

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

JUL 12 2010

This form was originated by: A.J. D'Angelo
Name of Contact person *Date*

in the Office of Regional Counsel (3RC30) at (215) 814-2480
Office *Phone number*

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS
 Administrative Order/Consent Agreement FMD COLLECTS PAYMENT
 SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Company making payment: General Dynamics Ordnance and Tactical Systems, Inc.

The Total Dollar Amount of Receivable: Thirty Eight Thousand Five Hundred Dollars (\$38,500.00)
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2010-0326

The Site-Specific Superfund Acct. Number N/A

The Designated Regional/HQ Program Office Office of Land Enforcement (3LC70)

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact *Date*

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- | | |
|--|------------------------------|
| 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005 | 2. Originating Office (ORC) |
| | 3. Designated Program Office |

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 2. Designated Program Office |
| 3. Regional Hearing Clerk | |

July 12, 2010

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

RECEIVED
JUL 13 2010
PHILADELPHIA

In Re:)
)
General Dynamics Ordnance and)
Tactical Systems, Inc.)
11399 16th Court North)
Suite 200)
St. Petersburg, Florida 33716)
)
RESPONDENT.)
)
General Dynamics Ordnance and)
Tactical Systems, Inc.)
200 E. High Street)
Red Lion, Pennsylvania 17356-0127)
RCRA Identification # PAD069779627)
)
FACILITY.)

Docket No. RCRA-03-2010-0326

Proceeding Under Section
3008(a) and (g) of the
Resource Conservation and
Recovery Act, as amended,
42 U.S.C. § 6928(a) and (g)

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and General Dynamics Ordnance and Tactical Systems, Inc. ("Respondent"), pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), 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, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The *Consolidated Rules of Practice*, at 40 C.F.R. § 22.13(b), provide, in pertinent part, that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement ("CA") and the accompanying Final Order ("FO", collectively referred to herein as the "CAFO") simultaneously commence and conclude this administrative proceeding against Respondent.

3. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the "Pennsylvania Hazardous Waste Management Program") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations ("PaHWR") were authorized by the U.S. Environmental Protection Agency ("EPA" or the "Agency") pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The PaHWR subsequently were revised, and thereafter re-authorized by EPA, on three separate occasions (September 26, 2000, January 20, 2004 and April 29, 2009). Such authorized revised PaHWR requirements and provisions became effective on November 27, 2000, March 22, 2004 and June 29, 2009, respectively. The provisions of Pennsylvania's current authorized revised PaHWR, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a, have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).
4. The factual allegations and legal conclusions in this CA are based on provisions of the PaHWR in effect at the time of the violations alleged herein. The PaHWR incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 (and as of July 6, 1999 for certain regulations regarding Universal Waste) for the November 27, 2000 PaHWR authorization, June 28, 2001 for the March 22, 2004 PaHWR authorization and October 12, 2005 for the April 29, 2009 PaHWR authorization.
5. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil penalty against any person who violates any requirement of Subtitle C of RCRA. Respondent is hereby notified of EPA's determination that Respondent has violated RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally-authorized PaHWR requirements, at its facility located at 200 E. High Street, Red Lion, Pennsylvania 17356-0127.
6. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by written letter dated February 25, 2010, EPA notified the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PaDEP" or the "Department"), of EPA's intent to commence this administrative action against Respondent in response to the violations of RCRA Subtitle C that are alleged herein.

II. GENERAL PROVISIONS

7. Respondent admits the jurisdictional allegations set forth in this CAFO.
8. Respondent neither admits nor denies the factual allegations or legal conclusions contained in this CAFO, except as provided in Paragraph 7, immediately above.

9. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
10. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
11. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
12. Respondent shall bear its own costs and attorney's fees.
13. The provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors and assigns.
14. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, or any regulations promulgated and/or authorized thereunder.

