

TRC/IAP - PL AGR
2005R00400

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

0 P. 06 - 207

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UNITED STATES OF AMERICA

PLEA AGREEMENT

- against -

MK SHIPMANAGEMENT CO., LTD,

Defendant.

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The United States of America, by and through the United States Attorney for the District of New Jersey, and the Environmental Crimes Section of the United States Department of Justice (collectively referred to herein as the "government"), and the Defendant, M.K. SHIPMANAGEMENT CO., LTD. (referred to herein as the "Defendant"), through its authorized representatives, enter into the following Agreement, pursuant to Rule 11(c)(1)(C) and Rule 11(c)(3) of the Federal Rules of Criminal Procedure:

1. Waiver of Indictment. The Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charges brought by the government in an Information filed in the District of New Jersey.

2. The Charge. The Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the criminal Information filed in the District of New Jersey. The charge to which the Defendant agrees to enter a plea of guilty is as follows: by and through the actions of the crewmembers of the vessel M/V

MAGELLAN PHOENIX, knowingly failed to maintain an accurate Oil Record Book in which all unprocessed overboard discharges of oil wastes were recorded, in violation of 33 U.S.C. § 1908(a) and 33 C.F.R. § 151.25.

3. Elements of the Offense.

a. Defendant, through its authorized representative, acknowledges that it is aware of the nature and elements of the offense to which it is entering a guilty plea. If this case were to proceed to trial, the government would have the burden of proving beyond a reasonable doubt each and every element of the offense. The elements of the offense of failing to maintain an accurate Oil Record Book, in violation of the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a) and 33 C.F.R. §§ 151.25, are as follows: (1) the Defendant, by and through the actions of its agents and/or employees, failed to maintain an Oil Record Book in which all overboard discharges of unprocessed oil-contaminated bilge wastes were fully recorded; and (2) the Defendant, by and through the actions of its agents and/or employees, acted knowingly.

b. Under well-established principles of corporate liability and *respondeat superior*, as these principles apply in this case, the corporate defendant is liable for the actions of its agents and employees, whether it knew of such actions or not. *New York Central and Hudson River R.R. v. United States*, 212 U.S. 481, 495 (1909); *United States v. Beusch*, 596 F.2d 871 (9th Cir. 1979); *United States v. Hilton Hotels Corp.*, 467 F.2d 1004-07 (9th Cir. 1972).

4. The Penalties. Defendant understands that the statutory penalties applicable to a corporate defendant for failing to maintain an oil record book, in violation of 33 U.S.C. § 1908(a), include (1) a maximum fine of either Five Hundred Thousand Dollars (\$500,000), or twice the gross gain or loss resulting from the unlawful conduct, pursuant to 18 U.S.C. § 3571(c) and

(d); (2) a term of probation of five (5) years, pursuant to 18 U.S.C. § 3561(c)(1); and (3) a special assessment of Four Hundred Dollars (\$400.00), pursuant to 18 U.S.C. § 3013(a)(2)(B).

5. Rights Waived by Pleading Guilty. Defendant knowingly and voluntarily waives the following rights through its guilty plea:

- a. The right to plead not guilty, and to persist in a plea of not guilty;
- b. The right to a speedy and public trial before a jury;
- c. The right to the effective assistance of counsel at trial;
- d. The right to be presumed innocent until guilt has been established at trial, beyond a reasonable doubt;
- e. The right to confront and cross-examine witnesses at trial;
- f. The right to compel or subpoena witnesses to appear on Defendant's behalf at trial;
- g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and
- h. The right to appeal a finding of guilt or any pretrial rulings.

6. Applicability of Sentencing Guidelines. Defendant understands and acknowledges that, at sentencing, the Court is required to take account of the United States Sentencing Guidelines, together with the other sentencing goals set forth in Title 18, United States Code, Section 3553(a). Defendant understands and acknowledges that the United States Sentencing Guidelines, including Chapter Eight that provide guidance for the sentencing of corporate defendants, may be considered by the Court, except that pursuant to USSG §§ 8C2.1 and 8C2.10, the United States Sentencing Guidelines are not applicable for purposes of determining a fine.

Instead, the fine is to be determined under 18 U.S.C. §§ 3553 and 3571.

7. Sentencing Agreement. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the government and Defendant agree that the sentence to be imposed by the Court is as follows:

a. Fine. Defendant shall pay a criminal fine in the amount of Two Hundred Thousand Dollars (\$200,000). The parties stipulate and agree that this amount is the maximum fine that may be imposed under this Agreement.

b. Community Service Payment. In furtherance of the sentencing principles provided for under §8B1.3 of the Federal Sentencing Guidelines and 18 U.S.C. § 3553(a), the Defendant shall make a Community Service Payment of One Hundred and Fifty Thousand Dollars (\$150,000) to the National Fish and Wildlife Foundation (the "NFWF"). The parties stipulate and agree that this amount is the maximum community service payment that may be imposed under this Agreement.

(i) The NFWF is a charitable and nonprofit corporation established pursuant to 16 U.S.C. §§ 3701-3709. Its purposes include the acceptance and administration of "private gifts of property for the benefit of, or in connection with, the activities and services of the United States Fish and Wildlife Service," and the performance of "such other activities as will further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions for present and future generations of Americans." 16 U.S.C. § 3701(b)(1), (2). The NFWF is empowered to "do any and all acts necessary and proper to carry out" these purposes, including, specifically, solicitation, acceptance, and administration of "any gift, devise or bequest . . . of real or personal property." 16 U.S.C. § 3703(c)(1), (7).

(ii) The payment of One Hundred and Fifty Thousand Dollars (\$150,000) to the NFWF shall be directed to New Jersey community organizations and citizens groups participating in the Delaware Estuary Grants Program. The Delaware Estuary Grants Program, administered by the NFWF, promotes community-based efforts to protect and restore the diverse natural resources of the Delaware Estuary and its watershed. The program provides grants to local governments and community organizations working on a local level to protect and improve watersheds in the Delaware Estuary, while building citizen-based resource stewardship. The purpose of the grants program is to address the living resource and water quality needs of the Delaware Estuary ecosystem. The grants program was designed to encourage the development and sharing of innovative ideas among the many organizations wishing to be involved in watershed protection activities. Launched in 2003, awards are made on an annual basis to communities and organizations within the 6000 square mile Estuary watershed.

(iii) Because the community service payment is designated as community service by an organization, Defendant agrees that it will not seek any reduction in its tax obligations as a result of the community service payment. In addition, because this payment constitutes community service, the Defendant will not characterize, publicize or refer to the community service payment as a voluntary donation or contribution.

c. Mandatory Special Assessment. Defendant shall pay a Four Hundred Dollar (\$400) special assessment .

d. Payments. Defendant further agrees that if the terms of this Rule 11(c)(1)(C) Agreement are accepted by the Court, it shall pay on the date of sentencing (1) the total criminal fine and mandatory special assessment in the form of a check for Two Hundred Thousand and Four

Hundred dollars (\$200,400) payable to "United States District Court Clerk," which shall include a notation containing the caption of the case and the case number for the district, and (2) the total Community Service Payment in the form of a check for One Hundred and Fifty Thousand dollars (\$150,000) payable to the "New Jersey Coastal Conservation Fund c/o the National Fish and Wildlife Foundation."

e. Probation. Further, pursuant to Rule 11(c)(1)(C), the government and the Defendant agree that the Defendant will be placed on organizational probation for a period of three years pursuant to 18 U.S.C. § 3561(c)(1) and consistent with USSG §§ 8D1.1 and 8D1.2. The parties jointly recommend that supervision of probation be administered in the District of New Jersey. The terms of probation, including special conditions of probation, shall be:

(1) No Further Violations. Defendant agrees that it shall commit no further violations of federal, state or local law, including those laws and regulations for which primary enforcement has been delegated to state authorities, and shall conduct all its operations in accordance with the MARPOL Protocol.

(2) Environmental Management System/Compliance Program. The Defendant agrees to develop, adopt, implement and fund a comprehensive Environmental Management System/Compliance Program ("EMS/CP") during its term of probation, consistent with sentencing policies set forth in USSG § 8D1.4. The EMS/CP is set forth as Exhibit A to this Plea Agreement. A failure to fund the EMS/CP will constitute a violation of probation.

8. Application of the Agreement. This Agreement shall bind Defendant and its successors and assigns. Defendant, or its successors-in-interest, if applicable, shall provide to each undersigned prosecuting office and the United States Probation Office in the District of New Jersey

with immediate notice of any name change, corporate reorganization, sale or purchase of vessels subject to the EMS/CP, or similar action affecting this Agreement and the EMS/CP. No change in name, change in corporate or individual control, corporate reorganization, change in ownership, merger, change of legal status, sale or purchase of vessels, or similar action shall alter Defendant's responsibilities under this Agreement. Defendant shall not engage in any action to seek to avoid the obligations and conditions set forth in this Agreement.

