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

IN RE:	:	
United States Department of the Navy,	:	
Respondent,	:	
	:	**Docket No. RCRA/CAA-03-2014-110FF**
Naval Support Activity Hampton Roads (Northwest Annex) Chesapeake, Virginia	:	
Facility.	:	

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement ("CA") is entered into by the Director of the Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant"), and the U.S. Department of the Navy ("Respondent"), pursuant to Sections 3008(a)(1) and (g), 6001(b), 9006, and 9007(a) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §§ 6928(a)(1) and (g), 6961(b), 6991e, and 6991f(a), Sections 113 and 118(a) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413 and 7418(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

Regulatory Background

This CA and the accompanying Final Order (collectively "CAFO") resolve violations of the RCRA, Subtitle C, 42 U.S.C. §§ 6921- 6939f, Subtitle I, 42 U.S.C. §§ 6991 – 6991m, and regulations in the authorized Virginia hazardous waste program in connection with Respondent's facility located at the Naval Support Activity Hampton Roads (Northwest Annex), Chesapeake, Virginia.

Virginia initially received final authorization for its hazardous waste regulations, the Virginia Hazardous Waste Management Regulations ("VaHWMR"), 9 VAC 20-60-12 *et seq.*, on December 4, 1984, effective December 18, 1984 (49 Fed. Reg. 47391). EPA reauthorized Virginia's regulatory program on June 14, 1993, effective August 13, 1993 (58 Fed. Reg.

32855); on July 31, 2000, effective September 29, 2000 (65 Fed. Reg. 46606), on June 20, 2003, effective June 20, 2003 (68 Fed. Reg. 36925), on May 10, 2006, effective July 10, 2006 (71 Fed. Reg. 27204), and on July 30, 2008, effective July 30, 2008 (73 Fed. Reg. 44168).

On September 28, 1998 (effective October 28, 1998) (63 Fed. Reg. 51528), pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, Virginia was granted final authorization by EPA to administer a state underground storage tank (UST) management program in lieu of the Federal UST management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i. The provisions of the Virginia UST program, through this final authorization, have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e.

Respondent was previously notified regarding the RCRA Subtitle C and Subtitle I allegations recited herein in a letter dated January 16, 2014. In accordance with Sections 3008(a)(2) and 9006(a)(2) of the RCRA, 42 U.S.C. §§ 6928(a)(2) and 6991e(a)(2), EPA has notified the Commonwealth of Virginia of EPA's intent to enter into a CAFO with Respondent resolving the RCRA Subtitle C and Subtitle I violations set forth herein.

This CAFO also resolves violations of the CAA, 42 U.S.C. §§ 7401, et seq. EPA is authorized by Section 110 of the CAA to approve a federally enforceable state implementation plan (SIP), and by Section 113 of the CAA to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements, 42 U.S.C. §§ 7410 and 7413. Respondent is subject to the federally-enforceable requirements set forth at 9 Virginia Administrative Code (VAC) Chapter 80, Article 5, regarding operating permits, which EPA approved in a revision of the Virginia SIP in 2003. In addition, Respondent is subject to 40 C.F.R. Part 82, Subpart F, regarding the regulation of equipment containing refrigerants which are ozone depleting substances.

Respondent was previously notified regarding the CAA allegations recited herein in a letter dated January 16, 2014. EPA has notified the Commonwealth of Virginia of EPA's intent to enter into a CAFO with Respondent to resolve the CAA violations set forth herein.

General Provisions

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

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

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

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

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

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

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

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

9. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of the RCRA, the CAA, or any regulations promulgated thereunder.

EPA's Findings of Fact and Conclusions of Law

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

11. Respondent is the owner and operator of the Naval Support Activity Hampton Roads (Northwest Annex), Chesapeake, Virginia (the "Facility").

12. EPA conducted an inspection of the Facility on June 9 - 11, 2010 ("EPA Inspection"). At the time of the EPA inspection, the Facility was known as the Naval Support Activity – Norfolk, Northwest Annex.

13. At the time of the EPA Inspection, the Facility was a small quantity generator of hazardous waste.

COUNT I (RCRA SUBTITLE C-FAILURE TO PERFORM A WASTE DETERMINATION)

14. Paragraphs 1 through 13 of this CAFO are incorporated by reference as though fully set forth herein.

15. Respondent is and has been at all times relevant to this CAFO the "owner" and "operator" of a "facility," as those terms are defined by 9 VAC 20-60-260, which, with exceptions not relevant to these terms, incorporates by reference 40 C.F.R. § 260.10.

