



U.S. Department of Justice

United States Attorney  
District of Connecticut

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March 3, 2014

Mr. Thomas Russo, Esq.  
Freehill, Hogan & Mahar LLP  
80 Pine Street  
New York, NY 10005-1759

Re: United States v. ODFJELL ASIA II PTE LTD  
Criminal No.: Information 14 cr 39 (VLB)

FILED  
2014 MAR -3 P 2:24  
US DISTRICT COURT  
HARTFORD CT

Dear Mr. Russo:

This letter confirms the plea agreement entered into between your client, ODFJELL ASIA II PTE LTD (the "defendant" or "ODFJELL"), and the United States Attorney's Office for the District of Connecticut and the Department of Justice Environmental Crimes Section (the "Government") concerning the referenced criminal matter.

THE PLEAS AND OFFENSES

The defendant agrees to waive its right to be indicted and will plead guilty to a one-count Information charging it with knowingly violating 33 U.S.C. § 1908(a).

The defendant acknowledges understanding the nature and elements of the offenses with which the defendant has been charged and to which defendant is pleading guilty. 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 acting within the scope of their employment and for the benefit of the corporation. The elements of Count One (Act to Prevent Pollution from Ships - Failure to Accurately Maintain An Oil Record Book, 33 U.S.C. § 1908(a)) are:**

**First: That the Motor Tanker (“M/T”) *Bow Lind* was a tank ship of more than 150 gross tons, and was registered in a country other than the United States;**

**Second: The defendant was responsible for maintaining the Oil Record Book on the *M/T Bow Lind*;**

**Third: The defendant knowingly failed to fully and accurately maintain an Oil Record Book in which the required operations involving oil, oily mixtures, oily residues, or disposals of bilge waste that had accumulated in machinery spaces were recorded without delay;**

**Fourth: The failure to maintain an accurate Oil Record Book occurred while the *M/T Bow Lind* was in or at a port or terminal of the United States.**

### **THE PENALTIES**

**Defendant understands that the maximum statutory penalties applicable to a corporate Defendant for the count in the Information includes a fine of either Five Hundred Thousand (\$500,000) dollars or twice the gross gain or loss resulting from the unlawful conduct, pursuant to 18 U.S.C. § 3571(c) and (d) (the “alternative fines” statute); a term of probation of five (5) years, pursuant to 18 U.S.C. § 3561(c)(1); and a special assessment of Four Hundred (\$400.00), pursuant to 18 U.S.C. § 3013(a)(2)(B). The defendant agrees to pay the special assessment to the Clerk of the Court on the day of sentencing.**

**Finally, unless otherwise ordered, should the Court impose a fine of more than \$2,500 as part of the sentence, interest will be charged**

**on the unpaid balance of a fine amount not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine pursuant to 18 U.S.C. §§ 3572 (h), (i) and 3612(g).**

**Restitution**

**In addition to the other penalties provided by law, the Court may order the defendant to make restitution. The parties agree that no restitution is due in this case.**

**THE SENTENCING GUIDELINES**

**Applicability**

**The defendant understands that the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence in this case. The defendant agrees that the Sentencing Guideline determinations will be made by the Court, by a preponderance of the evidence, based upon input from the defendant, the Government, and the United States Probation Office.**

**Application of the Sentencing Guidelines**

**The parties agree as follows:**

**The Guidelines Manual in effect on the date of sentencing is used to determine the applicable Guidelines range.**

**The parties agree that Chapter 8 of the United States Sentencing Guidelines Manual governs the case with regard to any payment of restitution, community service, and probation. Regarding determinations of an appropriate fine, however, pursuant to Commentary for U.S.S.G. § 8C2.1, the provisions of § 8C2.2 and § 8C2.9 do not apply to counts for which the applicable guideline offense level is determined under Chapter Two, Part Q (Offenses Involving The Environment). For such cases, § 8C2.10 (Determining the Fine for**

**Other Counts) is applicable on an advisory basis. U.S.S.G. § 8C2.10, in turn, directs the Court to apply the provisions of Title 18, United States Code, Sections 3553 and 3572 to determine the appropriate fine.**

**Plea Agreement Pursuant to Rule 11(c)(1)(C)**

**The defendant and the Government agree, pursuant to Fed. R. Crim. P. 11(c)(1)(C), that the following sentence is a reasonable and appropriate disposition of this case:**

**A. Penalty: The defendant agrees to pay a total criminal penalty of One Million, Two Hundred Thousand (\$1,200,000.00) dollars of which the criminal fine will be Nine Hundred Thousand (\$900,000.00) dollars. The Defendant understands and agrees that this fine is calculated pursuant to the alternative fines statute, 18 U.S.C. § 3571(d), and that the gain occasioned by the offense to which it is pleading was greater than four hundred and fifty thousand dollars.**

**B. Community Service Payment: The defendant agrees to pay a total of Three Hundred Thousand (\$300,000.00) dollars in the form of an organizational community service payment pursuant to §8B1.3 of the Federal Sentencing Guidelines and in furtherance of satisfying the sentencing principles provided for under 18 U.S.C. § 3553(a), as follows:**

**1. The defendant shall pay Three Hundred Thousand (\$300,000.00) dollars to the National Fish and Wildlife Foundation ("NFWF"). The community service payment shall be applied by NFWF to fund projects for the preservation and restoration of the Long Island Sound marine environment.**

**NFWF is a charitable and nonprofit organization established pursuant to 16 U.S.C. §§ 3701-3710. Its purposes include the acceptance and administration of "property . . . to further the conservation and management of fish, wildlife, plants, and other natural resources," 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). NFWF is empowered to "do any and all acts necessary and proper to carry out" these purposes, including, specifically, solicitation, acceptance, administration, and use of "any gift, devise or bequest . . . of real or personal property." 16 U.S.C. § 3703(c)(1), (11). NFWF's Congressional charter mandates that it be governed by a Board of Directors that includes the Director of the United States Fish and Wildlife Service, the Under Secretary of Commerce for Oceans and Atmosphere, and various individuals educated or experienced in fish, wildlife, ocean, coastal, or other natural resource conservation. 16 U.S.C. § 3702(b)(1), (2). NFWF is also required by its charter to submit to Congress annually a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments. 16 U.S.C. § 3706(a), (b).**

**The explicit goal of the defendant's required community service is to fund environmental projects and initiatives designed for the benefit, preservation and restoration of the Long Island Sound marine environment and should build on ongoing conservation efforts in the Long Island Sound. Because the community service payment is designated as community service by an organization, the defendant further agrees that it will not seek any reduction in its tax obligations as a result of its community service payment. In addition, since 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: The defendant shall pay a special assessment for the count of conviction in the amount of Four Hundred (\$400.00) dollars.**

**D. Payments: At the time of sentencing, the defendant agrees to pay the total monetary penalty of One Million Two Hundred Thousand (\$1,200,000.00) dollars specified above. The fine payment is to be made in the form of a check payable to "United States District Court Clerk." The Community Service Payment is to be**

made in the form of a check payable to the “National Fish and Wildlife Foundation” and make reference to the “*M/T Bow Lind* case” with its corresponding court docket number.

