

1                   **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
2                                   **REGION 9**

3                                   75 Hawthorne Street  
4                                   San Francisco, California 94105

5 In re the Matter of:

6  
7 **Eagle Marine Services, Ltd.**

8 614 Terminal Way  
9 Terminal Island, California, 90731

10                   Respondent.

) Docket No.: CWA-09-2009-0004  
)  
)

) **COMPLAINT, NOTICE OF PROPOSED**  
) **PENALTY, AND NOTICE OF**  
) **OPPORTUNITY FOR HEARING**  
)

) Proceedings Under Section 309(g)(2)(B) of the  
) Clean Water Act, as amended, 33 U.S.C. §  
) 1319(g)(2)(B)  
)

12                                   **COMPLAINT**

13                                   **Statutory Authority**

14                   1. The United States Environmental Protection Agency (“EPA”) issues this Complaint,  
15 Notice of Proposed Penalty, and Notice of Opportunity for Hearing (“Complaint”) pursuant to  
16 Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g). The  
17 authority to take action under Section 309(g) of the Act, 33 U.S.C. § 1319(g), is vested in the  
18 Administrator of the EPA. The Administrator has delegated this authority to the Regional  
19 Administrator, EPA Region 9, who in turn has delegated it to the Director of the Water Division  
20 of EPA, Region 9, who hereby issues this Complaint.

21                                   **Statutory and Regulatory Framework**

22                   2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant  
23 from a point source by any person into a water of the United States unless it complies with the  
24 Act, including Section 402, 33 U.S.C. § 1342.  
25

1       3. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge  
2 Elimination System (“NPDES”) program. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA  
3 and states with EPA-approved NPDES programs are authorized to issue permits governing the  
4 discharge of pollutants from regulated sources.

5       4. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA’s implementing regulations at  
6 40 C.F.R. § 122.26, require NPDES permit authorization for discharges of storm water  
7 associated with industrial activity. Facilities engaged in industrial activity, as defined by 40  
8 C.F.R. § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to  
9 discharge storm water into waters of the United States.

10       5. Marine Cargo Handling, Standard Industrial Classification (SIC) Code 4491 falls under  
11 SIC Major Group 44 and, pursuant to 40 C.F.R. § 122.26(b)(14)(viii), is an industrial activity  
12 subject to the discharge and permitting requirements under Section 402(p) of the Act, 33 U.S.C.  
13 § 1342(p).

14       6. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations,  
15 authorize EPA to, *inter alia*, require the owner or operator of any point source to establish  
16 records, make reports, or submit other reasonably required information, including individual and  
17 general NPDES permit applications.

18       7. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 C.F.R. § 122.21, any  
19 person who discharges or proposes to discharge storm water associated with industrial activity  
20 must submit an application for an NPDES permit 180 days before the date on which the  
21 discharge is to commence.

22       8. The State of California has an EPA-approved NPDES program, and issues permits,  
23 including storm water permits, through its State Water Resources Control Board (“State Board”)  
24 and nine Regional Water Quality Control Boards (“Regional Boards”). On April 17, 1997, the  
25 State Board adopted General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ

1 (“General Permit”), the current statewide NPDES permit for storm water discharges associated  
2 with industrial activity.

3 9. All facility operators seeking coverage under the General Permit must submit a *Notice*  
4 *of Intent to Comply with the Terms of the General Permit for Storm Water Discharges*  
5 *Associated with Industrial Activity* (“NOI”) to the State Board fourteen (14) days prior to  
6 commencing industrial operations. A facility operator that does not submit an NOI must submit  
7 an application for an individual NPDES permit. (General Permit, Order Provision E(1), pg. 6  
8 and Attachment 3 to the General Permit.)