16. Respondent is a department, agency and/or instrumentality of the United States and is a "person" as defined by Section 1004(15) of the RCRA, 42 U.S.C. § 6903(15), and 9 VAC 20-60-260, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.

17. Respondent is and, at all times relevant to this CAFO, has been a "generator" of, and has engaged in the "storage" in "containers" of materials that are "solid wastes" and "hazardous waste" at the Facility, as those terms are defined in 9 VAC 20-60-260 and 261, which incorporate by reference 40 C.F.R. §§ 260.10 and 261.2 and .3, including the hazardous waste referred to herein.

18. 9 VAC 20-60-262 (which incorporates by reference 40 C.F.R. § 262.11) requires a person who generates a solid waste to determine whether the waste is a hazardous waste.

19. At the time of the EPA Inspection, the EPA inspector noted a failure to make a hazardous waste determination for solid wastes that were stored at the Facility; specifically, in a locker outside of Building 403, there were 40 one-gallon cans of paint, 31 of which the Facility identified as hazardous waste after the EPA Inspection.

20. Respondent violated 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.11, by failing to make a hazardous waste determination for the solid wastes identified above in Paragraph 19.

COUNT II (RCRA-OPERATING WITHOUT A PERMIT)

21. Paragraphs 1 through 20 of this CAFO are incorporated by reference as though fully set forth herein.

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

23. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(d)(4), provides

that a small quantity generator may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that, *inter alia*:

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

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

24. 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.34(c)(1), provides, in relevant part, that a generator may accumulate as much as 55 gallons of hazardous waste at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of 40 C.F.R. § 262.34(d), provided certain conditions are met.

25. At the time of the EPA Inspection, the EPA inspector observed two lockers with one drum each that contained D008 hazardous waste lead dust and fragments located outside of Building 398 and Building 416, respectively. The D008 hazardous waste was generated by the Respondent from operations in two indoor small arms firing ranges: an indoor firing range inside Building 398 and an indoor firing range inside Building 416. The EPA inspector was informed by Facility personnel that a HEPA vacuum cleaner was used to collect the D008 hazardous lead waste generated inside of each Building, and that the waste was then transported and emptied into the drums located in the lockers outside of Buildings 398 and 416.

26. At the time of the EPA Inspection, the drums of D008 hazardous waste identified in Paragraph 25, immediately above, were not under the control of the operator where such hazardous waste was generated, and were not located at or near the point where the waste was generated. As a result, Respondent was not storing such D008 hazardous waste in compliance with the generator satellite accumulation provisions of 40 C.F.R. § 262.34(c)(1).

27. At the time of the EPA Inspection, the drums of D008 hazardous waste identified in Paragraphs 25 and 26, immediately above, were not marked with the words "Hazardous Waste" or with the initial date of waste accumulation. As a result, Respondent's storage of such hazardous waste was not in compliance with the 9 VAC 20-60-262 permit and interim status exemption conditions for a small quantity generator, identified in Paragraph 23 above, for temporary (*i.e.,* 180 days or less) accumulation of hazardous waste at the Facility without a permit or interim status.

28. Respondent does not have, and at the time of the violations alleged herein, did not have, a permit or interim status to store hazardous waste at the Facility as required by 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), and Sections 3005(a) and (e) of the RCRA, 42 U.S.C. §§ 6925(a) and (e).

29. Because of the activities alleged in Paragraphs 25-27, above, Respondent violated 9 VAC 20-60-270, which incorporates by reference 40 C.F.R. § 270.1(b), by operating a hazardous waste storage facility without a permit or interim status.

COUNT III (RCRA SUBTITLE C-HAZARDOUS WASTE MANIFESTS)

30. Paragraphs 1 through 29 of this CAFO are incorporated by reference as though fully set forth herein.

31. 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.22, requires the hazardous waste manifest to consist of at least the number of copies which will provide the generator, each transporter and the owner or operator of the designated facility one copy each for their records and another copy to be returned to the generator.

32. 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.23(a) and (b), requires the generator to sign the hazardous waste manifest, obtain the signature of the initial transporter, and provide the transporter the remaining copies to accompany the waste.

33. 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.40(a), requires that the waste generator maintain a copy of each manifest in its records for three years.

