

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

75 Hawthorne Street
San Francisco, California 94105



IN THE MATTER OF:)	DOCKET NO. CWA-09-2022-0005
)	
Mediterranean Shipping Company)	
S.r.l.)	COMPLAINT, CONSENT AGREEMENT
Sorrento, Italy)	AND FINAL ORDER
)	
Respondent.)	<i>Class II Administrative Penalty Proceeding under</i>
)	<i>Section 309(g) of the Clean Water Act, 33 U.S.C.</i>
MSC Aurora, NPDES Permit)	<i>§ 1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>
<u>Tracking No. VPAB94570</u>)	

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 persons who violate Sections 301(a) of the Act, 33 U.S.C. §§ 1311 (a) and or who has violated any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, 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 Mediterranean Shipping Company S.r.l.
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 the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

A handwritten signature in blue ink, appearing to be a stylized 'B' or similar character, located in the bottom right corner of the page.

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 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 a 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 means waters of the United States, as that term is defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
8. On December 4, 2018, Section 312(p) of the CWA was amended by the Vessel Incident Discharge Act (VIDA) and now provides that all provisions of the 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).
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 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 vessel owners/operators must submit a signed and certified, complete and accurate Notice of Intent (NOI) to receive coverage 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 \$22,584 per day of violation, not to exceed \$282,293 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 December 23, 2020.

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**III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS,
AND CONCLUSIONS OF LAW**

12. Respondent is a privately-owned company headquartered in Sorrento, Italy and therefore, a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Respondent technically manages and holds the Document of Compliance for the MSC Aurora (Vessel), a container ship registered in Panama and designated by International Maritime Organization (IMO) number 9484481. The Vessel has been in operation since March 7, 2012.
13. The Vessel is 365 meters in length, 143,521 gross tons, and has a ballast water capacity of 44,766 cubic meters.
14. 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. §1322(p), and the VGP.
15. On February 4, 2014, Respondent submitted a NOI to EPA to seek coverage under the VGP for the MSC Aurora, which was assigned NPDES permit tracking number VPAB94570.
16. The VGP requires, among other things, that:
 - a. Permittees conduct self-inspections and monitoring when located in waters subject to the VGP. Part 4.1.1 of the VGP requires that permittees conduct routine visual inspections at least once per week or per voyage, whichever is more frequent. Routine visual inspections must be conducted in all accessible areas addressed by the VGP, including, but not limited to, cargo holds, boiler areas, machinery storage areas, welldecks, and other deck areas.
 - b. Part 4.1.1.1 of the VGP requires that permittees document the findings of each routine visual inspection in the official ship logbook or as a component of other recordkeeping documentation. During routine visual inspections, inspectors must document the date and time of the inspection, ship locations inspected, personnel conducting the inspection, location of any visual sampling and observations, note any potential problems and sources of contamination found, and it must be signed by the person conducting the inspection.
 - c. Part 4.4.1 of the VGP requires that for each vessel, owners/operators are required to submit an annual report for each year that they have active permit coverage. For vessels that must file an NOI, this means for as long as they have an active NOI, regardless of whether the vessel was in waters of the United States during a



calendar year. Annual reports must be completed each calendar year and submitted by February 28 of the following year. The vessel owner/operator must complete the annual report form provided in Appendix H of the VGP and submit it to EPA electronically. The annual report form can be completed online by accessing EPA's main NPDES vessel webpage or through EPA's eNOI system.

17. On February 25, 2020, representatives of the EPA and the U.S. Coast Guard, Los Angeles/Long Beach Sector performed an inspection of the Vessel that included an evaluation of the Respondent's compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 1342, and the VGP. The EPA provided the inspection report to Respondent on May 1, 2020.
18. As described more fully in the inspection report, the EPA inspectors observed the following:
 - a. Respondent had not submitted annual reports since 2014 to the NOI database as required by Parts 1.14 and 4.4.1 of the VGP;
 - b. Routine visual inspections were not conducted and documented as required by Parts 4.1.1 and 4.1.1.1 of the VGP; and
 - c. Comprehensive annual inspections were not conducted, or at least not documented, as required by Part 4.1.3 of the VGP.
19. On May 15 and May 18, 2020, Respondent first submitted the missing annual reports for the years 2015-2019 to the NOI database, some of which were corrected thereafter via new submissions.
20. Respondent violated Part 4.4.1 of the VGP by not completing and submitting the four (4) annual reports for the years 2016-2019 to the NOI database by February 28 of the applicable year.
21. Respondent violated Parts 4.1.1. and 4.1.1.1 of the VGP by failing to perform and document the required routine visual inspections during thirteen (13) voyages in waters subject to the VGP during the period of November 29, 2016 through July 3, 2021.
22. On July 9, 2021, Respondent submitted information to EPA evidencing that annual comprehensive inspections were timely completed and documented as required by Part 4.1.3 of the VGP.

