

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

AUG 24 2009

Sent Via Certified Mail
7000 0520 0021 6108 5696
Return Receipt Requested

Mr. Hugh Healy
General Manager
Horizon Lines of Guam, LLC
Guam Commercial Port
1010 Cabras Highway
Piti, Guam 96915

Subject: Findings of Violation and Order for Compliance
EPA Docket No. CWA-309(a)-10-019

Dear Mr. Healy:


On July 1, 2009, representatives of the U.S. Environmental Protection Agency (EPA) and the Guam Environmental Protection Agency (Guam EPA) conducted a Clean Water Act compliance inspection of Horizon Lines' Port of Guam facility (the Facility). A copy of EPA's inspection report identifying, among other deficiencies, the Facility's lack of NPDES permit coverage is enclosed.

Based on the inspection, EPA today issues the enclosed Findings of Violation and Order for Compliance (Order) requiring Horizon Lines of Guam, LLC to take specific actions to bring the Facility into compliance with the Clean Water Act, including the following:

1. Immediately upon receipt of this Order submit an application to EPA for an NPDES permit authorization for the discharge of storm water associated with the Facility's industrial activities. Instructions and necessary forms may be viewed and obtained at <http://cfpub.epa.gov/npdes/stormwater/enoi.cfm>;
2. Immediately upon receipt of NPDES permit coverage for the discharges of storm water associated with the Facility's industrial activities, take all necessary measures to achieve continuous compliance with all terms and conditions of the NPDES permit;
3. Within 30 days of receipt of this Order, complete interim control measures as specified in the Order; and
4. Within 30 days of receipt of NPDES permit coverage, submit to EPA the Facility's Storm Water Pollution Prevention Plan.

If you have any questions concerning this matter, please contact Greg Gholson of my staff at (415) 947-4209.

Sincerely yours,


Alexis Strauss, Director
Water Division

24 August 2010

Enclosures: (2)

cc: E. Cruz, Guam EPA
I. Quinata, Guam EPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:

Horizon Lines of Guam, LLC
Guam Commercial Port
Piti, Guam 96915

) Docket No. CWA 309(a)-10-019
)
)

) **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 Territory of Guam.

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 is 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. Pursuant to 40 CFR § 122.26(b)(14)(viii), marine cargo handling facilities, Standard Industrial Classification (SIC) code 4491 and SIC Major Group 44, are engaged in industrial activity subject to the discharge and permitting requirements under Section 402 of the Act, 33 U.S.C. § 1342, if they have on-site vehicle maintenance and equipment cleaning operations.
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. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 CFR § 122.21, any person who discharges or proposes to discharge storm water associated with industrial activity must submit an application for an NPDES permit 180 days prior to commencing industrial activity.
7. Since October 30, 2000, EPA has adopted two successive NPDES Multi Sector General Permits for Stormwater Discharges Associated with Industrial Activity (MSGP). The MSGP that is currently effective was adopted on September 29, 2008.
8. In order to obtain authorization under the MSGP, a facility must be located in a state, a territory, or in Indian Country, or be a federal facility identified in Appendix C of the MSGP where EPA is the permitting authority. (MSGP, Part 1.3.1).
9. The MSGP requires facility operators to develop and implement a storm water pollution prevention plan (SWPPP) prior to commencing industrial operations. (MSGP, Part 5). The purpose of the SWPPP is to identify sources of industrial storm water pollution and to identify and implement site-specific best management practices (BMPs) to control discharges.
10. The SWPPP must include, inter alia, a list identifying members of the Facility's storm water pollution prevention team and their responsibilities (MSGP, Part 5.1.1); a site description (MSGP, Part 5.1.2); a summary of potential pollutant sources (MSGP, Part 5.1.3); a description of all pollutant control measures (MSGP, Part 5.1.4); schedules and procedures for housekeeping, maintenance, spill prevention and response, and training (MSGP, Part 5.1.5); and the SWPPP signature requirements. (MSGP, Part 5.1.7).
11. Facility operators must select, design, install, and implement control measures, including BMPs, to meet non-numeric effluent limits as well as any applicable effluent limitations guidelines. (MSGP, Part 2.1). All technology-based effluent limits must reduce and/or

eliminate pollutants in discharges to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practice. (MSGP, Part 2).

