

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

U.S. EPA-REGION 3-RHC  
FILED-23JAN2020am7:58

|   |   |   |
|---|---|---|
| <b>In the Matter of:</b>                        | : |   |
|   | : |   |
| <b>United States Department of the Army</b>     | : | <b>U.S. EPA Docket No. CAA-RCRA-03-2020-0046</b>          |
|   | : |   |
| <b>Respondent.</b>                              | : | <b>Proceeding under Section 3008(a) and (g) of the</b>    |
|   | : | <b>Resource Conservation and Recovery Act, 42</b>         |
|   | : | <b>U.S.C. § 6928(a) and (g), and Sections 113 and</b>     |
| <b>United States Army Garrison Fort Detrick</b> | : | <b>118(a) of the Clean Air Act, 42 U.S.C. §§ 7413 and</b> |
| <b>810 Schreider Street</b>                     | : | <b>7418(a)</b>  |
| <b>Fort Detrick, Maryland 21702-5000</b>        | : |   |
|   | : |   |
| <b>Facility.</b>                                | : |   |
|   | : |   |
|   | : |   |
|   | : |   |

**CONSENT AGREEMENT**

**PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and the U.S. Department of the Army (“Respondent”) (collectively the “Parties”), pursuant to Section 3008(a)(1) and (g) of the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. § 6928(a)(1) and (g), and Sections 113 and 118(a) of the Clean Air Act, as amended (“CAA”), 42 U.S.C. §§ 7413 and 7418(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and Sections 113 and 118(a) of the CAA, 42 U.S.C. §§ 7413 and 7418(a), authorize the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under RCRA and the CAA for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

### **JURISDICTION**

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2) and (4).
5. Respondent was previously notified regarding the RCRA and CAA allegations recited herein under cover letter dated December 14, 2018. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has notified Maryland of EPA's intent to enter into a CAFO with Respondent resolving the RCRA violations set forth herein. In addition, in accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), EPA will provide a copy of the CAFO to the Maryland Department of the Environment ("MDE").

### **GENERAL PROVISIONS**

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing, the right to contest the allegations set forth in this CAFO and its right to appeal the accompanying Final Order. For purposes of this proceeding only, Respondent also expressly waives any right to confer with the Administrator pursuant to RCRA Section 6001(b)(2), 42 U.S.C. § 6961(b)(2). In addition, for purposes of this proceeding only, Respondent expressly waives the notice requirement and its opportunity to request a hearing on the order pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
12. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and the Attorney General, each through their respective delegates, have jointly determined that this administrative penalty action is appropriate.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
14. EPA conducted an inspection at the United States Army Garrison Fort Detrick, 810 Schreider Street, Fort Detrick, Maryland (the “Facility”), on April 2-5, 2018 (“EPA Inspection”).

**COUNT I**

**Title V Permit Violation-Continuous Emission Monitoring Systems Requirements**

15. Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), because it is a department of the United States. At all times relevant to this Consent Agreement, Respondent has been the owner and operator of the Facility.
16. Title V of the CAA, 42 U.S.C. §§ 7661 – 7661f, established an operating permit program for major sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to the Administrator a permit program meeting the requirements of Title V.
17. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations providing for the establishment of Title V permitting programs at 40 C.F.R. Part 70.
18. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.
19. EPA granted full approval to the Maryland Title V operating permit program on January 15, 2003, and the program became effective on February 14, 2003. *See* 68 Fed. Reg. 1974 (Jan. 15, 2003) (granting full approval to Maryland’s operating permits program). *See also* 61 Fed. Reg. 34733 (July 3, 1996) (granting interim final approval to Maryland’s operating permits program).
20. MDE is a Permitting Authority for Title V purposes as defined in Section 501(4) of the CAA, 42 U.S.C. § 7661(4).
21. The major source threshold for triggering Title V permitting requirements in Frederick County, Maryland, where the Facility is located, is 25 tons per year for Volatile Organic Compounds (“VOCs”) or Nitrogen Oxides (“NOx”), 100 tons per year for any other criteria pollutant, 10 tons per year of any single hazardous air pollutant (“HAP”) or 25 tons per year of any combination of HAPs. Since actual emission of NOx is greater than the major source thresholds of 25 tons per year, Fort Detrick is required to obtain a Title V Part 70 Operating Permit.

