BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 191032029

IN RE:	:	
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United States Department of the Army	:	
	:	
and	:	
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BAE Systems Ordnance Systems Inc.	:	
	:	
Respondents,	:	
	:	Docket No. RCRA-CWA-EPCRA-CAA-03-2018-0014
	:	
Radford Army Ammunition Plant Radford, 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"), the U.S. Department of the Army ("Army") and BAE Systems Ordnance Systems Inc. ("OSI"). The Army and OSI are collectively referenced herein as Respondents. This CA is entered into pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6928(a) and (g), Section 309(g) of the Clean Water Act, as amended ("CWA"), 33 U.S.C. § 1319(g), Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), Sections 113 and 118(a) of the Clean Air Act, as amended ("CAA"), 42 U.S.C. §§ 7413 and 7418(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

Regulatory Background

RCRA 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 Radford Army Ammunition Plant located in Radford, 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); on July 30, 2008, effective July 30, 2008 (73 Fed. Reg. 44168); and on September 3, 2013, effective September 3, 2013 (78 Fed. Reg. 54178).

Notice to the State

Respondents were previously notified regarding the RCRA allegations recited herein under cover letter dated January 26, 2016. In accordance with Section 3008(a)(2) of 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 violations set forth herein.

CWA Background

Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of "pollutants," as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), from a point source into the waters of the United States by any person except in accordance with certain sections of the CWA, or in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Under Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the Administrator of EPA (or a state that has a permit program authorized pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b)) may issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such a permit, including effluent limitations, but only upon compliance with applicable requirements of Section 301 of the CWA, 33 U.S.C. § 1311, or under such other conditions as the Administrator determines are necessary to carry out the provisions of the CWA.

Section 402(k) of the CWA, 33 U.S.C. § 1342(k), provides that compliance with the terms and conditions of a permit issued pursuant to that section shall be deemed compliance with, *inter alia*, Section 301 of the CWA, 33 U.S.C. § 1311. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents which are discharged from

point sources into waters of the United States. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), authorizes EPA to delegate permitting and inspection authority to states that meet certain requirements. The Commonwealth of Virginia is authorized by the Administrator of EPA, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), to administer the NPDES permit program for discharges into navigable waters within its jurisdiction. The Virginia Department of Environmental Quality ("VADEQ") is the "approval authority" as defined in 40 C.F.R. § 403.3(c).

Section 313 of the CWA, 33 U.S.C. § 1323, requires in relevant part that each department, agency, or instrumentality of the executive, legislative and judicial branches of the Federal Government ("Federal Entities") shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity. Nevertheless, nothing in this CAFO shall be interpreted to constitute a waiver of sovereign immunity for Federal Entities with respect to civil penalties for past violations of the CWA.

Notice to the State

Pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), EPA has consulted with the Commonwealth of Virginia regarding this action, and in addition will mail a copy of this CAFO to the appropriate Virginia official.

EPCRA Regulatory Background

EPCRA Section 313(a), 42 U.S.C. § 11023(a), requires subject owners or operators of any facility that, in any calendar year, manufactures, processes or otherwise uses a toxic chemical listed under EPCRA Section 313(c), 42 U.S.C. § 11023(c), in quantities exceeding a regulatory threshold under EPCRA Section 313(f), 42 U.S.C. § 11023(f), to complete and submit a toxic chemical release inventory report *(i.e.,* "Form R" or "Form A") for each such listed toxic chemical. Pursuant to EPCRA Section 313(a), 42 U.S.C. § 11023(a), each required Form R or Form A must include the information required under Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), and must be submitted to EPA and to the designated State agency by July 1 of the year following the year for which such toxic inventory report is required. Nothing in this CAFO should be interpreted to constitute a waiver of sovereign immunity for Federal entities with respect to civil penalties for past violations of the EPCRA.

CAA Regulatory Background

Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI (also referred to as Titles I, IV, V and VI) of the

CAA. Title V of the CAA, 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. 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. 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. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V permit.

Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged violation occurred no more than 12 months prior to the initiation of an administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action. The Administrator and Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Notice to the State

Respondents were previously notified regarding the CAA allegations recited herein under cover letter dated January 26, 2016. 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 and, in accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), will provide a copy of the CAFO to VADEQ.

General Provisions

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

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

3. Respondents agree 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, Respondents hereby expressly waive their rights to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order, or any right to confer with the EPA Administrator pursuant to the RCRA Section 6001(b)(2), 42 U.S.C. § 6961(b)(2).

5. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.

6. Respondents shall bear their own costs and attorneys' fees.

7. The Army certifies to EPA by its signature herein that, upon investigation, to the best of its knowledge and belief, it is presently in compliance with the provisions of the RCRA, the CWA, the EPCRA and the CAA allegedly violated as set forth in this CAFO. OSI certifies to EPA by its signature herein that, upon investigation, to the best of its knowledge and belief, it is presently in compliance with the provisions of the RCRA, the CWA, the EPCRA and the CAA allegedly violated as set forth in this CAFO.

8. The provisions of this CAFO shall be binding upon Complainant and Respondents, their officers, directors, employees, successors, and assigns.

9. This CAFO shall not relieve Respondents of their 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 CWA, the EPCRA, 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. The Army is the owner of the Radford Army Ammunition Plant, off of State Route 114, Radford, Virginia 24141 (the "Facility").

12. Beginning on July 1, 2012, and at all times relevant to this CAFO, OSI was the operator of the Facility.

13. EPA conducted an inspection of the Facility on February 4-12, 2014 ("2014 Inspection").

COUNT I (RCRA SUBTITLE C-FAILURE TO MANIFEST HAZARDOUS WASTE)

14. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

15. The Army is and has been at all times relevant to this CAFO the "owner" 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.

16. OSI is and has been at all times relevant to this CAFO the "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.

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

18. OSI is a corporation and is a "person" as defined by Section 1004(15) of the RCRA, 42 U.S.C. § 6903(15), and 9 VAC 20-60-260, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.

19. Respondents were at all times relevant to this CAFO "generators" of, and have engaged in the "storage" in "containers" of, materials that are "solid wastes" and "hazardous wastes" 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.

20. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.20(a), provides that a generator who transports, or offers for transport, a hazardous waste for offsite treatment, storage or disposal must prepare a Manifest on EPA Form 8700-22.

21. At the time of the 2014 Inspection:
    a. A review of records indicated that on at least three occasions: February 14, 2013, April 25, 2013, and June 19, 2013, Respondents disposed of laboratory samples of ash weighing approximately 30 grams, which had tested as "hazardous wastes," in the general laboratory trash.
    b. In each of the three instances referenced in Paragraph 21.a above, Respondents failed to prepare a Manifest prior to offering the samples of ash for transport for offsite treatment, storage, or disposal.

22. For those instances set forth in Paragraph 21, above, Respondents violated 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.20(a).

COUNT II (RCRA SUBTITLE C-IMPROPER TREATMENT, STORAGE OR DISPOSAL OF A HAZARDOUS WASTE)

23. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

24. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.12(c), provides that a generator must not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number to receive hazardous wastes.

25. At the time of the 2014 Inspection:

a. A review of records indicated that on at least three occasions: February 14, 2013, April 25, 2013, and June 19, 2013, Respondents disposed of laboratory samples of ash weighing approximately 30 grams, which had tested as "hazardous wastes," in the general laboratory trash.
b. In each of the three instances referenced in Paragraph 25.a above, Respondents offered the samples of ash for transport for offsite treatment, storage, or disposal at a facility that had not received an EPA identification number to receive hazardous wastes.

26. For those instances set forth in Paragraph 25, above, Respondents violated 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.12(c).

