

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, California 94105**

IN THE MATTER OF:)	DOCKET NO. CWA-309-2018-003
)	
Cabras Marine Corporation)	
178 Industrial Avenue)	ADMINISTRATIVE ORDER ON
Piti, Guam 96915)	CONSENT
)	
)	<i>Proceeding under Section 309(a) of the Clean</i>
Respondent.)	<i>Water Act, 33 U.S.C. § 1319(a)</i>

ADMINISTRATIVE ORDER ON CONSENT

I. STATUTORY AUTHORITY

1. Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), provides that, whenever the EPA finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Order on Consent (AOC) is issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region IX, and further delegated by the Regional Administrator to the Director of the Enforcement Division of the EPA, Region IX.

II. STATUTORY AND REGULATORY FRAMEWORK

3. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

4. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States and CWA Section 402(p), 33 U.S.C. § 1342(p) requires that NPDES permits be issued for stormwater discharges “associated with industrial activity.”

5. 40 C.F.R. § 122.26(b)(14)(ii) defines stormwater discharges associated with industrial activity to include ship building and repair classified under SIC Code 3731.

6. Pursuant to CWA § 402(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.

7. On June 16, 2015, EPA issued the most recent version of the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (hereinafter referred to as the “2015 MSGP”), which was effective on the date of issuance. The 2015 MSGP replaced the 2008 MSGP, which expired September 29, 2013 but which was administratively continued until EPA’s issuance of the 2015 MSGP. Like the 2008 MSGP, the 2015 MSGP provides for a Master Permit (No. GUR050000) for the Territory of Guam (“Guam”) that covers stormwater discharges associated with industrial activities in Guam. See 2015 MSGP Appendix C.9. The 2015 MSGP’s Master Permit conditions for Guam remain the same as under the 2008 MSGP. *See* 2015 MSGP Part 9.9.4. Facilities in Guam requiring coverage under the 2015 MSGP Master Permit for Guam must develop a Storm Water Pollution Prevention Plan (“SWPPP”) and file a Notice of Intent (“NOI”) to be covered.

III. FINDINGS OF FACT AND DETERMINATIONS OF LAW

8. Respondent Cabras Marine Corporation is a corporation organized under the laws of Territory of Guam and is a “person” within the meaning of CWA § 502(5), 33 U.S.C. § 1362(5).

9. At all times relevant to this action, Respondent owned and/or operated a drydock facility (“Drydock Facility”) and associated shoreside ship repair facility (“Shoreside Facility”) located at 178 Industrial Avenue, Piti, Guam 96915, hereinafter referred to together as the “Facilities.”

10. Respondent has been engaged in ship repair at the Facilities since approximately June 2013, including boat repair, chassis repair, engine repair, fabrication, sandblasting and material storage and disposal at the Shoreside Facility. Respondent’s operations at the Facilities fall within activities classified under SIC Code 3737 (Ship Building and Repairing), and is therefore an “industrial activity” for purposes of CWA § 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(ii).

11. Stormwater runoff and process wastewater from the Drydock Facility discharge directly to Apra Harbor from four authorized outfalls (NPDES Outfalls 001-004). Pollutants may also discharge from the Drydock deck when the Drydock submerges. Such outfalls and the Drydock deck are “point sources” within the meaning of CWA § 502(14), 33 U.S.C. § 1362(14).

12. Stormwater runoff and process wastewater from the Shoreside Facility discharges directly to Apra Harbor from an on-site storm drain inlet. The inlet is a “point source” within the meaning of CWA § 502(14), 33 U.S.C. § 1362(14).

13. Stormwater runoff from the Facilities is a “stormwater discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(ii).

14. Stormwater and process wastewater discharges from the Facilities include sandblasting grit, zinc, copper, and suspended solids, among other things, and therefore contain “pollutants,” as defined by CWA § 502(6), 33 U.S.C. § 1362(6).

15. Apra Harbor is a navigable “waters of the United States” within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7) and implementing regulations.

