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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

11 IN THE MATTER OF:) Docket No. TSCA-09-2008-0003
12 Global Shipping LLC and)
13 Global Marketing Systems, Inc.) **ANSWER TO ADMINISTRATIVE**
14 Respondents.) **COMPLAINT**
15) **AND**
16) **REQUEST FOR HEARING**

16 **SERVING PARTY:** UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
17 **RESPONDING PARTY:** GLOBAL SHIPPING LLC

18 Respondent Global Shipping, LLC ("GSL") answers the United States
19 Environmental Protection Agency's ("EPA") civil administrative complaint as follows:

20 **APPLICABLE STATUTORY AND REGULATORY SECTIONS**

21 1 GSL admits that EPA has promulgated regulations at 40 C.F.R. Part 761;
22 GSL lacks knowledge or information sufficient to form a belief as to the truth of the
23 remaining allegations of Paragraph 1.

24 2-14. The allegations of Paragraphs 2 through 14 state legal conclusions that do
25 not require a response.

26 **GENERAL ALLEGATIONS**

27 15. GSL incorporates by reference its responses to the allegations contained in
28 Paragraphs 1-14.

1 16. GSL admits that it is a limited liability corporation; GSL lacks knowledge or
2 information sufficient to form a belief as to the truth of the allegations of Paragraph 16
3 insofar as they relate to the status of the other respondent. The remaining allegations of
4 Paragraph 16 state legal conclusions that do not require a response.

5 17. GSL denies that it is classified in Standard Industrial Classification (“SIC”)
6 code 5088. GSL lacks knowledge or information sufficient to form a belief as to the truth
7 of the allegations of Paragraph 17 insofar as they relate to the other respondent. GSL denies
8 that SIC code 5088 is the SIC code for Whole Ships for Scrap or that a code for “Whole
9 Ships for Scrap” would necessarily be the correct SIC code for GSL.

10 18. GSL admits that the M/V OCEANIC (“OCEANIC”) was formerly known as
11 the SS INDEPENDENCE, however lacks knowledge or information sufficient to form a
12 belief as to exactly when the OCEANIC was constructed, and denies the remaining
13 allegations of Paragraph 18.

14 19. GSL lacks knowledge or information sufficient to form a belief as to the
15 truth of the allegations of Paragraph 19.

16 20. GSL lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations of Paragraph 20.

18 21. GSL lacks knowledge or information sufficient to form a belief as to the
19 truth of the allegations of Paragraph 21.

20 22. GSL lacks knowledge or information sufficient to form a belief as to the
21 truth of the allegations of Paragraph 22.

22 23. GSL admits that at least from July 13, 2007 through February 8, 2008 the
23 OCEANIC was berthed in San Francisco Bay at or in the vicinity of Pier 70, San Francisco,
24 California; GSL lacks knowledge or information to form a belief as to the truth of the
25 remaining allegations of Paragraph 23.

26 24. GSL denies the allegations of Paragraph 24.

27 25. The allegations of Paragraph 25 state legal conclusions that do not require a
28 response; to the extent the paragraph alleges facts, GSL denies such facts.

1 **COUNT II: Export of PCBs and PCB Items for Disposal**

2 37. GSL incorporates by reference its responses to the allegations contained in
3 Paragraphs 1-36.

4 38. GSL denies the allegations of Paragraph 38.

5 39. GSL admits that as of this date, it has not returned the OCEANIC to the
6 United States. GSL denies the remaining allegations of Paragraph 39.

7 40. The allegations of Paragraph 40 state legal conclusions that do not require a
8 response; to the extent the paragraph alleges facts, GSL denies such facts.

9 41. The allegations of Paragraph 41 state legal conclusions that do not require a
10 response; to the extent the paragraph alleges facts, GSL denies such facts.

11 **DEFENSES AND OTHER GROUNDS FOR DISMISSAL**

12 **FIRST DEFENSE**

13 1. The Civil Administrative Complaint fails to state facts sufficient to warrant the
14 assessment of civil penalties against GSL.

15 **SECOND DEFENSE**

16 2. The Civil Administrative Complaint is fatally flawed in that it fails to adequately
17 describe the relief sought against GSL, including a description of the number of alleged violations
18 for which a penalty is sought and a brief explanation of the severity of each violation, as required
19 by 40 C.F.R. § 22.14(a)(4).

20 **THIRD DEFENSE**

21 3. The assessment of civil penalties against GSL is barred by the doctrines of
22 waiver and estoppel, in that, among other things, the EPA has never before sought to
23 impose such penalties in connection with the sale and holding of the OCEANIC, including
24 the sale of the vessel to California Manufacturing Corporation in or around 2003, and the
25 holding of that vessel by that company from 2003 through 2007.

26 **FOURTH DEFENSE**

27 4. The assessment of civil penalties against GSL is barred by the doctrine of
28 laches.

1 **FIFTH DEFENSE**

2 5. GSL is exempt from the assessment of civil penalties under 40 C.F.R.
3 § 761.20(c)(1), in that the OCEANIC was sold for purposes other than resale prior to July 1,
4 1979, and, on information and belief, if there are any PCBs or PCB Items on the ship with
5 PCB concentrations of 50 ppm or greater, such PCBs or PCB Items are maintained in a
6 totally enclosed manner.

7 **SIXTH DEFENSE**

8 6. GSL's purchase and holding of the OCEANIC from July 2007 through
9 February 2008 does not constitute "distribution in commerce," as that term is defined by
10 TSCA § 3, 15 U.S.C. § 2602(4), and 40 C.F.R. § 761.3, in that such purchase and holding
11 neither involved nor affected trade, traffic, transportation, or other commerce between a
12 place in a State and a place outside of such State, as required by TSCA § 3, 15 U.S.C.
13 § 2602(3), and 40 C.F.R. § 761.3.