COUNT III (RCRA SUBTITLE C-ACCEPTING HAZARDOUS WASTE FROM ANOTHER GENERATOR IN THE 90 DAY STORAGE AREA)

27. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

28. Alliant Techsystems Operations LLC ("ATK") is a tenant at the Facility and is permitted, pursuant to Respondents' RCRA Permit VA1210020730 issued by the Commonwealth of Virginia ("RCRA Permit"), to offer its hazardous waste for treatment and storage at the Facility.

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

30. 9 VAC 20-60-262, which incorporates by reference 40 C.F.R. § 262.34(a), provides that a generator may accumulate its own 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. § 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 C and D, § 265.16, and § 268.7(a)(5).

31. At the time of the 2014 Inspection:

a. A review of waste tracking records indicated that Respondents were accepting ATK's hazardous waste in the Facility's 90-day storage area.
b. At the time of the violations alleged herein, the RCRA Permit did not explicitly, allow for the storage of ATK's hazardous waste in the 90-day storage area.

32. 40 C.F.R. § 262.34(a) allows an operator to store only its own hazardous waste in its 90-day storage area, unless the operator's permit provides otherwise. The RCRA Permit, while allowing for the disposal of ATK's hazardous waste in the Facility's Treatment, Storage, and Disposal Facility ("TSDF"), did not explicitly permit the storage of ATK's hazardous waste in the 90-day storage area. Respondents accepted and stored ATK's hazardous waste in the 90-day storage area and in doing so, Respondents violated 9 VAC 20-60-262, which incorporates by reference the requirements of 40 C.F.R. § 262.34(a).

COUNT IV (CWA NPDES PERMIT)

33. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

34. At the time of the 2014 Inspection, the Facility was subject to NPDES Permit No. VA0000248 ("NPDES Permit") issued by the Commonwealth of Virginia. This permit was issued with an effective date of June 10, 2010.

35. Part II(A)2 of the NPDES Permit states that monitoring shall be conducted in accordance with procedures approved under 40 C.F.R. Part 136 unless other procedures have been specified in the permit.

36. Part I(B)15 of the NPDES Permit states that monitoring shall be conducted in accordance with the terms of the approved Operations and Maintenance Manual ("O&M Manual").

37. For certain effluent characteristics, including but not limited to phenols, both 40 C.F.R. Part 136 and the O&M Manual require that grab samples be taken and collected in glass jars.

38. At the time of the 2014 Inspection, a review of records and interviews with facility personnel indicated that during the period between July 2012 and January 2014 at Outfalls 007, 029, 041, 044, and 050, for certain effluent characteristics, including but not limited to phenols, Respondents did not collect samples in accordance with the terms of 40 C.F.R. Part 136 or the O&M Manual.

39. Respondents did not comply with Part II(A)2 or Part I(B)15 of the NPDES Permit as described in Paragraph 38, above, and, therefore, Respondents violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

COUNT V (CWA NPDES PERMIT)

40. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

41. Part I(A) of the NPDES Permit (Final Effluent Limitations and Monitoring Requirements) states that the Biological Oxygen Demand – 5 Day discharge limit monthly average ("BOD") shall be 24 milligrams per liter ("mg/l") and 233 kilograms per day (kg/d).

42. At the time of the 2014 Inspection, a review of records indicated that during February 2013, the monthly average BOD at Outfall 007 was 244 kg/d, which exceeded the monthly average BOD discharge limitation of 233 kg/d.

43. Respondents did not comply with Part I(A) of the NPDES Permit as described in Paragraph 42, above, therefore, Respondents violated Section 301 of the Clean Water Act, 33 U.S.C. §1311.

COUNT VI (CWA NPDES PERMIT)

44. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

45. Part II(F)1 of the NPDES Permit (Unauthorized Discharges) states that "except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or

deleterious substances."

46. At the time of the 2014 Inspection, a review of records indicated that Respondents self-reported to VADEQ that on June 10, 2013, approximately 450 gallons of stormwater containing coal fines bypassed treatment and discharged from Outfall 004, which discharge was not allowed for by the NPDES Permit.

