

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. CWA-309(a)-19-007
)	
Guam Industrial Services Inc.)	
272 East Harmon Industrial Park Road)	FINDINGS OF VIOLATION
Suite 201-202)	AND ORDER FOR COMPLIANCE
Tamuning, Guam 96913)	
)	
)	<i>Proceeding under Section 309(a)(3) of the</i>
<u>Respondent.</u>)	<i>Clean Water Act, 33 U.S.C. § 1319(a)(3)</i>

I. STATUTORY AUTHORITY

1. Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3), 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) 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 for Compliance (“Order”) is issued pursuant to the authority vested in the EPA by Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 9, and further delegated by the Regional Administrator to the Director of the Enforcement and Compliance Assurance Division of EPA Region 9.

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 navigable waters, including territorial seas, except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

4. Section 502(7) of the CWA defines “navigable waters” as the “waters of the United States, including territorial seas.” 33 U.S.C. § 1362(7).

5. Section 502(8) of the CWA defines “territorial seas” to mean the belt of the seas measured from the line of ordinary low water along that 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.

6. 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, and CWA Section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for stormwater discharges “associated with industrial activity.” 33 U.S.C. § 1342(p)(2)(B).

7. 40 C.F.R. § 122.26(b)(14)(ii) defines stormwater discharges associated with industrial activity to include ship building and repair activity classified under SIC Code 3731 (Ship Building and Repair), a subcategory of SIC Code Industry Group 373 (Ship and Boat Building and Repair).

8. 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. *See also* 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c).

9. 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 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. 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

10. Guam Industrial Services, Inc. dba “Guam Shipyard” (“Respondent”) 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).

11. At all times relevant to this action, Respondent owned and/or operated a ship repair facility (“Facility”) on land it leases from the Port of Guam located on the Cabras Island breakwater on Industrial Avenue, Cabras Island, Piti, Guam 96915, adjacent to Apra Harbor.

12. Respondent has been engaged in ship repair at the Facility since approximately January 2016, including boat repair, blasting (using sand and abrasives), high pressure washing, painting and material storage and disposal. Respondent’s operations at the Facility fall within activities classified under SIC Code 3731 (Ship Building and Repair), a subcategory of SIC Code Industry Group 373 (Ship and Boat Building and Repair) 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).

13. Respondent’s industrial activity at the Facility occurs on a flat semi-paved area of land (the “onshore facility”) and on a floating crane docked in Apra Harbor alongside the onshore facility.

14. Stormwater runoff and process wastewater from the Facility discharge directly to Apra Harbor through drainage pipes placed through an approximately 18-inch concrete berm running along the seaward edge of the onshore facility and also from overland flow conveyed through a

gap in the berm at its terminus in the southeast corner of the Facility. Such outfalls and conveyances are “point sources” within the meaning of CWA § 502(14), 33 U.S.C. § 1362(14).

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

16. Stormwater and process wastewater discharges from the Facility include, among other things, blasting grit (including abrasive blasting grit containing calcium oxide (CaO), iron oxide (Fe₂O₂), silicon dioxide (SiO₂); magnesium oxide (MgO), and aluminum oxide (Al₂O₃)), as well as zinc, copper, paint chips, and suspended solids, and therefore contain “pollutants” as defined by CWA § 502(6), 33 U.S.C. § 1362(6); *see also* U.S. EPA Office of Water’s *Industrial Stormwater Fact Sheet – Sector R: Ship and Boat Building or Repair Yards*, EPA-833-F-06-033 (Dec. 2006).

17. Discharges from the Facility enter Apra Harbor, which is a “waters of the United States” and “territorial sea” within the meaning of CWA §§ 502(7) and 502(8), 33 U.S.C. §§ 1362(7) and (8), and the CWA’s implementing regulations.

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

19. On October 20, 2017, representatives of the EPA and the Guam Environmental Protection Agency (“GEPA”) performed an inspection of the Facility 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), and the regulations promulgated thereunder at 40 C.F.R. § 122.26. The EPA provided its inspection report (“Exhibit 1”) to Respondent on October 16, 2018. Respondent did not provide a response to the inspection report.

20. As described in more detail in Exhibit 1, the EPA inspectors observed the following:

- a. Two floating cranes and a fuel barge owned and/or operated by Respondent labeled the “Guam Ship Yard Fuel Barge” (the “Fuel Barge”) were docked alongside the onshore facility
- b. Respondent was pumping turbid water over the side of the Fuel Barge and discharging it directly via a pipe to Apra Harbor. A visible plume extended alongside a pier underneath the Fuel Barge. Facility representatives described the discharge to the EPA inspector as comprised of ballast water.¹
- c. Respondent was actively conducting ship repair maintenance (*e.g.*, welding) on the deck of one of the floating cranes.

