

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**307 CAMPOSTELLA, LLC,**

**Plaintiff**

**v.**

**Civil Action No: 2:15-cv-224**

**TIMOTHY S. MULLANE,**

**SIX M, LLC,**

**AMERICAN MARINE GROUP, INC.,**

**AMERICAN MARINE GROUP, LLC,**

**DOMINION MARINE GROUP, LTD,**

**MULLANE BROS MARINE TRANSPORTATION, LLC,**

**GREENLEAF & ASSOCIATES, LTD,**

**Serve: Bourdow Bowen & Ellis, PC (Registered Agent)  
5104 W. Village Green Drive, Suite 108  
Midlothian, VA 23112**

**DELVIN T. GREENLEAF, JR.,**

**Serve: 10155 Tunstall Road  
New Kent, VA 23124-2918**

**AND**

**AMERICAN MARINE LEASING CORP.**

**a/k/a AMERICAN MARINE LEASING, INC.,**

**Serve: Harvard Business Services, Inc. (Registered Agent)  
16192 Coastal Highway  
Lewes, DE 19958**

**Defendants.**

**SECOND AMENDED COMPLAINT**

Plaintiff, 307 Campostella, LLC, by its undersigned counsel, for its Second Amended Complaint against defendants, respectfully states as follows:

**Preliminary Statement of the Case**

1. This action seeks to stop the defendants' uncontrolled release of pollution into the Elizabeth River and to remove the defendants' large illegal obstruction in the Elizabeth River, all of this caused by the defendants' oversized collection of rusting, dilapidated, aged ships that are clogging and damaging the river, and damaging the adjoining waterfront properties, in the City of Norfolk. The defendants' fleet of ships is much too large for the waterway, it obstructs the channel of navigation, and it interferes with the waterfront businesses operated by the defendants' neighbors. The dilapidated, unseaworthy, derelict condition of the ships creates an eyesore and blight. The defendants' failure to properly care for and maintain the ships pollutes the river, causing environmental damage. All of these things harm the value of plaintiff's waterfront property.

2. The plaintiff on several occasions contacted defendant Timothy Mullane ("Mullane") in 2013 and 2014 to ask him to reduce the fleet to a reasonable size and clean up the Elizabeth River.

3. Plaintiff was aware when making these requests of Mullane that Mullane has acquired a lengthy record of environmental violations due to his wrongful activities at this very location on the Elizabeth River. The violations for which Mullane has been found "guilty" or "liable" include a civil penalty and restoration order imposed by the Norfolk Wetlands Board in 2007 for destruction of wetlands; a criminal conviction in the Norfolk General District Court in 2010 for release of hazardous substances into the Elizabeth River; a criminal conviction in the Norfolk General District Court in 2010 for unlawful accumulation of solid waste; a criminal conviction in

the Norfolk General District Court in 2010 for failure to notify fire official of release of hazardous waste; a civil penalty imposed by the State Water Control Board in 2010 for release of diesel fuel into the Elizabeth River from a vessel; a civil penalty and restoration order imposed by the Norfolk Wetlands Board in 2012 for destruction of wetlands; and, a civil penalty imposed by the State Water Control Board in 2014 for discharging industrial stormwater into the Elizabeth River without a permit.

4. Mullane refused the plaintiff's requests. The plaintiff's last and final option for protecting its valuable waterfront property is to file this lawsuit. The plaintiff asks the Court to order the defendants to remove the blockage they have placed in the navigation channel, clean up the eyesore they have created, and stop polluting the Elizabeth River.

#### **Parties**

5. The plaintiff, 307 Campostella, LLC ("307 Campostella") is a Virginia limited liability company. The membership interest is wholly owned by Carmelo Gomez, a citizen of the State of Florida. The principal office of 307 Campostella is in Fort Lauderdale, Florida.

6. The first individual defendant, Mullane, is an adult individual who resides in Norfolk, Virginia. He is a citizen of the Commonwealth of Virginia. Mullane, on information and belief, owns and controls several of the entities that are the co-defendants in this legal action: (a) Six M, LLC, a Virginia limited liability company with principal office in Chincoteague, Virginia; (b) American Marine Group, Inc., a Virginia stock corporation, with principal office in Chincoteague, Virginia, whose corporate existence was cancelled in 2011, leaving Mullane, on information and belief, as the Trustee in Liquidation for this entity; (c) American Marine Group, LLC, a Delaware limited liability company with principal office in Philadelphia, Pennsylvania, whose certificate of registration was cancelled by Virginia in 2012, whose corporate existence

was cancelled in Delaware as of 2013, leaving Mullane, on information and belief, as the Trustee in Liquidation for this entity; (d) Dominion Marine Group, LTD, a Virginia stock corporation with principal office in Chincoteague, Virginia, whose corporate existence was cancelled in 2011, leaving Mullane, on information and belief, as the Trustee in Liquidation for this entity; and, (e) an entity known as “Mullane Bros Marine Transportation, LLC” which, on information and belief, is a sole proprietorship operated, owned and controlled by Mullane. The defendants in this paragraph are “The Mullane Defendants.”

7. The second individual defendant, Delvin T. Greenleaf, Jr. (“Greenleaf”) is an adult individual who resides in New Kent, Virginia. He is a citizen of the Commonwealth of Virginia. Greenleaf, on information and belief, owns and controls defendant Greenleaf & Associates, Ltd., a Virginia stock corporation, with principle office in New Kent, Virginia. Defendant Greenleaf and defendant Greenleaf & Associates, Ltd. are “The Greenleaf Defendants”. Defendant American Marine Leasing Corp., AKA American Marine Leasing, Inc. (“American Marine Leasing”), a Delaware corporation, is the grantee to whom, in March 2015, defendant Greenleaf & Associates, Ltd. conveyed ownership of a vessel that is used in a manner giving rise to the plaintiff’s claims in this legal action.

**Facts Common to All Counts**

8. Plaintiff owns a 6.8 acre parcel of valuable waterfront land in the City of Norfolk, Virginia, at the southwestern foot of the Campostella Bridge.

9. The part of the river fronting the plaintiff's property is a one quarter mile long waterway in the shape of a "cul-de-sac" oriented north and south, with the mouth of the "cul-de-sac" at the north end where it joins the Eastern Branch of the Elizabeth River. The waterway is public and navigable, with a channel that is 15' deep in many places, and is 200' feet wide along much of its length. Several respected maritime firms operate facilities on the waterway, those being Lyon Shipyard, Great Lakes Dredge & Dock, and Marine Contracting Corporation. These firms (and the defendants) operate vessels in the waterway that are used in interstate and/or foreign commerce.

