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ENVIR. APPEALS BOARD

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of: Great Enterprise Company Limited, International Maritime Organization (IMO) Number: 1882700, Eastern Mediterranean Maritime Limited, IMO Number: 1252195, and Phoenix Bulk Carriers (US) LLC, IMO Number: 5262368, Respondents.	Docket No. MSEB-HQ-2015-8125

CONSENT AGREEMENT

Preliminary Statement

1. This is a civil administrative penalty assessment proceeding initiated under section 1908 of the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. § 1908, to resolve alleged violations of the APPS[1] committed by the ship, Pretty Lady, IMO Number: 9223174, for failure to comply with required fuel sulfur limits while operating in the North American Emission Control Area (ECA).

2. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

3. Complainant in this matter is the United States Environmental Protection Agency (EPA). On the EPA's behalf, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized to

[1] The APPS is cited throughout this Consent Agreement and Final Order as it is codified in the United States Code.

initiate and settle civil administrative actions pursuant to the APPS, to assess penalties for violations of the APPS, and to compromise, modify and remit, with or without conditions, any civil penalty subject to assessment under the APPS. 33 U.S.C. § 1908(b), (c); Office of Enforcement and Compliance Assurance Redelegations 21-3 and 21-4.

4. Respondents in this matter are Great Enterprise Company Limited, IMO Number: 188270, Eastern Mediterranean Maritime Limited, IMO Number: 1252195, and Phoenix Bulk Carriers (US) LLC, IMO Number: 5262368 (Respondents).

5. The EPA and Respondents, having agreed to settle this action, consent to the entry of this Consent Agreement and the attached Final Order before taking testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this Consent Agreement and the attached Final Order.

Jurisdiction

6. This Consent Agreement is entered into under sections 1908(b) and (c) of the APPS, 33 U.S.C. §§ 1908(b) and (c), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 (Consolidated Rules).

7. The EPA has the authority to enforce violations of the APPS that have been referred to the EPA by the United States Coast Guard (USCG). 33 U.S.C. § 1907(f)(2). On or about April 10, 2013, the USCG referred this matter to the EPA.

8. The Environmental Appeals Board (EAB) is authorized to approve settlements of proceedings commenced at EPA Headquarters. 40 C.F.R. § 22.4(a)(1).

9. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously

commenced and concluded by the issuance of a Consent Agreement and Final Order. 40 C.F.R. §§ 22.13(b), 22.18(b).

10. This proceeding arises under MARPOL Annex VI as implemented in the United States through the APPS, 33 U.S.C. § 1901 *et seq.*, and the regulations promulgated thereunder in 40 C.F.R. Part 1043. *See* International Convention for the Prevention of Pollution from Ships Annex VI, Reg. 1(1), Nov. 2, 1972, 12 ILM 1319 (hereinafter MARPOL). These laws aim to reduce air pollution from ships, including emissions of sulfur oxides, oxides of nitrogen, and particulate matter. What follows is a summary of the law that governs these allegations.

11. General definitions:

    (a) "MARPOL Protocol" means the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, and includes the Convention. 33 U.S.C. § 1901(a)(4).

    (b) "Convention" means the International Convention for the Prevention of Pollution from Ships, 1973, including Protocols I and II and Annexes I, II, V and VI thereto, including any modification or amendments to the Convention, Protocols, or Annexes which have entered into force for the United States. 33 U.S.C. § 1901(a)(5).

    (c) "Annex VI" means Annex VI of the MARPOL Protocol. MARPOL Annex VI, Reg. 2.1.

    (d) "Operator" means, in the case of a ship, a charterer by demise, or any other person, except the owner, who is responsible for the operation, manning, victualing and supplying of the ship. 33 U.S.C. § 1901(a)(9)(a).

(e) "Owner" means any person holding title to, or any other indicia of ownership of, a ship, but does not include a person who, without participating in the management or operation of a ship, holds indicia of ownership primarily to protect a security interest in the ship. 33 U.S.C. § 1901(a)(8).

(f) A "person" includes any individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body. 33 U.S.C. § 1901(a)(10).

(g) A "ship" means a vessel of any type whatsoever, including hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating platforms. 33 U.S.C. § 1901(a)(12); *see also* Convention Article 2(4).