16. Respondent’s discharge of pollutants in stormwater and process wastewater from the Facilities to waters of the United States constitutes a “discharge of pollutants” within the meaning of CWA § 502(12), 33 U.S.C. § 1362(12).

17. On December 19, 2012, EPA issued NPDES permit number GU00200397 (the “Drydock Individual Permit”) to Respondent authorizing the discharge of wastewater and stormwater containing

pollutants from the Drydock Facility to Apra Harbor subject to specified conditions and limitations. The Drydock Individual Permit became effective February 1, 2013 with an expiration date of January 30, 2018. Respondent submitted a timely and complete application for renewal of the Drydock Individual Permit on July 5, 2017, therefore it has been automatically administratively extended until EPA decides on its renewal.

18. Part I.A.1 of the Permit authorizes the “discharge [of] stormwater runoff (associated with storms larger than once in 25 yr/24 hr event) ... provided [Respondent] fulfills the requirements to design, maintain, and operate a capture and divert system for 100% process wash water and most storm runoff from storms smaller than once in 25 yr/24 hr event” and use a mobile pump to transport this water and runoff to Respondent’s Shoreside Facility for treatment/filtration prior to acceptance by the local sewer treatment plant.

19. Part II of the Permit describes Respondent’s installation of a nine-inch high retention berm at each end of the Drydock Facility as part of its stormwater retention system.

20. Part III.D.5 of the Permit requires Respondent to develop and implement a Best Management Practices (BMP) Plan to reduce pollutants discharged from the Facility and review and update the BMP Plan as needed to comply with the Permit or as required by EPA.

- a. Respondent’s BMP Plan for the Drydock Facility provides that “[e]mployees shall effectively cover all 4 drainages on the deck of AFDL-21 at all times prior to performing any work” as part of Respondent’s capture and diversion system.
- b. Respondent’s BMP Plan for the Drydock Facility provides that employees “[a]pply a rubber seal under each drainage grill to prevent any stormwater, wash water, grit and debris from entering the receiving water.”

21. Part III.A.6 of the Permit states: “Per conditions identified in the Guam EPA 401 certification (dated November 28, 2012): “[T]he permittee must strictly implement 'good housekeeping' and Best Management Practices (“BMPs”) prior to each drydock submergence to prevent accumulation of debris and corroded metal scale from the drydock floor from being discharged into the receiving waters.”

22. Part III.D of the Permit requires Respondent to implement specific BMPs, including:

- a. Part III.D.1.f: “The permittee shall maintain all drydock surfaces, including the top of the wing walls, to prevent chipped paint, rust, and other debris from entering the receiving water.”
- b. Part III.D.1.g: “Prior to lowering/submerging the drydock, the permittee shall clean wash and rinse the vessel and drydock surface (walls and floor) to remove solids (metal shaving, paint chips, spent sand grit, etc.) and other pollutants. This includes vacuuming and rinsing to clean hard-to-reach areas, or the permittee shall implement additional measures to ensure that solids are removed from the drydock surface and prevented from discharging into receiving waters.”
- c. Part III.D.1.i: “The permittee shall properly store and dispose all wastes.”
- d. Part IV.3.e(1)(i): “[V]ehicle and equipment storage areas must be regularly inspected and cleaned for spills and leaks (including storm inlets); and have spill response equipment (e.g., drip pans, sorbent pads) to respond immediately to spills or leaks.”

23. On October 17, 2016, the EPA sent a Request for Information under Section 308 of the Clean Water Act to Respondent requesting copies of Discharge Monitoring Reports (“DMR”) and copies of photo documentation required by the Permit that EPA had not received.

24. On January 13, 2017, Respondent provided a response to EPA’s information request, which included copies of all the requested DMRs and photo documentation showing:

- a. The Drydock’s containment berms had been disassembled and removed from service from at least April 4, 2014 through June 17, 2014; and
- b. Uncontained sand blast grit had been allowed to accumulate inside and outside the Drydock Facility’s containment berms with potential to discharge to surface waters on at least February 17, 2014 through February 20, 2014.

