

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

FILED

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In the matter of:

PACIFIC MARINE AND INDUSTRIAL
CORPORATION

EPA I.D. No. TTR000128736

Respondent.

U.S. EPA Docket Nos.
RCRA-9-2008- 0007
SPCC-9-2008- 0006

U.S. EPA REGION IX
REGIONAL HEARING CLERK
**CONSENT AGREEMENT
AND FINAL ORDER
PURSUANT TO
40 CFR SECTIONS
22.13 AND 22.18**

CONSENT AGREEMENT

A. **PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action instituted pursuant to: Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1); Section 311(b)(6)(B)(i) of the Clean Water Act ("CWA"), as amended by the Oil Pollution Act of 1990, 33 U.S.C. § 1321(b)(6)(B)(i); and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Pacific Marine and Industrial Corporation ("PMIC").
2. Respondent operates a facility in Puerto Rico, Saipan (the "Facility"). The Facility operates a power plant to provide electricity to the local community. The Facility's EPA Identification Number is TTR000128736.
3. This Consent Agreement and Final Order pursuant to 40 CFR Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent: (1) Failed to respond fully to a request for information in violation of Section 3007 of RCRA, 42 U.S.C. § 6927; (2) Failed to properly store used oil, in violation of 40 CFR § 112.3 and 40 CFR § 279.22; (3) Failed to properly mark or label containers of used oil, in violation of 40 CFR § 279.22(c)(1); (4) Failed to respond to a release of used oil, in violation of 40 CFR § 279.22 (d); (5) Transported used oil offsite without an EPA ID number in violation of 40 CFR § 279.24; (6) Failed to maintain records of used oil analysis and transportation, in violation of 40 CFR § 279.46(b) and (d) and 40 CFR § 279.72; and (7) Failed to properly drain oil filters in accordance with the specifications of 40 CFR § 261.4(b)(13), resulting in storage,

resulting in a violation of 40 CFR § 270.1(c). These alleged violations are in violation of Section 3001 et seq., of RCRA, 42 U.S.C. §6921 et seq., and regulations adopted pursuant thereto, and/or in violation of 40 CFR Part 112, the Spill Prevention Control and Countermeasure ("SPCC") regulations promulgated under Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C). The alleged violation of the SPCC regulations is a Class I violation under 33 USC § 1321(b)(6)(B)(1).

B. JURISDICTION

4. Respondent is a "person" as defined in 40 CFR §§ 260.10 and 112.2.
5. Respondent is the "operator" of a facility as defined in 40 CFR §§ 260.10 and 112.2.
6. Respondent is a "used oil generator" as defined in 40 CFR § 279.10.
7. Respondent is a "small quantity generator" of hazardous wastes as defined in 40 CFR § 260.10.
8. Pursuant to RCRA Section 1004(15), 42 U.S.C. § 6903(15), the term "person" as used in RCRA includes a "State." The term "State" as defined in RCRA Section 1004(31), 42 U.S.C. § 6903(31), includes the Commonwealth of the Northern Mariana Islands ("CNMI"). EPA administers the Federal RCRA program in "States" that have not received authorization to administer the program pursuant to RCRA Section 3006, 42 U.S.C. § 6926. CNMI has not received authorization to administer the Federal RCRA program and, as a result, EPA administers the Federal RCRA program in CNMI.
9. The Facility is located on the island of Saipan in CNMI, near a drainage pathway which flows into the Pacific Ocean. The Pacific Ocean is a navigable water, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 CFR § 110.1, and is within the jurisdiction of Section 311 of the CWA, 33 U.S.C. § 1321.
10. Various petroleum materials are generated and stored at the Facility in the course of its operations, including various waste oils. Each of the petroleum materials is an "oil" as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).
11. The Facility is an "onshore facility" as defined at 33 U.S.C. § 1321(a)(10).
12. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.
13. On March 4-5, 2004, an EPA inspector, accompanied by CNMI Department of Environmental Quality ("DEQ") personnel, conducted a RCRA compliance evaluation inspection ("CEI") at the Facility.
14. Based upon the findings made during the CEI, and additional information obtained

subsequent to the CEI, EPA determined that Respondent has violated Subtitle C of RCRA and the SPCC regulations, and therefore is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928, and Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

15. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA et seq., 42 U.S.C. § 6921, et seq. Section 311 of the CWA, 33 U.S.C. § 1321, authorizes the EPA Administrator to assess a penalty against an operator of a facility violating the SPCC regulations.
16. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division. The Administrator has delegated the authority under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), to the Regional Administrator of EPA Region IX, who has redelegated these authorities to the Director of the Superfund Division, through Regional Delegation R9-1250.09 (September 30, 1997).

