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

**1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

2016 JUN 27 PM 12:33
REGIONAL DEPT. OF ENV.
PHILADELPHIA

IN THE MATTER OF:

United States Department of the Navy

Respondent,

Norfolk Naval Shipyard
Portsmouth, Virginia

Facility.

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: Docket No. CAA/RCRA-03-2016-0108
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:
: Proceeding under 42 U.S.C. § 6928(a) and
: (g) and 42 U.S.C. §§ 7413 and 7418(a)
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CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement (“CA”) is entered into by the Director of the Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”) and the United States Department of the Navy (“Respondent”), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as “RCRA”), 42 U.S.C. § 6928(a) and (g), Sections 113 and 118(a) of the Clean Air Act, as amended (“CAA”), 42 U.S.C. §§ 7413 and 7418(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement (“CA”) and the accompanying Final Order (“FO”, collectively referred to herein as the “CAFO”) simultaneously commences and concludes this administrative proceeding against Respondents.

Regulatory Background

This CAFO resolves violations of the RCRA, Subtitle C, 42 U.S.C. §§ 6921- 6939e, and regulations in the authorized Virginia hazardous waste program in connection with Respondent’s

facility located Portsmouth, Virginia. Virginia initially received final authorization for its hazardous waste regulations, the Virginia Hazardous Waste Management Regulations (“VaHWMR”), 9 Virginia Administrative Code (“VAC”) 20-60-12 *et seq.*, on December 4, 1984, effective December 18, 1984 (49 Fed. Reg. 47391). EPA reauthorized Virginia’s regulatory program on June 14, 1993, effective August 13, 1993 (58 Fed. Reg. 32855); on July 31, 2000, effective September 29, 2000 (65 Fed. Reg. 46606); on June 20, 2003, effective June 20, 2003 (68 Fed. Reg. 36925); on May 10, 2006, effective July 10, 2006 (71 Fed. Reg. 27204); on July 30, 2008, effective July 30, 2008 (73 Fed. Reg. 44168); and on September 3, 2013, effective November 4, 2013 (78 Fed. Reg. 54178). The provisions of the revised federally-authorized program have thereby become requirements of the RCRA, Subtitle C, and therefore are enforceable by EPA pursuant to Section 3008(a) of the RCRA, 42 U.S.C. § 6928(a). The factual allegations and legal conclusions in this CA are based on provisions of the federally-authorized VaHWMR in effect at the time of the violations alleged herein.

Respondent was previously notified regarding the RCRA allegations recited herein under cover letter dated July 28, 2015. In accordance with Section 3008(a)(2) of the RCRA, 42 U.S.C. § 6928(a)(2), EPA has notified Virginia, through the Virginia Department of Environmental Quality, of EPA’s intent to enter into a CAFO with Respondent resolving the RCRA 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, 42 U.S.C. § 7410, to approve a federally enforceable state implementation plan (“SIP”), and by Section 113 of the CAA, 42 U.S.C. § 7413, 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. Title V of the CAA, and implementing regulations at 40 C.F.R. Part 70, require states to develop and submit to EPA operating permit programs, and that EPA act to approve or disapprove each program. EPA fully approved the Title V operating permit program for the Commonwealth of Virginia effective on November 30, 2001, 40 C.F.R. Part 70, App. A. The Facility was issued Virginia Title V Operating Permit No. TRO060326, on November 1, 2012, for a period of five years. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), 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.

Respondent was previously notified regarding the CAA allegations recited herein under cover letter dated July 28, 2015. EPA has notified Virginia, through the Virginia Department of Environmental Quality, 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 appeal the accompanying Final Order, or any right to confer with the Administrator.
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. Respondent certifies to EPA by its signature herein that it is presently in compliance with the provisions of the RCRA and the CAA referenced herein.
8. The provisions of this CAFO shall be binding upon Complainant and Respondent, and any successors and assigns.
9. 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, Subtitle C, 42 U.S.C. §§ 6921- 6939e, the CAA, or any regulations promulgated thereunder.

EPA's Findings of Fact and Conclusions of Law

10. 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.
11. Respondent is a department of the United States. Respondent is the owner and operator of the Norfolk Naval Shipyard, Portsmouth, Virginia 23709-5000 (the "Facility").
12. EPA conducted an inspection of Respondent's Facility on June 17 - 20, 2013 ("EPA Inspection").

