

INDEPENDENT INVESTIGATION FINDINGS
of the
Subic Bay Freeport Chamber of Commerce

In Relation to the Alleged Waste Dumping by its Member,
Glenn Defense Marine Asia Philippines Inc

2 December 2012



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EXECUTIVE SUMMARY

On 15 October 2012, a hazard call was received by the SBMA Ecology Center. It was later found that MT Glenn Guardian, a vessel owned by Glenn Defense Marine Asia Philippines Inc (“Glenn Defense”), dumped waste on Philippine marine waters. It was alleged on various media reports that the waste was dumped within the confines of Subic Bay, and that it was toxic. It was further alleged that Glenn Defense had no necessary government permits to dump waste and was said to have invoked immunity through the Visiting Forces Agreement (VFA).

Glenn Defense is a member of the Subic Bay Freeport Chamber of Commerce (“Subic Chamber”). It’s CEO, Retired Vice-Admiral Mateo Mayuga, is also its official representative to the organization.

The Subic Chamber, in its desire to safeguard the name of the organization deemed it necessary to conduct an independent investigation. Its Bylaws state that the Board of Directors shall have the power to suspend or expel any member for causes deemed inimical to the interests of the Chamber; obviously, only after thorough examination.

The initial investigation found *prima facie* evidence that there could be truth to the allegations. Glenn Defense was, thus, suspended by the Subic Chamber on 25 October 2012.

The Subic Chamber investigation continued and while not yet concluded with finality pending continued investigations by government agencies, the following interim findings were established:

1. The Glenn Defense vessel, MT Glenn Guardian, hauled 50,000 gallons of domestic waste from USS Emory S. Land, and this waste was discharged on Philippine waters.
2. The waste was likely dumped far outside the confines of Subic Bay, but the dumping was performed on an unlawful manner.
3. On whether the waste was toxic, DAO-35 has clear parameters whether to consider waste as toxic or not. Negative results on parameter tests commissioned by the Subic Chamber clearly indicate that the untreated waste from the US Navy ship was, according to DAO-35, *conventional pollutants* and not *toxic and deleterious substances*.
4. The waste was likely dumped outside Philippine Territorial Waters but still in violation of Philippine laws since the Philippines has jurisdiction over its exclusive economic zone.
5. Glenn Defense violated MarPol and Philippine Coast Guard regulations.
6. Glenn Defense does not have the necessary permits to haul and dump wastewater at sea.
7. Glenn Defense is not covered by the Visiting Forces Agreement (VFA).

The rationales for the above findings are described later in this document.

There seemed to be no question that Glenn Defense committed violations when they dumped waste absent of the necessary permits and by not following regulations. The Subic Chamber will, however, not make recommendations as to what penalties should be imposed. This is better left to concerned government agencies. The main purpose of the Subic Chamber’s investigation is to validate its actions against Glenn Defense in terms of its membership to the organization. The Subic Chamber, in any case, provided recommendations at the end of this document which, hopefully, will provide systemic solutions that might lessen the continuing pollution of Philippine waters.

BACKGROUND

Glenn Defense, a member of the Subic Chamber since 2009, was alleged to have dumped toxic waste on Subic Bay waters around the middle of October 2012 and have done so without the necessary government permits but under the cover of the Visiting Forces Agreement (VFA).

The Subic Chamber, founded in 1995 inside the Subic Bay Freeport by pioneer locators, is a non-profit and membership-based organization. Part of its advocacies includes promoting commerce while protecting the environment.

OBJECTIVES

In the light of the foregoing, the Subic Chamber conducted an independent investigation that could shed light on the veracity of the allegations. We hoped to make a sound judgment on whether to expulse or temporarily suspend Glenn Defense's membership from the Subic Chamber, or clear it from wrongdoings, thereby retaining its membership.

At the same time, we hoped that our investigation would be of use to government agencies investigating the same.