C. ALLEGED VIOLATIONS

Count I

Failure to Respond Fully to a Request for Information under RCRA 3007

17. Paragraphs 1 through 16 above are incorporated herein by this reference as if they were set forth here in their entirety.
18. RCRA Section 3007(a), 42 U.S.C. § 6927(a), provides that EPA may require any person who generates hazardous wastes to furnish information relating to such wastes. On or about May 5, 2004, EPA sent a Request for Information ("RFI") to Respondent, requesting, among other things, sampling results for fifty-seven 55-gallon containers of used oil present at the Facility during the CEI.
19. On or about May 21, 2004, Respondent sent a partial response to EPA that included testing results from only two composite samples, did not provide sampling results for the containers as requested, and did not fully comply with the RFI in other respects.
20. Therefore, EPA alleges that Respondent failed to comply with RCRA Section 3007(a).

Count II

Failure to Properly Store Used Oil

21. Paragraphs 1 through 20 above are incorporated herein by this reference as if they were set forth here in their entirety.

22. The SPCC regulations at 40 C.F.R. Part 112, establish certain procedures, methods and requirements applicable to the operator of regulated facilities for proper handling of used oil. These requirements include providing an SPCC plan that is certified by a professional engineer (§ 112.3(d)) and providing adequate secondary containment for used oil (§ 112.7(c)).
23. 40 CFR § 279.22(b) provides that containers used to store use oil at generator facilities must be in good condition and not leaking.
24. During the CEI, the EPA inspector observed that secondary containment for used oil was inadequate; that many containers were outside of the secondary containment area; and that at least forty containers holding used oil were severely corroded and leaking.
25. Information provided by Respondent in 2004 following the CEI revealed that, at the time, the Facility's SPCC plan was not certified by a professional engineer.
26. Therefore, EPA alleges that Respondent failed to properly store used oil in violation of 40 CFR §§ 112 and 279.22.

Count III

Failure to Properly Label Containers of Used Oil

27. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.
28. 40 CFR § 279.22(c)(1) provides that containers used to store used oil at generator facilities must be labeled or marked clearly with the words "used oil."
29. During the CEI, the EPA inspector observed more than five hundred fifty five-five gallon drums that contained used oil that were not marked with the words "used oil."
30. Therefore, EPA alleges that Respondent failed to label containers of used oil in violation of 40 C.F.R. §§ 279.22(c)(1).

Count IV

Failure to Respond to a Release of Used Oil

31. Paragraphs 1 through 30 above are incorporated herein by this reference as if they were set forth here in their entirety.
32. 40 CFR § 279.22 (d) provides that, upon detection of a release of used oil, a generator must take steps to stop the release, contain and clean up the oil, and repair or replace leaking used oil containers.
33. During the CEI, EPA inspectors observed the following: thirty-four 55 gallon containers

within the Used Oil Storage Area that were severely corroded and deteriorated, and were visibly releasing their contents; approximately fifty to seventy-five gallons of used oil in this area that had been released from containers, draining rags, or both; used oil partially drained into the discharge valve sump of the containment area; and patches of spilled used oil on soil surrounding the storage area. Respondent had not taken any steps to contain the leaked oil, to clean the released used oil, or to repair or replace the leaking containers.

34. Therefore, EPA alleges that Respondent failed to respond to a release of used oil in violation of 40 CFR § 279.22(d).

Count V

Transporting Used Oil Offsite Without an EPA Identification Number

35. Paragraphs 1 through 34 above are incorporated herein by this reference as if they were set forth here in their entirety.
36. 40 CFR § 279.24 provides that a generator must ensure that its used oil is transported only by transporters who have obtained EPA identification numbers. Under § 279.24(a)(2), a generator may self-transport quantities of 55 gallons or less without an identification number.
37. During the CEI, and based on records provided by Respondent, EPA determined that Respondent had self-transported nineteen fifty-five gallon drums of used oil at one time to an offsite facility, without first obtaining an EPA identification number.
38. Therefore, EPA alleges that Respondent transported used oil offsite without an EPA identification number, in violation of 40 CFR § 279.24.

