BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	:	
	:	
	:	
	:	**U.S. EPA Docket Number:**
United States Coast Guard	:	
	:	**RCRA/CAA-03-2008-0378**
Respondent	:	
	:	
United States Coast Guard	:	
Integrated Support Command Portsmouth	:	
4000 Coast Guard Boulevard	:	
Portsmouth, Virginia 23703	:	
	:	
Facility	:	

CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement ("CA") is entered into by the Director of the Office of Enforcement, Compliance, and Environmental Justice ("OECEJ") of the United States Environmental Protection Agency, Region III ("EPA" "Agency" or "Complainant") and the United States Coast Guard ("Respondent").

2. This CA and the accompanying Final Order ("FO") address violations by Respondent of:

   a. Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6921-6939e, the regulations thereunder at 40 C.F.R. Parts 260-271, and the Virginia Hazardous Waste Management Regulations ("VaHWMR"), 9 VAC 20-60-12 *et seq.* (1999), which were authorized by EPA, effective December 18, 1984 (49 Fed. Reg. 47391) and re-authorized by EPA, effective September 29, 2000 (65 Fed. Reg. 46607 (July 31, 2000)) and June 20, 2003 (68 Fed. Reg. 36925 (July 20, 2003));

   b. Respondent's federally enforceable Clean Air Act ("CAA") Title V Permit; and

c. Federally enforceable provisions of the Virginia CAA State Implementation Plan ("SIP"), 40 C.F.R. Part 52, Subpart VV.

3. This CA and the accompanying FO, which are collectively referred to as the "CA/FO," is being filed pursuant to 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, including, specifically, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

4. The authority for this CA/FO is set forth in:

a. Section 3008(a)(1) and (g) of RCRA, 42 U.S.C. § 6928(a)(1) and (g); and

b. Section 113(d) of the Clean Air Act ("CAA") , 42 U.S.C. § 7413(d).

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA/FO.

6. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 5, above.

7. Respondent agrees not to contest EPA's jurisdiction with respect to the execution and issuance of this CA/FO, or the enforcement of the CA/FO.

8. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA, any right to appeal the accompanying FO, and any right to confer with the Administrator pursuant to RCRA § 6001(b)(2), 42 U.S.C. § 6961(b)(2).

9. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms.

10. Respondent shall bear its own costs and attorneys fees.

Notice of Action to the Commonwealth of Virginia

11. EPA has given the Commonwealth of Virginia prior notice of the issuance of this CA/FO in accordance with § 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Findings of Facts and Conclusions of Law

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

12. Respondent is an agency of the United States.

13. Respondent is a person within the meaning of:

    a. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 9 VAC 20-60-260, which incorporates by reference 40 C.F.R. § 260.10; and,

    b. Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

14. Respondent is, and was at the time of the violations alleged in this CA, the operator of a facility, the Integrated Support Command, located at 4000 Coast Guard Boulevard, Portsmouth, Virginia 23703 (the "Facility").

15. Respondent's Facility is a facility as defined by 9 VAC 20-60-260, which, with exceptions not relevant to this matter, incorporates by reference 40 C.F.R. § 260.10.

16. Respondent is the owner and/or operator of the Facility as those terms are defined at:

    a. 9 VAC 20-60-260, which incorporates by reference 40 C.F.R. § 260.10; and

    b. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), and 40 C.F.R. § 61.02.

17. From August 1 through August 3, 2005, EPA representatives conducted a Multi-media Compliance Inspection (the "Inspection") of the Facility.

RCRA Statutory and Regulatory Background

18. RCRA establishes a comprehensive program to be administered by the Administrator of EPA for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. §§ 6901 *et seq.*

19. Pursuant to its authority under RCRA, EPA has promulgated regulations at 40 C.F.R. Parts 260 through 272 applicable to hazardous waste generators, transporters, and treatment, storage and disposal facilities. These regulations generally prohibit treatment, storage and disposal of hazardous waste without a permit or "interim status." They prohibit land disposal of certain hazardous wastes, and provide detailed requirements to govern the activities of those who are lawfully permitted to store, treat and dispose of hazardous waste.

