

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

IN THE MATTER OF:	)	DOCKET NO. CWA-309-2019-0002
	)	
American Samoa Shipyard Services	)	<b>ADMINISTRATIVE ORDER ON</b>
Authority and Territory of American	)	<b>CONSENT</b>
Samoa	)	
Pago Pago Harbor	)	<i>Proceeding under Section 309(a) of the Clean</i>
	)	<i>Water Act, 33 U.S.C. § 1319(a)</i>
	)	
Respondents	)	
_____	)	

**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 U.S. Environmental Protection Agency (“EPA”) finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301(a), 308, and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1318 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 Compliance 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 and Compliance Assurance Division of the EPA, Region IX.

3. This AOC is being issued to the Territory of American Samoa (“Territory”) and the American Samoa Shipyard Services Authority (“ASSSA”), arising out of the operation of the Satala Shipyard (“Shipyard”) in the Pago Pago Harbor. The EPA alleges that the Territory and ASSSA (“Respondents”) are in violation of the CWA for unpermitted discharges of pollutants in violation of CWA Section 301(a), violation of conditions established in the National Pollutant Discharge Elimination System (“NPDES”) permit issued to ASSSA by EPA under Section 402(a) of the Act, 33 U.S.C. §1342(a), and for failing to comply fully with a request for information issued to ASSSA by EPA pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

## **II. STATUTORY AND REGULATORY FRAMEWORK**

4. 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, including the territorial seas, except as authorized by a NPDES permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

5. 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, including the territorial seas.

6. CWA Section 402(p), 33 U.S.C. § 1342(p) requires that NPDES permits be issued for stormwater discharges “associated with industrial activity.”

7. CWA § 402(p)(4) requires dischargers of stormwater associated with industrial activity to seek coverage under a promulgated general permit or seek individual permit coverage.

8. 40 C.F.R. § 122.21(d) requires wastewater dischargers to apply for a new permit at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director.

9. 40 C.F.R. § 122.26(b)(14)(ii) defines stormwater discharges associated with industrial activity to include “Ship Building and Repairing” classified under SIC Code 3731.

10. In the Territory, EPA issues NPDES permits authorizing the discharge of pollutants into navigable waters of the United States in compliance with the applicable requirements of Sections 301 and 402(a) of the Act, 33 U.S.C. §§ 1311 and 402(a), and such other conditions as the Administrator determines are necessary to carry out the Act.

11. On October 1, 2010, pursuant to its authority to issue NPDES permits, EPA issued NPDES permit number AS0020036 (the “NPDES Permit”) to MYD Samoa, Inc., an operator of the Shipyard prior to ASSSA. The NPDES Permit authorized MYD Samoa, Inc., and, when ASSSA assumed operations, authorized ASSSA to discharge wastewater and stormwater from the Shipyard subject to specified conditions and limitations. The NPDES Permit was set to expire on September 30, 2015, but ASSSA sought and received an administrative continuance of the NPDES Permit pursuant to 40 C.F.R. §§ 122.6 and 122.21(d)(2)(1).

12. Under Section 308 of the CWA, whenever required to carry out the objectives of the CWA, such as determining a person’s compliance status, EPA has the authority to require the owner or operator of any point source to provide information.

## **III. FINDINGS OF FACT AND DETERMINATIONS OF LAW**

13. Respondent Territory is an unincorporated territory of the United States of America and the owner of the real property on which the Shipyard is located. ASSSA is an authority established by the Territory under American Samoan law, and thus part of the Territory, and is the operator of the Shipyard. The Territory is a “State” within the meaning of Section 502(3) of the Act, 33 U.S.C. § 1362(3), and a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

14. At all times relevant to this action, Respondent ASSSA has operated a ship repair and dry dock facility, and associated shoreside support facilities, at the Shipyard. The Shipyard is located on the north side of the inner Pago Pago Harbor in the Village of Satala on the Island of Tutuila in American Samoa.