**E. Probation:** The parties jointly recommend that the defendant be placed on organizational probation for a period of three (3) years from the date of sentencing pursuant to 18 U.S.C. § 3561(c)(1) and USSG §§ 8D1.1 and 8D1.2. The parties recommend that the terms of probation be as follows:

**1. No Further Violations.** The defendant agrees that it shall commit no further violations of MARPOL 73/78, the Act to Prevent Pollution from Ships, the Clean Water Act, or any other federal, state, or local law, including those laws and regulations for which primary enforcement has been delegated to the state authorities.

**2. Payments.** Payment in full of the monetary amounts set forth herein including all special assessments, fines, and community service.

**3. Environmental Management System Plan.** The defendant agrees to fund and implement the environmental remedial measures set forth in the Environmental Management System Plan (“EMS/P”), attached hereto as Attachment A, during its term of probation, consistent with sentencing policies set forth in USSG §8D1.4. As the EMS/P constitutes a special condition of probation, a violation of the EMS/P is a violation of probation.

**F. Maintenance of Crew:** The defendant agrees to provide full maintenance for certain crewmembers in the District of Connecticut until final disposition of this matter and closely related matters. The parties have previously identified which specific crewmembers will remain in the District of Connecticut and the extent of their maintenance requirements.

**The parties agree that this sentence is sufficient, but not greater than necessary, to achieve the purposes of sentencing in light of the factors set forth under 18 U.S.C. § 3553(a).**

**In accordance with Fed. R. Crim. P. 11(c)(1)(C), if the Court accepts this plea agreement, the Court must include the agreed-upon disposition in the judgment. Pursuant to Fed. R. Crim. P. 11(c)(5), if the Court rejects this plea agreement or the agreed-upon sentencing stipulation, the defendant shall be afforded the opportunity to withdraw its guilty pleas. The defendant understands that it has no right to withdraw its guilty pleas as long as the Court imposes a sentence consistent with the terms of the stipulated sentence. The defendant further understands that if the Court rejects the plea agreement or the agreed-upon sentencing stipulation, the Government may deem this plea agreement null and void.**

#### **Stipulation**

**Pursuant to § 6B1.4 of the Sentencing Guidelines, the defendant and the Government have entered into a stipulation, which is attached to and made a part of this plea agreement. The defendant understands that this stipulation does not set forth all of the relevant conduct and characteristics that may be considered by the Court for purposes of sentencing. The defendant understands that this stipulation is not binding on the Court. The defendant also understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention.**

#### **Corporate Defendant**

**The undersigned corporate officer or representative of the defendant hereby certifies that he is authorized by the defendant corporation to act on its behalf, to plead guilty to the charge alleged in the Information, and to enter into this Agreement, and that a corporate resolution so empowering said officer or representative has been duly made and approved by said corporation. A copy of the resolution will be presented to the court at the entry of the plea in this case. Said**

**defendant corporation has agreed to implement an Environmental Management Systems / Plan, as set forth in Attachment A. The defendant corporation further agrees that such a program is a condition of probation.**

**Information to the Court**

**The parties expressly reserve their rights to address the Court with respect to an appropriate sentence to be imposed in this case, which is the sentence described above.**

**Cooperation**

**As part of this Agreement, the defendant agrees that it will continue to cooperate with the United States regarding any further investigation of this matter.**

**WAIVER OF RIGHTS**

**Waiver of Right to Indictment**

**The defendant understands that it has the right to have the facts of this case presented to a federal grand jury, consisting of between sixteen and twenty-three citizens, twelve of whom would have to find probable cause to believe that it committed the offense set forth in the information before an indictment could be returned. The defendant expressly acknowledges that it is knowingly and intelligently waiving its right to be indicted.**

**Waiver of Trial Rights and Consequences of Plea**

**The defendant understands that it has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent it.**

**The defendant understands that it has the right to plead not guilty or to persist in that plea if it has already been made, the right to a public trial, the right to be tried by a jury with the assistance of**



**counsel, the right to confront and cross-examine the witnesses against it, the right not to be compelled to incriminate itself, and the right to compulsory process for the attendance of witnesses to testify in its defense. The defendant understands that by pleading guilty it waives and gives up those rights and that, if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.**

**The defendant understands that if it pleads guilty, the Court may ask it questions about each offense to which it pleads guilty, and if it answers those questions falsely under oath, on the record, and in the presence of counsel, its answers may later be used against it in a prosecution for perjury or making false statements.**

**Waiver of Right to Appeal or Collaterally Attack Conviction and Sentence**

**The defendant acknowledges that under certain circumstances it is entitled to challenge its conviction and sentence. The defendant agrees not to appeal or collaterally attack in any proceeding, including but not limited to a motion under 28 U.S.C. § 2255, the conviction or sentence imposed by the Court if that sentence does not exceed a three year term of probation subject to both the standard conditions of probation and those delineated in Appendix A and a financial penalty of \$1,200,000, even if the Court imposes such a sentence based on an analysis different from that specified above. The defendant acknowledges that it is knowingly and intelligently waiving these rights. Furthermore, the parties agree that any challenge to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) this waiver.**

**Waiver of Statute of Limitations**

**The defendant agrees that, should the conviction following defendant's pleas of guilty pursuant to this plea agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement may be commenced or reinstated against defendant,**

**notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date the plea agreement is signed.**

### **ACKNOWLEDGEMENT OF GUILT; VOLUNTARINESS OF PLEA**

**The defendant acknowledges that it is entering into this agreement and is pleading guilty freely and voluntarily because it is guilty. The defendant further acknowledges that it is entering into this agreement without reliance upon any discussions between the Government and it (other than those described in the plea agreement letter), without promise of benefit of any kind (other than the concessions contained in the plea agreement letter), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges its understanding of the nature of the offense to which it is pleading guilty, including the penalties provided by law. The defendant also acknowledges its complete satisfaction with the representation and advice received from its undersigned attorney. The defendant and its undersigned counsel are unaware of any conflict of interest concerning counsel's representation of the defendant in the case.**

