

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

SEP 25 2009

Via Certified Mail:  
7008 3230 0000 3862 9106  
Return Receipt Requested

Jeff Brennan  
General Manager  
Hawaii Stevedores, Inc.  
965 North Nimitz Highway  
Honolulu, HI 96817-4572

Subject: Findings of Violations and Order for Compliance  
EPA Docket No. CWA-309(a)-09-018

Dear Mr. Brennan:

On December 8, 2008, representatives of the U.S. Environmental Protection Agency (EPA) and the Hawaii State Department of Health (DOH) conducted a Clean Water Act compliance inspection at Hawaii Stevedore, Inc.'s marine cargo handling facility located at Pier 1, Honolulu, Hawaii (Facility). A copy of the inspection report is attached.

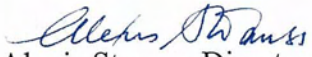
Based on the inspection, EPA today issues the enclosed Findings of Violation and Order for Compliance requiring Hawaii Stevedores, Inc. to take specific actions to bring the Facility into compliance with the Clean Water Act, including the following:

1. Complete interim measures of structural and good housekeeping Best Management Practices (BMPs) in all areas of the Facility that have the potential to generate stormwater discharges;
2. Submit an application to the State of Hawaii for NPDES permit authorization for the discharge of storm water associated with the Facility's industrial activities;
3. Prepare and submit a storm water pollution control plan (SWPCP) and monitoring program that fully complies with Hawaii Administrative Rules and the General Permit; and

4. Complete several additional tasks identified in the Order, within the time specified.

If you have any questions concerning this matter, please contact Ann Murphy of my staff at (415) 972-3640.

Sincerely yours,

 25 September 2009  
Alexis Strauss, Director  
Water Division

Enclosures

cc: Jamie Tanimoto, Hawaii DOH  
Michael Tsuji, Hawaii DOH

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

75 Hawthorne Street  
San Francisco, California 94105

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**IN THE MATTER OF:**

**Hawaii Stevedores, Inc.**  
965 North Nimitz Highway  
Honolulu, HI 96817-4572

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) Docket No. CWA 309(a)-09-018  
)  
)

) **FINDINGS OF VIOLATION**  
) **AND**  
) **ORDER FOR COMPLIANCE**  
)

) Proceedings under Section 308(a) and 309(a)  
) of the Clean Water Act, as amended, 33  
) U.S.C. Sections 1318(a), and 1319(a)

**STATUTORY AUTHORITY**

The following Findings of Violation are made and Order for Compliance issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Clean Water Act, as amended (the Act or CWA), 33 U.S.C. §§ 1318(a), and 1319(a)(3), (a)(4), and (a)(5)(A). This authority has been delegated to the Regional Administrator of EPA, Region 9, and re-delegated by the Regional Administrator to the Director of the Water Division of EPA, Region 9. Notice of this action has been given to the State of Hawaii.

**FINDINGS OF VIOLATION**

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States, except in compliance with the Act, including Section 402, 33 U.S.C. § 1342.
2. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (NPDES) program. Under Section 402, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.
3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA's implementing regulations at 40 CFR § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Facilities engaged in industrial activity, as defined by 40 CFR § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or



propose to discharge storm water into waters of the United States. Pursuant to 40 CFR §§ 122.26(a)(1)(ii) and 122.26(c), dischargers of storm water associated with industrial activity are required to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

