

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2019

September 15, 2014

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Subject: City of Portsmouth, Virginia
Docket No. CWA-03-2014-0240

Dear Judge Biro:

Pursuant to 40 C.F.R. 22.21(a) of the Consolidated Rules of Practice, I am today transmitting copies of Complaint and Notice of Opportunity for Hearing in the above captioned matter, along with Respondent's Answer and Request for Hearing. Please assign an Administrative Law Judge to serve as Presiding Officer.

Sincerely yours,



Lydia A. Guy
Regional Hearing Clerk

cc: Counsel for Respondent:
Jeffrey S. Miller, VSB # 43033
Assistant City Attorney
801 Crawford Street, 6th floor
Portsmouth, Virginia 23
Telephone No. (757) 393-8731

Counsel for Complainant:
Kelly Gable, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Penna. 19103-2029
Telephone No. (215) 814-2471



CITY OF PORTSMOUTH, VIRGINIA

— Established 1752 —

Office of the City Attorney

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September 12, 2014

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Via Federal Express

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

Re: **In the Matter of City of Portsmouth, Virginia**
Docket No. CWA-03-2014-0240

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

Dear Sir or Madam:

Please find enclosed an Answer and Request for Hearing for filing on behalf of the City of Portsmouth in the referenced matter.

Should you need anything additional please do not hesitate to contact me at (757) 393-8731 or millerj@portsmouthva.gov.

Thank you for your assistance.

Sincerely,

Jeffrey S. Miller
Assistant City Attorney

cc: James Wright, City Engineer

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

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

2014 SEP 15 PM 2:20

RECEIVED

In the Matter of:	:	Proceeding Pursuant to
	:	Section 309(g) of the Clean
	:	Water Act, 33 U.S.C 1391(G), to
City of Portsmouth, Virginia	:	Assess Class II Civil Penalty
801 Crawford Street	:	
Portsmouth, Virginia 23704,	:	Docket No. CWA-03-2014-0240
	:	
	:	
Respondent.	:	
	:	
	:	
	:	

ANSWER AND REQUEST FOR HEARING

COMES NOW the City of Portsmouth, Virginia, by counsel in its Answer to the Administrative Complaint issued in the above-referenced action and states as follows:

RESPONSE TO FACTUAL ALLEGATIONS

1. Paragraphs 1 through 11 of the Complaint are statements and/or conclusions made by the Complainant about statutory and regulatory authorities it deems applicable and thus do not require a response or are otherwise denied.
2. Paragraph 12 is admitted.
3. With respect to Paragraph 13, it is admitted that the City of Portsmouth encompasses a total area of approximately 30 square miles and that the City's website references a population of 100,565, which upon information and belief is based upon 2000 census data. It is denied that the population of Portsmouth is 100,565.

4. With respect to Paragraph 14, it is admitted that stormwater from the City of Portsmouth drains to the Elizabeth River and the James River. The remainder of the paragraph is a legal conclusion and does not require a response and is otherwise denied.

5. Respondent lacks sufficient information to admit or deny Paragraph 15 and Paragraph 15 is accordingly denied.

6. Paragraph 16 is admitted.

7. With respect to Paragraph 17, it is admitted that the expiration date of the MS4 Permit was March 8, 2006 and that the MS4 Permit has been administratively extended. The remainder of Paragraph 17 is otherwise denied.

8. Respondent lacks sufficient information to admit or deny Paragraph 18 and Paragraph 18 is accordingly denied.

9. With respect to Paragraph 19, it is admitted that the EPA prepared the Inspection Report. The Inspection Report speaks for itself and Paragraph 19 is otherwise denied.

10. Paragraph 20 is admitted.

11. Paragraphs 22 through 24 of the Complaint are statements and/or conclusions made by the Complainant about statutory and regulatory authorities it deems applicable and thus do not require a response or are otherwise denied.

12. Paragraphs 25 and 26 are denied.

13. Paragraphs 28 through 30 of the Complaint are statements and/or conclusions made by the Complainant about statutory and regulatory authorities it deems applicable and thus do not require a response or are otherwise denied.

14. Paragraph 31 is admitted.

15. Paragraph 32 is a legal conclusion and is therefore denied.

16. Paragraphs 33-56 of the Complaint are explanations of the agency process and as such, do not require a response or are otherwise denied.

17. The City of Portsmouth, Virginia, denies each and every allegation that has not heretofore been expressly and unambiguously denied.

DEFENSES TO THE CLAIMS ALLEGED

1. Respondent disputes the penalty proposed by the Complainant as unwarranted based on the allegations of the Complaint.

2. Respondent has complied with the requirements of the MS4 Permit.

3. As to Count 1, no enforcement or other action by Respondent was required in response to dry weather discharges based on the results of dry weather screening conducted by the City of Portsmouth and applicable EPA standards.

4. Upon information and belief Respondent's poverty rate is approximately 50% higher than the average poverty rate in the Commonwealth of Virginia and Respondent's Area Median Income is approximately 25% lower than the average Area Median Income in the Commonwealth of Virginia. Because of Respondent's economic condition, the penalty proposed by the Complainant is excessive.

5. Respondent reserves the right to supplement the defenses stated herein.

REQUEST FOR SETTLEMENT CONFERENCE

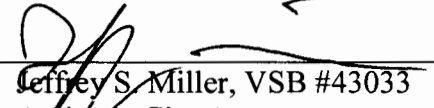
1. In accordance with Section V of the Complaint, Respondent hereby requests a settlement conference to discuss the allegations of the Complaint and the amount of the proposed civil penalty.

REQUEST FOR A HEARING

1. Based on the above, Respondent hereby requests a hearing to dispute the allegations of the Complaint, as well as the proposed penalty assessment.

I CERTIFY: That on this 12th day of September, 2014, the original of this document was sent via FedEx to Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029; and a copy sent by email to Kelly Gable, Esquire, Assistant Regional Counsel, at gable.kelly@epa.gov.

CITY OF PORTSMOUTH, VIRGINIA

By: 
Jeffrey S. Miller, VSB #43033
Assistant City Attorney
801 Crawford Street, 6th Floor
Portsmouth, Virginia 23704