

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

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IN THE MATTER OF:)	Docket No. RCRA-09-2019-0043
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American Samoa Shipyard Services Authority and Territory of American Samoa)	ADMINISTRATIVE ORDER ON CONSENT
)	
Respondents)	
)	
Proceeding under Section 3008(a) of the Resource Conservation And Recovery Act)	
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I. INTRODUCTION

1. This Order is entered into upon mutual agreement by the parties, EPA Region IX and the American Samoa Shipyard Services Authority (ASSSA) and the Territory of American Samoa (Territory) (together, Respondents). Accordingly, although Respondents neither admit nor deny EPA’s specific factual allegations herein, Respondents admit to and agree not to contest EPA’s jurisdiction to issue this Order or enforce its terms. Further, Respondents will not contest EPA’s jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondents’ full compliance with the terms of this Order; or impose sanctions for violations of this Order.

2. EPA makes the following Findings and hereby issues this Order for violations of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (hereinafter, RCRA), Section 3002, 42 U.S.C. § 6922, and the implementing regulations found at 40 C.F.R. Part 262, pursuant to Section 3008(a) of RCRA, 42 U.S.C § 6928(a); and the Consolidated Rules of Practice

Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Part 22).

3. This Order shall apply to and be binding upon Respondents, its agents, successors and assigns and upon all persons, contractors, and consultants acting under or for Respondents. No change in ownership or corporate or partnership status of Respondents will in any way alter the status of Respondents or its responsibilities under this Order.

II. STATUTORY AND REGULATORY AUTHORITY

4. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA Subtitle C, 42 U.S.C. § 6921 et seq., empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA has promulgated federal regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-270.

5. Section 3006 of RCRA, 42 U.S.C. § 6926, allows EPA to authorize states to administer and enforce the RCRA hazardous waste management program in lieu of EPA. The Territory of American Samoa has not applied for or received authorization to implement the RCRA program, and therefore EPA directly implements RCRA in American Samoa.

6. Sections 3002(a) and 3004(a), 42 U.S.C. §§ 6922 and 6926, authorize the EPA Administrator to promulgate regulations applicable to generators of hazardous wastes and to owners and operators of hazardous waste treatment, storage, and disposal facilities. The EPA Administrator has promulgated such regulations at 40 C.F.R. Parts 260, 261, 262, 264, 265, 266, 268 and 270. Respondents violated regulations promulgated pursuant to RCRA Section 3002(a),

42 U.S.C. § 6922(a) (standards applicable to generators of hazardous waste), and RCRA Section 3004(a), 42 U.S.C. § 6924 (standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities).

7. “RCRA requires a permit for the ‘treatment,’ ‘storage,’ and ‘disposal’ of any ‘hazardous waste’ as identified or listed in 40 C.F.R. part 261 ... Owners and operators of hazardous waste management units must have permits during the active life ... of the unit.” 40 C.F.R. § 270.1(c). The regulations provide an exemption from this requirement for “persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under this part by 40 C.F.R. § 261.4 or 262.14 (very small quantity generator exemption).” 40 C.F.R. § 270.1(c)(2)(iii). The regulations state that “noncompliance by any generator with an applicable condition for exemption from storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in 40 C.F.R. parts 124, 264 through 267, and 270 of this chapter, and the notification requirements of section 3010 of RCRA.” 40 C.F.R. § 262.10(g)(2).

8. Section 3008(a) of RCRA provides that whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both.

9. The Administrator has delegated enforcement authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrators. The Regional Administrator of EPA Region IX redelegate that authority to the Director of the Enforcement Division, Region IX.

10. Pursuant to 40 C.F.R. § 22.37(b), compliance orders brought pursuant to 3008(a), 42 U.S.C. § 6928(a), automatically become a final order unless, no later than 30 days after the order is served, the Respondents request a hearing pursuant to 40 C.F.R. § 22.15. (As specified in Paragraph 34 below, Respondents agree to waive this right to a hearing.)

