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2010 SEP 23 PM 1:01

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8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION 9**

10 In re the Matter of:

) Docket No. CWA-09-2010-0006

11
12 **Honolulu Marine, LLC**

)
)
) **ADMINISTRATIVE COMPLAINT,**
) **AND NOTICE OF OPPORTUNITY**
) **TO REQUEST A HEARING**

13 Respondent.

14 Proceedings Under Section 309(g)(2)(B) of the
15 Clean Water Act, as amended, 33 U.S.C. §
16 1319(g)(2)(B).

17 **COMPLAINT**

18 Statutory Authority

19 The United States Environmental Protection Agency (EPA) issues this Complaint,
20 Notice of Proposed Penalty, and Notice of Opportunity For Hearing (Complaint) pursuant to
21 Section 309(g) of the Clean Water Act (the CWA or the Act), 33 U.S.C. § 1319(g). The
22 authority to take action under Section 309(g) of the Act, 33 U.S.C. § 1319(g), is vested in the
23 Administrator of the EPA. The Administrator has delegated this authority to the Regional
24 Administrator, EPA, Region 9, who in turn has delegated it to the Director of the Water
25 Division of EPA, Region 9, who hereby issues this Complaint.

Statutory and Regulatory Framework

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2 1. The objective of the Act is to restore and maintain the chemical, physical and biological
3 integrity of the nation's waters. Section 101(a) of the Act, 33 U.S.C. § 1251(a). To accomplish
4 this objective, Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
5 pollutants by any person into waters of the United States except as in compliance with the Act,
6 including compliance with a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

7 2. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge
8 Elimination System (NPDES) permit program. Under Section 402 of the Act, 33 U.S.C. § 1342,
9 EPA and states with EPA-approved NPDES programs are authorized to issue permits governing
10 the discharge of pollutants from regulated sources.

11 3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA's implementing regulations at
12 40 C.F.R. § 122.26, require NPDES permit authorization for discharges of stormwater associated
13 with industrial activity. Facilities engaged in industrial activity, as defined by 40 C.F.R. §
14 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to
15 discharge stormwater into waters of the United States. Pursuant to 40 C.F.R. §§ 122.26(a)(1)(ii)
16 and 122.26(c), dischargers of stormwater associated with industrial activity are required to apply
17 for an individual permit or to seek coverage under a promulgated stormwater general permit.

18 4. Ship and boat building and repair facilities fall under Standard Industrial Classification
19 (SIC) Code 373 and are, pursuant to 40 C.F.R. § 122.26(b)(14)(ii), industrial activities subject to
20 the discharge and permitting requirements of Section 402(p) of the Act, 33 U.S.C. § 1342(p).

21 5. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations,
22 including 40 C.F.R. § 122.21, authorize EPA to, *inter alia*, require the owner or operator of any
23 point source to establish records, make reports, or submit other reasonably required information,
24 including individual and general NPDES permit applications.

1 6. The State of Hawaii has an EPA-approved NPDES program, and issues permits,
2 including stormwater permits, through its Department of Health (DOH). On October 25, 2002,
3 DOH adopted the NPDES General Permit Authorizing Discharges of Storm Water Associated
4 with Industrial Activities, Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix B
5 (hereinafter referred to as the General Permit), which became effective November 7, 2002, and
6 expired on October 21, 2007. The General Permit that is currently effective is dated October 22,
7 2007, and expires on October 21, 2012.

8 7. The General Permit, section 6(a), requires facility operators to develop and implement a
9 "storm water pollution control plan" (SWPCP) to minimize the discharge of pollutants in
10 stormwater runoff and to maintain compliance with General Permit conditions.

11 8. The General Permit, section 6(a)(3), requires that the SWPCP include a pollutant strategy
12 identifying potential pollutants, pollutant sources, and control strategies (i.e., best management
13 practices (BMPs)) that will be used to minimize the discharge of pollutants in stormwater from
14 the identified pollutant sources.

15 9. The General Permit, section 6(a)(4), requires a spill prevention and response plan that
16 identifies facility personnel responsible for spill prevention and response implementation.

17 10. The General Permit, section 6(a)(8), requires an annual employee education or training
18 program that ensures the SWPCP will be properly implemented, and that the SWPCP's spill
19 prevention and response plan will be effectively carried out.

