

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

IN RE:

United States Department of the Army,

Respondent,

Tobyhanna Army Depot
Tobyhanna, Pennsylvania

Facility.

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:
: **U.S. EPA-REGION 3-RHC**
: FILED-19SEP2018am6:34
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: Docket No. RCRA-CAA-03-2018-0128
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: Proceeding under 42 U.S.C. §§ 7413 and
: 7418(a) and 42 U.S.C. §§ 6928(a) and (g)
: and 6961(b)
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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 U.S. Department of the Army (“Respondent”), pursuant to Sections 113 and 118(a) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7413 and 7418(a), Sections 3008(a)(1) and (g), and 6001(b) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6928(a)(1) and (g), and 6961(b), 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 authority to enter into this CA has been duly delegated to the Regional Administrator by EPA Delegations 7-6-A and 8-9-A and re-delegated to Complainant by EPA Region III Delegations 7-6-A and 8-9-A.

The Consolidated Rules, 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 may be simultaneously 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 CA and the accompanying Final Order (“FO”), collectively referred to herein as the “CAFO” simultaneously commences and concludes this administrative proceeding against Respondent.

Regulatory Background

This CAFO resolves violations of the CAA, 42 U.S.C. §§ 7401, *et seq.* in connection with the Tobyhanna Army Depot located in Tobyhanna, Pennsylvania (“Facility”). On July 1, 2008, EPA promulgated rules under Section 112 of the CAA, 42 U.S.C. § 7412, establishing national emission standards for plating and polishing operations. There rules were and are codified at 40 C.F.R. Part 63, Subpart WWWW (Sections 63.11504-63.11513)(“Plating and Polishing NESHAP”). 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.

Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), among other things, limits the Administrator’s authority to matters where the first alleged violation occurred no more than twelve (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 in a letter dated February 2, 2018. EPA has notified Pennsylvania of EPA’s intent to enter into a CAFO with Respondent to resolve the CAA violations set forth herein.

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

The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the “Pennsylvania Hazardous Waste Management Program”) *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939f. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations (“PaHWR”) were authorized by EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A (51 Fed. Reg. 1791). The PaHWR have been re-authorized several times subsequent to this original authorization, including most recently effective June 29, 2009 (74 Fed. Reg. 19453). The provisions of Pennsylvania’s current authorized revised PaHWR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a). Many of the federal RCRA regulations are incorporated by reference into the PaHWR. Pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a), EPA may enforce the conditions contained in a state-issued permit.

Respondent was previously notified regarding the RCRA Subtitle C allegations recited

herein in a letter dated February 2, 2018. In accordance with Sections 3008(a)(2) of the RCRA, 42 U.S.C. § 6928(a)(2), EPA has notified Pennsylvania of EPA's intent to enter into a CAFO with Respondent resolving the RCRA Subtitle C 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. Respondent, upon investigation, certifies to EPA by its signature herein that, to the best of its knowledge and belief, it is presently in compliance with the provisions of the CAA and the RCRA referenced herein.
8. The provisions of this CAFO shall be binding upon Complainant and Respondent and any successor departments, agencies, and instrumentalities.
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, 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 and has been, at all times relevant to this

CAFO, the owner and operator of the Facility.

12. EPA conducted an inspection of the Facility on February 21-23, 2017 (“EPA Inspection”).

COUNT I (CAA – PLATING AND POLISHING NESHAP)

13. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
14. The Facility conducts operations at its Plating Shop which are subject to the Plating NESHAP.
15. 40 C.F.R. § 63.11509(c) requires preparation of an annual certification of compliance report. In accordance with 40 C.F.R. § 63.11509(c)(7) such a report must be prepared no later than January 31 of the year immediately following the reporting period and kept in a readily-accessible location for inspector review.
16. At the time of the EPA Inspection on February 21-23, 2017, the annual certification of compliance reports for calendar years 2015 and 2016 had not been prepared. The reports for calendar years 2015 and 2016 were subsequently prepared on March 15, 2017.
17. Respondent is in violation of 40 C.F.R. § 63.11509(c) for not having prepared in a timely manner the annual of certification of compliance reports for calendar years 2015 and 2016.

