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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

DEC -5 PM 3:10
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:	:	
	:	
C & M Industries, Inc.	:	Proceeding under Section 311(j) and
121 Republic Road	:	311(b)(6)(B)(i) of the Clean Water
Chesapeake, Virginia 23324,	:	Act, 33 U.S.C. § 1321(j) and
	:	1321(b)(6)(B)(i)
Respondent.	:	
	:	Docket No. CWA-03-2018-0001
C & M Industries, Inc.	:	
739 East End Avenue	:	
Norfolk, Virginia 23504	:	
	:	
Facility.	:	
	:	

CONSENT AGREEMENT

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(i) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1321(b)(6)(B)(i), and under the authority provided by Section 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region's Hazardous Site Cleanup Division ("Complainant").
2. The parties agree to the commencement and conclusion of this matter by issuance of this Consent Agreement and Final Order (collectively "CAFO"), as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b) and 22.18(b), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.
3. For purposes of this proceeding only, C & M Industries, Inc. ("Respondent") admits to the jurisdictional allegations set forth in this Consent Agreement. Respondent agrees not to contest EPA's jurisdiction with respect to the execution, enforcement, and issuance of this CAFO.
4. Respondent neither admits nor denies the specific factual allegations, findings of fact, and conclusions of law set forth in this Consent Agreement, except as provided in Paragraph 3, above.
5. For 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.

Statutory and Regulatory Authority

6. Congress enacted the CWA, 33 U.S.C. §§ 1251 et seq., in 1972. In Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.
7. By Executive Order 12777, the President delegated the authority to promulgate regulations for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges under Section 311(j) of the CWA to EPA for non-transportation-related onshore and offshore facilities.
8. Pursuant to its delegated authority under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA promulgated the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112, Subparts A - C.
9. Pursuant to 40 C.F.R. § 112.1, an owner or operator of a non-transportation-related onshore or offshore facility with an above-ground oil storage capacity exceeding 1,320 gallons, engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines is subject to Part 112.
10. According to 40 C.F.R. § 112.3, an owner or operator of an onshore or offshore facility subject to the Oil Pollution Prevention Regulations must prepare in writing and implement a Spill Prevention, Control, and Countermeasure (SPCC) plan, in accordance with § 112.7 and any other applicable section, including, but not limited to, § 112.8.
11. Congress amended Section 311 of the CWA, 33 U.S.C. § 1321, by enacting the Oil Pollution Act of 1990 (“OPA”), which required, in part, that the President promulgate regulations which would mitigate potential harm caused by vessels, and onshore and offshore oil facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States or adjoining shorelines (“substantial harm facilities”). 33 U.S.C. § 1321(j)(5)(A). Specifically, Congress directed the President to promulgate regulations requiring the owners or operators of substantial harm facilities to submit to the President plans for responding to worst case oil discharges and substantial threats of such discharges.
12. In 1994, pursuant to Section 311(j)(5)(A) of the CWA, 33 U.S.C. § 1321(j)(5)(A), EPA amended 40 C.F.R. Part 112 by promulgating oil spill response regulations requiring the owners or operators of non-transportation substantial harm facilities to, *inter alia*, develop and implement a facility response plan (“FRP”), an oil spill response training program, and a program of oil spill response drills and exercises (“Oil Spill Response Regulations”). These Oil Spill Response Regulations are codified at 40 C.F.R. Subpart D, § 112.20 and 112.21, and became effective on August 30, 1994.

13. Pursuant to 40 C.F.R. § 112.20(a), the owner or operator of a non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines shall prepare and submit to EPA an FRP.
14. A facility could, because of its location, reasonably be expected to cause substantial harm to the environment if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility's total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation within each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years. 40 C.F.R. § 112.20(f)(1)(i-ii).
15. To meet the requirements of 40 C.F.R. § 112.20(h), an FRP shall follow the format of the model facility-specific response plan included in Appendix F to 40 C.F.R. Part 112, unless an equivalent response plan acceptable to the EPA Regional Administrator has been prepared to meet State or other Federal requirements.
16. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and implemented by 40 C.F.R. Part 19, *Adjustment of Civil Monetary Penalties for Inflation*, to file an Administrative Complaint seeking a civil penalty of \$18,107 per violation, up to a maximum of \$45,268, or seeking a civil penalty of \$18,107 per day for each day during which a violation continues, up to a maximum of \$226,338, for violations occurring after November 2, 2015.

Findings of Fact and Conclusions of Law

17. Respondent is a Virginia corporation with a principal place of business located at 121 Republic Road, Chesapeake, Virginia 23324.
18. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
19. Respondent is the owner and operator of a wastewater pretreatment and oil recycling facility located at 739 East End Avenue, Norfolk, Virginia 23504 ("Facility").
20. On August 4, 2016, EPA conducted an SPCC and FRP compliance inspection ("Inspection") of the Facility.