22. On September 1, 2015, MDE issued to Respondent a Title V Major Source Operating Permit, Permit Number 24-021-00131, with an expiration date of August 31, 2020 (the "Title V Permit").
23. The Facility had, at all time relevant to this CAFO, two hospital-medical-infectious waste incinerators ("HMIWIs") and two municipal waste combustion units ("MWCUs").
24. The Title V Permit imposes monitoring requirements regarding carbon monoxide ("CO") emissions from the HMIWIs through the use of Continuous Emissions Monitoring Systems ("CEMS"). Condition IV.4.5.4.A.(2)(c) of the Title V Permit requires that the CEMS be operated in accordance with the applicable procedures under Appendices B and F of 40 C.F.R. Part 60. Appendices B and F of 40 C.F.R. Part 60 include procedures to ensure that the accuracy of the CEMS is verified through the performance of Relative Accuracy Test Audits ("RATAs") and Cylinder Gas Audits ("CGAs").
25. The Facility did not conduct a RATA or CGAs in calendar year 2017 for the HMIWIs CEMS.
26. Respondent violated Condition IV.4.5.4.A.(2)(c) of the Title V Permit by failing to conduct a RATA or CGAs in calendar year 2017 for the HMIWIs CEMS.

### **COUNT II**

#### **Title V Permit-CO Monitoring**

27. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
28. Condition IV.4.5.4.A.(2)(a) of the Title V Permit imposes CO monitoring requirements for the HMIWIs, specifically with respect to a 12-hour rolling average for CO.
29. For the time period between January 1, 2016 through the date of the EPA Inspection (April 2-5, 2018), the Facility did not compile and maintain records to demonstrate compliance with the CO limits for the HMIWIs imposed by the Title V Permit.
30. Respondent violated Condition IV.4.5.4.A.(2)(a) of the Title V Permit for the time period between January 1, 2016 through the date of the EPA Inspection.

### **COUNT III**

#### **Title V Permit-Hourly Averages**

31. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
32. Condition IV.4.5.4.A.(6) of the Title V Permit specifies certain operating parameters for the HMIWIs. These parameters include the requirement to record data showing that the Facility is continuously monitoring and maintaining the specified averages for all established operating parameters, on a 1-hour average and a 3-hour average, computed once each hour to demonstrate compliance.



33. Respondent did not compile and maintain records to demonstrate compliance with Condition IV.4.5.4.A.(6) of the Title V Permit for the time period from January 1, 2016 through the time of the April 2018 EPA Inspection.
34. Respondent violated Condition IV.4.5.4.A.(6) of the Title V Permit for the time period from January 1, 2016 through the time of the EPA Inspection.

**COUNT IV**  
**Title V Permit-CO and SO<sub>2</sub> Limits**

35. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
36. Condition IV.4.6.2 of the Title V Permit sets forth emission limitations for the MWCUs, including limitations for CO (Condition IV.4.6.2(C) of the Title V Permit) and Sulfur Dioxide (SO<sub>2</sub>) (Condition IV.4.6.2(E) of the Title V Permit).
37. For the time periods from January 1, 2016, through August 30, 2016, and from January 7, 2017, through August 3, 2017, the Facility did not compile and maintain records to demonstrate compliance with CO and SO<sub>2</sub> limits for the MWCUs.
38. Respondent was in violation of Condition IV.4.6.2(C) and (E) of the Title V Permit for the time period from January 1, 2016, through August 30, 2016, and from January 7, 2017, through August 3, 2017.

**COUNT V**  
**Title V Permit-Opacity Limits**

39. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
40. Condition IV.4.6.4.A of the Title V Permit requires the installation and operation of a continuous opacity monitoring system (“COMS”) to monitor the opacity limits for the MWCUs.
41. For the time periods from January 1, 2016 through August 30, 2016, and from January 7, 2017 through March 19, 2018, the Facility did not compile and maintain records to demonstrate compliance with its opacity limit for the MWCUs.
42. Respondent is in violation of Conditions IV.4.6.4.A of the Title V permit for the time periods from January 1, 2016 through August 30, 2016, and from January 7, 2017 through March 19, 2018.