III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. In accordance with the *Consolidated Rules of Practice* at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the following findings of fact and conclusions of law:
16. Respondent is a Virginia corporation headquartered in St. Petersburg, Florida.
17. Respondent is engaged in the manufacture of large and medium-caliber ordnance projectiles, housings and parts for the military at its facility located at 200 E. High Street, Red Lion, Pennsylvania 17356-0127 (hereinafter, the "Facility").
18. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), 40 C.F.R. § 260.10 and 25 PA Code Section 260a.10.
19. The Facility identified in Paragraph 17, above, and further described below, is a hazardous waste storage "facility" as that term is defined in 40 C.F.R. § 260.10 and 25 PA Code Section 260a.10.

20. Respondent is and, at all times relevant to this CAFO, was the “owner” and “operator” of a *facility* (i.e., the Facility), where the Respondent engaged in *hazardous waste management* activities, as these terms are defined in 40 C.F.R. § 260.10 and incorporated by reference in 25 Pa. Code § 260a.1, and as defined in 25 Pa. Code § 260a.10.
21. As described below, Respondent is and, at all times relevant to this CAFO has been, a “generator” of “solid waste” and “hazardous waste” (including hazardous waste having EPA Hazardous Waste Numbers D001, D002, D007, D008, D035, F003, F005, F006, as specified in 40 C.F.R. §§ 261.21, 261.22, 261.23 and 261.31, and incorporated by reference in 25 Pa. Code § 261a.1), at the Facility, as these terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
22. At all times relevant to this CAFO, and as described below, Respondent has engaged in the “storage” of “solid waste” and “hazardous waste” in “container[s]” at the Facility, as the former term is defined in 25 PA Code Section 260a.10 and as the latter terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1.
23. Respondent has submitted to EPA a Notification of Hazardous Waste Activity (“Notification”), pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, for its operations at the Facility and in which Respondent has identified itself as a large quantity generator of hazardous waste.
24. On September 9, 2009, a duly authorized representative of EPA conducted a compliance evaluation inspection (the “CEI”) at the Facility to assess the Respondent’s compliance with federally authorized PaHWR requirements.
25. On January 26, 2010, pursuant to the authority of RCRA § 3007(a), 42 U.S.C. § 6927(a), EPA sent an information request letter (“IRL”) to the Facility seeking additional information regarding Respondent’s hazardous waste generation and management practices at the Facility and requesting the production of specified documents and information.
26. Respondent replied to EPA’s IRL by correspondence dated February 15, 2010.
27. On May 17, 2010, EPA sent a Notice of Noncompliance and Request to Show Cause letter (“NON”) to the Respondent advising Respondent of EPA’s preliminary findings of PaHWR violations at the Facility and offering the Respondent an opportunity to provide such additional information as it believed the Agency should review and consider before reaching any final conclusions as to the Respondent’s PaHWR compliance at the Facility.
28. In response to the NON, Respondent provided EPA with supplemental information by correspondence dated May 27, 2010. EPA reviewed and considered such supplemental information and advised Respondent’s representatives of its acceptance of the same

during a meeting of the parties held on June 7, 2010.

29. On the basis of the CEI and a review of the supplemental information provided to EPA by Respondent in response to the NON, EPA concludes that Respondent has violated certain requirements and provisions of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, and federally authorized PaHWR requirements promulgated thereunder.

COUNT I
(Operating Without a Permit)

30. The allegations of Paragraphs 1 through 29 of this Consent Agreement are incorporated herein by reference as though fully set forth at length.

Applicable Statutory Requirements & Factual Findings

31. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
32. At all times relevant hereto, Respondent did not have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference into 25 Pa. Code § 270a.1, for the storage of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference into 25 Pa. Code § 270a.1.

