



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 04 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles Fearing
Assistant Director, Maintenance and Materials
Ferry Division
North Carolina Department of Transportation
8550 Shipyard Road
Manns Harbor, North Carolina 27953

Re: Consent Agreement and Final Order
NCDOT Ferry Division Shipyard
EPA ID No.: NCD 981 920 580
Docket No. RCRA-04-2014-4010(b)

Dear Mr. Fearing:

Enclosed please find a copy of the Consent Agreement and Final Order (CA/FO) resolving the violations of the Resource Conservation and Recovery Act alleged by U. S. Environmental Protection Division against the Ferry Division of the North Carolina Department of Transportation in Manns Harbor, North Carolina. The effective date of the CA/FO is the date the CA/FO is filed with the Regional Hearing Clerk. While the payment of penalty is due within 30 days of the effective date of the CA/FO, I understand that NCDOT has already sent the penalty payment.

Thank you for your assistance in resolving this matter. If you have any questions, please call me at (404) 562-9572.

Sincerely,

A handwritten signature in blue ink that reads "CÉSAR A. ZAPATA".

César A. Zapata
Chief, RCRA and OPA Enforcement and
Compliance Branch
RCRA Division

Enclosure

cc: Jason Thomas, (via email)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

| | | |
|--------------------------------------|---|---|
| IN THE MATTER OF: |) | DOCKET NO.: RCRA-04-2014-4010(b) |
| |) | |
| Ferry Division of the North Carolina |) | |
| Department of Transportation |) | |
| 8550 Shipyard Road |) | Proceeding Under Section 3008(a) of the |
| Manns Harbor, North Carolina 27953 |) | Resource Conservation and Recovery Act, |
| |) | 42 U.S.C. § 6928(a) |
| EPA ID No.: NCD 981 920 580 |) | |
| |) | |
| Respondent |) | |
| _____ |) | |

RECEIVED
EPA REGION IV
2014 SEP -4 PM 2:49
HEARINGS
CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of the General Statutes of North Carolina (N.C. Gen. Stat.) Chapter 130A, Article 9 [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939f], and the North Carolina Hazardous Waste Rules promulgated pursuant thereto and set forth at 15A North Carolina Administrative Code (NCAC) Subchapter 13A Hazardous Waste Management [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270]. This action seeks the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of N.C. Gen. Stat Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925] and 15A NCAC Subchapter 13A [40 C.F.R. Parts 260 through 270, & 273].
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

II. THE PARTIES

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.
5. Respondent is the Ferry Division of the North Carolina Department of Transportation, a Public Agency organized under the laws of North Carolina. Respondent is the owner and operator of a shipyard located at 8550 Shipyard Road, Manns Harbor, North Carolina 27953 (the Facility).

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of North Carolina (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized State program are found at N.C. Gen. Stat. Sections 130A-290 to 130A-309 [RCRA, 42 U.S.C. §§ 6901 *et. seq.*], and the North Carolina Hazardous Waste Rules, which are found at 15A NCAC Subchapter 13A [40 C.F.R. Parts 260-268, 270 and 279]
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. The N.C. Gen. Stat. § 130A294(c) [Section 3002(a) of RCRA, 42 U.S.C. § 6922(a)], requires the promulgation of standards applicable to generators of hazardous waste. The implementing regulations for these standards are found at 15A NCAC 13A .0107 [40 C.F.R. Part 262].
12. The N.C. Gen. Stat. Sections 130A-290 to 130A-309 [Section 3005 of RCRA, 42 U.S.C. § 6925], set forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at 15A NCAC 13A .0109 (permitted) and 15A NCAC 13A .0110 (interim status) [40 C.F.R. Parts 264 (permitted) and 265 (interim status)].

13. Pursuant to 15A NCAC 13A .0106(a) [40 C.F.R. § 261.2], a “solid waste” is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
14. Pursuant to 15A NCAC 13A .0106(a) [40 C.F.R. § 261.3], a solid waste is a “hazardous waste” if it meets any of the criteria set forth in 15A NCAC 13A .0106(a) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by 15A NCAC 13A .0106(a) [40 C.F.R. § 261.4(b)].
15. Pursuant to 15A NCAC 13A .0106(d) [40 C.F.R. § 261.30], a solid waste is a listed “hazardous waste” if it is listed in 15A NCAC 13A .0106(d) [40 C.F.R. Part 261, Subpart D].
16. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.20], solid waste that exhibits any of the characteristics identified in 15A NCAC 13A .0106(c) [40 C.F.R. §§ 261.12-24] is characteristic hazardous waste and is provided with the EPA Hazardous Waste Numbers D001 through D0043.
17. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.21], a solid waste that exhibits the characteristic of ignitability is a hazardous waste and is identified with the EPA Hazardous Waste Number D001.
18. Pursuant to 15A NCAC 13A .0106(c) [40 C.F.R. § 261.21], a solid waste that exhibits the characteristic of toxicity due to the concentration level of benzene is a hazardous waste and is identified with the EPA Hazardous Waste Number D018.
19. Pursuant to 15A NCAC 13A .0106(d) [40 C.F.R. § 261.31(a)], a solid waste is a listed hazardous waste identified with the EPA Hazardous Waste Number F003 if it is one of the following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixture/blend containing, before use, one or more of the above non-halogenated solvents and a total of ten percent or more (by volume) of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.
20. Pursuant to 15A NCAC 13A .0106(d) [40 C.F.R. § 261.31(a)], a solid waste is a listed hazardous waste identified with the EPA Hazardous Waste Number F005 if it is one of the following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.
21. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], a “generator” is defined as “any person, by site, whose act or process produces hazardous waste identified or listed in 15A NCAC 13A.0106 [40 C.F.R. Part 261], or whose act first causes a hazardous waste to become subject to regulation.”
22. Pursuant to 15A NCAC 13A .0102(c)(1) [40 C.F.R. § 260.10], a “facility” means “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.” A facility may consist of several treatment, storage,

