

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9  
75 Hawthorne Street  
San Francisco, California 94105**

IN THE MATTER OF:	)	DOCKET NO. CWA-09-2021-0015
	)	
Guam Industrial Services	)	<b>COMPLAINT, CONSENT AGREEMENT</b>
272 East Harmon Industrial Park Rd.	)	<b>AND FINAL ORDER</b>
Ste. 201-202	)	
Tamuning, Guam 96913	)	
	)	<i>Class II Administrative Penalty Proceeding under</i>
	)	<i>Section 309(g) of the Clean Water Act, 33 U.S.C.</i>
Respondent.	)	<i>§ 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>

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**COMPLAINT/CONSENT AGREEMENT**

**I. AUTHORITY AND PARTIES**

1. This is a Class II civil administrative penalty proceeding under sections 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. §§ 1319(g)(1)(A) and (2)(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342. The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter “Complainant.”
3. Respondent is Guam Industrial Services, Inc., doing business as “Guam Shipyard.”
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F. R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

**II. STATUTORY AND REGULATORY FRAMEWORK**

5. Section 301(a) of the CWA, 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 and the ocean, except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 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 section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires that NPDES permits be issued for stormwater discharges “associated with industrial activity.”
7. 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.
8. Section 402(p)(4) of the CWA, 33 U.S.C. § 1342(p)(4), requires dischargers of stormwater associated with industrial activity to seek coverage under a promulgated general permit or seek individual permit coverage.
9. On June 16, 2015, the EPA issued the most recent version of the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2015 MSGP), which was effective on the date of issuance. The 2015 MSGP provides for a Master Permit (No. GUR050000) that authorizes stormwater discharges associated with industrial activities in Territory of Guam (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.
10. Entities seeking coverage under the General Permit must submit a NOI to the EPA pursuant to 40 C.F.R. § 122.28(b)(2).
11. Pursuant to section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, the EPA may assess a Class II civil administrative penalty of up to \$22,320 per day of violation, not to exceed \$278,995 in total, against a person for violations of section 301(a) of the CWA, 33 U.S.C. § 1311(a), that occurred after November 2, 2015 where penalties are assessed on or after January 13, 2020.

### **III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW**

12. Respondent is a corporation organized under the laws of Territory of Guam and is therefore a person within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5). Respondent operates a ship repair facility located at 1026 Cabras Highway at the Hotel Wharf (aka “H Wharf”) on Cabras Island, Guam, hereinafter referred to as the “Facility.”
13. Respondent has been engaged in ship repair activities at the Facility since at least May 4, 2017, on a date best known to Respondent. Respondent’s operations at the Facility fall within activities classified under SIC Code 3731 (Ship Building and Repair) and is therefore an “industrial activity” for purposes of section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(ii).
14. 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).
15. Stormwater runoff from the Facility discharges directly to Apra Harbor through drainage pipes embedded in an 18-inch concrete berm running along the Facility’s oceanfront and via a channel that serves to convey stormwater surface flows around the terminus of the berm at the Facility’s

southeast corner. The drainage pipes and channel are each a “point source” within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Stormwater discharges from the Facility likely contain sandblasting grit, paint particles, suspended solids, debris, fuel oils and metals such as zinc and copper as a result of activities that include sand blasting, pressure washing, maintenance, fuel and waste storage and therefore contain “pollutants,” as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6).
17. The Facility discharges directly to Apra Harbor, which is a navigable “waters of the United States” and “territorial sea” within the meaning of sections 502(7) and 502(8) of the CWA, 33 U.S.C. § 1362(7) and (8), and the CWA’s implementing regulations.
18. Respondent’s discharge of pollutants in stormwater into waters of the United States constitutes a “discharge of pollutants” within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).
19. On October 20, 2017, representatives of the EPA Region 9 and the Guam Environmental Protection Agency (GEPA) inspected the Facility to evaluate 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 40 C.F.R. § 122.26. The EPA Region 9 inspector found that Respondent had not submitted an NOI to the EPA seeking authorization to discharge industrial stormwater under the 2015 MSGP. The EPA Region 9 inspector observed turbid water being pumped from a barge under repair at the Facility to Harbor waters and also observed Respondent was actively conducting ship repair maintenance (*e.g.*, welding) on the deck of one of the floating cranes.
20. On September 4, 2018, the EPA Region 9 inspector observed the following conditions at the Facility:
  - a. Active repair and painting of a fuel barge;
  - b. Evidence of recent maintenance activities, including blasting and pressure washing;
  - c. Drainage pipes embedded in the 18-inch concrete berm running along the Facility’s oceanfront positioned to convey surface water flows from the Facility to Apra Harbor;
  - d. A channel circumventing the terminus of the concrete berm at the Facility’s southeast corner creating a pathway for the conveyance of surface water flows from the Facility to Apra Harbor;
  - e. Blasting grit, paint particles and debris accumulated throughout the Facility’s outdoor areas, including an accumulation along the Facility’s berm directly adjacent to Apra Harbor;
  - f. Distribution of accumulated blasting grit and debris in flow pathways indicating historical direct discharges of these pollutants to Apra Harbor in stormwater and non-stormwater;
  - g. Inadequate implementation of BMPs to contain and control potential pollutant sources such as piles of waste, unused equipment, improperly stored materials, and oil stains that the EPA Region 9 inspector observed had no protection from stormwater;
  - h. Active discharge of non-stormwater to Apra Harbor from a hose;
  - i. A lack of adequate secondary containment, including an open valve at a fuel tank area that would allow an oil spill through the containment structure; and waste containers, including what appeared to be used oil, stored without secondary containment or cover and exposed to stormwater; and
  - j. No spill response equipment on-site, including any spill kits, floating booms, or other mechanisms to control spills on land or in water.

