



The Maryland Hazardous Waste Management Regulations (MdHWMR) were originally authorized by EPA on February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the MdHWMR set forth at Code of Maryland Regulations (COMAR), Title 26, Subtitle 13 were authorized by EPA effective July 31, 2001 (*See* 66 FR 29712), and September 24, 2004 (*See* 69 FR 44463). The provisions of the revised authorized program are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

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

### **General Provisions**

1. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this CAFO.
2. Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondents agree 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, Respondents hereby expressly waive their 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. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.
6. Respondents shall bear their own costs and attorney's fees.
7. Respondents, upon investigation, certify to EPA by their signatures herein that, to the best of their knowledge and belief, they are presently in compliance with the provisions of the RCRA referenced herein.
8. The provisions of this CAFO shall be binding upon Complainant and Respondents and any successors and assigns.
9. This CAFO shall not relieve Respondents of their 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 the RCRA 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 U.S. Department of the Navy (“Navy”) is, and has been at all times relevant to this CAFO, the owner of the Uniformed Service University of the Health Sciences facility in Bethesda, Maryland (the “Facility”).

12. Respondent Uniformed Services University of the Health Sciences (“University”) is, and has been at all times relevant to this CAFO, the operator of the Facility.

13. Respondent Navy has been at all times relevant to this CAFO the “owner” of a “facility” (Facility), as that term is defined by COMAR 26.13.01.03.

14. Respondent University has been at all times relevant to this CAFO the “operator” of a “facility” (Facility), as that term is defined by COMAR 26.13.01.03.

15. EPA conducted an inspection of the Facility on August 6-9, 2012 (“EPA Inspection”).

**COUNT I – RCRA SUBTITLE C – OPERATING WITHOUT A PERMIT OR INTERIM STATUS**

16. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

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

18. Each Respondent is and, at all times relevant to this CAFO, has been a “generator” of, and has engaged in the “storage” in “containers” of materials that are “solid wastes” and “hazardous waste” at the Facility, as those terms are defined in COMAR 26.13.01.03, including the hazardous waste referred to herein.

19. Each Respondent is and, at all times relevant to the violations in this CAFO, has been a large quantity generator of hazardous waste in an amount greater than 1,000 kilograms per month at the Facility.
20. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A, provide, in pertinent part, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility.
21. COMAR 26.13.03.05E(1) provides, in pertinent part, that a generator may accumulate hazardous waste on-site without a permit or without holding interim status for 90 days or less, if:
- (a) The waste is shipped off-site within 90 days to a permitted facility or placed in an on-site permitted facility;
  - (b) The generator accumulates the waste in containers, tanks, on certain drip pads, or in a containment building;
  - (c) Containers used to accumulate the waste meet the standards of COMAR 26.13.03.05A (Packaging);
  - (d) The generator accumulates the waste in containers in accordance with COMAR 26.13.05.09;
  - (e) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
  - (f) Each container is (i) properly labeled and marked according to COMAR 26.13.03.05B and C (“Labeling and Marking”), and (ii) labeled or marked clearly with the words “Hazardous Waste” according to COMAR 26.13.03.05E(1)(f)(ii), while being accumulated on-site; and
  - (g) The generator complies with the requirements for owners and operators in COMAR 26.13.05.02G, 26.13.05.03, and 26.13.05.04 (“Personnel Training,” “Preparedness and Prevention,” and “Contingency Plan and Emergency Procedures,” respectively).

### **Container Labeling**

22. COMAR 26.13.03.05E(1)(f)(ii), referenced in Paragraph 21(f), above, provides that a container of hazardous waste must be labeled or marked clearly with the words “hazardous waste.”

23. COMAR 26.13.03.05E(1)(e), referenced in Paragraph 21(e), above, provides that the date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container.

24. At the time of the inspection, on August 6-9, 2012, Respondents were storing containers of hazardous waste that were not labeled or marked clearly with the words “hazardous waste” or with the date upon which each period of accumulation began as follows:

- (A) In Building 74, which housed the University’s less than 90-day storage area for hazardous waste, Respondents were storing small containers of hazardous waste in storage lockers. Several containers in one of the storage lockers did not contain labels indicating that they were hazardous waste, nor did they contain an accumulation start date. The locker itself also had no label or accumulation start date.
- (B) In Building 74, Respondents also stored a container of hazardous waste on which there was a hazardous waste label but the accumulation start date was unreadable.

25. The contents of the containers described in Paragraph 24, above, are and were, at all times relevant to the violations alleged herein, “solid wastes” and “hazardous wastes” as defined at COMAR 26.13.01.03B.

26. Respondents’ containers as described in Paragraph 24 above, are and were, at all times relevant to the violations alleged herein, “containers” of “hazardous waste” in “storage” at the Facility within the meaning of COMAR 26.13.01.03B.

