ENFORCEMENT ITEM SUMMARY FORM
STATE WATER CONTROL BOARD MEETING
ON JUNE 29, 2020

ITEM: City of Richmond

DEQ CONTACT: Enforcement Division
Kristen Sadtler
804-698-4149
Kristen.Sadtler@deq.virginia.gov

FACILITY ADDRESS: 1400 Brander Street in Richmond, Virginia

TYPE OF PERMIT OR PROGRAM: VPDES Permit VA0063177

STATE WATER AFFECTED: The James River. The Aquatic Life Use is impaired due to inadequate submerged aquatic vegetation (SAV), chlorophyll *a* exceedances, and an altered benthic community. The Recreation Use is impaired due to E. coli exceedances. The Fish Consumption Use is impaired due to a Virginia Department of Health fish advisory for PCBs and due to exceedances of the water quality standard for PCBs; in addition, arsenic, mercury and kepone are non-impairing "observed effects".

PROPOSED BOARD ACTION: Consent Special Order w/ Civil Charge and SEP

BACKGROUND: DEQ permitted the City of Richmond's combined sewer system, wastewater treatment plant, and municipal separate storm sewer system (MS4) under VPDES Permit No.VA0063177.

DISCUSSION:
On July 24, 2018, DEQ received notification from the City of Richmond, Department of Public Utilities (Richmond) of an unpermitted discharge of untreated sewage into state waters. On July 27, 2018 and June 28, 2019 Richmond submitted written reports to DEQ, which revealed that the City incorrectly connected a pool, pool house, and sewer lines from a block of 28 recently constructed condominiums to the storm sewer system. The pool and pool house were improperly connected by June 2008 and the condominiums were connected between October 2017 and April 2018. Richmond estimates the total volume discharged over that time to be 869,000 gallons. Once the investigation discovered the issue, the City moved expeditiously to cease the discharge and remove the cross connection.

On September 4, 2018, the Department issued a Notice of Violation No. W2018-08-P-0006 (NOV) to Richmond for the unauthorized discharge at Rockett's Landing. On September 27, 2018, the Department met with Richmond to discuss the NOV and the issuance of a Consent Order.

On October 29, 2018, DEQ received notification of a fish kill in the Kanawha Canal, near Byrd Park along North Bend Trail in Richmond, Virginia. PRO staff investigated the incident and reported chlorine odor near the Byrd Park Pump House, an auxiliary water intake for the City of Richmond's Department of Public Utilities ("DPU") Water Treatment Plant. DPU personnel

reported that a 30-inch potable waterline ruptured near the Byrd Park Pump House on October 19, 2018. Finished drinking water flowed from the broken main over Pump House Road where it entered a nearby storm drain system and Kanawha Canal. DPU subsequently submitted a report on November 2, 2018, stating that the ruptured line was rehabilitated and estimating the volume of discharge at 13,984,200 gallons over 11 days. The Virginia Department of Game and Inland Fisheries reported necessary replacement of 129 fish.

On November 20, 2018 the Department issued NOV No. 2018-11-PRO-201 to Richmond for the unauthorized discharge in the Kanawha Canal.

CIVIL CHARGES/SUPPLEMENTAL ENVIRONMENTAL PROJECT: Section D of the Order imposes a civil charge of $91,575. The City will pay $22,894 by check which will be deposited into the Virginia Environmental Emergency Response Fund. The City will satisfy $68,681 of the civil charge by satisfactorily completing a Supplemental Environmental Project (SEP). The SEP to be performed is restoration of riparian buffer along the James River and Rockfall's Creek at the Wetlands and Pony Pasture Rapids sections of the James River Park. The project will include invasive plant removal & native plant restoration and planting of 1,430 trees.

PREVIOUS ENFORCEMENT ACTIONS: No enforcement action in the last three years. The City is currently under an active Consent Order issued on March 17, 2005 to address combined sewer overflows. The City is in compliance with the requirements of the 2005 Order.

PUBLIC COMMENT: The Consent Order was signed on March 13, 2020. A public notice for this proposed Consent Order was run on April 22, 2020 in *Style Weekly*, in the *Virginia Register* on April 27, 2018, and on the Department's website. The 30 day public comment period ended on May 27, 2020. No public comments were received during the comment period.