9. Nature of the Agreement. Defendant and the government acknowledge that this Agreement is made pursuant to Rule 11(c)(1)(C) and Rule 11(c)(3) of the Federal Rules of Criminal Procedure. If the Court rejects any provision of this Agreement or seeks to impose a sentence other than that recommended by the parties, each party reserves the right to withdraw from this Agreement and the Defendant may withdraw its guilty plea.

10. Non-Prosecution of Additional Offenses. Provided that the Defendant complies fully with the terms of this Agreement, the United States agrees to forgo additional criminal prosecution in the District of New Jersey against Defendant for any additional environmental offenses, or related offenses including, but not limited to, the discharge of oil, the failure to report the discharge of oil, false statements or related acts of obstruction that are related to the offense set forth in the Information in this matter and/or arise out of the conduct giving rise to the investigation in this matter, which occurred before the date of this Agreement and are known to the government at the time of the signing of this Agreement.

Defendant understands and agrees that neither this paragraph nor this Agreement limits the prosecuting authority of any sections or divisions of the Department of Justice, other than the United States Attorney's Office for the District of New Jersey and the Environmental Crimes Section,

including the United States Attorney of any judicial district not a party to this Agreement, or any other federal, state or local regulatory or prosecuting authorities. Furthermore, this Agreement does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including but not limited to: fines, penalties, claims for damages to natural resources, suspension, debarment, listing to restrict rights and opportunities of the Defendant to contract with or receive assistance, loans, and benefits from United States agencies, licensing, injunctive relief, or remedial action to comply with any applicable regulatory requirement. This Agreement has no effect on any proceedings against any party not expressly mentioned herein, including the actual or potential criminal liability of any individuals.

This Agreement does not limit the right of Defendant or the government to speak at the time of sentencing consistent with the provisions set forth in this plea agreement, and to provide the Court with evidence of all relevant conduct committed by Defendant. The parties agree that at sentencing each will support the agreed disposition set forth in this Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rule of Criminal Procedure.

11. Breach of the Agreement. Defendant, through its authorized representatives recognizes that the government has agreed not to prosecute all of the criminal conduct established by the evidence as committed by the Defendant solely because of the promises made by the Defendant in this Agreement. If the Defendant breaches this Agreement, or if the Defendant withdraws its guilty plea pursuant to paragraph 9 of this Agreement, the government retains the right to present to the Grand Jury for indictment, all of the criminal violations established by the evidence. If the actions of the Defendant or any of its agents and/or employees results in the breach of this Agreement, the Defendant will not be able to withdraw its guilty pleas, and the government will be

relieved of all of its obligations under this Agreement. If, as a result of a breach of the Agreement, the government elects to pursue any charge that was not filed as a result of this Agreement, Defendant expressly waives all defenses based upon the statute of limitations and pre-indictment delay, except to the extent that such defenses existed as of the date of the signing of this Agreement and subject to paragraph 15 below.

12. Corporate Authorization. Defendant agrees that it is authorized to enter into this Agreement. At the time of signing by Defendant's representatives, Defendant shall provide the government with a written statement in the form of a corporate resolution certifying that Defendant is authorized to enter into and comply with all of the terms of this Agreement. The corporate resolution shall certify that Defendant's Board of Directors has authorized the undersigned representatives to take these actions and that all corporate formalities for such authorizations have been observed. The Defendant agrees that the plea of guilty will be entered by the Defendant through Mr. Saburo Iwai, Chief Operating Officer, and that he is authorized to enter a plea of guilty on the Defendant's behalf. By entering this guilty plea, the Defendant hereby waives all objections to the form of the charging documents and admits that it is in fact guilty of the offense as set forth in the Information.

13. Waiver of Appeal. Defendant, through its authorized representatives, is aware that 18 U.S.C. § 3742 gives the right to appeal the sentence to be imposed, and that other federal statutes give a defendant the right to appeal other aspects of the conviction. In consideration of the Agreement with the United States as set forth herein, Defendant knowingly and voluntarily agrees to waive the following rights:

- a. The right, conferred by 18 U.S.C. § 3742, to appeal the sentence imposed by the Court for the conviction of this offense, including fine and community service;
- b. The right to appeal any aspect of Defendant's conviction; and
- c. The right to bring any collateral attack, or any other writ or motion, that challenges Defendant's conviction or sentence, except as it may relate to the effectiveness of legal representation.

14. Voluntariness of the Plea. Defendant, through its authorized representatives, acknowledges that it has entered into this Agreement freely and voluntarily and that they have been fully advised by counsel, and that no threats or promises were made to induce it to enter into the guilty plea called for by this Agreement.

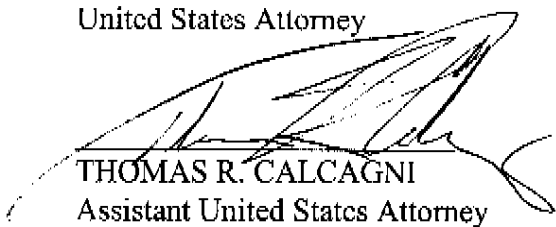
15. Statute of Limitations. In the event that this Agreement is not accepted by the Court for any reason, or Defendant has breached any of the terms of this Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Agreement to: (1) 60 days following the date of non-acceptance of the Agreement by the Court; or (2) 60 days following the date on which a breach of the Agreement by Defendant is discovered by the government.

16. Completeness of Agreement. The government and Defendant acknowledge that these terms constitute the entire Agreement between the parties. This Agreement is effective upon signature by Defendant and all of the attorneys for the government.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
DISTRICT OF NEW JERSEY

CHRISTOPHER J. CHRISTIE
United States Attorney

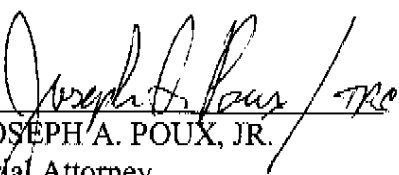

THOMAS R. CALCAGNI
Assistant United States Attorney

4/7/06
Date

APPROVED: 
MARC LARKINS
Chief, Government Fraud Unit

UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division


JOSEPH A. POUX, JR.
Trial Attorney
Environmental Crimes Section
U.S. Department of Justice


4/7/06
Date

On behalf of the Defendant, MK SHIPMANAGEMENT CO., LTD. ("MK SHIPMANAGEMENT"), I have been authorized by a corporate resolution to sign this Agreement and bind MK SHIPMANAGEMENT. MK SHIPMANAGEMENT has been advised by its attorneys of MK SHIPMANAGEMENT's rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this Agreement. MK SHIPMANAGEMENT voluntarily agrees to all of the terms of this Agreement. No promises or inducements have been made to MK SHIPMANAGEMENT other than those contained in this Agreement. No one has threatened or forced MK SHIPMANAGEMENT in any way to enter into this Agreement. Finally, MK SHIPMANAGEMENT is satisfied by the representation of its attorneys in this matter.


MR. SABURO IWAI
Chief Operating Officer
and Authorized Representative
of MK SHIPMANAGEMENT CO., LTD.
Defendant

Date

I am MK SHIPMANAGEMENT's attorney. I have carefully discussed every part of this Agreement with authorized representatives of MK SHIPMANAGEMENT. Further, I have fully advised the authorized representatives of MK SHIPMANAGEMENT's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, the decision of MK SHIPMANAGEMENT to enter into this Agreement is an informed and voluntary one.


MICHAEL G. CHALOS, ESQ.
Fowler, Rodriguez & Chalos
Co-counsel for Defendant
MK SHIPMANAGEMENT CO., LTD.

2/10/06
Date


RICHARD Q. WHELAN, ESQ.
Palmer Biezup & Henderson LLP
Co-counsel for Defendant
MK SHIPMANAGEMENT CO., LTD.

per email from [unclear] 2/10/06
Date

On behalf of the Defendant, MK SHIPMANAGEMENT CO., LTD. ("MK SHIPMANAGEMENT"), I have been authorized by a corporate resolution to sign this Agreement and bind MK SHIPMANAGEMENT. MK SHIPMANAGEMENT has been advised by its attorneys of MK SHIPMANAGEMENT's rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this Agreement. MK SHIPMANAGEMENT voluntarily agrees to all of the terms of this Agreement. No promises or inducements have been made to MK SHIPMANAGEMENT other than those contained in this Agreement. No one has threatened or forced MK SHIPMANAGEMENT in any way to enter into this Agreement. Finally, MK SHIPMANAGEMENT is satisfied by the representation of its attorneys in this matter.

