



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**Commander, Navy Region Mid-Atlantic
for**

**Naval Air Station Oceana – Dam Neck Annex
EPA ID Number VA5170022938**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and the Commander, Navy Region Mid-Atlantic, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the Virginia Waste Management Board, a permanent citizens board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1401 and 10.1-1184.
3. “CNRMA” means Commander, Navy Region Mid-Atlantic, the Department of the Navy’s Regional Command responsible for installation management in Hampton Roads.
4. “Dam Neck” means Naval Air Station Oceana, Dam Neck Annex, with the listed address of 2089 Tartar Ave, Virginia Beach, Virginia.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality.
7. "Oceana" means Naval Air Station Oceana, with the listed address of 953 Hornet Drive, Virginia Beach, Virginia.
8. "Order" means this document, also known as a Consent Order.
9. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
10. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("VHWMR"). The Regulations at 9 VAC 20-60-124, 260-266, -268, -270, -273, and -279 adopt by reference the corresponding provisions of Title 40 of the Code of Federal Regulations ("CFR"), with exceptions as noted in the VHWMR.
11. "Navy" means the United States Department of the Navy.

SECTION C: Findings of Fact and Conclusions of Law

1. Dam Neck and Oceana are Navy installations located in Virginia Beach, Virginia. In general, Dam Neck supports naval training activities, and Oceana supports naval flight operations.
2. Dam Neck is a generator of hazardous waste from its operations, including listed and characteristic hazardous wastes such as halogenated and non-halogenated solvents, corrosives, batteries (some reactive), paint wastes, contaminated petroleum/oil/lubricants, lead wastes and silver wastes. Dam Neck has given notice of hazardous waste activity and has been issued EPA Identification Number VA5170022938 for the site. Dam Neck is classified as a large quantity generator ("LQG") of hazardous waste pursuant to the Regulations since Dam Neck generates greater than 2,200 pounds total hazardous waste per month, on average.
3. On June 19, 2008, Navy environmental staff reported that Navy personnel had transported two 55-gallon drums and one 30-gallon drum (682 lbs total) of spent citrus-based liquid parts cleaner (D-Limonene) from Dam Neck to Oceana in a government vehicle. Oceana holds a separate EPA Identification Number and is considered "off-site" from Dam Neck for hazardous waste management purposes. Navy environmental staff identified D-Limonene as a characteristic hazardous waste because of its ignitability (D001). A review of DEQ files did not find a hazardous waste transporter permit for Dam Neck, or any other groups or persons located at Dam Neck, or the individuals who transported the hazardous waste to Oceana.

4. According to information provided by Navy environmental staff, the containers of hazardous waste transported from Dam Neck to Oceana were accompanied by a Department of Defense Issue Release/Receipt Document form; however, the containers of hazardous waste were not accompanied by an EPA Form 8700-22 uniform hazardous waste manifest.
5. The containers of hazardous waste were transported from Dam Neck Building 1110 to the less than 90-day hazardous waste accumulation area at Oceana, which is not permitted to accept hazardous wastes generated off-site. Oceana does not currently hold a permit, nor has Oceana been granted interim status, as a facility permitted to treat, dispose or store hazardous waste. Navy personnel at Oceana, however, notified Navy environmental staff of the shipment, and Navy environmental staff notified DEQ TRO staff within hours of the incident. DEQ concurred in Navy environmental staff's request to allow the containers to remain at Oceana pending proper disposal, rather than returning the containers to Dam Neck. The wastes have subsequently been managed appropriately.
6. 9 VAC 20-60-420.E of the Regulations requires that all transporters of hazardous waste originating or terminating in Virginia have a hazardous waste transporter permit from the Director. Navy violated the Regulations by transporting two 55-gallon drums and one 30-gallon drum of hazardous waste from Dam Neck to Oceana without a hazardous waste transporter permit from the Director.
7. 40 CFR 262.20(a)(1), adopted by reference in 9 VAC 20-60-262 of the Regulations, requires that a generator of hazardous waste who transports or offers for transport a hazardous waste for offsite treatment, storage or disposal prepare an EPA Form 8700-22 uniform hazardous waste manifest. Navy violated the Regulations by transporting hazardous waste from Dam Neck to Oceana without a uniform hazardous waste manifest.
8. 40 CFR 262.20(b), adopted by reference in 9 VAC 20-60-262 of the Regulations, requires that a generator of hazardous waste must designate on the manifest one facility which is permitted to handle the waste described on the manifest. Navy violated the Regulations by transporting hazardous waste to Oceana, which is not a permitted transfer, storage or disposal facility authorized to accept hazardous waste shipments.
10. CNRMA represents the Navy regarding compliance with the Regulations. DEQ advised CNRMA of the above referenced findings by Notice of Violation dated August 20, 2008.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders CNRMA, and CNRMA voluntarily agrees, to perform the actions described in the Appendix A of this Order. In addition, the Board orders, and CNRMA agrees, to pay a civil charge of \$8,400.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by