Count VI

Failure to Maintain Records of Used Oil Analysis and Transportation

39. Paragraphs 1 through 38 above are incorporated herein by this reference as if they were set forth here in their entirety.
40. 40 CFR § 279.40 defines “used oil transporters” to include persons who transport used oil. 40 CFR § 279.46(b) provides that used oil transporters must keep a record of each shipment of used oil, which record must include, among other things, the name and address of the receiving facility, the quantity of used oil delivered, and the date of delivery. 40 CFR § 279.46(d) provides that the generator must maintain these records for at least three years.
41. 40 CFR § 279.72 provides that a generator who claims that used oil meets the specifications to be burned for energy recovery must keep copies of analyses of the used oil or other information used to make the determination for three years.

42. During the CEI, and based on records provided by Respondent, EPA determined that within the three years preceding the CEI, Respondent had transported used oil to an offsite facility for the purpose of burning for energy recovery, and did not have records of the shipments, nor records showing analysis of the used oil, nor other information used to make a determination that the used oil met the specifications for energy recovery.
43. Therefore, EPA alleges that Respondent failed to maintain records of used oil analysis and transportation, in violation of 40 CFR §§ 279.46(b) and (d) and 279.72.

Count VII
Failure to Properly Drain Oil Filters

44. Paragraphs 1 through 43 above are incorporated herein by this reference as if they were set forth here in their entirety.
45. 40 CFR § 270.1(c) requires that each person owning or operating a facility where hazardous waste is transferred, treated, stored, or disposed must have a permit. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste under 40 CFR § 270.1(c).
46. 40 CFR § 262.34(d) provides that a small quantity generator of hazardous waste may accumulate hazardous waste onsite for 180 days or less without a permit or grant of interim status, provided the generator complies with the requirements which are set forth or incorporated by reference in 40 CFR § 262.34(d). A small quantity generator's failure to comply with these requirements subjects it to the permitting requirements of 40 C.F.R. § 270.1.
47. 40 CFR § 262.34(a) requires generators who accumulate hazardous waste onsite without a permit or grant of interim status to label containers with the words "hazardous waste" and with the date accumulation of the waste begins, and the label must be visible for inspection. A small quantity generator who fails to label containers of hazardous waste accordingly fails to meet the requirements of 40 CFR § 262.34(d), and is subject to the permitting requirements of 40 CFR § 270.1.
48. 40 CFR § 261.4(b)(13) provides that non-terne plated used oil filters are not hazardous wastes if they are gravity hot-drained.
49. During the CEI, EPA inspectors observed non-terne plated used oil filters that had not been gravity hot-drained. The filters were stored in fifty-five gallon drums that were not marked with the words "hazardous waste" nor with the date accumulation of the waste began.
50. The Respondent did not meet the requirements for on-site accumulation without a permit provided in 40 CFR § 262.34(d) because the oil filters had not been gravity hot-drained

and therefore were hazardous waste, and this hazardous waste was stored in containers that were not properly labeled.

51. Therefore, EPA alleges that Respondent failed to properly drain used oil filters in accordance with the specifications of 40 CFR § 261.4(b)(13), resulting in a violation of 40 CFR § 270.1(c).

D. CIVIL PENALTY

52. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, (see 61 Fed. Reg. 69360 (Dec. 31, 1996)), authorizes a civil penalty of up to TWENTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$27,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq. occurring on or after January 31, 1997 but before March 16, 2004, and a penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq., occurring after March 15, 2004. Based upon the facts alleged herein and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the June 2003 RCRA Civil Penalty Policy, and the EPA Supplemental Environmental Project Policy ("SEP Policy"), the Complainant proposes that the Respondent be assessed and Respondent agrees to pay, **Twenty Thousand Dollars (\$20,000.00)** as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with the June 2003 RCRA Civil Penalty Policy, as adjusted by the Debt Collection Improvement Act, and the SEP Policy.

E. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

53. As part of the settlement of this enforcement action, Respondent shall perform four SEPs. Performance of the tasks set forth in this Section shall constitute satisfactory performance of the SEPs.
54. Respondent shall implement tasks related to used oil management, as listed below and as further detailed in the Scope of Work, Attachment A to this CA/FO:

SEP Task 1: Conduct a used oil collection event, including collection, transportation, and processing of approximately 7,000 gallons of used oil from residential sources, including oil already collected and currently stored at DPW Lower Base Transfer Station, at a cost of approximately \$27,325;

SEP Task 2: Purchase low cost, low- or no-maintenance pollution prevention equipment for facilities using oil and generating used oil, and provide training to local inspectors from CNMI DEQ, at a cost of approximately \$14,400;

SEP Task 3: Conduct pollution prevention evaluations in the hospitality industry with a focus on used oil and other hazardous materials and wastes, at a cost of approximately \$20,925; and

SEP Task 4: Prepare and conduct a pollution prevention training workshop for general managers and physical plant workers in the hospitality industry, at a cost of approximately \$6,100.

55. Respondent shall expend at least **Sixty-Eight Thousand Seven Hundred Fifty Dollars (\$68,750.00)** on the SEPs.
56. Respondent shall complete all SEP activities within six (6) months of the Effective Date of this CA/FO.
57. Within eight (8) months after the Effective Date of this CA/FO, Respondent shall certify to EPA in writing that it has completed all SEP activities. At the same time, Respondent shall provide EPA an accounting showing the amount Respondent expended for the implementation of the SEPs, and submit to EPA substantiating documentation, including but not limited to invoices, purchase orders, checks or receipts. The signatory for Respondent shall certify under penalty of law that this certification is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.
58. In the event that Respondent publicizes the SEPs, Respondent shall state in a prominent manner that the project is part of a settlement of an enforcement action by EPA.
59. Respondent certifies that it will neither deduct nor capitalize SEP costs for federal income tax purposes.
60. In signing this CA/FO, Respondent hereby certifies that it is not required by any federal, state or local law or regulation to perform or develop the SEPs described above; nor is Respondent required by agreement, grant or as injunctive relief in this or any other case (other than in this CA/FO) to perform or develop these SEPs. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for these SEPs; nor will Respondent realize any profit, credit or tax deduction attributable to or associated with these SEPs.

F. ADMISSIONS AND WAIVERS

61. Respondent admits and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and Section 311 of the CWA, 33 U.S.C. § 1321, and 40 CFR §§ 22.4 and 22.37. Further, for the purposes of this proceeding, Respondent admits to the jurisdictional allegations of facts and law set forth in Section B of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either

administrative or judicial, or to impose sanctions for violations of this CA/FO.

62. Neither this CA/FO, nor Respondent's execution of this CA/FO, nor any actions taken by Respondent in accordance with this CA/FO constitute an admission or a denial of any allegations of fact or law set forth in Paragraph 14 or Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), or Section 311(b) of the CWA, 33 U.S.C. § 1321(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

63. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section D has been paid and either (1) the SEPs required under Section E have been fully completed, or (2) in the event of failure to complete the SEPs in full, satisfactory good-faith compliance pursuant to Paragraph 73 has been made, or stipulated penalties in accordance with Paragraphs 72 or 74 of this CA/FO have been paid, for each SEP not completed. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
64. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
65. Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer until the termination of this CA/FO.
66. The undersigned representative of Respondent hereby certifies s/he is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

H. PAYMENT OF CIVIL PENALTY

67. Respondent consents to the assessment of and agrees to pay a civil penalty of **Twenty Thousand Dollars (\$20,000.00)** in full settlement of the civil penalty claims made in the CA/FO.
68. Respondent shall submit payment of the **Twenty Thousand Dollars (\$20,000.00)** civil penalty within thirty (30) calendar days of receipt of EPA's written demand for such payment, which EPA shall provide within five (5) business days after the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by

the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. Payment shall be made in accordance with instructions which EPA will provide in its written demand.

At the time payment is so made, a copy of the check shall be sent to:

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Daniel Fernandez (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

69. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received within thirty (30) calendar days of the Effective Date of this CA/FO to avoid additional charges. If payment is not received within thirty (30) calendar days, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 CFR §13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

70. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of each activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.
71. For failure to submit a payment to EPA by the time required in this CA/FO: up to **Five Hundred Dollars (\$500)** per day for first to fifteenth day of delay, up to **One Thousand Dollars (\$1,000)** per day for sixteenth to thirtieth day of delay, and up to **One Thousand Five Hundred Dollars (\$1,500)** per day for each day of delay thereafter.