### **SCOPE OF THE AGREEMENT**

**The defendant acknowledges and understands that this agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to it with respect to any civil or administrative consequences that may result from these pleas of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved. Finally, the defendant understands and acknowledges that this agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving it.**

## **COLLATERAL CONSEQUENCES**

**The defendant further understands that it will be adjudicated guilty of each offense to which it has pleaded guilty and may be deprived of certain rights. The defendant understands that the Government reserves the right to notify any state or federal agency by whom it is licensed, or with whom it does business, of the fact of its conviction.**

## **SATISFACTION OF FEDERAL CRIMINAL LIABILITY; BREACH**

**This Agreement binds only the United States Attorney's Office for the District of Connecticut and the Environmental Crimes Section of the U.S. Department of Justice, and the defendant. As part of this Agreement and solely because of the promises made by the defendant in this Agreement, the government agrees not to criminally prosecute the defendant in the District of Connecticut for any environmental offenses or related offenses involving the *M/T Bow Lind*, 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 of *M/T Bow Lind*, that occurred before the date of this Agreement and are known to the Government at the time of the signing of this Agreement. The defendant understands and agrees that neither this paragraph nor this Agreement limits the prosecuting authority of any other sections or divisions of the U.S. Department of Justice, including the U.S. Attorney of any other judicial district, 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 applies only to crimes committed by the defendant and has no effect on any proceedings against any other**

**defendant not expressly mentioned herein. The government agrees to bring the defendant's cooperation to the attention of other prosecuting offices or others, if any.**

**The defendant understands that if it violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may void all or part of this agreement. If the agreement is voided in whole or in part, defendant will not be permitted to withdraw its pleas of guilty.**

**NO OTHER PROMISES**

**The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all the parties.**

**This letter shall be presented to the Court, in open court, and filed in this case.**

**Very truly yours,**

**DEIRDRE M. DALY  
UNITED STATES ATTORNEY  
DISTRICT OF CONNECTICUT**

**ROBERT G. DREHER  
ACTING ASSISTANT ATTORNEY GENERAL  
ENVIRONMENT & NATURAL RESOURCES  
DIVISION**



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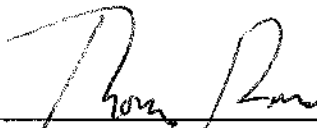
**PAUL H. McCONNELL  
ASSISTANT UNITED STATES ATTORNEY**



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**STEPHEN DA PONTE  
TRIAL ATTORNEY  
U.S. DEPARTMENT OF JUSTICE  
ENVIRONMENTAL CRIMES SECTION  
ENVIRONMENT AND NATURAL  
RESOURCES DIVISION**

**The defendant certifies that it has read this plea agreement letter and its attachment(s) or has had it read or translated to it, that it has had ample time to discuss this agreement and its attachment(s) with counsel and that it fully understands and accepts its terms.**



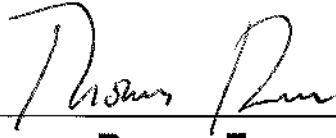
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**Thomas Russo, Esq.  
For the Defendant**

*Mar 3 2014*

**Date**

**I have thoroughly read, reviewed and explained this plea agreement and its attachment(s) to my client, who advises me that it understands and accepts its terms.**



**Thomas Russo, Esq.**  
**Attorney for the Defendant**

*March 3 2014*

**Date**

**STIPULATION OF OFFENSE CONDUCT**

**The defendant ODFJELL ASIA II PTE LTD and the Government stipulate to the following offense conduct that gives rise to the defendant's agreement to plead guilty to the Information:**

**Defendant ODFJELL ASIA II PTE LTD was the Owner and Operator of the *M/T Bow Lind* from October 1, 2011, to November 6, 2012. During this time the vessel visited various places in the United States, including New Haven, Connecticut on or about November 6, 2012, where it was boarded and inspected by the U.S. Coast Guard.**

**The *M/T Bow Lind* is a 26,327 gross ton ocean-going petroleum/chemical tanker ship built in South Korea and completed in 2011. The *M/T Bow Lind* is approximately 577 feet in length, registered in The Republic of Singapore, and has an International Maritime Organization (IMO) number of 9388314.**

**As set forth herein, the Second Engineer of the *M/T Bow Lind*, acting within the scope of his duties as agent and employee of defendant ODFJELL ASIA II PTE LTD, failed to record in the oil record book that he directed and caused the overboard discharge of the vessel's bilge holding tank containing machinery space bilge water from the *M/T Bow Lind* in violation of the Act to Prevent Pollution from Ships (APPS) and the MARPOL Protocol (hereinafter, "MARPOL," a widely accepted international law treaty to which the United States is a party). MARPOL requires that such discharges from a vessel be made through pollution prevention equipment known as an Oily Water Separator ("OWS") and that such discharges contain concentrations of not more**

than 15 parts per million ("ppm") oil.<sup>1</sup> These overboard discharges directed and caused by the Second Engineer of the *M/T Bow Lind* were concealed by misleading entries and omissions made by the Second Engineer in the Oil Record Book, a required log book in which all internal transfers and overboard discharges of machinery space bilge water must be recorded.

In pleading guilty, defendant ODFJELL ASIA II PTE LTD admits that the Oil Record Book failed to disclose prohibited discharges of the bilge holding tank that took place prior to the vessel's arrival in New Haven, CT.

### Overboard Discharges that Bypassed the OWS

Based on the government's investigation, at the direction of the *M/T Bow Lind's* Second Engineer, a portable pump was used to remove

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<sup>1</sup> APPS makes it a crime to knowingly violate MARPOL or a series of similar regulations promulgated pursuant to APPS. 33 U.S.C. § 1908(a). The 1973 International Convention for the Prevention of Pollution From Ships and the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution From Ships, 1973, are commonly referred to as the "MARPOL Protocol" or "MARPOL 73/78." MARPOL established the international standard that discharges of bilge waste must not contain more than 15 ppm oil. Under APPS regulations, each oil tanker of 150 gross tons or more or non-tanker vessel of more than 400 gross tons must maintain a record known as an Oil Record Book. 33 C.F.R. § 151.25.(a). Entries must be made in the Oil Record Book for certain Engine Room operations including the disposal of oil residue or the discharge overboard or disposal otherwise of bilge water that has accumulated in machinery spaces. 33 C.F.R. § 151.25(d). All accidental, emergency or other exceptional discharges of bilge waste or oil must be recorded in the Oil Record Book along with the reason for the discharge. 33 C.F.R. § 151.25(g). Each of these Engine Room operations, including the overboard discharge of bilge waste, is required to be fully recorded without delay in the Oil Record Book. 33 C.F.R. § 151.25(h). The entries are to be signed by the person or persons in charge of the operation and each completed page must be signed by the Master of the vessel. 33 C.F.R. § 151.25(h). These regulations apply to foreign-flagged ships when they are in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States. 33 C.F.R. § 151.09. It is widely known within the maritime industry that the U.S. Coast Guard regularly inspects the Oil Record Book during port state inspections to determine compliance with U.S. law and the MARPOL Protocol and to assure that vessels are not an environmental threat to U.S. ports and waters.