10. Starting at the mouth of this waterway, and proceeding toward the south, plaintiff owns all of the east-side shoreline on the navigable portion of the waterway, except for approximately 150 feet of shoreline at the southern end where the waterway becomes non-navigable, this being the "dead end" of the "cul-de-sac". Defendant Six M, LLC owns the just-described small 1 acre parcel with approximately 150 feet of shoreline at the "dead end" of the "cul-de-sac".

11. The March 18, 2015 photo shows the relative size and locations of plaintiff's and defendant's property:



12. Mullane and Greenleaf, acting on their own or through others, including, but not limited to Six M, LLC, American Marine Group, Inc., American Marine Group, LLC, Dominion Marine Group, LTD, and/or Mullane Bros Marine Transportation, LLC, and/or Greenleaf & Associates, Ltd., and/or American Marine Leasing, have overcrowded the waterway with unseaworthy hulks of former vessels, many 60-70 years old, many of them sitting idly for years, many of them

aground for years, rusting and having little or no use. Local governmental authorities have described this as “the worst cove” in the City of Norfolk. All three local television stations ran newscasts in 2013 and 2014 decrying “the Floating Junkyard” created by the defendants.

13. Plaintiff and the other businesses operating on the waterway properly berth their relatively small number of vessels at properly constructed mooring facilities licensed through permits issued by the Army Corps of Engineers (under the Rivers and Harbors Act), and permits from the Virginia Marine Resources Commission. These permits require, among other things, that plaintiff and the other businesses operating on the waterway utilize their mooring facilities in a manner that causes no more than “a minimal adverse effect on navigation.” Plaintiff and the other businesses on the waterway berth a reasonable number of vessels at their respective facilities, they do not bring overly large vessels into the waterway, they berth their vessels in compliance with the permits obtained for their respective mooring facilities, and they berth their vessels in a manner consistent good with marine practices.

14. The defendants berth an unreasonably large number of vessels at an unlicensed pier/storage facility, on the west side of the waterway, approximately 200’ from (and immediately in front of) plaintiff’s property. The defendants use the unlicensed pier/storage facility in this manner notwithstanding their failure to obtain permits for the facility from the Army Corps of Engineers and from the Virginia Marine Resources Commission, in violation of law.

15. The unlicensed pier/storage facility used by the defendants is a 200’ by 50’ structure, formerly a Hopper Barge (but no longer a vessel), that they use as a pier. The site for this 10,000 square foot pier-like structure has never been designated by any government official as a mooring location. The defendants are essentially squatters in that they do not own the property

they occupy with their pier/storage facility, nor do they have permission from the landowner to operate on that property. The structure is pushed up into wetlands on shoreline owned by City of Norfolk.

16. The unreasonably large number of vessels illegally berthed at the defendants' unlicensed pier/storage facility, and the unreasonably great size of the vessels, creates overcrowded conditions which interfere with and obstruct navigation in the navigable waterway adjacent to plaintiff's property.

17. The unseaworthy vessels that the defendants have introduced into the waterway cause pollution and create blight in the waterway adjacent to plaintiff's property.

18. These actions by the defendants cause economic harm to 307 Campostella in the form of lost or reduced rents, and reduction in the value of the 307 Campostella property, in an amount in excess of \$75,000.00.

### **Jurisdiction and Venue**

19. This Honorable Court has subject matter jurisdiction pursuant to 28 USC section 1331 (federal question), 28 USC section 1333 (admiralty/maritime), and 28 USC 1367 (supplemental).

20. This Honorable Court has an additional source of subject matter jurisdiction pursuant to the citizen suit provisions at 33 USC section 1365 (Clean Water Act) and 42 USC section 6972 (Resource, Conservation and Recovery Act). More than 90 days have passed since plaintiff served notice of the environmental violations being prosecuted in this legal action.

21. This Honorable Court has personal jurisdiction over the defendants due to their systematic and continuous activities in the Eastern District of Virginia, and also because this legal action arises out of the defendants' activities in the Eastern District of Virginia.

22. Venue is proper pursuant to 28 USC section 1391.

**Count I: PRIVATE NUISANCE UNDER STATE LAW**

23. All factual allegations in this Complaint are incorporated in this Count I.

24. The defendants' unlicensed pier/storage facility was formerly aground on the west shore but in a location different from the present location. This former location was directly in front of the Six M, LLC parcel, near the "dead end" at the south of the waterway. The unlicensed pier/storage facility was at that time abandoned property, owned by no one.

25. On information and belief, The Mullane Defendants, or persons acting in concert with them, or acting at the behest, direction or control of The Mullane Defendants, took possession of the unlicensed pier/storage facility and, through use of a vessel or other mechanized equipment operated under their direction or control, they re-located the unlicensed pier/storage facility approximately 100 yards north and discharged it into Waters of the United States, including wetlands, on shoreline owned by City of Norfolk, at the west side of the waterway, immediately in front of and approximately 200' from the bulkheaded portion of the plaintiff's property.

26. Since the time when they moved the structure to its present location The Mullane Defendants have continuously used this unlicensed pier/storage facility in their business, namely to berth their vessels (or the vessels of their business invitees) and they have also used it in their business as a facility for storage of a ship mast, a pedestal crane boom they removed from BARGE CAPTAIN GEORGE, and for other items of equipment belonging to them and/or their business associates. Thereafter, beginning in 2011, The Greenleaf Defendants, in concert with The Mullane Defendants, commenced use of the unlicensed pier/storage facility by berthing a 261 foot vessel, the ex-USS YRST-2, at the unlicensed pier/storage facility (with the ex-USS