72. Except as provided in Paragraph 73 immediately below, in the event that Respondent fails to perform any of the SEP Tasks in accordance with the terms of this CA/FO, Respondent shall pay a stipulated penalty in the following amounts:
- a. For a noncompliance relating to SEP Task 1: Thirty Thousand Dollars (\$30,000.00).
 - b. For a noncompliance relating to SEP Task 2: Fifteen Thousand Dollars (\$15,000.00).
 - c. For a noncompliance relating to SEP Task 3: Twenty-Two Thousand Dollars (\$22,000.00).
 - d. For a noncompliance relating to SEP Task 4: Seven Thousand Five Hundred Dollars (\$7,500.00).
73. If Respondent fails to perform any of the SEP Tasks in accordance with the terms of this CA/FO, but Respondent (a) has made good faith and timely efforts to complete that Task; and (b) certifies, with supporting documentation, that at least the amount shown below was expended on trying to complete the specified Task, no stipulated penalty will apply for failure to complete that SEP Task:
- a. For SEP Task 1: Twenty-four Thousand Five Hundred Ninety-Two Dollars and Fifty Cents (\$24,592.50).
 - b. For SEP Task 2: Twelve Thousand Nine Hundred Sixty Dollars (\$12,960.00).
 - c. For SEP Task 3: Eighteen Thousand Eight Hundred Thirty-Two Dollars and Fifty Cents (\$18,832.50).
 - d. For SEP Task 4: Five Thousand Four Hundred Ninety Dollars (\$5,490).
74. If Respondent satisfactorily performs the SEP Tasks otherwise in accordance with the terms of this CA/FO, but Respondent spent less than the amount specified in the preceding Paragraph for any one or more SEP Tasks, then for each such Task, Respondent shall pay a stipulated penalty in the following amounts:
- a. For SEP Task 1: Four Thousand Three Hundred Seventy-Two Dollars (\$4,372.00).
 - b. For SEP Task 2: Two Thousand Five Hundred Ninety-Two Dollars (\$2,592.00).
 - c. For SEP Task 3: Three Thousand Seven Hundred Sixty-Six Dollars and Fifty Cents (\$3,766.50).
 - d. For SEP Task 4: One Thousand Ninety-Eight Dollars (\$1,098.00).
75. If Respondent spends at least the amounts shown in Paragraph 73 for all SEP Tasks and satisfactorily completes all SEP Tasks otherwise in accordance with the terms of this CA/FO, no stipulated penalty will apply for the SEPs.
76. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the SEP activities required by this CA/FO, are within the sole

discretion of the Division Director, Waste Management Division, EPA Region IX.

77. All stipulated penalties shall begin to accrue on the date that performance is due or a violation occurs. Stipulated penalties under Paragraph 71 shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations.
78. All stipulated penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 CFR § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
79. Payment shall be made by check payable to U.S. Environmental Protection Agency, as described above in Paragraph 68. At the time payment is made, a copy of the check shall be sent to Danielle Carr and Daniel Fernandez as described above in Paragraph 68.
80. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action.
81. The payment of stipulated penalties under Paragraph 71 shall not alter in any way Respondent's obligation to complete the performance required hereunder.
82. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

J. RESERVATION OF RIGHTS

83. Other than Respondent's liability for civil penalties and SEP activities (as provided herein) for the alleged violations of RCRA and the CWA which are the subject matter of this CA/FO, which liability is resolved under this CA/FO, EPA hereby reserves (i) all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, and (ii) all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), and under Section 311(b)(6) of the CWA, 33 U.S.C. § 311(b)(6). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA or the CWA, except as to those alleged violations which are the subject matter of this CA/FO, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.

84. Respondent reserves all rights that it may have against any other person under all federal, state and local laws.
85. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA, the CWA, or any other applicable local, State or federal laws and regulations.
86. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
87. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

K. OTHER CLAIMS

88. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

L. MISCELLANEOUS

89. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
90. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
91. The Effective Date of this CA/FO is the date the Final Order, signed by the EPA Regional Judicial Officer, is filed with the Regional Hearing Clerk.