34. At the time of the inspection, the Facility, as the generator, transferred its hazardous waste to representatives of the Naval Facilities Engineering Command (NAVFAC), which acted as the transporter, for transport to the TSDF (Treatment, Storage and/or Disposal Facility) at Naval Station Norfolk, VA. NAVFAC representatives signed the manifest form for the Facility, the generator. Upon transferring the hazardous waste to NAVFAC, the Facility failed to separate and maintain the initial signed generator copy of the manifest. In addition, the Facility did not receive the generator's copy of the manifest after the hazardous waste was delivered to the Naval Station Norfolk. The signed initial generator copies of the hazardous waste manifests and the generator's copy from the TSDF were maintained by NAVFAC at Naval Station Norfolk, not at the Facility where the waste was generated.

35. Respondent violated 9 VAC 20-60-262, by not maintaining the signed initial generator copies of the manifests for hazardous waste generated by the Facility, or the copies of the manifests from the TSDF after the Facility's hazardous waste was delivered to the TSDF.

COUNT IV (RCRA SUBTITLE I-TANK SPILL AND OVERFILL CONTROL)

36. Paragraphs 1 through 35 of this CAFO are incorporated by reference as though fully set forth herein.

37. 9 VAC 25-580-80.A and 40 C.F.R. § 280.30(a) require owners and operators of underground storage tanks (UST) to take necessary precautions to prevent overfills and spillage during the transfer of product to a UST system.

38. At Building 257, NATO Satellite Ground Terminal, the EPA inspector visited two USTs, NW-257-UST-01 and NW-257-UST-02. The EPA inspector observed that both of the spill buckets for the remote fill pipes associated with those diesel fuel tanks had liquid and slop contained in the spill buckets.

39. A spill bucket is designed to catch spills when filling the UST, and is part of the regulated UST system. The failure to empty the spill buckets for NW-257-UST-01 and NW-257-UST-02 meant that the spill buckets would not be able to capture other spills, which could cause a release of diesel fuel to the environment.

40. Respondent violated 9 VAC 20-580-80.A and 40 C.F.R. § 280.30(a) by failing to ensure that releases due to spills or overfills of the UST system would not occur.

COUNT V (CAA—REFRIGERANT REGULATIONS)

41. The allegations contained in Paragraphs 1 through 40 of this CAFO are incorporated by reference herein as though fully set forth herein.

42. Under Section 113(a)(3) of the CAA, the Administrator of EPA has the authority to issue administrative penalty orders for violations of regulations concerning stratospheric ozone-depleting refrigerants promulgated under Section 608(a) of the CAA, 42 U.S.C. § 7671g(a). These regulations have been codified at 40 C.F.R. Part 82.

43. 40 C.F.R. § 82.156 (i)(5) requires owners or operators of comfort cooling appliances normally containing more than 50 pounds of refrigerant to determine the leak rate, as defined in § 82.152, to ensure leaks are repaired as required by § 82.156(i)(9).

44. At the time of the EPA Inspection, the Facility had 13 comfort cooling appliances

normally containing greater than fifty pounds of R-22, a Class II ozone depleting refrigerant.

45. At the time of the EPA Inspection, the Facility did not perform leak rate calculations for the 13 comfort cooling systems normally containing more than 50 pounds of R-22 when adding R-22 to those systems.

46. Respondent violated 40 C.F.R. § 82.156(i)(5) by failing to perform leak rate calculations, as described in §82.152, when adding R-22 to, and otherwise servicing and repairing, its 13 comfort cooling appliances that normally contained more than 50 pounds of R-22, a Class II ozone depleting refrigerant.

COUNT VI (CAA-OPERATING PERMIT)

47. The allegations contained in Paragraphs 1 through 46 of this CAFO are incorporated by reference herein as though fully set forth herein.

48. Under section 110 of the CAA, EPA has the authority to approve a State Implementation Plan (SIP). A SIP is federally enforceable once it is approved by EPA. EPA originally approved the Virginia SIP on May 31, 1972, at 37 Fed. Reg. 10842, and has periodically approved revisions to the SIP after that date.

49. Under section 113(a)(1) of the CAA, EPA has the authority to issue administrative penalty orders for violations of any requirement or prohibition contained in a federally enforceable SIP or permits.

50. EPA approved a revision to the Virginia SIP for permits for new and modified stationary sources at 9 VAC 5-80-10 in 65 Fed. Reg. 21315 (April 21, 2000). Those regulations became a federally enforceable part of the SIP as of the June 20, 2000, effective date. (The Virginia Department of Environmental Quality (Virginia DEQ) re-codified these regulations at 9 VAC 5-80-1100 through -1300 after EPA approved the SIP. All citations in this count are to the federally-enforceable SIP provisions.)