12. Facility operators must: conduct routine inspections of all areas of the facility where industrial materials or activities are exposed to storm water and of all storm water control measures used to comply with the effluent limits contained in the MSGP; document the findings of each routine facility inspection performed and maintain this documentation onsite with the SWPPP; conduct quarterly sampling of storm water from each outfall and conduct a visual assessment of each of these samples; document the results of the visual assessment and maintain this documentation onsite with the SWPPP; conduct an annual comprehensive site inspection while the facility is covered under the MSGP; and document the findings of each comprehensive site inspection and maintain this documentation with the SWPPP. (MSGP, Part 4.1, 4.2, and 4.3).
13. Horizon Lines of Guam, LLC (Respondent) is a Delaware limited liability company that conducts business in the Territory of Guam and is thus a "person" under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
14. Respondent operates a transportation facility located at the Guam Commercial Port, Piti, Guam, 96915 (Facility). The Facility is primarily engaged in marine cargo handling, an industrial activity classified under SIC code 4491, and has an associated vehicle maintenance shop and equipment cleaning operation.
15. Storm water runoff from the Facility's vehicle maintenance and equipment cleaning area discharges into a storm drain inlet located adjacent to the Facility's equipment and repair building. The storm drain system discharges into the Apra Harbor, which flows into the Philippine Sea.
16. 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).
17. The Apra Harbor is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7). The Apra Harbor and near shore waters of the Philippine Sea are "waters of the United States" as defined by EPA regulations in 40 CFR § 122.2.
18. On July 1, 2009, a representative of EPA inspected the Facility to evaluate compliance with the MSGP. The inspection report is attached and incorporated by reference, and contains evidence that Respondent has never submitted a notice of intent to comply with the MSGP to EPA or otherwise sought or received NPDES permit coverage for the Facility.

19. Based on the foregoing, EPA has determined that, by failing to acquire an NPDES permit and by discharging pollutants without a permit, Respondent has violated Sections 301(a) and 308(a) of the Act, 33 U.S.C. §§ 1311(a) and 1318(a).

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:

20. Immediately upon receipt of this Order, if it has not already done so, Respondent shall submit an application to EPA for an NPDES permit authorization for the discharge of storm water associated with the Facility's industrial activities. Instructions and necessary forms may be viewed and obtained at <http://cfpub.epa.gov/npdes/stormwater/enoi.cfm>.
21. 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.
22. Within 30 days of receipt of this Order, Respondent shall complete interim control measures (Interim Measures) including:
- Clean all exposed areas of the Facility used for vehicle maintenance and equipment cleaning using dry methods (e.g., absorbents) to remove residual pollutants from previous leaks, spills, or overflows of, among other pollutants, fuels, battery acid, and oil and grease.
 - Confine vehicle maintenance and equipment cleaning activities to designated areas of the Facility that are outside of drainage pathways and on impervious surfaces.
 - Provide secondary containment for all potential pollutants, such as fuels, lubricants, waste oils and solvents, used or generated as part of the Facility's vehicle maintenance and equipment cleaning operations.
23. Within 30 days of receipt of this Order, upon completion of the Interim Measures, Respondent shall submit a Notice of Completion, which shall include a list of the measures taken; the date of completion for each measure; the person(s) responsible for overseeing each measure; photographs (before and after) of each completed measure; and copies of documents associated with the completion of the measures, such as contracts, permits, and manifests.
24. 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. Care shall also be taken to ensure

compliance with all applicable federal, state, and local waste storage and disposal requirements.

25. Within 30 days of receipt of NPDES permit coverage, Respondent shall submit to EPA, the Facility's SWPPP and any additional documents required to be maintained with the SWPPP pursuant to the requirements of Part 5.4 of the MSGP. The SWPPP shall be prepared by a qualified professional and fully comply with permit requirements. The SWPPP shall specifically include, but not be limited to, BMPs to eliminate, or reduce to the maximum extent achievable in light of best industry practice, the discharge of contaminated storm water from vehicle maintenance and equipment cleaning activities.
26. EPA may require Respondent to make modifications to the SWPPP. Unless otherwise specified by EPA, Respondent shall, within 15 days of receipt of comments from EPA, incorporate any modifications into the SWPPP required by EPA and implement the modifications.
27. Within 45 days of the receipt of this Order, Respondent shall submit a report to EPA on the costs associated with: development of the SWPPP, projected annual costs associated with implementation of the SWPPP, and any other costs associated with complying with this Order.
28. 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 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.

29. 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: Greg Gholson

All telephone inquiries should be made to Greg Gholson, Environmental Scientist, at (415) 947-4209.

30. This Order shall be binding upon Respondent and its officers, directors, agents, employees, heirs, successors, and assigns.
31. 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.
32. 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.
33. 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).
34. Respondent 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.
35. 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.
36. This Order shall become effective upon the date of receipt by Respondent.



