

20 SEP 28 AM 11:02

U.S. EPA. REGION IX  
REGIONAL HEARING CLERK

1 NANCY J. MARVEL  
2 Regional Counsel  
3  
4 Margaret Alkon  
5 Assistant Regional Counsel  
6 U.S. Environmental Protection Agency  
7 Region IX  
8 75 Hawthorne Street  
9 San Francisco, CA 94105  
10 (415) 972-3890  
11

12 UNITED STATES  
13 ENVIRONMENTAL PROTECTION AGENCY  
14 REGION IX  
15 75 HAWTHORNE STREET  
16 SAN FRANCISCO, CA 94105  
17

18 In the matter of: ) Docket No. TSCA-09-2012- 0012  
19 ) CONSENT AGREEMENT  
20 Esco Marine, Inc. ) and  
21 ) FINAL ORDER PURSUANT TO  
22 Respondent. ) SECTIONS 22.13 AND 22.18  
23 )  
24  
25  
26

27 I. CONSENT AGREEMENT

28 Complainant, the Director of the Waste Management Division, United States  
29 Environmental Protection Agency, Region 9, ("EPA") and Respondent Esco Marine, Inc.  
30 (hereafter "**Respondent**") seek to settle this case and consent to the entry of this Consent  
31 Agreement and Final Order ("CAFO").

32 A. APPLICABLE STATUTES AND REGULATIONS

33 1. This administrative proceeding is initiated pursuant to Section 16(a) of the Toxic  
34 Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., and the Consolidated Rules of  
35 Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

2. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), EPA promulgated regulations

1 governing polychlorinated biphenyls ("PCBs") at 40 C.F.R. Part 761.

2 3. No persons may process or distribute in commerce any PCB, or any PCB Item  
3 regardless of concentration, for use within the United States or for export from the United States  
4 without an exemption. 40 C.F.R. §761.20(c).

5 4. "Person" means any individual, corporation, partnership, or association; any State, or  
6 political subdivision thereof; any interstate body; and any department, agency, or instrumentality  
7 of the Federal Government. 40 C.F.R. §761.3.

8 5. "Distribute in commerce" and "Distribution in commerce" when used to describe an  
9 action taken with respect to PCBs, or article containing PCBs means to sell, or the sale of, PCBs  
10 or PCB articles in commerce; to introduce or deliver for introduction into commerce, or the  
11 introduction or delivery for introduction into commerce PCBs or PCB articles; or to hold or the  
12 holding of, PCBs or PCB articles after its introduction into commerce. 40 C.F.R. §761.3.

13 "Commerce" means trade, traffic, transportation, or other commerce. 40 C.F.R. §761.3.

14 6. "PCB" and "PCBs" means any chemical substance that is limited to the biphenyl  
15 molecule that has been chlorinated to varying degrees or any combination of substances which  
16 contains such substances. 40 C.F.R. §761.3.

17 7. "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB  
18 Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB  
19 or PCBs. 40 C.F.R. §761.3.

20 8. "PCB Article" means any manufactured article, other than a PCB container, that  
21 contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article"  
22 includes capacitors, transformers, electric motors, pumps, pipes and any other manufactured item  
23 (1) which is formed to a specific shape or design during manufacture, (2) which has end use

1 function(s) dependent in whole or in part upon its shape or design during end use, and (3) which  
2 has either no change of chemical composition during its end use or only those changes of  
3 composition which have no commercial purpose separate from that of the PCB Article. 40  
4 C.F.R. §761.3.

5 9. "PCB Container" means any package, can, bottle, bag, barrel, drum, tank, or other  
6 device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with  
7 PCBs. 40 C.F.R. §761.3.

8 10. "PCB Equipment" means any manufactured item, other than a PCB Container or a  
9 PCB Article Container, which contains a PCB Article or other PCB Equipment, and includes  
10 microwave ovens, electronic equipment, and fluorescent light ballasts and fixtures. 40 C.F.R.  
11 §761.3.

12 11. Section 6(e)(3)(B) of TSCA, 15 U.S.C. § 2605(e)(3)(B), provides that [a]ny person  
13 may petition the Administrator for an exemption from the [prohibition of the process or  
14 distribution in commerce of any PCB] and the Administrator may grant by rule such an  
15 exemption if the Administrator finds no unreasonable risk of injury to health or environment  
16 would result and a good faith effort to develop a chemical substance which does not present an  
17 unreasonable risk of injury to health or environment and which may be substituted for PCB.

18 12. Section 15(1)(c) of TSCA, 15 U.S.C. § 2614(1)(c), provides that it shall be unlawful  
19 for any person to fail or refuse to comply with any rule promulgated or order issued under section  
20 2604 or 2605 of TSCA.

21 **B. AUTHORITY AND PARTIES**

22 13. Respondent is Esco Marine, Inc., a Delaware corporation with business operations in  
23 Brownsville, Texas.



1 exemption to 40 C.F.R. §761.20(c) for the Artship.