check or by electronic transfer of funds to the Treasurer of Virginia. Payment by check shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, CNRMA shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for CNRMA. Payment by electronic transfer of funds to the Treasurer of Virginia shall be made by contacting the DEQ Office of Financial Management at (804) 698-4162 to arrange an ACH electronic transfer of funds. By separate correspondence, CNRMA shall notify TRO of the date and amount of the payment by electronic transfer of funds.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of CNRMA for good cause shown by CNRMA or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to CNRMA by DEQ on August 20, 2008. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For the purposes of this Order only, CNRMA admits the jurisdictional allegations in the Order but does not admit the factual allegations or legal conclusions contained herein.
4. CNRMA declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of substantive or procedural rights to which the CNRMA is entitled by Federal law, the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by CNRMA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by

the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. CNRMA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CNRMA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CNRMA shall notify the TRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the TRO Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and CNRMA. Notwithstanding the foregoing, CNRMA agrees to be bound by any compliance date which precedes the effective date of this Order.
10. In accordance with the Federal Anti-Deficiency Act, the obligations of the Navy under this section are expressly conditioned on the availability of Congressional appropriations, which CNRMA agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, CNRMA will promptly inform the TRO of DEQ. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with CNRMA's consent.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to CNRMA. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CNRMA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, CNRMA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9th day of March, 2009.

Francis L. Daniel
Francis L. Daniel

Commander, Navy Region Mid-Atlantic voluntarily agrees to the issuance of this Order.

By: Cheryl F. Barnett
Date: 1/29/2009

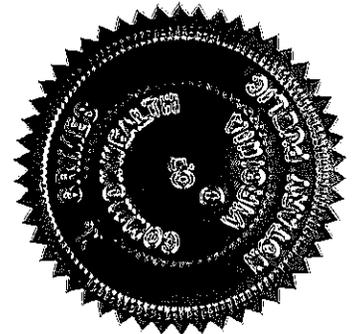
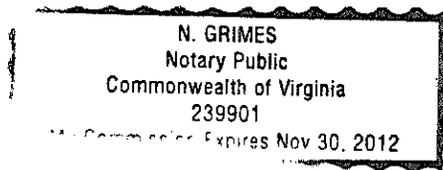
Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 29 day of
January, 2009, by Cheryl F. Barnett.
(month) (name)

Environmental Program Manager, on behalf of Navy Region Mid-Atlantic.
(title)

N. Grimes
Notary Public

My commission expires: 30 NOV 2012



APPENDIX A

1. Within thirty (30) days of the effective date of this Order, CNRMA shall provide to DEQ, for review and approval, an approvable corrective action plan that addresses any and all underlying reasons for the violations referenced in this Order. Upon DEQ approval of the corrective action plan, the corrective action plan shall become a requirement of and enforceable under the terms of this Order.
2. Within 30 days of DEQ approval of the corrective action plan, CNRMA shall implement the plan.
3. Mail all submittals required by this Appendix A to:

Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd
Virginia Beach, VA 23462