47. Respondents did not comply with Part II(F)1 of the NPDES Permit as described in Paragraph 46, above, therefore, Respondents violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

COUNT VII (EPCRA FORM R)

48. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

49. EPCRA Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22, provide, in relevant and applicable part, that a facility which meets the following criteria for a calendar year is a "covered facility" for that calendar year and must report under 40 C.F.R. § 372.30: [a] the facility has 10 or more full-time employees; [b] the facility is in a Standard Industrial Classification ("SIC") (as in effect on January 1, 1987) major group or industrial code listed in 40 C.F.R. § 372.23(a), for which the corresponding North American Industrial Classification System ("NAICS") (as in effect on January 1, 2007, for reporting year 2008 and thereafter) subsector and industry codes are listed in 40 C.F.R. § 372.23(b) and (c), by virtue of the fact that the facility is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. § 372.23(b) or 40 C.F.R. § 372.23(c); and [c] the facility manufactured (including imported), processed or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 C.F.R. §§ 372.25, 372.27, or 372.28.

50. 40 C.F.R. § 372.30(a) provides, in relevant part, that for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in 40 C.F.R. §§ 372.25, 372.27, or 372.28, at its covered facility for a calendar year, the owner or operator must submit to EPA and to the State in which the covered facility is located a completed EPA Form R (EPA Form 9350-1) or a Form A (EPA Form 9350-2) in accordance with the instructions referred to in 40 C.F.R. Part 372, Subpart E.

51. 40 C.F.R. § 372.30(d) provides, in relevant part, that: "[e]ach report under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year."

52. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.

53. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include any corporation.

54. OSI is a corporation and is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

55. The Facility is a "facility" as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

56. During calendar year 2012, 10 or more full-time employees were employed at the Facility.

57. During calendar year 2012, the Facility had a SIC code of 2892, corresponding to the manufacture of explosives.

58. For purposes of the toxic chemical release reporting requirements, the Facility was a "covered facility," within the meaning of 40 C.F.R. § 372.22 and was required to file a toxic chemical release report under § 372.30(a), in calendar year 2012.

59. "Copper" is listed as a chemical in 40 C.F.R. § 372.65 and is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), and 40 C.F.R. § 372.3.

60. As set forth in Section 313(f)(l)(A) of EPCRA, 42 U.S.C. § 11023(f)(l)(A), and 40 C.F.R. § 372.25(a), the reporting threshold amount for copper processed at a facility is 25,000 pounds.

61. The Facility processed more than 25,000 pounds of copper during the 2012 calendar year.

62. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30, Respondents were required to submit to the Administrator of EPA and the Commonwealth of Virginia by July 1, 2013, a completed Form R or Form A for the copper processed at the Facility during calendar year 2012.

63. The Facility's Form R submissions for calendar year 2012 did not include a Form R for copper processed at the Facility during calendar year 2012. However, on or about May 21, 2014, Respondents did file a complete Form R with the Administrator of EPA and the Commonwealth

of Virginia for the toxic chemical copper processed at the Facility during calendar year 2012.

64. Respondents' failure to timely file a complete Form R or Form A with EPA or the Commonwealth of Virginia for the toxic chemical copper processed at the Facility during calendar year 2012 constitutes a violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

COUNT VIII (CAA—TITLE V PERMIT—OPACITY-BOILERS)

65. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

66. 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.

67. Title V of the CAA, 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.

68. 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.

69. 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. VADEQ is a Permitting Authority for Title V purposes as defined in Section 501(4) of the CAA, 42 U.S.C. § 7661(4)

70. The Facility received a Title V permit from VADEQ effective on January 15, 2004, with an expiration date of January 15, 2009. The Facility's Title V permit number is VA-20656. Since Respondents submitted a timely and complete Title V renewal application, the Title V permit terms were automatically extended beyond the January 15, 2009, expiration date and these terms were in effect at the time of the 2014 Inspection. An administrative amendment, effective May 9, 2013, which was generated to reflect a change in the operating contractor for the Facility, did not alter any of the permit conditions at issue in this CAFO.

