BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:	:	
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Alliant Techsystems Operations, LLC	:	
	:	
Respondent,	:	
	:	Docket No. CAA-CWA-RCRA-03-2021-0024
	:	
Allegany Ballistics Laboratory,	:	
Keyser (Rocket Center), West Virginia,	:	
	:	
Facility.	:	

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Alliant Techsystems Operations, LLC ("ATO" or "Respondent"). This Consent Agreement 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); Sections 309(g) and 311(b)(6) of the Clean Water Act, as amended ("CWA"), 33 U.S.C. §§ 1319(g) and 311(b)(6); Section 113(d) of the Clean Air Act, as amended ("CAA"), 42 U.S.C. § 7413(d); 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 .18(b)(2) and (3). This Consent Agreement and the accompanying Final Order resolve violations of the RCRA, CWA and CAA at the Allegany Ballistics Laboratory, 210 State Route 956, Keyser (Rocket Center), WV 26726 (the "Facility").

Regulatory Background

RCRA Background

The State of West Virginia ("West Virginia" or the "State") has received federal authorization to administer a Hazardous Waste Management Program in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The federally-authorized West Virginia Hazardous Waste Management Regulations (hereinafter, "WVHWMR") are set forth in Title 33, Leg. Rule, Division of Environmental Protection, Office of Waste Management, Series 20, Parts 33-20-1 through 33-20-15 (33 Code of State Regulations 20, abbreviated as 33CSR20 and hereinafter cited as WVHWMR § 33-20-1, et seq.). The provisions of the WVHWMR incorporate by reference rules promulgated in 40 C.F.R. Parts 260-279 through June 16, 2010 and have become requirements of RCRA Subtitle C that are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).

The Facility (EPA RCRA ID No. WV0170023691) is permitted as a RCRA Treatment, Storage, and Disposal facility (TSDF) and has notified as a large quantity generator (LQG). The Facility has a RCRA hazardous waste management permit that allows Respondent to store hazardous and non-hazardous waste in containers at two storage pads, Buildings 366 and 810, and to operate Open Burning Grounds to treat (by open burning) waste propellant and explosives at the Facility. WVDEP issued Respondent its current Hazardous Waste Management Renewal Permit (Permit I.D. Number WVO 170 023 691) for the Facility (hereinafter, "Facility HWM Permit") on October 14, 2015, in accordance with the West Virginia Hazardous Waste Management Act (Chapter 22, Article 18 of the West Virginia Code) and WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. Part 270, and it became effective on November 14, 2015. The Facility HWM Permit remains in effect through November 13, 2025.

On October 6, 2015, and in accordance with W.Va. Code §§ 22-5-1. et seq., and 45 C.S.R. 25, WVDEP issued Respondent Permit R25-HW-X-2. Permit R25-HW-X-2, entitled "Permit to Operate Open Burning Grounds for the Treatment of Energetic Hazardous Waste," authorizes the operation of open burning grounds ("Open Burning Grounds") at the Facility and contains requirements for preventing and controlling organic air emissions associated with hazardous waste management utilizing containers. Permit R25-HW-X-2 (hereinafter, "OB Permit") forms Module V of the current Facility HWM Permit. The OB Permit became effective on October 6, 2015 and expires on March 30, 2025.

Respondent has not been issued a permit (pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or WVHWMR § 33-20-11.1) for the storage of hazardous waste at any <u>other</u> area of the Facility. However, the Facility does maintain numerous less than 90-day hazardous waste accumulation areas (or "HWAA") and satellite accumulation areas (or "SAA").

Notice to the State

Respondent was previously notified regarding the RCRA regulatory and permit allegations recited herein under cover letter dated April 11, 2019. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), EPA has also notified the State of West Virginia, through Mr. Joe Sizemore, Assistant Chief Inspector, WVDEP Division of Water and Waste Management, Hazardous Waste Section, of the RCRA regulatory and RCRA permit violations that are alleged herein and of EPA's intent to enter into this Consent Agreement and accompanying Final Order with Respondent in commencement and resolution of this action. EPA will also mail a copy of this Consent Agreement and Final Order to WVDEP upon execution and filing of the same.

CWA National Pollutant Discharge Elimination System 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, 42 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 State of West 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 West Virginia Department of Environmental Protection ("WVDEP") is the "approval authority" as defined in 40 C.F.R. § 403.3(c).

The WVDEP Division of Water and Waste Management issued NPDES Water Pollution Control Permit number WV0020371 ("the NPDES Permit") to Respondent, as the Facility operator, on November 6, 2013. The NPDES Permit, which became effective on January 1, 2014, initially was scheduled to expire in 2017 but was extended on multiple occasions, through at least September 30, 2018. The NPDES Permit specifically covers point source discharges from the portion of the Facility generally referred to as "Plant 1" (a 1,577-acre portion of the Facility owned by the Naval Sea Systems Command leased to, and operated by, Respondent that incorporates the original industrial Plant #1 area, the new "Plant #3" Large Tactical Manufacturing Facility completed in 2016, the Area 500 magazine area and an area of undeveloped land), as well as point source discharges from "Plant 2" (a 57-acre portion of the Facility owned and operated by Respondent). Discharge outlets 204, 304, 404, 001, 002, 003, 004, 005, 287, 288, 297, 315, 316, and 317 are located at Plant 1, while discharge outlets 106, 206, 107, 006, and 007 are located at Plant 2. According to the NPDES Permit, Respondent and the Naval Sea Systems Command ("NAVSEA") are responsible and liable for all discharges from Plant 1 discharge outlets, while Respondent is solely responsible and liable for all discharges from Plant 2 discharge outlets. The permit allows the permittees to operate and maintain disposal systems and best management practices for the direct discharge to the North Branch of the Potomac River of untreated storm water, untreated industrial wastewater (process, non-contact cooling water, groundwater, and storm water); and treated industrial waste water (process and sanitary). Plant 1 has both a sanitary wastewater system ("WW System") and a storm water system ("SW System"). The Facility is therefore a "major facility" per the definitions in 40 C.F.R. Part 122, Subpart A.

Notice to the State

Respondent was previously notified regarding the NPDES permit allegations recited herein under cover letter dated April 11, 2019. Pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), EPA has also notified and consulted with Mr. Yogesh P. Patel, P.E., Assistant Director, WVDEP Division of Water and Waste Management, regarding the NPDES Permit violations that are alleged herein and of EPA's intent to enter into this Consent Agreement with Respondent in commencement and resolution of this action. EPA will also mail a copy of the Consent Agreement and Final Order to WVDEP upon execution and filing of the same.

CWA Oil Pollution Prevention Requirements and Background

Section 311 of the Clean Water Act ("CWA"), as amended in 1990 by the Oil Pollution Act ("OPA"), declares that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines and authorized EPA to issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from onshore facilities and to contain such discharges. 33 U.S.C. §§ 1321(b)(1) and (j)(1)(C). Pursuant to these authorities, EPA issued Oil Pollution Prevention ("OPP") regulations at 40 C.F.R. Part 112, establishing a framework for the prevention of, and response to, oil spills and setting forth regulatory procedures, methods, equipment, and other requirements to prevent the discharge of oil from onshore facilities into navigable waters and adjoining shorelines. These regulations require owners and operators of regulated facilities, *i.e.*, nontransportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products that store oil in aboveground tanks and that, because of the facility location, "could reasonably be expected to discharge oil in quantities that may be harmful . . . into or upon the navigable waters of the United States or adjoining shorelines," to prepare in writing and to implement Spill Prevention Control and Countermeasure ("SPCC") plans as part of a Federal/State spill prevention program that minimizes the potential for discharges. 40 C.F.R. §§ 112.1(b)(1), 112.1(e) and 112.3.

The relevant OPP regulations include SPCC rules (hereinafter, "SPCC regulations") that require owners of facilities in operation before August 16, 2002 to implement an SPCC plan that addresses all relevant spill prevention, control, and countermeasures necessary at the specific facility before November 10, 2011. 40 C.F.R. §§ 112.1(e) and 112.3(a)(1). Among other things, the SPCC regulations provide that SPCC plans must be reviewed and certified by a licensed Professional Engineer and, when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge, the facility owner or operator must amend the SPCC plan within six months of the change. 40 C.F.R. §§ 112.3(d) and 112.5(a).

The ABL Facility is adjacent to the North Branch of the Potomac River, a navigable waterway. The Facility has aggregate aboveground oil storage capacity in excess of 1,320 gallons and, at the time of the 2016 Inspection, did not meet any of the 40 C.F.R. § 112.1(d) SPCC regulatory exemption

criteria.

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 State of West Virginia effective November 19, 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) provides 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.

The Facility is a major source under the Clean Air Act ("CAA") and WVDEP issued Respondent a Title V Permit to Operate (hereinafter, "Title V Permit") pursuant to Title V of the CAA and in accordance with the West Virginia Air Pollution Control Act (West Virginia Code §§ 22-5-1 and 45CSR30) Requirements for Operating Permits. The Title V Permit is divided into three parts: Part 1 - Motor Manufacturing Operations (Permit #R30-05700011-2014 with an effective date of May 5, 2014 and an expiration date of April 27, 2019); Part 2 - Composites Manufacturing and Metal Fabrication (#R30-05700011-2014 with an effective date of July 1, 2014 and an expiration date of June 17, 2019); and Part 3 - Miscellaneous Units (#R30-05700011-2009 with an effective date of August 24, 2009 and an expiration date of August 10, 2014; thereafter renewed [#R30-05700011-2014] with an effective date of August 12, 2014 and an expiration date of July 29, 2019).

Administrative Assessment of Civil Penalties

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. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and Attorney General, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate in this matter.

Notice to the State

Respondent was previously notified regarding the CAA Title V permit allegations recited herein under cover letter dated April 11, 2019. EPA simultaneously notified the State of West Virginia, through Mr. Jesse D. Adkins, PE, Assistant Director, WVDEP Division of Air Quality, Compliance and Enforcement Section, of the CAA violations that are alleged herein and of EPA's intent to enter into this Consent Agreement with Respondent to resolve these violations. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), EPA will also mail a copy of the Consent Agreement and Final Order to WVDEP upon execution and filing of the same.

