

enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Effective July 30, 1992, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the State of Maryland was granted final authorization to administer a state underground storage tank (UST) management program *in lieu* of the Federal underground storage tank management program. The provisions of the Maryland underground storage tank management program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. Maryland's authorized underground storage tank program regulations are set forth in COMAR 26.10.02. Section 9006(a)-(d) of RCRA, 42 U.S.C. § 6991e(a)-(d), authorizes EPA: (a) to take an enforcement action whenever it is determined that a person is in violation of any requirement of RCRA Subtitle I, EPA's regulations thereunder, or any regulation of a state underground storage tank program which has been authorized by EPA; and (b) to assess a civil penalty against any person who violates any requirement of RCRA Subtitle I.

Respondent was previously notified regarding the RCRA Subtitle C and Subtitle I allegations recited herein in a letter dated April 24, 2014. In accordance with Sections 3008(a)(2) and 9006(a)(2) of the RCRA, 42 U.S.C. §§ 6928(a)(2) and 6991e(a)(2), EPA has notified the State of Maryland of EPA's intent to enter into a CAFO with Respondent resolving the RCRA Subtitle C and Subtitle I violations set forth herein.

This CAFO also resolves violations of the CAA, 42 U.S.C. §§ 7401, *et seq.* EPA is authorized by Section 110 of the CAA to approve a federally enforceable state implementation plan (SIP), and by Section 113 of the CAA to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements, 42 U.S.C. §§ 7410 and 7413. These include requirements promulgated by EPA and those contained in federally enforceable state implementation plans or permits. Respondent is subject to the federally-enforceable requirements set forth at COMAR 26.11, regarding operating permits, which EPA approved in a revision of the Virginia SIP on February 14, 2003.

Respondent was previously notified regarding the CAA allegations recited herein in a letter dated April 24, 2014. EPA has notified the State of Maryland of EPA's intent to enter into a CAFO with Respondent to resolve the CAA violations set forth herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to

contest the allegations set forth in this CA and any right to a hearing and to appeal the accompanying Final Order, or any right to confer with the Administrator pursuant to RCRA Section 6001(b)(2), 42 U.S.C. § 6961(b)(2).

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

6. Respondent shall bear its own costs and attorney's fees.

7. The provisions of this CAFO shall be binding upon Complainant and Respondent and any successors and assigns.

8. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of the RCRA, the CAA, or any regulations promulgated thereunder.

EPA's Findings of Fact and Conclusions of Law

9. In accordance with the Consolidated Rules at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the findings of fact and conclusions of law which follow.

10. Respondent is, and has been at all times relevant to this CAFO, the owner and operator of the Naval Support Activity Bethesda ("NSAB"), Bethesda, Maryland (the "Facility").

11. EPA conducted an inspection of the Facility on August 6-9, 2012 ("EPA Inspection").

COUNT I – RCRA SUBTITLE C – FAILURE TO PROPERLY MANAGE UNIVERSAL WASTES

12. Paragraphs 1 through 11 of this CAFO are incorporated by reference as though fully set forth herein.

13. Respondent is and has been at all times relevant to this CAFO the "owner" and "operator" of a "facility," as those terms are defined by COMAR 26.13.01.03.

14. Respondent is a department, agency and/or instrumentality of the United States and is a "person" as defined by Section 1004(15) of the RCRA, 42 U.S.C. § 6903(15), and COMAR 26.13.01.03.

15. COMAR 26.13.01.03 (43-2) defines a "lamp" as "the bulb or tube portion of an electric lighting device...specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum."

16. COMAR 26.13.01.03 (89-1) defines “universal waste” as including, among other things, discarded lamps.
17. A “small quantity handler of universal waste” is defined in COMAR 26.13.01.03 (72-2) as a universal waste handler that does not accumulate 5,000 kilograms or more of universal waste at any time during a calendar year.
18. At the time of the EPA Inspection, there were shrink-wrapped universal waste lamps in Bay #1 at the Facility.
19. Respondent is and, at all times relevant to this CAFO, has been a “small quantity handler of universal waste” at the Facility, as that term is defined in COMAR 26.13.01.03.
20. COMAR 26.13.10.17 requires a small quantity handler of universal waste to label or mark the universal waste to identify the type of universal waste.
21. COMAR 26.13.10.17 also requires that a small quantity handler of universal waste be able to demonstrate the length of time the universal waste has been accumulated from the date it becomes a waste and to make that demonstration by one of several methods, including placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received by the handler.
22. At the time of the EPA Inspection, Respondent was storing universal waste lamps in Bay #1 in shrink-wrapped packages, some of which were missing labels, others of which were missing the accumulation start date, and still others that had the date when the facility called its contractor to pick up the universal wastes rather than the accumulation start date.
23. Respondent violated COMAR 26.13.10.17 by failing to properly store and label universal wastes identified above in Paragraph 18.

