

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION**

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UNITED STATES OF AMERICA, and

TERRITORY OF AMERICAN SAMOA,

Plaintiffs,

v.

Civil No. 2:17-cv-01190-DSC

STARKIST CO. and STARKIST SAMOA CO.,

Defendants.

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CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint in this action concurrently with a proposed Consent Decree on September 12, 2017, alleging that Defendants, StarKist Co. and Starkist Samoa Co., violated Sections 301(a) and 311(j) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a) and 1321(j), Section 112 of the Clean Air Act (“CAA”), 42 U.S.C. 7412, Sections 312 and 313 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11022 and 11023, and Section 3010 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6930, and the regulations promulgated under those statutes;

WHEREAS, the September 12, 2017 Complaint alleges that Defendants violated the terms of the National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, at a tuna processing and canning facility located in the village of Atu’u on Tutuila Island in American Samoa (“the Facility”) owned and operated by Defendants; that Defendants discharged wastewater into Pago Pago Harbor without a NPDES permit through a break in the joint cannery outfall discharge line; that Defendants have failed to comply with certain Spill Prevention, Control and Countermeasure (“SPCC”) Regulations promulgated pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j); and that Defendants have violated various provisions of the CAA, EPCRA, and RCRA related to the use of chemicals and substances at the Facility;

WHEREAS, on December 21, 2015, in accordance with EPA’s Audit Policy, Defendants disclosed to EPA the transactions or occurrences related to the EPCRA, RCRA, and certain CAA violations alleged in the Complaint, and listed in Appendix A to this Decree, and admit liability for those violations;

WHEREAS, following a March 2015 inspection of the Facility by EPA and the identification of alleged Clean Water Act violations, Defendants requested a meeting with EPA regarding noncompliance at the Facility and, in consultation with EPA and DOJ, Defendants have installed, optimized, and commenced operation of Interim Wastewater Compliance Measures at the Facility, including the Tricanter Centrifuge, Retort Water Recycling System, Rotary Screens, and Dissolved Air Flotation, in order to minimize the discharge of pollutants to Pago Pago Harbor;

WHEREAS, following a May 2016 inspection of the Facility by EPA and identification of the Clean Air Act Section 112(r), 42 U.S.C. § 7412(r), violations alleged in the Complaint, Defendant Starkist Samoa Co. and EPA entered into an Administrative Compliance Order on Consent (“AOC”) pursuant to Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (4), and pursuant to that AOC, Defendant Starkist Samoa Co. carried out a number of assessments related to its ammonia refrigeration, chlorine, and butane systems;

WHEREAS, the Consent Decree lodged with this Court on September 12, 2017 was subject to a 30-day notice and comment period pursuant to 28 C.F.R. § 50.7, and elected officials of the Territory of American Samoa (the “Territory”) provided comments on that Consent Decree;

WHEREAS, following the lodging of the Consent Decree on September 12, 2017, Defendants reported to the United States that it had identified a stormwater pipe from the Facility

to Pago Pago Harbor, through which Defendants were discharging pollutants to Pago Pago Harbor on occasion, as well as a discharge of pollutants from a sewage lift station overflow pipe to Pago Pago Harbor, requiring additional amendments to the Consent Decree;

WHEREAS, the United States and the Territory filed an amended complaint in this action concurrently with this revised Consent Decree, alleging that Defendants, StarKist Co. and Starkist Samoa Co., violated Sections 301(a) and 311(j) of the CWA, 33 U.S.C. §§ 1311(a) and 1321(j), Section 112 of the CAA, 42 U.S.C. 7412, Sections 312 and 313 of EPCRA, 42 U.S.C. §§ 11022 and 11023, and Section 3010 of RCRA, 42 U.S.C. § 6930, and the regulations promulgated under those statutes. In addition to the violations alleged in the September 12, 2017 complaint, the Amended Complaint alleges new violations by Defendants of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), as well as violations by Defendants of the American Samoa Environmental Quality Act and its implementing regulations. A.S.A.C. 24.0135 and 24.0136.

WHEREAS, the Amended Complaint seeks injunctive relief and the assessment of civil penalties for the alleged violations;

WHEREAS, Defendants do not admit any liability to the United States or the Territory arising out of the transactions or occurrences related to the Clean Water Act, Clean Air Act, Emergency Planning and Community Right to Know Act, Resource Conservation and Recovery Act, or the American Samoa Environmental Quality Act violations alleged in the Amended Complaint and which are not the subject of self-disclosure under EPA's Audit Policy;

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Sections I and V, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1367 and 1355, and Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(c) and 1321(b)(7)(E), Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), and Section 3008(a)(1) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (g), and over the Parties. Venue lies in this District pursuant to Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(c) and 1321(b)(7)(E), Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), and Section 3008(a)(1) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (g), and 28 U.S.C. §§ 1391(b) and 1395(a), because Defendant StarKist Co. resides and is located in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action, and over Defendants, and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Amended Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d), and 311(b)(7)(C) of the CWA, 33 U.S.C. §§ 1311, 1319(b) and (d), 1321(b)(7)(C), Section 113

of the CAA, 42 U.S.C. § 7413, Section 325(c) of EPCRA, 42 U.S.C. §§ 11045(c), Section 3008(a) of the RCRA, 42 U.S.C. § 6892(a), and 24.0169 of American Samoa Environmental Quality Act, A.S.C.A. 24.0169.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, the Territory, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented unless (1) the transferee agrees to undertake the obligations in Section VI of this Decree and to be substituted for Defendants as a Party under the Decree and thus be bound by the terms thereof, (2) the United States consents to relieve Defendants of their obligations, and (3) the Court agrees. The United States may refuse to approve the substitution of the transferee for Defendant if it determines that the proposed transferee does not possess the requisite technical abilities or financial means to perform the obligations of the Consent Decree. In the event the United States' decision to refuse to approve substitution of the Transferee for the Defendants is submitted for dispute resolution, dispute resolution is limited to informal and formal dispute resolution under Paragraphs 120 and 121. The United States' decision to refuse to approve the substitution of the transferee for the Defendants shall not be subject to judicial review. At least 30 Days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer to EPA Region 9 and the United States Department of Justice, in accordance with Section XV (Notices), together with: (i) a description of the proposed transfer agreement; and (ii) the portions of the proposed agreement relevant to the implementation of the requirements of this Consent Decree. Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree, and to any neighboring facility whose actions can impact compliance with this Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the CWA, CAA, EPCRA, or RCRA or in regulations promulgated under those statutes shall have the meanings assigned to them in the statutes or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Above-Ground Storage Tank” shall mean the Above-Ground Storage Tanks identified by number in the diagram attached to this Consent Decree as Appendix B;
- b. “Amended Complaint” shall mean the amended complaint filed by the United States and the Territory in this action;
- c. “Ammonia Refrigeration System” shall mean the anhydrous ammonia refrigeration system at the Facility and all associated safety systems, including alarms, sensors, and ventilation systems;
- d. “API Standard 653” shall mean tank integrity standard 653 for aboveground oil storage tanks established by the American Petroleum Institute;
- e. “AS EPA” shall mean American Samoa Environmental Protection Agency;
- f. “Audit Policy” shall mean the EPA policy entitled “Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations” (Apr. 11, 2000);
- g. “Bypass” shall mean the intentional diversion of waste streams from any portion of a treatment facility as provided in 40 C.F.R. § 122.41(m);
- h. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto listed in Section XXIII;
- i. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Western District of Pennsylvania;
- j. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, territorial or federal holiday, the period shall run until the close of business of the next business day;
- k. “Defendants” shall mean StarKist Co. and Starkist Samoa Co.;
- l. “Dissolved Air Flotation” or “DAF” shall mean the wastewater treatment system operated by the Facility comprised of the following: chemical pipe flocculator, pneumatic control system, dissolved air flotation tank, dissolved air flotation recycle and air dissolution system; and, interconnecting piping and valves;
- m. “Effective Date” shall have the definition provided in Section XVI;
- n. “EMS Auditor” shall mean the party meeting the requirements of Paragraph 46 who is approved by EPA and contracted by the Defendants to perform the duties set forth in Paragraph 48, including an evaluation of