21. At the time of the Inspection, Respondent was the owner and/or operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
22. Respondent accepts oily wastewater generated by petroleum tank washing, bilge cleaning, tank remediation, boiler-related processes, firefighting, oil/water separator servicing, fuel tank compensation, and CHT tank cleaning. The Facility unloads and loads barges on the Elizabeth River by pumping the oily wastewater through a pipeline from/to the dock to/from tanks at the Facility. The Facility also accepts wastewater by truck and has a truck loading and unloading racks on-site.
23. The Facility includes an above-ground storage tank that is used to store recycled oil after processing and prior to resale ("recycled oil storage tank"). The recycled oil storage tank has a capacity of 69,000 gallons.
24. The Facility is located approximately 625 feet north of the Elizabeth River shoreline.
25. The Elizabeth River is a tidal estuary whose main branch is approximately 6 miles long and passes three neighboring Virginian cities, namely Norfolk, Portsmouth, and Chesapeake, and serves as the home to the Norfolk Naval Shipyard.
26. The Elizabeth River is a navigable water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.
27. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
28. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or its adjoining shoreline.
29. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112.
30. Pursuant to 40 C.F.R. § 112.3, Respondent is required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.
31. The Facility is a "substantial harm" facility pursuant to 40 C.F.R. § 112.20(f)(1) because the Facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons.
32. Pursuant to 40 C.F.R. § 112.20(f)(1), the Facility is subject to the Oil Spill Response Regulations.
33. Respondent has not prepared a response plan acceptable to the Regional Administrator to meet State or other Federal requirements; therefore, pursuant to 40 C.F.R. § 112.20(h),

Respondent's FRP for the Facility is required to follow the format of the model facility-specific response plan included in Appendix F of 40 C.F.R. Part 112.

34. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement the Oil Pollution Prevention Regulations and the Oil Spill Response Regulations, as set forth below.
35. At the time of the Inspection:
 - a. Respondent failed to comply with 40 C.F.R. § 112.5(b), which, in pertinent part, requires the owner or operator of a facility for which an SPCC plan must be prepared in writing and implemented to complete a review and evaluation of the SPCC plan at least once every five years, document completion of the review and evaluation, and sign a statement in the plan or as an appendix as to whether the SPCC plan will be amended. At the time of the Inspection, Respondent provided to EPA inspectors an SPCC plan for the Facility that was dated 2008 that did not include documentation of subsequent review and evaluation, and did not include a signed statement regarding amendment.
 - b. Respondent failed to comply with 40 C.F.R. § 112.7(a)(3), which, in pertinent part, requires the owner or operator of a facility for which an SPCC plan must be prepared in writing and implemented to describe in the SPCC plan the physical layout of the facility, including a facility diagram and associated discharge or drainage controls. At the time of the Inspection, Respondent's SPCC plan did not adequately depict the location and contents of the Facility's diesel fuel tanks and motor oil drums and their associated discharge or drainage controls in the facility diagram.
 - c. Respondent failed to comply with 40 C.F.R. § 112.8(c)(6), which, in pertinent part, requires the owner or operator of a facility for which an SPCC plan must be prepared in writing and implemented to test or inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. The owner or operator must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections, which account for container size, configuration, and design. The owner or operator must keep comparison records and inspect the container's supports and foundations and frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. At the time of Inspection, Respondent's recycled oil storage tank had not been integrity tested on a regular schedule or by an individual with appropriate qualifications, as defined by industry standards.
 - d. Respondent failed to comply with 40 C.F.R. § 112.20(h)(4), which requires the owner or operator of a facility for which an FRP must be submitted to follow the format of the model facility-specific response plan included in Appendix F of 40 C.F.R. Part 112, unless an equivalent response plan acceptable to the Regional Administrator to meet State and other Federal requirements has been prepared, and, in pertinent part, to identify in the FRP areas within the Facility where an oil

discharge could occur and the potential effect of such discharges on the environment. At the time of the Inspection, Respondent had not submitted an equivalent response plan deemed acceptable to the Regional Administrator, and failed to follow the format of the model FRP. Specifically, the FRP did not include adequate hazard identification worksheets or equivalent documents for the diesel fuel tanks and motor oil drums, as required by the model FRP provided in 40 C.F.R Part 112, Appendix F, Section 1.4.1, which identifies the tank number and type, substance and quantity stored therein, the year installed, maximum capacity, and cause and date of any tank failures.

- e. Respondent failed to comply with 40 C.F.R. § 112.20(h)(9), which requires the owner or operator of a facility for which an FRP must be submitted to include in the FRP, site plan and drainage plan diagrams. At the time of the Inspection, the FRP did not include adequate site plan diagrams as required by the model FRP provided in 40 C.F.R Part 112, Appendix F, Section 1.9.
- f. Respondent failed to comply with 40 C.F.R. § 112.20(h)(11), which requires the owner or operator of a facility for which an FRP is required to be submitted to EPA to include a response plan cover sheet to the FRP as described in Appendix F, Section 2.0 and Attachment F-1. At the time of the Inspection, the FRP included a document entitled "Response Plan Cover Sheet" on page 42, but the cover sheet did not include the requisite information, as specified by the model Appendix F, Attachment F-1.
- g. Respondent failed to comply with 40 C.F.R. § 112.21(c), which requires the owner or operator of a facility for which an FRP is required to be submitted to EPA to develop a program of facility response drills/exercises in accordance with an approved program. At the time of the Inspection, Respondent's FRP included an approved program of drills and exercises that required records of the drills to be maintained for three years following the completion of the drills. At the time of the Inspection, Respondent could not present to EPA records of the qualified individual notification drills for the 2nd and 3rd quarter of 2014.