20. Under Section 3006 of RCRA, 42 U.S.C. § 6926, state hazardous waste programs may be authorized by EPA to operate in lieu of the federal hazardous waste program. The requirements of the federal RCRA regulations are not applicable to persons who generate, treat, store, transport or dispose of hazardous wastes in a state which has received

authorization to administer a state hazardous waste program.

21. On December 18, 1984, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the Commonwealth of Virginia was granted final authorization to administer a state hazardous waste management program in lieu of the Federal hazardous waste management program established under Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e. The provisions of Virginia's hazardous waste management program ("VaHWMR"), through this final authorization, have become requirements of Subtitle C of RCRA and are, accordingly, enforceable by EPA pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

22. On September 29, 2000 and again on June 20, 2003 , the Commonwealth of Virginia's hazardous waste management program was re-authorized. The provisions of Virginia's hazardous waste management program, through these re-authorizations, have become requirements of Subtitle C of RCRA and are, accordingly, enforceable by EPA pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g). The VaHWMR incorporate, with certain exceptions, specific provisions of Title 40 of the 2001 Code of Federal Regulations by reference. See 9 VAC 20-60-18.

COUNT I

(Owning and/or operating a hazardous waste storage facility without a permit or interim status)

23. The allegations of Paragraphs 1 through 22 of this CA are incorporated herein by reference as though fully set forth at length herein.

24. Respondent is and has been, at all times relevant to this CA, a "generator" of, and has engaged in the "storage" of, materials, described herein, that are "solid wastes" and "hazardous waste" at the Facility, as those terms are defined by 9 VAC 20-60-260 and 9 VAC 20-60-261, which, with exceptions not relevant to this matter, incorporate by reference 40 C.F.R. §§ 260.3 and 260.10.

25. 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), provides in pertinent part that a person may not own or operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility or has qualified for interim status for the facility.

26. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), provides, in pertinent part, that a large quantity generator may accumulate hazardous waste on-site without a permit or interim status provided that, among other things:

a. Storage of hazardous waste does not exceed 90 days (see 40 C.F.R.§ 262.34(a),

which is incorporated by reference in 9 VAC 20-60-262);

b. Containers of hazardous waste are labeled or marked clearly with the words "Hazardous Waste" (see 40 C.F.R. § 262.34(a)(3) and (c)(2), which is incorporated by reference in 9 VAC 20-60-262); and

c. Containers of hazardous waste are clearly marked with the date upon which the period of accumulation began (see 40 C.F.R. § 262.34(a)(2), which is incorporated by reference in 9 VAC 20-60-262).

27. A review of Respondent's Hazardous Waste Manifests by an EPA inspector during the Inspection revealed that Respondent had stored certain 55-gallon containers of hazardous waste, including wastes identified under EPA Hazardous Waste Code Nos. D001, D003, D005, D009, D018, D035, and D039, for time periods greater than 90 days on three instances:

a. Between February 24, 2004 and June 3, 2004 (100 days);

b. Between June 4, 2004 and December 21, 2004 (200 days); and

c. Between March 17, 2005 and July 13, 2005 (118 days).

28. During the Inspection, an EPA inspector discovered three 55-gallon drums containing hazardous waste that were not labeled or marked clearly with the words "Hazardous Waste."

29. During the Inspection, an EPA inspector discovered eight containers of hazardous waste that were not marked with accumulation start dates.

30. Respondent failed to qualify for the "less-than-90-day" generator accumulation exemption of 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), for the hazardous waste storage activities described above by failing to satisfy the conditions for such exemptions.

31. The Facility is a hazardous waste treatment, storage or disposal "facility", as that term is defined by 9 VAC 20-60-260, which incorporates by reference 40 C.F.R. § 260.10.

