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

AUG 15 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Kenneth I. Wright
Mayor, City of Portsmouth
Portsmouth City Hall
801 Crawford Street
Portsmouth, VA 23704

Re: Administrative Penalty Order - Docket No. CWA-03-2014-0240

Dear Mayor Wright:

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 City of Portsmouth ("Portsmouth") under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). EPA alleges that Portsmouth has violated the Act and its implementing regulations, and the terms of its Virginia Pollutant Discharge Elimination System ("VPDES") permit, VA 0088668, issued by the Virginia Department Environmental Quality under authority of the Act. The alleged violations are specifically set out in Section III of the enclosed Complaint.

Unless Portsmouth elects to resolve the proceeding as set forth in Section VII 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.

Portsmouth has the 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 Portsmouth to confer informally with EPA concerning the alleged violations and proposed penalty. 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 a penalty to pursue settlement through informal conference. A request for a settlement conference may be included in your Answer or Portsmouth may contact the attorney assigned to this case:

Kelly Gable (3RC20)
U.S. Environmental Protection Agency, Region III

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1650 Arch Street
Philadelphia, PA 19103-2029
215-814-2471

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

If Portsmouth believes it may be a "small business" under the Small Business Regulatory Enforcement Fairness Act (SBREFA), you should review 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. Any decision to participate in such program or to seek compliance assistance does not relieve Portsmouth of its obligation to respond in a timely manner to this 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 its legal rights, Portsmouth must comply with all rules governing the administrative enforcement process. The Ombudsman and does not participate in the resolution of EPA's enforcement actions.

In addition, Portsmouth may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against Portsmouth 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 Portsmouth in determining whether Portsmouth is subject to it.

We urge your prompt attention to this matter.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

Enclosures

cc: Jerome Brooks, VADEQ

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

In the Matter of:	Proceeding to Assess Class II Administrative Penalty Under Section 309(g) of the Clean Water Act
City of Portsmouth, Virginia 801 Crawford Street Portsmouth, Virginia 23704,	Docket No. CWA-03-2014-0240
Respondent.	**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").

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 proposes to assess a civil penalty in the amount of $50,000 (fifty thousand dollars) against the City of Portsmouth ("Respondent") for violation(s) of Section 301 of the CWA, 33 U.S.C. § 1311.

II. FACTUAL AND LEGAL ALLEGATIONS

3. 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.

4. 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 or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.

5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions, not relevant here, storm water discharges are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

6. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

7. "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.

8. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

9. 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).

10. An 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.

11. At all times relevant to this Complaint, Respondent has owned and/or operated an MS4 as that term is defined in 40 C.F.R. § 122.26(b)(8).

12. Respondent's MS4 is located within the geographic boundaries of the City of Portsmouth.

13. The City of Portsmouth encompasses a total area of approximately 30 square miles and, according to the City of Portsmouth, its population is 100,565 people.

14. Stormwater from the City of Portsmouth drains to a number of water bodies, including the James River and the Elizabeth River, which are considered "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; 40 C.F.R. § 122.2.

15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia to issue NPDES permits on March 31, 1975.

16. The Virginia Department of Environmental Quality ("VDEQ") issued to Respondent an NPDES MS4 Discharge Permit No. VA 0088668 which became effective on March 8, 2001 (hereinafter the "MS4 Permit").

17. The expiration date of the MS4 Permit was March 8, 2006; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.

18. On June 4-5, 2012, a compliance inspection team composed of EPA staff and authorized representatives of EPA inspected Respondent's MS4 program (the "MS4 Inspection").

19. EPA prepared the City of Portsmouth MS4 Program Inspection Report ("the Inspection Report"), which included, in addition to general information regarding Respondent's MS4 program and history, multiple observations regarding Respondent's MS4 Program related to the requirements of the current MS4 Permit (VA 0088668, effective March 8, 2001).

20. Respondent received a copy of the Inspection Report, to which it prepared and submitted a response to EPA on August 9, 2013.

III. FINDINGS OF VIOLATIONS

Count 1: Failure to Eliminate Unauthorized Stormwater Discharges

22. Part I.A.1.b of the MS4 Permit requires the Respondent to implement a program "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 [MS4]."

23. Part I.A.1.b(3) of the MS4 Permit requires, as part of the program required in Part I.A.1.b of the MS4 Permit, that the Respondent "shall act as expeditiously as possible to require a discharger to eliminate unauthorized non-storm water discharges except discharges identified in Part I.B.4 of this permit, or, if appropriate, to notify the discharger to apply to the Department of Environmental Quality for a Virginia Pollutant Discharge Elimination System (VPDES) permit for the discharge. . . . The [Respondent] shall require immediate cessation of improper disposal practices upon identification of responsible parties."

24. Part I.B.4 of the MS4 Permit requires that the Respondent "shall effectively prohibit non-storm water discharges into the [MS4]. . . ."

25. A review of documentation provided by the Respondent shows multiple dry weather discharges in 2011, but no enforcement or other action taken by Respondent to eliminate those discharges.

26. Respondent's failure to eliminate these dry weather discharges constitutes a violation of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2: Failure to Provide Adequate Staffing

28. Part I.A. of the MS4 Permit requires the Respondent to "implement, to the maximum extent practicable, the provisions of the SWMP required under this Part as a condition of the permit. All applicable components of the [MS4] Phase I VPDES Permit Application submitted in accordance with 40 CFR 122.26, and all approved modifications are hereby incorporated by reference into the SWMP."