- the adequacy of the EMS implementation relative to the EMS manual;
- o. “EMS Consultant” shall mean the party identified in Paragraph 40 as approved by EPA and meeting the qualifications set forth in Paragraph 41, and contracted by the Defendants to perform the duties set forth in Paragraph 42, including assisting Defendants in the development of an EMS and EMS manual;
 - p. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
 - q. “Evaporation System” shall mean a system that uses heat to reduce the water content in high strength wastewater and for the purpose of recovering fishmeal solids from the Facility's wastewater stream fishmeal sump and pre-cooker sump;
 - r. “Facility” shall mean Defendants’ tuna processing and canning facility located on Route 1 Atu'u, Pago Pago, American Samoa;
 - s. “Fit For Service” shall mean a storage tank that is approved for continued use by a qualified inspector following prescribed inspection and testing as defined in API Standard 653;
 - t. “Interim Wastewater Compliance Measures” shall mean the Tricanter Centrifuge, Retort Water Recycling System, Rotary Screens, Dissolved Air Flotation, and the Evaporation System;
 - u. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;
 - v. “Parties” shall mean the United States, the Territory, and Defendants;
 - w. “Retort Water Recycling System” shall mean the system of piping, valves and storage tanks for the capture and re-use of retort water for washdown and other uses in the Facility;
 - x. “Rotary Screens” shall mean the rotary drum screens that remove grit and course solids from the wastewater upstream of the Dissolved Air Flotation System;
 - y. “Section” shall mean a portion of this Decree identified by a roman numeral;
 - z. “Self-Disclosed Violations” shall mean the violations listed in Appendix A;
 - aa. “Territory” shall mean the Territory of American Samoa;
 - bb. “Tricanter Centrifuge” shall mean a three phase centrifuge installed to separate oil and solids from the wastewater collected in the pre-cooker sump;

- cc. "Unauthorized Discharge" shall mean a discharge of pollutants from the Facility to a navigable water in any location or from any point source other than the discharge point authorized in the Facility's NPDES permit in effect at the time or by the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity; and
- dd. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

8. Within thirty (30) Days after the Effective Date, Defendants shall pay the sum of \$3,900,000 to the United States as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

9. Defendants shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Western District of Pennsylvania after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Contact: Jung Ki Ro
Email: jungki.ro@starkist.com
Telephone: 412-323-7567
Address: StarKist Co.
225 North Shore Drive, Suite 400
Pittsburgh, Pennsylvania 15212

Contact: Jaeho Yang
Email: Jaeho.yang@starkist.com
Telephone: 412-323-7559
Address: StarKist Co.
225 North Shore Drive, Suite 400
Pittsburgh, Pennsylvania 15212

on behalf of Defendants. Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States, EPA, and the Territory in accordance with Section XV (Notices).

At the time of payment, Defendants shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States in accordance with Section XV; and (iii) to EPA in accordance with Section XV. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and the Territory of American Samoa v. StarKist Co. and Starkist Samoa Co.* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-11357.

10. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section IX (Stipulated Penalties) in calculating their federal income taxes.

11. Within thirty (30) Days of the Effective Date of this Consent Decree, Defendants shall pay a civil penalty of \$2,600,000 to the Territory, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

12. Defendants shall pay the civil penalty due to the Territory by submitting payment to the Stationary Air Pollution Source Fund of the American Samoa Government, in accordance with instructions provided by the Territory to Defendants after the Effective Date. The payment instructions provided by the Territory will include the Routing Transit number and bank account number for the Stationary Air Pollution Source Fund, which Defendants shall use for all payments due to the Territory under this Consent Decree. The Territory will provide the payment instructions to the individuals identified in Paragraph 9, or subsequently identified by Defendants pursuant to Paragraph 9.

13. At the time of payment, Defendants shall send notice that payment has been made to the Territory in accordance with Section XV (Notices). Such notice shall state that the payment is for the civil penalty owed to the Territory pursuant to the Consent Decree in *United States and the Territory of American Samoa v. StarKist Co. and Starkist Samoa Co.* and shall reference the civil action number.

V. DEFENDANTS' CERTIFICATIONS REGARDING SELF-DISCLOSED VIOLATIONS

14. Defendants certify as true to the best of their knowledge and belief, after a reasonable inquiry, each of the factual assertions set forth in the following Subparagraphs regarding the subject violations set forth in Appendix A attached to this Decree:

- a. Defendants discovered the subject violations through an environmental audit or through a compliance management system reflecting their due diligence;
- b. Defendants either disclosed the subject violations to or entered into the audit agreement with EPA prior to discovering such violations through a monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement;
- c. Defendants disclosed the subject violations promptly and in writing;
- d. Defendants disclosed the subject violations to EPA prior to the commencement of a federal, state, or local inspection or investigation of the CAA, RCRA, or EPCRA compliance, notice of a citizen suit, filing of a complaint of a third party, reporting of the subject violations to EPA (or other government agency) by a "whistle blower" employee, or imminent discovery by a regulatory agency;
- e. Defendants have corrected the subject violations in Appendix A and are, to the best of their knowledge and belief, in full compliance with the

requirements associated with the subject violations set forth in Appendix A;

- f. Defendants have taken appropriate steps to prevent a recurrence of the subject violations;
- g. Defendant Starkist Samoa Co. has owned and operated and Defendant StarKist Co. has operated the Facility since October 6, 2008. For the time periods identified in Appendix A, Defendants did not receive notice from the government of any of the violations (or closely related violations) identified in Appendix A. For the purposes of this Subparagraph g., a violation is:
 - i. any violation of federal, state, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or
 - ii. any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a state or local agency.
- h. Defendants cooperated as requested by EPA and provided information necessary and requested by EPA to determine applicability of the Audit Policy.

VI. COMPLIANCE REQUIREMENTS

A. Interim Wastewater Compliance Measures

15. Operation of Interim Wastewater Compliance Measures. Once each Interim Wastewater Compliance Measure in Paragraphs 16-20 is installed and operational, Defendants shall operate such measure at all times that there is flow of wastewater through the wastewater treatment system in accordance with the process flow diagram in Appendix C, and shall not Bypass any measure except in accordance with the Bypass provisions in the NPDES permit to which the Facility is subject at the time of any such Bypass. In order to change the treatment process represented in Appendix C, Defendants must first submit a revised process flow diagram to EPA and AS EPA for review and approval pursuant to Paragraph 69.

16. Operation of the Tricanter Centrifuge. From the Date of Lodging of this Consent Decree, Defendants shall operate and maintain the Tricanter Centrifuge to separate and recover total suspended solids (“TSS”) and oil and grease from the high strength waste collected by the pre-cooker sump, consistent with good engineering and maintenance practices and in accordance with its design and the manufacturer's specifications.

17. Retort Water Recycling. From the Date of Lodging of this Consent Decree, Defendants shall operate and maintain the Retort Water Recycling System to reduce the flow of low strength wastewater through the Dissolved Air Flotation System by storing the diverted retort water for use as floor washing in both the fish and fish meal processing areas of the Facility, consistent with good engineering and maintenance practices and in accordance with its design.

18. Rotary Screens. From the Date of Lodging of this Consent Decree, Defendants shall operate and maintain the Rotary Screens to improve solids capture and improve reliability, consistent with good engineering and maintenance practices and in accordance with its design and the manufacturer's specifications.

19. Dissolved Air Flotation (DAF). From the Date of Lodging of this Consent Decree, Defendants shall operate and maintain the DAF consistent with good engineering and maintenance practices and in accordance with its design and the manufacturer's specifications.