15. Activities conducted at the Shipyard include, but are not limited to, material storage, pressure washing, sand blasting, sanding, paint removal, paint application, welding, metal grinding and other metal fabrication, mechanical work, electrical work, petroleum storage, and hazardous waste storage. ASSSA is authorized to discharge the following wastewaters at the Shipyard: hose cleaning and hydrotesting tailwaters at Discharge Points NPDES-001, NPDES-002 and NPDES-003 and low-pressure vessel wash water and hydroblasting tailwater at the 3,000-ton dry dock.

16. The activities conducted at the Shipyard, including but not limited to those identified in Paragraph 15, constitute “industrial activity” for purposes of stormwater requirements pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), 40 C.F.R. § 122.26. EPA’s implementing regulations further define a facility to be engaged in “industrial activity” if it, *inter alia*, falls within certain SIC Codes, including SIC Code 3731 (“Ship Building and Repairing”). 40 C.F.R. § 122.26(b)(14)(ii).

17. Stormwater discharges from the Shipyard include copper, zinc, tributyltin, lead, biocides and other toxic chemicals, and therefore contain “pollutants,” as defined by CWA § 502(6), 33 U.S.C. § 1362(6).

18. Pago Pago Harbor is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a “water of the United States,” including the territorial seas, as defined in EPA’s NPDES regulations, 40 C.F.R. § 122.2. Section 502(8) of the CWA, 33 U.S.C. § 1362(8), defines “territorial seas” as “the belt of the seas measure from the line of ordinary low water along the portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.”

19. At all times relevant herein, ASSSA has discharged, and continues to discharge, stormwater and wastewater containing pollutants, within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6), from a point source or point sources, within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), to Pago Pago Harbor in the course of conducting industrial activities at the Shipyard as described in Paragraph 15.

20. Respondents’ discharge of pollutants in wastewater and stormwater into waters of the United States, including the territorial seas constitutes a “discharge of pollutants” within the meaning of CWA § 502(12), 33 U.S.C. § 1362(12).

#### *Unauthorized Discharges*

21. Part 1.A.4 of the NPDES Permit describes five stormwater drainage basins and associated discharge points: the 3000-ton dry dock, the currently inactive 800-ton dry dock, and three stormwater drainage areas leading to Discharge Points NPDES-001, NPDES-002, and NPDES-003. Discharges occurring at any other location are unauthorized. See Permit Part I.A.4.

22. On April 2, 2015, an EPA inspector observed the unauthorized discharge of pollutants in stormwater and wastewater from points other than Discharge Points NPDES-001, NPDES-002, and NPDES-003, at the Shipyard. Specifically, the EPA inspector observed spent blasting grit in Harbor waters. Spent blasting grit accumulations were visible in the water surrounding the entire landward perimeter of the 3,000-ton dry dock. The unauthorized discharge occurred during and immediately after ship maintenance activities on the dry dock. The dry dock had numerous holes through which grit would discharge to the water below, and the poorly maintained condition of the curtains used during ship maintenance activities failed to prevent grit from discharging from the sides of the dry dock. On July 25, 2017, an EPA inspection showed that the 2015 condition of the dry dock and curtains had not been remedied.

23. On September 30, 2015, a member of EPA's Permitting Office staff visited the Shipyard and documented the presence of a fourth, unpermitted, discharge point or outfall. Although ASSSA subsequently amended its application for NPDES permit renewal, the NPDES permit has not yet been renewed. EPA inspectors observed and documented the same discharge point or outfall during the July 25, 2017 inspection. The unpermitted outfall was not bermed to prevent stormwater entry at the time of either inspection. The topography of the drainage area for this unpermitted outfall, and the materials stored within the drainage area, indicate that pollutant discharges occur at the unpermitted outfall during rain events.

24. Because industrial process and waste materials are stored outside on impervious surfaces within a short distance of the 3000-ton dry dock, the pollutants in the stormwater discharges are substantively the same as those discharged in the Shipyard's industrial wastewater discharges.

