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TRANSMITTAL FOR PROPOSED MODIFIED FEDERAL FACILITY COMPLIANCE  
AGREEMENT CNC CHARLESTON SC  
3/25/1991  
U S EPA REGION IV



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.  
ATLANTA, GEORGIA 30365

MAR 28 1991

4WD-RCRA&FFB

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Captain Fenton, Base Commander  
U.S. Navy - Charleston Naval Shipyard  
Charleston, South Carolina 29408-6100

RE: Federal Facility Compliance Agreement  
Docket No.: 91-02-FFR  
EPA ID No.: SC0 170 022 560

Dear Captain Fenton:

Enclosed is the proposed modified Federal Facility Compliance Agreement. Please sign and return the original to this office within 10 days of receipt of this letter. We are looking forward to resolving this matter.

If you have any questions, please contact Mr. Jeffrey T. Pallas of my staff at FTS 257-7603.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James H. Scarbrough".

James H. Scarbrough, P.E., Chief  
RCRA and Federal Facilities Branch  
Waste Management Division

Enclosure

cc: Hartsill Truesdale, SC DHEC  
Wayne Fanning, SC DHEC, Trident District  
Melanie Barger, EPA, Washington

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

FEDERAL FACILITY COMPLIANCE AGREEMENT

CHARLESTON NAVAL SHIPYARD AND BASE

UNITED STATES NAVY

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

In the Matter of: )  
 )  
Charleston Naval Shipyard and Base )  
Charleston, South Carolina ) FEDERAL FACILITY  
 ) COMPLIANCE AGREEMENT  
UNITED STATES NAVY )  
 ) DOCKET NO. 91-02-FFR  
 )  
 )  
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I. INTRODUCTION

1. The United States Environmental Protection Agency (EPA) Region IV and the United States Navy - Charleston Naval Shipyard and Base (CNSY), located in Charleston, South Carolina, are the Parties to this Federal Facility Compliance Agreement (FFCA or Agreement), entered into pursuant to Executive Order No. 12088, October 13, 1978, (43 FR 47707) and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act) and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 USC §6901 et seq.

2. This Agreement is entered into by the Parties to assure compliance by CNSY with Subtitle C of RCRA, 42 USC §4921 et seq., and its implementing regulations regarding the covered matters of this Agreement. The terms of this Agreement shall apply to and be

binding upon EPA and CNSY. CNSY shall take all appropriate measures to ensure that its contractors performing work under this Agreement act in a manner consistent with the terms of this Agreement and pursuant to Section 6002 of RCRA. This Part shall not be construed as an agreement by the Parties to indemnify each other or any third party. CNSY shall notify its agents, employees, contractors, and all subsequent owners, operators, management and operating contractors and lessees of the existence of this Agreement.

3. Executive Order 12088 was promulgated to ensure federal compliance with applicable pollution control standards and to provide a plan to achieve and maintain compliance with these standards. The Office of Management and Budget and the Department of Justice will be notified of this Agreement pursuant to their respective duties to assure compliance with the environmental laws under RCRA and Executive Order 12088. The authority to enter into this Agreement has been delegated by the EPA Administrator to the Regional Administrator of EPA Region IV, and subsequently to the Director, Waste Management Division, Region IV.

4. Section 6001 of RCRA, 42 USC §6961, provides that each department, agency and instrumentality of the Executive Branch of the Federal Government having jurisdiction over any solid waste management facility or disposal site, or engaged in any activity resulting in, or which may result in, the disposal or management of solid or hazardous waste shall be subject to, and comply with all

federal, state, interstate, and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements.

5. CNSY recognizes its obligations to comply with RCRA as set forth in Section 6001 of RCRA, 42 USC §6961, its implementing regulations at 40 CFR Parts 124 and 260-270, and R.61-79.124 and R.61-79.260-270 of the South Carolina Hazardous Waste Management Regulations (SCHWMR), and Executive Order 12088, Section 1-3, which authorizes EPA to monitor federal compliance with applicable pollution control standards. EPA and CNSY have reached agreement as to the steps that CNSY must take for CNSY to achieve compliance and to resolve those matters stated herein.

6. This Agreement is not and shall not be construed as a permit and in no way affects requirements for CNSY to obtain all applicable federal, state, or local hazardous waste management permits. This Agreement does not relieve CNSY of any legal obligations under RCRA or the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 USC Section 9601 et seq.

## II. STATEMENT OF FACTS

1. CNSY is a department, agency or instrumentality of the Executive Branch of the Federal Government and is subject to the requirements of Section 6001 of RCRA, 42 USC §6961.

