

FIFTEENTH CONGRESS OF THE REPUBLIC }
OF THE PHILIPPINES }
Third Regular Session }

13 FEB -5 P3:02

SENATE

COMMITTEE REPORT NO. 738

Submitted by the Committee on Foreign Relations and the Committee on
Environment and Natural Resources on FEB 05 2013

Re : P.S. Res. Nos. 894, 895 and 896

Recommending the adoption of the recommendations and their immediate
implementation.

Sponsors : Senators Legarda and Escudero.

MR. PRESIDENT:

The Committee on Foreign Relations and the Committee on Environment and
Natural Resources, to which were referred the following resolutions:

SRN 894, introduced by Sen. Loren Legarda, entitled:

"Resolution

***Directing the Senate Committee on Foreign Relations and the
Committee on Environment and Natural Resources to Conduct a
Joint Inquiry, in Aid of Legislation, on the Reported Dumping of
Toxic Waste in Philippine Waters by a Foreign Firm and its
Alleged Claim of Coverage Under the Visiting Forces Agreement
With the United States to Avoid Investigation and Possible
Criminal Liability, With the End View of Ensuring that
Implementation of Philippine Treaties and Agreements With Other
Countries Will Continue to Serve the Paramount Objective of
Protecting the National Interest"***

SRN 895, introduced by Sen. Miriam Defensor Santiago, entitled:

"Resolution

Directing the Proper Senate Committee to Conduct an Inquiry in Aid of Legislation on the Reported Dumping of Toxic and Hazardous Wastes in Subic Bay by Glenn Defense Marine Asia"

SRN 896, introduced by Sen. Aquilino "Koko" Pimentel III, entitled:

"Resolution

Directing the Committee on Foreign Relations and Other Appropriate Senate Committees to Conduct an Inquiry, in Aid of Legislation, on the Reported Dumping of Hazardous Wastes in Our Territorial Seas Abutting Subic Bay and if Necessary to Revisit the Provisions of the RP-USA Visiting Forces Agreement to Prevent a Recurrence of the Incident Subject of This Resolution"

have considered the same and have the honor to present the report on their inquiry back to the Senate respectfully submitting the adoption of the recommendations as contained in this report and their immediate implementation.

Respectfully submitted:

Chairpersons:

FRANCIS "CHIZ" ESCUDERO
*Committee on Environment and
Natural Resources
Member, Committee on
Foreign Relations*



LOREN LEGARDA
*Committee on Foreign Relations
Vice Chair, Committee on Environment
and Natural Resources*

Vice-Chairperson:



EDGARDO J. ANGARA
*Committee on Foreign Relations
Member, Committee on Environment and Natural Resources*

Members:



MIRIAM DEFENSOR SANTIAGO
Committee on Foreign Relations



TEOFISTO L. GUINGONA III
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FERDINAND R. MARCOS JR.
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RAMON BONG REVILLA JR.
Committee on Foreign Relations
Committee Environment & Natural Resources



MANNY VILLAR
Committee on Foreign Relations
Committee Environment & Natural Resources



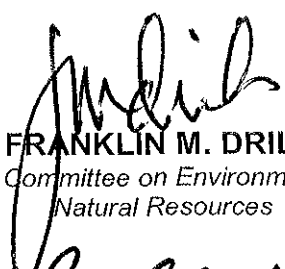
ANTONIO "SONNY" F. TRILLANES IV
Committee on Foreign Relations

MANUEL "LITO" M. LAPID
Committee on Foreign Relations
Committee Environment & Natural Resources

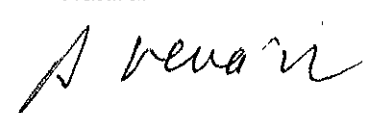


AQUILINO "KOKO" L. PIMENTEL III
Committee on Foreign Relations

FRANCIS N. PANGILINAN
Committee on Environment &
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FRANKLIN M. DRILON
Committee on Environment &
Natural Resources



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Committee on Environment &
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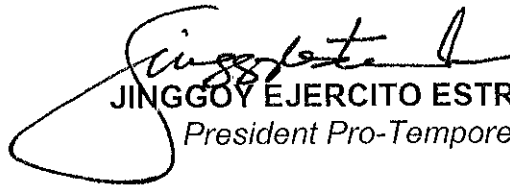


PIA S. CAYETANO
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Natural Resources



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JINGGOY EJERCITO ESTRADA
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VICENTE C. SOTTO III
Majority Leader

ALAN PETER "COMPANERO" S. CAYETANO
Minority Leader

JUAN PONCE ENRILE
President
Senate of the Philippines
Pasay City



Senate of the Philippines

COMMITTEE REPORT

Re : P.S. Res. Nos. 894, 895 and 896

on the

Reported Dumping of Toxic Wastes in Philippine Waters

Submitted by:

the

Committee on Foreign Relations

and the

Committee on Environment and Natural Resources

Sponsor:

Senator Loren Legarda

Chair, Committee on Foreign Relations

February, 2013

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I. PREFATORY

Constitutional Mandate

It is mandated under the 1987 Constitution that *"The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature"* (Article II, Section 16).

Reports on alleged dumping of toxic wastes in Philippine territorial waters and its Exclusive Economic Zone (EEZ) evoke public concern and fear given its implications to environmental integrity and sustainability, public health, food security, job security for those who primarily derive their income from the produce of the sea, and the well-being of the Filipino people at large.

Background

It was alleged in different news reports that came out in October 2012 that MT Glenn Guardian, a vessel owned by Glenn Defense Marine Asia Pte Ltd, a company based in Singapore and operating in several countries which services American ships in the Philippines, carried some 189,500 liters of domestic waste and 760 liters of bilge water (a combination of water, oil and grease), which it dumped into the Subic Bay. Glenn Defense Marine Asia Pte Ltd has an existing service agreement with Glenn Defense Marine Asia Philippines, Inc. (Glenn Defense). This arrangement will be discussed in succeeding sections of this report.

There were various accounts on the nature and volume of wastes it had allegedly dumped in Philippine territorial waters. It was also reported that the company had invoked its coverage under the Visiting Forces Agreement (VFA) to escape culpability for its act of dumping

wastes into seawaters.

Pursuant to the reports, the following resolutions were filed in the Senate:

1. **SRN 894** – Resolution Directing the Senate Committee on Foreign Relations and the Committee on Environment and Natural Resources to Conduct a Joint Inquiry, in Aid of Legislation, on the Reported Dumping of Toxic Waste in Philippine Waters by a Foreign Firm and its Alleged Claim of Coverage Under the Visiting Forces Agreement With the United States to Avoid Investigation and Possible Criminal Liability, With the End in View of Ensuring that Implementation of Philippine Treaties and Agreements With Other Countries Will Continue to Serve the Paramount Objective of Protecting the National Interest *by Sen. Loren Legarda (Annex “A”)*;
2. **SRN 895** – Resolution Directing the Proper Senate Committee to Conduct an Inquiry in Aid of Legislation on the Reported Dumping of Toxic and Hazardous Wastes in Subic Bay by Glenn Defense Marine Asia *by Sen. Miriam Defensor Santiago (Annex “B”)*; and
3. **SRN 896** - A Resolution Directing the Committee on Foreign Relations and Other Appropriate Senate Committees to Conduct an Inquiry, in Aid of Legislation, on the Reported Dumping of Hazardous Wastes in Our Territorial Seas Abutting Subic Bay and if Necessary to Revisit the Provisions of the RP-USA Visiting Forces Agreement to Prevent a Recurrence of the Incident Subject of This Resolution *by Sen. Aquilino “Koko” Martin Pimentel III (Annex “C”)*;

II. GOVERNING LAWS

There are various legislations that pertain to environmental and marine pollution prevention and control. These include the following:

A. Executive Order No. 192

EO 192 which designates the DENR as the primary lead agency “responsible for the conservation, management, development, and proper use of the country’s environment and natural resources”. Section 5 of EO 192 mandates the DENR to “promulgate rules and regulations for the control of water, air and land pollution”.

B. Republic Act No. 9275, the Philippine Clean Water Act of 2004

The Constitutional mandate finds resonance under RA 9275 (Annex “D”).

Section 3 provides, as follows:

*“Section 3. Coverage of the Act. - This Act shall apply to water quality management in all water bodies: Provided, That it shall primarily apply to the abatement and control of pollution from land based sources: **Provided, further, That the water quality standards and regulations and the civil liability and penal provisions under this Act shall be enforced irrespective of sources of pollution.**” (emphasis and underscoring supplied)*

Section 19 of RA 9275 designates the DENR as “the primary government agency responsible for the implementation and

enforcement” of the Clean Water Act. It further provides that DENR shall exercise supervision and control over all aspects of water quality management.

Section 22 of Chapter 3 provides, as follows:

“Section 22. Linkage Mechanism. - The [Department of Environment and Natural Resources] and its concerned attached agencies including LLDA shall coordinate and enter into agreement with other government agencies, industrial sector and other concerned sectors in the furtherance of the objectives of this Act- The following agencies shall perform the functions specified hereunder:

(a) Philippine Coast Guard in coordination with [Department of Agriculture] and the [Department of Environment and Natural Resources] shall enforce for the enforcement of water quality standards in marine waters, set pursuant to this Act [Republic Act No. 9275], specifically from offshore sources; xxx

Section 27 of RA 9275 provides that the following acts shall be prohibited:

“SECTION 27. Prohibited Acts. - *The following acts are hereby prohibited:*

a) Discharging, depositing or causing to be deposited material of any kind directly or indirectly into the water bodies or along the margins of any surface water, where, the same shall be liable to be washed into such surface water, either by tide action or by storm, floods or

otherwise, which could cause water pollution or impede natural flow in the water body;

XXX

e) Unauthorized transport or dumping into seawaters of sewage sludge or solid waste as defined under Republic Act No.9003;

f) Transport, dumping or discharge of prohibited chemicals, substances or pollutants listed under Republic Act No.6969;

g) Operate facilities that discharge or allow to seep, willfully or through gross negligence, prohibited chemicals, substances or pollutants listed under R. A. No. 6969 into water bodies or wherein the same shall be liable to be washed into such surface, ground, coastal, and marine water;

XXX

i) Discharging regulated water pollutants without the valid required discharge permit pursuant to this Act or after the permit was revoked for any violation of condition therein;

XXX

k) Refusal to allow entry, inspection and monitoring by the Department in accordance with this Act;

l) Refusal to allow access by the Department to relevant reports and records in accordance with this Act;

m) Refusal or failure to submit reports whenever required by the Department in accordance with this Act.

It also provides that the Department of Environment and Natural Resources (DENR) shall require owners or operators of facilities that discharge regulated effluents to secure a permit to discharge which shall serve as legal authorization granted by the DENR to discharge wastewater provided it shall contain information, such as, the quantity and quality of effluent to be discharged into a particular water body, among others.

C. Republic Act No. 6969 otherwise known as the “Toxic Substances and Hazardous and Nuclear Wastes Control Act”

RA 6969 or the Toxic Substances and Hazardous and Nuclear Wastes Control Act is relevant in this investigation considering the fact that Glenn Defense, as will be shown by records from the Subic Bay Metropolitan Authority (SBMA) and the Department of Environment and Natural Resources (DENR), has also been involved in the collection and transport of hazardous wastes from visiting US ships.

Section 3 of RA 6969 provides, as follows:

“Section 3. Scope. - This Act shall cover the importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal of all unregulated chemical substances and mixtures in the Philippines, including the entry even in transit, as well as the keeping or storage and disposal of hazardous and nuclear wastes into the country for whatever purposes.”

Section 13(d) provides, as follows:

“Section 13. Prohibited Acts. - The following acts and omissions shall be considered unlawful:

XXX

(d) Cause, aid or facilitate, directly or indirectly, in the storage, importation or bringing into Philippine territory, including its maritime economic zones, even in transit, either by means of land, air or sea transportation or otherwise keeping in storage any amount of hazardous and nuclear wastes in any part of the Philippines.

Refer to **(Annex "E")**.

**D. Presidential Decree 979, Providing for the Revision of
Presidential Decree No. 600 Governing Marine Pollution**

The Philippine Coast Guard, as an implementing authority, also exercises its marine environmental protection mandates by virtue of Presidential Decree 979 **(Annex "F")** entitled, "Providing for the revision of Presidential Decree No. 600 Governing Marine Pollution", known as the Marine Pollution Decree of 1976. It is provided in the said law that:

"Section 5. *It shall be the primary responsibility of the National Pollution Control Commission (now Environmental Management Bureau) to promulgate national rules and policies governing marine pollution, including but not limited to the discharge of effluents from any outfall structure, industrial and manufacturing establishments or mill of any kind to the extent that it is regulated under the provisions of Republic Act Numbered Three Thousand Nine Hundred Thirty-One, and to issue the appropriate rules and regulations upon consultation with the Philippine Coast Guard.* (Parenthetical entry and underscoring supplied)

The Philippine Coast Guard shall promulgate its own rules and regulations in accordance with the national rules and policies set by the National Pollution Control Commission (now Environmental Management Bureau) upon consultation with the latter, for the effective implementation and enforcement of this decree and other applicable laws, rules and regulations promulgated by the government.”
(Parenthetical entry and underscoring supplied)

E. Republic Act 9993, The Coast Guard Law

The PCG’s authority in marine environmental protection is clearly defined under RA 9993 known as “The Coast Guard Law” wherein the PCG is explicitly mandated under section 3 para (n) **(Annex “G”)**:

“xxx To enforce laws and promulgate and administer rules and regulations for the protection of marine environment and resources from offshore sources of pollution within the maritime jurisdiction of the Philippines”.

In view of the aforementioned mandates, the PCG had promulgated the following memorandum circulars (MC) integrating pertinent maritime protection policies under the International Convention for the Prevention of Pollution From Ships, 1973 as modified by its 1978 Protocol (MARPOL 73/78) from Annex I to V and the London Dumping Convention of 1972:

- a. MC 01- 2005 **(Annex “H”)** - Revised Rules On Prevention, Containment, Abatement And Control Of Oil Marine Pollution;
- b. MC 02-2005 **(Annex “I”)** - Prevention of Pollution By Garbage From Ship;

- c. MC 03-2005 (**Annex “J”**) - *Rules and Regulations for Tank Cleaning Operations and the Collection and Disposal of Diluted Oil and Other Substances;*
- d. MC 04-2005 (**Annex “K”**) - *Accreditation Of Oil Water Separators, Oil Containment, Recovery And Dispersal Equipment And Chemical Dispersants;*
- e. MC 05-2005 (**Annex “L”**) - *Shipboard Oil Pollution Emergency Plan For Philippine-Registered Vessels;*
- f. MC 06-2005 (**Annex “M”**) - *Issuance of International Oil Pollution Prevention Certificate to Philippine Registered Vessels;*
- g. MC 07-2005 (**Annex “N”**) - *Prevention Of Pollution By Sewage From Ships;*
- h. MC 01-2006 (**Annex “O”**) - *Rule Prohibiting The Dumping And Discharging Of Wastes And Other Harmful Matters*

Pertinent provisions of these circulars and Administrative Order shall be discussed in pertinent sections of this report in support of the findings.

F. Republic Act. No. 7227, particularly pertinent provisions on the Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority under Republic Act. No. 7227

The mandate of the Subic Bay Metropolitan Authority in the promulgation and enforcement of environmental laws is provided in RA 7227. These provisions include:

“SECTION 13. The Subic Bay Metropolitan Authority. —

XXX

(10) To adopt and implement measures and standards for environmental pollution control of all areas within its territory, including, but not limited to all bodies of water and to enforce the same. For which purpose the Subic Authority shall create an Ecology Center.”

The Implementing Rules and Regulations of RA 7227 also define the specific functions of the SBMA with respect to the enforcement of environmental regulations in areas under its jurisdiction. Specific provisions include the following:

Chapter II, Part B, Section 10(j) provides, as follows:

“Section 10. Powers and Functions. The SBMA shall have the following powers and functions:

XXX

(j) To adopt and implement measures and standards for environment pollution control of all areas within its territory, including, but not limited to all bodies of water and to enforce the same. For the purpose, the SBMA shall create an Ecology Centre; (emphasis supplied)

XXX”.

Chapter II, Part B, Section 11(a), 11(d), 11(e) and 11(f) provide, as follows:

"Section 11. Powers and Functions. Other than the powers and functions prescribed in Section 10 of these Rules, the SBMA shall have the following responsibilities:

*"(a.) The SBMA **shall exercise authority and jurisdiction over all economic activity within the SBF:***

XXX

*"(d.) The SBMA shall have the **authority to exclude from the SBF any articles substance, merchandise, operation, activity or process it considers to be inconsistent with the policies and purposes of the [Republic Act No. 7227] and these Rules, or detrimental to the public interest, and to establish procedures for such exclusion;***

XXX

*"(e.) The SBMA **may require SBF Enterprises or Residents to secure the necessary permits for any article, substance, merchandise, transaction, activity, or operation in the SBF,** specify conditions under which such permits will be issued, and establish procedures for issuing and revoking such permits; and*

"(f.) Consistent with the Constitution, the SBMA shall have the following powers to enforce the law and these Rules in the SBF:

(1) To audit and inspect the records of any SBF Enterprise;

(2) To inspect and search the premises of any SBF Enterprise or Resident, or any vehicle,

aircraft, vessel, or person in the SBF to detect any violation of the law or these Rules;
(emphasis supplied)

(3) To conduct investigations of any suspected violation of the law or these Rules, *provided that the investigation of any violation of the criminal laws of the Philippines occurring in the SBF shall not be conducted by the SBMA, but rather by the police or National Government agency having jurisdiction in the area where the violation occurred;* (emphasis supplied)

(4) To seize articles, substances, merchandise and records considered to be in violation of the law and these Rules, and to provide for their return to the enterprise of person from whom they were seized, or their forfeiture to the SBMA;

XXX

(7) To assess and collect administrative fees or impose administrative fines or other monetary penalties for violations of these Rules;

(8) To issue, alter, modify, suspend or revoke for cause, any permit, certificate, license, visa or privilege allowed under [Republic Act No. 7227] or these Rules; (emphasis supplied)

(9) To regulate ingress to and egress from the SBF;

XXX

(11) to promulgate such other rules, regulations and

circulars as may be necessary, proper or incidental to carry out the policies and objectives of the [Republic Act No. 7227], these Rules, as well as the powers and duties of the SBMA thereunder."

Refer to **(Annex "P")**.

G. DENR Administrative Orders and other Government Circulars

There are a host of government regulations and rules pertinent to the enforcement of the country's maritime protection laws. These include:

- (1) DENR Administrative Order No. 2001-28 (as amended by DENR Administrative Order No. 2003-10) otherwise known as the Implementing Rules and Regulations of the Protection and Preservation of the Environment during VFA-Related Activities of the Country - Refer to **(Annex "Q")**.
- (2) DENR Administrative Order No. 2005-10 otherwise known as the Implementing Rules and Regulations of the Philippine Clean Water Act of 2004 - Refer to **(Annex "R")**.
- (3) DENR Administrative Order No. 1990-35 otherwise known as the Revised Effluent Regulations of 1990 - Refer to **(Annex "S")**.
- (4) DENR Administrative Order No. 2004-36 - Refer to **(Annex "T")**.
- (5) Revised Water Usage And Classification/Water Quality Criteria Amending Section Nos. 68 And 69, Chapter III Of The 1978 NPCC Rules And Regulation - Refer to **(Annex "U")**.
- (6) SBMA Seaport Instruction 94-007 otherwise known as the SBMA Rules and Regulations for Prevention,

Containment, Abatement and Control of Marine Pollution of 1994 - Refer to **(Annex "V")**.

- (7) SBMA Waste Management Guidelines of 2003 - Refer to **(Annex "W")**.
- (8) Implementing Rules And Regulations Of Republic Act No. 9993, Otherwise Known As The "Philippine Coast Guard Law of 2009
- (9) Marina Circular No. 2011 - 04 - Refer to **(Annex "X")**.

The relevance of these circulars to the case at hand will be discussed in the proceeding sections of this report.