**Applicable Regulatory Permit Exemption Conditions -
Accumulation Time & General Requirements**

33. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 25 Pa. Code § 262a.10, and with exceptions not herein applicable, “a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status” so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*:
- a. the condition set forth at 40 C.F.R. § 262.34(a)(1)(i), which provides, in pertinent part and with exceptions not herein applicable, that: “(1) The waste is placed: (i) In containers and the generator complies with the applicable requirements of Subparts I . . . of 40 C.F.R. Part 265. . . .”;
 - b. the condition set forth at 40 C.F.R. § 262.34(a)(2), which requires, in pertinent part and with exceptions not herein applicable, that: “(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each

container”;

- c. the condition set forth at 40 C.F.R. § 262.34(a)(3), which requires, in pertinent part and with exceptions not herein applicable, that: “(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words “Hazardous Waste”; and
- d. the condition set forth at 40 C.F.R. § 262.34(a)(4), which requires, in pertinent part, that: “(4) The generator complies with the requirements for owners and operators in Subpart[] C . . . in 40 C.F.R. Part 265”

**Applicable Regulatory Permit Exemption Conditions -
Management and Inspection of Containers**

- 34. Subpart I of 40 C.F.R. Part 265 includes the provisions of 40 C.F.R. § 265.173(a), which pertain to the management of containers and require that: “[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”
- 35. Subpart I of 40 C.F.R. Part 265 additionally includes the provisions of 40 C.F.R. § 265.174, which pertain to the inspection of containers and require, in relevant part, that: “[a]t least weekly, the owner or operator must inspect areas where containers are stored The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.”

**Applicable Regulatory Permit Exemption Conditions -
Maintenance and Operation of Facility**

- 36. Subpart C of 40 C.F.R. Part 265 includes the provisions of 40 C.F.R. § 265.31, which pertain to the maintenance and operation of a facility and require, in relevant part, that: “[f]acilities must be maintained and operated to minimize the possibility of . . . any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.”

Factual Findings - Permit Exemption Conditions

- 37. A drum of D001/D007/D008/F003/F005 hazardous waste that was shipped off-site under Manifest # 2909502FLE (line item 9.b.1) was stored at the Facility from June 10, 2009 through September 10, 2009, a period of 93 days.
- 38. At the time of the September 9, 2009 CEI, each of several small containers of solid and hazardous waste “Lab Pack Material” containing D002 adhesive hardener, D002 epoxy

resins and D001/D035 adhesives and primers, as well as a 55 gallon container of solid and D001 hazardous waste spent "Solvent 100", were in storage at the Facility and were not labeled or marked clearly with the words "Hazardous Waste".

39. At the time of the September 9, 2009 CEI, each of the containers of hazardous waste identified in Paragraph 38, immediately above, as well as a two open carts containing F006 hazardous waste sludge that were located beneath a sludge press in the Facility's Building 1 Wastewater Treatment Plant and near a sludge dryer in the Facility's Building 3 Wastewater Treatment Plant, respectively, were not marked with the date upon which the period of hazardous waste accumulation began.
40. At the time of the September 9, 2009 CEI, each of the two open carts containing F006 hazardous waste sludge identified in Paragraph 39, immediately above, as well as a partially open 20-yard roll-off container containing F006 hazardous waste from the Facility Wastewater Treatment Plant that was in a storage area adjacent to the Facility's main Accumulation Area, were not kept closed during storage at times when it was not necessary to add or remove waste.
41. Respondent failed to inspect the hazardous waste container storage areas located within the Facility Accumulation Area on a weekly basis from May 7, 2009 through June 4, 2009.
42. At the time of the September 9, 2009 CEI, F006 hazardous waste sludge residue was present on and around the base of a sludge dryer located within, and also on the floor of, the Facility's Building 3 Wastewater Treatment Plant, such that the Facility was not properly maintained and operated to minimize the possibility of an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air or soil.

Legal Conclusion - Failure to Comply with Permit Exemption Conditions

43. For each of the reasons and during each of the times set forth in Paragraphs 37 through 42, above, Respondent failed to comply with the conditions, identified in Paragraphs 33 through 36, above, for temporary (*i.e.*, 90 days or less) accumulation of hazardous waste by a generator that are required pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 25 PA Code Section 262a.10, and therefore failed to qualify during those times for an exemption from the permitting/interim status requirements provided by such section.

