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

IN RE:	
United States Department of the Navy,	
Respondent,	
	Docket No. RCRA/CAA-03-2017-0005
Washington Navy Yard Washington, DC	Proceeding under 42 U.S.C. §§ 7413 and 7418(a) and 42 U.S.C. §§ 6928(a) and (g) and 6961(b)
Facility.	

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CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement ("CA") is entered into by the Director of the Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant"), and the U.S. Department of the Navy ("Respondent"), pursuant to Sections 113 and 118(a) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413 and 7418(a), Sections 3008(a)(1) and (g), and 6001(b) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928(a)(1) and (g), and 6961(b), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). The authority to enter into this CA has been duly delegated to the Regional Administrator by EPA Delegations 7-6A and 8-9A and re-delegated to Complainant by EPA Region III Delegations 7-6A and 8-9A.

The Consolidated Rules, 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 may be simultaneously 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 CA and the accompanying Final Order ("FO"), collectively referred to herein as the "CAFO" simultaneously commences and concludes this administrative proceeding against Respondent.

Regulatory Background

This CAFO resolves violations of the CAA, 42 U.S.C. §§ 7401, *et seq.* in connection with Respondent's facility located at the Washington Navy Yard, Washington D.C. ("Facility"). EPA is authorized by Section 110 of the CAA, 42 U.S.C. § 7410, to approve a federally-enforceable state implementation plan ("SIP"), and by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally-applicable air pollution control requirements, including requirements promulgated by EPA and those contained in federally-enforceable state implementation plans or permits. EPA originally approved the District of Columbia ("D.C.") SIP on December 6, 1973, at 38 Fed. Reg. 33709, and has periodically approved revisions to the SIP after that date. Title V of the CAA, 42 U.S.C. §§ 7661 – 7661f, and its implementing regulations at 40 C.F.R. Part 70, require states to develop and submit to EPA operating permit programs, and EPA to approve or disapprove such programs. EPA fully approved the Title V operating permit program for D.C., effective on June 2, 2003, 40 C.F.R. Part 70, App. A. Under Section 113 of the CAA, 42 U.S.C. § 7413, EPA also has the authority to ensure compliance with the National Recycling and Emission Reduction Program for stratospheric ozone-depleting refrigerants promulgated under Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), and set forth at 40 C.F.R. Part 82.

Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), among other things, limits the Administrator's authority to matters where the first alleged violation occurred no more than twelve (12) months prior to the 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. The Administrator and 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.

Respondent was previously notified regarding the CAA allegations recited herein in a letter dated November 24, 2015. EPA has notified D.C. of EPA's intent to enter into a CAFO with Respondent to resolve the CAA violations set forth herein.

This CAFO also resolves violations RCRA, Subtitle C, 42 U.S.C. §§ 6921- 6939f, and regulations in the authorized D.C. hazardous waste program in connection with Respondent's Facility.

D.C. initially received final authorization for its hazardous waste regulations, the D.C. Hazardous Waste Regulations ("DCHWR"), 20 DCMR 40 – 54, on March 8, 1985, effective March 22, 1985 (50 Fed. Reg. 9427). EPA reauthorized D.C.'s regulatory program on September 10, 2001, effective November 9, 2001 (66 Fed. Reg. 46961). The provisions of the revised federally-authorized are enforceable by EPA pursuant to Section 3008(a) of the RCRA, 42 U.S.C. § 6928(a). The factual allegations and legal conclusions in this CA are based on provisions of the federally-authorized DCHWR in effect at the time of the violations alleged herein.

Respondent was previously notified regarding the RCRA Subtitle C allegations recited herein in a letter dated November 24, 2015. In accordance with Sections 3008(a)(2) of the RCRA, 42 U.S.C. § 6928(a)(2), EPA has notified D.C. of EPA's intent to enter into a CAFO with Respondent resolving the RCRA Subtitle C violations set forth herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.

3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.

