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

In Reply Refer To Mail Code: 3RC50

Via UPS and Email

6/21/13

Miguel Padilla, Esq.
U.S. Coast Guard
Mission Support Division (LSC-4E)
300 E. Main Street, Suite 400
Norfolk VA 23510-9100

Re: CAFO in Re: Docket No. RCRA-03-2013-0144

Dear Miguel:

Enclosed you will find a true and correct copy of the executed settlement ("CAFO") in the above captioned matter. This settlement was filed with the Regional Hearing Clerk today, June 21, 2013. Please note that the enclosed settlement is effective on the this date, and that Respondent's respective payment obligations are to be found in the CIVIL PENALTY provisions of the enclosed Consent Agreement. If you have any questions regarding compliance with the terms of the Consent Agreement, please call me at (215) 814-2618.

Sincerely,


Benjamin M. Cohan
Senior Assistant Regional Counsel

Enclosures

cc: Melissa Toffel (3LC70)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

SUBJECT: Consent Agreement and Final Order
In the Matter of U.S. Dept. of Homeland Security
United States Coast Guard
Docket Number RCRA-03-2013-0144

FROM: Marcia E. Mulkey
Regional Counsel (3RC00)
John A. Armstead, Director
Land and Chemicals Division (3LC00)

TO: Renée Sarajian
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order ("CAFO") has been negotiated in settlement of an action to be filed against The U.S. Department of Homeland Security/United States Coast Guard ("Respondent"), for violations of Section 9006(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e(a), at a Coast Guard training center located at 1 USCG Training Center, Yorktown, VA ("Facility"). Under the terms of the CAFO, Respondent certifies that it is in compliance with the provisions of RCRA allegedly violated, and agrees to pay a civil penalty of \$19,197.00. The civil penalty is based on consideration of the factors set forth in Section 9006(c) through (e) of RCRA, 42 U.S.C. § 6991e(c) through (e), and the "U.S. EPA Penalty Guidance for Violations of UST Regulations" dated November, 1990 ("UST Penalty Policy").

Accordingly, pursuant to 40 C.F.R. §§ 22.13(b), .18(b)(2) and (3), we recommend that you sign the attached Final Order and return the files to the Office of Regional Counsel for further processing.

cc: Miguel Padilla, Esq. (Respondent's Counsel)

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY NOV: 53

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

In the Matter of:)
)
U.S. Department of Homeland Security)
United States Coast Guard)
Norfolk, VA 23510)

U.S. EPA Docket Number RCRA-03-2013-0144

RESPONDENT)

1 USCG Training Center)
Yorktown, VA 23690)

FACILITY.)

Proceeding Under Section 9006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6991e

CONSENT AGREEMENT

This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant") and U.S. Department of Homeland Security, United States Coast Guard ("Respondent"), pursuant to Sections 9006 and 9007 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6991e and 6991f, 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 .18(b)(2) and (3).

This CA and the Final Order (collectively "CAFO"), resolve alleged violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's federally authorized underground storage tank ("UST") program by Respondent in connection with its underground storage tanks at Respondent's facility located at the 1 USCG Training Center, Yorktown, Virginia (the "Facility").

Effective October 28, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state UST management program in lieu of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i. The

provisions of the Virginia UST management program, through these final authorizations, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 and 9007 of RCRA, 42 U.S.C. §§ 6991e and 6991f. Virginia's authorized UST program regulations are set forth in the Virginia Administrative Code as Underground Storage Tanks: Technical Standards and Corrective Action Requirements ("VA UST Regulations"), 9 VAC § 25-580-10 *et seq.*

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits to 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 Consent Agreement ("CA"), the issuance of the attached Final Order ("FO"), or the enforcement thereof.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO. In addition, Respondent waives its opportunity to confer with the Administrator pursuant to RCRA § 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. As to RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the Commonwealth of Virginia's federally authorized underground storage tank program set forth at 9 VAC § 25-580-10 *et seq.* allegedly violated as set forth in the Factual Allegations and Conclusions of Law, Respondent certifies to EPA that, upon appropriate investigation, to the best of Respondent's knowledge and belief, Respondent is presently in compliance with all such relevant provisions and regulations. This certification is based upon the personal knowledge of the signer or based upon an inquiry of the person or persons responsible for the Facility's compliance with Subtitle I of RCRA.
8. This CAFO shall not relieve Respondent of its obligations 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 RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.

9. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CAFO are false or, in any material respect, inaccurate. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability.
10. EPA has given the Commonwealth of Virginia prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Sections 9006 and 9007 of RCRA, 42 U.S.C. §§ 6991e and 6991f, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).