9 10. The General Permit requires facility operators to develop and implement a storm water  
10 pollution prevention plan (“SWPPP”) prior to discharging storm water from their industrial  
11 operations. (General Permit, Order Section A(1)(a), p. 11.) The SWPPP includes obligations to  
12 identify sources of industrial storm water pollution and to identify site-specific best management  
13 practices (“BMPs”). The SWPPP must include, *inter alia*, a narrative description of the storm  
14 water BMPs to be implemented at the facility for each potential pollutant and its source.  
15 (General Permit, Order Section A(8), pg. 17.)

16 11. The General Permit requires facility operators to reduce or prevent pollutants associated  
17 with industrial activity in their storm water discharges and authorized non-storm water  
18 discharges by implementing best available technology economically achievable (“BAT”) for  
19 toxic and non-conventional pollutants and best conventional pollutant control technology  
20 (“BCT”) for conventional pollutants. Development and implementation of a SWPPP that  
21 complies with the General Permit and that includes BMPs that achieve BAT/BCT constitute  
22 compliance with this requirement. (General Permit, Order Provision B.3, pg. 4.)

23 12. The General Permit requires that the SWPPP identify a specific individual or individuals  
24 and their positions within the facility organization as members of a storm water pollution  
25 prevention team responsible for developing the SWPPP, assisting the facility manager in SWPPP

1 implementation and revision, and conducting all monitoring program activities, among other  
2 things. (General Permit, Order Section A(3), pg. 12.)

3 13. The General Permit requires facility operators to include a clear and understandable site  
4 map in the SWPPP that includes, *inter alia*, an identification of the location of municipal storm  
5 drain inlets, direction of storm water flow, and areas of industrial activity, including the location  
6 of fueling areas, material handling and processing areas, waste treatment and disposal areas, and  
7 other areas of industrial activity which are potential pollutant sources. (General Permit, Order  
8 Section A(4), pp. 12-14.)

9 14. The General Permit requires facility operators beginning industrial activities after  
10 October 1, 1992, to develop and implement a written monitoring program when the industrial  
11 activities begin. (General Permit, Order Section B(1)(a), pp. 24-25.)

12 15. The General Permit requires all facility operators falling under SIC Major Code 44 to  
13 monitor for the following specified analytical parameters to determine whether these parameters  
14 are present in significant quantities in storm water discharges: total suspended solids (TSS), Ph,  
15 specific conductivity, and total organic carbon (TOC) (oil and grease may be substituted for  
16 TOC), pursuant to General Permit, Order Section B(5)(c)(i), pg. 27, and aluminum, iron, lead  
17 and zinc, pursuant to General Permit, Order Section (B(5)(c)(iii), pg. 27, and Table D, pg. 43.

18 16. EPA has established parameter benchmark values (PBVs) for TSS, pH, specific  
19 conductivity, TOC (or oil and grease), aluminum, iron, lead and zinc. Final Reissuance of  
20 National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General  
21 Permit for Industrial Activities; Notice (MSGP 2000), Table 3 ("Parameter Benchmark Values"),  
22 65 Fed. Reg. 64766, 74767 (October 30, 2000). The State Board adopted the EPA's PBVs for  
23 purposes of General Permit storm water monitoring and analysis and they are included in the  
24 State Board's Sampling and Analysis Reduction Form. The instructions for completing the Form  
25 provide: "Analytical results above the PBVs may indicate that the facility's SWPPP is not fully

1 effective in reducing or preventing pollutants in storm water discharges.” See Form, Part B,  
2 [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/docs/smanlrhc.doc](http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/smanlrhc.doc).

3 17. The General Permit requires all facility operators to retain in the SWPPP the written  
4 authorization identifying the person duly authorized to submit reports, certifications, or other  
5 information required by the General Permit. (General Permit, Order Section C(9), pp. 48-49.)

### 6 **Factual Background**

7 18. Respondent is a Delaware corporation, licensed to do business in California, and is thus  
8 a “person” under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

9 19. Respondent operates a marine cargo handling facility (the “Facility”) located on  
10 approximately 292 acres of land at 614 Terminal Way, Terminal Island, California, at berths 303  
11 to 307, at the Port of Los Angeles in California. Respondent is primarily engaged in marine  
12 cargo handling activities classified under SIC Major Group 44, specifically SIC Code 4491  
13 (“Marine Cargo Handling”). Respondent has operated the Facility since at least 1997, and  
14 obtained General Permit coverage on June 25, 1997.

