

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

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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,	:	<b>Docket No. CWA-03-2014-0240</b>
	:	
Respondent.	:	

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**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**

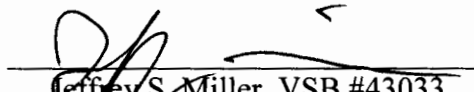
1. In accordance with Section V of the Complaint, Respondent hereby requests a settlement conference to discuss the allegations of the Complaint and the amount of the proposed civil penalty.

#### **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 12<sup>th</sup> 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](mailto:gable.kelly@epa.gov).

CITY OF PORTSMOUTH, VIRGINIA

By:   
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