2 18. In 2004, EPA notified Respondent and Sanship, Inc. that the Artship contains PCBs  
3 at concentrations at or above 50 ppm and that the sale of the ship prior to the removal of such  
4 PCBs violates TSCA and is illegal. Respondent purchased the Artship from Sanship, Inc. on or  
5 about March 5, 2007; held the Artship between March 5, 2007 and June 25, 2007; and sold the  
6 Artship to International Maritime Security Alliance LLC on or about June 25, 2007.

7 19. Respondent distributed in commerce the Artship, in violation of 40 C.F.R.  
8 §761.20(c). Respondent's failure to comply with 40 C.F.R. §761.20(c), promulgated under  
9 section 2605(e) of TSCA, constitutes a violation of Section 15(1)(c) of TSCA, 15 U.S.C. §  
10 2614(1)(c).

#### 11 **D. RESPONDENT'S ADMISSIONS**

12 20. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding,  
13 Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
14 Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section  
15 I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to  
16 pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this  
17 CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO;  
18 and (vi) waives the right to appeal the proposed final order contained in this CAFO.

#### 19 **E. CIVIL ADMINISTRATIVE PENALTY**

20 21. Respondent consents to the assessment of a penalty in the amount of **TEN**  
21 **THOUSAND DOLLARS (\$10,000)** as final settlement and complete satisfaction of the civil  
22 claims against Respondent arising from the facts alleged in Section I.C. of the CAFO and under  
23 the Act, as alleged in Section I.C. of the CAFO. Respondent shall pay this civil penalty within

1 thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by remitting a  
2 certified or cashier's check, including the name and docket number of this case, for the amount,  
3 payable to "Treasurer, United States of America," (or be paid by one of the other methods listed  
4 below) and sent as follows:

5 Regular Mail:

6 U.S. Environmental Protection Agency  
7 Fines and Penalties  
8 Cincinnati Finance Center  
9 PO Box 979077  
10 St. Louis, MO 63197-9000

11 Wire Transfers:

12 Wire transfers must be sent directly to the Federal Reserve Bank in New  
13 York City with the following information:  
14 Federal Reserve Bank of New York  
15 ABA = 021030004  
16 Account = 68010727  
17 SWIFT address = FRNYUS33  
18 33 Liberty Street  
19 New York, NY 10045  
20 Field Tag 4200 of the Fedwire message should read "D 68010727  
21 Environmental Protection Agency"  
22

23 Overnight Mail:

24 U.S. Bank  
25 1005 Convention Plaza  
26 Mail Station SL-MO-C2GL  
27 ATTN Box 979077  
28 St. Louis, MO 63101

29 ACH (also known as REX or remittance express):

30 Automated Clearinghouse (ACH) for receiving U.S. currency  
31 PNC Bank  
32 808 17<sup>th</sup> Street, NW  
33 Washington, DC 20074  
34 ABA = 051036706  
35 Transaction Code 22 – checking  
36 Environmental Protection Agency  
37 Account 31006  
38 CTX Format  
39  
40  
41

1                   On Line Payment:

2                   This payment option can be accessed from the information below:

3                   www.pay.gov

4                   Enter "sf01.1" in the search field

5                   Open form and complete required fields

6  
7                   If clarification regarding a particular method of payment remittance is  
8                   needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

9  
10  
11                  A copy of each check, or notification that the payment has been made by one of the other  
12                  methods listed above, including proof of the date payment was made, shall be sent with a  
13                  transmittal letter, indicating Respondent's name, the case title, and docket number, to the  
14                  following addresses:

15  
16                               Regional Hearing Clerk  
17                               Office of Regional Counsel (ORC-1)  
18                               U.S. Environmental Protection Agency, Region IX  
19                               75 Hawthorne Street  
20                               San Francisco, CA 94105

21  
22                               Christopher A. Rollins  
23                               Waste Management Division (WST-3)  
24                               U.S. Environmental Protection Agency, Region IX  
25                               75 Hawthorne Street  
26                               San Francisco, CA 94105

27  
28                               Margaret Alkon  
29                               Office of Regional Counsel (ORC-2)  
30                               U.S. Environmental Protection Agency, Region IX  
31                               75 Hawthorne Street  
32                               San Francisco, CA 94105

33  
34                  22. In the event that Respondent fails to pay the civil administrative penalty assessed  
35                  above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in  
36                  the amount of **FIVE HUNDRED DOLLARS (\$500)** for each day that payment is late. Upon  
37                  Complainant's written demand, payable shall immediately become due and payable.



1 compliance with TSCA and all applicable regulatory standards.

2 **G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.**

3 25. This Consent Agreement constitutes the entire agreement between the Respondent  
4 and EPA. This CAFO is for the purpose of fully and finally settling the civil claims against  
5 Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil  
6 penalty and any applicable interest charges or late fees or penalties as set forth in this CAFO shall  
7 constitute full settlement and satisfaction of civil penalty liability against Respondent for the  
8 violations alleged in Section I.C. of this CAFO.