H. International Convention for the Prevention of Pollution from Ships (MARPOL)

The International Convention for the Prevention of Pollution from Ships (MARPOL) **(Annex "Y")**, includes regulations aimed at preventing and minimizing pollution from ships - both accidental pollution and that from routine operations - and currently includes the succeeding six technical Annexes. Special Areas with strict controls on operational discharges are included in most Annexes.¹

- Annex I Regulations for the Prevention of Pollution by Oil (entered into force on 2 October 1983)
- Annex II Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk (entered into force on 2 October 1983)
- Annex III Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form (entered into force on 1 July 1992)

- Annex IV Prevention of Pollution by Sewage from Ships
(entered into force on 27 September 2003) - Refer to
(Annex "Z").
- Annex V Prevention of Pollution by Garbage from
Ships (entered into force on 31 December 1988)
- Annex VI Prevention of Air Pollution from Ships
(entered into force on 19 May 2005)

The most relevant MARPOL Annex applicable to the subject of this report is Annex IV on the Prevention of Pollution by Sewage from Ships. It contains requirements to control pollution of the sea by sewage; the discharge of sewage into the sea is prohibited, except when the ship has in operation an approved sewage treatment plant or when the ship is discharging comminuted and disinfected sewage using an approved system at a distance of more than three nautical miles from the nearest land; sewage which is not comminuted or disinfected has to be discharged at a distance of more than 12 nautical miles from the nearest land.ⁱⁱ

Pertinent provisions of the said resolution are, as follows:

"1.1 Regulation 11.1.1 of the revised Annex IV of MARPOL 73/78 requires that untreated sewage, which may be discharged at more than 12 nautical miles from the nearest land, should not be discharged instantaneously but at a moderate rate of discharge when the ship is en route and proceeding at a speed not less than 4 knots, while the rate should be approved by the Administration based upon standards developed by the Organization.

XXX

*'3.1 The maximum permissible discharge rate is 1/200,000
(or one 200,000th part) of swept volume, as follows:*

$$DR_{max} = 0.00926 V D B$$

Where:

DR_{max} is maximum permissible discharge rate (m³/h)

V is ship's average speed (knots) over the period

D is Draft (m)

B is Breadth (m)

'4.1 The Administration should approve the rate of discharge specified in 3.1 based upon the ship's maximum summer draft and maximum service speed¹. Where sewage is to be discharged at a different combination of draft and speed one or more secondary discharge rates may also be approved."

'5.1 Where the intended actual discharge rate exceeds that permissible at 4 knots, the actual discharge rate may need to be reduced or the speed increased. The rate and speed is to be detailed in the approval issued by the Administration."

I. United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS entrusts to coastal states the responsibility of protecting and preserving the marine environment. Part XII of UNCLOS defines the general obligations of states to protect and preserve the marine environment, to wit:

"PART XII

*'PROTECTION AND PRESERVATION OF THE MARINE
ENVIRONMENT*

"Article 192. General obligation

*States have the obligation to protect and preserve the
marine environment.*

*'Article 194. Measures to prevent, reduce and control
pollution of the marine environment*

*'1. States shall take, individually or jointly as appropriate,
all measures consistent with this Convention that are
necessary to prevent, reduce and control pollution of the
marine environment from any source, using for this purpose
the best practicable means at their disposal and in
accordance with their capabilities, and they shall endeavor
to harmonize their policies in this connection.*

*'The measures taken pursuant to this Part shall deal with
all sources of pollution of the marine environment. These
measures shall include, inter alia, those designed to
minimize to the fullest possible extent:*

*'(a) the release of toxic, harmful or noxious substances,
especially those which are persistent, from land-based
sources, from or through the atmosphere or by dumping;*

*'(b) pollution from vessels, in particular measures for
preventing accidents and dealing with emergencies,
ensuring the safety of operations at sea, preventing
intentional and unintentional discharges, and regulating
the design, construction, equipment, operation and manning
of vessels;*

XXX”

Under Article 56, Part V of UNCLOS, the Philippines exercises “jurisdiction over the protection and preservation of the marine environment” in its Exclusive Economic Zone (EEZ), to wit:

“Article 56. Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

‘1. In the exclusive economic zone, the coastal State has:

‘(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

‘(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

‘(c) other rights and duties provided for in this Convention.”

Refer to **(Annex “AA”)**.

**J. Adopted Resolution 2002/27 of the United Nations Commission
on Human Rights**

Aside from the protection provided by our own Constitution and domestic laws and regulations, Adopted Resolution 2002/27 (**Annex “BB”**) of the United Nations Commission on Human Rights states:

*"that the illicit movement and dumping of toxic and dangerous products and wastes constitute a serious threat to the human rights to life and the enjoyment of the highest attainable standard of physical health, particularly of individuals in developing countries that do not have the technologies to process them."*ⁱⁱⁱ

III. SENATE INVESTIGATION

The Committees on Foreign Relations and Environment and Natural Resources thereafter conducted public hearings and technical consultative meetings on the following dates:

A. **21 November 2012**, first public hearing was conducted with the following resource persons who all gave their testimonies under oath:^{iv}

1. Atty. Juan Miguel T. Cuna
OIC-Director, Environmental Management Bureau (EMB-DENR)
2. Usec. Edilberto Adan
Executive Director, VFA Commission
3. Mr. Roberto V. Garcia
Chair & Administrator, Subic Bay Metropolitan Authority (SBMA)
4. Mr. Angel P. Bagaloyos
OIC – Manager, Subic Bay Ecology Center
5. Ms. Rose B. Baldeo
Vice-President, Subic Bay Freeport Chamber of Commerce (SBFCC)
6. Rear Admiral Luis Tuason Jr
OIC & Vice Commandant for Operations, Philippine Coast Guard (PCG)
7. Rear Admiral Cecil R Chen
PCG
8. Vice Admiral Mateo M Mayuga (Ret)
Chairman, Glenn Defense Marine Asia

B. **27 November 2012** – Technical Consultative Meeting with the following resource persons^v:

1. Dr. Eva S. Ocfemia
Asst. Director of the Environmental Management Bureau
(EMB)
2. Ms. Petra Aguilar
Office of the Assistant Director, EMB
3. Ms. Leza Acorda-Cuevas
Water Quality Management, EMB
4. Ms. Maria Dorica N. Hipe
Office of the Director, EMB
5. Ms. Rose Baldeo
VP, SBFCC
6. Atty. Dennis R. Manzanal
Counsel for Rose Baldeo
7. Mr. Arsenio F. Lingad II
Director, Overseas Shipping Office, Maritime Industry
Authority (MARINA)
8. Dr. Myrna C. Clemeno
Director, Domestic Shipping Office, MARINA

C. 3 December 2012, Technical Consultative Meeting with the
following resource persons^{vi}:

1. Usec. Edilberto Adan
Executive Director, VFA Commission
2. Atty. Julius Magno
VFA Commission
3. Mr. Roberto Garcia
Chair and Administrator, SBMA
4. Mr. Marcelino Sanqui
SBMA
5. Ms. Ameth DL. Koval
SBMA

6. Mr. Carlito M. Rufo Jr.
SBMA
7. Mr. Jerome Martinez
SBMA
8. Ms. Jocelyn Alvarado
SBMA
9. Mr. Angel P. Bagaloyos
OIC-Manager, Subic Bay Ecology Center
10. Mr. Jonathan Guanzon
Glenn Defense Marine Asia
11. Mr. Kristoffer James Purisima
Glenn Defense Marine Asia
12. Ms. Bernice Mendoza
Glenn Defense Marine Asia
13. Mr. Xerxes Fernandez
Philippine Coast Guard
14. Ruben De Guzman
Acting Station Commander, Coast Guard Station, Subic
PCG
15. Luisito Sibayan
PCG
16. Rear Admiral Cecil R Chen
PCG
17. Rolando R Ricafrente
PCG

As part of the investigation, various letters were issued to agencies concerned, requesting for reports, data, documents, and other information:

- Letter to DENR addressed to Secretary Ramon J.P. Paje dated 3 December 2012;
- Letter to SBMA addressed to Chair Roberto V. Garcia dated 3 December 2012;

- Letter to PCG addressed to RADM Cecil R Chen dated 28 December and 3 December 2012;
- Letter to VFACOM addressed to Gen. Edilberto Adan dated 4 December 2012; and
- Letter to MARINA dated 28 November 2012.

IV. INFORMATION GATHERED

A. Subic Bay Metropolitan Authority Report

The following events transpired as per the submitted preliminary report and powerpoint presentation of the Subic Bay Metropolitan Authority (**Annex "CC"**) to the Committee on Foreign Relations and the Committee on Environment and Natural Resources during its public hearing on 21 November 2012:

1. On October 15, 2012 at around 12:00 NN, a hazard call was received by the Ecology Center, from the Public Relations Department of the SBMA, pertaining to a reported oil spill at the vicinity of the former Naval Supply Depot (NSD);
2. At around 12:30 PM on the same date, a team of personnel from the Ecology Center responded to the hazard call by proceeding to Alava Pier to wait for a vessel so that they could inspect the NSD for the purported oil spill. The vessel was arranged by a certain Mr. Bayarong with a certain Mr. Jay Mendoza, Chief of Staff of Ms. Rose Baldeo, the owner of the Global Terminal and Development, Inc., registered locator of the SBMA;
3. During the wait for the vessel at Alava Pier, the Ecology Center team was informed by Mr. Mendoza about the operation of the Glenn Guardian which was alleged to be involved in the collection of waste water from the USS Emory Land, in particular, and dumping of the same into the sea. Mr. Mendoza claimed that his interest in bringing the matter of the alleged operations of Glenn Guardian to the attention of SBMA was in compliance with the instructions of the Subic Bay Freeport Chamber of Commerce President, Mr. Danny Piano, to monitor

the Subic Bay for potential environmental problems. He apparently “noticed” the questionable hauling of wastes by the Glenn Guardian from US ships. According to Mr. Mendoza, his suspicion was aroused because wastes from ships are normally hauled by trucks once vessels are berthed.

4. The Team inspected the vicinity of the Naval Supply Depot, where the oil spill was said to have occurred, but the team did not find any oil spill.
5. Finding no oil spill, the team from the Ecology Center then proceeded to the vicinity of the Glenn Guardian at around 2:00pm and conducted an onboard inspection.;
6. Sometime in the evening of October 15, 2012, the Glenn Guardian exited the Port of Subic Bay bound for the high seas and returned sometime in the morning of October 16, 2012;
7. At around 2:00 PM of October 16, 2012, the Ecology Center team coordinated with the Philippine Coast Guard (PCG). At 3:00 PM of the same day, the members of the Ecology Center conducted a spot inspection of the Glenn Guardian. PCG officers were with them during the inspection, but it was subsequently clarified by PCG that their personnel were there only to determine if there was indeed an oil spill. A copy of the spot Inspection Report of the Ecology Center dated October 15, 2012 is hereto attached as **Annex “DD”** hereof;
8. During the inspection, samples of sewage were taken – two (2) samples from the Glenn Enterprise and one (1) from the M/T Glenn Guardian. The Ecology Center team then sent a request to Subic Water for the testing and analysis of the waste samples;

9. On the October 17, 2012, Subic personnel arrived at the Ecology Center to collect the samples for analysis.

10. On October 17, 2012, the Ecology Center (1) sent a show cause letter to Glenn Defense Marine requiring an explanation, within five (5) days from receipt of such letter, as to why it should not be penalized for the alleged unauthorized collection and deliberate discharging of contaminated waste and that a failure to comply would result in the issuance of a Notice of Violation and appropriate penalties;

11. On October 19, 2012, the Ecology Center received from Subic Water the test results of the samples showing that the effluent levels of the samples were beyond the permissible levels under DAO 35-1990;

12. On November 7, 2012, the Ecology Center received the letter-reply of CVCLaw on behalf of Glenn Defense Marine in response to the show cause letter arguing that (1) the VFA applies to their vessels, (2) support vessels operated by them are not subject to the regulation of the SBMA and (3) the operation of the vessels fall more properly under the jurisdiction of the VFACOM;

It must also be noted that apart from the arguments weighing against the jurisdiction of the SBMA, in no part of the letter-reply were the issues raised in the show cause letter were addressed; and

13. On November 12, 2012 the Board of Directors of the SBMA held a special board meeting wherein the Ecology Center, Seaport Department and Business and Investment Group

presented their preliminary findings. On the same date, an initial position statement was released. ^{vii}

Consequently, the following preliminary findings were also submitted by the SBMA^{viii}:

1. As of October 16, 2012 there has been no report, complaint or allegation, nor has there been any evidence which would show or suggest, that toxic and hazardous waste such as nuclear, chemical and other hazardous wastes, were dumped in Subic Bay.
2. SBMA records show that between January 13, 2012 to October 22, 2012, Glenn Defense transported and disposed of, by land, 72,000 liters of Oily Water, 192,120 liters of Bilge Water and 440,000 liters of Sewage duly covered with the proper waste transport permits and corresponding certificates of treatment by accredited waste treatment facilities.
3. It is undetermined at this point, however, whether these volumes account for ALL of the Oily Water, Bilge Water and Sewage collected by Glenn Defense from US Navy Ships.
4. Samples of sewage collected from the Glenn Guardian by SBMA on October 16, 2012 were found by Subic Water and Sewerage Inc. to be in excess of permitted effluent standards as prescribed under DENR DAO No. 35 (Series of 1990). This will be seriously harmful to aquatic life and the marine ecosystem should this be dumped in Philippine waters.

Copies of the Physical and Chemical Analyses of Sewage taken from Glenn Guardian and Glenn Enterprises are hereto attached marked as **Annex "EE"** hereof.

5. Based on the ship logs of the Glenn Guardian which were inspected by SBMA, a discharge of sewage water was made on October 15, 2012 at an area with coordinates 14° 32'N and 119°57'E – approximately seventeen (17) nautical miles from the nearest land point.
6. This entry in the ship log matches with the SBMA Seaport's vessel movement log which shows that the Glenn Guardian left on October 15, 2012 at 1730H allegedly destined for the high seas, and returned to Subic Bay on October 16 at 0320H.
7. Based on the MARPOL regulations, discharge of sewage which is not comminuted or disinfected, must be at a distance of more than 12 nautical miles from the nearest land. Provided, that the discharge shall not be instantaneous but at a moderate rate when the ship is *en route* and proceeding at a speed not less than 4 knots. Further, MEPC Resolution 157.55 provides that the maximum permissible discharge rate is 1/200,000 of swept volume or $DR_{max} = 0.00926 \times \text{breadth} \times \text{draft} \times \text{ship's average speed over the period}$.
8. On November 15, 2012, the SBMA received information that based on MARPOL regulations on discharge rate and the travel time of the Glenn Guardian, there is serious doubt whether the recommended maximum discharge rate was followed.

B. Philippine Coast Guard

In response to the queries of the Committees especially on the claim of Glenn Defense Marine Asia that they were not aware of certain PCG environmental circulars, in general, and that MC 01-2006 did not mention the need for a permit from the PCG, the Philippine Coast Guard submitted the following (**Annex "FF"**):

1. The Accreditation Certificate issued by the Philippine Coast Guard to Glenn Defense Marine Asia PTE LTD (GDMAPL) numbered PCG-11-08-126 (**Annex “GG”**) dated 23 August 2011, states, among other things, that:

“a. GDMAPL and its vessels are not allowed to dispose, discharge, or dump any of its collected waste within Philippine territory.”

2. That MC 01-2006, particularly Section 5, paragraph A, sub-paragraph 1, says that the dumping of any matter or substance is prohibited, to wit:^{ix}

“It shall be unlawful for any person to discharge, dump, permit the discharge of noxious, gaseous and liquid substances, waste and other matters in or out from ships, tankers, barges, dredges, oil and gas explorers, power plants and shipyards, and other establishments into or upon territorial and inland navigable water of the Philippines.”

3. That, further reading of the Memo-Circular reveals that the dumping of waste can be permitted subject to the terms and conditions set forth in the Memo-Circular 01-2006 as stated in paragraph A sub-paragraph 2, to wit:

“The permit shall allow the dumping of waste or other matter in whatever form or condition, subject to the terms and condition set forth herein...”

4. That the argument of Glenn Defense that the sewage waste was

not listed in Annex II or Annex III of MC 01-2006, hence, it did not require a permit from the PCG is erroneous. Annex II of the MC is a list of substances that require special attention during dumping while Annex III is a list of criterion to be used in determining if such waste may be dumped into the sea. The waste dumped by M/T Guardian should have undergone evaluation by the PCG using said criteria listed in Annex III.

5. On the argument of Glenn Defense that the actions taken by M/T Glenn Guardian is within the provisions of MC 07-2005, it should be noted that the said MC is intended to regulate waste generated by a vessel during its operation (operational discharge) and does not cover waste that are collected and are intended for dumping at sea. In this instance, the waste dumped into the sea was not from M/T Glenn Guardian (own ship waste) but from USS Emory Land, hence, it is not operational waste from M/T Glenn Guardian but collected waste from USS Emory Land.

Consequently, the PCG, in the course of its investigation and based on certain facts including those enumerated above, have concluded that M/T Glenn Guardian violated the following PCG MEP MCs:

- a) MC 01-2006 on the need to secure a permit from the PCG prior to its dumping of sewage waste and that this violation is the result of the wrong appreciation of PCG Memo-Circulars.
- b) MC 01-2006 on dumping of waste in an area not designated as a PCG dump-site.
- c) MC 03-2005 on operating as a waste collector without the proper accreditation from the PCG.

6. As to the alleged dumping of wastes in Philippine waters or even immediately outside territorial waters, no dumping permit was issued by the PCG to MT Glenn Guardian since January 2012 to this date. Any waste collected by the said vessel should be brought to the next port of call for proper treatment and disposal if the waste will not be treated and disposed by the land based facilities in the Philippines.

C. Subic Bay Freeport Chamber of Commerce (SBFCC)

The Subic Bay Freeport Chamber of Commerce is a private non-profit Filipino corporation of locators and stakeholders in the Subic Bay Freeport Zone. Its areas of interest include duty-free, access and movement within the Freeport Environment, recruitment, training, labor relations, import/export regulations, health and community affairs, travel and tourism and security issues.

Ms. Rose Baldeo, Vice-President of the Subic Bay Freeport Chamber of Commerce (SBFCC), is one of the complainants invited by the Committees to shed light on the matter at hand. Thus, the following are the submissions of the SBFCC (**Annex "HH"**):

1. Glenn Defense Marine Asia Philippines, Inc. is a Malaysian owned company but based in Singapore with a branch office in Manila and SBFZ. It is a contractor of U.S. Navy providing for husbanding services such as facilitation of berthing, delivery of logistics services and supply requirements.
2. It is registered as locator of SBMA and a member since 2009 of the Subic Bay Freeport Chamber of Commerce prior to its recent suspension due to its reported violation of environmental regulations.

The SBFCC submitted the following information in connection with the reported waste dumping by Glenn Defense:

3. On October 15, 2012 the tanker MT Glenn Guardian was spotted collecting liquid waste from a US Navy Ship at Alava Pier at around 8 o'clock in the morning. This aroused suspicion since a tanker truck and not a barge would normally haul waste from a ship already berthed on a pier. Acting on a tip by the Subic Bay Freeport Chamber of Commerce, the members of the local media contacted the Ecology Center of the Subic Bay Metropolitan Authority (SBMA-Ecology).
4. A spot inspection was conducted by members of the Ecology Center on MT Glenn Guardian at around 1PM when the said tanker was already docked at the NSD area of the Freeport.
5. Edilberto Acedilla, captain of Glenn Guardian revealed during the spot inspection that they are carrying around 50,000 gallons of domestic waste and around 200 liters of bilge water (a combination of water, oil and grease) all of which were hauled from the US Navy ship. **Capt. Acedilla alleged that the water in the tanks has been treated and that the usual practice is to dump these liquid wastes 20 nautical miles from Subic Bay.**
6. The following day (October 16, 2012), a team from the Philippine Coast Guard, Marine Pollution Division (MARPOL), headed by **Petty Officer 1, Enrico Viuda** together with the SBMA Ecology boarded MT Glenn Guardian and another vessel, MT Glenn Enterprise, for inspection and revealed that these vessels have expired registrations and permits.

