

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

In the Matter of:

Henrico County, Virginia
4301 East Parham Road
Henrico, Virginia 23228

Respondent

**Proceeding to Assess Class II
Administrative Penalty Under
Section 309(g) of the Clean Water Act**

Docket No. CWA-03-2011-0139

**ADMINISTRATIVE PENALTY COMPLAINT
AND NOTICE OF OPPORTUNITY TO
REQUEST HEARING**

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, Consolidated Rules), a copy of which is enclosed.

II. FACTUAL AND LEGAL ALLEGATIONS

3. Henrico County, 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 Henrico County.

6. The County of Henrico is located in Central Virginia and encompasses a total area of 244 square miles. Henrico County is bordered by the James River, the Tuckahoe Creek, and the Chickahominy River. 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 a Phase I MS4 serving a population of 250,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p)(2)(C); 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 stormwater discharges from VADEQ to the Virginia Department of Conservation and Recreation.
14. The Virginia Department of Environmental Quality (VADEQ) issued to Respondent an NPDES MS4 Discharge Permit No. VA0088617 on March 18, 2003, which permit was

modified on March 5, 2004 (hereinafter the "MS4 Permit"). The MS4 Permit expired on March 17, 2008, and has been administratively extended to the present.

15. On April 19 and 20, 2010, a compliance inspection team comprised of EPA staff and authorized representatives of EPA inspected Respondent's MS4 program (Inspection).

III. FINDINGS OF VIOLATION

Illicit Discharge Detection and Elimination

16. Pursuant to Part I.A.1.b. of the Permit, the Respondent's Storm Water Management Program shall contain a "program and schedule to detect and remove, or to notify a discharger to apply for a separate VPDES permit for, unauthorized non-storm water discharges and/or improper disposal into the municipal separate storm sewer system.
17. Pursuant to Part I.A.1.b.(2) of the Permit, "[t]he permittee shall continue the implementation of the current field screening procedures for identifying unauthorized non-storm water discharges and improper disposal into the storm sewer system. Priority shall be placed on segments of the storm sewer system which receive drainage from industrial and commercial sources."
18. Pursuant to Part I.B.5. of the Permit, "[t]o the extent practicable, subject to annual appropriations, the permittee shall provide adequate finances, staff, equipment, and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A. of this permit."
19. At the time of the inspection, Henrico County's inspector stated that in 2007, Henrico County inspected approximately 1200 inlets and outfalls. In 2008, the number of inspections dropped to 400 and in 2009, the County inspected 150 inlets and outfalls. There are over 1000 outfalls in Henrico County. Currently, Henrico County has discontinued the inlet inspections and only inspects a limited number of outfalls.
20. Respondent failed to comply with Parts I.A.1.b.(2) and I.B.5. of the Permit by discontinuing implementation of the field screening procedures in place at the time the Permit was issued, and by failing to commit adequate resources to the inspections. Respondent's actions resulted in an inability to inspect a sufficient number of inlets and outfalls in the County in violation of its Permit.
21. Pursuant to Part I.A.3. of the Permit (Annual Report), and as part of the Respondent's annual reporting requirements, Respondent shall submit "a summary of maintenance activities performed on structural BMPs in accordance with Part I.A.1.a.(1) (which requires the permittee to continue with the existing maintenance program for its structural controls), is required to be submitted to VADEQ in Respondent's annual report. See Part I.A.3.a.(1).

