UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. _____
v.	)	
	)	
STARKIST CO. and STARKIST SAMOA, CO.,	)	
	)	
Defendants.	)	
	)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, and at the request of Administrator of the United States Environmental Protection Agency ("EPA"), through the undersigned attorneys, files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil environmental enforcement action brought under Sections 309(b) and (d), and 311(b)(7)(C) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(b) and (d), 1321(b)(7)(C); Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(b); Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c); and Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), by the United States alleging that StarKist Co. and Starkist Samoa, Co. (collectively "Starkist" or "Defendants") have violated the CWA, CAA, EPCRA, RCRA, and the regulations promulgated thereunder, and continue to violate the CWA and CAA, at Starkist's tuna processing facility located in the village of Atu'u in American Samoa.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and Defendants, pursuant to Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4); Sections 3008(a)(1) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(1) and (g); and 28 U.S.C. §§ 1331, 1345, and 1367.

3. This Court has personal jurisdiction over Defendant StarKist Co. under 42 Pa. Consol. Stat. Ann. § 5322, because it transacts business in Pennsylvania. In addition, this Court's exercise of jurisdiction over Defendant StarKist Co. is consistent with due process.

4. This Court has personal jurisdiction over Defendant Starkist Samoa Co. under 42 Pa. Consol. Stat. Ann. § 5322, because it transacts business in Pennsylvania. In addition, this Court's exercise of jurisdiction over Defendant Starkist Samoa Co. is consistent with due process.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b); Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), because Defendant StarKist Co. is located and has its principal place of business in this judicial district.

AUTHORITY AND NOTICE

6. Authority to bring this action is vested in the Attorney General of the United States pursuant to Section 506 of the CWA, 33 U.S.C. § 1366; Sections 113(b) and 305 of the CAA, 42 U.S.C. §§ 7413(b) and 7605; Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and 28 U.S.C. §§ 516 and 519.

7. Notice of the commencement of this action has been given to the United States territory of American Samoa pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

DEFENDANTS

8. Defendant StarKist Co. is a Delaware corporation, with corporate headquarters and its principal place of business located in Pittsburgh, Pennsylvania.

9. Defendant Starkist Samoa, Co. is a Delaware corporation with its principal place of business located in Pago Pago, American Samoa. Defendant Starkist Samoa, Co. is a wholly-owned subsidiary of Defendant StarKist Co.

10. On October 6, 2008, Defendant Starkist Samoa, Co. merged with Starkist Samoa, Inc., a California corporation. Defendant Starkist Samoa, Co. was the surviving corporation, and under the terms of the merger agreement, assumed all the rights, assets, liabilities and commitments of Starkist Samoa, Inc., including environmental permits.

11. Each Defendant is a "person" within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. § 1321(a)(7) and 1362(5); Section 302(e) of the CAA, 42 U.S.C. 7602(e); Section 329(7) of EPCRA, 42 U.S.C. § 11049(7); and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

12. At all times relevant to this Complaint, Defendant Starkist Samoa, Co. has owned and operated a tuna processing and canning facility in the village of Atu'u on Tutuila Island, American Samoa (the "Facility").

13. At all times relevant to this Complaint, Defendant StarKist Co. managed, directed, and controlled environmental compliance at the Facility. This included controlling expenditures to address environmental issues, managing environmental consultants used at the

Facility, and directing compliance actions taken to address a pipeline rupture in 2014, including communications with environmental regulators.

14. At all times relevant to this Complaint, Defendant StarKist Co. has operated the Facility.

STATUTORY AND REGULATORY BACKGROUND

I. CLEAN WATER ACT (CWA)

15. Congress enacted the CWA to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

16. In order to achieve its objective, the CWA includes, among others, the following provisions: 1) the National Pollutant Discharge Elimination System ("NPDES"), which allows pollutants to be discharged to navigable waters only in accordance with a permit, 33 U.S.C. § 1342; and 2) the Spill Prevention Control and Countermeasures Regulations ("SPCC Regulations"), which require certain facilities to prepare and implement plans to prevent spills of oil and hazardous substances, 33 U.S.C. § 1321(j).

A. National Pollutant Discharge Elimination System ("NPDES")

17. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" to waters of the United States, except, among other things, in compliance with a NPDES permit issued by EPA or an authorized state pursuant to Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

18. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include an "individual, corporation, partnership, [or] association."

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

20. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, among others, chemical wastes, biological materials, and industrial, municipal, and agricultural waste.

21. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" as "any discernible, confined and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure . . . from which pollutants are or may be discharged."

22. 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" has been further defined to include, among other things, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce (hereinafter "traditional navigable waters"); interstate waters; and tributaries of such waters. 40 C.F.R. § 122.2. Section 502(3) of the CWA defines the term "State" to include the United States territory of American Samoa. 33 U.S.C. § 1362(3).

23. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the permit-issuing authority may issue an NPDES permit that authorizes the discharge of any pollutant into navigable waters of the United States, upon the condition that such discharge meets all applicable requirements of the CWA and such other conditions as the permitting authority determines necessary to carry out the provisions of the CWA.

24. EPA has not authorized the territory of American Samoa to issue NPDES permits and therefore EPA Region 9 is the permit-issuing agency for American Samoa.

25. Section 402(a)(2) of the CWA directs the Administrator to prescribe conditions and limitations, including effluent limitations, for NPDES permits to ensure compliance with the

requirements of the CWA. 33 U.S.C. § 1342(a)(2); *see also* 33 U.S.C. § 1311. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents that are discharged from point sources into navigable waters.

26. In 1974 and 1975, EPA set effluent limitation guidelines ("ELGs") for discharges from seafood processing facilities, including a subcategory specifically for tuna processing facilities. *See* 40 C.F.R. Part 408, Subpart N, 39 Fed Reg. 23,134 (June 26, 1974), 40 Fed. Reg. 6432 (Feb. 11, 1975). ELGs are used as a basis for some of the numeric effluent limits in Starkist's Permit. The water quality standards for Pago Pago Harbor provide another basis for effluent limits in Starkist's Permit.

27. Pursuant to 40 C.F.R. § 122.46(a), NPDES permits are effective for a fixed term, which cannot exceed five years from the effective date of the permit. NPDES permits can be renewed by application in accordance with the requirements of 40 C.F.R. § 122.21.

28. Coverage under an expired permit will be administratively continued if the permittee timely applies for renewal and the agency has not made a decision by the expiration date. 40 C.F.R. § 122.6(a).

B. Spill Prevention, Control and Countermeasure ("SPCC") Regulations

29. Congress has directed the President to issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges." 33 U.S.C. § 1321(j)(1)(C). The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by

Executive Order 12,777. 56 Fed. Reg. 54,737, 54,760 (Oct. 18, 1991), superseding Exec. Order No. 11,735, 38 Fed. Reg. 21,243 (Aug. 3, 1973).

30. EPA initially promulgated regulations for preventing discharges of oil from non-transportation-related onshore facilities in 1973. 38 Fed. Reg. 34,164 (Dec. 11, 1973). Those regulations, known as the SPCC Regulations, are codified in 40 C.F.R. Part 112, Subparts A through C.

31. The SPCC Regulations apply to owners and/or operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, transferring, distributing, or consuming oil and oil products, which, due to their location, could reasonably be expected to discharge oil in quantities that may be harmful to the public health or welfare or the environment, as described by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or their adjoining shorelines, or that may affect natural resources belonging to, or under the exclusive management authority of the United States, and have an above ground oil storage capacity of more than 1,320 U.S. gallons. 40 C.F.R. § 112.1(b).

32. The SPCC Regulations require the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan ("SPCC Plan") in accordance with the requirements of 40 C.F.R. § 112.7 and any other applicable provision. 40 C.F.R. § 112.3.

33. 40 C.F.R. § 112.7(c) requires the owner or operator of a subject facility to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as defined in 40 C.F.R. § 112.1(b), and further requires that the entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any

discharge from a primary containment system, such as a tank, will not escape the secondary containment system before cleanup occurs.

34. 40 C.F.R. § 112.7(e) requires the owner or operator of a subject facility to conduct inspections and tests required by 40 C.F.R. Part 112 in accordance with written procedures developed for the facility and to keep the written procedures, inspection records, and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan on-site for a period of three years.

35. Appendix A to 40 C.F.R. Part 112, Memorandum of Understanding between the Secretary of Transportation and the Administrator of EPA, defines "non-transportation-related" facility to include: oil storage facilities including all equipment and appurtenances related thereto; industrial, commercial agricultural or public facilities which use and store oil; and waste treatment facilities, including in-plant pipelines, effluent discharge lines, and storage tanks.

36. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and the SPCC Regulations at 40 C.F.R. § 112.2 define "onshore facility" as any facility of any kind located in, on, or under, any land within the United States, other than submerged land. The SPCC Regulations define a "facility" to include any fixed onshore building, property, parcel, lease, structure, installation, equipment, pipe, or pipeline used in oil production, storage, gathering, or processing. 40 C.F.R. § 112.2.

37. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B), and the SPCC Regulations define "owner or operator" in the case of an onshore facility as any person owning or operating such onshore facility.

38. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and the SPCC Regulations at 40 C.F.R. § 112.2 define "oil" as oil of any kind or in any form, including: fats, oils, or greases

of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

39. 40 C.F.R. § 110.3 provides that discharges of oil in such quantities that EPA has determined may be harmful to the public health or welfare or the environment of the United States include discharges of oil that: (a) violate applicable water quality standards; or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

40. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and the SPCC Regulations at 40 C.F.R. § 112.2 define "discharge" to include any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil.

41. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 define "navigable waters" as waters of the United States, including its territorial seas. Section 311(a)(5) of the CWA, 33 U.S.C. § 1321(a)(5), defines the "United States" to include American Samoa.

C. CWA Enforcement Authority

42. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), provides that EPA is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person violates Section 301 of the CWA, 33 U.S.C. § 1311, or any term or condition of an NPDES permit.

43. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, provides that any person who violates Sections 301 or 308 of the CWA, 33 U.S.C. §§ 1311 and 1318, or who

violates any term or condition of a NPDES permit, is subject to a civil penalty in an amount up to $37,500 per day for each violation occurring after January 12, 2009 and up to $52,414 per day for each violation occurring after November 2, 2015, with each day in which a violation occurs constituting a separate violation.

44. Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, provides that any person who fails to comply with any regulation issued under Section 311(j), 33 U.S.C. § 1321(j), shall be subject to a civil penalty in an amount up to $37,500 per day for each violation occurring after January 12, 2009 and up to $45,268 per day for violations that occurred after November 2, 2015.

II. THE CLEAN AIR ACT

45. Congress enacted the Clean Air Act ("CAA") to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

46. The CAA establishes a national program for the control of hazardous air pollutants ("HAPs"), which is set forth in Section 112 of the CAA, 42 U.S.C. § 6412. Section 112 of the CAA achieves that goal through a number of provisions, including: (1) the General Duty of Care Clause, contained in Section 112(r)(1) of the CAA, 42 U.S.C. § 6412(r)(1), which aims to prevent and minimize consequences of accidental releases of extremely hazardous air pollutants; and (2) the National Emission Standards for Hazardous Air Pollutants ("NESHAPs"), which establishes federal emission standards for specified air pollutants from certain types of sources.

A. CAA Section 112(r): The General Duty of Care Clause

47. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), mandates three distinct general duty of care requirements for owners and operators of stationary sources producing, processing, handling, or storing listed hazardous substances. In pertinent part, Section 112(r)(1) of the CAA provides:

> The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as Section 654 of Title 29 [29 U.S.C. § 654 (a provision under the Occupational Safety & Health Act)], to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

48. A "regulated substance" includes any substance listed by EPA pursuant to CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3).

49. Anhydrous ammonia, butane, and chlorine are "regulated substances" because they are each listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) and 40 C.F.R. § 68.130.

50. A "stationary source" means "any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur." 42 U.S.C. § 7412(r)(2)(C); 40 C.F.R. § 68.3.

51. An "accidental release" means an unanticipated emission of a "regulated substance" or other extremely hazardous substance into the ambient air from a stationary source. 42 U.S.C. § 7412(r)(2)(A).

52. In order to comply with the requirements of Section 112(r)(1) of the CAA, owners and operators of facilities that use "regulated substances" or other extremely hazardous substances must, at a minimum, ensure that equipment and practices comply with recognized and generally accepted good engineering practices.

53. Violations of industry standards, including, but not limited to, the industry standards described below in Paragraphs 54-56 are considered when identifying violations of the CAA's general duty clause with respect to ammonia refrigeration systems, chlorine systems, and butane systems. In addition, manufacturer recommendations for operation and maintenance of such systems are considered.

54. In light of the hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards for recognized and generally accepted good engineering practices in the ammonia refrigeration industry. The International Institute of Ammonia Refrigeration ("IIAR") publishes bulletins and guidance documents for ammonia refrigeration systems, including without limitation: the 2005 Ammonia Refrigeration Management Program ("IIAR Ammonia Refrigeration Manual"); and IIAR Bulletin No. 110, "Guidelines for Start-Up, Inspection, and Maintenance of Ammonia Mechanical Refrigerating Systems" (as revised on May 24, 2007. IIAR, in collaboration with the American National Standards Institute ("ANSI"), also issues "American National Standards" for ammonia refrigeration systems, including without limitation: "Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems" ("ANSI/IIAR 2-2008"); "Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems ("ANSI/IIAR 2-2014"); and "Developing Operating Procedures for Closed-Circuit Ammonia Mechanical Refrigerating Systems" ("ANSI/IIAR 7-2013"). In addition, the American Society of Mechanical Engineers ("ASME") publishes "American

National Standards" for refrigeration piping and heat transfer components, including without limitation, "Refrigeration Piping and Heat Transfer Components, ASME Code for Pressure Piping" ("ASME B31.5-2016") and "Boiler and Pressure Vessel Code" ("B&PV 2007"). The American Society of Heating, Refrigerating, and Air-Conditioning Engineers ("ASHRAE"), in collaboration with ANSI, has publishes and periodically updates a "Safety Standard for Refrigeration Systems" ("ASHRAE 15-2010"). Also relevant to this complaint is the "National Board Inspection Code" ("NBIC 2007"), published by the National Board of Boiler and Pressure Vessel Inspectors.

55. In light of the hazards posed by the mishandling of chlorine gas, the Chlorine Institute has issued Pamphlet 73, Atmospheric Monitoring Equipment for Chlorine ("Pamphlet 73"), a guidance document for recognized and generally accepted good engineering practices for monitoring chlorine gas in the event of a release.

56. Due to the high risks involved in transporting, storing, producing, and handling liquefied petroleum gas, such as butane, the National Fire Protection Association ("NFPA") has issued NFPA 58, *Liquified Petroleum Gas Code* (2011). Section 6.5 establishes building requirements and minimum distances to exposures (i.e. roadways, buildings, adjacent properties, and outdoor places of assembly), as well as inspection and maintenance schedules, for liquefied petroleum gas filling areas. In addition, for systems that include pressure relief devices, such as a butane filling station, the American Petroleum Institute ("API"), in collaboration with ANSI, publishes standards that establish inspection and maintenance frequency intervals for pressure relief systems and design standards for these systems, among others. These standards include: "Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration" ("API 510"); "Sizing, Selection, and Installation of Pressure-relieving Devices" ("API 520"); and

"Piping Inspection Code: In-Service Inspection, Rating, Repair, and Alteration of Piping Systems ("API 570").

B. CAA Section 112: The National Emission Standards for Hazardous Air Pollutants

57. Under Section 112(b), Congress listed 188 hazardous air pollutants ("HAPs") believed to cause adverse health or environmental effects. 42 U.S.C. § 7412(b).

58. Congress directed EPA to publish a list of all categories and subcategories of sources of HAPs. 42 U.S.C. § 7412(c)(1). A "category" of sources is a group of sources having some common features suggesting that they should be regulated in the same way and on the same schedule. 57 Fed. Reg. 31576, 31578 (July 16, 1992).

59. An "area source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit less than 10 tons per year of any one HAP or less than 25 tons per year of any combination of HAPs. 42 U.S.C. § 7412(a). A "stationary source" is defined as any building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7412(a)(3) (incorporating the definition in Section 111(a) of the CAA, 42 U.S.C. § 7411(a)(3)).

60. Once a category is on the list, Section 112(d)(1) requires EPA to promulgate federal emissions standards for each category or subcategory of area sources of HAPs. 42 U.S.C. § 7412(d)(1). These emission standards are known as the National Emission Standards for Hazardous Air Pollutants for Source Categories. The NESHAPs are codified in Part 63 of Title 40 of the Code of Federal Regulations.

61. An "affected source" is the collection of equipment or activities within a single contiguous area and under common control that is included in a source category for which a

NESHAP is established. 40 C.F.R. § 63.2. Each NESHAP defines the relevant affected source or sources within a facility to which the NESHAP applies.

62. Section 112(i)(3) of the CAA prohibits the operation of a source in violation of any emissions standard, limitation, or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard. 42 U.S.C. § 7412(i)(3).

63. It is a violation of the CAA for the owner or operator of an affected source to fail to keep records, submit notifications, reports, or revise reports as required by an applicable NESHAP. 40 C.F.R. § 63.4(a)(2).

64. Of relevance to this Complaint, pursuant to Section 112(c) of the CAA, 42 U.S.C. § 7412(c), EPA has identified the following as categories of sources that emit or may emit HAPs and EPA has promulgated NESHAPs in the following Subparts of Part 63 of Title 40 of the Code of the Federal Regulations to regulate those categories:

Category	**Regulation (40 C.F.R. Part 63)**
Stationary Reciprocating Internal Combustion Engines	Subpart ZZZZ ("RICE NESHAP") 40 C.F.R. §§ 63.6580-63.6675
Industrial, Commercial, and Institutional Boilers at Area Sources	Subpart JJJJJJ ("Boiler NESHAP") 40 C.F.R. §§ 63.11193 – 63.11237

C. RICE NESHAP

65. Of relevance to this Complaint, an "affected source" to which the RICE NESHAP applies is any stationary reciprocating internal combustion engine located at an area source of HAP emissions. 40 C.F.R. § 63.6590(a). A stationary reciprocating internal combustion engine

is any internal combustion engine that uses reciprocating motion to convert heat energy into mechanical work and that is not mobile. 40 C.F.R. § 63.6585(a).

66. Of relevance to this Complaint, a stationary reciprocating internal combustion engine located at an area source of HAP emissions is "existing" if its construction or reconstruction commenced before June 12, 2006. 40 C.F.R. § 63.6590(a)(1)(iii).

67. The owner or operator of an existing stationary compression ignition reciprocating internal combustion engine located at an area source must comply with the applicable requirements in the RICE NESHAP no later than May 3, 2013. 40 C.F.R. § 63.6595(a)(1).

68. Of relevance to this Complaint, the owner or operator of an emergency stationary compression ignition reciprocating internal combustion engine located in an area source of HAP emissions must comply with the requirements in Table 2d to the RICE NESHAP. 40 C.F.R. § 63.6603; RICE NESHAP Table 2d.

