



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

September 23, 2021

CERTIFIED MAIL—RETURN RECEIPT REQUESTED:

Mr. Tatsuomi Hori  
4-1 Nihonbashi 1-Chome Bldg  
Toyko, Japan 103 0027  
[marine.smd-bulker@bigthree.co.jp](mailto:marine.smd-bulker@bigthree.co.jp)

Re: Notice of Proposed Assessment of Class I Civil Penalty  
Docket Number: CWA-06-2021-1743  
NPDES Permit Tracking No. VPBC5038A

Dear Mr. Hori:

This is to acknowledge receipt of your email dated September 21, 2021, transmitting the signed Consent Agreement and Final Order (CAFO). As no comments were received from the general public during the Forty (40) day public notice period, the Environmental Protection Agency hereby issues this CAFO.

Penalty payment is due within thirty (30) days after issuance of this CAFO.

If you have any questions regarding this matter, please contact Anthony M. Loston, of my staff, at (214) 665-3109.

Sincerely,

A handwritten signature in black ink that reads "Cheryl T. Seager".

Digitally signed by CHERYL SEAGER  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CHERYL SEAGER,  
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Date: 2021.09.23 05:46:37 -05'00'

Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

Enclosure(s)

cc: Regional Hearing Clerk (6RC-D)  
U.S. EPA Region 6  
1201 Elm Street, Ste. 500  
Dallas, TX 75270-2102

FILED

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 6 REGIONAL HEARING CLERK EPA REGION VI

In the Matter of
Victoria Ship Management, Inc.
Respondent.
NPDES Permit Tracking No. VPBC5038A
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DOCKET NO. CWA-06-2021-1743

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the United States Environmental Protection Agency (EPA) pursuant to Section 309(g) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g). This CAFO is issued to simultaneously commence and conclude this proceeding to assess a Class I civil penalty in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

2. The EPA (Complainant) and Victoria Ship Management, Inc. (Respondent) (collectively, the "Parties") agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged herein.

3. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this CAFO.

4. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in this CAFO and in this proceeding, and waives its right to appeal the Final Order set forth herein.

5. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Victoria Ship Management, Inc is a corporation headquartered in Tokyo, Japan, and as such (Respondent) is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

7. At all times relevant to the Order (all relevant times), Respondent owned or operated the Western Durban (Vessel), a bulk carrier sailing under the flag of the Philippines and designated by International Maritime Organization (IMO) Number 9700031, and was, therefore, an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

8. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

9. 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 also greater than 79 feet in length and subject to the requirements of Section 312(p) of the CWA, 33 U.S.C. § 1312(p), and the Vessel General Permit (VGP).

10. The VGP authorizes certain types of discharges incidental to the normal operation of vessels into waters of the United States. “Ballast water” is one of the authorized discharge types

eligible for coverage under the VGP. See Part 1.2.2.3 of the VGP. The Notice of Intent for the Western Durban authorizes ballast water discharges, among others. By Respondent's admission and as evidenced by the National Ballast Information Clearinghouse report for the Western Durban, Respondent discharged ballast water while at the Port of New Orleans, Louisiana in August 2017.

11. Under Section 502(6) of the Act, 33 U.S.C. § 1362(6), ballast water discharges are included within the meaning of "pollutant" under CWA § 502(6) as "industrial waste." See 2013 Final Issuance of National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Vessels Fact Sheet, EPA-HQ-OW-2011-0131-0950, at 17-18.

12. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines "navigable waters" as "waters of the United States, including territorial seas." The term "territorial seas" is defined in Section 502(8), 33 U.S.C. § 1362(8), as "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open seas and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." The ballast water discharge at the Port of New Orleans, which is located on the Mississippi River, qualifies as a discharge into navigable waters within the meaning of Section 502(7) of the Act, 33 U.S.C. 1362(7).

13. Therefore, at all relevant times, the Vessel was a "point source" of "discharges" of "pollutants" to "waters of the United States" within the meaning of Section 502(12) and (14) of the Act, 33 U.S.C. § 1362(12), (14) and 40 C.F.R. § 122.2.

14. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point

sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

15. On April 12, 2013 EPA issued the final NPDES VGP for discharges incidental to the normal operation of a vessel in waters of the United States, with an effective date of December 19, 2013 and an expiration date of December 18, 2018. On December 4, 2018 the Vessel Incidental Discharge Act (VIDA) was signed into law. Pursuant to the VIDA, the existing vessel discharge requirements established through the EPA 2013 VGP and the USCG ballast water regulations, and any applicable state and local government requirements are applicable until EPA develops new national standards of performance for commercial vessel incidental discharges and the U.S. Coast Guard (USCG) develops corresponding implementing regulations.

16. On September 30, 2015, Respondent submitted a timely Notice of Intent to be covered under the VGP.

17. As described more fully in the inspection report, on February 26, 2020, the USCG, Los Angeles/Long Beach Sector and EPA Region 9 Enforcement and Compliance Assurance Division conducted an inspection of the Vessel and found that the Vessel employs a ballast water treatment system and had discharged ballast water at the Port of New Orleans, Louisiana without performing any functionality monitoring or biological monitoring as required by the VGP.

18. Pursuant to Part 2.2.3.5.1.1.2 of the VGP, functionality monitoring is required at least once per month for specific parameters that are applicable to the ballast water treatment system.

