

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 HAWTHORNE STREET
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. CWA-09-2023-0038
)	
MMS CO. LTD.)	
)	COMPLAINT, CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	
)	<i>Class II Administrative Penalty Proceeding under</i>
St. Pauli, NPDES Permit)	<i>Section 309(g) of the Clean Water Act, 33 U.S.C.</i>
Tracking No. VPBD8857G)	<i>§1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>
_____)	

CONSENT AGREEMENT

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), and 40 C.F.R. Part 22 (Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits).

2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate inter alia, Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a), and/or who has violated any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter, "Complainant."

3. Respondent is MMS Co., Ltd.

4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, including the territorial seas, except as authorized, inter alia, by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. On April 12, 2013, EPA issued the *NPDES General Permit for Discharges Incidental to the Normal Operation of a Vessel*, EPA-HQ-OW-2011-0411 (Vessel General Permit or VGP), with an effective date of December 19, 2013 and an expiration date of midnight December 19, 2018. The VGP authorizes discharges incidental to the normal operation of non-military and non-recreational vessels greater than 79 feet in length into waters subject to the requirements of Section 312(p) of the CWA, 33 U.S.C. § 1322(p), and the VGP. Waters subject to the VGP are referred to as “navigable waters” which means waters of the United States, including territorial seas, as those terms are defined at Sections 502(7) and 502(8) of the CWA, 33 U.S.C. § 1362(7) and 1362(8).

8. On December 4, 2018, Section 312(p) of the CWA was amended by the Vessel Incidental Discharge Act (VIDA) and now provides that all provisions of the 2013 Vessel General Permit shall remain in force and effect, and shall not be modified until the U.S. Coast Guard promulgates regulations that are final, effective, and enforceable for implementation, compliance, and enforcement of new EPA standards of performance for marine pollution control devices for each type of discharge incidental to the normal operations of a vessel. 33 U.S.C. § 1322(p)(3). To date, these regulations have not been promulgated.

9. Section 312(p)(8)(A) of the CWA makes it “unlawful for any person to violate a provision of the Vessel General Permit.” 33 U.S.C. § 1322(p)(8)(A)(i).

10. Under Part 1.5.1.1. of the VGP, if the vessel is 79 feet or longer, greater than or equal to 300 gross tons, or if the vessel has the capacity to hold or discharge more than 8 cubic meters (2,113 gallons) of ballast water, then the vessel owners/operators must submit a signed and certified, complete and accurate Notice of Intent (NOI) to receive authorization under the VGP for their discharges.

11. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, the EPA may assess a Class II civil administrative penalty of up to \$25,847 per day of

violation, not to exceed \$323,081 in total, against any person that has violated Section 301(a), or has violated any permit condition or limitation of a permit issued under Section 402 of the CWA that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023.

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

12. Respondent is a privately-owned company headquartered in Tokyo and therefore a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. Respondent owns and operates the St. Pauli (Vessel), an oil or gas tanker registered in Singapore and designated by International Maritime Organization (IMO) number 9790373. The Vessel has been in operation since 2015. The Vessel is 600 feet in length, 29,365 gross tons and has a ballast water capacity of 21,802 cubic meters.

14. The Vessel is a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14). The Vessel is subject to the requirements of Section 312(p) of the CWA, 33 U.S.C. § 1322(p), and the VGP.

15. On April 27, 2017, Respondent submitted a NOI to EPA to seek coverage under the VGP for the St. Pauli, which was assigned NPDES tracking number VPBD8857G.

16. Respondent installed a JFE Ballast Ace ballast water treatment system (BWTS) on board the Vessel on April 10, 2017 and first used it to treat ballast water prior to a discharge to navigable waters on June 27, 2017 while in port at Houston, TX.

17. The VGP requires, among other things:

a. Part 2.2.3.5 requires that the owners/operators must meet ballast water discharge limits (expressed as instantaneous maximum) consistent with the schedule found in Part 2.2.3.5.2.

b. Part 2.2.3.5.1.1.3 requires that sensors and other equipment for the BWTS be calibrated annually, at a minimum, and no less frequently than recommended by the sensor manufacturer, BWTS manufacturer, or when warranted based on device drift from a standard or calibrated setting.

c. Part 2.2.3.5.1.1.4. requires that ballast water discharges from vessels containing a BWTS be monitored to ascertain compliance with the effluent limitations for indicator microorganisms required under part 2.2.3.5 of the VGP. For vessels with high quality data, biological indicator compliance monitoring must be conducted two times during the first year the BWTS is installed, and if sampling results are below permit limits for two consecutive events, one time per year after the first year. If the vessel owner/operator exceeds a permit limit on any sampling event, they must return to monitoring two times per year until they have two additional results below permit limits. For vessels for which high quality data are not available, monitoring must be conducted four times per year.

- d. Part 2.2.3.5.1.1.5.1 requires that ballast water discharges from vessels containing a BWTS that uses or generates biocides must meet the ballast water discharge limits (expressed as instantaneous maximum) for biocides or residuals.
- e. Part 2.2.3.5.1.1.5.2 requires monitoring of the vessel ballast water discharge for any residual biocides or derivatives used in the treatment process, in part to demonstrate compliance with the conditions in Part 2.2.3.5.1.1.5.1. The vessel operator must perform initial monitoring and maintenance monitoring in compliance with the schedule set out in the Permit.
- f. Part 2.2.3.5.1.1.6 of the VGP requires that records of sampling and testing results required under Part 2.2.3.5.1.1 must be retained onboard for a period of three years in the vessel's recordkeeping documentation. Vessels must also submit the testing results to EPA as part of the vessel's annual report on the VGP ballast water DMR.
- g. Part 2.2.3.5.2 sets out a schedule for when ballast water treatment becomes best available technology (BAT) and is therefore required. For vessels such as this, which are new vessels (constructed after December 1, 2013) the vessel's compliance date is on delivery.
- h. Part 4.4.1 of the VGP requires that for each vessel, owners/operators are required to submit an annual report for each year that they have active permit coverage. For vessels that must file an NOI, this means for as long as they have an active NOI, regardless of whether the vessel was in subject waters during a calendar year. Annual reports must be completed each calendar year and submitted by February 28 of the following year. The vessel owner/operator must complete the annual report form provided in Appendix H of the VGP and submit it to EPA electronically. All analytical monitoring results must be submitted to EPA as part of the annual report. The vessel owner/operator shall respond to all questions accurately and completely and provide the necessary information and/or data to support each response.