27. Respondents’ failure to properly label containers of hazardous waste at the time of the EPA Inspection, August 6-9, 2012, is a violation of COMAR 26.13.03.05E, which requires that each container have a label with the date upon which each period of accumulation begins and while being accumulated on-site each container is labeled or marked clearly with the words “Hazardous Waste.”

#### **Satellite Accumulation**

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

29. At the time of the EPA Inspection, on August 6-9, 2012, Respondent was collecting in a white jug a hazardous waste stream from a Human Phenotype Ontology (HPO) machine in the

Genomics Lab. The container did not have a hazardous waste label nor were its contents identified. In addition, Respondents maintained a drum for the collection of liquid hazardous waste through a plastic tube from a scintillation machine in Room 9 that did not have a hazardous waste label nor were its contents identified.

30. At the time of the EPA Inspection, August 6-9, 2012, Respondents were storing hazardous wastes in containers at or near a point of generation where wastes initially accumulate, without properly labeling the contents of the container with the words “Hazardous Waste” or other words that clearly identify the contents of the containers in violation of COMAR 26.13.03.05E(3).

31. For the reasons and during each of the dates and time periods identified in Paragraphs 22 through 30, above, Respondents failed to comply with the permit exemption conditions, identified in Paragraph 21, above, for temporary (i.e., 90 days or less) or satellite accumulation of hazardous waste by a generator at the Facility, as required pursuant to COMAR 26.13.03.05E(1) and (3), and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.

32. For each of the reasons and during each of the dates and time periods identified in Paragraphs 22 through 30, above, Respondents engaged in the operation of a hazardous waste storage facility (i.e., the Facility) without having interim status or obtaining a permit for the Facility pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, or COMAR 26.13.07.01A.

**COUNT II – RCRA SUBTITLE C – FAILURE TO MAKE A WASTE DETERMINATION**

33. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

34. COMAR 26.13.02.02A defines a solid waste as “any discarded material that is not excluded by Regulation .04 of this chapter or that is not excluded by a variance granted under COMAR 26.13.01.04D and E.” The wastes generated by Respondents do not qualify under the variances.

35. COMAR 26.13.03.02 requires a person who generates a solid waste to determine whether the waste is a hazardous waste.

36. Based upon information gathered and observations made by the EPA Inspectors during the course of the August 6-9, 2012 EPA inspection, Respondents failed to make a hazardous waste determination for the following solid wastes:

- (A) Expired waste medications located in containers in the Pharmacy.

- (B) A mixture containing 10% formalin and Trisol, located under a lab hood in Room B4131.

37. Respondents violated COMAR 26.13.03.02 during the August 6-9, 2012 EPA Inspection by failing to make a hazardous waste determination for the solid wastes identified above in Paragraph 36 during that time period.

**COUNT III – RCRA SUBTITLE C – FAILURE TO MAINTAIN RECORDS OF INSPECTIONS OF HAZARDOUS WASTE STORAGE AREA**

38. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

39. COMAR 26.13.05.02F(2) requires that “the owner or operator shall develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human hazards.”

40. COMAR 26.13.05.02F(4) requires, in pertinent part, that “the owner or operator shall record inspections of its facility in an inspection log or summary” and “shall keep these records for at least three (3) years from the date of the inspection.”

41. At the time of the EPA Inspection, Respondent did not have records for inspections of monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment that are important to preventing, detecting, or responding to environmental or human hazards at the University from August 2009 to June 2011.

42. Respondents violated COMAR 26.13.05.02F(4) by failing to maintain records for inspections of monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment that are important to preventing, detecting, or responding to environmental or human hazards from August 2009 to June 2011.

**COUNT IV – RCRA SUBTITLE C – FAILURE TO DISTRIBUTE THE HAZARDOUS WASTE CONTINGENCY PLAN FOR THE FACILITY**

43. Each of the preceding paragraphs is incorporated by reference herein as though fully set forth herein.

44. COMAR 26.13.05.04B provides that “[e]very owner or operator shall have a contingency plan for his facility. The contingency plan shall be designed to minimize hazards to human

health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.”

45. COMAR 26.13.05.04D provides, in relevant part, that a copy of the contingency plan and all revisions to the plan be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services (“local authorities”).

46. At the time of the August 6-9, 2012 EPA Inspection, the Facility’s contingency plan had never been submitted to the local authorities.

47. Respondents violated COMAR 26.13.05.04D, by not submitting on or before the EPA Inspection a copy of their contingency plan to local authorities that may be called upon to provide emergency services.

### CIVIL PENALTY

48. Respondents consent to the assessment of a civil penalty of twenty-three thousand dollars (\$23,000.00) in full satisfaction of all claims for civil penalties for the violations alleged in the above alleged four counts of this CAFO. Respondents must pay the civil penalty no later than **SIXTY (60)** calendar days after the date on which this CAFO is mailed or hand-delivered to Respondents.