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE
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Matthew J Strickler
Secretary of Natural Resources

David K Paylor
Director
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James J. Golden
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - CONSENT ORDER
ISSUED TO
CITY OF RICHMOND
FOR
CITY OF RICHMOND DEPARTMENT OF PUBLIC UTILITIES
UNPERMITTED DISCHARGES

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the City of Richmond ("City of Richmond"), regarding unpermitted discharges at Rocketts Landing and the Byrd Park Pump Station, for the purpose of resolving certain violations of the State Water Control Law and other applicable laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "CSS" means the City of Richmond's combined sewer system that collects rainwater runoff, domestic sewage, and industrial wastewater in the same pipe system that carries wastewater and stormwater to Richmond's wastewater treatment plant.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Discharge" or "discharge of a pollutant," as defined in 9 VAC 25-31-10, means:

   (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

   (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

7. "Notice of Violation" or "NOV" means a type of notice of alleged violation under Va. Code § 62.1-44.15.

8. "Order" or "Consent Order" means this document, which is a type of special order under the State Water Control Law.

9. "Pollutant," as defined in 9 VAC 25-31-10, means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

10. "Pollution," as defined in Va. Code § 62.1-44.3, means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution."

11. "PRO" means the DEQ Piedmont Regional Office, located in Glen Allen, Virginia.

12. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 et seq.

13. "Richmond" or "the City of Richmond" means the City of Richmond, a political subdivision of the Commonwealth of Virginia. City of Richmond is a "person" within the meaning of Va. Code § 62.1-44.3.

14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.

15. "State waters," as defined in Va. Code § 62.1-44.3, means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

16. "Va. Code" means the Code of Virginia (1950), as amended.

17. "VAC" means the Virginia Administrative Code.

18. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

I. General.

1. Va. Code § 62.1-44.5(A) states that, except in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.

2. The Regulation, at 9 VAC 25-31-50(A), also states that, except in compliance with a VPDES permit or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.

3. The Water Quality Standards Regulation at 9 VAC 25-260-20(A) states, in part, that, "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant or aquatic life. Specific substances to be controlled include . . . toxic substances."

4. The Water Quality Standards Regulation at 9 VAC 25-260-140(A) states, in part, that, instream water quality conditions shall not be acutely or chronically toxic except as allowed in 9 VAC 25-260-20(B) (mixing zones). Regulation 9 VAC 25-260-140(A) also states, "[a]cute toxicity means an adverse effect that usually occurs shortly after exposure to a pollutant. Lethality to an organism is the usual measure of acute toxicity.

Where death is not easily detected, immobilization is considered the equivalent of death."

5. Va. Code § 62.1-44.5(B) and 9 VAC 25-31-50(B) state that any person who discharges to state waters shall notify DEQ within 24 hours of discovery of the discharge.

6. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

7. The sites of the Rocketts Landing discharge and Kanawha discharge, described below, are located within the study area for the James River and Tributaries - City of Richmond Bacterial Total Maximum Daily Load ("TMDL"). They are also located in the Chesapeake Bay watershed. The Chesapeake Bay TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids in the Chesapeake Bay and its tidal tributaries. The sites are Tier 1 waters.

II. Rocketts Landing Discharge.

1. Richmond owns and operates the CSS. The Department permitted Richmond's CSS, wastewater treatment plant, and municipal separate storm sewer system (MS4) under VPDES Permit No.VA0063177.

2. A discharge (the "Rocketts Landing discharge") occurred from the outfall located at Orleans Street into the James River (James River Basin -Middle).

3. During DEQ's 2016 water quality assessment for 305(b) reporting, the James River at the site of the Rocketts Landing discharge was assessed as a Category 5D waterbody. The Aquatic Life Use is impaired due to inadequate submerged aquatic vegetation (SAV), chlorophyll a exceedances, and an altered benthic community. The Recreation Use is impaired due to E. coli exceedances. The Fish Consumption Use is impaired due to a Virginia Department of Health fish advisory for PCBs and due to exceedances of the water quality standard for PCBs; in addition, arsenic, mercury and kepone are non-impairing "observed effects". The Wildlife Use is fully supporting. The location of the discharges is within the study area for the James River and Tributaries – City of Richmond Bacterial Total Maximum Daily Load (TMDL) (EPA approval November 4, 2010, Board approval June 29, 2012). The TMDL requires E. coli reductions in the watershed. The discharges are also within the Chesapeake Bay watershed. The Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010, allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and SAV criteria in the Chesapeake Bay and its tidal tributaries.

