

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

75 Hawthorne Street
San Francisco, California 94105

In the Matter of:) Docket No. RCRA-9-2016- 0003
)
UNITED STATES DEPARTMENT OF THE)
NAVY, Respondent) **CONSENT AGREEMENT**
) **AND FINAL ORDER**
)
Naval Base Guam, Santa Rita, Guam)
) **Proceedings pursuant to**
) **40 C.F.R. §§ 22.13 and 22.18**
U.S. EPA ID. No. GUR000032540)

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice") at 40 Code of Federal Regulations ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region 9 ("U.S. EPA"). Respondent is the United States Department of the Navy ("Respondent" or "the Navy").

B. REGULATORY BACKGROUND

2. Pursuant to U.S. EPA's Consolidated Rules of Practice at 40 C.F.R. §§ 22.13 and 22.18, this Consent Agreement and the accompanying Final Order (collectively "CA/FO") resolve violations of the RCRA, Subtitle C, 42 U.S.C. §§ 6921- 6939f, and regulations in the Territory of Guam's ("Guam's") authorized hazardous waste program in connection with Respondent's facility ("Facility") located at the Naval Base Guam, Santa Rita, Guam.

1 3. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that authorized state hazardous
2 waste programs are carried out under Subtitle C of RCRA. On January 27, 1986, pursuant to
3 Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271, Guam was granted final
4 authorization to administer a hazardous waste management program in lieu of the federal
5 program established under Subtitle C of RCRA, 42 U.S.C. §§ 6921- 6939f. The provisions of
6 Guam’s hazardous waste management program, including its Hazardous Waste Management
7 Regulations (“HWMRs”), 22 G.A.R. §§ 30101-30113, as established pursuant to 10 Guam Code
8 Annotated (G.C.A.) § 51103(a)(8), have become requirements of Subtitle C of RCRA and are,
9 accordingly, enforceable by U.S. EPA pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.

10 4. Respondent was previously notified regarding the RCRA Subtitle C allegations recited
11 herein in a letter dated November 18, 2014. In accordance with Section 3008(a)(2) of RCRA, 42
12 U.S.C. § 6928(a)(2), EPA has notified Guam of U.S. EPA’s intent to issue the accompanying
13 Final Order that will resolve Respondent’s RCRA Subtitle C violations set forth herein.

14 5. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection
15 Improvement Act of 1996 (*see also* 40 C.F.R. Part 19), authorizes the U.S. EPA Administrator to
16 seek penalties of up to \$37,500 per day per violation of any requirement of Subtitle C of RCRA,
17 Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*

18 6. The U.S. EPA Administrator has delegated the authority under Section 3008 of RCRA,
19 42 U.S.C. § 6928, to the U.S. EPA Regional Administrator for Region 9, who has redelegated
20 the authority to enter into this Consent Agreement to the Director, Deputy Director, Assistant
21 Directors and Managers of the U.S. EPA Region 9 Enforcement Division. The authority to issue
22 the Final Order has been redelegated to the Regional Judicial Officer for U.S. EPA Region 9.

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C. FINDINGS

7. At all times relevant to this CA/FO, Respondent owned and/or operated a ship repair facility, a "Facility" as that term is defined at 22 G.A.R. § 30102(d)(3) (*see also* 40 C.F.R. § 265.10), located on the former U.S. Ship Repair Facility ("SRF"), Naval Base Guam, in Santa Rita, Guam (the "Facility").

8. Respondent is a federal agency and a "person" as defined in 22 G.A.R. § 30102(d)(5) (*see also* Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10).

9. At all times relevant to this CA/FO, Respondent, was a "generator" of hazardous waste at the Facility, as that term is defined in 22 G.A.R. § 30102 (*see also* 40 C.F.R. § 260.10).

10. At all times relevant to this CA/FO, Respondent's activities at the Facility included "storage" of hazardous waste as that term is defined in 22 G.A.R. § 30102 (*see also* 40 C.F.R. § 260.10).