20. Evaporation System. By no later than February 1, 2018, Defendants shall install and optimize the Evaporation System to process wastewater from the fish meal sump and pre-cooker sump for the purpose of recovering fish meal solids. Defendants shall operate and maintain the Evaporation System consistent with good engineering and maintenance practices and in accordance with its design and the manufacturer's specifications.

B. Evaluation of Interim Wastewater Compliance Measures

21. Defendants shall conduct a sampling event to evaluate the effectiveness of the Interim Wastewater Compliance Measures at removing pollutants in effluent from the Facility. By no later than May 1, 2018, Defendants shall submit to EPA and AS EPA a report providing the results of the sampling, which may include, but not be limited to the following information:

- a. Wastewater source flow data;
- b. Monitoring data;
- c. Results from analyses of samples;
- d. Jar and bench testing results; and
- e. Summary of results

C. Wastewater Treatment Upgrade

22. Wastewater Treatment Upgrade Proposal. By no later than June 1, 2018, Defendants shall submit to EPA and AS EPA for review and approval pursuant to Paragraph 69 a proposal to upgrade the Facility's wastewater treatment system to provide for a treatment technology to be proposed by Defendants. Defendants' proposal shall include preliminary design calculations, process flow diagrams, and any other information or data necessary to demonstrate that the upgraded wastewater treatment system will be capable of reducing pollutants to achieve compliance with the effluent limitation for each pollutant in the NPDES permit to which the Facility is subject at the time of the proposal. Prior to responding to Defendants' proposal, EPA reserves its right to require Defendants to submit additional information, documentation or data it deems necessary to approve a proposal.

23. Wastewater Treatment Upgrade Compliance Deadlines. Defendants shall comply with the following compliance deadlines.

- a. Defendants shall submit a preliminary design (30%) of the wastewater treatment system upgrade approved pursuant to Paragraph 22 to EPA and AS EPA for review and approval pursuant to Paragraph 69 no later than

April 1, 2019. The preliminary design shall include a proposed deadline for completion of the installation, optimization, and compliance with the final effluent limitations as soon as practicable and no later than December 31, 2020.

- b. Defendants shall submit to EPA and AS EPA for review a 60% design of the approved wastewater treatment system upgrade no later than July 2, 2019.
- c. Defendants shall complete the installation and optimization of any necessary equipment at the wastewater treatment plant to enable operation of the approved wastewater treatment system upgrade by no later than the date approved by EPA pursuant to Paragraph 23.a.
- d. Defendants shall comply with the final effluent limitations in Paragraph 26 no later than the date approved by EPA pursuant to Paragraph 23.a, and in no case no later than December 31, 2020.

24. Operation of Upgraded Wastewater Treatment System. Once the upgraded wastewater treatment system is installed and optimized pursuant to the applicable deadlines in Paragraph 23, Defendants shall operate the wastewater treatment system all times that there is flow of wastewater through the wastewater treatment system and shall not Bypass the wastewater treatment system, except in accordance with the Bypass provisions in the Facility's NPDES permit. Defendants shall operate and maintain the wastewater treatment system consistent with good engineering and maintenance practices and in accordance with its design and the manufacturer's specifications.

25. Request for Approval to Comply Using Interim Wastewater Compliance Measures. By no later than October 1, 2018, Defendants may submit a request to EPA and AS EPA for review and approval pursuant to Paragraph 69 to comply with the final effluent limitations in the Facility's NPDES permit using the Interim Wastewater Compliance Measures without additional wastewater treatment. Defendants may not submit a request under this Paragraph if the Facility has reported any exceedances of the effluent limitations within six months of submitting the request.

- a. Contents of the Request. Defendants must demonstrate that the Facility has not exceeded any NPDES permit limitations for maximum daily limits and average monthly limits for six consecutive months. Any such request must include all pertinent data, information, and documents that support a request to not require additional wastewater treatment.
- b. Additional information required. EPA may require Defendants to conduct additional testing or provide additional information in support of their request prior to responding to the proposal.
- c. Effect of EPA's Decision on Request. If EPA determines that Defendants failed to successfully demonstrate that they can achieve and maintain compliance with the effluent limitations in the Facility's NPDES permit without a wastewater treatment system upgrade, Defendants shall upgrade

the Facility's wastewater treatment system in accordance with the option approved by EPA in accordance with the timeframes set forth in Paragraph 23. If EPA approves Defendants' request for approval to comply using Interim Wastewater Compliance Measures, Defendants shall not be required to comply with Paragraph 23. If EPA approves Defendants' request for approval to comply using Interim Wastewater Compliance Measures, Defendants shall comply with the final effluent limitations in Paragraph 26 as of the date of Defendants' request.

D. Final Effluent Limitations

26. Defendants shall comply with the effluent limitations in the Facility's NPDES permit for the following pollutants by no later than the final compliance date in Paragraph 23 or 25, as applicable:

- a. Ammonia
- b. Total N
- c. Total P
- d. Oil and Grease
- e. Total suspended solids
- f. pH

E. On-site Laboratory

27. Defendants shall operate and maintain the Facility's on-site laboratory in accordance with an EPA-approved Quality Assurance Manual ("QAM") and with any subsequent substantive revisions provided to EPA for review.

F. Spill Prevention Control and Countermeasure Regulations (SPCC)

28. By June 1, 2017, Defendants amended the Facility's SPCC Plan as required by 40 C.F.R. § 112.5 to incorporate the repairs of ASTs 1-2, the relocation of the tanks on impervious concrete, and secondary containment upgrades. By June 1, 2017, Defendants submitted a copy of their recertified SPCC Plan to EPA.

29. By no later than December 31, 2017, Defendants shall complete the following actions to ensure the integrity of ASTs 3 and 4 and sufficient impervious secondary containment for ASTs 3 and 4:

- a. Take ASTs 3 and 4 out of service and place them on an impervious concrete surface capable of providing adequate sized secondary containment; and
- b. Conduct follow-up evaluation of ASTs 3 and 4 for suitability as outlined in API 653 after re-installation to confirm the tanks are Fit For Service.

30. By no later than February 1, 2018, Defendants shall submit to EPA and AS EPA documentation demonstrating that ASTs 3 and 4 are Fit For Service, including integrity test reports for ASTs 3 and 4.

31. By no later than June 1, 2018, Defendants shall amend the Facility's SPCC Plan as required by 40 C.F.R. § 112.5 to incorporate the repairs of ASTs 3-4, the relocation of the tanks on impervious concrete, and secondary containment upgrades. By no later than June 1, 2018, Defendants shall submit a copy of the recertified SPCC Plan to EPA and AS EPA.

G. Ammonia, Chlorine, and Butane System Requirements

32. Evaluation of Ammonia Losses. By April 30, 2017, Defendants completed the following work to evaluate potential areas of ammonia loss from the Ammonia Refrigeration System:

- a. Pressure test the shell and tube heat exchangers and the condenser coils;
- b. Internally inspect condensers 1 and 2, the injector heat exchangers, and connected piping to confirm the equipment's integrity; and
- c. Perform baseline thickness tests on pipes and vessels to determine the remaining life of equipment.

33. Ammonia Refrigeration System Maintenance. Upon the Date of Lodging of the Consent Decree, Defendants shall implement an Ammonia Refrigeration System inspection and maintenance schedule.