**COUNT VI**  
**Title V Permit-Block Averages**

43. The allegations in each of the preceding paragraphs of this CAFO are incorporated by

reference as though fully set forth herein.

44. Condition IV.4.6.2.H.(3) of the Title V Permit requires that the Facility maintain block averages for certain specified parameters for the MWCUs.
45. For the time periods from January 1, 2016, through August 30, 2016, and January 7, 2017, through August 3, 2017, the Facility did not compile and maintain the records necessary to demonstrate compliance with Condition IV.4.6.2.H.(3) of the Title V Permit.
46. Respondent violated Condition IV.4.6.2.H.(3) of the Title V Permit Facility for the time period from January 1, 2016, through August 30, 2016, and January 7, 2017, through August 3, 2017.

### **COUNT VII**

#### **Title V Permit-COMS Evaluation**

47. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
48. Condition IV.4.6.4.A.(1)(b) of the Title V Permit requires that the Facility complete a satisfactory evaluation of the COMS for the MWCUs meeting the requirements of performance Specification 1 in Appendix B of 40 C.F.R. Part 60.
49. As of the time of the EPA Inspection, the Facility had not provided the field test report, as required by Performance Specification 1 in Appendix B of 40 C.F.R. Part 60, to complete the initial evaluation of the COMS for the MWCUs, which were installed on January 7, 2017.
50. Respondent violated Condition IV.4.6.4.A.(1)(b) of the Title V Permit by not complying with the requirements of Performance Specification 1 in Appendix B of 40 C.F.R. Part 60.

### **COUNT VIII**

#### **Title V Permit-MWCUs Operational Limits**

51. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
52. Condition IV.4.6.4.(H) of the Title V Permit includes operational limits for the MWCUs derived from 40 C.F.R. Part 62, Subpart JJJ.
53. For the time period from January 1, 2016, through March 15, 2018, the Facility did not compile and maintain summary records of steam flow for the MWCUs as required by Condition IV.4.6.4.(H)(2) of the Title V Permit.
54. Respondent violated Condition IV.4.6.4.(H) of the Title V Permit for the time period from January 1, 2016, through March 15, 2018.

**COUNT IX**  
**Title V Permit-Stack Tests**

55. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
56. Condition IV.4.6.3.G of the Title V Permit sets forth parameters for initial stack tests to be performed on the MWCUs.
57. The required stack test for the MWCUs conducted by the Facility between July 24, 2017, and July 28, 2017, failed to collect required operating parameter data and to establish parameter limits.
58. Respondent violated Condition IV.4.6.3.G of the Title V Permit by failing to collect the required operating parameter data and to establish parameter limits.

**COUNT X**  
**Title V Permit-Annual Dynamic Back Pressure Tests**

59. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
60. Condition IV.4.9.3.C.(3) of the Title V Permit requires the owner of a Stage II Vapor Recovery System (which are used for gasoline dispensing units), to conduct an annual Dynamic Back Pressure Test.
61. The Facility did not conduct its annual Dynamic Back Pressure Tests of the Stage II Vapor Recovery Systems for the gasoline tanks at the Army and Air Force Exchange Service (AAFES) Gas Station in calendar years 2016 and 2017.
62. Respondent violated of Condition IV.4.9.3.C.(3) of the Title V Permit by not conducting its annual Dynamic Back Pressure Tests of the Stage II Vapor Recovery Systems for the gasoline tanks at the Army and Air Force Exchange Service (AAFES) Gas Station in calendar years 2016 and 2017.