25. With a yearly total of 123 inches of precipitation and an average of 249 days of rain in Pago Pago, stormwater discharges likely occurred from the Shipyard cement ramp between the winch house and the 3000-ton dry dock every time it rained, before curbing was constructed to prevent these discharges in March 2018.

26. Each time wastewater from the dry dock and stormwater from the fourth outfall discharged without the required BMPs constituted a discharge in violation of Section 301(a) of the Act. 33 U.S.C. §§ 1311(a),

*Failure to Comply with Permit Conditions  
Monitoring and Reporting*

27. Parts I.B. and II.A of the NPDES Permit authorize ASSSA to discharge wastewater containing pollutants through three outfalls subject to the effluent limits and monitoring and reporting requirements specified therein.

28. From June 2011 through October 2017, ASSSA failed to conduct the monthly sampling required by Part I.B. (Table 1) for the following four parameters: pH, total suspended solids, turbidity, and oil and grease.

29. From December 2017 through January 2018 and again in March 2018, ASSSA failed to conduct the monthly sampling required by Part I.B. (Table 1) for the following three parameters: total suspended solids, turbidity, and oil and grease.

30. From June 2011 through October 2017 and from January 2018 through March 2018, ASSSA failed to conduct the quarterly sampling required by Part I.B. (Table 1) for the following 12 parameters: arsenic, mercury, total polychlorinated biphenyls, chromium VI or total chromium, copper, lead, zinc, tributyltin, benzene, ethylbenzene, toluene and xylene.

31. From June 2011 through October 2017, ASSSA failed to continuously monitor flow rate during discharges as required by Part I.B. (Table 1).

32. From June 2011 through October 2017, ASSSA failed to conduct daily inspections of Harbor waters for visible sheen and foam, and to log those observations as required by Part I.B. (Table 1).

33. Respondents failed to comply with Part II.A.3., which requires ASSSA to report the results of samples collected during the quarterly reporting period on Discharge Monitoring Reports (“DMRs”). From June 2011 through October 2017, ASSSA failed to submit any DMRs to EPA.

*Failure to Comply with Permit Conditions  
Site-specific Best Management Practices*

34. Part III.B.1. and Table 3 of the NPDES Permit require site-specific best management practices (“BMPs”) to reduce and mitigate wastewater and stormwater discharges resulting from Shipyard operations. Respondents failed to comply with BMP S1 (Table 3), which specifies that “[s]econdary containment always shall be deployed around all materials, paints, fuel, containers, drums, trash heaps, hazardous materials storage, tooling and mechanized equipment exposed to rainfall on the dry docks or on shore.”

35. During the April 2, 2015 inspection, EPA observed:

- a. a drum of Chevron Rando HD ISO 68 Industrial Oil stored without cover or secondary containment on the pier in catch basin #3, and
- b. a drum of Carboline Line 949, a fast-curing aliphatic, two-part curing polyurethane, stored without secondary containment or a cover, on the pier in catch basin #3. The Material Safety Data Sheet for Carboline Line 949 advises to prevent spillage from entering drains or waters. The EPA inspector observed staining around the drum, indicating spills.

36. During the July 25, 2017 inspection, EPA observed:

- a. blast grit stored at the Shipyard in the open and exposed to rainfall without secondary containment in catch basin #1, and
- b. the drainage valve for the secondary containment surrounding the diesel fueling tank was in the open position, removing containment capacity.

37. Respondents failed to comply with BMP S3 (Table 3), which specifies that “[c]ollected spent blasting grit shall be stored in a way that prevents contact with rainfall or stormwater runoff.”

38. During the April 2, 2015 inspection, EPA observed bags of spent blasting grit stored without cover near Discharge Point NPDES-001. Some of the grit had washed from the bags and had settled onto the pavement between the bags and Discharge Point NPDES-001.

