

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

In the Matter of:	:	
	:	
Commonwealth of Virginia	:	U.S. EPA Docket No.
Department of Corrections	:	CERCLA-03-2020-0017
6900 Atmore Drive	:	
Richmond, Virginia 23225,	:	Proceeding under Sections 103 and 109
	:	of the Comprehensive Environmental
Respondent.	:	Response, Compensation and Liability Act,
	:	42 U.S.C. §§ 9603 and 9609
Commonwealth of Virginia	:	
Department of Corrections	:	
James River Work Center	:	
1954 State Farm Road	:	
State Farm, Virginia 23160,	:	
	:	
Facility.	:	

U.S. EPA-REGION 3-RHC
FILED-23OCT2019AM11:51

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and the Commonwealth of Virginia Department of Corrections (“Respondent”) (collectively the “Parties”), pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9609, and 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. Section 109 of CERCLA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under CERCLA for the violation alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(7).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Respondent is a department of the Commonwealth of Virginia, with its headquarters located at 6900 Atmore Drive in Richmond, Virginia 23225.
13. As a department of a state government, Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and the regulations at 40 C.F.R. § 302.3, and is subject to the assessment of civil penalties for the violation alleged herein.
14. At all times relevant to this CAFO, Respondent has been in charge of the water treatment plant at the Virginia Department of Corrections James River Work Center facility located

at 1954 State Farm Road, State Farm, Virginia 23160 (“Facility”), within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

15. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and the regulations at 40 C.F.R. § 302.3.
16. Respondent is an “owner or operator” of the Facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).
17. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances is codified at 40 C.F.R. § 302.4.
18. On September 14, 2017, EPA representatives conducted an inspection of the Facility following a reported release of sodium hydroxide on or about January 1, 2017 to determine Respondent’s compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11002-11022 (“the EPA Inspection”).
19. During the EPA Inspection, Respondent’s employees (hereinafter, collectively referred to as “Respondent”) provided information and documentation to EPA regarding an event that had occurred on or about January 1, 2017 at the Facility, when approximately 42,734 pounds of sodium hydroxide, Chemical Abstracts Service (“CAS”) Registry No. 1310-73-2, was released from an underground pipeline conveying sodium hydroxide from the storage tank to the water treatment plant building (“the Release”).
20. According to information provided to the EPA representatives during the EPA Inspection, on December 31, 2016, Respondent observed that the sodium hydroxide tank level indicator was reading 8 feet, which meant that the tank contained approximately 4,000 gallons of sodium hydroxide. On January 1, 2017, Respondent observed that the level indicator on the sodium hydroxide tank appeared to be reading incorrectly since it was showing a negative number. Respondent inspected the exterior of the tank, saw no evidence of a leak or above-ground spill, and determined that the indicator must be malfunctioning. On January 2, 2017, Respondent observed that the sodium hydroxide pump was operating in an unusual manner and, following an attempt to recalibrate the pump, inspected the inside of the tank and discovered that it was empty. Thus, Respondent knew or should have known of the Release on January 2, 2017.
21. Since Respondent observed the level of sodium hydroxide in the tank on December 31, 2016 to be approximately eight feet, which equates to approximately 4,000 gallons, Respondent was aware on January 2, 2017, that the amount of sodium hydroxide released was 4,000 gallons. Based on the specific gravity of sodium hydroxide, 4,000 gallons is equal to approximately 42,734 pounds of sodium hydroxide.

22. On January 3, 2017, Respondent conducted an air test on the tank pipeline and determined that there was a leak in the pipeline between the sodium hydroxide storage tank and the water treatment plant building. Respondent hired a contractor to investigate and repair the leak, and repairs were completed between January 23 and 27, 2017.
23. On April 11, 2018, EPA sent to Respondent an EPCRA/CERCLA Post-Inspection Letter itemizing potential violations of, *inter alia*, the CERCLA release reporting requirement following the January 1, 2017 Release, and requesting that Respondent comply with its obligations under EPCRA and take steps to prevent recurrence of the compliance issues.
24. On April 26, 2018, Respondent replied to EPA's Post-Inspection Letter, outlining steps it had taken to come into compliance and to prevent future violations of the requirements of CERCLA and EPCRA, including, among other things, implementing redundancy measures to verify sodium hydroxide tank levels.

Count I
Failure to Immediately Notify the NRC of a Release

25. The allegations of Paragraphs 1 through 24 of this Consent Agreement are incorporated herein by reference.
26. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as they have knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.
27. The chemical sodium hydroxide is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 1000 pounds, as listed in 40 C.F.R. § 302.4.
28. The January 1, 2017 Release from the Facility constituted a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
29. The January 1, 2017 Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).
30. Respondent notified the NRC of the Release on January 19, 2017, which was 17 days after Respondent should have known that the release exceeded the RQ.
31. Respondent failed to immediately notify the NRC as soon as it had knowledge of the release of a hazardous substance from the Facility in a quantity greater than the RQ.

32. Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the relevant regulations at 40 C.F.R. § 302.6 by failing to immediately notify the NRC as soon as it had knowledge of the release of a hazardous substance from the Facility in a quantity greater than the RQ.
33. In failing to comply with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. Part 302, Respondent is subject to the assessment of penalties under Section 109(a) of CERCLA, 42 U.S.C. § 9609(a).

SETTLEMENT

34. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the following Paragraph 35.

Civil Penalty

35. In settlement of EPA's claims for civil penalties for the violation alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **TWENTY-FOUR THOUSAND SEVEN HUNDRED AND TWO DOLLARS (\$24,702)** for the alleged violation of Section 103 of CERCLA, 42 U.S.C. § 9603 ("civil penalty"), which Respondent shall be liable to pay in accordance with the terms set forth below.
36. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), including, the following: the nature, circumstances, extent and gravity of the violation or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999)*, which reflects the statutory penalty criteria and factors set forth at Section 109(a)(3) of CERCLA, the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
37. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, CERCLA-03-2020-0017;

- b. All checks in payment of the civil penalty shall be made payable to the “EPA-Hazardous Substances Superfund”;
- c. All payments made by check in payment of the civil penalty and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amounts see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent’s checks or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Elizabeth B. Lukens
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029
lukens.elizabeth@epa.gov

- 38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent’s failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
- 39. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent’s legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
- 40. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be

assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).

41. ADMINISTRATIVE COSTS: The costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
42. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
43. Failure by the Respondent to pay the civil penalty assessed by the Final Order in accordance with the terms of this CAFO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.
44. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

45. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
46. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to EPA regarding matters relevant to this CAFO, including information about Respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

47. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violation alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

48. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of CERCLA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

49. This CAFO resolves only EPA's claims for civil penalties for the specific violation alleged against Respondent in this 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under CERCLA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

50. This CAFO shall apply to and be binding upon EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that they are fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

51. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

52. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violation alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

In Re: *Commonwealth of Virginia Department of Corrections*
EPA Docket No. CERCLA-03-2020-0017

For Respondent: Commonwealth of Virginia Department of Corrections

Date: 10/7/19

By: 
[SIGNATURE]


Timothy Newton
[SIGNATORY NAME - PRINT]

Director of Infrastructure +
[SIGNATORY TITLE] Environmental management
unit

In Re: *Commonwealth of Virginia Department of Corrections*
EPA Docket No. CERCLA-03-2020-0017

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

Date: 10/17/19

By: 
Elizabeth B. Lukens
Sr. Assistant Regional Counsel

After reviewing the Consent Agreement and other pertinent matters, the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: OCT 22 2019

By: 
Karen Melvin, Director
Enforcement and Compliance Assurance Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Commonwealth of Virginia
Department of Corrections
6900 Atmore Drive
Richmond, Virginia 23225,**

Respondent.

**Commonwealth of Virginia
Department of Corrections
James River Work Center
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State Farm, Virginia 23160,**

Facility.

**EPA Docket No.
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FINAL ORDER

**Proceeding under Sections 103 and 109
of the Comprehensive Environmental
Response, Compensation and Liability Act,
42 U.S.C. §§ 9603 and 9609**

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Commonwealth of Virginia Department of Corrections, 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 *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999)*, and the statutory factors set forth in

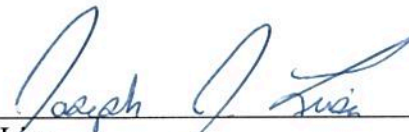
Section 109(a)(3) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609(a)(3).

NOW, THEREFORE, PURSUANT TO Section 109 of CERCLA, 42 U.S.C. § 9609, 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 **TWENTY-FOUR THOUSAND SEVEN HUNDRED AND TWO DOLLARS (\$24,702)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of CERCLA and the regulations promulgated thereunder.

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.

Oct. 23, 2019
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

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State Farm, Virginia 23160, :
: :
Facility. :

CERTIFICATE OF SERVICE

I certify that on OCT 23 2019, the original and one (1) copy of the foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **UPS Next Day Delivery** to:

Timothy Newton, Director
Infrastructure & Environmental Management Unit
Commonwealth of Virginia Department of Corrections
6900 Atmore Drive, 2nd Floor
Richmond, VA 23225
(804) 674-3000
timothy.newton@vadoc.virginia.gov

In Re: *Commonwealth of Virginia Department of Corrections*
EPA Docket No. CERCLA-03-2020-0017

Copies served via **Hand Delivery or Inter-Office Mail** to:

Elizabeth B. Lukens
Senior Assistant Regional Counsel
ORC – 3RC20
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Theresa Gallagher
Enforcement Officer
ECAD – 3ED12
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: OCT 23 2019


Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBERS: 17 A43 F71 24 9551 0071