**bilge water from the Bilge Holding Tank and pump it to the vessel's sewage tank. The bilge water was then discharged overboard through the vessel's sewage system discharge piping. This involved running a length of hose from the sewage tank down through the engine room to the Bilge Holding Tank below. These prohibited overboard discharges of bilge water bypassed the OWS (required pollution prevention equipment) and took place on October 7, 2011, July 29, 2012, and October 16, 2012.**

**In order to create a record to account for the bilge water that was transferred to and discharged through the sewage system in a prohibited manner, the *M/T Bow Lind's* Second Engineer ordered lower ranking crew members to fill the empty Bilge Holding Tank (once the bilge water transfer to the sewage tank was completed) with a mixture of fresh water and sea water for the purpose of masking the earlier prohibited discharges.**

**In pleading guilty, defendant ODFJELL ASIA II PTE LTD admits that the Oil Record Book maintained onboard the *M/T Bow Lind* was inaccurate because it contained misleading and incomplete entries upon arrival in New Haven, CT. Specifically, it failed to record the overboard discharge of the bilge holding tank without passing through the OWS.**

**Based upon the government's investigation, no evidence has been developed that the Captain of the *Bow Lind* or Odfjell shore side personnel knew, condoned or instructed that the above mentioned discharge of the bilge holding tank took place or that the Oil Record Book was inaccurate, misleading or incomplete. The parties agree that at the time of the discharges Odfjell Asia II PTE had an existing extensive environmental management system, but it did not reveal the misconduct in this case. In pleading guilty, ODFJELL ASIA II PTE agrees to take responsibility for the conduct of the Second Engineer based upon the doctrine of *respondeat superior*.**

**The written stipulation above is incorporated into the preceding plea agreement. The defendant and the Government reserve their right to**

**present additional relevant offense conduct to the attention of the Court in connection with sentencing.**

**ATTACHMENT A**  
**Environmental Management System/Plan (EMS/P)**

**United States v. Odfjell Asia II Pte Ltd.**

**The following standards and requirements for an Environmental Management System/Plan (EMS/P) have been prepared pursuant to the Plea Agreement between Odfjell Asia II Pte Ltd. (hereinafter "OA II") and the United States (hereinafter "Government") filed in the United States District Court for the District of Connecticut. Compliance with all of the standards and requirements of the EMS/P is an essential term of the Plea Agreement.**

**The EMS/P applies to all vessels manned and technically managed) by OAIL under its Safety Management System calling on a port in the USA during the probationary period ("covered vessels") to further ensure compliance 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) The EMS/P is not intended to replace the ISM Code, or any other applicable international legal requirement or United States statute and regulation. The purpose of this EMS/P is to (i) enhance OAIL's already existing Environmental Management System ("EMS") and to (ii) augment the requirements of existing law by increasing and improving inspections, reviews, and audits of the covered vessels as more fully described below, shoreside**

**facilities, and operations involving said vessels; increase training of all of OA II personnel involved with said vessels; amend 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 Connecticut, the United States Attorney's Office for the District of Connecticut, 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 OA II is following the requirements of this EMS/P and that any of its covered vessels comply with all maritime environmental requirements established under applicable international, flag state, and port state law and an 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, OAII shall designate a senior corporate officer as Corporate Compliance Manager (hereinafter "CCM") who shall report directly to the Senior Vice President Ship Management, OA II shall provide the name of the CCM to the United States. The CCM shall be responsible for coordinating with the Independent EMS/P Consultant (hereinafter "IC"), 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 OA II managed vessels (i.e. operated vessels), 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 IC and the United States. All reports required under this EMS/P shall be reviewed by the CCM.**

- (2) OA II shall enhance procedures and reporting system that requires and enables all officers, crewmembers, and shoreside personnel involved in the manning and management of OA II covered vessels, to notify the CCM of all violations of any applicable environmental requirements or other requirements of this EMS/P and to cooperate fully with the IC and the United States in carrying out their reviewing, auditing and oversight functions required by applicable law and this EMS/P. OA II agrees to establish a procedure that makes failure to notify the CCM of any violations of any applicable environmental requirements and failure to cooperate fully with the IC and the United States in carrying out their auditing and oversight functions required by applicable law and this EMS/P, grounds for reprimand up to and including dismissal. OA II agrees not to retaliate against any officer, crewmember, or shoreside personnel involved in the manning, management or operation of OAll covered vessels making any such report.**
- (3) The CCM shall be authorized to access all records and personnel regarding all covered vessels subject to the EMS/P for the purpose of ensuring compliance with the EMS/P. The CCM shall be authorized to implement all requirements of the EMS/P on all vessels subject to the EMS/P. The CCM shall ensure that audits and surveys are carried out as required, that all documents are properly maintained and that reports are made on a timely basis as required by this EMS/P to the U.S. Probation Office, IC, the designated representative of the Coast Guard, and Department of Justice. The CCM position will be filled by an**

**individual(s) with maritime vessel operational background, who possesses auditing experience and is familiar with the requirements of this EMS/P, and is knowledgeable about U.S. and international maritime environmental laws and regulations.**

**CCM Responsibilities:**

**(a) Development and Maintenance of Effective Training Programs**

**-To the extent not already completed, the CCM will be responsible for and authorized to appoint a training Manager responsible for the development of training programs to educate and train n OA II employees of their environmental commitment, the requirements of the EMS/P, the policies and procedures for complying with the EMS/P, and the possible consequences to OA II and to individuals for failure to comply with environmental regulations.**

**-Provide environmental consultants and contractors of OA II with documents and training to make them aware of the EMS/P.**

**(b) Auditing and Compliance Assessment**

**-Ensure that the IC conducts the review and audits required by the EMS/P and that the reports as described in this EMS/P are prepared.**

**(c) Fleet Reviews**

**-Supervise annual reviews of the environmental compliance programs to promote the adoption of best practices".**

**(d) Reporting of Non -Compliance by Employees and Crew Members**

**-Establish a means by which employees may report (anonymously if the employee so desires) issues of non-compliance with this EMS/P and any other procedure, policy, or regulation associated with environmental protection.**

