UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In re the Matter of:	)	Docket No.: CWA-309(a)-09-002
	)	
Unites States Navy	)	**FINDINGS OF VIOLATION**
Naval Base Guam	)	
	)	Proceedings Under Sections 308(a) and 309(a) of the Clean Water Act, as amended, 33 U.S.C. §§ 1318(a) and 1319(a)
Respondent	)	

STATUTORY AUTHORITY

The United States Environmental Protection Agency ("EPA") issues these Findings of Violation ("Findings") to the United States Navy (the "Navy"), pursuant to Sections 308(a) and 309(a) of the Clean Water Act (the "CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). The authority to take action under CWA Sections 308(a) and 309(a) is vested in the Administrator of the EPA. This authority has been duly delegated to the Director of the Water Division of EPA, Region 9, who hereby issues these Findings.

FINDINGS AND CONCLUSIONS

1. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342.

2. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System ("NPDES") program. Under Section 402 of the CWA, 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. EPA is the authorized permitting authority for purposes of issuing NPDES permits governing the discharge of pollutants on the Island of Guam.

4. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines a "person" as an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

5. Section 313(a) of the CWA, 33 U.S.C. 1323(a), specifies that departments of the executive branch of Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, shall be subject to, and comply with, all Federal, State, interstate, and local requirements respecting the control and abatement of water pollution in the same manner, and to the same extent, as any nongovernmental entity. Therefore, the Navy is subject to the requirements of the CWA, including Sections 301 and 402, as if it were considered a "person" under Section 502(5).

6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6) defines a "pollutant" as dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as the waters of the United States, including the territorial seas. "Waters of the United States" is defined by EPA regulations in 40 C.F.R. § 122.2.

8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a "discharge of pollutants" as any addition of any pollutant to navigable waters from any point source.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines a "point source" as any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or maybe discharged.

10. Section 308(a) of the CWA, 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. *See also* 40 C.F.R. § 122.21.

11. EPA staff conducted inspections of the Navy's Naval Base Guam ("Base") on 16-17 July 2008. The inspections consisted of the examination of facility records, interviews, and walk-throughs of certain Base facilities. EPA staff assessed the Navy's compliance with certain environmental requirements, including the Navy's NPDES permit for the Apra Harbor Wastewater Treatment Plant, its NPDES general permit for stormwater discharges from industrial activities, and the NPDES requirements for stormwater discharges from construction activities.

The Apra Harbor WWTP NPDES Permit

12. EPA has issued NPDES Permit. No. GU0110019 ("Apra Harbor WWTP permit") to the Navy governing the discharge of pollutants from the Apra Harbor Waste Water Treatment Plant ("WWTP"). The Apra Harbor WWTP permit was last re-issued with an effective date of April 16, 2001, and it expired on April 15, 2006. The terms and conditions of Apra Harbor WWTP permit have remained in effect pending its re-issuance.

13. The Apra Harbor WWTP permit authorizes both the discharge of treated domestic wastewater from the Apra Harbor WWTP through Outfall 001 to Tipalao Bay, and emergency filter backwash and/or clarifier overflows from the Fena Water Treatment Plant ("Fena WTP") to the Namo River through Outfall 002. Outfall 001 and Outfall 002 are "point sources" under Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

14. Both Tipalao Bay and the Namo River are "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "waters of the United States" as defined by EPA regulations in 40 C.F.R. § 122.2.

15. The Apra Harbor WWTP permit establishes certain maximum discharge limitations ("effluent limitations") and monitoring requirements governing the discharges from both Outfalls 001 and 002. See permit at A.1.a and A.1.b, respectively. A listing of select effluent limitations and monitoring requirements for Outfalls 001 and 002 are attached as Exhibits 1 and 2, which are each hereby made a part of these Findings of Violation.