20 11. The General Permit, section 6(a)(9)(c), requires the permittee to conduct facility
21 inspections at least semi-annually to ensure that the SWPCP remains effective.

22 12. The General Permit, section 6(d), requires facility operators to review and update the
23 SWPCP as often as needed to comply with General Permit conditions.

24 13. The General Permit, section 8(a), requires that stormwater discharges be limited and
25 monitored by the permittee by collecting and analyzing samples from stormwater outfalls as

1 specified in Table 34.1 of the General Permit. Table 34.1 of the General Permit requires that
2 stormwater sampling occur “annually.”

3 14. The General Permit, section 8(b), requires the permittee to “timely inspect the receiving
4 state waters, stormwater runoff, control measures, and BMPs to detect violations of Hawaii’s
5 basic water quality criteria, as specified in section 11-54-4. (e.g., the permittee shall look at the
6 stormwater discharge and receiving state waters for turbidity, color, floating oil and grease,
7 floating debris and scum, materials that will settle, substances that will produce taste in the water
8 or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or
9 other life.)”

10 15. The General Permit, section 10(a)(1), requires the permittee to report monitoring results
11 of all monitoring required by this General Permit in a format that demonstrates compliance with
12 the limitations in Table 34.1 and other General Permit requirements. The General Permit, section
13 10(a)(2), requires the permittee to submit discharge monitoring reports (DMRs) at least annually.

14 Factual Background

15 16. Honolulu Marine, LLC (Respondent) is a limited liability company incorporated in the
16 State of Hawaii.

17 17. Respondent is the owner and/or operator of a ship and boat repair facility located at 123
18 Ahui Street, Honolulu, Hawaii (the Facility), which fronts the Kewalo Basin Harbor (Harbor),
19 located south of Honolulu Harbor.

20 18. Respondent is primarily engaged in activities at the Facility that are classified under SIC
21 Major Group 373, including SIC Codes 3731 (Ship Building and Repairing) and 3732 (Boat
22 Building and Repairing).

23 19. The Facility consists of indoor and outdoor work areas, including, *inter alia*:

24 a. the outdoor “North Dock Work Area” used for sand-blasting dry docked vessels;
25

- 1 b. the outdoor Boat Ramp area located at the north side of the Facility, north of the
2 North Dock Work Area, where the dry dock boat ramp winch housing is located;
3 c. the outdoor "Work Dock" located at the west side of the Facility, which is used
4 for access to vessels in the water and dockside maintenance and repair work of
5 vessels;
6 d. the outdoor "Parking Area" located at the south side of the Facility, which is used
7 for employee and customer parking, parking of shipyard vehicles and equipment,
8 sand-blast grit storage, vehicle refueling of shipyard vehicles and equipment from
9 an above-ground diesel storage tank, and storage of containers and equipment;
10 e. the outdoor Marine Railway Transfer Pit located at the east side of the Facility,
11 which is used to move dry docked vessels to and from the Boat Ramp and the
12 Boat Yard Work area via a mechanized flatbed rail car;
13 f. Building A, located at the east side of the Facility, which provides cover for the
14 Machine and Welding Shops located on the building's ground floor; and
15 g. the outdoor Boat Yard Work Area located in the center of the Facility, which is
16 used for vessel construction, vessel repair, vessel-bottom scraping, vessel
17 painting, and used paint evaporation.

18 20. Stormwater discharges from the Facility to the Harbor from at least the following point
19 sources:

- 20 a. stormwater outfall D-2, which discharges stormwater that flows into Building A;
21 b. stormwater outfall D-3, which discharges stormwater from a catchment basin on
22 the north side of the Facility that collects stormwater runoff from the North Dock
23 Work Area;
24 c. unnamed stormwater outfalls at the Work Dock, which discharge stormwater
25 directly to the Harbor;

- 1 d. an unnamed stormwater outfall located at the lowest point of the Parking Area,
2 which discharges stormwater directly to the Harbor;
3 e. stormwater outfall D-4, which discharges stormwater from a catchment basin
4 located at the north side of the Facility that serves to contain stormwater runoff
5 from the Marine Railway Transfer Pit and Boat Yard Work Area; and
6 f. direct discharge of stormwater from the roof of the drydock winch housing into
7 the Harbor via the Boat Ramp or surrounding unpaved soil.