2. Section 3005(a) of Subtitle C of RCRA provides in part that:

[The] Administrator [of the Environmental Protection Agency] shall promulgate regulations requiring each person owning or operating a ... facility for the treatment, storage or disposal of hazardous waste identified or listed under this subtitle to have a permit issued pursuant to this section. [After the effective date of these regulations] the treatment, storage or disposal of any such hazardous waste ... is prohibited except in accordance with such a permit.

42 USC §6925(a).

3. On May 19, 1980, EPA promulgated regulations requiring each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste to have a permit issued pursuant to Section 3005 of RCRA. These regulations are codified at 40 CFR Parts 264, 265, 270 and 124. The original effective date of these regulations was November 19, 1980.

4. Section 3005(e) of RCRA provides that an owner or operator of a facility engaged in the treatment, storage, or disposal of hazardous waste, shall be treated as having been issued a permit pending final administrative disposition of the permit application provided that: (1) the facility was in existence on November 19, 1980; (2) the requirements of Section 3010(a) of RCRA concerning notification of hazardous waste activity have been complied with; and (3) application for a permit has been made. The statutory authority to operate is known as interim status. The regulations implementing these provisions are found at 40 CFR §270.70.

5. On November 17, 1980, pursuant to Section 3005(e) of RCRA, 42 USC §6925(e), CNSY submitted to EPA Part A of its hazardous waste permit application for the CNSY facility, thereby achieving interim status under Section 3005(e) of RCRA.

6. On November 22, 1985, South Carolina was granted final authorization by EPA pursuant to Section 3006 of RCRA, 42 USC §6926, to operate an equivalent hazardous waste program in the State.

7. The standards and requirements contained in the hazardous waste program for which South Carolina has been granted authorization are federally enforceable as authorized by Section 3008(a)(2) of RCRA, 42 USC §6928.

8. Section 3002 of RCRA, 42 USC §6922, and 40 CFR Part 262 provide standards and requirements applicable to generators of hazardous waste.

9. CNSY is a generator of hazardous waste, as these terms are defined in Section 1004(5) of RCRA, 42 USC §6903(5), and 40 CFR §260.10.

10. On October 20, 1986, CNSY submitted its final Part B permit application to obtain RCRA and HSWA permits.

11. On January 2, 1990, CNSY submitted its RCRA Facility Investigation Workplan for SWMUs with potential releases.

12. On May 4, 1990, DHEC and EPA issued CNSY its RCRA and HSWA permits, respectively, for management of hazardous waste. Both permits became effective on June 4, 1990. The DHEC RCRA

permit allows storage of hazardous waste in containers in Building 246 and at DRMO - Building 1606. The EPA HSWA permit includes twenty-four (24) Solid Waste Management Units (SWMU), Land Ban requirements, and Waste Minimization Requirements.

13. On August 20-22, 1990, EPA and DHEC conducted a RCRA inspection of CNSY and documented the following violations of 40 CFR parts 260-270 and SCHWMMR R.61-79.260-270 and an area of concern:

A. Battery Electrolyte Treatment Unit Area (Building 1278):

1) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), §265.31, §265.171 and §268.50(a); R.61-79.265.173(c) and Section IV.B.5. of its EPA-issued HSWA permit. Specifically, a waste drum labeled sulfuric acid was leaking. In addition, CNSY failed to properly label and mark the container with the words "Hazardous Waste" and the date of accumulation.

2) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), §265.31, §265.35 and §268.50; R.61-79.265.173(c), and Section IV.B.5. of its EPA-issued HSWA permit. Specifically, CNSY is storing pallets of expired acids and bases without hazardous waste labels, dates of accumulation, and the required aisle space.

3) CNSY failed to comply with 40 CFR §265.174. Specifically, CNSY failed to conduct weekly inspections of the acids and bases.

B. Paint Shop, Building 223: CNSY failed to comply with 40 CFR §262.11. Specifically, CNSY failed to make a proper

hazardous waste determination for one (1) 55-gallon container labelled "Oakite-PK144."

C. Adjacent to Building 064-40, SHT X64:

1) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), and 268.50(a); and R.61-79.265.173(c).

Specifically, CNSY failed to properly label and mark six (6) 55-gallon containers of seam filler waste, lead waste, adhesive waste, alcohol rags and trichloroethane rags with the words "Hazardous Waste" and the date of accumulation.

2) CNSY failed to comply with 40 CFR §265.32.

Specifically, CNSY failed to have the required equipment, such as a portable fire extinguisher or spill equipment, in this area.

3) CNSY failed to comply with 40 CFR §265.174.

Specifically, CNSY failed to conduct weekly inspections of this area.

D. Pier C Paint Waste Storage (West End):

1) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), §265.173(a) and §268.50(a); R.61-79.265.173(c); and Section IV.B.5. of its EPA-issued HSWA permit. Specifically, CNSY failed to properly label and mark numerous containers of waste paint, thinner waste, and solvent rags with the words "Hazardous Waste" and the date of accumulation, and failed to keep each container of hazardous waste closed during storage.