16. Required self-monitoring reports submitted by the Navy pursuant to the Apra Harbor WWTP permit demonstrate that, since at least April 2005, the Navy has violated several of its established effluent limitations on numerous occasions for both Outfalls 001 and 002, including those established for Aluminum, Copper, Nickel, Enterococci bacteria, Total Residual Chlorine, Biochemical Oxygen Demand and Total Suspended Solids. A listing of these reported violations are attached at Exhibits 3 and 4, which are each hereby made a part of these Findings of Violation.

EPA's Multi-Sector General Permit

17. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations at 40 C.F.R. § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Operators of facilities engaged in industrial activity, as

defined by 40 C.F.R. § 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 C.F.R. §§ 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 seek coverage under a promulgated storm water general permit. *See also* 40 C.F.R. § 122.21.

18. In October of 2000, EPA reissued the NPDES General Permit for Storm Water Discharges from Industrial Activities ("the 2000 Multi-Sector General Permit, or MSGP") pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2000 MSGP became effective on 30 October 2000 and authorizes certain discharges of storm water associated with industrial activities. The MSGP's coverage extends to all facilities on the Island of Guam and requires permittees to comply with the conditions and requirements set forth in the MSGP. The MSGP expired on 30 October 2005. As of the date of EPA's inspection, the MSGP had not yet been re-issued. Subsequently, EPA reissued the MSGP on 22 September 2008, with an effective date of 29 September 2008, and an expiration date of 29 September 2013. However, the terms and conditions of the expired permit continued to apply during the interim period between expiration and re-issuance to then-current enrollees, like the Navy. Therefore, for the purpose of these findings, the 2000 MSGP is the effective permit.

19. To obtain coverage for storm water discharges from an industrial facility under the MSGP, an operator must first "prepare and submit a complete and accurate Notice of Intent "(NOI). MSGP at Part 1.3. The Navy originally applied for NPDES industrial stormwater permit coverage under the predecessor permit to the MSGP, the "Baseline General Permit". Upon issuance of the 2000 MSGP, the Navy applied for coverage under that permit and has been continually covered since that time. The Navy's most recent NOI submittal was made on or about 2 March 2001, for which it was issued Tracking No. GUR05A008 by EPA.

20. According to EPA's NOI database (http://cfpub1.epa.gov/npdes/stormwater/noi/noisearch.cfm), the Navy's NOI seeking coverage under the MSGP listed Apra Harbor as the receiving water for its storm water discharges associated with industrial activities on the Base. Apra Harbor is a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "water of the United States" as defined by EPA regulations in 40 C.F.R. § 122.2.

21. EPA's NOI database also indicates that the Navy's NOI under the MSGP sought authorization to discharge stormwater associated with the following industrial activities:

> "Landfills, Land Application Sites, and Open Dumps; Ship and Boat Building or Repairing Yards; Water Transportation; SIC Primary Code: Marine cargo handling; SIC Secondary Code: Ship and Boat Building or Repairing Yards"

The NOI filing process limits applicants to indicating three sectors of industrial activity.

22. The Navy developed a storm water pollution prevention plan ("SWPPP") for the Base for the purpose of complying with the 2000 MSGP. At the EPA inspection, an updated SWPPP with a date of December 2005 was provided for review. The SWPPP was comprised of one main volume, 5 annex-specific volumes, visual monitoring report log sheets, and a volume of reports of Annual Comprehensive Site Compliance Evaluations ("ACSCEs").

23. The 2005 SWPPP provides a different listing than that included in the NOI of industrial activities which occur at the Base:

Sector K -	Hazardous Waste Treatment, Disposal or Storage
Sector L -	Landfills and Land Application Sites (subsector LF)
Sector N -	Scrap Recycling Facilities (SIC 5093, Scrap Recycling Facilities)
Sector O -	Steam Electric Generating Facilities (subsector SE)
Sector P -	Land Transportation and Warehousing (SIC 4419, 5171)
Sector Q -	Water Transportation (SIC 4491, 4493)
Sector T -	Treatment Works (subsector TW)

Sector AB - Transportation Equipment, Industrial or Commercial Machinery (SIC 3599)

24. Following the 16-17 July 2008 inspection, EPA prepared a report documenting the Navy's compliance with the requirements of the MSGP, a copy of which is attached at Exhibit 5 and hereby made a part of these Findings of Violation.