39. Respondents failed to comply with BMP S4 (Table 3), which specifies that “[a]ll captured runoff from contact with contamination sources shall be treated through settling and oil skimming prior to discharge to the Harbor.”

40. During the April 2, 2015 inspection, EPA observed that discharge points were not maintained in good working order such that BMP S4 could be met. The EPA inspector observed:

- a. stormwater flowing directly into the Harbor untreated from catch basin #2, without settling or oil skimming,
- b. areas without curbing in all three catch basins that allowed untreated stormwater flows to the Harbor, and
- c. the oil-water separator at Discharge Point NPDES-003 was malfunctioning due to a broken pipe.

41. On September 30, 2015, a representative of EPA Region 9 Permits Office visiting the Shipyard observed that the oil/water separator at Discharge Point NPDES-002 was damaged and not treating runoff as designed.

42. During the July 25, 2017 inspection, EPA observed that:

- a. surface sloping in the area of the decommissioned 800-ton dry dock creates a drainage area within catch basin #1 that flows into the Harbor without any treatment (oil/water separation) prior to discharge,
- b. stormwater from the fueling area drains along the surface curbing prior to collection in the oil/water separator sump (NPDES-001). Curbing was observed to be approximately 2-3 inches in height and staining indicated that oily contaminants are flowing over the curbing and into Harbor during rain events without treatment,
- c. within catch basin #2 there is a pathway for stormwater runoff underneath the eastern end of the 3,000-ton dry dock due to sloping and a lack of curbing, creating a drainage area within catch basin #2 that flows to the Harbor without treatment, and
- d. flows within catch basin #3 are only partially conveyed to the oil/water separator sump (NPDES-003). The southern portion of catch basin #3 (the docking area) drains to NPDES-003, while the northern portion of catch basin #3 (at a lower gradient) drains into a recently constructed concrete trench after the oil/water separator.

43. Respondents failed to comply with BMP S5 (Table 3), which specifies that “[p]ier side curbs along the Harbor shall be maintained; pier side curbs surrounding the dry docks shall be built if the landings are not maintained swept, cleaned, and in order.”

44. During the April 2, 2015 inspection, EPA observed that landings had petroleum product spills, and accumulated debris and blasting grit. Large areas lacked curbing to intercept flows

from these landings before reaching the Harbor. The EPA inspector further observed that curbing necessary to direct flows to the three permitted outfalls was missing in portions of all three catch basins.

45. During the July 25, 2017 inspection, EPA observed:

- a. areas surrounding the decommissioned 800-ton dry dock lack curbing, and
- b. curbing in the fueling area was of insufficient height because staining indicated that oily contaminants flow over the curbing and into the Harbor during strong rain events.

46. Respondents failed to comply with BMP S6 (Table 3), which specifies that “[t]here shall be self-certifications of no discharge to the Harbor of fuel oil, oil sludge, oil refuse, bilge water, ballast waters, ships sanitary, or any other wastewaters from any vessel berthed at the shipyard or in dry dock.”

47. At the April 2, 2015 inspection, ASSSA could not produce any self-certifications required by BMP S6.

48. Part III.B.2. and Table 4 of the NPDES Permit require site-specific BMPs to reduce and mitigate wastewater and stormwater discharges resulting from the 3000-Ton Marine Railway (Dry Dock).

49. Respondents failed to comply with BMP D1 (Table 4), which specifies that “[t]he dry dock shall be sealed to the greatest extent practical in order to prevent the loss of solids into the Harbor through gaps in the decking.”

50. During the April 2, 2015 inspection, EPA observed that the dry dock had many gaps through which solids could discharge directly to the Harbor.

51. During the July 25, 2017 inspection, EPA observed that the wood surface of the 3,000-ton dry dock had substantial gaps, and that grit accumulations on the beams and below the dock indicated that the dry dock was not properly sealed to the greatest extent practical. Blast curtains were observed to be in poor condition, with substantial holes and gaps that allow blast grit and paint overspray to exit the 3,000-ton dry dock.