51. EPA approved a revision to the Virginia SIP for stationary source permit exemption levels at 9 VAC 5-80-11 in 65 Fed. Reg. 21315 (April 21, 2000). Those regulations became a federally enforceable part of the SIP as of the June 20, 2000, effective date. (Virginia DEQ re-codified these regulations at 9 VAC 5-80-1105 after EPA approved the SIP. All citations in this count are to the federally-enforceable SIP provisions.)

52. EPA approved a revision to the Virginia SIP for state operating permits at 9 VAC 5-80-800 through 5-80-1040 in 68 Fed. Reg. 38191 (June 27, 2003). Those regulations became a federally enforceable part of the SIP as of the August 26, 2003, effective date.

53. Pursuant to 9 VAC 5-80-10.A.3 and 5-80-10.C.1.a, a stationary source is required to obtain a permit to construct and operate or modify and operate a stationary source, unless the source is exempted under 9 VAC 5-80-11.

54. Pursuant to 9 VAC 5-80-11B.1.b, any unit using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour is exempt from the permit requirements in 9 VAC 5-80-10.

55. Pursuant to 9 VAC 5-80-800.A, the operating permit provisions at 9 VAC 5-80-800 through 5-80-1040 apply to the operation of any stationary source or emissions unit of a regulated air pollutant.

56. Pursuant to 9 VAC 5-80-830.A, an application for an operating permit shall include all emissions units which are to be permitted in the stationary source.

57. At the time of the EPA Inspection, the Facility had a liquid fuel Kewanee boiler with a maximum heat input rate of 10.462 million Btu per hour in Building 2 (the "Kewanee boiler").

58. The Facility is a "stationary source" as defined in 9 VAC 5-80-10.B.3 and 9 VAC 5-80-810.C.

59. The Facility and the Kewanee boiler are a "new source" as defined in 9 VAC 5-80-10.B.3 and 9 VAC 5-80-810.C.

60. The Kewanee boiler is an "emissions unit" as defined in 9 VAC 5-80-10.B.3 and 9 VAC 5-80-810.C because it emits, among other substances, nitrogen oxides, which are a "regulated air pollutant" as defined in 9 VAC 5-80-810.C.

61. The Virginia Department of Environmental Quality (Virginia DEQ) issued an amended Stationary Source Permit to Operate, Registration No. 60957, Identification No. 51-550-00098 (the "Permit") on September 20, 2002, which included the Kewanee boiler and subjected that boiler to the Permit's requirements.

62. Respondent submitted an application to Virginia DEQ on November 17, 2008, to amend the Permit by removing the Kewanee boiler from the Permit. Upon information and belief, Respondent thought the Kewanee boiler was exempt because it had replaced the burner and it erroneously believed the maximum heat input capacity was below 10 million Btu per hour.

63. Virginia DEQ issued an amended Permit on April 15, 2009, that removed the Kewanee

boiler from the Permit.

64. During the EPA Inspection on June 9-11, 2010, the EPA inspector observed that the Facility's emissions inventory listed the Kewanee boiler's normal operating heat input capacity of 8.369 million Btu per hour rather than the maximum heat input capacity of 10.462 million Btu per hour indicated on the manufacturer's specification plate on the boiler.

65. Virginia DEQ issued an amended Permit on June 29, 2010, which did not include the Kewanee boiler in the Permit.

66. Respondent submitted an application to Virginia DEQ on September 29, 2011, to amend the Permit to add the Kewanee boiler back into the Permit and to make other changes. Virginia DEQ issued an amended Permit on February 14, 2012, that added the Kewanee boiler back into the Permit.

67. Respondent continued to operate the Kewanee boiler from April 15, 2009, though February 13, 2012, when it was not included in the Permit.

68. The Kewanee boiler was not exempt from the Virginia stationary source and operating permit requirements from April 15, 2009, through February 13, 2012, because its maximum heat input capacity was over 10 million Btu per hour.

69. Respondent's November 17, 2008, application to amend the Permit violated the federally enforceable 9 VAC 5-80-830.A permit application requirements because it requested to remove the Kewanee boiler from the Permit when in fact the boiler was subject to the Virginia stationary source permit requirements at 9 VAC 5-80-10.C.1.a and the Virginia operating permit requirements at 9 VAC 5-80-800.A.

70. Respondent's operation of the Kewanee boiler from April 15, 2009, through February 13, 2012, violated the federally-enforceable Virginia stationary source permit requirements at 9 VAC 5-80-10.C.1.a and the Virginia operating permit requirements at 9 VAC 5-80-800.A.