25. As part of this inspection, on 16 July 2008 the EPA inspector conducted a cursory review of the Navy's 2005 SWPPP and monitoring and inspection records. The following deficiencies were observed, which constitute violations of the MSGP:

a. the SWPPP was not certified by a responsible official, in violation of Part 9.7.4 of the MSGP;

b. the SWPPP does not include BMPs for all applicable on-site activities, in violation of Part. 4.2.7 of the MSGP. The 2005 SWPPP (at Vol. I, Table N-1, "Sectors of Industrial Activity at Guam Naval Activities") does not include Sector R or other acknowledgment of vessel repair activities occurring on the Base, and no BMPs for this type of industrial activity are described anywhere in the SWPPP. BMPs for Sector R should have been included because: (1) the Navy's March 2001 NOI included Sector R and SIC 373 Ship and Boat Building and Repairing as applicable industrial activities on the Base; (2) the SWPPP (at Vol. I, Section 2.B) indicates that submarine maintenance and repair occurs on the Base; and (3) Navy personnel in subsequent communications stated that "maintenance of submarines as well as ships may and do occur on base".

c. field verification indicated that some text and maps are outdated, in violation of Part 4.10.1 of the MSGP, e.g.:

i. the 2005 SWPPP refers to a less-than-90 day hazardous waste storage area, but this facility has since been demolished; and

ii. Maintenance Shop (Bldg. 1793), reportedly a 2-year old structure, is not included in the current (2005) SWPPP.

d. The last ACSCE had been conducted in August 2007, but the 2005 SWPPP had not yet been updated, in violation of Part. 4.9.3 of the MSGP which requires that necessary updates to the SWPPP be completed within two weeks of the evaluation.

26. During the 16-17 July 2008 inspection, the EPA inspector visited several industrial activity locations at the base. The following deficiencies were observed, which constitute violations of the MSGP:

a. Outside of the Transportation Maintenance Shop (Bldg. 372), several vehicles and pieces of equipment were parked over oil stains, some apparently fresh. Following recent rains, there was also a noticeable sheen in the area. There was no evidence of drip pans in use anywhere at this shop area, contrary to the 2005 SWPPP (Vol. IV, Section 3.3.4.3), and in violation of Part. 1.3.1.2 of the MSGP. This deficiency had also been noted previously in the August 2007 ACSCE report for this shop, which indicates that it had not been corrected during the intervening 11 months; and

b. At the Apra Harbor WWTP operators were unable to produce a copy of the SWPPP and BMPs for that facility, in violation of Part 4.11.12 of the MSGP.

EPA's Construction General Permit

27. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and EPA's implementing regulations at 40 C.F.R. § 122.26, additionally require NPDES permit authorization for discharges of storm water associated with construction activity. Operators of facilities engaged in construction activity, as defined by 40 C.F.R. §§ 122.26(b)(14)(x) and 122.26(b)(15), must obtain NPDES permit authorization if they discharge or propose to discharge storm water into waters of the

United States. Pursuant to 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c), dischargers of storm water associated with construction activity are required to apply for an individual permit or to seek coverage under a promulgated storm water general permit. *See also* 40 C.F.R. § 122.21.

28. In July 2003, EPA reissued the NPDES General Permit for Storm Water Discharges from Construction Activities ("the Construction General Permit, or CGP") pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2003 CGP became effective on July 1, 2003 and authorizes certain discharges of storm water associated with construction activities. On December 22, 2004, EPA modified the CGP, with modifications effective on January 21, 2005. On June 30, 2008 EPA re-issued the CGP with an effective date of June 30, 2008 and an expiration date of June 30, 2010 ("2008 CGP"). The 2008 CGP specifies that enrollees under the 2003 CGP continue to be subject to the requirements of the 2003 CGP. Coverage under the CGPs is available for eligible construction activities in the Island of Guam.