(h) A "vessel" means a "ship" as defined in APPS.

(i) "Administrator" means the Administrator of the Environmental Protection Agency. 33 U.S.C. § 1901(a)(1).

(j) "Secretary" means the Secretary of the department in which the United States Coast Guard is operating. 33 U.S.C. § 1901(a)(11).

(k) "Fuel oil" means any fuel delivered to and intended for combustion purposes for propulsion or operation on board a ship, including distillate and residual fuels. MARPOL Annex VI, Reg. 2.9.

(l) "Emission Control Area" or "ECA" means an area where the adoption of special mandatory measures for emissions from ships is required to prevent, reduce and control air pollution from NO_x, SO_x, and particulate matter, or all three types of emissions, and their attendant adverse impacts on human health

and the environment. ECAs include those listed in, or designated under regulations 13 and 14 of Annex VI. MARPOL Annex VI, Reg. 2.8; *see also* 40 C.F.R. § 1043.20 (July 2012) (stating an Emission Control Area is an area designated pursuant to Annex VI as an Emission Control Area that (1) is in force; and (2) includes waters of the U.S. territorial sea and/or the U.S. Exclusive Economic Zone (U.S. EEZ) (as defined in Presidential Proclamation 5030 of March 10, 1983)).

12. The United States deposited with the IMO its instrument of ratification for Annex VI on October 8, 2008, and therefore the United States is a party to Annex VI. *See* IMO Status of Convention documents (available at http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx).

13. The North American Emission Control Area was established through an amendment to Annex VI and entered into force for the United States on August 1, 2011, and became enforceable on August 1, 2012. *Information on North American Emission Control Area (ECA) Under MARPOL Annex,* MEPC.1/Circ.723 (May 13, 2010) (available at http://www.epa.gov/otaq/regs/nonroad/marine/ci/mepc1-circ-re-na-eca.pdf). The specific geographic coordinates that comprise the North American ECA are listed in MARPOL Annex VI, Appendix VII.

14. The sulfur content of fuel oil used on board ships operating within the North American ECA may not exceed 1.00% by mass (m/m) on or after August 1, 2012, and 0.10% m/m on or after January 1, 2015. MARPOL Annex VI, Reg. 14.4.

15. The APPS implements the requirements of MARPOL Annex VI and amendments to MARPOL Annex VI which have entered into force for the United States. 33 U.S.C. §§ 1901(a)(4)-(a)(5), 1902.

16. A ship that is not of United States registry or nationality is subject to the APPS while in the navigable waters or the exclusive economic zone of the United States. 33 U.S.C. § 1902(a)(5); *see also* 40 C.F.R. § 1043.10(b)(1) (July 2012) (explaining how the requirements of 40 C.F.R. Part 1043 apply to foreign-flagged ships operating in U.S. navigable waters or the U.S. Exclusive Economic Zone).

17. Pursuant to the APPS, it is unlawful to act in violation of the MARPOL Protocol, including Annex VI, the APPS, or the regulations issued thereunder. 33 U.S.C. § 1907(a).

18. The APPS applies "to all persons to the extent necessary to ensure compliance with Annex VI to the Convention." 33 U.S.C. § 1902(c).

19. A person who is found to have violated the MARPOL Protocol, the APPS, or the regulations promulgated thereunder, shall be liable to the United States for a civil penalty not to exceed $25,000 for each violation. 33 U.S.C. § 1908(b)(1).

20. Each day of a continuing violation shall constitute a separate violation. 33 U.S.C. § 1908(b).

21. The EPA has the authority to administratively assess civil penalties, and to compromise, modify, or remit, with or without conditions, any civil penalty which is subject to assessment under section 1908 of the APPS. 33 U.S.C. §§ 1908(b), (c).

Alleged Facts and Violations of Law

22. On or about November 12, 2012, the ship Pretty Lady, IMO Number: 9223174, (Pretty Lady), entered into the North American ECA and the U.S. EEZ in transit to the port of New Orleans using fuel oil with a sulfur content of 1.97% m/m.

23. At the time of entry into the North American ECA and U.S. EEZ, the Pretty Lady was flagged in the Republic of Malta.

24. The Pretty Lady continued to operate in the North American ECA and the U.S. EEZ using fuel oil with a sulfur content of 1.97% m/m until approximately November 14, 2012.