According to Mr. Viuda, these vessels never applied for any MARPOL Permits to dump domestic wastes in the open sea.

7. One of the pre-requisites of the MARPOL dumping permit is waste testing in order to determine whether the liquid waste has been properly treated and is no longer hazardous to the marine environment.

SBFCC also gave the following comments on the results of the laboratory tests on the waste water samples:

8. Result of the water testing indicates that the level of toxicity of the liquid wastes from the Glenn vessels exceeded the Department of Environment and Natural Resources Administrative Order 35 series of 1990 (DAO-35 on acceptable amount of toxicity) by more than 700 percent. This means the water on the vessels is not permissible for dumping.
9. Contrary to the allegations of the Captain of the Glenn Tankers, the water test results yield that the water inside their tanks was not treated. The so-called domestic waste is not just domestic waste but also has a high level of oil and grease which is barred by international maritime pollution laws from being dumped in open water regardless of distance and under any circumstances except in cases of extreme emergency.

The SBFCC also said that no SBMA/DENR permits were issued to the Defense to conduct toxic waste hauling.

10. The Certificate of Registration of Glenn Marine Defense Asia as a Freeport Registered Company in Subic Bay has no

provision for waste water collection, hauling and dumping in violation of the clean water act.

11. The term "Husbanding Agency" or "Husbanding Contractor" which describes Glenn Defense's SBMA Certificate of Registration is very broad and covers all logistical service provision which includes toxic waste collection, hauling and treatment (CHT). **But in order to perform CHT, a separate DENR and SBMA Ecology permit is required.** The SBMA Certificate of Registration is not a permit but a mere proof of business registration.
12. All collection, hauling and treatment of all kinds of liquid waste collected from all vessels should be covered by Certificate of Treatment (COT) issued by the treater and stamped by the Environmental Management Bureau-DENR in their respective region. This is part of the contractual obligation of Glenn Marine in their contract with the U.S. Navy under Performance Work Statement (PWS) for Husbanding Services, which specifically states that "The HS Contractor shall obtain any necessary insurance, licenses and permits, and comply with any applicable laws, codes, and regulations, in connection with the performance of the work at no additional cost to the U.S. Government."

A copy of the Standard Form of Husbanding Contract with the U.S. Navy is hereto attached marked as **Annex "II"** hereof.

SBFCC is also alleging that the Glenn Defense may have already dumped millions of gallons of liquid wastes from their ships, alleging the following:

13. Records show that Glenn Defense has been servicing vessels in Subic since 2007. This year alone, a total of 37 US Navy

ships have been serviced by Glenn Marine and part of their service is to collect tons of liquid wastes from these ships.

14. In 2011, Glenn Defense was also charged for dumping liquid waste a few miles from Manila Bay. But the VFACOM allegedly intervened, saying that the DENR-EMB has no jurisdiction over the case and that VFA security issues could be violated. The case is still pending at the DENR-NCR. This alleged erroneous argument was made by a certain Atty. Julius Magno.
15. Procedurally, waste water collection from vessels docked in the Subic Port are coordinated with and regulated by the Seaport Department in relation to the regulations of the SBMA Ecology Department, the DENR and International Pollution Laws for proper handling, hauling and disposal of Noxious Liquid Substances or NLS.
16. The proper and most sound practice of liquid waste collection and handling from vessels which are docked, is to have the waste collected and hauled by a DENR- Licensed Liquid and Hazardous Waste Hauler. Large tanker trucks are placed beside the docked vessel and the waste is transferred to the trucks which will be hauled by land to a water treatment facility and the said facility will take charge to treat in accordance with DENR regulations.
17. Trucks are being used for ships docked alongside, while barges are used if the ship is at anchorage.
18. In a letter dated November 15, 2012 issued by Subic Bay Freeport Chamber of Commerce President Danny J. Piano, it was argued that with the size, waterline breadth, and width of MT Glenn Guardian, and taking into consideration the MARPOL prescribed mode of dumping, it should have taken

MT Glenn Guardian a minimum of 16 hours travel to the designated dumping area nearest to Subic Bay, which is 33 nautical miles southwest of Sattler Pier. This does not include the actual dumping time.

19. Based on the MARPOL Permissible Discharge Rate, MT Glenn Guardian would have taken 218 hours or a full 9 days to discharge. **It is thus impossible to be back to Sattler Pier in just 1 day had it discharged 50,000 gallons of toxic sewage in the manner specified by MARPOL regulations.**
20. On October 18, 2012, the SBMA Ecology Center issued a Show-Cause letter to Glenn Defense for its failure to comply with environmental regulations. However, instead of answering the show-cause letter on the reported toxic waste dumping, the lawyers of Glenn Defense argued that they are not covered by the SBMA Ecology Center's regulatory powers. This has been the usual line of Glenn Defense whenever it is being called upon to explain its failure to comply with our laws, rules and regulations.
21. The Subic Bay Freeport Chamber of Commerce was merely performing its function when it supported the investigation conducted by SBMA Ecology Center by providing motorboat for transportation during the inspection. Regardless of the identity of the contractors, complainants and vessel being served, all locators operating inside SBFZ must comply with all environmental, security and safety laws, rules, and regulations, and Subic Bay Freeport Chamber of Commerce will continue with its mandate of protecting the environment for the benefit of all stakeholders of SBFZ in particular and of the public in general.

D. Glenn Defense Marine Asia Philippines, Inc. (Glenn Defense)

Glenn Defense, in its preliminary position paper (**Annex “JJ”**) submitted to the Committees, provided the following information:

1. Glenn Defense provides marine husbanding and logistics support for United States Navy Vessels visiting the Philippines under the Ph-US Visiting Forces Agreement.
2. By protocol, whenever vessels of the US Navy visit or call on a port within GDMAPL's area of responsibility, said vessels inform GDMAPL about the logistics requirement for the visit. In response to the same, GDMAPL mobilizes its marine husbanding equipment inclusive of tugs, water taxis, barges and other marine equipment (e.g., marine husbanding ships gear) to deliver the contracted services. The vessels and marine husbanding equipment, hereafter collectively referred to as GDMAPL Support Vessels, are owned by and registered to GDMAPL.
3. GDMAPL, in turn, has a Service Agreement with Glenn Defense, a Philippine-registered company engaged in providing marine husbanding, logistics, maritime security and other marine services, including a range of marine services to enable GDMAPL to comprehensively address the requirements of the US Navy.

On the allegations pertaining to Glenn Defense's purported violations of environmental protection laws and regulations for allegedly dumping toxic wastes, particularly in Subic Bay, the following were submitted by Glenn Defense, among others:

4. Glenn Defense has not been and will never be involved in the dumping of toxic or hazardous waste in Subic or in any part of the Philippines. Reports to the contrary are utterly false, unfounded and malicious and appear to be part of a smear campaign intended to advance the business agenda of a competitor based in Subic.
5. On October 15, 2012, SBMA Ecology Center personnel, responding to an alleged anonymous "hazard call", boarded 2 GDMAPL Support Vessels – MT Glenn Guardian and MT Glenn Enterprise – and conducted an inspection thereof and took samples of their cargo.
6. The next day, on 16 October 2012, the SBMA Ecology Center personnel, accompanied by personnel from the Philippine Coast Guard, again boarded MT Glenn Guardian and MT Glenn Enterprise and conducted an inspection thereof.
7. Glenn Defense extended its full cooperation during these surprise inspections. The inspections and taking of samples took place unhampered despite serious concerns regarding the manner the inspections and taking of samples were conducted in light of the applicable protocols for such aboard ships, as well as security considerations given the sensitive nature of Glenn Defense's operations in support of US Navy vessels visiting the Philippines under the VFA.
8. Thereafter, on 18 October 2012, Glenn Defense was surprised to receive a letter dated 17 October 2012 from the SBMA Ecology Center stating that the SBMA Ecology Center allegedly received a "hazard call" regarding the disposal of domestic sewage. Without containing any factual statements,

the SBMA Ecology Center alleged that MT Glenn Guardian and MT Glenn Enterprise were supposedly engaged in the unauthorized collection, hauling, transport and deliberate discharging of contaminated water in violation of RA No. 9275 and PD 979.

9. Glenn Defense conducted its own preliminary inquiry into the incident and uncovered the following:
 - a. The SMBA Ecology Center personnel received a false report from a competitor of Glenn Defense alleging that an oil spill occurred in Subic Bay involving the Support Vessels. The report was later characterized in the show cause letter as an anonymous "hazard call".
 - b. The SBMA Ecology Center personnel were actually ferried to and from the GDMAPL Support Vessels by a vessel operated by the same competitor of Glenn Defense. Upon inspection, it was found out that there was actually no oil spill.
 - c. The SBMA Ecology Center personnel were accompanied by a representative of said competitor and joined by media personalities sympathetic to said competitor during the inspection and taking of samples from the Support Vessels further indicating that the entire incident has been staged.
10. Given these circumstances, on 07 November 2012, Glenn Defense, through counsel, submitted its letter dated 06 November 2012 to the SBMA Ecology Center stating, among others, that: (1) considering that the GDMAPL Support Vessels that are used to service visiting US Navy vessels

under the VFA are not commercial vessels, said Support Vessels are not subject to the jurisdiction of the SBMA Ecology Center; (2) considering that the said Support Vessels solely and exclusively operate for the US armed forces pursuant to the VFA, they are *sui generis*; (3) matters relating to the VFA should be properly treated by the VFACOM, which is mandated to coordinate with concerned government offices, including the SBMA regarding the adoption of mutually-acceptable implementing rules and regulations for the VFA; (4) Glenn Defense has not violated any Philippine law and/or regulation in connection with the discharge of sewage and grey water.

Glenn submitted additional information through a communication dated 14 December 2012, the highlights of which include the following:

11. On the accreditation under Memorandum Circular No. 186 – Part III (2) of MARINA Memorandum Circular No. 186 dated 09 July 2003 (MARINA MC 186) provides that all Maritime Enterprises – which include “any ship manager, ship agent, multimodal transport operator, and any other similar enterprise whose activities consist of representing, within the Philippines, as an agent, the business interest of one or more shipping line or shipping companies” – must be accredited pursuant to the said issuance. Part II of MARINA MC 186 itself provides that said issuance covers “all persons, corporations, firms and other entities engaged or shall engage in ship agency, husbanding, ship chandling, ship breaking and similar enterprises.” To date, GDMAPI has been issued the following Accreditation Certificates by the MARINA:

- a. Accreditation Certificate No. DSO-186-008 (2007)
valid until 16 September 2010; and
- b. Accreditation Certificate No. DSO-186-014 (2011)
valid until 15 August 2014.

12. Part III (2) of MARINA Memorandum Circular No. 105 (MARINA MC 105), as amended by MARINA Memorandum Circular No. 105-A (MARINA MC 105-A), both of which became effective in 1995, provides that operators who will utilize or need foreign vessels temporarily in domestic trade to carry or transport passengers and/or cargoes shall apply for a **Special Permit** and pay the required processing fee therefor. “Domestic trade” is defined by MARINA MC 105 as “any operation of a vessel within Philippine waters”. (underscoring supplied)

Notably, when RA 9295 was enacted later, the definition of “domestic trade” was limited to the “**sale, barter, or exchange of goods, materials or products within the Philippines**”. It should be noted, however, that Section 6 of RA 9295 provides:

“Section 6. Foreign Vessels Engaged in Trade and Commerce in the Philippine Territorial Waters. — No foreign vessel shall be allowed to transport passengers or cargo between ports or places within the Philippine territorial waters, except upon the grant of Special Permit by the MARINA when no domestic vessel is available or suitable to provide the needed shipping service and public interest warrants the same.”
(underscoring supplied)

On the other hand, an **Exemption Permit** is issued for any vessel used in certain activities, which are enumerated under

MARINA MC 105, as follows:

“On the other hand, Private/Public Corporation, Partnership, Association and other Entities which shall utilize vessels in oil exploration and drilling activities, offshore surveying, dredging, construction, underwater cable laying, floating hotel and/or recreation center, training/research ships, storage facilities and other similar activities shall apply for Exemption Certificate with Domestic Shipping Office.”

An Exemption Permit shall be co-terminous with the contract for which the vessel shall be utilized, but not to exceed one (1) year. Additionally, the requirements to obtain an Exemption Permit are the same as those for obtaining a Special Permit under MARINA MC 105. The application fees and the penalties for not securing an Exemption Permit are also the same.

13. In a Letter dated 12 August 2011, GDMAPI wrote the MARINA requesting for the grant of an Exemption Certificate for certain foreign flagged vessels owned by GDMAPL – Singapore from the requirement of a Special or Exemption Permit under MARINA MC 105 considering that said foreign vessels will not be engaging in domestic trade as defined by RA 9295. However, in a Letter dated 24 August 2011, the MARINA denied GDMAPI’s request on the ground that GDMAPL – owned Support Vessels would supposedly be engaged in domestic trade.

The following is clear from the foregoing: (1) as of August 2011, the MARINA was still implementing MARINA MC 105; and (2) the basis for the denial of the request for exemption from the

application of MARINA MC 105 is that the GDMAPL – owned Support Vessels will supposedly be engaging in domestic trade.

Without abandoning its position, GDMAPI was constrained to apply for **Exemption Permits** in order to ensure the continuity of its operations. Thus, it applied for and was issued the following Exemption Permits:

- a. Exemption Permit No. DSO-019-2011 valid from 26 August 2011 to 25 September 2011; and
- b. Exemption Permit No. DSO-040-2011 valid from 16 September 2011 to 15 October 2011.

Notwithstanding the foregoing, it is GDMAPI's considered position that the GDMAPL-owned Support Vessels are not engaged in either domestic trade or domestic shipping as defined by RA 9295, which took effect after MARINA MC 105. To reiterate, "domestic trade" is defined under RA 9295 as the "sale, barter or exchange of goods, materials or products within the Philippines", whereas "domestic shipping" is defined as "the transport of passengers or cargo, or both, by ships duly registered and licensed under Philippine law to engage in trade and commerce between Philippine ports and within Philippine territorial or internal waters, for hire or compensation, with general or limited clientele, whether permanent, occasional or incidental, with or without fixed roots, and done for contractual or commercial purposes". This was attested to by Vice Admiral Alexander P. Pama, Flag Office in Command of the Philippine Navy, in a Letter dated 23 August 2011 addressed to the MARINA. In said letter, VADM Pama noted that GDMAPL-owned Support Vessels are used solely and exclusively to service visiting US Navy vessels while within Philippine territory

pursuant to the PH-US Visiting Forces Agreement (VFA). Said Support Vessels do not compete with local companies rendering services to other privately-owned vessels. Further, the GDMAPL-owned Support Vessels do not service any other vessel or engage in any other business while in the Philippines.

Nevertheless, to show prudence and good faith, GDMAPI also complied with the conditions stated in the Exemption Permits, documentary proofs of which are now being respectfully submitted to the Honorable Committees:

1. As regards Exemption Permit No. DSO-019-2011 (Annex "B"), the need for the same did not materialize considering that the visit of USS John C Stennis was eventually cancelled.
2. As regards Exemption Permit No. DSO-040-2011 (Annex "C"), the following were submitted by GDMAPI:
 - a. Letters dated 15 September 2011 addressed to the Philippine Ports Authority and the Bureau of Customs, copy-furnished the Bureau of Quarantine, Philippine Coast Guard, and Bureau of Immigration of the arrival and planned departure of the Support Vessels for USS Dewey. These are attached as Annexes "C-1" and "C-1-A";
 - b. A Copy of the KBI Debit Note dated 29 July 2011 to show that some of the Support Vessels, i.e., Glenn California, Glenn Horizon 3, Glenn Horizon 4; Glenn Hurricane; Glenn FP3, are covered by KBI Insurance Cover Note KIB/0324/2009/G0020-10 from 01 July 2009 to 30 June 2012. The Debit Note is attached as

Annex "C-2".

14. On 17 November 2011, the MARINA issued MARINA Memorandum Circular No. 2011-04 (MARINA MC 2011-04) embodying the Revised Rules on the Temporary Utilization of Foreign-Registered Ships Within the National Territory. MARINA MC 2011-04 clarifies that the primary reason for requiring a Special Permit from foreign ships is for MARINA to be able to ensure that there is no readily available or suitable domestic fleet that would address the need for such foreign ships, so as not to prejudice efficient trade and commerce, delivery of critical services/commodities, and infrastructure and development projects.

More importantly, Part IV(15) of MARINA MC 2011-04 provides that:

"Ships owned by another sovereign entity performing any governmental function in the national territory, pursuant to any treaty or agreement, including foreign ships used incidental to such functions, shall not be covered by this Circular. The movement of these ships in the national territory shall be in accordance with international custom and practice governing such ships. However, the same will be covered by an implementing arrangement between MARINA and the appropriate government agency."
[Emphasis and underscoring supplied]

Considering that GDMAPL-owned Support Vessels are in the Philippines only for the sole and limited purpose of exclusively

providing marine husbandry support to US Navy vessels visiting the Philippines pursuant to the VFA, it is clear that GDMAPL-owned Support Vessels are foreign ships that temporarily operate in the Philippines for uses incidental to the performance by the US of its governmental functions (i.e., visits for joint military exercises, courtesy calls, etc.) under a treaty or agreement.

MARINA MC 2011-04 further states that foreign ships **shall be governed by implementing arrangements to be crafted by the MARINA and the appropriate government agency, in this case, the VFACOM, in cooperation with the Philippine Coast Guard (PCG). To date, however, no implementing arrangements have been issued to govern the unique operations of GDMAPI in the Philippines.** (Underscoring supplied)

In this regard, GDMAPI respectfully manifests the MARINA MC 2011-04 is an unequivocal confirmation of the consistent position taken by it that a Special or Exemption Permit is not required for foreign vessels that are temporarily in the country solely to provide support services to visiting US Navy vessels. However, this is not to say that Philippine maritime and environmental laws do not apply to foreign vessels, only that it is now the lookout of the various agencies concerned to draft implementing arrangements that would govern foreign vessels in the unique situation envisioned by MARINA MC 2011-04.

15. For the information of the Honorable Committees, GDMAPI has been cooperating with the PCG to ensure that the company's operations are in full compliance with domestic and international laws and regulations on marine environmental

protection.

Specifically, in its recent Letter to the PCG, GDMAPI stated that it is prepared to work with said agency towards the adoption of clear regulations that will cover the company's unique operations and ensure compliance with applicable local and international laws, rules and regulations. Said regulations may include appropriate ship-boarding and/or shiprider arrangements and protocols to govern boarding by PCG marshals of the company's vessels during the conduct of its operations. A copy of GDMAPI's Letter to the PCG is attached as Annex "D".

E. Subic Bay Ecology Center

In its testimony before the Committees, the Subic Bay Ecology Center stated the following upon the queries of the Senators present: *

1. Sewage is not considered hazardous waste under RA 6969 but it can be toxic if its effluent is beyond the permissible limit set by the DENR and it could affect marine life.
2. The parameters used for the testing of the samples were biological oxygen demand (BOD) which is purely chemical oxygen demand, oil and grease total suspended solids and true colors. The BOD is the measure of the approximate quantity of the salt oxygen that will be required by bacteria to stabilize organic matter in wastewater or surface water. In Filipino: *Ito ang magbibigay indikasyon kung ang tubig ay madumi o hindi. Ibig sabihin, kung mas mataas ang BOD, mas madumi ang tubig.*

3. As per its findings (**Annex “KK”**), one of the samples from Glenn Enterprise showed a BOD of 20,500 mg. per liter while the second sample showed 3,500 mg. per liter which is way beyond the permissible 30 mg. per liter.
4. That the samples also had oil and grease which showed 9,953 mg. per liter which is beyond the permissible level of 5 mg. per liter.