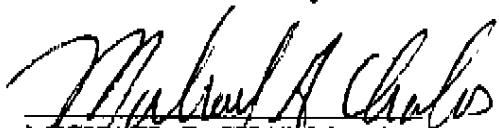


MR. SABURO IWAI
Chief Operating Officer
and Authorized Representative
of MK SHIPMANAGEMENT CO., LTD.
Defendant

2/14/06

Date

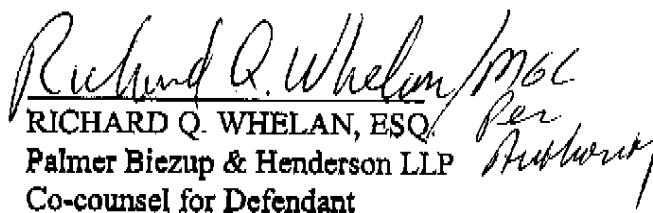
I am MK SHIPMANAGEMENT's attorney. I have carefully discussed every part of this Agreement with authorized representatives of MK SHIPMANAGEMENT. Further, I have fully advised the authorized representatives of MK SHIPMANAGEMENT's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, the decision of MK SHIPMANAGEMENT to enter into this Agreement is an informed and voluntary one.



MICHAEL G. CHALOS, ESQ.
Fowler, Rodriguez & Chalos
Co-counsel for Defendant
MK SHIPMANAGEMENT CO., LTD.

2/10/06

Date



Per Authority

RICHARD Q. WHELAN, ESQ.
Palmer Biezup & Henderson LLP
Co-counsel for Defendant
MK SHIPMANAGEMENT CO., LTD.

2/10/06

Date

EXHIBIT "A"
PLEA AGREEMENT

United States v. MK SHIPMANAGEMENT CO., LTD., CR 06-_____

**MK SHIPMANAGEMENT CO., LTD. ENVIRONMENTAL MANAGEMENT
SYSTEM/COMPLIANCE PROGRAM**

The following standards and requirements for an ENVIRONMENTAL MANAGEMENT SYSTEM/COMPLIANCE PROGRAM (EMS/CP) have been prepared pursuant to the Plea Agreement between MK SHIPMANAGEMENT CO., LTD. (hereinafter "Defendant") and the United States (hereinafter "Government") filed in the United States District Court for the District of New Jersey in United States v. MK SHIPMANAGEMENT CO., LTD., CR 06-_____. Compliance with all of the standards and requirements of the EMS/CP is an essential term of the Plea Agreement.

The EMS/CP includes various provisions to ensure that all vessels listed in Attachment 1 hereto¹, which are directly or indirectly operated, managed, manned and/or controlled by MK SHIPMANAGEMENT CO., LTD., comply with all maritime environmental requirements established under applicable international, flag state, and port state law, including, but not limited to, the International Convention for the Safety of Life at Sea (SOLAS), the International Safety Management (ISM) Code, the International Convention for Prevention of Pollution from Ships (MARPOL), and all applicable Federal and state statutes and regulations including, but not limited to, the Ports and Waterways Safety Act (PWSA), the Act to Prevent Pollution from Ships (APPS), the Clean Water Act (CWA) and the Oil Pollution Act (OPA), and with the requirements of this agreement itself.

A. APPLICABILITY/PURPOSE

- (1) This EMS/CP shall cover and apply to all of the Defendant's operations, including all subsidiaries, affiliated business entities, and agents (owned wholly or partially by the Defendant), involved in the operation of seagoing vessels listed in Attachment 1 hereto, which are operated, managed and/or manned by the Defendant, on the date of sentencing or at anytime during the period of probation. It shall also include all persons working for the Defendant, its subsidiaries, affiliated business entities, agents, and any other individuals or organizations who are involved in the operation, maintenance and repair of aforesaid seagoing vessels, operated, managed and/or manned by the Defendant, as direct employees or independent contractors, on the date of sentencing or at any time during the period of probation.
- (2) The EMS/CP is not intended to replace the ISM Code, or any other applicable international legal requirement or United States statute

¹ Subject to modification under Section M, below.

and regulation. The purpose of this EMS/CP is to augment the requirements of existing law by increasing and improving inspections, reviews, and audits of Defendant's operated and/or managed vessels listed in Attachment 1 hereto, shore side facilities, and operations involving said vessels; increase training of all of Defendant's personnel involved with said vessels; develop and implement management and engineering controls to better manage, detect and prevent environmental violations; and require periodic reports to the United States Probation Office for the District of New Jersey, the United States Attorney's Office for the District of New Jersey, the Environmental Crimes Section of the United States Department of Justice, the Environmental Protection Agency, and the United States Coast Guard (collectively hereinafter "the United States") to ensure that the Defendant is following the requirements of this EMS/CP and that the vessels listed in Attachment 1, hereto, comply with all maritime environmental requirements established under applicable international, flag state, and port state law and all applicable Federal and state statutes and regulations and that an effective environmental management system is in place to prevent recurrence of violations.

B. CORPORATE COMPLIANCE MANAGER

- (1) Within sixty (60) days of entry of the Plea Agreement, the Defendant shall designate a senior corporate officer as Compliance Manager (hereinafter "Compliance Manager") who shall report directly to the President and/or Managing Director of Defendant. Defendant shall provide the name of the Compliance Manager to the United States. The Compliance Manager should be the same individual as Defendant's "designated person" under the International Safety Management Code (hereinafter "ISM") unless reasons are provided to the United States justifying why the "designated person" should not also be the Compliance Manager. The Compliance Manager shall be responsible for coordinating with the Independent EMS Consultant, as more fully described below, developing and implementing all of the procedures and systems required herein, establishing and implementing training programs for the officers and crew of Defendant's operated and/or managed vessels listed in Attachment 1, ensuring that reviews, audits and surveys are carried out as required and ensuring that all documents are properly maintained and that reports are made on a timely basis to the Independent EMS Consultant and the United States. All reports required under this EMS/CP shall be reviewed by the Compliance Manager and signed under the penalty of perjury.
- (2) Defendant shall establish a procedure and reporting system that requires and enables all officers, crewmembers and employees, and shore side personnel involved in the manning and/or operation of seagoing vessels of the Defendant's operated and/or managed vessels

listed in Attachment 1 hereto, including all persons working for the Defendant, its subsidiaries, affiliated business entities (owned wholly or partially by the Defendant) and agents of the Defendant as either direct employees or independent contractors, to notify the Compliance Manager of any violations of any applicable environmental requirements or other requirements of this EMS/CP and to cooperate fully with the Independent EMS Consultant and the United States in carrying out their reviewing, auditing and oversight functions required by applicable law and this EMS/CP. Defendant agrees to establish a procedure that makes failure to notify the Compliance Manager of any violations of any applicable environmental requirements and failure to cooperate fully with the Classification Societies, the Independent EMS Consultant and the United States in carrying out their auditing and oversight functions required by applicable law and this EMS/CP, grounds for dismissal. Defendant agrees not to retaliate against any officer, crewmember, employee, or shore side personnel involved in the manning and/or operation of seagoing vessels listed in Attachment 1, including all persons working for the Defendant, its subsidiaries, affiliated business entities (owned wholly or partially by the Defendant) and agents of the Defendant as either direct employees or independent contractors or entity making any such report.

C. INDEPENDENT EMS CONSULTANT AND INITIAL ENVIRONMENTAL REVIEW

- (1) No later than thirty (30) days following the District Court's final imposition of sentence in United States v. MK SHIPMANAGEMENT CO., LTD., CR 06-_____, the Defendant shall nominate an Independent EMS Consultant who meets the qualifications below to conduct an Initial Environmental Review, and a Report of Findings for all Defendant's operations as defined below. The United States will notify the Defendant in writing of its approval or disapproval as expeditiously as possible. The United States' approval shall not be unreasonably withheld.
- (2) Qualified candidates for the Independent EMS Consultant position must have expertise and competence in the regulatory programs under U.S. and international environmental laws, and have expertise and competence in waste stream evaluation monitoring and control technologies, with a primary emphasis on engine room and machinery space operations, used by the Defendant to achieve and maintain compliance in respect to the seagoing vessels listed in Attachment 1, hereto. The Independent EMS Consultant shall also have sufficient expertise and competence to assess whether the Defendant has an adequate environmental management system (EMS) in place to assess regulatory and EMS compliance, correct non-compliance, and prevent future non-compliance. The Defendant and the United States acknowledge that the functions of the Independent EMS Consultant

may, by mutual agreement, be fulfilled by one or more individuals.