11. At all times relevant to this CA/FO, Respondent generated and stored materials at the Facility that were "wastes" as defined in G.A.R. §§ 30102 and 30103 (*see also* 40 C.F.R. §§ 260.10 and 261.2).

12. At all times relevant to this CA/FO, Respondent generated and stored "hazardous waste" as defined by G.A.R. § 30102 (*see also* Section 1004(5) of RCRA, 42 U.S.C. § 260.10 and 261.3) This hazardous waste included, but was not limited to: fluorescent light bulbs, waste flammable liquids (D001), waste battery fluid acid (D002), lead paint (D008), zinc powder (D003), and oily rags (D001).

13. On or about October 10, 1997, Guam Industrial Services, Inc. ("GIS"), a ship-repair company operating at the Facility pursuant to a Respondent-approved lease agreement, provided a RCRA Section 3010 Notification of Regulated Waste Activity to U.S. EPA indicating hazardous waste was generated at the Facility.

1 14. In response to GIS's notification, U.S. EPA assigned Respondent's Facility with
2 Identification Number GUR000032540 for the off-site disposal of hazardous waste.

3 15. Respondent generated 1,000 kilograms ("kg") or more of hazardous waste for at least a
4 month and was a Large Quantity Generator ("LQG"), pursuant to 22 G.A.R. § 30104 (*see also*
5 40 C.F.R. § 262.34(a)).

6 16. On April 16, 2012 and July 18-19, 2013, U.S. EPA Inspectors conducted unannounced
7 RCRA Compliance Evaluation Inspections ("CEIs") at the Facility. The purpose of the
8 inspections was to determine the Facility's compliance with applicable federal environmental
9 statutes and regulations, and in particular RCRA, as amended, and the regulations in 40 C.F.R.
10 Parts 261-265, 268, 273 and 279, and Guam's HWMRs at 22 G.A.R. §§ 30101-30113. Based
11 upon the findings U.S. EPA made during the inspections, and additional information obtained
12 subsequent to the inspection, U.S. EPA determined that Respondent violated RCRA, the
13 regulations adopted pursuant thereto, and Guam's HWMRs.

14 17. On March 26, 2014, a U.S. EPA Inspector conducted a focused compliance inspection
15 of Respondent's Facility, including the Facility's Hazardous Materials Building 2002 ("Facility
16 Building 2002"). Based on the observations made by the U.S. EPA Inspector during this March
17 26, 2014 inspection, and additional information obtained subsequent to the focused compliance
18 inspection (and CEIs), U.S. EPA determined that Respondent violated RCRA, and the Guam
19 HWMRs adopted pursuant thereto, as approved and authorized by the United States.

20 18. On April 23 and 30, 2014, GIS, operating at the Facility under a License to Use U.S.
21 Government Property (No. N40192-14-RP-00001) issued by Respondent, recorded on separate
22 manifests the removal and disposal of 35,177 pounds of hazardous waste, including flammable
23 liquids, from the Facility.

1 D. ALLEGED VIOLATIONS

2 COUNT I

3 Failure to make hazardous waste determinations
4 (Violation of 22 G.A.R. § 30103 and 40 C.F.R. § 262.11)

5 19. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were
6 set forth here in their entirety.

7 20. 22 G.A.R. § 30104 (*see also* 40 C.F.R. § 262.11) requires that a person who generates a
8 solid waste, as defined in 22 G.A.R. § 30103 (*see also* 40 C.F.R. § 261.2), must determine if that
9 waste is a hazardous waste.

10 21. Respondent generated solid waste at the Facility in Building 2002, and owned and/or
11 operated the Facility when the following hazardous waste was generated: waste paint (RCRA
12 waste codes D001 and D008), aerosol cans (RCRA waste code D003), crushed bulbs (RCRA
13 waste code D009), zinc dust (RCRA waste code D001 and D003) and waste flammable liquids
14 (RCRA waste code D001).

15 22. At the time of the CEIs, U.S. EPA alleges that Respondent had not determined that the
16 waste generated at the Facility were hazardous. No waste determinations were made at the
17 Facility until GIS, operating under a License to Use the Facility issued by Respondent,
18 completed Uniform Hazardous Waste Manifests on April 23 and 30, 2014.