F. Department of Environment and Natural Resources (DENR)

The DENR, in its testimony during the hearing of the Committees, stated the following:^{xi}

1. There was a complaint made by Global Ship Management and Marine Services on the alleged waste dumping by Glenn Marine in Manila Bay.
2. This complaint is the basis for the meeting called by the regional office of the EMB. This was attended by the representatives of Glenn Defense and the VFACOM through the person of its Senior Legal Adviser.
3. Based on the report of the EMB NCR, the Legal Adviser of the VFA Commission mentioned that by reason of the ongoing drafting of the guidelines of the VFA, “It would not be appropriate to conduct any inspection or sampling to avoid preempting the negotiations with the US government”.
4. Atty. Magno of the VFACOM reportedly informed the meeting that the presence of the DENR in succeeding meetings on the crafting of the guidelines would be vital, but that the DENR never got any invitation to a meeting.

During the meeting conducted by the Committees on November 27, 2012, the DENR-EMB representatives provided the following information:

1. The effluent standards for conventional pollutants and toxic substances indicated in the PCG Philippine Coastal Management Guidebook Series No. 7 is consistent with the effluent standards set by the DENR;
2. There is a need to harmonize marine pollution prevention guidelines and policies;
3. There is a need to address existing coordination gaps between and among agencies implementing marine pollution prevention guidelines and policies and to adopt a more holistic approach toward marine preservation;
4. The results of the laboratory analysis by Subic Water on the sample wastes collected by the Ecology Center is confirmed to exceed the permissible levels under DENR effluent standards;
5. DENR would not have allowed the dumping of the untreated sewage wastes if a permit were applied for by Glenn Defense with the EMB;
6. There are efforts to update the effluent standards as contained in DAO 35-1990, but due to comments from various stakeholders, the approval is always held in abeyance. A draft was forwarded to the Committees by the DENR;
7. It was confirmed that a complaint was filed against Glenn Defense in October 2011, but that action on the complaint remains pending. It was reported that the inaction was not within the regular practice of EMB as normally they act on complaints within seven days from filing;
8. DENR confirmed that there have been previous cases of waste dumping reported to them.

The DENR also submitted a report to the committees providing the following information:

1. In a letter dated 26 November 2012, Engineer. Exuperio L. Lipayon, OIC-Office of the Director and concurrent Chief, Pollution Control Division of EMB-Region 3 directed Mr. Jonathan L. Guanson, Executive Assistant to the Chairman and CEO of Glenn Defense to submit the following:

- a. Position paper;
- b. Copies of Transport Permit (TP), Certificate of Treatment (COT), completed Manifest Form and transport report as proof that oily waste was properly treated by an Accredited DENR Treater; and
- c. List of transporter and treaters the company has engaged.

It was not indicated in the report if any submission was made by Glenn Defense.

2. The EMB-Region 3 also wrote to PCG and SMBA, in letters dated 27 November 2012, requesting to be provided copies of the agency report and other information relevant to the alleged toxic waste dumping by MT Glenn Guardian;

3. The SBMA Ecology Center, in a response dated 28 November 2012 informed EMB-Region 3 of the following:

- a. All bilge water and oily water from the US ships were transported by DENR accredited transporters and brought to waste treatment facilities.

(The bilge water and oily water mentioned herein refer only to those collected by Glenn Defense from USS Emory Land and which is the subject of the inspection report of the SBMA)

- b. The 50,000 gallons of domestic waste water collected by the MT Glenn Guardian from the US Navy vessels were disposed without notification or permit from the PCG approximately 17 nautical miles from the nearest land outside the bay;
 - c. No evidence of bilge, oily water and domestic waste were disposed within Subic Bay.
- 4. SBMA provided EMB-3 a record of hazwaste transports made for US ships.
- 5. The SBMA list of waste transporters and waste management facilities were verified with EMB Central Office and Region 3 records with respect to the applicable permits and showed that the following had valid permits:
 - a. Innovative Technology and Environment Solutions, Inc. has a valid Environmental Compliance Certificate for its treatment facility in Bataan. It is also a registered Treatment, Storage, and Disposal Facility valid until November 6, 2013;
 - b. JM Ecotech Solutions, Inc. was issued an ECC by the Laguna Lake Development Authority for its TSD facility located in Caloocan City. It has a TSD registration certificate with the DENR valid until November 2013;
 - c. ADL Waste Management has a Transporter Registration Certificate valid until June 29, 2012.
- 6. EMB-3, through a memorandum to DENR-EMB Director Miguel Cuna, provided the following information:
 - a. **ADL did not secure a Permit to Transport (PTT) from EMB 3 and made the transport without the proper**

manifest forms, in violation of the requirements under Chapter 3 and Chapter 8-1 of DAO 36, series of 2004;

- b. EMB-3 will issue the corresponding Notice of Violation (NOV) to ADL and Innotech, and will recommend the issuance of NOV to Ecotech by EMB-NCR which has jurisdiction over the said TSD Facility. Innotech and Ecotech are deemed to have violated DENR regulations when they accepted the waste from ADL without the proper manifest as provided for in Chapter 8-1 of DAO 36.**

G. Visiting Forces Commission (VFACOM)

The VFACOM offered the following information through its position paper (**Annex “LL”**):

1. On November 9, 2012, media reported that the Subic Bay Metropolitan Authority (SBMA) is investigating Glenn Defense Marine Asia, a US Navy contractor, for allegedly dumping hazardous and toxic wastes on Subic Bay.
2. SBMA records showed that Glenn Defense Ships (M/T Glenn Guardian and Glenn Enterprise) carried raw sewage that was collected from USS Denver and USNS Emory Land that docked in Subic port in a recently concluded PH-US PHIBLEX 13 held on October 8 to October 18.
3. A Show Cause Letter, dated October 17, 2012, was sent to Glenn Defense by SBMA Ecology Center about the possible violation of the environmental laws. In a reply, Glenn Defense invoked that it is the VFA Commission that should treat the matter and thus beyond the regulatory framework of the SBMA.

4. This was subsequently corrected by the Glenn Defense Marine Asia CEO and ex-Navy chief Mateo Mayuga and stated in a press conference that the company is not covered by the VFA. On several reports, Glenn Defense has also maintained that it did not dump toxic wastes but released previously treated wastewater. It released at the prescribed distance of 12 miles from shore as established by the Marine Pollution Protocol.
5. **Glenn Defense cannot invoke the VFA to escape liability for possible violation of the Philippine laws.** Glenn Defense is a contractor of US Navy ships that docked in Subic for naval exercises and therefore, a non-party to the Visiting Forces Agreement (VFA) between the Philippines and the United States. Glenn Defense cannot claim cover under the VFA as this agreement involves only the Philippine Government and US Government. As used in the Agreement, it only covers "United States personnel" which means United States military and US civilian personnel temporarily in the Philippines in connection with activities approved by the Philippine Government. Glenn Defense cannot be considered as US civilian personnel as defined under the Agreement.
6. Under Executive Order No. 199^{xii}, the Presidential Commission on the Visiting Forces Agreement (PCVFA) was created to monitor the implementation and compliance of the provisions of the VFA. **VFA Commission is a "monitoring and assessment body".**
7. Under Executive Order No. 199, **VFA Commission has no power to conduct investigation on the alleged waste dumping.**

The VFACOM proffered the following on the allegations by the DENR that the VFA Commission prevented inspection of Glenn Defense barges:^{xiii}

1. The Commission was invited to attend a conference with the DENR in February 9, 2012 and that its Senior Legal Adviser attended the meeting.
2. It was reported by the Legal Adviser to the VFACOM Executive Director that there was no specific violation being discussed but that they were discussing what would be the arrangements/procedures that should be undertaken when such occurrences happen. In other words, it was a hypothetical discussion.

V. FINDINGS

The following are the key issues upon which the focus of the joint investigation being conducted by the Senate Committee on Foreign Relations and the Senate Committee on Environment and Natural Resources was centered:

1. Glenn Defense's claim of coverage under the VFA;
2. The factual information and circumstances on the alleged dumping by Glenn Defense Marine Asia Philippines, Inc. (Glenn Defense) of sewage, toxic, or hazardous wastes in the waters of Subic or in the Philippine Exclusive Economic Zone;
3. Legislations, rules and regulations pertinent to the aforementioned allegations;
4. Nature, type, and volume of wastes allegedly dumped into the seawaters, if any;
5. Attendant issues and circumstances on the alleged illegal dumping of waste by Glenn Defense:
 - a. Area where the dumping was done;
 - b. Compliance issues with respect to Annex IV of the International Convention for the Prevention of Pollution from Ships (MARPOL);
 - c. Compliance issues with respect to the provisions of RA 6969 and its implementing rules and regulations;
 - d. Compliance issues with respect to existing laws, rules and regulations.
6. Degree/extent of waste dumping in seawaters;
7. Relevant factors or circumstances attendant to the case at hand;
8. Actions and findings of government agencies; and
9. Recommendations.

After a series of hearings and meetings, collection of information and data from various stakeholders and the principals involved in these issues, and analysis of the information gathered, the Committees hereby submit the following findings:

1. GLENN DEFENSE IS NOT COVERED BY THE VFA

Glenn Defense Marine Asia Philippines, Inc. (GDMAPI/Glenn Defense) is a corporation, organized and registered under Philippine laws. **It is a legal entity that is separate and distinct from Glenn Defense Marine (Asia) Pte Ltd** (GDMAPL), a private corporation duly organized and existing under the laws of Singapore that was awarded the United States Fleet and Industrial Supply Center Contract Number N40345-11-D0016 on 23 June 2011.

GDMAPI/Glenn Defense which was duly incorporated and registered with the Securities and Exchange Commission effective June 29, 2007. Its primary purpose, as stated in its Articles of Incorporation is, as follows:

“To engage in marine husbanding, naval support, maritime security, force protection, building, constructing, fabricating, and repair, to own, manage, operate, maintain, buy, sell, or otherwise deal in and with ships, vessels, boats and marine structures of every kind and nature, graving docks, dry docks, floating docks, various land structures, industrial plants, and structures, and other conveniences for building, repairing of marine and land structures and industrial plants”

“Glenn Defense Marine (Asia) Pte Ltd and the US Navy entered into solicitation/contract/order for commercial items for the

performance of maritime husbanding support for US Navy ships visiting ports and operating in, among others, Manila, Puerto Princesa, and Subic Bay, Philippines. It became effective on 27th July 2011 and remains valid and subsisting.”^{xiv}

A service agreement was entered into “with effect as of January 1, 2008”, by and between Glenn Defense Marine Asia Philippines, Inc. and Glenn Defense Marine (Asia) Pte Ltd.

Pertinent provisions of the Service Agreement (**Annex “MM”**) include the following:

“1. Scope of Services. During the term of this agreement, GDMAPI agrees to provide GDMAPL various marine services, including, but not limited to: marine husbanding; marine logistics support; maritime security and force protection for ships and crew; assistance in berthing; ordnance logistics support; supply of high priority parts, cargo freight, tugs, barges and bunkers; facilitate crew swaps, mail services and delivery; arranging port services, water taxis, ground transportation, recreation and communication; ship building and repair; land, sea, and air transportation and defense logistics; supply of fuel and potable water; **waste disposal including trash, black water, CHT and oily waste; and such other similar services.**”

‘2. Consideration. In consideration of the services rendered by GDMAPI, GDMAPL agrees to **pay a service fee** equal to fifteen percent (15%) of all costs and expenses incurred by GDMAPI in providing the services, including administrative and other operating costs related to the

services. As provided in paragraph 2, GDMAPL shall likewise reimburse GDMAPI for any and all costs and expenses incurred related to the services within fifteen (15) days upon receipt of the invoice.

'9. No Agency. *The parties hereto shall at all times remain independent contractors, and neither this Service Agreement nor any activities of the parties pursuant hereto shall create the relationship of partnership, principal and agent, or employer and employee, and each party agrees that it shall be responsible for its own acts, errors and omissions. Neither party shall have the authority to bind the other or to incur any liability or debt on behalf of or against the other."*

From the above information, it is clear that:

1. GDMAPI/Glenn Defense is an entity duly established under Philippine laws to engage in commercial operations.
2. On the basis of the subject Service Agreement, it is clear that GDMAPI /Glenn Defense, a Philippine SEC-registered company, was **not directly engaged by the US Navy and is only involved in the provision of husbanding and related services to visiting US ships in the Philippines on the basis of a Service Agreement with the contract owner, GDMAPL.** The "No Agency" provision of the Service Agreement clearly provides that GDMAPI/Glenn Defense and GDMAPL are **independent contractors** and that no partnership nor employee and employer relationship exists between these two entities.

3. GDMAPI / Glenn Defense is not even remotely a part of the US Navy as an organization nor are its employees a part of the United States personnel as defined in the VFA to include United States military and civilian personnel temporarily in the Philippines in connection with activities approved by the Philippine Government.
4. As contractor, GDMAPI cannot claim coverage under the VFA in ways that they would enjoy benefits and privileges accorded to the treaty partner of the Philippines. If the VFA requires US personnel to respect the laws of the Philippines, as provided under Article II (Respect for Law), why should GDMAPI / Glenn Defense think that they are exempt from complying with the country's laws, rules, and regulations?
5. The lawyers of GDMAPI / Glenn Defense are wrong in saying that GDMAPI "support vessels are not commercial vessels that are subject to the regulation of your (SBMA) office".^{xv} By the primary nature of its business as reflected in its registration with the Philippine SEC, Glenn Defense is a commercial entity and the services it extends are commercial in nature, proven by the fact that its services are covered by a commercial contract wherein it is stipulated that fees shall be collected for the delivery of such services to GDMAPL.
6. GDMAPI / Glenn Defense is liable for any omission or violation it may have committed in the course of providing contracted services to US Navy ships. **GDMAPI is not operating vessels for the United States armed forces, a claim it has repeatedly cited to escape coverage from Philippine laws and regulations, including payment of processing fees with MARINA. It operates as a contractor servicing US ships, and as such, is not covered**

by the privileges provided under the VFA. The DFA and the US Embassy share this view. US Ambassador Harry Thomas, appearing before the Bulong Pulungan news forum at Sofitel Philippine Plaza on November 13, 2012, said: “This (Glenn Defense) is not the US Navy, these are contractors hired by the US Navy whom we expect to respect and conform in accordance with Philippine law; they are not under the VFA.”

2. **GLENN DEFENSE MARINE ASIA PHILIPPINES, INC. (GLENN DEFENSE) FAILED TO COMPLY WITH THE REGULATORY AND PERMITTING REQUIREMENTS OF THE GOVERNMENT WHEN IT DUMPED AROUND 200,000 LITERS OF SEWAGE WASTE IN SEAWATERS ON OCTOBER 15, 2012. SIMILAR DUMPING ACTIVITIES BY GLENN DEFENSE WERE ALSO CARRIED OUT PRIOR TO THE SUBJECT INCIDENT.**

The Joint Committee, on the basis of the information and documents provided by the SBMA, PCG, DENR, and Glenn Defense, established, insofar as the instant case is concerned, that:

- a. MT Glenn Guardian, which is owned and operated by Glenn Defense, dumped around 200,000 liters of sewage waste it had collected from USS Emory Land in the seawaters in the evening of October 15, 2012;
- b. MT Glenn Guardian also conducted similar dumping activities involving undeclared wastes on October 6, 2012 and October 11, 2012. The dumping of such untreated sewage wastes into

seawaters has been the usual practice the details of which will be discussed in item 3 of the Findings.

- c. Glenn Defense failed to acquire the necessary permits and authorization from pertinent agencies of the government prior to dumping the untreated sewage wastes into the sea. The PCG, in its report to the Senate, declared that **“there is no record to show that subject vessel or the owner/operator of Glenn Defense Marine (Asia) Philippines Incorporated had forwarded any request for dumping or discharging of sewage waste”** to the PCG;
- d. Glenn Defense had claimed it discharged the sewage waste 32 kilometers (17.27 nautical miles) from land, a claim which is disputed by the PCG per item 7 in the Findings;
- e. Apart from the sewage waste, Glenn Defense collected another 200 liters of bilge water (combined water and oil) from USS Emory Land. These wastes were subsequently collected and transported by ADL Waste Management for eventual treatment by Innovative Technology and Environmental Solutions (Innotech) and JM Ecotech Solutions, Inc. (Ecotech). **These entities, contracted by Glenn Defense, have been found by the Department of Environment and Natural Resources to have violated DENR Department Administrative Order 36, series of 2004 (which revised DAO 29, series of 1992 of the Implementing Rules and Regulations of RA 6969) for failing to observe the permitting and waste acceptance guidelines for hazardous wastes.** This will be discussed in greater detail in item 6 of the Findings.

The following explains the bases of the above findings:

Republic Act 9275 defines dumping as **“any unauthorized or illegal disposal into any body of water or land of wastes or toxic or hazardous material: Provided that it does not mean a release of effluent coming from commercial industrial, and domestic sources which are within the effluent standards.** (emphasis supplied)

The coverage of RA 9275 is provided as follows:

“SECTION 3. Coverage of the Act. - This Act shall apply to water quality management in all water bodies: Provided, That it shall primarily apply to the abatement and control of pollution from land based sources: Provided, further, That the water quality standards and regulations and the civil liability and penal provisions under this Act shall be enforced irrespective of sources of pollution.”

Glenn Defense did not only dump sewage waste without permit. It dumped wastewater whose effluent levels were way beyond the effluent standards set by the DENR per DAO No. 35, series of 1990. Details of this finding will be discussed in item 4 of Findings.

The dumping of untreated sewage waste was confirmed by the following:

- a. Captain Edilberto Acedilla, the captain of M/T Glenn Guardian informed the Subic Ecology Center team on October 16, 2013, that they had dumped approximately 200,000 of untreated sewage

waste collected from the USS Emory Land in the evening of October 15, 2013 in the high seas;

- b. The Joint Senate Committee Hearing conducted on November 21, 2012 by the Foreign Relations Committee and the Committee on Environment and Natural Resources, pursuant to Senate Resolutions 894, 895, and 896 was able to confirm from retired V/Adm. Mayuga that M/T Glenn Guardian had dumped the sewage waste it had collected from USS Emory Land in the high seas. Mr. Mayuga further claimed that he had assumed that the sewage waste had been treated by the source, only to be disputed by the results of the laboratory tests and by Captain Glen Hildreth of the USS Emory Land.
- c. The Environmental Inspection Report (**Annex "NN"**) of the SBMA Ecology Center, dated Oct. 15, 2012, duly acknowledged and signed by the representative of M/T Glenn Guardian, indicated that it was carrying 50,000 gallons (approximately 200,000 liters) of domestic waste that will be disposed / discharged at sea, 20 to 25 nautical miles from Grande Island. Another 200 liters of bilge water (combination of water and oil) will be transported and treated by land-based contractors.

Regulatory / Permitting Requirements

Glenn Defense failed to secure the necessary permits/clearances from government authorities prior to its collection and dumping of the sewage waste into the seas. These permits include:

1. Disposal permit from the PCG (per PCG MC No. 01-2006); and
2. Clearance to dispose sanitary waste from the Ecology Center (per SBMA Waste Management Guidelines of 2003).

The following are the pertinent legislations/regulatory and permitting requirements governing the collection and discharge of sewage wastes from vessels:

A. Philippine Coast Guard Memorandum Circular No. 01-2006

Pertinent provisions are, as follows:

Scope

*“This circular applies to “oil companies, refineries, terminals, depots, **ships, tankers**, oil barges, dredges oil and gas explorers, power plants, shipyards and other establishments **wherein marine pollution originates in these sources such as dumping and discharging through the rivers, estuaries, outfalls and pipelines of waste and other matter within the territorial jurisdiction and exclusive economic zone of the Philippines**”.*

Prohibition

“It shall be unlawful for any person to discharge, dump, permit the discharge of noxious, gaseous and

liquid substances, waste and other matter in or out from company refineries, terminals, depots, oil companies, ships, tankers, barges, dredges, oil and gas explorers, power plants and shipyards, and other establishments into or upon territorial and inland navigable water of the Philippines.

‘The permit shall allow the dumping of waste or other matter in whatever form or condition, subject to the terms and conditions set forth herein...’.