21. On October 16, 2018, the EPA Region 9 provided its inspection reports for the October 20, 2017 and September 4, 2018 inspections to Respondent.
22. On June 12, 2019, the EPA Region 9 sent Respondent an Information Request pursuant to section 308(a) of the CWA, 33 U.S.C. § 1318(a).
23. On July 12, 2019, the EPA Region 9 received Respondent's response to the EPA Region 9's June 12, 2019 Information Request, in which Respondent provided information that it had commenced industrial activity at the Facility on May 4, 2017 with repair of a barge involving structural repair work, high pressure water blasting, and painting. Respondent also indicated that industrial activities at the Facility were ongoing and involved hull cleaning, structural repairs, and painting of a fuel barge from October 2017 to the present. Respondent's response also provided information that it had commenced structural repairs on a floating crane owned by Respondent sometime in January 2016 and that these industrial activities, as well as deck cleaning and painting of the floating crane, were ongoing.
24. On August 22, 2019, the EPA Region 9 performed an inspection of the Facility after a recent rain event to evaluate Respondent's compliance with the CWA and observed:
  - a. A discharge of unauthorized industrial stormwater from the Facility to Apra Harbor without CWA authorization;
  - b. Inadequate implementation of BMPs to control large amounts of accumulated sandblast grit, paint particles and debris from discharging in stormwater to Apra Harbor;
  - c. Pollutant sources, including piles of waste, unused equipment, improperly stored materials, and oil stains, in stormwater discharge pathways; and
  - d. Waste containers, including what appeared to be used oil, stored without secondary containment with potential exposure to stormwater.
25. On September 4, 2019, the EPA Region 9 provided the August 22, 2019 inspection report to Respondent.
26. As of September 4, 2019, Respondent had not filed for NPDES coverage under the MSGP by filing an NOI.
27. On September 5, 2019, the EPA Region 9 issued an Administrative Order (Order) to Respondent requiring that it 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, within sixty (60) days of the Order's effective date, *i.e.* by November 5, 2019. The Order also required that Respondent provide documentation that it corrected the deficiencies identified in the EPA Region 9's prior inspection reports within ninety (90) days of the Order's effective date, *i.e.*, by December 5, 2019.
28. On January 23, 2020, a representative of EPA Region 9 inspected the Facility to evaluate Respondent's compliance with the CWA and observed active ship repair activity and the same type of BMP deficiencies as observed in prior inspections that had not been corrected as required by the Order.

29. On February 5, 2020, a representative of EPA Region 9 inspected the Facility to evaluate Respondent's compliance with the CWA and observed active ship repair activity and the same type of BMP deficiencies as observed in prior inspections that had not been corrected as required by the Order.
30. On March 4, 2020, the EPA Region 9 provided Respondent with the inspection reports for its January 23 and February 5, 2020 inspections.
31. On May 11, 2020, Respondent submitted a NOI to EPA for MSGP coverage along with a SWPPP that EPA Region 9 found included a description of adequate BMPs and that otherwise met the requirements of the MSGP.
32. Between May 4, 2017 and May 11, 2020, the National Oceanic and Atmospheric Administration reports that at least 0.5 inches of rain fell on at least 63 days at Guam International Airport weather station, the closest monitoring station to the Facility. Upon information and belief, each of these 63 half-inch rainfall events resulted in a discharge of stormwater from Respondent's Facility to Apra Harbor.