4. Marine Cargo Handling facilities, Standard Industrial Classification (SIC) 4491 falls under SIC Group 44, and, pursuant to 40 CFR § 122.26(b)(14)(viii), is an industrial activity subject to the discharge and permitting requirements under Section 402 of the Act, 33 U.S.C. § 1342.
5. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations authorize EPA to, inter alia, require the owner or operator of any point source to establish records, make reports, or submit other reasonably required information, including individual and general NPDES permit applications.
6. The State of Hawaii (State) has an EPA-approved NPDES program, and issues permits, including storm water permits, through its Department of Health (DOH). On October 25, 2002, DOH adopted the NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities, Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix B (General Permit), which became effective on November 7, 2002. The General Permit that is currently effective is dated October 22, 2007, and expires on October 21, 2012.
7. All facility operators seeking coverage under the General Permit must submit a notice of intent to comply (NOI) to DOH thirty days prior to commencing industrial operations or thirty days prior to the expiration of existing permit coverage. (General Permit § 4(a)). Industrial storm water dischargers that do not submit an NOI must submit an application for an individual NPDES permit. (HAR § 11-55-04(a)).
8. The General Permit requires facility operators to develop and implement a storm water pollution control plan (SWPCP). The purpose of the SWPCP is to identify sources of industrial storm water pollution and to identify and implement site-specific best management practices (BMPs) to control discharges.
9. The SWPCP must include, inter alia, (a) a facility description; (b) a site map that identifies drainage areas and outfalls, areas of outdoor storage and industrial activity, sampling locations, and the nearest receiving water; (c) a pollution control strategy that considers the use of containment structures, appropriate facility covering, and other BMPs to minimize the discharge of pollutants; and (d) a storm water monitoring plan. (General Permit § 6(a)).
10. The storm water monitoring plan must provide the rationale for the sampling locations selected by the permittee; the sample collection methodologies to be used; the parameters

to be monitored; the methods for calculating storm water flow volume; and the procedures used to inspect receiving waters, storm water runoff, and facility control structures and BMPs. (General Permit § 6(a)(7)).

11. Discharges regulated under the General Permit must comply with the applicable sections of the State's water quality standards, found in HAR Chapter 11-54, as well as the applicable sections of HAR Chapter 11-55, which include but are not limited to, the applicable effluent standards and limitations in HAR Section 11-55-19, the monitoring requirements in HAR Section 55-11-28, and the sampling requirements in HAR Section 55-11-31. (HAR § 11-55.34.04 and General Permit § 8(b)). Discharges regulated under the General Permit must also comply with federal effluent limitations and best management practices. (HAR § 11-55-34.07).
12. The General Permit requires permittees to monitor all storm water outfalls and collect samples during "representative storm events." (General Permit § 8(a)). In addition to sampling storm water runoff, permittees must also conduct semi-annual facility inspections to ensure that the SWPCP is effective and must inspect the receiving waters as well as the facility's storm water control measures and BMPs to detect and prevent violations of water quality criteria. (General Permit §§ 6(a)(9)(c), 8(b)(2), and 8(c)).
13. Pursuant to the General Permit's record keeping requirements, permittees must record sampling results and certain storm data as well as information gathered during routine facility inspections. (General Permit §§ 6(a)(9)(c) and 10(a)). All records and data collected during monitoring activities must be maintained for at least five years and must be available at the facility for review, and the storm water sampling results must be submitted to DOH annually. (General Permit §§ 13 and 10(a)).
14. Facilities subject to reporting requirement for EPCRA Section 313 "water priority chemicals" are subject to additional conditions under the General Permit. (General Permit § 7).
15. Hawaii Stevedores, Inc. (Respondent or Hawaii Stevedores) is a Hawaii corporation licensed to do business in the State of Hawaii and is thus a "person" under CWA Section 502(5), 33 U.S.C. § 1362 (5).
16. Hawaii Stevedores operates a facility located at the south side of Pier 1, Honolulu Harbor, in Honolulu, Hawaii (Facility). Respondent has operated the Facility since March, 1992. The Facility is primarily engaged in marine cargo handling, activities that are categorized under SIC 4491. The Facility also includes a "mechanic's area" where Respondent maintains and repairs vehicles used at the Facility, including cargo crate chassis. Hawaii Stevedores has not filed for coverage under the Hawaii General Permit for the Pier 1 facility.