COMPLIANCE ORDER

71. Respondent shall use the following procedure for its paper hazardous waste manifests:

a. All shipments of hazardous waste will be accomplished using Uniform Hazardous Waste Manifests (the manifest) as required by the state and Federal requirements. Naval Facilities Engineering Command Mid-Atlantic Environmental Services Division (EV Services) is currently authorized by Commander Navy Region Mid-

Atlantic to represent the Navy as the Generator, Transporter, and TSDF Operator for hazardous waste shipments from Naval Installation to Naval Installation in the Hampton Roads area of Virginia. Manifests for these types of shipments are all centrally located at Naval Station Norfolk.

b. Prior to shipment: EV Services will conduct a pre-shipment inspection and prepare the manifest.

c. Day of shipment: The Generator will sign, separate, and retain Page 6 of the manifest and provide the remaining copies to the Transporter (40 C.F.R. §262.23).

d. After receipt of the shipment at the TSDF, the TSDF will sign, separate and retain Page 4 in the designated TSDF folder, and will separate and transmit Page 3 to the Generator to be kept in the designated Generator folder, and provide Page 5 to the Transporter to be kept in the designated Transporter folder (40 C.F.R. §264.71).

e. After receipt of the Page 3 from the TSDF, the Generator will reconcile this with Page 6. Any discrepancies will be addressed.

f. After reconciliation, Page 3 will be maintained for a period of three years (40 C.F.R. §262.40).

72. Nothing in this Compliance Order as set forth in Paragraph 71 shall preclude Respondent from using electronic manifests for its hazardous waste shipments once the state and federal regulations for electronic manifests are in effect.

CIVIL PENALTY

73. Respondent consents to the assessment of a civil penalty of forty-nine thousand five hundred dollars ($49,500.00) in full satisfaction of all claims for civil penalties for the violations alleged in the above alleged six counts of this CAFO. Respondent must pay the civil penalty no later than **SIXTY (60)** calendar days after the date on which this CAFO is mailed or hand-delivered to Respondent.

74. For the violations alleged in Counts I - III, EPA considered a number of factors including, but not limited to, the statutory factors set forth in Section 3008(a)(3) of the RCRA, 42 U.S.C. § 6928(a)(3), *i.e.*, the seriousness of Respondent's violations and the good faith efforts by Respondent to comply with the applicable requirements of the RCRA, and the *RCRA Civil Penalty Policy* (2003). EPA has also considered the *Adjustments of Civil Penalties for Inflation and Implementing the Debt Collection*

Improvement Act of 1996 ("DCIA"), as set forth in 40 C.F.R. Part 19, and the December 29, 2008 memorandum by EPA Assistant Administrator Granta Y. Nakayama entitled, *Amendments to EPA's Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)* ("2008 Nakayama Memorandum"), which specify that for violations that occurred after January 30, 1997, statutory penalties and penalties under the RCRA Civil Penalty Policy for, *inter alia*, RCRA Subtitle C violations, were increased 10% above the maximum amount to account for inflation, statutory penalties for, *inter alia*, RCRA Subtitle C violations that occurred after March 15, 2004 through January 12, 2009, were increased by an additional 17.23% above the maximum amount to account for inflation, and statutory penalties for, *inter alia*, RCRA Subtitle C violations that occurred after January 12, 2009, were increased by an additional 9.83% above the maximum amount to account for inflation.

75. For the violations in Count IV, EPA considered a number of factors, including, but not limited to, the statutory factors set forth in Section 9006(e) of RCRA, 42 U.S.C. § 6991e(e), *i.e.*, the compliance history of the Respondent, and other factors EPA considers appropriate under the *U.S. EPA Penalty Guidance For Violations of UST Regulations,* OSWER Directive 9610.12 (November 14, 1990) and *Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009*, Rosemarie A. Kelley (April 6, 2010). EPA also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2008 Nakayama Memorandum, which specify that for violations that occurred after January 30, 1997, statutory penalties and penalties under the *U.S. EPA Penalty Guidance For Violations of UST Regulations* were increased 10% above the maximum amount to account for inflation, statutory penalties for, *inter alia*, RCRA Subtitle I violations that occurred after March 15, 2004 through January 12, 2009, were increased by an additional 17.23% above the maximum amount to account for inflation, and statutory penalties for, *inter alia*, RCRA Subtitle I violations that occurred after January 12, 2009, were increased by an additional 9.83% above the maximum amount to account for inflation.