M. NOTICE

92. Any notices or other correspondence relating to this CA/FO shall be delivered in writing to the attention of Respondent at the following addresses:

Michael Kunz
Assistant General Counsel

Pacific Marine and Industrial Corporation
Box 10001, AAA-805
Saipan, MP 96950
Tel: 670-322-6181
Fax: 670-322-6180
michael.kunz@rrpv.com

Scott N. Castro
Jeffer, Mangels, Butler & Marmaro, LLP
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111
Tel: 415-398-8080
Fax: 415-398-5584
scaastro@jmbm.com

93. Any notices or other correspondence relating to this CA/FO, except notices of payments provided under paragraph 68, shall be delivered in writing to the attention of EPA at the following addresses:


Daniel Fernandez (WST-3)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105
Tel: 415-972-3299
Fax: 415-947-3530
Fernandez.Daniel@EPA.gov

Harrison Karr (ORC-3)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105
Tel: 415-972-3939
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Karr.Harrison@EPA.gov

IT IS SO AGREED.

November 20, 2007

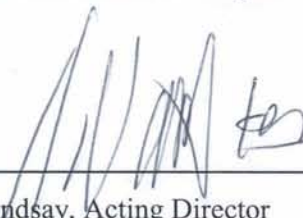
Date



Michael Kunz
Assistant General Counsel
Pacific Marine Industrial Corporation

3/17/08


Date



Nancy Lindsay, Acting Director
Waste Management Division
United States Environmental Protection Agency,
Region IX

3/17/08

Date



for Keith Takata, Director
Superfund Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ("CA/FO") (U.S. EPA Docket Nos. RCRA-09-2008-07 and SPCC-09-2008-) be entered and that Respondent complete the Supplemental Environmental Projects and all other tasks required under this CA/FO (including, if applicable, the payment of the additional civil penalty which may become due under Section I of this CA/FO), and pay a civil penalty of **Twenty Thousand Dollars (\$20,000.00)** as provided in Paragraph 68, within thirty (30) days after the Effective Date of this Consent Agreement and Final Order. A copy of the check shall be sent to the EPA Region IX address specified in Section H of this Consent Agreement and Final Order within such 30-day period.

This Final Order shall be effective upon filing with the Regional Hearing Clerk.

03/18/08

Date

A handwritten signature in blue ink, appearing to read "Steven Jawgiel", is written over a horizontal line.

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

Attachment A

Supplemental Environmental Projects

1.0 Introduction

PMIC will perform these Supplemental Environmental Projects ("SEPs") as part of its consent agreement with U.S. EPA regarding the PMIC facility in Puerto Rico, Saipan. The SEP scope of work ("SOW") includes a statement of the overarching SEP Objectives, a description of each SEP Task, and a cost and target completion dates for each task. Schedules in Section 4.0 are targets provided for planning purposes only, and are not deadlines. For items listed below that request EPA response within a designated time, if EPA's response is not forthcoming in the time stated, the CA/FO's date for completion of the applicable SEP Task shall be extended by the number of days by which EPA's response exceeded the time stated herein.

2.0 SEP Objectives

The subject of PMIC's violation was the proper management of used oil and as such, the SEPs should assist in improving used oil management. Specifically, the SEP Objectives are:

- Have a primary focus of used oil management including storage and spill prevention at commercial facilities and secondarily on other waste and environmental issues at the same facilities.
- Reflect EPA's pollution prevention hierarchy: (a) source reduction, (b) reuse, (c) recycle, (d) treatment, and (e) disposal.
- Combine various forms of assistance to provide the most effective combination of training, audits, equipment and implementation assistance to each targeted audience.
- Reflect a prioritized approach to the targeted activities and audiences that considers both environmental impact and regulatory importance.
- Include documentation of the quantitative and qualitative environmental benefits to Saipan.

