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HEARINGS CLERK
EPA -- REGION 10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	
)	
)	EPA Docket No. RCRA 10-2012-0028
United States Department)	
of the Navy)	CONSENT AGREEMENT
)	AND FINAL ORDER
Naval Base Kitsap)	
)	
Respondent.)	
_____)	

I. AUTHORITY

1.1 This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections 6001, 9006, and 9007 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6961, 6991e, and 6991f. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10.

The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.2 Respondent is the United States Department of the Navy, Naval Base Kitsap.

1.3 Pursuant to Section 6001(b)(1) of RCRA, 42 U.S.C. § 6961(b)(1), the Administrator is authorized to initiate an administrative enforcement action against a federal facility in the same manner and under the same circumstances as an action would be initiated against another person, and any settlement of such action must be set forth in a consent order. Under Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2), the federal facility has the opportunity to confer with the Administrator before the administrative order becomes final.

1.4 Effective October 8, 1993, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, EPA granted final authorization to the State of Washington to administer a state underground storage tank ("UST") management program to operate in lieu of the federal UST program established in Subtitle I of RCRA. The provisions of the Washington UST program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

1.5 The State of Washington's authorized UST program is set forth in the Revised Code of Washington ("RCW") Chapter 90.76 and its implementing regulations are set forth in the Washington Administrative Code ("WAC"), Chapter 173-360.

1.6 EPA has given Washington prior notice of this enforcement action in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

1.7 Pursuant to Section 9007(a) of RCRA, 42 U.S.C. § 6991f(a), a federal facility having jurisdiction over any UST or engaged in any activity involving the installation, operation, management, or closure of an UST including any release response activities related thereto, or the delivery, acceptance, or deposit of any regulated substance into an UST, is subject to, and must comply with, all federal, state, interstate, and local UST requirements in the same manner and to the same extent as any person is subject to such requirements, including complying with administrative orders and paying administrative penalties.

1.8 Pursuant to Section 9006(d) of RCRA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Respondent hereby consents to the issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2 The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority to sign consent agreements between EPA and the party against whom an administrative penalty is proposed to be assessed pursuant to Section 9006 of RCRA, for violations of Subtitle I of RCRA, the corresponding federal regulations and the EPA-authorized Washington UST regulations set forth in Chapter 173-360 of the WAC.

2.3 A concise statement of the factual basis for alleging violations of RCRA and the WAC, together with specific references to the WAC regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1 The U.S. Department of Defense, Department of the Navy is the owner of Naval Base Kitsap Bangor in Silverdale, Washington (“Bangor”).

3.2 USTs that contain petroleum are installed at 32 separate locations at Bangor.

3.3 In March 2010, EPA Region 10 conducted inspections of the USTs at Bangor.

3.4 The EPA inspections included a review of the records maintained at Bangor for each UST system for the previous year and an inspection of the UST systems at each of the 32 locations.

3.5 Respondent is a “person” as that term is defined in WAC 173-360-120, Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.

3.6 The USTs at the facilities within Bangor are used to store petroleum which is a “regulated substance,” as defined in WAC 173-360-120, Section 9001(2), 42 U.S.C. § 6991(2), and 40 C.F.R. § 280.12.

3.7 Respondent is the “owner” and/or “operator” of “underground storage tank(s)” as these terms are defined in WAC 173-360-120, Section 9001 of RCRA, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

3.8 As owner and/or operator of petroleum USTs in the state of Washington, Respondent is subject to the Washington UST requirements.

3.9 As a result of the March 2010 inspections and follow-up discussions with Respondent, EPA alleges the violations described in paragraphs 3.10 to 3.46 below.

Building 1012 Motor Pool Oil/Water Separator

3.10 **Count 1**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 1012 Motor Pool Oil/Water Separator from March 1, 2009 through May 31, 2009 and November 1, 2009 through January 31, 2010.

