

plumbing), water treatment, water pumping facilities, irrigation and power generation facilities infested with invasive quagga and zebra mussels and associated reservoirs, water holding marinas and watercraft, recreational facilities (e.g., beaches, boat launches), fish hatcheries and fish protection facilities (e.g., fish ladders and screens). Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that mussel infestations are causing physical obstruction of flow in water conveyance systems, ranging from roughening to complete blockage. Intake structures such as pipes and screens are becoming clogged, reducing delivery capacities, pumping capabilities, and hydropower generation functions. Flow obstruction from mussel settlement at Reclamation facilities has caused a significant increase in the frequency of high temperature alarms in cooling systems, requiring shut-downs for maintenance. It is often necessary to replace plugged equipment to avoid lengthy interruptions in operations. Invasive mussels affect all submerged components, conduits and other structures such as trashracks, fish screens, raw water distribution systems for turbine cooling, fire suppression systems, water intakes (service, domestic, and irrigation), irrigation canals, gauging stations, weirs, gates, diffuser gratings, drains, and virtually all types of instrumentation in contact with raw water. Chemical degradation (corrosion) of infrastructure is also resulting from mussel fouling of metallic structures and equipment. These impacts are increasing both in degree and frequency. The ongoing proliferation and dispersion of mussel populations threatens to seriously impact Reclamation operations, resulting in the interruption of hydropower and water delivery at significant economic costs.

Method of Application: MOI 401 (the product containing *Pseudomonas fluorescens* CL145A) will be applied using standard aquatic pesticide application equipment and or similar equipment commonly used for chemical injection in drinking water treatment. This includes equipment such as sprayers, mixers, injection pumps and/or weighted hoses. The material will be contained and transported in totes or appropriate plastic chemical application barrels. Application will be flow of volume based. For enclosed and confined systems (i.e. canals, irrigation, and pipes), treated water flow rates and chemical injection pump flow rates can be measured by using flow meters and

hand flow measurements. Turbidity measurements before and after application can be used as a surrogate to measure actual applied product.

Maximum Rate of Application: Up to 200 ppm for up to 24 hours per treatment.

Maximum Number of Applications: Maximum of 12 applications of MOI 401 end use product (84059-L) per site.

Maximum Amount of Pesticide to be Used: 60,000 kg active ingredient, which equals approximately 411,000 kg of end use product.

Maximum Volume to be Treated: Based on the maximum amount of pesticide to be used and the treatment rate of 200 mg a.i./L, the maximum volume of water that will be treated will be 1.67 acre-feet.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a quarantine exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA.

The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the quarantine exemption requested by the United States Department of Interior's Bureau of Reclamation.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 29, 2009.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9-26822 Filed 11-10-09; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (<http://www.fmc.gov>) or by contacting the Office of Agreements at (202) 523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 011426-046.

Title: West Coast of South America Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; APL Co. Pte Ltd.; Compania Chilena de Navegacion InterOceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd; King Ocean Services Limited, Inc.; Mediterranean Shipping Company, SA; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd.; and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes Maruba S.C.A. as a party to the agreement.

Agreement No.: 012037-002.

Title: Maersk Line/CMA CGM TA3 Space Charter Agreement.

Parties: A.P. Moeller-Maersk A/S and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would reduce the amount of space being chartered, extend the duration of the agreement, incorporate other miscellaneous modifications, change the name of the agreement, and restate the agreement.

Agreement No.: 201202-002.

Title: Oakland MTO Agreement.

Parties: Eagle Marine Services, Ltd.; Ports America Outer Harbor Terminal, LLC; Seaside Transportation Service LLC; SSA Terminals (Oakland), LLC; Total Terminals International, LLC; Transbay Container Terminal, Inc.; and Trapac, Inc.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add SSA Terminals, LLC as a party to the agreement.

Agreement No.: 201203-002.

Title: Port of Oakland/Oakland

Marine Terminal Operator Agreement.

Parties: Eagle Marine Services, Ltd.; Ports of America Outer Harbor Terminal, LLC; Port of Oakland; Seaside Transportation Service LLC; SSA Terminals (Oakland), LLC; Total Terminals International, LLC; Transbay Container Terminal, Inc.; and Trapac, Inc.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add SSA Terminals, LLC as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: November 6, 2009.

Karen V. Gregory,
Secretary.

[FR Doc. E9-27188 Filed 11-10-09; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

[Docket No. 09-05]

Application of Leonardo Ortiz for Admission To Practice Before the Federal Maritime Commission

Served: November 5, 2009.

By The Commission: Richard A. Lidinsky, Jr.,
Chairman, Joseph E. BRENNAN, and
Rebecca F. DYE, Commissioners.

Order Denying Application of Leonardo Ortiz for Admission to Practice

By Order served July 30, 2009, the Commission directed Respondent Leonardo Ortiz to demonstrate that he is qualified to practice before the Commission as a non-lawyer, pursuant to 46 CFR 502.27 and 502.29. Despite two opportunities to be heard, Mr. Ortiz did not submit evidence or otherwise respond to the Commission's Order. Accordingly, the Commission upholds the Secretary's April 15, 2009 decision letter to Mr. Ortiz, and denies Mr. Ortiz certification to practice before the Commission.

Background

Mr. Ortiz filed an Application for Admission to Practice before the Commission on December 31, 2007, showing that he is self-employed and operating from his residence in Anderson, SC. Following discussions among FMC staff and further communications with Mr. Ortiz, the Secretary issued a decision letter on April 15, 2009, indicating the denial of Mr. Ortiz's application to practice before the Commission as a non-attorney. Among issues cited in the Secretary's decision letter for the determination are Respondent's lack of legal academic credentials and lack of relevant work experience demonstrating his qualifications to practice before the Commission.