We sought to answer the following questions:

1. Did Glenn Defense dump wastewater on marine waters?
2. Was the waste dumped within the confines of Subic Bay?
3. Was the waste pretreated and if not, was it toxic waste?
4. If the waste was dumped outside of the confines of Subic Bay, was it dumped outside the Philippine Territorial waters?
5. Did Glenn Defense dump the waste in accordance with MarPol and Philippine Coast Guard regulations?
6. Does Glenn Defense have the necessary government permits to haul and dump waste on marine waters?
7. Is Glenn Defense covered by the Visiting Forces Agreement (VFA)?

METHOD OF INVESTIGATION

The Subic Chamber gathered information by independently conducting tests, interviewing sources, requesting information from government agencies, obtaining information from news reports, and receiving vetted information from anonymous sources.

We chronicled the information into a *Timeline of Events* to have a better understanding of what went on and to be able to answer the questions we seek. From it, we later made our findings and recommendations.

TIMELINE OF EVENTS

15 Oct 2012

At past 8:00am, a member of the Subic Chamber Environment Committee noticed questionable hauling of waste from the submarine tender USS Emory S. Land (AS-39) while it was docked at Alava Pier, by a vessel owned by Glenn Defense, the MT Glenn Guardian. Wastes from ships are normally hauled by trucks if the ships are already berthed on a pier. The information was relayed to the SBMA a few hours later.

At past 1:00pm, the SBMA Ecology Center responded and later boarded MT Glenn Guardian, which had already moved to Sattler Pier, more than a kilometer away from Alava Pier. During inspection, Capt. Edilberto Acedilla of MT Glenn Guardian admitted that the vessel was carrying an estimated 50,000 gallons of domestic waste and 200 liters of bilge water (combination of water and oil).¹ Acedilla stated that the wastes were hauled from USS Emory Land as it was docked at Alava Pier.² Acedilla alleged that the wastewater in the tanks had been treated and that the usual practice is to dump these liquid wastes 20-25 nautical miles from Subic Bay.³

16 Oct 2012

At around 4:00pm, when a team from the Philippine Coast Guard (PCG) headed by Petty Officer 1 Enrico Viuda and personnel from SBMA's Ecology Center boarded the vessel for follow-up inspection, its captain said that they already unloaded the waste supposedly some 25 nautical miles from Subic Bay. Another vessel, the MT Glenn Enterprise, situated right beside MT Glenn Guardian, was also inspected. Wastewater was being transferred from MT Glenn Enterprise to MT Glenn Guardian at that time. According to Viuda, the vessels never applied for any permits to dump domestic wastes. Two sets of samples were taken from MT Glenn Enterprise and one from MT Glenn Guardian. It was already past office hours when they finished.

17 Oct 2012

The samples were brought to Subicwater for analysis. The results for all three samples showed high levels of Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), Oil & Grease, and Total Suspension Solids (TSS).⁴ No testing was performed for heavy metals since Subicwater is not equipped for such kind of testing.

On the same date, SBMA's Ecology Center issued a show-cause order to Glenn Defense for "Unauthorized collection, hauling, transport and deliberate discharging of Contaminated Water."

19 Oct 2012

The Philippine Star reported the incident with the headline, "Shipping firm in hot water for dumping waste in open sea."⁵

¹ "Environmental Inspection Report." *SBMA Ecology Center* 15 Oct 2012.

² Bayarong, Anthony. "Shipping firm in hot water for dumping waste in open sea." *Philippine Star* 19 Oct 2012. Web. Retrieved 19 Oct 2012.

³ *Ibid.* 1

⁴ "Physical and Chemical Analyses of Sewage (Effluent)." *Subicwater Sewage Laboratory Report* 17 Oct 2012.

⁵ *Ibid.* 2

20 Oct 2012

The Subic Chamber Environment Committee submitted the incident report to Subic Chamber President Danny Piano. A preliminary investigation was initiated and was presented to the Subic Chamber Board for deliberation.

