



promulgated, issued, or approved under Subchapters I, IV, V and VI [also referred to as Titles I, IV, V and VI] of the Act. The authority to issue the Consent Agreement has been duly delegated to the Director of the Air Protection Division, Region III, and the accompanying Final Order has been duly delegated to the Regional Judicial Officer, EPA Region III.

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO and agrees not to contest EPA's jurisdiction with respect to the issuance, execution and enforcement of this Consent Agreement and the accompanying Final Order. Respondent also waives any right to confer with the Administrator under 40 C.F.R. §22.31(e) with regard to this case.
3. Except as provided in paragraph 2 above, Respondent neither admits nor denies the specific findings of fact and the conclusions of law set forth in this Consent Agreement and the accompanying Final Order.
4. Respondent consents to the issuance of this Consent Agreement and the accompanying Final Order, agrees to comply with the terms and conditions set forth therein, and consents to the payment of a civil penalty as set forth in this CAFO.
5. Respondent agrees to pay its own costs and attorney fees.
6. Respondent agrees that this Consent Agreement and the accompanying Final Order shall apply to, and be binding upon, Respondent, and its successor agencies, departments and instrumentalities.

### **III. Findings Of Fact And Conclusions Of Law**

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), EPA alleges the following findings of fact and conclusions of law:

7. Respondent owns and operates the Naval Foundry and Propeller Center, located at Building 592, Code 1423, Philadelphia, Pennsylvania 19112 ("NFPC" or the "Facility"), through its Norfolk Naval Shipyard.
8. The Facility is a non-ferrous foundry that produces propellers for the United States Department of the Navy.
9. Respondent is a department of the United States and is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. §7413(d).
10. At all times relevant to the violations alleged in this Consent Agreement, Respondent has been the owner and operator of the Facility.
11. Title V of the CAA, 42 U.S.C. § 7661a, 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.
12. 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.
  13. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provides 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.
  14. EPA granted full and final approval to the Pennsylvania Title V permit program on August 29, 1996, and the program became effective on that date. 61 Fed. Reg. 39597. Pennsylvania's Title V regulations are promulgated at 25 Pa. Code §§ 127.501 through 127.543.
  15. Section 113(d)(1) of the CAA limits the Administrator's authority to matters where the first alleged violation occurred no more than 12 months prior to initiation of an administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
  16. The Administrator and the Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.
  17. The Pennsylvania Department of Environmental Protection ("PADEP") is a permitting authority for Title V purposes as defined in Section 501(4) of the CAA, 42 U.S.C. § 7661(4).
  18. The state regulatory requirements concerning Pennsylvania's Title V CAA permitting program are primarily found at 25 Pa. Code §§ 127.501 through 127.543.
  19. Pursuant to 25 Pa. Code § 127.512, each permit issued to a Title V facility shall contain the minimum permit terms and conditions set forth in § 127.512, which includes a provision stating that "[t]he permittee shall comply with conditions of the operating permit." 25 Pa. Code § 127.512(c)(1).
  20. Pursuant to Title 35, Chapter 23, Section 4012(b) of the Pennsylvania Consolidated Statutes, 35 Pa. Cons. Stat. 4012(b), PADEP delegated its permitting authority for Philadelphia County to City of Philadelphia Air Management Services ("AMS").
  21. AMS is the Title V permitting authority for Philadelphia County.
  22. Respondent's Facility is a "Title V Facility" under 25 Pa. Code § 121.1 because it is a major stationary source of air pollutants that has potential to emit 100 tons or more per year of nitrogen oxides.

23. On July 28, 2008, AMS issued a Title V operating permit to the Respondent for the Facility (Permit No. V07-003). On August 8, 2013, AMS renewed Respondent's operating permit for the Facility (Permit No. V13-002), which became effective on that date and expires on August 8, 2018 (the "Title V Permit"). The Norfolk Naval Shipyard Detachment is the Permittee under the Title V Permit.
24. On November 18, 2014, an authorized representative for EPA conducted a compliance inspection and document review of the Facility.
25. On February 23, 2015, EPA issued an information request letter to the Respondent, pursuant to Section 114(a) of the CAA, 42 U.S.C. 7414(a). Respondent provided a response to EPA's information request in a letter dated April 15, 2015 (the "Response").