17. Hawaii Stevedores operates a second marine cargo handling facility at Pier 35 at Honolulu Harbor. Hawaii Stevedores filed for coverage under the Hawaii General Permit for the Pier 35 facility on or around January 13, 2005. DOH assigned Notice of General Permit Coverage (NGPC) No. HIR80A305 to Hawaii Stevedores for the Pier 35 facility.
18. Rainfall events that exceed 0.1 inches are generally sufficient to generate storm water runoff at the Facility. Data from the Honolulu International Airport rain gauge, which is located approximately 6 miles from the Facility, indicate there were 183 days with more than 0.1 inches of rainfall at the Facility between June 1, 2004 and June 1, 2009.
19. Storm water runoff at the Facility discharges through three stormdrains located on the Facility. The stormdrains are “point sources” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).
20. The storm water discharged from the Facility contains “pollutants,” including industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6), and is storm water discharge associated with industrial activity as defined by EPA regulations in 40 CFR §122.26(b)(14).
21. Honolulu Harbor, is a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined by EPA regulations in 40 CFR § 122.2.
22. On December 8, 2008, representatives of EPA and DOH inspected the Facility to evaluate compliance with the General Permit. The inspection report is attached and incorporated by reference, and contains evidence that Respondent has never submitted an NOI to Hawaii DOH or otherwise sought or received NPDES coverage for the Pier 1 Facility.
23. The attached inspection report contains evidence of staining on the ground, and drums and other containers not properly covered or contained. These observations appear to have been in the vehicle maintenance area and are regulated under 40 CFR § 122.26(b)(14)(viii).
24. Based on the foregoing, EPA has determined that Respondent has violated the CWA as follows:
  - a. Respondent discharged stormwater associated with industrial activity prior to obtaining an NPDES permit and violated Section 301(a) of the Act, 33 U.S.C. § 1311; and
  - b. Respondent failed to submit an NOI for coverage under the General Permit before commencing industrial operations at the Facility violated Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 CFR § 122.21.

## ORDER FOR COMPLIANCE

Considering the foregoing Findings of Violation and the potential environmental and human health effects of the violations, EPA has determined that compliance in accordance with the following requirements is reasonable. Pursuant to the authority of Sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, it is hereby ordered that Respondent comply with the following requirements:

25. Immediately upon receipt of this Order Respondent shall, if it has not already, submit an application to the State of Hawaii for NPDES permit authorization for the discharge of storm water associated with the Facility's industrial activities. Immediately upon receipt of NPDES permit coverage, Respondent shall send a written notice of receipt of coverage to EPA. Instructions and necessary forms may be viewed and obtained at this website: <http://hawaii.gov/health/environmental/water/cleanwater/logo/cleanwater/forms/forms/genl-index.html>.
26. Immediately upon receipt of NPDES permit coverage for the discharges of storm water associated with the Facility's industrial activities, Respondent shall take all necessary measures to achieve continuous compliance with all terms and conditions of the NPDES permit.
27. Within thirty (30) days of receipt of this Order, Respondent shall complete interim measures (Interim Measures) in all areas of the Facility that have the potential to generate storm water discharge associated with industrial activity, as the term is defined at 40 CFR § 122.26(b)(14). These Interim Measures shall include, at a minimum:
  - a. Implementation of structural and good housekeeping BMPs to cover and contain liquid substances, exposed engine parts, batteries, equipment, and waste materials; and
  - b. Implementation of structural and good housekeeping BMPs to contain all pollutants from the fueling equipment and fueling areas.
28. Upon completion of the Interim Measures, Respondent shall submit a notice of completion to EPA that shall include a list of the measures taken, the date of completion for each measure, the person(s) responsible for overseeing each measure, photographs of each completed measure, and copies of documents associated with the completion of the measures, such as contracts, permits, and manifests.
29. In performing the Interim Measures, care shall be taken to ensure they do not cause or contribute to any runoff to waters of the United States, the municipal storm drains, or the municipal sewer systems. Care shall also be taken to ensure compliance with all applicable federal, state, and local waste storage and disposal requirements.