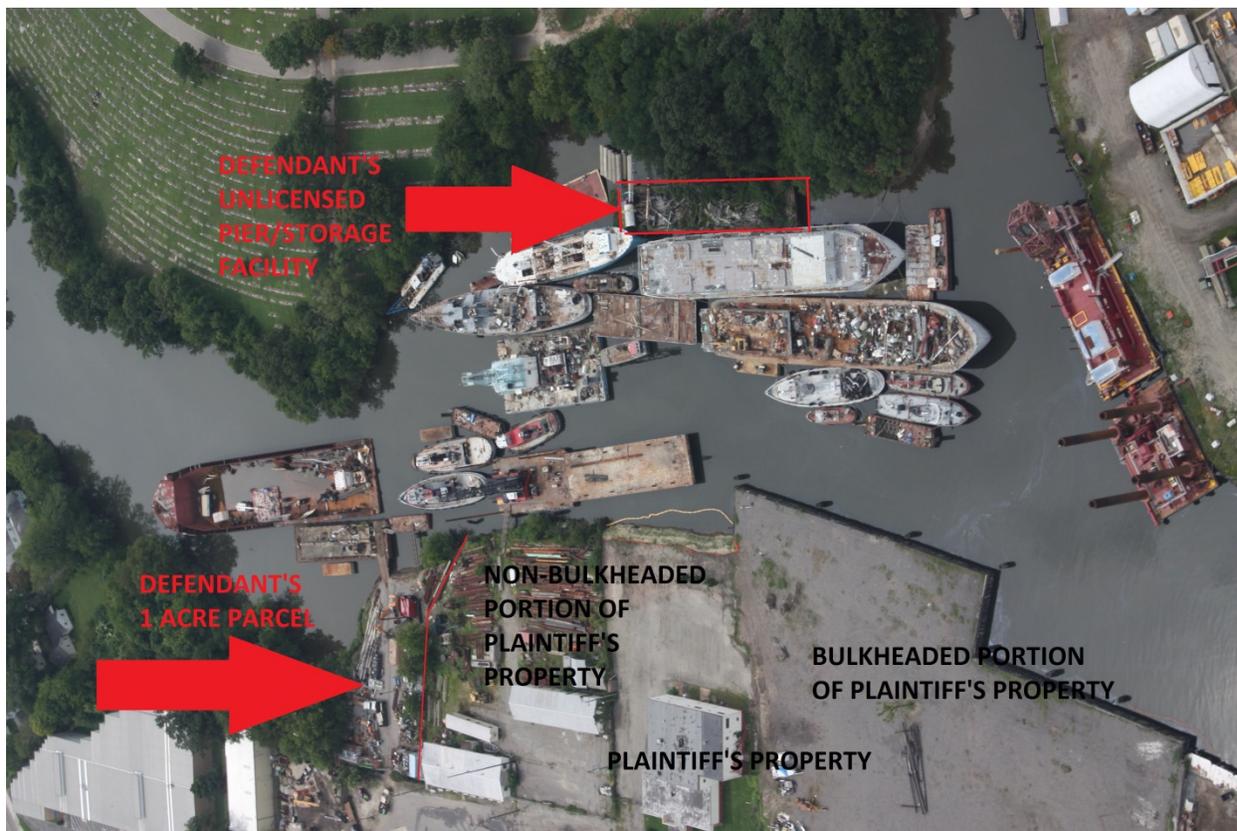
YRST-2 remaining at this same location at all times and dates subsequent to 2011, up to and including the present). Starting in March 2015, The Greenleaf Defendants conveyed the ex-USS YRST-2 to American Marine Leasing. Thereafter, American Marine Leasing, in concert with The Mullane Defendants, continued with the aforementioned use of the unlicensed pier/storage facility. The ex-USS YRST-2 during all time periods relevant to this legal action was owned by defendant Greenleaf & Associates, Ltd. and/or American Marine Leasing, and it was operated and/or controlled by The Mullane Defendants and/or The Greenleaf Defendants and/or American Marine Leasing. The unlicensed pier/storage facility offers 200' of pier space on its east side – the side of the facility that faces the waterway. The ex-USS YRST-2 occupies approximately 90% of the available pier space at the east side of the facility, and has so occupied this pier space since 2011. The manner in which defendants berth their vessels at the unlicensed pier/storage facility has created an impenetrable exclusion barrier around that facility which denies all other persons access to the facility. The exclusion barrier that the defendants have established around the unlicensed pier/storage facility has been continuously in place for several years, it is open and notorious, and it gives notice to all other persons that the defendants have taken ownership of the unlicensed pier/storage facility.

27. On information and belief, The Mullane Defendants collect rentals or other consideration from vessels owned by their business invitees that are berthed at the unlicensed pier/storage facility.

28. The defendants' action in reducing the unlicensed pier/storage facility to their exclusive use, possession and control, means that by operation of law the defendants are now the legal owner of the unlicensed pier/storage facility.

29. The defendants are also the operator of the unlicensed pier/storage facility.

30. The red arrow on the August 2013 aerial photograph, immediately below, shows the location of the defendants' unlicensed pier/storage facility on the west shore of the waterway, directly across the water from the bulkheaded portion of the plaintiff's property:



#### NUISANCE AT BULKHEADED PORTION OF PLAINTIFF'S PROPERTY

31. The navigable channel is approximately 220' wide at the place where the defendants operate their unlicensed pier/storage facility. The fleet of vessels that the defendants berth at their unlicensed pier/storage facility obstruct more than half the channel at most times, the August 20, 2013 photo in paragraph 30, immediately above, being one example. Paragraph 30, immediately above, and the photos in this paragraph 31 show the obstruction defendants caused

in the channel immediately in front of the bulkhead portion of plaintiff's property on various dates in 2013 to 2015.

August 20, 2013 (155' obstruction in the 220' channel in front of the bulkheaded portion of plaintiff's property): See photograph in paragraph 30, immediately above.

April 4, 2014 (140' obstruction in the 220' channel in front of the bulkheaded portion of plaintiff's property):



October 2, 2014 (140' obstruction in the 220' channel in front of the bulkheaded portion of plaintiff's property):