69. For each existing stationary reciprocating internal combustion engine located at an area source of HAP emissions, the owner or operator must perform the following actions by May 3, 2013:

a. Develop and implement a maintenance plan to ensure the engine is maintained and operated consistent with good air pollution control practice for minimizing emissions, 40 C.F.R. § 63.6625(e)(3).;

b. Install a non-resettable hour meter, 40 C.F.R. § 63.6625(f); and

c. Establish and maintain records regarding operation and maintenance, hours of operation, and reasons for operation, 40 C.F.R. §§ 63.6655(e)(2); 63.6655(f)(2).

D. Boiler NESHAP

70. Of relevance to this Complaint, the "affected source" to which the Boiler NESHAP applies includes the collection of all existing oil-fired boilers located at an area source of HAP emissions that are used in manufacturing, processing, mining, and refining, or any other industry to provide steam, hot water, and/or electricity. 40 C.F.R. § 63.11194(a).

71. Under the Boiler NESHAP, an affected source is "existing" if its construction or reconstruction commenced on or before June 4, 2010. 40 C.F.R. § 63.11194(b).

72. Under the Boiler NESHAP, the owner or operator of an existing affected source was required to comply with all applicable provisions of the NESHAP no later than March 21, 2014. 40 C.F.R. § 63.11196(a).

73. Of relevance to this Complaint, the owner or operator of an existing oil-fired boiler with a heat input capacity of 10 million BTUs/hour or greater that is subject to the Boiler NESHAP must comply with the following requirements:

a. Submit an initial notification to EPA by January 20, 2014, 40 C.F.R. § 63.11225(a)(2);

b. Submit a Notification of Compliance Status to EPA by July 21, 2014 that complies with the requirements in 40 C.F.R. § 63.11225(a)(4), including certification that an energy assessment has been performed, 40 C.F.R. § 63.11214(c);

c. Conduct an initial tune-up of its boilers as specified in 40 C.F.R. § 63.11214(b), and thereafter conduct biennial performance tune-ups of the boilers as specified in 40 C.F.R. § 63.11223(b), 40 C.F.R. § 63.11214(b); Boiler NESHAP Table 2;

d. Submit biennial tune up compliance certification reports to EPA, 40 C.F.R. § 63.11225(b);

e. Conduct a one-time energy assessment of the boiler and its energy use systems, 40 C.F.R. § 63.11214(c); Boiler NEHSAP Table 2; and

f. Maintain records associated with maintenance of the boilers, 40 C.F.R. § 63.11225(c) and (d).

E. The American Samoa State Implementation Plan

74. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, each State must adopt and submit to EPA for approval a State Implementation Plan ("SIP").

75. Pursuant to Section 302(q) of the CAA, 42 U.S.C. §7602(q), an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, and which implements the relevant requirements of the CAA.

76. Upon EPA approval, SIP requirements are federally enforceable under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 52.23.

77. Pursuant to Section 110(k) of the CAA, 42 U.S.C. § 7410(k), EPA approved the Territory of American Samoa's State Implementation Plan ("American Samoa SIP") Rules, including Rule 1.1.6 Permit to Operate. 70 Fed. Reg. 53,564 (Sept. 9, 2005).

78. The federally-approved American Samoa SIP is the "applicable implementation plan" within the meaning of Section 113(b) of the CAA, 42 U.S.C. § 7413(b), governing the operations of the Facility.

79. American Samoa SIP Rule 1.1.6 requires that the owner or operator of a source obtain a permit to operate from the American Samoa EPA prior to of the source.

80. American Samoa SIP Rule 1.0.16 defines a source as "any property, real or personal, which emits or may emit any air pollutant." American Samoa SIP Rule 1.0.1 defines air pollutant as "dust, mist, fumes, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof."

F. CAA Enforcement Authority

81. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes EPA to bring a civil action in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b), when EPA finds that any person has violated or is in violation of any CAA requirements.

82. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), provides that EPA is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person violates the CAA and its implementing regulations or the applicable SIP.

83. Section 113(b) of the CAA, as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, provides that any person who fails to comply with the CAA, its implementing regulations, or the applicable SIP shall be subject to a civil penalty in an amount up to $37,500 per day for each violation occurring after January 12, 2009, and up to $95,284 per day for violations that occurred after November 2, 2015.

III. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT ("EPCRA")

84. EPCRA provides communities with information on potential chemical hazards within their boundaries and fosters state and local emergency planning efforts to control any accidental releases by instituting reporting requirements on the owners or operators of facilities that make, use, store, or process certain chemicals.

85. Pursuant to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, Subparts A and B and §§ 370.40 to 45, the owner or operator of a facility that is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical by the Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*, and its implementing regulations, including 29 C.F.R. §1910.1200, must prepare and submit annually, to the appropriate local emergency planning committee, state emergency planning committee, and fire department, for each chemical present at the facility in an amount equal to or greater than the minimum threshold level set by EPA for such chemical, pursuant to 40 C.F.R. § 370.10, an emergency and hazardous chemical inventory form ("Inventory Form"). The Inventory Forms must be submitted by March 1st of each year with information for the preceding year.

86. Pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.22, the owner or operator of any facility that (i) has 10 or more full-time employees, (ii) is in Standard Industrial Classification codes 20 through 39, and (iii) manufactured, processed, or otherwise a toxic chemical listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65 in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25 during the preceding calendar year, is required to submit annually to EPA and the state in which the subject facility is located a Toxic Chemical Release Inventory ("TRI") Form ("Form R") for such chemical. The owner or operator of a subject facility must submit a Form R no later than July 1st of the following calendar year.

87. EPCRA's implementing regulations define "manufacture" as to produce, prepare, import, or compound a toxic chemical, to produce a toxic chemical coincidentally during the manufacture, process, use, or disposal of another chemical or mixture of chemicals (including a

toxic chemical separated from that chemical or mixture as a byproduct or remains in that other chemical or mixture as an impurity). 40 C.F.R. § 372.3.

88. EPCRA's implementing regulations define "process" to mean preparation of a toxic chemical, after its manufacture, for distribution in commerce 1) in the same form or physical state as, or in a different form or physical state from, that in which it was received; or 2) as part of an article containing the toxic chemical. 40 C.F.R. § 372.3.

89. EPCRA's implementing regulations define "otherwise use" to mean any use of a toxic chemical that is not covered by the terms "manufacture" or "process" and does not include disposal, stabilization, or treatment for destruction. 40 C.F.R. § 372.3.

90. Under EPCRA, a "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person. 42 U.S.C. § 11049(4).

91. Under EPCRA, a "hazardous chemical" means any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified. 42 U.S.C. § 11021(e) (incorporating 29 U.S.C. § 1910.1200(c)).

92. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, provides that any person who violates Sections 312 or 313 of EPCRA shall be subject to a civil penalty in an amount up to $37,500 per day for each violation occurring after January 12, 2009 and $54,789 per day for each violation occurring after November 2, 2015.

IV. RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA")

93. RCRA establishes a comprehensive program to be administered by EPA for regulating the generation, transportation, and treatment, storage, and disposal of hazardous waste

and used oil. In enacting RCRA, Congress intended to establish a regulatory program that would allow used oil to be recycled in a manner that did not constitute a threat to public health and the environment. *See* 42 U.S.C. § 6901a.

94. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA has promulgated regulations, codified at 40 C.F.R. Part 279, that apply to facilities that generate used oil, accept used oil from others, and burn used oil for energy recovery.

95. Under RCRA, "used oil" is defined as "any oil which has been refined from crude oil, used, and as a result of such use, contaminated by physical or chemical impurities." 42 U.S.C. § 6904(36); 40 C.F.R. § 279.1.

96. Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to all requirements in 40 C.F.R. Part 279, unless and until it is shown to meet the specifications set forth in 40 C.F.R. § 279.11 and is therefore "on-specification". 40 C.F.R. § 279.11.

97. Under RCRA, a "used oil fuel marketer" includes any person who first claims that used oil that is to be burned for energy recovery is on-specification. 40 C.F.R. § 279.1.

98. Under 40 C.F.R. Part 279 – Subpart H, a used oil fuel marketer that first claims used oil that is to be burned for energy recovery is on-specification must comply with the following requirements:

a. Perform analyses or obtain copies of analyses or other information that documents the used oil is on-specification, and retain copies of such analyses or information for three years. 40 C.F.R. § 279.72.

b. Maintain records of each shipment of used oil to the facility, including the quantity of used oil in each shipment, the date of shipment or delivery, and a

cross-reference to the analysis used to determine that the used oil is on-specification. 40 CF.R. § 279.74(b).

99. A used oil fuel marketer who is also a used oil processor must also comply with the requirements of 40 C.F.R. Part 279, Subpart F – Standards for Used Oil Processors and Re-refiners. 40 C.F.R. § 279.70(c).

100. Under RCRA, a "used oil processor" means any facility that processes oil. 40 C.F.R. § 279.1. "Processing" means "chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product." *Id.*

101. Section 3010 of RCRA, 42 U.S.C. § 6930, and its implementing regulations at 40 C.F.R. Part 279, Subparts F and H, require used oil fuel marketers and processors to file with EPA a notification stating the location and general description of their regulated activities.

102. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the United States to commence a civil action in United States District Court to seek appropriate relief in the event of a violation of RCRA and the regulations promulgated thereunder.

103. Under Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, any person who violates RCRA and its implementing regulations shall be subject to a civil penalty in an amount up to $37,500 per day for each violation occurring after January 12, 2009 and $71,264 per day for each violation occurring after November 2, 2015.

