

COMPLIANCE AGREEMENT
between the
UNITED STATES
DEPARTMENT OF THE NAVY
and the
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

I. PARTIES

1. The U.S. Environmental Protection Agency and the United States Department of the Navy ("Navy") are parties to this Compliance Agreement ("Agreement") regarding the donation by the Navy of the destroyer ex-USS EDSON (DD 946) ("ex-EDSON") to the Saginaw Valley Naval Ship Museum (the "Donee") located in Bay City, Michigan, for use as a static museum and memorial.

II. PURPOSE

2. The use, distribution in commerce, and disposal of polychlorinated biphenyls ("PCBs") are regulated by EPA under the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 et seq., and 40 C.F.R. Part 761. Non-liquid PCB materials and liquid-filled PCB items, regardless of concentration, may not be used in any manner other than in a totally enclosed manner within the United States unless authorized by EPA under TSCA. The PCBs referred to in Paragraphs 12-15, below, may not be totally enclosed, and their use may not be authorized by EPA.
3. This Agreement sets forth the conditions under which EPA will refrain from instituting an enforcement action against the Navy under TSCA with respect to the distribution in commerce of ex-EDSON, a vessel known to contain PCBs in regulated concentrations, by the Navy to the Donee.

III. APPLICABILITY

4. This Agreement identifies the steps the Navy shall take regarding the distribution in commerce of ex-EDSON to the Donee in light of the presence of PCBs onboard ex-EDSON.
5. If the Navy fully complies with each of the terms and conditions of this Agreement, EPA will not institute an enforcement action against the Navy for violations of the PCB requirements under TSCA and the PCB regulations at 40 C.F.R. Part 761 based upon the act of transferring title to or possession of ex-EDSON to the Donee or reassuming title to or possession of ex-EDSON. EPA has determined that this exercise of enforcement discretion will serve the public interest.

6. This Agreement pertains solely to the distribution in commerce by the Navy of ex-EDSON to the Donee, pursuant to the CONTRACT FOR THE DONATION OF THE DESTROYER ex-EDSON (DD 946), Contract No. _____, (hereinafter, "Donation Contract") (attached hereto as Exhibit 1), and does not bind either party with regard to TSCA requirements in any other matter.
7. A separate compliance agreement between EPA and the Donee addresses the requirements which the Donee must satisfy to address potential risks to human health and the environment that may be associated with the continued presence of PCBs onboard ex-EDSON after the transfer of such vessel by the Navy to the Donee.

IV. DEFINITIONS

8. The following definitions apply to this Agreement. If a term is not defined below, it shall have the meaning set forth in Section 3 of TSCA, 15 U.S.C. § 2602, or in 40 C.F.R. Part 761. If a term is not defined in Section 3 of TSCA, or in 40 C.F.R. Part 761, such term shall have its ordinary meaning.
 - a. "PCB inventory" means the complete and final listing of suspected liquid-filled PCB items onboard ex-EDSON, which was developed by the Navy and dated November 10, 2004 (Exhibit 2).
 - b. "Liquid-filled PCB item" means any item that does in fact or is assumed to contain liquid PCBs and includes transformers, capacitors, and any other piece of equipment or other material having or assumed to contain a liquid PCB component.
 - c. "Non-liquid PCB materials" means any non-liquid material containing PCBs including, but not limited to, all of the following items which may contain PCBs, and for the purposes of this Agreement, are assumed to contain PCBs on ex-EDSON: caulking; felt and rubber ventilation duct flange gaskets; insulation and other nonmetallic components of electrical cable; fluorescent light ballast starters and potting material; bulkhead and pipe insulation; foam rubber/plastic/fiberglass/cork anti-sweat insulation used on hull surfaces and cold water piping; other rubber products such as pipe hanger rubber blocks, snubbers, bumpers, shock and vibration mounts, pads, spools, hatch gaskets, O-rings, packing, grommets, etc.; adhesive tape and double-backed adhesive tape; dried aluminized paint; and dried oil-based paint.

V. STATEMENT OF FACTS

9. Under 10 U.S.C. § 7306, the Navy is authorized to donate vessels to State and local governments and non-profit organizations. Pursuant to this statutory authority, the Navy proposes to donate ex-EDSON to the Donee for continued use as a static museum and memorial.
10. The ex-EDSON was a Forrest Sherman-class destroyer, decommissioned on December 15, 1988. The ex-EDSON served as a museum ship at the Intrepid Sea-Air-Space

Museum in New York City from June 30, 1989 to June 14, 2004, when it was towed to the Philadelphia Inactive Ships Maintenance Facility for storage.