34. Pressure Relief Valve Piping Upgrade. By April 30, 2017, Defendants completed the following modifications to the pressure relief valve piping design in the Ammonia Refrigeration System:

- a. Combined the discharge of all pressure relief valve into fourteen (14) relief terminations;
- b. Terminated the pressure relief device discharge piping relieving to the atmosphere to be no less than 15 feet above grade;
- c. Terminated the pressure relief devices relieving to the atmosphere to be no less than 7.25 feet above a roof that is occupied solely during service and inspection. Where a higher adjacent roof level is within 20 feet horizontal distance from the relief discharge, the discharge termination shall not be less than 7.25 feet above the height of the higher adjacent roof;
- d. Directed the termination of the discharge upward and positioned the termination of the discharge to avoid spraying ammonia on persons in the vicinity;
- e. Installed drainage for moisture accumulation; and
- f. Installed discharge piping from pressure relief devices and fusible plugs that are steel pipe minimum Schedule 40 for pipe sizes up to 6 inches and

minimum Schedule 20 for pipe sized 8 inches and larger or stainless steel pipe minimum Schedule 40 for pipe sizes 1-1/2 inches and small and minimum Schedule 10 for pipe sizes 2 inches and larger.

35. At all times, Defendants shall maintain, and have available for inspection at the Facility, an updated Process & Instrument Diagram for the Ammonia Refrigeration System.

36. Implementation of Ammonia Hazard Assessment Recommendations. By April 30, 2017, Defendants implemented the following recommendations from the ammonia hazard assessment for the Facility:

- a. Replacement of the Facility's high pressure receiver;
- b. Replacement of the Facility's liquid transfer vessel ("LTV");
- c. Installation of Level Alarms on the LTV;
- d. Replacement of the Facility's accumulator oil pot, including necessary pressure relief valves and piping; and
- e. Installation of an emergency stop for remote control of the Facility's machinery room.

37. Implementation of Safer Designs for Chlorine System. By June 22, 2017, Defendants discontinued the use of chlorine gas for the disinfection of tuna thaw water at the Facility. Defendants have installed equipment and make any upgrades necessary to switch from using chlorine gas to liquid sodium hypochlorite in retort water. As of the Effective Date, Defendants shall use liquid sodium hypochlorite in retort water to disinfect tuna thaw water. Defendants may seek approval from EPA, pursuant to Paragraph 69, to use an alternate method of disinfecting tuna thaw water that is safer than chlorine gas.

38. Community Notification System.

- a. By no later than sixty (60) Days after the Effective Date, Defendants shall notify the 24/7 Emergency Watch Center or Emergency Operations Center at 699-3800 operated by the American Samoa Government Territorial Emergency Management Coordination Office ("TEMCO") and AS EPA if any of the following situations arise:
 - i. A fixed ammonia detection of 220 parts per million or greater within a monitored production space or the refrigeration machinery room;
 - ii. A visible ammonia cloud is observed; or
 - iii. The Facility is evacuated as a result of the release of a chemical listed pursuant to CAA § 112(r)(3).
- b. By no later than sixty (60) Days after the Effective Date, Defendants shall revise their Emergency Action Response Plan to include the requirements in Paragraph 38.a.
- c. By no later than ninety (90) Days of the Effective Date, Defendants shall

develop, establish, and implement a program to educate the community on what to do in the event of a TEMCO-activated alarm in response to a chemical release.

39. Butane. On April 1, 2017, Defendants discontinued filling butane cylinders for use in forklifts at the Facility. As of the Effective Date, Defendants shall implement written procedures for receiving butane and for installing cylinders to forklifts at the Facility.

H. Environmental Management System

EMS Implementation and Development

40. EMS Consultant. Defendants have retained, and EPA has approved, Geosyntec Consultants as the Environmental Management System (“EMS”) Consultant to develop an integrated EMS for Starkist Samoa Co. Defendants shall bear all costs associated with the EMS Consultant, cooperate fully with the EMS Consultant, and provide the EMS Consultant with access to all records, employees, contractors, and the Facility that the EMS Consultant deems reasonably necessary to effectively perform the duties described in Paragraph 42.

41. Selection of Replacement EMS Consultant. In the event the consultant(s) approved by EPA are no longer available or willing to accept the work described in Paragraph 42, Defendants shall submit to EPA for approval a list of two or more proposed consultants to serve as EMS Consultant, along with (a) the name, affiliation, and address of the proposed consultants; (b) information demonstrating how each proposed consultant has experience in developing and implementing an EMS; (c) information demonstrating that the team proposed to develop and implement the EMS, in composite, has a working process knowledge of the Facility or similar operations, and has a working knowledge of federal, state, and local environmental requirements which apply to the Facility; and (d) descriptions of any previous work contracts, or financial relationships with Defendants. Within thirty (30) Days of receiving the list of proposed consultants, EPA shall notify Defendants whether it approves of any consultant(s) on the list. If EPA does not approve any of the proposed consultants on Defendants’ list, then Defendants shall submit another list of proposed consultants to EPA within thirty (30) Days of receipt of EPA’s written notice. Within ten (10) Days after receipt of EPA’s approval, Defendants shall select one consultant from those approved by EPA and enter into the contract to perform all duties described in Paragraph 42 within fifteen (15) Days.

42. Duties of the EMS Consultant. Defendants’ contract with the EMS Consultant shall require the EMS Consultant to develop and assist in implementing an EMS for Starkist Samoa Co. to be consistent with the EMS manual approved by EPA and attached to this Consent Decree as Appendix D.

43. EMS Manual.

- a. Defendants and the EMS Consultant have submitted to EPA for review and approval, and EPA has approved, the EMS manual in Appendix D for implementing the EMS.
- b. Defendants and the EMS Consultant have submitted to EPA, and EPA has reviewed, the EMS Implementation Milestones appended to this Consent

Decree in Appendix E.

44. Implementation of the EMS. Defendants shall complete all milestones listed in the EMS Implementation Milestones in Appendix E by the later of 12 months following Date of Lodging or November 5, 2018. Managers responsible for environmental compliance at the Facility shall thereafter, on a quarterly basis, provide a certification of conformance with the approved EMS manual to appropriate management, and for any noncompliance, shall submit an explanation of the cause of the noncompliance, remedial steps to be taken, and a date for achieving compliance.

45. Revisions of the EMS Manual. Defendants must submit any substantive revisions to the EMS manual to EPA and AS EPA for review.

Audit of EMS Implementation

46. EMS Auditor. Defendants shall hire an EMS Auditor to conduct an EMS audit. Defendants shall bear all costs associated with the EMS Auditor, cooperate fully with the EMS Auditor, and provide the EMS Auditor with access to all records, employees, contractors, and the facilities that the EMS Auditor deems reasonably necessary to effectively perform the duties described in Paragraph 48.

47. Selection of EMS Auditor. No later than July 5, 2018, Defendants shall propose to EPA for approval the selection of two or more proposed EMS Auditors who meet the qualification requirements of Table 1 in ISO 19011 (First edition, 2002-10-01) and have expertise and competence in the regulatory programs under federal environmental laws. The proposed EMS Auditors must have no direct financial stake in the outcome of the EMS audit conducted pursuant to this Consent Decree. Defendants shall disclose to EPA any past or existing contractual or financial relationships with the proposed EMS Auditors when the proposed EMS Auditors are identified.

- a. Within thirty (30) Days of receiving the list of proposed EMS Auditors, EPA shall notify Defendants of whether it approves any auditor(s) on the list. If EPA does not approve any of the proposed EMS Auditors on Defendants' list, then Defendants shall submit another list of proposed EMS Auditors for approval to EPA within thirty (30) Days of receipt of EPA's written notice. If after Defendants have submitted a third list of proposed EMS Auditors, which must be submitted within thirty (30) Days of receipt of written notice that EPA has not approved any of the auditors on Defendants' second list, the Parties are unable to agree on an EMS Auditor, the Parties agree to resolve the selection of the EMS Auditor through the Dispute Resolution process in Section XI.
- b. Within thirty (30) Days of the date that EPA notifies Defendants of the approval of the proposed EMS Auditor, Defendants shall retain the proposed EMS Auditor, thereafter designated the "EMS Auditor," to perform an EMS audit as further described in Paragraph 48 below.

