1	NANCY MARVEL Regional Counsel			
2	United States Environmental Protection Agency	v, Region 9		
3	RICH CAMPBELL Assistant Regional Councel			
4	Assistant Regional Counsel United States Environmental Protection Agency, Region 9			
5	75 Hawthorne Street San Francisco, California 94105			
6	(415) 972-3870			
7	Attorneys for Complainant			
8		ENTAL PROTECTION AGENCY		
9	75 Hawth	GION 9 norne Street		
10	San Francisco,	California 94105		
11	In re the Matter of:) Docket No.: CWA-09-2009-0001		
12)		
13	APM Terminals Pacific Ltd.) CONSENT AGREEMENT AND		
14	2500 Navy Way Terminal Island, California,) PROPOSED FINAL ORDER		
15	Respondent.	Proceedings Under Section 309(g)(2)(B) of the		
16		Clean Water Act, as amended, 33 U.S.C. § 1319(g)(2)(B)		
17		,		
18	CONSENT A	AGREEMENT		
19	Preliminar	y Statements		
20	1. This is a class II civil administrat	tive penalty proceeding under section 309(g) of		
21	the Clean Water Act ("CWA" or "the Act), 33 U	J.S.C. § 1319(g), and 40 C.F.R. Part 22,		
22	"Consolidated Rules of the Practice Governing	the Administrative Assessment of Civil Penalties,		
23	Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or			
24	Suspension of Permits."			
25				
	CONSENT AGREEMENT AND			

PROPOSED FINAL ORDER DOCKET NO. CWA-09-2009-0001

2. The United States Environmental Protection Agency, Region 9 ("EPA" or 1 2 "Complainant) institutes this proceeding against APM Terminals Pacific Ltd. ("Respondent") for alleged violations of Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342. 3 Complainant and Respondent are hereinafter collectively referred to as "the Parties." 4 3. This Consent Agreement and Final Order ("CA/FO") simultaneously commences 5 and concludes this penalty proceeding, as authorized by 40 C.F.R. § 22.13(b). 6 4. 7 The Parties agree that settlement of this matter is consistent with the Act's objectives, in the public interest, and the most appropriate means of resolving this matter. 8 NOW THEREFORE, before the taking of any testimony, without adjudication of any 9 issue of fact or law, and upon consent and agreement of the parties to this Stipulation and Order, 10 11 it is hereby AGREED, STIPULATED, and ORDERED: **General Provisions** 12 5. EPA has jurisdiction over the subject matter of this action. The Consent 13 Agreement contains the elements of a complaint required by 40 C.F.R. §§ 22.14(a)(1)-(3) and 14 15 (8). For purposes of this proceeding, Respondent agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO. 16 6. Respondent neither admits nor denies the factual allegations or legal conclusions 17 set forth herein. 18 7. Respondent agrees not to contest the terms and conditions set forth in this CA/FO 19 20 in this or subsequent proceedings related to this CA/FO, and agrees not to appeal the Final Order set forth below. 21 8. Respondent explicitly waives its right to a hearing on any issue of fact or law set 22 forth herein. 23 9. This CA/FO, inclusive of all exhibits and attachments, is the entire agreement 24 between the parties to resolve EPA's civil penalty claim against Respondent for the specific 25 **CONSENT AGREEMENT AND PROPOSED FINAL ORDER** DOCKET NO. CWA-09-2009-0001

- 2 -

CWA violations alleged herein. Full compliance with this CA/FO shall constitute full settlement only of Respondent's federal civil penalty liability for the CWA violations specifically alleged herein. EPA is presently unaware of any additional violations. The provisions of this paragraph shall survive the termination of this CA/FO.

10. This CA/FO is not a permit and it does not constitute a waiver, suspension, or modification of the requirements of any federal, state, or local permit, statute, ordinance, regulation, or order, including but not limited to any CWA requirements, permits, or orders.

8 11. Respondent certifies by signing this CA/FO that, to the best of its knowledge, it is
9 in compliance with the requirements of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and
10 1342.

11 12. Except as set forth in Paragraphs 56 and 57, the Parties agree to bear their own
12 costs and attorneys' fees.

13. This CA/FO shall in no way affect the right of EPA or the United States against 13 any third party not a party to this CA/FO. For purposes of this Paragraph 13 the "Respondent" 14 15 who is resolving the matters resolved by this CA/FO shall include Respondent and its predecessors, successors, assigns and corporate affiliates having corporate predecessor or 16 successor liability or corporate derivative liability operating at the Facility or directing Facility 17 operations during any time periods within the statutes of limitations applicable to the alleged 18 violations resolved herein. This CA/FO does not create any right in or grant any cause of action 19 20 to any third party. No third party shall have a right to use or plead this CA/FO in any other 21 proceeding.

