

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Daniel L. Isales
Name of Contact person

June 17, 2011
Date

in the Office of Regional Counsel
Office

at 410-305-3016
Phone number

Non-SF Jud. Order/Consent
Decree. DOJ COLLECTS

Administrative Order/
Consent Agreement
FMD COLLECTS PAYMENT

SF Jud. Order/Consent
Decree. FMD COLLECTS

This is an original debt

This is a modification

Name of Person and/or Company/Municipality making the payment

United States Department of the Navy, Naval Support Facility Dahlgren

The Total Dollar Amount of Receivable \$51,899.00 (RCRA C-\$18,826; RCRA I-\$33,073)

(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2011-0154

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office Office of Enf., Compliance, and Environmental Justice/
Federal Facilities Enforcement Office (OECA)

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call:

Name of Contact

Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005

2. Originating Office (ORC)
3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

1. Originating Office
3. Regional Hearing Clerk

2. Designated Program Office
3. Regional Council

**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,

Naval Support Facility Dahlgren
Dahlgren, Virginia

Facility.

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Docket No. RCRA-03-2011-0154

10/10/11

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement ("CA") is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and the U.S. Department of the Navy ("Respondent"), pursuant to Sections 3008, 9006, and 9007 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6928, 6991e, and 6991f, 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 .18(b)(2) and (3).

Regulatory Background

This CA and the accompanying Final Order (collectively "CAFO") resolve violations of RCRA, Subtitles C and I, 42 U.S.C. §§ 6921- 6939e and 6991-6991i, and regulations in the authorized Virginia hazardous waste and underground storage tank programs in connection with Respondent's facility located at the Naval Support Facility Dahlgren, Dahlgren, 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, the Commonwealth of Virginia was granted final authorization by EPA to administer a state underground storage tank management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991i. The provisions of the Commonwealth of Virginia underground storage tank management 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. The provisions of the Commonwealth of Virginia's authorized underground storage tank program are cited as Underground Storage Tanks: Technical Standards and Corrective Action Requirements ("VA UST Regulations"), 9 VAC 25-580-10 *et seq.*

Respondent was previously notified regarding the RCRA allegations recited herein under cover letter dated June 15, 2010. In accordance with Sections 3008(a)(2) and 9006(a)(2) of 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 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 certifies to EPA by its signature herein that it is presently in compliance with the provisions of RCRA referenced herein.

8. The provisions of this CAFO shall be binding upon Complainant and Respondent and any successors, assigns, or other entities or persons otherwise bound by law.
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 RCRA, Subtitle C, 42 U.S.C. §§ 6921- 6939e, RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991i, 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 Facility Dahlgren, Dahlgren, Virginia (the "Facility").
12. EPA conducted an inspection of Respondent's Facility on May 5 – 8, 2008 ("EPA Inspection").

COUNT I (RCRA SUBTITLE C-OPERATING WITHOUT A PERMIT)

13. Paragraphs 1-12 of this CAFO are incorporated by reference as though fully set forth herein.
14. 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 this term, incorporates by reference 40 C.F.R. § 260.10.
15. Respondent is a department, agency and/or instrumentality of the United States and is a "person" as defined by Section 1004(15) of 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.
16. 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.
17. Section 3005(a) and (e) of 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.

18. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), provides that a 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 containers and the generator complies with 40 C.F.R. Part 265, Subparts I, AA, BB and CC;
 - 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 and tank is labeled or marked clearly with the words "Hazardous Waste;" and
 - d. The generator complies with the requirements for owners or operators set forth in 40 C.F.R. Part 265, Subparts B, C, and D, § 265.16, and § 268.7(a)(5).
19. 40 C.F.R. § 262.34(b) provides that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. parts 264 and 265 and the permit requirements of 40 C.F.R. part 270 unless he has been granted an extension to the 90-day period.

Satellite Accumulation

20. 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 waste initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status provided certain condition are met.
21. At the time of the EPA Inspection, the EPA inspector observed that hazardous wastes from Building 1520, the Aegis Building, were placed in a drum located outside of Building 1520.
22. Respondent violated 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.34(c)(1), by placing waste generated from a location which was not at or near the point of generation, in the accumulation area outside of and adjacent to Building 1520.