2) CNSY failed to comply with 40 CFR §265.31.

Specifically, CNSY failed to maintain or operate this area to minimize the possibility of a fire, explosion, or any unplanned

sudden or nonsudden release of hazardous waste to the air, soil or surface water which could threaten human health or the environment. The entire area has waste spilled all over the ground.

3) CNSY failed to comply with 40 CFR §265.32.

Specifically, CNSY failed to have the required equipment, such as a portable fire extinguisher or spill control equipment, in this area.

4) CNSY failed to comply with 40 CFR §265.174.

Specifically, CNSY failed to conduct weekly inspections of this area.

E. Paint C Waste Storage (East End):

1) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), and §268.50(a); R.61-79.265.173(c); and Section IV.B.5. of its EPA-issued HSWA permit. Specifically, CNSY failed to properly label and mark numerous containers of waste paint, thinner waste, and solvent rags with the words "Hazardous Waste" and the date of accumulation.

2) CNSY failed to comply with 40 CFR §265.174.

Specifically, CNSY failed to conduct weekly inspections of this area.

F. Building 246 - Permitted Storage Building:

1) CNSY failed to comply with 40 CFR

§268.50(a)(2)(i), Module I of its DHEC-issued RCRA permit, Section IV.B.5. of its EPA-issued HSWA permit, and R.61-79.264.173(c).

Specifically, CNSY failed to properly label and mark seventeen (17)

55-gallon containers of hazardous waste with the words "Hazardous Waste" and the date of accumulation.

2) CNSY failed to comply with 40 CFR §262.11 and Part 268, and Module I of its DHEC-issued RCRA permit. Specifically, CNSY failed to properly identify its hazardous waste ("D" waste versus and "F" or "U" waste). It should be noted that a similar violation was identified by EPA during an inspection conducted of CNSY on April 24-25, 1989.

3) CNSY failed to comply with 40 CFR §264.35. Specifically, CNSY failed to provide the required aisle space between containers of hazardous waste.

G. Building X-10:

1) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), and §268.50(a); R.61-79.265.173(c); and Section IV.B.5. of its EPA-issued HSWA permit. Specifically, CNSY failed to properly label and mark thirty-seven (37) containers of waste paint, waste monoethanolamine, and waste solvents and an additional twenty (20) pallets containing smaller containers of waste paint and solvents with the words "Hazardous Waste" and the date of accumulation.

2) CNSY failed to comply with 40 CFR §265.173(c). Specifically, CNSY failed to keep twenty (20) pallets of containers and thirty-seven (37) containers of hazardous waste closed during storage.

3) CNSY failed to comply with 40 CFR §265.31 and §265.171. Specifically, CNSY failed to maintain and operate the

area to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste to the soil, air, or surface water which could threaten human health or the environment. The area had numerous spills.

4) CNSY failed to comply with 40 CFR §265.174.

Specifically, CNSY failed to conduct weekly inspections of this area.

5) CNSY failed to comply with 40 CFR §265.31 and §265.177(c). Specifically, CNSY failed to segregate incompatible hazardous waste. Waste hydrogen peroxide is being stored with waste ammonium hydroxide as well as other waste acids and bases on the same pallet.

H. DRMO Storage Area - Building 1606: CNSY failed to comply with 40 CFR §268.50(a)(2)(i); Section IV.B.5. of its EPA-issued HSWA permit; Section VI.B.5. of its DHEC-issued RCRA permit; and R.61-79.264.173(c). Specifically, CNSY failed to properly mark and label numerous containers of hazardous waste with the words "Hazardous Waste" and the date of accumulation.

I. Lab Building No. 13:

1) CNSY failed to comply with 40 CFR §262.34(a)(2), §268.50(a), and Section IV.B.5. of its EPA-issued HSWA permit. Specifically, CNSY failed to mark dates of accumulation on two (2) 55-gallon containers labelled "Hazardous Waste."

2) CNSY failed to comply with 40 CFR §262.11. Specifically, CNSY failed to make a hazardous waste determination on one (1) tank of sludge oil.

3) CNSY failed to comply with 40 CFR §265.174.

Specifically, CNSY failed to conduct weekly inspections of this area.

4) CNSY failed to comply with 40 CFR §265.32.

Specifically, CNSY failed to have the required equipment, such as a portable fire extinguisher or spill control equipment, in this area.

5) CNSY failed to comply with 40 CFR §265.31.

Specifically, CNSY failed to operate and maintain the area to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste to the soil, air, or surface water which could threaten human health or the environment. The area in front of the two (2) 55-gallon containers had spillage.