4. The James River Association contacted Richmond on July 20, 2018, and requested an investigation of a discharge from a storm drain near the Rocketts Landing development.

Weather prevented an immediate investigation by Richmond. On July 24, 2018, Richmond staff discovered the discharge and reported it to DEQ that same day. On July 27, 2018, Richmond submitted a written report to DEQ, which revealed that sanitary sewer connections from a block of 15 recently constructed condominiums to the storm sewer system in September 2017 were the sources of the Rocketts Landing discharge. Richmond originally estimated that the total volume of wastewater discharged over that time was 700,000 gallons.

5. On September 4, 2018, the Department issued Notice of Violation No. W2018-08-P-0006 to Richmond for the unauthorized Rocketts Landing discharge.

6. On September 27, 2018, the Department met with Richmond to discuss the Rocketts Landing discharge and the issuance of a consent order. Richmond eliminated the discharge upon discovery and promptly completed all necessary repair work.

7. On June 28, 2019, Richmond voluntarily updated its July 27, 2018 written notice by letter to DEQ stating the Rocketts Landing developer first improperly connected the Rocketts Landing pool and pool house to the storm sewer system by June 2008, and then connected approximately 28 condominiums to the storm sewer system between October 2017 and April 2018. Based on this information and related records, Richmond estimates that the total volume of wastewater discharged during the Rocketts Landing discharge was approximately 869,000 gallons.

8. The Department has issued no permits or certificates to City of Richmond for the Rocketts Landing discharge.

9. The James River at Rocketts Landing is a surface water located wholly within the Commonwealth and is state waters.

10. Based on the results of the Department's investigation and other information collected, the Board concludes that City of Richmond violated Va. Code § 62.1-44.5(A) and 9 VAC 25-31-50(A) by discharging untreated sewage without a Permit at Rocketts Landing, as described in this Section.

III. <u>Kanawha Discharge.</u>

1. Richmond owns and operates, through its water utility, the Byrd Park Pump Station (the "Facility"), which includes a 30" finished water main pipe that connects to public infrastructure.

2. A discharge from the Facility on October 19, 2018 (the "Kanawha discharge") occurred adjacent to Kanawha Canal (James River Basin – Middle). During DEQ's 2016 water quality assessment for 305(b) reporting, Kanawha Canal was not assessed for a specific designated use and is considered a Category 3A waterbody.

3. On October 29, 2018, DEQ's Piedmont Regional Office received notification of a fish kill in Kanawha Canal, near Byrd Park along North Bank Trail in Richmond, Virginia. PRO staff investigated the incident and reported chlorine odor near the Byrd Park Pump House, an auxiliary water intake for City of Richmond. City of Richmond personnel reported that a 30-inch potable waterline ruptured near the pump house on October 19, 2018. Finished drinking water flowed from the broken main over Pump House Road where it entered a nearby storm drain system and Kanawha Canal. City of Richmond initiated measures to substantially reduce the volume within 48 hours, and also initiated dechlorination.

4. DEQ staff performed an assessment of the fish kill in Kanawha Canal resulting from the discharge. The Virginia Department of Game and Inland Fisheries, Fisheries Division reported necessary replacement of 129 fish.

5. City of Richmond staff provided DEQ a written report on November 2, 2018, notifying DEQ that the ruptured main was rehabilitated and the discharge was controlled. The written report estimated the volume of discharge at 13,984,200 gallons over 11 days, and included all the information required by the Regulation, at 9 VAC 25-31-50(B). In addition, City of Richmond indicated it was developing enterprise-level dechlorination procedures for failures on large pipes occurring in the future.

6. On November 20, 2018, the Department issued Notice of Violation No. 2018-11-PRO-201 to Richmond for the unauthorized Kanawha discharge.