- (3) The Independent EMS Consultant must not directly own any stock in any of the Defendant, its subsidiaries, affiliated business entities (owned wholly or partially by the Defendant) or any agents of the Defendant, and must have no other direct financial stake in the outcome of duties conducted pursuant to this Plea Agreement. The Independent EMS Consultant must be capable of exercising the same independent judgment and discipline that a certified public accounting firm would be expected to exercise in auditing a publicly held corporation. If Defendant has any other contractual relationship with the Independent EMS Consultant, both Defendant and the Independent EMS Consultant shall disclose to the Government such past or existing contractual relationships.
- (4) If the Government determines that the proposed Independent EMS Consultant does not meet the qualifications set forth in the previous paragraphs, or that past or existing relationships with the Independent EMS Consultant would affect the Independent EMS Consultant's ability to exercise the independent judgment and discipline required to conduct the EMS/CP review and evaluation, such Independent EMS Consultant shall be disapproved and another Independent EMS Consultant shall be proposed by the Defendant within thirty (30) days of the Defendant's receipt of the Government's disapproval.
- (5) The Independent EMS Consultant shall conduct an Initial Environmental Review of Defendant's operations (vessel and shore side) and include thirteen (13) of the seagoing vessels listed in Attachment 1. Seven (7) of such vessels listed in Attachment 1 may be reviewed while the vessels are in port. The remaining six (6) must be reviewed while the vessels are underway and operating. These underway inspections will be conducted, as much as possible and practicable, on voyages of short durations (i.e., approximately 4 days or less). However, if such inspections cannot be practically conducted in such time period, then, the Defendant and the EMS Consultant shall coordinate the underway inspections to accommodate the vessel's operations and schedule. The Initial Environmental Review shall be performed to ascertain and evaluate various aspects of the Defendant's vessels: their systems, equipment and components; current practices whether documented or not; and the knowledge, skills, and abilities of ship and shore side personnel as they relate to the requirements of this CP, the EMS, and other maritime environmental protection requirements.
- (6) The Initial Environmental Review may be considered as a discovery action in that its purpose is to review all areas of operation that may impact various elements of pollution prevention and environmental protection. It will exceed a typical SMS audit in scope and will be used to determine practices, procedures and equipment conditions not

typically documented during a routine inspection by class society, port or flag state inspection processes. The results of the initial environmental review will be used to shape and revise the Environmental Management System established by this CP.

- (7) The Initial Environmental Review shall meet the following specific requirements:
- (a) It shall assess all waste streams developed from any system, equipment and components found in each machinery space or pump room onboard the Defendant's vessels. This will include observation and documentation describing the leakages apparent on each system that can contribute to bilge loading. The audit will determine the status and quantify leakages stemming from:
 - (i) all pump and valve seals and glands during operation,
 - (ii) all piping systems, flanges, gaskets, fittings and joints,
 - (iii) all equipment casings such as main and auxiliary engines, and reduction gears,
 - (iv) operation of engines, boilers, incinerators, and evaporators, and
 - (v) all other mechanical components found aboard the Defendant's vessels.
 - (b) It shall assess the adequacy and performance of the Oily Water Separator (OWS) and Incinerator, Sewage System, and any other pollution prevention equipment to handle the quantities and types of wastes, including cargo wastes and slops developed during normal operations. It will include an evaluation of the capacities for all tanks or containers associated with the management of sludges, bilges and oily wastes or other wastes. It will include an evaluation of documentation tracking, maintenance and repair, modifications of all pollution prevention equipment, and notifications of equipment failure to the compliance manager or other shoreside personnel.
 - (c) It shall assess each vessel's crew and their current workloads relating to all work performed on the vessel's systems, equipment and components, in an effort to ascertain that even the least significant leakages contributing to waste streams are remedied in a prompt and effective manner.
 - (d) It shall assess the adequacy of the policy, procedures, current practices and equipment, including storage capabilities used to manage shipboard solid wastes generated in all areas of the vessel and the effectiveness of garbage management plans.
 - (e) It shall assess the adequacy of the policy, procedures, current practices and equipment associated with cargo wastes and slop

management developed during all evolutions of cargo operations and tank washing.

- (f) It shall assess the ability of the vessel's crewmembers to create, devise or implement an unauthorized process to dispose of a shipboard waste including regular garbage, machinery space and cargo generated wastes.

- (g) It shall assess the adequacy of the vessel crewmembers to maintain the following records and includes a complete comparative analysis (against each other where possible) of the following records:
 - (i) Oil Record Book
 - (ii) Engine Room Alarms
 - (iii) Tank sounding sheets
 - (iv) Personal work records and lists
 - (v) Maintenance records
 - (vi) Vendor service records
 - (vii) Bilge waste and sludge receipts
 - (viii) Deck Log
 - (ix) Garbage Record Book
 - (x) Wastewater Discharge Log
 - (xi) Oil to Sea Equipment Interface Logs
 - (xii) Hazardous waste manifests
 - (xiii) Solid waste discharge receipts
 - (xiv) Content Monitor (ODME and OWS) calibration logs
 - (xv) Training records
 - (xvi) Vetting documents
 - (xvii) Inspection Documents
 - (xviii) SMS or SQE Audit documents.

- (h) It shall assess the adequacy of the policy, procedures, and current practices used to store and dispose of:
 - (i) Solvents
 - (ii) Degreasers
 - (iii) Cleaning wastes
 - (iv) Batteries
 - (v) Paints
 - (vi) Oily rags
 - (vii) Fluorescent and incandescent bulbs
 - (viii) Expired boiler and engine chemicals
 - (ix) Used boiler and engine chemicals
 - (x) Galley greases
 - (xi) Pyrotechnics
 - (xii) Medical supplies
 - (xiii) Contaminates fuels
 - (xiv) Used Oils and greases

- (xv) Incinerator ash
- (xvi) Transformer oils
- (xvii) Contaminated refrigerants
- (xviii) Hazardous materials.

- (i) It shall assess and evaluate documentation containing the certifications that all vessel officers understand the requirements of this CP and the EMS, and shall verify signed statements by all vessel officers that false entries in the Oil Record Book for Machinery Space or Deck Operations is a violation of law.
- (j) It shall assess the policy, procedures, and current practices associated with the Master and Chief Engineer's capability to communicate with shoreside personnel, including the Compliance Manager and designated persons, and shall review such communications.
- (k) It shall assess the frequency and adequacy of, through interviews of crewmembers, shipboard pollution prevention and environmental protection meetings and training.
- (l) It shall assess the policy, procedures, and current practices used on vessels and ashore to track crewmember environmental training, as well as the availability of and access to training resources.
- (m) It shall assess the adequacy of existing hotline reporting methods to report environmental concerns and evaluate the capability of a reporting individual to remain anonymous, and review processes of handling environmental complaints from crewmembers and shoreside personnel.
- (n) It shall assess the policy, procedures, and current practices to ensure that vessel vendors, technicians, and other non-crewmembers follow the Defendant's requirements regarding pollution prevention and environmental protection.
- (o) It shall assess the policy, procedures, and current practices used to manage the existing seal tracking and valve locking program, including the storage of seals and preventing the use of duplicate seals.
- (p) It shall assess the policy, procedures, and current practices and equipment used to maintain refrigeration units, including availability and status of refrigerant recovery units, procedures for recovering refrigerants, and maintenance of a leak log.
- (q) It shall assess the policy, procedures, current practices, and equipment related to Oil Transfer Procedures, including slops

discharges, conditions of hoses, connections and transfer equipment, and shall include reviews of Declarations of Inspections.

- (r) It shall assess the policy, procedures, current practices, and equipment used to handle emergency releases of hazardous fluids or pollutants on deck or within machinery spaces of vessels, including a review of the Shipboard Oil Pollution Emergency Plan and evaluation of personnel performing such duties.
 - (s) It shall assess the policy, procedures, and current practices associated with ballast water management and invasive species requirements.
 - (t) It shall include a survey of all fleet engineers at all levels for information on how to make the OWS, OCM, associated systems and waste management processes tamper proof and for methods on reducing or handling waste accumulations within machinery spaces or pump rooms. Participation shall be mandatory for all engineering personnel. The survey shall request the opinions of the vessels' engineers into their ability to adequately maintain the vessel systems, equipment and components. The survey will emphasize non-retaliation for open and honest opinions and reports of current non-compliant circumstances. The responses will be maintained in original format and made available to the CP Consultant. The original survey responses shall be included in the Report of Findings.
- (8) At the conclusion of the Initial Environmental Review, but in no event later than one hundred twenty (120) days following imposition of sentence, the Independent EMS Consultant shall prepare a Report of Findings. If the Independent EMS Consultant believes that additional time is needed to analyze available information, or to gather additional information, or to complete the Report of Findings, the Defendant may request that the Government grant the Independent EMS Consultant such additional time, as required, which request shall not be unreasonably denied. If necessary, the Government may grant additional time in 30 day increments for completion of the Report of Findings. The Report of Findings shall be provided to the Defendant and the United States. Based on the Report of Findings, the Defendant shall develop an EMS/CP Manual as described below.