**COUNT XI**  
**Operating a Treatment, Storage or Disposal Facility Without a Permit or Interim Status**

63. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
64. The State of Maryland Hazardous Waste Management Regulations (“MdHWMR”), are set forth at the Code of Maryland Regulations (“COMAR”), Title 26, Subtitle 13 *et seq.* The MdHWMR were originally authorized by EPA on February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b) (*See* 50 FR 3511). Revisions to the MdHWMR set forth at COMAR, Title 26, Subtitle 13 were authorized by EPA effective July 31, 2001 (*See* 66 FR 29712), September 24, 2004 (*See* 69 FR 44463) and October

- 31, 2016 (*See* 81 FR 59503). The provisions of the revised authorized program are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
65. Respondent is a federal agency and is a “person” as defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15), and COMAR 26.13.01.03B(61).
66. Respondent is and has been through the period of the violations alleged herein, the “owner” and “operator” of a “facility” as these terms are defined by COMAR 26.13.01.03B(59), (58) and (23), respectively.
67. Respondent is and has been through the period of the violations alleged herein, a “generator” of, and has engaged in the “storage” of, materials that are “solid wastes” and “hazardous waste” at the Facility as those terms are defined by COMAR 26.13.01.03B(29), (76), (73) and (31), respectively.
68. Respondent is and, at all times relevant to the violations in this CAFO, has been a large quantity generator who generates hazardous waste in an amount greater than 1,000 kilograms per month at the Facility.
69. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A, provide, with certain exceptions not relevant here, 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.
70. RCRA § 3005(e), 42 U.S.C. § 6925(e), provides, in pertinent part, that any person who owns or operates a facility required to have a permit under RCRA § 3005, which facility was in existence on November 19, 1980, or is in existence on the effective date of statutory or regulatory provisions that render the facility subject to the requirement to have a permit, has complied with the notification requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), and has applied for a permit under RCRA § 3005, shall be treated as having been issued such permit (*i.e.*, “interim status”) until such time as final administrative disposition of such application is made.
71. Respondent has never had “interim status” pursuant to RCRA Section 3005(e) or a permit issued pursuant to RCRA Section 3005(a) for the treatment, storage, or disposal of hazardous waste at the Facility.
72. Pursuant to COMAR 26.13.03.05E, large quantity generators of hazardous waste who accumulate hazardous waste on-site for less than 90 days are 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. Pursuant to COMAR 26.13.03.05E(1)(d), the generator must comply with the requirements of COMAR 26.13.05.09, including:
    - i. The requirement to always keep containers holding hazardous waste closed during storage, except when necessary to add or remove waste, in accordance with COMAR 26.13.05.09D; and,
    - ii. The requirement to inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion and other factors, in accordance with COMAR 26.13.05.09E.
  - b. Pursuant to COMAR 26.13.03.05E(1)(k)(i), the generator must maintain an inspection log or summary documents of the inspections performed in accordance with COMAR 26.13.03.05E(1)(d).
  - c. Pursuant to COMAR 26.13.03.05E(1)(e), the generator must clearly mark each container with the date upon which each period of accumulation begins so that the mark is visible for inspection on each container; and,
  - d. Pursuant to COMAR 26.13.03.05E(1)(f), while being accumulated in containers on site, the generator must label or mark each container with the words “Hazardous Waste.”
73. Respondent did not qualify for the permit exemptions specified under COMAR 26.13.03.05E(1) and (3) with respect to the on-site storage of the hazardous waste at the Facility because it failed to meet applicable permit exemption conditions for each of the following reasons:
- a. At the time of the EPA Inspection, Respondent stored hazardous waste in containers that were open when not adding or removing waste, in contravention of COMAR 26.13.03.05E(1)(d), specifically:
    - i. A box containing waste lamps in Room 315, Building 9250; and
    - ii. A box containing waste lamps in Room 400, Building 9250.
  - b. For the time period from January 14, 2016, to October 19, 2016, Respondent could not produce an inspection log or summary documenting inspections for the 90-day storage area in Building 393, an area where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion and other factors, in contravention of COMAR 26.13.05.09E, COMAR 26.13.03.05E(1)(k)(i), and the permit exemption requirements of COMAR 26.13.03.05E(1)(d).