#### Failure to Keep Records of Visible Emission Checks for Dust Collector Stacks

26. Section D, Condition 5(a)(1) of the Title V Permit requires Respondent to keep records of "visible emission checks for each Dust Collector Stack."
27. At the time of the November 18, 2014 compliance inspection and records review, Respondent failed to produce any records of visible emission checks for the Facility.
28. In Paragraph 4 of its Response to EPA's Section 114 information request letter, Respondent admitted that "... daily visible emission checks on the dust stacks had not been documented." As a corrective measure, Respondent indicated that "[t]he following SOP [Standard Operating Procedure] was implemented on January 1, 2015 and will continue forward in perpetuity for any day when the dust collectors are in operation."
29. Respondent's failure to keep records of visible emission checks from at least January 1, 2014 to January 1, 2015 is a violation of Section D, Condition 5(a)(1) of the Title V Permit and Section 502 of the Act.

#### Failure to Keep Records of Baghouse Pressure Drop

30. Section D, Condition 5(a)(2) of the Title V Permit requires the Respondent to keep records of the "[p]ressure drop across the Building 20 Baghouse using a continuous monitoring system."
31. At the time of the November 18, 2014 compliance inspection and records review at the Facility, Respondent failed to produce any records of the Baghouse pressure drop, in accordance with the requirement of Section D, Condition 5(a)(2) of the Title V Permit.
32. In Paragraph 5 of its Response to EPA's Section 114 information request letter, Respondent admitted that "... the instrumentation for continuously monitoring baghouse pressure is out of service." As a corrective measure Respondent indicated that "[t]he following SOP was implemented on April 1, 2015 and will continue forward any day when the dust collectors are

in operation until the ability for continuously monitoring is available or the permit is updated to reflect daily monitoring.”

33. Respondent’s failure to keep records of the Baghouse pressure drop from at least January 1, 2014 to April 1, 2015 is a violation of Section D, Condition 5(a)(2) of the Title V Permit and Section 502 of the Act.

Failure to Keep Records of Monthly Solvent Usage From the Propeller Cleaning Building

34. Section D, Condition 5(a)(3)(i) of the Title V Permit requires the Respondent to keep records of monthly solvent usage for Propeller Cleaning Building #1029.
35. At the time of the November 18, 2014 compliance inspection and records review at the Facility, Respondent failed to produce records of monthly solvent usage for the Propeller Cleaning Building.
36. In Paragraph 6 of its Response to EPA’s Section 114 information request letter, Respondent admitted that “. . . past record keeping processes do not allow for calculations of monthly solvent use.” As a corrective measure Respondent indicated that “[t]he following SOP has been implemented to ensure capture of monthly solvent use.”
37. Respondent’s failure to keep records of monthly solvent usage for Propeller Cleaning Building #1029 from at least January 1, 2014 to April 15, 2015 is a violation of Section D, Condition 5(a)(3)(i) of the Title V Permit and Section 502 of the Act.

Failure to Keep Records of Monthly Fuel Usage for Each Combustion Unit

38. Section D, Condition 5(b)(1) of the Title V Permit requires the Respondent to keep records of “[m]onthly fuel usage for each combustion unit.”
39. At the time of the November 18, 2014 compliance inspection and records review at the Facility, Respondent failed to produce records of monthly fuel usage for each of its combustion units.
40. In Paragraph 8 of its Response to EPA’s Section 114 information request letter, Respondent admitted that “the NFPC . . . does not have the capability to meter fuel usage to each combustion unit.” As a corrective measure Respondent indicated that “NFPC will be submitting a permit modification to Philadelphia AMS to request simplifying this recordkeeping requirement.”
41. Respondent’s failure to keep records of monthly fuel usage for each combustion unit from at least January 1, 2014 to the current date is a violation of Section D, Condition 5(b)(1) of the Title V Permit and Section 502 of the Act.

Failure to Keep Records of Initial Notification and Notification of Compliance Status