D. ENVIRONMENTAL MANAGEMENT SYSTEM /COMPLIANCE PROGRAM

- (1) The Compliance Manager shall be responsible for establishing an Environmental Management System (EMS). To the extent possible, the EMS shall be based upon the ISO 14001 / 2004 standards. The EMS shall include the following core requirements:

(2) Environmental Policy

- (a) The EMS should be based upon a documented and clearly communicated policy. This policy should set out the Defendant's commitment towards a cleaner marine environment. It should include:
- (i) provision for compliance with environmental requirements;
 - (ii) commitment to continuous improvement in environmental performance, including those areas required by this CP;
 - (iii) commitment to pollution prevention that emphasizes source reduction, to include funding and human resources necessary to effectively maintain and repair the systems, equipment and components found in machinery spaces of vessels;
 - (iv) commitment to continuous reduction of environmental risks; and
 - (v) commitment to sharing information with external stakeholders on environmental performance.

(3) Environmental Requirements and Voluntary Undertakings

- (a) The EMS must provide a means to identify, explain and communicate all environmental requirements and voluntary undertakings to all employees, vendors, technicians, and other non-crewmembers, whose work could affect the Defendant's ability to meet those requirements and undertakings.
- (b) Environmental requirements include statutes, regulations, permits, and agreements such as this CP. Voluntary undertakings include the adaptations of additional best practices or industry norms that Defendant may choose to adopt.
- (c) The EMS must include procedures for ensuring that the organization meets these environmental requirements, voluntary undertakings and the additional requirements of this CP. The EMS must also specify procedures for anticipating changes to environmental requirements, including new requirements that may apply as a result of changes in operations and incorporating these changes into the EMS.

(4) Objectives and Targets

- (a) The EMS shall establish specific objectives and targets for:

- (i) achieving and maintaining compliance with all marine environmental protection requirements and the requirements of this CP;
- (ii) environmental performance demonstrating continuous improvement in regulated and non-regulated areas;
- (iii) pollution prevention that emphasizes source reduction with respect to machinery space waste streams and effective management of cargo related wastes; and
- (iv) sharing information with external stakeholders on environmental performance against all EMS objectives and targets.

(b) The EMS shall establish appropriate time frames to meet these objectives and targets. These must be documented and updated as environmental requirements change or as modifications occur in activities and structures within organizations in a manner that affects environmental performance or as a result of recommendations made by the EMS Consultant or other Auditor.

(5) Structure, Responsibility and Resources

(a) The Defendant will ensure that it is equipped with sufficient personnel and other resources to meet its objectives and targets. The EMS will describe in detail the procedures and steps for achieving those objectives and targets. The EMS will define the compliance roles and responsibilities of all vessel and shoreside personnel involved with the operation maintenance and repair of the Defendant's vessels, and will indicate how they and other corporate personnel will be held accountable for achieving and maintaining compliance with this EMS, the requirements of the CP, and other marine environmental protection requirements. Additionally, it will describe how environmental performance and compliance information will be communicated to all vendors, technicians, and other non-crewmembers onboard the Defendant's vessels. The EMS will also establish procedures for receiving and addressing concerns raised by these personnel regarding environmental performance and compliance.

(6) Operational Control

The EMS will identify and provide for the planning and management of all the Defendant's operations and activities with a view to achieving the EMS objectives and targets. For example, vessel deck department, pump room and engine room machinery space maintenance and repair will be an important

aspect in achieving and maintaining compliance and enhancing environmental performance.

(7) Corrective and Preventive Action and Emergency Procedures

- (a) The Defendant, through its EMS, will establish and maintain documented procedures for preventing, detecting, investigating, promptly initiating corrective action, and reporting (both internally and externally) any occurrence that may affect the organization's ability to achieve the EMS objectives and targets.
- (b) Such measures must address incidents that may have an effect on compliance with environmental requirements as well as on environmental performance in regulated and non-regulated areas, including requirements of this EMS, the CP or other marine environmental protection requirements. Examples of such situations include incinerator or oily water separator malfunctions, overflows of cargo or slop tanks, overflow of tanks within machinery spaces, fuel oil, lube oil, saltwater line failures, operator errors and other accidental releases.
- (c) The EMS must also establish documented procedures for mitigating any adverse impacts on the environment that may be associated with accidents or emergency situations. If the environmental violation or incident resulted from a weakness in the system, the EMS should be updated and refined to minimize the likelihood of such problems recurring in the future. The EMS should also, to the extent possible, provide for the testing and evaluation of emergency procedures.

(8) Training, Awareness and Competence

The EMS must establish procedures to ensure that all personnel (including vendors, technicians, and other non-crewmembers) whose job responsibilities affect the ability to achieve the EMS objectives and targets, have been trained and are capable of carrying out these responsibilities. In particular, the training should highlight means to enhance the ability of such personnel to ensure compliance with environmental requirements and voluntary undertakings, the requirements of the CP and other marine environmental protection requirements. Additional training requirements are provided in section J.

(9) Organizational Decision-making and Planning

The EMS must describe how these elements will be integrated into the organization's overall decision-making and planning, in particular, decisions on capital improvements, training programs, and vessel operations, maintenance and repair activities. Specific information shall be provided relating to the additional recourses required of older vessels within its fleet.

(10) Document Control

The EMS must establish procedures to ensure maintenance of appropriate documentation relating to its objectives and targets and should also ensure that those records will be adequate for subsequent evaluation and improvement of the operation of the EMS. Additionally, all records will be maintained and made available to the CP Consultant, the Auditor and Port and Flag State Personnel.

(11) Continuous Evaluation and Improvement

- (a) The EMS must include methods to perform periodic, documented and objective internal auditing of the organization's performance in achieving these objectives and targets, and on how well the EMS assists the organization in achieving those objectives and targets. This requirement is independent from the auditing requirements detailed elsewhere in this plan. The goal of these internal audits and reviews will be to allow management to continuously monitor and assess vessel systems, equipment and components, and the ability and proficiency at which vessel crew members and personnel ashore comply to the policies and procedures established by this EMS.
- (b) The EMS will identify an ongoing process for assessing when a vessel is to be taken out of service for an environmental discharge related repair, such as when a discharge is caused by leaking stern tubes, thrusters or other equipment.
- (c) The EMS will include organization charts, as appropriate, that identify shore side and vessel individuals having environmental performance, risk reduction, and regulatory compliance responsibilities. The charts shall also specify responsibilities of Port Captains, Port Engineers, and Engineering Superintendents to report information related to environmental releases or inadequate performance of environmental pollution protection equipment, casualties causing internal spills, excessive waste development and leaking equipment with oil-to-sea interfaces.

- (d) The EMS will promote non-retaliatory practices and ensure that employees are not punished or otherwise suffer negative consequences for reporting violations of environmental laws, regulations, or policies.
- (e) The EMS will describe potential consequences for departure from specified operating policies and procedures, including possible termination of employment, as well as criminal/civil/administrative penalties as a result of noncompliance.
- (f) The EMS will make employee compliance with environmental policies of the CP, the EMS, and other marine environmental protection requirements a positive factor, and failure to comply a negative factor, in all evaluations undertaken for the performance of all its employees.
- (g) The EMS will include policies against any incentive or bonus programs based on minimizing operational costs associated with the operation, maintenance and repair of machinery space systems, equipment and components to ensure that employees do not avoid such costs and thereby sacrifice environmental compliance.
- (h) The EMS will describe a confidential non-compliance reporting system that is adopted to ensure that employees may quickly and confidentially report discharges, spills, environmental incidents and other environmental performance data.
- (i) The EMS will identify all operations and activities where documented standard operating practices (SOPs) are needed to prevent potential violations or unplanned waste stream releases, with a primary emphasis on vessel engine room operations, systems, equipment and components and cargo slop management.
- (j) The EMS will identify the types of records developed and maintained in support of the CP and the EMS, such as reports, audit working papers, correspondence, communications, reports from the confidential system for non-compliance reporting, and identify personnel responsible for their maintenance, and procedures for responding to inquiries and requests for release of information. The EMS shall provide a system for conducting and documenting routine, objective self-inspections by the Defendant's internal auditors, supervisors, and trained staff to check for malfunctions, deterioration, and inadequate maintenance of pollution prevention equipment, worker adherence to SOPs, unusual situations, and unauthorized releases.

