COMPLIANCE AGREEMENT

BETWEEN

THE UNITED STATES NAVY

AND

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C.

Toxic Substances Control Act

IN RE:
Transfer of the ex-MISSOURI from the Navy to
USS MISSOURI Memorial Association of Honolulu, Hawaii

PARTIES

1. The United States Environmental Protection Agency ("EPA") and the United States Navy ("the Navy") are parties to this Compliance Agreement ("Compliance Agreement" or "Agreement").

PURPOSE

2. This Agreement relates to the transfer of the ex-MISSOURI from the Navy to the USS MISSOURI Memorial Association of Honolulu, Hawaii (hereinafter referred to as the DONEE) for use as a static museum/memorial pursuant to EPA's Agreement with the DONEE concerning this continued use.

COVERED MATTERS

3. This Agreement addresses steps the Navy shall take respecting the transfer of the ex-MISSOURI to the DONEE in light of the presence on the ex-MISSOURI of polychlorinated biphenyls ("PCBS"). If the Navy abides by the terms of this Agreement, EPA agrees not to institute an enforcement action against the Navy for the violation of PCB regulatory requirements under TSCA in transferring the ex-MISSOURI to the DONEE. This Agreement does not address, or represent any form of agreement regarding EPA enforcement response, for any other possible violations of EPA regulations by the Navy. A separate EPA/DONEE agreement will address the conditions which the DONEE must meet to reduce risks to human health and the environment associated with the continued presence of PCBs on the ex-MISSOURI.

STATEMENT OF FACTS

4. According to the Navy, in 1989, the Navy discovered the presence of wool felton submarines and surface ships in the Fleet with PCB concentrations up to 30% by weight. The felt was used in a number of applications including acoustical damping material on submarines, gasket material in the joints of ventilation ducts, faying or insulation material between dissimilar metals, and machinery mount insulation.

5. Prior to the 1989 discovery of this felt on its ships, the Navy affirms that it had no knowledge that it was using PCBs in the applications described above. The Navy states that it procured this felt from approximately 1948 until the late 1970s for use in a variety of applications, and, in some cases, the felt may have been installed in older ships during periodic overhauls and maintenance. The ex-MISSOURI contains this felt material. Based on the results of the Navy's PCB sampling survey on the ex-MISSOURI, this felt material was found to contain PCBs in the range from less than 5 ppm to 9 ppm. However, this sampling survey is not a complete characterization of the extent of PCBs in felt material on the ex-MISSOURI, and other felt material may exist on the ex-MISSOURI with PCB concentrations that exceed this range.

6. In 1990 and later, the Navy contends that it discovered 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. The ex-MISSOURI contains some or all of these materials. Based on the results of the Navy's PCB sampling survey on the ex-MISSOURI, some of these materials were found to contain PCBs in the range from less than 5 ppm to 120 ppm, and all surface contamination samples were below 10 micrograms per 100 centimeters squared (ug/100cm2). However, this sampling survey is not a complete characterization of the extent of PCBs in these materials on the ex-MISSOURI, and other materials of these types may exist on the ex-MISSOURI with PCB concentrations that exceed these ranges.

7. These PCBs and PCB items are regulated by EPA under 40 C.F.R. Part 761. PCBs and PCB items, regardless of concentration, may not be used in a non-totally enclosed manner within the United States unless authorized by EPA under TSCA. The uses described in paragraphs 4-6 may not be totally enclosed, and may not be authorized by EPA.

8. The Navy advises EPA that when the ex-MISSOURI was placed on inactive status on 15 January 1995, the Navy conducted the following activities: a ship wide PCB inventory was conducted and any leaking electrical equipment was removed from the vessel and spills were cleaned up in accordance with the provisions of 40 CFR 761; non-leaking PCB items were left intact, inventoried and labeled; hydraulic and heat transfer systems were tested, and if fluids tested above 50 ppm PCB, they were drained and possibly retro filled.

9. The Navy has provided EPA and the DONEE with a preliminary inventory and sampling/survey data of known or potential PCB items onboard the ex-MISSOURI.

10. The Navy advises EPA that it intends to transfer the ex-MISSOURI to the DONEE pursuant to a contract that will contain the following provisions:

"2. <u>Responsibility of the Donee.</u> The Donee, including any successor in interest, shall:

(e) Maintain the Vessel in a condition satisfactory to the Secretary of the Navy in such a manner that it will not cast discredit upon the Navy or upon the proud tradition of the Vessel, and will not allow the Vessel to become a menace to navigation, public health or safety.