Regulatory Requirements

“Disposal of wastes shall be subject to evaluation and other requirements as may be determined by the PCG and other government agencies.”

Procedure for Requests

“a. Requests for dumping shall be forwarded by the requesting party to the respective Coast Guard District (Attn: MEPO) one (1) week prior to the scheduled date for approval of the District Commander or his authorized representative.

‘b. Disposal shall be done specifically in accordance with the general and special permits, and only in the area designated by the PCG’ based on the coordinates indicated in PCG MC 01-2006.”

B. SBMA Seaport Instruction 94-007^{xvi}

Scope

“This instruction shall apply to all marine pollution in all bodies of water within the territorial jurisdiction of the Subic Bay Freeport Zone, Philippines.”

Prohibition

“It shall be unlawful for any vessel or person to: (1) discharge, dump or suffer, permit the discharge of oil or oily mixtures, noxious gaseous and liquid substance and other harmful substances from or out of any ship vessel, barge of any other floating craft or other man-made structures at sea by any methods, means, or manner, into or upon the territorial and inland navigable waters of the Zone.”

Requirements

“5(c)(1)(o) All shipments of hazardous substances through barging from ship to shore or vice-versa shall be reported beforehand to the Authority by shipping agents to include movements, destination and estimated time of transfer operation.”

*'5(c)(3)(f) Discharging/dumping of oil/wastewater from industries and manufacturing plants within the territorial water of the Zone shall be regulated by the Ecology Center. However, **the Authority shall implement in addition to this instruction, rules and regulations of agencies involved in water pollution control.**'*

Responsibility In Case of Pollution Incidents

"b. All persons who come across pollution incidents either from land-based or water-borne sources shall immediately inform the Authority for appropriate action."

Penalties

"a. The following administrative fines/penalties shall be imposed upon any vessel/person who violates any of the prohibition prescribed in Item 5.a (4) hereof as specified.

XXX

'(2) For discharging or dumping hazardous or noxious substances from vessels \$5,000 to \$10,000.

XXX

'(4) For failure to notify the Authority by the Master/Chief Engineer of the vessel and Salvor who

spilled/discharged oil or oily wastes or noxious gases or harmful substances, \$5,000 or suspension/barred of Marine Profession of the Master/Chief Engineer at the discretion of the Authority shall depend upon the amount of spill.”

3. GLENN DEFENSE, BY PRACTICE, HAS BEEN DUMPING SEWAGE WASTE INTO THE SEAWATERS OVER THE YEARS WITHOUT PERMITS FROM THE GOVERNMENT

Glenn Defense, during a meeting at the Senate on December 3, 2012, confirmed that by practice, the company has been disposing the sewage wastes collected from US Navy ships into the seawaters. The only time they would have the sewage transported, hauled, and treated by accredited land-based contractors is when all their ships are not available or are fully utilized due to multiple ship visits.

The statement of Mr. Jonathan Guanzon, representing Glenn Defense during the meeting on December 3, 2012, establishes the company's practice:

“Our practice of disposal is really based on MARPOL which is the – more than 12 nautical miles out. But there are cases, ma’am, wherein let us say our vessels are unavailable or there are multiple ship visits so we actually tap shore-based contractors to provide the sewage collection services for some of the ships because of unavailability of our assets.”

He further adds:

“Our good faith understanding is that there are no existing local policies governing the disposal of sewage more than 12 nautical miles out.”

The SBMA, in its report to the Senate, gave the following information:

*“SBMA records show that between 13 January 2012 to 22 October 2012, the Company (Glenn Defense) transported and disposed of, by land, seventy two thousand (72,000) liters of oily water, one hundred ninety two thousand (192,000) liters of bilge water and four hundred forty thousand (440,000) liters of sewage duly covered with the proper waste transport permits and corresponding certificates of treatment by accredited waste treatment facilities. However, it is **undetermined as of the writing of this Report, whether these volumes account for all of the oily water, bilge water, and sewage collected by the Company from US Navy ships.**”*

A. Estimating the Volume of Sewage Wastes Dumped into the seas from 2007 to 2012

It would be difficult to measure, in the absence of data, to determine the exact total volume of sewage wastes and bilge water, as well as hazardous wastes, that have been generated by US ships over time as collections by off-shore vessels have been left unmonitored by government agencies concerned.

Upon request of the Senate Committee, the SBMA submitted copies of Certificates of Treatment issued by land-based accredited waste transporters and treaters, sub-contracted by Glenn Defense to collect and treat sewage and hazardous wastes. These certifications are required of waste transporters and collectors under RA 6969 and its implementing rules and regulations.

The SBMA report causes alarm based on the following findings:

1. The Certification issued by Subic Water on the volume of Sewage wastes collected **from October 15 2012 to November 19 2012 revealed that a total of 4,025,000 liters of sewage were collected from the USS Emory Land alone**. A total of 357 US vessels visited the Philippines from 2007 to October 2012, and 56% or 191 ships were serviced by Glenn Defense. From January to October 22, 2012 alone, Glenn Defense serviced a total of 39 ships. Refer to Table 1. This gives an alarming picture as to the millions of untreated sewage wastes that have been dumped in seawaters by Glenn Marine over time.

Table 1

**Certification Issued by ADL Waste Management on the Volume of Sewage Wastes Collected and Treated
 from the USS Emory Land
 October 16 - November 19, 2012**

Date	In Liters	Water Treater
October 15 -21*	735,500	Innovative Technology and Environmental Solutions
October 22-28	849,000	Innovative Technology and Environmental Solutions/Subic Water and Sewerage Co., Inc.
October 29-November 4	766,000	Subic Water and Sewerage Co., Inc.
November 5 – 11	841,000	Subic Water and Sewerage Co., Inc.

November 12 – 19	833,500	Subic Water and Sewerage Co., Inc.
TOTAL	4,025,000	
NOTE: THE CERTIFICATION WAS NOT IN THE PRESCRIBED CERTIFICATE OF TREATMENT PRESCRIBED BY THE DENR. THE SAME WAS ALSO NOT CERTIFIED AS RECEIVED AND RECORDED BY THE DENR.		

*It was not indicated in the report, but this figure may include sewage waste received by Innovative Technology and Environmental Solutions on Oct. 16 amounting to 172,500 liters.

2. **Only three (3) land-based collection of sewage and hazardous wastes from US ships, under contract by Glenn Defense, were recorded in 2011** – (a) March 2011 involving 1 drum of waste oil/water mixture; (b) 640 gallons of sewage; and (3) 69,000 liters of oily water. Items (a) and (b) are classified as hazardous wastes under RA 6969 and its implementing rules and regulations. The question is, were there other hazardous wastes collected by Glenn Defense in 2011 that were not reported to the SBMA? And if so, how were these wastes disposed by Glenn Defense?;

3. Certificates of Hazardous waste treatment issued by Innovative Technology and Environmental Solutions for treatments made in September 2011 and February 2012 raises integrity issues as these Certificates had **later numbers than the Certificate of Treatment issued by the same waste treater on November 14, 2012.** Control numbers are precisely issued to ensure integrity in the certification system.

4. **From January to October 14, 2012, covering a period of nearly 10 months, there were only six (6) recorded instances of sewage and hazardous waste collection by accredited land-based waste transporters from US ships,**

under contract by Glenn Defense.^{xvii} After October 15, 2012 - - the date when the SBMA Ecology Center undertook a spot inspection wherein more than 200,000 liters of sewage waste was found on MT Glenn Guardian for disposal at sea - - thirty four (34) waste collections were undertaken by accredited land-based waste transporters from US ships covering a period of only four weeks. This only underscores the fact that had it not been for the public uproar and the subsequent investigation being conducted on the alleged waste dumping by Glenn Defense, the latter would not have resorted to having the sewage wastes it collected from US ships treated by accredited waste treatment facilities.

A question that begs an answer is how much sewage wastes, oily wastes, bilge water, and hazardous wastes have been generated by these ship visits that have escaped the attention of the government authorities and which were subsequently dumped into the seas by Glenn Defense?

Why was there a breakdown and total failure on the part of government agencies concerned to monitor and regulate the arrival and operation of ships that provide husbanding, waste collection and transport, and waste disposal?

What happened to the rest of the hazardous wastes that were collected from US ships in 2011 by Glenn Defense, considering that only 1 drum of waste oil / oily mixture, and 69,000 liters were treated by JM Ecotech Solutions, Inc. -- Glenn Defense's contracted Waste Treater.

It also remains to be seen if the other companies that were contracted to collect sewage and hazardous wastes from US ships -- Global Ship Management & Marine Services, and Wilhelmsen-Smithbell Subic Inc. -- which accounted for 70% of ships serviced in 2011 -- complied with government regulatory and permitting requirements for the transport and treatment of sewage and hazardous wastes. This is a matter that deserves the close scrutiny of the DENR, SBMA, and the PCG.

Glenn Defense has admitted that by practice, it dumps the sewage waste collected from the US ships into the sea. It also admitted that land-based accredited waste transporters are contracted by their firm **as an exception whenever their ships are unable to meet the demands due to multiple ship visits.**

This practice, undetected by DENR, SBMA, and PCG for years, deserves these agencies' serious review. If findings should provide basis for the imposition of the necessary sanctions against the violators, then so be it.

Table 2

**SUBIC BAY METROPOLITAN AUTHORITY
U.S. VESSELS BERTHED IN-PORT
From 2007 - Oct. 2012**

FREQUENCY DISTRIBUTION OF US SHIPS BY SHIP AGENT BY YEAR

SHIP AGENT	2007	2008	2009	2010	2011	2012	TOTAL	
						(Jan-Oct)	No.	%
Barwill-Smithbell Subic Inc	1	1					2	0.6%
Glenn Defense	4						4	1.1%
Glenn Defense Marine Phils (Glenn Defense Marine Asia; Glenn Defense Marine Asia Phils)	9		1		1		11	3.1%

Glenn Defense Marine/Seaway Fil (Glenn Defense/Seaway Marine Asia)	4			17			21	5.9%
Glenn Defense/Seaway Fil. (Seaway Fil/Glenn Defense; Seaway Fil Log/Glenn Defense)	11	60	28	16	11	39	165	46.2%
Global Ship Mgmt (Global Ship Mgmt & Marine Svcs)	12	19	33	16	25	13	118	33.1%
Seaway Filipinas Logistics Inc	4						4	1.1%
Sharp ISS Port Agency	2						2	0.6%
Vision Air & Sea Svcs. Inc.	2		12	8		2	24	6.7%
Wilhelmsen-Smithbell Subic Inc					3		3	0.8%
No Ship Agent Indicated						3	3	0.8%
TOTAL	49	80	74	57	40	57	357	100%
(% By Year)	14%	22%	21%	16%	11%	16%	100%	

4. THE SEWAGE WASTES DUMPED BY GLENN GUARDIAN ON OCTOBER 15, 2012 IN SEAWATERS WERE FOUND TO BE IN EXCESS OF PERMITTED EFFLUENT STANDARDS IN VIOLATION OF DENR DEPARTMENT ADMINISTRATIVE ORDER NO. 35, SERIES OF 1990 AND PHILIPPINE COAST GUARD GUIDEBOOK SERIES NO. 7^{xviii}. THE LABORATORY RESULTS ALSO INDICATED THE PRESENCE OF ALARMING LEVELS OF OIL AND GREASE -- WASTES THAT ARE CONSIDERED HAZARDOUS UNDER RA 6969 AND ITS IMPLEMENTING RULES AND REGULATIONS.

The following are the pertinent findings in connection with the nature and level of effluent of the sewage waste that was dumped by M/T Glenn Guardian in the seawaters:

- a. Untreated sewage wastes, whose effluent levels were found to be in excess of permitted standards as prescribed under DENR Department Administrative Order No. 35, series of 1990 and Philippine Coast Guard Guidebook Series No. 7, were dumped by M/T Glenn Guardian in seawaters on October 15, 2012;

- b. Oil and grease, which are considered hazardous wastes under RA 6969 and its implementing rules and regulations, have been detected at alarming levels in the samples collected from M/T Glenn Marine and Glenn Enterprise on October 15, exceeding the DENR DAO permissible level of 5mg/liter;
- c. Assistant Director Eva Ocfemia of the DENR-EMB, in a technical meeting conducted on November 27, 2012, confirmed that DENR would not have allowed the discharging of the untreated sewage waste into the seawaters if Glenn Defense had applied with the said agency for a permit to discharge given that its effluent levels far exceeded the standards as prescribed under DENR Department Administrative Order No. 35, series of 1990.

Table 3

SUMMARY OF SUBIC WATER LABORATORY SEWAGE TEST RESULTS
Percentage Difference Between Sample & DENR DAO 35 Standard

PARAMETERS	DAO 35 STANDARD & UNITS		EFFLUENTS TESTED & RESULTS					
			GLENN ENTERPRISE				GLENN GUARDIAN	
			SAMPLE 1		SAMPLE 2			
	No.	Unit	Sample	% Difference	Sample	% Difference	Sample	% Difference
Biochemical Oxygen Demand (BOD)	30	mg/L	20,500	68233%	3,500	11567%	750	2400%
Chemical Oxygen Demand (COD)	60	mg/L	43,982	73203%	6,969	11515%	1,485	2375%
Oil & Grease	5	mg/L	9,953	198960%	492	9740%	30	500%
Total Suspended Solids	50	mg/L	23,160	46220%	820	1540%	252	404%
True Color	100	TCU	317	217%	241	141%	201	101%

- d. The spot inspection on October 15, 2012 and the collection of sewage waste samples by the SBMA Ecology Center from the M/T Glenn Guardian and M/T Glenn Enterprise on October 16, respectively, were actions that fall within the authority of SBMA.
- e. The concerns raised by Glenn Defense on the method by which the sewage waste samples were collected by Subic Water is duly noted, but the DENR *Manual on Effluent Quality Monitoring* identified *manual grab sampling* -- the method used for sample collection by the SBMA Ecology Center, which involved the use of a dipper (an intermediate container) -- as one of the acceptable methods for collecting samples. The manual provides that the subject method is suitable when “(1) analyzing situations at specific sites; (2) analyzing for unstable parameters that have to be measured right away or on site; (3) a snapshot of a water quality at a particular instant is desired; (4) the characteristics of the waters are known to be relatively constant over time; and (5) collecting samples to be analyzed for parameters that could be adversely affected by compositing process.”

Glenn Defense is not in a position to conclude that the Subic Ecology Center representatives had improperly done grab sampling. The fact remains that its representatives, in the persons of Captain Acedilla (M/T Glenn Guardian) and a certain Mr. Falaes (M/T Glenn Enterprise), had allowed the collection of the samples as evidenced by the Environmental Inspection Reports of the SBMA Ecology Center.

The claim of Glenn Defense that “international boarding and inspection protocols of a foreign flagged vessel were not observed” does not hold water as the SBMA is clearly within its legal mandate and authority to

inspect the vessels concerned, by virtue of Philippine laws and regulations.

Chapter II, Part B, Section 11(f) of the Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority under RA No. 7227 provides, as follows:

Section 11. Powers and Functions. Other than the powers and functions prescribed in Section 10 of these Rules, the SBMA shall have the following responsibilities:

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“(f) Consistent with the Constitution, the SBMA shall have the following powers to enforce the law and the Rules in the Subic Bay Freeport:

(1) To audit and inspect the records of any SBF Enterprise;

*(2) To **inspect and search the premises of any** SBF Enterprise or Resident, or nay vehicle, aircraft, **vessel**, person in the SBF **to detect any violation of the law or these Rules;***

(3) To conduct investigations of any suspected violation of the law or these Rules.

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The fact remains that to date, no information nor proof has been

presented by Glenn Marine to refute the results of the laboratory analysis by Subic Water.

Furthermore, there are three sets of samples acquired by SBMA, all of which had effluent levels that were in excess of permitted standards as prescribed under DENR Department Administrative Order No. 35.

The laboratory analysis, undertaken by qualified technical personnel of Subic Water cannot just be dismissed only because Glenn Defense, without any clear proof, decided to undermine the qualifications of the Subic Ecology personnel who collected the samples, question the sample collection process without basis, and claim “manifest bias” on the part of Subic Ecology Center who boarded, inspected, and took samples of the sewage wastes that were dumped into seawaters.

5. GLENN DEFENSE IS NOT AN ACCREDITED SEWAGE WASTE COLLECTOR OR COLLECTOR OF OTHER RELATED HARMFUL SUBSTANCES IN VIOLATION OF PCG MEMORANDUM CIRCULAR 03-2005

SBMA and DENR submitted reports to the Senate, indicating that apart from sewage wastes, Glenn Defense also collected hazardous wastes from US ships. **As a collector of waste and hazardous waste, Glenn Defense is required, under the law, to secure accreditation from pertinent agencies of the government before it can discharge such services.**

The following are the findings:

- a. The following table shows the type and indicative volume of hazardous and sewage wastes collected by Glenn Defense from US ships from January to October 22, 2012. The sewage wastes

reflected in the following table is partial. Refer to Table 5 for actual volume collected from just 1 US ship:

Table 4
SBMA Ecology Center
Table of Hazardous and Sewage Waste Collected from US Ships by
Glenn Defense/Subic Drydock
January 2012 to 25 October 22, 2012

Date	Waste Generator	Sewage (Liters)	Expired paints (kilos)	Oily Rags (kg)	Busted Flour. Lamp (BFL) (pcs)	Oil Filter (pcs)	Oil Cans (pcs)	Bilge Water (liters)	Oily water, oily waste (liters)
2011									
3/17	Glenn Defense Marine Services								1200
8/19	Glenn Defense Marine Services (USS Defender)	2,422*							
10/19	Glenn Defense Marine Services (USS Denver)								69000
	(Sub-Total)	2,422							70200
	Total - 2011	2422 Liters							70,200 liters
2012									
1/13	Glenn Defense Marine Services (USNS John Ericson)		180						
3/2	Glenn Defense Marine			100	156	40	48		
4/30	Glenn Defense Marine (USNS Tippecanoe)							50,000	
7/2	Glenn Defense Marine (USNS Safeguard)								9,000
8/28	Glenn Defense Marine (Glenn Tiange)								5,000
10/11	Glenn Defense Marine - Glenn Enterprise								5,000
10/16	Subic Drydock Corp. (USNS Emory S. Land)	172,500							
10/17	Glenn Defense Marine Service/USS Tortuga	100,000							

10/18	Glenn Defense Marine/USNS Tortuga	273,500							
10/22	Glenn Defense Marine/USNS Walter S. Diehl								80,000
10/22	Glenn Defense Marine Service /USNS Richard Byrd								14,000
10/25	Subic Drydock Corp. (USNS Emory S. Land)								61,400
	Total January 2011 to Oct. 25, 2012	548,422 liters	180 kilos	100 kilos	156 pcs	40 pcs	48 pcs	50,000 liters	174,400 liters

* 640 gallons indicated in SBMA report, converted into liters

** Error in SBMA report, should be reflected in liters

***Sewage waste is not hazardous waste per DAO No. 36-2004

The SBMA indicated that it has not determined yet if the volumes reflected in its report account for all of the oily water, bilge water and hazardous wastes collected by Glenn Defense from US ships. **Based on other Certifications from Subic Water Co. and reports from SBMA, total sewage collected from USS Emory Land for the period from October 15 to November 19, 2012 is 4,025,000 liters.**

- b. Glenn Defense is required by law and the regulations of the government to secure accreditation as waste collector/hazardous waste transporter before it can discharge such functions. Glenn Defense, which was incorporated in 2007, was able to secure only two (2) term-specific accreditations from the Philippine Coast Guard and none from the DENR and SBMA. These accreditations are as follows:
 - i. Accreditation Certificate as Oily Waste and Sewage Collector, dated 23 August 2011, **valid until September 2, 2011** (applied for and issued per PCG MC 03-2005);

- ii. Provisional Accreditation Certificate as Waste Collector, dated September 14, 2011, **valid until September 24, 2011** (applied for and issued per PCG MC 03-2005).

Glenn Defense, therefore, after September 24, 2011, did not have a valid accreditation to undertake sewage waste and oily waste collection and collection of other related harmful substances, notwithstanding the fact that it continued to service visiting US ships. For security reasons, the listing of US Navy Ships that visited the Philippines will not be reflected in this report.

