FILED
August 18, 2023
U.S. EPA - REGION IX

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 HAWTHORNE STREET
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. CWA-09-2023-0025
	)	
SWIRE SHIPPING PTE. LTD.	)	
	)	COMPLAINT, CONSENT AGREEMENT
	)	AND FINAL ORDER
Respondent.	)	
	)	*Class II Administrative Penalty Proceeding under*
Lintan, NPDES Permit	)	*Section 309(g) of the Clean Water Act, 33 U.S.C.*
Tracking No. VPBC5253A	)	*§1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18*
	)	

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 inter alia, Section 301(a) of the CWA, 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 CWA, 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 Swire Shipping Pte. Ltd.

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 EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

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, inter alia, 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 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 are referred to as "navigable waters" which means waters of the United States, including territorial seas, as those terms are defined at Sections 502(7) and 502(8) of the CWA, 33 U.S.C. § 1362(7) and 1362(8).

8. On December 4, 2018, Section 312(p) of the CWA was amended by the Vessel Incidental Discharge Act (VIDA) and now provides that all provisions of the 2013 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). To date, these regulations have not been promulgated.

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 79 feet or longer, 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 the vessel owners/operators must submit a signed and certified, complete and accurate Notice of Intent (NOI) to receive authorization 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 $25,847 per day of violation, not to exceed $323,081 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 January 6, 2023.

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

12. Respondent is a privately-owned company headquartered in Singapore and therefore, a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Respondent owns and operates the Lintan (Vessel), a bulk carrier registered in Hong Kong and designated by International Maritime Organization (IMO) number 9715206. The Vessel has been in operation since 2015.

13. The Vessel is 591 feet in length, 24,785 gross tons and has a ballast water capacity of 25,396 cubic meters.

14. The Vessel is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14). The Vessel is subject to the requirements of Section 312(p) of the CWA, 33 U.S.C. § 1322(p), and the VGP.

15. On October 20, 2015, Respondent submitted a NOI to EPA to seek coverage under the VGP for the Lintan, which was assigned NPDES tracking number VPBC5253A.

16. Respondent installed a Techcross ECS ballast water treatment system (BWTS) on board the Vessel on October 20, 2015 and first used it to treat ballast water prior to a discharge to navigable waters on November 8, 2018 while in port at Longview, WA.

17. On November 21, 2016, the U.S. Coast Guard issued Respondent an extension to the compliance date of the ballast water management implementation schedule in 33 C.F.R. Part 151, Subparts C and D for the Vessel, with an extended compliance date of the "[n]ext scheduled drydocking after date of delivery." The extension noted that it did not affect or supersede the prohibitions pertaining to the discharge of ballast water into the waters of the United States under the Clean Water Act, including the requirements of the VGP.

18. The VGP requires, among other things:

a. Part 2.2.3.5 requires that the owners/operators must meet ballast water discharge limits (expressed as instantaneous maximum) consistent with the schedule found in Part 2.2.3.5.2.

b. Part 2.2.3.5.1.1.4. requires that ballast water discharges from vessels containing a BWTS be monitored to ascertain compliance with effluent limitations for indicator microorganisms. For vessels with high quality data, biological indicator compliance monitoring must be conducted two times during the first year the BWTS is installed, and if sampling results are below permit limits for two consecutive events, one time per year after the first year.

c. Part 2.2.3.5.1.1.5.2 requires monitoring of the vessel ballast water discharge for any residual biocides or derivatives used in the treatment process to ascertain compliance with effluent limitations. The vessel operator must perform initial monitoring and maintenance monitoring in compliance with the schedule set out in the VGP.

d. Part 2.2.3.5.1.1.6 requires that records of sampling and testing results required under Part 2.2.3.5.1.1 must be retained onboard for a period of three years in the vessel's recordkeeping documentation. Vessels must also submit the testing results to EPA as part of the vessel's annual report on the VGP ballast water DMR.

e. Part 2.2.3.5.2 sets out a schedule for when ballast water treatment becomes best available technology (BAT) and is therefore required. For new vessels (constructed after December 1, 2013) the vessel's compliance date is on delivery.

f. Part 4.1.3 requires that comprehensive vessel inspections must be conducted by qualified personnel at least once every 12 months. Comprehensive visual inspections must cover all areas of the vessel affected by the requirements in this permit and special attention should be paid to those areas most likely to result in a discharge.