4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to a hearing and to appeal the accompanying Final Order, including any right to confer with the EPA Administrator under 40 C.F.R. § 22.31(e). Respondent also expressly waives any right to a hearing pursuant to CAA Section 113(d)(2)(A). 42 U.S.C. § 7413(d)(2)(A), and any right to confer with the Administrator pursuant to RCRA Section 6001(b)(2), 42 U.S.C. § 6961(b)(2).

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

6. Respondent shall bear its own costs and attorney's fees.

7. Respondent, upon investigation, certifies to EPA by its signature herein that, to the best of its knowledge and belief, it is presently in compliance with the provisions of the CAA and the RCRA referenced herein.

8. The provisions of this CAFO shall be binding upon Complainant and Respondent and any successors and assigns.

9. 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 the RCRA, the CAA, or any regulations promulgated thereunder.

EPA's Findings of Fact and Conclusions of Law

10. In accordance with the Consolidated Rules at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the findings of fact and conclusions of law which follow.

11. Respondent is a Department of the United States and has been, at all times relevant to this CAFO, the owner and operator of the Washington Navy Yard ("WNY"), Washington, D.C. (the "Facility").

12. EPA conducted an inspection of the Facility on June 5 -7, 2012 ("EPA Inspection").

COUNT I (CAA – TITLE V)

13. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference herein as though fully set forth herein.

14. Under Section 110 of the CAA, 42 U.S.C. § 7410, EPA has the authority to approve a SIP, which is federally enforceable once it is approved by EPA. EPA originally approved the D.C. SIP on December 6, 1973, at 38 Fed. Reg. 33709, and has periodically approved revisions to the SIP after that date.

15. Title V of the CAA, 42 U.S.C. §§ 7661 – 7661f, and implementing regulations at 40 C.F.R. Part 70, require that states develop and submit to EPA operating permit programs, and that EPA approve or disapprove each program.

16. Provisions included by state permitting authorities in Title V permits issued under a program approved by EPA are enforceable by EPA unless denoted in the permit as a state or local requirement that is not federally-enforceable.

17. EPA fully approved the Title V operating permit program for D.C. effective on June 2, 2003, 40 C.F.R. Part 70, Appendix A.

18. The Facility was issued D.C. Title V Operating Permit Number 007 ("Permit") with an effective date of September 27, 2004, and an expiration date of September 27, 2009. This expired permit has been administratively extended until a new permit is issued. The Permit was in effect at the time of the EPA Inspection.

19. Pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), EPA has the authority to issue administrative penalty orders for violations of any requirement or prohibition contained in a federally-enforceable SIP or permit.

Failure to Comply with the Requirements of Operation of Emergency Standby Generators

20. Section B.3.b. of the Permit provides, as follows: the permittee must keep a log of date and time [emergency] generators are operated and type and quantity of fuel used.

21. Section F.2 of the Permit requires Respondent to keep and maintain all records required by the Permit for a period of at least five years from the date of the test, monitoring sample, measurements or report.

22. At the time of the EPA Inspection, Respondent's representatives stated that the Facility did not maintain a log of operating data for the fourteen (14) emergency generators covered by the Permit.

23. In Respondent's 2011 Annual Certification Report, required by Section E.2 of the Permit, Respondent certified that monthly usage records for emergency generators were maintained at either the individual generators or in the Public Works Office.

24. At the time of the EPA Inspection, monthly usage records were not maintained at either the individual generators or in the Public Works Office.

25. Respondent violated Section B.3.b. and F.2 of its Permit from at least June 2007 through and including the date of the June 5-7, 2012 EPA Inspection, by failing to log the date and time emergency generators are operated and the type and quantity of fuel used.

Failure to Submit a Complete and Accurate Annual Certification Report

26. Section E.2 of the Permit provides, in relevant part, as follows:

> Annual Certification Report: By March 1 of each year, Permittee must submit to the District and the U.S. Environmental Protection Agency an Annual Certification Report certifying compliance with the terms and conditions of this permit.

27. Respondent's 2011 Annual Certification Report stated that only non-VOC paints were used in the spray booths during the reporting period.