J. Dry Dock No. 5 Hazardous Waste Storage:

1) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), §268.50(a); R.61-79.265.173(c), and Section IV.B.5. of its EPA-issued HSWA permit. Specifically, CNSY failed to properly label and mark numerous containers of waste paint, thinner waste, and solvent rags with the words "Hazardous Waste" and the date of accumulation.

2) CNSY failed to comply with 40 CFR §265.174.

Specifically CNSY failed to conduct weekly inspections of this area.

3) CNSY failed to comply with 40 CFR §265.173(a).

Specifically, CNSY failed to keep numerous containers of waste paint, solvent rags, and thinner waste closed during storage.

4) CNSY failed to comply with 40 CFR §265.31.

Specifically, CNSY failed to operate and maintain the area to minimize the possibility of fire, explosion or any unplanned sudden or nonsudden release of hazardous waste to the soil, air, or surface water which could threaten human health or the environment. The area had numerous spills.

5) CNSY failed to comply with 40 CFR §265.32.

Specifically, CNSY failed to have the required equipment, such as a portable fire extinguisher or spill control equipment, in this area.

6) CNSY failed to comply with 40 CFR §265.31.

Specifically, CNSY failed to operate and maintain the hazardous waste in the storage shed to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of a hazardous waste to the air, soil, or surface water which could threaten human health or the environment. The shed contained numerous spills.

K. Hazardous Waste Storage Area Near Building 195:

1) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), §268.50(a); R.61-79.265.173(c), and Section IV.B.5. of its EPA-issued HSWA permit. Specifically, CNSY failed to properly label and mark numerous containers of paint, lead, thinner, and solvent rag waste with the words "Hazardous Waste" and date of accumulation.

2) CNSY failed to comply with 40 CFR §265.173(a).

Specifically, CNSY failed to conduct weekly inspections of this area.

3) CNSY failed to comply with 40 CFR §265.31.

Specifically, CNSY failed to maintain and operate this area to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste to the soil, air, or surface water which could threaten human health or the environment. The area had apparent spillage.

4) CNSY failed to comply with 40 CFR §265.35.

Specifically, CNSY failed to provide the required aisle space between containers of hazardous waste for this area.

5) CNSY failed to comply with 40 CFR §265.174.

Specifically, CNSY failed to conduct weekly inspections of this area.

6) CNSY failed to comply with 40 CFR §265.31.

Specifically, CNSY failed to maintain and operate a shipping container which contained waste paint to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste to the soil, air, or surface water which could threaten human health or the environment. Waste had corroded through the shipping container and was leaking into a storm drain immediately next to the container.

7) CNSY failed to comply with 40 CFR §265.31.

Specifically, CNSY failed to maintain and operate four paint storage sheds which contain paint waste to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste to the soil, air, or surface water which could threaten human health or the environment. Each storage shed had spillage.

8) CNSY failed to comply with 40 CFR §265.32.

Specifically, CNSY failed to have the required equipment, such as spill control equipment, in this area.

L. Dry Dock No. 2 Hazardous Waste Storage:

1) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), §268.50(a); R.61-79.265.173(a), and Section IV.B.5. of its EPA-issued HSWA permit. Specifically, CNSY failed to properly mark and label numerous containers of paint waste, waste thinner, and solvent rags with the words "Hazardous Waste" and date of accumulation.

2) CNSY failed to comply with 40 CFR §265.173(a). Specifically, CNSY failed to keep numerous containers of paint waste, waste thinner, and solvent rags closed during storage.

3) CNSY failed to comply with 40 CFR §265.31. Specifically, CNSY failed to maintain and operate this area to minimize the possibility of a fire, explosion or any unplanned sudden or nonsudden release of hazardous waste to the air, soil, or surface water which could threaten human health or the environment. The area had numerous spills.

4) CNSY failed to comply with 40 CFR §265.32. Specifically, CNSY failed to have the required equipment, such as a portable fire extinguisher or spill control equipment, in this area.

5) CNSY failed to comply with 40 CFR §265.174. Specifically, CNSY failed to conduct weekly inspections of this area.

6) CNSY failed to comply with 40 CFR §265.35.

Specifically, CNSY failed to have the required aisle space between containers of hazardous waste.

M. MWR Compound Behind Building X-10:

1) CNSY failed to comply with 40 CFR §262.11.

Specifically, CNSY failed to make a hazardous waste determination on one (1) drum.

2) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), §268.50(a); R.61-79.265.173(c), and Section IV.B.5. of its EPA-issued HSWA permit. Specifically, CNSY failed to properly label and mark four (4) 55-gallon containers of waste paint with the words "Hazardous Waste" and date of accumulation.

3) CNSY failed to comply with 40 CFR §265.31.