During a technical meeting at the Senate on December 3, Mr. Guanzon of Glenn Defense informed the meeting that they had applied for accreditation in 2011 only because there were complaints against Glenn Defense at that time.

At the Senate hearing on November 21, 2012, Mr. Mayuga admitted that Glenn Defense is aware of PCG MC 01-2006 but gave the opinion that it covers only “dumping within Philippines territorial waters”.

A close reading of the scope of PCG MC 01-2006, however, would not support Mr. Mayuga’s claim. It reads:

*“3. SCOPE: **This Memo Circular shall apply to oil companies, refineries, terminals, depots, ships, tankers, oil barges, dredges oil and gas explorers, power plants, shipyards and other establishments wherein marine pollution originates in these sources such as dumping and discharging through the rivers, estuaries, outfall and pipelines of waste and other matter within the territorial***

***jurisdiction and exclusive economic zone of the
Philippines.***” (emphasis supplied)

It is therefore apparent, from the above narration of facts, that Glenn Defense unilaterally just decided to brush aside government regulations while it continued to operate in the Philippines on the basis of its claimed “good faith interpretation of the regulations” and its self-serving interpretation that it is covered by the privileges extended by the Visiting Forces Agreement. This is an interpretation disputed by the DFA, VFACOM, and even the US Embassy.

- c. There are other agencies that have issued regulations governing the accreditation of waste collectors, transporters, and waste treatment facilities. These include the DENR, SBMA, and the PCG. The DENR accreditation requirements cover only land-based sources of wastes. PCG and SBMA guidelines cover the operations of Glenn Defense.

Pertinent regulations in this regard are, as follows:

A. Philippine Coast Guard Memorandum Circular 03-2005

PCG MC 03-2005 provides the procedures for the accreditation of tank cleaning contractors/collectors of diluted oil and other related harmful substances.

It provides that the contractor shall observe all rules and regulations pertaining to marine pollution.

It further provides that **“collectors shall be accredited by the**

Philippine Coast Guard and/or other concerned government agencies. Collection shall be supervised by/reported to PCG authorities. Oil wastes shall be disposed of by depositing it to the DENR-EMB accredited reception facility or dumping areas."

It was under this circular that Glenn Defense had applied for its accreditation as Oily Waste and Sewage Collector in August 2011, and as Waste Collector in September 2011.

Thereafter and even upon expiration of these accreditations, Glenn Defense has not filed further applications for accreditation with the PCG.

Pertinent provisions of PCG MC 03-2005 are, as follows:

A. PCG Memorandum Circular 03-2005

The following are pertinent provisions governing the accreditation of Collectors of Diluted Oil and Other Related Harmful Substances:

"A. Procedures for Accreditation of Tank Cleaning Contractors/ Collectors of Diluted Oil and Other Related Harmful Substances

'1. Accreditation of tank cleaning contractors shall be processed and filed with the Commander, National Operations Center for Oil Pollution (NOCOP), PCG. Those in the areas shall submit their request to CNOCOP thru the respective District Commander for endorsement if applicant is outside the AOR of Coast Guard District NCR-CL.

'Applications for accreditation shall include the following: (a) Articles of Incorporation, (b) List of Equipments, (c) List of qualified personnel to conduct Tank Cleaning Operation (attach certificates or any proof of training taken to qualify to perform tank cleaning operation), (d) Copy of the contract with the vessel's owner/agent, (e) Plan for the conduct of tank cleaning activity, (f) Emergency plan in case of injury/accident, (g) Copy of the approved PPA permit for tank cleaning and berthing space, (h) Disposal plan of waste (i) Permit from EMB for land disposal, (j) Contract of the company for proper disposal.'

B. SBMA Waste Management Guidelines of 2003

Pertinent provisions of the SBMA Waste Management Guidelines of 2003 are, as follows:

(1) Article II, Section 10.0 Visiting Vessels

*"All visiting vessels shall dispose of their wastes properly. The Seaport Department shall immediately notify the EC of the presence of visiting vessels. Solid wastes shall be properly contained prior to collection. **Sewage and toxic and hazardous wastes which may be present in the vessels shall be collected only by SBMA and DENR accredited haulers and transporters.**"*

(2) Article V, Section 1.0

Article V, Sec. 1.0 (b) provides that "Dumping of **all**

types of waste in all water bodies and in Environmentally Critical Areas" is prohibited.

(3) Guidelines for Hazardous and Waste Transporters and Generators

The following provisions outline the guidelines and requirements for hazardous waste transporters and generators, as follows:

"a. Only SBMA and DENR accredited haulers/transporters are allowed to collect and dispose hazardous waste.

'b. The accredited Provide Material Safety Data Sheet (MSDS) of material to be disposed

'c. Necessary permit(s) shall be secured from the (Ecology Center) prior to disposal.

'd. Disposal of sanitary wastes shall require clearance from the Ecology Center and can only be done by SBMA accredited hauler, this shall be dispose only in Sewer Treatment Facility of Subic Water, Inc."

Clearly, Glenn Defense did not comply with those guidelines.

6. PER DENR REPORT, THE SUB-CONTRACTORS OF GLENN DEFENSE VIOLATED DENR GUIDELINES IN TRANSPORTING AND TREATING BILGE WATER (WATER AND OIL) THAT IT HAD COLLECTED FROM US NAVAL SHIPS

DENR reported that based on SBMA records, these hazardous wastes were hauled by ADL Waste Management (ADL), an accredited transporter, and were supposedly treated by two accredited Treatment, Storage, and Disposal (TSD) Facilities, namely, Innovative Technology and Environmental Solutions (Innotech) and JM Ecotech Solutions, Inc. (Ecotech). It further reported the following findings:

- i. Based on its records, ADL did not secure Permits to Transport (PTT) the Hazardous Wastes from the EMB, Regional Office III in violation of DENR DAO 36, series of 2004 or the implementing rules and regulations of RA 6969;
- ii. It finds Innotech and Ecotech (TSD facilities) to be in violation as well of DENR DAO 36, series of 2004 or the implementing rules and regulations of RA 6969 for accepting waste without the proper manifest.

The following are the pertinent legislations/regulatory and permitting requirements governing the transport, hauling, transfer, and treatment of hazardous wastes:

A. RA 6969 or the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990

RA 6969 covers “the importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal of all

unregulated chemical substances and mixtures in the Philippines, including the entry, even in transit as well as the keeping or storage and disposal of hazardous and nuclear wastes into the country for whatever purposes”.

The implementing rules and regulations of RA 6969, as amended by DENR DAO N. 36, series of 2004, provide the permitting processes and requirements.

B. SBMA Waste Management Guidelines of 2003

Pertinent provisions of the SBMA Waste Management Guidelines of 2003, as indicated above also apply to this finding.

7. GLENN DEFENSE DID NOT DUMP THE SEWAGE WASTES IN THE DULY-DESIGNATED DUMPING AREAS IDENTIFIED IN PCG PER MC 01-2006

The PCG, in its report to the Senate, gave its qualified view that Glenn Defense dumped the sewage wastes in an area outside of the designated dumping areas in violation of PCG MC -1-2006.

The Committee requested the Philippine Coast Guard to analyze the Ship Movement Summary of M/T Glenn Guardian as provided by SBMA, covering the ship's movement when it allegedly proceeded to the high seas to dump the sewage waste in the area designated by PCG under MC 01-2006.

The report of the PCG reflects the following:

“Disposal 3 sometime on October 15, 2012

Latitude 14 degrees **32 minutes** North (Lat 14° 32' N)

Longitude 119 degrees 57 minutes East (Long 119° 57' E)

'Above grid coordinate at Disposal 3 sometime on 15 October 2012 has an upshot of **12 nautical miles or 20.04 kilometers** (*represented by the 12 minutes discrepancy in the Latitude grid coordinate wherein 1 minute is equal to 1 nautical mile or 1.67 kilometers*)”.

“The dumping area designated by PCG”, on the other hand, is based on the following coordinates:

Latitude 14 degrees **20 minutes** North (Lat 14° 20' N)

Longitude 120 degrees 00 minutes East (Long 119° 57' E)

This finding disputes the earlier report of the SBMA that indicated that “the destination of M/T Glenn Defense for the purpose of discharge is compliant with the PCG Standard.”

PCG MC 01-2006 provides the following:

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”6. PROCEDURE FOR REQUESTS:

‘a. Requests for dumping shall be forwarded by the requesting party to the respective Coast Guard District (Attn: MEPO) one (1) week prior to the scheduled date for approval of the District Commander or his

authorized representative.

*'b. Disposal shall be done specifically in accordance with the general and special permits, **and only in the area designated by the PCG based on the following coordinates:** (emphasis supplied)*

CGD NCR-Central Luzon

*Lat – 14 deg 20.0'N, Long – 120 deg 00.0 E or 25 NM
SW of Luzon Point"*

It may also be noted that while the ship log of M/T Glenn Guardian tend to suggest that the sewage waste was dumped around 17 nautical miles from the nearest land point, albeit outside of the designated dumping area, there is no way to verify if, indeed, the ship log faithfully reflected the actual area where the ship had dumped the sewage wastes.

The claim of Glenn Defense that it "discharged CHT approximately seventeen (17) nautical miles from the nearest shoreline of the Philippines – i.e., **in the high seas**, beyond Philippine territorial waters"^{xix} is likewise inaccurate.

It is **grossly inaccurate for Glenn Defense to claim in its position paper that the area where it dumped the sewage is in the high seas. UNCLOS provides a clear distinction between the EEZ and the high seas.** Clarifying this distinction is vital given that while the Philippines exercises enforcement rights in the EEZ, flag states of vessels have the enforcement obligations based on international laws in the high seas under the UNCLOS.

Seventeen (17) nautical miles from the nearest land point of the Philippines **is not the high seas. It is part of the Philippine EEZ.**

Pertinent provisions of UNCLOS in this regard are, as follows:

Article 86, Section 1 (General Provisions), Part VII, **High Seas**:

*“The provisions of this Part apply to all parts of the sea **that are not included in the exclusive economic zone**, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.” (emphasis supplied)*

By this provision, UNCLOS creates a clear distinction between the country’s EEZ and the high seas.

Under Article 56, Part V of UNCLOS, the Philippines exercises “jurisdiction over the protection and preservation of the marine environment” in its Exclusive Economic Zone (EEZ).^{xx} The area where Glenn Defense claims to have dumped the sewage waste, which is “17 nautical miles from the nearest shoreline of the Philippines” is still part of the Philippine EEZ, and on the basis of UNCLOS, the Philippines exercises prescriptive and enforcement rights in this area.

**8. RESULTS OF PCG ANALYSIS OF SEWAGE DISCHARGE RATE
DEBUNK THE CLAIM OF GLENN DEFENSE THAT MT GLENN GUARDIAN
HAD DUMPED THE SEWAGE WASTES IT WAS CARRYING ON OCTOBER
15, 2012 IN ACCORDANCE WITH THE PCG AND MARPOL GUIDELINES
FOR THE DISCHARGE OF UNTREATED SEWAGE WASTES INTO THE
SEA**

The Senate Committees, in determining if M/T Glenn Guardian discharged the sewage in the manner specified by regulations, particularly PCG MC 01-2006 and Regulation 11.11.1 of the Revised Annex IV of MARPOL 73/78, requested the PCG to verify Glenn Defense's claim that it had complied with MARPOL and PCG guidelines and regulations in discharging the waste.

Glenn Defense, in its position paper submitted to the Committee, claims the following:

"In the case of MT Glenn Guardian, as shown by the ship log obtained during the surprise inspection, it discharged CHT approximately 17 nautical miles from the nearest shoreline of the Philippines - i.e. high seas, beyond Philippine territorial waters."

"Under the legal and regulatory regime of MARPOL 73/78, as enforced by the PCG, Glenn Defense has not violated any pertinent regulation in connection with the discharge of sewage and gray water into the high seas."

The report of SBMA made the observation that:

"The MT Glenn Guardian completed the voyage to the dumping destination, the actual discharge and the voyage back to the port in approximately ten (10) hours during each discharge."

The results of PCG's analysis however, indicate that **M/T Glenn Guardian would have needed a much longer time, not just nine hours and fifty minutes (or 9.83 hours) -- the total traveling/discharge time based on its ship log -- to complete the sewage dumping process**

commencing from the 17 nautical mile point from the nearest land point, if it had, indeed, dumped the sewage waste in conformance with the guidelines of Annex IV of MARPOL.

In reaching this conclusion, the PCG used the standards for the rate of discharge of untreated sewage from ships per the Marine Environment Protection Committee (MEPC)^{xxx} Resolution 157 adopted on October 13, 2006.

Pertinent provisions of the said resolution are as follows:

“1.1 Regulation 11.1.1 of the revised Annex IV of MARPOL 73/78 requires that untreated sewage, which may be discharged at more than 12 nautical miles from the nearest land, should not be discharged instantaneously but at a moderate rate of discharge when the ship is en route and proceeding at a speed not less than 4 knots, while the rate should be approved by the Administration based upon standards developed by the Organization.

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‘3.1 The maximum permissible discharge rate is 1/200,000 (or one 200,000th part) of swept volume as follows:

$$DR_{max} = 0.00926 V D B$$

Where:

DR_{max} is maximum permissible discharge rate (m³/h)

V is ship's average speed (knots) over the period

D is Draft (m)

B is Breadth (m)

*'4.1 The Administration **(state authority)** should approve the rate of discharge specified in 3.1 based upon the ship's maximum summer draft and maximum service speed¹. Where sewage is to be discharged at a different combination of draft and speed one or more secondary discharge rates may also be approved.'* (Note in bracket supplied)

'5.1 Where the intended actual discharge rate exceeds that permissible at 4 knots, the actual discharge rate may need to be reduced or the speed increased. The rate and speed is to be detailed in the approval issued by the Administration.

Using the discharge rate formula under MEPC Resolution 157, the PCG computed the time it would have taken for M/T Glenn Guardian to discharge the waste, as follows:

A. Computation based on a speed of 4 knots

General ship data and main particulars of MT Glenn Guardian^{xxii}

DR max = 0.00926 VDB where: DRmax = maximum permissible discharge rate (m³/hr)

V = average speed (knots)

D = draft (meter)

B = breadth (meter)

Given: $V = 4$ knots; $D = 3.5\text{m}$; $B = 9.2\text{m}$

Computing for the DRmax or maximum permissible discharge rate

$$\begin{aligned}\text{DRmax} &= 0.00926 (4) (3.5) (9.2) \\ &= 1.19 \text{ m}^3 \text{ per hour}\end{aligned}$$

Computing for time needed to dispose the 50,000 gallons of sewage waste or 190³m waste:

$$\begin{aligned}\text{Time} &= \text{Load} / \text{DRmax} = 50,000 \text{ gal or } 190\text{m}^3 / 1.19\text{m}^3/\text{hr} \\ &= 159.66 \text{ hours or } 6.6 \text{ days} \quad (\text{Time needed to} \\ &\quad \text{discharge} \quad \quad \quad \text{190m}^3 \text{ of sewage at } 4 \\ &\quad \text{knots})\end{aligned}$$

Therefore:

- a. Discharge rate = $1.19\text{m}^3/\text{hour}$
- b. Time = 159.66 hours or **6.6 days**
- c. Distance Covered (speed x time) = 4 nautical miles/hour x 9.83 (or 9hours and 50 minutes) = **39.32 nautical miles**

The results show that it would take at least 6.6 days to discharge the sewage waste at the MARPOL permissible speed of 4 knots, not even counting the steaming time to the discharge area and back to the port. The Summary of ship movement of the MT Glenn Guardian, however, would show that it took MT Glenn Guardian a total of only 9 hours and fifty minutes to complete the discharge, including the travel to and from the discharge area.

The PCG further notes in its findings the following:

"We have to note that a vessel has to be underway while discharging and can only commence her intended activity (discharge of waste) upon her arrival (in) the designated dumping site. Considering all these facts, MT Glenn Guardian claims that she had accomplished everything properly in just 9 hours and 50 minutes time covering only 39.32 NM of distance traveled in 4 knots."

B. Computation based on a speed of 12 knots

Given: $V = 12$ knots; $D = 3.5\text{m}$; $B = 9.2\text{m}$

Computing for the DRmax or maximum permissible discharge rate

$$\begin{aligned}\text{DRmax} &= 0.00926 (12) (3.5) (9.2) \\ &= 3.58\text{m}^3 \text{ per hour}\end{aligned}$$

Computing for time needed to dispose the 50,000 gallons of sewage waste or 190m^3 waste:

$$\begin{aligned}\text{Time} &= \text{Load} / \text{DRmax} = 50,000 \text{ gal or } 190\text{m}^3 / 3.58\text{m}^3/\text{hr} \\ &= \mathbf{53.07 \text{ hours or } 2.2 \text{ days (Time needed to}} \\ &\quad \mathbf{\text{discharge } 190\text{m}^3 \text{ of sewage at 12 knots)}}\end{aligned}$$

Therefore:

- a. Discharge rate = $3.58\text{m}^3/\text{hour}$
- b. Time = 53.07 hours or **2.2 days**
- c. Distance Covered (speed x time) = 4 nautical miles/hour x 9 hours and 50 minutes (or 9 hours and 50 minutes) = **117.96 nautical miles**

Even at a speed of 12 knots, it would take at least 2.2 days just to discharge the sewage waste, commencing at the designated discharge area. This time, requirements do not even include the number of hours required to travel to the discharge area and back to the Port.

The SBMA also gave the following observation in its report to the Senate:

“Therefore, based on its reported traveling time of only ten (10) hours, it appears physically impossible for the MT Glenn Guardian to travel to the discharge point and discharge the 50,000 gallons of sewage in compliance with the discharge rate under the MARPOL Convention. The implication is threefold – (a) either the MT Glenn Guardian discharged the sewage in a place other than the claimed discharge point, or (b) the MT Glenn Guardian did not follow the discharge rate prescribed under the MARPOL Convention, or (3) both.”

9. GLENN DEFENSE SECURED FROM MARINA ONLY TWO EXEMPTION PERMITS IN 2011 EVEN AS MARINA REGULATIONS, EFFECTIVE AT THAT TIME, REQUIRED SUCH PERMITS AS A PRE-REQUISITE FOR THE TEMPORARY OPERATION OF FOREIGN VESSELS IN THE PHILIPPINES

Documents provided by Marina show that Glenn Defense acquired only two (2) exemption permits (**Annex “OO”**) from MARINA, as follows:

- a. Exemption Permit No. DSO-019-2011, valid from August 26, 2011 to September 25, 2011;
- b. Exemption Permit No. DSO-040-2011, valid from September 16, 2011 to October 15, 2011.

These Exemption Permits carried with it the following conditions:

"1. That the ships' domestic utilization shall be to provide marine husbanding and logistics services to the US Navy Carrier Strike Group 3, headed by USS John C. Stennis;

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'8. That the Glenn Defense Marine Asia Philippines, Inc. shall notify NAMRIA, PCG and PPA of the above operation of the ships so that appropriate Notice to the Mariners be issued should the operation of the ships be situated near the navigational sea lanes;

'10. That the Glenn Defense Marine Asia Philippines, Inc. shall comply with any order or directive that may be issued by Maritime Industry Authority (MARINA) and abide by all existing laws, orders, decrees, rules and regulations and particularly those pertaining to the Bureau of Customs relative to the ships entry into and exit from any port in the Philippines."

From the above conditions set forth in the Exemption Permit issued by Marina, it was clear that Glenn Defense had to inform the PCG and abide by **all existing laws, orders, decrees, rules and regulations of the**

government. As discussed above, Glenn Marine failed to notify, much less apply for a permit to dump waste with the PCG.

The “good faith understanding” excuse that Glenn Defense has repeatedly used to explain its failure to secure the necessary government permits is debunked by the fact that as early as March 2007, Glenn Defense has already been the subject of an inquiry with MARINA by the Lighterage Association of the Philippines, Inc.