GENERAL ALLEGATIONS

104. The Facility is a seafood processing facility located on the northwestern side of Pago Pago Harbor in the village of Atu'u on Tutuila Island in the territory of American Samoa. The Facility processes and cans tuna for human consumption, and also processes fish by-products into fishmeal and fish oil.

105. The Facility's operations are covered by Standard Industrial Classification (SIC) Code 2091 for Canned and Cured Fish and Seafoods.

106. Defendant Starkist Samoa Co. employs more than ten full-time employees at the Facility.

107. The Facility includes cold storage, a wastewater treatment facility, an on-site laboratory, four boilers used to generate steam for Facility operations, three emergency generators, a fire pump, fishmeal processing equipment, can and box labeling equipment, cooling towers, and four above-ground oil storage tanks.

108. The Facility generates two wastewater streams: "high-strength" wastewater from its fishmeal processing and pre-cooker operations; and "low-strength" wastewater from all other operations (such as non-contact utility waters, seawater treated with chlorine used to defrost frozen tuna and water from steam units) combined with industrial stormwater.

109. The Facility's high-strength wastewater contains fish viscera and other biological material and is very high in nutrients, such as nitrogen and phosphorous, as well as oil and grease, total suspended solids, and ammonia.

110. The Facility's low-strength wastewater is primarily generated from washing and rinsing of processing equipment. The Facility's low-strength wastewater contains ammonia, nitrogen, and phosphorous.

111. The Facility's high-strength and low-strength waste streams contain "pollutants" within the meaning of Sections 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12), because they include, among others, biological materials and industrial wastes.

A. The Facility's NPDES Permit

112. The Facility is authorized to discharge pollutants from its wastewater treatment system through a single, designated outfall pipe, Outfall 001 (the "Outfall") into Pago Pago Harbor by NPDES Permit Number AS0000019 (the "Permit"), issued by EPA on February 28, 2008. The Permit became effective on April 1, 2008 and the expiration date was set as March 31, 2013.

113. On September 17, 2012, Starkist Samoa Co. filed an application to renew its NPDES Permit. Pursuant to 40 C.F.R. § 122.6(a), the Permit is administratively extended so that its terms are still in effect, pending EPA's issuance of a new NPDES Permit for the Facility.

114. The Facility's wastewater treatment system and the Outfall are each a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

115. The Permit authorizes the discharge of effluent from the Facility only in compliance with conditions and limitations set forth in the Permit.

116. The Permit contains effluent limitations prohibiting discharges of specified pollutants from the Facility in excess of numeric monthly average and/or daily maximum limits, including the following limits:

a. Ammonia monthly average: 83.36 mg/L

b. Ammonia daily maximum: 185.3 mg/L

c. Total nitrogen monthly average: 1200 lb/day

d. Total nitrogen daily maximum: 2100 lb/day

e. Oil and grease monthly average: 1008 lb/day

f. Oil and grease daily maximum: 2520 lb/day

g. Total suspended solids monthly average: 3960 lb/day

h. Total suspended solids daily maximum: 9960 lb/day

i. Total phosphorus monthly average: 192 lb/day

j. Total phosphorus daily maximum: 309 lb/day; and

k. pH minimum: 6.5.

117. The Permit also contains a number of standard conditions with which Starkist is required to comply, including monitoring, reporting, and operation and maintenance requirements. These requirements include quarterly submission to EPA Region 9 of Discharge Monitoring Reports ("DMRs"), which summarize discharge monitoring data, including non-compliance with permit limits, and report any unauthorized discharges.

B. The Outfall and Pago Pago Harbor

118. The Facility has "discharged" and continues to discharge pollutants, within the meaning of Section 502(16) of the CWA, 33 U.S.C. § 1362(16), from its wastewater treatment facility through the Outfall to Pago Pago Harbor.

119. The Outfall extends approximately 1.5 miles from inner Pago Pago Harbor to a discharge point in the deep outer waters of Pago Pago Harbor.

120. Pago Pago Harbor is a "navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), because it is a water of the United States and part of the territorial seas of the United States.

121. Pago Pago Harbor is polluted by contaminated sediments and fish processing wastes, which contribute to high bacterial levels that peak during and after heavy rains.

122. The mouth of Pago Pago Harbor has areas of excellent coral reef cover, which is an ecosystem that comprises fish, corals, and other invertebrates, algae, turtles, and marine mammals.

123. Coral ecosystems can provide a source of food, protect coastlines from storms and erosion, provide habitat, spawning and nursery grounds for economically important fish species, and are hotspots of marine diversity.

124. Excess nutrients, including dissolved nitrogen and phosphorous, promote the growth of algae that compete with juvenile and adult corals for space on reef surfaces and can affect the success of coral settlement by other species. Higher levels of total suspended solids in overlying waters can limit coral growth, feeding patterns, photosynthesis, recruitment and survivorship on reefs.

C. Changes in the Facility's Wastewater Treatment Processes

125. Part IV.A and Attachment A, Part 13(1) of the Permit require Starkist to notify EPA about any planned changes to the wastewater treatment system described in the application for the Permit. Notification of EPA is accomplished by alerting EPA's NPDES Permit office.

126. The 2008 application for the Facility's NPDES permit stated that the Facility's low-strength wastewater stream was treated through its on-site wastewater treatment facility prior to conveying the wastewater through a pipe to the Outfall for ultimate discharge into outer Pago Pago Harbor. The Facility's high-strength wastewater stream was collected and held at the Facility and, approximately once a month, was pumped into the hold of a ship that transported and disposed of the wastewater at an EPA-approved offshore ocean dump site.

127. In or about May 2012, Starkist began diverting the Facility's high-strength wastewater stream to the Facility's wastewater treatment facility and discharging it, along with low-strength wastewater, through the Outfall to outer Pago Pago Harbor.

128. Starkist did not notify the EPA NPDES Permit office of the change in the Facility's wastewater treatment system until it submitted a NPDES Permit Renewal Application in September 2012.

129. In its September 2012 NPDES Permit Renewal Application, Starkist indicated that it was now treating its high-strength wastewater stream through the same treatment process that it used for its low-strength wastewater stream. That treatment process included the use of Dissolved Air Flotation, which removes light solids from wastewater, prior to discharge through the Outfall.

130. At some point in time, best known to Starkist, after it had submitted the September 2012 renewal application, Starkist discontinued use of the Dissolved Air Flotation to treat the high-strength wastewater stream.

131. Beginning in or about April 2013, Starkist regularly reported in its DMRs discharges that significantly exceeded the effluent limitations listed in Paragraph 116.

132. Prior to June 2015, Starkist did not notify the EPA NDPES Permit office that it had discontinued the use of the Dissolved Air Flotation in its treatment process.

133. At some point after May 2012 and prior to December 21, 2015, Starkist installed a bromine addition system, which introduced bromo-chloro-dimethylhydantoin ("BCDMH") to its high-strength wastewater, to its wastewater treatment process. The system was intended to remove ammonia from the Facility's effluent.

134. BCDMH contains bromine, chlorine, and nitrogen, and increases total nitrogen levels in final effluent from the Facility.

135. Bromine is known to be a source of toxicity to aquatic organisms, whether alone or in combination with organic matter in the form of bromo-methane compounds.

136. Based on information submitted to EPA by Starkist, there is no indication that the bromine addition system removed ammonia from the Facility's wastewater. Rather, the system may have increased the amount of ammonia in the effluent.

137. Starkist did not provide written notification to the EPA NPDES Permit office of its use of bromine in its treatment process until it requested approval from EPA to discontinue the addition of bromine in February 2016.

D. June-July 2014 Outfall Rupture

138. On or before July 3, 2014, representatives of American Samoa Environmental Protection Agency ("ASEPA") received reports that the water in inner Pago Pago Harbor, near the Starkist facility, was visibly discolored.

139. On July 2, 2014, representatives of ASEPA observed and reported that the water near the Outfall in inner Pago Pago Harbor was discolored, murky, bubbling, and there was a strong odor coming from the water.

140. On July 3, 2014, ASEPA issued an order to Starkist to cease operations at the Facility or to cease engaging in any activities responsible for creating an unauthorized discharge of pollutants to inner Pago Pago Harbor until the Outfall was repaired ("Stop Order Notice").

141. The Stop Order Notice informed Starkist of its duty to report the discharges to EPA Region 9 immediately.

142. After receiving the Stop Order Notice, Starkist confirmed to ASEPA that the Outfall had ruptured and effluent was discharging into inner Pago Pago Harbor and not from the authorized discharge point in outer Pago Pago Harbor.

143. Starkist did not report the discharges or rupture to EPA Region 9 until July 30, 2014, when it submitted a report of its response and investigation of the rupture through July 14, 2014.

144. On May 8, 2015, Starkist provided additional information to EPA documenting that final repairs to the Outfall were completed on July 31, 2014.

145. Based on Starkist's July 30, 2014 Report and the additional information submitted to EPA in May 2015, any discharges of effluent from the Facility's wastewater treatment system between July 3, 2014 and July 31, 2014 could not have occurred at the authorized discharge point under the Permit.

146. According to Starkist's DMRs for July 2014, Starkist discharged wastewater from its Facility to the Outfall on 15 days between July 3, 2014, when the rupture was first reported to ASEPA, and July 31, 2014, when the Outfall was fully repaired.

E. EPA's March 30, 2015 Inspection of the Facility and Subsequent Self-Disclosure of Violations

147. On March 30, 2015, representatives of EPA conducted an on-site inspection of the Facility for the purpose of documenting Starkist's industrial activities and treatment processes and determining Starkist's compliance with the requirements of the CWA and its Permit.