E. EMS/CP MANUAL

- (1) Within six months of receiving the Report of Findings on the Initial Environmental Review from the Independent EMS Consultant, Defendant shall prepare an EMS/CP Manual, which shall describe and document the EMS/CP and contain any additional EMS/CP implementation schedules as needed to ensure complete compliance in all operations and procedures. If the Defendant believes that additional time is needed to analyze available information or to gather additional information to prepare the EMS/CP Manual, the Defendant may request that the Government grant it such additional time as needed to prepare and submit the EMS/CP Manual, which request shall not be unreasonably denied. If necessary, the Government may grant additional time in thirty (30) day increments for completion of the EMS/CP Manual.
- (2) Defendant shall submit a proposed final EMS/CP Manual to the Compliance Manager, the Independent EMS Consultant and the United States immediately upon its completion. The Independent EMS Consultant and the United States shall provide comments on the proposed EMS/CP Manual within ninety (90) days of receipt unless additional time for review is requested in writing. Defendant shall submit a supplement to the EMS/CP or a written response, as appropriate, within sixty (60) days of receipt of the comments. The EMS/CP is subject to final approval from the United States, which approval shall not be unreasonably withheld.
- (3) All elements of the EMS/CP Manual shall be fully implemented no later than nine (9) months following final approval by the United States. Upon receipt of final approval, Defendant shall immediately commence implementation of the EMS/CP in accordance with the schedule contained in the EMS/CP Manual. Defendant shall submit reports to the designated representative of the United States beginning no later than one hundred twenty (120) days following the publication of the Report of Findings by the Independent EMS Consultant, regarding the status of the development and implementation of the EMS/CP and the results of the review and evaluation of Defendant's operations or audits conducted pursuant to the EMS/CP. These reports shall be made on an annual basis.

F. FINAL EMS/CP COMPLIANCE AUDIT

- (1) Beginning no later than twelve (12) months following implementation of the EMS/CP, Defendant shall arrange for, fund and complete a Final EMS/CP Compliance Audit of the Defendant's fleet management offices and twelve (12) vessels listed in Attachment 1 that were not previously

audited pursuant to this EMS/CP, to verify compliance with applicable environmental laws and regulations and the requirements of this EMS and CP. Six (6) of such vessels may be reviewed while the vessels are in port. The remaining six (6) must be examined while the vessels are underway and operating. These underway examinations will be conducted, as much as possible and practicable, on voyages of short durations (i.e., approximately 4 days or less). However, if such examinations cannot be practically conducted in such time period, then, the Defendant and the Third Party Auditor shall coordinate the underway examinations to accommodate the vessel's operations and schedule. The Third-Party Auditor will have full access to Defendant's facilities, records, employees and officers at all times. During this final audit phase the Defendant shall immediately advise the Third-Party Auditor of any issue that comes to its attention that adversely impacts the Defendant's compliance with all applicable laws and regulations and the EMS/CP.

- (2) The Third-Party Auditor will be certified by the American National Standards Institute-Registration Accreditation Board or will have comparable credentials and experience in performing EMS audits. Selection of the Third-Party Auditor is subject to the same conditions identified in Section C above regarding selection of the Independent EMS Consultant. Selection of the Third-Party Auditor will be approved by the United States. The United States will notify the Defendant in writing of its approval or disapproval as expeditiously as possible. The United States approval shall not be unreasonably withheld.
- (3) The Final EMS/CP Compliance Audits shall be conducted, as much as is practicable under the circumstances, in accordance with the principles set forth in ISO 9000 and ISO 14011, using ISO 14012 as supplemental guidance. The Third-Party Auditor shall assess conformance with the elements covered in the Initial Environmental Review, with all additional requirements presented in the EMS and with the additional requirements of this plan. Designated United States representatives may participate in the audits as observers at Government expense. The Defendant shall make timely notification to the United States regarding audit scheduling in order to make arrangements for observers to be present.
- (4) The Third-Party Auditor shall deliver each vessel's and facility's audit report to the appropriate company official upon completion. In addition, the Third-Party Auditor will deliver an Audit Report to the designated representative of the United States within thirty (30) days after the completion of each audit. If the Third-Party Auditor believes that additional time is needed to analyze available information or to gather additional information, the Defendant may request that the Government

grant the Third-Party Auditor such additional time as needed to prepare and submit the Audit Report. If necessary, the Government may grant additional time in thirty (30) day increments for completion of the Audit Report. Should the Government or the United States Probation Office seek to revoke the Defendant's probation based on the Third-Party Auditor's failure to file a timely EMS/CP Final Compliance Audit Report, the Defendant shall have the right to contest the reasonableness of such revocation in the appropriate U.S. District Court.

- (5) The Final EMS/CP Compliance Audit Reports shall present the Audit Findings and shall, at a minimum, contain the following information:
 - (a) Audit scope, including the time period covered by the audit;
 - (b) The date(s) the on-site portion of the audit was conducted;
 - (c) Identification of the audit team members;
 - (d) Identification of the company representatives and regulatory personnel observing the audit;
 - (e) The distribution list for the Final EMS/CP Compliance Audit Report;
 - (f) A summary of the audit process, including any obstacles encountered;
 - (g) Detailed Audit Findings, including the basis for each finding and the Area of Concern identified;
 - (h) Identification of any Audit Findings corrected or Areas of Concern addressed during the audit, and a description of the corrective measures and when they were implemented;
 - (i) Certification by the Independent Third-Party Auditor that the Final EMS/CP Compliance Audit was conducted in accordance with this document and general audit principles.
- (6) Within sixty (60) days from completion of the Final EMS/CP Compliance Audit of a particular facility or vessel, the Defendant shall develop and submit to the United States, for review and comment, an Action Plan for expeditiously bringing the Defendant into full conformance with all applicable laws and regulations and the EMS/CP manual. The Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule. The Defendant may request that the United States permit a brief extension of the time limit stated above on a case by case basis. Such permission shall not be unreasonably withheld.
- (7) The Action Plan shall be reviewed by the designated representative of the United States who shall provide written comments within thirty (30) days of receipt. After making any necessary modifications to the Action Plan based on the comments, the Defendant shall implement the Action Plan in accordance with the schedules set forth therein. Within thirty (30) days after all items in the Action Plan have been completed, the Defendant shall submit a written Action Plan Completion Certification to the United States.

G. NON-COMPLIANCE

- (1) This EMS/CP does not in any way release Defendant from complying with any applicable international conventions and treaties, State or Federal statutes and/or regulations, the ISM Code, or other international maritime conventions or treaties and does not limit imposition of any sanctions, penalties, or any other actions, available under those international conventions and treaties, State or Federal statutes and regulations, the ISM Code, or other international maritime safety conventions or treaties.
- (2) The EMS/CP shall be part of the Plea Agreement and adherence to it will be a condition of probation. Failure to comply with any part of this EMS/CP (including but not limited to refusal to pay valid charges for the Independent EMS Consultant or Third-Party Auditor and failure to provide the Independent EMS Consultant or Third-Party Auditor access to vessels, facilities, personnel or documents) shall be a violation of the Plea Agreement and shall be grounds for the revocation or modification of Defendant's probation. Should the Government or the United States Probation Office seek to revoke or modify the Defendant's probation based on the Defendant's refusal to pay valid charges for the Independent EMS Consultant or Third-Party Auditor and/or its failure to provide the Independent EMS Consultant or Third-Party Auditor access to vessels, facilities, personnel, or documents, and/or as a result of any disagreement regarding any of the provisions of this EMS/CP, the Defendant shall have the right to contest the reasonableness of such revocation before the appropriate U.S. District Court.

H. COMPLIANCE MANAGER/MASTER RESPONSIBILITIES

The Master of any of Defendant's vessels listed in Attachment 1 hereto, with the assistance of the Compliance Manager, shall ensure that timely reports are made to the United States Coast Guard of any non-compliant condition of any of Defendant's operated and/or managed vessels listed in Attachment 1 that calls upon any Port in the United States or sails into any waters under the jurisdiction of the United States. Defendant shall establish that manager enforcement of and employee compliance with the EMS/CP, ISM Code, MARPOL, and all applicable State and Federal safety and environmental statutes and regulations is an important positive factor and that failure to comply with such policies, regulations and laws will be a negative factor in all appropriate personnel evaluations.

I. BOARD OF DIRECTORS

Defendant shall ensure that at least twice yearly its Board of Directors receive and review reports from the Compliance Manager and any applicable report from the

Independent EMS Consultant concerning the implementation of this EMS/CP, including environmental compliance, Environmental Management System implementation, and manager, officer, and crew training. Copies of those portions of the meeting agendas and internal company reports concerning these items shall be included in the reports to the designated representative of the United States and the United States Probation Office.