#### **IV. ALLEGED VIOLATIONS**

33. Between May 4, 2017 and May 11, 2020, Respondent violated section 301(a) of the CWA, 33 U.S.C. § 1311(a), on at least 63 days by discharging pollutants from point sources into waters of the United States without NPDES permit authorization.

#### **V. ADMINISTRATIVE PENALTY**

34. In consideration of the penalty factors of section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of sixty-eight thousand and three hundred and eighty-eight dollars (\$68,388) pursuant to the installment payment plan provided below, with the first payment due within ninety (90) calendar days of this CA/FO's Effective Date as defined in Section X below:

<b>Summary</b>	<b>Days</b>	<b>Interest Payment</b>	<b>Installment Payment</b>
Payment 1	90	\$341.94	\$17,310.71
Payment 2	90	\$256.46	\$17,310.71
Payment 3	90	\$170.97	\$17,310.71
Payment 4	90	\$85.49	\$17,310.71
<b>\$68,388.00</b>	360	\$854.85	\$69,242.85

35. Respondent submitted a certified statement on October 22, 2020 to the EPA indicating that Respondent has a limited ability to pay a civil penalty in this matter and that it lost approximately 25% of its revenue from mid-March 2020 to the present due to the COVID-19 pandemic. The EPA considered the certified statement when agreeing to the civil penalty terms included in this CA/FO. Respondent certifies to the truth and accuracy of the information and representations made to the EPA relating to Respondent's financial conditions. Respondent acknowledges that it may be subject to prosecution under federal law by providing false or inaccurate information to the EPA.

36. Respondent shall make its penalty payments by one of the options listed below:

- a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency  
Fines and Penalties  
PO BOX 979077  
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency  
Government Lockbox 979077  
USEPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

- b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

- c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency)

- d. Online Payment: This payment option can be accessed from the information below:

Go to [www.pay.gov](http://www.pay.gov)  
Enter "SFO Form Number 1.1." in the search field  
Open "EPA Miscellaneous Payments – Cincinnati Finance Center" form and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

37. To ensure proper credit, Respondent shall include the following transmittal information with each penalty payment: (i) Respondent's name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.
38. Concurrent with each payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Rich Campbell, Attorney-Advisor  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

39. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
40. Pursuant to section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the CA/FO's Effective Date. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

## **VI. APPLICABILITY**

41. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

## **VII. RESPONDENT'S ADMISSIONS AND WAIVERS**

42. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of the complaint;
  - b. except as set forth in Paragraphs 35 and 42.a. neither admits nor denies the specific factual allegations contained in this Consent Agreement;
  - c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
  - d. waives any right to contest the allegations set forth in this CA/FO; and
  - e. waives its right to appeal this proposed Final Order.

## **VIII. RESERVATION OF RIGHTS**

43. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
44. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

## **IX. ATTORNEY FEES AND COSTS**

45. Unless otherwise specified, each party shall bear its own attorney fees and costs.

## **X. EFFECTIVE DATE AND TERMINATION**

46. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the CA/FO's requirements in full.

## **XI. PUBLIC NOTICE**

47. Pursuant to section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.
48. Pursuant to section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the EPA has consulted with the Government of the Territory of Guam, *i.e.*, GEPA, regarding this penalty action.



FOR RESPONDENT GUAM INDUSTRIAL SERVICES, INC:

\_\_\_\_\_/s/\_\_\_\_\_  
Signature

Mathews Pothen\_\_\_\_\_  
Name (printed)

04-Dec-2020\_\_\_\_\_  
Date

Title: \_\_\_President\_\_\_\_\_

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

\_\_\_\_\_/s/\_\_\_\_\_  
Amy C. Miller-Bowen, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 9

\_\_\_\_\_/1/18/2020\_\_\_\_\_  
Date

Of Counsel:

Rich Campbell  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 9

**FINAL ORDER**

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2021-0015) be entered and that Respondent shall pay a civil penalty in the amount of sixty-eight thousand and three hundred and eighty-eight dollars (\$68,388) in accordance with the terms of this Consent Agreement and Final Order.

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Steven L. Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region 9