22 Oct 2012

The Subic Chamber independently took seawater samples from Alava Pier and Sattler Pier and had the same tested by Subicwater. No significant amounts of BOD, COD, and Oil & Grease were found on the seawater samples tested.⁶

25 Oct 2012

The Subic Chamber issued a suspension letter to Glenn Defense citing Section 4 Paragraph B of the Subic Chamber Bylaws, to wit:

Section 4 - Suspension or Loss of Membership

(B) The Board of Directors shall have the power to suspend or expel any member for causes deemed inimical to the interests of the Chamber as may be determined by the Board of Directors.

The letter also stated, “The suspension will remain in effect until such time the investigating government agencies issue their final and official findings. Thereafter, the SBFCC Board of Directors will deliberate and decide Glenn Marine Defense’s status of SBFCC membership.”

6 Nov 2012

Glenn Defense submitted their reply to the SBMA Ecology Center’s show-cause order. Glenn Defense basically stated, “...its Support Vessels are not commercial vessels that are subject to the regulation of your office [SBMA]. Rather, the Support Vessels solely operate for the benefit of the US armed forces under the stated provisions of the VFA.”⁷

9 Nov 2012

The Philippine Daily Inquirer reported the issue with the front-page headlines, “US toxic waste dumped in Subic”⁸ and “US Navy contractor invokes VFA.”⁹

The Department of Foreign Affairs (DFA) stated that the US Navy contractor accused of dumping hazardous waste into Subic Bay was not covered by the Visiting Forces Agreement between the US and the Philippines. “The VFA only covers US military personnel and US civilian personnel who are individuals employed by the US Armed Forces or those that accompany them such as employees of the American Red Cross and United Services Organization,” said Assistant Secretary Raul Hernandez, the DFA spokesperson.¹⁰

⁶ “Physical and Chemical Analyses of Seawater from Alava Pier and Sattler Pier.” *Subicwater Sewage Laboratory Report* 22 Oct 2012.

⁷ “Glenn Defense reply to SBMA Show-Cause Order.” *CVC Law* 6 Nov 2012.

⁸ Gonzaga, Robert. “US toxic waste dumped in Subic.” *Inquirer Central Luzon* 9 Nov 2012.

⁹ Gonzaga, Robert. “US Navy contractor invokes VFA.” *Philippine Daily Inquirer* 9 Nov 2012.

¹⁰ Aning, Jerome & Bordadora, Norman. “No VFA cover for dumping.” *Philippine Daily Inquirer* 10 Nov 2012.

10 Nov 2012

Malacañang stated that Glenn Defense could not seek protection behind the VFA. "The VFA applies only to US personnel, but since the alleged dumping was not done by US personnel but by other nationalities, then the VFA does not apply," said presidential spokesperson Edwin Lacierda.¹¹

11 Nov 2012

United States Ambassador to the Philippines Harry Thomas Jr. said that the provisions in the Philippines-US Visiting Forces Agreement did not apply to the accused Malaysian shipping firm. "These people are contractors, they are not under the Visiting Forces Agreement (VFA)," Thomas said.¹²

Subic Chamber President Danny Piano, on his blog, opined that hauling and dumping raw sewage out to sea should not be allowed. He wrote, "Not only does this process seem wrong (and disgusting), the MarPol does not actually provide consent to it. If you look closely at MarPol's regulation, the provision allowing the discharge of sewage to sea 12 nautical miles out is only for ships *en route*—an unassuming but nevertheless, important wording of the provision. It did not state that a ship could intentionally go out of a port, dump sewage to sea, and then come back in. When a ship is already inside the jurisdiction of a country, then the laws and regulations of that country apply. Correspondingly, the Philippine Clean Water Act of 2004 prohibits discharging of materials which could cause water pollution, directly into water bodies."¹³

12 Nov 2012

Subic Chamber President Danny Piano instructed Jay Mendoza, a member of the Subic Chamber's Environment Committee, to attend the Department of Environment and Natural Resources (DENR) Technical Conference in Pampanga regarding the issue. During the conference, the PCG confirmed that they have not issued any waste dumping permit to Glenn Defense, nor Glenn Defense had requested any clearance from them. Further, the DENR said that they only issued a Certificate of Non-Coverage (CNC), instead of an Environmental Compliance Certificate (ECC), to Glenn Defense. The reason is that Glenn Defense only applied for a husbanding office.¹⁴