25. On March 1, 2017, the EPA performed an inspection of the Facilities to evaluate the Respondent’s compliance with the requirements of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p); the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Drydock Individual Permit. The EPA provided its inspection report (“Inspection Report”) to Respondent on May 22, 2017.

26. As described in more detail in the Inspection Report, the EPA inspectors reported the following:

- a. The Drydock’s containment berms were perforated with rusted holes and had berm heights of only 3-inches at chock locations indicating they were insufficiently maintained and sized to capture 100% of process wastewater and stormwater up to the 25-year, 24-hour storm event.
- b. The Drydock’s deck outfall drains were not sufficiently plugged to prevent the discharge of process water or capture stormwater in events less than the 25-year, 24-hour rain events though the four permitted outfalls.
- c. The Drydock’s floor contained an accumulation of sandblast grit, paint particles and debris inside and outside its containment berm, providing the potential to discharge to receiving waters, and paint particles and debris were observed floating in the Harbor water immediately adjacent to the Drydock.
- d. The Shoreside Facility had five containers dedicated to oil spill response that were either empty or contained inadequate materials for spill prevention.
- e. The Shoreside Facility had equipment that was actively leaking oil without control measures such as drip pans or sorbent pads in place.
- f. The Shoreside Facility’s surface area was stained with oil and grease indicating leaks and spills of oil and grease throughout the Facility that had not been adequately cleaned.
- g. The Shoreside Facility had drums and containers of petroleum waste and other waste materials there were improperly stored without secondary containment, without covers, without labels and with exposure to stormwater and potential to discharge.
- h. The Shoreside Facility had a storm drain inlet with discharge to Apra Harbor.
- i. The Shoreside Facility had uncontained sandblast grit and debris with stormwater exposure at the paint shop and blasting booth areas.

27. On June 6, 2017, Respondent provided additional information indicating it had addressed many of significant deficiencies identified by the EPA during the March 1, 2017 inspection.

28. On October 20, 2017, the EPA performed a follow-up inspection of the Facilities. The EPA provided the follow-up inspection report to Respondent on November 14, 2017. The follow-up inspection report notes the following compliance items:

- a. Berms had been upgraded and replaced to fix rusted holes and to provide nine (9) inch containment around the entire Drydock to comply with the Permit requirement that berms capture 100% process wash water and stormwater runoff from storms smaller than the once in 25-year, 24-hour event.
- b. The rubber seals under each drainage grill had been upgraded to prevent the discharge of stormwater and/or process wastewater.
- c. Areas were generally cleaned of wastes, oil residues, debris and sandblast grit.
- d. Additional BMPs had been temporarily installed to contain sandblast grit and debris at the drydock containment area and Shoreside vessel maintenance area.
- e. The Shoreside Facility was without NPDES permit coverage, although Facility staff indicated Respondent had filed a Notice of Intent for MSGP coverage.
- f. The lack of a berm between the Shoreside Facility and Harbor waters has the potential to allow for runoff of pollutants in stormwater and process wastewater directly to Harbor waters.
- g. Sediment track-out was observed originating from the non-paved areas in the vicinity of the paint shop and blasting booth to the paved area draining to the stormdrain.
- h. The waste material storage area had been cleaned and materials had been removed from the area. All materials were currently stored in a new area generally located beneath a roof. The new storage area was free from evidence of spills, but had potential stormwater exposure and did not have secondary containment.

29. On December 27, 2017, Respondent submitted its NOI for MSGP coverage, and on January 30, 2018, obtained MSGP coverage (MSGP Permit GUR053010).

30. Between June 2012 and January 30, 2018, the National Oceanic and Atmospheric Administration reports that at least 0.5 inches of rain fell on at least 246 days at Guam International Airport weather station, the closest monitoring station to Piti, Guam. Upon information and belief, each of these 246 rainfall events resulted in a discharge of stormwater from the Facilities to Apra Harbor. By discharging stormwater associated with industrial activity, and process wastewater, from its Drydock Facility and failing to comply with its Drydock Individual Permit, Respondent has violated CWA §§ 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342.

