

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

2011 SEP 27 PM 4: 08  
REGIONAL HEARING CLERK  
EPA REGION III PHILA. PA

In the Matter of:

City of Newport, Virginia  
2400 Washington Avenue  
Newport News, VA 23607

Respondent

Proceeding to Assess Class II  
Administrative Penalty and Notice of  
Opportunity to Request Hearing Under  
Section 309(g) of the Clean Water Act

Docket No. CWA-03-2011-0162

**I. STATUTORY AUTHORITY**

1. Pursuant to Section 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director (Complainant), pursuant to Delegation No. 2-52-A.
2. This action is governed by 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; Final Rule," 40 C.F.R. Part 22 (hereinafter, Part 22 Procedural Rules), a copy of which is enclosed.

**II. FACTUAL AND LEGAL ALLEGATIONS**

3. The City of Newport, Virginia (Respondent) is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
4. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system (MS4) as that term is defined in 40 C.F.R. § 122.26(b)(8).
5. Respondent's MS4 is located within the geographic boundaries of City of Newport, Virginia.

6. The City of Newport News is located in Southeastern Virginia and encompasses a total area of 68 square miles. Newport is bordered by the City of Hampton, the James River, the Chesapeake Bay, and the Counties of York and James City. Stormwater from the County drains to “water 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; 40 C.F.R. § 122.2.
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.
8. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
9. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.
10. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
11. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned 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.” 40 C.F.R. § 122.26(b)(8)(i).
12. A NPDES permit is required for discharges from an “MS4” serving a population of 100,000 or more, Section 402(p)(2)(c) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
13. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Virginia Department of Environmental Quality (“VADEQ”) to issue NPDES permits on May 20, 1991. On December 30, 2004, EPA approved the Commonwealth of Virginia’s request to transfer the permitting program for construction and MS4 storm water discharges from VADEQ to the Virginia Department of Conservation and Recreation.

14. VADEQ issued to Respondent an NPDES MS4 Discharge Permit No. VA0088641 on April 10, 2001 (hereinafter the "MS4 Permit"). The MS4 Permit expired on April 10, 2006, and has been administratively extended, pending issuance of a new permit.
15. On June 14 and June 15, 2010, a compliance inspection team comprised of EPA and authorized representatives of EPA inspected Respondent's MS4 program.
16. The allegations of paragraphs 1 through 15 are re-alleged and incorporated herein for purposes of each count below.

### **III. FINDINGS OF VIOLATION**

#### **Count #1**

#### **Private Storm Water Management Facilities**

17. Part I.A.1.a (2) of the Permit requires the Respondent to adhere to and enforce all City storm water-related ordinances pertaining to development and redevelopment.
18. The Respondent's Stormwater Management ordinances Sec. 37.1-36(a); Sec. 37.1-36(b); Sec. 37.1-37(b);, Sec. 37.1-39(a); and Sec. 37.1-39.(c) requires post-construction stormwater management (SWM) at construction sites, in accordance with City standards, and that post-construction SWM structures be maintained by the owner of the structures.
19. Based upon investigation of the Respondent's MS4 program, EPA determined that the Respondent had not adhered to, and where applicable, not pursued corrective actions or enforcement against owners of SWM structural controls for their failure to perform long-term maintenance and repair of structural controls.
20. Respondent failed to comply with Part I.A.1.a (2) of the Permit by not adhering to, and where applicable, not enforcing all storm water related ordinances pertaining to development and redevelopment.

#### **Count #2**

#### **Chesapeake Bay Act Ordinance**

21. Permit Part I.A.1.d (1) requires the permittee to operate in accordance with, and continue enforcement of, City ordinances, including the Chesapeake Bay Preservation Act (CBA) Ordinance Sec. 37.1.51.
22. According to the documentation provided by Newport News, there were at least two occurrences in which ordinance violations occurred within the Resource Protection Area (RPA), on July 24, 2007, and May 8, 2008. No further details or documentation on enforcement of the violations was provided by the City regarding follow-up action or enforcement of the two occurrences.