7. The Department has issued no permits or certificates to City of Richmond for the Kanawha discharge.

8. Kanawha Canal is a surface water located wholly within the Commonwealth and is state waters.

9. Based on the results of the Department's investigation and other information collected, the Board concludes that City of Richmond violated Va. Code § 62.1-44.5(A) and 9 VAC 25-31-50(A) by discharging chlorinated water from the Facility. Further, the Board concludes that City of Richmond failed to provide timely notice of the Kanawha discharge in violation of Va. Code § 62.1-44. 5(B) and 9 VAC 25-31-50(B).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders City of Richmond, and City of Richmond agrees:

1. To perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $91,575 in settlement of the violations cited in this Order, to be paid as follows:

   a. City of Richmond shall pay $22,894 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

      Receipts Control
      Department of Environmental Quality
      Post Office Box 1104
      Richmond, Virginia 23218

      City of Richmond shall include its Federal Employer Identification Number (FEIN) (xx-xxxxxxx) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund VEERF.

   b. City of Richmond shall satisfy $68,681 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.

   c. The net project costs of the SEP to the City of Richmond shall not be less than the amount set forth in Paragraph D.2.b. If it is, the City of Richmond shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

   d. By signing this Order the City of Richmond certifies that it has not commenced performance of the SEP.

   e. City of Richmond acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the City of Richmond to a third party, shall not relieve the City of Richmond of its responsibility to complete the SEP as described in this Order.

   f. In the event it publicizes the SEP or the SEP results, City of Richmond shall state in a prominent manner that the project is part of a settlement of an enforcement action.

   g. The Department has the sole discretion to:

i. Authorize any alternate, equivalent SEP proposed by the Facility; and

ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

h. Should the Department determine that the City of Richmond has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify the City of Richmond in writing. Within 30 days of being notified, the City of Richmond shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

i. If the Department has to refer collection of moneys due under this Order to the Department of Law, City of Richmond shall, to the extent permitted by law, be liable for attorneys' fees of 30% of the amount outstanding.

j. All payments and other performance by the City of Richmond under this Order shall be subject to annual appropriations by the City Council of the City of Richmond.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of City of Richmond for good cause shown by City of Richmond, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order, in NOV No. W2018-08-P-0006 dated September 4, 2018, and in NOV No. 2018-11-PRO-201 dated November 20, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce this Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, the City of Richmond admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. City of Richmond consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. City of Richmond declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be

construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by City of Richmond to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of this Order shall remain in full force and effect.

8. City of Richmond shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. City of Richmond shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. City of Richmond shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 24 hours, and in writing, within three business days of learning of any condition above, which the parties intend to assert, will result in the impossibility of compliance and shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director, or his designee, and City of Richmond. Nevertheless, City of Richmond agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after City of Richmond has completed all of the requirements of this Order;

    b. City of Richmond petitions the Director, or his designee, to terminate this Order after it has completed all of the requirements of this Order and the Director, or his designee, approves the termination of this Order; or

    c. The Director or Board terminates this Order in his or its sole discretion upon 30 days' written notice to City of Richmond.

    d. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve City of Richmond from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by City of Richmond and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of City of Richmond certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind City of Richmond to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of City of Richmond.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, City of Richmond voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2020.

_____
James J. Golden, Regional Director
Department of Environmental Quality

[Remainder of page intentionally left blank]

City of Richmond voluntarily agrees to the issuance of this Order.

By: Lenora G. Reid
Lenora G. Reid, Acting Chief Administrative Officer
City of Richmond

Date: 3/13/2020

Commonwealth of Virginia
(City) County of Richmond

The foregoing document was signed and acknowledged before me this 13th day of March, 2020, by Lenora G. Reid of City of Richmond on behalf of City of Richmond.

Elizabeth H. D'Arcy
Notary Public

7850195
Registration No.

My commission expires: 04/30/2023

Notary seal:

Elizabeth Helen D'Arcy
NOTARY PUBLIC
REG. #7850195
MY COMMISSION EXPIRES
4/30/2023
COMMONWEALTH OF VIRGINIA

Approved as to form:

Assistant City Attorney

APPENDIX A

1. The SEP to be performed by the City of Richmond is to partner with Friends of James River Park to restore 100 feet of riparian buffer along the James River and Rockfall's Creek at the Wetlands and Pony Pasture Rapids sections of the James River Park. The project, described in the *Analysis of Proposed Supplemental Environmental Project* submitted by the City of Richmond and approved by DEQ on January 27, 2020, will also have invasive plant removal & native plant restoration and planting of 1,430 trees.

2. The SEP shall be completed by December 31, 2022.

3. The City of Richmond shall submit progress reports on the SEP on a quarterly basis, on the 10th day of each month due, beginning the first full calendar month after the effective date of this Order.

4. City of Richmond shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible public utility officer. The City of Richmond shall submit the final report and certification to the Department within 30 days from the completion of the SEP.

