

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

PARTIES

1. The United States Environmental Protection Agency ("EPA") and the United States Department of the Navy ("Navy") are parties to this Compliance Agreement ("Agreement") regarding the donation by the Navy of the vessel ex-USS WISCONSIN (BB 64) ("ex-WISCONSIN") to the City of Norfolk, Virginia ("Donee") for use as a static museum and memorial.

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 11-13, 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-WISCONSIN, a vessel known to contain PCBs in regulated concentrations, by the Navy to the Donee.

APPLICABILITY

4. This Agreement identifies the steps the Navy shall take regarding the distribution in commerce of ex-WISCONSIN to the Donee in light of the presence of PCBs onboard ex-WISCONSIN.

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-WISCONSIN to the Donee or reassuming title to or possession of ex-WISCONSIN. 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-WISCONSIN to the Donee, pursuant to the CONTRACT FOR THE DONATION OF THE

BATTLESHIP ex-WISCONSIN (BB 64), Contract No. N00024-09-C-4407, (hereinafter, "Donation Contract") (attached hereto as Exhibit 3), 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 reduce the potential risks to human health and the environment that may be associated with the continued presence of PCBs onboard ex-WISCONSIN after the transfer of such vessel by the Navy to the Donee.

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 below, 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-WISCONSIN, which was developed by the Navy and dated December 31, 2008 (Exhibit 1).

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-WISCONSIN: 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.

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-WISCONSIN to the Donee for continued use as a static museum and memorial.

10. 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-WISCONSIN from the Navy to the Donee and shall require the Donee to maintain ex-WISCONSIN in a condition satisfactory to the Navy, including the management of ex-WISCONSIN in accordance with the requirements established by a separate compliance agreement between the Donee and EPA.

11. The Navy has provided a written notification to the Donee and EPA of all known or potential liquid-filled PCB items onboard ex-WISCONSIN. This notification is 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 1). The Navy sampled and analyzed additional hydraulic fluids and lubricants from other equipment onboard ex-WISCONSIN during October 2008. All of the samples collected at that time contained less than 40 mg/kg (ppm) PCBs (see Exhibit 2). The Navy removed the drum of oil referenced in Sample No. 34 of Exhibit 2 from the vessel. The PCB regulations do not prohibit the use of the oil contained in the motor gear box referenced in Sample No. 12 of Exhibit 2.

12. In addition to the above-referenced PCB inventory of liquid-filled PCB items onboard ex-WISCONSIN, 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-WISCONSIN contains some of these materials.

13. The Navy's 1995 PCB survey of ex-WISCONSIN shows that there are some non-liquid PCB materials with PCB concentrations ranging from less than 1 ppm to 170 ppm onboard the vessel (See Exhibit 4). This sampling survey does not completely characterize the extent to which PCBs are present in all types of solid materials on ex-WISCONSIN. Consequently, other materials of these types and other types of solid materials may exist on ex-WISCONSIN with PCB concentrations that exceed the levels identified to date.

REQUIREMENTS

14. The Navy shall ensure that the Donation Contract requires the Donee to maintain ex-WISCONSIN in a condition satisfactory to the Navy, including management of ex-WISCONSIN 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-WISCONSIN 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-WISCONSIN or to transfer or assign any interest in the vessel to another entity.

15. 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-WISCONSIN 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.

16. 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-WISCONSIN 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-WISCONSIN 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-WISCONSIN 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-WISCONSIN are 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 paragraph 22 of the *Compliance Agreement Between the City of Norfolk, Virginia and the U.S. Environmental Protection Agency*.

17. Nothing in this Agreement relieves the Donee, the Navy, or any other entity of any responsibility for disposing of PCBs from ex-WISCONSIN in accordance with 40 C.F.R. Part 761.

18. Nothing in this Agreement shall limit EPA's potential enforcement response for any violation of TSCA or any other law by Donee.

19. 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-WISCONSIN 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.

PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT

20. Notwithstanding anything to the contrary in the Donation Contract, if EPA determines that the PCBs on ex-WISCONSIN 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-WISCONSIN. The Navy shall complete such actions as soon as possible.

RESERVATION OF RIGHTS

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

ENFORCEMENT

22. 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 the Region 3 PCB Coordinator 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.

NOTICES AND CORRESPONDENCE

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

EPA Region 3: Chief, Toxics Programs Branch
 U.S. EPA Region 3 (3LC61)
 1650 Arch Street
 Philadelphia, PA 19103

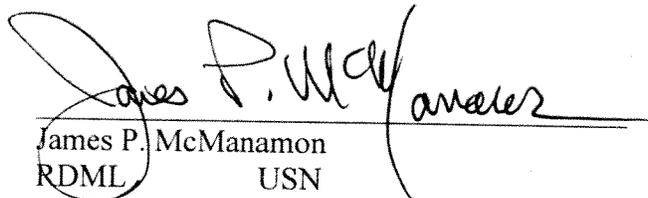
U.S. Navy: NAVSEA 21, PMS 333
 Navy Inactive Ships Program
 1333 Isaac Hull Avenue SE Stop 2701
 Washington Navy Yard, DC 20376-2701

EFFECTIVE DATE

24. 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

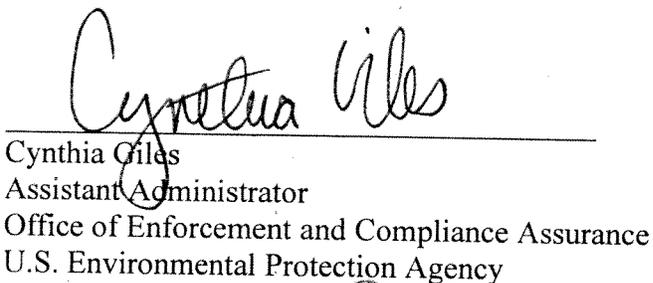
hereto as Exhibit 3, have been fully executed by all of the parties to each of these three agreements. If the proposed Donation Contract is substantively revised before it is executed by the Navy and the Donee, this Agreement shall not become effective.

THE PARTIES SO AGREE:



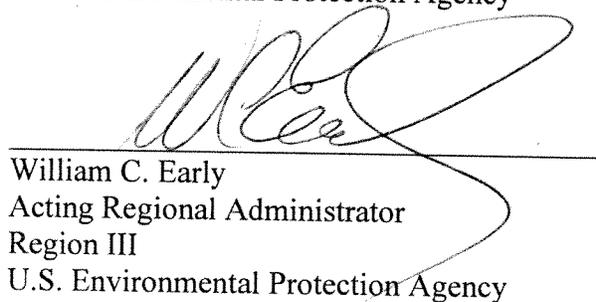
James P. McManamon
RDML USN
Deputy Commander for Surface Warfare
Naval Sea Systems Command

19 Nov 2009
Date



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

12/2/09
Date



William C. Early
Acting Regional Administrator
Region III
U.S. Environmental Protection Agency

11 | 5 | 09
Date