



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 08 2014

CERTIFIED MAIL 7010 1060 0002 1703 9850
RETURN RECEIPT REQUESTED

Captain Joseph Cheeran
Managing Director
Bernhard Schulte Shipmanagement (India) Private Limited
401, OLYMPIA, Hiranandani Gardens,
Powai, Mumbai – 400 076, India

Re: Consent Agreement and Final Order, Docket No.: CWA-04-2014-4503(b)
National Pollutant Discharge Elimination System Vessel General Permit
Tracking No.: VPAAE307G for Vessel *Honourable Henry Jackman*

Dear Captain Cheeran:

Enclosed, please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Judicial Officer. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions regarding this matter, please contact Ms. Tanya Floyd, Associate Regional Counsel, at (404) 562-9813 or via email at floyd.tanya@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Denisse D. Diaz".

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Captain Tom Allan
U.S. Coast Guard Sector Jacksonville, Florida

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)

BERNHARD SCHULTE)
SHIPMANAGEMENT (INDIA))
PRIVATE LIMITED,)
VESSEL *HONOURABLE HENRY*)
JACKMAN,)

RESPONDENT.)

CONSENT AGREEMENT AND
FINAL ORDER

Docket No. CWA-04-2014-4503**(b)**

2014 JUL - 8 PM 1:31
HEARING CLERK

RECEIVED
EPA REGION IV

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 *Fed. Reg.* 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of the EPA, Region 4 ("Complainant").

II. Allegations

3. Bernhard Schulte Shipmanagement (India) Private Limited ("Respondent") is an Indian corporation doing business in the State of Florida, and, therefore, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this Consent Agreement and Final Order ("CA/FO"), the Respondent owned and/or operated a vessel entitled *Honourable Henry Jackman*.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. On December 29, 2008, the EPA announced in the Federal Register issuance of a final NPDES Vessel General Permit ("VGP"), effective December 19, 2008, regulating point source discharges associated with discharges incidental to the normal operations of vessels into "waters of the United States" as defined in 40 C.F.R. 122.2, which extend to the outer reach of the 3 mile "territorial seas" as defined in section 502(8) of the CWA, 33 U.S.C. § 1362(8). See 73 Fed. Reg. 79473.

7. The VGP that became effective on December 19, 2008, applies to owners and operators of non-recreational vessels that are 79 feet and greater in length pursuant to Part 1.2.1 of the VGP. See 73 Fed. Reg. at 79477. If such a vessel is greater than or equal to 300 gross tons or has the capacity to hold or discharge more than eight cubic meters (2113 gallons) of ballast water, it is required to submit a Notice of Intent ("NOI") to the EPA to receive coverage under the VGP in accordance with Part 1.5.1 of the VGP.

8. On August 15, 2009, the Respondent submitted an electronic NOI to the EPA requesting permit coverage under the VGP for the vessel entitled *Honourable Henry Jackman*. The NOI identifies *Honourable Henry Jackman* as a vessel of 46,191 gross registered tons with a length of 244.7 meters (802.8 feet). The EPA granted the *Honourable Henry Jackman* coverage under the VGP with unique identifier VPAAE307G.

9. Part 4.1.1 (Routine Visual Inspections) of the VGP requires the vessel owner/operator to perform routine visual inspections at least once per week or per voyage, whichever is more frequent, and to conduct such inspections of safely accessible deck and cargo areas and all accessible areas where chemicals, oils, dry cargo or other materials are stored, mixed, and used, whether or not the areas have been used since the last inspection.

10. Part 4.1.3 (Comprehensive Annual Vessel Inspections) of the VGP requires the vessel owner/operator to perform a comprehensive vessel inspection at least once every 12 months and such inspections be carried out by qualified personnel, to include the master or owner/operator of the vessel, if appropriately trained, or appropriately trained marine or environmental engineers or technicians or an appropriately trained representative of a vessel's class society acting on behalf of the owner/operator. Such inspections must include, but are not limited to the following:

- a. Vessel hull for attached living organisms, flaking anti-foulant paint, exposed tributyltin ("TBT") or other organotin surfaces;
- b. Ballast water tanks, as applicable;
- c. Bilges, pumps, and oily water separator ("OWS") sensors, as applicable;
- d. Protective seals for lubrication and hydraulic oil leaks;
- e. Oil and chemical storage areas, cargo areas, and waste storage areas; and
- f. All visible pollution control measures to ensure that they are functioning properly.

11. On November 6, 2013, the EPA performed a Compliance Evaluation Inspection ("CEI") onboard the *Honourable Henry Jackman* while the vessel was moored in the Port of Jacksonville, Florida, for cargo off-loading operations.