15 20. Data from the Torrance Municipal Airport Weather Monitoring Station, located  
16 approximately six miles northeast of the Facility, indicate there were at least 71 days with 0.1  
17 inches or more of rainfall at the Facility from October 1, 2004 to February 1, 2008.

18 21. Storm water runoff at the Facility collects and flows to on-site storm drains that  
19 discharge to the Inner Los Angeles Harbor.

20 22. The Los Angeles Harbor (including the Inner Harbor) is considered Essential Fish  
21 Habitat for two Fishery Management Plans developed by the National Marine Fisheries Service  
22 (“NMFS”) pursuant to the federal Magnuson-Stevens Fishery Conservation and Management  
23 Act, Public Law 94-265 (as amended October 11, 1996): the Coastal Pelagic Species Fishery  
24 Management Plan (“FMP”), 64 Fed. Reg. 69888 (Dec. 15, 1999), and the Pacific Coast  
25 Groundfish FMP, 71 Fed. Reg. 27408 (May 11, 2006).

1       23. The Inner Los Angeles Harbor is listed as an “impaired” water for copper, zinc, DDT,  
2 PCBs, sediment toxicity, and degraded benthic communities by the State of California pursuant  
3 to Section 303(d) of the Act, 33 U.S.C. § 1313(d).

4       24. On May 17, 2007, EPA Region 9’s contracted inspector visited the Facility to evaluate  
5 Respondent’s compliance with the General Permit. The inspector observed inadequate  
6 implementation and maintenance of BMPs throughout the Facility, including oil drums, oily  
7 parts, and batteries in areas lacking secondary containment, and visible evidence of recent fuel  
8 leaks or spills outside the Facility’s generator and power shop.

9       25. During the May 17, 2007 inspection, EPA’s contracted inspector reviewed the analytical  
10 results of storm water sampling performed by Respondent at the Facility and found that on  
11 February 27, 2006, and March 17, 2006, the storm water discharged from the Facility contained  
12 pH, TSS, specific conductivity, oil and grease, zinc, aluminum, and iron, at levels above the  
13 PBVs adopted by the State Board.

14       26. On November 9, 2007, EPA issued Respondent a Findings of Violation and Order for  
15 Compliance, EPA Docket No. CWA 309(a)-08-002 (the “2007 Order”), which required  
16 Respondent to bring the Facility into compliance with the General Permit by, *inter alia*,  
17 implementing additional BMPs, revising its SWPPP, and revising its monitoring program.

18       27. On December 19, 2007, Respondent provided EPA with a copy of a revised written  
19 monitoring program and also notified EPA that it had installed additional BMPs. On February 1,  
20 2008, Respondent submitted a revised SWPPP to EPA.

21       28. On August 18, 2009, EPA inspectors from EPA Region 9’s CWA Compliance Office  
22 inspected the Facility. EPA’s inspectors reviewed the analytical results of storm water sampling  
23 performed by Respondent at the Facility and found that on December 24, 2008, the storm water  
24 discharged from the Facility contained aluminum, iron, zinc, and pH at levels above the PBVs  
25 adopted by the State Board.

1 **Findings of Violation**

2 29. The facts stated in paragraphs 1 through 28 are re-alleged and incorporated herein.

3 30. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant  
4 from a point source by any person into a water of the United States unless it complies with the  
5 Act, including Section 402, 33 U.S.C. § 1342.

6 31. On June 25, 1997, the State Board granted Respondent coverage under the General  
7 Permit and assigned Waste Discharge Identification (“WDID”) Number 419I021437 for the  
8 Facility.