32. Respondent was required by 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), to obtain a permit for the storage of the containers of hazardous wastes referred to above.

33. Respondent does not currently have, nor did Respondent have at the time of the hazardous waste storage activities described above, a permit or interim status pursuant to

9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), or Section 3005 of RCRA, 42 U.S.C. § 6925, for the storage of such hazardous waste at the Facility.

34. Because of the activities alleged in Paragraphs 27 through 33, above, Respondent violated 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit or interim status.

COUNT II

(Failure to label universal waste batteries)

35. The allegations of Paragraphs 1 through 34 of this CA are incorporated herein by reference as though fully set forth at length herein.

36. 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.14(a), requires that small quantity handlers of universal waste batteries label each battery or the container in which batteries are located with any one of the following phrases: "Universal Waste -- Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

37. In the Facility's 2003 Biennial Report (the Facility's most recent Biennial Report at the time of the Inspection), the Facility declared itself to be a small quantity handler of universal waste.

38. During the Inspection, an EPA inspector discovered a storage container containing waste batteries. Neither the container, nor any of the batteries therein, were labeled with any of the phrases listed in 40 C.F.R. § 273.14(a).

39. Respondent violated 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.14(a), by not labeling waste batteries or the container in which waste batteries were located with any of the phrases listed in 40 C.F.R. § 273.14(a).

CAA Statutory and Regulatory Background

40. Title V of the CAA, and the implementing regulations at 40 C.F.R. Part 70, require that states develop and submit to EPA operating permit programs, and that EPA act to approve or disapprove each program.

41. 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.

42. EPA fully approved the Title V operating permit program for the Commonwealth of Virginia on October 10, 2001.

43. Section 502(a) of the CAA, 42. U.S.C. § 7661a(a), provides that it is unlawful for any person to violate any requirement of a permit issued under Title V of the CAA, after the effective date of any permit program approved under Title V of the CAA.

44. In a letter dated July 16, 2007, EPA notified Respondent of Respondent's violations of the CAA.

45. In a letter dated April 24, 2008, EPA notified the Commonwealth of Virginia of Respondent's violations of the CAA.

COUNT III

(Failure to maintain records of CAA training)

46. The allegations of Paragraphs 1 through 45 of this CA are incorporated herein by reference as though fully set forth at length herein.

47. The Facility operates subject to CAA Stationary Source Permit to Operate, Registration No. 60410, issued June 6, 2005 (the "Title V Permit").

48. Paragraph 29 (d) of the Title V Permit requires the Facility to maintain records of training for a period of five years.

49. In an October 31, 2006 response to EPA's September 7, 2006 letter requesting additional information, Respondent admitted that Respondent had not maintained such records of training for the previous five years.

50. Respondent violated Paragraph 29(d) of the Title V Permit by failing to maintain these records of training for the previous five years.

COUNT IV

(Failure to maintain air pollution control equipment)

51. The allegations of Paragraphs 1 through 50 of this CA are incorporated herein by reference as though fully set forth at length herein.

52. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), EPA's authority to bring an administrative action is limited to matters where the total penalty sought does not exceed $270,000[1] and the first alleged date of violation occurred no more than twelve

[1] This figure of $270,000 is calculated by increasing the $200,000 statutory maximum in the Act pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the Civil Monetary Penalty Inflation

(12) months prior to the initiation of the administrative action, except where EPA and the United States Department of Justice ("DOJ") jointly determine that a matter involving a larger penalty amount or longer period of violations is appropriate for administrative penalty action. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), any such determination by EPA and DOJ shall not be subject to judicial review.

53. In a letter dated June 24, 2008, DOJ concurred with EPA's determination that an administrative penalty action is appropriate for the violation discussed below.

54. 40 C.F.R. § 52.2420(c) lists the EPA-approved provisions of Virginia's CAA SIP.