22. On an annual basis, Henrico County's Dry Weather Screening Inspector generates a list of all outfalls that require cleaning. The data base is marked "TRUE," and an email is sent to the Road Maintenance Division to enter a cleaning request into their work order system. Once the Road Maintenance Division completes the work, the data base entry is changed from "Needs Cleaning" to "False." At the time of inspection, Complainant discovered that Respondent failed to document follow-up actions taken after potential illicit discharges were found. Specifically, there was no tracking information regarding routine maintenance and no procedure to describe work performed at a particular outfall other than to change the heading from "needs cleaning" to "false".
23. Respondent failed to comply with Parts I.A.3. (annual reporting), and I.B.5 (implementation of the Storm Water Management Program), of the Permit, by failing to provide a summary of maintenance activities on its structural BMPs and failing to provide adequate support capabilities to implement all parts of the Storm Water Management Program, which includes tracking of outfall inspections, in violation of the Permit.
24. Pursuant to Part I.A.1.b.(3), "[w]here necessary, the permittee shall conduct on-site investigation of potential sources of unauthorized non-storm water discharges. The permittee shall act as expeditiously as possible to require a discharger to eliminate unauthorized non-storm water discharges except discharges identified in Part 1.B.4." of the Permit. If a VPDES permit is needed, but not obtained by the discharger, the permittee shall take actions to implement the applicable provisions of the County Code. The permittee shall require immediate cessation of improper disposal practices upon identification of responsible parties.
25. Upon review of the Respondent's outfall inspection database, the EPA inspection team noted several instances that a potential illicit discharge was identified during an inspection and no information was logged into the inspection database. In addition, a comparison of the inspection database entries with corresponding paper records found inconsistencies and missing information.
26. Respondent failed to comply with Parts I.A.1.b.(3), I.A.1.b(2) and I.B.5. of the Permit by failing to properly document potential illicit discharge investigations; failing to implement current field screening procedures; and failing to provide adequate support capabilities to implement all parts of the Storm Water Management Program in violation of the Permit.
27. A review of the Respondent's inspection database identified several entries indicating that Henrico County inspectors could not confirm the location of outfalls that the County cannot visually locate. In addition, the Respondent has no protocol for confirming outfalls that cannot be visually found.
28. Respondent failed to comply with Parts I.A.1.b.(2) and I.B.5. of the Permit by failing to implement current field screening procedures, and failing to provide adequate support capabilities to implement all parts of the Storm Water Management Program in violation of the Permit.

Industrial and Commercial Facilities

29. Pursuant to Part I.B.4. of the Permit, “[t]he permittee shall operate pursuant to the established legal authority described in 40 C.F.R. 122.26(d)(2)(i), or shall obtain legal authority necessary to control discharges to and from those portions of the municipal separate storm sewer system over which it has jurisdiction.” In addition, pursuant to A.1.b.(1), “[t]he permittee shall implement and enforce all provisions of the County’s Storm Sewer System Discharge Ordinance which prohibits unauthorized non-storm water discharges to the storm sewer system.”
30. Section III of the Respondent’s Storm Water Management Master Plan states “[t]he legal authority to conduct inspections and require compliance is based on the fact they drain to the County’s storm sewer system for which the County holds a NPDES permit or the industry has a SIC code that is required to have a NPDES industrial permit with a Pollution Prevention Plan.”
31. Chapter 10 – Environment, Article VII., Section 10-198 (a) of the Henrico County Code states: “[t]he director shall have authority to carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and non-compliance with the condition of the county’s VPDES permit, including the prohibition of illicit discharges to the storm sewer system. The director may monitor storm water outfalls or other components of the storm sewer system as may be appropriate in the administration and enforcement of this article.”
32. Pursuant to Part I.A.1.d.(1), “[t]he permittee shall continue to operate in accordance with, and continue enforcement of, the stormwater management requirements of the Chapter 10, Environment, and Chapter 24, Zoning, of the Code of the County of Henrico Virginia, for land disturbing activities.”
33. Henrico County staff stated that the County has not established the necessary legal authority to conduct routine inspections of private industrial and commercial facilities for stormwater discharges unless a release is suspected based upon outfall screening information, or if a potential release is identified by another Henrico County agency. Respondent relies on industrial and commercial facilities submitting to voluntary inspections and notifies the facility thirty days in advance of the inspection. However, under Chapter 10 – Environment, Article VII, Section 10-198, Respondent has designated inspection authority to the County inspectors.
34. Pursuant to Article VII. Sec. 10-198 (b), of the Henrico County Code, “[t]he director shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of the county’s VPDES permit.”
35. Respondent failed to comply with Part I.B.4. of the Permit by failing to have a program to inspect industrial facilities and thereby control discharges to and from those portions of the municipal separate storm sewer system over which it has jurisdiction.

