COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2009
www.deq.virginia.gov

Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

NORFOLK NAVAL SHIPYARD

EPA ID No. VA1170024813

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Norfolk Naval Shipyard, 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. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1401.

2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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, as described in Va. Code § 10.1-1185.

5. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

6. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

7. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(I).

8. "Navy" means the United States Department of the Navy. Navy is a 'person' within the meaning of Va. Code § 10.1-1400.

9. "NNSY" means the Norfolk Naval Shipyard, with the listed address of 2601 Effingham Street, Portsmouth, Virginia. NNSY is a "person" within the meaning of Va. Code § 10.1-1400.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

11. "NSN" means the Naval Station Norfolk, with the listed address of 9742 Maryland Ave, Norfolk, Virginia.

12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

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

14. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

15. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. NNSY is a Navy installation located in Portsmouth, Virginia. In general, NNSY performs a variety of activities in support of ship repair and overhaul operations. Operations at NNSY are subject to the Virginia Waste Management Act and the Regulations.

2. NNSY is a generator of hazardous waste from abrasive blasting, cleaning compounds, electroplating, lab waste, lubrication of equipment, photographic chemicals, painting, paint related material and spill debris and was issued EPA Identification Number VA1170024813. NNSY is a permitted federal treatment, storage and disposal ("TSD") facility and a LQG.

3. Hazardous waste generated on vessels while berthed at NNSY is managed and handled through NNSY, which is considered the generator of the hazardous waste when the waste is off-loaded pier side from Navy ships and submarines.

4. On February 18, 2010, Navy environmental program personnel reported that crew members from the USS Montpelier berthed at NNSY had transported seven six-quart containers of potassium hydroxide solution (30%) from NNSY to NSN. NSN holds a separate EPA Identification Number (VA6170061463) and is not considered part of the NNSY TSD facility; NSN is considered "offsite" to NNSY for hazardous waste management purposes. Once the potassium hydroxide arrived at NSN, Navy environmental personnel identified it as a hazardous waste characteristic for corrosivity, EPA hazardous waste code D002. A review of DEQ files did not find a hazardous waste transporter permit for the USS Montpelier Navy personnel or any other groups or persons located at NNSY for this shipment.

5. According to information provided by Navy environmental personnel, the containers of hazardous waste transported from NNSY to NSN were not accompanied by a uniform hazardous waste manifest.

6. As reported to DEQ, the seven six-quart containers of hazardous waste transported from NNSY to NSN did not have hazardous waste labeling or EPA waste codes. The containers were labeled as hazardous materials with the description of contents and the words 'used and old'.

7. 40 CFR 262.11 and 9 VAC 20-60-262 require that a person who generates a solid waste must determine if that waste is a hazardous waste.

8. 9 VAC 20-60-420(E) requires that all transporters of hazardous waste originating or terminating in Virginia have a hazardous waste transporter permit.

9. 40 CFR 262.20(a)(1) and 9 VAC 20-60-262 require that a generator of hazardous waste who transports or offers for transport a hazardous waste for offsite treatment, storage or disposal must prepare a uniform hazardous waste manifest.

10. 40 CFR 262.32(b) and 9 VAC 20-60-262 require that before transporting hazardous waste or offering hazardous waste for transportation offsite, a generator must mark each container of 119 gallons or less with Hazardous Waste, Generator's Name and Address, Generator's EPA Identification Number and Manifest Number.

11. On March 15, 2010, NNSY submitted a written response to the incident described above. The written response addressed short-term and long-term corrective actions taken by NNSY as a result of the incident and included: not unloading from the USS Montpelier any remaining material shipments including hazardous wastes still onboard until the completion of hazardous waste material training to USS Montpelier staff by NNSY environmental personnel; determination if similar environmental awareness deficiencies exist on other ships at NNSY; issuance of a naval message to Naval Submarine Command regarding proper handling of hazardous materials; issuance of a bulletin to respective peers at other naval installations; briefing of the Submarine Team 1 knowledge sharing network; modification of NNSY's project support process; modification of the Environmental Coordinator training for hazardous materials management for vessels berthed at NNSY; and incorporation of this occurrence into the submarine pre-planning process.

12. On March 18, 2010, based on the initial February 18, 2010 report and follow-up information, the Department issued a Notice of Violation to NNSY for the violations described in paragraphs C(4) through C(10), above.

13. On March 29, 2010, Department staff met with representatives of NNSY to discuss the violations, including NNSY's written response.

14. Based on the initial report by NNSY on February 18, 2010 and the March 29, 2010 meeting, the Board concludes that NNSY has violated the Regulations, as described in paragraphs C(4) through C(10), above.

15. NNSY has submitted documentation that verifies that the violations in paragraphs C(4) through C(10), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders NNSY and NNSY agrees to pay a civil charge of $8,400.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

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

NNSY shall include its Federal Employer Identification Number (FEIN) [31-1575142] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of NNSY for good cause shown by NNSY, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.

3. For the purposes of this Order and subsequent actions with respect to this Order only, NNSY admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law contained herein.

4. NNSY acknowledges that any civil action taken by the Board to enforce the terms of this Order will be in the Circuit Court of the City of Richmond. However, NNSY does not waive any rights it may have to seek removal of such action to Federal court pursuant to 28 United States Code §§ 1441 *et seq.*

5. NNSY 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 NNSY 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.

6. Failure by NNSY 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.

7. 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.

8. NNSY 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. NNSY shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NNSY shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 and in writing within three business days, of learning of any condition above, which NNSY intends 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.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and NNSY. Nevertheless, NNSY agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

a. NNSY petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to NNSY

Termination of this Order, or any obligation imposed in this order, shall not operate to relieve NNSY from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. 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 NNSY agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, NNSY will promptly inform the DEQ Regional Director. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with NNSY's consent or in accordance with the Administrative Process Act.

13. Any plans, reports, schedules or specifications attached hereto or submitted by NNSY and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

14. The undersigned representative of NNSY certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind NNSY to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NNSY.

15. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between parties other than those expressed in this Order.

16. By its signature below, NNSY voluntarily agrees to the issuance of this Order.

And it is so ORDERED this_____ day of _____, 2010.

_____

Francis L. Daniel

Norfolk Naval Shipyard voluntarily agrees to the issuance of the Virginia Waste Management Board Enforcement Action Order by Consent issued to Norfolk Naval Shipyard (EPA ID No. VA1170024813).

By: 2 July 2010

Date: A. J. Mullarky

Commonwealth of Virginia
City of Portsmouth

The foregoing document (consisting of eight pages) was signed and acknowledged before me this 2nd day of July 2010, by Anthony J. Mullarky, Shipyard Commander, on behalf of Norfolk Naval Shipyard.

Victoria L. Sanderlin
Notary Public #7097522

My commission expires: 31 July 2011

VICTORIA L. SANDERLIN
COMMONWEALTH OF VIRGINIA
EXPIRES 07-31-11
#7097522
NOTARY PUBLIC