COUNT II – RCRA SUBTITLE C – OPERATING WITHOUT A PERMIT

24. Paragraphs 1 through 23 of this CAFO are incorporated by reference as though fully set forth herein.
25. Respondent is and has been through the period of the violations alleged herein, a “generator” of, and has engaged in the “storage” of, materials that are “solid wastes” and “hazardous waste” at the Facility as those terms are defined by COMAR 26.13.01.03B.
26. The Facility is a Large-Quantity Generator (LQG) of hazardous waste that generates hazardous waste in an amount greater than 1,000 kilograms per month, and uses EPA ID MD4170024687.
27. The Facility also has a RCRA Treatment, Storage, and Disposal (TSD) permit, Controlled Hazardous Substances (CHS) Permit No. A-221, for the storage of hazardous waste at

Building 256. This permit does not cover other areas or operation.

28. Respondent is and, at all times relevant to this CAFO, has been an “owner” and “operator” of a “hazardous waste treatment, storage and disposal facility” at the Facility, as those terms are defined in COMAR 26.13.01.03.

29. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A, provide, in pertinent part, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility.

30. COMAR 26.13.03.05E(1) provides, in pertinent part, that a generator may accumulate hazardous waste on-site without a permit or without holding interim status for 90 days or less, if:

(a) The waste is shipped off-site within 90 days to a permitted facility or placed in an on-site permitted facility;

(b) The generator accumulates the waste in containers, tanks or certain drip pads;

(c) Containers used to accumulate the waste meet the standards of COMAR 26.13.03.05A (Packaging);

(d) The generator accumulates the waste in containers in accordance with COMAR 26.13.05.09;

(e) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(f) Each container is (i) properly labeled and marked according to COMAR 26.13.03.05.B and C (“Labeling and Marking”), and (ii) labeled or marked clearly with the words “Hazardous Waste”, while being accumulated on-site; and

(g) The generator complies with the requirements for owners and operators in COMAR 26.13.05.02G, 26.13.05.03, and 26.13.05.04 (“Personnel Training,” “Preparedness and Prevention,” and “Contingency Plan and Emergency Procedures,” respectively).

Open Containers

31. COMAR 26.13.05.09(D), referenced in Paragraph 30(d), above, provides that a container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste. COMAR 26.13.03.05.E (1)(f) referenced in Paragraph 25, above, provides that a container of hazardous waste must be labeled or marked clearly with the words “hazardous waste.”

32. During the EPA Inspection, a black 5 gallon container labeled as hazardous waste was open at a time when waste was not being added or removed, as follows: The EPA Inspector

noted that a hazardous waste container was left open by Facility staff at the Pharmacy.

33. Respondent violated COMAR 26.13.05.09.D by failing to ensure a container holding hazardous waste be closed during storage, except when it is necessary to add or remove waste

34. Respondent violated COMAR 26.13.07.01A. and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit or interim status.

Container Labeling

35. COMAR 26.13.03.05E(1), referenced in Paragraph 30 above, provides, in pertinent part, that a generator may accumulate hazardous waste on-site without a permit or without holding interim status for 90 days or less, if [e]ach container is...labeled or marked clearly with the words "Hazardous Waste", while being accumulated on-site; and

36. COMAR 26.13.03.05.B, referenced in Paragraph 30(f) above, and CHS Permit No. A-221 I.A., require that before transporting or offering hazardous waste for transportation off-site a generator shall label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 C.F.R. Part 172.

37. COMAR 26.13.03.05.E(1)(e) and CHS Permit No. A-221 I.A. require that the date upon which each period of accumulation [of hazardous waste in a container] begins be clearly marked and visible on each container.

38. At the time of the EPA Inspection, the label on one of the hazardous waste containers in Building #256 of the Hospital at the Facility had no accumulation start date and two X-ray contrast containers that the Facility was using to store hazardous wastes did not have labels or accumulation start dates.

39. Respondent violated COMAR 26.13.03.05.B, COMAR 23.13.03.05.E, and CHS Permit No. A-221 I.A. by failing to ensure a container holding hazardous waste have a label with the date upon which each period of accumulation begins and while being accumulated on-site each container is labeled and marked clearly with the words "Hazardous Waste."

Satellite Accumulation

40. COMAR 26.13.03.05.E(3) states that a generator may accumulate as much as 55 gallons of hazardous waste or 1 quart of acutely hazardous wastes in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit and without complying with §E(1) if the generator complies with COMAR 26.13.05.09.B-D and marks the containers with the words "Hazardous Waste" or with other words that identify the contents of the containers.