31. By discharging stormwater associated with industrial activity and process wastewater from its Shoreside Facility without NPDES Permit authorization until January 30, 2018, Respondent violated CWA § 301(a), 33 U.S.C. §§ 1311(a).

IV. ORDER FOR COMPLIANCE ON CONSENT

32. Based on the foregoing Findings of Fact and Determinations of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), IT IS HEREBY ORDERED and AGREED TO:

33. By May 30, 2018, Respondent shall install a storm drain filtration system (Filtration System) at the Shoreside Facility's Drain 1 catch basin to treat stormwater discharges. The Filtration System shall be designed to capture and treat drainage from at least the first 0.5-inches of rainfall from the Shoreside Facility's impervious surface drainage and consist of a pre-settling sediment chamber and a media filtration unit to capture pollutants. Respondent shall update its SWPPP with maintenance requirements for the filtration system, including:

- a. Schedule of inspections to include once every three months and after significant rain events greater than one inch;
- b. Schedule to remove, dispose and replace media filters at least every six months in accordance with manufacturers recommendation; and
- c. Schedule of BMPs to control sediment and particle matter on impervious surfaces (such as sweeping, vacuuming) to prevent clogging filter and flooding the area.

34. By June 30, 2018, Respondent shall install a permanent facility for the temporary storage of liquid and oily wastes at the Shoreside Facility. The storage facility shall, at a minimum be: sufficient size to accommodate the accumulation of waste over a projected six-month period; equipped with secondary containment to control potential spills; and designed to prevent exposure of waste materials and spills to stormwater.

35. By July 30, 2018, Respondent shall install a permanent containment facility at the Shoreside Facility's paint shop and blasting booth areas to fully capture and contain blasting grit, paint particles and paint aerosols. The containment facility's area enclosure shall be of sufficient size to accommodate all grit blasting and prevent drift of materials and paint from exposure to stormwater.

36. By August 30, 2018, Respondent shall prepare and submit a revised SWPPP(s) for the Facilities that includes the actions discussed in paragraphs 33-35 of this Order above. The SWPPP(s) shall also be revised to include visual observations during rain events to assess whether stormwater pollutants from the Shoreside Facility have potential to directly flow into Apra Harbor in the absence of a berm. If evidence exists that discharge occurs directly to the Harbor, the SWPPP shall be revised within one month to incorporate appropriate BMPs.

37. Respondent shall take all measures necessary to fully and properly comply with all terms and conditions of the Drydock Individual Permit GU0020397 and the NPDES permit for the Shoreside Facility (MSGP Permit GUR053010) and as described in Respondent's updated SWPPP and BMP Plan for both Facilities.

V. FINAL REPORT AND TERMINATION OF THE AOC

38. Within thirty (30) calendar days after Respondent has fully completed and implemented the actions required by Section IV (Agreement on Consent) of this AOC, Respondent shall submit for the EPA's review and approval a final report (Final Report) that includes a description and timeline of all of actions which have been taken toward achieving compliance with this AOC and the CWA.

39. If the EPA determines, after review of the Final Report, that all the requirements of this AOC have been completed and implemented in accordance with this AOC, the EPA will provide notice to Respondent and this AOC shall be deemed terminated.

40. If the EPA determines that any requirement has not been completed and implemented in accordance with this AOC, the EPA will notify Respondent, provide a list of deficiencies, and require Respondent to modify its actions as appropriate to correct such deficiencies. If so required, Respondent shall implement the modified requirement(s) and submit a modified Final Report.

VI. SUBMISSIONS AND RECORD RETENTION

41. Respondent shall submit all written communications, including progress reports, electronically to EPA at the following e-mail addresses. Submissions will be deemed made on the date (ChST) they are sent electronically:

John Tinger, Wastewater Enforcement, US EPA: Tinger.John@epa.gov

Ken Greenberg, Manager, Wastewater Enforcement, US EPA: Greenberg.Ken@epa.gov

Maricar Quezon, Guam EPA: Maricar.Quezon@epa.guam.gov

42. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of Respondent as specified by 40 C.F.R. § 122.22 and shall include the following statement:

“I certify under the 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 am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

43. Respondent shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the performance of the tasks in this AOC, until five (5) years after termination of this AOC. Respondent shall also instruct its agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this AOC.