COUNT I (RCRA SUBTITLE C-OPERATING WITHOUT A PERMIT)

13. The allegations in each of the preceding paragraphs are incorporated by reference as though fully set forth herein.
14. 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 9 VAC 20-60-260, which, with exceptions not relevant to these terms, incorporates by reference 40 C.F.R. § 260.10.
15. 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 9 VAC 20-60-260, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.
16. Respondent is and, at all times relevant to this CAFO, has been a “generator” of, and has engaged in the “storage” in “containers” of materials that are “solid wastes” and “hazardous waste” at the Facility, as those terms are defined in 9 VAC 20-60-260 and 261, which incorporate by reference 40 C.F.R. §§ 260.10 and 261.2 and .3, including the hazardous waste referred to herein.
17. Section 3005(a) and (e) of the RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270 (which incorporates by reference 40 C.F.R. § 270.1(b)) 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 such facility or has qualified for interim status.
18. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), provides that a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that, *inter alia*:
 - a. The waste is placed in containers and the generator complies with 40 C.F.R. § 265, Subparts I, AA, BB and CC;
 - b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
 - c. While being accumulated on-site, each container and tank is labeled or marked clearly with the words “Hazardous Waste;” and
 - d. The generator complies with the requirements for owners or operators set forth in 40 C.F.R. Part 265, Subparts C and D, 40 C.F.R. § 265.16, and 40 C.F.R. § 268.7(a)(5).

19. 40 C.F.R. § 262.34(b) provides that a generator who accumulates more than 1,000 kilograms (kg) of hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264 and 265 and the permit requirements of 40 C.F.R. Part 270 unless it has been granted an extension to the 90-day period.

Facility Operation

20. 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(4), provides in relevant part that a generator must comply with the requirements for owners or operators, including the requirements of Subpart C of 40 C.F.R. Part 265. 40 C.F.R. § 265.31, which is part of Subpart C of 40 C.F.R. Part 265, provides that, “Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.”
21. At the time of the EPA Inspection, June 17-20, 2013:
- a. There was blast grit, a hazardous waste, on the floor near a blast cabinet in Building 510.
 - b. There was blast media, a hazardous waste, on the floor near Satellite Accumulation Area (“SAA”) 529 in Building 171.
 - c. There was blast media, a hazardous waste, on the floor near SAA 143 in Building 171.
22. At the time of the EPA Inspection, June 17-20, 2013, Respondent violated 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 265.31, by failing to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste to air, soil, or surface water which could threaten human health or the environment.
23. For the reasons and during each of the dates and time periods identified in Paragraphs 13 through 22, above, Respondents failed to comply with the permit exemption conditions, identified in Paragraph 18, above, for temporary (i.e., 90 days or less) accumulation of hazardous waste by a generator at the Facility, as required pursuant to 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.
24. For each of the reasons and during the dates and time periods identified in Paragraphs 13 through 22, above, Respondents engaged in the operation of a hazardous waste storage facility (i.e., the Facility) without having interim status or obtaining a permit for the Facility pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, or 9 VAC 20-60-270.

COUNT II (RCRA SUBTITLE C-WASTE DETERMINATIONS)

25. The allegations in each of the preceding paragraphs are incorporated by reference as though fully set forth herein.
26. 90 VAC 20-60-261, which incorporates by reference the requirements of 40 C.F.R. § 261.2, defines a solid waste as “any discarded material that is not excluded under [40 C.F.R.] § 261.4(a) or that is not excluded by a variance granted under [40 C.F.R.] §§ 260.30 and 260.31 or that is not excluded by a non-waste determination under [40 C.F.R.] §§ 260.30 and 260.34.”
27. 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.11, requires that a person who generates a solid waste determine if the waste is a hazardous waste using one of the methods therein described.
28. At the time of the EPA Inspection, June 17-20, 2013, Respondent failed to make a hazardous waste determination for the following solid wastes:
- a. The Facility did not properly determine if paint filters from the paint booth located in SAA 507 (Building 369) were hazardous waste.
 - b. The Facility did not properly determine if paint rags being accumulated in Building 1499 were hazardous waste.
 - c. The Facility did not properly determine if a 5 gallon pail of dried paint at SAA 427 (Building 1499) was hazardous waste.
29. At the time of the EPA Inspection, June 17-20, 2013, Respondent violated 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.11, by failing to determine if the solid wastes described in Paragraph 28, above, were hazardous wastes.

COUNT III (RCRA-UNIVERSAL WASTE)

30. The allegations in each of the preceding paragraphs are incorporated by reference as though fully set forth herein.
31. 9 VAC 20-60-273 incorporates by reference the definitions of 40 C.F.R. § 273.9, which provides in relevant part the following definition of lamp: “Lamp, also referred to as ‘universal waste lamp’ is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.”