3.0 SEP Components

The following four tasks comprise the SEPs and reflect the objectives described above:

3.1 Task 1 - Conduct Used Oil Collection Event:

- Meet with EPA staff to request concurrence on the proposed targets for used oil pickup (see below). EPA will be asked to provide input within thirty (30) days of the Effective Date of the CA/FO. CNMI DEQ will be asked to participate.
- Work with EPA and CNMI DEQ to promote and run a used oil collection event including: press release, press event/Rotary Club presentation. CNMI DEQ will be asked to promote the used oil collection event and to (i) issue a press release 7-10 days prior to the event; (ii) provide notice on its website 7-10 days prior to the event; and (iii) conduct active promotion of the event by its inspectors and staff.
- Work with used oil recycling facility to plan and conduct used oil collection.
- Contract with used oil recycling contractor to collect, transport and process used oil collected. Based on the task budget and preliminary quotes provided

by used oil recyclers, approximately 130 55-gallon drums (7,000+ gallons) of used oil could be collected and processed. Bids from firms will determine actual amounts. Collections may include:

- Used oil already collected since January 2004 from residential sources and currently stored at DPW Lower Base Transfer Station including:
 - Approximately 3,000 gallons of used oil stored in 55 55-gallon drums
 - Approximately 1,500 gallons of mixed fluids including used oil, paint, and other vehicle fluids.
- Used oil collected from new collection event.
- Used oil collected from other facilities and other locations, with EPA approval.
- Prepare a memorandum to EPA and CNMI DEQ summarizing the event including used oil collected, lessons learned, and estimated costs for future used oil collection events.

Deliverables:

- Used oil collection event
- Event Summary Memorandum

3.2 Task 2 - Purchase P2 Equipment for Used Oil Management and Spill Prevention:

- Purchase low cost, low- or no-maintenance P2 equipment for facilities using oil and generating used oil; examples include:
 - oil filter drainers (sit atop a 55-gallon drum and allow for more complete draining of oil filters and safe and efficient collection of drained oil)
 - absorbent materials and drain covers that capture spills and contaminants that would otherwise flow to storm drains and the environment
 - other equipment substituted with EPA approval
- Conduct training session for local inspectors from CNMI DEQ on the proper use and implementation of P2 equipment.
- Conduct marketing effort in concert with CNMI DEQ including: press release, press event/Rotary Club presentation.
- Develop and provide a simple flyer, poster, or sticker to accompany the P2 equipment and identify proper use.

Deliverables:

- Planning/Promotion (including instructional material)
- Prepare and Deliver Training Session for DEQ Inspectors
- Purchase P2 Equipment for at least 25 facilities
- Flyer/Poster/Sticker for P2 Equipment (100 copies and the electronic file)

3.3 Task 3 - Hospitality Industry Pollution Prevention (P2) Evaluations:

- Develop Hotel P2 Checklist using existing green lodging materials; the materials will be adapted for Saipan-specific issues and conditions. The Hotel P2 Checklist will be divided into two sections: (1) the first section will

address used oil, fuel, and hazardous material management issues; and (2) the second section will address other environmental best practices such as “green” cleaning product use, water and energy efficiency, and related issues. The checklist will be configured as a “scorecard” that can be used by general managers for self-audits.

- Conduct P2 Evaluations at 4 hotels in Saipan with a focus on oil and fuels management, used oil, hazardous materials and waste, in accordance with Section 1 of the P2 Checklist. Other waste/environmental issues addressed by the checklist may also be evaluated, time permitting. U.S. EPA will be asked to provide initial contacts within thirty days of the Effective Date of the CA/FO. CNMI DEQ also will be asked to provide contacts.
- Provide 4 hotels with a written “P2 Report Card” and pertinent supporting factsheets summarizing the findings of the P2 evaluations, common problems and solutions, issues surrounding used oil and other wastes and recommendations.

Deliverables:

- P2 Checklist (3-5 pages) for Saipan Hospitality Sector
- P2 Report Card for four hospitality facilities consisting of a two-page summary letter outlining recommendations and opportunities, the P2 Checklist completed for the facility, and supporting documentation including calculations, vendor information, and pictures. (The P2 Report Cards will be delivered to hotels, and with permission, also will be provided to CNMI DEQ inspectors after the project for further follow-up and implementation.)

3.4 Task 4 - Hospitality P2 Work Group:

- Prepare training materials and conduct a P2 training workshop for general managers and physical plant workers. The training will:
 - Focus on hazardous materials and hazardous waste management, especially used oil issues associated with industrial machinery including emergency generators and boilers.
 - Be based on the findings and common challenges observed during P2 audits.
 - Be supplemented by a “field trip” to a participating attendee's facility to support discussion (assuming a facility volunteers to host the field trip).