148. During the March 2015 inspection, EPA representatives observed a number of CWA violations at the Facility.

149. Between July 21-24, 2015, Starkist performed an audit at the Facility to evaluate compliance with environmental laws and regulations.

150. On December 21, 2015, as a result of its audit, Starkist disclosed to EPA potential CAA, EPCRA, and RCRA violations that it had discovered at the Facility through its audit.

151. In December 2015, March 2016 and April 2016, Starkist submitted to EPA reports with details of these violations ("Starkist Self-Disclosure Reports").

FIRST CLAIM FOR RELIEF
(CWA – Unauthorized Discharge)

152. Paragraphs 1 through 151 are realleged and incorporated herein by reference.

153. On at least 15 days, between at least July 3, 2014 and July 31, 2014, Starkist discharged pollutants from a rupture in the Outfall that was a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

154. Each of the discharges described in Paragraph 153 was an unauthorized discharge in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

155. As described in Paragraphs 42 - 43, for each violation referred to in this Claim for Relief, the United States is entitled to injunctive relief, as well as civil penalties, pursuant to Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d).

SECOND CLAIM FOR RELIEF

(CWA – Violations of the Permit's Effluent Limitations)

156. Paragraphs 1 through 151 are realleged and incorporated herein by reference.

157. Based on Starkist's DMRs, between April 2013 and the present, Starkist has discharged effluent from the Outfall in amounts and quality that exceeded the effluent limitations set forth in the Permit and listed in Paragraph 116.

158. Each instance of a discharge from the Facility exceeding an effluent limitation set forth in the Permit is a violation of a condition or limitation in the Permit. Each day of the averaging period for each instance of exceedance constitutes a separate violation.

159. Unless enjoined by the Court, Defendants will continue to violate the effluent limitations in the Permit.

160. As described in Paragraphs 42 - 43, for each violation referred to in this Claim for Relief, the United States is entitled to injunctive relief, as well as civil penalties, pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d).

THIRD CLAIM FOR RELIEF
(CWA – Violations of General Permit Conditions)

161. Paragraphs 1 through 151 are realleged and incorporated herein by reference.

Violation 1: Incomplete and/or Insufficient DMRs

162. Part II.A.3 and Attachment A.12 of the Permit require the quarterly submission of DMRs to EPA. The Permit requires that the DMRs be signed and certified by an authorized representative.

163. Part I, Table 1 of the Permit requires Starkist to collect samples of its wastewater discharge weekly, and to monitor the levels of pollutants for which it has effluent limitations in the effluent. The monitoring results must be reported in the DMRs submitted to EPA.

164. Between April 2012 and March 2015, Starkist failed to submit DMRs to EPA on at least 3 occasions, failed to submit complete DMRs on at least 12 occasions (including missing weekly monitoring), failed to submit DMRs that were signed by an authorized representative on at least 3 occasions, and failed to submit its DMRs on time on at least 3 occasions.

165. Each of Starkist's failures to submit DMRs that fully complied with the requirements of the Permit is a violation of the terms and conditions of its Permit.

Violation 2: On-site Laboratory Operation, Maintenance, and Procedures

166. The Permit requires Starkist to collect and analyze samples at the Facility's on-site laboratory and to comply with the following terms and conditions in the Permit related to its on-site laboratory:

a. Perform all effluent monitoring and analyses at the laboratory in accordance with procedures approved by EPA under 40 C.F.R. Part 136;

b. Develop and implement a Quality Assurance Manual for field collection and laboratory analysis of samples within 90 days of the effective date of the Permit; and

c. Properly operate and maintain all facilities and systems of treatment and control that are installed or used to achieve compliance with the permit's conditions. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. Permit Attachment A.6.

167. During the March 2015 inspection, EPA representatives observed that laboratory bench sheets contained inadequate information on sample collection and analysis times, methods, and the basis for calculations of reported results; the laboratory was missing floor tiles and was not climate-controlled; the laboratory was missing key equipment, including a spectrophotometer; and that laboratory personnel had not received any formal training in laboratory analysis and sample collection.

168. Starkist's failure to keep maintenance or calibration records for its laboratory equipment, include the minimum information required on laboratory bench sheets, establish formal training requirements for laboratory technicians, establish procedures to ensure timely

and correct laboratory results are submitted to EPA, and maintain the physical on-site laboratory space in a sanitized condition are violations of Attachment A.6 to the Permit.

169. Starkist failed to develop and implement a Quality Assurance Manual for collection and laboratory analysis of samples at its on-site laboratory.

170. Starkist's failure to develop and implement a Quality Assurance Manual for the field collection and laboratory analysis of effluent samples within 90 days of the effective date of its Permit is a violation of Part II.A.4 of the Permit.

Violation 3: Failure to Notify

171. The Permit requires Starkist to give notice to EPA as soon as possible of any planned physical alterations or additions to the permitted facility when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. Attachment A.13(1) and (2). The Permit further requires Starkist give EPA advance notice of any planned changes at the Facility or active that may result in non-compliance with permit requirements. *Id*.

172. Attachment A.13(8) to the Permit requires Starkist to promptly submit relevant facts or information to EPA that it failed to submit or which is incorrect in a permit application.

173. Starkist's failure to notify ASEPA and EPA until September 2012 that it had ceased ocean dumping of the Facility's high-strength wastewater stream and instead would route it through the Facility's wastewater treatment process and discharge it into Pago Pago Harbor is a violation of Attachment A.13(1) and (2) to the Permit.

174. Starkist's failure to notify EPA that it discontinued use of the Dissolved Air Flotation for its high-strength wastewater stream as stated in its September 2012 permit renewal application is a violation of Attachment A.13(1), (2), and (8) to the Permit.

175. Starkist's failure to notify EPA of its use of a bromine addition system to its wastewater treatment system is a violation of Attachment A.13(1) and (2) to the Permit.

176. Part II.D of the Permit, and the CWA's implementing regulations at 40 C.F.R. § 122.41(1)(6), require Starkist to report to EPA Region 9 and ASEPA "any noncompliance which may endanger human health or the environment" orally within 24-hours and in writing within five days of becoming aware of such circumstances.

177. The Facility's July 2014 discharges of effluent to inner Pago Pago Harbor through the rupture in the Outfall was noncompliance which may endanger human health or the environment.

178. Starkist's failure to report the July 2014 rupture in the Outfall to EPA Region 9, orally or in writing, until July 30, 2014 despite becoming aware of the rupture no later than July 3, 2014 is a violation of Part II.D of the Permit and 40 C.F.R. § 122.41(1)(6).

Violation 4: Failure to Mitigate and Operate and Maintain the Outfall

179. Under Attachment A.5 to the Permit, Starkist has a "duty to mitigate" or to take all reasonable steps to minimize or prevent any discharge or disposal in violation of the Permit that has a reasonable likelihood of adversely affecting health or the environment.

180. From January 1, 2013 to the present, Starkist's DMRs reflect consistent violations of the effluent limitations included in the Permit. The exceedances range from 105% to 745% of the applicable effluent limitation.

181. Based on the observations of EPA representatives at the March 2015 inspection and subsequent documentation provided by Starkist to EPA, Starkist took no steps to investigate the causes of the effluent limitation exceedances at the Facility or to remedy the problems with its treatment system prior to the March 2015 inspection by EPA.

182. Exceedances of the effluent limitations at this Facility have a reasonable likelihood of adversely affecting health or the environment, because they cause or contribute pollutant loading in Pago Pago Harbor affecting water quality and can adversely affect the fragile reef ecosystems in Pago Pago Harbor.

183. Starkist's failure to investigate and remedy the problems with its treatment system is a violation of the duty to mitigate provision in Attachment A.5 of the Permit.

184. Under Attachment A.6 of the Permit, Starkist is required to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the Permit, including the Outfall.

185. Starkist's failure to cease operation of the Outfall during the 2014 rupture is a violation of the proper operation and maintenance provision in Attachment A.6 of the Permit.

186. As described in Paragraphs 42 - 43, for each violation referred to in this Claim for Relief, Defendants are subject to injunctive relief, as well as civil penalties, pursuant to Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d).

FOURTH CLAIM FOR RELIEF
(CWA – SPCC Violations)

187. Paragraphs 1 through 151 are realleged and incorporated herein by reference.

188. Based on the March 2015 inspection, Starkist engages in producing, storing, processing, transferring, using, distributing or consuming oil or oil products at the Facility, including fish oil.

189. The Facility and each of its above-ground storage tanks is a "facility," as that term is defined in 40 C.F.R. § 112.2, because they are fixed onshore buildings and structures used in oil production, storage, gathering, or processing.

190. The Facility and each of its above-ground storage tanks is located on land within the United States and is therefore an "onshore facility" as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

191. The Facility and each of its above-ground storage tanks is a "non-transportation-related" facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

192. Based on the observations of EPA inspectors during the March 2015 inspection and information provided by Starkist, the Facility includes four single-walled above- ground oil storage tanks with a capacity of 42,300 gallons each.

193. Based on observations by EPA inspectors and review of documents, photographs, and other information submitted to EPA by Starkist, the Facility's above-ground oil storage tanks are located up-gradient from, and within a quarter-mile of, the shoreline of Pago Pago Harbor.

194. During the March 2015 inspection, EPA inspectors observed that the above-ground oil storage tanks rested on crushed coral or aggregate instead of impervious material, such as concrete, and noted that the concrete secondary containment berm did not extend underneath the oil storage tanks.

195. Without impervious secondary containment beneath the above-ground oil storage tanks or diversionary structures around the above-ground storage tanks, oil spilled or leaked from the tanks could reach the shoreline and Pago Pago Harbor.

196. The Facility was and is a non-transportation-related on-shore facility engaged in the storing of oil and oil products that, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. Part 110, into or upon navigable waters of the United States or adjoining shorelines.

