

US EPA ARCHIVE DOCUMENT

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2009 SEP -3 PM 12: 50

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

IN THE MATTER OF:)
) U.S. EPA Docket No.
APM Terminals Pacific Ltd.,) CWA-09-2009-0001
Respondent.)
)
)

ORDER GRANTING COMPLAINANT'S MOTION TO APPROVE FINAL ORDER

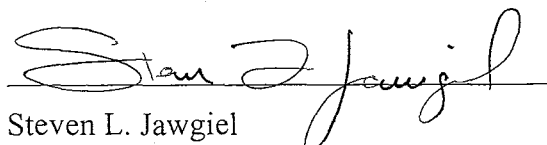
By motion filed September 2, 2009 by the United States Environmental Protection Agency (Complainant), Complainant seeks approval of the parties' Consent Agreement and Proposed Final Order.

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 Complainant 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

US EPA ARCHIVE DOCUMENT

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2009 SEP -3 PM 12: 51

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

1 NANCY MARVEL
Regional Counsel
2 United States Environmental Protection Agency, Region 9

3 RICH CAMPBELL
Assistant Regional Counsel
4 United States Environmental Protection Agency, Region 9
75 Hawthorne Street
5 San Francisco, California 94105
(415) 972-3870

6 Attorneys for Complainant

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **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.**)

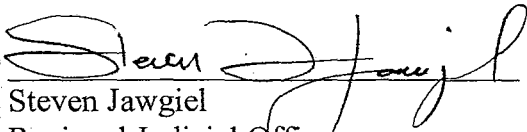
14 2500 Navy Way)
Terminal Island, California,)

15 Respondent.)

~~PROPOSED~~
FINAL ORDER

16) Proceedings Under Section 309(g)(2)(B) of the
17) Clean Water Act, as amended, 33 U.S.C. §
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
Regional Judicial Officer
24 U.S. Environmental Protection Agency
25 Region 9

09/03/09
DATE:

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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

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)

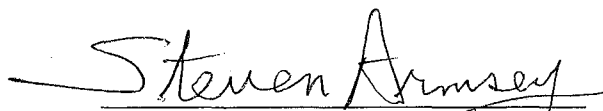
Judith M. Praitis
SIDLEY AUSTIN LLP
555 West Fifth Street
Loa Angeles, CA 90013

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.



Steven Armsey
Regional Hearing Clerk
EPA, Region 9

FILED

2009 JUL 28 AM 11:43

U.S. EPA REGION IX
REGIONAL HEARING CLERK

1 NANCY MARVEL
Regional Counsel
2 United States Environmental Protection Agency, Region 9

3 RICH CAMPBELL
Assistant Regional Counsel
4 United States Environmental Protection Agency, Region 9
75 Hawthorne Street
5 San Francisco, California 94105
(415) 972-3870

6 Attorneys for Complainant

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 9
 75 Hawthorne Street
 9 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
)	PROPOSED FINAL ORDER
14 2500 Navy Way)	
Terminal Island, California,)	
15 Respondent.)	Proceedings Under Section 309(g)(2)(B) of the
)	Clean Water Act, as amended, 33 U.S.C. §
)	1319(g)(2)(B)

18 **CONSENT AGREEMENT**

19 **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 Penalties,
 23 Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or
 24 Suspension of Permits."

US EPA ARCHIVE DOCUMENT

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

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

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

US EPA ARCHIVE DOCUMENT

1 15. 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,
3 but all of which shall constitute one instrument. If any portion of this Consent Agreement is
4 determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the
5 remaining portions shall remain in full force and effect.

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

8 **Statutory and Regulatory Framework**

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

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

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

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

25

1 21. The State of California has an EPA-approved NPDES program, and issues
2 permits, including storm water permits, through its State Water Resources Control Board ("State
3 Board") and nine Regional Water Quality Control Boards ("Regional Boards"). On April 17,
4 1997, the State Board adopted General Permit No. CAS000001/Water Quality Order No. 97-03-
5 DWQ ("General Permit"), the current statewide NPDES permit for storm water discharges
6 associated with industrial activity.

7 22. 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*
9 *Associated with Industrial Activity* ("NOI") to the State Board fourteen (14) days prior to
10 commencing industrial operations.

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

16 24. The General Permit requires facility operators to include a clear and
17 understandable site map in the SWPPP that includes, *inter alia*, an identification of the location
18 of municipal storm drain inlets, direction of storm water flow, and areas of industrial activity,
19 including the location of fueling areas, material handling and processing areas, waste treatment
20 and disposal areas, and other areas of industrial activity which are potential pollutant sources.
21 (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.)

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

8 **General Allegations**

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

10 28. Respondent operates a marine shipping container terminal located on Pier 400 at
11 2500 Navy Way on Terminal Island at the Port of Los Angeles in California (the "Facility").
12 Respondent, or a predecessor, has operated the Facility since at least August 2002.

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

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

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

20 32. Storm water runoff from the Facility that discharges to the Los Angeles Harbor is
21 storm water discharge associated with industrial activity as defined by 40 C.F.R. §
22 122.26(b)(14).

