COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

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Director

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

Commander, Navy Region, Mid-Atlantic EPA ID Number VA6170061463

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 collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1401 and 10.1-1184.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.

5. "CNRMA" means Commander, Navy Region, Mid-Atlantic (formerly Commander, Navy Region, Mid-Atlantic, Regional Engineer "CNRMA-RE").

6. "NSN" means the U.S. Navy – Naval Station Norfolk, with the listed address of 1510 Gilbert Street, Norfolk, VA 23511.

7. "Order" means this document, also known as a Consent Order.

8. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

9. "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 certain provisions of Title 40 of the Code of Federal Regulations ("CFR").

SECTION C: Findings of Fact and Conclusions of Law

1. CNRMA operates the U.S. Navy – Naval Station Norfolk located in the vicinity of Hampton Boulevard with the listed address of 1510 Gilbert Street, Norfolk, Virginia. CNRMA is responsible for regulatory compliance of the facility, including handling of hazardous waste materials. NSN is a naval base that provides full support to the Atlantic Fleet.

2. NSN is a generator of hazardous waste from the operation and maintenance of naval ships and the base itself. These wastes include halogenated and non-halogenated solvents, corrosives, batteries (some reactive), paint wastes, contaminated petroleum/oil/lubricants, and off-spec, excess, or out-of-date commercial chemical products. NSN is a permitted federal treatment, storage or disposal ("TSD") facility ("facility") and is classified as a large quantity generator ("LQG") pursuant to the Regulations, thus greater than 2,200 pounds total hazardous waste is generated per month, on average.

3. CNRMA was issued a Hazardous Waste Management Facility permit ("permit") for NSN effective September 20, 1994; the permit was revoked and reissued on October 23, 2006. The permit allows for the storage of hazardous waste in specific buildings at NSN.

4. On May 23, 2006 according to CNRMA, two trucks were discovered containing apparent "abandoned waste" parked outside of NSN building LP-24. According to CNRMA environmental staff, the waste in the two trucks was parked without notice to Navy waste or materials handling groups prior to its discovery and was not identified as to the type of waste. After discovery, the trucks were taken to NSN's hazardous waste storage facility where it was determined that the two trucks contained 1,445 lbs and 871 lbs of unmanifested hazardous waste respectively and consisted partly of wastes that were hazardous for the characteristics of ignitability, corrosivity, toxicity, and as listed from non-specific sources. CNRMA subsequently reported that the hazardous waste had apparently been generated on NSN; however, the date of generation of the hazardous waste is unknown.

5. On June 21, 2006, CNRMA environmental staff contacted DEQ by telephone and notified DEQ of the unmanifested hazardous waste from the trucks received at the permitted hazardous waste storage facility.

6. On July 19, 2007, CNRMA environmental staff met with DEQ and indicated that the containers found in the two trucks were not marked, labeled or dated. Furthermore, photographs taken as well as statements from CNRMA environmental staff indicated that some of the containers containing hazardous were open and/or not secured.

7. 40 CFR 262.11, as adopted by reference in 9 VAC 20-60-262 of the Regulations requires that a person who generates a solid waste must determine if that waste is a hazardous waste.

CNRMA violated the Regulations by failing to make a hazardous waste determination of the waste found in the two trucks in front of building LP-24.

8. 40 CFR 262.34 (a)(2) and (a)(3), as adopted by reference in 9 VAC 20-60-262 of the Regulations, requires that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and that while being accumulated on site, each container is labeled or marked clearly with the words "Hazardous Waste". CNRMA violated the Regulations by failing to mark, label, and date the hazardous waste containers found in the trucks.

9. 40 CFR 265.173(a) and (b) as referenced for generators of hazardous waste in 40 CFR 262.34(a)(1)(i) and adopted by reference in 9 VAC 20-60-262 and 265 of the Regulations, require that a container holding hazardous waste must always be closed during storage and that a container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak. CNRMA violated the Regulations by failing to properly close and secure the containers holding hazardous waste in the trucks.

10. DEQ advised CNRMA of the above referenced findings by Notice of Violation dated January 22, 2007.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders the CNRMA, and the CNRMA voluntarily agrees, to pay a civil charge of $10,000.00 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 payable to the "Treasurer of Virginia," and 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.

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 January 22, 2007. 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 the CNRMA agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the 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 the 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 day of _____, 2007.

_____
Francis L. Daniel

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

By: Cheryl F. Barnett

Date: 10/15/07

Commonwealth of Virginia

City/County of NORFOLK

The foregoing document was signed and acknowledged before me this 15th day of October, 2007, by Cherryl F. Barnett, who is
(month) (name)

Env Prog. Mgr ~~U.S. Navy~~, on behalf of Navy Region, Mid-Atlantic.
(title)

Steven P. Cole
Notary Public 352166

My commission expires: 31 December 2008