197. Starkist was therefore required by 40 C.F.R. § 112.3(b) to prepare and implement a SPCC plan for the Facility that complied with the requirements of 40 C.F.R. § 112.7.

198. Based on the observations of EPA representatives, Starkist failed to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. § 112.1(b) from the storage tanks in violation of 40 C.F.R. § 112.7(c).

199. During the March 30, 2015 inspection, representatives at the Facility were unable to produce the following records: (a) 2008 API-653 internal tank integrity tests; (b) rainwater removal logs; (c) visual inspection records for the tank farm; (d) oil/water separator monthly checklists; and (e) visual inspection reports for the tanks.

200. Defendants' failure to maintain the records described in Paragraph 199 is a violation of 40 C.F.R. § 112.7(e).

201. Defendants are subject to injunctive relief to remedy its violations of Section 311(j) of the CWA, 33 U.S.C. § 1321, pursuant to the equitable authority of this Court.

202. As described in Paragraph 44, for each violation referred to in this Claim for Relief, Defendants are subject to civil penalties pursuant to Section 311(b) of the CWA, 33 U.S.C. § 1321(b).

FIFTH CLAIM FOR RELIEF
(CAA – General Duty Clause Violations)

203. Paragraphs 1 through 151 are realleged and incorporated herein by reference.

204. At all times relevant to this Complaint, Starkist maintained refrigeration systems at the Facility, which utilized, processed, handled, or stored anhydrous ammonia.

205. At all times relevant to this Complaint, Starkist utilized, processed, handled, or stored chlorine gas at the Facility.

206. At all times relevant to this Complaint, Starkist utilized, processed, handled, or stored butane at the Facility.

207. At all times relevant to this Complaint, the Facility has been a "stationary source" as defined in CAA Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C).

208. On May 25 and May 26, 2016, EPA conducted an on-site inspection of the Facility for the purpose of determining Starkist's compliance with Section 112(r)(1) of the CAA. During the inspection, the EPA inspector discovered evidence of a number of violations of Section 112(r)(1) of the CAA.

Violation Category 1: Failure to Update and Perform Hazard Assessments

209. During the May 2016 inspection, the EPA representative requested to review Starkist's hazard assessments for its ammonia refrigeration system. In response, Starkist could only produce a 2001 hazard assessment that had not been updated. In addition, the EPA inspector noted that safeguards identified in the 2001 hazard assessment, including following a five year change out for pressure relief valves to prevent vessel failure and annual thickness testing to prevent line failure, had not been implemented.

210. Starkist's failure to update its 2001 hazard assessment to identify hazards associated with the ammonia refrigeration system and to resolve issues identified in the 2001 hazard assessment is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from accidental releases of regulated substances using appropriate hazard assessment techniques, and (2) design and maintain a safe facility taking such steps as are necessary to prevent releases. 42 U.S.C. § 7412(r)(1).

211. During the May 2016 inspection, the EPA representative requested to review Starkist's hazard assessments for its chlorine and butane systems. Starkist representatives stated that such assessments had not been performed.

212. Starkist's failure to perform hazard assessments for its chlorine and butane systems is a violation of Section 112(r)(1) of the CAA's requirement to identify hazards which may result from accidental releases of regulated substances using appropriate hazard assessment techniques. 42 U.S.C. § 7412(r)(1).

Violation Category 2: Failures to Maintain, Replace, or Inspect Equipment

213. At the time of the May 2016 inspection, the Facility did not have in place and had not implemented a program to inspect and test its ammonia refrigeration system, including but not limited to pressure vessels, piping, insulation, and valves. Good engineering practice requires establishing such a program in order to ensure that inspections and testing of equipment take place at the intervals established by industry standards and to ensure the integrity of the equipment. *See, e.g.*, NBIC 2007, Sec. 2.4.4 (recommending procedures and intervals for external inspection of refrigeration piping); ANSI/IIAR 2-214, Sec. 12.3 (recommending inspection and testing intervals for pressure vessels).

214. At the time of the May 2016 inspection, the Facility did not have in place and had not implemented a program to inspect and test its chlorine gas or butane systems, including but not limited to pressure vessels and piping. Good engineering practice requires establishing such a program to ensure that inspections of equipment take place at the intervals established by industry standards to confirm the integrity of the equipment. *See, e.g.*, API 510, Sections 6.2 and 6.6 (recommending inspection and testing intervals for the butane storage tank and its associated pressure relief device); *see also* Hydrosystems 800 Operations and Maintenance brochure

(http://www.hydroinstruments.com/files/Instruction&20pages/E800%20manual%20050217.pdf), pages 4-6 (recommending various inspection and maintenance tasks to be performed regularly on the chlorine gas system).

215. Starkist's failures to establish or implement a program to inspect and test components of its ammonia refrigeration, chlorine gas, and butane systems to ensure their ongoing integrity are violations of Section 112(r)(1) of the CAA's requirement to (1) identify hazards which may result from accidental releases of regulated substances using appropriate hazard assessment techniques, and (2) design and maintain a safe facility taking such steps as are necessary to prevent releases. 42 U.S.C. § 7412(r)(1).

216. At the time of the May 2016 inspection, the Facility did not have in place and had not implemented a program to test instrumentation and safety systems for the Facility's ammonia refrigeration or butane systems, including but not limited to ammonia sensors, engine room ventilation, compressor cut-outs, and fire water systems. Good engineering practice requires establishing such a program in order to ensure that inspections of instrumentation and safety systems take place at the intervals established by industry standards to confirm the integrity of these systems. *See, e.g.*, ANSI/IIAR 2-2014, Sec. 17.3 (recommending annual testing of ammonia detectors and alarms) and Sec 6.14.8.2 (recommending biannual testing of engine room mechanical ventilation system); NFPA 58, Sec. 6.12.9 (recommending annual testing of butane system emergency shut-off valve).

217. Starkist's failures to establish or implement a program to test instrumentation and safety systems of its ammonia refrigeration and butane systems are violations of Section 112(r)(1) of the CAA's requirement to (1) identify hazards which may result from accidental releases of regulated substances using appropriate hazard assessment techniques, and (2) design

and maintain a safe facility taking such steps as are necessary to prevent releases. 42 U.S.C. § 7412(r)(1).

218. At the time of the May 2016 inspection, a number of pressure relief valves associated with the Facility's ammonia refrigeration system had been installed or recalibrated more than 5 years earlier. Industry standards require that such pressure relief valves are replaced or recalibrated every five years in order to ensure that they will function properly and prevent releases. *See* IIAR Bulletin No. 110, Sec. 6.6.3.

219. At the time of the May 2016 inspection, the Facility's ammonia refrigeration system included pressure relief valves that had been recalled by Hansen Technologies Corporation in June 2013.

220. Starkist's failures to replace recalled pressure relief valves and to replace or recalibrate pressure relief valves in the ammonia refrigeration system that had been installed more than five years prior to May 2016 are violations of Section 112(r)(1) of the CAA's requirement to design and maintain a safe facility taking such steps as are necessary to prevent releases. 42 U.S.C. § 7412(r)(1).

221. At the time of the May 2016 inspection, in several places, ammonia piping in the Facility was supported by wires from the roof or by other pipes. Industry standards require that ammonia piping must be adequately supported in order to avoid collapse, inadvertent breakage, ammonia release, and difficulty in turning off components. See ASME B31.5, *Refrigeration Piping and Heat Transfer Components*, Part 520.

222. Starkist's failure to adequately support its ammonia piping is a violation of Section 112(r)(1) of the CAA's requirement to design and maintain a safe facility taking such steps as are necessary to prevent releases. 42 U.S.C. § 7412(r)(1).

223. At the time of the May 2016 inspection, the pressure relief valve on the Facility's butane system had not been inspected, tested, or replaced in the last five years. Industry standards require that, unless there is a documented reason for a longer interval, pressure-relieving devices should be inspected and tested every five years. *See* API 510, Section 6.6.2.2.

224. Starkist's failure to inspect, test, or replace pressure relief valves on the butane filling station that had been installed more than five years prior to May 2016 is a violations of Section 112(r)(1) of the CAA's requirement to design and maintain a safe facility taking such steps as are necessary to prevent releases. 42 U.S.C. § 7412(r)(1).

Violation Category 3: Failure to Adequately Label Equipment

225. At the time of the May 2016 inspection, ammonia piping and valves associated with the Facility's ammonia refrigeration system were not labeled adequately, contrary to industry standards requiring all ammonia piping to have appropriate markers to indicate the use of the pipe and arrows to indicate the direction of flow. Industry standards require all piping mains, headers, and branches to be identified as to the physical state of the refrigerant, the relative pressure, and the direction of flow. Additionally, lines, emergency isolation valves, and safety systems must be adequately labeled. ANSI/IIAR 2-2014, Sec. 5.14.

226. Starkist's failure to adequately label its ammonia refrigeration equipment is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation Category 4: Failure to Prepare and Implement Adequate Written Standard Operating Procedures

227. At the time of the May 2016 inspection, incorrect operating procedures for draining an oil pot were posted at an oil pot associated with the Facility's ammonia refrigeration system. Incorrect draining of an oil pot can result in a release of ammonia. Industry standards require clear, written instructions for safely conducting activities associated with a covered process, including draining an oil pot. ANSI/IIAR 7-2013, Sec. 5.1.