28. At the time of the EPA Inspection, the corresponding log of paints used at the time of Respondent's 2011 certification contained labels and MSDSs demonstrating that the paints used contained VOCs.

29. Respondent violated Section E.2 of its Permit on February 8, 2012 by submitting inaccurate information in its 2011 Annual Certification Report as described in Paragraph 28 above.

COUNT II (CAA – STATIONARY REFRIGERATION)

30. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference herein as though fully set forth herein.

31. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the EPA has the authority to issue administrative penalty orders requiring persons to comply with the National Recycling and Emission Reduction Program for stratospheric ozone-depleting refrigerants promulgated under Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), set forth at 40 C.F.R. Part 82.

32. Pursuant to Section 302(e) of the CAA, 42 U.S.C. § 7602(e), the term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof. Respondent, as a department of the United States, is a person for purposes of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

Failure to Certify to EPA that the required certified recovery or recycling equipment was acquired and is in compliance

33. Pursuant to 40 C.F.R. § 82.162(a), persons maintaining, servicing, or repairing appliances containing Class I or Class II ozone-depleting refrigerants and persons disposing of such appliances are required to certify to the Administrator within twenty (20) days of commencing business that such person has acquired certified recovery or recycling equipment and is complying with the applicable requirements of Subpart F of 40 C.F.R. Part 82.

34. Section X.2 of the Permit requires Respondent to comply with the standards for recycling and emissions reduction pursuant to 40 C.F.R. Part 82, Subpart F, including 40 C.F.R. § 82.162.

35. Respondent services and maintains appliances containing Class II ozone-depleting refrigerants, including R 22 chlorodifluoromethane (ClF_2CH) and R 123 1,1-dichloro-2,2,2-trifluoroethane (Cl_2CHCF_3).

36. At the time of the inspection, Respondent reported that it had not notified EPA of the acquisition of a refrigeration recovery unit when the unit was acquired in 2010.

37. The Respondent, in a follow-up email, provided a copy of the notification sent to EPA on June 6, 2012, which only included the year in which the unit was acquired and not the exact date on which the unit was acquired.

38. Respondent violated its Permit and 40 C.F.R. § 82.162 (Certification of Recovery and Recycling Equipment) from June 2010 through June 2012, by failing to notify EPA that it had acquired certified recovery or recycling equipment and its compliance with applicable requirements.

Failure to keep servicing records for appliances containing more than fifty (50) pounds of refrigerant

39. 40 C.F.R. § 82.166(k) requires that facilities with appliances containing greater than 50 pounds of Class I or Class II ozone depleting refrigerants must create and maintain servicing records documenting the date and type of service, as well as the quantity of refrigerant added to such appliances.

40. Section X.2 of the Permit requires Respondent to comply with the standards for recycling and emissions reduction pursuant to 40 C.F.R. Part 82, Subpart F, including 40 C.F.R. § 82.166(k).

41. At the time of the June 5-7, 2012 EPA Inspection, Respondent maintained an air conditioning unit in the yard outside of the Heat Plant that contained 65 pounds of R-22, but for which no servicing records existed.

42. At the time of the June 5-7, 2012 EPA Inspection, Respondent did not maintain service or maintenance logs for Air Conditioning and Refrigeration ("ACR") units which each contained more than 50 pounds of R-123. This ACR units were located on the First Floor Main MER (capacity of 400 tons and a recharge of 1,000 lbs), First Floor MER 1801 (capacity of 500 tons and a recharge of 750 lbs), and the 2nd Floor Chiller Room (capacity of 970 tons and a recharge of 2,000 lbs).

43. Respondent violated Section X.2 of its Permit and 40 C.F.R. § 82.166(k), from June 5-7, 2012, by failing to keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added, for appliances containing more than 50 pounds of a Class I or Class II ozone depleting refrigerants.

COUNT III – RCRA SUBTITLE C – OPERATING WITHOUT A PERMIT

44. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference herein as though fully set forth herein.