Execution of Tolling Agreements

EPA and Respondent initially executed and entered into a Tolling Agreement which extended the tolling period for EPA's pursuit of alleged Clean Air Act violations against Respondent until November 30, 2019. EPA and Respondent subsequently executed two extensions to that original Tolling Agreement. The first Tolling Agreement Extension ("TAE") extended the tolling period for EPA's pursuit of alleged Clean Air Act violations against Respondent through May 30, 2020 and the second TAE further extended that tolling period through November 30, 2020. EPA and Respondent thereafter executed a third Tolling Agreement Extension and Modification ("TAE&M") to the original Tolling Agreement which extended the tolling period for EPA's pursuit of alleged Clean Air Act violations against Respondent through February 28, 2021 and which additionally modified the Tolling Agreement and extended, through that same date, the tolling period for EPA's pursuit of alleged RCRA regulatory (non-permit) violations (*i.e.*, alleged violations of the federally authorized West Virginia Hazardous Waste Management Regulations set forth in Title 33, Leg. Rule, Division of Environmental Protection, Office of Waste Management, Series 20, Parts 33-20-1 through 33-20-15, which incorporate by reference rules promulgated in 40 C.F.R. Parts 260-279 through June 16, 2010 and have become requirements of RCRA Subtitle C that are enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a)) against Respondent. EPA and Respondent subsequently entered into a fourth TAE&M which further extended the tolling period for EPA's pursuit of the alleged Clean Air Act and RCRA regulatory violations against Respondent through June 30, 2021.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.

2. Except as provided in Paragraph 1, immediately above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.

3. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.

4. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.

5. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.

6. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

EPA's Findings of Fact and Conclusions of Law

7. 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.

8. As previously stated, the ABL Facility, located at 210 State Route 956, Keyser, WV 26726, consists of two main areas: a 1,577-acre parcel, generally referred to as Plant 1, that is owned by NAVSEA and leased to, and operated by, Respondent (which includes the original industrial "Plant #1" area, the new "Plant #3" Large Tactical Manufacturing Facility completed in 2016, the Area 500 magazine area, and an area of undeveloped land); and a 57-acre parcel that is owned and operated by Respondent and herein identified as Plant 2.

9. Respondent is a limited liability company organized under the laws of Delaware and currently operates as a wholly owned subsidiary of Northrop Grumman Innovation Systems, LLC (formerly known as Orbital ATK, Inc.), which is a subsidiary of Northrop Grumman Corporation.

10. At all times relevant to this Consent Agreement and Final Order, Respondent is, and has been, the operator of the ABL Facility.

11. EPA conducted inspections at the Facility on June 6-10, 2016 (the "2016 Inspection"), and on July 31-August 1, 2019 (the "2019 Inspection").

RCRA ALLEGATIONS

COUNT I
Failure to Make Hazardous Waste Determinations at the Point of Waste Generation

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

13. Respondent is a "person" as defined in Section 1004(15) of the RCRA, 42 U.S.C. § 6903(15), and in WVHWMR § 33-20-2.1.a, which, with exceptions not relevant to this term, incorporates by reference 40 C.F.R. § 260.10.

14. Respondent was, at all times relevant to this Consent Agreement and Final Order, the "operator" of a "facility," as those terms are defined in WVHWMR § 33-20-2.1.a, which, with exceptions not relevant to these terms, incorporates by reference 40 C.F.R. § 260.10.

15. Respondent was, at all times relevant to this Consent Agreement and Final Order, a "generator" of, and engaged in the "storage" in "containers" of, materials that are "solid wastes" and "hazardous wastes" at the Facility, as those terms are defined in in WVHWMR § 33-20-2.1.a, which, with exceptions not relevant to these terms, incorporates by reference 40 C.F.R. §§ 260.10 and 261.2 and .3, including the hazardous wastes referred to herein.

16. Pursuant to WVHWMR § 33-20-5.1 and 40 C.F.R. § 262.11(a) and (b), a person who generates a solid waste, must make an accurate determination, at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations and must determine if that waste is excluded from regulation under 40 C.F.R § 261.4.

17. Pursuant to WVHWMR § 33-20-5.1 and 40 C.F.R. §§ 262.11(c) and (d)(1) and (2), if the generated solid waste is not excluded under 40 C.F.R. § 261.4 the person must use acceptable knowledge of the waste to determine whether the waste meets any of the listing descriptions in 40 C.F.R. Part 261, Subpart D and then further determine, through the application of acceptable knowledge (including process knowledge), applicable testing procedures, or a combination of both, whether the waste exhibits one or more hazardous characteristics identified in 40 C.F.R. Part 261, Subpart C.

18. On or about June 6, 2016, Respondent was storing an unlabeled and undated 5-gallon bucket containing approximately two inches of dark brown liquid, resembling oil, in a solid waste dumpster outside of Facility Building 421. On or about that same date, Respondent was also storing ten (10) 1-gallon, severely rusted, metal cans on a wooden pallet at the Building 810 permitted hazardous waste container storage pad which were, at that time, labeled as "Hazardous Waste" with a May 23, 2016 accumulation start date and a hazardous waste description code "D001."

19. On or about June 6, 2016 the Respondent's Facility Hazardous Waste Manager was unable to identify the contents of the bucket being stored in the solid waste dumpster outside of Facility Building 421, the point of solid waste generation of this material or whether the solid waste material was a hazardous waste or if the waste was excluded from regulation under 40 C.F.R § 261.4.

20. On or about June 6, 2016 the Respondent's Facility Hazardous Waste Manager told EPA Inspectors that the ten (10) 1-gallon, severely rusted, metal cans of D001 hazardous waste then being stored at the Building 810 permitted hazardous waste container storage pad were previously stored in an on-site Facility trailer for approximately ten (10) years before they were determined by the Respondent to contain a solid waste that was then characterized as D001 hazardous waste and properly marked and labeled as such. However, the Respondent subsequently identified the original product in

these cans as MIL-C-450 Type II Asphalt (used in the coating or treatment of rocket motor cases), a product which, pursuant to the manufacturer's Technical Data Sheet, has a shelf life of only one (1) year from its date of manufacture.

21. Respondent failed to make a hazardous waste determination at the point of waste generation and in accordance with WVHWMR § 33-20-5.1 requirements that are designed to ensure that solid wastes are properly managed, subsequent to generation, according to applicable RCRA regulations, with respect to: (i) the contents of the unlabeled and undated 5-gallon bucket containing approximately two inches of dark brown liquid, resembling oil, in the solid waste dumpster outside of Facility Building 421 at the time of the 2016 Inspection; and, (ii) the contents of each of the above-referenced ten (10) 1-gallon rusted metal cans containing spent (*i.e.*, solid waste) MIL-C-450 Type II Asphalt materials that were stored by the Respondent and not properly managed as a solid or a hazardous waste, for a lengthy time period prior to May 23, 2016, at which time the Respondent ultimately made the required hazardous waste determination and began to properly manage that hazardous waste at the Building 810 permitted hazardous waste container storage pad.

22. Respondent violated WVHWMR § 33-20-5.1, which incorporates the requirements and provisions of 40 C.F.R. § 262.11, by failing to accurately determine, at the point of waste generation and through the use of any of the methods identified in 40 C.F.R. § 262.11(a) or (b), whether: (i) the contents of the 5-gallon bucket of dark, brown liquid *solid waste* in storage at Facility Building 421 was a hazardous waste at the time of the 2016 Inspection; and, (ii) whether the contents of the ten (10) 1-gallon rusted metal cans containing spent, *i.e.*, *solid waste*, MIL-C-450 Type II Asphalt materials were hazardous wastes prior to May 23, 2016, in order to ensure their proper management, subsequent to generation, according to applicable RCRA regulations.

COUNT II
Operating Without a Permit or Interim Status

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

24. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. § 270.1(b), no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.

25. At all times relevant hereto, and as set forth above, Respondent had a Part B RCRA Permit that allowed Respondent to store hazardous waste in containers at two storage pads, Buildings 366 and 810 (the Facility HWM Permit), and to operate an open burning ground to treat (by open burning) waste propellant and explosives (the OB Permit, which is Module V of the Facility HWM Permit) at the Facility.

26. At all times relevant hereto, Respondent did not have a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or WVHWMR § 33-20-11.1, which incorporates by reference 40 C.F.R. Part 270, for the storage of hazardous waste at any other area of the Facility.

Permit Exemption Conditions

27. WVHWMR § 33-20-5.1 incorporates by reference 40 C.F.R. § 262.34(a) and provides that a generator may accumulate 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. [40 C.F.R. § 262.34(a)(1)];

b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container. [40 C.F.R. § 262.34(a)(2)];

c. While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste." [40 C.F.R. § 262.34(a)(3)]; 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). [40 C.F.R. § 262.34(a)(4)].

28. WVHWMR § 33-20-5.1 further incorporates by reference 40 C.F.R. § 262.34(b), which provides that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264, 265, and 267, and the permit requirements of 40 C.F.R. Part 270 unless he has been granted an extension to the 90-day period.

Satellite Accumulation Provisions

29. WVHWMR § 33-20-5.1, which incorporates by reference the requirements of 40 C.F.R. § 262.34(c)(1), provides, in relevant part and with exceptions not herein applicable, that a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of 40 C.F.R. § 262.34(a), provided he complies with §§ 265.171, 265.172, and 265.173(a) of 40 C.F.R. Part 265, Subpart I, and marks his containers either with the words ''Hazardous Waste'' or with other words that identify the contents of the containers.

Failure to Date Containers of Hazardous Waste that Were Not at or Near the Point of Generation

30. On June 8, 2016, EPA Inspectors observed a clamshell secondary containment unit with a closed 55-gallon drum labeled "Hazardous Waste" outside of Facility Building 420. The drum contained "bond liner" hazardous waste that was generated inside Building 420 and transferred to this outside drum, which did not have an affixed accumulation start date label.

31. On June 9, 2016, EPA Inspectors observed a clamshell secondary containment unit with a closed 55-gallon drum labeled "Hazardous Waste" Outside of Building 421. The drum contained "paint/solvents" wastes that were generated inside Facility Building 421 and transferred to this outside drum, which did not have an affixed accumulation start date label.

32. On June 8, 2016, EPA Inspectors observed two (2) clamshell secondary containment units outside at the Facility, west of Building 404. Inside one of these units was a closed 55-gallon drum labeled "Hazardous Waste" that, according to the label, contained "solvent rags" and which was observed to also contain other solvent contaminated debris. Inside the other clamshell unit were two 55-gallon drums. One of these drums had an attached funnel with a closed lid, was approximately three quarters full, and had a "Hazardous Waste" label indicating that it contained "waste flammable liquids." The hazardous waste in each of these two drums was transferred into them daily from SAAs inside Facility Buildings 404, 405, and 406 and neither drum had an affixed accumulation start date label.