Alexis Strauss, Director
Water Division



Date

EPA NPDES Industrial Stormwater Compliance Inspection Report

Section A: National Data System Coding

NPDES	Permit ID Number
	N O N F I L E R
SIC Code	Receiving Water/MS4
4 4 9 1	Apra Harbor

Section B: Facility Data

Name and Location of Facility Inspected Horizon Lines LLC Guam Commercial Port Piti, Guam 96915	Entry Time/Date 7/1/09 ~2:00 pm	Permit Effective Date
	Exit Time/Date 7/1/09 ~ 2:45 pm	Permit Expiration Date
Name(s) of On-Site Representatives	Title(s)	
Name, Address of Responsible Official Mr. Huegh Healy Horizon Lines LLC 1010 Cabras Highway Piti, Guam 96915	Title General Manager	Phone Number
	Contacted: YES ___ NO <u>X</u>	

Section C: Areas Evaluated During Inspection
(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)

SWPPP	Records/Reports	Facility Site Review	Effluent/Receiving Waters	Self-Monitoring Program
-------	-----------------	----------------------	---------------------------	-------------------------

Section D: Summary of Findings/Comments (Attach additional sheets if necessary)

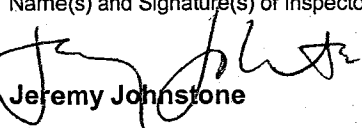
This facility operates a marine cargo handling facility at the commercial port for the island of Guam. Marine cargo handling activities, are classified under SIC 4491. As such the facility is subject to EPA's Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity (MSGP).

However, as of the date of the inspection the facility had not filed for coverage under the MSGP.

The facility operates some of the equipment on-site, e.g. some of the one of the container gantries and some container pickers/lifters, and performs maintenance and repair of the equipment that it operates. Other equipment is operated by the Port Authority of Guam and other port tenants, e.g. Matson Navigation and Cabras Marine Corp. No best management practices were observed to be implemented to prevent contaminated stormwater runoff from any of these areas. See photos.

The facility should promptly apply for coverage under the MSGP, and develop and implement a Stormwater Pollution Prevention Plan (SWPPP) and Monitoring Plan (MP). The MSGP and instructions for enrolling for coverage may be found at <http://cfpub.epa.gov/npdes/stormwater/msgp.cfm>

Mr. Oscar Delfin and Ms. Maricar Quezon of the Guam EPA also participated in this inspection.

Name(s) and Signature(s) of Inspector(s)  Jeremy Johnstone	Agency/Office/Telephone US EPA Region 9 Clean Water Act Compliance Office (WTR-7) (415) 972-3499	Date 8-6-09
Signature of Reviewer	Agency/Office US EPA Region 9 Clean Water Act Compliance Office (WTR-7)	Date

US EPA ARCHIVE DOCUMENT

Horizon Lines LLC - Port Authority of Guam
1 July 2009

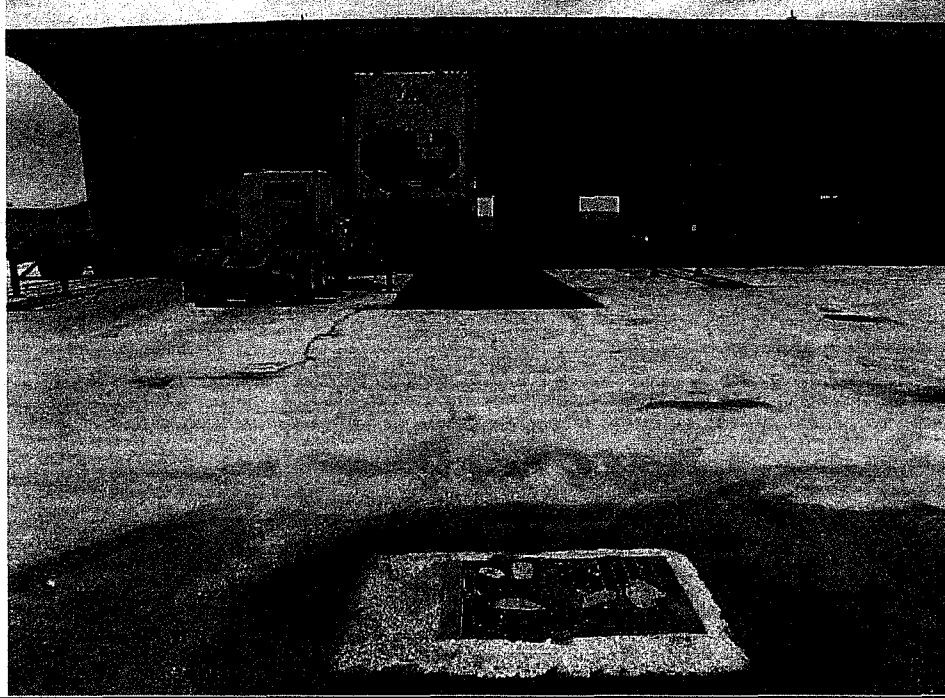


Photo 1 - View of Horizon Lines' (tenant) equipment maintenance area



Photo 2 - Close-up of storm drain inlet outside of Horizon Lines maintenance area