19 23. Respondent's failure to make all necessary hazardous waste determinations violated 22
20 G.A.R. § 30103 (*see also* 40 C.F.R. § 262.11).

21 COUNT II

22 Failure to obtain a permit for storage of hazardous waste
23 (Violation of 22 G.A.R. §§ 30104 and 30109, and 40 C.F.R. §§ 262.34 and 270.1(c))

24 24. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were
25 set forth here in their entirety.

1 25. 22 G.A.R. § 30104 (*see also* 40 C.F.R. § 262.34) allows generators of hazardous waste
2 to accumulate hazardous waste on-site for certain specified time periods without a permit or
3 interim status as long as they comply with specified waste management practices, including the
4 labeling of hazardous waste containers (*see also* 40 C.F.R. § 270.1).

5 26. In order to be eligible to accumulate hazardous waste without a permit or interim status,
6 generators of hazardous waste must limit the duration of storage to less than 90 days. 22 G.A.R.
7 §§ 30103(e) and 30104 (*see also* 40 CFR §§ 261.5 and 262.34).

8 27. In addition, in order to be eligible to accumulate hazardous waste without a permit or
9 interim status, generators of hazardous waste must, among other requirements:

- 10 a. Place hazardous waste in containers and label containers of hazardous waste with
11 the words “Hazardous Waste” and the date they start accumulating hazardous
12 waste in each container, pursuant to 22 G.A.R. § 30104 (*see also* 40 C.F.R. §
13 262.34(a));
- 14 b. Maintain aisle space to allow the unobstructed movement of personnel, fire
15 protection equipment, spill control equipment, and decontamination equipment to
16 any area of facility operation in an emergency, unless the aisle space is not needed
17 for any of these purposes, pursuant to 2 G.A.R. §§ 30104 and 30107(a) (*see also*
18 and 40 C.F.R. § 262.34(a)(4) and 265.35);
- 19 c. Maintain emergency equipment, pursuant to 22 G.A.R. §§ 30104(a) and 30107
20 (*see also* 40 C.F.R. §§ 262.34(a)(4) and 265.32); and
- 21 d. Keep hazardous waste containers closed during storage, except when it is
22 necessary to add or remove waste, pursuant to 22 G.A.R. §§ 30104(a) and 30107
23 (*see also* 40 C.F.R. §§ 262.34(c)(1)(i) and 265.173(a)).

24 28. 22 G.A.R. § 30109 also requires that owners and operators of facilities that store
25 hazardous wastes be eligible for interim status or obtain a hazardous waste permit (*see also* 40
C.F.R. § 270.1(b) and Section 3005 of RCRA, 42 U.S.C. § 6925).

26 29. At the time of the April 16, 2012 CEI, spent fluorescent bulbs were stored near the
Facility’s Electrical Shop Area without any container or appropriate labeling.

27 30. At the time of the July 18-19, 2013 CEI, several containers of RCRA hazardous waste
were stored at the Facility but not labelled with the words “hazardous waste” and did not include

1 the required accumulation start date; and waste fluorescent bulbs and empty aerosol cans were
2 stored in unlabeled containers.

3 31. At the times of the 2012 and 2013 CEIs and March 26, 2014 focused compliance
4 inspection, hazardous wastes had been stored at the Facility for more than 90 days and were not
5 removed from storage and disposed of until April 23, 2014 and April 30, 2014, when 35,177
6 pounds of hazardous waste, including flammable liquids, were manifested offsite for disposal.

7 32. At the times of the 2012 and 2013 CEIs and March 26, 2014 focused compliance
8 inspection, and for all periods relevant to this action, Respondent was not eligible for interim
9 status under RCRA, nor was Respondent in possession of a permit to store or treat hazardous
10 waste at the Facility, and therefore Respondent was in violation of 22 G.A.R. § 30109 (*see also*
11 40 C.F.R. § 270.1(b) and Section 3005 of RCRA, 42 U.S.C. § 6925).