COUNT II (RCRA SUBTITLE C – OPERATING WITHOUT A PERMIT)

18. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
19. At the time of the EPA Inspection, the Facility was a Large Quantity Generator of hazardous waste and, as such, had less-than 90-day storage areas and satellite accumulation areas. In addition, the Facility was issued Permit No. 5213820892 for hazardous waste storage at certain areas of the Facility by the Pennsylvania Department of Environmental Protection (PADEP); this permit was issued on May 10, 2013, with an expiration date of May 10, 2023. The allegations in this Count related to the Facility’s obligations as a Large Quantity Generator of hazardous waste and not to the permitted storage area addressed by the permit.
20. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(c), requires an owner or operator to obtain a permit for the treatment, storage, and disposal of any hazardous waste as identified or listed in 40 C.F.R. Part 261. Under 40 C.F.R. § 270.30, as incorporated into the PaHWR by reference, a RCRA permit holder must comply with

all conditions of the issued hazardous waste permit.

21. 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(c)(2)(i), sets forth a 90-day exception to the permit requirement allowing a generator to accumulate hazardous waste on-site in containers or tanks for 90 days or less without a permit so long as such accumulation is in compliance with 40 C.F.R. § 262.34.
22. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34, provides that, to be eligible for the 90-day permit exemption, a generator must comply with the standards in, *inter alia*, Subparts C, D and I of 40 C.F.R. Part 265. These conditions are further described in Paragraph 39 below.
23. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(b), provides that a generator who stores hazardous waste for more than 90 days is subject to the permit requirements of 40 C.F.R. Part 270 unless such generator has been granted an extension to the 90-day period due to unforeseen, temporary, and uncontrollable circumstances.
24. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, defines “generator” as any person whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.
25. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, defines “owner” as the person who owns a facility or part of a facility.
26. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, defines “operator” as the person responsible for the overall operation of a facility.
27. 25 Pa. Code § 260a.10 defines “person” as, *inter alia*, a Federal agency.
28. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, which, in turn, incorporates by reference 40 C.F.R. § 261.2, defines “solid waste” to include materials that are abandoned by being disposed of. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, defines “hazardous waste” as that term is defined in 40 C.F.R. § 261.3.
29. 25 Pa. Code § 260a.10 defines “facility” as “the land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored, or disposed.”
30. 25 Pa. Code § 260a.10 defines “treatment” as “a method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of waste to neutralize the waste or to render the waste nonhazardous, safer for transport, suitable for recovery, suitable for storage, or reduced in volume....The term

includes an activity or processing designed to change the physical form or chemical composition of waste to render it neutral or nonhazardous.”

31. 25 Pa. Code 260a.10 defines “storage” as “the containment of a waste on a temporary basis that does not constitute disposal of the waste. It will be presumed that the containment of waste in excess of 1 year constitutes disposal. This presumption can be overcome by clear and convincing evidence to the contrary.”
32. 25 Pa. Code 260a.10 defines “disposal” as “the incineration, deposition, injection, dumping, spilling, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of [the] Commonwealth.”
33. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), provides that no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
34. Respondent’s Facility was, at all times relevant to the allegations set forth in this CA, a hazardous waste storage “facility” as that term is defined in 25 Pa. Code § 260a.10.
35. Respondent was, at all times relevant to the allegations set forth in this CA, the “owner” of a “facility” (the Facility), as those terms are defined in 40 C.F.R. § 260.10, and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 Pa. Code § 260a.10.
36. Respondent was, at all times relevant to the allegations set forth in this CA, the “operator” of the Facility, as that term is defined in 40 C.F.R. § 260.10, and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 Pa. Code § 260a.10.
37. Respondent was, at all times relevant to the allegations set forth in this CA, a “generator” of “solid waste” and “hazardous waste” at the Facility, as these terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
38. At all times relevant to the allegations set forth in this CA, Respondent was engaged in the “storage” of “solid waste” and “hazardous waste” in “container[s]” at the Facility, as the term “storage” is defined in 25 Pa. Code § 260a.10, and as the remaining terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
39. Pursuant to 25 Pa. Code § 262a.10, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a), generators of hazardous waste may accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than 90 days and remain exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that

section, including, *inter alia*:

- a. the condition set forth at 40 C.F.R. § 262.34(a)(4), which requires, in relevant and applicable part, that “[t]he generator complies with the requirements for owners or operators in Subpart[] C . . . in 40 CFR Part 265. . .[,]” including the 40 C.F.R. Part 265, Subpart C, requirement in 40 C.F.R. § 265.31 (entitled “Maintenance and operation of facility”), that “[f]acilities 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[;]”
 - b. the condition set forth at 40 C.F.R. § 262.34(a)(4), which requires, in relevant and applicable part, that “[t]he generator complies with the requirements for owners or operators in Subpart[] D in 40 C.F.R. Part 265. . .[,]” including the 40 C.F.R. Part 265, Subpart D requirement in 40 C.F.R. § 265.52(f), which requires preparation of a contingency plan for the facility that includes an evacuation plan describing evacuation routes and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous wastes or fires); and
 - c. the condition set forth at 40 C.F.R. § 262.34(a)(1)(i), which requires, in relevant and applicable part, that when hazardous waste is placed in containers, the generator must comply “with the applicable requirements of subpart[] I . . . of 40 C.F.R. Part 265[,]” including the 40 C.F.R. Part 265, Subpart I requirement in 40 C.F.R. § 265.173(a) (pertaining to the “[m]anagement of containers”) which provides that “[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”
40. At all times relevant hereto, Respondent did not have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference into 25 Pa. Code § 270a.1, for the storage of hazardous waste at the Facility at the specific locations described below in Paragraph 42, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference into 25 Pa. Code § 270a.1.
41. Respondent did not qualify for the exemption found in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a), because of its failure to comply with all of the conditions of this exemption.
42. The following acts or omissions prevented Respondent from meeting the regulatory permit exemption requirements in 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(a):

- a. At the time of the EPA Inspection, a 1.3 cubic-yard sack in Building 30 was open though it was not necessary to add or remove waste, in violation of 40 C.F.R. § 265.173(a).
 - b. At the time of the EPA Inspection, at three different locations in Building 30 (the Right Shed, the North Area and the South Area), hazardous waste was located outside of containers, on the floor, in violation of 40 C.F.R. § 265.31.
 - c. At the time of the EPA Inspection, the Facility's contingency plan did not provide for an alternate evacuation route, in violation of 40 C.F.R. § 265.52(f).
43. As a result of the conditions described in Paragraph 42 immediately above, Respondent did not qualify for the generator accumulation exemption for the wastes described in Paragraph 42, immediately above.
44. Respondent violated Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), by operating several hazardous waste storage units at the Facility without a permit or interim status.

COUNT III (RCRA SUBTITLE C-OPEN CONTAINER)

45. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
46. Pursuant to 25 Pa. Code § 265a.1, which incorporates by reference the requirements of 40 C.F.R. § 265.173(a) (pertaining to the “[m]anagement of containers”), “[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”
47. At the time of the EPA Inspection a 1.3 cubic-yard sack in Building 30 was open though it was not necessary to add or remove waste, in violation of 40 C.F.R. § 265.173(a).
48. Respondent violated 25 Pa. Code § 265a.1 at the time of the EPA Inspection by having an open 1.3 cubic-yard sack in Building 30 though it was not necessary to add or remove waste.

COUNT IV (RCRA SUBTITLE C-MAINTENANCE AND OPERATION OF A FACILITY)

49. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
50. Pursuant to 25 Pa. Code § 265a.1, which incorporates by reference the requirements of 40

C.F.R. § 265.31 (entitled “Maintenance and operation of facility”), “[f]acilities 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.”