- c. At the time of the EPA Inspection, Respondent did not clearly mark a box containing waste lamps in Room 400, Building 9250, with the date upon which the period of accumulation begins so that the mark is visible for inspection on each container in contravention of the permit condition exemption conditions of COMAR 26.13.03.05E(1)(e).
  - d. At the time of the EPA Inspection, Respondent did not label or mark a box containing waste lamps in Room 400, Building 9250, with the words “Hazardous Waste,” in contravention of the permit condition exemption conditions of COMAR 26.13.03.05E(1)(f).
74. For the reasons and during the times set forth above at the Facility, Respondent failed to comply with the conditions for the temporary storage (*i.e.*, 90 days or less) of hazardous waste by a generator that are required pursuant to COMAR 26.13.03.05E, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.
75. Respondent’s Facility is a hazardous waste treatment, storage or disposal “facility” as that term is defined in COMAR 26.13.01.03B(23), with respect to the storage of hazardous waste as described above.
76. From at least January 14, 2016, to October 19, 2016, and on the date of the EPA Inspection, and for each of the reasons and on each of the dates set forth in Paragraphs 72(a) – (d), above, Respondent did not meet the requirements for a permit exemption under COMAR 26.13.03.05E and therefore violated COMAR 26.13.07.01A and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility (*i.e.*, the Facility) without a permit or interim status.

## COUNT XII

### **Failure to conduct weekly inspections of Hazardous Waste Storage Area**

77. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
78. COMAR 26.13.05.09E requires the owner or operator of a hazardous waste facility to inspect areas where hazardous waste containers are stored, at least weekly, to look for leaks and for deterioration of the containers and the containment system caused by corrosion or other factors.
79. Pursuant to COMAR 26.13.05.05D(2)(e), the owner or operator generator must maintain an inspection log or summary documents of the inspections performed in accordance with COMAR 26.13.05.09E.
80. At the time of the EPA Inspection, Respondent maintained a hazardous waste storage area in Building 393.
81. For the time period from January 14, 2016, to October 19, 2016, Respondent could not produce an inspection log or summary documenting inspections for the hazardous storage

area in Building 393, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion and other factors.

82. For the time period from January 14, 2016, to October 19, 2016, Respondent violated COMAR 26.13.05.09E and COMAR 26.13.05.05D(2)(e), by failing to maintain records documenting its inspection of areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion and other factors.

### CIVIL PENALTY

83. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **FOUR HUNDRED FORTY THOUSAND THREE HUNDRED NINETY NINE** dollars (\$440,399.00), which Respondent shall be liable to pay in accordance with the terms set forth below. Respondent must pay the civil penalty no later than **SIXTY (60)** calendar days from the effective date of this CAFO.
84. For the violations alleged in Counts I - X, 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 the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and such other factors as justice may require. EPA also considered the *Clean Air Act Stationary Source Civil Penalty Policy* (1991), 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 applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
85. As alleged in Counts XI - XII, 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 the 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 DCIA, as set forth in 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
86. Payment of the civil penalty amount shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, CAA-RCRA-03-2020-0046.

- b. All checks shall be made payable to the “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  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

- d. 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. CAA-RCRA-03-2020-0046) in the description field of the IPAC.
- e. For additional information concerning other acceptable methods of payment of the civil penalty amount see:  
  
<https://www.epa.gov/financial/makepayment>
- f. A copy of Respondent’s check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Daniel L. Isales  
U.S. EPA, Region III (3RC50)  
701 Mapes Road  
Fort Meade, MD 20755-5350  
[isales.daniel@epa.gov](mailto:isales.daniel@epa.gov)

86. If Respondent fails to make full and complete payment of the portion of the penalty corresponding to the CAA violations (\$421,161.00) by the due date set forth in this CAFO, the entire unpaid balance of the CAA penalty and accrued interest shall become immediately due and owing. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2), from effective date of the Final order until the date of payment, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within sixty (60) days of the effective date of the final Order. In any action taken to compel payment, the validity, amount, and appropriateness of the penalty shall not be subject to review. 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.

#### **GENERAL SETTLEMENT CONDITIONS**

87. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent’s knowledge and belief, this CAFO does not contain any confidential business information, personally

identifiable information, or information which may adversely affect national security.

88. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent's officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

#### **CERTIFICATION OF COMPLIANCE**

89. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

#### **OTHER APPLICABLE LAWS**

90. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CAA, RCRA, or any regulations promulgated thereunder.

#### **RESERVATION OF RIGHTS**

91. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CAA, RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date. Respondent reserves whatever rights or defenses it may have to defend itself in any such action.