**Legal Conclusion - Operating without a Permit,
Interim Status or Valid Permit Exemption**

44. Respondent violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous

waste storage facility without a permit, interim status or valid exemption to the permitting/interim status requirements.

COUNT II

(Failure to Make Hazardous Waste Determinations)

45. The allegations of paragraphs 1 through 44 of this CA are incorporated herein by reference as though fully set forth at length.
46. 25 PA Code Section 262a.10 incorporates by reference the requirements of 40 C.F.R. § 262.11, which provides, in relevant part, that: “[a] person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method: (a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4[; and] (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261.”
47. At the time of the September 9, 2009 CEI, Respondent had not determined if the “Lab Pack Material” and the spent “Solvent 100” solid wastes previously identified in Paragraph 38, above, were hazardous wastes.
48. In its February 15, 2010 IRL response, Respondent informed EPA of its subsequent determination that the “Lab Pack Material” waste referenced in Paragraphs 38 and 47, above, included D002 adhesive hardener, D002 epoxy resins and D001/D035 adhesives and primers, respectively, and that the spent “Solvent 100” waste also referenced in Paragraphs 38 and 47, above, was a D001 hazardous waste.
49. From the date of generation through October 1, 2009, Respondent failed to determine if the solid wastes identified in Paragraph 47, above, were hazardous wastes in accordance with 25 PA Code Section 262a.10, which incorporates by reference the requirements and provisions of 40 C.F.R. § 262.11.

COUNT III

(Failure to Comply with Hazardous Waste Exception Reporting Requirements)

50. The allegations of paragraphs 1 through 49 of this CA are incorporated herein by reference as though fully set forth at length.
51. 25 PA Code Section 260a.3.(a)(1) provides that terms including “Regional Administrator” are “substituted with “Department”.”
52. 25 PA Code Section 262a.10 incorporates by reference the recordkeeping requirements of 40 C.F.R. § 262.40(a), which provide that: “[a] generator must keep a copy of each manifest signed in accordance with [40 C.F.R.] § 262.23(a) for three years or until he

- receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.”
53. 25 PA Code Section 262a.10 incorporates by reference the exception reporting recordkeeping requirements of 40 C.F.R. § 262.42(a)(2), as modified by 25 PA Code Section 260a.3.(a)(1) and by 25 PA Code Section 262a.42 (which does not incorporate by reference the phrase “for the Region in which the generator is located” that is contained in 40 C.F.R. § 262.42(a)(2)), and collectively provide that a generator of greater than 1000 kilograms of hazardous waste in a calendar month must submit an Exception Report to the Department if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter.
54. At the time of the September 9, 2009 CEI, the copy of Hazardous Waste Manifest No. 206521 (signed by the initial transporters of such waste on December 11, 2008) maintained by the Respondent at the Facility did not include the handwritten signature of the owner or operator of the facility designated to receive the hazardous waste.
55. On September 18, 2009, a Facility representative submitted a fully signed copy of Hazardous Waste Manifest No. 206521 that included the handwritten signature of the owner or operator of the facility designated to receive the hazardous waste.
56. In its May 27, 2010 IRL Response, Respondent confirmed that the Facility initially did not receive a fully signed copy of Hazardous Waste Manifest No. 206521 that included the handwritten signature of the owner or operator of the facility designated to receive the hazardous waste, but that “a copy of that manifest subsequently was obtained and . . . submitted . . .” .
57. Respondent failed to comply with 25 PA Code Section 262a.10, which incorporates by reference (and with the modifications noted at 25 PA Code Sections 260a.3.(a)(1) and 262a.42) the exception reporting requirements of 40 C.F.R. § 262.42(a)(2), by failing to submit an Exception Report to the Department upon failing, within 45 days of the date the waste was accepted by the initial transporter, to receive a copy of Hazardous Waste Manifest No. 206521 that contained the handwritten signature of the owner or operator of the designated facility.

COUNT IV

(Failure to Comply with Hazardous Waste Container Management Requirements)

58. The allegations of paragraphs 1 through 57 of this CA are incorporated herein by reference as though fully set forth at length.

59. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.173(a), provides, in relevant part and with exceptions not herein applicable, that “[a] container holding hazardous waste must always be kept closed during storage, except when it is necessary to add or remove waste.”
60. On September 9, 2009, each of the three containers of hazardous waste identified in Paragraph 40, above, were being stored at the Facility and were not kept closed at times when it was not necessary to add or remove waste.
61. Respondent failed to comply with the requirements of 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.173(a), by storing hazardous waste in containers that were not kept closed during storage, when it was not necessary to add or remove waste.

COUNT V

(Failure to Comply with Weekly Hazardous Waste Container Storage Area Inspections)

62. The allegations of paragraphs 1 through 61 of this CA are incorporated herein by reference as though fully set forth at length.
63. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.174, provides, in relevant part and with exceptions not herein applicable, that “[a]t least weekly, the owner or operator must inspect areas where containers are stored The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.”
64. Respondent failed to inspect the hazardous waste container storage areas located within the Facility Accumulation Area on a weekly basis from May 7, 2009 through June 4, 2009.
65. Respondent failed to comply with the requirements of 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.174, by failing to perform required weekly container storage area inspections at the Facility Accumulation Area during the periods of May 7, 2009 through June 4, 2009.

COUNT VI

(Failure to Comply with Facility Design and Operation Requirements)

66. The allegations of paragraphs 1 through 65 of this CA are incorporated herein by reference as though fully set forth at length.
67. 25 PA Code Section 264a.1, which incorporates by reference 40 C.F.R. § 264.31, provides, in relevant part, that “[f]acilities must be designed, constructed, maintained and

operated to minimize the possibility of . . . any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.”

68. At the time of the September 9, 2009 CEI, Respondent operated the Facility’s Building 3 Wastewater Treatment Plant in a manner that allowed hazardous waste sludge residue to be released on and around the base of the sludge dryer and onto the floor.
69. Respondent failed to comply with the requirements of 25 Pa. Code § 264a.1, which incorporates by reference the requirements of 40 C.F.R. § 264.31, by operating the Facility’s Building 3 Wastewater Treatment Plant in a manner that failed to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

COUNT VII

(Failure to Keep Universal Waste Lamps in Closed Containers)

70. The allegations of paragraphs 1 through 69 of this CA are incorporated herein by reference as though fully set forth at length.
71. 25 PA Code Section 266b.1 incorporates by reference the requirements of 40 C.F.R. § 273.13(d)(1), which provides that “[a] small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.”
72. At the time of the September 9, 2009 CEI, Respondent was a small quantity handler of universal waste and was storing universal waste lamps at Facility Building 4 in cardboard box containers that were not fully closed.
73. Respondent failed to comply with the requirements of 25 PA Code Section 266b.1, which incorporates by reference the requirements of 40 C.F.R. § 273.13(d)(1), by storing universal waste lamps at the Facility in containers that were not fully closed.

COUNT VIII

(Failure to Properly Label/Mark Containers of Universal Waste Lamps)

74. The allegations of paragraphs 1 through 69 of this CA are incorporated herein by reference as though fully set forth at length.

75. 25 PA Code Section 266b.1 incorporates by reference 40 C.F.R. § 273.14(e), pertaining to universal waste lamp labeling or marking requirements. These provisions require that: “[e]ach lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”
76. At the time of the September 9, 2009 CEI, Respondent was storing containers of universal waste lamps at Facility Building 4 in metal and cardboard containers that had Universal Waste labels on them, but which were not correctly labeled or marked with one of the required and applicable phrases (i.e., “Universal Waste—Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s)”).
77. Respondent failed to comply with the requirements of 25 PA Code Section 266b.1, which incorporates by reference the requirements of 40 C.F.R. § 273.14(e), by failing to label or mark containers of universal waste lamps in storage at the Facility with one of the specified and required phrases.

