



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

MEMORANDUM

DAVID P. LITTELL  
COMMISSIONER

TO: Board of Environmental Protection  
FROM: Peter Carleton, Bureau of Air Quality Control  
SUBJECT: NCTAMS LANT DET  
DATE: September 4, 2008

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**Statutory and Regulatory References:**

The Naval Computer and Telecommunications Station Cutler (NCTAMS LANT DET) operates emission sources associated with their naval computer and communications center in Cutler, Maine, under the terms and conditions of Air Emission License A-210-70-A-I issued on January 14, 2002 and all of its amendments as well as being subject to all applicable state and federal regulations

**Description**

Department staff documented that NCTAMS LANT DET failed to perform NO<sub>x</sub> RACT tests as required by Air Emission License A-210-70-A-I. NCTAMS LANT DET failed to conduct a total of 81 required NO<sub>x</sub> emissions tests on the facility's diesel engines. This consent agreement provides release for any violations which the MEDEP Bureau of Air Quality was aware through the quarter ending December 31, 2007. All known violations which the Department was aware of through December 31, 2007, and which warranted enforcement action, are specifically identified in the agreement. The release was not intended to release NCTAMS LANT DET for violations not specifically identified in the agreement.

**Location:**

Cutler, Maine

**Environmental Issues**

The Department imposes air emission license conditions to ensure that the licensed equipment is operated in a manner consistent with good air pollution control practices and in a manner protective of air quality. Compliance with all air emission license conditions and applicable regulations is essential to the maintenance of good air quality.

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**Department Recommendation**

Staff recommends approval of the Consent Agreement which requires NCTAMS LANT DET to make payment of civil penalties in the amount of \$81,000.00. The penalty was a negotiated settlement based on the Air Bureau's penalty assessment guideline.



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IN THE MATTER OF:

NCTAMS LANT DET ) ADMINISTRATIVE CONSENT  
Washington County ) AGREEMENT  
Cutler, Maine )  
A-210-70-A-I

This Agreement by and among NCTAMS LANT DET, the Maine Department of Environmental Protection (the "Department") and the State of Maine Office of the Attorney General is entered into pursuant to 38 M.R.S.A. § 347-A(1)(A); and in accordance with the Department of Environmental Protection (the "Department") Consent Agreement Policy as amended

The parties agree as follows:

1 The Naval Computer and Telecommunications Station Cutler (NCTAMS LANT DET) operates the Cutler facility under the terms and conditions of Air Emission License A-210-70-A-I issued on January 14, 2002 and all of its amendments. The NCTAMS LANT DET Air Emission License and amendments provide for the operation of fuel burning and process equipment associated with the naval communications station.

2 Air Emission License A-210-70-A-I contains Condition (8)(a)(ii) and (iii) and Condition (9)(a) and (b), which state in relevant part:

(8) In accordance with the Department's air emission compliance test protocol and 40 CFR Part 60 or other method approved or required by the Department, the licensee shall

(a) perform stack testing under circumstances representative of the facility's normal process and operating conditions

(ii) to demonstrate compliance with the applicable emission standards, or

(iii) pursuant to any other requirement of this license to perform stack testing

(9) If the results of a stack test performed under circumstances representative of the facility's normal process and operating conditions indicates emissions in excess of the applicable standards, then

(a) within thirty (30) days following receipt of such test results, the licensee shall re-test the non-complying emission source under circumstances representative of the facility's normal process and operating conditions and in accordance with the Department's air emission compliance test protocol and 40 CFR Part 60 or other method approved or required by the Department, and

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Cutler, Maine  
A-210-70-A-1

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ADMINISTRATIVE CONSENT  
AGREEMENT

(b) the days of violation shall be presumed to include the date of stack test and each and every day of operation thereafter until compliance is demonstrated under normal and representative process and operating conditions, except to the extent that the facility can prove to the satisfaction of the Department that there were intervening days during which no violation occurred or that the violation was not continuing in nature, and

3 Air Emission License A-210-70-B-A contains Condition (15)(I) and Condition (16)(A), which state in relevant part

(15)Stationary Internal Combustion Engines—GAS-D#5, GAS-D#6, VLF-D#1, VLF-D#2, VLF-D#3, VLF-D#4, VLF-D#5, VLF-D#6 and DIE-09

I NCTAMS LANT DET shall utilize a portable NO<sub>x</sub> monitor to measure the NO<sub>x</sub> emissions from each SICE unit after generating power for more than 48 hours or if the unit is scheduled to operate for more than 48 hours during a monthly period. The NO<sub>x</sub> monitor shall be operated and maintained according to manufacturer's specifications. Monitoring shall be performed according to the Portable Analyzer Monitoring Protocol approved by the Department.