Contingency Plan-Scope

23. 9 VAC 20-60-265, which incorporates by reference 40 C.F.R. § 265.51, requires in relevant part, the creation of a contingency plan that is designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release or hazardous waste or hazardous waste constituents to air, soil, or surface water.
24. At the time of the EPA Inspection, the Facility's contingency plan did not include all areas of the Facility where hazardous waste management was taking place.
25. Respondent violated 9 VAC 20-60-265, which incorporates by reference 40 C.F.R. § 265.51, by not including in its contingency plan all areas where hazardous waste management was taking place at the Facility.

Contingency Plan—Copy of Contingency Plan

26. 9 VAC 20-60-265, which incorporates by reference 40 C.F.R. § 265.53(b), requires in relevant part, that a facility provide a copy of its contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
27. At the time of the EPA Inspection, the Facility had not provided a copy of its contingency plan to the Naval Support Facility Dahlgren (NSFD) Fire Department.
28. Respondent violated 9 VAC 20-60-265, which incorporates by reference 40 C.F.R. § 265.53(b), by not providing a copy of its contingency plan to the NSFD Fire Department.
29. Because Respondent did not comply with the satellite accumulation requirements, as described in Paragraphs 20-22, above, did not include within its contingency plan all areas where hazardous waste management took place, as described in Paragraphs 23-25, above, and did not provide a copy of its contingency plan to the NSFD Fire Department, as described in Paragraphs 26-28, above, Respondent failed to satisfy the conditions set forth at 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34, for a generator to qualify for an exemption from the permit and/or interim status requirements of RCRA Section 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), and 9 VAC 20-60-270 for the hazardous waste management activities described in Paragraphs 20-28, above.
30. 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 Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e).

31. Because of the activities alleged in Paragraphs 20-28, 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 II (RCRA SUBTITLE C-CONTINGENCY PLAN)

32. Paragraphs 1 through 31 of the CAFO are incorporated by reference as though fully set forth herein.
33. 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.51, requires in relevant part, the creation of a contingency plan that is designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release or hazardous waste or hazardous waste constituents to air, soil, or surface water.
34. At the time of the EPA Inspection, the Facility's contingency plan did not include all areas of the Facility where hazardous waste management was taking place.
35. Respondent violated 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.51, by not including in its contingency plan all areas where hazardous waste management was taking place at the Facility.

COUNT III (RCRA SUBTITLE C-CONTINGENCY PLAN)

36. Paragraphs 1 through 35 of the CAFO are incorporated by reference as though fully set forth herein.
37. 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.53(b), requires in relevant part, that a facility provide a copy of its contingency plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
38. At the time of the EPA Inspection, the Facility had not provided a copy of its contingency plan to the NSFD Fire Department.
39. Respondent violated 9 VAC 20-60-264, which incorporates by reference 40 C.F.R. § 264.53(b), by not providing a copy of its contingency plan to the NSFD Fire Department.

COUNT IV (RCRA SUBTITLE C-UNIVERSAL WASTE)

40. Paragraphs 1 through 39 of the CAFO are incorporated by reference as though fully set forth herein.

41. 9 VAC 20-60-273, 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.
42. 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. § 273.14(c), 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.
43. 9 VAC 20-60-273, 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 the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.
44. At the time of the EPA Inspection, there was a box in Building 242 which contained approximately eleven universal waste lamps. This box was open, was not labeled as containing universal waste lamps, and there was no indication that the Facility had any means of being able to demonstrate the length of time that the universal waste had been accumulating.
45. Respondent violated 9 VAC 20-60-273, which incorporates by reference the requirements of 40 C.F.R. §§ 273.13(d)(1), 273.14(e), and 273.15(c), by having a box of universal waste lamps which was neither closed nor labeled appropriately, and the Facility did not have a means of demonstrating the length of time the universal waste had been accumulating.

COUNT V (RCRA SUBTITLE C-USED OIL)

46. Paragraphs 1 through 45 of the CAFO are incorporated by reference as though fully set forth herein.
47. 9 VAC 20-60-279, which incorporates by reference the provisions of 40 C.F.R. § 279.22(c), requires, in relevant part, that containers of used oil be labeled or marked with the words "used oil."
48. At the time of the EPA Inspection, a 55-gallon drum containing used oil in Building 1282 was labeled as "Non-Regulated Waste."
49. Respondent violated 9 VAC 20-60-279, which incorporates by reference the provisions of 40 C.F.R. § 279.22(c), by having a drum of used oil labeled as "Non-Regulated Waste."