48. Duties of the EMS Auditor. Defendants' contract with the EMS Auditor shall require the EMS Auditor to perform the following duties:

- a. Within ninety (90) Days of the date of its contract with Defendants, the EMS Auditor shall perform an audit of the EMS (the “EMS audit”). The EMS audit shall evaluate the adequacy of EMS implementation relative to the EMS manual and identify areas of concern, from top management down, throughout each major organizational unit with responsibilities under the EMS manual. The EMS audit shall be conducted in accordance with ISO 19011 (First edition, 2002-10-01), and shall determine the following:
 - i. Whether there is a defined system, subsystem, program, or planned task for the respective EMS element;
 - ii. To what extent the system, subsystem, program, or task has been implemented, and is being maintained;
 - iii. The adequacy of the Facility’s internal self-assessment procedures for programs and tasks composing the EMS;
 - iv. Whether Starkist Samoa Co. is effectively communicating environmental requirements to affected parts of the organization, or those working on behalf of the organization;
 - v. Whether further improvements should be made to the EMS and EMS manual; and
 - vi. Whether there are deviations from Starkist Samoa Co.’s written requirements or procedures.
- b. Within forty-five (45) Days following the completion of the EMS audit, the EMS Auditor shall develop and concurrently submit an EMS audit Report to Defendants, EPA, and AS EPA. The EMS audit report shall contain: (i) a summary of the audit process, including any obstacles encountered; (ii) detailed audit findings, including the basis for each finding and each area of concern identified; (iii) identification of any audit findings corrected or areas of concern addressed during the audit; (iv) recommendations for resolving any area of concern or otherwise achieving full implementation of the EMS manual; and (v) certification that the EMS audit was conducted in accordance with the provisions of this Decree.

49. Follow-Up Corrective Measures. Within sixty (60) Days of receiving the EMS audit report, Defendants shall submit to EPA and AS EPA for review and approval, a report responding to the audit findings and areas of concern identified in the EMS audit report and providing an action plan for expeditiously coming into full conformance with the provisions in the EMS manual (the “Audit Response and Action Plan”). The Audit Response and Action Plan shall include the result of any root-cause analysis, specific deliverables, responsibility assignments, and an implementation schedule for the identified actions and measures, including those that may have already been completed.

- a. EPA will provide comments on the Audit Response and Action Plan and Defendants shall, within thirty (30) Days of receipt of EPA’s comments on

the Audit Response and Action Plan, submit to EPA a final Audit Response and Action Plan responding to and addressing EPA's comments.

- b. After making any necessary modifications to the Audit Response and Action Plan based on EPA comments, if any, Defendants shall implement the final Audit Response and Action Plan in accordance with the schedules set forth therein.

I. Multi-media Compliance Audits and Dock Trench and Sump Inspections and Assessments

50. Multi-media Environmental Audits. Defendants shall hire an environmental consultant(s) with the qualifications set forth in Paragraph 51 to conduct multi-media environmental audits annually at the Facility. The first audit shall be performed no later than eighteen (18) months following the Effective Date of the Consent Decree. Audits under this Paragraph shall evaluate compliance with this Consent Decree and with the following statutes: CAA, CWA, EPCRA, and RCRA. Should Defendants need to replace the consultant for conducting the annual multi-media compliance audit, Defendants must submit to EPA and AS EPA, at least thirty (30) days prior to an audit taking place, documentation demonstrating that the consultant meets the qualifications set forth in Paragraph 51.

51. Qualifications of Environmental Consultant. The environmental consultant hired to perform the multi-media environmental audits required by Paragraph 50 must have at least five years of experience with the requirements of the CAA, CWA, EPCRA, and RCRA.

52. Compliance Audit Reports. Within forty-five (45) Days following each audit required by Paragraph 50, the consultant conducting such audit shall concurrently submit a compliance audit report to EPA, AS EPA, and Defendants. Such report(s) shall contain: (i) a summary of the audit process, including any obstacles encountered; (ii) a description of any noncompliance or areas of concerns identified during the audit, including the cause of any such violations or areas of concern; (iii) recommendations for resolving any noncompliance, areas of concern or otherwise achieving compliance; and (iv) a certification that the audits were conducted in accordance with the provisions of this Decree and the information in the audit report is true and accurate.

53. Follow-up Corrective Measures. Defendants shall implement corrective measures for noncompliance and areas of concern identified in the compliance audit report. In the semi-annual report required by Paragraph 86 following the submittal of each compliance audit report, Defendants shall include an explanation of the corrective measures taken to remedy noncompliance and areas of concern or, if applicable, an explanation of future corrective measures to be taken to remedy noncompliance and areas of concern and a schedule for implementation of such corrective measures. If Defendants elect not to implement a recommendation, or not to implement a corrective measure for an area of concern, noted in a compliance audit report, Defendants shall provide a detailed explanation of the reason why they elected not to implement that recommendation or to correct an area of concern in their semi-annual report. Defendants' failure to implement a recommendation or to correct an area of concern noted in a compliance audit report shall not be subject to stipulated penalties.

54. Dock Trench and Sump Inspection. Defendants shall inspect the dock trench and sump lining system annually. Defendants shall perform annual dye testing to confirm that there are no discharges from the dock trench and/or sump to the harbor. Defendants shall include the results of the dock trench and sump inspection and dye testing assessment in the semi-annual report required by Paragraph 86 following the inspection and dye testing each year.

J. Training

55. General Environmental Awareness Training. The EMS developed pursuant to Paragraph 43 must provide for, and Defendants must conduct, annual general environmental awareness training for all Facility employees.

56. Specific Environmental Compliance Training. The EMS developed pursuant to Paragraph 43 must also provide for, and Defendants must conduct, specific regulatory training for employees whose job responsibilities include environmental monitoring or compliance.

57. Contractor Training. Defendants shall provide training for all contractors with responsibilities under this Consent Decree and/or the EMS manual. The training shall relate to the contractor's responsibilities and cover any applicable requirements under this Consent Decree and/or any applicable requirements in the EMS manual. The training shall be conducted no later than ninety (90) Days after the Effective Date of this Consent Decree. For contractors hired subsequent to lodging, training shall be conducted no later than forty-five (45) Days after the date of execution of the contract, but in any event should be conducted in advance of implementation of the contractor's duties. After the initial training by Defendants, Defendants shall require contractors to provide equivalent annual training for the contractor's employees with responsibilities under this Consent Decree and/or the EMS manual.

58. All training conducted pursuant to Paragraphs 55, 56 and 57 shall be documented with the date of training, list of attendees, a summary of training topics, and copies of training materials. Such documentation shall be included in semi-annual reports required by Paragraph 86 following the training session(s).

K. Stormwater Permits and Investigation of Illicit Connections

59. Scope of Work for Illicit Connection Investigation and Identification. By no later than December 15, 2017, Defendants shall submit to EPA and AS EPA for review and approval pursuant to Paragraph 69 a scope of work ("SOW") for the investigation and identification of illicit connections between the Facility's industrial processes and stormwater outfalls at the Facility. At a minimum, the SOW must include:

- a. Performance of dye testing, smoke testing, and use of cameras, to the extent feasible for each stormwater outfall, in the Facility's stormwater collection system;
- b. Identification of chemicals used at the Facility in the industrial stormwater drainage area;
- c. A program for sampling of stormwater discharge flows from the Facility that includes the following:

- i. Specified representative sampling locations for each stormwater outfall; or, if a representative sampling location cannot be identified for a stormwater outfall by December 15, 2017, a proposal for identifying, then seeking EPA approval, for a representative sampling location, including a schedule;
- ii. Sampling during dry weather while the Facility is in production, or in a storm event if there is no discharge during dry weather while the Facility is in production; and
- iii. Analysis of samples for indicators of sewage, industrial wastewater, and chemicals used at the Facility.
- d. Identification of stormwater outfalls at the Facility owned by a third party that discharge stormwater that includes off-site contributions; and
- e. Schedule for implementation of the SOW.