55. 9 VAC 5-20-180, as listed in 40 C.F.R. § 52.2420(c), states: "[a]t all times, including periods of startup, shutdown and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment or monitoring equipment, in a manner consistent with good air pollution control practice of minimizing emissions."

56. During the Inspection, an EPA inspector observed that the pressure drop magnahelic gauge at the Facility's blasting booth bay #1 had been painted over and then subsequently cleaned. The painting and paint removal process left the gauge unreadable.

57. The function of the pressure drop magnahelic gauge at the Facility's blasting booth bay #1 is to ensure that the fabric filter that controls particulate emissions from blasting booth bay #1 is working properly.

58. By rendering the gauge unreadable by painting and then removing the paint from the pressure drop magnahelic gauge at the Facility's blasting booth bay #1, Respondent failed to maintain air pollution control equipment in a manner consistent with good air pollution control practice of minimizing emissions, as required by 40 C.F.R. § 52.2420(c).

Compliance Order

59. Respondent shall perform the following within the time periods specified. "Days" as used herein shall mean calendar days unless specified otherwise. Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and Section 113(a)(1)(A) of the CAA, 42 U.S.C. § 7413(a)(1)(A), Respondent is hereby ordered to:

60. Immediately upon the effective date of this CA/FO, cease storing hazardous waste at the Facility except in accordance with a permit or interim status obtained pursuant to RCRA Section 3005, 42 U.S.C. § 6925, and 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), or in accordance with the generator accumulation requirements of 9

Adjustment Rule, codified at 40 C.F.R. Part 19.

VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34, or other applicable exemption from permitting requirements under RCRA, EPA's regulations thereunder, or VaHWMR, as applicable.

61. Immediately upon the effective date of this CA/FO, ensure that each universal waste battery or the container in which batteries are located are labeled with any one of the following phrases: "Universal Waste -- Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)," in accordance with 9 VAC 20-60-273, which incorporates by reference 40 C.F.R. § 273.14(a).

62. Immediately upon the effective date of this CA/FO, ensure that records of CAA training are kept at the Facility, in accordance with the Facility's CAA Title V Permit.

63. Immediately upon the effective date of this CA/FO, maintain air pollution control equipment in a manner consistent with good air pollution control practice of minimizing emissions, in accordance with 9 VAC 5-20-180, as listed in 40 C.F.R. § 52.2420(c).

64. Within sixty (60) days after the effective date of this CA/FO, Respondent shall certify to EPA in writing that Respondent is in compliance with the Compliance Tasks described above. Such certification shall be made in the manner specified in Paragraph 66, below.

65. Information or documents required to be submitted to EPA under this CA shall be sent to:

> Tia Chambers (3EC10)
> United States Environmental Protection Agency - Region III
> 1650 Arch Street
> Philadelphia, Pennsylvania 19103-2029.

66. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this CA which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this CA shall be certified by Captain Steven Andersen.

The certification of Captain Steven Andersen shall be in the following form:

> I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure the qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or

persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

Civil Penalty

67. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty of Nine Thousand Two Hundred Eighty Dollars ($9,280.00), perform the Supplemental Environmental Project ("SEP") described in Paragraphs 69 through 78, below and perform the tasks set forth in the Compliance Order. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO. Respondent must pay the civil penalty no later than **THIRTY (30) CALENDAR DAYS** after the date on which this CA/FO is mailed or hand-delivered to Respondent.

68. Payment of the penalty shall be made by sending a check, payable to the "United States Treasury" to the following address:

By Regular US Postal Service Mail:

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

Contact: Natalie Pearson, (314-418-4087)

By Private Commercial Overnight Delivery:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson (314-418-4087)

Payment by EFT to:

Wire Transfers

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 wire transfer message should read:
"D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfers for receiving U.S. currency (also known as REX or remittance express)

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, DC 20074

Contact for ACH: Jessie White- (301) 887-6548

Online Payments:

This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field

Open form and complete required fields.