### **C. MASTER AND CHIEF ENGINEER**

**The Master of each of OA II vessel subject to this EMS/P shall ensure that prompt reports are made to the CCM (who must in turn make a report to the USCG) of any major non-compliant condition of his/her vessel.**

**(1) The Chief Engineer on board all vessels subject to this EMS/P shall perform the following duties regarding this EMS/P:**

- To daily measure, monitor and manage engine room generated wastes;**
- Report to the Master and cooperate with OAI to resolve environmental concerns, such as inoperative or ineffective pollution prevention equipment and document all efforts to do so in a log that is available for review and audit at all times.**

### **D. INDEPENDENT EMS/P CONSULTANT AND ENVIRONMENTAL AUDITS**

- (1) No later than thirty (30) days following the District Court's final imposition of sentence in United States v. Odfjell Asia II Pte Ltd., OA II shall nominate three candidates for the IC that meet the qualifications below to conduct an Initial Environmental Review, and a Report of Findings for all of OA II operations as defined below. The United States will notify OA II in writing of which IC is acceptable. If none of the proposed candidates are acceptable, OA II will supply an additional candidate.**
- (2) Qualified candidates for the IC 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 OA II to achieve and maintain compliance in respect to OA II seagoing vessels. The IC shall also have sufficient expertise and competence to assess whether OA II has an adequate Environmental Management System in place to assess regulatory and EMS/P compliance, to correct non-compliance, and to prevent future non-compliance, OA II and the United States acknowledge that the functions of the IC may, by mutual agreement, be fulfilled by one or more individuals.**

- (3) The IC must not directly own any stock in OA II, any of its subsidiaries, affiliated business entities (owned wholly or partially by OA II) or any agents of OA II, and must have no other direct financial stake in the outcome of duties conducted Pursuant to this Plea Agreement The IC 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 OA II has any other contractual relationship with the IC, both OA II and the IC shall disclose to the United States such past or existing contractual relationships.**
- (4) If the United States determines that the proposed IC does not reasonably meet the qualifications set forth in the previous paragraphs, or that past or existing relationships with the IC would affect the IC's ability to exercise the independent judgment and discipline required to conduct the EMS/P review and evaluation, such IC shall be disapproved and another IC shall be proposed by OA II within thirty (30) days of OA II receipt of the United States' disapproval.**



- (5) During the first year of probation, the IC shall conduct an Initial Environmental Review of OA II operations shoreside and 5 of the covered vessels (covered vessels to be audited hereinafter “audited vessels”) while the vessels are underway and operating on voyages of short duration (4 days or less). . OA II and the IC shall coordinate any underway inspections to accommodate, as much as practicable, the vessels’ operations and schedule. The Initial Environmental Review shall be performed to ascertain and evaluate various aspects of the audited vessels: their systems, equipment and components; current practices whether documented or not; and the knowledge, skills, and abilities of ship and shoreside personnel as they relate to the requirements of this EMS/P, and other maritime environmental protection requirements. The IC shall also conduct a second set of audits of 3 covered vessels , but not the office, under the same circumstances as in the initial review, during the second year of probation.**
- (6) The Initial Environmental Review may be considered as a discovery action in that its purpose is to review all areas of the operations 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 the classification society, port or flag state. The results of the Initial Environmental Review will be used to enhance OA II’s EMS.**
- (7) The Initial Environmental Review shall meet the following specific requirements:**

- (a) It shall assess all oily waste streams developed from any system, equipment and components found in each machinery space on board the audited 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 relevant mechanical engine room components found aboard the audited 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 developed during normal operations. To assess the performance of the OWS, the auditor shall conduct an operational test using the normal tank or bilge well supply as would be used in normal operations. The supply tank or bilge well must not be diluted. It will include an evaluation of the capacities for all tanks or containers associated with the management of sludge, bilges and oily wastes or other Wastes. It will include an evaluation of documentation tracking, maintenance and repair, and modifications of all pollution prevention equipment, and**

**notification of equipment failure to the CCM or other shoreside personnel.**

- (c) It shall assess each audited 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.**

**It shall assess the adequacy of the policy, procedures and current practices dealing with engine room oily waste in order to prevent pollution.**

- (d) It shall assess the ability of the crewmembers of the audited vessel's to create, devise or implement an unauthorized process to discharge engine room oily water waste**

- (e) While on board, the IC shall assess the adequacy of the audited vessel's responsible crewmembers to maintain the following records and shall include a comparative analysis (against each other where possible) of the following records:**

- (i) Oil Record Book part I**
- (ii) Engine room Alarms,**
- (iii) Engine room tank sounding logs**
- (iv) Personal work records**
- (v) Maintenance records,**
- (vi) Vendor service records,**
- (vii) Bilge waste and sludge receipts,**
- (viii) Wastewater Discharge Log,**
- (xi) Oil to Sea Equipment Interface Logs,**
- (xii) Content Monitor (OWS) calibration logs,**
- (xv) Training records,**
- (xvii) Port state Inspection Documents, and**
- (xviii) SMS or SQE Audit documents**

- (f) 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) Expired boiler and engine chemicals,**
  - (v) Used boiler and engine chemicals,**
  - (vi) Contaminates fuels,**
  - (vii) Used Oil and greases,**
  - (viii) Transformer oils,**
- (g) It shall assess and evaluate documentation containing the certifications that the audited vessel's officers understand the requirements of this EMS/P. The understanding of this EMS/P is a part of the familiarization process and is signed by the officer and his superior**
- (h) 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 CCM and designated persons, and shall review such communications.**
- (i) It shall assess the frequency and adequacy of, through interviews of crewmembers, shipboard pollution prevention and environmental protection meetings and training.**

- (j) 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.**
- (k) It shall assess the adequacy of existing methods for employees 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 shore side personnel.**
- (l) It shall assess the policy and procedures, to ensure that OA II suppliers, technicians, and other non-employees follow OA II onboard requirements regarding pollution prevention and environmental protection.**
- (m) It shall assess the policy, procedures, and current practices used to manage the existing seal tracking and valve locking program, including the storage of scale and preventing the use of duplicate seals.**
- (n) It shall assess the policy, procedures, current practices, and equipment related to Engine Room Oil Transfer Procedures, including sludge discharges, conditions of hoses, connections and transfer equipment, and shall include reviews of Declarations of inspections.**
- (o) It shall assess the policy, procedures, current practices, and equipment used to handle emergency releases of bunkers on deck or fuel oil within machinery spaces of vessels, including a review of the Shipboard Oil Pollution Emergency Plan and evaluation of personnel performing such duties.**