71. Each Respondent is a "person" as that term is defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

72. Condition III. (Fuel Burning Equipment Requirements – Boilers PH1 through PH5; Boilers WB1 and WB2) A.(Limitations) 5., which applies to the coal-fired boilers at the Facility, provides: Visible emissions from each of the boiler stacks shall not exceed 20 percent opacity except during one six-minute period in any one hour in which visible emissions shall not exceed 60 percent opacity. (9 VAC 5-40-80, 9 VAC 5-40-940 and 9 VAC 5-80-110). This condition is applicable only to those boilers identified in the Title V permit as Boilers PH1 through PH5 and Boilers WB1 and WB2.

73. For those instances listed on Appendix A to this CAFO, the Facility exceeded the limitation described in Paragraph 72 with respect to Boilers PH1 through PH5. The Facility self-reported these exceedances as part of its Title V monitoring reporting.

74. The Facility violated its Title V operating permit and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), with respect to opacity limitations set forth in Condition III.A.5. of its Title V permit.

COUNT IX (TITLE V PERMIT-INCINERATORS)

75. The allegations in each of the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

76. Condition IX. (Process Equipment Requirements – RCRA Hazardous Waste Incinerators) B. (Monitoring) 1.provides: The permittee shall comply with the operating requirements and operating parameter limits specified in the September 29, 2003 or most current Documentation of Compliance prepared pursuant to 40 CFR 63, Subpart EEE, Section 63.1211; with the operating requirements and operating parameter limits specified in the Notification of Compliance prepared pursuant to 40 CFR 63, Subpart EEE, Section 63.1210; and with monitoring requirements in accordance with 40 CFR 63, Subpart EEE, Section 63.1209. (9 VAC 5-80-110 and 9 VAC 5-60-100)

77. At the time of the 2014 EPA Inspection, the Facility was operating Incinerators 440 and 441.

78. 40 C.F.R. § 63.1209(j) – (o) establishes limits for certain operating parameters for incinerators, including minimum combustion chamber temperature (which would include the kiln combustion chamber and the afterburner combustion chamber), and minimum scrubber water flow rate.

79. Appendix B to this CAFO lists those instances where the Facility did not comply with the requirements of 40 C.F.R. § 63.1209(j) – (o) for minimum combustion chamber temperature and minimum scrubber water flow rate. Respondent alleges power outages affected the Facility's

incinerators at these times.

80. The Facility violated Condition IX.B.1 of its Title V permit and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), for those instances referenced in Paragraph 79, above, where the Facility's incinerators did not meet the requirements of 40 C.F.R. § 63.1209(j) – (o).

CIVIL PENALTY

81. Respondents consent to the assessment of a civil penalty of Two Hundred Seventy-Nine Thousand Seven Hundred Dollars ($279,700.00) in full satisfaction of all claims for civil penalties for the violations alleged above in Counts I, II, and IV through IX of this CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondents must pay the civil penalty no later than **SIXTY (60)** calendar days after the effective date.

82. As alleged in Counts I - II, 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 the violations and the good faith efforts by Respondents 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 6, 2013 memorandum by EPA Assistant Administrator Cynthia Giles entitled, *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)* ("2013 Giles Memorandum").

83. For the violations alleged in Counts IV - VI, EPA considered a number of factors, including, but not limited to, the statutory factors of the nature, circumstances, extent and gravity of the violation, or violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require as provided in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3). EPA has also considered the *Interim Clean Water Act Settlement Policy* (March 1, 1995), the DCIA and the 2013 Giles Memorandum.