12 33. At the time of the March 26, 2014 focused compliance inspection, U.S. EPA Inspectors
13 found crushed fluorescent bulbs (D009) improperly stored at the Facility.

14 34. Respondent's storage of hazardous waste without a RCRA permit violated 22 G.A.R.
15 §§ 30104 and 30109 (*see also* 40 C.F.R. § 270.1), and Section 3005 of RCRA, 42 U.S.C. § 6925.

16 COUNT III

17 Failure to provide adequate aisle space
(Violation of 22 G.A.R. §§ 30104 and 30107(a) and 40 C.F.R. §§ 262.34(a)(4) and 265.35)

18 35. Paragraphs 1 through 34 above are incorporated herein by this reference as if they were
19 set forth here in their entirety.

20 36. 22 G.A.R. §§ 30104 and 30107(a) (*see also* 40 C.F.R. §§ 262.34(a)(4) and 265.35)
21 require that a generator maintain aisle space to allow the unobstructed movement of personnel,
22 fire protection equipment, spill control equipment, and decontamination equipment to any area of
23 the facility in an emergency, unless the aisle space is not needed for any of these purposes.
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1 37. At the time of the July 18-19, 2013 CEI, there was insufficient aisle space in Facility
2 Building 2002 to walk through to inspect hazardous waste containers.

3 38. Respondent's failure to provide adequate aisle space in the Facility's hazardous waste
4 storage container areas violated 22 G.A.R. § 30107(a) (*see also* 40 C.F.R. §§ 262.34(a)(4) and
5 265.35).

6 COUNT IV

7 Failure to maintain emergency equipment

8 (Violation of 22 G.A.R. §§ 30104(a) and 30107, and
9 40 C.F.R. §§ 262.34(a)(4) and 265.32)

10 39. Paragraphs 1 through 38 above are incorporated herein by this reference as if they were
11 set forth here in their entirety.

12 40. The regulations at 22 G.A.R. §§ 30104(a) and 30107 and 40 C.F.R. §§ 262.34(a)(4) and
13 265.32 require that a generator maintain emergency equipment.

14 41. At the time of the July 18-19, 2013 CEI, the U.S. EPA Inspectors observed that the
15 Hazardous Waste Storage Area had no water connection, rendering the fire suppression system,
16 emergency eye wash and shower nonfunctional. In addition, the spill kit at the Facility's Used
17 Oil Lot was empty.

18 42. Respondent's failure to maintain emergency equipment violated 22 G.A.R. §§ 30104(a)
19 and 30107 (*see also* 40 C.F.R. §§ 262.34(a)(4) and 265.32).

20 COUNT V

21 Failure to keep a hazardous waste storage container closed

22 (Violation of 22 G.A.R. §§ 30104(a) and 30107 and
23 40 C.F.R. §§ 262.34(a)(1)(i) and 265.173(a))

24 43. Paragraphs 1 through 42 above are incorporated herein by this reference as if they were
25 set forth here in their entirety.

1 44. 22 G.A.R. §§ 30104(a) and 30107 (*see also* 40 C.F.R. §§ 262.34(c)(1)(i) and
2 265.173(a)) require that a generator keep hazardous waste containers closed during storage,
3 except when it is necessary to add or remove waste.

4 45. At the time of the April 16, 2012 CEI, U.S. EPA Inspectors observed an open container
5 of hazardous waste paint and epoxy waste (D008) in the Facility Paint Shop; and an open
6 container of hazardous waste aerosol cans (D001 and D003) in the Facility's Electrical Shop,
7 with no indication that waste was being added to or removed from these containers.

8 46. At the time of the July 18-19, 2013 CEI, the U.S. EPA Inspectors observed an open 55-
9 gallon container of hazardous waste paint and thinner (D001, potentially D008) in the Facility
10 Paint Shop, two unlabeled waste lead-acid batteries in an open box outside of the Facility's
11 Machine Shop and several punctured (open) containers in the Facility's Hazardous Waste
12 Accumulation Area.

13 47. At the time of the March 26, 2014 focused compliance inspection, the U.S. EPA
14 Inspector observed a severely corroded and open container of hazardous flammable waste in
15 Facility Building 2002.