21. On September 4, 2018, a representative of the EPA performed another inspection of the Facility 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), and regulations promulgated thereunder at

¹ Respondent has since informed the EPA that the Fuel Barge does not have ballast tanks, but void and cargo tanks. See paragraph 22, *infra*.

40 C.F.R. § 122.26. The EPA provided its inspection report (“Exhibit 2”) to Respondent on October 16, 2018 (along with the October 20, 2017 inspection report attached as Exhibit 1). As described in more detail in the September 4, 2018 Inspection Report, the EPA inspectors observed the following:

- a. One floating crane was docked along the onshore facility;
- b. The Fuel Barge was placed on chocks at the onshore facility area and was actively undergoing repair and painting;
- c. Evidence of past maintenance activities at the Facility’s onshore facility area, including blasting and pressure washing;
- d. Several outfall locations consisting of drainage pipes placed through the 18-inch concrete berm that separates the Facility’s onshore area from Apra Harbor. Several inches of surface material had been removed to expose the below-grade drainage pipes and allow for the conveyance of stormwater and process water through them. The EPA inspector observed that these drainage pipe holes had not been visible during the previous inspection conducted on October 20, 2017;
- e. The concrete berm’s terminus at the Facility’s southeast corner allows a pathway for the conveyance of stormwater flows from the onshore area to discharge to Apra Harbor;
- f. The Facility did not have the functional equivalent of a SWPPP and on-site employees did not appear to have knowledge of stormwater or process water controls;
- g. Respondent had not implemented adequate Best Management Practices (“BMPs”) to control blasting grit, paint particles and debris, which likely resulted in the large volume of grit and paint debris the EPA inspector observed accumulated throughout the Facility, including an accumulation directly adjacent to Apra Harbor. Based on observed distribution of material deposition, blasting grit and debris appeared to have been directly discharged to Apra Harbor in stormwater, and process wastewater;²
- h. Respondent had not implemented adequate BMPs to contain and control potential pollutant sources, which likely resulted in the piles of waste, unused equipment, improperly stored materials, and oil stains that the EPA inspector observed had the potential to discharge pollutants associated with Respondent’s industrial activity in stormwater;
- i. The Facility was actively discharging non-stormwater, *i.e.*, process wastewater, to Apra Harbor from a hose;
- j. The Facility lacked secondary containment of oils. The EPA inspector observed that the fuel tank’s secondary containment area appeared to have an open valve, with

² In its July 12, 2019 RFI Response, Respondent indicates that it used a backhoe, brooms and dust pans to collect abrasive grit material for delivery to a warehouse located in Agat, Guam, for storage, recycling and reuse. *See infra* para. 21.

evidence of an oily sheen on the concrete near the containment area. Waste containers, including what appeared to be used oil, were stored without secondary containment or cover and exposed to stormwater; and

- k. The Facility did not have spill response equipment on-site, including any spill kits, floating booms, or other mechanisms to control spills on land or in water.

22. On June 12, 2019, the EPA sent Respondent an Information Request pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The EPA received Respondent's response on July 12, 2019, in which Respondent provided information that its industrial activity at the Facility's onshore area began on May 4, 2017 with repair of an in-service Navy YC-1417 barge involving structural repair work, high pressure water blasting, and painting. Respondent also stated that industrial activities at the onshore area were ongoing and involved hull cleaning, structural repairs, and painting of Respondent's Fuel Barge from October 2017 to the present. Respondent also stated that the Fuel Barge does not have ballast tanks, but rather has void and cargo tanks. Respondent's response also provided information that it had commenced structural repairs on Respondent's floating crane sometime in January 2016 and that these industrial activities, as well as deck cleaning and painting of the floating crane, were ongoing.

23. Between January 1, 2016 and July 15, 2019, the National Oceanic and Atmospheric Administration reports that at least 0.5 inches of rain fell on at least 165 days at the Guam International Airport weather station, the closest monitoring station to Piti, Guam. Upon information and belief, at least each of these 165 rainfall events resulted in a discharge of stormwater from the Facility to Apra Harbor.

24. Respondent never applied for coverage under any NPDES permit for the discharge of industrial stormwater or process wastewater from its Facility.

25. By discharging stormwater and process wastewater associated with industrial activity without NPDES Permit authorization, Respondent has violated and continues to violate CWA § 301(a), 33 U.S.C. § 1311(a).