3.11 **Count 2**: Respondent failed to provide overfill prevention as required by WAC 173-360-310(4) for the UST at Building 1012 Motor Pool Oil/Water Separator from March 8, 2010 through May 27, 2010.

Building 1038 Supply Support Oil/Water Separator

3.12 **Count 3**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 1038 Supply Support Oil/Water Separator from March 1, 2009 through July 31, 2009, and from September 1, 2009 through January 31, 2010.

Building 1102 Emergency Generator Building

3.13 **Count 4**: Respondent failed to provide overfill prevention as required by WAC 173-360-310(4) for the UST at Building 1102 Emergency Generator Building from August 26, 2009 through December 1, 2009.

Building 1204 Public Works Gas Station

3.14 **Count 5**: Respondent failed to provide adequate line leak detection for the underground piping of the two high flow turbines as required by WAC 173-360-350(3)(a) for the USTs at Building 1204 Public Works Gas Station from June 30, 2006 through November 19, 2010.

Building 2000 Trident Training

3.15 **Count 6**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 2000 Trident Training from March 1, 2009 through March 8, 2010.

Building 2150 COMSUB GRP9 Facility

3.16 **Count 7**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for Tank 2 at Building 2150 COMSUB GRP9 Facility from September 1, 2009 through February 28, 2010.

Building 2810 Substation #2

3.17 **Count 8**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for Tank 1 at Building 2810 Substation #2 from March 1, 2009 through July 31, 2009 and September 1, 2009 through November 30, 2009.

3.18 **Count 9**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for Tank 2 at Building 2810 Substation #2 from March 1, 2009 through February 28, 2010.

Building 2951 Auto Hobby Shop

3.19 **Count 10**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 2951 Auto Hobby Shop from April 1, 2009 through May 31, 2009.

Building 4042 Housing

3.20 **Count 11**: Respondent failed to provide overfill prevention as required by WAC 173-360-305(3)(a)(ii) for the UST at Building 4042 Housing from March 8, 2010 through March 12, 2010, when the alarm was found to not be operating on March 8, 2010, and was repaired four days later.

Building 6002 Equipment Maintenance Building

3.21 **Count 12**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 6002 Equipment Maintenance Building from March 1, 2009 through January 31, 2010.

Building 6589 Inert Comp Processing Building

3.22 **Count 13**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 6589 Inert Comp

Processing Building from March 1, 2009 through June 30, 2009 and January 1, 2010 through January 31, 2010.

Building 6598 Emergency Generator Building 1

3.23 **Count 14**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 6598 Emergency Generator Building 1 from March 1, 2009 through June 30, 2009.

Building 6301 Emergency Generator Building 2

3.24 **Count 15**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for Tanks 1-3 at Building 6301 Emergency Generator Building 2 from April 1, 2009 through April 30, 2009.

3.25 **Count 16**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for Tank 4 at Building 6301 Emergency Generator Building 2 from March 1, 2009 through January 31, 2010.

3.26 **Count 17**: Respondent failed to have an annual line tightness test or to perform monthly monitoring as required by WAC 173-360-350(2)(a)(ii) on the pressurized pipe at Building 6301 Emergency Generator Building 2 from March 1, 2009 through January 31, 2010.

3.27 **Count 18**: Respondent failed to provide overfill prevention as required by WAC 173-360-305(3)(a)(ii) on Tank 4 at Building 6301 Emergency Generator Building 2 from March 2, 2010 to April 20, 2010.

Building 6302 Vertical Missile Packaging Building 2

3.28 **Count 19**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 6302 Vertical Missile Packaging Building 2 from April 1, 2009 through November 30, 2009.

3.29 **Count 20**: Respondent failed to provide overfill prevention as required by WAC 173-360-305(3)(a)(ii) on the UST at Building 6302 Vertical Missile Packaging Building 2 from March 2, 2010 through April 1, 2010.