5. If the SEP has not or cannot be completed as described in the Order, City of Richmond shall notify DEQ in writing no later than 15 days after discovery. Such notification shall include:
   a. an alternate SEP proposal, or
   b. payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.

6. City of Richmond hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.

7. City of Richmond shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation

within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from the city of Richmond's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov

Analysis of Proposed Supplemental Environmental Project
Va. Code § 10.1-1186.2
City of Richmond
Riparian Buffer Restoration at Pony Pasture Rapids & Wetlands Park

Erosion and exposure at Pony Pasture Rapids along the James River

Erosion and exposure at Pony Pasture Rapids – Half Moon Beach

Project Description: We propose to partner with Friends of James River Park to restore 100 feet of riparian buffer along the James River and Rockfall's Creek at the Wetlands and Pony Pasture Rapids sections of the James River Park. The project will also have invasive plant removal & native plant restoration and planting of 1,430 trees.

The project will use contractors to remove destructive invasive plant species such as fig buttercup, wisteria, Japanese knotweed, amur honeysuckle, and privet. The Public Outreach and natural resource coordinator will assist with community removal and clean up days, provide outreach to surrounding neighborhoods, and on-going caretaking of planted trees and stabilized areas.

Item	Cost	Unit(s)	Total Cost
Riparian buffer design and restoration (100 ft)	$ 300 - $ 350	Per linear foot	$ 35,000
Tree planting	$ 3.72 per tree	tree	$ 5,320
Contractor Labor	$1500 per day	8.5 days	$ 12,700
Public Education & Outreach Coordinator	$19.00 per hour	16 hrs per week for 6 mo	$ 9,120 (inc. agency fee)
Tree Maintenance			$ 6,260
		Totals:	**$ 68,400**

1. Explain how the project is environmentally beneficial:

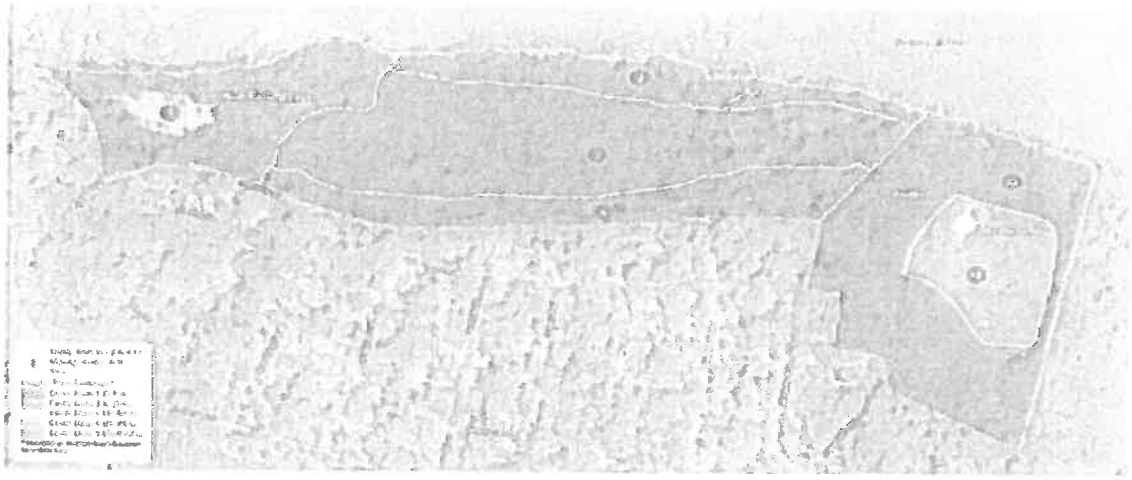
Funding is sought to protect and restore approximately 13 acres of the James River Park System in the Wetlands and Pony Pasture Rapids Park areas. This is just one part of a larger effort to reduce the destructive impact of invasive species and restoring native plants, tree canopy and the riparian buffer in the urban wilderness of Richmond through contracted professionals, volunteerism, and park staff.

The JRPS in this particular area is protected from development in perpetuity by a conservation easement. The Conservation Easement aims to protect and promote healthy and native green spaces, support erosion control, riparian buffer protection, and wildlife habitat conservation.