41. At the time of the EPA Inspection, the EPA Inspector noted that the Facility staff was collecting waste at a DAKO brand machine and then transferring that container when full to a satellite accumulation area away from the area where the wastes initially accumulated.

42. Respondent violated COMAR 23.13.03.05.E(3) by carrying hazardous waste away from the point of generation to a satellite accumulation area in another room and away from the control of the operator.

43. Because Respondent did not comply with the requirements concerning open containers, as described in Paragraphs 31-34, above, and did not comply with the requirements pertaining to container labeling, as described in Paragraphs 35-39, above, Respondent failed to satisfy the conditions set forth at COMAR 26.13.03.05.E(1) for a generator to qualify for an exemption from the permit and/or interim status requirements of RCRA Section 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), for the hazardous waste management activities described in Paragraphs 31- 42, above.

44. Respondent does not have, and at the time of the violations alleged herein, did not have, a permit or interim status to store hazardous waste at the Facility as required by COMAR 26.13.07.01A, and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e).

45. Because of the activities alleged in Paragraphs 31- 42, above, Respondent violated COMAR 26.13.07.01A, by operating a hazardous waste storage facility without a permit or interim status.

**COUNT III – RCRA SUBTITLE C – FAILURE TO PROPERLY LABEL AND DATE
HAZARDOUS WASTE**

46. Paragraphs 1 through 45 of this CAFO are incorporated by reference as though fully set forth herein.

47. COMAR 26.13.03.05.B and CHS Permit No. A-221 I.A. require that before transporting or offering hazardous waste for transportation off-site a generator shall label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 C.F.R. 172.

48. COMAR 26.13.03.05.E and CHS Permit No. A-221 I.A. require that the date upon which each period of accumulation [of hazardous waste in a container] begins be clearly marked and visible on each container.

49. At the time of the EPA Inspection, the label on one of the hazardous waste containers in Building #256 of the Hospital at the Facility had no accumulation start date and two X-ray contrast containers that the Facility was using to store hazardous wastes did not have labels or accumulation start dates.

50. Respondent violated COMAR 26.13.03.05.B, COMAR 23.13.03.05.E, and CHS Permit No. A-221 I.A. by failing to ensure a container holding hazardous waste have a label with the date upon which each period of accumulation begins and while being accumulated on-site each container is labeled and marked clearly with the words “Hazardous Waste.”

**COUNT IV -- RCRA SUBTITLE C – FAILURE TO PROPERLY MANAGE
HAZARDOUS WASTE IN A SATELLITE ACCUMULATION AREA**

51. Paragraphs 1 through 50 of this CAFO are incorporated by reference as though fully set forth herein.

52. COMAR 26.13.03.05.E(3) states that a generator may accumulate as much as 55 gallons of hazardous waste or 1 quart of acutely hazardous wastes in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit and without complying with §E(1) if the generator complies with COMAR 26.13.05.09.B-D and marks the containers with the words “Hazardous Waste” or with other words that identify the contents of the containers.

53. At the time of the EPA Inspection, the EPA Inspector noted that the Facility staff was collecting waste at a DAKO brand machine and then transferring that container when full to a satellite accumulation area away from the area where the wastes initially accumulated.

54. Respondent violated COMAR 23.13.03.05.E(3) by carrying hazardous waste away from the point of generation to a satellite accumulation area in another room and away from the control of the operator.

**COUNT V – RCRA SUBTITLE C – IMPROPER STORAGE OF INCOMPATIBLE
HAZARDOUS WASTES**

55. Paragraphs 1 through 54 of this CAFO are incorporated by reference as though fully set forth herein.

56. COMAR 26.13.05.02.H requires, *inter alia*, that an owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive wastes and that the mixture or comingling of incompatible wastes, or incompatible wastes and materials, shall be conducted so that it does not, *inter alia*, threaten human health or the environment.

57. Part II.1 of the Facility’s RCRA Permit No. A-221 for the storage of hazardous waste at Building 256 requires that the Facility shall manage ignitable, reactive, or incompatible waste in accordance with COMAR 26.13.05.02.H. In addition, Part III.C. designates that hazardous wastes should be stored in accordance with Table III.2, which requires that wastes with a waste code of P105 be stored with oxidizers.

58. At the time of the EPA Inspection, the EPA Inspector observed that sodium azide, waste code P105, was stored in the cyanides/sulfides bay. According to the Facility’s permit, sodium azide should only be stored in the oxidizers bay.

59. Respondent violated Part II.1 of the RCRA Permit and COMAR 26.13.05.02H by storing

incompatible wastes in close proximity to each other.