30. Within thirty (30) days of the receipt of this Order, Respondent shall submit to EPA, a SWPCP and a monitoring program, as required by HAR Chapters 11-55, Appendix B, 4(b)(5)(A) and 4(b)(5)(B) of the General Permit. The SWPCP and the monitoring program shall be prepared by a qualified professional and fully comply with the provisions of the General Permit. The SWPCP shall include, among all other required elements:
  - a. Cover and containment BMPs for liquid substances, exposed engines, batteries, equipment, and waste materials; and
  - b. BMPs to prevent and contain spills.
31. EPA and/or DOH may require Respondent to make modifications to the SWPCP and/or the monitoring program. Unless otherwise specified by EPA or DOH, Respondent shall, within 15 days of receipt of comments from EPA or DOH, incorporate the modifications into the SWPCP and monitoring program and implement the modifications.
32. Immediately upon completion of Interim Measures, Hawaii Stevedores shall inspect all the facility's outdoor areas of industrial activity, as the term is defined at 40 C.F.R. 122.26(b)(14), and drainage areas to ensure that there is no pollutant source which may result in, or contribute to, unauthorized discharges to any waters of the United States and to determine the condition and effectiveness of BMPs. Hawaii Stevedores shall also conduct an inspection after each rain event and, at least, once each week during operating hours, for 30 days, and shall keep an inspection log for each inspection. The inspection log shall include the following:
  - a. The date and time of the inspection;
  - b. The name of the person conducting the inspection;
  - c. A check list of areas inspected;
  - d. Observation of any industrial activity or potential pollution source, including any spill, leakage, or storage of material, which may drain into the storm water collection system or contribute to unpermitted discharges; and
  - e. List all control measures taken to address the observation made pursuant to subparagraph d. above and the person performing the control measures.
33. Within 75 days of the receipt of this Order, Respondent shall submit inspection logs for inspections ordered in paragraph 32 of this Order.
34. Within 45 days of receipt of this Order, Respondent shall submit to EPA:
  - a. A description of the Facility's history, including its length of operation and the identity of its owner(s) and operator(s) since it began operation, and all supporting documents;
  - b. All documents, (including internal communications, design and construction documents, location maps, operating instructions, cleaning practices, contracts, invoices for repair, cleaning and disposal, drawings, correspondence, maintenance

- records, and consultant reports) relating to any and all drains, catch basins, sumps, and surface water collection systems located at the Facility; and
- c. All documents, including internal communications, consultant reports, and communications with any regulatory agencies, concerning the General Permit; and all documentation of any and all facilities owned by Hawaii Stevedores.
35. Within 60 days Respondent shall submit:
- a. Detailed costs for developing the SWPCP required under the permit;
  - b. Detailed cost estimates, including estimated capital, one-time, and annual costs, for implementing the SWPCP;
  - c. Detailed accounting of costs incurred to comply with Interim Measures required by the Order;
  - d. Detailed accounting of costs incurred to develop the monitoring required under the General Permit;
  - e. Detailed cost estimates, including estimated capital, one-time, and annual costs for implementing the monitoring program; and
36. All reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of Respondent (as specified by 40 CFR § 122.22 (b)(2)) 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, I certify that 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.”

37. All submissions requested by this Order shall be mailed to the following address:

U. S. Environmental Protection Agency - Region 9  
Clean Water Act Compliance Office WTR-7  
75 Hawthorne Street  
San Francisco, CA 94105

Attention: Ann Murphy, Enforcement Officer  
All telephone inquiries should be made to Ann Murphy at (415) 972-3640.



38. Respondent shall send a copy of all submissions required under this Order to:

Hawaii Department of Health  
Clean Water Branch  
919 Ala Moana Blvd. Room 301  
Honolulu, HI 96814-4920

Attention: Jamie Tanimoto, Environmental Health Specialist, Hawaii DOH  
Michael Tsuji, Supervisor, Enforcement Section, Hawaii DOH

39. This Order shall be binding upon Respondent and Respondent's officers, directors, agents, employees, heirs, successors, and assigns.
40. This Order is not a permit under the CWA, and does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all applicable federal, state, or local laws, regulations, ordinances, permits, or licenses.
41. This Order is not to be deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations cited in this Order and to enforce this Order.
42. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a "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 CFR § 1320.4(a)(2).
43. Respondents may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 CFR Part 2, Subpart B, regulations to protect confidential business information it receives. A legally supportable claim of business confidentiality may be asserted in the manner specified by 40 CFR § 2.203(b) for all or part of the information requested by EPA. EPA will disclose business information covered by such claim only as authorized under 40 CFR Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.
44. Section 309(a), (b), (d) and (g) of the Act, 33 U.S.C. § 1319(a), (b), (d) and (g), provides 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.



45. This Order shall become effective upon the date of receipt by the Respondent.

*Alexis Strauss*  
Alexis Strauss, Director  
Water Division

*25 September 2009*  
Date