Malacañang clarified that it was an "organic" waste contrary to earlier report that it was a nuclear chemical waste. "I spoke to (SBMA) Chairman Bobby Garcia and apparently they are conducting already the investigation on the toxic wastes. He would like to clarify -- this is a clarification that he asked me to do -- that the toxic wastes do not involve nuclear chemical wastes. That's contrary to what some quarters have been saying. There are no chemical wastes. We're talking of organic wastes here," said Presidential Spokesman Edwin Lacierda at the press

¹¹ Gonzaga, Robert. "US Navy investigates Subic waste dumping." *Inquirer Central Luzon* 11 Nov 2012.

¹² Fernandez, Mandy. "US Navy initiates inquiry on alleged Subic Bay toxic waste dumping." *GMA News Online* 12 Nov 2012.

¹³ Piano, Danny, "Legality of Dumping Sewage to Sea." *SBFCC President's Blog* 11 Nov 2012.

¹⁴ "Technical Conference Regarding the Waste Dumping Issue," *DENR Region III*, conducted 12 Nov 2012.

briefing. Despite being an organic waste, Lacierda said there would still be an investigation to be conducted by the Subic Bay Metropolitan Authority (SBMA).¹⁵

The US Navy contractor accused of dumping toxic waste in Subic Bay will not invoke the Visiting Forces Agreement (VFA) with the United States to avoid prosecution in Philippine courts. "We are not claiming cover under the VFA. We service only US Navy ships but we are not in any way included in VFA arrangements," Glenn Defense Marine Asia CEO and ex-Navy chief Mateo Mayuga stressed in a press conference.¹⁶

Mayuga said that the MT Glenn Guardian waste disposal vessel inspected in Subic Bay was not "dumping toxic waste" but releasing previously treated waste water. "We handle domestic water from ships. This is the waste that comes from toilets and kitchens," he said... Before the waste water is handed over to the company, Mayuga explained, it is pre-treated by the client -- in this case the US Navy -- so "the resulting fluid is (...) rendered inert or harmless and ready to be released at sea."¹⁷

13 Nov 2012

The Subic Chamber contacted an engineering personnel from USS Emory S. Land and was told that they do not have a waste treatment facility. The information was kept confidential as per request of the source.

14 Nov 2012

Subic Chamber President Danny Piano wrote SBMA Chairman Garcia stating that MT Glenn Guardian could not have possibly discharged properly the domestic waste in less than one day had it followed Annex 14 of MarPol 73/78 with regards to the required Discharge Rates in dumping wastewater.¹⁸ The same information also appeared in a local online news website, Subicupdater.¹⁹

16 Nov 2012

USS Emory S. Land has no waste treatment facility, contradicting claims by Glenn Defense that what it receives from the vessel are pretreated wastes. Capt. Glenn Pendrick, commanding officer of the submarine tender ship, told Akbayan Rep. Walden Bello and Subic Bay Metropolitan Authority (SBMA) Chair Roberto Garcia that the ship "has no waste treatment facility [which is why] we hire third party contractors."²⁰

The Subic Chamber requested the SBMA Ecology Center to take another sample from USS Emory S. Land. The purpose is to test for chemicals and heavy metals which previous tests did not include. Present as witnesses were a representative from the Subic Chamber and two councilors from the City of Olongapo. The sample was transported to SGS in Manila. Present

¹⁵ Ison, Lilibeth (PNA) & Reyes, Karl John. "Palace clarifies organic waste, not nuclear chemical waste dumped on Subic Bay." *InterAksyon* 12 Nov 2012.

¹⁶ Santamaria, Carlos. "No VFA for us, says contractor accused of polluting Subic Bay." *Rappler* 12 Nov 2012.

¹⁷ *Ibid.*

¹⁸ Piano, Danny, "Glenn Guardian's dumping of domestic waste." *SBFCC Letter to SBMA Chairman Garcia* 14 Nov 2012.