51. At the time of the EPA Inspection, at three different locations in Building 30 (the Right Shed, the North Area and the South Area), hazardous waste was located outside of containers, on the floor, in violation of 40 C.F.R. § 265.31.
52. Respondent violated 25 Pa. Code § 265a.1 at the time of the EPA Inspection by having hazardous waste outside of containers at three different locations in Building 30.

COUNT V (RCRA SUBTITLE C-CONTINGENCY PLAN)

53. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
54. Pursuant to 25 Pa. Code § 265a.1, which incorporates by reference the requirements of 40 C.F.R. § 265.52(f), facilities must prepare a contingency plan that includes an evacuation plan describing evacuation routes and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous wastes or fires).
55. At the time of the EPA Inspection, the Facility’s contingency plan did not provide for an alternate evacuation route, in violation of 40 C.F.R. § 265.52(f).
56. Respondent violated 25 Pa. Code § 265a.1 at the time of the EPA Inspection by having a contingency plan which did not provide for an alternate evacuation route.

COUNT VI (RCRA SUBTITLE C- FAILURE TO MAKE A HAZARDOUS WASTE DETERMINATION)

57. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.
58. 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, provides that a person who generates a solid waste must determine if that waste is a hazardous waste.
59. 25 Pa. Code § 260a.10, which incorporates by reference 40 C.F.R. § 260.10, which, in turn, incorporates by reference 40 C.F.R. § 261.2, defines “solid waste” to include materials that are abandoned by being disposed of.
60. As of the date of the EPA Inspection, Respondent failed to make a hazardous waste determination for the contents of a partially-filled, open, 30-gallon drum in the Plating

Branch which contained waste generated from a leak in a packing flow control valve from a glycol system.

61. Respondent violated the requirements of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.11, by failing to make a hazardous waste determination for the solid waste generated at the Facility, as described above.

COUNT VII (RCRA SUBTITLE C – PERMIT VIOLATION)

62. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
63. Permit No. PA5213820892, Part III, Section G., provides, in relevant part, that “The Permittee shall construct and/or maintain the containment system as required by 40 C.F.R. § 264.175 as incorporated by reference at 25 Pa. Code § 264a.1 and the attached plans and specifications...All containment area floors shall be uniform and free from cracks and holes.”
64. The permit requirements of Permit No. PA5213820892 apply to the storage areas of Building 56 at the Facility.
65. At the time of the EPA Inspection, there was a crack in the floor of Storage Bay No. 9 in Building 56. This crack was repaired on September 27, 2017.
66. Respondent was in violation of Part III, Section G, of Permit No. PA5213820892, by having a crack in the floor of Storage Bay No. 9 in Building 56.

CIVIL PENALTY

67. Respondent consents to the assessment of a civil penalty of FIFTY-FOUR THOUSAND THREE HUNDRED FOURTEEN dollars (\$54,314.00) in full satisfaction of all claims for civil penalties for the violations alleged in the above seven counts of this CAFO. Respondent must pay the civil penalty within **SIXTY (60)** calendar days after the Effective Date of this CAFO.
68. For the violations alleged in Count I, 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, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation; and the *Clean Air Act Stationary Source Civil Penalty Policy* (1991). EPA also considered the Debt Collection Improvement Act, as modified by the Federal Civil Penalties Inflation

Adjustment Act Improvements Act of 2015 (“DCIA”), and implemented by 40 C.F.R. Part 19, *Adjustments of Civil Monetary Penalties for Inflation*, and the January 11, 2018, memorandum by EPA Assistant Administrator Susan Parker Bodine entitled, *Amendments to the EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Rule* (“2018 Bodine Memorandum”).