Funding will cover the removal of non-native plants in the area by contracting out to certified contractors to remove invasive and non-native plants. In coordination with the removal, Best Management Practices will be used to regrade and stabilize the area and plant native trees and shrubs to create a healthy riparian buffer.

Please refer to supplemental maps and photos provided on Maps:

Pony Pasture and The Wetlands Study Area



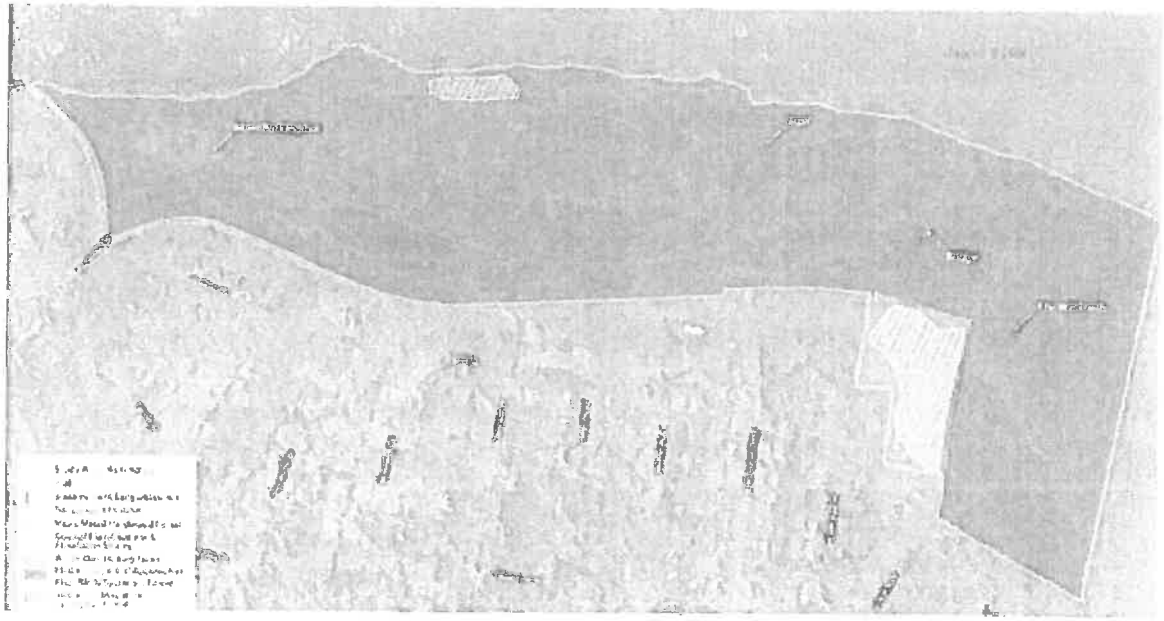
Map Key Study Area Management Unit Trail

Invasive Plant Coverage

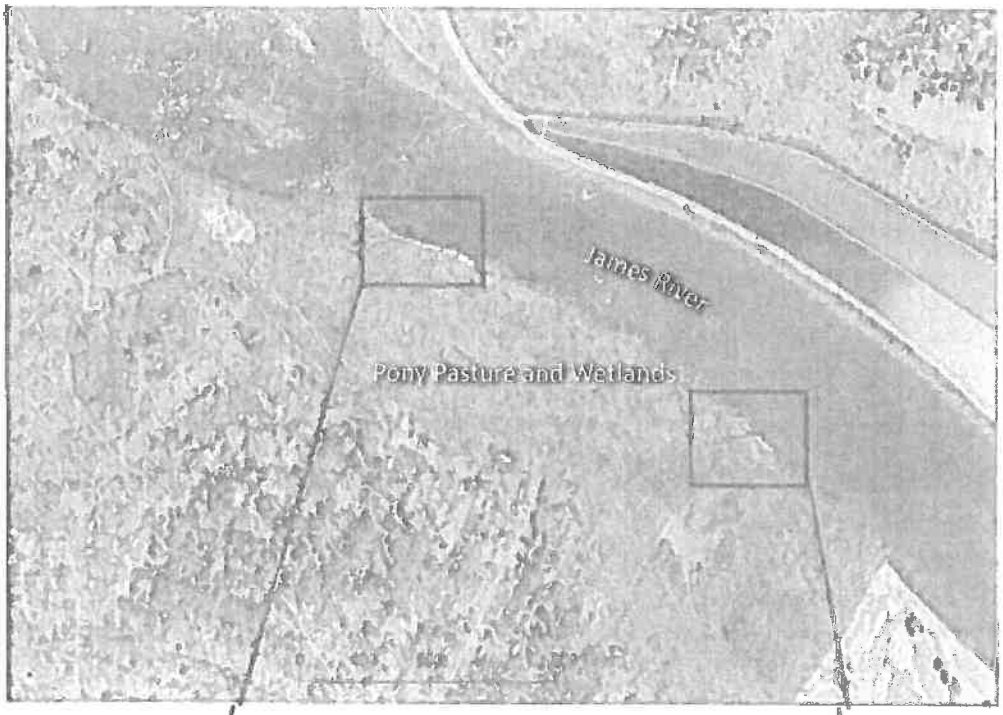
Cover Class 1 (0 5%) Cover Class 2 (5 20%) Cover Class 3 (20 50%)