COUNT VI (RCRA SUBTITLE I-BUILDING 1105 RECORDS)

50. Paragraphs 1 through 49 of the CAFO are incorporated by reference as though fully set forth herein.
51. Respondent is a department, agency and/or instrumentality of the United States and is a "person" as defined by Section 9001(6) of RCRA, 42 U.S.C. § 6991(6).
52. Respondent is, and at the time of the violations alleged in this CAFO, was the "owner" and/or "operator" of "underground storage tanks" ("USTs" and "UST systems"), as defined in Section 9001(1), (3), and (4) of RCRA, 42 U.S.C. § 6991(1), (3), and (4) and 9 VAC § 25-580-10. Building 1105 has a 1,000-gallon gasoline UST.
53. Respondent's UST referenced in Paragraph 52, above, is and was at all times relevant hereto a "petroleum UST system" used to store "regulated substances" as defined in 9 VAC 25-580-10, and Section 9001(2) of RCRA, 42 U.S.C. § 6991(2).
54. 9 VAC 25-580-130A requires that the owner and/or operator of new and existing UST systems must provide a method, or combination of methods, of release detection that: can detect a release from any portion of the tank and the connected underground piping that routinely contains product; is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and meets the performance requirements of 9 VAC 25-580-160 or 9 VAC 25-580-170.
55. 9 VAC 25-580-180(2), requires, in relevant part, that the results of any sampling, testing, or monitoring be maintained for at least one (1) year.
56. 9 VAC 25-580-120(2)(c) requires, in relevant part, that the owner and operator maintain documentation of recent compliance with release detection requirements. In addition, 9 VAC 25-580-120(3)(a) requires, in relevant part, that the owner and/or operator must keep the required records at the UST site and immediately available for inspection by the implementing agency. In the alternative, pursuant to 9 VAC 25-580-120(3)(b), the records may be kept at a readily available alternative site and be provided upon request.
57. At the time of the EPA Inspection, the Facility did not have release detection records pertaining to the UST in Building 1105 available for review, either immediately available or readily available.
58. Respondent violated 9 VAC 25-580-180(2), 9 VAC 25-580-120(2)(c), and 9 VAC 25-580-120(3)(a) and (b) by not having release detection records for the UST at Building 1105 available for review.

COUNT VII (RCRA SUBTITLE I-BUILDING 231 RECORDS)

59. Paragraphs 1 through 58 of the CAFO are incorporated by reference as though fully set forth herein.
60. Respondent is, and at the time of the violations alleged in this CAFO, was the “owner” and/or “operator” of USTs and UST systems, as defined in Section 9001(1), (3), and (4) of RCRA, 42 U.S.C. § 6991(1), (3), and (4) and 9 VAC § 25-580-10. Building 231 has one 8,000-gallon gasoline UST and an 8,000-gallon diesel UST.
61. Respondent’s USTs referenced in Paragraph 60, above, are and were at all times relevant hereto “petroleum UST systems” used to store “regulated substances” as defined in 9 VAC 25-580-10, and Section 9001(2) of RCRA, 42 U.S.C. § 6991(2).
62. 9 VAC 25-580-130A requires that the owner and/or operator of new and existing UST systems must provide a method, or combination of methods, of release detection that: can detect a release from any portion of the tank and the connected underground piping that routinely contains product; is installed, calibrated, operated, and maintained in accordance with the manufacturer’s instructions, including routine maintenance and service checks for operability or running condition; and meets the performance requirements of 9 VAC 25-580-160 or 9 VAC 25-580-170.
63. 9 VAC 25-580-180(2), requires, in relevant part, that the results of any sampling, testing, or monitoring be maintained for at least one (1) year.
64. 9 VAC 25-580-120(2)(c) requires, in relevant part, that the owner and operator maintain documentation of recent compliance with release detection requirements. In addition, 9 VAC 25-580-120(3)(a) requires, in relevant part, that the owner and/or operator must keep the required records at the UST site and immediately available for inspection by the implementing agency. In the alternative, pursuant to 9 VAC 25-580-120(3)(b), the records may be kept at a readily available alternative site and be provided upon request.
65. At the time of the EPA Inspection, the Facility did not have release detection records pertaining to the USTs in Building 231, and their associated piping, available for review, either immediately or readily available.
66. Respondent violated 9 VAC 25-580-180(2), 9 VAC 25-580-120(2)(c), and 9 VAC 25-580-120(3)(a) and (b) by not having release detection records for the USTs at Building 231, or their associated piping, available for review.

