



4410-15

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree
Under the
Clean Water Act, Clean Air Act, Emergency Planning and Community Right-To-Know Act, and
Resource Conservation and Recovery Act

On December 22, 2017, the Department of Justice filed an amended complaint and lodged a revised proposed consent decree with the United States District Court for the Western District of Pennsylvania in the lawsuit entitled *United States and Territory of American Samoa v. StarKist Co. and Starkist Samoa Co.*, Civil Action No. 2:17-cv-01190-DSC. The amended complaint and revised proposed consent decree supersede the complaint and proposed consent decree filed by the Department of Justice in this action on September 12, 2017 and noticed for public comment in 82 Fed. Reg. 43,573 (Sept. 18, 2017).

In addition to the allegations in the original complaint, the amended complaint, which is filed by the United States and the Territory of American Samoa, alleges three new violations of the Clean Water Act (“CWA”) related to unpermitted discharges from Starkist’s facility to Pago Pago Harbor. First, the amended complaint alleges that Starkist discharged stormwater associated with industrial activity without a permit between June 2, 2015 and the present. Second, the amended complaint alleges that Starkist discharged a milky-white substance that contained pollutants from its facility through a stormwater outfall on 5 occasions between July 13, 2017 and October 30, 2017. Finally, the amended complaint alleges that Starkist discharged pollutants from a sewage lift station overflow pipe at its facility into the harbor on September 20, 2017. For each of these violations, the amended complaint seeks injunctive relief and civil penalties.

The amended complaint also adds a claim for relief by the Territory for violations of the American Samoa Environmental Quality Act and its implementing regulations based on the same facts underlying the United States' claims for relief. In particular, the amended complaint alleges that Starkist's unauthorized discharges and its discharges that exceeded effluent limitations in its NPDES permit violated the requirement in the American Samoa Environmental Quality Commission Rules that such discharges comply with NPDES rules and regulations. In addition, the amended complaint alleges that each of Starkist's violations of Section 112(r) of the Clean Air Act related to the handling of ammonia, butane, and chlorine at the facility violated the American Samoa Environmental Quality Commission Rules requirement to comply with the federal Clean Air Act. For each of these violations, the Territory seeks civil penalties.

The revised proposed consent decree requires the defendants to perform injunctive relief, and pay an increased civil penalty of \$6,500,000 (an increase of \$200,000) to resolve the additional CWA violations alleged in the amended complaint, as well as the original alleged violations. Starkist must pay \$3,900,000 to the United States and \$2,600,000 to the Territory.

The revised proposed consent decree requires the defendants to perform the injunctive relief included in the previously-lodged consent decree, as well as to address the additional CWA violations. It requires Starkist to obtain authorization to discharge stormwater from the facility, to implement best management practices, and prepare a plan to reduce, minimize, and eliminate pollutants in stormwater discharges from the facility. The decree also requires Starkist to identify and eliminate any connections between the facility's industrial processes and its stormwater collection system. Finally, the revised proposed Consent Decree formalizes the role of the Territory in the implementation of the revised Consent Decree. The revised consent decree also replaces the process flow diagram in Appendix C to include an updated diagram.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. StarKist Co. and Starkist Samoa Co.*, D.J. Ref. No. 90-5-1-1-11357. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

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| <i>To submit comments:</i> | <i>Send them to:</i> |
| By e-mail | pubcomment-ees.enrd@usdoj.gov |
| By mail | Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611 |

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. A Samoan language summary of the settlement is also available on the website. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to:

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P.O. Box 7611
Washington, D.C. 20044-7611

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