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**Congress of the United States**  
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October 13, 2017

The Honorable Judge David Stewart Cercone, United States District Court, Western District of Pennsylvania, Pittsburgh Division;

The Honorable Attorney General of the United States Jeff Sessions III, U.S. Department of Justice; c/o Assistant Attorney General Environmental and Natural Resources Division:

I write these comments pursuant to the Department of Justice Notice of Lodging of the Proposed Consent Decree Under the Clean Water Act ("CWA"), Clean Air Act ("CAA"), Emergency Planning and Community Right-To-Know Act ("EPCRA"), and the Resource Conservation and Recovery Act ("RCRA") published in the Federal Register on September 18, 2017 calling for public comments on the proposed consent decree filed in the United States District Court in the Western District of Pennsylvania before the Honorable District Court Judge David Stewart Cercone.

I would like you both to be aware of the true environmental ramifications that will occur as a byproduct of this agreement, which I respect the parties right to voluntarily enter into without any admission of fault or liability.

Some of the fixes the DOJ/EPA mandate and its timeframe in the Consent Decree necessarily require that the largest employer in American Samoa temporarily layoff nearly 2500 workers of a total territorial workforce of only 16,000 for at least 5 weeks for the required repairs.

This will immediately create a 16 % rise in the unemployment rate -- doubling the current rate of 15% - putting 1 in 3 workers out of work for the remainder of 2017. Over \$1.5 million in direct lost wages to the workers heading into the Holiday season; at least \$3.6 million in lost purchasing power and over \$1.4 million in income taxes or about a 7% loss in local income tax revenue to the American Samoa government according to the Governor's estimates. The effect down the supply chain from lost income to small business vendors, vessel owners and their crews who support the cannery, and the utility companies is incalculable to my constituents. See The Pacific Islands Report dated September 18, 2017 "Starkist Five Week Shutdown will Cost American Samoa Government Millions."

"Local government and tuna canneries are the largest employers, accounting in 2014 for 42 percent and 14 percent of the workforce, respectively. From 2007 to 2014, overall employment fell by 4 percent, and workers' average inflation-adjusted earnings fell by about 11 percent. During the same period, cannery *employment decreased by 50 percent*, and the minimum wage for cannery workers rose. Cannery officials reported labor costs and fisheries access among the challenges of operating in the territory, and

one of the two canneries announced plans to suspend operations indefinitely in December 2016.” See GAO Report on American Samoa, GAO-17-83 December 2016.

As you can see, this is not a normal case with normal side effects-it is an extraordinary case with extraordinary negative effects to an entire community largely dependent upon a *sole* core business which the local economy thoroughly revolves. Starkist has a long and positive history in American Samoa providing valuable employment. Dongwon Enterprise Chairman Jae-chul Kim himself is a legend in the Pacific tuna sector delivering catches of tuna to American Samoa decades ago first as a fisherman then as a Captain - rising up to lead this global company upon which we depend.

The DOJ and EPA, and this Honorable Court, need to better understand the real environmental harm in this case to American Samoa. The Consent Decree calls for the collection of \$6.3 million in penalties to go to Washington bureaucrats and not to the cannery workers harmed, some of whom are Veterans; as well as those integral vendors in the supply chain effected such as the fishermen, suppliers and support service providers to the tuna industry; and to the essential government services, like the maintenance-starved Veterans clinic and LBJ Hospital, all of which will suffer direct harm. But none of that \$6.3 million appears to be directed to any of them.

Too often in the past these agencies have been eager to pat themselves on the back, telling us how they are “enhancing” and “protecting” our environment while sapping the environment of our jobs and using penalties to bankroll Washington, D.C. based administrators, special interest groups, “non-profits” and other DC bureaucrats.

Fortunately, U.S. Attorney General Jeff Sessions has recently reviewed, revised and rescinded most of these practices as detailed in his June 5, 2017 Memo to his U.S. Attorneys outlining the Prohibitions on Settlement Payments to Third Parties in these types of cases absent a few specific exceptions detailed therein.

As this is a relatively new DOJ policy and this is one of the first cases wherein that policy is potentially applicable, I want to make sure that the DOJ adheres to it and examine the possibility for an exception where the parties agree to direct a portion of these penalties to an appropriate entity in American Samoa to ameliorate this imminent harm.

The “parties” can direct some or all of these fines legally under valid exceptions to DOJ policy. If they feel otherwise please explain the reasons on the record to the Court and the people of American Samoa why they cannot do so in order that I may seek legislative solutions to this travesty.

I enclose a copy of the letter recently written to me September 18, 2017 by the Governor of American Samoa, Lolo M. Moliga, asking me to “Please take steps to address this issue with the United States Department of Justice *assuring allocation of these funds to American Samoa to mitigate other potential adverse impact to our environment not yet uncovered.*” (Italics added).

My understanding is that the Governor’s request to have “these [\$6.3 million in] funds” sent “to American Samoa to mitigate other potential adverse impact to our environment not yet uncovered” would be, at a minimum, contrary to the Attorney General’s new policy on the use of Settlement funds, and possibly against federal law to have money from this case go to “other” “uncovered” cases that “potential[ly]” might “impact ...our [American Samoan] environment some other time.