45. Respondent is a department, agency and/or instrumentality of the United States and is a "person" as defined by Section 1004(15) of the RCRA, 42 U.S.C. § 6903(15), and 20 DCMR § 5400.1.

46. Respondent is and has been through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous waste" at the Facility as those terms are defined by 20 DCMR § 5400.1.

47. Respondent is a Large-Quantity Generator (LQG) of hazardous waste that generates hazardous waste at the Facility in an amount greater than 1,000 kilograms per month, and uses EPA ID DC9170024310.

48. Respondent is and, at all times relevant to this CAFO, has been an "owner" and "operator" of the Facility, as those terms are defined in 20 DCMR § 5400.1.

49. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 20 DCMR § 4600.5, provide, in pertinent part, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility.

50. 20 DCMR § 4202.7 provides, in relevant part, that a generator may accumulate hazardous waste on-site for ninety (90) days or less without a permit or without having interim status, provided that:

    a. The waste is placed in containers and the generator complies with 20 DCMR § 4415;

    b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

    c. While being accumulated on-site, each container and tank is labeled and marked clearly with the words "Hazardous Waste."

Container Labeling

51. 20 DCMR § 4202.7(c) and (d) respectively require that each container have upon it the date upon which each period of accumulation begins and be labeled or marked clearly with the words, "Hazardous Waste" while being accumulated on-site.

52. At the time of the EPA Inspection, the following hazardous wastes were not marked clearly as "Hazardous Waste" and did not have upon them accumulation start dates:

    a. on board the DS Barry, four spent fluorescent light tubes located in a lamp storage area at mid-ship; and
    b. in Building 118 (Boiler Plant), three boxes of spent fluorescent bulbs, including one that was broken.

53. At the time of the EPA Inspection, the following hazardous wastes were not clearly marked with accumulation start dates:

    a. in Building 116, a metal cabinet with a sign that indicated it was for "Hazardous Waste Storage" containing a one-gallon container of mineral spirits, ten (10) spray bottles, and a bag containing oily rags; and
    b. in Building 116, a yellow bucket that contained Ni-Cad batteries.

54. The contents of the containers described in Paragraphs 52 and 53, above, are and were, at all times relevant to the violations alleged herein, "solid wastes," as defined in 20 DCMR §§ 4100.4 through 4100.11, and "hazardous wastes," as defined 20 DCMR §§ 4100.12 through 4100.17.

55. Respondent violated 20 DCMR § 4202.7(c) and (d), during the June 5-7, 2012 EPA Inspection by failing to ensure that containers holding hazardous waste had a label with the date upon which each period of accumulation begins and while being accumulated on-site each container is labeled and marked clearly with the words "Hazardous Waste."

Open Containers

56. 20 DCMR § 4415.5 requires that a container holding hazardous waste always be closed during storage, except when it is necessary to add or remove waste.

57. At the time of the EPA Inspection, on board the DS Barry there were at least four spent fluorescent bulbs that were not stored in a container.

58. At the time of the EPA Inspection, in Building 118 (Boiler Plant) there were three boxes of spent tubes, none of which had dates and one of which was open. Waste was neither being added nor removed to this box at the time of the observation.

59. At the time of the EPA Inspection, in Building 118 (Boiler Plant) there was at least one broken fluorescent bulb.

60. Respondent violated 20 DCMR § 4415.5, during the June 5-7, 2012 EPA Inspection by failing to ensure a container holding hazardous waste be closed during storage, except when it is necessary to add or remove waste.

61. For the reasons and during each of the dates and time periods identified in Paragraphs 51 through 60 above, Respondent failed to comply with the permit exemption conditions, identified in Paragraph 50, above, for temporary (i.e., 90 days or less) accumulation of hazardous waste by a generator at the Facility, as required pursuant to 20 DCMR § 4202.7, and therefore failed to qualify for an exemption from the permitting/interim status requirements provided by such section.