9 32. Respondent is a “person” under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

10 33. Storm water runoff from the Facility contains “pollutants,” including industrial waste, as  
11 defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

12 34. Storm drains at the Facility that discharge to the Inner Los Angeles Harbor are “point  
13 sources” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

14 35. Storm water runoff from the Facility that discharges to the Inner Los Angeles Harbor is a  
15 “storm water discharge associated with industrial activity” as defined by 40 C.F.R. §  
16 122.26(b)(14).

17 36. The Inner Los Angeles Harbor is a “water of the United States” as that term is defined in  
18 Section 502(7) of the Act, 33 U.S.C. § 1362(7), and EPA’s implementing regulations at 40  
19 C.F.R. § 122.2.

20 37. Data from the Torrance Municipal Airport Weather Monitoring Station indicate there  
21 were at least 71 days with 0.1 inches or more of rainfall at the Facility from October 1, 2004 to  
22 February 1, 2008. Upon information and belief, each of the rainfall events with 0.1 inches or  
23 more of rainfall at the Facility generated storm water associated with industrial activity that  
24 discharged into and added pollutants to the Inner Los Angeles Harbor and the Pacific Ocean.  
25

Counts

1. Failure to Comply with NPDES Permit Requirements

38. The facts stated in paragraphs 1 through 37 are re-alleged and incorporated herein.

39. Respondent discharged storm water associated with industrial activity at the Facility in violation of the General Permit from at least October 1, 2004 until at least February 1, 2008. During this period of noncompliance with the General Permit, there were at least 71 days with rainfall in excess of 0.1 inches during a twenty-four period. Respondent's noncompliance with the General Permit included:

2. Failure to Comply with General Permit Requirement  
to Develop an Adequate SWPPP

40. The facts stated in paragraphs 1 through 39 are re-alleged and incorporated herein.

41. The General Permit (General Permit, Order Section A, pp. 11-23) requires Respondent to develop and implement an adequate SWPPP prior to commencing industrial operations.

42. During the May 17, 2007 inspection of the Facility, Respondent provided EPA with a copy of a SWPPP dated February 1999. EPA's review of the SWPPP indicated it did not comply with requirements of the General Permit (General Permit, Order Section A, pp. 11-23) because it failed to:

- a. Specifically identify the current individual(s) responsible for implementing and developing the SWPPP, i.e., pollution prevention team, as required by the General Permit (General Permit, Order Section A(3), pg. 12);
- b. Develop an adequate site map, as required by the General Permit (General Permit, Order Section A(4), pp. 12-14), that included all points of storm water discharge from the Facility; and
- c. Include the written authorization of the person duly authorized to submit all reports, certifications, or other information required by the General Permit. (General Permit, Order Section C(9), pp. 48-49).

43. Upon information and belief, EPA alleges that Respondent failed to develop and implement an adequate SWPPP for operations at the Facility between October 1, 2004 and February 1, 2008. On February 1, 2008, Respondent submitted a revised SWPPP to EPA.



1 44. Respondent's failure to develop and implement an adequate SWPPP while engaged in  
2 industrial activity at the Facility between October 1, 2004 and February 1, 2008, constitutes no  
3 fewer than 1,217 days of violation of the General Permit (General Permit Order Sections A(3),  
4 pg. 12, A(4), pp. 12-14, and C(9), pp. 48-49), which was issued pursuant to Section 402 of the  
5 Act, 33 U.S.C. § 1342. Each violation of the General Permit is a violation of Section 301(a) of  
6 the Act, 33 U.S.C. § 1311(a).

7 3. Failure to Comply with General Permit Requirement to  
8 Develop an Adequate Written Monitoring Program

9 45. The facts stated in paragraphs 1 through 44 are re-alleged and incorporated herein.

10 46. The General Permit (General Permit, Order Section B(1)(a), pp. 24-25) requires facility  
11 operators to develop a site-specific written monitoring program prior to commencing industrial  
12 operations and to have the written monitoring program readily available for review by inspectors  
13 and employees.

14 47. During the May 17, 2007 inspection and pursuant to the Order, EPA requested that  
15 Respondent provide it with copies of all documents or reports related to inspections, visual  
16 observations of storm water and non storm water events, and sampling events at the Facility.