14 **SEVENTH DEFENSE**

15 7. GSL's purported export of the OCEANIC for delivery and/or alleged
16 disposal outside the United States is outside the reach of the TSCA "distribution in
17 commerce" regulations in that such a transaction does not present an unreasonable risk of
18 injury to health within the United States or to the environment within the United States, as
19 required by TSCA § 12, 15 U.S.C. § 2611.

20 **EIGHTH DEFENSE**

21 8. EPA is selectively enforcing TSCA "export for disposal" and "distribution in
22 commerce" regulations for PCBs and PCB Items against GSL, given that, since the
23 enactment of TSCA and its implementing regulations, on information and belief, numerous
24 ships containing PCBs and PCB Items have been bought, sold, and held by numerous
25 entities, and EPA has not initiated comparable enforcement actions against the other entities
26 who have bought, sold, and held such ships.

27 **NINTH DEFENSE**

28 9. GSL did not export the OCEANIC or any PCBs or PCB Items contained on

1 the vessel when it removed the OCEANIC from San Francisco harbor.

2 **TENTH DEFENSE**

3 10. GSL did not export for disposal the OCEANIC or any PCBs or PCB Items
4 contained on the vessel when it removed the OCEANIC from San Francisco harbor.

5 **ELEVENTH DEFENSE**

6 11. EPA cannot permissibly impose a civil penalty on GSL, given that,
7 (a) TSCA and its implementing regulations do not expressly prohibit the purchase, sale,
8 holding, or recycling of ships that may contain PCBs in particular ship components; (b) as
9 of the time of EPA's initiation of this Administrative Complaint, there had not been a single
10 reported judicial decision holding that the activities of which EPA complains in the
11 Administrative Complaint are contrary to TSCA and its implementing regulations;
12 (c) because TSCA and its implementing regulations do not expressly prohibit such
13 activities, TSCA and its implementing regulations do not provide fair notice to entities
14 seeking to engage in such activities that such activities are prohibited by TSCA; and
15 (d) because TSCA and its implementing regulations do not expressly prohibit such
16 activities, TSCA and its implementing regulations do not provide fair notice such as would
17 justify commencement of an Administrative Complaint or the assessment of a civil penalty.

18 **TWELFTH DEFENSE**

19 12. GSL's purchase and holding of the OCEANIC from July 2007 through
20 February 2008 and its subsequent sale has not created an "unreasonable risk of injury to
21 health or the environment," 15 U.S.C. § 2601(a)(2), and therefore has not violated the
22 policy underlying TSCA.

23 **THIRTEENTH DEFENSE**

24 13. EPA's enforcement action violates the underlying congressional policy that
25 the act be carried out in a "reasonable and prudent manner" including consideration of "the
26 environmental, economic, and social impact of any action the Administrator takes or
27 proposes to take under this Chapter." 15 U.S.C. §2601(c).

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1 **FOURTEENTH DEFENSE**

2 14. EPA's enforcement action is in violation of both the statutory requirements
3 and congressional policy set forth in 15 U.S.C. § 2605.

4 **OPPOSITION TO PROPOSED CIVIL PENALTY**

5 EPA requests a civil penalty of up to \$32,500 per day for each violation of TSCA.
6 GSL opposes the imposition of such a penalty on several grounds. First, one or more of the
7 defenses outlined above precludes the imposition of any civil penalty on GSL. Second,
8 contrary to the implication of the Civil Administrative Complaint, the holding of a vessel
9 containing PCBs or PCB Items (although not proven by EPA) can, at most, constitute a
10 single one-day violation of TSCA, if such conduct is a violation of TSCA. Likewise, the
11 export for disposal of a vessel containing PCBs or PCB Items can at most constitute a single
12 one-day violation of TSCA, if such conduct is a violation of TSCA.

13 Accordingly, if EPA is able to show that GSL violated TSCA by virtue of its alleged
14 "distribution in commerce" of the OCEANIC and/or its alleged export for disposal of the
15 OCEANIC, EPA cannot assess multi-day penalties for each of those purported TSCA
16 violations. Third, assuming any penalty is imposed upon GSL, such penalty should be far
17 below the maximum allowed based on the lack of history of any prior such violations, the
18 lack of evidence that the OCEANIC actually contains PCBs or PCB items with PCB
19 concentrations of 50 ppm or greater, and the lack of evidence that the OCEANIC poses any
20 unreasonable risk of injury to health within the United States or the environment of the
21 United States, among other reasons. Fourth, the lack of fair notice that EPA would regard
22 the purchase, sale, and holding of the OCEANIC as the distribution in commerce and/or
23 export for disposal of PCBs or PCB Items mitigates against any substantial penalty.

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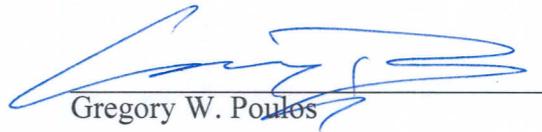
CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2008, the original and a true copy of the foregoing Answer and Request for Hearing was hand delivered to:

Regional Hearing Clerk
United States Environmental Protection Agency – Region 9
75 Hawthorne Street
San Francisco, California 94105

and that a true and correct copy of said document was hand delivered to the following:

Margaret Alkon, Esquire
United States Environmental Protection Agency – Region 9
75 Hawthorne Street
San Francisco, California 94105


Gregory W. Poulos