VII. MODIFICATION

44. Any request for modification by Respondent shall include the reason(s) for the request and a timeline for completion. Modification of this AOC shall be in writing and shall take effect only upon approval by the EPA. Failure by Respondent to implement any modified requirement(s) shall be a violation of this AOC.

VIII. GENERAL PROVISIONS

45. This AOC is binding on Respondent and its officials, officers, directors, partners, agents, employees, attorneys, successors and assigns, and on all persons, independent contractors, consultants and contractors acting in concert with Respondent.

46. Respondent shall provide a copy of this AOC to any successor in interest to its control, operation, or any other interest in any portion of its Facility at least thirty (30) calendar days prior to the transfer, and shall simultaneously notify the EPA in writing, via e-mail, that such notice has been given. Within fourteen (14) calendar days after the effective date of this AOC or the date of contracting, whichever is later, Respondent shall provide a copy of this AOC to all contractors and/or consultants to perform any of the work described in Section IV. Respondent shall condition the transfer of control, operation or any other interest in any portion of its Facilities and any contract related to the performance of the work described in Section IV upon successful execution of this AOC.

47. This AOC is not and shall not be construed to be a permit under the CWA, nor shall it in any way relieve or affect Respondent's obligations under the CWA, or any other applicable federal or state laws, regulations, and/or permits. Compliance with this AOC shall be no defense to any actions commenced pursuant to such applicable laws, regulations, or permits, nor does it constitute a release.

48. This AOC shall in no way affect the rights of the EPA or the United States against any person not a party hereto.

49. This AOC shall in no way limit or affect the EPA's authority to obtain information, and to enter, inspect, sample or monitor compliance under any law, permit, court order or agreement.

50. The provisions of this AOC shall be severable. If any provision is declared by a court of competent jurisdiction to be unenforceable, then the remaining provisions shall remain in full force and effect.

51. Respondent does not admit any of EPA's Findings of Fact and Determinations of Law. Respondent reserves all of its rights, remedies, and defenses, including all rights and defenses it may have regarding liability or responsibility, except for its right to contest EPA's jurisdiction to issue or enforce this Section 309(a) AOC, including any right of judicial review of the AOC under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondent has entered into this AOC in good faith without trial or adjudication of any issue of fact or law.

52. Failure to comply with the terms of this AOC may result in liability for statutory civil penalties under CWA Section 309(d), 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, a United States District Court may impose such penalties if the court determines that Respondent has violated the CWA as described above and failed to comply with the terms of this AOC. In determining the amount of any penalty, the court will consider the seriousness of the violations, the economic benefit (if any) resulting from the violations, any history that Respondent may have of such violations, any good faith efforts that Respondent has made to comply with legal requirements, the economic impact a penalty may have upon Respondent, and such other matters as justice may require.

53. Issuance of this AOC is not an election by the EPA to forego any remedies available to it under the law, including without limit any administrative, civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA. The EPA reserves all available legal and equitable rights and

remedies to enforce any violations cited in this AOC, and the right to seek recovery of any costs and attorney fees incurred by the EPA in any actions against Respondent for non-compliance with this AOC.

54. In accordance with CWA § 309(a)(4), 33 U.S.C. § 1319(a)(4), the EPA will provide notice and a copy of this AOC to the Territory of Guam upon execution.

55. The undersigned signatory for Respondent certifies that he or she is authorized to execute this AOC and legally bind the Respondent.

IX. EFFECTIVE DATE

56. This AOC shall become effective on the date it is signed by the EPA.

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT

/s/

John Manibusan
Vice-President, Cabras Marine Corporation

May 18, 2018
Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9

/s/

Kathleen H. Johnson
Director, Enforcement Division

May 22, 2018
Date