Payment by Respondent shall reference the name and address of the Facility, Respondent's name and address, and the EPA Docket Number of this CA/FO (RCRA/

CAA-03-2008-0378). A copy of Respondent's check or a copy of Respondent's electronic wire transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103 - 2029, and

Mark Bolender, Esq. (3RC43)
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

Supplemental Environmental Project

69. Respondent shall complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental or public health protections.

70. The SEP, as described in Attachment A to this CA/FO, shall be implemented within One Hundred and Eighty (180) Days of the effective date of this CA/FO.

71. The total expenditure for the implementation of this SEP shall not be less than Twenty-Nine Thousand Four Hundred Sixty Dollars ($29,460.00). Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

72. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP or any portion thereof.

73. Respondent shall submit a SEP Completion Report to EPA no later than Sixty (60) Days after implementation of the SEP. The SEP Completion Report shall include the following information:

    a. A detailed description of the SEP as implemented, describing how the SEP has fulfilled all of the requirements described in Attachment A;

    b. A description of any operating problems encountered and the solutions utilized by

Respondent to address such problems;

c. An itemization of costs incurred in implementing the SEP. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" for itemizing eligible SEP costs includes invoices, purchase orders, cancelled checks, and other documentation that specifically identifies and itemizes the costs of the goods and/or services for which payment is being or has been made by Respondent. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made;

d. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and

e. A description of the environmental and public health benefits resulting from implementation of the SEP.

74. Respondent agrees that failure to submit the SEP Completion Report required by Paragraph 73, above, shall be a violation of this CA/FO and Respondent shall become liable for the stipulated penalties pursuant to Paragraph 81, below.

75. Respondent agrees that EPA may inspect the location of the Digital Dental X-Ray Machine at any time in order to confirm that the SEP is being undertaken in conformity with the specifications made herein.

76. Respondent shall maintain for inspection by EPA the original records pertaining to the costs incurred and expenditures made for implementing the SEP, such as purchase orders, receipts, and/or cancelled checks, for a period of one year following EPA's issuance of a "Letter of Remittance Upon Satisfaction of Settlement Conditions" for the SEP as provided in Paragraph 92 of this CA/FO. Respondent shall also maintain non-financial records, such as work orders and work reports, documenting the actual implementation and/or performance of the SEP for a period of one year following EPA's issuance of a Letter of Remittance Upon Satisfaction of Settlement Conditions for the SEP as provided in Paragraph 92 of this CA/FO. In all documents or reports, including, without limitation, any SEP report, submitted to EPA pursuant to this CA/FO, Respondent shall sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading in accordance with Paragraph 66 of this CA/FO.

77. After receipt of the SEP Completion Report described in Paragraph 73, above, EPA shall:

a. Notify Respondent, in writing, of any deficiency in the SEP Completion Report and grant an additional THIRTY (30) DAYS for Respondent to correct the deficiency;

b. Notify Respondent, in writing, of EPA's determination that the project has been satisfactorily completed; or

c. Notify Respondent, in writing, that the project has not been completed satisfactorily, in which case EPA may seek stipulated penalties in accordance with Paragraph 81, herein.

78. If EPA, in its sole discretion and after completion of the Dispute Resolution process set forth below in Paragraphs 79 and 80 of this CA/FO, if applicable, determines that the SEP and/or any report due pursuant to this CA/FO has not been completed as set forth herein, stipulated penalties shall be due and payable by Respondent to EPA, in accordance with Paragraph 81, herein.

Dispute Resolution

79. If EPA issues a written notice of disapproval rejecting a SEP Completion Report pursuant to Paragraph 73, above, EPA shall grant Respondent the opportunity to object in writing to such notification of disapproval within TWENTY (20) DAYS of receipt of EPA's notification. EPA and Respondent shall have an additional THIRTY (30) DAYS from the receipt by EPA of the objection by Respondent, to resolve and reach an agreement on the matter in dispute. If an agreement cannot be reached within the THIRTY (30) DAY period, EPA shall provide to Respondent a written statement of its decision and the rationale therefore.