Specifically, CNSY failed to operate and maintain this area to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste to the soil, air, or surface water which could threaten human health or the environment. Several drums of waste paint were leaking and spillage was apparent on the ground around the drums.

4) CNSY failed to comply with 40 CFR §265.174.

Specifically, CNSY failed to conduct weekly inspections of this area.

5) CNSY failed to comply with 40 CFR §262.11.

Specifically, CNSY failed to make a hazardous waste determination on an above-ground tank.

N. Building X-12:

1) CNSY failed to comply with 40 CFR §262.34(a)(2), §262.34(a)(3), §268.50(a); R.61-79.265.173(c), and Section IV.B.5.

of its EPA-issued HSWA permit. Specifically, CNSY failed to label and mark five (5) 55-gallon and numerous smaller containers of waste paint with the words "Hazardous Waste" and date of accumulation.

2) CNSY failed to comply with 40 CFR §265.174. Specifically, CNSY failed to conduct weekly inspections of this area.

3) CNSY failed to comply with 40 CFR §265.173(a). Specifically, CNSY failed to keep the five (5) 55-gallon and numerous smaller containers of hazardous waste closed during storage.

4) CNSY failed to comply with 40 CFR §265.32. Specifically, CNSY failed to have the required equipment, such as spill control equipment, in this area.

5) CNSY failed to comply with 40 CFR §265.31. Specifically, CNSY failed to operate and maintain this area to minimize the possibility of a fire, explosion, or unplanned sudden or nonsudden release of hazardous waste to the air, soil, or surface water which could threaten human health or the environment. Several containers of hazardous waste were leaking.

O. Personnel Training Records: CNSY failed to comply with 40 CFR §264.16 and Section II.F. of its DHEC-issued RCRA permit. Specifically, out of 10 records reviewed for employees who manage hazardous waste, 4 had not been trained by CNSY.

P. Operating Record: CNSY failed to comply with 40 CFR §264.73 and Section II.J.1. of its DHEC-issued RCRA permit. Specifically, CNSY failed to have an operating record that lists the location of each hazardous waste within its facility and the quantity at each location.

Q. Contingency Plan: CNSY failed to comply with Module I of its DHEC-issued RCRA permit. Specifically, CNSY failed to follow its approved contingency plan.

R. Closure Plan: CNSY failed to comply with 40 CFR Part 265, Subpart G. Specifically, CNSY failed to update its closure plan for all hazardous waste management units at the facility.

S. Solid Waste Management Unit (SWMU): CNSY failed to comply with Section II.B.1. of its EPA-issued HSWA permit. Specifically, CNSY failed to notify the EPA Regional Administrator of any SWMUs discovered during the course of a field investigation within fifteen (15) days of discovery.

T. The following area of concern was noted during the August 20-22, 1990, EPA and DHEC inspection:

Used Waste Oil Stream Testing Log Book and Points of Contact: Used oil stored in tanks is on occasion off-specification pursuant to 40 CFR, Part 266, Subpart E, and consequently a hazardous waste. A concern was noted as to how and when CNSY makes a hazardous waste determination and how the waste is managed once the waste is determined to be hazardous.

14. On August 29, 1990, CNSY notified DHEC of ten (10) additional SWMUs identified during the August 20-22, 1990,

inspection. The notification was not submitted to EPA as required by the EPA-issued HSWA permit.

15. On November 13, 1990, CNSY notified EPA that a RCRA Facility Assessment (RFA) for the potential ten new SWMUs would be submitted to EPA on or before November 27, 1990, as required by the EPA-issued HSWA permit.

16. On November 27, 1990, CNSY submitted a RFA to EPA for the ten (10) potential SWMUs identified during the August 20-22, 1990, inspection.

17. On December 5, 1990, CNSY notified DHEC (EPA received a carbon copy) that CNSY was committed to the prompt resolution of the environmental problems discovered during the joint EPA/DHEC inspection conducted on August 20-22, 1990.

18. On December 13, 1990, CNSY submitted a letter to EPA clarifying several HSWA violations identified during the August 20-22, 1990, inspection.

19. On January 8, 1991, CNSY submitted a letter to DHEC (EPA received a carbon copy) indicating it had "...completed corrective action on the sites noted during the inspection as well as instituted controls and procedures which we think will help us maintain compliance."

### III. COMPLIANCE AGREEMENT

1. This Agreement is developed pursuant to the procedures set forth in Section 1-6 of Executive Order 12088.

2. Within thirty (30) days after the effective date of this Agreement, CNSY shall submit to EPA and DHEC a detailed written

report of the measures CNSY has taken, or intends to take, to eliminate the violations set forth in Part II, Paragraph 13 of this Agreement, and controls implemented, or to be implemented, to ensure that such violations do not reoccur.