23. During the investigation by EPA of Respondent's MS4 Program, EPA learned that the Respondent did not conduct periodic follow-up inspections of residential properties that are required to install vegetation in the RPA, or Resource Management Area (RMA). Under "Vegetative Maintenance Agreements" required pursuant to the CBA ordinance, vegetation must be installed to offset an increase in impervious space in the RPA and RMA. The purpose of such inspections would be to ensure that the vegetation has survived, or that the vegetation has not been removed.
24. Respondent failed to comply with Permit Part I.A.1.d by not operating in accordance with, and not pursuing enforcement actions against violations of the CBA Ordinance.

### **Count #3**

#### **Industrial and Commercial Facilities**

25. Part I.A.1.c of the permit states that the permittee must have a program to monitor and control pollutants in storm water discharges from ... hazardous waste treatment, storage and disposal facilities, and industrial facilities subject to Section 313 of the Emergency Planning & Community Right to Know Act (EPCRA), and facilities determined by the Respondent to be contributing substantial pollutant loadings to the MS4.
26. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, Respondent indicated that it does not have the authority to conduct inspection of industrial and commercial facilities. The Respondent has indicated that its Fire Department is utilized to conduct stormwater inspections for complying with Part I.A.1.c of the permit. However, the EPA inspection team observed that the Fire Department's inspection reports do not include a section devoted to stormwater issues.
27. Respondent failed to comply with Part I.A. of the Permit by not including controls necessary to effectively prohibit the unauthorized discharge of non-storm water into the MS4 and reduce the discharge of pollutants from the MS4 to the maximum extent practicable.
28. Further, Respondent failed to comply with Part I.A.1.c of the permit by not having "a program to monitor and control pollutants in storm water discharges" from hazardous waste treatment, storage and disposal facilities, and industrial facilities subject to Section 313 of the EPCRA, and facilities determined by the Respondent to contributing substantial pollutant loadings" to the MS4.

### **Count #4**

#### **Industrial and Commercial Facilities**

29. Pursuant to Part I.B.3 of the Permit, the Respondent shall ensure that "[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit."

30. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, the EPA inspection team noted during the inspection of "Pete's Used Auto Parts", numerous environmental concerns were identified by the EPA inspection team that were not noted on the inspection report from the Fire Department, including:
- Used oil drying material had not yet been cleaned up at multiple locations around the facility. Oil staining was also present around the facility.
  - Blue-green staining, indicating a spill, was located near the waste oil area.
  - Multiple drums, including open drums, and buckets containing product or other liquid materials were located around the facility. Some drums and buckets were located under a roofed area; however, many were not. One drum, which was not located under a roofed area, was actively leaking oil. Oil could be seen on top of the drum as well as on the grass and dirt area next to the drum. Oily staining was present on the side of the drum. Additionally, secondary containment was not present around the drums or buckets. Most drums were not labeled with their contents.
  - Oil staining and spillage had occurred around two large used oil tanks, outside of the secondary containment. The tanks were located outside, but under a roofed area.
  - Multiple engines were located on the ground around the wash rack area. Oil staining was present around the engines.
31. Without appropriate controls in place, the materials described in paragraph 30 will be transported to the MS4 when exposed to storm water.
32. Respondent failed to comply with Part I.B.3. of the Permit by failing to reduce the discharge of pollutants transported by storm water runoff from the MS4 to the maximum extent practicable, and by not effectively prohibiting non-stormwater discharges into the MS4.

**Count #5  
Municipal Yards**

33. Pursuant to Part I.B.3 of the Permit, the Respondent shall ensure that "[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit."
34. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, the EPA inspection team observed material management issues at the City Fleet Maintenance garage, the City Traffic Operations Facility, and the City Stockpile Area, including:
- A truck leaking oil was parked near a concrete drainage ditch. Oil staining could be seen at the entrance to the ditch.
  - Oil staining was present around the facility.
  - Rusty metal was located around the facility.
  - An uncovered dumpster was present on site.
  - Metal parts were scattered around the back of the facility.
  - An open paint drum, coated on the inside with paint was lying on its side outside.
  - A rusty spray paint can was located outside.

- Evidence of paint spills and paint spray were seen on vegetation and paved areas around the facility. Paint from a hose placed on a curb had spilled outside the curb. Paint spray was also present on vegetation outside of the wire fence behind the facility. Gaps were present between the concrete barricades. In one case, gravel had spilled through and accumulated behind the barricades.
  - An open dumpster containing trash was present on site.
  - Trash was strewn about the site. Piles of trash were located behind the barricades.
  - An oily sheen was present on mud behind the barricades.
35. Respondent failed to comply with Part I.B.3. of the Permit by failing to reduce pollutants discharged from the municipal separate storm sewer system to the maximum extent practicable.

