



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

Captain Vince Baker, Commanding Officer
Naval Support Activity Annapolis
Department of the Navy
58 Bennion Road
Annapolis, Maryland 21402

AUG 09 2018

re: Federal Facility Compliance Agreement, CWA-03-2018-0094FF

Dear Captain Baker,

The United States Environmental Protection Agency ("EPA") has filed the Federal Facility Compliance Agreement for the Wastewater Treatment Plant located at Naval Support Activity Annapolis, Docket Number CWA-03-2008-0094, on August 9, 2018. The EPA appreciates the efforts made by the Department of the Navy to coordinate with the Maryland Department of the Environment and the EPA to come to an agreement on a path towards compliance with the National Pollutant Discharge Elimination System permit, MD0023523.

If you need any additional information, please contact Ms. Rebecca Crane at 215-814-2389 or email crane.rebecca@epa.gov.

Sincerely,

A handwritten signature in cursive script, reading "Dominique Lueckenhoff", is positioned above the typed name.

Dominique Lueckenhoff, Acting Director
Water Protection Division

Enclosure: Federal Facility Compliance Agreement

cc: Sharon Talley, Maryland Department of the Environment



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

IN THE MATTER OF :

United States Department of the Navy :

Docket No. CWA-03-2018-0094 FF

Respondent. :

U.S. EPA-REGION 3-RHC
FILED-9AUG2018am8:46

Naval Support Activity Annapolis :
Wastewater Treatment Plant :

NSA Annapolis/North Severn :
107NS Carrs Creek Road :
Annapolis, Maryland 21402 :

FEDERAL FACILITY
COMPLIANCE AGREEMENT

Facility :
-----:

I. SCOPE AND PURPOSE

1. The express purpose of the undersigned Parties in entering into this Federal Facility Compliance Agreement ("FFCA" or "Agreement") is to address the discharge of pollutants from the Naval Support Activity Annapolis ("NSAA") Wastewater Treatment Plant ("NSAA-WWTP") located at NSA Annapolis/North Severn 107 Carrs Creek Road, Annapolis Maryland, 21402 ("NSAA" or "the Facility") to Carr Creek, and to further the goals of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1251 *et seq.* It is the express objective of all provisions and obligations of this Agreement to cause the United States Department of the Navy ("Navy"), at its NSAA to come into and remain in full compliance with all applicable Federal, state and local laws, regulations and ordinances governing the discharge of pollutants from the NSAA-WWTP into waters of the United States as required by Section 301 of the Clean Water Act (CWA), 33 U.S.C. §1311.

II. JURISDICTION

2. The United States Environmental Protection Agency, Region III ("EPA" or "the Agency") and the Navy enter into this Agreement pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and Executive Order No. 12088 (Oct. 13, 1978). This Agreement

contains a "plan," as described in Section 1-601 of Executive Order No. 12088, to achieve and maintain compliance with the CWA.

III. PARTIES

3. The Parties to this FFCA are EPA and Navy.
4. The undersigned representative of each Party to this Agreement certifies that s/he is fully authorized by the Party whom s/he represents to enter into the terms and conditions of the Agreement and to execute and legally bind that Party to it.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into the waters of the United States by any person except in accordance with other specified sections of the Act, including Section 402, 33 U.S.C. § 1342.
6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA or its designated authority may issue permits under the National Pollutant Discharge Elimination System ("NPDES") program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe. Each violation of an NPDES permit, and each discharge of pollutant that is not authorized by an NPDES permit, constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
7. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits on September 5, 1974.
8. MDE issued to NSAA an NPDES Discharge Permit No. MD0023523, for the NSAA-WWTP which became effective on February 1, 2010 ("2010 Permit"). The Permit authorizes NSAA to discharge from Outfall 001 to Carr Creek. Carr Creek is on the CWA Section 303(d), 33 U.S.C. § 1313(d), list of impaired waters for the pollutants nitrogen and phosphorous, as well as others. The NSAA-WWTP discharges into the Chesapeake Bay watershed.
9. The expiration date of the 2010 Permit was January 31, 2015. NSAA submitted a permit renewal application to the MDE on January 14, 2014.
10. MDE administratively extended the 2010 Permit and its conditions remained in full force and effect, until MDE reissued the permit, with an effective date of November 1, 2015 ("2015 Permit").