¹⁹ "Subic chamber doubts Malaysian firm disposed American sewage properly." *Subicupdater* 14 Nov 2012.

²⁰ Gonzaga, Robert. "Ships' waste untreated--US Navy." *Inquirer Central Luzon* 17 Nov 2012.

during the entire trip were a representative from the Subic Chamber and the City of Olongapo. The analysis was scheduled to be completed on November 27.

18 Nov 2012

The US Navy is reviewing the past performance of its contractor to find out if it had violated ocean dumping laws, which would mean it violated its husbanding contract with the US Navy. "If it is proven that GDMA (Glenn Defense) violated any Philippine laws, codes and/or regulations while performing the contract, then the Philippine government and its appropriate enforcing agency can choose to pursue appropriate actions against GDMA," said Sky Laron, director of corporate communications at the Navsup Fleet Logistics Center of the US Navy based in Yokosuka in Honshu, Japan. Laron said that "as with any violation, the US Navy has the normal contractual remedies, to include adverse past performance reports and consideration of revocation of acceptance for the services that were rendered."²¹

20 Nov 2012

On a letter to Sen. Legarda on November 20, Undersecretary Edilberto Adan mentioned, "It is our position that Glenn Defense cannot invoke the VFA to escape liability for possible violation of the Philippine laws."²²

21 Nov 2012

During the Senate hearing chaired by Senator Legarda, it was found out that Glenn Defense does not have any permit from the Coast Guard to dump wastewater on the high seas. Furthermore, that the domestic waste dumped was beyond permissible limits with high levels of toxicity.

Retired Vice Admiral Mateo Mayuga stated, "...we released the wastewater beyond our territorial limits and the exact place is about 17 miles from the nearest shoreline." He also stated, "we are aware that there is this Memorandum Circular 01-2006 which specifically is, ma'am [Senator Legarda], on dumping."

23 Nov 2012

The SBMA Board of Directors issued an Official Statement on the alleged waste dumping incident in Subic Bay.²³

The Statement mentioned that "There is no evidence that toxic, hazardous or domestic waste have been dumped in the waters of Subic Bay." Also, that SBMA has temporarily suspended Glenn Defense's operations with regards to the collection and disposal of ship sewage in the sea using sea vessels and that, subsequently, the imposition of necessary sanctions and penalties will be applied.²⁴

²¹ Gonzaga, Robert. "US Navy probes waste contractor." *Inquirer Central Luzon* 18 Nov 2012.

²² Adan, Edilberto. "Letter to Sen. Legarda about the Alleged Dumping of Toxic Wastes in Subic," *VFA Commission* 20 Nov 2012.

²³ "Official Statement by the SBMA Board of Directors on the Alleged Waste Dumping Incident in Subic Bay." *Subic Bay Metropolitan Authority* 23 Nov 2012.

²⁴ *Ibid.*

26 Nov 2012

In aid of its investigation, the Subic Chamber wrote Mr. Jerome Martinez, OIC General Manager of the SBMA Seaport Department requesting for vessel tracking information or at least the ships' logs of MT Glenn Guardian and MT Glenn Enterprise. The Subic Chamber also wrote on the same date Rear Admiral Luis Tuason Jr, Vice Commandant of the Philippine Coast Guard. Both have yet to reply on the Subic Chamber's request.

28 Nov 2012

The results of the wastewater analysis by SGS showed none or negligible levels of Arsenic, Cadmium, Mercury, Lead, and PCBs. The BOD and COD levels were, however, still beyond permissible limits.

INTERIM FINDINGS

Question 1: Did Glenn Defense dump wastewater on marine waters?