The SOW may contain optional provisions for Defendants to construct or reconstruct a replacement stormwater outfall instead of investigating illicit connections to that outfall.

60. Interim Measures to Eliminate Illicit Connections. During implementation of the SOW, Defendants shall take reasonable measures to eliminate identified illicit connections to stormwater outfalls at the Facility.

61. Elimination of Connection between Can Washer Pit and Stormwater System. Defendants shall eliminate any connections between the can washer pit and piping associated with the can washer pit and the Facility's stormwater collection system no later than January 31, 2018, unless otherwise approved by EPA pursuant to Paragraph 62. No later than February 14, 2018, Defendants shall submit a report to EPA and AS EPA describing the work completed.

62. Updating of Can Washer Pit Discharge Elimination Deadline. If new information is discovered or developed during the implementation of Paragraph 61, Defendants may submit a proposal to EPA and AS EPA for review and approval pursuant to Paragraph 69 describing additional work or actions to be taken and proposing a schedule to replace the date in Paragraph 61.

63. Illicit Connection Identification Report and Elimination Work Plan. Within sixty (60) Days of completing the work required by the SOW, Defendants shall submit an Illicit Connection Identification Report and Elimination Work Plan to EPA and AS EPA for review and approval pursuant to Paragraph 69. The report and work plan must include the following:

- a. Description of all identified illicit connections between the Facility's industrial processes and stormwater outfalls at the Facility;
- b. Description of all actions taken to date to eliminate illicit connections between the Facility's industrial processes and stormwater outfalls at the Facility; and
- c. Proposal of corrective measures, including a schedule for implementation, to eliminate remaining illicit connections between the Facility's industrial

processes and stormwater outfalls at the Facility in accordance with Paragraph 64.

The Work Plan may contain optional provisions for Defendants to construct or reconstruct a replacement stormwater outfall instead of investigating illicit connections to that outfall.

64. Elimination of Illicit Connections. All illicit connections identified in the report approved pursuant to Paragraph 63 shall be eliminated as early as feasible and no later than nine (9) months following EPA approval of that report.

65. Modification of SOW or Illicit Connection Elimination Work Plan. If, following EPA approval of the SOW or Illicit Connection Identification Report and Elimination Work Plan, new information is discovered or developed, Defendants may submit a proposed modification of either plan, or a specific provision in either plan, to EPA and AS EPA for review and approval pursuant to Paragraph 69. The proposal must be accompanied by all supporting data and information relied upon in the proposal and, if a date in a previously-approved schedule would be affected by the proposed modification, the proposal must set forth a new schedule.

66. Submittal of Notice of Intent Under the Multi-Sector General Permit. By no later than January 31, 2018, Defendants shall submit a complete and accurate electronic notice of intent (“NOI”) to EPA in accordance with the terms and conditions of EPA’s National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”).

67. Stormwater Pollution Prevention Plan. By no later than the date of the submittal of the NOI pursuant to Paragraph 66, Defendants shall submit a stormwater pollution prevention plan (“SWPPP”) to EPA and AS EPA for review and approval pursuant to Paragraph 69. By no later than January 31, 2018, Defendants shall implement structural and non-structural best management practices at the Facility to reduce, minimize, and eliminate pollutants in stormwater discharges as required by the MSGP.

68. Compliance with the Multi-Sector General Permit. Beginning on the date Defendants submit the NOI required by Paragraph 6659, Defendants shall comply with the terms and conditions of the MSGP.

Approval of Deliverables

69. After review of any plan, report, or other item that is required to be submitted for review and approval pursuant to this Consent Decree, EPA, after consultation with AS EPA, shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. Approvals granted by EPA prior to the Effective Date become effective and binding under the Consent Decree upon the Effective Date of the Consent Decree.

70. If the submission is approved pursuant to Paragraph 69, Defendants shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 69(b) or (c), Defendants shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject

to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section XI (Dispute Resolution).

71. If the submission is disapproved in whole or in part pursuant to Paragraph 69(c) or (d), Defendants shall, within thirty (30) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

72. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Defendants' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties.

73. Any stipulated penalties applicable to the original submission, as provided in Section IX, shall accrue during the 30 Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

74. Permits. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section X (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

75. Defendants shall implement a Supplemental Environmental Project ("SEP"), the Emergency Responder Equipment Project, in accordance with all provisions of this Section. The SEP provides for the purchase and donation of emergency response equipment to the American Samoa Fire Department, for use by first responders operating in the area of the Facility.

76. Defendants are responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. "Satisfactory completion" means the purchase and donation of emergency response equipment, including at least twelve (12) protective suits and at least twelve (12) self-contained breathing apparatus units, to the American Samoa Fire Department no later than ninety (90) Days after the Effective Date. Defendants may use contractors or consultants in planning and implementing the SEP.

77. With regard to the SEP, Defendants certify the truth and accuracy of each of the following:

- a. that all cost information provided to EPA in connection with EPA's

approval of the SEP is complete and accurate and that Defendants in good faith estimate that the cost to implement the SEP is \$88,000;

b. that, as of the date of executing this Decree, Defendants are not required to perform or develop the SEP by any federal, state, or local law or regulation and are not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Defendants were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendants have not received and will not receive credit for the SEP in any other enforcement action;

e. that Defendants will not receive any reimbursement for any portion of the SEP from any other person; and

f. that (i) Defendants are not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 75; and (ii) Defendants have inquired of the American Samoa Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and have been informed by the American Samoa Fire Department that it is not a party to such a transaction. For purposes of these certifications, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

78. SEP Completion Report

a. Within thirty (30) Days after the date set for completion of the SEP, Defendants shall submit a SEP completion report to the United States, in accordance with Section XV (Notices). The SEP completion report shall contain the following information:

- i. a detailed description of the SEP as implemented;
- ii. a description of any problems encountered in completing the SEP and the solutions thereto;
- iii. an itemized list of all eligible SEP costs expended;
- iv. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- v. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

79. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendants’ SEP completion report.

80. After receiving the SEP completion report, the United States shall notify Defendants whether or not Defendants have satisfactorily completed the SEP. If Defendants have not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section IX.

81. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XI (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

82. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 89.

83. Any public statement, oral or written, in print, film, or other media, made by Defendants making reference to the SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States and the Territory of American Samoa v. StarKist Co. and Starkist Samoa Co. taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, and the Emergency Planning and Community Right-to-Know Act, and by the Territory under the American Samoa Environmental Quality Act.”

84. For federal income tax purposes, Defendants agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

85. If Defendants satisfactorily complete the SEP, but do not spend the full amount of the estimate set forth in Paragraph 77.a, and if EPA determines that the amount remaining reasonably could be applied toward another SEP, within 30 Days of EPA’s written determination, Defendants shall propose an alternative SEP for the balance remaining for the review and approval of EPA.

VIII. REPORTING REQUIREMENTS

86. Defendants shall submit the following reports:

- a. By July 31st and January 31st of each year after the lodging of this Consent Decree, until termination of this Decree pursuant to Section XIX, Defendants shall submit by electronic mail a semi-annual report for the preceding six months (i.e., January to June or July to December) that shall include the status of any construction or compliance measures; completion of milestones; problems encountered or anticipated that may affect timely completion of obligations in Section VI of this Consent Decree, together with implemented or proposed solutions; status of permit applications; operation and maintenance; reports to territorial agencies; an explanation of any corrective measures taken in response to a multi-media compliance audit as required in Paragraph 53.
- b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or

minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendants shall so state in the report. Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day either Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of the obligation to provide the notice required by Section X (Force Majeure).

87. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendants' performance under this Decree, or the performance of the Facility, may pose an immediate threat to the public health or welfare or the environment, Defendants shall notify EPA orally or by electronic mail as soon as possible, but no later than 24 hours after either Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

88. All reports shall be submitted to the persons designated in Section XV (Notices).

89. Each report submitted by Defendants under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision 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 have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

90. This certification requirement does not apply to emergency or similar notifications, such as notifications submitted pursuant to Paragraph 87, where compliance would be impractical.

91. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by any federal, state, or local law, regulation, permit, or other requirement.

92. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

IX. STIPULATED PENALTIES

93. Defendants shall be liable for stipulated penalties to the United States and the Territory for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all

applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

94. Non-Compliance with Consent Decree. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement of this Consent Decree, except as provided in Paragraphs 95 - 104:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500 per Day or portion thereof.....	1st through 14th Day
\$1000 per Day or portion thereof.....	15th through 30th Day
\$2000 per Day or portion thereof.....	31st Day and beyond

95. Non-Compliance with Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the Reporting Requirements under Section VIII of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250 per Day or portion thereof.....	1st through 14th Day
\$500 per Day or portion thereof.....	15th through 30th Day
\$1000 per Day or portion thereof.....	31st Day and beyond

96. Non-Compliance with Interim Wastewater Compliance Measure Requirements. The following stipulated penalties shall accrue per violation per Day of Paragraphs 15 - 21 of this Consent Decree.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1000 per Day or portion thereof.....	1st through 14th Day
\$1500 per Day or portion thereof.....	15th through 30th Day
\$3000 per Day or portion thereof.....	31st Day and beyond

97. Non-Compliance with Wastewater Treatment Upgrade Compliance Milestones. The following stipulated penalties shall accrue per violation per Day of Paragraphs 23 and 24 of this Consent Decree.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1000 per Day or portion thereof.....	1st through 14th Day
\$2000 per Day or portion thereof.....	15th through 30th Day
\$4000 per Day or portion thereof.....	31st Day and beyond

98. Unauthorized Discharge Violations.

a. The following stipulated penalties shall accrue per violation per Day for an Unauthorized Discharge from the Facility to the permitted joint cannery outfall conveyance or from the dock trenches at the Facility.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$10,000	1st through 7th Day
\$15,000	8th through 15th Day
\$20,000	16th Day and beyond

b. Except as provided in Paragraph 98.c below, the following stipulated penalties shall accrue per violation per Day for any other Unauthorized Discharge from the Facility: a per occurrence penalty of \$4,000 plus:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 7th Day
\$4,000	8th through 15th Day
\$6,000	16th Day and beyond

- c. A stipulated penalty of \$500 per day shall apply to an Unauthorized Discharge from a stormwater outfall at the Facility that includes any contribution from any illicit connection to the Facility’s industrial processes prior to the final compliance date for that outfall as established pursuant to Paragraph 64. The stipulated penalties set forth in Paragraph 98.b shall apply to an Unauthorized Discharge from a stormwater outfall at the Facility after the final compliance date for that outfall as established pursuant to Paragraph 64.

99. Effluent Limit and Failure to Sample Violations. The following stipulated penalties shall accrue for each exceedance of the effluent limits as set forth in Paragraph 26 or a failure to sample violation of the Facility’s NPDES permit, as applicable, after the Effective Date of this Consent Decree:

<u>Penalty Per Violation</u>	<u>Type of Violation</u>
\$1500	Failure to Sample Violation
\$2000.....	Daily Effluent Limit Violation
\$2500.....	Monthly/Quarterly Effluent Limit Violation

100. Non-Compliance with Laboratory Requirements. The following stipulated penalties shall accrue per violation per Day of Section VI.E of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250 per Day or portion thereof.....	1st through 14th Day
\$500 per Day or portion thereof.....	15th through 30th Day
\$1000 per Day or portion thereof.....	31st Day and beyond

101. Non-Compliance with SPCC Requirements. The following stipulated penalties shall accrue per violation per Day of Section VI.F of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500 per Day or portion thereof.....	1st through 14th Day
\$1000 per Day or portion thereof.....	15th through 30th Day
\$2000 per Day or portion thereof.....	31st Day and beyond

102. Non-Compliance with Ammonia, Chlorine, and Butane Requirements.

- a. Except as set forth in Paragraph 102.b, the following stipulated penalties shall accrue per violation per Day of Section VI.G of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1000 per Day or portion thereof.....	1st through 14th Day
\$2000 per Day or portion thereof.....	15th through 30th Day
\$4000 per Day or portion thereof.....	31st Day and beyond

- b. A stipulated penalty of \$3,500 per violation shall accrue for each violation

of Paragraph 38 that results from a release of a CAA § 112(r)(3) listed substance from the Facility.

103. Non-Compliance with EMS, Compliance Audit and Inspection, and Training Requirements. The following stipulated penalties shall accrue per violation per Day of Sections VI.H, I, and J of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1000 per Day or portion thereof.....	1st through 14th Day
\$2000 per Day or portion thereof.....	15th through 30th Day
\$4000 per Day or portion thereof.....	31st Day and beyond

104. Non-Compliance with SEP Requirements. If Defendants fail to satisfactorily complete the SEP by the deadline set forth in Section VII, Defendants shall pay stipulated penalties for each day for which they fail to satisfactorily complete the SEP, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250 per Day or portion thereof.....	1st through 14th Day
\$500 per Day or portion thereof.....	15th through 30th Day
\$1000 per Day or portion thereof.....	31st Day and beyond

105. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

106. Defendants shall pay stipulated penalties to the United States and the Territory within 30 Days of a written demand by either Plaintiff. Defendants shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the Territory. The Plaintiff making a demand for payment of a stipulated penalty shall consult with the other Plaintiff prior to making a demand. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

107. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

108. Stipulated penalties shall continue to accrue as provided in Paragraph 105, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States and the Territory within thirty (30) Days of the effective date of the agreement or the receipt of EPA’s decision or order.
- b. If the dispute is appealed to the Court and the United States or the Territory prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court’s decision or order, except as

provided in subparagraph c, below.

- c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

109. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Paragraphs 15-2019, 29, 33, 59, 61, and 66-68 that have occurred from the Date of Lodging and prior to the Effective Date, provided that stipulated penalties that may have accrued since the Date of Lodging which occur prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

110. Defendants shall pay stipulated penalties owing to the United States and the Territory in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

111. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the Territory from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

112. The payment of penalties and interest, if any, shall not alter in any way Defendants' obligation to complete the performance of the requirements of this Consent Decree.

113. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' or the Territory's exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the United States and the Territory expressly reserve the right to seek any other relief they each deem appropriate for Defendants' violation of this Decree or applicable law, including but not limited to an action against Defendants for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

X. FORCE MAJEURE

114. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

115. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic mail to the Directors of the Enforcement Division and the Superfund Division in EPA Region 9 within seven (7) Days of when Defendants first knew that the event was reasonably likely to cause a delay. Within seven (7) Days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

116. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

117. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

118. If Defendants elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), they shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 114 and 115. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XI. DISPUTE RESOLUTION

119. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

120. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States and the Territory, if applicable, a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with the Territory, shall be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

121. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the Territory a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

122. After consultation with the Territory, the United States shall serve its Statement of Position within forty-five (45) Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

123. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States and the Territory, in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within fifteen (15) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

124. The United States and/or the Territory shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

125. Standard of Review. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 123, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree, that their proposal will achieve compliance with the Facility's permits and the relevant environmental statutes in an expeditious manner, and that they are entitled to relief under applicable principles of law. The United States and the Territory reserve the right to argue that the United States' position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with the law.

126. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 108. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

127. The United States, the Territory, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

128. Upon request, Defendants shall provide EPA, AS EPA, or their authorized representatives splits of any samples taken by Defendants. Upon request, EPA or AS EPA shall provide Defendants splits of any samples taken by that agency.