**(8) At the conclusion of the Initial Environmental Review, but in no event later than twelve (12) months following the appointment date of the IC, the IC shall prepare a Report of Findings. If the IC believes that additional time is needed to analyze available information, or to gather additional information, or to complete the Report of Findings, OA II may request that the Government grant the IC such additional time, as required, which request shall not be unreasonably denied. If necessary, the Government may grant additional time in thirty (30) day increments for completion of the Report of Findings. The Report of Findings shall be provided, to OA II and the United States. Based on the Report of Findings, OA II shall enhance its EMS as described below. The IC shall conduct a second audit using the above criteria during the second year of probation in order to ascertain if OA II has continued to implement the EMS system and whether the audited vessels are in compliance with environmental requirements.**

**Any audit conducted during the period of probation under this EMS/P shall be based solely on the terms of this EMS/P as incorporated into the EMS.**

#### **E. ENVIRONMENTAL MANAGEMENT SYSTEM**

**(1) The CCM shall be responsible to enhance the existing EMS that is based upon the ISO 14001 /2004 standards. The EMS will include the following core requirements: Environmental Policy:**

**The EMS is based upon a documented and clearly communicated policy. This policy set out the OA II 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 EMS/P;**
- (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 commitment to sharing information with external stakeholders on environmental performance.**

**(2) Communication of Environmental Requirements:**

**The EMS will provide a means to identify, explain, and communicate all environmental requirements related to the discharge of engine room oily waste, and any additional best practices or industry norms which OA II may choose to adopt, to OA II employees. The EMS will also specify procedures for incorporating changes in engine room operations related to engine room oily waste or environmental requirements related to engine room oily waste.**

**(3) 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 EMS/P;**
- (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**

**(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 changes agreed with IC or Classification Society (DNV).**

**(4) Structure, Responsibility and Resources:**

**OAll 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 tasks and responsibilities of all vessel and shoreside personnel involved with the operation of the covered vessels The EMS will indicate how they and other corporate personnel will be held accountable for achieving and maintaining compliance with the EMS and other marine environmental protection requirements. The EMS will also establish procedures for receiving and addressing concerns raised by OA II employees and others regarding environmental performance and compliance.**

**(5) Operational Control:**

**The EMS will identify and provide for the planning and management of OA II engine room oily waste operations and activities with a view to achieving the EMS/P objectives and targets. For example, engine room machinery space maintenance and repair will be an important aspect in achieving and maintaining compliance and enhancing environmental performance.**

**(6) Corrective and Preventive Action and Emergency Procedures:**



- (a) OA II will maintain documented procedures for preventing, detecting, investigating, initiating corrective action, and reporting any occurrence that may affect the organizations ability to achieve the EMS/P 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/P, or other marine environmental protection requirements. Examples of such situations include incinerator or oily water separator malfunctions, overflow of tanks within machinery spaces, fuel oil, lube oil, , operator errors and other accidental releases**
  
- (c) The EMS must also contain 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.**

**(7) Training, Awareness and Competence:**

**The EMS must establish procedures to ensure that all OA II personnel whose job responsibilities affect the ability to achieve the EMS/P 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 this EMS/P, and other marine environmental protection requirements.**

**(8) Organizational Decision-making and Planning:**

**The EMS must describe how these elements will be considered in the OA II overall decision-making and planning, in particular, decisions on capital improvements, training programs, and vessel operations, maintenance, and repair activities.**

**(9) 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 IC, auditors and port and flag state personnel.**

**(10) 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/P 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/P,**

**(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 stem tubes, thrusters or pitch propeller systems**

- (c) The EMS will identify shoreside and vessel individuals having environmental performance, risk reduction, and regulatory compliance responsibilities and shall also specify responsibilities of 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 or refer to potential consequences for departure from specified operating policies and procedures, including possible disciplinary action, 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 EMS/P, 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 engine room oily waste releases, with a primary emphasis on vessel engine room operations, systems, equipment and components**
  
- (j) The EMS will identify the types of records developed and maintained in support of the EMS/P such as progress reports, audit reports, 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 OA II 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.**

#### **F. COURT APPOINTED MONITOR**

**As part of the EMS/P, OA II agrees to pay for a Court Appointed Monitor (hereinafter "Monitor") that will report to the Court and the United States during the entire period of probation. The Monitor can, at OA**

**II's option, serve concurrently in the additional capacity of Third Party Auditor (hereinafter "TPA") under the terms of this Agreement. Within thirty (30) days of the entry of the imposition of sentence OA II will submit a list of three qualified candidates for the Monitor from which the United States will select one of the candidates. In the event that the United States does not find one of the candidates satisfactory, or if the United States does not find the work of the Monitor satisfactory, at any time they may request OA II to supply additional candidates. Further, if an agreement cannot be reached regarding the selection, the decision shall be left up to the Court. The Monitor must have staff with the following experience:**

**(a) Expertise and competence in the regulatory programs under United States and international marine safety and environmental laws; expertise and competence to assess whether OA II has adequate management systems in place to ensure regulatory compliance, correct non-compliance, and prevent future non-compliance; and demonstrated capability to evaluate OA II's required effort and commitment in satisfying the requirements of this EMS/P and the EMS. OA II shall ensure that the Monitor is provided all reports and notifications as established in this plan.**

**(b) The Monitor shall be assigned the following tasks and responsibilities and provide written submissions to the Court as set forth below:**

**-Review the relationship between OA II and the IC and TPA and evaluate the adequacy of measures taken to ensure that the IC and TPA act with independence.**

**-Conduct a review and submit an annual report to the U.S. Probation Office, OA II, designated representative of the Coast Guard, and the Environmental Crimes Section, United States Department of Justice regarding each of the audits conducted by the IC and TPA pursuant to the Plea Agreement and the EMS/P. The Monitor's reports shall provide**

**a summary of the findings regarding the adequacy of any audits required by this EMS/P and adequacy of recommendations for change, as found necessary.**

**-The annual report shall also include and address any other information that the Monitor is aware of which pertains to OA II's capabilities to meet the objectives of this EMS/P or any other marine environmental protection requirements.**

**-All known inadequacies of the IC, the TPA or with respect to OA II performance whether personnel based or related to any of its covered vessels, systems, equipment, or components shall be reported in the annual report.**

**-If the Monitor receives information regarding a direct violation of any existing marine environmental protection requirement or requirement of this EMS/P, the Monitor must immediately report the occurrence to the U.S. Probation Office and to the United States. At any time during the probationary period the Monitor may inspect or investigate any aspect of the IC or TPA activities as they relate to the requirements of this plan or with respect to OA II operations, and shall be provided full access to all records, audit personnel, vessels and shore side facilities as is necessary to perform its duties.**