3. Within thirty (30) days of the effective date of this Agreement, CNSY shall submit to EPA and DHEC a certification that demonstrates that CNSY has achieved full compliance with the violations set forth in Part II, Paragraph 13 of this Agreement. CNSY shall immediately cease and desist from the management of hazardous waste at any hazardous waste management unit unless full compliance for that unit with its permit and/or RCRA requirements is achieved and is included in the certification.

4. Within thirty (30) days after the effective date of this Agreement, CNSY shall submit a modification to its RFI Workplan submitted on January 2, 1990, to address the potential releases identified during the August 20-22, 1990, inspection at SWMU No. 5 (Battery Electrolyte Treatment Unit Area) and SWMU No. 21 (Paint Shop, Building 223).

5. Within thirty (30) days after the effective date of this Agreement, CNSY shall submit an Operating Record to EPA and DHEC consistent with 40 CFR Part 264.73.

6. CNSY will submit a plan for a waste minimization program to EPA for review. The waste minimization program will substitute nonhazardous solvents for hazardous solvents where possible and will pursue a program to minimize the generation of hazardous waste throughout the facility. Upon review by EPA and DHEC of the waste

minimization program and receipt of comments by CNSY, CNSY will modify and implement the waste minimization program accordingly. The plan for the waste minimization program will be submitted to EPA within sixty (60) days after the effective date of this Agreement. Two reports updating the waste minimization plan shall be submitted to EPA, with the first report due on January 31, 1992, and the second report due January 31, 1993.

7. Within thirty (30) days of the effective date of this Agreement, CNSY shall develop and submit a plan which addresses the area of concern identified in Part II, Paragraph 13, Subparagraph T of this Agreement. The plan, at a minimum, will address how CNSY manages its used and off-specification oil to ensure compliance with RCRA.

#### IV. ENFORCEABILITY

1. CNSY recognizes its obligations to comply with RCRA as set forth in Section 6001 of RCRA.

2. The provisions of this Agreement, including those related to statutory requirements, regulations, permits, closure plans or corrective action, including recordkeeping, reporting and schedules of compliance, shall be enforceable under citizen suits pursuant to 42 USC §6972(a)(1)(A), including actions or suits by the State and its agencies.

3. CNSY agrees that the State and its agencies are a "person" within the meaning of Section 7002(a) of RCRA.

4. In the event of any action filed under Section 7002(a) of RCRA, alleging any violation of any such requirement of this Agreement, it shall be presumed that the provisions of this

Agreement, including those provisions which address recordkeeping, reporting and schedules of compliance, are related to statutory requirements, regulations, permits, closure plans, or corrective action, and are thus enforceable under Section 7002(a) of RCRA.

V. DISPUTE RESOLUTION

1. Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Part shall apply. In addition, during the pendency of any dispute, CNSY agrees that it shall continue to implement those portions of this Agreement which are not in dispute and which EPA determines can be reasonably implemented pending final resolution of the issue(s) in dispute.

2. If EPA determines, in writing, that all or part of those portions of work which are affected by the dispute should stop during the pendency of the dispute, CNSY shall discontinue implementing those portions of the work.

3. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be implemented to resolve a dispute.

4. Within thirty (30) days of the date of any action by EPA which leads to or generates a dispute, CNSY shall submit to EPA a written statement of dispute setting forth the nature of the dispute including any elements of work, submittals or actions

affected by the dispute, CNSY's position with respect to the dispute, the information CNSY is relying upon to support its position, and any impact such dispute may have on specified schedules, elements of work, submittals, or actions required by this Agreement. If CNSY does not provide such written statement to EPA within this thirty (30) day period, CNSY shall be deemed to have agreed with the action taken by EPA which led to or generated the dispute.

5. Where EPA issues a Written Notice of Position, if CNSY disagrees with the Written Notice of Position, it may provide EPA with a written statement of dispute, setting forth the nature of the dispute, its position with respect to the dispute, the information it is relying upon to support its position, and any impact such dispute may have on specified schedules, elements of work, submittals, or actions required by the Agreement.

6. If CNSY fails to provide a written statement of dispute within thirty (30) days of receipt of the Written Notice of Position, the Parties shall be deemed to have agreed with the Written Notice of Position.

7. Upon receipt of the written statement of dispute, the Parties shall engage in dispute resolution among the Project Coordinators and/or their immediate supervisors.

8. The Parties shall have fourteen (14) days from the receipt by EPA of the written statement of dispute to resolve the dispute.

9. During this period, the Project Coordinators shall meet as many times as are necessary to discuss and attempt resolution of

the dispute. Any agreed resolution shall be in writing, signed by all Parties.

