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-03-2015-0072**
Naval Station Norfolk Norfolk, 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(g) and 6001(b) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §§ 6928(g) and 6961(b), Sections 113(d) and 118(a) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(d) 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, and regulations in the authorized Virginia hazardous waste program in connection with Respondent's facility located at the Naval Station Norfolk, Norfolk, Virginia, (the "Facility").

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), on July 30, 2008, effective July 30, 2008 (73 Fed. Reg. 44168), and on September 3, 2013, effective November 4, 2013 (78 Fed. Reg. 54178).

Respondent was previously notified regarding the RCRA Subtitle C allegations recited herein in a letter dated October 8, 2014. In accordance with Section 3008(a)(2) of the RCRA, 42 U.S.C. §§ 6928(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 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. These include requirements promulgated by EPA and those contained in federally enforceable state implementation plans or permits. Title V of the CAA, and implementing regulations at 40 C.F.R. Part 70, require states to develop and submit to EPA operating permit programs, and that EPA act to approve or disapprove each program. EPA fully approved the Title V operating permit programs for the Commonwealth of Virginia effective on November 30, 2001, 40 C.F.R. Part 70, App. A. The Facility was issued Virginia Title V Operating Permit No. TRO60941 on March 24, 2009, for a period of five years. 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 October 8, 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 Facility.

12. EPA conducted an inspection of the Facility on June 20 - 23, 2011 (the "EPA Inspection").

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

14. At the time of the EPA Inspection, the Facility had a Final Permit for Hazardous Waste Storage (EPA ID No. VA6170061463) issued by the Commonwealth of Virginia, effective October 23, 2006, through October 23, 2016 (the "HW Permit").

15. The HW Permit allows the storage of hazardous waste for up to one year in designated portions of Buildings LP-24, LP-159 and SDA-215. Building LP-24 and other areas at the Facility also contain non-permitted hazardous waste storage areas subject to the regulations for large quantity generators.

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

16. Paragraphs 1 through 15 of this CAFO are incorporated by reference as though fully set forth herein.

17. 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.A, which, with exceptions not relevant to these terms, incorporates by reference 40 C.F.R. § 260.10.

18. 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.A, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.

19. 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.A and -261.A, which incorporate by reference 40 C.F.R. §§ 260.10 and 261.2 and .3, including the hazardous waste referred to herein.

20. 9 VAC 20-60-262.A, 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.

21. 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 prior to disposal at the Facility in Building Z-309 and outside of Building W-131.

22. At the time of the EPA Inspection, Building Z-309 was used to store and segregate potentially recyclable materials. The EPA inspector observed seven aerosol cans containing liquids that had not had a hazardous waste determination done. The Respondent disposed of the seven aerosol cans as required by the hazardous waste regulations after the EPA Inspection.

23. During the EPA Inspection, the EPA inspector observed eight drums outside of Building W-131. Three of the drums contained liquids that had not had a hazardous waste determination done. The Respondent disposed of the liquids in the three drums after the EPA Inspection.

24. The liquids in the seven aerosol cans in Building Z-309 and the liquids in the three drums outside of Building W-131 were a "solid waste" as defined in 9 VAC 20-60-260.A and 261.A, which incorporate by reference 40 C.F.R. §§ 260.10 and 261.2.

25. Respondent violated 9 VAC 20-60-262.A, 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 Paragraphs 21 through 24.

COUNT II (RCRA - OPERATING WITHOUT A PERMIT)

26. Paragraphs 1 through 25 of this CAFO are incorporated by reference as though fully set forth herein.

27. Sections 3005(a) and (e) of the RCRA, 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270.A, 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.

28. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a) and (b), provides that a large quantity generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that, *inter alia*:

a. The waste is placed in a container;

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

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

d. Facility personnel satisfactorily complete classroom training or on-the-job training that teaches them to perform their duties in compliance with the hazardous waste regulations; and

e. The owner or operator maintains aisle space adequate to allow the unobstructed movement of personnel and emergency response equipment.