33. None of the three (3) hazardous waste storage areas described in the three (3) preceding paragraphs, immediately above, were "at or near the point of [waste] generation" or "under the control of the operator of the process generating the waste." As a result, these three (3) Facility hazardous waste storage areas did not comport with WVHWMR § 33-20-5.1 (40 C.F.R. § 262.34(c)(1)) SAA requirements and the hazardous wastes observed in these areas on June 8 and 9, 2016 were not being stored in a permitted or interim status area of the Facility or in a manner compliant with WVHWMR § 33-20-5.1 (40 C.F.R. § 262.34(a)) permit exemption criteria.

Failure to Conduct Weekly Inspections of Hazardous Waste Container Storage Areas

34. WVHWMR § 33-20-5.1 incorporates by reference the requirements of 40 C.F.R. § 262.34(a), including the previously referenced permit exemption conditions of 40 C.F.R. Part 265, Subpart I (including 40 C.F.R. § 265.174), which provides, in relevant part and with an exception not herein applicable that "[a]t least weekly, the owner or operator must inspect areas where containers are stored . . . . The owner or operator must look for leaking containers and for deterioration of containers . . . caused by corrosion or other factors."

35. At the time of the 2016 Inspection, Respondent was mistakenly treating each of the three (3) hazardous waste container storage areas Outside of Facility Buildings 420, 421 and west of Building 404, respectively, as SAAs and not as hazardous waste storage or accumulations areas subject to WVHWMR § 33-20-11.1 permit requirements or to WVHWMR § 33-20-5.1 less-than-90-day hazardous waste accumulation area permit exemptions conditions.

36. From on or about January 1, 2016 until June 10, 2016, Respondent regularly and routinely failed to inspect these three (3) hazardous waste container storage areas to look for leaking containers and for deterioration of containers caused by corrosion or other factors. The Respondent, therefore, failed to meet WVHWMR § 33-20-5.1 (40 C.F.R. § 262.34(a) and 40 C.F.R. § 265.174) permit exemption criteria and also failed to comply with applicable hazardous waste container storage area weekly container inspection requirements during such time period.

Failure to Comply with Facility Maintenance and Operation Requirements

37. WVHWMR § 33-20-5.1 incorporates by reference 40 C.F.R § 262.34(a)(4), which, as previously noted, provides that a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status provided that he, among other things complies with the requirements of 40 C.F.R. Part 265, Subpart C, including those of 40 C.F.R. § 265.31, which provides that "Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

38. On June 8, 2016, during the 2016 Inspection, EPA Inspectors visited the Grit Blasting Room in Facility Building 420 and observed a grit blasting machine fitted with a 30-gallon drum for the accumulation of "used grit." The drum was labeled "Hazardous Waste" and appeared to be tightly fitted to the grit blasting machine; however, the EPA Inspectors observed and documented the presence of spilled hazardous waste grit material on the Facility Building 420 floor, around the drum.

<u>Failure to Comply with Permit Exemption Conditions</u>

39. For each of the reasons and on each of the days and time periods identified in paragraphs 30 through 38, immediately above, Respondent failed to comply with permit exemption conditions of 40 C.F.R. § 262.34(a), or with satellite accumulation provisions of 40 C.F.R. § 262.34(c)(1) for the temporary (*i.e*., 90 days or less) accumulation or for the satellite accumulation of hazardous waste by a generator at each of the hazardous waste management areas of the Facility identified and described in those paragraphs.

40. Because the Respondent did not comply with the permit exemption conditions of 40 C.F.R. § 262.34(a), or with the satellite accumulation requirements of 40 C.F.R. § 262.34(c)(1), as described above, Respondent failed to satisfy the conditions set forth at WVHWMR § 33-20-5.1 for a generator

to qualify for an exemption from the permit and/or interim status requirements of RCRA Section 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), and WVHWMR § 33-20-11.1 for the hazardous waste management activities described in Paragraphs 30 through 37, above.

41. WVHWMR § 33-20-5.1, which additionally incorporates by reference the requirements of 40 C.F.R. § 262.34(b), provides, in relevant part and with an exception not herein applicable, that: "A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. parts 264 and 265 and the permit requirements of 40 C.F.R. Part 270 . . . ".

42. Respondent does not have, and at the time of the violations alleged herein, did not have, a permit or interim status to store the hazardous waste at any of the hazardous waste management areas of the Facility identified and described in Paragraphs 30 through 37, above, as required by WVHWMR § 33-20-11, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e).

43. Respondent violated WVHWMR § 33-20-11, which incorporates by reference 40 C.F.R. § 270.1(b) and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating hazardous waste management facilities, as identified and described in paragraphs 30 through 37, above, without a permit, interim status or valid exemption to the applicable permitting/interim status requirements.

COUNT III
Failure to Comply with
Hazardous Waste Container Storage Area Weekly Inspection Requirements

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

45. WVHWMR § 33-20-7, which incorporates by reference 40 C.F.R. § 264.174, requires that owners and operators of all hazardous waste facilities that store containers of hazardous waste inspect, at least weekly, areas where containers are stored to look for deterioration of containers and the containment system caused by corrosion or other factors.

46. During the 2016 Inspection, and as identified in paragraphs 30 through 37, above, the EPA inspectors observed three (3) hazardous waste container storage areas that were improperly managed as SAAs and where no weekly inspections were being conducted. These areas were located:

a. Outside of Facility Building 420, where the EPA inspectors observed a clamshell secondary containment unit with a closed 55-gallon drum labeled "Hazardous Waste," containing "bond liner" waste;

b. Outside of Facility Building 421, where the EPA inspectors observed a clamshell secondary containment unit with a closed 55-gallon drum labeled "Hazardous Waste," containing "paint/solvents" waste; and

c. Outside, and West, of Facility Building 404, where the EPA inspectors observed two clamshell secondary containment units; one with a closed 55-gallon drum labeled "Hazardous Waste," containing "solvent rags" and solvent contaminated debris, and the other with two 55-gallon drums, one unlabeled and empty and other labeled "Hazardous Waste," containing "waste flammable liquids."

47. From on or about January 1, 2016 until June 10, 2016, Facility personnel mistakenly treated each of the three (3) hazardous waste container areas Outside of Buildings 420, 421 and West of Building 404, respectively, as SAAs and not as hazardous waste storage or accumulations areas subject to WVHWMR § 33-20-11.1 permit requirements or to WVHWMR § 33-20-5.1 less-than-90-day hazardous waste accumulation area permit exemption conditions (including 40 C.F.R. § 265.174 less-than-90-day hazardous waste accumulation area weekly container inspection requirements).

48. From on or about January 1, 2016 until June 10, 2016, Facility personnel failed to inspect these three (3) hazardous waste container storage areas at the Facility to look for leaking containers and for deterioration of containers caused by corrosion or other factors, in accordance with 40 C.F.R. § 265.174 inspection requirements.

49. Respondent violated WVHWMR § 33-20-7.2, which incorporates by reference the requirements of 40 C.F.R. § 264.174, from on or about January 1, 2016 until June 10, 2016, by failing to perform weekly inspections to look for leaking containers and for deterioration of containers caused by corrosion or other factors, at three (3) areas of the Facility where containers of hazardous waste were then being stored.

COUNT IV
Noncompliance with Facility HWM Permit Module II, Section II-G-3
Failure to Amend Facility Contingency Plan

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

51. Module II, Section II-G-3, of the Facility HWM Permit provides that the permittee must review and immediately amend, if necessary, the Facility Contingency Plan, in accordance with 40 C.F.R. § 264.54 requirements.

52. 40 C.F.R. § 264.54 requires, inter alia, that the contingency plan be amended whenever a facility changes - in its design, construction, operation, maintenance, or other circumstances - in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous

waste constituents, or changes the response necessary in an emergency; or the list of emergency equipment changes.

53. The Facility Contingency Plan provided by Respondent's representatives to the EPA Inspectors for review during the 2016 Inspection only addressed those response actions to be implemented in response to fires, explosions, or releases related to the permitted hazardous waste management activities at the Facility Open Burning Grounds and at Buildings 366 and 810.

54. The Facility Contingency Plan provided by Respondent's representatives to the EPA Inspectors for review during the 2016 Inspection did not address actions to be implemented in response to fires, explosions, or releases at, or from, various other hazardous waste management activities then conducted at the Facility, including the Respondent's accumulation of hazardous waste in areas outside of Facility Buildings 420, 421 and 404, and at SAAs, that the Respondent was then operating at the Facility and which constituted an unaddressed material change in Facility circumstances that increased the potential for fires, explosions, or releases of hazardous waste beyond what the existing Facility Contingency Plan then addressed.

55. At the time of 2016 Inspection, Respondent was in violation of the requirements of Facility HWM Permit Module II, Section II-G-3, by and through its failure to have immediately amended the Facility Contingency Plan, in accordance with 40 C.F.R. § 264.54 requirements, to address the actions that would be implemented at the Facility in response to fires, explosions, or releases related to the Respondent's operation of the hazardous waste accumulation areas located outside of Facility Buildings 420, 421 and 404, and the Facility SAAs (identified in the preceding paragraph and above), which constituted material changes in Facility circumstances that increased the potential for fires, explosions, or releases of hazardous waste beyond what the Facility Contingency Plan then addressed.

COUNT V
Noncompliance with Facility HWM Permit Module III, Section III-C
Failure to Transfer Hazardous Waste from Containers Not in Good Condition

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

57. Module III, Section III-C, of the Facility HWM Permit requires the permittee to transfer the hazardous waste from a container that is not in good condition, such as one showing severe rusting or apparent structural defects, to one that is in good condition, or to otherwise manage the waste in compliance with the conditions of the permit.

58. During the course of the 2016 Inspection, and as previously identified and described in paragraphs 18 and 20 through 22, above, the Respondent was storing D001 Hazardous Waste (*i.e.*, spent *solid waste* MIL-C-450 Type II Asphalt materials that had exceeded their useful life), bearing an accumulation start date label of May 23, 2016, in ten (10) severely rusted 1-gallon metal cans that were

not in good condition.

59. At the time of the 2016 Inspection, Respondent was in violation of HWM Permit Module I, Section III-C, by failing to transfer the hazardous waste from each of the above-referenced ten (10) 1-gallon containers that were not in good condition, to one or more containers that were in in good condition, or to otherwise manage the waste in compliance with the conditions of the Facility HWM permit.