III. GENERAL ALLEGATIONS AND FINDINGS OF VIOLATIONS

11. Respondents operate the Satala Shipyard (Shipyard) and an inland Tafuna facility (Facility). This AOC alleges Respondents stored or disposed of hazardous wastes at the Shipyard and Facility without the required permits in violation of regulations promulgated pursuant to RCRA Section 3002(a), 42 U.S.C. § 6922(a) (standards applicable to generators of hazardous waste), and RCRA Section 3004(a), 42 U.S.C. § 6924(a) (standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities).

12. On July 25, 2017, an EPA inspector observed that waste oil and spent gun wash (a solvent and potentially hazardous waste) were removed from the Shipyard premises entirely, confirming prior statements by ASSSA staff that ASSSA had moved waste oils, spent gun wash, and spent blast grit to a centralized location in Tafuna.

13. On July 26, 2017, an EPA inspector observed that waste oil and spent gun wash were being stored on land owned by the Territory in Tafuna in a 2,386 cubic foot steel shipping container, which rested on wooden beams approximately 1 foot above the ground, without secondary containment or cover. Inside the shipping container, waste was stored in unlabeled 55-gallon drums haphazardly stacked on top of wood pallets. There was evidence of spilled materials and some drums had open tops or appeared to be bulging. Air exiting the shipping container smelled strongly of gun wash. ASSSA staff stated at the time of inspection that ASSSA had not made an inventory of the wastes in the shipping container.

14. RCRA defines “person” to include a “State” or “political subdivision of a State.” 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10. The term “State” explicitly includes American Samoa. 42 U.S.C. § 6903(31), 40 C.F.R. § 260.10. The Territory and ASSSA, as one of its political subdivisions, are each a “person” within the meaning of 42 U.S.C. § 6903 and 40 C.F.R. § 260.10 and thus subject to the provisions of RCRA.

15. Respondents are “generators” of hazardous waste as defined in 40 C.F.R. § 260.10.

16. Respondents are “operators” of a facility as defined in 40 C.F.R. § 260.10.

17. At the Shipyard and Facility, Respondents generate and accumulate, or have generated and accumulated, “hazardous waste” as defined in 40 C.F.R. §§ 260.10 and 261.3, including RCRA D001 ignitable waste, and RCRA F005, certain spent non-halogenated solvents.

18. Respondents are or have been engaged in “treatment,” “storage,” or “disposal” of “hazardous waste” as defined in 40 C.F.R. §§ 260.10 and 261.3.

19. Respondents do not have a RCRA permit or grant of interim status for treatment, storage, or disposal of hazardous waste under 40 C.F.R. § 270.1.

20. Respondents do not qualify for any exemption to the RCRA permitting requirements, including the Very Small Quantity Generator Exemption at 40 C.F.R. Part 262.

21. Respondents’ storage or disposal of hazardous waste without a RCRA permit is in violation of regulations promulgated under RCRA Section 3002(a), 42 U.S.C. § 6922(a) (standards applicable to generators of hazardous waste), and RCRA Section 3004(a), 42 U.S.C. § 6924 (standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities).

IV. COMPLIANCE ORDER

22. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), it is hereby ordered that upon the Effective Date Respondents, who have consented to the terms of this Order,

A. Short-Term Measures.

- i. shall not transport any hazardous waste generated at the Shipyard away from the Shipyard unless hazardous waste is transported by a licensed hazardous waste transporter to a permitted treatment, storage, and disposal facility;
- ii. shall assure that all hazardous waste currently onsite at the Shipyard and at the Tafuna Facility, and any hazardous waste generated prior to the disposal required by Paragraph 22(A)(i), meets the requirements of 40 C.F.R. § 262.16(b)(6), including labeling containers with the words “Hazardous Waste,” an indication of the hazards of the contents (e.g. ignitable), and the date that hazardous waste accumulation begins;
- iii. shall ensure that containers are closed and in good operating condition, as required by 40 C.F.R. § 262.16(b)(2);
- iv. shall place “No Smoking” signs wherever ignitable waste is stored;
- v. shall create a centralized hazardous waste accumulation area at the Shipyard, where containers of hazardous waste shall be stored;
- vi. shall conduct weekly inspections of areas where hazardous waste is accumulating to determine whether containers are leaking or deteriorating; and pursuant to 40 C.F.R. § 262.16(b)(2), if containers holding hazardous waste begin to leak, hazardous waste must be transferred to a container that is in good condition and lined with materials that are nonreactive with the hazardous waste. Respondents