8 21. The Harbor is navigable, connected to, and tidally influenced by the Pacific Ocean.

9 22. Between October 1, 2005 and December 3, 2009, there were at least 115 measurable rain
10 events that accumulated at least 0.1-inch or more of stormwater as recorded by the National
11 Oceanic and Atmospheric Administration (NOAA) Honolulu Airport Weather Monitoring
12 Station, located approximately 3.5 miles from the Facility.

13 23. Respondent began operating the Facility in 1998, and obtained coverage under the
14 General Permit in 1998 from DOH. On December 16, 2002, DOH renewed permit coverage for
15 Respondent's Facility. Respondent's General Permit coverage was scheduled to expire on
16 November 6, 2007. On October 19, 2007, DOH granted Respondent an administrative extension
17 of its permit coverage after Respondent submitted a NOI to renew its General Permit coverage.

18 24. On December 9 and 11, 2008, EPA Region 9 and DOH inspected the Facility to evaluate
19 Respondent's compliance with the General Permit. The inspectors observed that Respondent was
20 out of compliance with the General Permit because Respondent failed to, among other things:

- 21 a. develop and implement an adequate SWPCP;
22 b. implement structural and non-structural (i.e., good housekeeping) BMPs,
23 including failing to prevent non-stormwater discharges from a sink that was not
24 connected to the sanitary sewer and that was discharging directly onto the deck of
25 the Work Dock, and then through the Work Dock's outfalls to the Harbor;

- 1 c. perform inspections, stormwater quality sampling, and reporting of sampling
2 results to DOH; and
3 d. train its employees in spill prevention and response.

4 25. On September 25, 2009, EPA issued an administrative compliance order (Order) to
5 Respondent, pursuant to Sections 308(a) and 309(a) of the Act, 33 U.S.C. §§ 1318(a) and
6 1319(a), which required Respondent to, among other things:

- 7 a. submit a revised SWPCP and sampling plan;
8 b. implement structural and good housekeeping BMPs, including connection of the
9 sink to the sanitary sewer to prevent the discharge of wastewater directly onto the
10 Work Dock and thus to the Harbor;
11 c. submit semi-annual inspection logs; and
12 d. submit evidence of employee training for spill prevention and response.

13 26. On or around October 2, 2009, Respondent submitted a revised SWPCP and sampling
14 plan (dated September 9, 2009) to EPA.

15 27. On or around October 8, 2009, Respondent submitted information that it performed a
16 semi-annual inspection on July 23, 2009.

17 28. On or around October 22, 2009, Respondent submitted information indicating that on
18 August 25, 2009, it connected the sink that was discharging to the Work Dock, and thus to the
19 Harbor, to a sanitary sewer line, and also that on or around September 13, 2009, it completed
20 implementation of additional structural and non-structural BMPs at its Facility.

21 29. On or around January 29, 2010, Respondent provided additional information that its
22 employees received training regarding spill prevention and response on September 4, 2009.

23 30. On or around April 29, 2010, Respondent provided its 2009 DMR to DOH, as well as its
24 semi-annual inspection report for an inspection performed on January 28, 2010.
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FINDINGS OF VIOLATION

31. The facts stated in paragraphs 1 through 30 above are incorporated herein.

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

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

34. Stormwater runoff and drainage from the Facility likely contains pollutants such as spent solvents, oil and grease, heavy metals (cadmium, chromium, copper, lead, and zinc), ethylene glycol, acid/alkaline wastes, detergents, nitrogen, total suspended solids, and other "pollutants" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

35. The Facility's stormwater outfalls that discharge to the Harbor are "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

36. Stormwater runoff from the Facility that discharges to the Harbor is a "storm water discharge associated with an industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(ii).

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

38. Data from the NOAA Honolulu Airport Weather Monitoring Station indicate there were at least 115 days with 0.1 inches or more of rainfall at the Facility from October 1, 2004 to September 13, 2009. Upon information and belief, each rainfall event resulting in 0.1 inches or more of rainfall at the Facility generated stormwater associated with industrial activity that discharged into and added pollutants to the Harbor and the Pacific Ocean.