11. At all times relevant to this CAFO, Respondent has been the "owner" and/or "operator," respectively, as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 9 VAC § 25-580-10, of the "underground storage tanks" ("USTs") and "UST systems" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 9 VAC § 25-580-10, located at the Facility described herein.
12. Respondent is a department, agency, and/or instrumentality of the United States as referred to in Section 9007 of RCRA, 42 U.S.C. § 6991f, and is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 9 VAC § 25-580-10.
13. On September 9, 2011, EPA performed a Compliance Evaluation Inspection ("CEI") at the Facility. At the time of the September 9, 2011 CEI, and at all times relevant to the violations alleged herein, three (3) USTs were located at the Facility as described in the following subparagraphs:
 - A. An eight thousand (8,000) gallon double wall fiberglass reinforced plastic tank that was installed in or about 1994, and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 1");
 - B. A ten thousand (10,000) gallon double wall cathodically-protected steel tank that was installed in or about 1990, and that, at all times relevant hereto, routinely contained and was used to store gasoline fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 2");

- C. A ten thousand (10,000) gallon double wall cathodically-protected steel tank that was installed in or about 1990, and that, at all times relevant hereto, routinely contained and was used to store gasoline fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10 (hereinafter "UST No. 3");
14. At all times relevant to the applicable violations alleged in this CAFO, USTs Nos. 1 through 3 have been "petroleum UST systems" and "new tank systems" as these terms are defined in 9 VAC § 25-580-10.
15. USTs Nos. 1 through 3 are and were, at all times relevant to the applicable violations alleged in this CAFO, used to store "regulated substance(s)" at Respondent's Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 9 VAC § 25-580-10, and have not been "empty" as that term is defined at 9 VAC § 25-580-310.1.

COUNT 1

(Failure to test automatic line leak detectors annually for USTs Nos. 1 through 3)

16. The allegations of Paragraphs 1 through 15 of this CA are incorporated herein by reference.
17. 9 VAC § 25-580-140(1) provides, in pertinent part, that all owners and operators of petroleum UST systems must provide release detection for pressurized piping as follows: ...Underground piping that conveys regulated substances under pressure must...be equipped with an automatic line leak detector conducted in accordance with 9 VAC § 25-580-170(1).
18. 9 VAC § 25-580-170(1) provides, in pertinent part, that with respect to automatic line leak detectors, "[a]n annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements".
19. From 10/2/10-9/8/11, Respondent failed to conduct the annual automatic line leak detector tests associated with USTs Nos. 2-3 as required by 9 VAC § 25-580-170(1); and from 4/11/09-9/8/11, Respondent failed to conduct the annual automatic line leak detector tests associated with UST No.1 as required by 9 VAC § 25-580-170(1).
20. Respondent's acts and/or omissions as alleged in Paragraph 19, above, constitute violations by Respondent of 9 VAC § 25-580-170(1).

COUNT 2

(Failure to conduct annual line tightness test or monthly monitoring for USTs Nos. 2 and 3)

21. The allegations in Paragraphs 1 through 20, above, are incorporated herein by reference as though fully set forth at length herein.
22. 9 VAC § 25-580-140(2)(a) provides, in pertinent part, that all owners and operators of petroleum UST systems must provide release detection for pressurized piping as follows: ...Underground piping that conveys regulated substances under pressure must...have an annual line tightness test conducted in accordance with 9 VAC § 25-580-170(2) or have monthly monitoring (i.e. another permissible monthly method of piping release detection) conducted in accordance with 9 VAC § 25-580-170(3).
23. 9 VAC § 25-580-170(2) sets forth the relevant performance standards that must be met regarding annual line tightness testing; and 9 VAC § 25-580-170(3) sets forth the applicable release detection methods for underground piping.
24. From 6/10/11-9/8/11, Respondent failed to conduct the annual line tightness testing or conduct monthly monitoring of the gasoline containing USTs Nos. 2 and 3 as required by 9 VAC § 25-580-140(2)(a)(2) and 9 VAC § 25-580-170(2) and (3).
25. Respondent's acts and/or omissions as alleged in Paragraph 24, above, constitute violations by Respondent of 9 VAC § 25-580-140(2)(a)(2), 9 VAC § 25-580-170(2) and (3).

CERTIFICATION OF COMPLIANCE

26. As to all relevant provisions of RCRA and the Commonwealth of Virginia Authorized UST management program allegedly violated as set forth herein, Respondent certifies to EPA that, upon investigation, to the best of each Respondent's knowledge and belief, Respondent is currently in compliance with all such provisions and regulations.

CIVIL PENALTY

27. In settlement of Complainant's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of Nineteen Thousand, One Hundred and Ninety-Seven Dollars (\$19,197.00) no later than THIRTY (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.

28. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(c), 42 U.S.C. § 6991e(c), and in accordance with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.

29. Respondent shall pay the civil penalty set forth in paragraph 27, above, by sending either a cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments shall be made to the "United States Treasury" by cashier's or certified check and sent by U.S Postal Service regular mail shall be addressed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The customer service contact for this address may be reached at 513-487-2105

b. All payments made by check and sent by UPS, FedEx, or overnight mail delivery service (except as noted in section c, below) shall be addressed 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 U.S. Bank customer service contact for overnight delivery is 314-418-1028.

c. All payments made by check in any currency drawn on banks with no branches in the United States shall be addressed for delivery to the following address:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. All payments made by electronic funds transfer ("EFT") shall be directed to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 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"

The Federal Reserve customer service contact may be reached at 212-720-5000.