29. During the EPA Inspection in the less-than-90-day storage area in Building LP-20, the EPA inspector observed a drum holding waste aerosol cans that did not have a label with the accumulation start date.

30. During the EPA Inspection, the EPA inspector observed a drum in the less-than-90-day hazardous waste storage area in Building LP-20 that held waste aerosol cans that did not have a label identifying the contents as a hazardous waste.

31. During the EPA Inspection, the EPA inspector observed a 250-ml beaker in the High

Pressure Lab (Room 246) in Building MARCC (V-61) that contained hazardous waste from cleaning equipment that did not have a label identifying the contents as hazardous waste.

32. During the EPA Inspection in Building V-146, one of the two Facility employees who accompanied the EPA inspector told the EPA inspector that he had not had hazardous waste training.

33. During the EPA Inspection of Building SDA-204, the EPA inspector observed that tents that had been treated with barium and that were a D005 hazardous waste were not fully wrapped and did not have adequate aisle space around them to allow unobstructed access for emergency response personnel and equipment.

34. Respondent did not have, at the time of the EPA Inspection, a permit or interim status to store hazardous waste in the portions of the Facility identified in Paragraphs 29 through 33, above, as required by 9 VAC 20-60-270.A, 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).

35. Because of the activities alleged in Paragraphs 29 through 34, above, Respondent violated 9 VAC 20-60-270.A, 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), by operating a hazardous waste storage facility without a permit or interim status.

COUNT III (RCRA - HAZARDOUS WASTE ACCUMULATION DATE)

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

37. 9 VAC 20-60-262.A, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(2), requires the hazardous waste accumulation start date be placed on the container holding the waste.

38. During the EPA Inspection in the less-than-90-day storage area in Building LP-20, the EPA inspector observed a drum holding waste aerosol cans that did not have a label with the accumulation start date.

39. The waste aerosol cans in the drum in building LP-20 were a D001 ignitable hazardous waste.

40. Respondent violated 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.34(a)(2), by not showing the waste accumulation start date on the drum holding the waste aerosol cans in Building LP-20.

COUNT IV (RCRA – HAZARDOUS WASTE LABELS)

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

42. 9 VAC 20-60-262.A, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(3), requires each container that holds hazardous waste to be labelled with the words "Hazardous Waste."

43. During the EPA Inspection, the EPA inspector observed a drum in the less-than-90-day hazardous waste storage area in Building LP-20 that held waste aerosol cans that did not have a label identifying the contents as a hazardous waste.

44. The waste aerosol cans in the drum in Building LP-20 were a D001 ignitable characteristic hazardous waste.

45. During the EPA Inspection, the EPA inspector observed a 250-ml beaker in the High Pressure Lab (Room 246) in Building MARCC (V-61) that contained hazardous waste from cleaning equipment that did not have a label identifying the contents as hazardous waste.

46. The wastes in the 250-ml beaker were a hazardous waste mixture of alcohol and water.

47. Respondent violated 9 VAC 20-60-262.A, which incorporates by reference 40 C.F.R. § 262.34(a)(3), by not marking the drum holding the aerosol cans in Building LP-20 and the 250-ml beaker in the High Pressure Lab with the words "Hazardous Waste."

COUNT V (RCRA – HAZARDOUS WASTE TRAINING)

48. Paragraphs 1 through 47 of this CAFO are incorporated by reference as though fully set forth herein.

49. 9 VAC 20-60-262.A, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(4), which incorporates by reference 40 C.F.R. § 265.16, requires Facility personnel to satisfactorily complete classroom training or on-the-job training that teaches them to perform their duties in compliance with the hazardous waste regulations.

50. During the EPA Inspection in Building V-146, one of the two Facility employees who accompanied the EPA inspector told the EPA inspector that he had not had hazardous waste training.