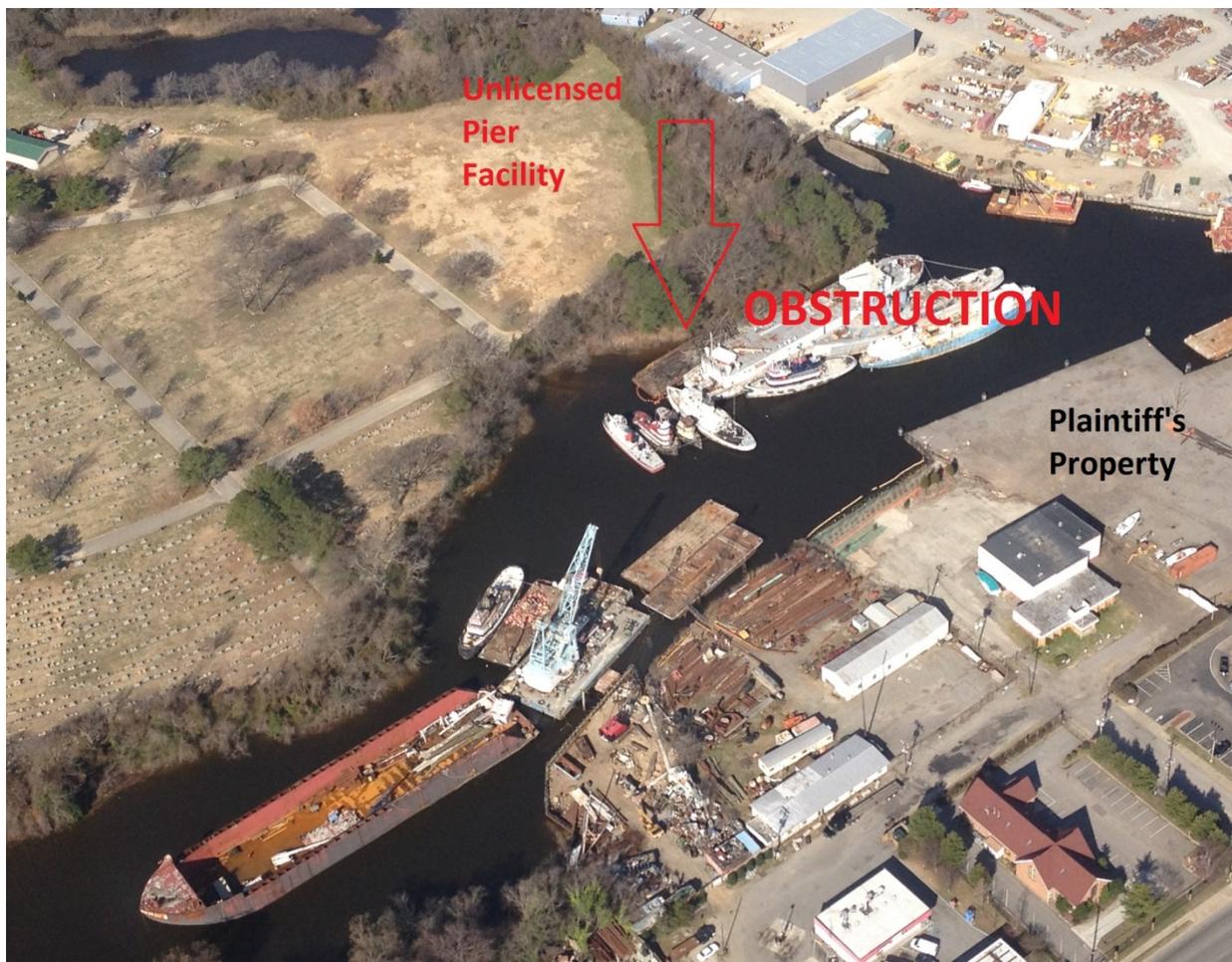
December 12, 2014 (140' obstruction in the 220' channel in front of the bulkheaded portion of plaintiff's property):



January 7, 2015 (140' obstruction in the 220' channel in front of the bulkheaded portion of plaintiff's property):



March 18, 2015 (140' obstruction in the 220' channel in front of the bulkheaded portion of plaintiff's property):



32. The vessel berthed with its port side to the defendants' unlicensed pier/storage facility is a 261' long former US Navy vessel, the ex-USS YRST-2, owned by defendant Greeleaf & Associates, Ltd. and/or American Marine Leasing. The vessel has a 49' beam. It is aground approximately 18 hours per day on average, and has not moved from its present location since 2011.

33. Most of the other vessels berthed at the defendants' unlicensed pier/storage facility are berthed to the starboard side, or to the stern, of the ex-USS YRST-2.

34. The defendants' unlicensed pier/storage facility is a structure that extends into the channel and, as such, the unlicensed pier/storage facility is an obstruction to navigation for which defendants have failed to obtain the requisite permit required by sections 10 and 15 of the Rivers and Harbors Act (33 USC Sections 403 & 409).

35. The vessels the defendants berth at their unlicensed pier/storage facility are an obstruction to navigation for which defendants have failed to obtain the permit required by sections 10 and 15 of the Rivers and Harbors Act (33 USC Sections 403 & 409).

36. The defendants periodically cause some vessels to enter or leave the nuisance at the bulkheaded portion of the plaintiff's property, which brings about changes in the shape, location and degree of obstruction in the waterway. Still, the unlicensed pier/storage facility, and the vessels berthed there, occupy at least 64% of the channel directly in front of the plaintiff's bulkhead at most times. They occupy so much of the navigable channel, and their occupation is of such duration, as to practically impede and/or interfere with the navigation of other vessels in the waterway.

37. The bulkheaded portion of plaintiff's property is the most valuable part of that property.

#### NUISANCE AT NON-BULKHEADED PORTION OF PLAINTIFF'S PROPERTY

38. The red box on the August 20, 2013 aerial photograph, immediately below, shows the channel completely obstructed at the non-bulkheaded portion of plaintiff's property (all of the

vessels in the blockade except four are owned and/or are operated by defendants or their business invitees):



39. The photos below show the obstruction defendants caused in the channel at the non-bulkheaded portion of the plaintiff's property on various dates in 2014 and 2015:

April 7, 2014: (complete obstruction in the channel at the non-bulkheaded portion of plaintiff's property / all vessels except two are owned and/or operated by defendants or their business

invitees/ this obstruction remained for at least seven days):