62. For each of the reasons and during each of the dates and time periods identified in Paragraphs 51 through 60 above, Respondent engaged in the operation of a hazardous waste storage facility (i.e., the Facility) without having interim status or obtaining a permit for the Facility pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, or 20 DCMR § 4600.5.

COUNT IV – RCRA SUBTITLE C – OPEN CONTAINERS

63. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference herein as though fully set forth herein.

64. 20 DCMR § 4415.5 requires that a container holding hazardous waste always be closed during storage, except when it is necessary to add or remove waste.

65. At the time of the EPA Inspection, on board the DS Barry there were at least four spent fluorescent bulbs that were not stored in a container.

66. At the time of the EPA Inspection, in Building 118 (Boiler Plant) there were three boxes of spent tubes, none of which had dates and one of which was open. Waste was neither being added nor removed to this box at the time of the observation.

67. At the time of the EPA Inspection, in Building 118 (Boiler Plant) there was at least one broken fluorescent bulb.

68. Respondent violated 20 DCMR § 4415.5, during the June 5-7, 2012 EPA Inspection by failing to ensure a container holding hazardous waste be closed during storage, except when it is necessary to add or remove waste.

CIVIL PENALTY

69. Respondent consents to the assessment of a civil penalty of eighty-four thousand one hundred dollars ($84,100.00) in full satisfaction of all claims for civil penalties for the violations alleged in the above four counts of this CAFO. This penalty consists of $73,300 assessed a result of the alleged violations of the CAA and $10,800 assessed as a result of the alleged violations of the RCRA. Respondent must pay the civil penalty no later than **THIRTY (30)** calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.

70. For the violations alleged in Counts I-II, EPA considered a number of factors, including, but not limited to, the penalty assessment criteria in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), including (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation; and the *Clean Air Act Stationary Source Civil Penalty Policy* (1991). EPA also considered the *Adjustments of Civil Penalties for Inflation and Implementing the Debt Collection Improvement Act of 1996* ("DCIA"), as set forth in 40 C.F.R. Part 19, the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles entitled, *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)* ("2013 Giles Memorandum").

71. For the violations alleged in Counts III-IV, EPA considered a number of factors including, but not limited to, the statutory factors set forth in Section 3008(a)(3) of the RCRA, 42 U.S.C. § 6928(a)(3), *i.e.*, the seriousness of Respondent's violations and the good faith efforts by Respondent to comply with the applicable requirements of the RCRA, and the *RCRA Civil Penalty Policy* (2003). EPA has also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2013 Giles Memorandum.

72. Payment of the civil penalty amount required under the terms of Paragraph 69, 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 its name and address and the Docket

Number of this action (Docket No. RCRA/CAA-03-2017-0005);

b. All checks shall be made payable to "**United States Treasury**;"

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

The Customer Service contact for the above method of payment is Eric Volck at 513-487-2105.

d. All payments made by check and sent by overnight delivery service shall be addressed and sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The Customer Service number for the above method of payment is 314-418-1028.

e. All electronic wire transfer payments 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"

f. All payments through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Transaction Code 22 - checking
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury Facility:

5700 Rivertech Court
Riverdale, MD 20737

The Customer Service contact for the above method of payment is John Schmid at 202-874-7026, or REX at 1-866-234-5681.

g. There is an on-line payment option available through the Department of the Treasury. This payment option can be accessed from: WWW.PAY.GOV. Enter sfo 1.1 in the search field and complete all required fields in the form.

h. Payment may be made using the Intra Governmental Payment and Collection application (IPAC), ALC 68-01-0727, and Treasury Symbol 681099. Please include the Docket Number of this action (Docket No. RCRA/CAA-03-2017-0005] in the description field of the IPAC. The Customer Service contact is Molly Williams at 513-487-2076.

73. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

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

and to

Gracie Pendleton
U.S. Environmental Protection Agency, Federal Facilities Enforcement Office
1200 Pennsylvania Ave. NW (MC 2261A)
Washington, DC 20460

74. If Respondent fails to make full and complete payment of the CAA penalty ($73,300) by the due date set forth in this CAFO, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order until the date of payment, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order. In any action taken to compel payment, the validity, amount, and appropriateness of the penalty shall not be subject to review.