36. Pursuant to Part I.A.1.c.(2) of the Permit, “[t]he permittee may monitor, or require the facility to monitor, storm water discharges associated with industrial activity to the municipal separate storm sewer system from facilities described in Part I.A.1(c).”
37. Henrico County is not completing all industrial and commercial facility inspections that the County has identified as necessary due to a lack of MS4 inspection staff. EPA’s review of the County’s inspection records determined that the Respondent is not conducting the necessary inspections at industrial and commercial facilities identified as potential sources of contaminated storm water runoff.
38. Respondent failed to comply with Part I.A.1.c., by failing to provide: “[a] program to monitor and control pollutants in storm water discharges from municipal landfills, hazardous waste treatment, storage and disposal facilities, industrial facilities subject to Section 313 of the Emergency Planning and Community Right to Know Act, and facilities determined by the permittee to be contributing substantial pollutant loadings,” and Part I.B.5. of the Permit by failing to “provide adequate finances, staff, equipment and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A.” in violation of the Permit.
39. On April 19 and April 20, 2010, EPA accompanied the Henrico County Industrial Inspector on three industrial facility inspections. Numerous potential violations noted by the EPA inspection team were not cited by the County Inspector. In addition, the EPA Inspection Team witnessed the County Inspector failing to note evidence of potential violations and fully investigate other potential noncompliance identified during the three facility inspections. Respondent is not conducting thorough inspections of industrial facilities and therefore, is not identifying all of the facilities contributing substantial pollutant loadings.
40. Respondent failed to comply with Part I.A.1.c. of the Permit by failing to monitor and control pollutants in storm water discharges from industrial facilities determined by Henrico County to be contributing substantial pollutant loadings.
41. Pursuant to Part I.B.2. the Permit, “[t]he permittee shall ensure that all pollutants discharged from the municipal separate storm sewer system shall be reduced to the maximum extent practicable through the continued development and implementation of a comprehensive Storm Water Management Program as specified in Part I.A. of this permit,” and further, pursuant to Part I.B.3., the permittee shall effectively prohibit non-storm water discharges into the municipal separate sewer system... or shall allow such discharges...” where...”authorized by a separate VPDES permit.”
42. The EPA inspection team and the Henrico County Industrial Inspector conducted site visits of the Respondent’s Central Automotive Maintenance (CAM) garage and the County salt storage facility. At the CAM facility, the EPA inspection team noted evidence of numerous oil spills in close proximity to storm drains, open dumpsters, outdoor above-ground petroleum storage tanks without secondary containment. At the salt storage facility, the EPA inspection team noted dark stains around the retention pond indicating a possible release, compromised silt fencing near a wetland, and uncovered stockpiles.

43. Respondent failed to comply with Parts I.B.2. and 3., of the Permit by failing to require secondary containment around above-ground petroleum storage tanks, among other things, and to ensure that all pollutants discharged from the municipal separate storm sewer system were reduced to the maximum extent practicable through the continued development and implementation of a comprehensive Storm Water Management Program as specified in Part I.A. of the Permit.

Construction Sites - BMPs

44. Pursuant to Part I.A.1.d., Respondent's Permit, shall contain "a program to continue implementation and maintenance of structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites."
45. On April 20, 2010, the EPA Inspection Team witnessed an inspection of a Henrico County Public School by a Henrico County Environmental Inspector. The site map did not designate a location for a concrete washout area, a requirement of the Virginia Storm Water Management Program General Permit. Due to the absence of a designated concrete washout area at the Site, concrete wash water was observed being actively released into the ground surface. The County Environmental Inspector did not identify deficiencies pertaining to the non-sediment pollutants while on site and did not document the aforementioned deficiencies in the County's Erosion and Sediment Control Inspection Report.
46. Respondent failed to comply with Part I.A.1.d. of the Permit by failing to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites.
47. The Virginia Erosion and Sedimentation Control Regulations at 4VAC50-30-06B, Maintenance and Inspections, requires Respondent to "provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two week period, within 48 hours following any runoff producing storm event and at the completion of the project prior to release of any performance bonds."
48. The EPA Inspection Team review found that the Respondent does not maintain records to document the type of erosion and sediment control inspection performed, does not provide a structured format to facilitate documenting the inspection type and does not maintain records to document that inspections are carried out in accordance with Section 10-41 of the Henrico County Erosion and Sediment Control Ordinance and the Virginia Erosion and Sediment Control Regulations.
49. Respondent failed to comply with Part I.A.1.d(1) of the Permit by failing to operate in accordance with the stormwater management requirements of Chapter 10, Environment, of the Code of the County of Henrico Virginia and the Virginia Erosion and Sediment Control Regulations.

Continuing Education

50. Pursuant to Part I.A.1.d.(2), Respondent “shall continue implementation of the education and training program for construction site operators.”
51. Respondent has not conducted a formal education and training class for construction site operators since conducting a site contractor workshop on November 7, 2002 prior to the current term of the Permit.
52. Respondent failed to comply with Part I.A.1.d.(2) of the Permit by failing to conduct a formal education and training program for construction site operators.

IV. PROPOSED CIVIL PENALTY

53. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), 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.
54. 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.
55. 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.
56. 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 Consolidated Rules, Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of one hundred and sixty-four thousand three hundred dollars (\$164,300) 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.
57. 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. 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.

58. EPA may issue the 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).
59. 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.
60. 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

61. Respondent must file an Answer to this Complaint unless it chooses to resolve this matter in accordance with the quick resolution procedure in Section VI; failure to file an Answer may result in entry of a Default Order 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.
62. Upon issuance of a Default Order, the civil penalty proposed herein shall become due and payable.
63. 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.
64. 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.