**Count #6  
Construction Sites**

36. Part I.A.1.a (2) of the Permit requires the Respondent to adhere to and enforce all storm water related ordinances pertaining to development and redevelopment.
37. Permit Part I.A.1.d. states that the City shall "...continue implementation and maintenance of structural and nonstructural best management practices to *reduce pollutants* in storm water runoff from construction sites."
38. Pursuant to Part I.B.3 of the MS4 Permit, the Respondent shall ensure that "[a]ll pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit."
39. The Respondent's ordinance Sec. 37.1-21. - Definitions, defines "*Other wastes*" as materials that can adversely affect waters of the United States should they be discharged into same, including, but not limited to, garbage, refuse, lime, fertilizer, ashes, offal, tar, paint, solvents, petroleum products, antifreeze and chemicals.
40. The Respondent's ordinance Sec. 37.1-22. - Violations and penalties, states that it shall be a violation of this article to discharge, or cause or allow to be discharged, sewage, industrial wastes or other wastes into the storm sewer system, or any component thereof, or onto driveways, sidewalks, parking lots or other areas draining to the storm sewer system.
41. The Respondent's Storm Water Management Program, Section 12.0, requires compliance with the VA Erosion and Sediment Laws and Regulations.
42. During the June 14 and June 15, 2010 review of the Respondent's MS4 program, which included construction site inspection reports, the EPA inspection team determined that Respondent has not conducted all bi-weekly inspections and post-rain event inspections as required by 4VAC50-30 (State of Virginia Erosion and Sediment Control Regulations – Minimum Standards).

43. Based upon EPA's review of the Respondent's MS4 Management Program For Construction Sites, including requirements for erosion and sediment management plans, EPA determined that the Respondent has not enforced all storm water ordinances by not managing sources of pollutants (i.e. "*Other Wastes*") other than sediment at construction sites.
44. Based upon EPA's review of the Respondent's MS4 Management Program For Construction Sites, EPA determined that the Respondent has not continued implementation and maintenance of structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites; and has not ensured that "[a]ll pollutants, such as form release oils, vehicle and equipment related-fluids, curing compounds, that are discharged from the MS4 shall be reduced to the maximum extent practicable.
45. Respondent failed to comply with Part I.A.1.d. of the Permit by not conducting all bi-weekly inspections and post-rain event inspections as required by 4VAC50-30 (State of Virginia Erosion and Sediment Control Regulations – Minimum Standards).
46. Respondent failed to comply with Permit Part I.A.1.d.(2) of the Permit by not continuing implementation and maintenance of structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites.
47. Respondent failed to comply with Part I.B.3 of the Permit by not ensuring that "[a]ll pollutants (including "*Other Wastes*") discharged from the MS4 shall be reduced to the maximum extent practicable...as specified in Part I.A. of this permit."
48. Respondent failed to comply with Part I.A.1.a. (2) of the Permit by not adhering to and enforcing ordinance Sec. 37.1-22.

#### **IV. PROPOSED CIVIL PENALTY**

49. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), provides that any person who has violated any NPDES permit condition or limitation is liable for an administrative penalty not to exceed \$10,000 per day for each such violation, up to a total penalty amount of \$125,000.
50. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after March 15, 2004, is liable for an administrative penalty not to exceed \$11,000 per day for each such violation occurring after March 15, 2004 through January 11, 2009, up to a total penalty amount of \$177,500.

51. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each such violation occurring after January 12, 2009, up to a total penalty amount of \$177,500.
52. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Part 22 Procedural Rules, Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of one hundred and fifty five thousand dollars (\$155,000) for the violations alleged herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
53. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations and such other matters as justice may require, 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant or EPA 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.
54. EPA may issue a Final Order Assessing Administrative Penalties after a thirty (30) day comment period unless Respondent either responds to the allegations in the Complaint and requests a hearing according to the terms of Section V, below, or pays the civil penalty in accordance with Section VI herein (Quick Resolution).
55. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.
56. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act, any other Federal or State laws, and/or with any separate Compliance Order issued under Section 309 of the Act, 33 U.S.C. § 1319, for the violations alleged herein.