COUNT VIII (RCRA SUBTITLE I-BUILDING 155 RELEASE DETECTION)

67. Paragraphs 1 through 66 of the CAFO are incorporated by reference as though fully set

forth herein.

68. Respondent is, and at the time of the violations alleged in this CAFO, was the "owner" and/or "operator" of USTs and UST systems, as defined in Section 9001(1), (3), and (4) of RCRA, 42 U.S.C. § 6991(1), (3), and (4) and 9 VAC § 25-580-10. Building 155 has one 1,000-gallon used oil UST.
69. Respondent's UST referenced in Paragraph 68, above, is and was at all times relevant hereto a "petroleum UST system" used to store "regulated substances" as defined in 9 VAC 25-580-10, and Section 9001(2) of RCRA, 42 U.S.C. § 6991(2).
70. 9 VAC 25-580-130A requires, in relevant part, that the owner and/or operator of new and existing UST systems must provide a method, or combination of methods, of release detection that: can detect a release from any portion of the tank and the connected underground piping that routinely contains product; is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and meets the performance requirements of 9 VAC 25-580-160 or 9 VAC 25-580-170.
71. 9 VAC 25-580-160 requires that facilities maintain release detection for USTs through one of the means set forth therein.
72. At the time of the EPA Inspection, the Facility did not have any release detection method for Respondent's UST identified in Paragraph 68, above.
73. Respondent violated 9 VAC 25-580-130A and 9 VAC 25-580-160 by not having release detection for the UST identified in Paragraph 68, above.

COUNT IX (RCRA SUBTITLE I-BUILDING 272 RECORDS)

74. Paragraphs 1 through 73 of the CAFO are incorporated by reference as though fully set forth herein.
75. Respondent is, and at the time of the violations alleged in this CAFO, was the "owner" and/or "operator" of USTs and UST systems, as defined in Section 9001(1), (3), and (4) of RCRA, 42 U.S.C. § 6991(1), (3), and (4) and 9 VAC § 25-580-10. Building 272 has a 12,000-gallon gasoline UST and a 10,000-gallon diesel UST.
76. Respondent's USTs referenced in Paragraph 75, above, are and were at all times relevant hereto "petroleum UST systems" used to store "regulated substances" as defined in 9 VAC 25-580-10, and Section 9001(2) of RCRA, 42 U.S.C. § 6991(2).
77. 9 VAC 25-580-130A requires that the owner and/or operator of new and existing UST

systems must provide a method, or combination of methods, of release detection that: can detect a release from any portion of the tank and the connected underground piping that routinely contains product; is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and meets the performance requirements of 9 VAC 25-580-160 or 9 VAC 25-580-170.

78. 9 VAC 25-580-180(2), requires, in relevant part, that the results of any sampling, testing, or monitoring be maintained for at least one (1) year.
79. 9 VAC 25-580-120(2)(c) requires, in relevant part, that the owner and operator maintain documentation of recent compliance with release detection requirements. In addition, 9 VAC 25-580-120(3)(a) requires, in relevant part, that the owner and/or operator must keep the required records at the UST site and immediately available for inspection by the implementing agency. In the alternative, pursuant to 9 VAC 25-580-120(3)(b), the records may be kept at a readily available alternative site and be provided upon request.
80. At the time of the EPA Inspection, the Facility did not have release detection records pertaining to the USTs in Building 272, or their associating piping, available for review.
81. Respondent violated 9 VAC 25-580-180(2), 9 VAC 25-580-120(2)(c), and 9 VAC 25-580-120(3)(a) and (b) by not having release detection records for the USTs at Building 272, or their associated piping, available for review.

COUNT X (RCRA SUBTITLE I-BUILDING 272 RELEASE DETECTION)

82. Paragraphs 1 through 81 of the CAFO are incorporated by reference as though fully set forth herein.
83. Pursuant to 9 VAC 25-580-130.A. and C., owners and operators of new and existing UST systems must provide a method or combination of methods of release detection monitoring that meets the requirements described therein.
84. 9 VAC 25-580-140.2 provides, in pertinent part, that underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:
 - a. Pressurized piping. Underground piping that conveys regulated substances under pressure must:
 - (1) Be equipped with an automatic line leak detector conducted in accordance with subdivision 1 of 9 VAC 25-580-170; and
 - (2) Have an annual line tightness test conducted in accordance with subdivision 2 of 9 VAC 25-580-170 or have monthly monitoring

conducted in accordance with subdivision 3 of 9 VAC 25-580-170.