69. For the violations alleged in Counts II-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 DCIA, as implemented by 40 C.F.R. Part 19, and the 2018 Bodine Memorandum.
70. Payment of the civil penalty amount required under the terms of Paragraph 67, 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-03-2018-0128);
 - 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
 - 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

The Customer Service contact for the above method of payment is 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-03-2018-0128) in the description field of the IPAC.
- i. All payments through the U.S. Government Wide Area Work Flow e-Business Systems shall include the EPA Region 3 Vendor Identification Cage Code 347A4. Please include the Docket Number of this action (Docket No. RCRA-CAA-03-2018-0128). The contact person for this method of payment is Craig Steffen at (513) 487-2091.
71. At the same time that any payment is made, Respondent shall mail or email copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

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
Email: isales.daniel@epa.gov

72. If the event that the payment required by Paragraph 67 is not made within sixty (60) calendar days from the effective date of this CAFO, interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim shall be managed in accordance with 31 U.S.C. § 3717, Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), and 40 C.F.R. § 13.11. Respondent disputes EPA's authority to impose interest charges on a federal agency and reserves its right to dispute any imposition of interest by EPA.

RESERVATION OF RIGHTS

73. 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

74. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 113 and 118(a) of the CAA, 42 U.S.C. §§ 7413 and 7418(a), and Sections 3008(a)(1) and (g), 6001(b) of the RCRA, 42 U.S.C. §§ 6928(a)(1) and (g), 6961(b) 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

75. 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

76. 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.

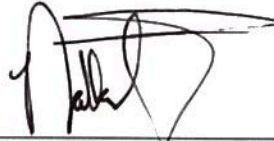
EFFECTIVE DATE

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

For Respondent:

The United States Department of the Army

09 SEP 18
Date



Nathan M. Swartz
Colonel, U.S. Army
Commanding

For Complainant:

U.S. Environmental Protection Agency,
Region III

9/11/18

Date

Daniel L. Isales

Daniel L. Isales
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 pertaining to Docket No. RCRA-CAA-03-2018-0128.

9/14/18

Date

Samantha P. Beers

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
Philadelphia, Pennsylvania 19103-2029**

IN RE:	:	
	:	
	:	
United States Department of the Army,	:	U.S. EPA-REGION 3-RHC
	:	FILED-19SEP2018am6:34
Respondent,	:	
	:	
Tobyhanna Army Depot	:	Docket No. RCRA-CAA-03-2018-0128
Tobyhanna, Pennsylvania	:	
	:	Proceeding under 42 U.S.C. §§ 7413 and
	:	7418(a) and 42 U.S.C. §§ 6928(a) and (g)
	:	and 6961(b)
	:	
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 Army, 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 June 2003 *RCRA Civil Penalty Policy* 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 **FIFTY-FOUR THOUSAND THREE HUNDRED FOURTEEN** dollars (\$54,314.00), 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.

Sept 18, 2018
Date



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

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

IN RE:

United States Department of the Army,

Respondent,

Tobyhanna Army Depot
Tobyhanna, Pennsylvania

Facility.

:
:
:
:
:
: Docket No. RCRA-CAA-03-2018-0128
:
: Proceeding under 42 U.S.C. §§ 7413 and
: 7418(a) and 42 U.S.C. §§ 6928(a) and (g)
: and 6961(b)
:
:
:

CERTIFICATE OF SERVICE

I certify that on SEP 19 2018, the original and one (1) copy of the foregoing **Consent Agreement and Final Order**, were filed with the EPA Region III Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Tracking No: 7002 2410 0005 1405 0168

Martha A. Verbonitz, Esquire
Legal Office
Tobyhanna Army Depot
11 Hap Arnold Boulevard
Tobyhanna, PA 18466-5054

Tracking No: 7002 2410 0005 1405 0175

John M. German
Associate Counsel, Environmental Law
Headquarters, U.S. Army Materiel Command
4400 Martin Road
Redstone Arsenal, AL 35898

Copy served via Hand Delivery or Inter-Office Mail to:

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

Dated: SEP 19 2018

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III