**COUNT VI – RCRA SUBTITLE C – IMPROPER COMPLETION OF A
HAZARDOUS WASTE MANIFEST**

60. The allegations contained in Paragraphs 1 through 59 of this CAFO are incorporated by reference herein as though fully set forth herein.

61. COMAR 26.13.03.04 requires that a generator who transports, or offers for transport, hazardous waste for off-site treatment, storage, or disposal prepare a manifest.

62. COMAR 26.13.05.05.C requires certain measures be taken upon the discovery of a manifest discrepancy, including, *inter alia*, attempt to reconcile the discrepancy with the waste generator or transporter and, if the discrepancy is not resolved shall write a letter to the Secretary of the Maryland Department of the Environment (“MDE”) describing the discrepancy, the attempts to reconcile it, and a copy of the manifest at issues.

63. COMAR 26.13.05.05.C (1)(b) defines a manifest discrepancy as a difference between the quantity or type of hazardous waste designated on the manifest or shipping paper. The Respondent initially labeled the wastes as non-regulated and then changed the waste designation as “flammable.”

64. At the time of the EPA Inspection, the EPA Inspector noted that there were manifests with discrepancies and the discrepancies were not corrected properly.

65. Respondent violated COMAR 26.13.05.05.C by not taking appropriate measures to correct manifest discrepancies.

**COUNT VII – RCRA SUBTITLE C – FAILURE TO FOLLOW PART B STORAGE
PERMIT REGARDING DAILY INSPECTIONS**

66. Paragraphs 1 through 65 of this CAFO are incorporated by reference as though fully set forth herein.

67. COMAR 26.13.05.09.E and CHS Permit No. A-221 II.C, and CHS Permit No. A-221 Permit Application Section 2.3.6.1 require that an owner and operator of a hazardous waste facility inspect where containers are stored at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.

68. COMAR 26.13.05.02F(4), which is incorporated by reference in CHS Permit No. A-221 II.C, and CHS Permit No. A-221 Permit Application Section 2.3.6.1, requires that the owner or operator maintain a copy of the records of inspections for at least 3 years from the date of the inspection.

69. The Facility's hazardous waste permit, CHS Permit No. A-221, Attachment 2 specifies items for which the Facility staff must inspect.

70. At the time of the Inspection, the Facility's inspection checklist was missing certain items, including, but not limited to, checking the ventilation system, temperature and labeling. The Facility staff was therefore conducting only partial inspections. Additionally, the facility was missing its inspection checklist for the 2nd quarter of 2009.

71. Respondent violated COMAR 26.13.05.09.E and its RCRA Permit by failing to perform weekly inspections as required by COMAR and the Facility RCRA Permit. Respondent violated 26.13.05.02F(4) and its RCRA Permit by failing to maintain records of the inspections as required by COMAR and the Facility RCRA Permit.

**COUNT VIII – RCRA SUBTITLE I – FAILURE TO CONDUCT LEAK
DETECTION ON A REGULATED TANK**

72. The allegations contained in Paragraphs 1 through 71 of this CAFO are incorporated by reference herein as though fully set forth herein.

73. COMAR 26.10.05.02.B requires that owners and operators of petroleum UST systems be inventoried daily and UST systems shall be monitored at least every 30 days for releases.

74. At the time of the EPA Inspection, the EPA Inspector noted that there were no leak tests performed for January, February, and March of 2012 for Tank 298A even though the tank contained product during those months.

75. Respondent violated COMAR 26.13.05.02.B by not performing leak tests at least every 30 days.

**COUNT IX FAILURE TO PROVIDE RECORDS AND DOCUMENTS TO EPA'S
AIR INSPECTOR**

76. The allegations contained in Paragraphs 1 through 75 of this CAFO are incorporated by reference herein as though fully set forth herein.

77. Section 113(d)(1) of the CAA limits the Administrator's authority to matters where the first alleged violation occurred no more than 12 months prior to the initiation of an administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action. The Administrator and Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO

78. MDE issued the Facility a Title V permit, #24-031-01124, with an effective date of

November 1, 2011, and an expiration date of June 30, 2016. This permit was in effect at the time of the inspection. At the time of this inspection, the Facility also had five MDE Permits to Construct for Emergency Generators (EGs). Those are #031-2509-9-1003, #031-2509-9-1004, #031-2509-9-1005 issued on 5/26/2001, #031-1124-9-1024 issued on 11/07/2011, and #031-1124-9-1034 issued on 2/22/2012.

79. The Facility's Title V Air Permit Section II.22.b requires that the Permittee shall allow employees and authorized representatives of the EPA to have access to and make copies of records required by the Permit.