COUNT VI
Noncompliance with Facility HWM Permit Module I, Section K-2(c)
Failure to Maintain Records and Results of Waste Analyses

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

61. HWM Permit Module I, Section I-K-2.c, provides, in relevant and applicable part, that: [t]he Permittee shall maintain, at the facility, until closure is completed and certified by an independent registered certified engineer, all items required by 40 CFR 264.73, including the following documents and all amendments, revisions, and modifications to these documents:

* * *

K-2 Operating Record, as required by 40 CFR 264.73, and this permit;

The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

* * *

c. Records and results of waste analyses performed as specified in 40 CFR 264.13, ...

62. 40 C.F.R. § 264.13(a) provides, in relevant and applicable part, that: "(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes . . . he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with this part and part 268 of this chapter.[;] (2) The analysis may include data developed under part 261 of this chapter, and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes[; and] (3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. . . ".

63. Page C-1-13, Table 1-1, of the "Consolidated Waste Analysis Plan for the ABL Miscellaneous Treatment Unit ('Burning Grounds') and Container Storage Areas" (hereinafter, "WAP"), which is Attachment 1 to the Facility HWM Permit's Module V OB Permit, identifies two hazardous wastes, "P/E Acetone Squares" and as "P/E Lacquer Squares," that are treated by the Respondent at the Facility Open Burning Grounds.

64. Page C-1-13, Table 1-1, of the WAP identifies "P/E Acetone Squares" as D03/D008/F003 hazardous wastes and "P/E Lacquer Squares" as D003/F003 hazardous wastes and states that the rationale for these waste designations was made "per process knowledge" and that each of the D003 (reactive) waste designations is the result of "process knowledge" and that "Previous Sensitivity Data" for these squares "indicate they are reactive, particularly if solvent is allowed to evaporate from the material."

65. Pursuant to its RCRA Section 3007(a), 42 U.S.C. § 6927(a), information gathering authorities, EPA sent an information request letter to the Respondent on August 14, 2018 (hereinafter, "IRL") seeking, among other things, copies of the "Previous Sensitivity Data" used by the Respondent to determine that its "P/E Acetone Squares" and as "P/E Lacquer Squares" were reactive and seeking the proportions of acetone, sawdust and propellants in each of these wastes.

66. In its September 13, 2018 IRL response letter, Respondent advised EPA, among other things, that: "[it] continues to search the sensitivity testing records and document archives at ABL but, to date, has been unsuccessful in locating the specific test results referenced by EPA in this request"; "it is believed that the subject testing . . . was inadvertently discarded"; "[t]he proportion of sawdust, acetone, and energetic compounds in a 'square' may vary significantly depending on the amount of propellant contamination present on a particular article of tooling/hardware and the ratio of energetics in the specific formulation"; and that "[a]t present, [ATO] does not have specific analysis of the propellant and/or soluble energetics concentrations (or %) in the spent acetone solution or "squares" but the potential reactivity of this material, as originally documented in ABL's 'Previous Sensitivity Data', indicates that this waste stream may contain a fairly significant amount of propellant residue and/or energetic compounds."

67. Respondent violated the requirement of HWM Permit Module I, Section I-K-2.c, on and after September 13, 2018, by failing to maintain in the Facility Operating Record, as required by HWM Permit Module I, Section I-K-2.c, records and results of the waste analyses, performed as specified in 40 C.F.R.§ 264.13, that contained all of the information which must be known to treat, store, or dispose its "P/E Acetone Squares" and "P/E Lacquer Squares" wastes and that would otherwise support Respondent's "process knowledge" characterization of these wastes as reactive in nature.

COUNT VII
Noncompliance with Class 1 Permit Modification Requirements
Implementing OB Permit General Operating Procedure Revisions without Meeting Applicable HWM Permit Modification Requirements

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

69. HWM Permit Module I, Section I-B, is entitled "Permit Actions (40 CFR 270.30(F))" and provides, in relevant and applicable part, that: "This permit may be modified, revoked and reissued, or terminated for cause, as specified in 40 CFR 270.41, 270.42 and 270.43."

70. 40 C.F.R. § 270.42(a), entitled "*Class 1 modifications*," provides, in relevant and applicable part and with an exception not herein applicable, that ". . . the permittee may put into effect Class 1 modifications listed in Appendix I of this section under the following conditions: (i) The permittee must notify the [WVDEP] concerning the modifications by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. The notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notice, the permittee must provide the applicable information required by [40 C.F.R.] §§ 270.21, 270.62 and 270.63."

71. Pursuant to 40 C.F.R. § 270.42(d)(2)(i), "Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment." Specific modifications that fall into the Class 1 permit modification category are enumerated in Appendix I to 40 CFR Part 270.

72. Sections 3.2 and 3.3 of the Facility HWM Permit's Module V OB Permit set forth the "Operating Requirements" and the "Handling and Storage Requirements" applicable to the Facility's Open Burning Grounds. These sections of the OB Permit require compliance with the procedures in OB Permit Attachment 3, which includes General Operating Procedure 1-81-01, entitled "Propellant and Explosive Waste Treatment" (hereinafter "GOP"1-81-01") and OB Permit Attachment 5, which includes General Operating Procedure 1-00-38, entitled Waste Classification, Labeling, Storage and Disposal" (hereinafter "GOP-1-00-38"), "or the most recent revision" of those General Operating Procedures (collectively, "GOPs").

73. On thirteen (13) separate occasions between July 18, 2016 and May 28, 2020, *i.e.*, subsequent to the effective date of the OB Permit and its incorporated Attachment 3 (GOP-1-81-01) and Attachment 5 (GOP-1-00-38) GOPs, Respondent made changes to those GOPs, and implemented those changes, without notifying WVDEP within seven (7) calendar days after these changes were put into effect at the Facility.

74. Pursuant to the provisions of 40 C.F.R. §§ 270.42(a) and (d)(2)(i), and 40 C.F.R. Part 270, Appendix I, each of the thirteen (13) changes that Respondent made to its OB Permit Attachment 3 (GOP-1-81-01) and Attachment 5 (GOP-1-00-38) GOPs, and put into effect at the Facility, constituted a Class 1 permit modification.

75. Respondent violated the requirements of Facility HWM Permit Module I, Section I-B, and the incorporated requirements of 40 C.F.R. § 270.42(a), on each of thirteen (13) separate occasions by making and implementing thirteen (13) Class 1 permit modifications to its OB Permit GOPs without notifying WVDEP of those actions within seven (7) calendar days after each of these respective changes was put into effect at the Facility.

COUNT VIII
Noncompliance with "Other Modifications" Permit Modification Requirements
Implementing OB Permit Unique Operating Procedures and Revisions without Meeting Applicable HWM Permit Modification Requirements

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

77. 40 C.F.R. § 270.42(d), entitled "*Other modifications*," provides that:

> (1) In the case of modifications not explicitly listed in appendix I of this section, the permittee may submit a Class 3 modification request to the Agency, or he or she may request a determination by the Director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the Agency with the necessary information to support the requested classification;
>
> (2) The Director shall make the determination described in paragraph (d)(1) of this section as promptly as practicable. In determining the appropriate class for a specific modification, the Director shall consider the similarity of the modification to other modifications codified in appendix I and the following criteria:
>
> > (i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.
> >
> > (ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(A) Common variations in the types and quantities of the wastes managed under the facility permit,

(B) Technological advancements, and

(C) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(iii) Class 3 modifications substantially alter the facility or its operation.

78. GOP-1-81-01, which is part of OB Permit Attachment 3, provides that "Only Group 1 and Group 2 reactive wastes identified in Table II shall be approved for treatment per this procedure. Group 3 wastes shall be treated in accordance with an approved waste-specific UOP [Unique Operating Procedure]. Failure to strictly meet this requirement may result in injury to Plant personnel and/or damage to property and equipment."

79. Table II of GOP-1-81-01 further provides that: "Group 3 wastes are defined as those wastes that exhibit a high potential to become propulsive or have the potential to fragment during treatment and shall only be treated in the ABL Burning Grounds bunker using an approved tie-down fixture and restraining device. The Groundwater Treatment Facility (Bldg. 424) shall be evacuated during a Group 3 burn, by either direct notification of personnel or by phone . . . . A separate UPO shall be required for each Group 3 configuration to be burned." [Emphasis supplied].

80. Respondent developed and implemented seven (7) Group 3 waste UOPs at the Facility between November 7, 2012 and February 28, 2014 (*i.e.*, prior to the effective date of the current OB Permit) and it subsequently developed and implemented three (3) additional Group 3 waste UOPs at the Facility between February 7, 2018 and January 1, 2019, for a total of 10 Group 3 waste UOPs.

81. Respondent also made and implemented subsequent operational revisions/changes to several of these newly developed Group 3 waste UOPs at the Facility, with eight (8) such revisions/changes occuring prior to the issuance of the current OB Permit and six (6) such revisions/changes occurring between October 19, 2016 and January 3, 2017.

82. Despite developing, revising and implementing new Group 3 waste UOPs and subsequent operational revisions/changes to GOP-1-81-01 (*i.e.*, to OB Permit Attachment 3), Respondent failed to: (a) submit a Class 3 permit modification request to WVDEP for any of these newly developed Group 3 waste UOPs, or for any of its operational revisions/changes thereto; or (b) alternatively request a determination by WVDEP that any of these newly developed Group 3 waste UOPs, or the subsequent operational revisions thereto, should be reviewed and approved as a Class 1 or Class 2 permit modification and provide WVDEP with the necessary information to support the requested classification, at any time prior or subsequent to putting them into effect at the Facility.

83. Respondent violated the requirements of Facility HWM Permit Module I, Section I-B, and the incorporated requirements of 40 C.F.R. § 270.42(d), by failing to submit a Class 3 permit modification request to WVDEP, or to alternatively request and provide sufficient information to WVDEP to support a determination that the Respondent's newly developed Group 3 waste UOPs, or the subsequent operational revisions thereto, should be reviewed and approved as a Class 1 or Class 2 permit modification, at any time subsequent to putting them into effect at the Facility.