42. Paragraph 13 of the Response states that 40 C.F.R. Part 63 Subpart ZZZZZZ (National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries) applies to the Facility.
43. Pursuant to 40 C.F.R. § 63.11553(a), a facility subject to Subpart ZZZZZZ must submit an Initial Notification that it is subject to the standard within 120 calendar days after June 25, 2009 or within 120 days after it becomes subject to the standard.
44. Pursuant to 40 C.F.R. § 63.11553(b), a facility subject to Subpart ZZZZZZ must submit a Notification of Compliance Status within 120 days of June 27, 2011 unless it must conduct a performance test. If it must conduct a performance test, it must submit the Notification of Compliance Status within 60 days of completing the performance test. *See* 40 C.F.R. § 63.11553(b).
45. 40 C.F.R. § 63.11553(c) requires a facility subject to Subpart ZZZZZZ to keep records of “each notification that [it] submitted to comply with [Subpart ZZZZZZ] and all documentation supporting any Initial Notification or Notification of Compliance Status that [it] submitted.” These records must be “in a form suitable and readily available for expeditious review . . . for 5 years following the date of each recorded action.”
46. During the November 18, 2014 compliance inspection and records review at the Facility, EPA determined that Respondent failed to produce an Initial Notification and Notification of Compliance Status as required by 40 C.F.R. § 63.11553(a) and (b); and failed to keep records and other documentation supporting its submission of Initial Notification and Compliance Status in a form suitable and readily available for expeditious review for 5 years following the date of each recorded action, in accordance with by 40 C.F.R. § 63.11553(c).
47. In Paragraph 13 of its Response to EPA’s Section 114 information request letter, Respondent admitted that “[the] NFPC cannot find the notifications regarding the three MACTS [Maximum Achievable Control Technology Standards].”
48. Respondent failed to submit a Notification of Compliance Status within the timeframe required by 40 C.F.R. § 63.11553.
49. Respondent’s failure to submit and keep records of Initial Notification and Notification of Compliance Status in a form suitable and readily available for expeditious review for 5 years following the date of each recorded action constitutes a violation of 40 C.F.R. § 63.11553(a)-(c) and Section 502 of the Act.

#### **IV. Settlement Recitation, Settlement Conditions, and Civil Penalty**

50. Complainant and Respondent enter into this Consent Agreement and the accompanying Final Order in order to settle the violations specifically set forth in Section III of this Consent Agreement.
51. In settlement of the alleged violations enumerated above in Section III of this Consent Agreement, Respondent consents to the assessment and agrees to pay a civil penalty in the amount of ONE HUNDRED EIGHTY-TWO THOUSAND, SEVEN HUNDRED EIGHTY-SIX DOLLARS AND SEVENTY-FIVE CENTS (\$182,786.75) within the time and manner specified herein.
52. The settlement amount of ONE HUNDRED EIGHTY-TWO THOUSAND, SEVEN HUNDRED EIGHTY-SIX DOLLARS AND SEVENTY-FIVE CENTS (\$182,786.75) is based upon Complainant's consideration of and application of the statutory penalty factors set forth in Section 113(e) of the Act, 42 U.S.C. §7413(e), which include the size of the business, economic impact of the penalty, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, the payment of penalties previously assessed for same violation, the seriousness of violation and such other matters as justice may require, and EPA's Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), as indexed for inflation in keeping with 40 C.F.R. Part 19 (Adjustment to Civil Monetary Penalties for Inflation). Complainant has determined that Respondent's payment of this civil penalty shall resolve the violations set forth in Section III of this Consent Agreement.
53. Complainant and Respondent agree that payment of the civil penalty of ONE HUNDRED EIGHTY-TWO THOUSAND, SEVEN HUNDRED EIGHTY-SIX DOLLARS AND SEVENTY-FIVE CENTS (\$182,786.75) shall be made no later than sixty (60) days after the effective date of this Consent Agreement and accompanying Final Order.
54. If Respondent fails to make full and complete payment of the ONE HUNDRED EIGHTY-TWO THOUSAND, SEVEN HUNDRED EIGHTY-SIX DOLLARS AND SEVENTY-FIVE CENTS (\$182,786.75) penalty by the due date set forth in this CAFO, the entire unpaid balance of the penalty shall become immediately due and owing. EPA reserves its right to compel payment, and in any action to compel payment of the unpaid balance of the penalty, the validity, amount, and appropriateness of the penalty shall not be subject to review. EPA also reserves its right to seek interest on any unpaid portion of the late payment. No interest shall be payable on any portion of the assessed penalty that is paid within 90 days of the effective date of the Final Order. The Navy disputes EPA's authority to impose interest charges on a federal agency and reserves its right to dispute any imposition of interest by EPA.
55. Payment of the penalty in Paragraph 51 shall be made by cashier's check, certified check, or electronic wire transfer, Automated Clearing House ("ACH"), or an on line, internet payment as specified below. All payments are payable to "Treasurer, United States of America" and shall reference the above case caption and docket number CAA-03-2017-0127.