- a. The Answer shall also indicate the following:
- b. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
- c. the specific facts that Respondent disputes;
- d. Respondent's basis for opposing the proposed penalty; and
- e. whether Respondent requests a hearing.

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

65. 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.
66. 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.
67. 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.
68. 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.
69. Any hearing that Respondent requests will be held and conducted in accordance with the Consolidated Rules.
70. At such a hearing, Respondent may contest any material fact contained in the Factual and Legal Allegations listed in Section II above, the Findings listed in Section III, above, and the appropriateness of the amount of the proposed civil penalty in Section IV, above.
71. 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

72. 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:

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

73. 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

74. 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.
75. If Respondent pays 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.
76. 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 30 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. 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:

Pamela J. Lazos (3RC20)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

If Respondent files such a written statement with the Regional Hearing Clerk within 30 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.

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 by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.
78. Payment of the penalty shall be made by one of the following methods below. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this action. 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.

Payment by check to "United States Treasury"

- i. 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

ii. 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

b. 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"

c. 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

79. 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

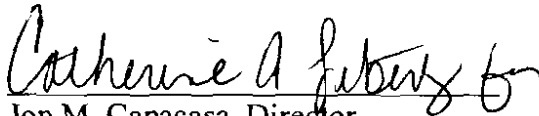
Ms. Pamela Lazos (3RC20)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

80. 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

81. 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: 4/6/11


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

CERTIFICATE OF SERVICE

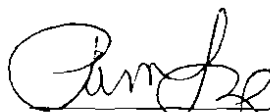
I hereby certify that on the date listed below, I filed the original attached Administrative Penalty Complaint and Notice of Opportunity to Request Hearing with the Regional Hearing Clerk, and sent a copy thereof to the following person via certified mail, return receipt requested:

Regional Hearing Clerk (3RC20)
1650 Arch Street
Philadelphia, PA 19103

Frank J. Thornton
Chairman
Board of Supervisors
Henrico County, Virginia
4301 East Parham Road
Henrico, Virginia 23228

Date: _____

4/6/11



Pamela J. Lazos



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank J. Thornton
Chairman
Board of Supervisors
Henrico County
4301 East Parham Road
Henrico, Virginia 23228

Re: Notice of Proposed Assessment of a Civil Penalty
Docket No. CWA-03-2011-0139

Dear Mr. Thornton:

Enclosed is a document entitled Administrative Penalty Complaint, and Notice of Opportunity to Request a Hearing (the "Complaint"), filed by the United States Environmental Protection Agency ("EPA") against Henrico County under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g).

EPA alleges that you have violated the Act and its implementing regulations, and the terms of your Virginia Pollutant Discharge Elimination System ("VPDES") permit, VA0088617, issued by the Virginia Department Environmental Quality and administered by the Virginia Department of Conservation and Recreation under authority of the Act. The alleged violations are specifically set out in Section III of the Complaint.

Unless you elect to resolve the proceeding as set forth in Section VI of the Complaint, an Answer addressing each allegation in the Complaint must be filed within thirty (30) days, or the allegations will be deemed admitted according to the rules governing this case, *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22 (enclosed). Failure to respond may result in the issuance of a Default Order imposing the proposed penalty without further administrative hearings.

You have a right to request a hearing regarding the violations alleged in the Complaint and the proposed civil penalty. Such request should be included with the Answer to this Complaint and must also be made within thirty (30) days.

Whether or not a hearing is requested, we invite you to confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. You may represent yourself or be represented by an attorney at any conference, whether in person or by telephone. An attorney from the EPA Office of Regional Counsel will normally be present at any informal conference.

EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement through an informal conference. A request for a settlement conference may be included in your Answer or you may contact the attorney assigned to this case:

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

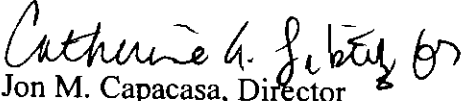
A request for an informal conference does not extend the thirty (30) day period by which you must request or waive a hearing on the proposed penalty assessment, and the two procedures can be pursued simultaneously.

To the extent you may be a "small business" under the Small Business Regulatory Enforcement Fairness Act (SBREFA), please see the enclosed information sheet, which provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also 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, does not 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 actions.

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.

We urge your prompt attention to this matter.

Sincerely,


Jon M. Capacasa, Director
Water Protection Division

Enclosures

cc: Anne Crosier, VA DCR