COUNT IX
Noncompliance with Facility HWM Permit Module II
Failure to design, construct, maintain
and operate the Facility to minimize the possibility of a release

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

85. The Facility HWM Permit's Module V OB Permit provides that "[t]he permittee may open burn the following wastes subject to the terms of this permit" and describes those wastes as: "Aluminized Composite Propellant, Hazardous Waste Code D003"; Non- Aluminized Composite Propellant, Hazardous Waste Code D003"; Double-Base Propellant, Hazardous Waste Codes D003, D008"; Plastic-Bonded Explosives (PBX), Hazardous Waste Code D003"; Type 1 P/E Waste, Hazardous Waste Codes D003, D008, F003"; and Type 2 P/E Waste, Hazardous Waste Codes D003, F003."

86. Module II ("General Operating Conditions"), Section II-A ("Design and Operation of Facility") of the Facility HWM Permit requires that steps be taken to minimize the sudden and non-sudden releases of hazardous waste which could threaten human health or the environment. In that respect, the Facility HWM Permit specifically provides that: "[t]he Permittee shall design, construct, maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste and/or hazardous waste constituents to air, soil, or state waters (including surface and groundwater) which could threaten human health or the environment as required by 40 CFR 264.31."

87. On August 1, 2019, during the course of the 2019 Inspection, a WVDEP representative observed and documented evidence of the release of hazardous waste residues from Facility burn pans A through F onto their surrounding concrete burn pad aprons, reporting in his subsequent, September 20, 2019, Inspection Memorandum that: "several locations of the burn pads indicate release of energetics while they are being treated and do not appear to be properly contained. Several areas of the pads were noted to be stained or even contain material outside of the burn pads indicating the possibility of uncontrolled releases."

88. On August 1, 2019, during the same 2019 Inspection, an EPA Inspector made similar and additional observations. In an October 10, 2019 Inspection Report, the EPA Inspector documented his

observation of burn residue stains, some of which had formed a crust, on the concrete burn pad aprons (hereinafter "Open Burn Pads") surrounding the Facility's Open Burning Grounds burn pans A through F. The EPA Inspector also reported observing stormwater runoff "plume" stains on the Open Burn Pads and on the adjacent surrounding soil. He further reported observing an accumulation of runoff residue on the adjacent soil around the Open Burn Pads.

89. During the course of the 2019 Inspection, EPA and WVDEP representatives were advised by Facility personnel that the Respondent uses a street sweeper to clean the concrete Open Burn Pads at the Facility Open Burning Grounds on a weekly basis. Nevertheless, the EPA Inspector additionally noted, in his October 10, 2019 Inspection Report, that "[t]he concrete burn pads are not covered and do not have berms to prevent hazardous waste or hazardous waste constituents associated with the burning activities from migrating along with stormwater runoff into the surrounding soil, or eventually into the North Branch of the Potomac River, which is located a couple hundred feet away from the burn pads."

90. Respondent violated the requirements of Facility HWM Permit Module II, ("General Operating Conditions"), Section II-A ("Design and Operation of Facility"), and its incorporated 40 C.F.R. § 264.31 requirements, by failing to design, construct, maintain and operate the Facility Open Burning Grounds to minimize the possibility of unplanned sudden or non-sudden releases of hazardous waste and/or hazardous waste constituents to air, soil, or state waters (including surface and groundwater) which could threaten human health or the environment.

CWA NPDES ALLEGATIONS

COUNT X
Noncompliance with NPDES Permit Section C-33
Failure to Collect Representative Samples of Effluent Discharges for Analysis

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

92. Respondent is a "person" within the meaning and definition of CWA Section 502, 33 U.S.C. § 1362.

93. The WVDEP Division of Water and Waste Management issued NPDES Water Pollution Control Permit number WV0020371 (the "Facility NPDES Permit") to NAVSEA, as the owner, and to Respondent as the operator, on November 6, 2013. The Facility NPDES Permit became effective on January 1, 2014.

94. The Facility NPDES Permit specifically covers point source discharges from the portion of the Facility generally referred to as Plant 1 (the 1,577-acre portion of the Facility owned by NAVSEA and operated by Respondent) as well as point source discharges from Plant 2 (the 57-acre portion of the Facility owned and operated by Respondent). Discharge outlets 204, 304, 404, 001, 002, 003, 004,

005, 287, 288, 297, 315, 316, and 317 are located at Plant 1, while discharge outlets 106, 206, 107, 006, and 007 are located at Plant 2.

95. The Facility NPDES Permit provides that the Respondent and NAVSEA are responsible and liable for all discharges from Plant 1 discharge outlets, while the Respondent is solely responsible and liable for all discharges from Plant 2 discharge outlets. The permit allows the permittees to operate and maintain disposal systems and best management practices for the direct discharge to the North Branch of the Potomac River of untreated storm water; untreated industrial wastewater (process, non-contact cooling water, groundwater, and storm water); and treated industrial waste water (process and sanitary).

96. Plant 1 has both a sanitary wastewater system ("WW System") and a storm water system ("SW System"). The WW System's associated sequential batch reactor ("SBR") typically discharges between 30,000 and 35,000 gallons of treated effluent per day to the North Branch of the Potomac River and the Facility, therefore, is a "major facility" per the definitions in 40 C.F.R. Part 122, Subpart A.

97. Section C-33 of the Facility NPDES Permit requires that sampling conducted at "external outlets" 003 – 007 and "internal outlet" 315 shall be "representative of all wastewaters discharged" [emphasis supplied], including storm water that contributes to these outlets.

98. With respect to "external outlet" 004, which is located in Plant 1, the Facility NPDES Permit effluent limitations for this outlet further require that a 24-hour composite sample be collected once per week to be analyzed for perchlorate.

99. On June 6, 2016, during the 2016 Inspection, representatives of the Respondent advised an EPA Inspector that the only source of any perchlorate in wastewater discharged to "external outlet" 004 at the Facility is effluent originating from the Facility's Explosives Wastewater Treatment Plant (Building 383). The same representatives of the Respondent also advised the EPA Inspector that treated effluent from the Facility Building 383 Explosives Wastewater Treatment Plant is released in batches that are not timed to correspond to the periods when the once per week 24-hour composite effluent sample is collected at "external outlet" 004 by the Respondent for required perchlorate analysis. As a result, the EPA Inspector learned that the weekly 24-hour composite effluent samples that the Respondent had been collecting, for required perchlorate analysis, at "external outlet" 004 were not properly "representative of all wastewaters discharged" to external outlet 004 during the 2016 calendar year.

100. Respondent violated Facility NPDES Permit Section C-33 during the period of January 2016 through May 2016 by failing to conduct weekly 24-hour composite effluent sampling in a manner "representative of all wastewaters discharged" to "external outlet" 004, for required perchlorate analysis, during that time period.

COUNT XI
Noncompliance with NPDES Permit Section C-18
Failure to comply with Sample Test Method Detection Level Requirements

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

102. Section C-18 of the Facility NPDES Permit requires, inter alia, the use of EPA Method No. 314.0 Modified with a listed detection method level of 0.53 µg/l for the analysis of perchlorate, unless the permittee desires to use an EPA Approved Test Method with a listed lower method detection level.

103. Analytical records for calendar year 2016 that were reviewed by EPA Inspectors during the 2016 Inspection indicated that the Respondent's hired contract analytical laboratory was reporting perchlorate analysis as EPA Method 314.0 (perchlorate in drinking water by ion chromatography) with a listed method detection level of 1.7 µg/l during that time period.

104. Respondent violated Facility NPDES Permit Section C-18 during the period of January 2016 through May 2016 by having required perchlorate analyses performed using a listed method detection level that was more than three (3) times greater than the 0.53 µg/l method detection level specified in, and required by, the Facility NPDES Permit.

COUNT XII
Noncompliance with NPDES Permit Section C-1
Failure to comply with Facility NPDES Permit "Good Housekeeping" Requirements

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

106. Section C-1 of the Facility NPDES Permit requires the permittee to practice "good housekeeping," which includes maintaining the Facility grounds.

107. Section C-1 of the Facility NPDES Permit additionally specifies that "[t]here shall be no scattered parts, equipment, debris, etc."

108. During the 2016 Inspection, an EPA Inspector observed and photographed coal fines that had spilled on the ground near Building 344 of Plant #1 at the Facility, immediately adjacent to the storm water ditch leading eastward to "external outlet" 004. In his subsequent inspection report, the EPA Inspector noted that the spilled material appeared to be localized and that the old, decommissioned boiler in Building 344 of Plant #1 at the Facility used coal as its main fuel source.

109. On June 16, 2016, the EPA Inspector received an email correspondence from the Respondent's Senior EH&S/Security Manager at the Facility acknowledging a coal fines spill and advising the EPA

Inspector that the Respondent had initiated a project to clean up that spill.

110. Respondent violated Facility NPDES Permit Section C-1 from at least June 6, 2016 through June 16, 2016 by failing to comply with the "good housekeeping" requirements of the Facility NPDES Permit by allowing coal fine debris to remain present on the grounds of the Facility during that time period.

CWA § 311(j)(1)(C) OIL POLLUTION PREVENTION ALLEGATIONS

COUNT XIII
Failure to amend SPCC Plan in Accordance with 40 C.F.R. § 112.5(a) Requirements

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

112. Respondent is a "person" within the meaning and definition of CWA Section 311(a), 33 U.S.C. § 1321(a).

113. Pursuant to CWA Section 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), EPA promulgated the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112, that include procedures, methods and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities.

114. Pursuant to 40 C.F.R. § 112.1, an owner or operator of a non-transportation-related onshore or offshore facility with an above-ground oil storage capacity exceeding 1,320 gallons, engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines is subject to Part 112.

115. 40 C.F.R. § 112.3 provides (unless otherwise exempt pursuant to 40 C.F.R. § 112.1(d)) that "[t]he owner or operator or an onshore or offshore facility subject to [40 C.F.R. Part 112] must prepare in writing and implement a Spill Prevention Control and Countermeasure Plan (hereafter "SPCC Plan" or "Plan")," in accordance with [40 C.F.R.] § 112.7 and any other applicable section of this part."

116. The Facility is adjacent to the North Branch of the Potomac River, which is a navigable water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a number of Facility storm water trenches discharge into the North Branch of the Potomac River.

117. The Facility is a "facility" within the meaning of Section 311(a)(9) of the CWA, 33 U.S.C. § 1321(a)(9), and 40 C.F.R. § 112.2.

118. Due to its location, the Facility could reasonably be expected to discharge oil in quantities that may be harmful, as defined by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or its adjoining shoreline.