MARINA, in its reply, confirmed that the said agency has not received any application or request from the said company for the issuance of a Special/Exemption Permit. Director Lilian Javier informed Mr. Reyes that an investigation would be immediately carried out.

Its claim of repeated harassment by competitors, including those they claim were undertaken in 2011, and the response from MARINA could not have provided them a reason to think that they are excused from securing the permits from MARINA.

MARINA Regulations and Processing Fees

The subject permitting requirement is provided for in MARINA Memorandum Circular NO. 105, series of 1995, which provides the guidelines in the temporary use of foreign owned/registered vessels and Philippine-registered overseas vessels in the domestic trade. It has since been amended by MC 2011-04.

The said Circular (**Annex “PP”**) states:

“III. General Guidelines

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'3. On the other hand, Private/Public Corporation, Partnership, Association and other Entities which shall utilize vessels in oil exploration and drilling activities, offshore surveying, dredging, construction, underwater cable laying, floating hotel and / or recreation center, training / research ships, storage facilities and other similar activities shall apply for Exemption Certificate with Domestic Shipping Office.'

Furthermore, in a letter of Marina Administrator Emerson Lorenzo of the MARINA to Admiral Ramon Liwag, Commandant of the PCG (**Annex "QQ"**), dated 25 August 2011, it was stated that:

"This has reference to the information received by this Authority that various foreign-registered ships owned by a Singapore-based company, thru its local company, Glenn Defense Marine Asia Philippines, Inc. will be utilized to provide Marine husbanding services in the forthcoming visit of the United States Carrier Strike Group 3....

*'Relative thereto, we would like to invite your attention to the existing policy of this Authority which covers domestic shipping companies/operators/charterers/oil companies and concerned entities intending to temporarily utilize vessels of any type in the domestic trade....**There is no exemption from securing SP/EP for all the foreign-registered ships to be utilized in the domestic trade under the said circular.***

Following subject letter, Glenn Defense, through a letter from Mr. Mayuga dated 26 August 2011, applied for the urgent issuance of a special permit from MARINA. The payment of Php2,520,015 (**Annex "RR"**) in processing fees was made on August 26, 2011.

Another application for a Special Permit was filed by Glenn Defense with the MARINA on 14 September 2011, with a further request to exempt Glenn Defense from the payment of fees, citing paragraph 3, Article VIII of the VFA, as follows:

"3. Vehicles, vessels, and aircraft operated by or for the United States armed forces shall not be subject to the payment of landing or port fees, navigation or over flight charges or tolls or other use charges, including light and harbor dues, while in the Philippines. Aircraft operated by or for the United States armed forces shall observe local air traffic control regulations while in the Philippines. Vessels owned or operated by the United States solely on United States Government non-commercial service shall not be subject to compulsory pilotage at Philippine ports."

Notwithstanding subject representation, Glenn Marine was made to pay processing fees in the amount of Php1,200,015 (**Annex "SS"**) for the issuance of a second Exemption Certificate. They did not apparently under protest.

While only two Exemption Certificates were issued to Glenn Defense, it must be noted that there were a total of 11 ship visits

handled by Glenn Defense beginning August to December 2011.

It may also be noted that MC 105 provides that Special Permits shall be issued on “a month-to-month” basis. On the other hand, Exemption Permits shall “have a duration co-terminus with the contract for which the vessel shall be utilized, but not to exceed one (1) year.

It is, therefore, puzzling how the vessels of Glenn Defense managed to use port facilities without the requisite permits from the MARINA. The liability of the Philippine Ports Authority, and other Port authorities such as the SBMA, which have the mandate to control, regulate and supervise pilotage, and the operation of port facilities and services need to be looked at.

In November 2011, MC 105 was replaced by MC 2011-04, practically providing a blanket exemption to Glenn Defense ships from having to secure permits from MARINA.

This action on the part of MARINA deserves scrutiny considering that this action contravenes the very policies that RA 9295, the Domestic Shipping Development Act of 2004, sought to promote, including that of ensuring the continued viability of domestic shipping operations and the provision of necessary assistance and incentives for the continued growth of the Philippine domestic merchant marine fleet. The provision of exemption to foreign vessels from MARINA’s permitting process removes from the government the authority to regulate the entry and operation of foreign vessels deemed qualified in the subject exemption, while Philippine vessels, on the other hand, shall continue to be subjected to the rigorous permit application process of MARINA.

10. GLENN DEFENSE DID NOT SECURE PERMITS FROM MARINA COVERING ITS OPERATIONS IN 2012. MARINA ISSUED REVISED CIRCULAR THAT EXEMPTS GLENN DEFENSE FROM REGULATORY REQUIREMENTS GOVERNING THE TEMPORARY UTILIZATION OF FOREIGN-REGISTERED SHIPS WITHIN THE NATIONAL TERRITORY ABSENT ANY FORMAL IMPLEMENTING ARRANGEMENT WITH THE APPROPRIATE GOVERNMENT AGENCY, RESULTING IN LOSSES OF MILLIONS OF PESOS IN POTENTIAL REVENUES

MARINA issued Memorandum Circular No. 2011-04 (**Annex “TT”**), revising the rules on the temporary utilization of foreign-registered ships within the national territory.

There are two provisions in the subject circular that may apply to Glenn Defense given the nature of its operations in the Philippines, as an entity **contracted by the US Navy** to provide logistical support to US ships participating in the VFA.

Section IV, item 14 of the subject Circular provides the following:

“14. In cases where a foreign ship(s) will operate in the national territory by virtue of a contract entered into by the government or its instrumentalities, or that of a sovereign entity which has an agreement with the government, to operate a ship for commercial purposes, the Special Permit requirement will still apply, but the verification of availability of suitable domestic ships to provide the same service will no longer be necessary.

‘15. Ships owned by another sovereign entity performing any governmental function in the national territory, pursuant to any treaty or agreement, including foreign ships used incidental to such functions, shall not be covered by this Circular. The movement of these ships in the national territory shall be in accordance with international custom and practice governing such ships. However, the same will be covered by an implementing arrangement between MARINA and the appropriate Government agency.’

For 2012, Glenn Defense has not applied for any permit from Marina on the basis of MARINA Circular 2011-04. This was allowed by MARINA notwithstanding the fact that:

1. Glenn Defense is operating a commercial service and these services are in relation to a Service Agreement it entered with GDMAPL, not with the US Navy. Allowing this to happen would be like allowing the companies providing janitorial services to a foreign embassy in the country to be exempted from the government’s permitting process and from paying the attendant processing fees. It should also be noted that Glenn Defense was not established for the sole purpose of servicing US Naval ships participating in the VFA. Its papers of incorporation provides the following primary purpose of Glenn Defense:

“To engage in marine husbanding, naval support, maritime security, force protection, building, constructing, fabricating, and repair, to own, manage, operate, maintain, buy, sell, or otherwise

deal in and with ships, vessels, boats and marine structures of every kind and nature, graving docks, dry docks, floating docks, various land structures, industrial plants, and structures, and other conveniences for building, repairing of marine and land structures and industrial plants"

2. Even assuming, for the sake of argument, that these services are validly covered by the conditions described in the circular, it must be noted that item 15 has a provision requiring an implementing arrangement between MARINA and the appropriate government agency to be in place as condition for the implementation of the said provision. In the absence of such implementing arrangements, there is no basis for determining the qualifications of the entity upon which the exemption shall apply.

11. ONE OF VFACOM'S PRINCIPAL MANDATES UNDER EXECUTIVE ORDER NO. 199 - "ENSURING RESPECT FOR PHILIPPINE LAWS, STATE POLICIES, AND STRICT COMPLIANCE WITH THE RULES AND REGULATIONS PROMULGATED BY THE CONCERNED DEPARTMENTS AND AGENCIES" -- NOT ENFORCED IN INSTANT CASE.

Under the Executive Order creating VFACOM, it is tasked, among others, to ensure "respect for Philippine laws, state policies, public morals, customs and traditions and strict compliance with the provisions of the VFA and the rules and regulations promulgated by the concerned Departments and Agencies".

No less than the VFA Agreement upholds the respect for Philippine laws as provided in Article II:

“Respect for Law

‘It is the duty of United States personnel to respect the laws of the Republic of the Philippines and to abstain from any activity inconsistent with the spirit of this agreement, and, in particular, from any political activity in the Philippines. The Government of the United States shall take all measures within its authority to ensure that this is done.’

The issue at hand highlights the need for the VFACOM to ensure that pertinent laws and regulations of the Philippines are respected and observed by all parties directly participating, incidental to, or merely providing contracted services to transport, haul, and treat sewage and hazardous wastes of US ships participating in VFA exercises. This is only possible if VFACOM pro-actively pursues its coordinative functions under E.O. 199.

Pertinent incidents need to be cited in connection with this investigation.

A letter (**Annex “UU”**) by Dr. Julius A. Magno, Senior Legal Adviser and Acting Director for Administration of the VFACOM, to Administrator Emerson Lorenzo of the Maritime Industry Authority, dated 12 November 2011, stated the following:

“The Presidential Commission on the Visiting Forces Agreement (VFACOM) is in receipt of an urgent letter dated 21 October 2011 from Glenn Defense Marine Asia Philippines, Inc....

‘The attention of VFACOM has been drawn on issues

affecting the issuance of necessary permits in favor of five (5) support vessels that will provide services to three (3) visiting US Navy vessels that will dock at the Port of Subic, Philippines from 22 October to 01 November 2011 for the annual PH-US Amphibious Landing Exercises (PHIBLEX). (underscoring supplied)

'As certified by the Philippine Navy, the support vessels shall be used solely and exclusively to service the aforementioned US Navy vessels, which have been allowed into Philippine territorial waters pursuant to a diplomatic clearance issued by the Philippine Government and the provisions of the PH-US Visiting Forces Agreement (VFA), specifically Paragraph 2 Article VIII (Movement of Vessels and Aircraft) thereof, which states:

*'2. Vessels operated **by or for** the United States armed forces may enter the Philippines upon approval of the Government of the Philippines. The movement of vessels shall be in accordance with international custom and practice governing such vessels and such agreed implementing arrangements as necessary.*

'Under the express terms of the VFA, the Philippine Government is obligated to allow vessels operated by or for the US armed forces to enter the Philippines and perform their duties and functions. The VFACOM is mandated to ensure strict compliance with the provisions of the VFA and coordinate with government agencies relative to needed implementing arrangements.

The lawyers of Glenn Defense from the Villaraza, Cruz, Marcelo and Angangco Law Firm, in responding to the inquiry of the Ecology Center of the Subic Bay Metropolitan Authority, in a letter dated, 6 November 2012 (**Annex "VV"**), cited the same VFA provision as above-stated and further said:

*"Based on the foregoing provision, it is clear that vessels operated **by or for the United States armed forces** – such as the Support Vessels of our client – may enter the Philippines upon approval of the Government of the Philippines and the movement thereof shall be subject to mutually-acceptable implementing agreements."*

The letter of the lawyers of Glenn Defense to the Ecology Center of SBMA further states:

For your reference, we enclose a copy of a letter dated 12 November 2011 to the MARINA, wherein the VFACOM emphasized that it is 'mandated to ensure strict compliance with the provisions of the VFA and coordinate with government agencies relative to needed implementing arrangements'. In fact, we understand that the VFACOM is already in the process of drafting said implementing arrangements. (underscoring supplied)

Considering that your office seeks to impose what our client views are inapplicable regulations, we respectfully submit that the matters raised in your letter dated 17 October 2012, which impact on the

implementation of and compliance with the VFA, is better referred to and resolved by the VFACOM.
(underscoring supplied)

It also bears pointing out that in a Memorandum (**Annex “WW”**) of Mr. Roberto Sheen, OIC Regional Director of DENR Region III to the Director of the DENR Environmental Management Bureau, dated 27 March 2012, Director Sheen reported that he had convened a technical conference on 09 February 2012 regarding the complaint of Global Ship Management and Marine Services, Inc. against Glenn Defense Marine Asia Philippines, Inc.

The meeting was attended by Atty. Mark Abaya of CVC Law for Glenn Defense, Atty. Julius Magno of the VFACOM, Engr. Alex Madamba and Sheilah D. Montana of the Philippine Ports Authority, EMB personnel, among others. The said memo of Director Sheen stated the following:

*“Anent the issue of conducting an inspection on Glenn Defense’s barge, Atty. Abaya maintained that the advice and approval of the VFACOM is necessary. **Atty. Magno then stated that by reason of the on-going drafting of the guidelines for the VFA, it would not be appropriate to conduct any inspection or sampling to avoid pre-empting the negotiations with the US government.**”*

It may be noted that while Atty. Abaya, the lawyer of Glenn Defense allegedly argued that “the advice and approval of the VFACOM” was necessary as regards the plan of DENR to inspect the ships of Glenn Defense, Atty. Magno, based on the information provided by DENR, did not counter this position and even supported the same by claiming that “by reason of the on-going drafting of the guidelines for the VFA, it would not be appropriate to conduct any inspection or sampling”.

It may further be noted that the VFACOM, while mandated to “coordinate with the concerned Department and Agencies for the issuance of the appropriate Implementing Rules and Regulations on the protection and the preservation of the environment”, among others, it has no authority to stop DENR, as a legally mandated agency, from carrying out its functions including the inspection of facilities suspected of causing harm or damage to the environment.

Differing Position of DFA

The Department of Foreign Affairs, in a Diplomatic Clearance No. ISS-DV-009-07, issued on 08 February 2007 clearly indicated the following:

The Glenn Defense ships enumerated therein are ships contracted by the US Navy.

The entry of the Glenn Defense ships listed in the Diplomatic Clearance is subject to “strict adherence to the following conditions:

‘1. Provisions of the Philippine Merchant Marine Rules and Regulations, PD 984-Pollution Control Law, PD 1152-Philippine Environmental Code, Philippine Coast Guard Memorandum Circular 02-77 Rules and Regulations for Prevention, Containment, Abatement and Control of Marine Pollution of the Sea by Oil...’

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‘3. Provisions of RA 6969 regarding the control of toxic substances and nuclear wastes shall be complied with;

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'6. The activities of the vessel shall be strictly limited to the purpose stated in the request and shall be monitored by the Philippine Navy/Philippine Coast Guard;

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*'10. The **entry of the aforesaid vessel shall also be subject to the other laws, rules, regulations and requirements of other agencies of the Philippine Government concerned with matters of this nature.***"

By the conditions stated in the diplomatic clearance, issued in 2007, **it was made clear by the DFA that the entry and operations of the Glenn Defense vessels are subject to conditions, including the laws, rules, regulations and requirements of Philippine government agencies.**

The said Diplomatic Clearance likewise clearly established that the Glenn Defense vessels, subject of the Diplomatic Clearance, **have been contracted by the US Navy** to support US Navy ships.

In view of this, it is clear that **these are not "vessels operated by or for the United States armed forces"**.

This position differs from the position of Glenn Defense and that of Dr. Magno which claim that Glenn Defense Vessels are "vessels operated by or for the United States armed forces" under the VFA and should be "allowed to enter the Philippines and perform their duties

and functions.”

The VFACOM Mandate

Executive Order No. 199 was issued on January 17, 2000, creating the Presidential Commission on Visiting Forces Agreement. The Executive Order defines the powers and functions of the VFACOM as follows:

“Sec. 3. Power and Functions. The Commission shall have the following powers and functions:

*‘a) **Ensure respect for Philippine laws, state policies, public morals, customs and traditions and strict compliance with the provisions of the VFA and the rules and regulations promulgated by the concerned Departments and Agencies;***

*‘b) **Coordinate with the concerned Departments and Agencies for the issuance of the appropriate Implementing Rules and Regulations (IRRs) for the VFA, providing clear guidelines on, among others:***

‘b.1 the entry and temporary stay of United States military and civilian personnel;

‘b.2 the entry and movement of the United States military vessels, aircraft and vehicles;

‘b.3 the protection of public health;

*‘b.4 **the protection and the preservation of the environment;***

‘b.5 the disposition of military equipment and other provisions brought into the country by United States military and civilian personnel;

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'c) Monitor, in coordination with the appropriate government and nongovernment agencies, the activities of foreign military and civilian personnel for the duration of activities held under the VFA;

*'d) **Assess the environmental, social and health impact of activities held under the VFA on the areas where they are held and to come up with recommendations designed to mitigate the impact of such activities;***

*'e) Submit regular reports to the President that would contain an **assessment of whether the VFA continues to serve, among others, the national security interest;***"

XXX

It is also tasked to **"coordinate with the concerned Departments and Agencies for the issuance of the appropriate Implementing Rules and Regulations (IRRs) for the VFA, providing clear guidelines on",** among others, "the protection of public health and **the protection and the preservation of the environment."**

Among VFACOM's mandate is to submit regular reports to the President that would contain an **assessment of whether the VFA continues to serve, among others, the national security interest.**

The conditions set forth in the DFA Diplomatic Clearance issued in 2007, as mentioned above, establishes the fact that Glenn Defense is not entitled to the privileges accorded to United States military and civilian personnel temporarily in the Philippines in connection with activities **approved by the Philippine Government.**

The conditions enumerated therein have been made known to Glenn Defense since 2007, and yet it continued to insist on its own interpretation of our laws, rules, and regulations.

Certainly, the dumping of untreated sewage waste, within Philippine territory and its Exclusive Economic Zone, contravenes Philippine and international laws and as such, there is no cogent reason for anyone to even assume that the government would allow a subcontractor of the US Navy to dump these wastes without the necessary permits from the Philippine government.

12. IN THE INSTANT CASE, THE DENR DID NOT CARRY OUT ITS MANDATED FUNCTIONS IN RELATION TO MARINE POLLUTION CONTROL

The DENR's mandate as the primary environmental agency "responsible for the conservation, management, development, and proper use of the country's environment and natural resources."

Section 4 of Executive Order No. 192 (1987) provides as follows:

*"SECTION 4. **Mandate.** The Department shall be the primary government agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources."*

Its lead role under RA 9275 and RA 6969 is indisputable.

RA 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990) mandates the DENR to “monitor and prevent the entry, even in transit, of hazardous and nuclear wastes and their disposal into the country”.

Section 6 of Presidential Decree No. 979 provides that “the Philippine Coast Guard shall have the primary responsibility of enforcing the laws, rules and regulations governing marine pollution. **However, it shall be the joint responsibility of the Philippine Coast Guard and the National Pollution Control Commission (now Environmental Management Bureau)^{xxdiii} to coordinate and cooperate with each other in the enforcement of the provisions of this decree and its implementing rules and regulations, and may call upon any other government office, instrumentality or agency to extend every assistance in this respect.**”

Republic Act No. 9993 mandates the PCG to “enforce laws promulgated and administer rules and regulations for the protection of marine environment and resources from offshore sources or pollution within the maritime jurisdiction of the Philippines”, but the DENR under existing laws is also mandated to coordinate with the PCG in the enforcement of the country’s marine preservation and conservation laws.

The following are the pertinent findings upon evaluation of the facts on hand:

- a. The DENR is mandated under RA 9275 to review and set effluent standards every five (5) years from the effectivity of the Clean Water Act. To date, eight years after the law was passed, the DENR continues to enforce DAO 35, series of 1990, the Effluent

Regulations of 1990. The review and revision of the Effluent Standards is crucial in the light of the fact that the list of toxic and other deleterious substances indicated in the 22-year old Effluent Standards (DAO 35) requires updating. The EMB officials who attended the Senate meeting on November 27, 2012, admitted that the effluent standards of the country need to be updated, but that previous efforts to revise the standards have failed due to representations that sought to block the adoption of more stringent standards.

- b. DENR did not exercise its role as the lead environmental agency of the country in terms of marine pollution control. Executive Order No. 192 (1987) mandates the DENR “to promulgate rules and regulations for the control of water, air, and land pollution”. PCG, on the other hand, has the mandate to enforce the laws, rules and regulations governing marine pollution. The DENR has received information as early as 2011 on alleged waste dumping activities of Glenn Defense in seawaters. While it convened a technical meeting in February 2012, it did not pursue further its investigation on the alleged waste dumping by Glenn Marine, citing that the VFACOM had prevented it from exercising its duly mandated function.
- c. DENR DAO 36-2004 categorizes the following items, among others, as hazardous wastes:
 - a. Wastes with lead compounds
 - b. Wastes with mercury and mercury compounds
 - c. Waste oils
 - d. Paint
 - e. Containers previously containing toxic chemical substances

These are among the wastes collected by Glenn Defense from US ships.