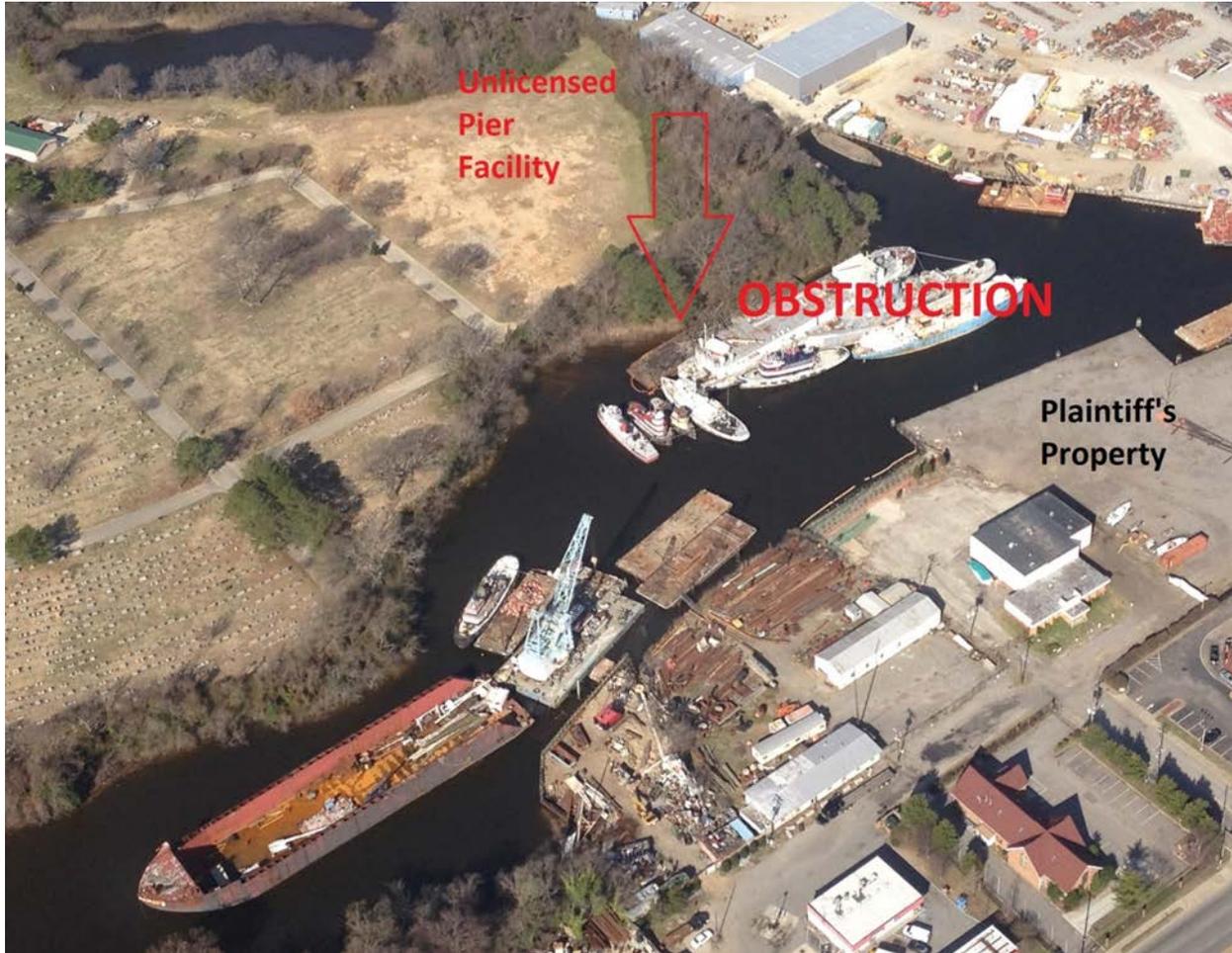
December 12, 2014 (50% obstruction in the channel at the non-bulkheaded portion of plaintiff's property / all vessels except two are owned and/or operated by defendants or their business invitees):



January 22, 2015 (50% obstruction in the channel at the non-bulkheaded portion of plaintiff's property / all vessels except one are owned and/or operated by defendants or their business invitees):



March 18, 2015 (50% obstruction in the channel at the non-bulkheaded portion of plaintiff's property / all vessels except three are owned and/or operated by defendants or their business invitees):



40. The defendants' vessels and those of their business invitees, occupy 50% or more of the channel at the plaintiff's non-bulkhead property at most times. The defendants periodically cause some vessels to enter or leave the nuisance at the non-bulkheaded portion of the plaintiff's property, which brings about changes in the shape, location and degree of obstruction in the waterway. Still, defendants occupy so much of the navigable channel, and their occupation is of such duration, as to impede and/or interfere with the navigation of other vessels in the waterway.

CONCLUDING ALLEGATIONS OF NUISANCE APPLICABLE TO THE BULKHEADED  
AND THE NON-BULKHEADED PORTIONS OF PLAINTIFF'S PROPERTY

41. The defendants' obstructions to navigation in the waterway adjacent to the bulkheaded and non-bulkheaded portions of plaintiff's property are a nuisance because: (a) they limit the space for vessel maneuvering in the waters immediately adjacent to plaintiff's property (this, among other things, denies plaintiff the ability to rent its property to persons or entities who require or prefer access to the full width of the waterway for vessel operations or for other purposes); and, (b) they impede free access to/from plaintiff's property.

42. The defendants' uncontrolled releases of pollution into the waterway, as described in the remaining Counts of this Second Amended Complaint, at both the bulkheaded and non-bulkheaded portion of plaintiff's property, are a nuisance.

43. At both the bulkheaded and non-bulkheaded portion of plaintiff's property, numerous of the defendants' vessels are stationary, disabled, and unsightly. As such the defendants' vessels are a blight, they are aesthetically displeasing, they devalue the plaintiff's property, thus constituting a nuisance.

44. At both the bulkheaded and non-bulkheaded portion of plaintiff's property, as a direct and proximate result of the nuisance maintained by defendants, plaintiff has suffered damage in the form of lost or reduced rents, and reduction in the value of plaintiff's property.

45. The defendants' activities alleged herein obstruct the plaintiff's reasonable and comfortable use of the plaintiff's property at both the bulkheaded and non-bulkheaded portion of plaintiff's property.

46. The defendants' activities alleged herein unreasonably interfere with the plaintiff's use and enjoyment of the plaintiff's property at both the bulkheaded and non-bulkheaded portion of plaintiff's property.

47. Plaintiff is entitled to judgment against defendants for the full amount of plaintiff's damages caused by defendants' nuisance and an order of Court requiring defendants to abate their nuisance.

**Count II: PUBLIC NUISANCE UNDER STATE LAW**

48. All factual allegations in this Complaint are incorporated in this Count II.

49. The defendants erected their nuisance in the navigable waters of the United States, where it obstructs and interferes with the right of the public to navigate on such waters, hence it is a public nuisance.

50. Distinct from the injury to navigation suffered by the general public, plaintiff has suffered special or peculiar damage, in the form of lost or reduced rents as a result of the defendants' nuisance, and has also suffered special or peculiar damage in the form of reduction in the value of plaintiff's property as a result of the defendants' nuisance.

51. Plaintiff is entitled to judgment against defendants for the full amount of plaintiff's damages caused by defendants' nuisance and an order of Court requiring defendants to abate their nuisance.

**Count III: PUBLIC NUISANCE UNDER GENERAL MARITIME LAW**

52. All factual allegations in this Complaint are incorporated in this Count III.

53. Plaintiff is entitled to judgment against defendants for the full amount of plaintiff's damages caused by defendants' nuisance and an order of Court requiring defendants to abate their nuisance.