119. At the time of the 2016 Inspection, the Facility had over 100,000 gallons of aggregate oil-storage capacity with a completely buried oil storage capacity exceeding 42,000 gallons, aggregate aboveground oil storage capacity in excess of 1,320 gallons (including containers with a capacity of 55 gallons or more) and the Facility did not meet the 40 C.F.R. § 112.1(d)(2)(i) and (ii), or any other 40 C.F.R. § 112.1(d), exemption criteria.

120. Respondent, as the operator of the Facility, is subject to the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112.

121. Pursuant to 40 C.F.R. § 112.3, Respondent was required to prepare in writing, and implement, an SPCC Plan at the Facility in accordance with 40 C.F.R. § 112.7 and any other applicable section.

122. Pursuant to 40 C.F.R. § 112.5(a), the owner or operator of a facility subject to the requirements of 40 C.F.R. Part 112 is required to amend its SPCC Plan, in accordance with the general requirements in 40 C.F.R. § 112.7 and with any specific section of 40 C.F.R. Part 112 applicable to the facility, whenever there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in 40 C.F.R. § 112.1(b). Specifically, 40 C.F.R. § 112.7(a)(3) requires, in relevant and applicable part, that the SPCC Plan describe the physical layout of the facility and include, inter alia, a facility diagram which must mark the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located. Pursuant to 40 C.F.R. § 112.5(a), examples of changes that may require amendment of an SPCC Plan include, but are not limited to, the decommissioning containers, changes of product or service, or a revision of standard operation or maintenance procedures at a facility.

123. At the time of the 2016 Inspection, Respondent maintained an SPCC Plan at the Facility dated September 2014.

124. On June 7, 2016, two (2) 50,000-gallon above-ground storage tanks ("ASTs") were present at the Facility's "old steam plant." These 50,000-gallon ASTs were not identified, included or otherwise addressed in the September 2014 Facility SPCC Plan. While Respondent's representatives then expressed their belief, to an EPA Inspector, that these ASTs were no longer in use, there were no out-of-service signs posted on either AST, they had not been permanently closed and Facility personnel were not certain as to whether these ASTs were completely empty of all liquid and sludge or whether all connecting lines and piping had been disconnected.

125. On June 7, 2016, the Facility's September 2014 SPCC Plan lacked a *complete* list, description and diagram of all Facility fixed oil storage containers and had not been amended to reflect the decommissioning, product service change or change in the operation and maintenance associated with

two (2) fixed oil storage containers (*i.e.*, the two 50,000-gallon ASTs near the "old steam plant") at the Facility.

126. On June 7, 2016, Respondent was in violation of applicable SPCC requirements of 40 C.F.R. § 112.5(a) by and through its failure to maintain a Facility SPCC Plan containing a *complete* list, description and diagram of all Facility fixed oil storage containers and because the Respondent failed to properly amend the Facility SPCC Plan to reflect the decommissioning, product service change or change in the operation and maintenance associated with each of these two (2) fixed oil storage containers at the Facility.

CAA TITLE V ALLEGATIONS

COUNT XIV

Noncompliance with CAA Section 502(a) and
Title V permit (Part 1 - Motor Manufacturing Operations)
Failure to Conduct and Record Required Monthly Visible Emissions Observations

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

128. 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.

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

130. 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.

131. 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.

132. EPA fully approved the Title V operating permit program for the State of West Virginia effective on November 19, 2001. 40 C.F.R. Part 70, Appendix A. WVDEP is a "Permitting Authority" for Title V purposes as defined in Section 501(4) of the CAA, 42 U.S.C. § 7661(4).

133. The Facility received a Title V permit from WVDEP that is divided into three parts.

134. The Facility Title V permit, Part 1, Motor Manufacturing Operations - Permit #R30-05700011-2014 (hereinafter "Title V Part 1 Permit") had an effective date of May 5, 2014 and an expiration date of April 27, 2019.

135. Section 3.2.1. of the Facility's Title V Part 1 Permit required the Respondent to conduct and record monthly visual emission observations in accordance with Method 22 of 40 C.F.R. Part 60, Appendix A, for the Emission Points 1-3E, 1-7E, F-6E, F-11E, F-14E, A-7E, B-16E, B-19E, B-21E, B-25E that are subject to 45 C.S.R. 7, and units emitting directly into the open air from points other than stack outlets (including visible fugitive dust emissions that leave the plant site boundaries).

136. During the month of December of 2015, and specifically for an approximate two-hour period on December 8, 2015, Respondent failed to conduct and record required monthly visible emissions observations for the emission point G-2E (Feed Hopper Exhaust Hood-2000).

137. Respondent violated CAA Section 502(a), 42 U.S.C. § 7661a(a), and Section 3.2.1. of the Facility's Title V Part 1 Permit by failing to conduct and record required monthly visible emissions observations for the emission point G-2E (Feed Hopper Exhaust Hood-2000) during the month of December 2015.

COUNT XV
Noncompliance with CAA Section 502(a) and
Title V Part 1 Permit (Motor Manufacturing Operations)
Failure to Conduct and Record Required Fabric Filter Checks

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

139. Section 3.2.2. of the Facility's Title V Part 1 Permit required the Respondent to conduct and record fabric filter checks prior to each use of the Facility paint booths and related equipment (Emission Points 2-9E, 2-10E, 2-11E, 2-15E, F-1E, F-3E, F-5E, F-9E, F-12E, F-13E, F-16E, F-18E, G-2E, 6-2E, 6-4E, 6-5E, 6-6E, 6-7E, 6-8E, J-2E, J-4E, J-5E, J-7E and J-8E).

140. On June 3, 2014, June 4, 2014, August 12, 2014 and October 10, 2014 Respondent failed to conduct required fabric filter checks prior to its use of Facility Emission point J-7E (*i.e.*, the Stenciling Conveyor-2011 equipment).

141. Respondent violated CAA Section 502(a), 42 U.S.C. § 7661a(a), and Section 3.2.2. of the Facility's Title V Part 1 Permit on four (4) separate occasions by failing to conduct and record required fabric filter checks prior to its use of Facility Emission point J-7E on each of the dates and on each of the occasions specified in the preceding paragraph.

COUNT XVI
Noncompliance with CAA Section 502(a) and
Title V permit (Part 2 - Composites Manufacturing and Metal Fabrication)
Failure to Comply with Air Conditioning and Refrigeration Unit Leak Calculation and Repair Requirements

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

143. The Facility Title V permit, Part 2, Composites Manufacturing and Metal Fabrication -#R30-05700011-2014 (hereinafter "Title V Part 2 Permit") had an effective date of May 5, 2014 and an expiration date of April 27, 2019.

144. A number of air conditioning and refrigeration ("ACR") units at the Facility contain ozone depleting substances ("ODS") and are regulated under Title VI of the CAA and Condition 3.1.7 of the Facility's Title V Part 2 Permit.

145. Condition 3.1.7 of the Facility's Title V Part 2 Permit provides, in pertinent part, that "[p]ersons opening appliances for maintenance, service, repair, or disposal must comply with the prohibitions and required practices pursuant to 40 C.F.R. §§ 82.154 and 82.156."

146. The provisions of 40 C.F.R. § 82.156 that apply to owners and operators of appliances containing 50 or more pounds of class I and class II (hereinafter "regulated") refrigerants are set forth in 40 C.F.R. § 82.156(i) and include leak calculations, monitoring and recordkeeping requirements that apply to the repair and servicing of commercial refrigeration equipment, industrial process refrigeration equipment and comfort cooling appliances that are leaking beyond certain specified rates.

147. During the 2016 Inspection, representatives of the Respondent advised EPA Inspectors that during calendar years 2011 through early December 2015 the Respondent typically performed required leak calculations and monitored repairs made to leaking ACR units containing 50 pounds or greater of regulated refrigerant R-22 when refrigerants were added to the units during servicing performed in the Mechanics Shop, located in Facility Building 845, and the Respondent provided EPA Inspectors with leak calculation records maintained at the Facility for ACR services performed during that specified time period.

148. During the 2016 Inspection, representatives of the Respondent also advised EPA Inspectors that, subsequent to early December 2015, Respondent continued to service and repair leaking ACR units containing 50 pounds or greater of regulated refrigerant R-22, but did not perform required leak calculations, or monitor repairs made to ACR units containing 50 pounds or greater of regulated refrigerants to ensure compliance with applicable recordkeeping and notification requirements of 40 C.F.R. § 82.156(i), because the individual at the Facility then tasked with those responsibilities had not been properly trained to perform those functions.

149. Respondent violated CAA Section 502(a), 42 U.S.C. § 7661a(a), and Condition 3.1.7 of the Facility's Title V Part 2 Permit by failing to comply with the applicable leak calculation, repair monitoring, recordkeeping and notification requirements of 40 C.F.R. § 82.156(i) when servicing and repairing leaking ACR units containing 50 pounds or greater of regulated refrigerant at the Facility from early December 2015 through June 6, 2016.

COUNT XVII

Noncompliance with CAA Section 502(a) and
Title V permit (Part 3 - Miscellaneous Units)
Failure to conduct required SO2 emission calculations

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

151. The Facility Title V permit, Part 3 - Miscellaneous Units – #R30-05700011-2009 had an effective date of August 24, 2009 and an expiration date of August 10, 2014, and was thereafter renewed (#R30-05700011-2014), with an effective date of August 12, 2014 and an expiration date of July 29, 2019 (hereinafter "Title V Part 3 Permit").

152. Section 4.2.2.b. of the Facility's Title V Part 3 Permit, pertains to the sulfur content of coal burned as fuel in the Facility's No. 17 Coal Fire Boiler-344 (emission unit L-1S) and initially specifies that "a copy of the laboratory analysis from the coal [supply] company shall be obtained with the first load of coal from the stockpile…." This Section subsequently states that "SO_2 emissions shall be calculated on a monthly basis using this sulfur content analysis and AP-42 emission factor to determine compliance with the weight emission factors per 45 CSR § 10-3.1.e."

153. A Facility Deviation Report for the second half of 2014 establishes that, in mid-June of 2014, the Respondent initially received and burned in the Facility's No. 17 Coal Fire Boiler-344 a ninety-five (95) ton "first load" of bituminous coal that the Facility received from a coal supply company's stockpile, but which was not accompanied by a corresponding laboratory sulfur content analysis.

154. The laboratory sulfur content analysis for the ninety-five (95) ton "first load" of bituminous coal referenced in the preceding paragraph, which the Respondent needed in order to conduct required June 2014 monthly SO_2 emissions calculations that would enable it to determine compliance with the weight emission factors set forth at 45 CSR § 10-3.1.e., was not obtained from the coal supply company by the Respondent until October 2014.