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11. The 2010 Permit at Part II. SPECIAL CONDITIONS, Section A. required that as of January 1, 2015, for Total Nitrogen and Total Phosphorous NSAA "shall comply with concentration based Annual Maximum Loading Rate limitation(s) defined below or the Tributary Strategy-based Annual Maximum Loading Rate limitation(s) in the above table, whichever is lower." Footnote (5)(a) establishes a concentration-based discharge limit of 4.0 milligrams per liter for Total Nitrogen beginning January 1, 2015. The limit is 4.0/mg/l calculated annually based on flow through the Facility. Footnote (5)(b) establishes a concentration-based discharge limit of 0.30 milligrams per liter (mg/l) for Total Phosphorous beginning January 1, 2015. The limit is 0.30/mg/l calculated annually based on flow through the Facility. The Tributary Strategy-based limitations is 8,527 pounds per year (total Nitrogen) and 640 pounds per year for total Phosphorous.
12. The 2015 Permit at Part II. Special Conditions contains updated Annual Maximum Loading Rates for pounds per year for Total Nitrogen and Total Phosphorous, based upon changes to the annual average flow limits for the facility. The concentration-based effluent limits for Total Nitrogen and Total Phosphorous are carried forward from the 2010 Permit to the 2015 Permit.
13. The NSAA has failed to meet the effluent limits for Total Nitrogen and Total Phosphorous in effect commencing on January 1, 2015 as required by the 2010 Permit and 2015 Permit.
14. The parties recognize that implementation (i.e., complete design and construction) of one or more treatment technologies is necessary to achieve compliance with the discharge limitations for Total Nitrogen and Total Phosphorous. In addition, the Parties recognize that NSAA is implementing a planned general upgrade to the Facility, the implementation schedule for which will impact the time frame needed for NSAA to implement the necessary technologies required to achieve compliance with the Total Nitrogen and Total Phosphorous limits.

V. COMPLIANCE PROGRAM

15. The Navy has developed a WWTP Upgrade Plan that the Navy will implement in order to achieve compliance with the Total Nitrogen and Total Phosphorous requirements of the 2010 Permit and the 2015 Permit. The WWTP Upgrade Plan consists of two phases of upgrades and repairs to the WWTP.
16. Phase I, which is due to be completed in September 2018, includes upgrades to the influent pump station, electrical system, and construction of a 150,000-gallon holding tank.

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17. Phase II is undergoing design and will be designed to meet the Total Nitrogen and Total Phosphorous standards in the 2015 permit.
18. The Navy shall implement Phase II of the WWTP Upgrade Plan in accordance with the following schedule:

a.	Phase II Award Design	March 23, 2018 (complete)
b.	2 Month Influent Data provided to contractor	11-Jun-18
c.	35% Submission to Navy	4-Sep-18
d.	MDE Review Period	5-Sep-18 to 4-Mar-19
e.	100% Submission to Navy	12-Dec-18
f.	Final Submission	24-Mar-19
g.	Design Release	12-Apr-19
h.	Phase II Completion of construction	October 2020
i.	WWTP Operating in compliance with Part II.A. effluent limits of NPDES Permit – February 1, 2021	
19. The Navy obtained approval from MDE to construct upgrades to the WWTP under Construction Permit No. 13-25-1042 (Phase I) in order to meet the schedule set forth in Paragraph 19 above.
20. The Navy agrees to fully comply with all requirements of the 2015 Permit upon the full and complete implementation of the WWTP Upgrade Plan or by February 1, 2021.
21. The Navy agrees to take any and all necessary steps within its power to achieve compliance with the requirements of Part II.A.(5) set forth in the NPDES Permit as soon as practicable. Such steps will include, but not be limited to, the activities outlined in this section.
22. The Navy's officers, agents, contractors, servants, employees and successor agencies departments or instrumentalities in active concert or participation with it shall take all necessary steps to ensure compliance with provisions of this Agreement. As long as this FFCA is in effect, the Navy shall give written notice of this Agreement to any prospective successor in interest and to EPA at least ninety (90) calendar days prior to transfer of ownership or operation of the Facility.
23. In any action by EPA to enforce this Agreement, the Navy agrees that it shall not raise as a defense the avoidable failure of any of its officers, agents, servants, employees, successors, or assigns, within the scope of their employment, to take all actions necessary to comply with this Agreement. This requirement is not be applicable to any suit brought by a non-party to this Agreement.