32. 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.13(d)(1), requires, in relevant part, that universal waste lamps be placed in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. In addition, such containers or packages must remain closed.
33. At the time of the EPA Inspection, June 17-20, 2013, there were two boxes of universal waste lamps in Building 281. The boxes were open. Lamps were neither being added nor removed to this box at the time of the observation.
34. At the time of the EPA Inspection, June 17-20, 2013, Respondent violated 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.13(d)(1), by placing the universal waste lamps referenced in Paragraph 33 in containers that did not remain closed.

COUNT IV (RCRA-UNIVERSAL WASTE)

35. The allegations in each of the preceding paragraphs are incorporated by reference as though fully set forth herein.
36. 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.14(e), requires, in relevant part, that each lamp or a container or package in which universal waste lamps are contained must be labeled or marked clearly as such.
37. At the time of the EPA Inspection, June 17-20, 2013, there were two boxes of universal waste lamps in Building 281 which were unlabeled and unmarked.
38. At the time of the EPA Inspection, June 17-20, 2013, Respondent violated 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.14(e) by not having the universal waste lamps referenced in Paragraph 37 appropriately labeled.

COUNT V (RCRA-UNIVERSAL WASTE)

39. The allegations in each of the preceding paragraphs are incorporated by reference as though fully set forth herein.
40. 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.15(c), requires, in relevant part, that a small quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.
41. At the time of the EPA Inspection, June 17-20, 2013, there were two boxes of universal waste lamps in Building 281 which did not have an accumulation start date, nor had any

other means of demonstrating the length of time the universal waste had been accumulating.

42. At the time of the EPA Inspection, June 17-20, 2013, Respondent violated 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.15(c) by not having a means of demonstrating the length of time universal waste had been accumulating with respect to the universal waste lamps referenced in Paragraph 41.

COUNT VI (CAA—TITLE V PERMIT)

43. The allegations in each of the preceding paragraphs are incorporated by reference as though fully set forth herein.
44. Under Section 110 of the CAA, EPA has the authority to approve a SIP, which is federally enforceable once it is approved by EPA. EPA originally approved the Virginia SIP on May 31, 1972, at 37 Fed. Reg. 10842, and has periodically approved revisions to the SIP after that date.
45. EPA is authorized by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in federally enforceable SIPs or permits. Under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), EPA has the authority to issue administrative penalty orders for violations of any requirement or prohibition contained in a federally enforceable SIP or permit.
46. Title V of the CAA, and implementing regulations at 40 C.F.R. Part 70 require that states develop and submit to EPA operating permit programs, and that EPA act to approve or disapprove each program.
47. Provisions included by state permitting authorities in Title V permits issued under a program approved by EPA are enforceable by EPA unless denoted in the permit as a state or local requirement that is not federally enforceable.
48. EPA fully approved the Title V operating permit program for the Commonwealth of Virginia effective on November 30, 2001, 40 C.F.R. Part 70, Appendix A.
49. The Facility was issued Virginia Title V Operating Permit Number TRO 060326 (“Permit”) on November 1, 2012, for a period of five years. The Permit was in effect at the time of the EPA Inspection.
50. Part VIII, Section A, Condition 73 of the Permit provides, in relevant part, as follows:
- VOC Work Practices – At all times the disposal of volatile organic compounds shall be accomplished by taking measures, to the extent practicable, consistent with air pollution

control practices for minimizing emissions. Volatile organic compounds shall not be intentionally spilled, discarded in sewers which are not connected to a treatment plant, or stored in open containers or handled in any other manner that would result in evaporation beyond that consistent with air pollution control practices for minimizing emissions.

51. The Permit also provides in the Facility Information section that, “The facility is a major source for all criteria pollutants. It is also a major source of [hazardous air pollutants] HAPs and is therefore, subject to the Shipbuilding MACT (Subpart II), the Chrome MACT (Subpart N), the RICE MACT (Subpart ZZZZ), the CI ICE NSPS (Subpart IIII) and the Asbestos NESHAP (Subpart M).”
52. 40 C.F.R. § 63.783(b)(3), which is part of the Shipbuilding Maximum Achievable Control Technology (“MACT”) standards, states as follows: “All containers, tanks, vats, drums, and piping systems are free of cracks, holes, and other defects and remain closed unless materials are being added to or removed from them.”
53. At the time of the EPA Inspection, June 17-20, 2013, there were open paint cans, still containing paint, in the vicinity of paint booth #1 in Building 234.
54. At the time of the EPA Inspection, June 17-20, 2013, there was a large trash can containing paint rags that were dry in a paint locker in Building 1499.
55. At the time of the EPA Inspection, June 17-20, 2013, there was an open five gallon pail of epoxy paint in Building 1499 which had been allowed to dry in the open.
56. The activities in Paragraphs 53-55 were in violation of Part VIII, Section A, Condition 73 of the Permit and 40 C.F.R. § 63.783(b)(3) at the time of the EPA Inspection, June 17-20, 2013.