(g) Allow representatives of the Government access to all of the Donee's records, documents, and facilities, including the right to perform inspections annually or as determined necessary by the Navy, to assure the accuracy of information provided the Government and compliance with the terms of this contract.

(h) Take all steps necessary to comply with any written directions or instructions that the Navy may prescribe for the protection, preservation, maintenance and repair of the Vessel.

(i) Comply with all Federal, State and local laws and regulations in being, or that may be enacted or issued in the future, with respect to the preservation, documentation and display of the Vessel and its equipment, including those relating to public safety, protection of the environment,

and historic preservation.

(j) Obtain all certificates, licenses and permits required by law or regulation from the appropriate authorities.

(k) Not transfer or otherwise dispose of the Vessel or any part of the Vessel or any interest the Donee may have unless the prior written consent of the Secretary of the Navy or his authorized representative has been obtained.

(l) Require any successor in interest or manager of the Vessel to comply with all provisions of this contract.

(m) Obtain written approval from the Secretary or his authorized representative prior to any significant change in the movement, operation, use, management or maintenance of the Vessel and its equipment.

(n) Notify the Navy should it no longer be willing or able to maintain the ex-MISSOURI as a museum and memorial.

6. Toxic Substances. The Donee acknowledges that Polychlorinated Biphenyls (PCBs) are present on the Vessel and that use of many of the PCB items on the Vessel is not authorized by the Toxic Substances Control Act, 15 U.S.C. 2601 et seq. or regulations implementing it. The Donee further acknowledges that the PCB items require special precautions to ensure against risks to health and the environment. Accordingly, the Donee agrees that it will manage all items on board the Vessel in accordance with the provisions of Section 2 above except as provided by Agreement between the DONEE and the Environmental Protection Agency.

8. Termination.

(b) In the event that the Donee, or its assigns, fails to perform the obligations assumed under this contract, or obligations under the EPA/Donee PCB Agreement, the Secretary of the Navy or his duly authorized representative may terminate this contract, provided that written notice to terminate, specifying the particulars wherein it is claimed that this contract has been violated, is transmitted by registered mail to the Donee. The Donee shall have ninety (90) days from the date of receipt of the written notice to cure the violations or deficiencies set forth in the notice or to begin diligent efforts to effect any cure

which may require more than ninety (90) days to complete. If, at the end of such time, it appears to the Secretary of the Navy, or his authorized representative, that the violations have not been cured, then the contract may be terminated, in which event the Donee shall forfeit to the Government any and all rights that it may have in the Vessel, including rights in any improvements made to the Vessel or fixtures attached by the Donee, as the Secretary of the Navy or his duly authorized representative may decide, and if the Secretary of the Navy or his duly authorized representative so directs, shall transfer title and return the Vessel to the Navy at Pearl Harbor at no cost to the Government. If the contract is terminated for cause, title to the Vessel shall revert to the Navy without further remediation or removal of environmental encumbrances that were associated with the Vessel at the time of original donation, provided that any such existing encumbrances whose condition has deteriorated as a consequence of the Association's possession of the ship shall be remediated to the satisfaction of the Navy at no cost to the Government. In the event the Vessel becomes a hazard to navigation, public health, safety or property, or in the event insurance coverage is not paid or is permitted to lapse, the Secretary of the Navy or his authorized representative may terminate this contract immediately."

REQUIREMENTS AND DELIVERABLES

11. Under 10 U.S.C. Section 7306, the Navy is authorized to donate ships to state governments and non-profit organizations for use as museums and memorials. Pursuant to this statutory authority, the Navy intends to donate the ex-MISSOURI to the DONEE for use as a memorial and museum. The Donation Contract, Contract # N00024-98-C-0201 ("Donation Contract"), which is the sole legal document evidencing title transfer from the Navy to the DONEE, shall require the DONEE to maintain the ex-MISSOURI in a condition satisfactory to the Navy including the management of the ex-MISSOURI in accordance with the requirements as established by the Agreement between the DONEE and EPA. If these conditions are not met by the DONEE, the Navy, upon notification and request by EPA, shall work with the DONEE and EPA to resolve these non-compliance issues through remedies available to the Navy under the Donation Contract, including reassumption by the Navy of possession and title to the ex-MISSOURI if EPA determines that the conditions of