80. In the event that EPA determines, after the expiration of the aforesaid 30-day dispute resolution period, that a SEP has not been completed as specified herein, or if EPA has issued a written notice of disapproval for which a timely objection has not been filed by Respondent as provided in Paragraph 79, above, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 81 of this CA/FO. The submission of an unacceptable SEP Completion Report shall be the equivalent of the failure to submit a timely SEP Completion Report for purposes of the stipulated penalty provision set forth in Paragraph 81, below, except that the calculation of any such stipulated penalties shall not run during the pendency of the dispute resolution procedure set forth in Paragraph 79, above, but shall instead run from the date on which Respondent receives EPA's statement of decision pursuant to Paragraph 79, above, or, in the event that Respondent has not filed a timely objection to an EPA notice of disapproval, the date following the day of expiration of the 20-day dispute resolution period.

Stipulated Penalties

81. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement relating to the performance of the SEP described in Paragraphs 69 through 78, above, and to the extent that the total expenditures for the SEP do not equal or exceed the total expenditures for the SEP as described in Paragraph 71, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in subparagraph (b) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty of twenty-nine thousand four hundred sixty dollars ($29,460.00);

b. If the SEP is not completed in accordance with Paragraphs 69 through 78, above, but the Complainant determines that Respondent: (i) made good faith and timely efforts to complete the project, and (ii) certifies, with supporting documentation, that at least 90% of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;

c. If the SEP, as described in Paragraphs 69 through 78, above, is completed satisfactorily but the Respondent spends less that 90% of the amount which was required to be spent on the SEP, Respondent shall pay, as an additional penalty, the difference between the amount of the proposed penalty that was mitigated on account of Respondent's performance of the SEP (i.e. $29,460.00) and the amount of penalty mitigation credit attributable to the actual amount spent by Respondent to complete the SEP;

d. If the SEP is completed in accordance with Paragraphs 69 to 78, above, and the Respondent spent at least 90% of the amount required to be spent for the SEP, Respondent shall not be liable for any stipulated penalty; and

e. For failure to submit the SEP Completion Report required by Paragraph 73, above, Respondent shall pay a stipulated penalty of FIVE HUNDRED DOLLARS ($500.00) for each day after the deadline set forth in Paragraph 73, above, until the report is submitted.

82. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the SEP shall be within the sole discretion of EPA after completion of the Dispute Resolution process set forth in Paragraphs 79 and 80, above, if applicable.

83. Stipulated penalties for Subparagraph 81.e, above, shall begin to accrue on the day after

performance is due, and shall continue to accrue through the final day of the completion of the activity. In no event shall the total amount of stipulated penalties, together with any expenditures approved by EPA under Paragraph 71, above, exceed $29,460.00. Such stipulated penalties shall not accrue during the period of any Dispute Resolution under this CA/FO.

84. Respondent shall pay stipulated penalties within THIRTY (30) DAYS after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with Paragraphs 67 and 68, above.

85. Nothing in this CA/FO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

Language To Be Included in Public Statements

86. Any public statement, oral or written, in print, film or other media, made by Respondent, making reference to this SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act and the EPA-authorized Virginia Hazardous Waste Management Regulations."

Provisions in the Event of Delay or Anticipated Delay

87. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CA/FO, Respondent shall notify Complainant in writing not more than TEN (10) DAYS after the date of the delay or the date on which Respondent knew or should have known of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipate length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable by which those measures shall be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved, and shall serve as a waiver of Respondent's right to seek an extension of the time for performance of its obligation under this CA/FO based on such incident.

88. If the Parties agree that the delay or anticipated delay in compliance with this CA/FO has been or will be caused by circumstances entirely beyond the control of Respondent that could not be overcome by due diligence, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time.