Considering the foregoing Findings and the potential environmental and human health effects of the violations, EPA has determined that compliance with the following requirements is reasonable. Pursuant to the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a), it is hereby ORDERED:

IV. ORDER FOR COMPLIANCE

Guam Industrial Services Inc. shall complete the following actions:

26. Within sixty (60) days of this Order's Effective Date, Respondent shall bring its Facility into compliance with the CWA by either filing for coverage under the 2015 MSGP and ceasing all unauthorized process wastewater discharges or by obtaining coverage under an individual NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for its stormwater *and* process wastewater discharges.

27. Within ninety (90) days of this Order's Effective Date, Respondent shall provide documentation that deficiencies identified in inspection reports of October 20, 2017 and September 4, 2018 have been corrected, including, but not limited to:

- (i) Development of a SWPPP for the Facility that meets the requirements of the MSGP;
- (ii) Installation of a system to capture wastewater discharges generated at the Facility (*e.g.*, discharges of process wastewater generated during ship repair and maintenance activities and from emptying of vessel void and cargo tanks) to prevent its discharge to Apra Harbor; and implementation of a capture system until Respondent ceases the unauthorized discharge of process wastewater from the Facility;
- (iii) Installation of adequate BMPs, including the provision of appropriate and effective containment of sandblast and abrasive blasting grit during blasting activities to prevent the discharge of grit to Apra Harbor;
- (iv) Making spill response equipment available on-site; and
- (v) Documentation of the activities described in subparagraphs (i) through (iv) above, including photographs, a description of activities conducted, and the certification statement provided in paragraph 32 below.

V. FINAL REPORT

28. Within thirty (30) calendar days after Respondent has fully completed and implemented the actions required by Section IV of this Order, Respondent shall submit to the EPA a final report ("Final Report") that includes a description and timeline of all of actions taken by Respondent to achieving compliance with this Order, accompanied by the certification statement provided in paragraph 32 below.

29. If the EPA concurs, after review of the Final Report, that all the requirements of this Order have been adequately completed and implemented, the EPA will provide notice to Respondent of this determination.

30. If, after review of the Final Report, the EPA determines that any requirement has not been completed and implemented in accordance with this Order then the EPA shall so 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 revised Final Report to the EPA.

VI. SUBMISSIONS

31. Respondent shall submit all written communications, including the Final Report, electronically in a format that allows them to be searchable by key word. Respondent shall send all submittals to the following e-mail addresses. Submissions will be deemed made on the date they are sent electronically.

<p>John Tinger Enforcement and Compliance Assurance Division U.S. EPA Region 9 75 Hawthorne Street (ENF 3-1) San Francisco, CA 94105 Tinger.John@epa.gov</p>	<p>Brian Bearden Guam Environmental Protection Agency 17-3304 Mariner Avenue Tiyan Barrigada, Guam 96913 brian.bearden@epa.guam.gov</p>
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32. All reports, notifications, documentation, and submittals required by this Order 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.”

VII. GENERAL PROVISIONS

33. This Order 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.

34. This Order 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 Order shall be no defense to any actions commenced pursuant to such applicable laws, regulations, or permits, nor does it constitute a release.

35. This Order shall in no way affect the rights of the EPA against any person not a party hereto.

36. This Order 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.

37. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

38. Issuance of this Order 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 Order.

39. Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

40. Requests for information contained with this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not “collection of information” within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 C.F.R. § 1320.4(a)(2).

41. Respondent may not withhold from the EPA any information on the grounds that it is confidential business information. However, the EPA has promulgated, under 40 C.F.R. Part 2, Subpart B, regulations to protect confidential business information it receives. A claim of business confidentiality may be asserted in the manner specified by 40 C.F.R. § 2.203(b) for all or part of the information requested by the EPA. The EPA will disclose business information covered by such claim only as authorized under 40 CFR Part 2, Subpart B. If no claim of business confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.

42. Sections 309(a), (b), (d), and (g) of the Act, 33 U.S.C. § 1319(a), (b), (d), and (g), provide administrative and/or judicial relief for failure to comply with the CWA. In addition, Section 309(c) of the Act, 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.

43. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, the EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance with the requirements of Section 402 of the CWA, 33 U.S.C. § 1342. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.

VIII. EFFECTIVE DATE

44. This Order shall become effective on the date of receipt by Respondent.

IX. TERMINATION

45. After completing all conditions of this Order, Respondent may request in writing that the EPA terminate this Order. Such request shall include a discussion of why termination is appropriate. The EPA shall either agree to the request and terminate the Order or reject the request and provide a written response to Respondent containing the EPA’s reasons for not terminating the Order. The EPA’s decision not to terminate the Order shall not foreclose Respondent’s opportunity to make additional termination requests at a later date.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9

_____/s/ Amy C. Miller_____ Date: _____9/5/2019_____

Amy C. Miller, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 9

Of counsel:

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U.S. EPA Region 9