

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION IX REGION IX REGIONAL HEARING CLERK

IN THE MATTER OF:

APM Terminals Pacific Ltd., Respondent.

U.S. EPA Docket No. CWA-09-2009-0001

ORDER GRANTING COMPLAINANT'S MOTION TO APPROVE FINAL ORDER

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By motion filed September 2, 2009 by the United States Environmental Protection Agency (Complainant), Complaiant seeks approval of the parties' Consent Agreement and Proposed Final Order.

Consolidated Rules of Practice at 40 C.F.R. § 22.45(b)(1) set forth the rules governing public notice and comment in proceedings under sections 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g). As stated in the parties' Consent Agreement and Proposed Final Order, Complainant assessed the penalties in this matter under Section 309(g) of the CWA. Therefore, Complainant is subject to the mandatory notice and public comment requirements of 40 C.F.R. § 22.45. Complainant's Motion to Approval of Consent Agreement and Final Order establishes that Complainaint complied with all the public notice requirements specified in 40 C.F.R. § 22.45. The record also shows that Complainant received no comments in response to its public notice.

IT IS THEREFORE ORDERED THAT:

Complaint's Motion To Approve Final Order is GRANTED.

Dated: September 3, 2009

Steven L. Jawgiel (/ Regional Judicial Officer U.S. EPA, Region IX

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1	NANCY MARVEL Regional Counsel United States Environmental Protection Agency,	2009 SEP - 3 PM 12: 51	
		U.S. EGIONAL HEARING CLERK	
3	RICH CAMPBELL Assistant Regional Counsel	KEGIONAL HEARING CLERK	
4 ·	United States Environmental Protection Agency, 75 Hawthorne Street	Region 9	
5	San Francisco, California 94105 (415) 972-3870		
6	Attorneys for Complainant		
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8	UNITED STATES ENVIRONME REGI	1	
9	75 Hawtho San Francisco, C		
10			
11	In re the Matter of:)	Docket No.: CWA-09-2009-0001	
12			
13	APM Terminals Pacific Ltd.	-REPORTEDT	
14	2500 Navy Way) Terminal Island, California,)	FINAL ORDER	
15	Respondent.		
16		Proceedings Under Section 309(g)(2)(B) of the Clean Water Act, as amended, 33 U.S.C. §	
17)	1319(g)(2)(B)	
18	The foregoing Consent Agreement is hereby approved and incorporated by reference into		
19	this Order. Respondent APM Terminals Pacific Ltd., is hereby ordered to comply with the		
20	Consent Agreement.		
21			
22	Steven Story 1	09/03/09	
23	Steven Jawgiel Regional Judicial Officer	DATE:	
24	U.S. Environmental Protection Agency		
25	Region 9		
	CONSENT AGREEMENT AND PROPOSED FINAL ORDER DOCKET NO. CWA-09-2009-0001 - 14	↓ -	

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1	ATTACHMENT A	
2	EPA REGION 9 COLLECTION INFO	ORMATION:
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4	ELECTRONIC FUNDS TRANS	FERS
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 "D 68010727 Environmental Protection Agenc	read: v"
9		J .
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 17	U.S. Bank 1005 Convention Plaza	
18	Mail Station SL-MO-C2GL St. Louis, MO 63101	
10	Contact: 314-418-4087	
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing ORDER GRANTING COMPLAINANT'S MOTION TO APPROVE FINAL ORDER in the matter of APM Terminals Pacific Ltd. (CWA-09-2009-0001), dated September 3, 2009, has been filed with the Regional Hearing Clerk, and a copy was served on Counsel for Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:

Respondent -(By Counsel) Judith M. Praitis SIDLEY AUSTIN LLP 555 West Fifth Street Loa Angeles, CA 90013

HAND DELIVERED:

Complainant -(By Counsel) Richard Campbell Office of Regional Counsel ENVIRONMENTAL PROTECTION AGENCY 75 Hawthorne Street San Francisco, CA. 94105

Dated at San Francisco, Calif., this 9th day of September, 2009.