**Count IV: RESOURCE CONSERVATION AND RECOVERY ACT, 42 USC §6972(a)(1)(A) CLAIM FOR ACTIVITIES AT THE UNLICENSED PIER/STORAGE FACILITY ON WEST SHORELINE**

54. All factual allegations in this Complaint are incorporated in this Count IV.

55. There is an extremely large inner cavity in the defendants' unlicensed pier/storage facility – approximately 4,000 cubic yards / equivalent to load carried by 220 dump trucks – that is filled with hundreds of discarded creosote soaked timbers, discarded mechanical and electrical equipment, discarded paint cans, discarded drums, trash, rubbish, and other nonputrescible wastes, as shown in the three photos that follow:





56. The defendants have stored the nonputrescible wastes in the inner cavity of the unlicensed pier/storage facility during all the years that they have owned or operated the unlicensed pier/storage facility, up to and including the present time.

57. During these several years, the wastes are exposed to all elements of the weather, including extremes of heat, sunlight and cold. This exposure to the elements is causing the wastes in the unlicensed pier/storage facility to deteriorate such that pollution and contamination is carried away by wind, rain, and other forces of nature after which the pollution and contamination is released into the waterway, and hence into the Elizabeth River and the surrounding environment.

58. The defendants' have failed to appropriately maintain their unlicensed pier/storage facility, the result of this being that the facility is disintegrating and falling apart. There are large holes in the outer wall of the facility through which, on information and belief, contaminated rainwater and contaminated leachate escape into the Elizabeth River. Some of the large holes in the defendants' unlicensed pier/storage facility are shown in the following photograph:



59. The defendants are operating a facility for disposal and/or storage of solid waste without a permit from the Virginia Department of Environmental Quality, in violation of Virginia Code

section 10.1-1408.1(A), 9 VAC 20-81-40(A) through (C), and 9 VAC 20-81-400(A). These provisions of the Virginia Waste Management Act, and the Virginia Solid Waste Regulations, became effective pursuant to the Resource, Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. The defendants' violations alleged in this paragraph have never been remedied and, hence, are ongoing.

60. There have been at least 180 dates in the last 5 years when a storm event at this location generated rainwater runoff from the many tons of solid waste in the defendants' unlicensed solid waste management facility such that, on information and belief, pollutants were discharged into the waterway causing uncontrolled environmental damage due to the defendants' failure to obtain a permit from the Virginia Department of Environmental Quality for operation of a solid waste management facility.

61. The defendants' discharge of pollutants into the Elizabeth River from their unlicensed pier/storage facility is prohibited by 40 CFR section 257.3-3(a).

62. The defendants are operating an Open Dump at their unlicensed pier/storage facility, in violation of Va. Code section 10.1-1408.1(H) and 9 VAC 20-81-45 (A)(1). These provisions of the Virginia Waste Management Act, and the Virginia Solid Waste Regulations, became effective pursuant to the Resource, Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. The defendants' violations alleged in this paragraph have never been remedied and, hence, are ongoing.

63. The tons of solid waste being mismanaged by the defendants at their unlicensed pier/storage facility cause blight in the waterway.

64. The uncontrolled pollution that the defendants discharge into the Elizabeth River from their unlicensed pier/storage facility, and the stigma and blight that attach to the waterway as a

result of the defendants' operation of this facility, cause damage to plaintiff in the form of lost or reduced rents, and diminution of value of the plaintiff's property.

65. Plaintiff is entitled to an injunction in accordance with 42 U.S.C. §6972(a) requiring The Mullane Defendants to come into compliance with the Resource, Conservation and Recovery Act, an order of Court requiring The Mullane Defendants to pay an appropriate civil penalty to the United States for their violation of the Act, and an order of Court requiring The Mullane Defendants to pay the plaintiff's legal fees and costs (including, but not limited to costs expended for expert witnesses). No claim for relief is asserted against The Greenleaf Defendants under this Count IV at this time because the waiting period set forth at 42 USC §6972(b) has not run. Once the statutory waiting period has run, plaintiff may seek to amend this complaint to assert a claim for relief against The Greenleaf Defendants under this Count IV.

**Count V: RESOURCE CONSERVATION AND RECOVERY ACT, 42 USC §6972(a)(1)(B) CLAIM FOR ACTIVITIES AT THE UNLICENSED PIER/STORAGE FACILITY ON WEST SHORELINE**

66. All factual allegations in this Complaint are incorporated in this Count V.

67. As previously alleged, the wastes in the unlicensed pier/storage facility are exposed to all elements of the weather, including extremes of heat, sunlight and cold. This exposure to the elements is causing the wastes in the unlicensed pier/storage facility to deteriorate such that pollution and contamination is carried away by wind, rain, and other forces of nature after which the pollution and contamination is released into the waterway, and hence into the Elizabeth River and the surrounding environment. This presents an imminent and substantial endangerment to health or the environment.

68. As previously alleged, contaminated rainwater and contaminated leachate escape into the Elizabeth River from the unlicensed pier/storage facility. This presents an imminent and substantial endangerment to health or the environment.

69. The defendants' operation of a 4,000 cubic yard waste pile at their unlicensed pier/storage facility on the banks of the waterway is a visual blight that causes aesthetic damage to the waterway. This presents an imminent and substantial endangerment to health or the environment.

70. The defendants are the past or present owners or operators of the unlicensed pier/storage facility. They are using the unlicensed pier/storage facility as facility for the disposal and/or storage of solid waste. As such, the defendants have contributed to the past or present handling, storage and/or disposal of the solid waste at the unlicensed pier/storage facility.

71. Plaintiff is entitled to an injunction in accordance with 42 U.S.C. §6972(a) requiring The Mullane Defendants to come into compliance with the Resource, Conservation and Recovery Act, an order of Court requiring The Mullane Defendants to pay an appropriate civil penalty to the United States for their violation of the Act, and an order of Court requiring The Mullane Defendants to pay the plaintiff's legal fees and costs (including, but not limited to costs expended for expert witnesses). No claim for relief is asserted against The Greenleaf Defendants under this Count V at this time because the waiting period set forth at 42 U.S.C. §6972(b) has not run. Once the statutory waiting period has run, plaintiff may seek to amend this complaint to assert a claim for relief against The Greenleaf Defendants under this Count V.

**Count VI: CLEAN WATER ACT VIOLATION AT THE DEFENDANTS' UNLICENSED PIER/STORAGE FACILITY ON WEST SHORELINE**

72. All factual allegations in this Complaint are incorporated in this Count VI.

73. The defendants' unlicensed pier/storage facility is aground, partly in tidal wetlands, and partly in navigable waters, all of which are Waters of the United States, as shown in the following photos:





74. It being aground, the unlicensed pier/storage facility owned or operated by defendants changes the bottom elevation of the waterway and thus is “fill material” as that term is defined in the Clean Water Act and the implementing regulations.