29. To obtain authorization for storm water discharges from a construction site under the CGP, an operator must first "prepare and submit a complete and accurate Notice of Intent." 40 C.F.R. § 122.28(b)(2); 2003 CGP at Part 2. An "operator" is defined as any party that either: (1) "has operational control over and construction plans and specifications ...," or (2) "has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a [storm water pollution prevention plan] for the site or other permit conditions." 2003 CGP at Appendix A.

30. Following the 16-17 July 2008 inspection, EPA prepared a report documenting the Navy's compliance with the requirements of the CGP, a copy of which is attached at Exhibit 6 and hereby made a part of these Findings of Violation.

31. At the time of that inspection, EPA observed that there were at least the following three construction projects on-going at the Base, each of which was visited as part of the inspection:

a. The McCool Elementary and Middle School Project;

b. The North Tipalao Housing Revitalization Project; and

c. The Old Apra Heights Housing Revitalization Project.

32. In regard to the McCool Elementary and Middle School Project, EPA's inspector noted the following:

a. The project was estimated to disturb approximately 31 acres, with stormwater runoff discharging to the Base's separate storm sewer system and thence to Apra Harbor. Apra Harbor is a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "water of the United States" as defined by EPA regulations in 40 C.F.R. § 122.2. As such, stormwater discharges from this project were subject to NPDES construction stormwater requirements.

b. The Navy's contractor for the project, Dick Pacific, submitted an NOI seeking coverage under the 2003 CGP on 15 June 2006. EPA assigned tracking No. GUR10A082 to the project. As the owner of the site and project, the Navy has operational control over the project's construction plans and specifications. As such, the Navy is also an operator under the CGP.

c. As an operator of the Site, the Navy was required to either submit the information required by an NOI to obtain coverage under the CGP, or apply for an individual NPDES permit before beginning construction activities at the Site. 33 U.S.C. § 1318(a); 40 C.F.R. § 122.21. To date, the Navy has failed to apply for an individual NDPES permit or properly seek coverage under the 2008 CGP.

d. During the EPA inspection, the EPA inspector observed unstabilized soils and inadequately maintained drain inlet protection BMPs with evidence of discharges of sediment into the Base's separate storm sewer system, and thence to Apra Harbor. Therefore, the Navy has discharged without a NPDES permit in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

e. The CGP requires an operator of a construction site to prepare a SWPPP. 2003 CGP at Part 3.1. The required contents of a SWPPP are set forth in Part 3 of the CGP. As of the 16 July 2008 EPA site inspection, a spot check of the SWPPP prepared by the contractor indicated that it did not meet the minimum requirements of the CGP in that, at a minimum: (1) the site map did not identify the areas of soil disturbance and areas that will not be disturbed, in violation of Part 3.3.C.2 of the CGP; (2) the site map did not identify drainage flow paths and discharge points, in violation of Parts 3.3.C.1 and 3.3.C.7 of the CGP; and (3) the SWPPP did not contain a copy of the CGP permit language, in violation of Part 3.8 of the CGP.

f. At the time of the EPA inspection, several sections of silt fence protecting drain inlets had collapsed, indicating both that: (1) sediment controls had not been maintained in effective operating condition in violation of Part 3.6.A of the CGP; and (2) discharges to the Base's separate storm sewer system and Apra Harbor had occurred in violation of Part 3.13 of the CGP and Section 301 of the CWA, 33 U.S.C. § 1311.

33. In regard to the North Tipalao Housing Revitalization Project, EPA's inspector noted the following:

a. The project was estimated to disturb approximately 27 acres, with stormwater runoff discharging to the Base's separate storm sewer system and thence to Agat Bay. Agat Bay is a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "water of the United States" as defined by EPA regulations in 40 C.F.R. § 122.2. As such this project was subject to the CGP.

b. As of the date of the inspection, the project did not have CGP coverage. The project's general contractor, Watts Construction, submitted an NOI seeking

coverage under the CGP the day after the inspection, 17 July 2008. EPA assigned tracking No. GUR10A149 to the project and granted permit coverage effective 24 July 2008. Stormwater discharges prior to that date were not authorized under the NPDES program.