**-Provide any additional reports, in both electronic and hard copy form, to the U.S. Probation Office, OAI; designated representative of the Coast Guard and the Environmental Crimes Section, United States Department of Justice, as requested by the Court or as appropriate and to include inadequacies in the audit process, violations of the terms and conditions of the EMS/P and any other findings of significant problems or deficiencies.**

## **G. ENVIRONMENTAL MANAGEMENT SYSTEM**

- (1) Within six (6) months of receiving the Report of Findings on the Initial Environmental Review from the IC, OA II shall enhance its existing EMS as per the requirements of this EMS/P. OAII will develop a separate schedule to ensure proper implementation of this EMS/P. If OA II believes that additional time is needed to analyze available information or to gather additional information to enhance the EMS, OA II may request that the Government grant it such additional time as needed to enhance the EMS, which request shall not be unreasonably denied. If necessary, the United States may grant additional time in thirty (30) day increments for completion of the enhancement of the EMS.**
- (2) OA II shall submit a proposed final EMS to the CCM, who will provide it to the the IC and the United States immediately upon its completion. The IC and the United States shall provide comments on the proposed EMS within ninety (90) days of receipt unless additional time for review is requested in writing. OAII shall submit a supplement to the EMS or a written response, as appropriate, within sixty (60) days of receipt of the comments. The enhancement of the EMS is subject to final approval from the United States, which approval shall not be unreasonably withheld**
- (3) All enhancement elements of the EMS I shall be fully implemented no later than nine (9) months following final approval by the United States. Upon receipt of final approval, OA II shall immediately commence implementation of the EMS in accordance with the schedule established by this EMS/P. OA II shall submit reports to the designated representative of the Coast Guard, and the Environmental Crimes Section, United States Department of Justice beginning no later than one hundred twenty (120) days following the publication of the Report**

**of Findings by the IC, regarding the status of the enhancement of the EMS and the results of the Review and evaluation of OA II operations or audits conducted. These reports shall be made on an annual basis.**

#### **H. FINAL EMS/EMS/P COMPLIANCE AUDIT**

**Beginning no later than twelve (12) months prior to the end of probation, OA II shall arrange for, fund and complete a Final audit of the EMS/P as incorporated into the EMS for 2 of the covered vessels while the vessels are underway. (this next piece is repetitive...see below) to ensure compliance with the EMS/P. The audits are to be conducted by the TPA, to verify compliance with applicable environmental laws and regulations and the requirements of the terms of the EMS/P as they enhance the EMS . . OA II and the TPA shall coordinate the underway examinations to accommodate, as much as practicable, the vessel's operations and schedule. These underway examinations will be conducted, to the extent practical, on voyages of short duration (i.e. four (4) days or less). The TPA will have full access to OA II records, employees and officers at all times. During this final audit phase OA II shall immediately advise the TPA of any issue that comes to its attention that adversely impacts the audited vessels' compliance the EMS/P as it enhances the EMS.**

**(1)The TPA will be certified by the American National Standards Institute -Registration Accreditation Board or will have compatible credentials and experience in performing EMS/EMS/P audits. Selection of the TPA is subject to the same conditions identified in Section C above regarding selection of the IC. Selection of the TPA will be approved by the United States. The United States will notify OA II in writing of its approval or disapproval as expeditiously as possible.**



- (2) The Final EMS Compliance Audit (“Final Audit”) shall be based upon this EMS/P and conducted, as much as is practicable under the circumstances, in accordance with the principles set forth in ISO 14001. The Final Audit shall assess conformance with the elements covered in the Initial Environmental Review, with all additional enhancement presented in the EMS and with the additional requirements of this EMS/P. Designated United States representatives may participate in the audits as observers at Government expense. OA II shall make timely notification to the United States regarding audit scheduling in order to make arrangements for observers to be present.**
- (3) The TPA shall deliver the audited vessel reports to the appropriate company official upon completion. In addition, the TPA will deliver an Audit Report to the U.S. Probation Office, designated representative of the Coast Guard, and Environmental Crimes Section, United States Department of Justice within thirty (30) days after the completion of each audit. If the TPA believes that additional time is needed to analyze available information or to gather additional information, OA II may request that the Government grant the TPA 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.**
- (4) The Final Audit Reports shall be premised on the requirements of this EMS/P 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 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 TPA that the Final Audit was conducted in accordance with this EMS/P and general audit principles.**
- (5) Within sixty (60) days from completion of the Final Audit of the audited vessels, OA II shall develop and submit to the United States, for review and comment, an Action Plan for expeditiously bringing OAll into full conformance with this EMS/P. The Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule. OA II 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.**
- (6) The Action Plan shall be reviewed by the United States which shall provide written comments within thirty (30) days of receipt. After making any necessary modifications to the Action Plan based on the comments, OA II 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,**

**OA II shall submit a written Action Plan Completion Certification to the United States.**

**I. NON-COMPLIANCE**

- (1) This EMS/P does not in any way release OAI 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/P 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/P (including but not limited to refusal to pay valid charges for the IC or TPA and failure to provide the IC or TPA access to vessels, facilities, personnel or documents) may be a violation of the Plea Agreement and may be grounds for the revocation or modification of OA II probation. Should the United States or the U.S. Probation Office seek to revoke or modify OA II probation based on OA II refusal to pay valid charges for the IC or TPA and/or its failure to provide the IC or TPA access to vessels, facilities, personnel, or documents, and/or as the result of any disagreement regarding any of the provisions of this /EMS/P, OA II shall have the right to contest the reasonableness of such revocation before the appropriate U.S. District Court.**

**J. CCM/VESSEL MASTER RESPONSIBILITIES**

- (1) The Master of any of OA II vessel covered under this EMS/P shall ensure that timely reports are made to the CCM and vessel Superintendent of any non-compliant condition of this EMS/P for**

**any covered vessel. OAI shall establish that enforcement of and employee compliance with the EMS/P, 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.**

**(2) BOARD OF DIRECTORS**

**OA II shall ensure that at least yearly its Board of Directors or equivalent governing structure receive and review reports from the CCM and any applicable report from the IC concerning the implementation of this EMS/P, including EMS enhancement 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 United States.**

**K. TRAINING REQUIREMENTS**

**(1) The CCM will be responsible for appointing a Training Manager for developing training programs to educate and train OA II vessel and shoreside employees associated with the operation and management of its vessels, The CCM may name a Corporate Training Officer to ensure that the requirements of this section are met.**

**(2) Training shall be implemented for all employees and be performed by internal/external qualified instructors at a training facility before an employee assumes his or her duties. The training shall consist of pertinent sections of this EMS/P, 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. Ship specific equipment training to be done onboard in addition to the general EMS/P training received at the shoreside facility. The training will include discussion of the consequences to OA II and its employees for failure to comply with the requirements of this EMS/P, EMS, and existing marine environmental protection requirements.**