9 26. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
10 liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C  
11 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
12 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
13 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
14 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
15 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
16 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.  
17 This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to  
18 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and  
19 permits.

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

23 28. Except as set forth in Paragraph 23 above, each party shall bear its own fees, costs,

1 and disbursements in this action.

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

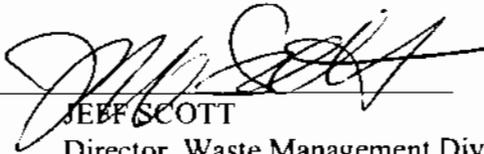
4 30. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this  
5 CAFO shall be the date on which the accompanying Final Order, having been signed by the  
6 Regional Judicial Officer, is filed.

7 31. The undersigned representatives of each party to this Consent Agreement certify that  
8 each is duly authorized by the party whom he or she represents to enter into the terms and  
9 conditions of this Consent Agreement and Final Order and bind that party to it.

10  
11  
12 **ESCO MARINE:**

13  
14  
15 Date: 9/20/12 By:   
16  
17 Name: Richard Saross  
18  
19  
20 Title: President  
21  
22  
23

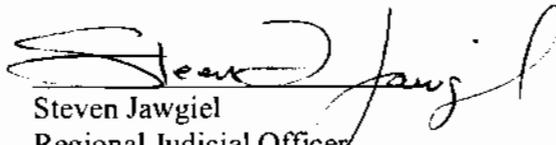
24  
25 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

26  
27  
28 Date: 9/27/12 By:   
29  
30 JEFF SCOTT  
31 Director, Waste Management Division  
32 U.S. Environmental Protection Agency,  
33 Region IX  
34  
35

1 **II. FINAL ORDER**

2  
3 IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and  
4 that Respondent shall pay a civil administrative penalty in the amount of **TEN THOUSAND**  
5 **DOLLARS (\$10,000)** in accordance with the terms set forth in the Consent Agreement.  
6  
7

8  
9 Date: 09/28/12

10   
11 Steven Jawgiel  
12 Regional Judicial Officer  
13 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 ESCO MARINE, INC (**Docket No: TSCA-09-2012-** ) was 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 to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Mr. Richard Jaross  
President  
Esco Marine, Inc.  
16200 Joe Garza Sr. Road  
Brownsville, TX 78521

**CERTIFIED MAIL NUMBER:** 7000 1670 0009 3120 7515

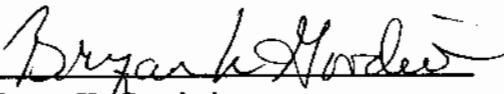
A copy was mailed via CERTIFIED MAIL to:

Patrick A. Genzler  
Vandeventer Black, LLP  
100 West Main Street  
500 World Trade Center  
Norfolk, VA 23510

**CERTIFIED MAIL NUMBER:** 7000 1670 0009 3120 7478

And an additional copy was hand-delivered to the following U.S. EPA case attorney:

Margaret Alkon  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Bryan K. Goodwin  
Regional Hearing Clerk  
U.S. EPA, Region IX

9/28/12  
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

OFFICE OF THE  
REGIONAL ADMINISTRATOR

Certified Mail No.  
Return Receipt Requested

SEP 28 2012

In reply, refer to WST-3

Richard Jaross  
President  
Esco Marine, Inc.  
16200 Joe Garza Sr. Road  
Brownsville, TX 78521

Re: Consent Agreement and Final Order  
In the Matter of Esco Marine, Inc.

Dear Mr. Jaross:

Please find enclosed the final executed Consent Agreement and Final Order ("CA/FO") negotiated between the United States Environmental Protection Agency, Region IX ("EPA"), and Esco Marine, Inc. ("ESCO").

This CA/FO sets out the terms for resolution of the Toxic Substances Control Act ("TSCA") administrative civil penalty action against ESCO for the alleged violation of the polychlorinated biphenyls ("PCBs") requirements during the sale of the Artship to International Maritime Security Alliance LLC.

ESCO's full compliance with the payment terms of this CA/FO and completion of all tasks in accordance with the terms of this CA/FO will close this case. If you have any questions regarding the PCB regulations governing your operations or the rules which govern the proceedings terminated by the enclosed document, please contact Christopher Rollins of my staff at (415) 947-4166, or Margaret Alkon, in the Office of Regional Counsel, at (415) 972-3890.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott".

Jeff Scott, Director  
Waste Management Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

OFFICE OF THE  
REGIONAL ADMINISTRATOR

Certified Mail No.  
Return Receipt Requested

SEP 28 2012

In reply, refer to WST-3

Patrick A. Genzler  
Vandeventer Black, LLP  
100 West Main Street  
500 World Trade Center  
Norfolk, VA 23510

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Sincerely,

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Jeff Scott, Director  
Waste Management Division

Enclosure