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IV. ALLEGED VIOLATIONS

23. Between November 29, 2016 and July 3, 2021, Respondent's operation of the MSC Aurora violated Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342 seventeen (17) times by failing to comply with a condition or limitation in the VGP and NPDES Permit No. VPAB94570.

V. ADMINISTRATIVE PENALTY

24. In consideration of the penalty factors of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of **sixty-six thousand four hundred seventy-four dollars (\$66,474)** within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

25. Respondent shall make penalty payment by one of the options listed below:

a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service Mail:*
U.S. Environmental Protection Agency
Fines and Penalties
PO BOX 979077
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

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- c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

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)

- d. Online Payment: This payment option can be accessed from the information below

Go to www.pay.gov
Enter "SFO Form Number 1.1." in the search field
Open "EPA Miscellaneous Payments – Cincinnati Finance Center" form
and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

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 the payment, Respondent shall send a true and correct copy 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

Desean Garnett
Attorney-Advisor
ORC-2-4
U.S. Environmental Protection Agency, Region 9



75 Hawthorne Street
San Francisco, CA 94105

28. 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.
29. 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

30. 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

31. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of the complaint;
 - b. neither admits nor denies specific factual allegations contained in the complaint;
 - 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

32. 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.
33. 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. ATTORNEY FEES AND COSTS

34. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

35. In accordance with 40 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

36. 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 to 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 the EPA that it no longer supports entry of this Consent Agreement.
37. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.



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

AMY MILLER- Digitally signed by AMY
MILLER-BOWEN
BOWEN Date: 2021.11.05 11:53:37
-07'00'

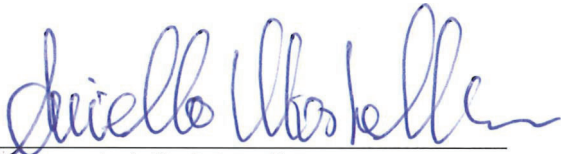
Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division

Date

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For Respondent Mediterranean Shipping Company S.r.l.



Name: Aniello Mastellone
Title: Managing Director

October 22nd 2021
Date

FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2022-0005) be entered and that Respondent shall pay a civil penalty in the amount of **sixty-six thousand four hundred seventy-four dollars (\$66,474)** in accordance with the terms of this Consent Agreement and Final Order.

January 7, 2022

Date



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



1 **CERTIFICATE OF SERVICE**

2 This is to certify that the final order order issued by the Regional Judicial Officer in
3 the matter of Mediterranean Shipping Company, Srl (CWA-09-2022-0005) has been
4 filed with the Regional Hearing Clerk, and a copy was served on Respondent, and
5 Counsel for EPA, as indicated below:

6 ELECTRONIC MAIL

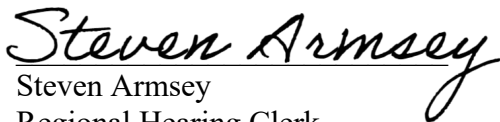
7 Respondent:

8 Aniello Mastellone
9 Mediterranean Shipping Company, S.r.l
10 aniello.mastellone@mscorrento.com

11 ELECTRONIC MAIL

12 Complainant:

13 Desean Garnett, Attorney-Advisor
14 United States Environmental Protection Agency
15 Garnett.Desean@epa.gov

16 

17 Steven Armsey
18 Regional Hearing Clerk
19 U.S. EPA, Region 9

20 07 January 2022

21 Date