1 VIOLATION: FAILURE TO COMPLY WITH GENERAL PERMIT

2 39. The facts stated in paragraphs 1 through 38 are re-alleged and incorporated herein.

3 40. Respondent violated Section 301(a) of the Act, 33 U.S.C. § 1311(a) by failing to comply
4 with various provisions of the General Permit, issued pursuant to Section 402 of the Act, 33
5 U.S.C. § 1342, including:

6 Failure to Develop an Adequate SWPCP

7 41. The General Permit, section 6(a), requires the permittee to develop and implement a
8 SWPCP to minimize the discharge of pollutants in stormwater runoff and to maintain
9 compliance with conditions of the General Permit. The General Permit, section 6(a)(4), requires
10 that the SWPCP include a spill prevention and response plan that identifies facility personnel
11 responsible for spill prevention and response.

12 42. During EPA's 2008 inspections of the Facility, Respondent provided EPA with a copy of
13 a SWPCP dated July 15, 1998.

14 43. EPA's review of the SWPCP indicated it did not comply with section 6(a) of the General
15 Permit because, among other things, it did not identify Facility personnel responsible for spill
16 prevention and response, as required by section 6(a)(4) of the General Permit.

17 44. Upon information and belief, EPA alleges that Respondent violated section 6(a) of the
18 General Permit by failing to develop an adequate SWPCP.

19 45. Respondent's failure to develop an adequate SWPCP between October 1, 2005 and
20 October 2, 2009, constitutes at least 1,460 days of violation of section 6(a) of the General Permit.
21 Each violation of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. §
22 1311(a).

23 Failure to Update the SWPCP as Necessary

24 46. The General Permit, section 6(d), requires facility operators to review and update the
25 SWPCP as often as needed to comply with General Permit conditions.

1 47. During EPA's 2008 inspections of the Facility, Respondent provided EPA with a copy of
2 a SWPCP dated July 15, 1998 for EPA's review.

3 48. EPA reviewed the SWPCP and found Respondent had never updated the SWPCP.

4 49. Upon information and belief, EPA alleges that Respondent violated section 6(d) of the
5 General Permit by failing to update its SWPCP as necessary since at least October 1, 2005.

6 50. Respondent's failure to update the SWPCP as necessary between October 1, 2005 and
7 October 2, 2009 constitutes at least 1,460 days of violation of section 6(d) of the General Permit.
8 Each violation of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. §
9 1311(a).

10 Failure to Implement BMPs

11 51. The General Permit, section 6(a)(3), requires the permittee to implement a SWPCP that
12 includes a pollutant strategy identifying potential pollutants, pollutant sources, and BMPs used to
13 minimize the discharge of pollutants.

14 52. During its 2008 inspections, EPA observed that Respondent was failing to implement the
15 non-structural "good housekeeping" BMPs identified in section 3.0 of the July 15, 1998 SWPCP,
16 by:

- 17 a. storing drums of used oil outside of the Facility's designated oil storage facility;
- 18 b. storing paint thinner in an exposed outside area;
- 19 c. storing an obsolete compressor in an exposed outside area;
- 20 d. inadequately using absorbent pads in the boat yard work area and parking lot area, as
21 evidenced by staining on the grounds of these outside areas of the Facility; and
- 22 e. using a hose to flush the catchment basin that serves the North Dock Work Area,
23 resulting in unpermitted non-stormwater discharges through outfall D-3, instead of
24 using good housekeeping BMPs that would not cause unpermitted non-stormwater
25 discharges, e.g., absorbent pads.

1 53. During the December 9 and 11, 2008 inspections, EPA observed that Respondent was
2 failing to implement the structural BMPs identified in section 3.0 of the July 15, 1998 SWPCP
3 by failing to cover and contain stored barrels of fluid located in outside areas of the Facility.

4 54. EPA inspectors also noted that additional BMPs (other than those identified in the 1998
5 SWPCP) were necessary in order for Respondent to minimize the discharge of pollutants in
6 stormwater runoff and to maintain compliance with the General Permit, including:

- 7 a. structural BMPs to minimize the discharge of pollutants from the drydock winch
8 housing located at the north side of the Facility;
- 9 b. prevention of non-stormwater discharges from a sink that was not connected to
10 the sanitary sewer and that was discharging directly onto the Work Dock;
- 11 c. good housekeeping BMPs in areas of the Facility where equipment was stored
12 outdoors without containment or cover; and
- 13 d. structural or good housekeeping BMPs to prevent the pooling of oily water near
14 an unused compressor.