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

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Customer service contact: John Schmid, at 202-874-7026, or REX at 1-866-234-5681

- f. On-line payment option

WWW.PAY.GOV

Enter "sfo 1.1" in the search field. Open and complete the form.

- g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/payment_instructions.htm

- 30. All payments by Respondent shall include Respondent's full name and address and the EPA Docket Number of this Consent Agreement (**RCRA-03-2013-0144**).
- 31. At the time of payment, Respondent shall send a notice of such payment, including a copy of the check, EFT authorization or ACH authorization, as appropriate to:

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

and

Benjamin M. Cohan
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

32. In accordance with 40 C.F.R. § 13.3, any debt owed to EPA as a result of Respondent's failure to timely pay the civil penalty set forth in paragraph 27, above, shall be resolved by negotiation between EPA and Respondent or by referral to the General Accounting Office (since 2004, referred to as the Government Accountability Office (PL-188-271)).

RESERVATION OF RIGHTS

33. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment, nor shall anything in this Consent Agreement and the attached Final Order be construed to limit the United States' authority to pursue criminal sanctions against any person or entity. In addition, Complainant reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
34. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, the applicable regulations thereunder, or with this CAFO.

OTHER APPLICABLE LAWS

35. Nothing in this CA shall be interpreted to require obligation or payment of funds in

violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable law.

AUTHORITY TO BIND THE PARTIES

36. The undersigned representatives of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of the CA and bind Respondent thereto.

FULL AND FINAL SATISFACTION

37. EPA hereby agrees and acknowledges that the settlement of the proposed penalty as set forth above shall be in full and final satisfaction of all civil claims for penalties which EPA may have under Sections 9006(a) of RCRA for the violations alleged herein.

ENTIRE AGREEMENT

38. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressly stated in this CAFO.

EFFECTIVE DATE

39. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator or the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

For Respondent: U.S. Dept. of Homeland Security
United States Coast Guard

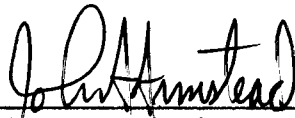
Date: 5/14/13 By: R. A. Stephenson
CAPT. Reed A. Stephenson
Title: Commanding Officer of Tracen Yorktown

For Complainant: United States Environmental Protection Agency, Region III

Date: 6/3/13 By: [Signature]
Benjamin M. Cohan
Sr. Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director, Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 6.17.13



John A. Armstead, Director
Land and Chemicals Division
EPA Region III

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EPA REGION III, PHILA. PA

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

In the Matter of:)
)
U.S. Department of Homeland Security)
United States Coast Guard) U.S. EPA Docket Number
Norfolk, VA 23510) RCRA-03-2013-0144
)
)
RESPONDENT)
)
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1 USCG Training Center)
Yorktown, VA 23690)
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)
FACILITY)

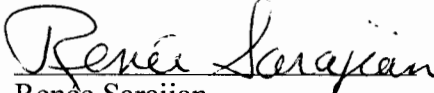
FINAL ORDER

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent U.S. Department of Homeland Security, United States Coast Guard ("Respondent"), 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 9006(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e(a) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 9006(c)-(e) of RCRA, 42 U.S.C. § 6991e(c)-(e), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of Nineteen Thousand, One Hundred and Ninety-Seven Dollars (\$19,197.00) in accordance with the terms and conditions of the Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 6/20/13


Renee Sarajian
Regional Judicial Officer
U.S. EPA, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

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EPA REGION III, PHILA. PA

IN RE:

US Department of Homeland Security
United States Coast Guard
Norfolk, VA 23510

Docket No: RCRA-03-2013-0144

Consent Agreement/Final Order

Respondent

1 USCG Training Center
Yorktown, VA 23690

Facility

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the above captioned United States Environmental Protection Agency's Consent Agreement and Final Order, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement, along with its enclosures and/or attachments, were sent by "UPS NEXT DAY AIR" mail to:

Miguel Padilla, Esq.
Mission Support Division
Legal Service Command
Norfolk, VA 23510

Date: 6/21/13

Sincerely,



Benjamin M. Cohan
Senior Assistant Regional Counsel

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

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IN RE:

US Department of Homeland Security
United States Coast Guard
Norfolk, VA 23510

Docket No: RCRA-03-2013-0144

Consent Agreement/Final Order

Respondent

1 USCG Training Center
Yorktown, VA 23690

Facility

CERTIFICATE OF SERVICE

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Miguel Padilla, Esq.
U.S. Coast Guard
Mission Support Division (LSC-4E)
300 E. Main Street, Suite 400
Norfolk VA 23510-9100

Date: 6/21/13

Sincerely,


Benjamin M. Cohan
Senior Assistant Regional Counsel