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Steven Armsey Regional Hearing Clerk EPA, Region 9

	EXHIB	ITA C	
1 2	NANCY MARVEL Regional Counsel United States Environmental Protection Agency	2009 JUL 28 AM 11: 43	
3 4 5	RICH CAMPBELL Assistant Regional Counsel United States Environmental Protection Agency 75 Hawthorne Street San Francisco, California 94105 (415) 972-3870		
6 7	Attorneys for Complainant		
8		ENTAL PROTECTION AGENCY	
9 10	REGION 9 75 Hawthorne Street 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 16	Respondent.)))	Proceedings Under Section 309(g)(2)(B) of the Clean Water Act, as amended, 33 U.S.C. § 1319(g)(2)(B)	
17 18	CONCENT A ODEENT		
10	CONSENT AGREEMENT Preliminary Statements		
20	1. This is a class II civil administrative penalty proceeding under section 309(g) of		
21	the Clean Water Act ("CWA" or "the Act), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22,		
22	"Consolidated Rules of the Practice Governing the Administrative Assessment of Civil Penaltie		
23	Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or		
24	Suspension of Permits."		
25			
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2. The United States Environmental Protection Agency, Region 9 ("EPA" or 1 "Complainant) institutes this proceeding against APM Terminals Pacific Ltd. ("Respondent") for 2 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. 5 This Consent Agreement and Final Order ("CA/FO") simultaneously commences 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 10 issue of fact or law, and upon consent and agreement of the parties to this Stipulation and Order, it is hereby AGREED, STIPULATED, and ORDERED: 11 **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 (8). For purposes of this proceeding, Respondent agrees not to contest EPA's jurisdiction in this 15 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 18 set forth herein. Respondent agrees not to contest the terms and conditions set forth in this CA/FO 7. 19 in this or subsequent proceedings related to this CA/FO, and agrees not to appeal the Final Order 20 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

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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.

11. Respondent certifies by signing this CA/FO that, to the best of its knowledge, it is in compliance with the requirements of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 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 who is resolving the matters resolved by this CA/FO shall include Respondent and its 15 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 to any third party. No third party shall have a right to use or plead this CA/FO in any other 20 proceeding. 21

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. 1 This Consent Agreement may be executed and transmitted by facsimile, email or 2 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 3 determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the 4 remaining portions shall remain in full force and effect. 5 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** 8 17. 9 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 10 with the Act, including Section 402, 33 U.S.C. § 1342. 11 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 17 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 to discharge storm water into waters of the United States. 20 Marine cargo handling is an industrial activity classified under Standard Industrial 20. 21 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 25

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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.

22. All facility operators seeking coverage under the General Permit must submit a 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 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
Permit, Order Section A(1)(a), p. 11). The SWPPP includes obligations to identify sources of
industrial storm water pollution and to identify site-specific best management practices
("BMPs").

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.)

22 25. The General Permit requires that the SWPPP contain the signature of the party
23 with responsibility for overall operation of the facility. (General Permit, Order Section C(9), p.
24 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

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).

27.

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.

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1	34.	On or ground March 22, 2002	Remandant submitted a NOI to the State Reard
1			Respondent submitted a NOI to the State Board
2			the Facility. On April 8, 2003, the Los Angeles
3			Angeles Regional Board") granted Respondent
4		_	ed Waste Discharge Identification ("WDID")
5	Number 419S	018069 to the Facility.	
6	.35.	On May 17, 2007, staff from El	PA Region 9 inspected the Facility to evaluate
7	Respondent's	compliance with the General Pe	rmit. Respondent provided access and cooperated
8	in the inspection. EPA alleges it found Respondent in violation of the General Permit's		ndent in violation of the General Permit's
9	requirements to adequately implement BMPs and develop an adequate SWPPP for the Facility.		
10	Specifically, H	EPA inspectors allege Responde	nt failed to:
11	a.	restrict equipment washing to a	reas 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 cove	r;
15	d.	install adequate secondary cont	ainment structures at the Facility's lube oil station
16		to prevent and minimize pollute	ants 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 und	er a mobile fuel truck parked outside the Facility
23		administration building that EP	A staff observed during the inspection was leaking
24		fluid onto the ground;	
25	h.	include a site map in the Facilit	y's SWPPP; and
	CONSENT AGREEMENT AND PROPOSED FINAL ORDER		

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1 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 2 3 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 4 the Facility into compliance with the General Permit. 5 6 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, 7 8 Respondent timely provided EPA with a revised SWPPP that included a site map and which 9 described additional BMPs to be implemented at the Facility. 38. 10 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 11 12 between May 17, 2007 and January 17, 2008 that accumulated 0.1 inch or more of rain at the Facility. 13 **Findings of Violation** 14 Failure to Implement BMPs 15 39. Paragraphs 1 through 38 are re-alleged and incorporated herein. 16 40. 17 The General Permit required Respondent to reduce or prevent pollutants associated with industrial activity in its storm water discharges and authorized non-storm water 18 discharges by implementing BAT for toxic and non-conventional pollutants and BCT for 19 conventional pollutants, and to develop and implement a SWPPP that included BMPs that 20 achieved BAT/BCT. (General Permit, Order Provision B(3), p. 4.) 21 41. Based on EPA's May 17, 2007 inspection of the Facility EPA alleges that 22 Respondent had failed to implement the following BMPs at the Facility: 23 a. restrict equipment washing to areas that do not pose a risk of unauthorized non-24 storm water discharges; 25 CONSENT AGREEMENT AND PROPOSED FINAL ORDER