shall maintain records of the date and time that inspections are conducted for a period of five years from the date of inspection;

vii. shall label all used oil stored at the Shipyard and at the Facility with the words “Used Oil” and ensure that containers are closed and in good operating condition. If oil is mixed with solvents, then the entire contents of the container must be managed as a hazardous waste;

viii. shall transport used oil pursuant to 40 C.F.R. § 279.24. All transport of used oil shall be tracked. Used oil that is generated at the Shipyard must be transported only by transporters who have obtained EPA identification numbers, except in the circumstance that (1) Respondents transport the used oil in a vehicle owned by Respondents or owned by an employee of the Respondents; (2) Respondents transport no more than 55 gallons of used oil at any one time; and (3) Respondents transport the used oil to a used oil collection center that is registered, licensed, permitted, or recognized by a state/county/municipal government to manage used oil. Used oil that is generated at the Shipyard can be transferred by Respondents to an aggregation point provided that it is owned by Respondents;

ix. shall contract with a licensed hazardous waste transporter to properly dispose of all hazardous waste currently stored at the Facility and at the Shipyard.

Respondents must prepare hazardous waste manifests pursuant to 40 C.F.R. §§ 262.20(a) and 262.21(f) and (g) for transport of hazardous waste offsite. All hazardous waste at the Tafuna Facility must be transported offsite no later than July 31, 2019. Thereafter, Respondents shall not store hazardous waste at the Tafuna Facility but may accumulate it at the Shipyard in accordance with 40

C.F.R Part 262, including the requirement to timely and appropriately dispose of the waste generated;

B. Long-Term Measures.

- i. shall develop a plan for proper management of hazardous waste generated at the Shipyard and submit it to EPA for review and approval by August 31, 2019. The plan shall include procedures to transport hazardous waste pursuant to applicable requirements in 40 C.F.R. Part 262, prohibit accumulation of more than a total of 1,000 Kg of hazardous waste at the Shipyard, and include steps necessary in the future to legally dispose of hazardous waste generated by the Respondents at an off-site treatment, storage or disposal facility, as required by 40 C.F.R. § 262.14(a)(5), within the time frames required by the regulations. The plan shall include procedures for tracking the quantity of hazardous waste accumulating onsite, to assure that Respondents know the total quantity of hazardous waste at the Shipyard at all times.
- ii. If Respondents exceed 1,000 kilograms of waste onsite, they have the option of meeting the additional requirements for Small Quantity Generators at 40 CFR § 262.14(a)(4) to gain an additional 270 days to store the waste. The plan may include information regarding meeting these additional requirements.

23. Where any compliance obligation under this Section requires Respondents to obtain a federal, state, or local permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

V. NOTIFICATIONS

24. Submissions required by this Order under Paragraph 22.B.i shall be in writing and shall be sent to the e-mail addresses below.

Dan Kostek
Kostek.Daniel@epa.gov

Jennifer MacArthur
MacArthur.Jennifer@epa.gov

25. EPA will send all written communications to the following representative for Respondent:

Moefa'auo Bill Emmsley
bill.emmsley.shipyard@gmail.com

Charles Perelini
cperelini.shipyard@gmail.com

26. All documents submitted to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondents pursuant to 40 C.F.R. Part 2, Subpart B and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

VI. GENERAL PROVISIONS

27. Nothing contained in this Order shall affect the responsibility of Respondents to comply with all applicable federal, state, or local laws or regulations.

28. Any and all information required to be maintained or submitted pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 et seq., because it seeks to collect information from specific individuals or entities to assure compliance with this administrative action.