14. This CA/FO shall apply to and be binding upon Respondent, including its
successors, and assigns. Changes in ownership, including but not limited to any transfer of
assets or real or personal property, shall not alter Respondent's obligations under this CA/FO.

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15. This Consent Agreement may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. If any portion of this Consent Agreement is determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.

16. Each signatory to this CA/FO certifies he or she is fully authorized to enter into 6 and bind the Party for whom it is signing to the terms of the CA/FO. 7

Statutory and Regulatory Framework

17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source by any person into a water of the United States unless it complies with the Act, including Section 402, 33 U.S.C. § 1342.

18. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant 12 Discharge Elimination System ("NPDES") program. Under Section 402 of the Act, 33 U.S.C. § 13 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits 14 15 governing the discharge of pollutants from regulated sources.

19. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA's implementing 16 regulations at 40 C.F.R. § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Facilities engaged in industrial activity, as defined by 18 40 C.F.R. § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose 19 20 to discharge storm water into waters of the United States.

20. 21 Marine cargo handling is an industrial activity classified under Standard Industrial Classification (SIC) 4491, which falls under SIC Major Group 44 (Water Transportation) and, 22 pursuant to 40 C.F.R. § 122.26(b)(14)(viii), is an industrial activity subject to the discharge and 23 permitting requirements under Section 402 of the Act, 33 U.S.C. § 1342. 24

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21. The State of California has an EPA-approved NPDES program, and issues permits, including storm water permits, through its State Water Resources Control Board ("State Board") and nine Regional Water Quality Control Boards ("Regional Boards"). On April 17, 1997, the State Board adopted General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ ("General Permit"), the current statewide NPDES permit for storm water discharges associated with industrial activity. 6

22. 7 All facility operators seeking coverage under the General Permit must submit a 8 Notice of Intent to Comply with the Terms of the General Permit for Storm Water Discharges Associated with Industrial Activity ("NOI") to the State Board fourteen (14) days prior to 9 10 commencing industrial operations.

23. The General Permit requires facility operators to develop and implement a storm water pollution prevention plan ("SWPPP") prior to commencing industrial operations. (General 12 Permit, Order Section A(1)(a), p. 11). The SWPPP includes obligations to identify sources of 13 industrial storm water pollution and to identify site-specific best management practices 14 ("BMPs"). 15

24. The General Permit requires facility operators to include a clear and understandable site map in the SWPPP that includes, *inter alia*, an identification of the location of municipal storm drain inlets, direction of storm water flow, and areas of industrial activity, including the location of fueling areas, material handling and processing areas, waste treatment and disposal areas, and other areas of industrial activity which are potential pollutant sources. (General Permit, Order Section A(4), pp. 12-14.)

25. The General Permit requires that the SWPPP contain the signature of the party with responsibility for overall operation of the facility. (General Permit, Order Section C(9), p. 49.)

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26. The General Permit requires facility operators to reduce or prevent pollutants associated with industrial activity in their storm water discharges and authorized non-storm water discharges by implementing best available technology economically achievable ("BAT") for toxic and non-conventional pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. Development and implementation of a SWPPP that complies with the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement. (General Permit, Order Provision B(3), p. 4.)

General Allegations

27. Respondent is a "person" under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

28. Respondent operates a marine shipping container terminal located on Pier 400 at
2500 Navy Way on Terminal Island at the Port of Los Angeles in California (the "Facility").
Respondent, or a predecessor, has operated the Facility since at least August 2002.

29. Respondent's operations fall within the class of industrial activity classified under SIC Code 4491 ("marine cargo handling"), and Respondent is therefore an industrial facility for purposes of Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b).

30. Storm water runoff at the Facility collects and flows to on-site storm drains that
discharge to the Los Angeles Harbor.

31. Storm water runoff from the Facility contains "pollutants," such as aluminum, lead, and zinc, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

32. Storm water runoff from the Facility that discharges to the Los Angeles Harbor is storm water discharge associated with industrial activity as defined by 40 C.F.R. § 122.26(b)(14).

33. The Los Angeles Harbor and the Pacific Ocean are "waters of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and EPA's implementing regulations at 40 C.F.R. § 122.2.

