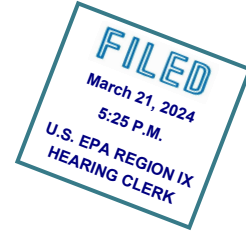


**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 HAWTHORNE STREET
San Francisco, California 94105**



| | | |
|---------------------------|---|---|
| IN THE MATTER OF: |) | DOCKET NO. CWA-09-2024-0019 |
| |) | |
| CROWLEY GLOBAL |) | |
| SHIP MANAGEMENT, INC. |) | |
| |) | COMPLAINT, CONSENT AGREEMENT |
| |) | AND FINAL ORDER |
| Respondent. |) | |
| |) | <i>Class II Administrative Penalty Proceeding under</i> |
| Ocean Grand, NPDES Permit |) | <i>Section 309(g) of the Clean Water Act, 33 U.S.C.</i> |
| Tracking No. VPBB3396P |) | <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 any person who has violated, *inter alia*, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), 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 Crowley Global Ship Management, Inc.
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 EPA 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 Jacksonville, Florida and therefore, a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Respondent operated the Ocean Grand (Vessel), a general cargo carrier owned by U.S. Ocean. The Vessel is registered in the United States and designated by International Maritime Organization (IMO) number 9681821. The Vessel was built in 2015.

13. The Vessel is 558 feet in length, 17,100 gross tons and has a ballast water capacity of 11,725 cubic meters.

14. The Vessel is a “point source” within the meaning of Section 502(14) of the CWA, 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. Respondent began operating the Vessel and submitted an NOI to the EPA on May 21, 2015 to seek coverage under the VGP. The NOI was assigned NPDES tracking number VPBB3396P. Respondent stopped operating the Vessel on November 22, 2022 and submitted a Notice of Termination on November 23, 2022.

16. 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 constructed after December 1, 2013, the vessel’s compliance date is on delivery. The Vessel was constructed in 2015.

17. When Respondent began operating the Vessel, the ballast water treatment system (BWTS) on board was an uncommissioned Alternate Management System (AMS) with U.S. Coast Guard identification number AMS-2013-GEA Westfalia BallastMaster-001.

18. On March 14, 2016, the U.S. Coast Guard issued Respondent an extension to the compliance date of the ballast water management implementation schedule in 33 C.F.R. Part

151, Subparts C and D, “because a Coast Guard type approved ballast water management system (BWMS) is not available for this vessel”. The extended compliance date was the “[n]ext scheduled drydocking after date of delivery”. The extension noted that it did not affect or supersede the prohibitions pertaining to discharge of ballast water in the waters of the United States under the Clean Water Act, including the requirements of the VGP.

19. The BWTS was not commissioned.

20. The BWTS was replaced on June 12, 2020 with a U.S. Coast Guard Type-Approved UV/Filtration system manufactured by Desmi Ocean AS, which completed commissioning on May 21, 2021.

21. The VGP includes the following terms, in relevant part:

- a. Part 2.2.3.5 of the VGP requires vessels to meet the ballast water numeric limits using one of the four ballast water management methods: (1) use of a ballast water treatment system under 2.2.3.5.1.1; (2) onshore treatment of ballast water under Part 2.2.3.5.1.2; (3) use of public water supply water under Part 2.2.3.5.1.3; and (4) no discharge of ballast water under Part 2.2.3.5.1.4; and
- b. Part 4.1.3 requires a comprehensive vessel inspection be conducted by qualified personnel at least once every 12 months.

22. Between February 8, 2021 and November 16, 2022, representatives of the EPA conducted a series of compliance reviews of the Department of Homeland Security Ship Arrival Notification System, the National Ballast Information Clearinghouse (NBIC), and additional information provided by the Respondent. These reviews included evaluations of the Vessel’s compliance with the requirements of Sections 301, 312(p), and 402 of the CWA, 33 U.S.C. §§ 1311, 1322(p), and 1342, and the VGP. EPA found that:

- a. According to the NBIC, from the period of January 19, 2019 through August 14, 2020, the Ocean Grand discharged exchanged ballast water pursuant to its U.S. Coast Guard extension numerous times, which was not in accordance with the four ballast water management methods authorized by Part 2.2.3.5 in waters covered by the VGP including in: North Carolina; Texas; Virginia; and Guam; and
- b. Part 4.1.3. of the VGP requires comprehensive vessel inspections be conducted by qualified personnel at least once every 12 months. The 2019 inspection conducted by Respondent was not within 12 months of the 2018 inspection.

IV. ALLEGED VIOLATIONS

23. Between August 2020 and December 2021 Respondent's operation of the Ocean Grand violated section 301(a) of the CWA, 33 U.S.C. § 1311(a), by failing to comply with multiple conditions and limitations in the VGP and NPDES Permit No. VPBB3396P.

V. ADMINISTRATIVE PENALTY

24. In consideration of the penalty factors of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondent, on its behalf and on behalf of the Vessel, *in rem*, as well as the Vessel's registered owner, owner *pro hac vice*, and operator, shall pay to the United States a civil administrative penalty in the amount of **one hundred eleven thousand two hundred and fifty dollars (\$111,250)** within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

25. Respondent may pay the penalty by check (mail or overnight delivery), wire transfer, Automated Clearing House, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>.

Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

26. 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.

27. Concurrent with payment, Respondent shall send proof 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

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

28. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at sherrer.dana@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding subparagraph, shall further:

i. notify EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of this Order per paragraph 36; and

ii. provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

29. 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.

30. 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

31. 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

32. 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

33. 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.

34. 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

35. Unless otherwise specified, each party shall bear its own attorney's fees and costs.

X. EFFECTIVE DATE AND TERMINATION

36. 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

37. 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 Consent Agreement 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 Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.

38. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the EPA has consulted with the States North Carolina, Texas, and Virginia and the Territory of Guam regarding this penalty action.

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

AMY
MILLER-
BOWEN

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AMY MILLER-
BOWEN
Date: 2024.02.07
21:03:01 -08'00'

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

Date

For Respondent Crowley Global Ship Management

DocuSigned by:

James C. Fowler

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Name: James C. Fowler

Title: Senior Vice-President & General Manager
Crowley Shipping

January 31, 2024

Date:

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2024-0019) be entered, and that Respondent shall pay a civil penalty in the amount of **one hundred eleven thousand two hundred and fifty dollars (\$111,250)** in accordance with the terms of this Consent Agreement and Final Order.

Date

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

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Crowley Global Ship Management, Inc., Ocean Grand, (CWA-09-2024-0019) has been filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent by electronic mail to the following parties:

RESPONDENT: Art Mead
VP & Chief Counsel
Crowley Global Ship Management, Inc.
9487 Regency Square Blvd.
Jacksonville, FL 32225
Art.Mead@crowley.com

COMPLAINANT: Julia Jackson
Attorney-Advisor
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Jackson.Julia@epa.gov

Ponly Tu
Regional Hearing Clerk
U.S. EPA, Region IX