c. As an operator of the Site, the Navy was also required to either submit the information required by an NOI to obtain coverage under the CGP, or apply for an individual NPDES permit before beginning construction activities at the Site. 33 U.S.C. § 1318(a); 40 C.F.R. § 122.21. To date, the Navy has failed to apply for an individual NDPES permit or properly seek coverage under the CGP. During the EPA inspection, EPA inspectors observed evidence of discharges of sediment into the Base's separate storm sewer system, which discharges to Agat Bay. Therefore, the Navy has discharged without a NPDES permit in violation of Section 301 of the Act, 33 U.S.C. § 1311.

d. The NOI submitted by the contractor on 17 July 2008 indicated Agat Bay as the nearest named receiving water, and also indicated that a SWPPP for the project had been prepared prior to filing. However, no SWPPP was available on-site at the time of the inspection, in violation of Part 3.12 of the CGP.

e. At the contractor's yard, there was evidence of fluid spillage and staining of the ground, with no clean-up having been performed, in violation of Part 3.13 of the CGP.

f. There were few or no soil stabilization BMPs employed within the project, resulting in sediment transport onto roadways and into drainage systems, in violation of Part 3.13 of the CGP.

g. Drain inlets ("DIs") and perimeter sediment controls were inadequately implemented and maintained, in violation of Part 3.13 of the CGP.

34. In regard to the Old Apra Housing Revitalization Project, EPA's inspector noted the following:

a. The project's general contractor, Black Construction, submitted an NOI seeking coverage under the CGP on 18 October 2007. EPA assigned tracking No. GUR10A090 to the project and granted permit coverage effective 25 October 2007. The NOI indicated a disturbed surface area of 62 acres and listed the Aplacho River as the nearest named receiving water. The Aplacho River is a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "water of the United States" as defined by EPA regulations in 40 C.F.R. § 122.2. As such this project was subject to the CGP.

b. As an operator of the Site, the Navy was also required to either submit the information required by an NOI to obtain coverage under the CGP, or apply for an individual NPDES permit before beginning construction activities at the Site. 33 U.S.C. § 1318(a); 40 C.F.R. § 122.21. The Navy did not properly seek coverage under the CGP until 2 October 2008. During the EPA inspection, EPA inspectors observed evidence of discharges of sediment into the Base's separate storm sewer system, which discharges to the Aplacho River. Therefore, the Navy has discharged without a NPDES permit in violation of Section 301 of the Act, 33 U.S.C. § 1311.

c. No internal controls were in evidence at the lower project perimeter of the project. Installed sediment controls were inadequate in that sediment accumulations were observed next to a drain inlet in violation of Part 3.13 of the CGP. There was also evidence of an apparent concrete slurry discharge off site and to this same drain inlet, in violation of Part 3.13 of the CGP and Section 301 of the CWA, 33 U.S.C. § 1311.

The Fena Water Treatment Plant

35. The Navy owns and operates the Fena Water Treatment Plant ("Fena WTP"). As discussed at Findings 12-15 above, the only discharges from this facility that are authorized under an NPDES Permit are the emergency filter backwash and/or clarifier overflows discharged to "Outfall 002" as authorized under the Apra Harbor WWTP permit.

36. On at least 154 occasions, from approximately June 25, 2006 through December 7, 2006, the Navy discharged up to 825,000 gallons per day of filter backwash water from the Fena WTP's Filter Backwash Settling Tank No. 1 to the ground, which subsequently flowed to a ravine and thence to the Namo River. The routine discharge of filter backwash water described herein was not authorized under the Apra Harbor WWTP permit or any other NPDES permit

Conclusion

37. Based on the foregoing, I have determined that the U.S. Navy has violated Sections 301(a) and 308(a) of the CWA, 33 U.S.C. §§ 1311(a) and 1318(a).

Alexis Strauss
Director, Water Division

24 Nov. 2008
Date