Building 6303 Vertical Missile Packaging Building 3

3.30 **Count 21**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 6303 Vertical Missile Packaging Building 3 from April 1, 2009 through July 31, 2009.

3.31 **Count 22**: Respondent failed to provide an alarm loud enough, nor visible from the fill area to comply with overfill prevention as required by WAC 173-360-305(3)(a)(ii) for the UST at Building 6303 Vertical Missile Packaging Building 3 from March 2, 2010 to April 1, 2010.

Building 6008 Electrical Building Substation #3

3.32 **Count 23**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the 8,000-gallon diesel fuel tank at Building 6008 Electrical Building Substation #3 from March 1, 2009 through October 31, 2009.

3.33 **Count 24**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the 500-gallon used oil tank at Building

6008 Electrical Building Substation #3 from March 1, 2009 through October 31, 2009 and January 1, 2010 through February 28, 2010.

3.34 **Count 25**: Respondent failed to provide overfill prevention as required by WAC 173-360-310(4) for the 8,000-gallon diesel fuel tank at Building 6008 Electrical Building Substation #3 from March 3, 2010 to March 26, 2010.

Building 6010 Sewage Lift Station

3.35 **Count 26**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 6010 Sewage Lift Station from March 1, 2009 through January 31, 2010.

Building 6350 Maintenance Support Building

3.36 **Count 27**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 6350 Maintenance Support Building from March 1, 2009 through January 31, 2010.

Building 7025 Emergency Generator/Sewage Lift Station

3.37 **Count 28**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 7025 Emergency Generator/Sewage Lift Station from March 1, 2009 through January 31, 2010.

Building 7044 MSF / CNRW Port Operations

3.38 **Count 29**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 7044 MSF / CNRW

Port Operations from April 1, 2009 through June 30, 2009 and November 1, 2009 through November 30, 2009.

3.39 **Count 30**: Respondent failed to provide overfill prevention as required by WAC 173-360-305(3)(a)(ii) for the UST at Building 7044 MSF / CNRW Port Operations from March 3, 2010 through March 29, 2010.

Building 7101 Service Craft Operations Building

3.40 **Count 31**: Respondent failed to meet the piping release detection requirements of WAC 173-360-350(3)(a) for the piping at Building 7101 Service Craft Operations Building from at least June 30, 2006 to March 1, 2011.

3.41 **Count 32**: Respondent failed to demonstrate compliance with the piping release detection requirements of WAC 173-360-350(3)(b) for the piping at Building 7101 Service Craft Operations Building from March 3, 2009 to May 5, 2010.

Building 7512 SOD Oil/Water Separator

3.42 **Count 33**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the UST at Building 7512 SOD Oil/Water Separator from April 1, 2009 through July 31, 2009 and September 1, 2009 through December 31, 2009.

Building 7702 Delta Pier Standby Generator Building

3.43 **Count 34**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for Tanks 1 - 3 at Building 7702 Delta Pier Standby Generator Building from March 1, 2009 through June 30, 2009.

3.44 **Count 35**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for Tank 4 at Building 7702 Delta Pier Standby Generator Building from March 1, 2009 through February 28, 2010.

Building 7707

3.45 **Count 36**: Respondent failed to demonstrate compliance with the tank release detection requirements of WAC 173-360-335(2)(a) for the four tanks at Building 7707 from April 1, 2009 through April 30, 2009, and June 1, 2009 through October 31, 2009.

3.46 **Count 37**: Respondent failed to demonstrate compliance with the piping release detection requirements of WAC 173-360-350(2)(a)(ii) for four lines at Building 7707 from April 1, 2009 through April 30, 2009, June 1, 2009 through October 31, 2009, and December 1, 2009 through January 31, 2010.

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

4.1 Respondent admits the jurisdictional allegations contained in Part I, above.

4.2 Respondent neither admits nor denies the specific factual allegations in Part III,

above.