228. Starkist's failure to maintain consistent and accurate written operating procedures for draining the oil pot is a violation of Section 112(r)(1) of the CAA's requirements to (1) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (2) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation Category 5: Failure to Provide Adequate Detection Equipment and Alarms for the Ammonia Refrigeration System

229. At the time of the May 2016 inspection, the Facility did not have ammonia detectors or alarms in the machine room or other occupied areas of the Facility, which contain ammonia equipment. Industry standards require that ammonia detectors and alarms be installed in machine rooms and where there is equipment located in occupied areas. ANSI/IIAR 2-2014, Part 7.2.3 and 6.13.1.

230. Starkist's failure to install adequate ammonia detectors and alarms in the Facility is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

231. At the time of the May 2016 inspection, the EPA inspector observed, and Starkist representatives confirmed, that there were no audible or visual alarms to warn that access to the engine room is restricted to authorized personnel and emergency responders when an ammonia detection alarm has been activated, as required by ANSI/IIAR 2-2014, Part 17.6.

232. Starkist's failure to install audible or visual alarms at the Facility warning that access to the engine room is restricted when an ammonia detection alarm is activated is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation Category 6: Failure to Provide Detection or Mitigation Systems for the Facility's Chlorine System

233. At the time of the May 2016 inspection, the Facility's chlorine system was located in an open air area that was frequently occupied by employees.

234. At the time of the May 2016 inspection, the Facility had no system in place to detect a release of chlorine from the chlorine system, contrary to the requirements in Pamphlet 73. Pamphlet 73, Section 1.4.

235. Starkist's failure to have a system in place to detect a release of chlorine into an occupied, open-air area is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

Violation Category 7: Failure to Maintain and Design Equipment to Minimize Consequences of an Accidental Release

236. At the time of the May 2016 inspection, pressure relief device discharge piping from the Facility's ammonia refrigeration system discharged directly into an emergency evacuation route and directly towards the ventilation intake from an adjacent tuna cannery, which was approximately 20 feet from the discharge. Industry standards require that pressure relief device discharge piping be terminated no less than 20 feet from windows, ventilation intakes, or exits in order to prevent ammonia from being released to the breathing zone. ANSI/IIAR 2-2014, Part 15.5.1.2.

237. Starkist's failure to terminate pressure relief device discharge piping more than 20 feet from an emergency evacuation route and ventilation intake is a violation of Section 112(r)(1) of the CAA's requirements to (1) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (2) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

238. At the time of the May 2016 inspection, pressure relief discharge points from the Facility's ammonia refrigeration system contained rain caps that would direct any release downward towards maintenance walkways and into potential breathing zones. Industry standards require that pressure relief discharge points should be terminated upwards and arranged so as to prevent ammonia from being released to a breathing zone. ANSI/IIAR 2-2014, Part 15.5.1.5.

239. Starkist's failure to terminate pressure relief discharge points upwards and to arrange discharge reliefs so as to avoid releasing ammonia to potential breathing zones is a violation of Section 112(r)(1) of the CAA's requirements to (1) design and maintain a safe

facility taking such steps as are necessary to prevent releases, and (2) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

240. At the time of the May 2016 inspection, in certain locations, discharge piping from the Facility's ammonia refrigeration system terminated less than 7.25 feet above platform surfaces that are occupied during service and inspection – in particular, the discharge valves were less than 7.25 feet above maintenance catwalks at the Facility. Industry standards require that discharge piping from ammonia refrigeration systems terminate 7.25 feet or more above maintenance catwalks. ANSI/IIAR 2-2014, Part 15.5.1.4.

241. Starkist's failure to terminate pressure relief discharge piping from its ammonia refrigeration systems less than 7.25 feet above platform surfaces is a violation of Section 112(r)(1) of the CAA's requirements to (1) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (2) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

242. At the time of the May 2016 inspection, the oil pot located below the low side suction accumulator did not have an installed Pressure Relief Device as required by IIAR 2-2014, Part 15.2.2.

243. Starkist's failure to adequately design the refrigeration system and install a pressure relief device on the low side suction accumulator oil pot is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

244. At the time of the May 2016 inspection, the main shut-off valve (known as a "king valve") on the High Pressure Receiver was observed to be out of reach and not readily accessible for emergency shutdown, as required by ANSI/IIAR 2-2014, Sec. 13.3.7.

245. Starkist's failure to adequately design the refrigeration system and make the king valve readily accessible is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

246. At the time of the May 2016 inspection, the butane filling area was observed to be occurring in a building that was greater than 50 percent enclosed. The butane transfer area was located adjacent to the main road and adjacent to the neighboring shipyard's entry. Section 6.5 of NFPA 58, *Liquified Petroleum Gas Code*, requires that that a building used to fill Liquified Petroleum Gas portable containers be located at least 10 feet from public ways in a roofed area that is 50% or more unenclosed.

247. Starkist's failure to adequately design and locate the butane system and its surrounding building is a violation of Section 112(r)(1) of the CAA's requirements to (1) identify hazards which may result from such releases using appropriate hazard assessment techniques, (2) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (3) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

248. At the time of the May 2016 inspection, Starkist did not have documentation demonstrating that the pressure relief systems for the Facility's ammonia refrigeration system and the butane system were sized appropriately, as required by ASHRAE 15-2010, Section 9.7

(relating to the ammonia refrigeration system); API 520, Section 5.1 (relating to the butane system). Subsequently, Starkist determined that it was necessary to make changes to some or all of the pressure relief system design for the ammonia refrigeration system in order to ensure the system was sized in accordance with industry standards.

249. Starkist's failures to adequately design the pressure relief systems for the ammonia refrigeration and butane systems, and maintain documentation evidencing the systems were adequately designed, are violations of Section 112(r)(1) of the CAA's requirement to design and maintain a safe facility taking such steps as are necessary to prevent releases.

250. At the time of the May 2016 inspection, Starkist did not have documentation demonstrating that the ventilation system design for the ammonia refrigeration system in the Facility engine room was consistent with industry standards. Industry standards require that such documentation is maintained on-site. ANSI/IIAR 2-2014, Sections 6.14.3 and 16.1.3.

251. Starkist's failure to maintain documentation confirming that the ventilation system design for the ammonia refrigeration system in the engine room was adequately designed is a violation of Section 112(r)(1) of the CAA's requirement to design and maintain a safe facility taking such steps as are necessary to prevent releases.

Violation Category 8: Failure to Prepare an Adequate Emergency Response Plan

252. The Facility is located adjacent to another tuna cannery that has over 250 employees on-site at any given time during operation, in addition to other businesses. In addition, the Facility is within a tenth of a mile radius of residences. A release of ammonia, chlorine, or butane from the Facility could affect employees at these businesses, as well as nearby residents.

253. At the time of the May 2016 inspection, Starkist did not have an emergency response plan that included steps or procedures to alert potentially-affected businesses or residents in the event of an accidental release of ammonia, butane, or chlorine as set forth in 40 C.F.R. § 68.95(a)(1)(i).

254. Starkist's failure to prepare an emergency response plan to notify and ensure the safety of potentially-affected business and/or residents in the event of an accidental release is a violation of Section 112(r)(1) of the CAA's requirements to (1) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (2) minimize the consequences of accidental releases which do occur. 42 U.S.C. § 7412(r)(1).

255. As described in Paragraphs 81 - 83, for each violation described in this Claim for Relief, Defendants are subject to injunctive relief, as well as civil penalties, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

SIXTH CLAIM FOR RELIEF
(CAA – RICE and BOILER NESHAPs; American Samoa SIP)

256. Paragraphs 1 through 151 are realleged and incorporated herein by reference.

257. Based on the Starkist Self-Disclosure Reports, at all times relevant to this Complaint, the Facility emits "hazardous air pollutants," as that term is defined in Section 112(a)(6) of the CAA, 42 U.S.C. § 7412(a)(6), including, among others, sulfur dioxide, oxides of nitrogen, volatile organic compounds, and particulate matter.

258. The Facility is a "stationary source" within the meaning of the CAA, and 40 CFR Part 63.

259. Based on the Starkist Self-Disclosure Reports, the Facility is an "area source" of hazardous air pollutants ("HAPs") within the meaning of Section 112(a) of the CAA, 42 U.S.C.

§ 7412(a), and 40 C.F.R. § 63.2, because it emits less than 25 tons per year total of HAPs and less than ten tons per year of any one HAP.

260. Based on the Starkist Self-Disclosure Reports, the Facility includes four "industrial boilers," as those terms are defined in 40 C.F.R. § 63.11193, that generate steam for Facility operations.

261. Based on the Starkist Self-Disclosure Reports, the four boilers at the Facility were manufactured in approximately 1983.

262. Based on the Starkist Self-Disclosure Reports, each of the four boilers was and is rated at approximately 600 horsepower ("Hp") and with a heat input capacity of 20 million BTU per hour or greater.

263. The collection of all of the Facility's boilers is an "affected source" within the meaning of 40 C.F.R. §§ 63.2 and 63.11194(a).

264. The collection of all of the Facility's boilers is an "existing source" within the meaning of 40 C.F.R. §§ 63.2 and 63.11194(b), because it was constructed prior to June 4, 2010.

265. As the owner or operator of an existing, affected source subject to the Boiler NESHAP, Defendants were required to comply with all applicable provisions of the NESHAP no later than March 21, 2014. 40 C.F.R. § 63.11196(a).

266. Based on the Starkist Self-Disclosure Reports, Defendants violated 40 C.F.R. § 63.11225(a)(2), by failing to submit an initial notification of the applicability of the Boiler NESHAP to EPA until April 30, 2016.

267. Based on the Starkist Self-Disclosure Reports, Defendants violated 40 C.F.R. § 63.11214(c), by failing to submit a Notification of Compliance Status Report to EPA.