J. TRAINING REQUIREMENTS

- (1) The Compliance Manager will be responsible for developing training programs to educate and train the Defendant's vessel and shore side employees associated with the operation and management of its vessels. The Compliance Manager may name a Corporate Training Officer to ensure that the requirements of this section are met.
- (2) Training shall occur annually for all employees and be performed by qualified instructors at a training facility before an employee assumes his or her duties. The training shall consist of pertinent sections of this CP, the EMS, and existing marine environmental protection requirements. The training shall include shipboard-related technical and practical information associated with pollution prevention and the operation, maintenance and repair of pollution prevention equipment and systems, and be appropriate for the work responsibilities and department in which an employee works. The training must include discussion of the consequences to the Defendant and its employees for failure to comply with the requirements of this CP, EMS, and existing marine environmental protection requirements.
- (3) Where possible, a basic initial training program shall be provided to vessel employees currently onboard vessels in an effort to promptly mitigate pollution risk and ensure environmental protection. However, such employees must receive the shore side training prior to returning to a vessel on a new contract.
- (4) Additionally, the training shall include instruction regarding:
 - (a) Corporate environmental compliance structure, including the Compliance Manager and contact information.
 - (b) Comprehensive overview of this CP, the EMS, and other marine environmental protection requirements.
 - (c) The reporting system used to report non-compliance.
 - (d) Sanctions and consequences for violations such as remedial training, suspension, termination, and civil and criminal liability.
 - (e) Pollution prevention and minimization programs specifically relating to steward, deck, and engine department procedures and operations.
 - (f) All requirements set forth in the Engineering section of this CP.

- (g) Position specific training in the operation, maintenance and repair of oily water separators, incinerators, oil content discharge monitoring equipment, and other pollution prevention equipment.
 - (h) Procedures for solid and hazardous waste segregation and storage, disposal, and reporting of releases.
 - (i) All other shipboard environmental protection related procedures examined and described in the required initial review.
- (5) All new crewmembers hired to work on Defendant's vessels shall receive training within seven days of beginning to work on board the vessel. Defendant shall maintain documentation onboard each of its operated and/or managed vessels listed in Attachment 1 verifying that all officers and crewmembers working on the vessel have received the required training. Such documentation shall be made available to the Independent EMS Consultant and the United States Coast Guard upon request.
- (6) The Chief Engineer onboard each of Defendant's operated and/or managed vessels listed in Attachment 1 shall prepare independent written verification that all engine room crew members have received the training required by this EMS/CP. All engine room crewmembers shall sign and date a statement acknowledging completion of the training. This written verification, together with the signed acknowledgment, shall be completed semi-annually and maintained in the engine control room of each vessel.

K. ENGINEERING REQUIREMENTS

- (1) Unless otherwise stated, all of the requirements set forth below, if not in contravention of any Class, Treaty or other Flag State requirements, shall be implemented on the vessels listed in Attachment 1 as soon as practicable, as determined by the Compliance Manager and not later than one year from the date of the signing of the plea agreement.
- (2) Bilge Main Cross - Connections
- (a) The Defendant shall immediately notify all of its vessels regarding the prohibition against non-emergency use of cross connections from engineroom bilge mains to the suction piping of larger pumps which may be referred to as the "fire and general service pump" or "fire, bilge and ballast" pump. The message shall state that the usage of these crossovers is similar to bypassing the OWS equipment and strictly prohibited.
 - (b) The deck plates above or near the locations of these cross connections and the valves bodies and associated hand wheels shall be painted international orange. A brightly colored sign with three inch letters shall be permanently fixed nearby - "Bilge System Piping Crossover - Emergency Use Only."

- (c) To prevent unauthorized usage, Chief Engineers shall place numbered seals on these valves.
- (d) The seal numbers shall be tracked in a seal number logbook and explanations shall be given anytime a crossover to the bilge main is opened. Seals shall be used in other areas of the machinery space. The Master of the vessel shall retain the replacement seals in the vessel's safe. He/she will keep an additional log documenting when seals are replaced and their respective numbers. The Compliance Manager will be responsible for ensuring fleet wide that no duplication of seal numbers occur and will have a master tracking document indicating which series were supplied to each vessel.
- (e) If the valves are remotely operated from the engine control room, the control must also be disabled and notice made near the associated push buttons or switches. They shall also be sealed.
- (f) All other bilge suction valves not connected to the bilge main, including independent emergency suctions to the vessel's engine room bilges like those that may be connected to sea water circulating pumps, will be painted brightly and labeled similarly "Emergency Bilge Suction - Emergency Use Only." Their valve wheels will also have a numbered and logged seal capable of breakaway during emergency. Seal numbers shall be kept in the Chief Engineer's official seal log book and explanations given for breakage or replacement.

(3) Blank Flanges

- (a) To prevent unauthorized connections within the engine-room and machinery spaces of Defendant's vessels, every blank flange associated with any piping leading overboard, on systems such as salt water service, main engine raw water cooling or other systems, shall be permanently secured, removed or fitted with numbered seals through the flange bolts to prevent unauthorized connections and discharges. The seals used shall be numbered and records kept in the previously mentioned log.
- (b) The blank flange securing the bilge and sludge transfer system and the shore connection discharge valve at the discharge stations shall also require a numbered seal that will be maintained. Seal numbers shall be kept in the Chief Engineer's official seal log book.

(4) Bilge Sampling and OWS Performance Analysis

- (a) The Defendant agrees within the first year of the probationary period to take samples of the bilge water from 50% of its vessels. The sample shall be taken from the surface of the water of the most commonly used bilge well

within the engineroom -- that is, the bilge well receiving most of the accumulation. The purpose of this collection is to capture a sample that adequately represents the common fluids and contaminants that accumulate. No attempt should be made to collect a clean sample only.

- (b) The samples shall be forwarded to an appropriate lab selected by the Compliance Manager at Defendant's cost for a content analysis. The comparative results of all the analyses shall be used to develop a representative sample of bilge water and its associated contaminants. This representative sample will then be provided to the manufacturer of the predominate oily water separator found onboard Defendant's vessels.
- (c) The Defendant agrees to work cooperatively with the manufacturer to verify the equipment's capability to process such fluids having this content. The Defendant may choose to work with the manufacturer in this verification process and also to develop ways to improve the performance of existing equipment or may explore other separation technologies capable of handling the fluid.

(5) Tank Sounding Log

The Compliance Manager shall ensure the immediate usage of Tank Sounding Log Books on all vessels listed in Attachment 1. Engineroom crewmembers shall be required to sound all waste, sludge, and bilge tanks associated with bilge water, oil wastes, or sludge during each watch for vessels having a manned engineroom or twice daily for those having an unmanned engineroom. The Tank Sounding Log shall be initialed by the crewmember that obtained the reading. The Tank Soundings Log shall be maintained in the engine control room and made available during all inspections and audits required by this agreement.

(6) Fuel Oil / Lube Oil Purifier Settings and Line Breaks

- (a) The Defendant agrees to immediately develop for each vessel a log book relating to fuel oil and lube oil management and to the operation of the fuel oil and lube oil purifiers and for line or piping failures. The shoot interval settings of each purifier will be documented at all times. Any change in the setting must note the date and respective motor controller hours. Any incident involving ships having received poor quality fuel will be noted. References to appropriate receipts shall be made. Any extraordinary operations, such as the need for frequent draining of fuel oil service and settling tanks, excessive water, waxing, compatibility, stratification or other contamination problems, shall be noted and explanations provided for the handling of unburned oils or used filters.

- (b) Any time, any line or component on a fuel, lube, or waste oil system fails, including high pressure lines on diesel engines, a record shall be made and a notation given as to the quantity released and an explanation given as to how the unintended released fluid was handled. Additionally, unintended releases of abnormal quantities of water, salt, fresh, condensate, or cooling, shall also be recorded. The lowest level engineer involved in any of the circumstances previously described will make the entry and provide his or her signature.

(7) Oil-to-Sea Interfaces

- (a) The Defendant agrees to immediately develop for each vessel a log book relating to equipment having oil-to-sea interfaces. Such systems may be oil lubricated stern tubes, bow or stern thrusters, stabilizers, hydraulically operated controllable pitch propellers, and similar equipment whereby the leakage of a sealing component may cause a loss of operating medium into the surrounding waters of the vessel. Any replenishment of oil into the head tanks, operating systems reservoirs or other receivers associated with this equipment shall be logged regardless of quantity. Ingress of water into these systems must also be logged.
- (b) When known, an explanation of the loss shall be provided, along with dates and time and signature. Routine stern tube lube oil loss must be logged and reported to the Compliance Manager immediately on each occasion. The Defendant agrees to remove from employment any Chief Engineer who fails to report these conditions.

(8) Record Keeping

- (a) All Soundings and Logs required by this section shall be maintained onboard the vessel for a period of three years from the date of the final entry.

L. DOCUMENTATION AVAILABLE FOR INSPECTION

The compliance manager shall ensure that all documentation required by this EMS/CP is maintained and available for inspection by the Independent EMS Consultant, Third-Party Auditor, and the United States Coast Guard. The Master of each of Defendant's vessels listed in Attachment 1 hereto, shall maintain on board the vessel, all records required by international conventions and treaties including SOLAS, the ISM Code, and MARPOL and applicable State and Federal statutes and regulations and any additional documents required under this EMS/CP, such as crew training records, and will make these records available to the Independent EMS Consultant, Third-Party Auditor, and the United States Coast Guard upon request. A summary of this information and any explanation where appropriate shall be included in the reports to be submitted to the designated representative of the

United States by the Independent EMS Consultant and Third-Party Auditor.