or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

23. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], which references N.C. Gen. Stat. §.130A-290(a)(22), a “person” includes an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency or other legal entity.
24. Pursuant to 15A NCAC 13A .0102(b) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
25. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)], a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the 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 without having interim status, as required by N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925], and without complying with 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(a)], provided that the generator complies with the satellite accumulation area (SAA) conditions listed in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)(i)-(ii)] (hereinafter referred to as the “SAA Permit Exemption”).
26. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)(i)], which incorporates 15A NCAC 13A .0110(i) [40 C.F.R. § 265.173(a)], and which is a condition of the SAA Permit Exemption, a generator is required to keep containers of hazardous waste closed when waste is not being added or removed.
27. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)(ii)], which is a condition of the SAA Permit Exemption, a generator is required to mark satellite accumulation containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.
28. Pursuant to 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)], a generator of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month is a Small Quantity Generator (SQG) and may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status, as required by N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925], provided that the generator complies with the conditions listed in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(d)(1)-(5)] (hereinafter referred to as the “SQG Permit Exemption”).
29. Pursuant to 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11], a person who generates a solid waste, as defined in 15A NCAC 13A .0106(a) [40 C.F.R. §261.2], must determine if that waste is a hazardous waste following the methods articulated in 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11].
30. Pursuant to 15A NCAC 13A .0119 [40 C.F.R. § 273.9] a “Small Quantity Handler of Universal Waste” (SQHUW) is a Universal Waste handler who does not accumulate 5,000 kilograms or more of Universal Waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

31. Pursuant to 15A NCAC 13A .0119 [40 C.F.R. § 273.14], a SQHUW must label or mark the universal waste to identify the type of universal waste as specified in 15A NCAC 13A .0119 [40 C.F.R. § 273.14(e)], which states each lamp or a container or packaged in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamps(s)" or "Waste Lamp(s)", or "Used Lamp(s)."
32. Pursuant to 15A NCAC 13A .0119 [40 C.F.R. § 273.13(d)(1)], a SQHUW must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

IV. EPA ALLEGATIONS AND DETERMINATIONS

33. Respondent is a "person" as defined in 15A NCAC 13A .0102(b), which references N.C. Gen. Stat. § 130A-290 [40 C.F.R. § 260.10].
34. Respondent is the "owner/operator" of a "facility" located in Manns Harbor, North Carolina, as those terms are defined in 15A NCAC 13A .0102(b) and 15A NCAC 13A .0102(c)(1) [40 C.F.R. § 260.10].
35. Respondent maintains, overhauls, and repairs steel hull vessels that are owned by the State of North Carolina. The Facility's operations includes mixing and storing paint, cleaning, painting and sandblasting vessels.
36. Respondent is a "generator" of "hazardous waste" as those terms are defined in 15A NCAC 13A .0102(b) and 15A NCAC 13A .0106(a) [40 C.F.R. §§ 260.10 and 261.3].
37. Respondent is a SQHUW as those terms are defined in 15A NCAC 13A .0119 [40 C.F.R. § 273.9].
38. Respondent generates waste paint related material, which is a hazardous waste identified with the EPA Hazardous Waste Numbers D001, F003, and F005.
39. Respondent generated a hazardous waste from a paint mixture, which included color, epoxy, and thinner (benzene waste), which is identified with the EPA Hazardous Waste Number D018.
40. Respondent most recently notified as a small quantity generator (SQG) of hazardous waste on February 7, 2012.
41. On September 24, 2013, inspectors from the EPA and North Carolina Department of Environment and Natural Resources conducted a RCRA compliance evaluation inspection (CEI) at Respondent's Facility.
42. At the time of the CEI, the Respondent had not made a waste determination on the following solid wastes:
 - a. one (1) drum of paint waste in the Paint Mixing Area. Following the CEI, the Respondent determined the material to be D001 waste until solidified;