4. Upon review of annual compliance certification reports submitted to the Department by NCTAMS LANT DET for the periods between August 2002 and September 2007, as well as documents submitted to the Department by NCTAMS LANT DET in October 2007, the Department documented that NCTAMS LANT DET failed to perform required NO<sub>x</sub> RACT tests. NCTAMS LANT DET failed to conduct required NO<sub>x</sub> RACT testing a total of eighty one (81) tests.

5. A Notice of Violation (NOV) was issued to NCTAMS LANT DET, on April 25, 2007 for the violations described in paragraph four (4).

6. For the purposes of this Agreement, NCTAMS LANT DET agrees that it received proper notice of all violations identified herein pursuant to 38 M.R.S.A. § 347-A(1)(B).

7. The Department has regulatory authority over the activities described herein.

8. Pursuant to 38 M.R.S.A. §§ 341-D(6)(c) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection ("Board"), which is a part of the Department.

9. This Agreement shall not become effective unless and until it is approved by the Board and the Office of the Attorney General.

- 10 To resolve the violations identified in this Agreement, within ninety (90) days of execution of this Agreement by all parties, NCTAMS LANT DET agrees to pay the amount of sixty five thousand dollars (\$65,000), and Commander, Navy Region, Mid-Atlantic agrees to pay the amount of sixteen thousand dollars (\$16,000), for a total amount of eighty one thousand dollars (\$81,000) to the *Treasurer, State of Maine*
11. The Department and the Office of the Attorney General grant NCTAMS LANT DET a release of the causes of action that they have for the specific violations described in the Department's "Letter of Warning" (LOW), dated March 23, 2007, the "Notice of Violation" (NOV), dated April 25, 2007 and in paragraph four (4) above and for any violations of the State's air quality laws of which the MEDEP Bureau of Air Quality was aware through the quarter ending December 31, 2007, in consideration of the payment called for in paragraph ten (10) above. The release shall not become effective until all requirements of this Agreement are satisfied.
- 12 Settlement of this matter shall not constitute an admission of liability in any administrative or judicial proceeding, nor shall evidence of settlement be admissible in any such proceeding, except that the violations alleged in this agreement shall constitute "prior violations" for the purpose of calculating civil penalties pursuant to 38 M.R.S.A. § 349(5)(A) in any future enforcement action by the State of Maine. Settlement of this matter, to include remittance of the amount agreed to in paragraph ten (10) above, also shall not constitute or be considered a waiver of federal sovereign immunity, or an admission that the United States is liable to pay administrative or civil penalties or fines assessed by state or local regulatory authorities implementing programs for the control and abatement of air pollution. The parties acknowledge that the issue of federal sovereign immunity from state-levied penalties assessed under the Clean Air Act air pollution prevention and control programs is subject to conflicting decisions in the courts. Nevertheless, the parties believe it appropriate here to resolve this disputed matter by agreement.
13. Nothing in this agreement shall be interpreted to require the obligation or payment of funds in violation of the Antideficiency Act, 32 U.S.C. § 1341.
14. Non-compliance with this Agreement voids the release set forth in paragraph eleven (11) of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S.A. § 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.
- 15 Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all local, state and federal laws, including but not limited to licensing requirements

NCTAMS LANT DET )  
Washington County )  
Cutler, Maine )  
A-210-70-A-I 4

**ADMINISTRATIVE CONSENT  
AGREEMENT**

- 16 The provisions of this Agreement shall apply to, and be binding on, the parties, their officers, agents, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this agreement
- 17 Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it

**IN WITNESS WHERE OF** the parties hereto have executed this agreement of four (4) pages.

NAVAL COMPUTER AND TELECOMMUNICATIONS STATION CUTLER

BY: Cherryl F. Barnett 8/13/08  
CHERRYL BARNETT, COMMANDER, NAVY REGION, DATE  
MID-ATLANTIC, ENVIRONMENTAL PROGRAM MANAGER

BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
ERNEST W HILTON, CHAIR DATE

STATE OF MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_  
GERALD D REID, ASSISTANT ATTORNEY GENERAL DATE