16 48. Respondent's failure to keep hazardous waste containers closed during storage violated
17 22 G.A.R. §§ 30104(a) and 30107 (*see also* 40 C.F.R. §§ 262.34(c)(1)(i) and 265.173(a)).

18 COUNT VI

19 Failure to maintain and operate the facility to minimize the possibility of an unplanned release
20 (Violation of 22 G.A.R. § 30107 and 40 C.F.R. § 265.31)

21 49. Paragraphs 1 through 48 above are incorporated herein by this reference as if they were
22 set forth here in their entirety.

23 50. 22 G.A.R. § 30107 (incorporating 40 C.F.R. § 265.31 by reference) provides that
24 facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any
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1 unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to
2 air, soil, or surface water which could threaten human health or the environment.

3 51. At the time of the April 16, 2012 CEI, U.S. EPA Inspectors observed the improper
4 storage of paint waste (D001) stored outside the Facility's Machine Shop; and during the July
5 18-19, 2013 CEI, U.S. EPA Inspectors observed that (i) there was no water connection to the
6 Hazardous Waste Storage Area, rendering the fire suppression system operable; (ii) emergency
7 equipment (spill kits) was missing from the Used Oil lot; (iii) the drainage valve to the Used Oil
8 Lot was in the open position, (iv) the drainage valve to the Hazardous Waste Storage Area was in
9 the open position; (v) oily rags (identified as hazardous waste in the Facility's Contingency Plan
10 and Storm Water Pollution Prevention Plan) were stored in the Used Oil Lot without containers;
11 (vi) significant staining from previous spills on the ground in the Hazardous Waste Storage Area
12 and the Used Oil Lot; and (vii) numerous pallets of leaking containers of hazardous waste in
13 Facility Building 2002.

14 52. Respondent's failure to minimize the possibility of releases of hazardous waste at the
15 Facility violated 22 G.A.R. § 30107 (*see also* 40 C.F.R. § 265.31 by reference).

16 COUNT VII

17 Failure to store hazardous waste in a container in good condition
18 (Violation of 22 G.A.R. § 30107(e) and 40 C.F.R. §§ 265.171 and 265.173(b))

19 53. Paragraphs 1 through 52 above are incorporated herein by this reference as if they were
20 set forth here in their entirety.

21 54. Guam's Interim Status Standards for Owners and Operators of Hazardous Waste
22 Treatment, Storage, and Disposal Facilities at 22 G.A.R. § 30107(e) (*see also* 40 C.F.R. §
23 265.173(b)) provides that a container holding hazardous waste must not be opened, handled, or
24 stored in a manner which may rupture the container or cause it to leak.
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1 61. G.A.R. § 30107 requires that owners and operators of hazardous waste facilities that
2 store containers of hazardous waste inspect hazardous waste storage areas weekly to look for
3 leaking or deteriorating containers (*see also* 40 C.F.R. § 265.174).

4 62. At the time of the CEIs, Respondent had not conducted any hazardous accumulation
5 container inspections at the Facility.

6 63. Respondent's failure to conduct hazardous waste container inspections violated G.A.R.
7 § 30107 (*see also* 40 C.F.R. § 265.174).

8 E. CIVIL PENALTY

9 64. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection
10 Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R.
11 Part 19, authorizes a civil penalty of up to thirty-seven thousand, five hundred dollars (\$37,500)
12 per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January
13 12, 2009. Based upon the facts alleged herein and upon those factors which U.S. EPA must
14 consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the 2003 RCRA
15 Civil Penalty Policy ("Penalty Policy"), including the seriousness of the violations, any good
16 faith efforts by Respondent to comply with applicable requirements, and any economic benefit
17 accruing to Respondent, as well as such other matters as justice may require, U.S. EPA proposes
18 that Respondent be assessed EIGHTY THOUSAND SIX HUNDRED AND EIGHTY
19 DOLLARS (\$80,680) as the civil penalty for the violations alleged herein. The proposed
20 penalties were calculated in accordance with the Penalty Policy.