51. The Facility employee who told the EPA inspector he had not had hazardous waste

training was responsible for the management of hazardous waste at the Facility.

52. Respondent violated 9 VAC 20-60-262.A, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(4), which incorporates by reference 40 C.F.R. § 265.16, because it failed to have the Facility employee referred to above in Paragraphs 50 and 51 satisfactorily complete classroom training or on-the-job training that taught him to perform his duties in compliance with the hazardous waste regulations.

COUNT VI (RCRA - AISLE SPACE)

53. Paragraphs 1 through 52 of this CAFO are incorporated by reference as though fully set forth herein.

54. 9 VAC 20-60-262.A, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(4), which incorporates by reference 40 C.F.R. Part 265, Subpart C, including 40 C.F.R. § 265.35, requires the owner or operator to maintain aisle space adequate to allow the unobstructed movement of personnel and emergency response equipment.

55. During the EPA Inspection of Building SDA-204, the EPA inspector observed tents that had been treated with barium and were a D005 hazardous waste. The tents were on a pallet with approximately a one foot width between the pallet and boxes near the pallet.

56. Respondent violated 9 VAC 20-60-262.A, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a)(4), which incorporates by reference 40 C.F.R. Part 265, Subpart C, including 40 C.F.R. § 265.35, because it failed to maintain aisle space adequate to allow the unobstructed movement of personnel and emergency response equipment around the D005 hazardous waste tents in Building SDA-204.

COUNT VII (RCRA – CONTAINMENT)

57. Paragraphs 1 through 56 of this CAFO are incorporated by reference as though fully set forth herein.

58. HW Permit Condition III.A.1(c), and 9 VAC 20-60-264.A, incorporating 40 C.F.R. § 264.175(b)(1), require the permitted hazardous waste storage areas in Buildings LP-24, LP-159, and SDA-215 to have a base underlying the storage containers which is free from cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

59. During the EPA Inspection, the EPA inspector observed cracks in the floors in the permitted hazardous waste storage areas in Buildings LP-24 and LP-159.

60. Respondent violated HW Permit Condition III.A.1(c), and 9 VAC 20-60-264.A, incorporating 40 C.F.R. § 264.175(b)(1) because, at the time of the EPA Inspection, there were cracks in the floors in the permitted hazardous waste storage areas in Buildings LP-24 and LP-159.

COUNT VIII (RCRA – UNIVERSAL WASTE – PACKAGING)

61. Paragraphs 1 through 60 of this CAFO are incorporated by reference as though fully set forth herein.

62. 9 VAC 20-60-273.A, which incorporates by reference the requirements of 40 C.F.R. § 273.13(d)(1), requires, in relevant part, that universal waste lamps be placed in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. In addition, such containers or packages must remain closed.

63. During the EPA Inspection, the EPA inspector observed an open box of waste fluorescent light tubes in Building SP-82.

64. During the EPA Inspection, the EPA inspector observed eight high pressure sodium bulbs in lamp posts in a fenced area next to a dumpster at Building Q-72 (Wharf Builders).

65. During the EPA Inspection, the EPA inspector observed a fluorescent light tube in a roll-off dumpster at Building P-76.

66. The Respondent disposed of the fluorescent light tubes from Building SP-82 and the roll-off dumpster at Building P-76, and the eight high pressure sodium bulbs next to a dumpster at Building Q-72, after the EPA Inspection.

67. Each of the high pressure sodium bulbs and fluorescent light tubes referred to in Paragraphs 63 through 66, above, is a "universal waste lamp" subject to the Part 273 Standards for Universal Waste Management, as defined in 9 VAC 20-60-273.A, which incorporates by reference the definition of "universal waste lamp" in 40 C.F.R. § 273.9.

68. Respondent violated 9 VAC 20-60-273.A, which incorporates by reference the requirements of 40 C.F.R. § 273.13(d)(1), by having an open box of universal waste lamps in Building SP-82, and by not placing the universal waste lamps in proper containers at Buildings Q-72 and P-76.

