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4 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

5 REGION IX

6 75 HAWTHORNE STREET

7 SAN FRANCISCO, CALIFORNIA 94105

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10 IN THE MATTER OF:

11 Global Shipping, LLC, and
12 Global Marketing Systems,
13 Inc.

Respondents.

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) Docket No. TSCA-09-2008-
)
) COMPLAINT AND NOTICE OF
) OPPORTUNITY FOR HEARING
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15 This is a civil administrative action instituted pursuant to
16 Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15
17 U.S.C. § 2601 et seq., for the assessment of a civil
18 administrative penalty. Complainant is the Director of the Waste
19 Management Division, EPA Region IX, who has been duly delegated
20 the authority to institute this action. Respondents are Global
21 Shipping, LLC ("GSL"), a corporation located at 81 Baltimore
22 Street, 4th Floor, Cumberland, Maryland; and Global Marketing
23 Systems, Inc. ("GMS"), a corporation also located at 81 Baltimore
24 Street, 4th Floor, Cumberland, Maryland. This Complaint and
25 Notice of Opportunity for Hearing ("Complaint") serves as notice
26 that Complainant has reason to believe that Respondents violated
27 Section 15 of TSCA, 15 U.S.C. § 2614, by failing to comply with
28 implementing regulations governing polychlorinated biphenyls at

1 40 C.F.R. Part 761.

2 APPLICABLE STATUTORY AND REGULATORY SECTIONS

3 1. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e),
4 EPA promulgated regulations governing polychlorinated biphenyls
5 (PCBs) at 40 C.F.R. Part 761.

6 2. "PCB" and "PCBs" means any chemical substance that is
7 limited to the biphenyl molecule that has been chlorinated to
8 varying degrees or any combination of substances which contains
9 such substances.

10 3. "PCB Article" means any manufactured article, other
11 than a PCB container, that contains PCBs and whose surface(s) has
12 been in direct contact with PCBs. "PCB Article" includes
13 capacitors, transformers, electric motors, pumps, pipes and any
14 other manufactured item (1) which is formed to a specific shape
15 or design during manufacture, (2) which has end use function(s)
16 dependent in whole or in part upon its shape or design during end
17 use, and (3) which has either no change of chemical composition
18 during its end use or only those changes of composition which
19 have no commercial purpose separate from that of the PCB Article.
20 40 C.F.R. §761.3.

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

25 5. "PCB Equipment" means any manufactured item, other than
26 a PCB Container or a PCB Article Container, which contains a PCB
27 Article or other PCB Equipment, and includes microwave ovens,
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1 electronic equipment, and fluorescent light ballasts and
2 fixtures. 40 C.F.R. §761.3.

3 6. "PCB Item" means any PCB Article, PCB Article
4 Container, PCB Container, PCB Equipment, or anything that
5 deliberately or unintentionally contains or has as a part of it
6 any PCB or PCBs. 40 C.F.R. §761.3.

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

9 8. "Distribute in commerce" and "Distribution in commerce"
10 when used to describe an action taken with respect to PCBs, or
11 article containing PCBs means to sell, or the sale of, PCBs or
12 PCB Article in commerce; to introduce or deliver for introduction
13 into commerce, or the introduction or delivery for introduction
14 into commerce of PCBs or PCB Article; or to hold or the holding
15 of, PCBs or PCB article after its introduction into commerce.
16 40 C.F.R. §761.3.

17 9. "Disposal" means intentionally or accidentally to
18 discard, throw away, or otherwise complete or terminate the
19 useful life of PCBs and PCB Items. Disposal includes leaks,
20 spills, and other uncontrolled discharges of PCBs as well as
21 actions related to containing, transporting, destroying,
22 degrading, decontaminating, or confining PCBs and PCB Items.

23 10. "Person" means any individual, corporation,
24 partnership, or association; any State, or political subdivision
25 thereof; any interstate body; and any department, agency, or
26 instrumentality of the Federal Government. 40 C.F.R. §761.3.

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

4 12. No person may export PCBs or PCB Items for disposal
5 without an exemption, except that PCBs and PCB Items at
6 concentrations less than 50 ppm may be exported for disposal.
7 For purposes of this section, PCBs and PCB Items of unknown
8 concentrations shall be treated as if they contain equal to or
9 greater than 50 ppm. 40 C.F.R. §§761.97(a)(1)and(2).

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

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

23 **GENERAL ALLEGATIONS**

24 15. Paragraphs 1 through 14 are realleged and incorporated
25 herein by reference.