80. The Facility's Title V Air Permit requires that the Facility maintain copies of, *inter alia*,

1. **Combustion Analyses for the new AERCO Water Heater**
2. **Records of tests of the Stage II Vapor Recovery Systems at the Government Gas Station (GGS) and Navy Exchange Gas Station (NEXGS)**
3. **Copy of the inspection records for the GGS for 2012**
4. **Records of the hours the three EGs at the Armed Forces Radiobiology Research Institute (AFRRI) were used and delivery tickets for the diesel fuel delivered to these EGs since they were installed**
5. **Operating Permit Application for the Facility Title V Permit**
6. **2011 Annual Compliance Certification Report**
7. **2011 Annual Emissions Certification Report**

81. At the time of the EPA Inspection and subsequent to the EPA Inspection, the EPA Inspector requested access to and/or copies of the above mentioned records.

82. The Facility failed to provide EPA access to or copies of records as required by the Facility's Title V Air Permit Section II.22.b.

83. The Facility violated its Title V Air Permit by failing to provide EPA access to or copies of records it was required to maintain under its Permit.

COUNT X FAILURE OF DESIGNATED OPERATORS TO ATTEND TRAINING

84. The allegations contained in Paragraphs 1 through 83 of this CAFO are incorporated by reference herein as though fully set forth herein.

85. The Facility's Air Permit Section IV.4.1.D(1)(d) requires that each operator of an installation, except combustion turbines, attend operator training programs at least once every three (3) years, on combustion optimization which are sponsored by the [Maryland] Department [of the Environment], the EPA, or equipment vendors.

86. At the time of the EPA Inspection, the Facility Staff informed the EPA Inspector that the Designated Operators of the 17 emergency generators and the emergency generator at the Walter

Reed Medical Center had not attended required training programs on combustion optimization at least once every three (3) years, as required by the Facility's Title V Air Permit.

87. Respondent violated its Title V Air Permit by not ensuring that the designated operators attend required training.

COUNT XI FAILURE TO INCLUDE ANALYSIS OF FUELS BURNED IN ANNUAL EMISSIONS CERTIFICATION REPORTS

88. The allegations contained in Paragraphs 1 through 87 of this CAFO are incorporated by reference herein as though fully set forth herein.

89. The Facility's Title V Air Permit Sections IV.1.5.C, IV.2.5.D, and IV.3.5.D, require that the Facility that the Respondent submit to the State of Maryland an annual emissions certificate report that contains the type, quantities, and analyses of all fuels burned.

90. At the time of the EPA Inspection, the EPA Inspector noted that the Facility failed to include the analysis of fuels burned by the AERCO manufactured water heater and the five Cleaver Brooks boilers in its 2009 and its 2010 Annual Emissions Certification Reports.

91. Respondent violated its Title V Air Permit by not submitting an annual emissions certificate report that contains the type, quantities, and analyses of all fuels burned.

COUNT XII FAILURE TO PROVIDE 12-MONTH NITROGEN OXIDES EMISSIONS TOTALS

92. The allegations contained in Paragraphs 1 through 91 of this CAFO are incorporated by reference herein as though fully set forth herein.

93. The Facility's Title V Air Permit Section IV.2.5.C(1)(b), requires that the Respondent shall report to MDE the rolling twelve-month NO_x emissions totals, which were calculated at the end of each month, in semi-annual monitoring reports due by July 31 for the period January 1 through June 30, and January 31 for the period July 1 through December 31.

94. The Facility's Title V Air Permit Section IV.3.5.C requires that the rolling twelve month NO_x emission records be kept for at least five (5) years

95. At the time of the EPA Inspection, the Facility staff failed to include the records for each boiler and for the five Cleaver-Brooks boilers in the semi-annual monitoring reports submitted to the State of Maryland.

96. Respondent violated its Title V Air Permit by not including the required rolling twelve month NO_x emissions in its semi-annual report to the Department and by failing to maintain the records for at least five (5) years.

**COUNT XIII FAILURE TO PROVIDE MONTHLY CONSUMPTION OF
NATURAL GAS AND FUEL OIL**

97. The allegations contained in Paragraphs 1 through 96 of this CAFO are incorporated by reference herein as though fully set forth herein.

98. The Facility's Title V Air Permit Section IV.2.5.C(1)(c) requires that the Respondent submit to MDE records of the consumption of both natural gas and No. 2 fuel oil for each boiler and for the five Cleaver-Brooks boilers on a rolling twelve-month basis and include those totals with the semi-annual monitoring reports.

99. The Facility's Title V Air Permit Section IV.2.4.C requires that the records for the consumption of natural gas and No. 2 fuel oil during any twelve-month rolling period be maintained for at least five (5) years

100. At the time of the EPA Inspection, the EPA Inspector noted that the Facility staff had failed to include the rolling records for each boiler and for the five Cleaver-Brooks boilers in the semi-annual monitoring reports submitted to the Department.