1	34. On or around March 23, 2003, Respondent submitted a NOI to the State Board	
2	seeking coverage under the General Permit for the Facility. On April 8, 2003, the Los Angeles	
3	Regional Water Quality Control Board ("Los Angeles Regional Board") granted Respondent	
4	coverage under the General Permit and assigned Waste Discharge Identification ("WDID")	
5	Number 419S018069 to the Facility.	
6	35. On May 17, 2007, staff from EPA Region 9 inspected the Facility to evaluate	
7	Respondent's compliance with the General Permit. Respondent provided access and cooperated	
8	in the inspection. EPA alleges it found Respondent in violation of the General Permit's	
9	requirements to adequately implement BMPs and develop an adequate SWPPP for the Facility.	
10	Specifically, EPA inspectors allege Respondent failed to:	
11	a. restrict equipment washing to areas that do not pose a risk of unauthorized non-	
12	storm water discharges;	
13	b. clean up trash and debris found at the Facility:	
14	c. maintain containers under cover;	
15	d. install adequate secondary containment structures at the Facility's lube oil station	
16	to prevent and minimize pollutants from contact with storm water;	
17	e. repair and adequately maintain a cracked curb dike at the west end of the	
18	Facility's fuel island to prevent pollutants from leaking through the dike and	
19	coming into contact with storm water;	
20	f. maintain a filler hose at the end of the Facility's fuel island to prevent pollutants	
21	from dripping outside the curb dike area and contacting storm water;	
22	g. maintain drip pans or pads under a mobile fuel truck parked outside the Facility	
23	administration building that EPA staff observed during the inspection was leaking	
24	fluid onto the ground;	
25	h. include a site map in the Facility's SWPPP; and	
	CONSENT AGREEMENT AND	

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i. include the signature of the person with overall responsibility for the Facility.

36. On November 9, 2007, EPA issued Respondent a Findings of Violation and Order
for Compliance, EPA Docket No. CWA 309(a)-08-017 (the "Order"), which required
Respondent to address the General Permit violations identified by EPA's inspectors and to bring
the Facility into compliance with the General Permit.

37. On December 18, 2007, Respondent timely informed EPA in writing that it had
implemented additional BMPs at the Facility as required by the Order. On January 17, 2008,
Respondent timely provided EPA with a revised SWPPP that included a site map and which
described additional BMPs to be implemented at the Facility.

38. Upon information and belief, EPA alleges there were at least 125 days of recorded rainfall at the Facility between October 1, 2004 and January 17, 2008, and at least 10 rain events between May 17, 2007 and January 17, 2008 that accumulated 0.1 inch or more of rain at the Facility.

Findings of Violation

Failure to Implement BMPs

39. Paragraphs 1 through 38 are re-alleged and incorporated herein.
40. The General Permit required Respondent to reduce or prevent pollutants associated with industrial activity in its storm water discharges and authorized non-storm water discharges by implementing BAT for toxic and non-conventional pollutants and BCT for conventional pollutants, and to develop and implement a SWPPP that included BMPs that achieved BAT/BCT. (General Permit, Order Provision B(3), p. 4.)

41. Based on EPA's May 17, 2007 inspection of the Facility EPA alleges that
Respondent had failed to implement the following BMPs at the Facility:

a. restrict equipment washing to areas that do not pose a risk of unauthorized nonstorm water discharges;

1	b. clean up trash and debris at the Facility:	
2	c. maintain containers under cover;	
3	d. install adequate secondary containment structures at the Facility's lube oil station	
4	to prevent and minimize pollutants from coming into contact with storm water;	
5	e. repair and adequately maintain a cracked curb dike at the west end of the	
6	Facility's fuel island to prevent pollutants from leaking through the dike and	
7	coming into contact with storm water;	
8	f. maintain a filler hose at the end of the Facility's fuel island to prevent pollutants	
9	from dripping outside the curb dike area and coming into contact with storm	
10	water; and	
11	g. maintain drip pans or pads under leaking mobile fuel trucks.	
12	42. EPA alleges Respondent's failure to implement these BMPs by May 17, 2007,	
13	and bring the Facility into compliance with the General Permit's BMP requirements until	
14	December 18, 2007, constitute violations of Sections 301(a) and 402 of the Act, 33 U.S.C. §§	
15	1311(a) and 1342.	
16	Failure to Develop an Adequate SWPPP	
17	43. Paragraphs 1 through 42 are re-alleged and incorporated herein.	
18	44. The General Permit required Respondent to develop and implement a SWPPP	
19	prior to commencing industrial operations that identified sources of industrial storm water	
20	pollution and site-specific BMPs. (General Permit, Order Section A(1)(a), p. 11.)	
21	45. The General Permit also required Respondent to include a clear and	
22	understandable site map in the SWPPP that included, <i>inter alia</i> , an identification of the location	
23	of municipal storm drain inlets, direction of storm water flow, and areas of industrial activity,	
24	including the location of fueling areas, material handling and processing areas, waste treatment	
25	and disposal areas, and other areas of industrial activity which are potential pollutant sources, as	