M. CHANGES IN OWNERSHIP/MANAGEMENT

The parties recognize that during the term of probation, the number and identity of vessels operated, managed, manned and/or controlled by the Defendant that call in the United States may increase or decrease. Any vessel, the operation, management, manning or control of which is assumed by the Defendant, and which calls in the United States shall be subject to the terms and conditions of this EMS/CP. Any vessel removed from the operation, management, manning or control by the Defendant or which stops calling in the United States shall be excluded from the scope of the EMS/CP. Defendant agrees that it will immediately (but in no event later than 21 days following a change) notify the United States of any change in name, flag of registry, recognized organization, ownership or class society of such Defendant's vessels listed in Attachment 1 hereto, and of any vessel the operation, management, manning or control of which is assumed by the Defendant and which calls in the United States. Defendant agrees that this EMS/CP shall remain in effect for all of the aforesaid vessels regardless of changes in the vessels' flag of registry, recognized organizations, name, or class society, so long as the vessels are managed, operated or manned by Defendant. The Defendant shall notify the United States before any vessel is released from the requirements of the EMS/CP due to a change in ownership, management, manning or control, or if such vessels cease calling United States ports.

N. SELF-ENFORCEMENT

Defendant further agrees that it will undertake and implement the necessary procedures to ensure that this EMS/CP is diligently complied with by the officers and crew of each of Defendant's operated and/or managed vessels listed in Attachment 1, as well as by all shore side employees, managers and other employees of the Defendant's subsidiaries, affiliated business entities (owned wholly or partially by the Defendant) and agents of the Defendant engaged wholly or partially in the manning, and/or operation of aforesaid seagoing vessels or contracted to do the same, on the date of sentencing or at any time during the period of probation.

O. REVISIONS/MODIFICATIONS

The requirements of this EMS/CP, including the dates and time periods mentioned herein, shall be strictly complied with. Should Defendant be unable to comply with any of the deadlines, Defendant shall immediately notify the designated representative of the United States in writing of the reason(s) for non-compliance, and propose a revised timetable. The designated representative of the United States, in consultation with the Government, shall then determine as to whether the

revised timetable should be accepted.

P. REPORTS

All reports, documents and correspondence required under this EMS/CP to be sent to the United States shall be sent to the following offices :

- (a) U.S. Attorney's Office
District of New Jersey
ATTN: Thomas R. Calcagni
970 Broad Street, Ste. 700
Newark, NJ 07102

- (b) U.S. Department of Justice
Environmental Crimes Section
ATTN: Joseph A. Poux, Jr.
601 "D" Street, NW
Washington, D.C. 20004

- (c) Environmental Protection Agency
Region II
ATTN: Charles E. Hoffman
Associate Regional Counsel for Criminal Enforcement
Office of Regional Counsel (2 ORC-ARC)
290 Broadway, Room 1671A
New York, NY 10007-1866

- (d) U.S. Coast Guard Commandant (G-PCV)
Office of Vessel Activities
2100 Second St., S.W.
Washington, D.C. 20593-0001
Attn: Designated United States Representative

- (e) U.S. Probation Department
401 Market St., 1st Floor
P.O. Box 3497
Camden, NJ 08101-3497

Defendant has read this EMS/CP carefully and understands it thoroughly. Defendant enters into this EMS/CP knowingly and voluntarily, and therefore agrees to abide by its terms. By its signatures below, the corporate representative agrees that he/she is duly authorized by the corporation's Board of Directors pursuant to the same notarized legal document filed in United States v. MK SHIPMANAGEMENT CO., LTD., CR 06-_____, certifying that the defendant company is authorized to enter into and comply with all of the provisions of this Plea Agreement.

DATED: _____

MK SHIPMANAGEMENT CO., LTD.

By:

MR. SABURO IWAI
Chief Operating Officer

As counsel for the Defendant we represent, we have discussed with our corporate client and its duly authorized representative the terms of this EMS/CP and have fully explained its requirements. We have no reason to doubt that our client is knowingly and voluntarily entering into this EMS/CP.

DATED: 2/10/06

Michael G. Chalos

MICHAEL G. CHALOS, ESQ.
Fowler, Rodriguez & Chalos
Co-Counsel for MK SHIPMANAGEMENT
CO., LTD.

DATED: 2/10/06

Richard Q. Whelan

RICHARD Q. WHELAN, ESQ.
Palmer Biezup & Henderson LLP
Co-Counsel for MK SHIPMANAGEMENT
CO., LTD. *as per authority*

Defendant has read this EMS/CP carefully and understands it thoroughly. Defendant enters into this EMS/CP knowingly and voluntarily, and therefore agrees to abide by its terms. By its signatures below, the corporate representative agrees that he/she is duly authorized by the corporation's Board of Directors pursuant to the same notarized legal document filed in United States v. MK SHIPMANAGEMENT CO., LTD., CR 06-_____, certifying that the defendant company is authorized to enter into and comply with all of the provisions of this Plea Agreement.

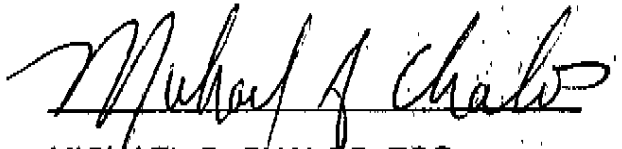
DATED: 2/14/06

MK SHIPMANAGEMENT CO., LTD.

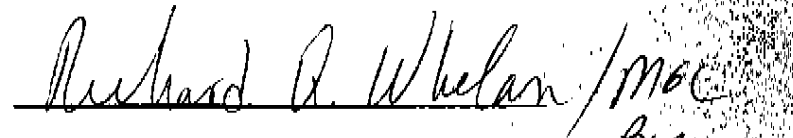
By: 
MR. SABURO IWAI
Chief Operating Officer

As counsel for the Defendant we represent, we have discussed with our corporate client and its duly authorized representative the terms of this EMS/CP and have fully explained its requirements. We have no reason to doubt that our client is knowingly and voluntarily entering into this EMS/CP.

DATED: 2/10/06

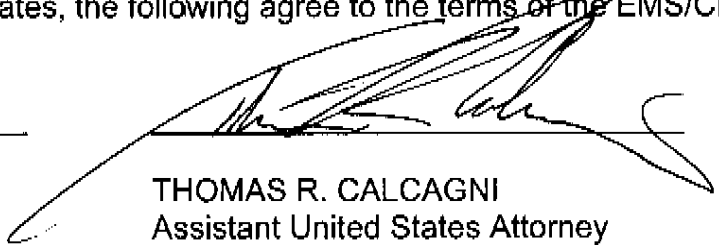

MICHAEL G. CHALOS, ESQ.
Fowler, Rodriguez & Chalos
Co-Counsel for MK SHIPMANAGEMENT
CO., LTD.

DATED: 2/10/06


RICHARD Q. WHELAN, ESQ.
Palmer Blezup & Henderson LLP
Co-Counsel for MK SHIPMANAGEMENT
CO., LTD. *By Anthony*

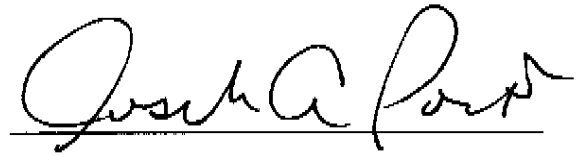
On behalf of the United States, the following agree to the terms of the EMS/CP:

DATED: 2/6/06



THOMAS R. CALCAGNI
Assistant United States Attorney

DATED: 2/9/06



JOSEPH A. POUX, JR.
Trial Attorney
Environmental Crimes Section

ATTACHMENT 1

NUMBER	VESSEL NAME	IMO NO.
1	BIG CROWN	9164615
2	BRIGHT OCEAN	9205952
3	OCEAN BRIDGE	9163465
4	OCEAN SUNRISE	9186766
5	SUNNY OCEAN	9072197
6	WILD JASMINE	9181156
7	BASIC ARROW	9226671
8	MARTORELL	9267675
9	GLOBAL ACE	9140229
10	KN ARCADIA	9235854
11	PRINCE OF TOKYO	9167497
12	PALMELA	9207388
13	SPRING ACCORD	9173018
14	VICTORY ACE	8418291
15	BRILLIANT SKY	9296743
16	PRAIRIE SKY	9073983
17	RADIANT SKY	9296755
18	ANGEL ARROW	9300192
19	MARINA ACE	8610526
20	PHOENIX ACE	8223593
21	PRINCESS ALIEL	9237383
22	ENERGY ROSE	9157507
23	SPEAR FLOWER	9276731
24	RUBIN POWER	9124902
25	ANGEL ACCORD	9266152