52. Respondents failed to comply with BMP D6 (Table 4), which specifies that “ASEPA shall be notified the day before any planned submergence of a dry dock; and the submergence shall not proceed until ASEPA has approved the condition of the dry dock and authorized its submergence in writing.”

53. At the time of EPA’s inspection on April 2, 2015, ASSSA was unable to produce any evidence that ASSSA had complied with BMP D6 at any time since ASSSA took over operation of the Shipyard on June 1, 2011.

*Failure to Comply with Permit Conditions  
Special Conditions*

54. Respondents failed to comply with Part III.B.3. of the NPDES Permit, which requires ASSSA to develop and implement a Best Management Practices Plan (“BMPP”) to document implementation of the BMPs set forth in Parts III.B.1 and III.B.2. of the NPDES Permit, and to pursue continuing improvement where feasible of on-site pollution prevention practices. Part III.B.3 establishes numerous requirements for the BMPP, including certain pollution prevention practices, as well as regular BMP self-inspections, maintenance, and self-training.

55. At the time of EPA’s April 2, 2015 inspection, ASSSA could not produce evidence of any BMPP, nor could it produce records of self-inspections of BMPs. On January 4, 2016, ASSSA provided a plan to EPA, which was dated November 19, 2015. However, the November 19, 2015 plan is deficient in several respects, including that it does not reflect ASSSA’s actual operations, and does not mention several of the BMPs mandated in the NPDES Permit.

56. Respondents failed to comply with Part III.C. of the NPDES Permit, which requires ASSSA to develop and implement a Storm Water Pollution Prevention Plan (“SWPPP”). The SWPPP must contain specific elements that address known pollutant sources at the Shipyard, as well as self-inspection and self-maintenance measures geared toward adaptive management of those pollutant sources.

57. At the time of EPA’s April 2, 2015 inspection, ASSSA was unable to produce any evidence of a SWPPP, nor could it produce records of self-inspection of stormwater BMPs.

58. Respondents failed to comply with Part III.D., which requires ASSSA to develop and implement a Pollution Minimization Plan (“PMP”) for Mercury and Total PCBs. Part III. D. requires that the PMP be consistent with EPA’s 2007 Total Maximum Daily Load for Mercury and PCBs in the Harbor. At the time of EPA’s April 2, 2015, inspection, ASSSA was unable to produce any evidence of a PMP.

59. Respondents failed to comply with Part II.A.4., which requires ASSSA to develop and implement a Quality Assurance Manual (“QAM”) to ensure proper sample collection and analysis within 90 days of the effective date of the Permit.

60. At the time of EPA’s April 2, 2015 inspection, ASSSA was unable to produce any evidence of a QAM.

61. By discharging wastewater and stormwater in violation of the terms of the NPDES Permit, Respondents violated Section 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342.

*Failure to Respond to Section 308 Information Request*

62. On March 31, 2016, EPA sent ASSSA an Information Request pursuant to its authority in Section 308(a) of the CWA, 33 U.S.C. § 1318(a) (the “Information Request”), requiring ASSSA to submit DMRs, a BMPP, a QAM, a SWPPP, and a PMP for Mercury and Total PCBs.

63. ASSSA has failed to respond fully to the Information Request in a timely manner. ASSSA did submit some information in response to the Information Request, but its response



was incomplete and at times incomprehensible. For example, the response lacked the requested information and was not certified as required by 40 C.F.R. § 122.22.