19. Between November 23, 2020 and February 28, 2022, representatives of the EPA reviewed available databases and additional information provided by the Respondent to evaluate the Vessel's compliance with the requirements of Sections 301, 312(p) and 402 of the CWA, 33 U.S.C. §§ 1311, 1322(p), 1342, and the VGP.

20. EPA found that:

a. Respondent reported an empty-refill ballast water exchange prior to discharging ballast water to navigable waters to the National Ballast Water Information Clearinghouse (NBIC) on May 22, 2018, in Portland, OR. Such discharge failed to meet the requirements of the compliance deadline set forth in Part 2.2.3.5.2 of the VGP, despite the Coast Guard's issuance of a ballast water management compliance date extension to the Vessel.

b. Respondent did not conduct sampling for biological indicator compliance monitoring and residual biocide monitoring following the first use of the BWTS in November 2018 as required by Part 2.2.3.5.1.1.4 and Part 2.2.3.5.1.1.5.2.

c. In the Vessel's 2018 and 2020 annual reports Respondent did not include BWTS functionality monitoring data as required by 2.2.3.5.1.1.6.

d. During the second year Respondent operated the BWTS in navigable waters (beginning in November 2020) Respondent failed to conduct a sampling event for biological indicators as required by Part 2.2.3.5.1.1.4.

e. During the second year Respondent operated the BWTS in navigable waters (beginning in November 2020) Respondent failed to conduct sampling of residual biocides or derivatives as required by Part 2.2.3.5.1.1.5.2.

f. Respondent reported in the Vessel's 2020 annual report that the Vessel operated in navigable waters but did not conduct an annual comprehensive inspection as required by Part 4.1.3.

IV. ALLEGED VIOLATIONS

21. Between May 2018 and February 2021, Respondent's operation of the Lintan failed to comply with multiple conditions and limitation in the VGP and EPA is authorized to assess administrative civil penalties pursuant to Section 309(g) of the CWA.

V. ADMINISTRATIVE PENALTY

22. 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 **fifty thousand and nineteen dollars ($50,019)** within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

23. 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: 0510367606
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

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.

24. 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.

25. Concurrent with 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
Supervisory Attorney-Advisor
ORC 2-3
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

26. 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.

27. 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

28. 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

29. In accordance with 40 C.F.R. § 22.18(b)(2), for the purpose of this proceeding, Respondent:

a. admits the jurisdictional allegations of the CA/FO;

b. neither admits nor denies specific factual allegations contained in the CA/FO;

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

30. 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.

31. 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. ATTORNEYS FEES AND COSTS

32. Unless otherwise specified, each party shall bear its own attorney's fees and costs.

X. EFFECTIVE DATE AND TERMINATION

33. In accordance with 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

34. 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 of 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 EPA that it no longer supports entry of this Consent Agreement.

35. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of Oregon regarding this penalty action.

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

JOEL JONES Digitally signed by JOEL JONES
Date: 2023.06.27
09:14:29 -07'00'

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

Date

For Respondent Swire Shipping Pte. Ltd.

Name: Stuart Jones
Title: Fleet Director

SWIRE SHIPPING PTE LTD. Co. Reg. No: 200917133H

12 JUNE 2023
Date:

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2023-0025) be entered, and that Respondent shall pay a civil penalty in the amount of **fifty thousand and nineteen dollars ($50,019)** in accordance with the terms of this Consent Agreement and Final Order.

BEATRICE WONG

Digitally signed by BEATRICE WONG
Date: 2023.08.18 13:12:42 -07'00'

Beatrice Wong Date
Regional Juidicial Officer
U.S. EPA - Region IX

CERTIFICATE OF SERVICE

I hereby certify the original copy of the foregoing Consent Agreement and associated Final Order in the matter of Swire Shipping Pte., Ltd. – Lintan Chief (CWA-09-2023-0025) was filed with the Regional Hearing Clerk, Region IX and that a true and correct copy was sent by electronic mail to the following parties:

RESPONDENT

Stuart Jones, Fleet Director
Swire Shipping Pte., Ltd.
300 Beach Road #27-01
The Concourse
Singapore 199555
Stuart.Jones@swireshipping.com

COMPLAINANT

Desean Garnett, Supervisory Attorney-Advisor
Office of Regional Counsel
U.S. EPA – Region IX
75 Hawthorne Street
San Francisco, CA 94105
Garnett.Desean@epa.gov

PONLY TU

Digitally signed by PONLY TU
Date: 2023.08.18 14:36:44 -07'00'

Ponly J. Tu Date
Regional Hearing Clerk
U.S. EPA – Region IX