11. The Navy and the Donee intend to enter into the Donation Contract, which will be the sole legal document evidencing the transfer of title to ex-EDSON from the Navy to the Donee and shall require the Donee to maintain ex-EDSON in a condition satisfactory to the Navy, including the management of ex-EDSON in accordance with the requirements established by a separate compliance agreement between the Donee and EPA.
12. The Navy has provided a written notification to the Donee and EPA of all known or potential liquid-filled PCB items onboard ex-EDSON and if applicable, their date of removal. The removal of liquid PCB containing items was in accordance with the Navy Policy for Environmental Remediation. This notification was in the form of a PCB inventory which lists the item, equipment ID number, quantity, cabinet, status, location compartment, serial number and kilograms of fluid or PCB material and any other "remarks" that describe what the item is and what is known about its PCB content (see Exhibit 2).
13. The Navy sampled and analyzed additional hydraulic fluids and lubricants from other equipment onboard ex-EDSON on February 5, 2009. All of the samples collected at that time contained less than 20 mg/kg (ppm) PCBs (see Exhibit 3).
14. In addition to the above-referenced PCB inventory of liquid-filled PCB items onboard ex-EDSON, available data show that various solid materials found on Navy ships and in other non-maritime and non-military industrial applications, may contain regulated PCBs. Such materials include: caulking; felt and rubber ventilation duct flange gaskets; insulation and other non-metallic components of electrical cable; fluorescent light ballast starters and potting material; bulkhead and pipe insulation; foam rubber/plastic/cork anti-sweat insulation used on hull surfaces and cold water piping; other rubber products such as pipe hanger rubber blocks, snubbers, bumpers, shock and vibration mounts, pads, spools, hatch gaskets, O-rings, packing, grommets, etc.; adhesive tape and double-backed adhesive tape; aluminized paint; gloss oil-based paint; and oils and greases. Ex-EDSON contains some of these materials.
15. The Navy's November 2004 PCB survey of ex-EDSON shows that there are some non-liquid PCB materials with PCB concentrations ranging from less than 1 ppm to 5,800 ppm onboard the vessel (See Exhibit 4). This sampling survey does not completely characterize the extent to which PCBs may be present in all types of solid materials on ex-EDSON. Consequently, other materials of these types and other types of solid materials may exist on ex-EDSON with PCB concentrations that exceed the levels identified to date.

VI. REQUIREMENTS

16. The Navy shall ensure that the Donation Contract requires the Donee to maintain ex-EDSON in a condition satisfactory to the Navy, including management of ex-EDSON in

accordance with the requirements established by the compliance agreement between EPA and the Donee. The Navy shall ensure that the Donation Contract requires the Donee to obtain prior approval from the Navy before disposing of all or any part of ex-EDSON and before transferring or assigning any Donee interest in the vessel to any other entity. The Navy shall notify EPA as soon as practicable, but not later than five (5) business days, after becoming aware that the Donee is requesting the Navy's approval, or is planning to dispose of ex-EDSON, or to transfer or assign any interest in the vessel to another entity.

17. In the event the Donee breaches its compliance agreement with EPA, the Navy and EPA shall provide written notification to the other party to this Agreement and to the Donee of such breach as soon as practicable, but in no event later than five (5) business days after the discovery of such breach. If such breach is not cured by the Donee after a reasonable period of time specified by EPA ("Cure Period"), then the Navy shall, within thirty (30) days of the expiration of such "Cure Period," and after consultation with EPA, ensure that all PCBs onboard ex-EDSON are managed or disposed of pursuant to 40 C.F.R. Part 761 or initiate best efforts to reassume title to and possession of the vessel. The Navy shall continue to exercise such efforts until reassumption of title to and possession of the vessel is completed.
18. The Navy shall ensure that the Donation Contract requires the Donee to notify the Navy if the Donee is no longer able or willing to maintain ex-EDSON as a museum or memorial. The Navy shall notify EPA of such notice by the Donee as soon as practicable, but not later than five (5) business days after receipt of such notice. Within thirty (30) days of its receipt of such notice from the Donee, the Navy shall take measures to ensure that all PCBs onboard ex-EDSON are managed or disposed of pursuant to 40 C.F.R. Part 761. Within ninety (90) days of its receipt of such notice from the Donee, the Navy shall initiate best efforts to approve the Donee's transfer of title to and possession of ex-EDSON to a third party pursuant to Section 2(l) of the Donation Contract or reassume title to and possession of the vessel. The Navy shall continue to exercise such efforts until title to and possession of ex-EDSON is successfully transferred to the third party or until the Navy's reassumption of title to and possession of the vessel is completed. Nothing herein shall relieve the Donee of its obligations under XIV.E. of the *Compliance Agreement Between the Saginaw Valley Naval Ship Museum, and the U.S. Environmental Protection Agency*.
19. Nothing in this Agreement relieves the Donee, the Navy, or any other entity of any responsibility for disposing of PCBs from ex-EDSON in accordance with 40 C.F.R. Part 761.
20. Nothing in this Agreement shall limit EPA's potential enforcement response for any violation of TSCA or any other law by Donee.
21. The Navy agrees not to modify the Donation Contract in any manner that may affect any future obligation of the Navy and the Donee to manage PCBs onboard ex-EDSON in accordance with the terms and conditions of this Agreement or with applicable environmental laws and regulations. The Navy shall provide EPA written notification of