64. Failure to respond in full to the Information Request is a violation of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

#### **IV. ORDER FOR COMPLIANCE ON CONSENT**

65. 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:

66. Respondents shall take the following actions at the Shipyard:

- a. By July 15, 2019, replace or repair and seal the 3000-ton dry dock slipway surface, including curbing on the north, south and west sides, and submit photos of the repair to EPA no later than August 15, 2019. In the interim, Respondents shall continue to prevent wastewater discharges through breaches in the slipway surface by using plywood and tarps. Respondents shall only submerge the slipway after the American Samoa Environmental Protection Agency has inspected the slipway;
- b. Maintain the rain gauge installed at the Shipyard in proper working order, record rain gauge readings daily, calculate flow to Discharge Points NPDES-001, NPDES-002, NPDES-003, and the unpermitted fourth outfall located on the pier adjacent to the decommissioned 800-ton dry dock (“fourth outfall”), and record daily in a database spreadsheet;
- c. Collect all samples and field readings from Discharge Points NPDES-001, NPDES-002 and NPDES-003 required at Section I.B (Table 1) and Section II.A.1.(a) and (b) of the NPDES Permit, adhering to the methods and frequencies required by the NPDES Permit, and conduct the following additional monitoring:
  - i. Monitor and log visible sheen and foam daily at the sump upstream of the fourth outfall (“Sump No. 4”);
  - ii. Conduct discharge sampling from Discharge Points NPDES-001, NPDES-002, and NPDES-003 for arsenic, chromium, copper, lead, zinc, mercury, and tributyltin for an additional two months in each quarter, until August 31, 2019;
  - iii. Conduct discharge sampling from the fourth outfall for arsenic, chromium, copper, lead, zinc, mercury, and tributyltin monthly, until August 31, 2019;
- d. By June 1, 2019, submit to EPA written certification that key personnel have been trained on adherence to proper field protocols for sampling, documentation, handling and shipping of discharge samples, a list identifying key personnel by name and position, a description of the curriculum for each trained employee, and the dates of training for each trained employee;
- e. Continue to use a certified commercial laboratory for analysis of discharge samples in

compliance with NPDES Permit Sections II.A.2.(a) and II.A.3.(a) and (b). In the event that Respondents decide to use a new certified commercial laboratory, Respondents shall provide copies of the contract and laboratory certifications to EPA within 90 days;

- i. The commercial laboratory shall have professional certification acceptable to EPA for methods and procedures used to analyze samples from Discharge Points NPDES-001, NPDES-002, NPDES-003, for all parameters specified in the NPDES Permit and to analyze samples for all parameters specified in Paragraph 66 Part c.iii for the fourth outfall;
  - ii. Respondents shall require that the laboratory provide ASSSA with a complete analytical report for each sampling event. Respondents shall require that the laboratory provide EPA with a complete analytical report for each sampling event through August 31, 2019. Respondents shall require that the report demonstrate that all established standards of practice for quality assurance and quality control (“QA/QC”) to support defensibility of analytical results are met. Respondents shall retain a copy of each analytical report for a period of five years from the report date;
- f. Prepare and timely submit DMRs via EPA’s online reporting platform (NetDMR website) consistent with NPDES Permit Section II.3. Include in DMRs the results of additional monitoring required in Paragraph 66 Part c;
  - g. Maintain the QAM, submitted to EPA on April 16, 2018, for field sampling protocols and interpretation of laboratory analytical results consistent with NPDES Permit Section II.A.4(a) and (b). All sampling methods and procedures required by the NPDES Permit shall be described in the QAM. The QAM shall specify which parameters will be analyzed during field measurements, which will be sent to an on-island lab for analysis, and which will be sent off-island for analysis. If any changes to field sampling or laboratory analysis are foreseen, Respondents shall update and submit the QAM to EPA for review and approval prior to making the change;
  - h. Perform a Priority Toxic Pollutant Scan no later than September 30, 2020, or in the second year of the next NPDES Permit term, whichever comes first, and report the results to EPA within seven (7) days of receipt of results; thereafter, perform Priority Pollutant Scans under the schedule required in the NPDES Permit;
  - i. Implement BMPs S-1, S-4, S-5, S-7 set forth in NPDES Permit Section III.B.1. In particular, no later than seven (7) days after the Effective Date:
    - a. Respondents shall employ secondary containment for all materials, paints, fuels, containers, drums, trash heaps, hazardous materials, tooling and mechanized equipment exposed to rainfall at the Shipyard in compliance with BMP S-1 and provide photos of these secondary containment measures to EPA no later than fourteen (14) days after the Effective Date;
    - b. Respondents shall maintain curbing throughout all catchment areas to a height of at least six inches to direct all flow to Discharge Points NPDES-001,