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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	understandabl	le 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 a	areas, and other areas of industrial activity which are potential pollutant sources, as	
		PENTENT AND	

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. 3 EPA alleges EPA's review of the SWPPP during its May 17, 2007 inspection 4 revealed the SWPPP lacked a site map and the signature of the party with responsibility for 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 until it submitted an adequate SWPPP to EPA on January 17, 2008, constitute violations of 8 Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342. 9 10 Discharges in Violation of Permit Requirements 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 14 with the Act, including Section 402, 33 U.S.C. § 1342. 50. Based on a May 17, 2007 inspection, EPA alleges Respondent was out of 15 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 18 water from the Facility to waters of the United States. On January 17, 2008, Respondent timely submitted information to EPA indicating it had come into compliance with the SWPPP and BMP 19 requirements of the General Permit. 20 51. Upon information and belief, EPA alleges there were at least 10 rain events 21 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 25

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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. 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 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 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

Jeremy Johnstone

75 Hawthorne Street

CWA Compliance Office

U.S. EPA Region 9 (WTR-7)

San Francisco, California 94105

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

Steve Armsey

Regional Hearing Clerk U.S. EPA Region 9 (ORC-1)

San Francisco, California 94105

75 Hawthorne Street

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. Failure by Respondent to pay the full penalty when due entitles EPA and the 7 United States to bring a civil action to recover the amount assessed. In such an action, 8 9 Respondent shall pay (in addition to any assessed penalty, interest, and monthly handling charges) attorney fees, cost for collection proceedings, and a quarterly nonpayment penalty for 10 each quarter during which such failure to pay persists. Pursuant to Section 309(g)(9) of the Act, 11 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. 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 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.

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			
22	BY: <u>Alexis Strauss, Director</u> DATE: <u>24 Thy 2009</u>		
23	Water Division		
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1	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			
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6	Final Order in response to public comments that petition EPA to set aside the Consent			
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8	C.F.R. § 22.45(c)(4). In such case, Respondent's obligations under this document shall			
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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	BV: DATE: 07/21/09			
16	Alan McCorkle			
17	Sr. Vice President			
18				
19	For Complainant U.S. Environmental Protection Agency, Region 9:			
20				
21	BY: DATE:			
22	Water Division			
23				
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1	NANCY MARVEL		
2	Regional Counsel United States Environmental Protection Agency, Region 9		
3	RICH CAMPBELL		
4	Assistant Regional Counsel		
	United States Environmental Protection Agency, Region 9 75 Hawthorne Street		
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6	Attorneys for Complainant		
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8			
9	75 Hawth	FION 9 norme Street	
10	San Francisco,	California 94105	
11	In re the Matter of:	Docket No.: CWA-09-2009-0001	
		DUCKELING CW/I-09-2009-0001	
12	APM Terminals Pacific Ltd.		
13	2500 Navy Way	[PROPOSED] FINAL ORDER	
14	Terminal Island, California,		
15	Respondent.		
16		Proceedings Under Section 309(g)(2)(B) of the Clean Water Act, as amended, 33 U.S.C. §	
17		1319(g)(2)(B)	
18	The foregoing Consent Agreement is hereby approved and incorporated by reference into		
19			
	this Order. Respondent APM Terminals Pacific Ltd., is hereby ordered to comply with the		
20	Consent Agreement.		
21			
22			
23	Steven Jawgiel	DATE:	
24	Regional Judicial Officer U.S. Environmental Protection Agency		
25	Region 9		
23			
	CONSENT AGREEMENT AND		
	PROPOSED FINAL ORDER DOCKET NO. CWA-09-2009-0001		
ł	- 14 -		

ATTACHMENT A

EPA REGION 9 COLLECTION INFORMATION:

ELECTRONIC FUNDS TRANSFERS

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"

CHECK PAYMENTS

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

OVERNIGHT MAIL:

U.S. Bank 1005 Convention Plaza Mail Station SL-MO-C2GL St. Louis, MO 63101

Contact: 314-418-4087

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

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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		
9	R. Juge Gregg Sidley Austin LLP		
10	555 West Fifth Street Los Angeles, California 90013		
11			
12			
13			
14	7/28/09 (Leen Tino		
15	Date For: 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 - 16 -		