268. Based on the Starkist Self-Disclosure Reports, Defendants violated 40 C.F.R. § 63.11214(c), by failing to conduct an energy assessment of its boilers by March 21, 2014.

269. Based on the Starkist Self-Disclosure Reports, Defendants violated 40 C.F.R. §§ 63.11223, 63.11214(b), by failing to conduct an initial tune-up of its boilers by March 21, 2014 or biennial tune-ups thereafter.

270. As set forth in Starkist's Self-Disclosure Reports, the Facility includes the following three diesel-fired emergency generators at the Facility:

a. An existing emergency compression ignition engine with a site rating of more than 500 brake horsepower, installed at the Facility in approximately 2001;

b. An existing emergency compression ignition engine with a site rating of less than 500 brake horsepower, installed at the Facility in approximately 2001; and

c. An existing emergency compression ignition engine with a site rating of less than 500 brake horsepower that was constructed prior to June 12, 2006 and was installed at the Facility in approximately December 2015.

271. As set forth in Starkist's Self-Disclosure Reports, the Facility includes one fire pump. The fire pump is an existing emergency compression ignition engine with a rating less than 500 Hp.

272. Each of the Facility's emergency generators and the fire pump is a "stationary reciprocating internal combustion engine" as that term is defined in 40 C.F.R. § 63.6585(a).

273. Each of the Facility's emergency generators and the fire pump is an "affected source" within the meaning of 40 C.F.R. §§ 63.2 and 63.6590(a).

274. Each of the Facility's emergency generators and the fire pump is an "existing source" within the meaning of 40 C.F.R. §§ 63.2 and 63.6590(a)(1)(iii).

275. As the owner or operator of existing affected sources subject to the RICE NESHAP, Defendants were required to comply with all applicable provisions of the NESHAP no later than May 3, 2013.

276. Based on the Starkist Self-Disclosure Reports, Defendants violated 40 C.F.R. § 63.6625(e)(3), by failing to develop and implement a maintenance plan for each emergency generator and fire pump by May 3, 2013.

277. Based on the Starkist Self-Disclosure Reports, Defendants violated 40 C.F.R. § 63.6625(f) by failing to install a non-resettable hour meter in each emergency generator and fire pump until April 30, 2016.

278. Based on the Starkist Self-Disclosure Reports, Defendants violated 40 C.F.R. §§ 63.6655(e)(2) and (f)(2), by failing to establish and maintain records regarding operation and maintenance, hours of operation, and reasons for operations for each emergency generator and fire pump until April 30, 2016.

279. Based on the Starkist Self-Disclosure Reports, the Facility is a "source" within the meaning of Rule 1.0.16 of the American Samoa SIP, because it is real property that emits dust, mist, fumes, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

280. As the owner or operator of a "source," Defendants were required to obtain a permit from American Samoa EPA for the Facility prior to operating.

281. Defendants violated Rule 1.1.6 of the American Samoa SIP by operating without obtaining a permit from American Samoa EPA. Defendants did not apply for a local air permit until April 29, 2016.

282. As described in Paragraphs 81 - 83, for each violation identified in this Claim for Relief, Defendants are subject to injunctive relief, as well as civil penalties, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

SEVENTH CLAIM FOR RELIEF
(EPCRA)

283. Paragraphs 1 through 151 are realleged and incorporated herein by reference.

284. Based on the Starkist Self-Disclosure Reports, in calendar years 2012, 2013, and 2014, hazardous substances for which Defendants were required to prepare or to have available MSDSs in accordance with OSHA and its implementing regulations, including ammonia, chlorine, diesel, sulfuric acid, nalsperse 7308 (ethoxylated nonyphenol), sodium chloride, caustic soda 50/50 (sodium hydroxide and potassium hydroxide), and aluminum sulfate, were present at the Facility in quantities equal to or greater than the minimum threshold level set by EPA for such substances pursuant to 40 C.F.R. § 370.10.

285. Based on the Starkist Self-Disclosure Reports, in calendar years 2013, and 2014, hazardous substances for which Defendants were required to prepare or to have available MSDSs in accordance with OSHA and its implementing regulations, including magnesium oxide and XtraBrom 111, were present at the Facility in quantities equal to or greater than the minimum threshold level set by EPA for such substances pursuant to 40 C.F.R. § 370.10.

286. Based on the Starkist Self-Disclosure Reports, in calendar year 2012, a hazardous substance (Boiler Care 1011 (sulfur dioxide)) for which Defendants were required to prepare or to have available an MSDS in accordance with OSHA and its implementing regulations, was

present at the Facility in quantities equal to or greater than the minimum threshold level set by EPA for such substance pursuant to 40 C.F.R. § 370.10.

287. Based on the Starkist Self-Disclosure Reports, in calendar years 2012 and 2014, a hazardous substance (Boiler Care 22300) for which Defendants were required to prepare or to have available an MSDS in accordance with OSHA and its implementing regulations, was present at the Facility in quantities equal to or greater than the minimum threshold level set by EPA for such substance pursuant to 40 C.F.R. § 370.10.

288. Based on the Starkist Self-Disclosure Reports, in calendar year 2013, a hazardous substance (sodium sulfite) for which Defendants were required to prepare or to have available an MSDS in accordance with OSHA and its implementing regulations, was present at the Facility in quantities equal to or greater than the minimum threshold level set by EPA for such substance pursuant to 40 C.F.R. § 370.10.

289. Based on the Starkist Self-Disclosure Reports, Starkist violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), by failing to prepare and submit to the American Samoa State Emergency Planning Committee or the Pago Pago Fire Department Inventory Forms that included the substances described in Paragraphs 284 through 288 for the relevant years until January 22, 2016.

290. Based on the Starkist Self-Disclosure Reports, in calendar years 2012, 2013, and 2014, Defendants manufactured, processed, or otherwise used at the Facility toxic chemicals listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, including ammonia, chlorine, formaldehyde, and polycyclic aromatic compounds, in quantities greater than the minimum threshold quantity set by EPA in 40 C.F.R. § 372.25.

291. Based on the Starkist Self-Disclosure Reports, in calendar year 2012, Defendants manufactured, processed, or otherwise used at the Facility methanol, a toxic chemical listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in a quantity greater than the minimum threshold quantity set by EPA in 40 C.F.R. § 372.25.

292. Based on the Starkist Self-Disclosure Reports, Defendants violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and its implementing regulations, by failing to submit the relevant TRI Form R Reports for the chemicals and calendar years described in Paragraphs 290 and 291 until February 1, 2016.

293. Pursuant to EPCRA Section 325(c)(3), 42 U.S.C. § 11045(c)(3), each day that each Defendant failed to timely submit a required Inventory Form to the appropriate LEPC, the SERC, and the fire department with jurisdiction over the Facility or to submit a TRI Form R to EPA, constitutes a separate violation.

294. As described in Paragraph 92, for each violation described in this Claim for Relief, Defendants are subject to civil penalties, and injunctive relief, pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1).

EIGHTH CLAIM FOR RELIEF
(RCRA – Used Oil Violations)

295. Paragraphs 1 through 151 are realleged and incorporated herein by reference.

296. Based on the Starkist Self-Disclosure Reports, at all times relevant to this Complaint, Starkist has generated "used oil", within the meaning of 40 C.F.R. § 279.1 and 42 U.S.C. § 6903(36), from its on-site operations at the Facility.

297. Based on the Starkist Self-Disclosure Reports, on one or more occasions, Starkist has accepted, and continues to accept, shipments of "used oil" within the meaning of 40 C.F.R. §

279.1 and 42 U.S.C. § 6903(36), at the Facility from outside entities, including Solar, Inc. and American Samoa Power Authority.

298. Based on the Starkist Self-Disclosure Reports, on one or more occasions, Starkist has burned the used oil referred to in Paragraphs 296 and 297 in its Boilers, or combined the used oil referred to in Paragraphs 296 and 297 with fish oil and then burns it in its Boilers.

299. Starkist is a "used oil fuel marketer" within the meaning of 40 C.F.R. § 279.1, because used oil generated at the facility is claimed to be on-specification by Starkist prior to being burned.

300. Starkist is a "used oil processer" within the meaning of 40 C.F.R. § 279.1, because it combines used oil with other oil prior to burning it.

301. From February 11, 2011 to March 17, 2016, Starkist violated Section 3010 of RCRA, 42 U.S.C. § 6930, 40 C.F.R. §§ 279.51 and 279.73 by failing to submit a notification to EPA of its used oil activities that included its activities as a used oil fuel marketer or used oil processor. Each day that Starkist failed to submit such a notification and carried out used oil fuel marketing and used oil processing activities at the Facility constitutes a separate violation of 40 C.F.R. §§ 279.51 and 279.73.

302. Based on the Starkist Self-Disclosure Reports, from February 11, 2011 to February 11, 2016, Starkist violated 40 C.F.R. § 279.74 by failing to keep records of shipments of used oil that it received from Solar, Inc. and American Samoa Power Authority.

303. Based on the Starkist Self-Disclosure Reports, from February 11, 2011 to February 11, 2016, Starkist violated 40 C.F.R. § 279.72 by failing to obtain copies of analyses, perform analyses, or retain copies of any analyses for three years showing that the used oil it burned in its Boilers was on specification, as required by 40 C.F.R. § 279.72.

304. As described in Paragraphs 102 - 103, for each violation described in this Claim for Relief, Defendants are subject to injunctive relief, as well as civil penalties, pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

A. Order Defendants to take all necessary steps to comply with the CWA, CAA, EPCRA, RCRA, and their implementing regulations;

B. Assess civil penalties against Defendants for each violation of the CWA, CAA, EPCRA, and RCRA and their implementing regulations as set forth in this Complaint;

C. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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