NPDES-002 and NPDES-003 in compliance with BMPs S-4 and S-5 of the NPDES Permit. If curbing is damaged, Respondents shall restore curbing to a height of at least six inches within two weeks of becoming aware of the damage;

- c. Respondents shall collect and remove shoreside debris from the 2009 tsunami event in compliance with BMP S-7 (excluding the sunken ship) and provide EPA with photos of the shoreside within fourteen (14) days after the Effective Date;
- j. Respondents shall conduct the following work at the fourth outfall and its associated catch basin (catch basin #4) following the Effective Date;
  - i. Submit a report to EPA within ten (10) days after the end of each month following the Effective Date through August 2019, containing the following elements from the previous month: Daily rain gage readings; daily sheen and foam observation in the sump; dates of sump cleaning; description and pictures of shipyard activities such as hauling, blasting, and cleaning; and copies of ASEPA ship submergence approvals. The final report shall be submitted to EPA by September 10, 2019;
  - ii. Within seven (7) days after the Effective Date, Respondents shall vacuum all loose grit and debris from catch basin #4. Alternatively, grit and debris can be removed by power washing into the oil/water separator sump, so long as all wash waters and sump contents are recovered and not discharged. Respondents shall collect a sample of the recovered grit and debris on the day that work to remove grit and debris from catch basin #4 is completed. Respondents shall contract with a certified commercial laboratory in accordance with the QAM to analyze the sample for arsenic, copper, lead, zinc, and tributyltin. Respondents shall provide sample analysis results to EPA within seven (7) days of receipt;
  - iii. Within one (1) day after grit and debris are removed from catch basin #4, Respondents must clean the oil/water separator sump and shall ensure that no industrial activities occur within its vicinity that could potentially contaminate the site; and
  - iv. After catch basin #4 is cleaned, EPA may review the available data and decide whether further cleaning and sampling is needed or whether a surface sealant and further sampling is needed to reduce the concentration of metals in discharges;
- k. No later than August 31, 2019, Respondents shall collect the following samples, using field sampling protocols sufficient for analysis in a certified commercial laboratory, from the concrete deck in two of the three catch basins (catch basins #1, #2, and #3):
  - i. One solid piece of concrete with an unbroken surface shall be cut from each of the two catch basins;
  - ii. Four pieces of disturbed concrete (two adjacent to each sample identified above

in Paragraph 66 Part k.i) shall be collected;

- iii. Samples shall be sent to a laboratory to conduct leachate analyses and the lab report shall be submitted to EPA no later than September 30, 2019;
- iv. Pictures shall be taken of the entire sampling process, including at a minimum: general area (establishing shot); marking of the sample prior to cutting; removal of samples; and samples sent for analysis. Pictures shall be submitted to EPA within seven (7) days of this sampling;
- l. Maintain the BMPP, submitted to EPA on August 17, 2018, consistent with NPDES Permit Section III.B.3. The BMPP shall reflect the current conditions at the Shipyard and identify those best management practices that are appropriate for the Shipyard, including BMPs specific to the Shipyard identified in Section III.B.1 and III.B.2 of the NPDES Permit. The BMPP shall include, at a minimum, the following BMPs: maintain curbing that isolates Sump No. 4 catchment area to prevent overland flow from NPDES-001 catchment area or other areas entering Sump No. 4; install a physical barrier such as bollards, chains/ropes, or concrete blocks, to prevent vehicle traffic from entering Sump No. 4 catchment area; place signs at conspicuous locations along the perimeter of Sump No. 4 catchment area that notify personnel of operational restrictions within the catchment area;
- m. Maintain the SWPPP, submitted to EPA on August 17, 2018, consistent with NPDES Permit Section III.C. The SWPPP shall be updated whenever there is a change in design, construction, operation, or maintenance at the Shipyard that has a significant effect on the discharge, or potential for discharge, of pollutants from the Shipyard;
- n. Maintain the PMP for Mercury and Total PCBs (PMP-Hg-PCB), submitted to EPA on October 31, 2018;
- o. Maintain and replace as necessary containment curtains for 3000-ton dry dock sufficient to provide full coverage of both sides of the dry dock to a height of at least 26 feet, and maintain copies of receipts and maintenance records;
- p. Report any non-compliance with the NPDES Permit within 24 hours consistent with NPDES Permit Section II.C. Oral reports of non-compliance shall be made within 24 hours of the incident to:

Eric Magnan  
Manager, Water Section 1  
U.S. EPA Region 9 Enforcement and Compliance Assurance Division  
415-947-4179

Written reports regarding non-compliance, as required by NPDES Permit Section II.C, shall be mailed to:

Eric Magnan  
Manager, Water Section 1  
Enforcement and Compliance Assurance Division (ENF-3-1)

U.S. EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

And provided via email to:

R9NPDES@epa.gov

## **V. FINAL REPORT AND TERMINATION OF THE AOC**

67. Within thirty (30) calendar days after Respondents have fully completed and implemented the actions required by Section IV (“Order for Compliance on Consent”) of this AOC, Respondents 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.

68. 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 Respondents and this AOC shall be deemed terminated.

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

## **VI. SUBMISSIONS AND RECORD RETENTION**

70. Respondents shall submit all written communications, including progress reports, electronically. Respondents shall send all submittals to the following e-mail address. Submissions will be deemed made on the date they are sent electronically.

Dan Kostek  
[Kostek.daniel@epa.gov](mailto:Kostek.daniel@epa.gov)

71. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of Respondents 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.”

72. Respondents 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. Respondents 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**

73. Any request for modification by Respondents 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 Respondents to implement any modified requirement(s) shall be a violation of this AOC.

## **VIII. GENERAL PROVISIONS**

74. This AOC is binding on Respondents 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 Respondents.

75. Respondents shall provide a copy of this AOC to any successor in interest to its control, operation, or any other interest in any portion of the Shipyard 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, Respondents shall provide a copy of this AOC to all contractors and/or consultants to perform any of the work described in Section IV. Respondents shall condition the transfer of control, operation or any other interest in any portion of its Facility and any contract related to the performance of the work described in Section IV upon successful execution of this AOC.

76. 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 Respondents' 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.

77. Respondents consent to and agree not to contest the EPA's authority or jurisdiction to issue and enforce this AOC issued pursuant to CWA Section 309(a). Respondents waive any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

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

79. 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.

80. 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.

81. Respondents neither admit nor deny the factual allegations and legal conclusions set forth in Section III of this Order, except to the extent that those allegations provide the EPA with a jurisdictional basis to enforce this AOC.

82. 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 Respondents have 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 Respondents may have of such violations, any good faith efforts that Respondents have made to comply with legal requirements, the economic impact a penalty may have upon Respondents, and such other matters as justice may require.

83. 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 Respondents for non-compliance with this AOC.

84. 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 American Samoa Territory upon execution.

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

#### **IX. EFFECTIVE DATE**

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

IT IS SO AGREED AND ORDERED:

FOR RESPONDENTS

/s/

5/13/2019

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Moefa'auo Bill Emmsley  
Chief Executive Officer  
American Samoa Shipyard Services Authority

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Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

/s/

5/15/2019

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Amy C. Miller  
Director, Enforcement and Compliance Assurance Division

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Date