84. For the violation alleged in Count VII, EPA has considered a number of factors, including, but not limited to, the statutory factors of Section 325(b)(l)(C) of the EPCRA, 42 U.S.C. § 11045(b)(l)(C), which include the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case, with specific reference to EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act*

(1986) (April 12, 2001). In addition, EPA also considered the DCIA and the 2013 Giles Memorandum.

85. For the violations alleged in Counts VIII - IX, 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 size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and such other factors as justice may require. EPA also considered the *Clean Air Act Stationary Source Civil Penalty Policy* (1991), the DCIA and the 2013 Giles Memorandum.

86. Payment of the civil penalty in the amount of $279,700.00, in satisfaction of Counts I, II, and IV through IX of this CAFO, shall be made by either cashier's check, certified check or electronic wire transfer, in the manner stated below. It is acknowledged that Respondents may issue separate checks in amounts to be agreed between them in order to satisfy the civil penalty.

a. All payments shall reference the name and address of the Respondent making the payment, and the EPA Docket Number of this Consent Agreement, RCRA-CWA-EPCRA-CAA-03-2018-0014;

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
Fine and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Customer service contact: 513-487-2091

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

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077

1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1818

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer 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"

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

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

h. On-Line Payment Option: WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

i. Additional payment guidance is available at:

https://www.epa.gov/financial/makepayment

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

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

88. In the event that the payment required by Paragraph 86 is not made within sixty (60) calendar days after the effective date, interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim shall be managed in accordance with 31 U.S.C. § 3717, Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), and 40 C.F.R. § 13.11. The Army disputes EPA's authority to impose interest charges on a federal agency and reserves its right to dispute any imposition of interest by EPA.

COMPLIANCE ORDER

89. Respondents consent to, and shall, perform the following Compliance Tasks within the time periods specified, in full satisfaction of the violation alleged in Count III of this CAFO.

90. Within **THIRTY** (30) calendar days after the effective date of this Consent Agreement, Respondents shall:

a. **Submit to Ashby Scott of VADEQ** a request to modify or otherwise clarify the Facility's RCRA Permit, in a manner acceptable to VADEQ, to clarify that tenant (e.g., ATK) hazardous waste may be temporarily accumulated in the Facility's 90-day storage area prior to treatment or disposal, but the total time from the date of generation of the tenant hazardous waste to treatment or disposal of such waste may not exceed 90 days; and

b. **Submit to EPA** a copy of the request submitted to VADEQ referenced in subparagraph a. above.

91. The copy of the request submitted by Respondents to EPA pursuant to this Section ("Compliance Order") shall be sent to the attention of:

Ms. Tia Chambers (3EC10)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and to

Thomas A. Cinti (3RC42)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

RESERVATION OF RIGHTS

92. 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 Respondents, 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 CWA, the EPCRA, 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

93. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 3008 of the RCRA, 42 U.S.C. § 6928, Section 309 of the CWA, 33 U.S.C. § 1319, Section 325(c) of the EPCRA, 42 U.S.C. § 11045(c), and Section 113 of the CAA, 42 U.S.C. § 7413, 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

94. Failure to obtain adequate funds or appropriations from Congress does not release the Army from its obligation to comply with the RCRA, the CWA, the EPCRA, 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

95. The undersigned representatives of Respondents certify that each is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the Respondents to it.

PUBLIC NOTICE

96. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on this Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA has consulted with the Commonwealth of Virginia regarding this action, and will mail a copy of this document to the appropriate official.

EFFECTIVE DATE

97. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective 30 days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5).

For Respondent: The United States Department of the Army

_____ _____

Date James H. Scott III
Lieutenant Colonel, U.S. Army
Commanding

For Respondent: BAE Systems Ordnance Systems Inc.

_____ _____

Date

For Complainant: U.S. Environmental Protection Agency, Region III

_____ _____

Date Thomas A. Cinti
Assistant Regional Counsel
U.S. EPA - Region III

_____ _____

Date Daniel L. Isales
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.

_____ _____

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