75. The location where the defendants discharged the “fill material” that now serves them as their unlicensed pier/storage facility is a mudflat, which is a special aquatic site. The defendants’ unlicensed pier/storage facility has occupied approximately 12,528 square feet (or one-quarter of an acre) of this mudflat for many years. This large unlicensed pier/storage facility compresses the mudflat underneath with its weight, with adverse impact to benthic organisms and other aquatic life. This large unlicensed pier/storage facility is likewise preventing sunlight from reaching approximately 10,000 square feet (or one-quarter of an acre) of the mudflat, with adverse impact to photosynthetic bacteria and benthic microalgae beneath the facility. These are significant adverse impacts to the functions and values of the mudflat and the waterway. This facility pollutes the waterway by causing a degradation to the physical, chemical and/or biological properties of the waters of the inlet.

76. The defendants' failure to obtain a permit under Clean Water Act section 404 (33 USC Section 1344) violates Clean Water Act section 301(a) (33 USC Section 1311(a)) and Va. Code Section 62.1-44.5.

77. The pollution that the defendants discharge into the waterway at their unlicensed pier/storage facility, and the stigma and blight that attach to the waterway as a result of the defendants' operation of the facility on the waterway, cause special damage to plaintiff in the form of lost or reduced rents, and reduction in the value of the plaintiff's property.

78. Plaintiff is entitled to an injunction requiring The Mullane Defendants to come into compliance with the Clean Water Act, an order of Court requiring The Mullane Defendants to pay an appropriate civil penalty to the United States for their violation of the Act, and an order of Court requiring The Mullane Defendants to pay the plaintiff's legal fees and costs (including, but not limited to, costs expended for expert witnesses). No claim for relief is asserted against The Greenleaf Defendants under this Count VI at this time because the waiting period set forth at 33 USC Section 1365(b) has not run. Once the statutory waiting period has run, plaintiff may seek to amend this complaint to assert a claim for relief against The Greenleaf Defendants under this Count VI.

**Count VII: CLEAN WATER ACT VIOLATION AT THE EX-USS YRST-2**

79. All factual allegations in this Complaint are incorporated in this Count VII.

80. The ex-USS YRST-2 is aground approximately 19 hours per day on average, at a position that is partly in tidal wetlands, and partly in navigable waters, all of which are Waters of the United States. The vessel has not moved from its present location since 2011.

81. It being aground, the ex-USS YRST-2, which has been operated by defendants during all times at issue in this legal action, changes the bottom elevation of the waterway and thus is “fill material” as that term has been defined in the Clean Water Act and the implementing regulations.

82. On information and belief, the defendants, or persons acting in concert with them, or acting at the behest, direction or control of the defendants, through use of a vessel or other mechanized equipment operated under their direction or control, placed the ex-USS YRST-2 at its present location, such action constituting a discharge of “fill material” into Waters of the United States.

83. The ex-USS YRST-2 occupies approximately 12,528 square feet (more than one-quarter of an acre) of mudflat and/or river bottom. Because this massive vessel is aground, it compresses the mudflat and/or river bottom underneath with its weight, with adverse impact to benthic organisms and other aquatic life. This vessel is likewise preventing sunlight from reaching approximately 12,528 square feet of mudflat and/or river bottom, with adverse impact to photosynthetic bacteria, benthic microalgae, and/or sub aquatic vegetation beneath the vessel. These are significant adverse impacts to the functions and values of the mudflat and the waterway. This vessel pollutes the Elizabeth River by causing a degradation to the physical, chemical and/or biological properties of the waters of the inlet.

84. The defendants' failure to obtain a permit under Clean Water Act section 404 (33 USC Section 1344) violates Clean Water Act section 301(a) (33 USC Section 1311(a)) and Va. Code Section 62.1-44.5.

85. The pollution that the defendants discharge into the waterway at the ex-USS YRST-2, and the stigma and blight that attach to the waterway as a result of the defendants' actions with respect to that vessel, cause special damage to plaintiff in the form of lost or reduced rents, and reduction in the value of the plaintiff's property.

86. Plaintiff is entitled to an injunction requiring The Mullane Defendants and The Greenleaf Defendants to come into compliance with the Clean Water Act, an order of Court requiring The Mullane Defendants and The Greenleaf Defendants to pay an appropriate civil penalty to the United States for their violation of the Act, and an order of Court requiring The Mullane Defendants and The Greenleaf Defendants to pay the plaintiff's legal fees and costs (including, but not limited to, costs expended for expert witnesses).

**Count VIII: CLEAN WATER ACT VIOLATION AT THE BARGE ATC 12000**

87. All factual allegations in this Complaint are incorporated in this Count VIII.

88. The BARGE ATC-12000 is a 245' vessel that is aground approximately 18 hours per day on average, at a position that is partly in tidal wetlands, and partly in navigable waters, all of which are Waters of the United States. The vessel has not moved from its present location since 2011.

89. It being aground, the BARGE ATC-12000, which has been operated by The Mullane Defendants during all times at issue in this legal action, and has been owned by Mullane since

March, 2014, changes the bottom elevation of the waterway and thus is “fill material” as that term has been defined in the Clean Water Act and the implementing regulations.

90. On information and belief, The Mullane Defendants, or persons acting in concert with them, or acting at the behest, direction or control of The Mullane Defendants, through use of a vessel or other mechanized equipment operated under their direction or control, placed the BARGE ATC 12000 at its present location, such action constituting a discharge of “fill material” into Waters of the United States.

91. The BARGE ATC 12000 occupies approximately 18,375 square feet (nearly one-half of an acre) of mudflat and/or river bottom. Because this massive vessel is aground, it compresses the mudflat and/or river bottom underneath with its weight, with adverse impact to benthic organisms and other aquatic life. This vessel is likewise preventing sunlight from reaching approximately 18,375 square feet of mudflat and/or river bottom, with adverse impact to photosynthetic bacteria, benthic microalgae, and/or sub aquatic vegetation beneath the vessel. These are significant adverse impacts to the functions and values of the mudflat and the waterway. This vessel pollutes the Elizabeth River by causing a degradation to the physical, chemical and/or biological properties of the waters of the inlet.

92. The Mullane Defendants’ failure to obtain a permit under Clean Water Act section 404 (33 USC Section 1344) violates Clean Water Act section 301(a) (33 USC Section 1311(a)) and Va. Code Section 62.1-44.5.

993. The pollution that The Mullane Defendants discharge into the waterway at the BARGE ATC 12000, and the stigma and blight that attach to the waterway as a result of The Mullane Defendants’ actions with respect to that vessel, cause special damage to plaintiff in the form of lost or reduced rents, and reduction in the value of the plaintiff’s property.