23 33. The Los Angeles Harbor and the Pacific Ocean are "waters of the United States"
24 as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and EPA's
25 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

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

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

6 37. On December 18, 2007, Respondent timely informed EPA in writing that it had
7 implemented additional BMPs at the Facility as required by the Order. On January 17, 2008,
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.

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

14 Findings of Violation

15 Failure to Implement BMPs

16 39. Paragraphs 1 through 38 are re-alleged and incorporated herein.

17 40. The General Permit required Respondent to reduce or prevent pollutants
18 associated with industrial activity in its storm water discharges and authorized non-storm water
19 discharges by implementing BAT for toxic and non-conventional pollutants and BCT for
20 conventional pollutants, and to develop and implement a SWPPP that included BMPs that
21 achieved BAT/BCT. (General Permit, Order Provision B(3), p. 4.)

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

- 24 a. restrict equipment washing to areas that do not pose a risk of unauthorized non-
25 storm 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, *inter alia*, 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

1 well as the signature of the party with responsibility for overall operation of the Facility.
2 (General Permit, Order Sections A(4), pp. 12-14, and C(9), p. 49.)

3 46. 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
5 overall operation of the Facility.

6 47. EPA alleges Respondent's failure to meet the General Permit's SWPPP site map
7 and signatory requirements from the time it commenced industrial operations on October 1, 2004
8 until it submitted an adequate SWPPP to EPA on January 17, 2008, constitute violations of
9 Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342.

10 Discharges in Violation of Permit Requirements

11 48. Paragraphs 1 through 47 are re-alleged and incorporated herein.

12 49. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits Respondent from
13 discharging any pollutant from a point source into a water of the United States unless it complies
14 with the Act, including Section 402, 33 U.S.C. § 1342.

15 50. Based on a May 17, 2007 inspection, EPA alleges Respondent was out of
16 compliance with the General Permit because it had not yet developed or implemented an
17 adequate SWPPP or adequate BMPs to minimize the quantity of pollutants discharged in storm
18 water from the Facility to waters of the United States. On January 17, 2008, Respondent timely
19 submitted information to EPA indicating it had come into compliance with the SWPPP and BMP
20 requirements of the General Permit.

21 51. Upon information and belief, EPA alleges there were at least 10 rain events
22 between May 17, 2007, and January 17, 2008, that accumulated 0.1 inch or more of rain at the
23 Facility and that resulted in the discharge of storm water associated with Respondent's industrial
24 activities at the Facility to the Los Angeles Harbor and Pacific Ocean.

US EPA ARCHIVE DOCUMENT

Public Notice

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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 BY: _____
16 (Name)

DATE: _____

17 _____
18 (Title)

19
20 For Complainant U.S. Environmental Protection Agency, Region 9:

21
22 BY: Alexis Strauss
23 Alexis Strauss, Director
24 Water Division
25

DATE: 24 July 2009

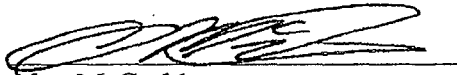
Public Notice

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CONSENTING PARTIES:

For Respondent APM Terminals Pacific Ltd.:

BY: 
Alan McCorkle
Sr. Vice President

DATE: 07/21/09

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

BY: _____
Alexis Strauss, Director
Water Division

DATE: _____

1 NANCY MARVEL
 Regional Counsel
 2 United States Environmental Protection Agency, Region 9

3 RICH CAMPBELL
 Assistant Regional Counsel
 4 United States Environmental Protection Agency, Region 9
 5 75 Hawthorne Street
 San Francisco, California 94105
 (415) 972-3870

6 Attorneys for Complainant

7

8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
 REGION 9
 9 75 Hawthorne Street
 10 San Francisco, California 94105

11 In re the Matter of:) Docket No.: CWA-09-2009-0001

12)
 13 **APM Terminals Pacific Ltd.**)

14 2500 Navy Way)
 15 Terminal Island, California,)

16 Respondent.)

) Proceedings Under Section 309(g)(2)(B) of the
) Clean Water Act, as amended, 33 U.S.C. §
 17) 1319(g)(2)(B)

**[PROPOSED]
 FINAL ORDER**

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.
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 22

23 _____
 Steven Jawgiel
 Regional Judicial Officer
 24 U.S. Environmental Protection Agency
 Region 9
 25

 DATE:

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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

US EPA ARCHIVE DOCUMENT

CERTIFICATE OF SERVICE

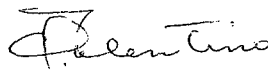
In the Matter of APM Terminals Pacific Ltd.
EPA Docket No. CWA-09-2009-0001

I hereby certify that the original of the foregoing Consent Agreement and Proposed Final Order was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, certified mail, return receipt requested, to:

Judith M. Praitis
R. Juge Gregg
Sidley Austin LLP
555 West Fifth Street
Los Angeles, California 90013

7/28/09

Date



For: Steve Armsey
Regional Hearing Clerk
U.S. EPA, Region 9