155. Respondent violated CAA Section 502(a), 42 U.S.C. § 7661a(a), and Condition Section 4.2.2.b. of the Facility's Title V Part 3 Permit by failing to conduct required SO2 emission calculations that would enable it to determine compliance with applicable weight emission factors for the No. 17 Coal Fire Boiler-344 (emission unit L-1S) at the Facility during the month of June 2014.

COUNT XVIII
Noncompliance with CAA Section 502(a) and
Title V Part 3 Permit (Miscellaneous Units)
Failure to conduct required SO2 weight emission testing

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

157. Section 4.2.2.a. of the Facility's Title V Part 3 Permit specifies that "[n]o SO_2 weight emission testing per 45 CSR § 10A-5.1.a is required for the [No. 17 Coal Fired] boiler [-344] if sulfur content of the bituminous coal used is 1.2% or less (which keeps SO2 emissions below testing applicability level)."

158. In mid-June 2014, the Respondent received and began to burn ninety-five (95) tons of bituminous coal for which it had not received the corresponding laboratory sulfur content analysis from the coal supply company, as specified in paragraph 147, above.

159. Respondent subsequently received a laboratory sulfur content analysis from the coal supply company that supplied the ninety-five (95) ton "first load" shipment of bituminous coal received at the Facility in mid-June 2014 (as referenced in paragraph 147, above) in October 2014 and that analysis indicated that the sulfur content of the coal was 1.28%.

160. Respondent violated CAA Section 502(a), 42 U.S.C. § 7661a(a), and Condition Section 4.2.2.a. of the Facility's Title V Part 3 Permit by impermissibly burning ninety-five (95) tons of bituminous coal having a sulfur content greater than 1.2% without performing required SO_2 weight emission testing, pursuant to 45 CSR § 10A-5.1.a., during the month of June 2014.

COUNT XIX
Noncompliance with CAA Section 502(a) and
Title V Part 3 Permit (Miscellaneous Units)
Failure to Submit Timely Report to WVDEP

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

162. Section 4.2.2.d. of the Title V Part 3 Permit provides that "[i]f at any time sulfur content of the burning coal would exceed 1.2%, a report shall be submitted to the DAQ [Department of Air Quality] Director within 30 days."

163. In mid-June 2014, Respondent proceeded to burn ninety-five (95) tons of bituminous coal, constituting the "first load" shipment of bituminous coal received at the Facility from the supplying coal company's stockpile, in the No. 17 Coal Fire Boiler-344 (emission unit L-1S) absent the

Respondent's receipt of the required laboratory sulfur content analysis for that coal from the coal supply company.

164. It was not until October 2014, and approximately four days after Respondent subsequently obtained laboratory sulfur content analysis from the coal supply company stating that the coal that it burned in the Facility's No. 17 Coal Fire Boiler-344 (emission unit L-1S) in June of 2014 had a sulfur content in excess of 1.2%, that the Respondent proceeded to notify the WVDEP Department of Air Quality ("DAQ") Director of that fact by telephone. Respondent subsequently confirmed that oral notification by letter to the Director dated November 4, 2015.

165. Respondent violated CAA Section 502(a), 42 U.S.C. § 7661a(a), and Section 4.2.2.d. of the Facility's Title V Part 3 Permit by failing to submit a timely report to the WVDEP DAQ Director within thirty (30) days of burning coal with greater than a 1.2% sulfur content in the Facility's No. 17 Coal Fire Boiler-344 (emission unit L-1S).

RCRA SECTION 3008(a) COMPLIANCE ORDER

166. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6298(a), Respondent shall perform each of the following Compliance Order tasks in the manner and within the time periods specified. As used herein, the term "days" shall mean calendar days unless specified otherwise.

167. Within seven (7) days of the effective date of this Consent Agreement and Final Order, Respondent shall submit to WVDEP by e-mail and/or by such other means that Respondent confirms, in advance, is acceptable to WVDEP, a written notice that Respondent has made and implemented, Class 1 modifications to the Facility HWM Permit's Module V OB Permit Attachments 3 and 5 by modifying certain of their GOP-1-81-01 and GOP-1-00-38 conditions. Such notice shall include:

(a) written copies of each of the GOP-1-81-01 and GOP-1-00-38 *Class 1* modifications that Respondent has made, and put into effect, at the Facility;

(b) a written explanation that identifies and describes each of the implemented changes that Respondent has made to the GOP-1-81-01 and GOP-1-00-38 conditions in Attachments 3 and 5 of the Facility's OB Permit and explains why each of these changes is necessary; and

(c) all applicable information, if any, required by 40 C.F.R. §§ 270.21, 270.62 and 270.63.

168. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall submit to WVDEP in writing, by e-mail and/or by such other means that Respondent confirms, in advance, is acceptable to WVDEP, either:

(a) a *Class 3* permit modification request, for WVDEP's review and approval, containing copies of the most recent version of (*i.e.*, containing the most recent operational revisions/changes to) each of the specific Group 3 waste UOPs that Respondent has developed and implemented at the Facility and which:

(i) describes the exact changes and/or additions made to each OB Permit condition and Attachment, including each change and/or addition, if any, made to the provisions of, or within, OB Permit Attachment 3 and GOP-1-81-01;

(ii) identifies that the modification is a Class 3 modification;

(iii) explains why the modification is needed;

(iv) provides the applicable information, if any, required by 40 CFR § 270.13 through 270.22, 270.62, 270.63, and 270.66; and

(v) complies with all other requirements and provisions of 40 C.F.R. § 270.42(c), unless specifically directed otherwise by WVDEP;

and/or

(b) a request for a determination, by WVDEP, that any of the changes and/or additions that Respondent has made to any condition of, and/or Attachment to, the OB Permit (including each change and/or addition, if any, made to the provisions of, or within, OB Permit Attachment 3 and GOP-1-81-01) pertaining to the UOPs that the Respondent has developed and implemented for the treatment of Group 3 wastes at the Facility Open Burning Grounds should be reviewed and approved as a *Class 1* or *Class 2* modification, which shall include all information necessary to support the requested classification.

169. Upon making any *Class 3* permit modification request and/or any request for a determination that any permit modification should be reviewed and approved as a *Class 1* or *Class 2* modification, pursuant to the preceding paragraph, Respondent shall timely comply with: all subsequent requests by WVDEP for additional supporting information and/or submissions; any associated deadlines established by WVDEP; and, with any responsive determinations that WVDEP may make pursuant to its applicable authorities and related discretion.

170. In the event that Respondent has the need to treat Group 3 wastes at the Open Burning Grounds during the pendency of any class determination request and/or permit modification review required pursuant to this "Compliance Order," Respondent may seek to demonstrate the nature and the scope of that need to WVDEP, establish that it meets the requisite regulatory criteria and request that WVDEP grant it temporary authorization (up to 180 days) to continue certain waste treatment activities and ongoing waste management practices in the pendency of its requested permit modification(s). Respondent may make any such temporary authorization request to WVDEP at any time, in

accordance with the requirements 40 C.F.R. § 270.42(e) and pursuant to the following provisions and procedures:

(a) Any such temporary authorization request must be made to WVDEP, in writing, by e-mail and/or by such other means that Respondent confirms, in advance, is acceptable to WVDEP, and shall therein include or be accompanied by:

(i) a description of the activities to be conducted under the temporary authorization;

(ii) an explanation of why the temporary authorization is necessary;

(iii) sufficient information to ensure compliance with 40 C.F.R. Part 264 standards; and

(iv) Any temporary authorization request for a Class 2 modification shall meet the criteria set forth in 40 C.F.R. § 270.42(e)(3)(ii), and any temporary authorization request for a Class 3 modification shall meet the criteria set forth in 40 C.F.R. § 270.42(e)(3)(ii)(C), (D) or (E) and provide improved management or treatment of a hazardous waste already listed in the Facility permit.

(b) Respondent shall subsequently comply with any determination that WVDEP may make, pursuant to its applicable authorities and related discretion, in response to any temporary authorization request.

171. Within ninety (90) days of the effective date of this Consent Agreement and Final Order, Respondent shall obtain and submit to WVDEP by e-mail and/or by such other means that Respondent confirms, in advance, is acceptable to WVDEP, a written and detailed chemical and physical analysis of a representative sample of each of the individual propellant formulation wastes currently (and collectively) identified in the Facility WAP as "P/E Acetone Squares" and as "P/E Lacquer Squares" hazardous wastes that Respondent has been treating, via open burning, at the Facility Open Burning Grounds. The required written and detailed chemical and physical analysis of each of these wastes shall, at a minimum, contain:

(a) a hazardous waste determination, for each waste type, that is made at:

(i) the point of initial waste generation, before any dilution, mixing, or other alteration of the waste occurs; and

(ii) at any time in the course of its management that the waste has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the RCRA classification of the waste may change, including waste treatment through the addition of triacetin and/or sawdust.

(b) all of the relevant additional information that Respondent has not previously provided to WVDEP, for each propellant formulation waste type, which must be known to treat, store, or dispose of each of these wastes in accordance with the requirements of the Facility HWM Permit, its Module V OB Permit, and 40 C.F.R. Parts 264 and part 268, including:

(i) a waste analysis and/or characterization that identifies all waste-specific information (including the percentage of each of the constituents present in each waste), indicates which of these waste constituents has the potential to detonate, and identifies the net explosive weight of each waste, prior and subsequent to Respondent's initial treatment (*i.e.*, prior to the addition of sawdust and/or triacetin) of the original waste "slums" (for the purposes of reducing their sensitivity to detonation and facilitating safe handling);

(ii) a list of the hazardous waste codes associated with each such hazardous wastes generated by the Respondent at the Facility, along with an explanation of the means and analytical or other methods used by the Respondent to make such hazardous waste code determinations;

(iii) a determination as to which, if any, of the original waste slums and of the treated hazardous waste "squares" (*i.e.*, of each type of waste "square" that results from treatment of the original waste "slum" by the addition of sawdust and/or triacetin) are explosive in nature and have the potential to detonate; and

(iv) copies of all supporting chemical and physical analyses performed on any of these wastes, and/or other information relied upon by the Respondent, to make and support each of the required waste characterizations.

