usps.com)

Postage	\$	10 day letter 7/12/05 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Post		

Sent To  
 Mr. Michael Costello  
 Mr. Ronald Carter  
 Carter & Costello Tree Professionals  
 3724 West Neck Road  
 Virginia Beach, VA 23456

Exhibit "F"



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

DEC 12 2005

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Michael Costello  
Mr. Ronald Carter  
Carter & Costello Tree Professionals  
3724 West Neck Road  
Virginia Beach, VA 23456

Re: Section 308 Demand for Information  
Property located Mill Landing Road, Virginia Beach

Dear Messrs. Costello and Carter;

On August 5, 2005, EPA forwarded to you a Section 308 Information Request which required that you provide information regarding the above named property. Your response to this request was due within fourteen (14) days of receipt the letter. We did not receive your response by the deadline.

However, on September 12, 2005, based on a conversation between Mr. Costello and Carol Petrow, EPA issued a letter via Certified Mail granting you an additional ten (10) days to respond to EPA's August 5, 2005 Section 308 Information Request. At that time you were informed that your failure to respond may result in, among other things, initiation of an enforcement action. According to our records Mr. Costello signed for this letter acknowledging receipt on September 16, 2005.

Again, we did not receive your response by the deadline. Ms. Petrow attempted contacting you by telephone, leaving messages on several occasions. On September 30, 2005 we sent another copy of our previous letters of August 5, 2005 and September 12, 2005 via Federal Express to your office. To date, we have not received a response EPA's August 5, 2005 Section 308 Information Request nor have we been contacted by you.

This letter serves to advise you that a response to EPA's August 5, 2005 Section 308 Information Request is due in our office immediately upon receipt of this letter. Please be sure to submit with your response all supporting documentation including, but not limited to, orders, bills of lading, and invoices. Your failure to respond may result in, among other things, initiation

Exhibit "G"



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

David K. Paylor, Director  
Virginia Department of Environmental Quality  
P.O. Box 10009  
Richmond, VA 23240.

Re: Notice of Proposed Assessment of a Civil Penalty  
EPA Docket No. CWA-03-2006-0104

Dear Mr. Paylor:

Enclosed is a copy of an Administrative Complaint which Region III of the U.S. Environmental Protection Agency (EPA) has issued to Michael Costello and Ronald Carter, d/b/a Carter and Costello Tree Professionals ("Respondents"), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), for failure to respond to a request for information authorized under Section 308 of the Clean Water Act. With this Complaint, EPA proposes assessing a civil penalty in the amount of ten thousand dollars (\$10,000) against these Respondents.

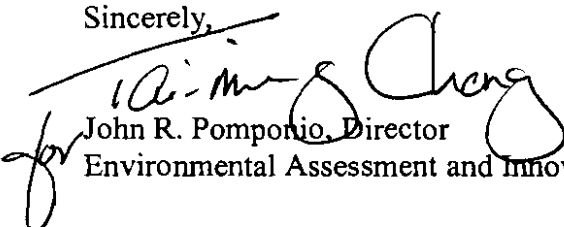
Since the violations occurred in Virginia, EPA is providing you with an opportunity to confer with EPA officials regarding the proposed assessment. You may request an in-person or telephone conference within thirty (30) days of receipt of this letter. To request a conference or to make any other inquiries, call or write to:

Pamela Lazos (3RC20)  
Sr. Asst. Regional Counsel  
U.S. Environmental Protection  
Agency--Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
215/814-2658

Jeff Lapp (3ES30)  
Wetlands and Oceans Program Manger  
U.S. Environmental Protection  
Agency--Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
215/814-2717

A copy of EPA procedures governing the assessment of administrative penalties is available upon request.

Sincerely,

  
John R. Pomponio, Director  
Environmental Assessment and Innovation Division

Enclosure