26 16. Respondents are each a corporation and therefore a
27 "person" as that term is defined by 40 C.F.R. §761.3.

1 17. Respondents GSL and GMS are classified in Standard
2 Industrial Classification ("SIC") code 5088, which is the SIC
3 code for Whole Ships for Scrap.

4 18. The M/V Oceanic (formerly the SS
5 Independence) ("Oceanic") is an approximately 637 foot vessel
6 constructed in or around 1951.

7 19. The Oceanic was built primarily for passenger transport
8 as an ocean liner and secondarily for troop transport.

9 20. The Oceanic contains "PCBs" and "PCB Items," as those
10 terms are defined by 40 C.F.R. §761.3.

11 21. The Oceanic contains PCBs and PCB Items at
12 concentrations equal to or greater than 50 ppm.

13 22. The Oceanic has not operated under its own power since
14 in or around 2001.

15 23. At all times relevant to this Complaint, up until on or
16 about February 8, 2008, the Oceanic was berthed in San Francisco
17 Bay at or in the vicinity of Pier 70, San Francisco, California.

18 24. At all times relevant to this Complaint, Respondents
19 GSL and GMS intended to transport the Oceanic outside of the
20 jurisdiction of the United States for demolition.

21 25. Demolition of the Oceanic necessitates the "disposal"
22 of PCBs and PCB Items contained in or on the Oceanic, as that
23 term is defined at 40 C.F.R. §761.3.

24 26. In or around January or February, 2008, Respondents GSL
25 and GMS hired the tugboat Pacific Hickory to tow the Oceanic from
26 California to a location outside of the jurisdiction of the
27 United States for demolition.

1 27. On or about February 8, 2008, Pacific Hickory began
2 towing the Oceanic for the purpose of delivering the Oceanic for
3 demolition to a location outside of the United States.

4 28. The Oceanic is no longer within the jurisdiction of the
5 United States.

6 29. At all times relevant to this Complaint, the EPA
7 Administrator has not granted an exemption to 40 C.F.R.
8 §761.20(c) or 40 C.F.R. §§761.97 for the Oceanic.

9 30. Respondents' failures to comply with 40 C.F.R.
10 §761.20(c) and 40 C.F.R. §§761.97, regulations promulgated under
11 section 2605(e) of TSCA, constitute violations of Section
12 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

13 **Count I: Distribution of PCBs in Commerce**

14 31. Paragraphs 1 through 30 are realleged and incorporated
15 herein by reference.

16 32. On or about July 24, 2007, Respondent GSL purchased the
17 Oceanic from California Manufacturing Corporation for disposal
18 outside of the United States.

19 33. Beginning on or about July 24, 2007, Respondent GSL has
20 been holding the Oceanic for disposal outside the United States.

21 34. As of this date, Respondents have not removed the
22 PCBs and PCB Items from commerce.

23 35. Respondent GSL's purchase and holding of the Oceanic
24 constitutes "distribution in commerce," of "PCBs and "PCB Items"
25 for export, as these terms are defined in 40 C.F.R. § 761.3 and
26 15 U.S.C. § 2602(3) and(4).

27 36. Respondent GSL's distribution in commerce of PCBs and
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1 PCB Items for export constitutes a violation of 40 C.F.R.
2 §761.20(c) and section 15(1) of TSCA, 15 U.S.C. § 2614(1).

3 **Count II: Export of PCBs and PCB Items for Disposal**

4 37. Paragraphs 1 through 35 are realleged and incorporated
5 herein by reference.

6 38. On or about February 8, 2008, Respondents GSL and GMS
7 initiated export of the Oceanic for disposal outside the United
8 States.

9 39. As of this date, Respondents have not returned the
10 Oceanic to the United States for disposal.

11 40. Respondents GSL and GMS are exporting for disposal the
12 Oceanic with PCBs and PCB Items.

13 41. Respondents GSL and GMS export of PCBs and PCB Items in
14 and on the Oceanic for disposal constitutes a violation of 40
15 C.F.R. § 761.97 and section 15(1) of TSCA, 15 U.S.C. § 2614(1).