any plan to modify the Donation Contract between the Donee and the Navy at least sixty (60) days prior to executing any such modification.

VII. PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT

22. Notwithstanding anything to the contrary in the Donation Contract, if EPA determines that the PCBs on ex-EDSON may present an unreasonable risk to human health or the environment, then the Navy, upon receipt of notification from EPA of such determination, shall immediately take all necessary actions to ensure that all PCBs onboard are managed or disposed of pursuant to 40 C.F.R. Part 761 or shall immediately initiate all actions necessary to reassume title to and possession of ex-EDSON. The Navy shall complete such actions as soon as possible.

VIII. RESERVATION OF RIGHTS

23. EPA reserves the right to commence an action against any person, including the Navy and the Donee, in response to any condition on ex-EDSON which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment.

IX. ENFORCEMENT

24. In the event the Navy does not comply with any term or condition of this Agreement, EPA shall provide written notification to the Navy of EPA's determination of the Navy's noncompliance and afford the Navy a reasonable opportunity under the circumstances to respond to EPA's notice of determination and to correct the noncompliance. If the EPA determines that such noncompliance has not been corrected after a reasonable opportunity to do so or after a time period for correction specified in writing by EPA, then EPA may exercise whatever enforcement authorities it may have in response to such noncompliance. The Navy shall provide written notification to Region 5 of any known or suspected noncompliance with this Agreement as soon as practicable, but not later than five (5) business days after the noncompliance. Failure to do so by the Navy shall constitute noncompliance with this Agreement. This Paragraph shall not be interpreted to limit EPA's authority to take action as described in Paragraph 21, above.

X. NOTICES AND CORRESPONDENCE

25. All notifications, reports, and correspondence required under this agreement shall be provided to the following individuals:

EPA Region 5: Chief, Pesticides and Toxics Compliance Section
 U.S. EPA Region 5
 77 West Jackson Blvd. (LC-8J)
 Chicago, Illinois 60604
 (312) 886-7061

U.S. Navy: NAVSEA 21, PMS 333
Navy Inactive Ships Program
1333 Isaac Hull Avenue SE Stop 2701
Washington Navy Yard, DC 20376-2701
(202) 781-4275

XI. EFFECTIVE DATE

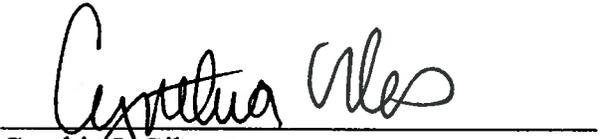
26. This Agreement shall become effective when this Agreement, the compliance agreement between the Donee and EPA referenced in Paragraph 7, above, and the Donation Contract containing terms and conditions identical to those in the proposed Donation Contract attached hereto as Exhibit 1, have been fully executed by all of the parties to each of these three agreements. If the proposed Donation Contract is substantively revised before it is executed by the Navy and the Donee, this Agreement shall not become effective.

THE PARTIES SO AGREE:



Bilyana Anderson
Executive Director
Deputy Commander for Surface Warfare (SEA 21B)
Naval Sea Systems Command

25 JAN 11
Date



Cynthia J. Giles
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

3/4/11
Date



Susan Hedman
Regional Administrator
Region 5
U.S. Environmental Protection Agency

2-18-11
Date