COUNT IX (RCRA – UNIVERSAL WASTE – LABELING)

69. Paragraphs 1 through 68 of this CAFO are incorporated by reference as though fully set forth herein.

70. 9 VAC 20-60-273.A, which incorporates by reference the requirements of 40 C.F.R. § 273.14(e), requires, in relevant part, that each lamp or a container or package in which universal waste lamps are contained must be labeled or marked clearly as such.

71. During the EPA Inspection, the EPA inspector observed that the box of waste fluorescent light tubes in Building SP-82 was not marked "Universal Waste – Lamps," "Waste Lamps," or "Used Lamps."

72. Respondent violated 9 VAC 20-60-273.A, which incorporates by reference the requirements of 40 C.F.R. § 273.14(e), by not labelling the box of universal waste lamps in Building SP-82 with the words "Universal Waste – Lamps," "Waste Lamps," or "Used Lamps."

COUNT X (RCRA – UNIVERSAL WASTE – ACCUMULATION DATE)

73. Paragraphs 1 through 72 of this CAFO are incorporated by reference as though fully set forth herein.

74. 9 VAC 20-60-273.A, which incorporates by reference the requirements of 40 C.F.R. § 273.15(c), requires, in relevant part, that a small quantity handler of universal waste must be able to demonstrate its accumulation start date from when it became a waste or was received.

75. During the EPA Inspection, the EPA inspector observed that the box of waste fluorescent light tubes in Building SP-82 was not marked with the accumulation start date for the tubes. In addition, the EPA inspector found no evidence that Respondent had an inventory system or other method that clearly demonstrated the accumulation start dates for these tubes.

76. Respondent violated 9 VAC 20-60-273.A, which incorporates by reference the requirements of 40 C.F.R. § 273.15(c), by not having a means of demonstrating the accumulation start date for the universal waste lamps in Building SP-82.

COUNT XI (CAA—REFRIGERANT REGULATIONS)

77. The allegations contained in Paragraphs 1 through 76 of this CAFO are incorporated by reference herein as though fully set forth herein.

78. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413, 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.

79. 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 40 C.F.R. § 82.152, to ensure leaks are repaired as required by 40 C.F.R. § 82.156(i)(9).

80. During the EPA Inspection, Building NH95 (NSAN HVAC Shop) had an air conditioning unit that normally contained at least 1,650 pounds of R-22 refrigerant.

81. The air conditioning unit in Building NH95 is an "appliance" as defined in 40 C.F.R. § 82.152.

82. R-22, also known as monochlorodifluoromethane, or HCFC-22, is a Class II controlled substance under 40 C.F.R. Part 82, Subpart A, App. B.

83. The R-22 in the air conditioning unit in Building NH 95 is a "refrigerant" as defined in 40 C.F.R. § 82.152.

84. Respondent is a "person" as defined in 40 C.F.R. § 82.152, and is the owner and operator of the air conditioning unit in Building NH95.

85. During the EPA Inspection, a Facility representative told the EPA-authorized inspector that the Respondent did not perform leak rate calculations when servicing the air conditioning unit containing R-22 in Building NH95. In addition, the EPA inspector found no evidence that the Respondent had done leak rate calculations when servicing that unit.

86. 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, the air conditioning unit in Building NH95 that normally contained more than 50 pounds of R-22, a Class II controlled substance.

COUNT XII (CAA-TITLE V PERMIT V.B.2 – SURFACE COATING OPERATIONS -MONITORING)

87. The allegations contained in Paragraphs 1 through 86 of this CAFO are incorporated by reference herein as though fully set forth herein.

88. EPA is authorized by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in federally enforceable state implementation plans or permits.

89. Title V of the Act, and 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.

90. 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.