VI. REPORTING

24. The Navy shall submit a written status report to EPA every six months, with the first six-month period starting from the date of last affixed signature. The status report shall be submitted no later than thirty (30) days from the end of the six month period. The status report shall be submitted in addition to any other reporting or certification required under this Agreement or pursuant to law, regulation, or NPDES Permit No. MD0023523. At a minimum, the status report shall include: (1) the deadlines and other milestones which the Navy was required to meet during the reporting period; (2) the progress it made toward meeting them; (3) the reasons for any noncompliance; and (4) a description of any other matters relevant to the status of its compliance with this Agreement. The status report shall state and describe the cause of any failure to comply with this Agreement and any requested timeline adjustments.
25. Notification to EPA of any noncompliance with any provision of the Agreement or anticipated delay in performing any obligation under the Agreement shall not excuse the Navy's noncompliance or anticipated delay.
26. Unless specified otherwise, when written notification to or communication with EPA is required by the terms of the Agreement, it shall be addressed as follows:

Chief
NPDES Enforcement Branch (3WP42)
Office of NPDES Permits and Enforcement
Water Protection Division, U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103
Telephone: 215-814-2788

27. Written communication with the Navy shall be addressed as follows:

Installation Environmental Program Director
181 Wainwright Rd., Bldg. Halligan Hall
Annapolis, MD 21402

With a copy to:

NAVFAC Washington, Office of Counsel
1314 Harwood Street, SE, Bldg. 212
Washington Navy Yard
Washington, DC 20374

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28. Each notification or communication to EPA shall be deemed submitted on the date it is postmarked, and shall be sent by certified mail, return receipt requested, unless otherwise mutually agreed to by the parties. The Navy shall maintain records of each notification or communication for the duration of the Agreement.
29. All submissions provided pursuant to this Agreement shall be signed by a duly authorized representative of the Navy who has personal knowledge of the submission's contents. A person is a "duly authorized representative" and/or the installation commanding officer only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying, whether on an acting or permanent basis, a named position). Each submission shall be admissible as evidence in any proceeding to enforce this Agreement. Each submission shall include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

VII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

30. Compliance with the terms of this Agreement in no way affects or relieves the Navy of its obligation to comply with all applicable requirements of the Act, and regulations promulgated there under, or other applicable requirements of Federal, state, or local law. This Agreement does not constitute a permit or permit modification and does not relieve the Navy of any obligation to comply with its existing NPDES Permit.

VIII. RIGHT OF ENTRY

31. EPA, its contractors, and other authorized representatives shall have the right to enter the facility to conduct any inspection, including but not limited to records inspection, sampling, testing, or monitoring the Agency believes is necessary to determine the Navy's compliance with the Agreement.

IX. DISPUTE RESOLUTION

32. In the event of any conflict involving violations of this Agreement, EPA and the Navy shall meet promptly and work in good faith in an effort to reach a mutually agreeable resolution of the dispute.
33. Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this

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Agreement, the procedures of this Section shall apply. In addition, during the pendency of any dispute, the Navy agrees that it shall continue to implement those portions of this Agreement which are not in dispute.