Penalty

- 36. In settlement of Complainant's claims for civil penalties for the foregoing violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of \$16,418.
- 37. The penalty was calculated after consideration of the applicable statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the allegations regarding the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; history of prior violations, if any; any other penalty for the same incident; the nature, extent, and degree of success of the violator's mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require. The applicable statutory factors were applied in accordance with EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).

38. The civil penalty of \$16,418 shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CAFO, Respondent shall pay the civil penalty of \$16,418 no later than thirty (30) days after the date on which a copy of the CAFO is mailed or hand-delivered to Respondent. All payments shall be made by a cashier's or certified check, by an electronic funds transfer ("EFT"), or by online payment, as set forth below.

- a. If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF-311." If paying by check, Respondent shall note on the check the title and docket number (CWA-03-2018-0001) of this case.
- b. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

- c. If Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Environmental Protection Agency
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Contact: (314) 418-1028

- d. If paying by EFT, the Respondent shall make the transfer to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
33 Liberty Street
New York, NY 10045

- e. If paying by EFT, field tag 4200 of the Fedwire message shall read: "(D 68010727 Environmental Protection Agency)." In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.

- f. If paying by check or EFT transfer, please provide a copy of the check or EFT confirmation page to the following individuals:

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

Lauren E. Ziegler
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region III
1650 Arch Street (3RC42)
Philadelphia, PA 19103-2029
Ziegler.Lauren@epa.gov

- g. If paying through the Department of Treasury's Online Payment system, please access "www.pay.gov," and enter sfo 1.1 in the search field. Open the form and complete the required fields and make payments. Note that the type of payment is "civil penalty," the docket number "CWA-03-2018-0001" should be included in the "Court Order # or Bill #" field, and "3" should be included as the Region number.
39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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, complete payment in accordance with this CAFO or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.
40. In accordance with 40 C.F.R. § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this fully executed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).
41. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.
42. A penalty charge of six percent per year will be assessed monthly on any portion of a payment that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

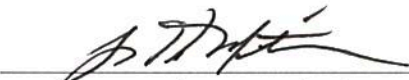
43. To avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit payment for the civil penalty in accordance with the payment deadline set forth above.
44. Failure by Respondent to pay the penalty assessed by the Final Order in full in accordance with this CAFO may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

45. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind the Respondent and its successors or assigns to the terms of this Consent Agreement.
46. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
47. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. 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. Nor shall anything in this Consent Agreement and the accompanying Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

For the Respondent, C & M Industries, Inc.

Date: 11.7.17


By: 

Elza H. Mitchell (print name)

President (title)

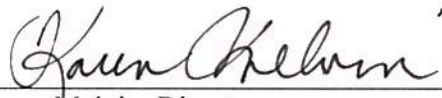
For the Complainant, U.S. Environmental Protection Agency, Region III

Date: 11/21/17

By: 
Lauren E. Ziegler
Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director of the Hazardous Site Cleanup Division, EPA Region III, recommends that the Regional Judicial Officer issue the Final Order attached hereto.

Date: DEC 1 2017

By: 
Karen Melvin, Director
Hazardous Site Cleanup Division
EPA Region III

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FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, C & M Industries, 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 references to Section 22.13(b), 22.18(b)(2) and (3), and 22.50(a)(1) and (b). 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.

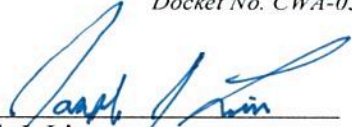
Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), which were applied in accordance with EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).

NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(i) of the CWA, as amended, and the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty of SIXTEEN THOUSAND FOUR HUNDRED EIGHTEEN DOLLARS (\$16,418), plus any applicable interest, 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.

In re: C&M Industries, Inc.
Docket No. CWA-03-2018-0001

Date: Dec. 5, 2017



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

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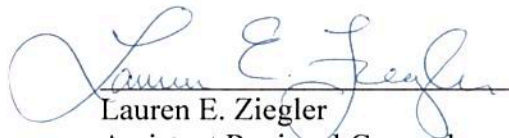
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that a copy of the CAFO was sent by UPS overnight mail to Respondent's representative:

Earl W. Edwards III
Vice President, Operations
C & M Industries, Inc.
121 Republic Road
Chesapeake, VA 23324

I further certify that I have sent a pdf copy of the CAFO by email to Respondent's representative, Earl Edwards, at aced3@verizon.net, on this day.

12/5/17
Date


Lauren E. Ziegler
Assistant Regional Counsel