49. For the violations alleged in Counts I - IV, 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 Respondents’ violations and the good faith efforts by Respondents to comply with the applicable requirements of the RCRA, and the *RCRA Civil Penalty Policy* (2003). EPA has also considered the *Adjustments of Civil Penalties for Inflation and Implementing the Debt Collection Improvement Act of 1996* (“DCIA”), as set forth in 40 C.F.R. Part 19, and the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles entitled, *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)* (“2013 Giles Memorandum”), which specify that for violations that occurred after January 30, 1997, statutory penalties and penalties under the RCRA Civil Penalty Policy for, *inter alia*, RCRA Subtitle C violations, were increased 10% above the maximum amount to account for inflation, statutory penalties for, *inter alia*, RCRA Subtitle C violations that occurred after March 15, 2004 through January 12, 2009, were increased by an additional 17.23% above the maximum amount to account for inflation, and statutory penalties for, *inter alia*, RCRA Subtitle C violations that occurred after January 12, 2009, were increased by an additional 9.83% above the maximum amount to account for inflation.

50. Payment of the civil penalty amount required under the terms of Paragraph 48, above,



shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondents shall reference its name and address and the Docket Number of this action (Docket No. RCRA-03-2016-0020);
- b. All checks shall be made payable to “**United States Treasury**;”
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

The Customer Service contact for the above method of payment is Craig Steffen at 513-487-2091.

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

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The Customer Service number for the above method of payment is Craig Steffen at 513-487-2091.

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

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

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

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

Physical location of U.S. Treasury Facility:

5700 Rivertech Court  
Riverdale, MD 20737

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

- g. There is an on-line payment option available through the Department of the Treasury. This payment option can be accessed from: [WWW.PAY.GOV](http://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-03-2016-0020] in the description field of the IPAC. The Customer Service contact is Molly Williams at 513-487-2076.
- i. At the same time that any payment is made, Respondents shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

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

and to

Gracie Pendleton  
U.S. Environmental Protection Agency, Federal Facilities Enforcement

Office  
1200 Pennsylvania Ave. NW (MC 2261A)  
Washington, DC 20460

### **EFFECT OF SETTLEMENT**

51. Payment of the penalty specified in Paragraph 48, above, in the manner set forth in Paragraph 50, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under the RCRA for the specific violations alleged in Counts I – IV, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

### **RESERVATION OF RIGHTS**

52. 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 Respondents, 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 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. Respondents reserve all available rights and defenses they may have to defend themselves in any such action.

### **FULL AND FINAL SATISFACTION**

53. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008(a)(1) and (g), and 6001(b) of the RCRA, 42 U.S.C. §§ 6928(a)(1) and (g), and 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**

54. Failure to obtain adequate funds or appropriations from Congress does not release Respondents from its obligation to comply with the RCRA, 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**

55. Each undersigned representative of Respondents certifies that he or she is fully authorized by the Respondents to enter into the terms and conditions of this CA and to bind each Respondent to it, respectively.

**EFFECTIVE DATE**

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

**For Respondent:**

Uniformed Services University of the Health  
Sciences

\_\_\_\_\_  
Date

*Charles T. Rice*  
\_\_\_\_\_  
Signature

Charles Rice  
\_\_\_\_\_  
Printed Name

President  
\_\_\_\_\_  
Title

**For Respondent:**

The United States Department of the Navy

**AUG 12 2016**

Date

Signature

M. L. JONES, CAPT, MSC, USN

Name [print or type]


COMMANDING OFFICER, NSA BETHESDA

Title [print or type]

**For Complainant:**

U.S. Environmental Protection Agency,  
Region III

9.7.16  
Date

  
\_\_\_\_\_  
John A. Armistead, Director  
Land and Chemicals Division  
U.S. EPA - Region III

**FINAL ORDER**

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

**In the Matter of:**

*United States Department of the Navy  
and  
Uniformed Services University of the Health  
Sciences  
8901 Wisconsin Ave.  
Bethesda, MD 20889,*

**Respondents.**

**EPA Docket No. RCRA-03-2016-0020**

**FINAL ORDER**

**Proceeding under Sections 3008(a)(1) and  
(g), 6001(b) of RCRA and 40 C.F.R.  
Part 22**

**FINAL ORDER**

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

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



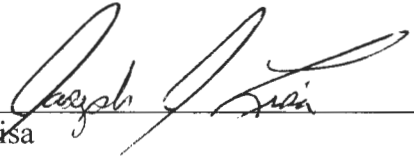
*Policy (2003); the Adjustments of Civil Penalties for Inflation and Implementing the Debt Collection Improvement Act of 1996, 40 C.F.R. Part 19; the December 29, 2008 memorandum by EPA Assistant Administrator Granta Y. Nakayama entitled, Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009), and the statutory factors set forth in Section 3008(a)(3) of Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a)(3).*

**NOW, THEREFORE, PURSUANT TO** Sections 3008(a)(1) and (g), 6001(b) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (g), 6961(b), 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 **TWENTY-THREE THOUSAND DOLLARS (\$23,000.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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

Sept. 7, 2016

Date

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