25. A separate violation of the APPS occurred for each of the three days the Pretty Lady operated in the North American ECA and the U.S. EEZ while using fuel oil that exceeded the 1.00% m/m limit. 33 U.S.C. §§ 1907(a), 1908(b); MARPOL Annex VI, Reg. 14.4.

26. At the time of entry into the North American ECA and U.S EEZ, Great Enterprise Company Limited, IMO Number: 188270, (Great Enterprise), was the "Owner" of the Pretty Lady, and Eastern Mediterranean Maritime Limited., IMO Number: 1252195, (Eastern Mediterranean), was the "Operator" of the Pretty Lady, as those terms are defined under section 1901 of the APPS, and Phoenix Bulk Carriers (US) LLC, IMO Number: 5262368, (Phoenix), was the charterer of the Pretty Lady.

27. On information and belief, Great Enterprise is a corporation organized under the laws of the Republic of Malta; Eastern Mediterranean is a corporation organized under the laws of the Hellenic Republic; and Phoenix is a corporation organized under the laws of Delaware, and thus all three are "Persons" as defined in section 1901 of the APPS.

28. As the Owner and Operator and charterer of the Pretty Lady, Great Enterprise, Eastern Mediterranean, and Phoenix were responsible for the management and operation of the

ship both at the time of entry into, and during operation in, the North American ECA and U.S. EEZ, and as Persons under the APPS, each is liable under 1908(b) of APPS for the operation of the ship in violation of the MARPOL Annex VI Regulation 14 fuel sulfur requirements. 33 U.S.C. §§ 1901(a), 1902(c), 1907(a), 1908(b).

Terms of Agreement

29. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents: admit that the EPA has jurisdiction over this matter as stated above; neither admit nor deny the alleged violations of law stated above; consent to the assessment of a civil penalty as stated below; consent to the issuance of any specified compliance or corrective action order; consent to any conditions specified in this Consent Agreement, and to any stated Permit Action; waive any right to contest the alleged violations of law; and waive their rights to appeal the Final Order accompanying this Consent Agreement.

30. For the purpose of this proceeding, Respondents:

(a) agree that this Agreement states a claim upon which relief may be granted against Respondents;

(b) waive any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this Order, including any right of review under 40 C.F.R § 22.30.

(c) waive any rights they may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to enforce this Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agree that federal law shall govern in any such civil action;

(d) consent to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the District of Columbia, and identify a U.S. agent for service of process as follows:

(1) For Respondents:

Eugene J. O'Connor, Partner
Montgomery McCracken Walker & Rhoads LLP
437 Madison Avenue, 29th Floor
New York, NY 10022
eoconnor@mmwr.com

(e) agree that Respondents may not delegate duties under this Consent Agreement to any other party without the written consent of the EPA, which may be granted or withheld at the EPA's sole discretion. If the EPA so consents, the Agreement is binding on the party or parties to whom the duties are delegated;

(f) acknowledge that this Agreement constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement actions;

(g) acknowledge that this Consent Agreement and attached Final Order will be available to the public and agree that it does not contain any confidential business information or personally identifiable information;

(h) certify that the information they have supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response, and statement; and

(i) acknowledge that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

31. For purposes of this proceeding, the parties each agree that:

(a) this Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;

(b) this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement. The counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts. Any signature page may be detached from any counterpart and attached to any other counterpart of this Agreement.

(c) its undersigned representative is fully authorized by the party whom he or she represents to enter into the terms and conditions of the Consent Agreement, to execute it on behalf of that party, and to legally bind that party on whose behalf he or she signs this Consent Agreement; and

(d) each party will bear their own costs and attorney fees in the action resolved by this Consent Agreement and attached Final Order.

32. Respondents shall pay to the United States a civil penalty of $14,767 (the Civil Penalty).

33. Respondents agree to pay the Civil Penalty to the United States within 30 calendar days following the EAB's issuance of the attached Final Order (i.e., the effective date of this Consent Agreement and attached Final Order).