The investigation revealed that DENR was not provided reports by the Glenn Defense or by the SBMA regarding the collection, hauling, transport, and treatment of these wastes. DENR likewise failed to monitor the enforcement of the country's environmental laws with respect to the waste collection activities of Glenn Defense.

- d. The DENR is the Chair of the Sub-committee on Environment and Natural Resources of the National Law Enforcement Coordinating Committee (NALECC), created by virtue of Executive Order 829 (1982) (**Annex "XX"**). The NALECC is intended to serve as "venue for the coordination of all law enforcement activities of various government law enforcement agencies to ensure unified direction and integration of effort". The Bureau of Fisheries and Aquatic Resources chairs the sub-Committee on Fishing and Marine Environment Protection. This law enforcement coordinative mechanism is available and yet, little, if any coordination on marine pollution control, as illustrated by the instant case, is carried out. DENR needs to assume a more active role in coordinating the formulation of policies on marine pollution control and in its enforcement.
- e. The DENR failed to implement Rule 22 of DENR Administrative Order No. 2005-10 which provides that the DENR **"shall monitor, remind in writing, assist where possible, other government agencies who are mandated to implement the Clean Water Act"**.

DENR Mandate

Beyond EO 192 which designates the DENR as the primary lead agency “responsible for the conservation, management, development, and proper use of the country’s environment and natural resources”, there are special laws passed that specifically mandated specific functions to the DENR with respect to the management of the country’s water and marine resources. These include the following:

A. RA 9275, The Clean Water Act

The DENR is the primary government agency responsible for the implementation and enforcement of the Clean Water Act. Section 19 of the Clean Water Act provides the following:

f) Review and set effluent standards every five (5) years from the effectivity of this Act or sooner as determined by the Department: Provided, That in the interim, the provisions of DENR Administrative Order No. 35 of the Department shall apply: Provided, further, That when new and more stringent standards are set in accordance with this section, the Department may establish a grace period with a maximum of five (5) years....

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l) Exercise supervision and control over all aspects of water quality management;

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s) Undertake appropriate protocol with other concerned agencies for immediate coordinated responses to water related emergency incidents.

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Section 22 of the Clean Water Act also provides the following:

SECTION 22. Linkage Mechanism. - The Department and its concerned attached agencies including LLDA shall coordinate and enter into agreement with other government agencies, industrial sector and other concerned sectors in the furtherance of the objectives of this Act. The following agencies shall perform the functions specified hereunder:

a) Philippine Coast Guard in coordination with DA and the Department shall enforce for the enforcement of water quality standards in marine waters, set pursuant to this Act, specifically from offshore sources.

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The DENR Administrative Order No. 2005-10 provides the following:

Rule 3.3 "The Department [DENR] shall coordinate with the Philippine Coast Guard with respect to the enforcement of standards and regulations in offshore areas including the discharge of wastewater by ships."

*Rule 22. Lead role of DENR. **The Department shall monitor, remind in writing, assist where possible, other government agencies who are mandated to implement the Clean Water Act.***

B. RA 6969, Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990

Section 6 of RA 6969 mandates the DENR to “monitor and prevent the entry, even in transit, of hazardous and nuclear wastes and their disposal into the country”.

“The Act seeks to protect public health and the environment from unreasonable risks posed by these substances in the Philippines.”^{xxiv}

Among the prohibited acts indicated in Sec. 13 of RA 6969 are, as follows:

“Section 13. Prohibited Acts – The following acts and omissions shall be considered harmful:

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*“(d) Cause, aid, or facilitate, directly or indirectly, in the storage, importation, or bringing into the Philippine territory, including **its maritime economic zones, even in transit, either by means of land, air, or sea transportation or otherwise keeping in storage any amount of hazardous and nuclear wastes in any part of the Philippines.**”*

Sec. 5 of RA 6969 defines hazardous wastes, as follows:

“h) Hazardous wastes are hereby defined as substances that are without any safe commercial, industrial, agricultural or economic usage and are shipped, transported or brought from the country of origin for dumping or disposal into or in transit through any part of the territory of the Philippines.”

DENR DAO 36-2004 categorizes wastes with lead compound, wastes with mercury and mercury compounds (i.e. fluorescent lamps), waste oils, paint, containers previously containing toxic chemical substances – part of the wastes collected by Glenn Defense from US ships -- as hazardous wastes.

13. DESPITE NUMEROUS LEGISLATIONS, POLICIES, RULES AND REGULATIONS THAT FOCUS ON ADDRESSING MARINE POLLUTION CONTROL, POLICY GOALS, AS ENSHRINED IN THESE LAWS, HAVE NOT BEEN MET AND POLICIES/RULES AND REGULATIONS ARE NOT FULLY ENFORCED

The laws and policies governing marine pollution control in the Philippines are anchored on at least twenty five (25) legislations and policy mechanisms.

The case at hand is a classic illustration of how legislations remain good on paper, but are unable to achieve the policy goals defined in these laws due to the following reasons:

a. Lack of Effective Environmental Leadership

Although the DENR is mandated to serve as the primary government agency responsible for the implementation of the country's environmental laws, it has shirked in its responsibilities insofar as "coordinating and cooperating with the PCG in the enforcement of the country's maritime laws". It may also be noted that the DENR is tasked, under the country's Clean Water Act, to review and update the country's effluent standards that need to be observed by pertinent government agencies in the enforcement of the country's maritime laws. Those guidelines have not been revised since 1990. In the instant case, DENR failed to take a pro-active role in addressing complaints of maritime pollution control even after the VFACOM allegedly stopped it from further pursuing its investigation.

PCG, on the other hand, has clear mandates under RA 9993 to (1) "enforce regulations in accordance with all relevant maritime international conventions, treaties or instruments and national laws for the promotion of safety of life property at sea within the maritime jurisdiction of the Philippines; and (2) enforce laws and promulgate and administer rules and regulations for the protection of marine environment and resources from offshore sources or pollution within the maritime jurisdiction of the Philippines."

The PCG, under the following rule of the IRR of RA 9993, has the following authorities:

"Rule 3 (k) 6. The PCG, in the performance of its maritime security functions, may coordinate, cooperate and enter into agreements with international and local agencies and organizations for the enhancement of its maritime security capabilities."

There is no formal coordinating mechanism between and among the DENR, PCG, and SBMA with respect to the enforcement of marine protection laws, particularly in areas under the administrative supervision of SBMA.

It is precisely in the absence of such coordinating mechanism that the Glenn Defense was able to impose its own interpretation of our laws, rules, and regulations, with neither the SBMA, DENR, and PCG intervening in ways that public interest will be upheld.

Clearly, a weak coordinating and monitoring mechanism could have only bred arrogance on the part of Glenn Defense when it declared in its letter to the Subic Ecology Center that “its support vessels are not commercial vessels that are subject to the regulation of your (SBMA) office.”^{xxv} Glenn Defense, through its lawyers, further adds, “Considering the your (SBMA) office seeks to impose what our client views are inapplicable regulations, we respectfully submit that the matters raised in your letter dated 17 October 2012, which impact on the implementation of and compliance with the VFA, is better resolved by the VFACOM.”^{xxvi}

While the DENR had been informed of waste dumping issues being committed by Glenn Defense in Philippine waters, its efforts did not go beyond one technical meeting only because according to DENR, VFACOM (a monitoring and coordinating body of the VFA), advised it that “by reason of the on-going drafting of the guidelines for the VFA, it would not be appropriate to conduct any inspection or sampling to avoid pre-empting the negotiations with the US government.”^{xxvii}

VFACOM has, in a letter to the Chair of the Senate Committee on Foreign Relations, claimed that the allegations are erroneous and

that “the attribution to the VFACOM Legal Counsel was in connection with coordinative consultative meeting about issues raised in 2011.” Such issues, based on records submitted to the Senate, were precisely about the alleged waste dumping in Manila Bay by Glenn Defense in 2011. **Director Juan Miguel Cuna, during the Senate hearing on November 21, 2012, confirmed that it had received a report in 2011 on the alleged waste dumping by Glenn Defense in the waters of Manila Bay, thus necessitating the technical meeting convened by Director Sheen.**

Finally, while the VFACOM is said to be developing implementing guidelines for the VFA, the DENR, based on documents submitted to the Senate, apparently has not been invited to any meeting pertaining to the crafting of these regulations on environmental protection.

b. Lack of integrated and coherent regulatory mechanisms for marine pollution control

As enumerated and discussed in various sections of this report, there are numerous laws, rules and regulations on environmental and marine pollution control and related matters. These include:

1. Executive Order No. 192, Reorganization Act of the Department of Environment and Natural Resources
2. Republic Act No. 9275, Philippine Clean Water Act of 2004
3. Republic Act No. 9993, Philippine Coast Guard Law of 2009
4. Presidential Decree No. 979, Providing for the Revision of Presidential Decree No. 600 Governing Marine Pollution

5. Republic Act No. 6969, "Toxic Substances and Hazardous and Nuclear Wastes Control Act
6. Republic Act No. 7227, Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority
7. Executive Order No. 829, Establishing Law Enforcement Coordinating Committees
8. Republic Act. No. 9275, Domestic Shipping Development Act of 2004

International Law

9. International Convention for the Prevention of Pollution from Ships of 1978 (MARPOL Convention)
10. International Convention for the Prevention of Pollution from Ships, 1973, as amended (MARPOL PROT 1978)
11. Annex IV of MARPOL on the Regulations for the Prevention of Pollution by sewage from Ships provides
12. United Nations Convention on the Law of the Sea

Implementing rules and regulations and Administrative Orders

13. DENR Administrative Order No. 2001-28 (as amended by DENR Administrative Order No. 2003-10) otherwise known as the Implementing Rules and Regulations of the Protection and Preservation of the Environment during VFA-Related Activities of the Country
14. DENR Administrative Order No. 2005-10 otherwise known as the Implementing Rules and Regulations of the Philippine Clean Water Act of 2004

15. DENR Administrative Order No. 1990-34, Revise Water Usage and Classification/Water Quality Criteria
16. DENR Administrative Order No. 1990-35 otherwise known as the Revised Effluent Regulations of 1990
17. DENR Administrative Order No. 2004-36, Implementing Rules and Regulations of RA 6969
18. Revised Water Usage And Classification/Water Quality Criteria Amending Section Nos. 68 And 69, Chapter III Of The 1978 NPCC Rules And Regulations
19. SBMA Seaport Instruction 94-007 otherwise known as the SBMA Rules and Regulations for Prevention, Containment, Abatement and Control of Marine Pollution of 1994
20. SBMA Waste Management Guidelines of 2003
21. Implementing Rules And Regulations Of Republic Act No. 9993, Otherwise Known As The "Philippine Coast Guard Law of 2009
22. Implementing Rules and Regulations, RA 7227, Bases Conversion and Development Act
23. Marina Circular No. 2011 - 04
24. PCG Memorandum No. 01-2006
25. PCG Memorandum Circular 03-2005

The numerous and sometimes outdated regulations need to be reviewed to ensure that policies across mandated agencies are harmonized.

It goes without saying that absent any revision in these rules, Glenn Defense has to respect and comply with these regulations.

14. CONFLICTING INTERESTS ARE EVIDENT IN THE ISSUES AT HAND

The Senate Committees that investigated the alleged waste dumping by Glenn Defense in the seawaters are not blind to the fact that conflicting and competing business interests have thrust this issue at a level that has caused wide public attention.

It is wrong, however, for the lawyers of Glenn Defense to claim in its position paper, submitted to the Committees, that all these have resulted to waste of government time and resources, including that of the Senate's.

The findings show the alarming rate of persistent disregard by Glenn Defense for the laws, rules, and regulations of this country. It deserves nothing less than condemnation and the application of appropriate sanctions against Glenn Defense.

Glenn Defense' callousness with respect to the damage it has inflicted upon the country's resources and our people is exhibited by the following statements appearing in its position paper:

*"Ever since GDMAPL/Glenn Defense obtained a multi-year contract to support US Navy vessels operating within the region, this competitor – whose operations are based at the Subic Bay Freeport Zone – has engaged in clear pattern of harassment in an attempt to disrupt the operations of Glenn Defense and GDMAPL Support Vessels. The same competitor has also engaged in forum shopping, raising various complaints against Glenn Defense before different government agencies and offices to harass the company and hamper the operation of its vessels, which exclusively **operate for** US Navy vessels visiting the Philippines under the VFA.*

*'The clear intent of the incident in Subic and the media frenzy that followed is to publicly embarrass and humiliate Glenn Defense. It is obviously meant to create problems with Glenn Defense's contractual relationships that enable it to exclusively service US Navy vessels visiting the country under the VFA. **This whole incident appears to have been staged to advance the self-serving business agenda of a Subic-based competitor, without regard to the great risk made to the country's relations with its principal defense and security treaty ally, or to the damage caused to the reputation of Subic as a tourism and investment destination. The incident likewise sends the wrong message to foreign ship owners that the country, particularly Subic, is a hostile destination for international shipping businesses.***

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'As the true facts and underlying motives are progressively revealing themselves, it is becoming clearer that the resources of the aforementioned five (5) government agencies and offices, as well as the precious time of the Honorable Committees, have been consumed by nothing more than this losing bidder's self-serving business agenda.' (underscoring and emphasis supplied)

By these declarations, it is clear that Glenn Defense is using the VFA as a shield against all accusations being hurled against it. The pertinent agencies of the government, including US Ambassador Harry Thomas, have spoken – **Glenn Defense is not entitled to any form of immunity or**

entitlements under the VFA as it is merely a contractor hired by the US Navy to undertake husbanding and logistical support to its visiting US ships. Part of its contract with the US Navy is a provision that requires it to conform and abide by all pertinent environmental regulations of the Philippines in the discharge of its services.

It is also noted that item 15 of the contract between GDMAPL and Glenn Defense (refer to Annex "MM") mandates this matter, to wit:

"15. Compliance with Laws

At All times during the term of this Service Agreement, GDMAPI (or Glenn Defense) shall lawfully comply, and be and remain in full compliances, with all applicable laws, rules and regulations, and the terms of this Service Agreement relating to, or affecting the performance of its obligations hereunder, including, but not limited to laws relating to employment of labor, hours of labor, working conditions, payment of wages, payment of taxes, social security, environmental laws, and shall secure and maintain in full force and effect all licenses, permits and authorizations necessary for the performance of its obligations hereunder."

It is clear, given the evidences submitted, are the following facts:

- a. Glenn Defense had violated the country's environmental and marine protection and preservation laws and regulations by:

- i. failing to comply with the government's permitting process;
- ii. dumping wastes in seawaters not designated by the PCG;
- iii. violating PCG regulations on the discharge of untreated sewage into seawaters;
- iv. failing to get the necessary accreditation as hazardous waste collector and transporter from government agencies;
- v. dumping millions of sewage wastes into seawaters over a period of time without the necessary permits from the government; among others.

While it may have been so that competing business interests have motivated certain quarters to complain about the violations being committed by Glenn Defense, the fact remains that the Senate Committees have not taken a biased position with respect to the submissions made, but were only driven by the desire to arrive at the truth and to identify measures that would provide more effective ways to protect the country's marine resources.

It may also be noted that it was not in October 2012 alone that complaints were made against Glenn Defense. Records will show that as early as March 2007, a complaint (**Annex "YY"**) had already been lodged by the Lighterage Association with the MARINA on the alleged failure of Glenn Defense to secure the necessary permits from that agency.

Notwithstanding what it claims to be continuing harassment from its competitors, as far back as 2007, Glenn Defense has done very little to comply with all the regulatory requirements of the government. Such attitude smacks of arrogance and indifference toward its obligations and duly established regulations of this government.

VI. RECOMMENDATIONS

In view of the foregoing, the following recommendations are hereby respectfully submitted:

1. For the SBMA, PCG, and DENR to initiate administrative proceedings against Glenn Defense for its failure to comply with the country's environmental and marine protection laws and regulations and to impose the necessary penalties as warranted;
2. For the SBMA, PCG, DENR to suspend all permits issued to Glenn Defense until such time that the administrative proceedings shall have been completed and appropriate sanctions shall have been meted out;
3. For the DENR, in coordination with the PCG and DOJ, to conduct further investigation to determine if the filing of criminal / civil cases against Glenn Defense, and its blacklisting, is warranted. The findings in this report shall be used as an input to the investigation;
4. For the DENR, in coordination with the PCG and DOJ, to conduct a full review and investigation to identify other individuals or entities that may have violated the country's marine protection laws, particularly with respect to the collection, hauling, treatment, and dumping of hazardous and sewage wastes from ships and to initiate the appropriate administrative cases, and if warranted, civil or criminal cases, against these violators. In view of this, the past and present operations of other entities providing marine husbanding and logistical services shall likewise be reviewed to determine if these entities have been compliant in the discharge of the services;

5. For the Office of the President to review the coordinative mechanisms of the VFACOM with the end-view of ensuring that the country's laws, rules and regulations are faithfully complied with in the implementation of activities under the VFA;
6. For MARINA to review its decision to exempt Glenn Defense from the government's permitting requirements covering the temporary use of foreign ships in Philippine territory on what is now established as a misplaced assumption on the part of Glenn Defense that it is covered and entitled to the privileges accorded under the VFA. This review is also recommended given the fact that item 15 of MARINA Memorandum Circular 2011-04 provides that such exemption shall be covered by an implementing arrangement between MARINA and the appropriate Government agency, which up to this date, is absent;
7. For MARINA to suspend the implementation of item 15 of its Memorandum Circular 2011-04 until such time that appropriate implementing guidelines and arrangements between MARINA and appropriate agencies, including the DENR and PCG, are in place;
8. For the Department of Transportation and Communication, as the agency exercising administrative control over MARINA, to determine possible culpabilities on the part of its officers and staff for failing to enforce MARINA regulations on Glenn Defense, except on two occasions in 2011 wherein its permitting requirements were imposed. In 2007, a complaint was lodged with MARINA by Mr. Celso Reyes, President of the Lighterage Association of the Philippines, Inc. on the alleged operations of Glenn Defense without the requisite permit to operate from Marina. Director Lilian Javier of MARINA, in her reply confirmed that the said agency has not received any application or request from the said company for the issuance of a Special/Exemption Permit. Director Lilian Javier informed Mr. Reyes that an investigation would

be immediately carried out. The results of such investigation, if any, should be shared with the DENR as inputs to its investigation, as recommended by this report;

9. For MARINA to review the extent of permitting violations by Glenn Defense prior to the adoption of MARINA Memorandum Circular 2011-04 and to impose the necessary penalties for such violations;
10. For the DENR, jointly with the PCG, to convene a Task Force, with representatives from the civil society, that will pursue the harmonization of policies, rules, and regulations governing maritime protection;
11. For the DENR and PCG to submit to the Philippine Senate proposals to strengthen the country's marine protection laws;
12. For the Office of the President and the Department of Foreign Affairs, as Chair and Vice-Chair respectively of the VFACOM, respectively, to immediately convene an inter-agency committee that will formulate the implementing rules and regulations that will provide clear guidelines on the protection and the preservation of the environment, among others, toward ensuring respect for Philippine laws in the implementation of the VFA;
13. For the government, through the DENR, PCG, MARINA, PPA, SBMA, and other Port Authorities to develop appropriate protocols for the immediate coordinated response to water-related incidents, including incidents of waste dumping at sea;
14. For Congress to undertake a review of legislations related to marine pollution control and initiate amendments, as necessary, with the view to strengthening its enforcement provisions, reconciling and harmonizing their provisions, and imposing stiffer penalties in a way

that is commensurate to the damage inflicted upon the environment and marine life by violators; and

15. For Congress to consider legislating measures and stiffer penalties that will apply to violations in the country's Exclusive Economic Zone.