19. Respondent violated Part 2.2.3.5.1.1.2 of the VGP by failing to perform the required ballast water treatment system functionality monitoring prior to discharging ballast water at the Port of New Orleans, Louisiana in August 2017.

20. Pursuant to Part 2.2.3.5.1.1.3 of the VGP, all applicable sensors and other control equipment must be calibrated as recommended by sensor and equipment manufacturers, or by ballast water treatment system manufacturers or when warranted based on device drift from a standard or calibrated setting. At a minimum, all applicable sensors and equipment must be calibrated at least annually.

21. Respondent violated Part 2.2.3.5.1.1.3 of the VGP by failing to perform an annual calibration of the ballast water treatment system prior to discharging ballast water at the Port of New Orleans, Louisiana in August 2017.

22. Pursuant to Part 2.2.3.5.1.1.4 of the VGP, biological indicator compliance monitoring sampling of ballast water effluent must be conducted twice a year during the first year the system is installed or used for vessel with type approved devices for which high quality type approval data are available. For vessels with high quality data, if sampling results are below permit limits for two consecutive events, the vessel owner/operator may reduce monitoring to one time per year after the first year. If the vessel exceeds a permit limit on any sampling event, however, they must return to monitoring two times per year until they have two additional results below permit limits.

23. Respondent violated Part 2.2.3.5.1.1.4 of the VGP by failing to perform required biological monitoring after discharging ballast water at the Port of New Orleans, Louisiana in August 2017.

24. Under Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), the Administrator is authorized to assess a Class I or Class II civil penalty whenever, on the basis of any available information, the Administrator finds that a person has violated Section 301 of the Act, 33 U.S.C. § 1311.

25. Each day of unauthorized discharge by Respondent that is not in compliance with its § 402 permit is a violation of Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342.

26. In August 2017, Respondent violated Sections 301(a) and 402 of the Act, 33 U.S.C. § 1311(a) and 1342 by failing to comply with a condition or limitation in a CWA Section 402 permit.

26. Under Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), Respondent is liable for a Class I civil penalty in an amount not to exceed \$22,584 per day for each day during which a violation continues, up to a maximum of \$56,460, for violations that occurred after November 2, 2015, and where penalties are assessed on or after December 23, 2020.

27. The State of Louisiana was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

28. EPA notified the public of the complaint via the internet at [www.epa.gov/region6/publicnotice](http://www.epa.gov/region6/publicnotice), and afforded the public thirty (30) days to comment on the complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

### III. TERMS OF SETTLEMENT

#### A. PENALTY PROVISIONS

29. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of fifteen thousand dollars (\$15,000.00) to settle the violations as alleged in this CAFO, in accordance with 40 C.F.R. § 22.18(c).

30. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO:

- a. By mailing a bank check, a cashier's check or certified check, payable to "Treasurer of the United States," to:

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

- b. By wire transfer to:

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"

- c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone: 314-418-4087

- d. By credit card payments to <https://www.pay.gov/paygov/>  
(enter sfo 1.1 in the search field)

When paying by check, the case name and docket number ("In the Matter of Victoria Ship Management, Inc., Docket No. CWA-06-2021-1743") should be clearly marked on the check to ensure credit for payment.

31. Respondent shall send simultaneous notice of payment, including a copy of the check or other proof of payment, to each of the following:



- (a) Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1201 Elm Street, Ste. 500  
Dallas, TX 75270-2102
  
- (b) Chief, Analysis and Assessment Section (ECDWA)  
U.S. EPA, Region 6  
1201 Elm Street, Ste. 500  
Dallas, TX 75270-2102
  
- (c) Chief, Water Legal Branch (ORCEW)  
U.S. EPA, Region 6  
1201 Elm Street, Ste. 500  
Dallas, TX 75270-2102

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

32. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

34. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt

which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

35. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be twenty percent (20%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

36. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

37. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

#### IV. GENERAL PROVISIONS

38. To execute this Agreement, Respondent shall forward this copy of the CAFO, with original signature, to:

Mr. Scott McDonald  
U.S. EPA, Region 6  
1201 Elm Street, Ste. 500  
Mail Code (ORCEW)  
Dallas, TX 75270-2102


39. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

40. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

41. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.

42. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:



Tatsuomi Hori  
Victoria Ship Management, Inc.  
General Manager

22nd September 2021



Digitally signed by CHERYL SEAGER  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CHERYL SEAGER,  
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Date: 2021.09.23 05:44:07 -05'00'

Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

September 23, 2021

Date:

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Issuance Date: \_\_\_\_\_

**THOMAS  
RUCKI**

Digitally signed by THOMAS RUCKI  
DN: c=US, o=U.S. Government,  
ou=Environmental Protection Agency,  
cn=THOMAS RUCKI,  
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Date: 2021.09.23 13:41:00 -05'00'

Regional Judicial Officer  
EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of September, 2021, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1201 Elm Street, Ste. 500, Dallas, Texas 75270-2102, and that a true and correct copy was placed in the United States Mail, by certified mail, return receipt requested, addressed to the following:

Mr. Tatsuomi Hori  
4-1 Nihonbashi 1-Chome Bldg  
Tokyo, Japan 103 0027  
[marine.smd-bulker@bigthree.co.jp](mailto:marine.smd-bulker@bigthree.co.jp)

Copy hand-delivered:

Mr. Scott McDonald  
U.S. EPA, Region 6  
1201 Elm Street, Ste. 500  
Mail Code (ORCEW)  
Dallas, TX 75270-2102

Date: September 24, 2021

Jackie Allen