172. Within one hundred and twenty (120) days of the effective date of this Consent Agreement and Final Order, or within such extended time period established by WVDEP in its sole, nonreviewable discretion, Respondent shall:

(a) seek to make any appropriate changes or revisions to the Facility WAP that are related to the above (*i.e.*, paragraph 171) activities, either by making any relevant and appropriate Class I permit modifications and timely notifying WVDEP of those changes implemented, or by initiating any other required Permit modification request with WVDEP and thereafter complying with any subsequent WVDEP determinations, directions and associated deadlines;

(b) update the Facility Operating Record to include the records and results of all waste analyses performed by Respondent, in accordance with this "Compliance Order" and Facility HWM Permit Module 1, Section K-2, requirements; and

(c) provide EPA with copies of all such permit modifications, permit modification requests and record updates to the Facility Operating Record.

173. Within one hundred and twenty (120) days of the effective date of this Consent Agreement and Final Order, or within such extended time period established by EPA and WVDEP, in their joint, nonreviewable discretion, Respondent shall submit to WVDEP, in writing, by e-mail and/or by such other means that Respondent confirms, in advance, is acceptable to WVDEP, for WVDEP's review and approval, an appropriate request and proposal to modify the Facility HWM Permit's Module V OB Permit in a manner that:

(a) provides for the incorporation and implementation of enhanced inspection procedures and increased cleaning and maintenance frequencies at the Facility 's hazardous waste-contaminated concrete Open Burn Pads that surround each of the six (6) open burn pans at the Facility 's Open Burning Grounds;

(b) includes and formally proposes those additional and revised design, construction, inspection, maintenance and operation activities necessary to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste and/or hazardous waste constituents from each of the Facility's Open Burn Pads to air, soil, or state waters (including surface and groundwater) which could threaten human health or the environment, as required by 40 C.F.R. 264.31, and the current Facility HWM Permit, and in accordance with the environmental performance standards of 40 C.F.R. § 264.601;

(c) includes, but is not limited to the proposed design, physical construction, inspection, maintenance and operation of any physical structures, such as berms, stormwater collection basins, sumps, and/or any such other physical means and procedures as may be necessary to:

(i) collect, contain and/or otherwise prevent all hazardous waste contaminated stormwater runoff from migrating from the hazardous waste-contaminated Open Burning Pads to the adjacent soil, surface water, ground water and/or the subsurface environment;

(ii) prevent stormwater, surface water and/or sub-surface water run on from migrating onto, and/or from otherwise infiltrating, any of the Facility's existing hazardous waste-contaminated Open Burn Pads; and

(iii) provide for the appropriate transportation, treatment and disposal of all hazardous waste contaminated stormwater runoff collected from the Facility's Open Burn Pads.

174. Complete copies of each subsequent submission that Respondent makes to WVDEP as a result of activities initiated and undertaken pursuant to this "Compliance Order," simultaneously shall be sent to EPA and shall be accompanied by a certification compliant with the requirements of paragraph 177, below.

175. Within two hundred and forty (240) days after the Effective Date of this Consent Agreement and Final Order or within such extended time period established by WVDEP, in its sole, nonreviewable discretion, Respondent shall complete construction of all WVDEP-approved physical containment and transportation structures referenced in Paragraph 173(c), above, and obtain all permits necessary to operate them in a manner designed to properly collect, contain, prevent migration of and treat hazardous stormwater runoff from, the Facility Open Burn Pads to soil or state waters (including surface and groundwater) and prevent stormwater, surface water and/or sub-surface water run on from migrating onto, or from infiltrating, any of the Facility's existing hazardous waste-contaminated Open Burn Pads in the manner specified in Paragraphs 173(c)(i),(ii) and (iii).

176. Within thirty (30) days after the deadline specified, or alternatively established by WVDEP, in the preceding paragraph, Respondent shall:

(a) return to compliance with all requirements and provisions of the Facility HWM Permit and all Attachments thereto, including the incorporated Module V OB Permit and its Attachments, the authorized West Virginia Hazardous Waste Management Program, and applicable requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e for which violations are alleged in this Consent Agreement; and

(b) certify to EPA, in writing and pursuant to the requirements of paragraph 177, immediately below, that Respondent and the Facility currently are in compliance with all requirements and provisions of the Facility HWM Permit and all Attachments thereto, including the incorporated Module V OB Permit and its Attachments, the authorized West Virginia Hazardous Waste Management Program and applicable requirements of RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e for which violations are alleged in this Consent Agreement. Such certification, and any other notice, certification, data presentation, or document submitted by Respondent pursuant to the "Compliance Order" section of this Consent Agreement, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this "Compliance Order" **shall be certified by a responsible corporate officer of Respondent**. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function,

or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

177. Any certification submitted by Respondent pursuant to this "Compliance Order" shall provide the following statement above the signature of the authorized individual signing the certification on behalf of the Respondent:

> I certify under penalty of law that this document and all attachments are true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.
>
> Signature: _____
> Name: _____
> Title: _____
> Date: _____

178. Complete copies of all submissions required to be made by the Respondent to WVDEP (including any certification, notice, data presentation, document, Facility Operating Record update or other submission) pursuant to this "Compliance Order" shall:

(a) be sent to the attention of the following individual, by e mail and/or by such other means that Respondent confirms, in advance, is acceptable to WVDEP, at the e-mail and/or mailing address(es) provided immediately below, along with a copy of the executed certification required pursuant to the preceding paragraph:

Chief Inspector
Environmental Enforcement – Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304
Jeremy.W.Bandy@wv.gov

(b) also be sent to the attention of the following EPA representative, via e-mail at the e-mail address provided immediately below, along with a copy of the executed certification required pursuant to the preceding paragraph:

Wilbur Martínez
U.S. EPA, Enforcement Support Section (Mail Code 3ED13)
Environmental Science Center
701 Mapes Road
Fort Meade, MD 20755
martinez.wilbur@epa.gov

CIVIL PENALTY

179. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of ***THREE HUNDRED AND FIFTY THOUSAND DOLLARS*** **($350,000.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

180. Civil penalties for the violations alleged in Counts I through IX of this Consent Agreement were based upon EPA's consideration of a number of factors including, but not limited to, the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), *i.e.*, the seriousness of Respondent's violations and the good faith efforts by Respondent to comply with the applicable requirements of the RCRA. These statutory factors were applied to the particular facts and circumstances of this case with specific reference to the *RCRA Civil Penalty Policy* (2003), which reflects the statutory penalty criteria and factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

181. Civil penalties for the violations alleged in Counts X through XII of this Consent Agreement were based upon EPA's consideration of a number of factors including, but not limited to, the statutory factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), *i.e.*, 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 statutory factors were applied to the particular facts and circumstances of this case upon EPA's consideration of the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

182. Civil penalties for the violation alleged in Count XIII of this Consent Agreement was based upon EPA's consideration of a number of factors including, but not limited to, the statutory factors set forth in Section 311(b)(8) of the CWA, as amended, 33 U.S.C. §1321(b)(8), *i.e.*, the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require. These statutory factors were applied to the particular facts and circumstances of this case upon EPA's consideration of the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998), the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

183. Civil penalties for the violations alleged in Counts XIV through XIX of this Consent Agreement were based upon EPA's consideration of a number of factors including, but not limited to, the statutory penalty criteria ("statutory factors") set forth 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. These statutory factors were applied to the particular facts and circumstances of this case with specific reference to the *Clean Air Act Stationary Source Civil Penalty Policy* (October 25, 1991) which reflects the statutory penalty criteria and factors set forth in CAA Section 113(e), 42 U.S.C. § 7413(e), the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

184. Payment of the full civil penalty amount and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, **[**CAA-CWA-RCRA-03-2021-0024**]**;

b. All checks shall be made payable to the "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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

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

e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously, by e-mail, to:

A.J. D'Angelo
Sr. Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029
dangelo.aj@epa.gov

185. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

186. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).

187. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).

188. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid

penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

189. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

190. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. §162(f)(2)(A)(ii), performance of those actions required pursuant to the "Compliance Order" provisions of this Consent Agreement are required to come into compliance with law.

GENERAL SETTLEMENT CONDITIONS

191. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order do not contain any confidential business information or personally identifiable information from Respondent.

192. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

193. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that with the exception of those outstanding compliance actions that Respondent is required to implement pursuant to the "RCRA Section 3008(a) Compliance Order" provisions and deadlines in this Consent Agreement, it is otherwise in current compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

194. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order do not constitute a waiver, suspension or modification of the requirements of the RCRA, CWA or CAA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

195. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the RCRA, CWA and CAA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date. Except as expressly waived herein, nothing in this Consent Agreement shall be construed to waive any rights or defenses otherwise available to Respondent.

EXECUTION /PARTIES BOUND

196. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

PUBLIC NOTICE

197. 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 the 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 State of West Virginia regarding this action and will mail a copy of this document to the appropriate official.

EFFECTIVE DATE

198. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

ENTIRE AGREEMENT

199. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the 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 Consent Agreement and Final Order.

For Respondent:

Date: 3/16/21

Daniel Olson
Vice-President
Alliant Techsystems Operations LLC

For Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 5/17/21 By: KAREN MELVIN Digitally signed by KAREN MELVIN Date: 2021.05.17 08:30:44 -04'00'

Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____ By: ANGELO D'ANGELO Digitally signed by ANGELO D'ANGELO Date: 2021.05.05 08:12:33 -04'00'

A.J. D'Angelo
Senior Assistant Regional Counsel
U.S. EPA – Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:	:	
	:	
	:	
Alliant Techsystems Operations, LLC	:	
	:	
Respondent,	:	
	:	Docket No. CAA-CWA-RCRA-03-2021-0024
	:	
Allegany Ballistics Laboratory,	:	
Keyser (Rocket Center), West Virginia,	:	
	:	
Facility.	:	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Alliant Techsystems Operations, LLC. have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the penalty criteria set forth in Section 3008(a)(3) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6928(a)(3), Sections 309(g)(3) and 311(b)(8) of the Clean Water Act, as amended ("CWA"), 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8), and Section 113(e) of the Clean Air Act, as amended ("CAA"), 42 U.S.C. § 7413(e), together with the *RCRA Civil Penalty Policy* (2003), the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998), the *Clean Air Act Stationary Source Civil Penalty Policy* (October 25, 1991), the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

NOW, THEREFORE, PURSUANT TO Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g); Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 311(b)(6), Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the *Consolidated Rules of Practice*, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***THREE HUNDRED AND FIFTY THOUSAND DOLLARS*** **($350,000.00)** in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Air Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

_____ _____

Date

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III