well as the signature of the party with responsibility for overall operation of the Facility. 1 2 (General Permit, Order Sections A(4), pp. 12-14, and C(9), p. 49.) 46. EPA alleges EPA's review of the SWPPP during its May 17, 2007 inspection 3 revealed the SWPPP lacked a site map and the signature of the party with responsibility for 4 overall operation of the Facility. 5 47. EPA alleges Respondent's failure to meet the General Permit's SWPPP site map 6 and signatory requirements from the time it commenced industrial operations on October 1, 2004 7 8 until it submitted an adequate SWPPP to EPA on January 17, 2008, constitute violations of Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342. 9 Discharges in Violation of Permit Requirements 10 48. Paragraphs 1 through 47 are re-alleged and incorporated herein. 11 49. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits Respondent from 12 discharging any pollutant from a point source into a water of the United States unless it complies 13 with the Act, including Section 402, 33 U.S.C. § 1342. 14 50. 15 Based on a May 17, 2007 inspection, EPA alleges Respondent was out of compliance with the General Permit because it had not yet developed or implemented an 16 adequate SWPPP or adequate BMPs to minimize the quantity of pollutants discharged in storm 17 water from the Facility to waters of the United States. On January 17, 2008, Respondent timely 18 submitted information to EPA indicating it had come into compliance with the SWPPP and BMP 19 requirements of the General Permit. 20 21 51. Upon information and belief, EPA alleges there were at least 10 rain events between May 17, 2007, and January 17, 2008, that accumulated 0.1 inch or more of rain at the 22 Facility and that resulted in the discharge of storm water associated with Respondent's industrial 23 activities at the Facility to the Los Angeles Harbor and Pacific Ocean. 24

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52. EPA alleges Respondent's discharges of industrial storm water to waters of the United States between May 17, 2007 and January 17, 2008, without an adequate SWPPP and/or BMPs in place as required by the General Permit, constitute violations of CWA sections 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342.

Penalty

53. EPA may assess administrative civil penalties in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum penalty of 177,500, pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. 1319(g)(2)(B), and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701. See also 40 C.F.R. Part 19.

54. Respondent consents to the assessment of and agrees to pay a civil penalty of Forty-Seven Thousand, One Hundred Dollars (\$47,100). The penalty was calculated based on the nature, circumstances, extent and gravity of the violations, Respondent's ability to pay, Respondent's cooperation with EPA, its prior history of violations, its degree of culpability, and any economic benefit or savings accruing to Respondent as a result of the violations.

55. 15 Payment of the civil penalty shall be made within thirty-five (35) days of the effective date of the CA/FO. The date by which payment must be received by the United States 16 shall be the "due date" for the payment. Respondent shall make the payment in accordance with any of the acceptable methods of payment listed in Exhibit A, "EPA Region 9 Collection 18 Information," which is incorporated by reference as part of this CA/FO. Concurrent with payment of the penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case and attaching a photocopy of the penalty payment, via mail to:

and

Steve Armsey Regional Hearing Clerk U.S. EPA Region 9 (ORC-1) 75 Hawthorne Street San Francisco, California 94105

Jeremy Johnstone **CWA** Compliance Office U.S. EPA Region 9 (WTR-7) 75 Hawthorne Street San Francisco, California 94105

CONSENT AGREEMENT AND PROPOSED FINAL ORDER DOCKET NO. CWA-09-2009-0001

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56. If the penalty is not paid when due, interest shall accrue on any overdue amount from the first date after the due date through the date of payment, at the interest rate established by the Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date during which time the balance remains unpaid. Payment of any interest and late handling charges shall be made in accordance with paragraph 55 above.

57. 7 Failure by Respondent to pay the full penalty when due entitles EPA and the 8 United States to bring a civil action to recover the amount assessed. In such an action, Respondent shall pay (in addition to any assessed penalty, interest, and monthly handling 9 10 charges) attorney fees, cost for collection proceedings, and a quarterly nonpayment penalty for 11 each quarter during which such failure to pay persists. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), the quarterly nonpayment penalty shall equal twenty percent (20%) of 12 the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of 13 the beginning of that quarter. 14

58. 15 The civil penalty and any interest, late handling fees, or late penalty payments provided for in the CA/FO shall not be deducted from Respondent's or any affiliated entity's 16 taxes.

59. EPA has consulted with the State of California pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38, in regards to this matter.