17 48. At the time of the May 17, 2007 inspection, Respondent did not have an adequate written  
18 monitoring program. Respondent's written monitoring program did not adequately describe  
19 sampling locations. Respondent provided EPA with a copy of a revised written monitoring  
20 program on December 19, 2007. Upon information and belief, EPA alleges that Respondent  
21 failed to develop an adequate written monitoring plan for operations at the Facility between  
22 October 1, 2004 and December 19, 2007.

23 49. Respondent's failure to develop an adequate written monitoring program while engaged  
24 in industrial activity at the Facility between October 1, 2004 and December 19, 2007, constitutes  
25 1,174 days of violation of the General Permit (General Permit, Order Section B(1)(a), pp. 24-25),  
which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Each violation of the

1 General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

2 4. Failure to Comply with General Permit Requirement to Implement BMPs

3 50. The facts stated paragraphs 1 through 49 are re-alleged and incorporated herein.

4 51. The General Permit (General Permit, Order Provision B(3), p. 4) requires facility  
5 operators to reduce or prevent pollutants associated with industrial activity from discharging  
6 from their facilities through implementation of BAT for toxic and non-conventional pollutants  
7 and BCT for conventional pollutants. Implementation of all appropriate BMPs can satisfy this  
8 requirement.

9 52. During the May 17, 2007 inspection, EPA observed the following violations of the  
10 “Good Housekeeping” BMPs identified in Section 5.1.1 of the SWPPP dated February 1999:

- 11 a. Sweepers had been emptied into a bin containing debris located above a drainage  
12 channel;
- 13 b. Pools of oily water of unknown source were observed north of the wash rack  
14 building;
- 15 c. Significant fresh oil stains were observed throughout generator shop area;
- 16 d. Dumpsters with oily parts were left open outside the crane maintenance shop; and
- 17 e. Several significant oil/coolant spills were observed outside the power shop.

18 53. During the May 17, 2007 inspection, EPA also observed the following violations of the  
19 Respondent’s “Spill Prevention/Response” BMPs identified in Section 5.1.3 of the SWPPP dated  
20 February 1999:

- 21 a. Several oil drums were not on spill pallets outside the crane maintenance shop;  
22 and
- 23 b. Spill control kits were not observed in the power shop and diesel fuel truck  
24 parking area.

25 54. The analytical results of Respondent’s storm water sampling at the Facility on February  
26 27, 2006 and March 17, 2006 for pH, TSS, specific conductivity, oil and grease, zinc, aluminum,  
27 and iron, indicated levels of these contaminants above the PBVs adopted by the State Board,  
28 indicating that the Facility’s SWPPP, and BMPs identified in the SWPPP, were not fully  
29 effective in reducing or preventing pollutants in storm water discharges

1 55. In addition to the fact that Respondent had not fully implemented all BMPs identified in  
2 its SWPPP at the time of May 17, 2007 inspection, EPA also determined that additional BMPs  
3 (other than those identified in the SWPPP) were necessary in order for Respondent to achieve  
4 BAT and BCT at the Facility. During the inspection, EPA observed the following violations of  
5 good housekeeping BMPs not identified in the SWPPP but necessary to achieve BAT and BCT  
6 at the Facility:

- 7 a. Batteries on the ground outside the chassis shop; and
- 8 b. Oily parts on the ground in the trailer parking area and outside the chassis shop.

9 56. On December 19, 2007, Respondent notified EPA that it had installed additional BMPs  
10 at the Facility.

11 57. Respondent's failure to implement all BMPs necessary to achieve BAT and BCT while  
12 engaged in industrial activity at the Facility from at least May 17, 2007, until December 19,  
13 2007, constitutes at least 215 days of violation of the General Permit (General Permit, Order  
14 Provision B.3, pg.4), which was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.  
15 Each violation of the General Permit is a violation of Section 301(a), 33 U.S.C. § 1311(a).