29. Part I.B.6 of the MS4 Permit states that "to the maximum extent practicable, subject to annual appropriations, the [Respondent] shall provide adequate finances, staff, equipment, and support capabilities to implement all parts of the [SWMP] required by Part I.A of this permit. Where programs operated by entities other than the [Respondent] are included in the [Respondent's] [SWMP], the [Respondent] shall, to the maximum extent practicable, ensure that such programs remain operational for the term of the permit. However, the [Respondent] shall not be responsible for operating or financing the program in the future if the current operators cease the activity."

30. Part II.Q of the MS4 Permit requires that the Respondent "shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the [Respondent] to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes . . . adequate staffing . . ."

31. As stated in the Inspection Report, the person at the Public Schools Operations Center who was responsible for stormwater management had left the position in December 2011 and no employee had been identified to fill the position until June 5, 2012. In addition, that new employee had no storm water-related training.

32. Respondent's failure to provide adequate staffing constitutes a violation of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. PROPOSED CIVIL PENALTY

33. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations that are assessed penalties under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), subject the violator to civil penalties in an amount not to exceed $177,500 per proceeding for violations that occurred between January 12, 2009 and December 6, 2013 and $187,500 per proceeding for violations that occurred after December 6, 2013.

34. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 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; Final Rule", 40 C.F.R. Part 22), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of $50,000 (fifty thousand dollars) 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.

35. 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 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.

36. 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. In addition, to the extent that facts or circumstances unknown to EPA at the time of issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

37. 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 CWA, 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. SETTLEMENT CONFERENCE

38. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CWA. Whether or not a hearing is requested, the Respondent may request a settlement conference to discuss the allegations of the Complaint and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.

39. If you wish to arrange a settlement conference or if you have any questions related to this proceeding, please contact the attorney assigned to this case, as indicated in Section VI, following your receipt of this Complaint.

40. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

VI. ANSWER TO COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING

41. 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 in accordance with the procedures contained in 40 C.F.R. Part 22. At the hearing, Respondent may contest any material fact contained in Section III, above ("Findings of Violations"), and the appropriateness of the penalty amount proposed in Section IV ("Proposed Civil Penalty").

42. If Respondent requests a hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action and a reasonable opportunity to comment pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), who have commented upon the proposed penalty assessment, will have an opportunity, pursuant to Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment.

43. 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.

44. Hearing procedures are described in the *"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, a copy of which is enclosed.

45. If the Respondent wishes to avoid being found in default, he must file a written Answer to this Complaint and a Request for Hearing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region III, within thirty (30) days of service of this Complaint.

46. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly state the Respondent has no knowledge as to particular factual allegations in the Complaint. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer must 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 Respondent disputes;
c. the basis for opposing any 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.

47. The Answer and 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

48. A copy of the Answer and Request for Hearing and any subsequent documents filed in this action shall also be sent to the following:

Kelly Gable
Assistant Regional Counsel (Mail Code 3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
gable.kelly@epa.gov

Ms. Gable may be reached by telephone at (215) 814-2471 and by facsimile at (215) 814-2603.

49. Failure to file an Answer within thirty (30) days of service of this Complaint may result in entry of a default judgment against Respondent. Default by the Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable without further proceedings thirty (30) days after the default order becomes final. 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.

50. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will herefore begin to accrue on any unpaid amount if it is not paid within thirty (30) calendar days of Respondent's receipt of notice of filing of an approved copy of an Order assessing Administrative Penalties with the Regional Hearing Clerk. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts. 40 C.F.R. 13.11(b). In addition, a penalty will be assessed on any portion of the debt that remains delinquent more than ninety (90) calendar days after payment is due. 40 C.F.R. 13.11(c). Should assessment of the penalty charge of the debt be required, it will be assessed as of the first day payment is due pursuant to 4 C.F.R. 102.13(e). Furthermore, pursuant to EPA Resources Management Directives System, Chapter 9, EPA will assess a $15.00 handling charge for administrative costs on unpaid penalties for the first 30-day period after a payment is due and an additional $15.00 for each subsequent 30 days the penalty remains unpaid.

VII. QUICK RESOLUTION

51. In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. 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.

52. 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 thirty (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 Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Kelly Gable (3RC20), Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 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 sixty (60) days of receiving the Complaint. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

53. 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.

54. 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 the Administrative Penalty Complaint.

a. 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

55. Copies of the check and/or proof of payment via wire transfer or ACH 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

Kelly Gable (3RC20)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

VIII. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

56. 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 Consolidated Rules of Practice, 40 C.F.R. Part 22, 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: AUG 1 5 2014

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

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Administrative Penalty Complaint and Notice of Opportunity to Request Hearing, to the following individual by First Class Mail, return receipt requested:

The Honorable Kenneth I. Wright
Mayor, City of Portsmouth, Virginia
Portsmouth City Hall
801 Crawford Street
Portsmouth, VA 23704

Date: AUG 15 2014

Kelly Gable
Assistant Regional Counsel NPDES Enforcement Branch
US EPA Region III