101. Respondent violated its Title V Air Permit by not submitting records of the rolling twelve-month consumption amounts of both natural gas and No. 2 fuel oil and failing to maintain the records for at least 5 years.

**COUNT XIV FAILURE TO COMPLY WITH APPLICABLE LEAK
REGULATIONS**

102. The allegations contained in Paragraphs 1 through 101 of this CAFO are incorporated by reference herein as though fully set forth herein.

103. The Facility's Title V Air Permit Section III.15, requires that the Respondent shall comply with the standards for recycling and emissions reduction pursuant to 40 C.F.R Part 82, which requires, *inter alia*,

- a. that persons disposing of small appliances, MVACS [motor vehicle air conditioners], and MVAC-like appliances, comply with the recordkeeping requirements of 40 C.F.R. § 82.166(k), which requires that facilities with appliances containing greater than 50 pounds of a Class I or Class II ozone depleting refrigerants must create and maintain servicing records documenting the date and type of service, as well as the quantity of refrigerant added to such appliances; and
- b. that persons owning commercial or industrial process refrigeration equipment

comply with the leak repair requirements pursuant to 40 C.F.R § 82.156.

104. At the time of the EPA Inspection, the EPA Inspector noted that the Facility did not have procedures to determine the leak rates of nine large chillers, which contain 2,400 pounds or more of R-123, at the Power Plant and did not maintain servicing and purchasing records.

105. At the time of the EPA Inspection, the EPA Inspector noted that the Facility had not listed the back-up air conditioning unit, with two circuits that each contained more than 50 pounds of R-22, on the inventory of air conditioning and refrigeration units with greater than 50 pounds of refrigerants. This unit was therefore not monitored for compliance with applicable leak regulations.

106. Respondent violated its Title V Air Permit by not complying with the standards for recycling and emissions reduction pursuant to 40 C.F.R Part 82.

COMPLIANCE ORDER

107. Within sixty (60) days of the effective date of this Consent Agreement Respondent shall ensure that all universal wastes are managed in accordance with COMAR 26.13.10.17, including the proper storage and labeling of universal wastes.

108. Within sixty (60) days of the effective date of this Consent Agreement Respondent shall either obtain a permit for the storage, treatment, or disposal of hazardous waste in accordance with Section 3005 of RCRA, 42 U.S.C. § 6925, and COMAR 26.13.07.01A or shall comply with the generator accumulation exemption of COMAR 26.13.03.05E.

109. Within sixty (60) days of the effective date of this Consent Agreement Respondent shall ensure that hazardous wastes containers are managed in accordance with COMAR 26.13.05.09D.

110. Within sixty (60) days of the effective date of this Consent Agreement Respondent shall ensure that all hazardous wastes are managed in accordance with COMAR 26.13.03.05.E, including the proper labeling and dating of hazardous waste prior to transporting.

111. Within sixty (60) days of the effective date of this Consent Agreement Respondent shall ensure that hazardous wastes stored in a satellite accumulation area are managed in accordance with COMAR 26.13.03.05.E.

112. Within sixty (60) days of the effective date of this Consent Agreement Respondent shall ensure that all hazardous wastes are stored per the terms of its permit in those areas covered by the permit.

113. Within sixty (60) days of the effective date of this Consent Agreement Respondent shall follow the proper procedure for its paper hazardous waste manifests, in accordance with COMAR 26.13.05.05.C.

114. Within sixty (60) days of the effective date of this Consent Agreement Respondent shall follow all storage permit requirements listed in Part B of the facility's permit for daily inspections of containers storing hazardous wastes.

115. Within sixty (60) days of the effective date of this Consent Agreement Respondent will conduct leak detection on all regulated underground storage tanks in accordance with required by COMAR 26.10.05.02.B.

CIVIL PENALTY

116. Respondent consents to the assessment of a civil penalty of one hundred thirty-nine thousand dollars (\$139,000.00) in full satisfaction of all claims for civil penalties for the violations alleged in the above alleged fourteen counts of this CAFO. Respondent must pay the civil penalty no later than **SIXTY (60)** calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.