91. EPA fully approved the Title V operating permit programs for the Commonwealth of Virginia effective on November 30, 2001, 40 C.F.R. Part 70, Appendix A.

92. The Facility was issued Virginia Title V Operating Permit Number TRO60941 on March 24, 2009 (the "Title V Permit") for a period of five years. The Title V Permit was in effect at the time of the EPA Inspection.

93. Title V Permit Condition V.B.2 required the log for the paint booth (Emission Unit PNTS-V-146) in Building V-146 to have the time HEPA filter pressure drop observations were made and the name of the observer.

94. Title V Permit Condition V.B.2 is a federally enforceable permit condition.

95. During the EPA Inspection, the EPA inspector reviewed the logs for the HEPA filter pressure drop for Emission Unit PNTS-V-146. The logs did not have the time of the pressure drop observations or the name of the observer.

96. Respondent violated Title V Permit Condition V.B.2 because the logs for the HEPA filter pressure drop for Emission Unit PNTS-V-146 did not have the time of the pressure drop observations or the name of the observer.

COUNT XIII (CAA – TITLE V PERMIT VI.A.2 – ABRASIVE BLASTING LIMITATION)

97. The allegations contained in Paragraphs 1 through 96 of this CAFO are incorporated by reference herein as though fully set forth herein.

98. Title V Permit Condition VI.A.2 imposed a 90,000 pound per year throughput limit for abrasive blast material used in Emission Unit ABRA-V146 in Building V-146. Compliance with the throughput limit must be demonstrated monthly by adding the total for the most recent calendar month to the individual totals for the preceding 11 months.

99. Title V Permit Condition VI.A.2 is a federally enforceable permit condition.

100. During and after the EPA Inspection, the EPA inspector reviewed the monthly logs for the amount of abrasive blast material used in Emission Unit ABRA-V146. The logs indicated that the 90,000 pound per year limit to be calculated monthly was exceeded from September

2010 through July 2011.

101. Respondent violated Title V Permit Condition VI.A.2 because it exceeded the 90,000 pound per year limit to be calculated monthly from September 2010 through July 2011.

CIVIL PENALTY

102. Respondent consents to the assessment of a civil penalty of Eighty-Three Thousand Nine-Hundred Dollars ($83,900.00) in full satisfaction of all claims for civil penalties for the violations alleged in the above alleged 13 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.

103. For the violations alleged in Counts I - X, 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.

104. For the violations alleged in Counts XI through XIII , 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.

105. Payment of the civil penalty amount required under the terms of Paragraph 102, 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-03-2015-0072);

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-0072 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

106. 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 105 above, shall be resolved by negotiation between the EPA and Respondent or by referral to the General Accountability Office.

EFFECT OF SETTLEMENT

107. Payment of the penalty specified in Paragraph 102, above, in the manner set forth in Paragraph 105, 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 - XIII, 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

108. 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, 40 C.F.R. § 22.18(c). 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

109. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 3008(g) of the RCRA, 42 U.S.C. §§ 6928(g), and Section 113(d) of the CAA, 42 U.S.C. §§ 7413(d), 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

110. 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

111. 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

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

Naval Station Norfolk

Docket No. RCRA/CAA-03-2015-0072

For Respondent:

The United States Department of the Navy

1.30.15

Date

CAPT, USN

Signature

ROBERT E. CLARK

Captain, U.S. Navy

Commanding Officer, Naval Station Norfolk

[redacted]

For Complainant:

U.S. Environmental Protection Agency,
Region III

2/12/15
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-03-2015-0072.

2/23/15
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-03-2015-0072**
Naval Station Norfolk	:	
Norfolk, 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 22.13(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) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a), EPA's *RCRA Civil Penalty Policy* (2003) and *Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009* (2010), and 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 Eighty-Three Thousand Nine-Hundred Dollars ($83,900.00) 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-03-2015-0072).

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.

3/31/15
Date

Denise Harris
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III