- b. one (1) 5-gallon container of murky liquid near the used oil storage tank. Following the CEI, the material was determined to be D001 waste contaminated with benzene (D018);
 - c. two (2) 55-gallon drums on abandoned material near the Diesel Storage Area. Following the CEI, the Respondent determined the material to be D001 waste;
 - d. five (5) 55-gallon drums of waste paint in the Hazardous Waste Storage Area. Following the CEI, the Respondent determined the material to be D001 waste until solidified.
43. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0107(a) [40 C.F.R. § 262.11] by failing to make a hazardous waste determination on solid wastes generated at its Facility.
44. During the CEI, inspectors observed one (1) unmarked container of used solvent cleaner in the SAA that was not properly labeled with the words "Hazardous Waste" or with other words that identified the contents of the container.
45. The EPA therefore alleges Respondent violated N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or without interim status, because Respondent failed to meet a condition of the SAA Permit Exemption by not complying with the labeling requirements of 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)(ii)].
46. During the CEI, inspectors observed the following SAA containers of hazardous waste not properly closed:
- a. one (1) 5-gallon container of used solvent cleaner, a hazardous waste;
 - b. one (1) 55-gallon drum of paint waste, a hazardous waste.
47. The EPA therefore alleges Respondent violated N.C. Gen. Stat. Chapter 130A, Article 9 [Section 3005 of RCRA, 42 U.S.C. § 6925] by storing hazardous waste without a permit or without interim status, because Respondent failed to meet a condition of the SAA Permit Exemption set forth in 15A NCAC 13A .0107(c) [40 C.F.R. § 262.34(c)(1)(i)], by not complying with the container management requirements of 15A NCAC 13A .0110(i) [40 C.F.R. § 265.173(a)].
48. During the CEI, the inspectors observed seventeen (17) boxes of used lamps located in the Warehouse that were not properly labeled with the one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamps(s)," or "Used Lamps."
49. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0119 [40 C.F.R. § 273.14(e)], by failing to label or mark each lamp or container of lamps clearly with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamps(s)," or "Used Lamps."
50. During the CEI, the inspectors observed seventeen (17) boxes of used lamps located in the Warehouse that were not closed.

51. The EPA therefore alleges that Respondent violated 15A NCAC 13A .0119 [40 C.F.R. § 273.13(d)], by failing to manage spent universal waste lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment.

V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

52. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
53. Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
54. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
55. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*
56. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
57. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
58. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
59. Respondent, by signing this CA/FO, certifies that Respondent is currently in compliance with RCRA and the authorized State hazardous waste program.
60. The parties agree that compliance with the terms of this CA/FO shall resolve the violations alleged and the facts stipulated to in this CA/FO.
61. Each party will pay its own costs and attorneys' fees.

VI. PAYMENT OF CIVIL PENALTY

62. Respondent consents to the payment of a civil penalty in the amount of EIGHTEEN THOUSAND SEVEN HUNDRED DOLLARS (\$18,700), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.
63. Payment shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

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

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

64. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and to:

John C. Goodwin
North Compliance and Enforcement Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division, US EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

65. If Respondent fails to remit the civil penalty as agreed to herein, the EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement or, if paying in installments, not paid in accordance with the installment schedule provided above. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:
- a. Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
 - b. Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.
 - c. Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).
66. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

VII. PARTIES BOUND

67. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
68. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
69. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

VIII. RESERVATION OF RIGHTS

70. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
71. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
72. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.

IX. OTHER APPLICABLE LAWS

73. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

X. SERVICE OF DOCUMENTS

74. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Teresa Mann
Regional Counsel
Office of RCRA, OPA and UST Legal Support
U.S. Environmental Protection Agency, Region 4

61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9572

75. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Charles Fearing
Assistant Director, Maintenance and Materials
Ferry Division of North Carolina Department of Transportation
8550 Shipyard Road
Manns Harbor, North Carolina 27953

XI. SEVERABILITY

76. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

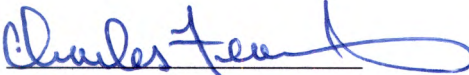
XII. EFFECTIVE DATE

77. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

In the matter of North Carolina Department of Transportation, Docket No. RCRA-04-2014-4010(b):

AGREED AND CONSENTED TO:

North Carolina Department of Transportation

By:  Dated: 08-25-2014

Charles Fearing
Assistant Director, Maintenance and Materials

United States Environmental Protection Agency

By:  Dated: 9-3-14

César A. Zapata, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Ferry Division of the North Carolina Department of Transportation, Docket Number: RCRA-04-2014-4010(b), and have served the parties listed below in the manner indicated:

Teresa Mann
Assistant Regional Counsel
Office of RCRA, OPA and UST Legal Support
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(Via EPA's electronic mail)

Quantindra Smith
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

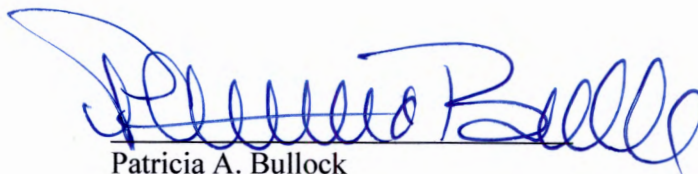
(Via EPA's electronic mail)

Charles Fearing
Assistant Director, Maintenance and Materials
8550 Shipyard Road
Manns Harbor, North Carolina 27953

(Via Certified Mail - Return Receipt Requested)

Date:

9-4-14



Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511