12. As a result of the CEI, the EPA made the following observations and determinations:

- a. The Respondent failed to perform inspections on a weekly basis as required by Part 4.1.1 of the VGP. Specifically, Respondent conducted inspections on a monthly routine versus a weekly, or per voyage routine, and thus failed to perform at least three of four inspections required each month from November 2010 to November 2013.
- b. The Respondent failed to adequately conduct comprehensive annual inspections for as required by 4.1.3 of the VGP. Specifically, the comprehensive annual inspection records from November 2010 to November 2013 show that the vessel did not examine the hull underneath the waterline for attached organisms, flaking anti-foulant paint, exposed TBT or other organotin surfaces; did not show that all spaces where inspected that provide for oil and chemical storage, cargo areas and waste storage areas; and did not show that routine maintenance records were reviewed by qualified personnel to ensure that required maintenance is being performed.

13. Therefore, the Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§1311 and 1342, by failing to comply with conditions of the VGP.

III. Stipulations and Findings

14. The Complainant and the Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

15. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations and the factual allegations set out above.

16. The Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

17. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

18. By signing this CA/FO, the Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response, and statement. The Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

19. The EPA reserves the right to assess and collect any and all civil penalties for any

violation described herein to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

20. The Complainant and the Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

21. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that Six Thousand Six Hundred Dollars (\$6,600) is an appropriate civil penalty to settle this action.

22. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the Effective Date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

23. At the time of payment, the Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

And

Ms. Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
Clean Water Enforcement Branch
Municipal and Industrial Enforcement Section
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

24. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

25. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

26. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

27. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the Respondent's violation of any federal or state statute, regulation, or permit.

28. Except as otherwise set forth herein, this CA/FO constitutes a settlement by the Complainant and the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, the Complainant does not waive any right to bring an enforcement action against the Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

29. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

30. This CA/FO applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors and assigns.

31. Any change in the legal status of the Respondent, including, but not limited to, any transfer of assets of real or personal property, shall not alter the Respondent's

responsibilities under this CA/FO.

32. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

33. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:
Ms. Tanya Floyd
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9813

For the Respondent:
Captain Joseph Cheeran
Managing Director
Bernhard Schulte Shipmanagement (I) Pvt. Ltd.
401, OLYMPIA, Hiranandani Gardens,
Powai, Mumbai – 400 076, India
91 22 4001 7501

34. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

35. Effective upon signature of this CAFO by the Respondent's responsible corporate officer, the Respondent agrees that the time period commencing on the date of his signature and ending on the date the EPA receives from Respondent the payment required by this CAFO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CAFO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CAFO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Release by the Respondent

36. The Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the matters addressed and resolved in this

CA/FO, including, but not limited to any claim that any of the matters or actions described in this CA/FO have resulted in a taking of the Respondent's property without compensation.

VII. Effective Date

37. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For RESPONDENT, BERNHARD SCHULTE SHIPMANAGEMENT (INDIA) PRIVATE LIMITED.:

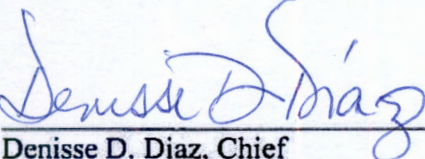


Captain Joseph Cheeran
Managing Director
Bernhard Schulte Shipmanagement (India) Private Limited



Date: 15-05-2014

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA, Region 4

Date: 7/8/14

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
BERNHARD SCHULTE) CONSENT AGREEMENT AND
SHIPMANAGEMENT (INDIA)) FINAL ORDER
PRIVATE LIMITED,)
VESSEL HONOURABLE HENRY)
JACKMAN,)
)
RESPONDENT.) Docket No. CWA-04-2014-4503(b)
_____)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: July 8, 2014

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

Docket No. CWA 04-2014-4503(b)

CERTIFICATE OF SERVICE

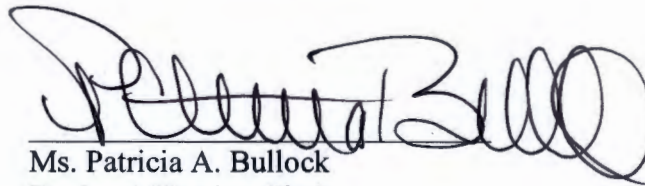
The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **BERNHARD SCHULTE SHIPMANAGEMENT (INDIA) PRIVATE LIMITED, Docket No. CWA-04-2014-4503(b)** filed with the Regional Hearing Clerk on 7-8, 2014, was served on 7-8, 2014, in the manner specified to each of the persons listed below.

By hand-delivery:

Ms. Tanya Floyd
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

By certified mail,
return receipt requested:

Capt. Joseph Cheeran D.
Managing Director
Bernhard Schulte Shipmanagement (I) Pvt. Ltd.
401, OLYMPIA, Hiranandani Gardens,
Powai, Mumbai – 400 076, India



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511