15 55. Respondent's failure to implement all BMPs necessary to minimize the discharge of
16 pollutants in stormwater runoff from the Facility and prevent the discharge of non-stormwater at
17 the Facility from at least December 9, 2008, until September 13, 2009, constitutes at least 278
18 days of violation of the General Permit, section 6(a)(3). Each violation of the General Permit is a
19 violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

20 Failure to Train

21 56. The General Permit, section 6(a)(8), requires the permittee to conduct an annual
22 employee education or training program that ensures the SWPCP will be properly implemented
23 and that the SWPCP's spill prevention and response plan is effectively carried out.

24 57. During EPA's 2008 inspections of the Facility, Respondent was unable to provide any
25 records that the annual employee training required by section 6(a)(8) of the General Permit.

1 58. Upon information and belief, EPA alleges that Respondent failed to conduct annual
2 employee training as required by section 6(a)(8) of the General Permit in years 2005 through
3 2008.

4 59. Respondent's failure to train its employees at the Facility from 2005 through 2008
5 constitutes at least four days of violation of section 6(a)(8) of the General Permit. Each violation
6 of the General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

7 Failure to Monitor

8 60. The General Permit, section 8(a), requires the permittee to monitor stormwater discharges
9 annually. The General Permit, section 10(a)(2), requires the permittee to submit DMRs annually
10 to DOH that contain the results of stormwater monitoring in a format that demonstrates
11 compliance with the discharge limitations in Table 34.1 of the General Permit.

12 61. Respondent could not produce any DMRs for the years 2006, 2007, and 2008 during
13 EPA's 2008 inspections or in response to EPA's 2009 Order. Respondent did submit DMRs for
14 2005 and 2009 to DOH, but the DMRs did not provide any monitoring results and only noted
15 that there were no discharges.

16 62. There were several rain events in 2005 and 2009 that accumulated at least 0.1-inch or
17 more of stormwater as recorded at the NOAA Honolulu Airport Weather Station. Upon
18 information and belief, EPA alleges that these rain events resulted in measurable discharges of
19 stormwater from the Facility.

20 63. Upon information and belief, EPA alleges that Respondent failed to conduct annual
21 stormwater monitoring as required by General Permit section 8(a) in years 2005 through 2009
22 despite the occurrence of several rain events resulting in measurable discharges of stormwater
23 from the Facility in those years.

24 64. Respondent's failure to perform stormwater monitoring while engaged in industrial
25 activity at the Facility in years 2005 through 2009, constitutes at least five days of violation of

1 section 8(a) of the General Permit. Each violation of the General Permit is a violation of Section
2 301(a) of the Act, 33 U.S.C. § 1311(a).

3 Failure to Inspect

4 65. The General Permit, section 6(a)(9)(c), requires the permittee to conduct semi-annual
5 facility inspections to ensure that the SWPCP remains effective, and section 8(b) of the General
6 Permit requires the permittee to timely inspect receiving waters, stormwater runoff, and BMPs,
7 to detect violations of Hawaii's basic water quality criteria.

8 66. Respondent could not produce any records during EPA's 2008 inspections, or in response
9 to EPA's 2009 Order, that the semi-annual or timely inspections called for by sections 6(a)(9)(c)
10 and 8(b) of the General Permit, respectively, were performed in years 2005 through 2008.

11 67. Upon information and belief, EPA alleges that in years 2005 through 2008, Respondent
12 failed to conduct the semi-annual facility inspections required by section 6(a)(9)(c) of the
13 General Permit, and failed to conduct the timely inspections required by section 8(b) of the
14 General Permit.

15 68. Respondent's failure to perform inspections on at least a semi-annual basis while engaged
16 in industrial activity at the Facility in years 2005 through 2008, constitutes at least 8 days of
17 violation of sections 6(a)(9)(c) or 8(b) of the General Permit, or both. Each violation of the
18 General Permit is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

19 Failure to Report

20 69. The General Permit, section 10(a)(1), requires the permittee to report monitoring results
21 of all monitoring required by this general permit in a format that demonstrates compliance with
22 the discharge limitations in Table 34.1 and other requirements of the General Permit. The
23 General Permit, section 10(a)(2), requires submission of DMRs at least annually to DOH.