29. This Order is not intended to be nor shall it be construed to be a permit. Further, the parties acknowledge and agree that EPA's approval of this Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of RCRA. Compliance by Respondents with the terms of this Order shall not relieve Respondents of their obligations to comply with RCRA or other applicable local, state, or federal laws and regulations.

30. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this Order.

31. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any statutory, regulatory, or common law authority of the United States.

32. This Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Order; nor does it limit the rights of the United States to obtain penalties or injunctive relief under the RCRA or other applicable federal law or regulation.

33. Respondents waive their right to contest and consent to the terms of this Order. Respondents have entered into this Order in good faith without trial or adjudication of any issue of fact or law.

34. Respondents waive any right to judicial review of this Order and waive any right to a RCRA hearing under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 22.37(b).

35. The parties shall bear their own costs and fees in this action, including attorney's fees.

36. Failure to comply with this Order may result in an enforcement action for appropriate injunctive relief and civil penalties pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), or, in appropriate cases, criminal penalties.

VII. ENFORCEMENT

37. This Order does not in any way impair EPA’s rights to enforce RCRA.

38. Be advised that issuance of this Order does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law.

VIII. STIPULATED PENALTIES

39. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 40 for failure to comply with the requirements of Paragraph 22. “Comply” as used in the previous sentence, includes compliance by Respondents with all applicable requirements and deadlines established in Paragraph 22 of this AOC.

40. Stipulated Penalty Amounts – The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements in Paragraph 22:

Period of Noncompliance	Penalty Per Violation Per Day
1 st through 30 th day	\$250
31 st through 60 th day	\$500
61 st day and beyond	\$1,000

41. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA’s decision or order.

42. Following EPA's determination that Respondents have failed to comply with a requirement of this AOC, EPA may give Respondents written notification of such noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in this Paragraph 41 regardless of whether EPA has notified Respondents of a violation.

43. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties.

44. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the 31st day after Respondents' receipt of EPA's demand. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days. In addition, a handling fee of \$15 per month shall be assessed beginning on the thirty-first day after Respondents' receipt of EPA's demand.

45. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be paid to "Treasurer, United States" by Automated Clearinghouse (ACH) to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Payments shall include a reference to the name of the Facility, Respondents' name and address, and the EPA docket number of this action. A copy of the transmittal request shall be sent

simultaneously to EPA's Project Coordinator and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

46. The payment of penalties and interest, if any, shall not alter in any way Respondents' obligation to complete the performance of Work required under this AOC.

47. Nothing in this AOC shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this AOC or of the statutes and regulations upon which it is based.

48. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this AOC.

EFFECTIVE DATE

49. This AOC shall become effective upon filing with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.31(b).

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS ADMINISTRATIVE ORDER ON CONSENT:

FOR RESPONDENTS:

5/13/2019
Date: _____

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

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9

/s/ _____
Amy C. Miller
Director, Enforcement and Compliance Assurance Division

5/23/2019

Date

FINAL ORDER

IT IS HEREBY ORDERED that this Administrative Order on Consent pursuant to 40 CFR Part 22 be entered. The Respondents are ordered to comply with the Compliance Order, Section IV as set forth in this Order.

Pursuant to 40 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

6/3/2019

/s/

Date: _____

Steven L. Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency
Region 9

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing ADMINISTRATIVE ORDER ON CONSENT in the matter of *American Samoa Shipyard Services etc.* (RCRA-09-2019-0043), signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and copies have been served on Counsel for Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:
(Certified w/Return Receipt)

Respondent - Talauega Eleasalo V. Ale, Esq.
 Attorney General
 American Samoa Government
 P.O. Box 7
 AP Lutali Executive Office Building
 Pago Pago, American Samoa 96799

HAND DELIVERED:

EPA - Rebecca Sugerman, Esq.
 Office of Regional Counsel
 Environmental Protection Agency
 75 Hawthorne Street
 San Francisco, CA 94105

Dated at San Francisco, Calif., this 4th day of June, 2019.

/s/

Steven Armsey
Regional Hearing Clerk
EPA, Region 9