IV. CIVIL PENALTIES

78. Respondent agrees to pay a civil penalty in the amount of **Thirty Eight Thousand Five Hundred Dollars (\$38,500.00)**, in settlement and satisfaction of all civil claims for penalties which Complainant may have concerning the violations alleged and set forth in Section III (“EPA Findings of Fact and Conclusions of Law”) of this CA. Such civil penalty shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.
79. The civil penalty settlement amount set forth in the preceding Paragraph was determined after consideration of the statutory factors set forth in Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to: EPA’s October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 (“RCRA Civil Penalty Policy”), which reflects the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g); the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, the December 29, 2008 memorandum by EPA Assistant Administrator Grant Y. Nakayama, entitled *Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule* (Effective January 12, 2009) (hereinafter “Nakayama Memo”). Pursuant to 40 C.F.R. Part 19, and as provided in the Nakayama Memo: penalties for RCRA violations occurring after January 30, 1997 were increased by 10% to

account for inflation, not to exceed a \$27,500.00 per violation statutory maximum penalty; penalties for RCRA violations occurring after March 15, 2004 and before January 13, 2009 were increased by an additional 17.23% to account for subsequent inflation, not to exceed a \$32,500.00 per violation statutory maximum penalty; and penalties for RCRA violations occurring after January 12, 2009 have been increased by an additional 9.83% to account for subsequent inflation, not to exceed a \$37,500.00 per violation statutory maximum penalty. Certain of the violations herein alleged occurred between March 15, 2004 and January 13, 2009 and others occurred on or continued after January 12, 2009. The civil penalty settlement amount set forth in the preceding Paragraph was determined in consideration of the applicable penalty inflation adjustments, pursuant to 40 C.F.R. Part 19, and as provided in: the revised RCRA Civil Penalty Policy matrices annexed to the January 11, 2005 memorandum by EPA Office of Regulatory Enforcement, RCRA Enforcement Division Director Rosemarie Kelly, entitled *Revised Penalty Matrices for the RCRA Civil Penalty Policy*; and the adjusted RCRA Civil Penalty Policy Matrices annexed to November 16, 2009 memorandum by EPA Office of Civil Enforcement, Waste and Chemical Enforcement Division Director Rosemarie A. Kelly, entitled *Adjusted Penalty Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule*.

80. Payment of the civil penalty as required by paragraph 78, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action (*Docket No. RCRA-03-2010-0326*).
 - b. All checks shall be made payable to "United States Treasury".
 - c. All payments made by check and sent by Regular U.S. Postal Service Mail shall be addressed and mailed to:

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

Contact: Craig Steffen - (513-487-2091)
Eric Volck - (513-487-2105)

- d. All payments made by check and sent by Private Commercial Overnight Delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Craig Steffen - (513-487-2091)
Eric Volck - (513-487-2105)

- e. All payments made by electronic wire transfer 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")

- g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

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

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

Contact for ACH: John Schmid - (202-874-7026)

h. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field.

Open form and complete required fields.

81. At the time of payment, Respondent simultaneously shall send a notice of such payment, including a copy of the check or electronic fund transfer, as applicable, to:

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

and

A.J. D'Angelo
Sr. Assistant Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

82. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

83. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

84. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
85. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
86. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

V. CERTIFICATIONS

87. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent and the Facility currently are in compliance with all relevant provisions of the federally-authorized PaHWR, and of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e, for which violations are alleged in this CA.

VI. OTHER APPLICABLE LAWS

88. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law and/or regulation.

VII. RESERVATION OF RIGHTS

89. This CAFO resolves only EPA's claims for civil penalties for the specific violations which are alleged in this CA. Nothing in this CAFO shall be construed as limiting the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under 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.

VIII. FULL AND FINAL SATISFACTION

90. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), for the violations alleged in this CA.

IX. PARTIES BOUND

91. This CA and the accompanying FO shall apply to and be binding upon the EPA, the Respondent, Respondent's officers and directors (in their official capacity) and Respondent's successors and assigns. By his or her signature below, the person signing this CA on behalf of Respondent acknowledges that he or she is fully authorized to enter into this CA and to bind the Respondent to the terms and conditions of this CA and the accompanying FO.