21 F. ADMISSIONS AND WAIVERS OF RIGHTS

22 65. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations
23 set forth in Sections B and C of this CA/FO and agrees not to contest EPA's jurisdiction and
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1 authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will
2 not contest U.S. EPA's jurisdiction and authority to compel compliance with this CA/FO in any
3 enforcement proceedings or to impose sanctions for violations of this CA/FO.

4 66. Respondent neither admits nor denies any allegations of fact or law set forth in Sections
5 C and D of this CA/FO. Respondent hereby waives any rights Respondent may have to contest
6 the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on
7 any issue relating to the factual allegations or legal conclusions set forth in this CA/FO,
8 including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. §
9 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. Also,
10 Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to
11 this Consent Agreement and made part of this CA/FO. In addition, Respondent expressly waives
12 any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e) with regard to this
13 case. Respondent expressly waives any right to confer with the EPA Administrator under
14 Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), on any issue of fact or law set forth in this
15 CA/FO.

16 G. PARTIES BOUND

17 67. This CA/FO shall apply to and be binding upon Respondent and its successor agencies,
18 departments or instrumentalities until such time as the civil penalty required under Sections E
19 and H has been paid in accordance with Section H, and any delays in performance and/or
20 penalties have been resolved. At such time as those matters are concluded, this CA/FO shall
21 terminate and constitute full settlement of the violations alleged herein.

22 68. No change in ownership or legal status relating to the Facility will in any way alter
23 Respondent's obligations and responsibilities under this CA/FO.
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1 69. Respondent's undersigned representative hereby certifies to being fully authorized by
2 Respondent to enter into this CA/FO, to execute and legally bind Respondent to it.

3 H. PAYMENT OF CIVIL PENALTY

4 70. Respondent consents to the assessment of and agrees to pay a civil penalty of EIGHTY
5 THOUSAND SIX HUNDRED AND EIGHTY DOLLARS (\$80,680) in full settlement of the
6 federal civil penalty claims set forth in this CA/FO. Respondent shall submit payment of the
7 \$80,680 within 30 calendar days of the CA/FO's Effective Date.

8 71. Respondent may pay the penalty by check (mail or overnight delivery), wire transfer,
9 ACH, or online payment. Payment instructions are available at:
10 <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified
11 check must be payable to the order of "Treasurer, United States of America" and delivered to the
12 following address:

13 U.S. Environmental Protection Agency
14 Fines and Penalties
15 Cincinnati Finance Center
16 P.O. Box 979077
17 St. Louis, Missouri 63197-9000

18 72. If clarification regarding a particular method of payment remittance is needed, contact
19 the U.S. EPA Cincinnati Finance Center at 513-487-2091.

20 73. Payment may be made using the Intra Governmental Payment and Collection
21 application (IPAC), ALC 68-01-0727, and Treasury Symbol 17. Please include the Docket
22 Number of this action in the description field of the IPAC. The customer service contact is Mary
23 Lanier at 202-874-9772.

24 74. At the time payment is made, a copy of the payment transmittal shall be sent to:

25 Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 9

1 75 Hawthorne Street (mail code: RHC-1)
2 San Francisco, CA 94105

and

3 Rick Sakow (ENF 2-2)
4 Enforcement Division
5 Waste and Chemical Section
6 U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

7 75. All payments shall indicate the Facility's name, the Facility's U.S. EPA Identification
8 Number GUR000032540, the Respondent's name and address, and the U.S. EPA docket number
9 assigned to this action.

10 I. ANTIDEFICIENCY ACT

11 76. Respondent shall seek all existing funds to meet the requirements of the CA/FO.
12 Failure to obtain adequate funds or appropriations from Congress does not release Respondent
13 from its obligation to comply with the RCRA, the applicable regulations thereunder, or with this
14 CA/FO. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in
15 violation of the Antideficiency Act, 31 U.S.C. § 1341.