CIVIL PENALTY

57. Respondent consents to the assessment of a civil penalty of thirty eight thousand three hundred dollars (\$38,300.00) in full satisfaction of all claims for civil penalties for the violations alleged in the above alleged six 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.
58. For the violations alleged in Counts I - V, 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. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s October 1990 RCRA Civil Penalty Policy, as revised in June 2003, which reflect the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and

(g) of the RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and memorandum by EPA Assistant Administrator Cynthia Giles entitled, *Amendments to U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation* (Effective December 6, 2013) ("*Giles Memorandum*").

59. For the violations alleged in Count VI, 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 (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and the *Clean Air Act Stationary Source Civil Penalty Policy* (1991). EPA also considered the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the *Giles Memorandum*.
60. Payment of the civil penalty amount required under the terms of Paragraph 57, 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. CAA/RCRA-03-2016-0108);
 - 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
Contact: Craig Steffen (513-487-2091)
 - 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

- 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
REX: 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. 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

Daniel L. Isales (3RC60)
Environmental Science Center
U.S. Environmental Protection Agency, Region III
701 Mapes Road
Fort Meade, MD 20755-5350

EFFECT OF SETTLEMENT

61. Payment of the penalty specified in Paragraph 57, above, in the manner set forth in Paragraph 60, above, and compliance with all other terms of this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under the RCRA, Subtitle C, and the CAA for the specific violations alleged in Counts I - VI, 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

62. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CA. 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

63. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008(a) and (g) of the RCRA, 42 U.S.C. § 6928(a) and (g), and Section 113 of the CAA, 42 U.S.C. § 7413, 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

64. 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

65. 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 Consent Agreement and to bind the Respondent to it.

EFFECTIVE DATE


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

For Respondent:

United States Department of the Navy

7/8/16

Date



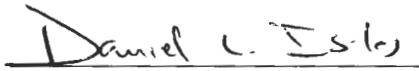
Scott M. Brown
Captain, U.S. Navy
Commanding Officer
Norfolk Naval Shipyard

For Complainant:

U.S. Environmental Protection Agency,
Region III

7/13/16

Date




Daniel L. Isaacs
Assistant Regional Counsel
U.S. EPA - Region III

Accordingly, I hereby recommend that the Regional Administrator or his designee, the Regional Judicial Officer, issue the Final Order attached hereto.

7/20/16

Date



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

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
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IN THE MATTER OF: :
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United States Department of the Navy :
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Respondent, :
 : Docket No. CAA/RCRA-03-2016-0108
Norfolk Naval Shipyard :
Portsmouth, Virginia :
 : Proceeding under 42 U.S.C. § 6928(a) and
 : (g) and 42 U.S.C. §§ 7413 and 7418(a)
 :
Facility. :

FINAL ORDER

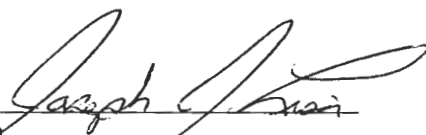
Complainant, the Director of the Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region III, and Respondent, the United States Department of the Navy, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement 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 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 on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's October 1990 *RCRA Civil Penalty Policy*, as revised in June 2003, and EPA's *Clean Air Act Stationary Source Civil Penalty Policy* (1991), 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), and in Section 113(e) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 3008(a)(1) and (g) of the RCRA, 42 U.S.C. § 6928(a)(1) and (g), Section 113(d) of the CAA, 42 U.S.C. § 7413(d), 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 thirty eight thousand three hundred dollars (\$38,300.00), 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.

July 26, 2016
Date



Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

RECEIVED

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

2016 JUL 27 PM 12: 33

IN THE MATTER OF:

United States Department of the Navy

Respondent,

Norfolk Naval Shipyard
Portsmouth, Virginia

Facility.

: REGIONAL HEARING CLERK
: EPA REGION III, PHILA. PA

:
: Docket No. CAA/RCRA-03-2016-0108

:
: Proceeding under 42 U.S.C. § 6928(a) and
: (g) and 42 U.S.C. §§ 7413 and 7418(a)

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent a true and correct copy of the Consent Agreement and Final Order to the following:


ORIGINAL AND ONE COPY FILED, VIA HAND DELIVERY

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

COPY SERVED, VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Waina McFarlane
Environment, Occupational Health and Safety Section
Office of Counsel
Naval Sea Systems Command
1333 Isaac Hull Avenue SE
Washington Navy Yard, DC 20376-1150

Dated: July 27, 2016



Catherine McCool
Paralegal Specialist
U.S. EPA, Region III
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Philadelphia, PA 19103
(215) 814-2670