34. The pendency of any dispute under this Section shall not affect the Navy's responsibility to perform the work required by this Agreement in a timely manner, except that the time period for completion of work affected by such dispute may, at EPA's sole discretion, be extended for a period of time not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.
35. The Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or First Line Supervisor level. With respect to EPA, which does not have a Project Manager, per se, "First Line Supervisor" means the Chief, NPDES Enforcement Branch, Office of NPDES Permits and Enforcement, Water Protection Division, EPA Region III. With respect to the Navy, "Project Manager" means the Installation Environmental Program Director, or any duly identified successor. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.
36. If the Parties are unable to informally resolve a dispute within thirty (30) days after any action which leads to or generates a dispute, the Navy shall within fourteen (14) days thereafter submit to EPA a written statement of dispute setting forth the nature of the dispute, the Navy's position with respect to the dispute, and the information the Navy is relying upon to support its position. If the Navy does not provide such written statement to EPA within this fourteen (14) day period, the Navy shall be deemed to have agreed with EPA's position with respect to the dispute.
37. Upon EPA receipt of a written statement of dispute from the Navy as provided for above, the Parties shall engage in formal dispute resolution among the Project Managers, First Line Supervisor, and/or their immediate supervisors. The Parties shall have fourteen (14) days from the receipt by EPA of the written statement of dispute to resolve the dispute. During this period, the Project Managers shall meet or confer as many times as necessary to discuss and attempt resolution of the dispute. If agreement cannot be reached on any issue within this fourteen (14) day period, the Navy may, within ten (10) days after the conclusion of the fourteen (14) day formal dispute resolution period, submit a written notice to the relevant Division Director (EPA Region III Water Protection Division). If the Navy does not elevate the dispute to the relevant Director within this ten (10) day period, the Navy shall be deemed to have agreed with EPA's position with respect to the dispute.
38. The relevant Directors for each agency will serve as a forum for resolution of disputes for

which agreement has not been reached pursuant to the foregoing paragraphs in this Section. Following elevation of a dispute to the relevant Directors, the Directors shall have thirty (30) days to unanimously resolve the dispute.

39. If unanimous resolution by the respective Directors is not achieved within this thirty (30) day period, the Navy Regional Commanding Officer may, within twenty-one (21) days after the conclusion of the thirty (30) day dispute resolution period, submit a written Notice of Dispute to the Regional Administrator of U.S. EPA Region III for final resolution of the dispute. In the event that the dispute is not elevated to the Regional Administrator of U.S. EPA Region III within the designated twenty-one (21) day period, the Navy shall be deemed to have agreed with the original EPA position with respect to the dispute.
40. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the Navy shall incorporate the resolution and final determination into the appropriate statement of work, plan, schedule, or procedures and proceed to implement this Agreement according to the amended statement of work, plan, schedule, or procedures.
41. Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. The Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

X. FORCE MAJEURE

42. The Navy's obligations under the Compliance Program section of this Agreement shall be performed as set forth in this Agreement unless performance is prevented or delayed by a *force majeure* event. For purposes of this Agreement, "*force majeure*" is defined as any event arising from causes beyond the control of the Navy or of entities controlled by the Navy, including but not limited to contractors and subcontractors, which could not be overcome by the due diligence of the Navy or the entities controlled by the Navy, which delays or prevents the performance of any obligation under this Agreement, including acts of God or war, labor unrest, civil disturbance and any judicial orders which prevent compliance with the provisions of this Agreement. *Force majeure* shall not include increased costs of performance of any activity required by this Agreement, the failure to apply for any required permits or approvals or to provide all information required therefore in a timely manner, nor shall it include the failure of contractors or employees to perform or the avoidable malfunction of equipment.

If the Navy experiences delays in meeting its obligations as set forth in this Agreement due to a *force majeure* event, it shall notify EPA promptly by telephone of any change in

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circumstances giving rise to the suspension of performance or the nonperformance of any obligation under this Agreement. In addition, within fourteen (14) days of the occurrence of circumstances causing such delays, it shall provide a written statement to EPA of the reason(s), the anticipated duration of the event and delay, the measures taken and to be taken to prevent or minimize the time and effects of failing to perform or delaying any obligation, and the timetable for the implementation of such measures. Failure to comply with the notice provisions shall constitute a waiver of any claims of *force majeure*. The Navy shall take all reasonable steps to avoid and/or minimize any such delay.