The time of this case is here, and now, as the plant is closing October 21 for five weeks putting 16% of the working people out of work on top of an existing unemployment rate(UR) in excess of 15%, doubling the UR. These funds should be used to help mitigate the damage to the *people's work environment* effected now—not the amorphous *environment* in the future.

I urge the Governor of American Samoa to file a Motion to Intervene in this matter before the Court as soon as possible to have standing as a party in this matter to help bring valid relief to the American Samoan community. In the absence thereof, I ask the Attorney General and the Court to review and take judicial notice, respectively, of some key findings in the opinion by U.S. District Judge Leslie Kobayashi in the case of Territory of American Samoa v. National Marine Fisheries Service et al., CV No. 16-00095, Hawaii Dist. Ct., 2017.

The Governor recently hired lawyers in Hawaii in a victorious case against the National Marine Fisheries Service; the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration, the Western Pacific Regional Fishery Management Council and others and urge the same zealously for the American Samoan community here.

Apportionment of some of these penalties fall within the AG's exceptions of "other law" that being pursuant to the historic political and international agreements between the United States and American Samoa thru the voluntary Deeds of Cession of 1900, bargained for and made in exchange for, certain protections of individual rights and property, and for the assistance, development and advancement of its people, as codified in 1929 at 48 U.S.C. Section 1661, and in particular, 48 U.S. C. Sec. 1661 (b), which states: **"That all revenue from or proceeds of the same [islands of eastern Samoa], shall be used solely for the benefit of the inhabitants of the said islands of eastern Samoa for educational and other purposes."** (Emphasis added).

The statutory provision also contemplates that revenue or proceeds may be assigned for the use of the local government-but my concern is with the workers, my constituents who have called my office and asked me, "Why does this money go to Washington bureaucrats?" And they plead "Don't send these millions to someone in Washington to run a water park (the National Marine Sanctuary)."

Indeed, a review of cases shows 25% or more of penalties went to questionable third parties before the revised policy was implemented. Looks like someone in DC benefitted not the community of American Samoa workers.

This would truly be "fine" money if it went to the environment of those workers in American Samoa who will suffer next month from being laid off. Only the "parties" can insure this and it is my hope they will.

The lawyers the Governor hired were successful in the respect that this became only the second time in over 100 years the Deeds of Cession were reviewed by a Federal Court and importantly were found to be deemed "law" by the District Court of Hawaii. The Deeds and their codification, 48 U.S.C. Sec 1661, would provide an adequate basis under the Attorney General's new policy to allow the DOJ to have these fine payments go in to a trust administered by one or both of the parties in the Consent Decree for the benefit of the workers that get sick from their environment and the clinic and hospital that heal them from these environmental harms as part of its implementation. This would be no slush fund and wholly consistent with the Attorney General's recent Memo of June 5, 2017 on Settlement Payments.



The parties can and should voluntarily amend the consent decree to provide a viable mechanism for using the \$6.3 million in penalties to remedy the real environmental havoc set to befall a community which has not the safety nets of fully integrated communities of the States. Otherwise the only penalty being imposed is on the people of American Samoa.

The Court can and should take judicial notice of the Deeds of Cession and corresponding statute under Sec. 1661 et al. where the Government, again, like the Court found in the Hawaii opinion, has arbitrarily overlooked the Deeds in this case in its implementation of the Consent Decree and suggest an alternative to the parties if they fail to act as a condition of approving it.

Few places may understand the devastating effects of a plant shutdown laying off over 16% of its workforce in one swoop but Pittsburgh is certainly one place that can understand the rippling fright disturbing the people from this coming economic Tsunami in American Samoa.

It is clear that the Deed of Cession contemplated such disruptions in 1900 and the Congress some 29 years in 48 U.S.C. Section 1661 Statute, not only contemplated but codified that realization of the inevitable growing pains from the integration of such a small fragile economy into the larger fabric of the existing United States and intended to compensate the "islands of eastern Samoa" [American Samoa] for such disruptions: "if the United States government 'require[s] **any land or any other thing** [e.g. fines/penalties imposed upon the licensed use of those American Samoa lands] for [United States] Government uses, the Government may take the same upon payment of a fair consideration for the ...other thing, to those who may be deprived of their **property** on account of the desire of the Government." Opinion at 34 (emphasis original by Court).

Samoans right to live and work, indeed an entire slice of the job environment, are being deprived of their "property" in this case, a right "reserved by implication in the Deeds of Cession" and "the Deeds of Cession constitute 'other applicable law'" Opinion at 38., warranting "payment of a fair consideration" to American Samoans for the taking of that most treasured "thing-" their job.

The people of American Samoa have always shown supreme concern for the preservation of "Fa'a Samoa," the Samoan way of life, which the District Court of Hawaii recognized and we ask the Department of Justice and Court to do so here.

Thank you for your consideration on behalf of the people of American Samoa.

Very Truly Yours,

  
Aumua Amata Coleman Radewagen

Member of Congress

cc: Honorable Lolo M. Moliga, Governor of American Samoa

Honorable Douglas W. Domenech, Assistant Secretary for Insular Affairs, U.S. Department of the Interior