76. For the violations alleged in Counts V and VI, EPA considered a number of factors, including, but not limited to, the penalty assessment criteria in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), including the seriousness of Respondent's violations and Respondent's good faith efforts to comply, and the *Clean Air Act Stationary Source Civil Penalty Policy* (1991). EPA also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2008 Nakayama Memorandum, which specify that for violations that occurred after January 30, 1997, statutory penalties and penalties under the *Clean Air Act Stationary Source Civil Penalty Policy*, were increased 10% above the maximum amount to account for inflation, and statutory penalties for, *inter alia*, CAA violations that occurred after March 15, 2004 through January 12, 2009, were increased by an additional 17.23% above the maximum amount to account for inflation, and statutory penalties for, *inter alia*, CAA violations that occurred after January 12, 2009, were increased by an additional 9.83% above the maximum amount to account for inflation.

77. Payment of the civil penalty amount required under the terms of Paragraph 73, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference its name and address and the Docket Number of this action (Docket No. RCRA/CAA-03-2014-0110FF);

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

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

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
The Customer Service contact for the above method of payment is Eric Volck at 513-487-2105.

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

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

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

e. All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727

Environmental Protection Agency"

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

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

Physical location of U.S. Treasury Facility:

5700 Rivertech Court
Riverdale, MD 20737

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

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

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

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

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

and to

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

78. In accordance with 40 C.F.R. § 13.3, any debt owed to the EPA as a result of Respondent's failure to make timely payments in accordance with Paragraph 73 above, shall be resolved by negotiation between the EPA and Respondent or by referral to the General Accountability Office.

EFFECT OF SETTLEMENT

79. Payment of the penalty specified in Paragraph 73, above, in the manner set forth in Paragraph 77, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under the RCRA and the CAA for the specific violations alleged in Counts I - VI, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

RESERVATION OF RIGHTS

80. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the RCRA, the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

FULL AND FINAL SATISFACTION

81. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008(a)(1) and (g), 6001(b), 9006, and 9007 of the RCRA, 42 U.S.C. §§ 6928(a)(1) and (g), 6961(b), 6991e, and 6991f, Sections 113 and 118(a) of the CAA, 42 U.S.C. §§ 7413 and 7418(a), for the specific violations alleged in this CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to specific violations alleged herein, and there are no

representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

ANTIDEFICIENCY ACT

82. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with the RCRA, the CAA, the applicable regulations thereunder, or with this CAFO. Nothing in this CAFO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

AUTHORITY TO BIND THE PARTIES

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

EFFECTIVE DATE

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

Navy Northwest Annex Docket No. RCRA/CAA-03-2014-0110FF

For Respondent: The United States Department of the Navy

27JUNE14

Date

M. H. JOHANSSON
Captain, U.S. Navy
Commanding Officer
Naval Support Activity Hampton Roads,
Northwest Annex

For Complainant:

U.S. Environmental Protection Agency,
Region III

July 8, 2014
Date

Stuart E. Hunt
Attorney-Advisor
U.S. EPA – Federal Facilities Enforcement Office

Accordingly, I hereby recommend that the Regional Administrator or his designee, the Regional Judicial Officer, issue the Final Order attached hereto pertaining to Docket No. RCRA/CAA-03-2014-0110FF.

July 11, 2014
Date

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

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

IN RE:	:	
	:	
	:	
United States Department of the Navy,	:	
	:	
Respondent,	:	
	:	**Docket No. RCRA/CAA-03-2014-0110FF**
Naval Support Activity Hampton Roads	:	
(Northwest Annex)	:	
Chesapeake, Virginia	:	
	:	
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 Department of the Navy, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific reference to Sections 22.1(4), 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 on the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based upon a consideration of the factors set forth in Sections 3008(a) and 9006(d) and(e) of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6928(a) and 6991e(d) and (e), EPA's *RCRA Civil Penalty Policy* (2003), *U.S. EPA Penalty Guidance For Violations of UST Regulations* (1990) and *Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009* (2010). Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e), EPA's *Clean Air Act Stationary Source Civil Penalty Policy* (1991), and the Consolidated Rules of Practice. **IT IS HEREBY ORDERED** that Respondent pay a penalty of forty-nine thousand five hundred dollars ($49,500.00) in accordance with the foregoing Consent Agreement. Payment shall be made in the manner set forth in the foregoing Consent Agreement. Payment shall reference Respondent's name and address as well as the EPA Docket Number of this Final Order (Docket No. RCRA/CAA-03-2014-0110FF).

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

8-18-14
Date

Heather Gray
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III