56. Instructions for submitting payment of the penalty using the methods, or combination of methods, described above are provided at the following EPA website addresses:  
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>  
<http://www2.epa.gov/financial/makepayment>
57. Any payment made by any method must reference the above case caption and docket number CAA-03-2017-0127. Within 24 hours of payment of any penalty amount, Respondent shall send copies of any corresponding check, or written notification confirming any electronic transfer through wire transfer, ACH, or internet payment, to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, to Dennis M. Abraham, Senior Assistant Regional Counsel (3RC10), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and to Paul Arnold (3AP20), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029.
58. This Consent Agreement and Final Order shall constitute satisfaction of all civil claims for penalties for the specific violations alleged in Section III of this Consent Agreement. This Consent Agreement constitutes the entire agreement and understanding of the parties regarding settlement of all claims 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 Consent Agreement. Compliance with this Consent Agreement and accompanying Final Order shall not be a defense to any action commenced at any time for any other violation of any federal laws and regulations administered by EPA.

#### **V. Reservation of Rights**

59. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in Section III of 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 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 to 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 Act, 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.

## **VI. Antideficiency Act**

60. 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, 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.

## **VII. Effective Date**

61. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Consent Agreement and Final Order, following signature by the Regional Judicial Officer or Regional Administrator of Region III, is filed with the Regional Hearing Clerk of EPA Region III.

## **VIII. Waiver of Hearing**

62. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), with respect to any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the accompanying Final Order.

## **IX. Entire Agreement**

63. This Consent Agreement and the accompanying Final Order constitute 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 Consent Agreement and the accompanying Final Order. Nothing in this Consent Agreement or the accompanying Final Order shall be construed to affect or limit in any way the obligation of Respondent to comply with all federal, state and local laws and regulations governing any activity required by this Consent Agreement and the accompanying Final Order.

**X. Execution**

64. The person signing this Consent Agreement on behalf of Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent, to the terms and conditions of this Consent Agreement and the accompanying Final Order.

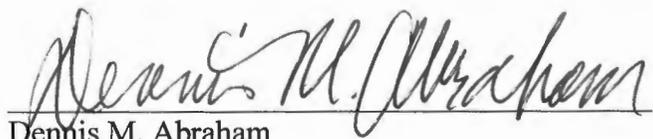
For the Respondent:

4/13/17  
Date

  
\_\_\_\_\_  
Scott M. Brown  
Captain, U.S. Navy  
Commanding Officer  
Norfolk Naval Shipyard

For the Complainant:

4/19/17  
Date

  
\_\_\_\_\_  
Dennis M. Abraham  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III

Accordingly, the Air Protection Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator of EPA Region III or his designee, the Regional Judicial Officer, ratify this Consent Agreement and issue the accompanying Final Order CAA-03-2017-0127. The amount of the recommended civil penalty assessment is ONE HUNDRED EIGHTY-TWO THOUSAND, SEVEN HUNDRED EIGHTY-SIX DOLLARS AND SEVENTY-FIVE CENTS (\$182,786.75).

5/19/17  
Date

  
\_\_\_\_\_  
Cristina Fernandez, Director  
Air Protection Division  
U.S. Environmental Protection Agency, Region III

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

IN THE MATTER OF:

United States Navy,	)	
	)	
Respondent	)	
	)	
Naval Foundry and Propeller Center,	)	Docket Number: CAA-03-2017-0127
Building 592, Code 1423,	)	
Philadelphia, Pennsylvania 19112,	)	Proceeding Pursuant to Sections 113(a)
	)	and (d) of the Clean Air Act, as amended,
Facility.	)	42 U.S.C. § 7413(a) and (d)
	)	
	)	

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**FINAL ORDER**

Complainant, the Director of the Air Protection Division, U.S. EPA Region III, and Respondent, the United States Department of the Navy, regarding its Norfolk Naval Shipyard Detachment, 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 40 C.F.R. §§ 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 Clean Air Act Stationary Source Civil Penalty Policy (dated October 25, 1991), and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e). This Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with the CAA and the regulations promulgated thereunder.

**NOW, THEREFORE, PURSUANT TO** Section 113(e) of the Clean Air Act, 42 U.S.C. §7413(e), and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent, the United States Department of the Navy, through its Norfolk Naval Shipyard Detachment, pay a civil penalty of ONE HUNDRED EIGHTY-TWO THOUSAND, SEVEN HUNDRED EIGHTY-SIX DOLLARS AND SEVENTY-FIVE CENTS (\$182,786.75), in accordance with the payment provisions set forth in the attached 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.

Date: May 23, 2017

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