117. For the violations alleged in Counts I - VII, EPA considered a number of factors including, but not limited to, the statutory factors set forth in Section 3008(a)(3) of the RCRA, 42 U.S.C. § 6928(a)(3), *i.e.*, the seriousness of Respondent's violations and the good faith efforts by Respondent to comply with the applicable requirements of the RCRA, and the *RCRA Civil Penalty Policy* (2003). EPA has also considered the *Adjustments of Civil Penalties for Inflation and Implementing the Debt Collection Improvement Act of 1996* ("DCIA"), as set forth in 40 C.F.R. Part 19, and the December 29, 2008 memorandum by EPA Assistant Administrator Granta Y. Nakayama entitled, *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)* ("2008 Nakayama Memorandum"), which specify that for violations that occurred after January 30, 1997, statutory penalties and penalties under the RCRA Civil Penalty Policy for, *inter alia*, RCRA Subtitle C violations, were increased 10% above the maximum amount to account for inflation, statutory penalties for, *inter alia*, RCRA Subtitle C violations that occurred after March 15, 2004, through January 12, 2009, were increased by an additional 17.23% above the maximum amount to account for inflation, and statutory penalties for, *inter alia*, RCRA Subtitle C violations that occurred after January 12, 2009, were increased by an additional 9.83% above the maximum amount to account for inflation.

118. For the violations in Count VIII, EPA considered a number of factors, including, but not limited to, the statutory factors set forth in Section 9006(c) and (e) of RCRA, 42 U.S.C. §§ 6991e(c) and (e), *i.e.*, the compliance history of the Respondent, and other factors EPA considers appropriate under the *U.S. EPA Penalty Guidance For Violations of UST Regulations*, OSWER Directive 9610.12 (November 14, 1990) and *Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009*, Rosemarie A. Kelley (April 6, 2010). EPA also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2008 Nakayama Memorandum, which specify that for violations that occurred after January 30, 1997, statutory penalties and penalties under the *U.S. EPA Penalty Guidance For Violations of UST Regulations* were increased 10% above the maximum amount to account for inflation, statutory penalties for, *inter alia*, RCRA Subtitle I violations that occurred after March 15, 2004 through January 12, 2009,

were increased by an additional 17.23% above the maximum amount to account for inflation, and statutory penalties for, *inter alia*, RCRA Subtitle I violations that occurred after January 12, 2009, were increased by an additional 9.83% above the maximum amount to account for inflation.

119. For the violations alleged in Counts IX - XIV, EPA considered a number of factors, including, but not limited to, the penalty assessment criteria in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), including the seriousness of Respondent's violations and Respondent's good faith efforts to comply, and the *Clean Air Act Stationary Source Civil Penalty Policy* (1991). EPA also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2008 Nakayama Memorandum, which specify that for violations that occurred after January 30, 1997, statutory penalties and penalties under the *Clean Air Act Stationary Source Civil Penalty Policy*, were increased 10% above the maximum amount to account for inflation, and statutory penalties for, *inter alia*, CAA violations that occurred after March 15, 2004 through January 12, 2009, were increased by an additional 17.23% above the maximum amount to account for inflation, and statutory penalties for, *inter alia*, CAA violations that occurred after January 12, 2009, were increased by an additional 9.83% above the maximum amount to account for inflation.

120. Payment of the civil penalty amount required under the terms of Paragraph 116, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference its name and address and the Docket Number of this action (Docket No. RCRA/CAA-03-2016-0019);
- b. All checks shall be made payable to "**United States Treasury**;"
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The Customer Service contact for the above method of payment is Eric Volck at 513-487-2105.

- d. All payments made by check and sent by overnight delivery service shall be addressed and sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza

Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The Customer Service number for the above method of payment is 314-418-1028.

- e. All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

- f. All payments through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Transaction Code 22 - checking
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury Facility:

5700 Rivertech Court
Riverdale, MD 20737

The Customer Service contact for the above method of payment is John Schmid at 202-874-7026, or REX at 1-866-234-5681.

- g. There is an on-line payment option available through the Department of the Treasury. This payment option can be accessed from: WWW.PAY.GOV. Enter sfo 1.1 in the search field and complete all required fields in the form.
- h. Payment may be made using the Intra Governmental Payment and Collection application (IPAC), ALC 68-01-0727, and Treasury Symbol 681099. Please include the Docket Number of this action (Docket No. RCRA/CAA-03-2016-0019] in the description field of the IPAC. The Customer Service contact is Molly Williams at 513-487-2076.
- i. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

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

and to

Gracie Pendleton
U.S. Environmental Protection Agency, Federal Facilities Enforcement
Office
1200 Pennsylvania Ave. NW (MC 2261A)
Washington, DC 20460

EFFECT OF SETTLEMENT

121. Payment of the penalty specified in Paragraph 116, above, in the manner set forth in Paragraph 120, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under the RCRA and the CAA for the specific violations alleged in Counts I - XIV, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

RESERVATION OF RIGHTS

122. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the RCRA, the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

FULL AND FINAL SATISFACTION

123. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008(a)(1) and (g), 6001(b), 9006, and 9007 of the RCRA, 42 U.S.C. §§

6928(a)(1) and (g), 6961(b), 6991e, and 6991f, Sections 113 and 118(a) of the CAA, 42 U.S.C. §§ 7413 and 7418(a), for the specific violations alleged in this CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to specific violations alleged herein, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

ANTIDEFICIENCY ACT

124. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with the RCRA, the CAA, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

AUTHORITY TO BIND THE PARTIES

125. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this CA and to bind the Respondent to it.