18. Between June 3, 2021, and April 13, 2022, representatives of the EPA conducted compliance reviews of available databases and additional information provided by the Respondent. These reviews included evaluations of the Respondent's compliance with the requirements of Sections 301, 312(p) and 402 of the CWA, 33 U.S.C. § 1311, 1322(p), 1342, and the VGP.

19. The EPA found the following violations:

- a. In the first year that the BWTS was used, starting June 2017, Respondent failed to conduct at least two sampling events, and failed to report the testing results for biological indicators in annual reports as required by Part 2.2.3.5.1.1.4. and Part 2.2.3.5.1.1.6.
- b. In the 2017, 2018, and 2020 annual reports, Respondent failed to report BWTS functionality monitoring data as required by Part 2.2.3.5.1.1.6.

- c. In 2018, 2020, and 2021 Respondent failed to conduct annual calibrations of the BWTS's sensors and equipment as required by Part 2.2.3.5.1.1.3.
- d. In the 2018 annual report, Respondent reported *E. coli* and enterococci concentrations in a treated ballast water discharge on June 30, 2018 to navigable waters at Corpus Christi, TX that exceeded the ballast water numeric discharge limitations required by Part 2.2.3.5 and Part 2.2.3.5.2.
- e. In the second year the BWTS was used, starting June 2018, Respondent failed to conduct at least one sampling event and failed to report the testing results for biological indicators in an annual report, as required by Part 2.2.3.5.1.1.4 and Part 2.2.3.5.1.1.6.
- f. In 2018 Respondent failed to conduct at least one maintenance monitoring sampling event and failed to report the testing results for residual biocides or derivatives used in the treatment process of the Vessel's BWTS, as required by Part 2.2.3.5.1.1.5.2 and Part 2.2.3.5.1.1.6.
- g. In the 2018 annual report, Respondent failed to report accurate and complete information regarding the annual inspection and noncompliance as required by Part 4.4.1.
- h. In the 2019 annual report, Respondent failed to report accurate information regarding operation of the vessel in navigable waters and failed to complete the remainder of the annual report.
- i. In the 2021 annual report, Respondent reported a total residual oxidizers (as chlorine) concentration in a treated ballast water discharge on December 30, 2021 to navigable waters at Richmond, CA that exceeded the maximum ballast water effluent limits for residual biocides required by Part 2.2.3.5.1.1.5.1.
- j. In the 2021 annual report, Respondent failed to report accurate and complete information regarding noncompliance as required by Part 4.4.1.

IV. ALLEGED VIOLATIONS

20. Between December 2017 and February 2022, Respondent's operation of the *St. Pauli* failed to comply with multiple conditions and limitation in the VGP and EPA is authorized to assess administrative civil penalties pursuant to Section 309(g) of the CWA.

V. ADMINISTRATIVE PENALTY

21. In consideration of the penalty factors of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of **one hundred and ten thousand, five hundred and nine dollars (\$110,509)** within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

22. Respondent shall make penalty payment by one of the options listed below:

a. Check payment: Payment by a cashier's or certified check shall be made payable to "treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO Box 979078
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979078
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Mo 63101

b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 0510367606
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency)

d. Online Payment: This payment option can be assessed from the information below

Go to www.pay.gov
Enter "SFO Form Number 1.1" in the search field
Open "EPA Miscellaneous Payments – Cincinnati Finance Center" form and complete required fields

Payment instructions are available at <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

23. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent's name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.

24. Concurrent with payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Sarah Ferrif
Attorney-Advisor
ORC 2-4
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

25. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.

26. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

27. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

28. In accordance with 40 C.F.R. § 22.18(b)(2), for the purpose of this proceeding, Respondent:

- a. admits the jurisdictional allegations of the CA/FO;
- b. neither admits nor denies specific factual allegations contained in the CA/FO;
- c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
- d. waives any right to contest the allegations set forth in this CA/FO; and
- e. waives its right to appeal this proposed Final Order.

VIII. RESERVATION OF RIGHTS

29. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

30. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ATTORNEYS FEES AND COSTS

31. Unless otherwise specified, each party shall bear its own attorneys fees and costs.

X. EFFECTIVE DATE AND TERMINATION

32. In accordance with C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with

the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XI. PUBLIC NOTICE

33. Pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this CA/FO is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent of this CA/FO if public comments disclose relevant and material information that was not considered by Complainant in entering into this CA/FO. Respondent may withdraw from this CA/FO only upon receipt of written notice from EPA that it no longer supports entry of this CA/FO.

34. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California and the State of Texas regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9

Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division

Date

For Respondent MMS Co. Ltd.

/s/
Captain Ajay Tripathi
Executive Managing Officer

6/12/2023
Date

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2023-0038) be entered, and that Respondent shall pay a civil penalty in the amount of **one hundred and ten thousand, five hundred and nine dollars (\$110,509)** in accordance with the terms of this Consent Agreement and Final Order.

Date

Beatrice Wong
Regional Judicial Officer
U.S. EPA, Region IX