**V. ANSWER TO COMPLAINT AND  
OPPORTUNITY TO REQUEST HEARING**

57. Respondent must file an Answer to this Complaint; failure to file an Answer may result in entry of a Default Judgment against Respondent. Respondent's default constitutes a binding admission of all allegations made in the Complaint and waiver of Respondent's right to a Hearing under the CWA. The civil penalty proposed herein shall then become due and payable upon issuance of the Default Order.
58. Upon issuance of a Default Judgment, the civil penalty proposed herein shall become due and payable.
59. Respondent's failure to pay the entire penalty assessed by the Default Order by its due date will 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, a 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.
60. Any Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly and directly state that the Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also indicate the following:
  - a. Specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
  - b. Specific facts that Respondent disputes;
  - c. Respondent's basis for opposing the proposed penalty; and
  - d. Whether Respondent requests a hearing.
61. Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.
62. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
63. EPA is obligated, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to give members of the public notice of and an opportunity to comment on this proposed penalty assessment.

64. If Respondent requests a hearing on this proposed penalty assessment, members of the public who submitted timely comments on this proposed penalty assessment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to not only be notified of the hearing but also to be heard and to present evidence at the hearing on the appropriateness of this proposed penalty assessment.
65. If Respondent does 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.
66. Any hearing that Respondent requests will be held and conducted in accordance with the Part 22 Procedural Rules.
67. At such a hearing, Respondent may contest any material fact contained in the Factual and Legal Allegations listed in Section II above, the Findings of Violation listed in Section III, above, and the appropriateness of the amount of the proposed civil penalty in Section IV, above.
68. Any Answer to this Complaint, and any Request for Hearing, must be filed within thirty (30) days of receiving this Complaint with the following:

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

69. Copies of the Answer and any Request for Hearing, along with any and all other documents filed in this action, shall also be sent to the following:

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

70. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. The Answer and any subsequent documents filed in this action should be sent to:

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

## **VI. QUICK RESOLUTION**

71. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.
72. If Respondent pays the specific penalty proposed in this Complaint within forty (40) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.
73. If Respondent wishes 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), Respondent may file a written statement with the Regional Hearing Clerk within 40 days after receiving this Complaint stating that Respondent agrees 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.

- a. Such statement shall be filed with the following:

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

and a copy shall be provided to:

Andy Duchovnay (3RC20)  
Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

- b. If Respondent files such a written statement with the Regional Hearing Clerk within 40 days after receiving this Complaint, Respondent shall pay the full amount of the proposed penalty within 60 days of receiving the Complaint. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.
74. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.
75. Payment of the penalty shall be made by one of the following methods below:
- a. Payment by respondent shall reference Respondent's name and address, and the EPA Docket Number of the Consent Agreement and Final Order. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to Lydia Guy, Regional Hearing Clerk, and the case attorney.

- b. Payment by check to "United States Treasury"

If sent via first-class mail, to:

US EPA Region III  
Fines and Penalties  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, MO 63197-9000

If sent via UPS, Federal Express, or Overnight Mail, to:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

- c. Via wire transfer, sent to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Attn: "D 68010727 Environmental Protection Agency"

- d. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Finance Center Contacts:

1) Jesse White: 301-887-6548

2) John Schmid: 202-874-7026

3) REX (Remittance Express) 866-234-5681

76. At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

Regional Hearing Clerk (3RC00)

U.S. EPA, Region III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

and to:

Andy Duchovnay (3RC20)

Assistant Regional Counsel

U.S. EPA, Region III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029.

77. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment of the penalty by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

## **VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

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 Water Protection 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 the Part 22 Procedural Rules prohibit 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: 9/27/11



Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection  
Agency, Region III

**CERTIFICATE OF SERVICE**

I hereby certify that on the date listed below, I filed the original attached Administrative Penalty Complaint and Notice of Opportunity to Request Hearing with the Regional Hearing Clerk, and , directed that a copy thereof be sent to the following person via certified mail, return receipt requested:

The Honorable McKinley L. Price, Mayor  
2400 Washington Avenue  
Newport News, VA 23607

Date: 9/27/11

  
\_\_\_\_\_  
Andy Duchovnay  
Assistant Regional Counsel