16 **PROPOSED CIVIL PENALTY**

17 Section 16(a) of TSCA authorizes the Administrator of the
18 United States Environmental Protection Agency ("EPA") to issue a
19 civil complaint and assess a civil penalty not to exceed \$25,000
20 per day for each violation of Section 15 of TSCA, 15
21 U.S.C. § 2614. This statutory maximum civil penalty subsequently
22 has been raised to \$32,500 per day for each violation that
23 occurred on or after March 15, 2004 pursuant to the Federal Civil
24 Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as
25 amended, and its implementing regulation, the Civil Monetary
26 Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19.
27 In assessing any civil penalty, Section 16(a) of TSCA requires

1 that EPA take into account the nature, circumstances, extent, and
2 gravity of the violations; Respondents' history of such
3 violations of TSCA; the degree of culpability involved;
4 Respondents' ability to pay a penalty without jeopardizing their
5 ability to continue to do business and such other factors as
6 justice may require.

7 Based upon the facts alleged in this Complaint and upon the
8 statutory factors enumerated above, Complainant requests that the
9 Administrator assess against the Respondents a civil
10 administrative penalty of up to \$32,500 per day for each
11 violation of TSCA.

12 **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

13 As provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a),
14 Respondents have the right to request a formal hearing to contest
15 any material fact set forth in this Complaint or to contest the
16 appropriateness of the proposed penalty. Any hearing requested
17 will be conducted in accordance with the Administrative Procedure
18 Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of
19 Practice Governing the Administrative Assessment of Civil
20 Penalties and the Revocation/Termination or Suspension of Permits
21 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of
22 the Consolidated Rules of Practice is enclosed with this
23 Complaint.

24 **You must file a written Answer within thirty (30) days of**
25 **receiving this Complaint to avoid being found in default, which**
26 **constitutes an admission of all facts alleged in the Complaint**
27 **and a waiver of the right to a hearing, and to avoid having the**

1 above penalty assessed without further proceedings. If you
2 choose to file an Answer, you are required by the Consolidated
3 Rules of Practice to clearly and directly admit, deny, or explain
4 each of the factual allegations contained in this Complaint to
5 which you have any knowledge. If you have no knowledge of a
6 particular fact and so state, the allegation is considered
7 denied. Failure to deny any of the allegations in this Complaint
8 will constitute an admission of the undenied allegation.

9 The Answer shall also state the circumstances and arguments,
10 if any, which are alleged to constitute the grounds of defense,
11 and shall specifically request an administrative hearing, if
12 desired. If you deny any material fact or raise any affirmative
13 defense, you will be considered to have requested a hearing.

14 The Answer must be filed with:

15 **Regional Hearing Clerk**
16 **USEPA, Region IX**
17 **75 Hawthorne Street**
San Francisco, CA 94105

18 In addition, please send a copy of the Answer and all other
19 documents that you file in this action to:

20 **Margaret Alkon**
21 **Assistant Regional Counsel**
Office of Regional Counsel (ORC-2)
22 **USEPA, Region IX**
75 Hawthorne Street
San Francisco, CA 94105

23 Ms. Alkon is the attorney assigned to represent EPA in this
24 matter. Her telephone number is (415)972-3890.

25 You are further informed that the Consolidated Rules of
26 Practice prohibit any ex parte (unilateral) discussion of the
27 merits of any action with the Regional Administrator, Regional
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1 Judicial Officer, Administrative Law Judge, or any person likely
2 to advise these officials in the decision of the case, after the
3 Complaint is issued.

4 **INFORMAL SETTLEMENT CONFERENCE**

5 EPA encourages all parties against whom a civil penalty is
6 proposed to pursue the possibility of settlement through informal
7 conferences. Therefore, whether or not you request a hearing,
8 you may confer informally with EPA through Margaret Alkon, the
9 EPA attorney assigned to this case, regarding the facts of this
10 case, the amount of the proposed penalty, and the possibility of
11 settlement. **An informal settlement conference does not, however,**
12 **affect your obligation to file an Answer to this Complaint.**

13 **ALTERNATIVE DISPUTE RESOLUTION**


14 The parties also may engage in any process within the scope
15 of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et
16 seq., which may facilitate voluntary settlement efforts. Dispute
17 resolution using alternative means of dispute resolution does not
18 divest the Presiding Officer of jurisdiction nor does it
19 automatically stay the proceeding.

20 **CONSENT AGREEMENT AND FINAL ORDER**

21 EPA has the authority, where appropriate, to modify the
22 amount of the proposed penalty to reflect any settlement reached
23 with you in an informal conference or through alternative dispute
24 resolution. The terms of such an agreement would be embodied in
25 a Consent Agreement and Final Order. A Consent Agreement signed
26 by both parties would be binding as to all terms and conditions
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1 specified therein when the Regional Judicial Officer signs the
2 Final Order.

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4 DATE: 31808



Nancy Lindsay
Acting Director
Waste Management Division
U.S. Environmental Protection Agency,
Region IX

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