10. If agreement cannot be reached on any issue within this fourteen (14) day period, each Party shall state its position in writing and provide it to the other Party. Either Party may, within ten (10) days of the conclusion of the fourteen (14) day dispute resolution period, submit a written notice to the other Party escalating the dispute to the Dispute Resolution Committee (DRC) for resolution.

11. If neither Party elevates the dispute to the DRC within this ten (10) day escalation period, the Parties shall be deemed to have agreed with EPA's position with respect to the dispute.

12. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached pursuant to Part V, Paragraphs 4-10. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement.

13. Following escalation of a dispute to the DRC as set forth in Part V, Paragraphs 6-11, the DRC shall have thirty (30) days to unanimously resolve the dispute. Any agreed resolution shall be in writing, signed by all Parties.

14. If the DRC is unable to unanimously resolve the dispute within this thirty (30) day period, each Party shall put its position in writing and provide it to the other Party. Either

Party may, within ten (10) days of the conclusion of the thirty (30) day dispute resolution period, submit a written notice of dispute to the Administrator of EPA for final resolution of the dispute.

15. In the event that the dispute is not escalated to the Administrator of EPA within the designated ten (10) day escalation period, the Parties shall be deemed to have agreed with the EPA DRC representative's final written position with respect to the dispute.

16. Upon escalation of a dispute to the Administrator of EPA pursuant to Part V, Paragraph 14, the Administrator will review and resolve such dispute as expeditiously as possible but not later than sixty (60) days. Upon resolution, the Administrator shall provide CNSY with a written final decision setting forth resolution of the dispute.

17. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region IV. The CNSY designated member is CNSY's equivalent position. Notice of any delegation of authority from either Party's designated representative on the DRC shall be provided to the other Party.

18. The pendency of any dispute under this Part shall not affect CNSY's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time not to exceed the actual delay caused by the resolution of any good faith dispute in accordance with the

procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable schedule. The determination of elements of work, submittals, or actions affected by the dispute shall be determined by EPA and shall not be subject to dispute under this Part.

19. Within fourteen (14) days of resolution of a dispute pursuant to the procedures specified in this Part, CNSY shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

20. Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of any dispute arising under this Agreement. CNSY shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Part of this Agreement.

## VI. FUNDING

1. CNSY shall seek all existing funds necessary to correct the violations identified above, and/or, if necessary, shall seek new authorizations from Congress to achieve the most expeditious schedule of compliance in accordance with Sections 1-4 and 1-5 of Executive Order 12088 as implemented by the Office of Management and Budget Circular A-106 (as amended). Section 1-5 of Executive Order 12088 states, "The head of each executive agency shall ensure

that sufficient funds for compliance with applicable pollution control standards are requested in the Agency budget." Failure to obtain adequate funds or appropriations from Congress does not in any way release CNSY from its obligation to comply with the Resource Conservation and Recovery Act, as amended, 42 USC §6901 et seq.

2. If, however, sufficient funds are not appropriated by Congress as requested, and existing funds are not available to achieve compliance with the schedules provided in this Agreement, and CNSY reports the lack of funds in accordance with Part VII, Paragraph 1 of this Agreement, any resulting delay shall be presumed to have been due to circumstances beyond the reasonable control of CNSY which could not have been overcome by due diligence within the context of Part VIII, Paragraph 1 of this Agreement. Nothing in this Agreement shall be construed to require CNSY to obligate funds in any fiscal year in contravention of the Anti-Deficiency Act, 31 USC §1341.

#### VII. REPORT REQUIREMENTS

1. If CNSY subsequently determines that funds are not appropriated from Congress as requested and existing funds are not available to achieve compliance in accordance with the schedule, CNSY shall notify EPA immediately in writing.

2. CNSY shall submit monthly progress reports by the fifteenth of each month until the compliance activities set forth herein have been completed, and a final report submitted within one

(1) month of completion of the final compliance activities. The progress reports will be submitted to the following officials of EPA's Region IV and South Carolina DHEC:

Chief, East Unit  
RCRA Compliance Section  
U.S. EPA, Region IV  
345 Courtland Street, NE  
Atlanta, Georgia 30365

Director  
Division of Compliance Monitoring  
and Enforcement  
South Carolina Department of Health  
and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201

#### VIII. DELAY IN PERFORMANCE

1. If any event occurs which causes delay in the achievement of the requirements of this Agreement, CNSY shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of CNSY, which could not have been overcome by the exercise of due diligence. If CNSY meets this burden, the time for performance of the affected task shall be extended in writing for a period equal to the delay resulting from such circumstances. If the Parties cannot agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of CNSY, or cannot agree on the period for extending performance, the dispute resolution procedures of this Agreement shall apply. CNSY shall adopt all reasonable measures to avoid or minimize delay. Failure of CNSY to comply with the notice

requirements of this paragraph shall constitute a waiver of CNSY's right to request an extension of time. As soon as CNSY becomes aware of a delay, CNSY shall promptly notify EPA's designated Project Coordinator orally of the delay and shall, within thirty (30) calendar days of oral notification to EPA, notify EPA in writing of the cause and anticipated length of the delay, and the timetable in which CNSY intends to implement these measures.