In the decision letter, the Secretary informed Mr. Ortiz of his right to request a hearing within twenty days, pursuant to Rule 29 of the Commission's Rules of Practice and Procedure, 46 CFR 502.29. Mr. Ortiz timely requested a hearing on April 29, 2009.

Pursuant to Mr. Ortiz's request, the Commission duly served an Order directing applicant to show his qualifications to practice as a non-attorney before the Commission. The Secretary served such Order on Mr.

Ortiz via Federal Express courier service on July 31, 2009. Mr. Ortiz signed a Federal Express receipt, evidencing his receipt of the Commission's Order. Notice of this proceeding also was published in the **Federal Register**. 74 FR 38627 (Aug. 4, 2009).

The Commission's Order designated Mr. Ortiz as a Respondent and directed him to file affidavits of fact and a memorandum of law no later than September 4, 2009. The Order designated the Commission's Bureau of Enforcement (BOE) as a party, and required BOE to submit rebuttal affidavits of fact and memoranda of law no later than October 5, 2009. Thereafter, Mr. Ortiz was permitted to file a reply brief no later than October 20, 2009.

BOE timely submitted its memorandum of law and factual case on October 5, 2009. BOE's case includes the verified statement of the Commission's Secretary, Karen V. Gregory, which describes the factual background of the Secretary's review of the subject application, along with the Secretary's decision letter issued to Mr. Ortiz on April 15, 2009. To date, Mr. Ortiz has not submitted evidence, any memoranda of law, or otherwise responded to the Commission's Order.

Discussion

The Secretary is authorized to approve or deny an application to practice before the Commission. 46 CFR 501.24(a). If the Secretary denies an application to practice before the Commission, written notice is given so that the applicant can request a hearing before the Commission. 46 CFR 502.29. At hearing, Mr. Ortiz has the burden of showing the applicant's qualifications. 46 CFR 502.155.

BOE cites the Secretary's decision letter as setting forth three major points which justify denying Mr. Ortiz admission to practice before the Commission: First, Mr. Ortiz is not a credentialed attorney because he does not have a license to practice law before any Federal, State or Territorial court. BOE Memorandum of Law at 3; Application of Leonardo Ortiz at 2 (Question 10); Decision Letter of April 15, 2009, at 1. Second, Mr. Ortiz lacks other credible proof of legal or academic education to justify his entitlement to practice before the Commission, inasmuch as the American Bar Association has not granted recognition to the British American School of Law, where Mr. Ortiz attended. BOE Memorandum of Law at 3; Application of Leonardo Ortiz at 2 (Questions 7 and 12a); Verified Statement of Karen V. Gregory at ¶ 7; and Decision Letter of

April 15, 2009, at 1. Third, Mr. Ortiz's purported work experience assisting attorneys in criminal, contract, torts, and Federal administrative law is not sufficient to make him qualified to practice before the Commission. BOE Memorandum of Law at 3; Application of Leonardo Ortiz at 2 (Questions 8 and 12b); Verified Statement of Karen V. Gregory at ¶ 7; and Decision Letter of April 15, 2009, at 2. Likewise, possession of a U.S. Coast Guard Merchant Marine Master license does not establish the requisite basis to conclude that Mr. Ortiz has shown the necessary "legal, technical or other qualifications to render valuable service before the Commission and is otherwise competent to advise and assist in the presentation of matters before the Commission," 46 CFR 502.27(a)(1). See also BOE Memorandum of Law at 1-2; Decision Letter of April 15, 2009, at 1.

Although Mr. Ortiz submitted several recommendations with his application, it was determined that these letters lacked sufficient information or support as to his qualifications to be admitted to practice before the Commission. BOE Memorandum of Law at 1-2, and Decision Letter of April 15, 2009, at 2. The Secretary determined that such letters served only to provide evidence of Mr. Ortiz's good character. *Id.*

Despite adequate notice of the issues in the Decision Letter and notice of the September 4, 2009 deadline by which Mr. Ortiz should respond to the Order, Mr. Ortiz never submitted evidence, memoranda of law or affidavits to contest the Secretary's determinations.

As the Commission explained in *Revocation of License No. 016019N—Central Agency of Florida Inc.*, 31 S.R.R. 486 (FMC, 2008): "It is a familiar rule of evidence that the party with control of information relevant to a disputed issue may be assigned the burden to provide such information or suffer an adverse inference for its failure to respond," 31 S.R.R. at 486-7, citing *Commonwealth Shipping Ltd., Cargo Carriers Ltd., Martyn C. Meritt—Submission of Materially False or Misleading Statements to the Federal Maritime Commission*, 29 S.R.R. 1408, 1412 (FMC 2003); *Adair v. Penn-Nordic Lines*, 26 S.R.R. 11, 15 (ALJ, 1991), citing *Alabama Power Co. v. FPC*, 511 F.2d 383, 391 (D.C. Cir., 1974). Of similar import, an applicant who fails to meet its burden of contesting allegations or evidence upon a disputed issue is deemed to have accepted the opposing party's allegations and evidence as true. *Revocation of License No. 016019N—Central Agency of Florida Inc.*, 31 S.R.R. at 487; *Capitol Transportation, Inc. v. United States*, 612 F.2d 1312, 1318-