4.3 Respondent waives its right to request an adjudicatory hearing on any issue addressed in this CAFO. In addition, Respondent waives its right to confer with the Administrator pursuant to Section 6001(b)(2) of RCRA, 42 U.S.C. § 6961(b)(2).

4.4 Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.5 Pursuant to Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), EPA and Respondent agree that an appropriate penalty to settle this action is ONE HUNDRED SIXTY THOUSAND SEVEN HUNDRED FIFTY-SIX DOLLARS (\$160,756).

4.6 Respondent consents to the issuance of the Final Order in Part V below and to payment of the civil penalty cited in the foregoing paragraph within 60 days of the effective date of the Final Order.

4.7 Payments under this CAFO shall be made by U.S. Government Treasury check, certified check or bank check payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case. Respondent also may make the penalty payment by wire transfer or electronic payment in accordance with instructions which will be provided by EPA upon request.

4.8 Respondent shall serve a photocopy of the check or documentation of the wire transfer or electronic payment described above to the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101-3140

Anne Christopher
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop OCE-082
Seattle, Washington 98101-3140

4.9 Each party shall bear its own costs, fees, and disbursements in this action.

4.10 Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein and, without admitting or denying the factual allegations contained in the Final Order, consents to the terms of this CAFO.

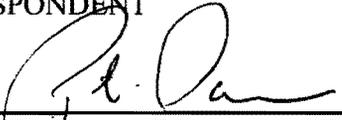
4.11 Pursuant to 40 C.F.R. § 22.18(c), full payment of the penalty assessed in this CAFO resolves Respondent's liability for federal civil penalties for the violations and facts alleged in Part III of this CAFO.

4.12 Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, 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 Anti-Deficiency Act, 31 U.S.C. § 1341.

STIPULATED AND AGREED:

RESPONDENT



PETER M. DAWSON
Captain, U.S. Navy
Commanding Officer, Naval Base Kitsap

Dated: 12/16/11

U.S. ENVIRONMENTAL PROTECTION AGENCY



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

Dated: 1/9/2012

V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

5.2. Based on the findings contained in the Consent Agreement, Respondent is also ordered to comply with the following requirement pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a):

(a) Within 30 days of the effective date of this Order, Respondents shall provide copies of release detection compliance documents for each UST system (for each tank and each piping system that is pressurized) at Naval Base Kitsap for November 2011.

(b) Compliance documentation shall be provided to the following address:

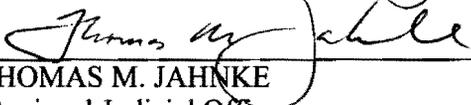
Anne Christopher
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop OCE-082
Seattle, Washington 98101-3140

5.3. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to RCRA for the violations and facts alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's

obligation to comply with all applicable provisions of RCRA and regulations and permits issued thereunder.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 17th day of January, ~~2011~~ 2012



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

I hereby certify that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: United States Department of the Navy, Naval Base Kitsap**, Docket No. RCRA-10-2012-0028 and one true and correct copy were filed with the Region 10 Hearing Clerk on Jan. 11, 2012

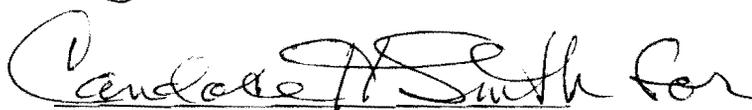
I also certify that on Jan. 11, 2012 a true and correct copy of the Consent Agreement and Final Order was sent by Certified Mail, Return Receipt Requested, to:

Nancy D. Glazier
Assistant Counsel
Office of General Counsel
Naval Facilities Engineering Command Northwest
1101 Tautog Circle
Silverdale, Washington 98315-1101

and on Jan. 11, 2012, a true and correct copy was delivered to:

Deborah E. Hilsman
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101

DATED this 11 day of January, 2012



Carol D. Kennedy
Regional Hearing Clerk
U.S. EPA Region 10