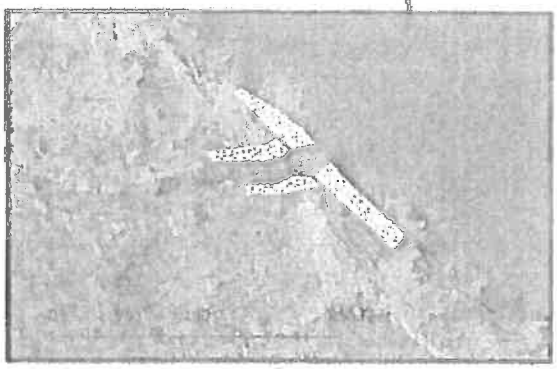
Cover Class 4 (50 75%) Cover Class 5 (75 100%)

Invasive Plant Removal Sites



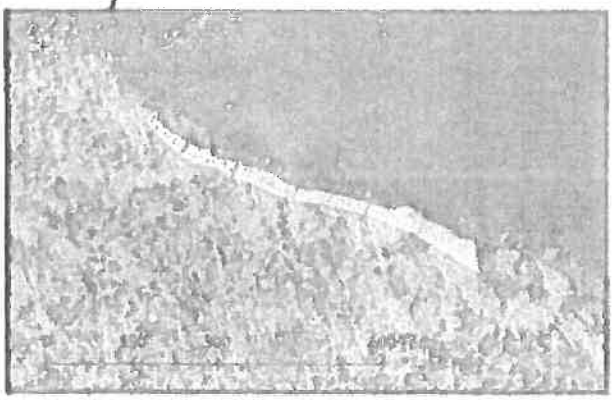
Pony Pasture & Wetlands Riparian Buffer Needs





Legend

- Priority Riparian Buffer Segments
- Riparian Buffer Needed



Riparian buffer sections range in length from 100-150 ft and width from 15 - 30 ft

Each section is an estimated $50,000 in cost to install

Riparian Buffer Restoration Sites

The benefits of a riparian buffer of native plants on the James River in the City of Richmond are numerous for the environment but include: erosion and sediment control; enhance and protect water quality; nutrient and pollution control; phosphorus and nitrogen capture and inertness; native wildlife and aquatic organism habitat; canopy cooling for water, people, and our planet.

2. A SEP may only be a partial settlement: typically only 75% of the civil charge can be mitigated by a SEP. Show the Projected Net Project Costs.

Civil Charge/Penalty without a SEP	$ 91,575
Minimum Payment Amount with a SEP (see Section II(F))	$ 22,894
Projected Net Project Costs (see No. 6, below)	$ 68,400
SEP Mitigation Amount	$ 68,400
Final Monetary Civil Charge/Penalty	$ 23,175

3. Explain how the SEP is not otherwise required by law and is solely the result of the settlement of an alleged violation: The project is not required by law, or permit requirements and is solely the result of the settlement of the Rockett's Landing settlement.

4. Is there reasonable geographic nexus? If YES, explain:

   Yes, there is reasonable geographic nexus. The proposed project site is within the James River watershed and is directly upstream.

   If NO, then does the SEP advance one of the declared objectives of the law or regulation that is the basis of the enforcement action (always preferred)? Explain:

5. Check all the qualifying categories that may apply (at least one must be checked):

- ☐ Public Health
- ☐ Pollution Prevention
- ☐ Pollution Reduction
- ☒ Environmental Restoration and Protection
- ☐ Environmental Compliance Promotion
- ☐ Emergency Planning & Preparedness

6. Does the SEP require a significant amount of DEQ management, resource investment or evaluation such that DEQ is unable to provide active oversight?