43. The burden of proving that any delay is caused by circumstances beyond the control of the Navy shall rest with the Navy.

XI. MODIFICATIONS

44. The requirements, timetables and deadlines under this Agreement may be modified upon receipt of a timely request for modification and when EPA determines that good cause exists for the requested modification. Any request for modification by the Navy shall be submitted in writing and shall specify: the requirement, timetable or deadline for which a modification is sought; the good cause for the extension; and any related requirement, timetable, deadline or schedule that would be affected if the modification were granted.
45. Good cause exists for a modification when sought in regard to: a *force majeure* event; a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable, deadline or schedule; a delay caused by failure of a regulatory agency to perform its duties in a timely manner where regulatory action is necessary to proceed with construction and where the Navy has made a timely and complete request for action from the regulatory agency; acceptable scientific data exists which demonstrates that another requirement, deadline or timetable would be adequate to achieve the numeric discharge limitations set forth in the NPDES Permit, protect water quality and achieve the goals of the Clean Water Act; and other event or series of events mutually agreed to by the Parties and constituting good cause.
46. Within twenty-one (21) calendar days of receipt of a request for a modification, EPA shall advise Navy of its position on the request. If EPA does not concur in the extension, it shall include its statement of nonconcurrence and an explanation of the basis for its position.
47. In the event that the NPDES Permit is modified, through appeal or otherwise, EPA and the Navy agree to negotiate modifications to this FFCA to the extent necessary for the Navy to achieve compliance with the discharge limitations in the final NPDES Permit pursuant to a schedule as consistent as practicable with the one set forth in this FFCA.

XII. GENERAL PROVISIONS

48. The Parties agree that the terms and conditions of this Agreement are enforceable as appropriate by any person pursuant to Section 505 of the Act, 33 U.S.C. § 1365.
49. This Agreement was negotiated and executed by the Parties in good faith to ensure compliance with the law. No part of this Agreement constitutes or should be interpreted or construed as an admission of fact or of liability under federal, state or local laws, regulations, ordinances, or common law or as an admission of any violations of any law, regulations, ordinances, or common law. By entering into this Agreement, the Navy does not waive, other than as to the enforcement of this Agreement pursuant to the terms contained herein, any claim, right, or defense that it might raise in any other proceeding or action.
50. If any provision or authority of this Agreement or the application of this Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Agreement shall remain in force and shall not be affected thereby.
51. The undersigned representative of the Navy certifies that he or she is fully authorized by the Navy to enter into the terms and conditions of this Agreement and to execute and legally bind the Navy to the Agreement.
52. Terms and conditions of this Agreement changed by an agreed upon modification shall be enforceable as changed.
53. The effective date of this Agreement shall be the date on which it is signed by the last signatory.
54. In computing any period of time described as “days” herein, all references to “days” refer to “calendar days.” The last day of a time period shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday or a legal holiday.

XIII. FUNDING

55. It is the expectation of the Parties to this Agreement that all obligations of the Navy will be fully funded. The Navy agrees to use every legally available mechanism to seek sufficient funding to fulfill its obligations under this Agreement.
56. Provisions herein shall not be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates establishes requiring the payment or obligation of such funds shall be appropriately adjusted within the terms delineated in this Agreement.
57. If funds are not available to fulfill the Navy's obligations under this Agreement, EPA reserves the right to initiate an action against any other person, or to take any action which would be appropriate absent this Agreement.

XVI. TERMINATION

58. This Agreement shall terminate once the Navy has met all of its obligations herein, as determined by the mutual consent of the Parties and evidenced in writing by EPA.

August 6, 2018
Date

Dominique Lueckenhoff
Dominique Lueckenhoff, Acting Director
Water Protection Division
US EPA Region III

27 JULY, 2018
Date

V. W. Baker
CAPT Vince Baker
United States Navy
Commanding Officer
Naval Support Activity Annapolis