#### 16 **NOTICE OF PROPOSED ORDER ASSESSING PENALTIES**

17 58. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of  
18 administrative civil penalties in an amount not to exceed \$10,000 per day for each day during  
19 which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the Debt  
20 Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, the  
21 administrative assessment of civil penalties may not exceed \$16,000 per day for each day during  
22 which the violation continues, up to a maximum penalty of \$177,500. *See also* 73 Fed. Reg.  
23 75340 (December 11, 2008) (2008 Penalty Inflation Rule).

24 59. The proposed penalty is based upon the facts stated in this Complaint, the nature,  
25 circumstances, extent, and gravity of the violation, and with respect to the violator, ability to pay,  
any prior history of such violation, the degree of culpability, economic benefit or savings

1 resulting from the violation, and such other matters as justice may require.

2 60. The nature, circumstances, extent, and gravity of the violations described above are  
3 significant. Respondent has not maintained adequate storm water controls at the Facility during  
4 its period of operations. The absence of adequate storm water controls resulted in the discharge  
5 of pollutants in storm water to waters of the United States above acceptable levels. Storm water  
6 discharges from water transportation activities categorized under SIC Major Code 44 are known  
7 to contain the following pollutants: aluminum, iron, lead, and zinc. *See* EPA Multi-Sector  
8 General Permit for Storm Water Discharges Associated with Industrial Activity, Part 8 (“Sector  
9 Q – Water Transportation”) p. 112, [http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf).  
10 During the May 17, 2007 and August 18, 2009 inspections, EPA observed materials and storm  
11 water pollutant sources at the Facility that would generally be expected to generate the types of  
12 pollutants typically associated with a facility operating under SIC 4491. The analytical results of  
13 storm water monitoring conducted by the Respondent also revealed that Respondent had on  
14 multiple occasions discharged storm water containing levels of copper, zinc, and aluminum  
15 above EPA PBVs, as well as pollutant such as pH, TSS, specific conductivity, oil and grease,  
16 and iron above EPA’s PBVs. The Inner Los Angeles Harbor is listed as an “impaired” water by  
17 the State of California pursuant to Section 303(d) of the Act for, *inter alia*, copper, zinc, benthic  
18 community, and sediment toxicity. The discharge of the above-mentioned pollutants in storm  
19 water at levels above the PBVs not only risks contributing to the Inner Harbor’s impairment for  
20 copper and zinc, but also poses a substantial risk of further contaminating the sediment in the  
21 Inner Harbor and increasing the risk of harm to aquatic species and other wildlife, e.g., these  
22 pollutants may adversely impact species of fish found in the Los Angeles Harbor, which is  
23 recognized by NMFS as Essential Fish Habitat.

24 61. By avoiding or delaying the costs necessary to comply with the Act, Respondent has  
25 realized an economic benefit as a result of the violations alleged above.

62. Based on the foregoing Findings of Violations, and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA Region 9 hereby proposes to issue a Final Order assessing a civil administrative penalty against Respondent in an amount not to exceed the statutory maximum penalty allowed under 33 U.S.C. § 1319(g)(2)(B), as amended by the Civil Monetary Penalty Inflation Act, and as reflected in 40 CFR § 19.4.

63. EPA has consulted with the State of California regarding this Complaint and its intention to seek civil administrative penalties against Respondent.

64. Neither assessment nor payment of a civil administrative penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to comply with the CWA, and with any separate compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

#### **ANSWER AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

65. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested. The answer shall be filed, in accordance with 40 C.F.R. §§ 22.5(b)(2) and 22.15 with the Regional Hearing Clerk at the address below:

Regional Hearing Clerk  
U.S. EPA Region 9 (ORC-1)  
75 Hawthorne Street  
San Francisco, California 94105

1       66. In accordance with Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), Respondent  
2 may request, within thirty (30) days of receipt of this Complaint, a hearing to contest any  
3 material fact contained in the Complaint or to contest the appropriateness of the proposed penalty  
4 set forth therein. Such a hearing will be held and conducted in accordance with the *Consolidated*  
5 *Rules of Practice Governing the Administrative Assessment of Civil Penalties and the*  
6 *Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, a copy of which is  
7 enclosed herein.