85. At the time of the EPA Inspection, the piping associated with the 10,000-gallon diesel UST at Building 272 was pressurized piping.
86. At the time of the EPA Inspection, Respondent was using interstitial monitoring as its leak detection method for the piping associated with the UST described in Paragraph 85, above. At the time of the EPA Inspection, Respondent was not using any other method of leak detection for the piping associated with this tank.
87. With respect to the piping associated with the tank described in Paragraph 85, above, any leak from the interstitial space between piping walls was designed to flow to a sump. This sump had a sump sensor to detect a leak from piping. At the time of the EPA Inspection, the sump sensor associated with this tank was improperly placed in the sump.
88. At the time of the EPA Inspection, Respondent was not properly conducting interstitial monitoring for the piping associated with the tank described in Paragraph 85, above.
89. Respondent violated 9 VAC 25-580-140.2 by failing to properly perform release detection for the piping associated with the tank described in Paragraph 85, above, at the Facility.

CIVIL PENALTY

90. Respondent consents to the assessment of a civil penalty of fifty one thousand eight hundred ninety nine dollars (\$51,899.00) in full satisfaction of all claims for civil penalties for the violations alleged in the above alleged ten 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.
91. For the violations alleged in Counts I - V, 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 and, 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.

92. For the violation alleged in Counts VI - X, EPA considered a number of factors, including, but not limited to: the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(d), 42 U.S.C. § 6991e(d), and EPA's *Penalty Guidance for Violations of UST Regulations* ("UST Guidance") dated November 4, 1990. EPA has 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 UST Guidance were increased 10% above the maximum amount to account for inflation and, statutory penalties for 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.
93. Payment of the civil penalty amount required under the terms of Paragraph 90, 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-03-2011-0154);
 - 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 Jesse White at 301-887-6548, 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. 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

Daniel L. Isales (3RC60)
Environmental Science Center
U.S. Environmental Protection Agency, Region III
701 Mapes Road
Fort Meade, MD 20755-5350

94. 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 93 above, shall be resolved by negotiation between the EPA and Respondent or by referral to the General Accounting Office.

EFFECT OF SETTLEMENT

95. Payment of the penalty specified in Paragraph 90, above, in the manner set forth in Paragraph 93, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under RCRA Subtitle C and RCRA Subtitle I for the specific violations alleged in Counts I - X, 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

96. 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 RCRA, 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

97. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008 and 9006 of RCRA, 42 U.S.C. §§ 6928 and 6991e, 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

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

AUTHORITY TO BIND THE PARTIES

99. 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

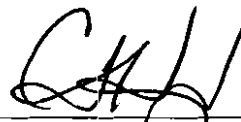
100. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

The United States Department of the Navy

5/13/11

Date



Captain C.T. Hanft
United States Navy
Commanding Officer
Naval Support Activity South Potomac

For Complainant:

U.S. Environmental Protection Agency,
Region III

5/19/11
Date

Daniel L. Isaacs
Daniel L. Isaacs
Assistant Regional Counsel
U.S. EPA - Region III

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-03-2011-0154.

6/7/11
Date

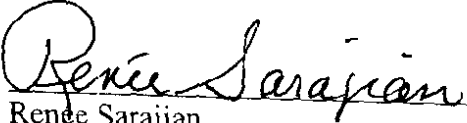
Samantha P. Beers
Samantha P. Beers, Director
Office of Enforcement, Compliance, and
Environmental Justice
U.S. EPA - Region III

6/10/11
Date

Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division
U.S. EPA - Region III

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.

6/15/11
Date


Renee Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

IN RE:

United Stated Department of the Navy

Respondent;

Naval Support Facility
Dahlgren, Virginia

Facility.

Docket No. RCRA-03-2011-0154

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent a true and correct copy of the Consent Agreement and Final Order to the following:

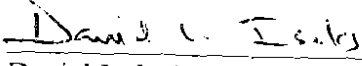
ORIGINAL AND ONE COPY FILED, VIA HAND DELIVERY

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

COPY SERVED, VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Christine Tollefson
NAVFAC Washington
Office of Counsel
1314 Harwood Street, SE
Washington Navy Yard, DC 20374

Dated: June 17, 2011



Daniel L. Isaacs
Assistant Regional Counsel
U.S. EPA, Region III
Environmental Science Center
701 Mapes Road
Fort Meade, MD 20755-5350
(410) 305-3016