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Effective and Termination Dates

60. This CA/FO shall take effect on the date the Final Order is filed with the Regional Hearing Clerk, and shall terminate when Respondent has fully complied with its terms. If the full payment due under Paragraphs 54 and 55 is timely made, the date EPA receives such payment shall be the termination date of this CA/FO.

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Public Notice

2	61. EPA's consent to this Consent Agreement is subject to the requirements of
3	Section 309(g)(4) of the Act, 33 U.S.C. §1319(g)(4), and 40 C.F.R. §22.45(b), that EPA provide
4	public notice of and a reasonable opportunity for comment on the Consent Agreement and
5	proposed Final Order. EPA reserves the right to withdraw the Consent Agreement and proposed
6	Final Order in response to public comments that petition EPA to set aside the Consent
7	Agreement and proposed Final Order on the basis that material evidence was not considered. 40
8	C.F.R. § 22.45(c)(4). In such case, Respondent's obligations under this document shall
9	terminate, and EPA may pursue any and all enforcement options as provided by law. If no
10	comment is received during the comment period regarding the Consent Agreement, EPA shall
11	file the Final Order and notify Respondent of the filing date with the Hearing Clerk.
12	
13	CONSENTING PARTIES:
14	For Respondent APM Terminals Pacific Ltd.:
15	
16	BY: DATE:
17	
18	(Title)
19	
20	For Complainant U.S. Environmental Protection Agency, Region 9:
21	Tor complainant 0.5. Environmental Protection Algency, Region 9.
22	BY: DATE:
23	Water Division
24	
25	
	CONSENT AGREEMENT AND PROPOSED FINAL ORDER DOCKET NO. CWA-09-2009-0001
	- 13 -

NANCY MARVEL Regional Counsel	Aganay Region 0
United States Environmental Protection	Agency, Region 9
RICH CAMPBELL Assistant Regional Counsel	
United States Environmental Protection A 75 Hawthorne Street	Agency, Region 9
San Francisco, California 94105 (415) 972-3870	
Attorneys for Complainant	
UNITED STATES ENVIR	CONMENTAL PROTECTION AGENCY REGION 9
	Hawthorne Street ncisco, California 94105
San Tai	leiseo, Camornia 94105
In re the Matter of:) Docket No.: CWA-09-2009-0001
)
APM Terminals Pacific Ltd.) [PROPOSED]
2500 Navy Way Terminal Island, California,) FINAL ORDER))
Respondent.	
	 Proceedings Under Section 309(g)(2)(B) of th Clean Water Act, as amended, 33 U.S.C. § 1319(g)(2)(B)
The foregoing Consent Agreemen	nt is hereby approved and incorporated by reference into
this Order. Respondent APM Terminals	Pacific Ltd., is hereby ordered to comply with the
Consent Agreement.	
Steven Jawgiel	DATE:
Regional Judicial Officer U.S. Environmental Protection Agency	
Region 9	
CONSENT AGREEMENT AND	
PROPOSED FINAL ORDER DOCKET NO. CWA-09-2009-0001	14
	- 14 -

1	ATTACHMENT A
2	EPA REGION 9 COLLECTION INFORMATION:
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4	ELECTRONIC FUNDS TRANSFERS
5	Federal Reserve Bank of New York ABA = 021030004
6	Account = 68010727 SWIFT address = FRNYUS33
7	33 Liberty Street New York, NY 10045
8	Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency "
9	
10	CHECK PAYMENTS
11	U.S. Environmental Protection Agency Fines and Penalties
12	Cincinnati Finance Center P.O. Box 979077
13	St. Louis, MO 63197-9000
14	
15	OVERNIGHT MAIL:
16	U.S. Bank 1005 Convention Plaza
17	Mail Station SL-MO-C2GL St. Louis, MO 63101
18	Contact: 314-418-4087
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	CONSENT AGREEMENT AND PROPOSED FINAL ORDER DOCKET NO. CWA-09-2009-0001

1	CERTIFICATE OF SERVICE	
2	In the Matter of APM Terminals Pacific Ltd.	
3	EPA Docket No. CWA-09-2009-0001	
4	I hereby certify that the original of the foregoing Consent Agreement and Proposed Final	
5	Order was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, certified	
6	mail, return receipt requested, to:	
7		
8	Judith M. Praitis R. Juge Gregg	
9	Sidley Austin LLP	
10	555 West Fifth Street Los Angeles, California 90013	
11		
12		
13		
14		
15	Date Steve Armsey Regional Hearing Clerk	
16	U.S. EPA, Region 9	
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	CONSENT AGREEMENT AND PROPOSED FINAL ORDER DOCKET NO. CWA-09-2009-0001	