   No, Richmond will provide updates and progress reports along with photographic documentation and a final report.

7. Does the proposed SEP require a significant amount of DEQ time and resources for negotiation, administration, SEP oversight or other management activities in comparison to the value of the SEP?

No, Richmond did not require significant resource time for negotiations.

8. Does the Responsible Party have the ability or reliability to complete the proposed SEP and demonstrated an ability or willingness to comply with existing requirements?

   Yes, the City is willing and able to complete the SEP.

9. Each of the following factors MUST be considered. Respond to each:

Net Project Costs (zero out all State or Federal government loans, grants, tax credits for project) (net cash flow to party should not be positive). Explain:

Net project costs are $68,681.00

Benefits to the Public or the Environment (should exceed VEERF value; include any Community Involvement). Explain:

The project will have many public benefits as described below:

JRPS boasts over 25 miles of trails throughout its system, promoting movement in the form of hiking, biking, running, and general exploration for all ages and socioeconomic classes. Every year nearly 2 million people visit the Park. Other activities include paddling sports, climbing and swimming. Many other health benefits are attributed to the outdoors, and our trees and plants acting as our natural air filters especially in a densely populated area such as the City Of Richmond provide further benefits to the city and its people.

Restoration of riparian buffer along the river will help to improve water quality, reduce stormwater runoff and restore a much needed urban tree canopy. Environmental challenges in this well-loved natural area are many, but the chief threat to environmental quality is the loss of mature canopy trees and other native vegetation due to encroachment of invasive plant species. Invasive species control and the restoration of native plant communities are essential to maximize the park's recreational and educational potential, to protect water quality, ecosystem health, and biodiversity in this unique urban environment.

Innovation. Explain:

This is not simply a replanting of a riparian buffer, this is the transformation of an ecologically sensitive area overrun by non-native and invasive plant species to a healthy native plant park in the middle of the capital city. The coordination will take place with public/private/nonprofit partnerships working together to ensure the native natural habitat is restored. There will be an educational and outreach component led by volunteers engaging the surrounding community and leading native plant hikes with information being posted on kiosks in the area. We will also rely on volunteers to help with plantings, removal of invasive plants, and spreading the good word, thus engaging more people.

Impact on Minority or Low-Income Populations. Explain:

The James River Park System serves the greater Richmond area as one of the most decorated and diverse park systems in a true urban environment. The Wetlands and Pony Pasture Rapids Park form 2 of 15 parks within the system that are completely free of fees and provide entry for families, school groups, individuals to experience nature, picnic, recreate and relax all within walking distance of many communities in the City of Richmond. 25% of the City of Richmond is below the poverty line according to US census data. A majority of the population within the city is comprised of minority population with just over 54% being African American or Hispanic origin. Introducing young people of color and providing a free park within a convenient area will set the stage of a new generation of young people who care about the natural environment around themselves. If the buffer continues to disappear, this will limit access of people to the park system within the city, thus decreasing the quality of life.

Emergency Planning and Preparedness – No measurable effect on emergency planning and preparedness.

Multimedia Impact. Explain:

The project's main impacts are to the water program and without measurable impacts to air and land protection programs, this project is not considered multimedia.

Pollution Prevention. Explain:

Pollution Prevention and Reduction - Within a healthy native ecosystem riparian buffers offer a filter from pollutants such as runoff from houses and streets. This area is particularly popular with dog walkers. About 25% of bacteria found in our waterways originates from pet waste and proliferates the amount of unhealthy levels of nitrogen and phosphorus. With a riparian buffer in place, the nutrients will be captured and absorbed by the plants and soil transforming the potential pollutants to less harmful forms. The area also lends itself to many support groups and volunteers who assist by doing river clean ups in a safe park setting, decreasing overall refuse into the water system. A healthy riparian buffer can reduce nitrogen and phosphorous loads to Chesapeake Bay.

☒ Division of Enforcement, Other RO, Program – Concurrence/Consultation
Kristen Sadtler 12/31/2019 Jeff Steers 01/24 /2020

Recommended/Not Recommended

(DEQ Regional Staff)

SEP Approved/Disapproved
(Subject to Execution of the Order)

(DEQ Regional Director) 1/27/2020