

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA

2009 JAN 28 PM 1:08

J. S. [illegible]
REGIONAL HEARING CLERK

IN THE MATTER OF:

Global Shipping, LLC, and Global
Marketing Systems, Inc.

Respondents.

)
) Docket No. TSCA-09-2008-0003
)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
)
)

I. CONSENT AGREEMENT

Complainant, the Director of the Waste Management Division, United States Environmental Protection Agency, Region 9 ("EPA"), and Respondents Global Shipping, LLC ("GSL") and Global Marketing Systems, Inc. ("GMS" and together with GSL the "Respondents") have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Complainant and Respondents agree to settle this matter pursuant to the terms of this Consent Agreement and Final Order ("CAFO"), and consent to the entry of this CAFO.

1. EPA initiated this civil administrative proceeding for the assessment of a civil penalty pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA") and the implementing regulations governing polychlorinated biphenyls ("PCBs") at 40 C.F.R. Part 761, by issuing a Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondents on March 18, 2008.

2. The Complaint alleges that GSL violated 40 C.F.R. §761.20(c) and Section 15(1) of TSCA, 15 U.S.C. § 2614(1) due to the purchase and holding for export of the OCEANIC, a

CAFO, Docket No. TSCA-09-2008-0003

page 1



former cruise ship EPA alleges contains PCBs and PCB Items, and that collectively Respondents violated 40 C.F.R. § 761.97 and section 15(1) of TSCA, 15 U.S.C. § 2614(1) by exporting the OCEANIC containing PCBs and PCB Items for disposal outside the United States. The Complaint proposes a penalty of up to \$32,500 per day for each violation of TSCA, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 19.4. Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that the following factors be considered in determining the amount of any penalty assessed under Section 16: the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as justice may require. Complainant has considered all of these factors, including arguments raised by Respondents concerning their limited ability to pay a substantial penalty.

A. RESPONDENTS' ADMISSIONS

3. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, each of the Respondents (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over each Respondent; (ii) neither admits nor denies the specific factual allegations contained in the Complaint; (iii) consents to any and all conditions specified in this CAFO; (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under this CAFO as set forth below; (v) waives any right to contest the allegations contained in the Complaint; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

B. CIVIL ADMINISTRATIVE PENALTY

4. Respondents consent to the assessment of a penalty in the amount of **THIRTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) against GMS and FOUR HUNDRED**



EIGHTY SIX THOUSAND DOLLARS (\$486,000) against GSL as full and final settlement and complete satisfaction of the civil claims against each Respondent arising from the facts alleged in the Complaint and under the Act. Respondent GMS and Respondent GSL shall pay the respective penalties no later than thirty (30) days from the effective date of this CAFO, in the manner described below:

5. Each of the above referenced payments shall be paid by wire transfer or certified or cashier's check, payable to "Treasurer, United States of America." Payment by check shall be sent by certified mail, return receipt requested, to:

**U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000**

Payment by wire transfers shall be sent to:

**Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235**

SWIFT Address: MELNUS3P (needed only for international transfers)

The check or wire transfer should note the case title and docket number, and a transmittal letter indicating Respondent's name, and this case docket number must accompany the payment.

When payment made to the appropriate address above, Respondents shall send a copy of the check (or proof of payment by electronic funds transfer) and transmittal letter to:

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



- b) Christopher Rollins
Waste Management Division (WST-3)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

6. In the event that either Respondent fails to pay the civil administrative penalty assessed above by its due date, said Respondents shall pay to Complainant an additional stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500) for each day that payment is late. Upon Complainant's written demand, payable shall immediately become due and payable.

7. Respondents' failure to pay in full the civil administrative penalty by its due date also may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondents' licenses or other privileges; (ii) suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-



of-credit. 40 C.F.R. §§ 13.17.

C. RESPONDENTS' CERTIFICATION

8. In executing this CAFO, each Respondent certifies that if it purchases, or acts as an agent or assists with the purchase of, any United States Registered Vessel first delivered to its original owners before 1979, it shall notify EPA in writing: (a) no later than five (5) business days after such purchase, and (b) at least forty-five (45) days in advance of any intended use, sale, or export of such vessel. Each notification shall contain the following information: (1) All names and/or other means of identification ever assigned or used by the vessel, including the IMO Number; (2) When the vessel's keel was laid; (3) Where the vessel was built; (4) Previous owners, and known use/service (including any military use or ownership by the military); (5) History of significant refurbishment or retrofits; (6) Where the vessel is then located and (7) The intended destination and disposition of the vessel. For the purposes of this certification, notification to EPA shall be provided to the EPA headquarters contact for ship disposal issues, and the appropriate EPA Regional PCB Coordinator.

D. RETENTION OF RIGHTS, BINDING EFFECT, ETC.

9. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve each Respondent of its duty to comply with all applicable provisions of the Act and other Federal, state or local laws or statutes.

10. The provisions of this CAFO shall be binding on each Respondent and on each Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

11. Except as set forth in Paragraph 7 above, each party shall bear its own costs, fees, and disbursements in this action.



12. For the purposes of state and federal income taxation, Respondents shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.

13. This Consent Agreement constitutes the entire agreement between the Respondents and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondents arising from the facts alleged in the Complaint. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondents for the violations alleged in the Complaint.

14. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

15. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind that party to it.

GLOBAL SHIPPING, LLC:

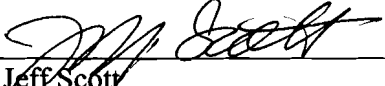
Date: 12/23/08 By: Faib B. Khan

GLOBAL MARKETING SYSTEMS, INC.:

Date: 12/23/08 By: Paul Chan

75

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

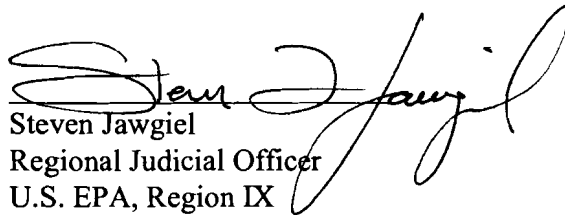
Date: 1/28/09 By: 
Jeff Scott
Director, Waste Management Division
U.S. Environmental Protection Agency,
Region IX

II. FINAL ORDER

Complainant EPA Region IX and Respondents Global Shipping, LLC and Global Marketing Systems, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondents shall pay a civil administrative penalty in the amount of **FIVE HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$518,500)**, of which **THIRTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500)** shall be paid by Global Marketing Systems, Inc. and **FOUR HUNDRED EIGHTY SIX THOUSAND DOLLARS (\$486,000)** shall be paid by Global Shipping, LLC, in accordance with the terms set forth in the Consent Agreement.

Date: 01/28/09


Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX



CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order (TSCA-09-2008-0003), was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Gregory W. Poulos, ESQ.
Cox, Wootton, Griffin, Hansen & Poulos, LLP
190 The Embarcadero
San Francisco, CA 94105

Certified Mail No. 7000 0520 0021 6109 9006

Stanley W. Landfair, Esq.
McKenna Long & Aldridge LLP
101 California Street, 41st Floor
San Francisco, Ca 94111

Certified Mail No. 7000 0520 0021 6109 9167

Jan. 28, 2009
Date

Danielle E. Carr
Danielle Carr
Regional Hearing Clerk
Office of Regional Counsel, Region IX