- (3) Where possible, a basic initial training program, For instance computerised training, 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 CCM and contact information.**
  - (b) Comprehensive overview of this EMS/P, 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 engine department procedures and operations.**

**(f) All requirements set forth in the Engineering section of this EMS/P.**

**(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). All other shipboard environmental protection related procedures examined and described in the required initial review.**

**(5) All new crewmembers hired to work on OA II vessels shall receive training within seven (7) days of beginning to work on board the vessel. OA II shall maintain documentation onboard each of it's operated and/or managed vessels verifying that all officers and crewmembers working on the vessel have received the required training. Such documentation shall be made available to the IC and the United States upon request**

**(6)The Chief Engineer or the Captain onboard each of the covered vessels shall confirm, through a familiarization checklist that all engineroom crew members have received the training required by this EMS/P. and such checklist will be signed and dated by the crewmember acknowledging completion of the training. The training shall be done once during the contract period. .**

## **L. ENGINEERING REQUIREMENTS**

**(1) Unless otherwise stated, all of the requirements set forth below, if not in contravention of any Classification Society, Treaty or other Flag State requirement, shall be implemented on the covered vessels under this EMS/P as soon as practicable, as**

**determined by the CCM and not later than one year from the date of the signing of the plea agreement.**

**(2) Bilge Main Cross -Connections:**

- (a) OA II shall immediately notify all of its vessels regarding the prohibition against non-emergency use of cross connections from engine room 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 reading, "Bilge System Piping Crossover-Emergency Use Only."**
  
- (c) To prevent unauthorized usage, the Chief Engineers, or the vessels crew under the Chief Engineer's supervision shall place numbered seals on these valves.**
  
- (d) The seal numbers shall be tracked in an official seal number log (i.e electronically) and explanations shall be given any time a crossover to the bilge main is opened. The Master of the vessel shall be responsible for the safekeeping and control of the replacement seals . The CCM 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 properly secured 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 suction 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 official seal number log (i.e electronically) and explanations given for breakage or replacement.**

**(3) Blank Flanges:**

**(a) To prevent unauthorized connections within the engine room and machinery spaces of the covered 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 as may be reasonable 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 vessels official seal number log (i.e. electronically).**



**(4) Tank Sounding Log:**

**(a) The CCM shall ensure the immediate usage of Tank Sounding Logs (e.g. electronically) on all vessels, Engine room 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 engine room or twice daily for those having an unmanned engine room. 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 or electronically in the vessels type approved Planned Maintenance System (PMS) and made available during all inspections and audits required by this agreement.**

**(5) Oil-to-Sea Interfaces:**

**(a) OA II agrees to keep for each covered vessel a log (i.e. electronically) relating to equipment having oil-to-sea interfaces. Such systems are identified to be oil lubricated stern tubes, bow thrusters and hydraulically operated controllable pitch propellers 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 stem tube lube oil loss must be logged and reported to the CCM immediately on each occasion..**

**(6) Record Keeping:**

**All Soundings and Logs (i.e. electronically) required by this section shall be maintained onboard in the vessels log system for a period of three years from the date of the final entry.**

**M. DOCUMENTATION AVAILABLE FOR INSPECTION**

**The CCM shall ensure that all documentation required by this EMS/P is maintained and available for inspection by the let TPA, and the United States. The Master of each OA II vessel under this EMS/P, 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 Federa1 statutes and regulations and any additional documents required under this /EMS/P, such as crew training records, and will make these records available to the IC, TPA, 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 United States by the IC and TPA.**

**EMS/PEMS/PEMS/PEMS/PEMS/P**

**A vessel that comes under the technical management of OAll during the period of probation and calls in the United States would be included as covered vessels under the EMS/P. Any covered vessel that is sold by OAll or no longer under the technical management of OAll would be released from the requirements of this EMS/P.**

**This can be fine tuned**

**N. SELF-ENFORCEMENT**

**OA II further agrees that it will undertake and implement the necessary procedures to ensure that this EMS/P is diligently complied with by the officers and crew, as well as by all shore side employees, on the date of sentencing or at any time during the period of probation.**

**O. REVISIONS/MODIFICATIONS**

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

**P. REPORTS**

**All reports, documents and correspondence required under this EMS/P to be sent to the United States shall be sent to the Environmental Crimes Section, the District of Connecticut U.S. Attorney's Office, and the U.S. Coast Guard Headquarters Office of Investigations (CG-INV).**

FILED

2014 MAR -3 P 2: 24

US DISTRICT COURT  
HARTFORD CT

**ODFJELL ASIA II PTE LTD.**

Minutes of a Meeting of  
Board of Directors and Resolution

Date: December 30th, 2013

Present: Tore Jakobsen      Chairman  
          Tor Johansen        Board member

In relation to a Plea Agreement arising from criminal actions pending in the United States District Court for the District of Connecticut captioned: United States v. Odfjell Asia II Pte Ltd., Crim. No. 14 - 39 (VLB), and upon motion duly made, seconded and unanimously carried;

**IT IS RESOLVED:**

THAT, the terms and conditions of the attached Plea Agreement between the United States of America and Odfjell Asia II Pte Ltd. (hereinafter the "Company") having been explained to the Board by counsel, and the Board understanding those terms and conditions, and all corporate formalities required for the authorizations contained herein having been observed, the Company hereby assents to those terms and conditions and agrees to enter into the said written Plea Agreement; and

**IT IS FURTHER RESOLVED:**

THAT, the Company acknowledges, with the consent of its Board of Directors; it is and has been represented in this matter by its counsel Mr. Thomas M. Russo, Esq. and/or Mr. Michael Fernandez, Esq., and/or Michael E. Unger, Esq., all of whom are attorneys with the firm Freehill, Hogan & Mahar LLP.; and THAT the Company, by its Board of Directors, acknowledges that it is satisfied by the representation of its attorneys in this matter and has been fully informed and counseled by its attorneys in respect to the



- (iii) appear before the Court at the time of sentencing, to allocute on behalf of the Company, and to do any and all things necessary to plead to the charge against the Company and to accept the sentence imposed by the Court on behalf of the Company, and to deliver payment of any and all fines and special assessments, as required; and
- (iv) do any and all other things necessary or incidental for the execution and entry of the plea and sentence.

Executed this 30th day of December, 2013.



\_\_\_\_\_  
(Name) Tore Jakobsen  
(Title) Chairman

  
\_\_\_\_\_  
(Name) Tor Johansen  
(Title) Board member