Deliverables:

- P2 Training Workshop: ½-day workshop open to all hotel/hospitality properties.

4.0 Cost and Schedule

The following summarizes the SEP deliverables, costs, and target dates for completion. Costs include all labor, equipment, travel, subcontractors, and other costs to complete the SEPs.

Task	Deliverable	Days After Consent Agreement	Cost [\$]
01	Used Oil Collection Event		
	• Planning/Promotion	45	
	• Used Oil Collection	75	
	• Subcontract Collection Disposal	75	
	• Summary/Recommendation	100	
	Total		27,325
02	Used Oil Management and Spill Prevention		
	• Research/Planning/Promotion	45	
	• Prepare/Deliver Training for CNMI DEQ	75	
	• Purchase P2 Equipment	75	
	Total		14,400
03	Hospitality Industry P2 Evaluations		
	• P2 Checklist for Saipan Hospitality Sector	75	
	• Planning/Preparation/BMP	75	
	• P2 Evaluations at Four Hotels	75	
	• P2 Report Cards for Four Hotels	100	
	Total		20,925
04	Hospitality P2 Work Group		
	• Prepare Workshop	75	
	• Deliver Hotel Workshop	75	
	Total		6,100
			\$ 68,750

CWA § 311(j) PENALTY PROPOSAL WORKSHEET

Pacific Marine and Industrial Corporation (PMIC), Power Plant #4
Revision 3 Penalty Calculation - June 28, 2005

A. PRELIMINARY GRAVITY CALCULATION

STEP 1 (Seriousness)

a. Storage capacity: 120,430 gal; Noncompliance category: Moderate = \$10,500

Major violations include the following:

40 CFR § 112.3(d) - Failure to have a PE-certified SPCC Plan

40 CFR § 112.3(a) - Failure to implement SPCC Plan (i.e., adequate secondary containment for 4 ASTs and 476 55-gal drums)

b. Environmental impact category: Major (+ 25 %) \$2,625 = \$13,125

The site is located near a drainage pathway to the ocean. It is assumed that a release would threaten or have a significant impact on navigable waters (potentially a drinking water supply), a sensitive island ecosystem, or wildlife (especially sensitive species).

c. Duration of the violation (months): 22 months (+ 11 %) \$1,444 = \$14,569

According to the June 2004 certified SPCC plan, the facility began operations during May 2002. The duration of non-compliance is calculated from May 2002 to the date of the RCRA inspection, March 2004.

STEP 2 (Culpability) (+ 25 %) \$3,643 = \$18,212

Culpability is high since the SPCC plan provides recommendations in section 4.f of the facility's uncertified plan that would correct five of the six above violations. Therefore, the facility has demonstrated that it is aware of the SPCC regulations and what is needed for facility compliance.

STEP 3 (Mitigation) (- %) = N/A

STEP 4 (History of SPCC violations) (+ %) = N/A

B. ADJUSTMENTS TO GRAVITY

Other penalty/same incident \$ (-\$) = N/A

C. ECONOMIC BENEFIT (+\$ 1,141) = \$19,353

Economic benefit includes the following:

1. Inadequate secondary containment for 4 ASTs and drums (capital investment of \$5,000)
2. No PE-certified SPCC Plan (one-time expenditure of \$5,000)

D. ADJUSTMENT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT

Negligence considerations = N/A

PROPOSED SPCC BOTTOMLINE PENALTY = \$ 19,353

Calculated by sngreiner 6/29/05

Typo in final penalty number corrected by HKarr

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Philip Hornibrook
General Manager
Pacific Marine & Industrial Corporation (PMIC)
P.O. Box 10001, PMB 805
Puerto Rico, Saipan, MP 96950

Michael Kunz
Assistant General Counsel
Pacific Marine and Industrial Corporation
Box 10001, AAA-805
Saipan, MP 96950

Scott N. Castro
Jeffer, Mangels, Butler & Marmaro, LLP
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111

3-18-08

Date

Danielle E. Carr

Danielle Carr
Regional Hearing Clerk
Office of Regional Counsel, Region IX