IX. AMENDMENT

In the event there is an amendment of RCRA after the effective date of this Agreement, or changes to the regulations promulgated thereunder, the compliance schedule herein may be renegotiated to reflect these changes. Such renegotiation shall be governed by Executive Order 12088. During the pendency of any renegotiation, the compliance schedule, to the extent that it does not conflict with statutory or regulatory changes, shall remain in effect unless specifically waived by EPA, Region IV.

X. ACCESS/DATA/DOCUMENT AVAILABILITY

1. Subject to the presentation of proper credentials and compliance with applicable security regulations, EPA and DHEC will be permitted to enter all areas of CNSY which handle hazardous waste, or which contain information referred to in this Agreement. EPA and DHEC will be permitted to inspect records, logs, and other documents relevant to implementation of this Agreement (other than attorney work-product or attorney-client privileged material);

verify compliance by CNSY with this Agreement; review the progress of CNSY, its contractors, and lessees in carrying out the activities under this Agreement; conduct tests which EPA and DHEC deem necessary; and verify data submitted to EPA and DHEC by CNSY. CNSY shall honor all requests for access to CNSY made by EPA and DHEC, so long as the provisions of this Part are fulfilled.

2. Information, records, or other documents produced under the terms of this Agreement by EPA and CNSY shall be available to the public except (a) those identified to EPA by the Department of Defense as classified, or unclassified but controlled; (b) those that could otherwise be withheld pursuant to the Freedom of Information Act or the Privacy Act, unless expressly authorized for release by the originating agency; (c) those still considered to be in draft or unfinished form; (d) those containing attorney work-product or attorney-client privileged material; or (e) those subject to business confidentiality claims. Documents or information so identified shall be handled in accordance with applicable regulations. No document marked "draft" may be made available to the public without prior written approval of the generating Party. Unless otherwise restricted by Subsections (a), (b) and (d), if the document is draft final (pending public review) or final and no confidentiality claim under Subsection (e) accompanies information which is submitted to any Party, then the information may be made available to the public without further notice to the originating Party.

3. Notwithstanding any provisions of this Agreement, all statutes and Executive Orders concerning the handling of

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unclassified controlled nuclear information, unclassified Naval Nuclear Propulsion Information, restricted data and national security information, including "need to know" requirements, shall be applicable to any access of information or facilities covered under the provisions of this Agreement. EPA reserves its right to seek to otherwise obtain access to such information or facilities in accordance with applicable law.

#### XI. SANCTIONS

1. In the event that CNSY fails to bring its facility, or any hazardous waste management unit located at the facility, into full compliance with the regulatory requirements specified in this Agreement within the time periods which are specified herein, subject to "Funding" and "Delay in Performance" Sections of this Agreement, EPA may require CNSY to immediately cease and desist from the management of hazardous waste at any hazardous waste management unit located at the facility, unless and until the facility and/or the hazardous waste management unit is brought into compliance, or a Presidential exemption is obtained pursuant to Section 6001 of RCRA, or Congress grants a petition for specific legislative relief. In such event, EPA reserves the right to pursue any remedies that it may have pursuant to law.

2. Provided that compliance is achieved, this Agreement is considered to be in lieu of any other EPA civil, judicial, or administrative enforcement action against CNSY for the violations specified. This Agreement in no way modifies Section 7002 RCRA, 42 USC §6972.

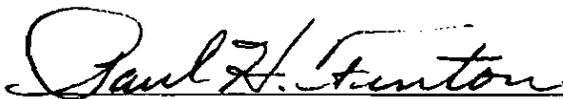
XII. EFFECTIVE DATE

This Agreement is effective five (5) calendar days after signature by EPA.

XIII. TERMINATION AND SATISFACTION

The provisions of this Agreement shall be deemed satisfied upon CNSY's receipt of written notice from EPA that CNSY has demonstrated, to the satisfaction of EPA, that the terms of this Agreement, including any additional tasks determined by EPA to be required pursuant to this Agreement, have been satisfactorily completed. This notice shall not, however, terminate CNSY's obligation to comply with any continuing obligations hereunder.

3/18/1991  
Date

  
United States Navy  
Charleston Naval Shipyard  
Permittee - Naval Base South Complex

\_\_\_\_\_  
Date

\_\_\_\_\_  
Donald J. Guinyard, Acting Director  
Waste Management Division  
U.S. Environmental Protection  
Agency, Region IV