89. In the event that EPA does not agree that the delay in achieving compliance with this CA/FO has been or will be caused by circumstances entirely beyond the control of Respondent that could not be overcome by due diligence, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

90. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent that could not be overcome by due diligence shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CA/FO shall not, in any event, be a basis for changes in this CA/FO or extensions of time under Paragraph 88 of this CA/FO. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

Satisfaction of Settlement Conditions

91. A determination of compliance with the conditions set forth herein will be based upon, inter alia, copies of records and reports submitted by Respondent to EPA under this CA/FO and any inspections of the work performed under the SEP that EPA reasonably determines are necessary to evaluate compliance. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

92. If EPA determines that Respondent has complied fully with the conditions set forth herein, EPA, through the Regional Administrator of U.S. EPA - Region III, or his designee, shall promptly issue a Letter of Remittance Upon Satisfaction of Settlement Conditions, which shall state that Respondent has performed fully the conditions set forth in this CA/FO and paid all penalty amounts due pursuant to the terms of this CA/FO.

Reservation of Rights

93. This CA/FO resolves only EPA's civil claims for penalties for the specific violations alleged in the CA/FO. 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 CAA, RCRA and the regulations promulgated thereunder, and any other federal laws or

regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, 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

94. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d); and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this Consent Agreement.

Antideficiency Act

95. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

Other Applicable Laws

96. Nothing in this CA/FO shall relieve Respondent of any duties or obligations otherwise imposed upon it by applicable Federal, State or local laws or regulations.

Authority to Bind the Parties

97. The undersigned certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement.

Effective Date

98. This CA/FO shall become effective upon filing with the Regional Hearing Clerk.

Entire Agreement

99. This CA/FO and its attachments constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA/FO, and the attachments hereto.

For the Respondent:

United States Coast Guard

Date: 9/9/08

By: S. J. Andersen
Captain Steven Andersen

For the Complainant:

U.S. Environmental Protection Agency
Region III

Date: 9/15/08

By:
Mark Bolender
Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Office of Enforcement, Compliance & Environmental Justice, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

9/17/08
Date

By:
Samantha Beers, Director
Office of Enforcement, Compliance and
Environmental Justice
EPA Region III

Attachment A

US Coast Guard Supplemental Environmental Project Proposal in response to Proposed Settlement of the Show Cause Letter issued in connection with the USCG Integrated Support Center Portsmouth, Multi-Media Compliance Inspection, August 1-3, 2005

The following Supplemental Environmental Project (SEP) proposal is submitted by the United States Coast Guard (USCG) to the Environmental Protection Agency (EPA) for its approval. It is consistent with the EPA SEP Policy dated April 10, 1998, and subsequent amendments to same and other guidance documents.

Background of the SEP Proposal:

The EPA issued a Show Cause Letter on July 16, 2007 to the USCG ISC Portsmouth, Virginia, to resolve alleged violations resulting from a Multi-Media Compliance Inspection held August 1-3, 2005. Various alleged violations involved the improper storage, labeling and marking of Resource, Conservation, and Recovery Act (RCRA) hazardous waste. Therefore, ISC Portsmouth is proposing a SEP to reduce a RCRA hazardous waste stream generated at the ISC.

In 2003, the ISC Medical Clinic replaced their traditional x-ray machine, which used hazardous materials to develop the film, with a digital x-ray machine. This digital x-ray machine eliminated the need to purchase the hazardous materials to develop the film, and hence, eliminated the resultant RCRA hazardous waste stream.

In order to further reduce our RCRA hazardous waste streams, the USCG is proposing the following project be approved as a SEP to reduce the proposed penalty in this matter.

Replacement of Dental Clinic X-ray Machine:

The current Dental Clinic x-ray machine uses both Peri-Pro Fixer and Peri-Pro Developer solutions to develop its film. When these two solutions are applied to the x-ray film, the silver is stripped from the film. This generates a hazardous waste stream. The proposed x-ray machine will eliminate the need to procure these materials and, hence the generation, storage and disposal of this RCRA hazardous waste stream.