24 70. Upon information and belief, EPA alleges that Respondent failed to provide annual
25 DMRs to DOH for years 2006, 2007, and 2008, as required by General Permit section 10(a)(1).

1 71. Respondent's failure to report its stormwater monitoring results for years 2006, 2007, and
2 2008 to DOH while engaged in industrial activity at the Facility, constitutes at least three days of
3 violation of section 10(a)(1) of the General Permit. Each violation of the General Permit is a
4 violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

5 **NOTICE OF PROPOSED ORDER ASSESSING PENALTIES**

6 72. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of
7 administrative civil penalties in an amount not to exceed \$10,000 per day for each day during
8 which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the Debt
9 Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, the
10 administrative assessment of civil penalties may not exceed \$16,000 per day for each day during
11 which the violation continues, up to a maximum penalty of \$177,500. *See also* 73 Fed. Reg.
12 75340 (December 11, 2008) (the 2008 Penalty Inflation Rule).

13 73. The proposed penalty is based upon the facts stated in this Complaint, the nature,
14 circumstances, extent, and gravity of the violation, and with respect to the violator, ability to pay,
15 any prior history of such violation, the degree of culpability, economic benefit or savings
16 resulting from the violation, and such other matters as justice may require.

17 74. The nature, circumstances, extent, and gravity of the violations described above are
18 significant. The result of Respondent's failure to maintain adequate stormwater controls at the
19 Facility was that the discharge of pollutants in stormwater to waters of the United States was not
20 minimized during rain events occurring since 2005, thus resulting in the discharge of pollutants
21 in stormwater to waters of the United States above acceptable levels. Stormwater discharges
22 from ship and boat building and repair activities categorized under SIC Major Code 373 are
23 known to contain pollutants that include, but are not limited to: spent solvents, oil and grease,
24 heavy metals (cadmium, chromium, copper, lead, and zinc), ethylene glycol, acid/alkaline
25 wastes, detergents, nitrogen, and total suspended solids. *See EPA Industrial Stormwater Fact*

1 *Sheet, Sector R: Ship and Boat Building Yards*, EPA-833-F-06-033 (December 2006). During
2 EPA's 2008 inspections, EPA observed materials and stormwater pollutant sources at the
3 Facility that would generally be expected to generate the types of pollutants typically associated
4 with a facility conducting industrial activities categorized under SIC 373. The discharge of the
5 above-mentioned pollutants in stormwater risks contaminating the sediment in the Harbor and
6 harming aquatic species and other wildlife. In addition, the Harbor is listed as an impaired water
7 by Hawaii pursuant to Section 303(d) of the Act for, among other things, total nitrogen and
8 suspended solids. The discharge of nitrogen and suspended solids from the Facility contributes to
9 the impairment of the Harbor.

10 75. By avoiding and delaying the costs necessary to comply with the Act, Respondent
11 realized an economic benefit as a result of the violations alleged above.

12 76. Based on the foregoing Findings of Violations, and pursuant to Section 309(g) of the
13 Act, 33 U.S.C. § 1319(g), EPA Region 9 hereby proposes to issue a Final Order assessing a civil
14 administrative penalty against Respondent in an amount not to exceed the statutory maximum
15 penalty allowed under 33 U.S.C. § 1319(g)(2)(B), as amended by the Civil Monetary Penalty
16 Inflation Act, and as reflected in 40 C.F.R. § 19.4.

17 77. EPA has consulted with the State of Hawaii regarding this Complaint and its intention
18 to seek civil administrative penalties against Respondent.

19 78. Neither assessment nor payment of a civil administrative penalty pursuant to Section
20 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to
21 comply with the Act, or any separate compliance order issued under Section 309(a) of the Act,
22 33 U.S.C. § 1319(a), for the violations alleged herein.