8       67. If Respondent requests a hearing, members of the public, to whom EPA is obligated to  
9 give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the CWA, 33  
10 U.S.C. § 1319(g)(4)(B), and 40 C.F.R. § 22.45 to be heard and to present evidence on the  
11 appropriateness of the penalty assessment.

12       68. A copy of the Answer and request for hearing and copies of all other documents relating  
13 to these proceedings filed with the Regional Hearing Clerk should also be sent to:

14       Rich Campbell  
15       Assistant Regional Counsel  
16       U.S. EPA Region 9 (ORC-2)  
17       75 Hawthorne Street  
18       San Francisco, California 94105

#### 19                                   **OPPORTUNITY FOR INFORMAL SETTLEMENT**

20       69. Whether or not Respondent requests a hearing, Respondent may confer informally with  
21 EPA to discuss the alleged facts, violations, and amount of the penalty. An informal conference  
22 does not, however, affect Respondent's obligation to file a written Answer within thirty (30)  
23 days of the Effective Date of the Complaint. The informal conference procedure may be pursued  
24 simultaneously with the adjudicatory hearing procedure.

25       70. Any settlement reached as a result of an informal conference will be embodied in a  
written Consent Agreement and Final Order. The issuance of the Consent Agreement and

1 Final Order will constitute waiver of Respondent's right to a hearing on any matter to which  
2 Respondent stipulated.

3 71. If a settlement cannot be reached through an informal conference, the filing of a written  
4 Answer within thirty (30) days of the Effective Date of this Complaint will preserve  
5 Respondent's right to a hearing.

6 72. EPA encourages all parties against whom a penalty is proposed to explore the  
7 possibility of settlement. To request an informal conference, Respondent should contact Rich  
8 Campbell, Assistant Regional Counsel, at (415) 972-3870 or at the following address:

9 Rich Campbell  
10 Office of Regional Counsel  
11 U.S. EPA Region 9 (ORC-2)  
75 Hawthorne Street  
San Francisco, California 94105

#### 12 PUBLIC NOTICE

13 73. Section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), require  
14 EPA to provide public notice of and a reasonable opportunity for comment before finalizing an  
15 administrative civil penalty action.

#### 16 EFFECTIVE DATE

17 74. This proceeding is initiated by the filing of this Complaint with the Regional Hearing  
18 Clerk. For calculation of time frames provided herein, the "Effective Date" of this Complaint is  
19 the date of service. Service is complete when the return mail receipt is signed by the Respondent  
20 or a duly authorized representative of the Respondent, in accordance with the provisions of 40  
21 C.F.R. §§ 22.5(b) and 22.7(c).

22  
23 September 25, 2009

24 \_\_\_\_\_  
Alexis Strauss, Director  
Water Division

1 **CERTIFICATE OF SERVICE**

2 In the Matter of Eagle Marine Ltd.,  
3 EPA Docket No. CWA-09-2009-0004

4 I hereby certify that the original of the foregoing Complaint, Notice of Proposed Penalty,  
5 and Notice of Opportunity for Hearing, was filed with the Regional Hearing Clerk, Region 9, and  
6 that a copy was sent, along with a copy of the 40 CFR Part 22 *Consolidated Rules of Practice*  
*Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or*  
*Suspension of Permit*, certified mail, return receipt requested, to:

7 Rick R. Rothman  
8 Bingham McCutchen LLP  
9 355 South Grand Avenue, Suite 4400  
10 Los Angeles, CA 90071-3106  
11 Phone: 213.680.6590  
12 Fax: 213.830.8790  
13 [rick.rothman@bingham.com](mailto:rick.rothman@bingham.com)

14 \_\_\_\_\_  
Date

\_\_\_\_\_  
Name

15 \_\_\_\_\_  
16 Position