#### **ANTIDEFICIENCY ACT**

92. Respondent shall seek all existing funds to meet the requirements of this CAFO. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with the CAA, 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.

**EXECUTION /PARTIES BOUND**

93. This CAFO shall apply to and be binding upon the EPA, the Respondent and its successor agencies, departments or instrumentalities. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

**EFFECTIVE DATE**

94. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

**ENTIRE AGREEMENT**

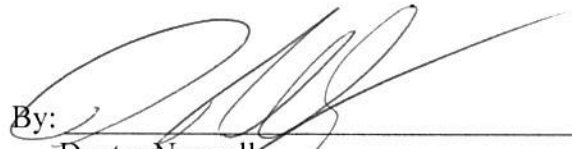
95. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

In the matter of: United States Army Garrison Fort Detrick  
Docket No. CAA-RCRA-03-2020-0046

For Respondent:

The United States Department of the Army


Date: 8 January 2020

By:   
Dexter Nunnally  
Colonel, U.S. Army  
Commanding

For the Complainant:

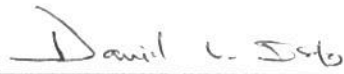
After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: JAN 21 2020

By:   
Karen Melvin  
Director, Enforcement and Compliance  
Assurance Division  
U.S. EPA – Region III  
Complainant

Attorney for Complainant:

Date: 1/10/2020

By:   
Daniel L. Isaacs  
Assistant Regional Counsel  
U.S. EPA – Region III

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

**In the Matter of:** :  
 :  
**United States Department of the Army** : **U.S. EPA Docket No. CAA-RCRA-03-2020-0046**  
 :  
 : **Proceeding under Section 3008(a) and (g) of the**  
**Respondent.** : **Resource Conservation and Recovery Act, 42**  
 : **U.S.C. § 6928(a) and (g), and Sections 113 and**  
**United States Army Garrison Fort Detrick** : **118(a) of the Clean Air Act, 42 U.S.C. §§ 7413 and**  
**810 Schreider Street** : **7418(a)**  
**Fort Detrick, Maryland 21702-5000** :  
 :  
**Facility.** :  
 :  
 :

U.S. EPA-REGION 3-RHC  
FILED-23JAN2020am7:59

**FINAL ORDER**

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, U.S. 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 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.

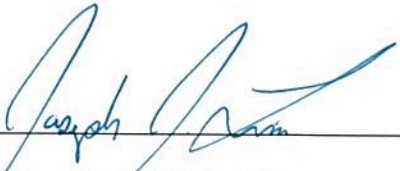
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *RCRA Civil Penalty Policy* (2003) and *Clean Air Act Stationary Source Civil Penalty Policy* (1991), and the statutory factors set forth 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 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 **FOUR HUNDRED FORTY THOUSAND THREE HUNDRED NINETY NINE DOLLARS (\$440,399.00)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA, the CAA and the regulations promulgated thereunder.

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.

Jan. 22, 2020  
Date

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



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

In the Matter of: :  
: :  
United States Department of the Army : U.S. EPA Docket No. CAA-RCRA-03-2020-0046  
: :  
Respondent. : Proceeding under Section 3008(a) and (g) of the  
: Resource Conservation and Recovery Act, 42  
: U.S.C. § 6928(a) and (g), and Sections 113 and  
United States Army Garrison Fort Detrick : 118(a) of the Clean Air Act, 42 U.S.C. §§ 7413 and  
810 Schreider Street : 7418(a)  
Fort Detrick, Maryland 21702-5000 :  
: :  
Facility. : :

**CERTIFICATE OF SERVICE**

I certify that on JAN 23 2020, the original and one (1) copy of foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional 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:

Gary T. Zolyak  
Department of the Army  
Office of the Staff Judge Advocate  
521 Fraim Street  
Fort Detrick, Maryland 21702-9223

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  
Environmental Science Center  
U.S. Environmental Protection Agency, Region III  
701 Mapes Road  
Fort Meade, Maryland 20755-5350

Dated: JAN 23 2020 Bevin Esposito  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 701726200000 91425585  
701726200000 91425707