X. EFFECTIVE DATE

92. The effective date of this CAFO is the date on which the FO is filed with the Regional Hearing Clerk after signature by the Regional Administrator or his designee, the Regional Judicial Officer.

XI. ENTIRE AGREEMENT

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

For Respondent General Dynamics Ordnance and Tactical Systems, Inc.:

Date: 7/01/10 By: Del S. Dameron
Del S. Dameron
Vice President and General Counsel
General Dynamics Ordnance and Tactical Systems, Inc.

For the Complainant:

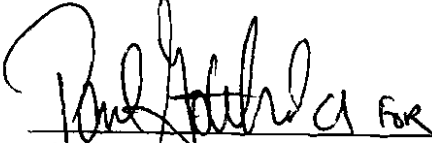
U.S. Environmental Protection Agency, Region III

Date: 7/2/2010

By: 
A.J. D'Angelo
Sr. Assistant Regional Counsel

After reviewing the EPA Findings of Fact, Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached FO.

Date: 7-6-2010

By: 
Abraham Ferdas, Director
Land and Chemicals Division

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

APR 14 2010
RECEIVED
PHILADELPHIA, PA

In Re:)
)
General Dynamics Ordnance and)
Tactical Systems, Inc.) Docket No. RCRA-03-2010-0326
11399 16th Court North)
Suite 200)
St. Petersburg, Florida 33716)
)
RESPONDENT.) Proceeding Under Section
) 3008(a) and (g) of the
General Dynamics Ordnance and) Resource Conservation and
Tactical Systems, Inc.) Recovery Act, as amended,
200 E. High Street) 42 U.S.C. § 6928(a) and (g)
Red Lion, Pennsylvania 17356-0127)
RCRA Identification # PAD069779627)
)
FACILITY.)

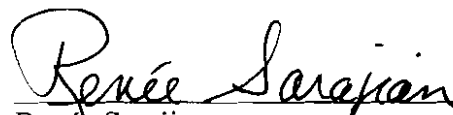
FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, General Dynamics Ordnance and Tactical Systems, Inc., 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.

NOW, THEREFORE, pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, commonly known as Resource Conservation and Recovery Act of 1976, as amended, *inter alia*, by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as "RCRA"), 42 U.S.C. § 6928(a) and (g), and the *Consolidated Rules of Practice*, after having determined, based on the representations of the Parties set forth in the Consent Agreement, that the civil penalty of Thirty Eight Thousand Five Hundred Dollars (\$38,500.00) agreed to therein was based upon a consideration of the factors set forth in RCRA Section 3008(a), 42 U.S.C. § 6928(a), IT IS HEREBY ORDERED that Respondent pay a civil monetary penalty of Thirty Eight Thousand Five Hundred Dollars (\$38,500.00), in accordance with the provisions of the foregoing Consent Agreement, and comply timely with each of the additional terms and conditions thereof.

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

7/12/10
Date



Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

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

In Re:)	
)	
General Dynamics Ordnance and Tactical Systems, Inc.)	Docket No. RCRA-03-2010-0326
11399 16th Court North)	
Suite 200)	
St. Petersburg, Florida 33716)	
)	
RESPONDENT.)	Proceeding Under Section
)	3008(a) and (g) of the
General Dynamics Ordnance and Tactical Systems)	Resource Conservation and
200 E. High Street)	Recovery Act, as amended,
Red Lion, Pennsylvania 17356-0127)	42 U.S.C. § 6928(a) and (g)
RCRA Identification # PAD069779627)	
)	
FACILITY.)	


CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to Ms. Lydia Guy, Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5th Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order. I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Certified Mail, Return Receipt Requested, Postage Prepaid, to the following persons at the following addresses:

Elaine B. Mills, Esquire
Associate General Counsel
General Dynamics Ordnance and Tactical Systems, Inc.
11399 16th Court North, Suite 200
St. Petersburg, Florida 33716
(Article No. 7004 2890 0000 5075 7064)

JUL 12 2010

Date


A.J. D'Angelo (3RC30)
Sr. Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2480