non-compliance by the DONEE present an unreasonable risk to human health or the environment. The Donation Contract shall require the DONEE to get prior approval from the Navy before transferring the ex-MISSOURI to another party. The Navy shall promptly notify EPA if such a request has been received from the DONEE. The Donation Contract shall require that the DONEE allow the Navy to conduct inspections annually or as determined necessary by the Navy to ensure that the ex-MISSOURI is appropriately maintained and operated in accordance with the Donation Contract. The Donation Contract shall also provide for the Navy to terminate the Contract and reassume title to the ship in any case in which the DONEE does not meet its obligations under the Donation Contract including obligations under the EPA/DONEE Agreement. If EPA terminates the EPA/DONEE Agreement, and such termination is based on an EPA determination that there is an unreasonable risk to human health or the environment from the PCBs on the ex-MISSOURI, then the Navy, upon notification and request by EPA, will reassume title and possession to the ex-MISSOURI or ensure that all PCBs are managed or disposed of pursuant to 40 CFR 761. The Donation Contract shall specify that the DONEE is obligated to notify the Navy should the DONEE no longer be able or willing to maintain the ex-MISSOURI as a museum or memorial. If the DONEE is no longer willing or able to maintain the ex-MISSOURI as a museum or memorial, the Navy shall either reassume title and possession to the ex-MISSOURI or ensure that all PCBs are managed or disposed of pursuant to 40 CFR 761. Nothing in this Compliance Agreement relieves the Navy of potential responsibility for the disposal of PCBs from the ex-MISSOURI in accordance with 40 CFR 761.60, regardless of who initiates disposal.

12. Before transferring title of the ex-MISSOURI to the DONEE, the Navy shall provide written notification to the DONEE and EPA of known or potential PCB items on board the ship. This notification shall be in the form of a final 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", which shall describe what the item is, and what is known about its PCB content. Any survey or sampling results conducted by the Navy or under the direction of the Navy, or conducted by any third party, concerning PCBs on the ex-MISSOURI shall be provided to EPA and the DONEE along with this inventory. A final version of this inventory and the sampling/survey data (if different from the ones that were initially provided by the Navy) shall be provided to

EPA and the DONEE prior to transferring title to the vessel. The Navy shall also provide written notification to the DONEE, prior to transfer of title to the ex-MISSOURI, that the PCB items on board the ex-MISSOURI are regulated under TSCA and that their continued presence on the ex-Missouri may not be authorized under TSCA. Nothing in this Agreement addresses EPA's potential enforcement response for the DONEE's violation of TSCA or any other law.

ENFORCEABILITY

13. In the event of a material breach by the Navy of any term or condition of this Agreement, or for other cause, EPA shall notify the Navy and afford the Navy a reasonable opportunity under the circumstances, as determined by EPA, to correct the problem. If EPA considers the material breach or other cause to remain, then EPA may, at its sole discretion, terminate this Agreement by written notice to the Navy. EPA may then take appropriate enforcement action for any violations of TSCA.The Navy shall provide written notification to EPA's Federal Facilities Enforcement Office of any known or suspected breach of this Agreement within Five (5) days of the breach or suspected breach. Failure to do so by the Navy may constitute a material breach of this Agreement.

TERMINATION

14. This Agreement shall terminate upon the Navy's reassumption of title to the ex-MISSOURI.

EFFECTIVE DATE

15. This Agreement shall become effective upon execution by authorized representatives of EPA and the Navy provided that EPA and the DONEE have executed an Agreement addressing the management of PCBs on the ex-MISSOURI. If this Agreement is signed prior to the EPA/DONEE Agreement, it does not become effective until the EPA/DONEE Agreement is effective. If the EPA/DONEE Agreement is effective prior to execution of this Agreement, this Agreement shall become effective upon the date on which the last party affixes its signature to the Agreement.

THE PARTIES SO AGREE:

Felicia Marcus
Regional Administrator
Region IX
U.S. Environmental Protection Agency

3/28/98
Date

Paul M. Robinson, Rear Admiral
Vice Commander
Naval Sea Systems Command
U.S. Navy

3/16/98
Date

CONCURRENCE:

Steven A. Herman
Assistant Administrator for
Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

3/24/98
Date

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