94. Plaintiff is entitled to an injunction requiring The Mullane Defendants to come into compliance with the Clean Water Act, an order of Court requiring The Mullane Defendants to pay an appropriate civil penalty to the United States for their violation of the Act, and an order of Court requiring The Mullane Defendants to pay the plaintiff's legal fees and costs (including, but not limited to, costs expended for expert witnesses).

**Count IX: FURTHER CLEAN WATER ACT VIOLATIONS**

95. All factual allegations in this Complaint are incorporated in this Count IX.

96. The Mullane Defendants owned and/or operated the following vessels present in the waterway when the Complaint in this legal action was filed in May 2015, with these vessels having been so present on a continuous basis for several years: ex-USS YRST-2 (261' former U.S. Navy vessel, 1300 gross tons, built in 1944, that appears to be in lay up); BARGE ATC 12000 (245' former sugar barge, greater than 300 gross tons); ex-USS ZUNI (205' warship built in 1943, 916 gross tons, now a rusting hulk incapable of use in transportation); F/V SHEARWATER (166' fishing vessel built in 1944, 607 gross tons, now a rusting hulk incapable of use in transportation); and, ATLAS CRANE BARGE (110' operational vessel, greater than 300 gross tons).

97. The Greenleaf Defendants owned and/or (together with The Mullane Defendants) operated the ex-USS YRST-2.

98. The stormwater flowing off of these vessels during rain events discharges pollutants into the waterway adjacent to plaintiff's property, this being a Water of the United States.

99. The defendants have failed to obtain a permit for such discharges, resulting in the discharge of pollution into the waterway, and hence into the Elizabeth River on the (at least) 180 dates in the last 5 years when a storm event at this location delivered enough rain to generate runoff from the vessels.

100. The defendants' failure to obtain a permit for these discharges violates Clean Water Act section 301(a) (33 USC Section 1311(a)) and Va. Code Section 62.1-44.5.

101. The uncontrolled pollution that the defendants discharge into the waterway, and hence into the Elizabeth River through stormwater discharged from these vessels, and the stigma and blight that attach to the waterway as a result of the defendants' uncontrolled releases of pollution into the river, cause special damage to plaintiff in the form of lost or reduced rents, and reduction in the value of the plaintiff's property.

102. Water that enters the interior of these vessels collects in the bilges and must be periodically removed. River water leaks into the vessels at the hull penetrations. Additionally, rain water enters the interior of the vessels during storm events. The defendants, on information and belief, periodically pump this bilge water into the waterway adjacent to plaintiff's property, and hence into the Elizabeth River, resulting in the discharge of pollution into Waters of the United States.

103. The defendants' failure to obtain a permit for these discharges violates Clean Water Act section 301(a) (33 USC Section 1311(a)) and Va. Code Section 62.1-44.5.

104. The uncontrolled pollution that the defendants discharge into the Elizabeth River through bilgewater discharged from these vessels, and the stigma and blight that attach to the waterway as a result of the defendants' uncontrolled releases of pollution into the river, cause special

damage to plaintiff in the form of lost or reduced rents, and reduction in the value of the plaintiff's property.

105. These vessels have anti-fouling hull coatings that leach, thus discharging pollution into the waterway adjacent to the plaintiff's property, and hence into the Elizabeth River, which is a part of the Waters of the United States. The defendants' failure to properly maintain the vessels results in paint peeling from the vessels and falling into the waterway adjacent to the plaintiff's property, and hence into the Elizabeth River, thus discharging pollution into Waters of the United States.

106. The defendants' failure to obtain a permit for these discharges violates Clean Water Act section 301(a) (33 USC Section 1311(a)) and Va. Code Section 62.1-44.5.

107. The uncontrolled pollution that the defendants discharge into the Elizabeth River through leaching of the anti-fouling hull coatings on the hull of these vessels and through peeling paint, and the stigma and blight that attach to the waterway as a result of the defendants' uncontrolled releases of pollution into the river, cause special damage to plaintiff in the form of lost or reduced rents, and reduction in the value of the plaintiff's property.

**WHEREFORE**, Plaintiff, 307 Campostella, LLC, by counsel, respectfully requests the Court enter an Order as follows:

- A. With respect to Counts I to III: requiring all defendants to abate their nuisance and pay compensatory damages to plaintiff;
- B. With respect to Counts IV and V: requiring The Mullane Defendants to come into compliance with the Resource Conservation and Recovery Act, pay an appropriate civil penalty to the United States for their violations of the Resource Conservation and Recovery Act, and pay the plaintiff's legal fees and costs;

- C. With respect to Count VI: requiring The Mullane Defendants to come into compliance with the Clean Water Act, pay an appropriate civil penalty to the United States for their violations of the Clean Water Act, and, pay the plaintiff's legal fees and costs;
- D. With respect to Count VII: requiring The Mullane Defendants and The Greenleaf Defendants to come into compliance with the Clean Water Act, pay an appropriate civil penalty to the United States for their violations of the Clean Water Act, and, pay the plaintiff's legal fees and costs;
- E. With respect to Count VIII: requiring The Mullane Defendants to come into compliance with the Clean Water Act, pay an appropriate civil penalty to the United States for their violations of the Clean Water Act, and, pay the plaintiff's legal fees and costs;
- F. With respect to Count IX: requiring The Mullane Defendants and The Greenleaf Defendants to come into compliance with the Clean Water Act, pay an appropriate civil penalty to the United States for their violations of the Clean Water Act, and, pay the plaintiff's legal fees and costs;
- G. With respect to all Counts: grant plaintiff such further and general relief as may be needed to serve the ends of justice in this action.

Plaintiff respectfully requests a trial by jury as to all claims so triable.

Respectfully submitted this 20<sup>th</sup> day of January, 2016.

**307 CAMPOSTELLA, LLC**

By:           /s/ James T. Lang            
Of Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2016 in accordance with 42 U.S.C. § 6972(b)(2)(F), I sent copy of the Second Amended Complaint filed in this above-matter to the following via certified mail, return receipt requested and by regular first class mail, postage prepaid, to the following:

Loretta E. Lynch, Esquire  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Civil Process Clerk  
United States Attorney's Office  
United States Department of Justice  
950 Pennsylvania Avenue, NW, Room 2242  
Washington, DC 20530-0001

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

I furthermore certify that on January 20, 2016, I caused this Second Amended Complaint to be electronically filed with the Clerk of the Court using the CM/ECF system, which in turn