EFFECT OF SETTLEMENT

75. Payment of the penalty specified in Paragraph 69, above, in the manner set forth in Paragraph 72, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under the CAA and the RCRA for the specific violations alleged in Counts I - IV, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

RESERVATION OF RIGHTS

76. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. 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 the RCRA, the CAA, 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. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

FULL AND FINAL SATISFACTION

77. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 113 and 118(a) of the CAA, 42 U.S.C. §§ 7413 and 7418(a), and Sections 3008(a)(1) and (g), 6001(b) of the RCRA, 42 U.S.C. §§ 6928(a)(1) and (g), 6961(b) for the specific violations alleged in this CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to specific violations alleged herein, and there are no representations, warranties, covenants, terms,

or conditions agreed upon between the parties other than those expressed in this CAFO.

ANTIDEFICIENCY ACT

78. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with the RCRA, 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.

AUTHORITY TO BIND THE PARTIES

79. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this CA and to bind the Respondent to it.

EFFECTIVE DATE

80. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

17 FEB 2017
Date

The United States Department of the Navy

Signature

Jeffrey J. Dragert CAPT, USN
Name [print or type]

Commanding Officer, NSAW
Title [print or type]

For Complainant:

U.S. Environmental Protection Agency,
Region III

2/28/17
Date

Gracie Pendleton
Attorney-Advisor
U.S. EPA – Federal Facilities Enforcement Office

Accordingly, I hereby recommend that the Regional Administrator or his designee, the Regional Judicial Officer, issue the Final Order attached hereto pertaining to Docket No. RCRA/CAA-03-2017-0005.

2/28/17
Date

Samantha P. Beers, Director
Office of Enforcement, Compliance, and
Environmental Justice
U.S. EPA - Region III

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	
United States Department of the Navy **Washington Navy Yard** **Washington, D.C.,**	**EPA Docket No. RCRA/CAA-03-2017-0005**
Respondent.	**FINAL ORDER**
	Proceeding under 42 U.S.C. §§ 7413 and § 7418(a) and 42 U.S.C. §§ 6928(a) and (g) § and 6961(b)

FINAL ORDER

Complainant, the Director of the Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency, Region III, and Respondent, the United States Department of the Navy have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's and the *Clean Air Act Stationary Source Civil Penalty Policy* (1991), the *RCRA Civil Penalty Policy* (2003), , the December 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles entitled, *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*, and the statutory factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and Section 3008(a)(3) of the RCRA, 42 U.S.C. § 6928(a)(3).

NOW, THEREFORE, PURSUANT TO Sections 113 and 118(a) of the Clean Air Act, 42 U.S.C. §§ 7413, 7418(a), and Sections 3008(a)(1) and (g) and 6001(b), 42 U.S.C. §§ 6928(a)(1) and (g), 6961(b), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***EIGHTY-FOUR THOUSAND ONE HUNDRED DOLLARS ($84,100.00)***, 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.

March 8, 2017
Date

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

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

IN RE:	)	**EPA Docket No.: RCRA/CAA-03-2017-0005**
	)	
	)	
United States Department of the Navy	)	
	)	**Proceeding under 42 U.S.C. §§ 7413 and**
Respondent,	)	**7418(a) and 42 U.S.C. §§ 6928(a) and (g)**
	)	**and 6961(b)**
Washington Navy Yard	)	
Washington, DC	)	
	)	
Facility.		

FILED
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REGION III
HEARING CLERK
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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:

Ms. Kimberly Fedinatz, Esquire
Assistant Counsel NAVFAC Washington
NAVFAC Washington, 09C
1314 Harwood St. SE
Washington Navy Yard, DC 20374

3/8/17
Date

Allison F. Gardner
Chief, Multi-Media & Legal Support Branch