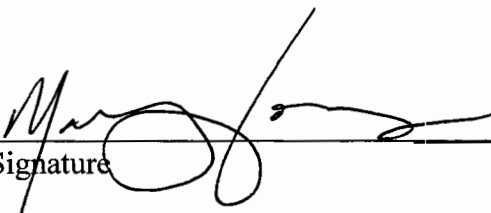
EFFECTIVE DATE

126. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

The United States Department of the Navy

12/24/15
Date


Signature

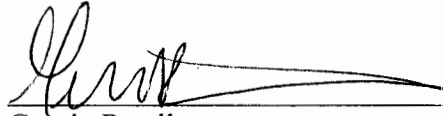
M. L. JONES, CAPT, MSC, USN
Name [print or type]

COMMANDING OFFICER
Title [print or type]

For Complainant:

U.S. Environmental Protection Agency,
Region III

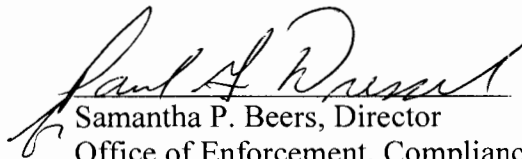
01/20/2016
Date



Gracie Pendleton
Attorney-Advisor
U.S. EPA – Federal Facilities Enforcement Office

Accordingly, I hereby recommend that the Regional Administrator or his designee, the Regional Judicial Officer, issue the Final Order attached hereto pertaining to Docket No. RCRA/CAA-03-2016-0019.

01/28/2016
Date



Samantha P. Beers, Director
Office of Enforcement, Compliance, and
Environmental Justice
U.S. EPA - Region III

FINAL ORDER

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**United States Department of the Navy
Naval Support Activity Bethesda
8901 Wisconsin Ave.
Bethesda, MD 20889,**

Respondent.

**EPA Docket No. RCRA/CAA-03-2016-
0019**

FINAL ORDER

**Proceeding under Sections 3008(a)(1) and
(g), 6001(b), 9006, and 9007(a) of the
Resource Conservation and Recovery
Act, Sections 113 and 118(a) of the Clean
Air Act, and 40 CFR Part 22**

FINAL ORDER

Complainant, the Director of the Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency, Region III, and Respondent, the U.S. Department of the Navy have executed a document entitled Consent Agreement, which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

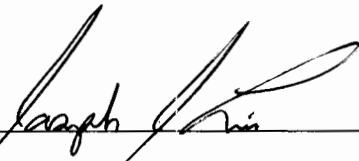
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *RCRA Civil Penalty*

Policy (2003), the *Adjustments of Civil Penalties for Inflation and Implementing the Debt Collection Improvement Act of 1996*, the *U.S. EPA Penalty Guidance for Violations of UST Regulations* (November 14, 1990), *Revision to Adjusted Penalty Policy Matrices Packages Issued on November 16, 2009* (April 6, 2010), the *Clean Air Act Stationary Source Penalty Policy* (1991), and the 2008 U.S. EPA Memorandum from Grant Nakayama entitled *Amendments to EPA Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule*, and the statutory factors set forth in Section 3008(a)(3) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a)(3), Section 9006(c) and (e) of RCRA, 42 U.S.C. §§ 6991(e)(c) and (e), and Section 113(e) of the Clean Air Act (CAA), 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Sections 3008(a)(1) and (g), 6001(b), 9006, and 9007(a) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (g), 6961(b), 6991e, and 6991f(a), Sections 113 and 118(a) of the CAA, 42 U.S.C. §§ 7413 and 7418(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **ONE HUNDRED THIRTY-NINE THOUSAND DOLLARS (\$139,000.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Feb. 2, 2016
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

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


IN RE: :
 :
United States Department of the Navy, :
 :
Respondent, :
 :
 : Docket No. RCRA/CAA-03-2016-0019
Naval Support Activity Bethesda :
Bethesda, Maryland :
 :
Facility. :

CERTIFICATE OF SERVICE

I hereby certify that on this date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5th Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and the accompanying Final Order. I further certify that on the date set forth, I caused true and correct copies of the same to be mailed, via CERTIFIED MAIL, Receipt Requested, Postage Prepaid, to the following person at the following address:

Kimberly Fedinatz, Esquire
Assistant Counsel (Environmental and Real Estate) NAVFAC Washington
1314 Harwood St. SE, Bldg. 212
Washington Navy Yard, 20374

2/2/16
Date


Jan Nation
Senior Paralegal Specialist
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029