129. Until five years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the Territory, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

130. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States and the Territory at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the Territory, Defendants shall deliver any such documents, records, or other information to EPA or the Territory, as applicable. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each

author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

131. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

132. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States and the Territory pursuant to applicable federal or territorial laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal, state, or territorial laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

133. This Consent Decree resolves the civil claims of the United States and the Territory for the violations alleged in the Amended Complaint filed in this action through the Date of Lodging.

134. The United States and the Territory reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the Territory to obtain penalties or injunctive relief under the CWA, CAA, EPCRA, or RCRA, or their implementing regulations, or under other federal laws, regulations, or permit conditions, or the laws of American Samoa. The United States and the Territory further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants’ Facility, whether related to the violations addressed in this Consent Decree or otherwise.

135. In any subsequent administrative or judicial proceeding initiated by the United States or the Territory for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Territory in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 133.

136. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants’ compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the Territory do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants’ compliance with any aspect of this Consent

Decree will result in compliance with provisions of the CWA, 33 U.S.C. § 1251, et seq.; the CAA, 42 U.S.C. § 7401, et seq.; EPCRA, 42 U.S.C. § 11001, et seq.; RCRA, 42 U.S.C. § 6901, et seq.; the American Samoa Environmental Quality Act, A.S.C.A. Title 24, Chapter 1; or with any other provisions of federal, state, territorial, or local laws, regulations, or permits.

137. This Consent Decree does not limit or affect the rights of Defendants or of the United States or the Territory against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

138. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIV. COSTS

139. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the Territory shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XV. NOTICES

140. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-11357

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-11357

As to EPA by email: raack.melissa@epa.gov
howell.adam@epa.gov
deyoe.jeremy@epa.gov
shepherdson.melanie@epa.gov

As to EPA by mail: Director, Water Enforcement Division
U.S. EPA
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
MC 2243A
Room 3104B
Washington, DC 20460

Manager, Wastewater Section
ENF 3-1
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Chief, Emergency Prevention and Preparedness Program
SFD 9-3
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

As to the Territory by email: alee@la.as.gov
meredithl@la.as.gov

As to the Territory by mail: Attorney General
Office of the Attorney General
Department of Legal Affairs
P.O. Box 7
Pago Pago, AS 96799

As to AS EPA by email: faamao.asalele@epa.as.gov
marian.mcguire@epa.as.gov

As to AS EPA by mail: Director
American Samoa Environmental Protection Agency
P.O. Box PPA
Pago Pago, AS 96799

As to Defendants by mail: Plant Manager
Starkist Samoa Co.
P.O. Box 368
Pago Pago, Tutuila
American Samoa 96799

Jeffrey S. Roberts
StarKist Co.

225 N. Shore Drive, Suite 400
Pittsburgh, PA 15212

Scott R. Dismukes
Eckert Seamans Cherin & Mellott, LLC
600 Grant St., 44th Floor
Pittsburgh, PA 15219

As to Defendants by email: Jeff.Roberts@StarKist.com
Sdismukes@eckertseamans.com

141. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

142. Except as otherwise provided, notice to a Party by electronic mail (if that option is provided in Paragraph 140) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

143. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVI. EFFECTIVE DATE

144. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendants hereby agree that they shall be bound to perform duties scheduled to occur on or after the Date of Lodging and prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVII. RETENTION OF JURISDICTION

145. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XI and XVIII, or effectuating or enforcing compliance with the terms of this Decree.

XVIII. MODIFICATION

146. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

147. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof

provided by Paragraph 125, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIX. TERMINATION

148. After Defendants have completed the requirements of Section VI (Compliance Requirements), have thereafter maintained continuous satisfactory compliance with this Consent Decree, Defendants' NDPEs permit, and the MSGP for a period of five years, have complied with all other requirements of this Consent Decree, including those related to the SEP required by Section VII, and have paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendants may serve upon the United States and the Territory a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

149. Following receipt by the United States and the Territory of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If both Plaintiffs agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

150. If Plaintiffs do not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section XI. However, Defendants shall not seek Dispute Resolution of any dispute regarding termination until 60 Days after service of their Request for Termination.

XX. PUBLIC PARTICIPATION

151. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants and the Territory consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants and the Territory in writing that it no longer supports entry of the Decree.

XXI. SIGNATORIES/SERVICE

152. Each undersigned representative of Defendants, the Territory, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

153. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service

requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXII. INTEGRATION

154. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXIII. FINAL JUDGMENT

155. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the Territory, and Defendants.

XXIV. APPENDICES

156. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is the Self-Disclosed Violations;

“Appendix B” is a Diagram of the Facility’s Above-Ground Storage Tanks;

“Appendix C” is the Process Diagram for Interim Wastewater Compliance Measures;

“Appendix D” is the approved EMS Manual for Starkist Samoa Co.; and

“Appendix E” is the EMS Implementation Milestones.

Dated and entered this __ day of _____, 201_

UNITED STATES DISTRICT JUDGE

Signature page for Consent Decree in *United States v. StarKist Co. and Starkist Samoa Co.*

FOR THE UNITED STATES OF AMERICA:

12/21/17
Date

[REDACTED]

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

[REDACTED]

SHEILA McANANEY (IL #6309635)
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
Phone: (202) 616-6535
Email: sheila.mcananey@usdoj.gov

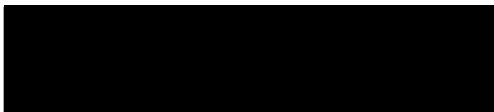
Signature page for Consent Decree in *United States and Territory of American Samoa v. StarKist Co. and Starkist Samoa Co.*

FOR THE UNITED STATES OF AMERICA (continued):

SCOTT W. BRADY
United States Attorney
Western District of Pennsylvania

22 Dec 2017

Date



PAUL E. SKIRTICH
Assistant United States Attorney
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
Phone: (412) 894-7418
Email: Paul.Skirtich@usdoj.gov
PA ID No. 30440

Signature page for Consent Decree in *United States and Territory of American Samoa v. StarKist Co. and Starkist Samoa Co.*

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY REGION 9:

15 Dec. 2017

Date



ALEXIS STRAUSS
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 9

12/14/17

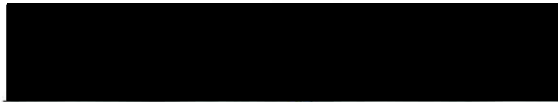
Date



SYLVIA QUAST
Regional Counsel
U.S. Environmental Protection Agency, Region 9
Office of Regional Counsel
75 Hawthorne Ave.
San Francisco, CA 94105

12/12/2017

Date




MELANIE SHEPHERDSON
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 9
Office of Regional Counsel
75 Hawthorne Ave.
San Francisco, CA 94105

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY (OECA):


12/22/17

Date


SUSAN PARKER BODINE
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency


12/23/17

Date


ROSEMARIE KELLEY
Acting Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency


12-22-17

Date


MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

12-22-17

Date


fa MELISSA K. RAACK
Attorney-Adviser, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Signature page for Consent Decree in *United States and Territory of American Samoa v. StarKist Co. and Starkist Samoa Co.*

FOR THE TERRITORY OF AMERICAN SAMOA:

12/18/17

Date



ELEASALO V. ALE
Attorney General
Office of the Attorney General
Department of Legal Affairs
P.O. Box 7
Pago Pago, AS 96799
Phone: (684) 633-4163
Email: alee@la.as.gov
HI ID No. 6390

Signature page for Consent Decree in *United States and Territory of American Samoa v. StarKist Co. and Starkist Samoa Co.*

FOR DEFENDANT STARKIST CO.:

12/13/17
Date



ANDREW CHOE
President and CEO

FOR DEFENDANT STARKIST SAMOA CO.:

12/13/17
Date



ANDREW CHOE
President and CEO