16 J. RESERVATION OF RIGHTS

17 77. U.S. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights
18 and remedies, both legal and equitable, including the right to require that Respondent perform
19 tasks in addition to those required by this CA/FO, except as to those civil penalties for the
20 violations and facts alleged herein. U.S. EPA further reserves all of its statutory and regulatory
21 powers, authorities, rights and remedies, both legal and equitable, which may pertain to
22 Respondents failure to comply with any of the requirements of this CA/FO, including without
23 limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). In
24 accordance with 40 C.F.R. § 22.31(a), this CA/FO shall not be construed as a covenant not to
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1 sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal,
2 which U.S. EPA has under RCRA (except as to those civil penalties for the violations alleged
3 herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980,
4 as amended ("CERCLA"); or any other statutory, regulatory or common law enforcement
5 authority of the United States.

6 78. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent
7 of its obligations to comply with RCRA or any other applicable local, territorial, or federal laws
8 and regulations.

9 79. The entry of this CA/FO and Respondent's consent to comply shall not limit or
10 otherwise preclude U.S. EPA from taking additional enforcement actions should U.S. EPA
11 determine that such actions are warranted except as they relate to Respondent's liability for
12 federal civil penalties for the specific alleged violations set forth in Sections C and D of this
13 CA/FO.

14 80. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO
15 does not relieve Respondent of any obligation to obtain and comply with any local, territorial, or
16 federal permits.

17 **K. OTHER CLAIMS**

18 81. Nothing in this CA/FO shall constitute or be construed as a release from nor an
19 admission by Respondent of any other claim, cause of action or demand in law or equity by or
20 against any person, firm, partnership, entity or corporation for any liability it may have arising
21 out of or relating in any way to the generation, storage, treatment, handling, transportation,
22 release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes,
23 pollutants, or contaminants found at, taken to, or taken from the Facility.
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1 L. MODIFICATION

2 82. This CA/FO may be amended or modified only by written agreement executed by both
3 U.S. EPA and Respondent.

4 M. SEVERABILITY

5 83. If any provision of this CA/FO is ruled invalid, illegal, or unconstitutional, the Parties
6 agree that any such ruling will not affect the remainder of the CA/FO.

7 N. MISCELLANEOUS

8 84. By signing this CA/FO, without admitting or denying them, Respondent certifies that
9 all of the alleged violations set forth in Sections C and D of this CA/FO, which are or were
10 capable of correction, have been corrected.

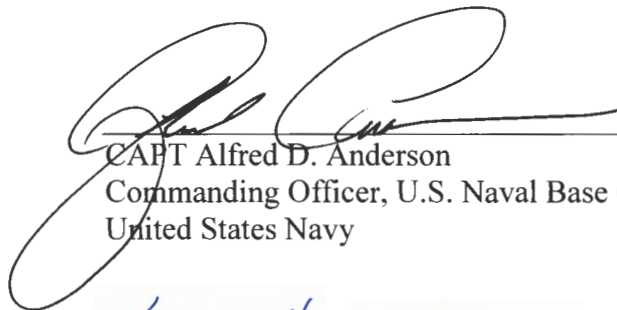
11 85. The headings in this CA/FO are for convenience of reference only and shall not affect
12 interpretation of this CA/FO.

13 O. EFFECTIVE DATE

14 86. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional
15 Judicial Officer, is filed by the Regional Hearing Clerk.

16
17 IT IS SO AGREED.

18 5 May 16
19 Date


20 CAPT Alfred D. Anderson
21 Commanding Officer, U.S. Naval Base Guam
22 United States Navy

21 6/14/16
22 Date

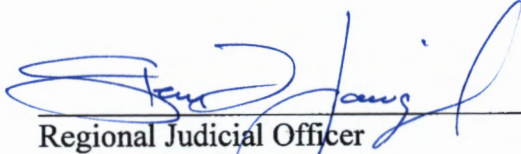

23 Kathleen H. Johnson, Director
24 Enforcement Division
25

1 FINAL ORDER

2 IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40
3 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9 -2016- 0003) be entered
4 and that the United States Department of the Navy pay a civil penalty of EIGHTY THOUSAND
5 SIX HUNDRED AND EIGHTY DOLLARS (\$80,680) due within thirty (30) days from the
6 Effective Date of this Consent Agreement and Final Order. Payment must be made pursuant to
7 Section H of the Consent Agreement.