23 **ANSWER AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

24 79. Respondent must file a written answer and any request for hearing within thirty (30)
25 days of service of this Complaint to avoid being found in default, which constitutes an admission

1 of all facts alleged in the Complaint and a waiver of the right to hearing. The answer shall clearly
2 and directly admit, deny, or explain each of the factual allegations contained in this Complaint
3 with respect to which Respondent has any knowledge, or shall clearly state that Respondent has
4 no knowledge as to particular factual allegations in this Complaint. The answer shall also state
5 (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the
6 facts that Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a
7 hearing is requested. The answer shall be filed, in accordance with 40 C.F.R. §§ 22.5(b)(2) and
8 22.15 with the Regional Hearing Clerk at the address below:

9 Regional Hearing Clerk
10 U.S. EPA Region 9 (ORC-1)
11 75 Hawthorne Street
12 San Francisco, California 94105

13 80. In accordance with Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2), Respondent
14 may request, within thirty (30) days of receipt of this Complaint, a hearing to contest any
15 material fact contained in the Complaint or to contest the appropriateness of the proposed penalty
16 set forth therein. Such a hearing will be held and conducted in accordance with the attached
17 *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and*
18 *the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

19 81. If Respondent requests a hearing, members of the public, to whom EPA is obligated to
20 give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33
21 U.S.C. § 1319(g)(4)(B), and 40 C.F.R. § 22.45 to be heard and to present evidence on the
22 appropriateness of the penalty assessment.

23 82. A copy of the answer and request for hearing and copies of all other documents relating
24 to these proceedings filed with the Regional Hearing Clerk should also be sent to:

25 Rich Campbell, Assistant Regional Counsel
 U.S. EPA Region 9 (ORC-2)
 75 Hawthorne Street
 San Francisco, California 94105

1 **OPPORTUNITY FOR INFORMAL SETTLEMENT**

2 83. Whether or not Respondent requests a hearing, Respondent may confer informally with
3 EPA to discuss the alleged facts, violations, and amount of the penalty. An informal conference
4 does not, however, affect Respondent's obligation to file a written answer within thirty (30) days
5 of the effective date of this Complaint. The informal conference procedure may be pursued
6 simultaneously with the adjudicatory hearing procedure.

7 84. Any settlement reached as a result of an informal conference will be embodied in a
8 written Consent Agreement and Final Order. The issuance of the Consent Agreement and
9 Final Order will constitute waiver of Respondent's right to a hearing on any matter to which
10 Respondent stipulated.

11 85. If a settlement cannot be reached through an informal conference, the filing of a written
12 answer within thirty (30) days of the effective date of this Complaint will preserve Respondent's
13 right to a hearing.

14 86. EPA encourages all parties against whom a penalty is proposed to explore the
15 possibility of settlement. To request an informal conference, Respondent should contact Rich
16 Campbell, Assistant Regional Counsel, at (415) 972-3870, or at the address provided above.

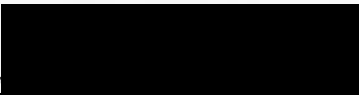
17 **PUBLIC NOTICE**

18 87. EPA must provide public notice of and a reasonable opportunity for comment before
19 finalizing an administrative civil penalty action, pursuant to Section 309(g)(4) of the Act, 33
20 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b).

21 **EFFECTIVE DATE**

22 88. This proceeding is initiated by the filing of this Complaint with the Regional Hearing
23 Clerk. For calculation of time frames provided herein, the "effective date" of this Complaint is
24 the date of service. Service is complete when the return mail receipt is signed by the Respondent
25

1 or a duly authorized representative of the Respondent, in accordance with the provisions of 40
2 C.F.R. §§ 22.5(b) and 22.7(c).



September 29, 2010

5 Alexis Strauss, Director
6 Water Division

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CERTIFICATE OF SERVICE

In the Matter of Honolulu Marine, LLC
EPA Docket No. CWA-09-2010-0006

I hereby certify that the original of the foregoing Complaint, Notice of Proposed Penalty, and Notice of Opportunity for Hearing, was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, along with a copy of the 40 CFR Part 22 *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit*, certified mail, return receipt requested, to:

Lisa A Bail, Esq
Goodsill Anderson Quinn & Stifel
1099 Alakea Street, Suite 1800
Honolulu, Hawaii, 96813
Phone: (808)547-5787
lbail@goodsill.com

September 29, 2010

Vasilis Koutarakis
Name
Receptionist
Position