34. Respondents agree to pay the Civil Penalty in the manner specified below:

(a) Pay the EPA Penalty using any method provided on the following website: http://www2.epa.gov/financial/additional-instructions-making-payments-epa;

(b) Identify each and every payment with "Docket No. MSEB-HQ-2015-8125"; and

(c) Within 24 hours of payment, email proof of payment to Meetu Kaul at kaul.meetu@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "Docket No. MSEB-HQ-2015-8125").

Effect of Consent Agreement and Attached Final Order

35. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondents' liability for federal civil penalties for the violations and facts specifically alleged above.

36. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondents to a civil action to collect any unpaid portion of the proposed Civil Penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such Civil Penalty, as described in the following paragraph of this Consent Agreement, Respondents must timely pay the penalty.

37. If Respondents fail to timely pay any portion of the penalty assessed under this Agreement, the EPA may take one or more of the following actions:

(a) request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed, 33 U.S.C. § 1908(c);

(b) commence an *in rem* action against the ship, 33 U.S.C. § 1908(d);

(c) refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;

(d) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;

(e) suspend or revoke Respondents' licenses or other privileges; or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and

(f) pursue any other remedy available under domestic or international law.

38. Penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes. 26 U.S.C. § 162(f).

39. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and the Respondents. Successors and assigns of Respondents are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondents. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondents' successor or assignee.

40. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with all applicable provisions of the APPS or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or

regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

41. The EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent the EPA finds, after signing this Consent Agreement, that any information provided by Respondents was or is materially false or inaccurate, and the EPA reserves the right to pursue, assess and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondents written notice of such termination, which will be effective upon mailing.

42. The Parties agree to submit this Consent Agreement to the EAB with a request that it be incorporated into a Final Order.

43. Respondents and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondents. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the EAB and filing with the Hearing Clerk.

The foregoing Consent Agreement *In the Matter of Great Enter. Co. Ltd. et al.*, Docket No. MSEB-HQ-2015-8125, is hereby stipulated, agreed, and approved for entry.

For Great Enterprise Company Limited, IMO Number: 9223174

January 22, 2016

Great Enterprise Company Limited
147/1 Santa Lucia Street
Valetta, Malta

Date

For Eastern Mediterranean Maritime Limited, IMO Number: 1252195

January 22, 2016

Eastern Mediterranean Maritime Ltd.,
69, Grigoriou Lampraki Street
Glyfada 166 75
Greece

Date

For Phoenix Bulk Carriers (US) LLC, IMO Number: 5262368

January 26, 2016

Phoenix Bulk Carriers (US) LLC
109 Long Wharf
Newport, RI 02840

Date

Attorney-in-fact
As per email authority
dated Jan. 26, 2016

The foregoing Consent Agreement *In the Matter of Great Enter. Co. Ltd. et al.*, Docket No. MSEB-HQ-2015-8125, is hereby stipulated, agreed, and approved for entry.

For Complainant:

3/18/2016

Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

Date

3/8/2016

Meetu Kaul, Attorney Advisor,
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

Date

FILED
MAR 29 2016
CLERK, ENVIRONMENTAL APPEALS BOARD
INITIALS

ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re: Great Enterprise Company Limited, International Maritime Organization (IMO) Number: 1882700, Eastern Mediterranean Maritime Limited, IMO Number: 1252195, and Phoenix Bulk Carriers (US) LLC, IMO Number: 5262368, Respondents.	))))))))))	Docket No. MSEB-HQ-2015-8125

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.[1]

ENVIRONMENTAL APPEALS BOARD

Dated: March 29, 2016

Mary Kay Lynch
Environmental Appeals Judge

[1] The three-member panel ratifying this matter is composed of Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order" in the matter of *Great Enterprise Company Limited, International Maritime Organization (IMO) Number: 1882700, Eastern Mediterranean Maritime Limited, IMO Number: 1252195, and Phoenix Bulk Carriers (US) LLC, IMO Number: 5262368*, Docket No. MSEB-HQ-2015-8125, were filed and copies of the same were sent to the following persons in the manner indicated:

By First Class Certified Mail/
Return Receipt Requested:

Eugene J. O'Connor, Partner
Montgomery McCracken Walker & Rhoads LLP
437 Madison Avenue, 29th Floor
New York, NY 10022

By Interoffice Mail:
Meetu Kaul
Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 2242A
Washington, DC 20460

Dated: MAR 29 2016

Annette Duncan
Secretary