8 This Final Order shall be effective upon filing by the Regional Hearing Clerk.

9
10 06/17/16
11 Date

12 
13 Regional Judicial Officer
14 U.S. EPA REGION IX
15 75 Hawthorne Street
16 San Francisco, CA 94105

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order in the matter of UNITED STATES DEPARTMENT OF THE NAVY, with Docket No. RCRA-09-2016- 0003 has been filed with the Regional Hearing Clerk, Region IX and copies were sent by Certified Mail, Return Receipt Requested, to Respondent:


NAVFAC MARIANAS
ATTN: EDWARD MOON
BLDG 3190, NAVAL BASE GUAM
SANTA RITA, GUAM 96915

Certified Mail Receipt #7012 1640 0001 2190 5904

Hand Delivered to:

Rich Campbell
Office of Regional Counsel
USEPA, Region 9, ORC-2
75 Hawthorne Street
San Francisco, CA 94105

Date 06/20/14


FOR: Steven Armsey
Acting Regional Hearing Clerk

1 SYLVIA QUAST
Regional Counsel
2 United States Environmental Protection Agency, Region 9

3 RICHARD CAMPBELL
4 Assistant Regional Counsel
United States Environmental Protection Agency, Region 9
5 75 Hawthorne Street
San Francisco, California 94105
6 (415) 972-3870

**** FILED ****
U.S.EPA - Region 09
20JUN2016 - 02:28PM

7 Attorneys for Complainant

8
9 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
10 **REGION 9**
75 Hawthorne Street
San Francisco, California 94105

11
12 In the Matter of:) Docket No. RCRA-9-2016- 0003
13)
14 UNITED STATES DEPARTMENT OF THE) **MOTION TO APPROVE**
NAVY, Respondent) **AND ISSUE FINAL ORDER**
15)
Naval Base Guam, Santa Rita, Guam) Proceedings pursuant to
16) 40 C.F.R. §§ 22.13 and 22.18
EPA ID. No. GUR000032540,)
17)

18 Attached for filing in the above captioned proceeding is the original and one copy of the
19 “Consent Agreement and Proposed Final Order” signed by Complainant, United States
20 Environmental Protection Agency Region 9, and Respondent, United States Department of the
21 Navy (“Navy”).

22 As set forth in the attached Consent Agreement, the parties are seeking approval of their
23 agreement to settle this proceeding pursuant to 40 C.F.R. § 22.18(b) of the “Consolidated Rules
24 of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or
25 Suspension of Permits,” and are hereby moving for issuance of the proposed Final Order. Under
the terms of the Consent Agreement, Respondent Navy shall pay a civil administrative penalty to

1 resolve this matter pursuant to Section 3008(a)(3) of the Resource Conservation and Recovery
2 Act ("RCRA"), 42 U.S.C. § 6928(a)(3).

3 No public notice of this proceeding was required under Section 3008(a)(3) of RCRA, 42
4 U.S.C. § 6928(a)(3), or its implementing regulations at 40 C.F.R. Part 260 *et seq.*, or by the
5 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties at 40
6 C.F.R. Part 22.

7 Respectfully submitted this 16 day of June, 2016.

8
9 By: Richard T. Campbell
10 Richard T. Campbell
11 Assistant Regional Counsel
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1 CERTIFICATE OF SERVICE

2 IN RE: UNITED STATES DEPARTMENT OF THE NAVY
3 EPA Docket No. RCRA-9-2016-__

4 I hereby certify that the original of the foregoing MOTION TO APPROVE AND ISSUE FINAL
5 ORDER was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, U.S.

6 mail, to:

7 John Cooper Masterson
8 Counsel, NAVFAC Marianas
9 NAVFAC Pacific Office of Counsel (Code 09C)
10 Naval Base Guam
11 PSC 455m Box 195
12 FPO AP 96540-2937

13 June 16, 2016

Richard Campbell
14 Name

Attorney, EPA R9 ORC
15 Title