ISC typically procures 104 gallons of the above fixer and 104 gallons of the above developer solution annually. ISC disposes of approximately 906 lbs of this RCRA hazardous waste annually.

This new digital x-ray machine, and its installation, will cost $89,290.

If its SEP proposal is approved by the EPA, ISC Portsmouth will place an order for the proposed x-ray machine within 60 days of receiving a signed and executed Consent Agreement from the EPA.

Qualification as a SEP Project Under EPA Guidelines

In support of this proposal, ISC Portsmouth submits the following analysis based on the EPA's Final Supplemental Environmental Projects Policy dated April 10, 1998.

http://www.epa.gov/compliance/resources/policies/civil/seps/fnlsup-hermn-mem.pdf

SEP Policy Section B:

The SEP Policy section requires that the SEP be environmentally beneficial, in settlement of an enforcement action and not otherwise required to be performed by the party. The USCG proposal meets each of these requirements.

The proposed SEP "benefits the environment" by eliminating the need to procure hazardous materials and by eliminating the generation and disposal of approximately 906 lbs. of hazardous waste per year.

The proposed SEP is "in settlement of an enforcement action" as the USCG has agreed to enter into settlement of the outstanding RCRA hazardous waste violations referenced above.

The ISC is also "not otherwise legally required" to undertake this project and could continue to lawfully store and dispose of this RCRA hazardous waste stream.

SEP Policy Section C:

This section establishes 5 criteria for determining whether a proposed SEP falls within EPA authority and is consistent with statutory and constitutional requirements.

1. This proposed SEP is consistent with underlying statutes.

2. There is a nexus between this SEP proposal and the basis of the enforcement action. The proposed project directly relates to the storage and disposal of RCRA hazardous waste. The proposed project reduces the likely of potential RCRA storage violations at the ISC. Such violations are delineated in the above referenced Show Cause letter.

3-5. EPA does not have the ability to pay for, manage or receive additional resources as a result of the SEP proposal, nor does the SEP proposal support specific activities performed by EPA employees or contractors.

SEP Policy Section D:

This section establishes 7 categories of SEP projects.

The proposed project falls under the Pollution Prevention category because it reduces the generation of pollution through "source reduction." The proposed replacement of equipment

with modern technology that eliminates the use of hazardous materials and generation of a RCRA hazardous waste stream clearly falls within this category of Pollution Prevention.

SEP Policy Section E:

We recognize that the EPA is reviewing the proposed penalty and so we are unable to fully apply Section E. However, we do offer the following information relative to Step 4 of this section.

This SEP benefits the environment at large. It will result in a significant and quantifiable reduction in the discharge of pollutants to the environment and hence reduce the risk to the general public by eliminating a RCRA hazardous waste stream.

This SEP is innovative in that it utilizes the innovative processes in a new technology which will more effectively reduce the generation, release and disposal of RCRA hazardous materials.

This SEP will result in pollution prevention as delineated above.

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

In the Matter of:	:	
	:	
	:	
United States Coast Guard	:	**U.S. EPA Docket Number:**
	:	
Respondent	:	**RCRA/ CAA-03-2008-0378**
	:	
United States Coast Guard	:	
Integrated Support Command Portsmouth	:	
4000 Coast Guard Boulevard	:	
Portsmouth, Virginia 23703	:	
	:	
Facility	:	
	:	
	:	
	:	

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 Coast Guard, 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. The terms of the foregoing Consent Agreement are accepted by thc undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice*, Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d); and Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a); and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e) and Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), **IT IS HEREBY ORDERED** that Respondent comply with the terms and conditions of the attached Consent Agreement and pay a civil penalty of Nine Thousand Two Hundred Eighty Dollars ($9,280.00), as specified in the attached Consent Agreement.

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

Date: 9/29/08

Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III