Finding: Definitely yes

Rationale:

According to the Environmental Inspection Report by SBMA's Ecology Center on 15 October 2012, the Inspection Findings stated that the following, among others, were found: 50,000 gallons of domestic waste and 200 liters of bilge water (combination of water and oil). Further, that the former was to be disposed at sea 20-25 nautical miles from Grande Island towards the West Philippine Sea.²⁵

On October 16, when personnel from the PCG and SBMA Ecology Center did a follow-up inspection on MT Glenn Guardian, **its captain said they had already unloaded the hazardous substance 25 nautical miles from Subic Bay.**²⁶

Clearly, 50,000 gallons of domestic waste, hauled from USS Emory S. Land by MT Glenn Guardian, was discharged on marine waters. There seemed to be no duress involved in obtaining the information since none was reported by anybody and because Capt. Edilberto Acedilla of MT Glenn Guardian even acknowledged and signed the said SBMA Ecology Center Inspection Report.²⁷

Question 2: Was the waste dumped within the confines of Subic Bay?

Finding: Not likely

Rationale:

Vessel tracking records are the most objective and most reliable sources of information in determining the actual movements of sea vessels. Conscious of this, the Subic Chamber wrote SBMA's Seaport Department and the Philippine Coast Guard requesting for vessel tracking information or at least the ships' logs of MT Glenn Guardian and MT Glenn Enterprise. Both have yet to reply on the Subic Chamber's request.

The Subic Chamber, therefore, have to rely on the following primarily anecdotal accounts:

- a. On October 16, when personnel from the PCG and SBMA Ecology Center did a follow-up inspection on MT Glenn Guardian, its captain said they had already unloaded the hazardous substance 25 nautical miles from Subic Bay.²⁸
- b. On November 21, Retired Vice Admiral Mateo Mayuga stated during the Senate Hearing that, "...we released the wastewater beyond our territorial limits, and the exact place is about 17 miles from the nearest shoreline."
- c. On November 23, the SBMA Board of Directors stated in their Official Statement that, "The ship sewage, which is domestic waste, was discharged by service contractor Glenn

²⁵ *Ibid.* 1

²⁶ *Ibid.* 2

²⁷ *Ibid.* 1

²⁸ *Ibid.* 2

Defense Marine in the West Philippine Sea far away from Subic Bay. The distance is approximately 32 kilometers from land in the high seas...”

- d. On November 30, the Subic Chamber President received reliable information that MT Glenn Guardian dumped the waste on the following coordinates: Latitude = 14°31'60.00"N and Longitude = 119°57'0.00"E. This is about 17 nautical miles from the Silanguin area of San Antonio, Zambales, the nearest land area.

From the preceding accounts, we have to assume that the waste was dumped 17 nautical miles from the nearest shoreline. Although Mr. Mayuga mentioned 17 miles, which is only 14.8 nautical miles (1nm=1.15mi), we will assume he meant nautical units. The SBMA Board’s pronouncement of 32 kilometers is also equivalent to 17 nautical miles (1nm=1.85km) so it corresponds with that of Mr. Mayuga’s. The coordinates provided by a reliable source also corresponds with the aforementioned.

The Subic Chamber also received earlier anonymous information that both accounts, Mr. Mayuga’s and SBMA’s, came from the same source—the MT Glenn Guardian’s handwritten ship log, but we do not want to muddle the aforesaid information with yet another anecdotal account.

On October 22, one week after the alleged wastewater dumping, the Subic Chamber independently took seawater samples from Alava Pier and Sattler Pier and had the same tested by Subicwater. No significant amounts of BOD, COD, and Oil & Grease were found.²⁹

The Subic Chamber does not have the time nor the resources to test how long sewage could be diluted by the bay using dispersion modeling. We would have to make the assumption that the piers where MT Glenn Guardian docked will likely have higher than normal levels of toxicity had it dumped the sewage inside Subic Bay. From the tests we did, this was not the case.

In short, from the foregoing, it is not likely that the waste was dumped inside the confines of Subic Bay. Pending receipt, if available, of the vessel tracking records which the Subic Chamber requested from the Philippine Coast Guard and SBMA Seaport Department, we have to go with this finding in the interim.

Question 3: Was the waste pretreated and if not, was it toxic waste?

Findings: Not pretreated. On whether the waste was toxic, DAO-35 clearly indicates that the effluents from USS Emory Land were conventional pollutants and technically, were not toxic and deleterious substances.

Rationale:

Mr. Mayuga claimed on November 12 that the MT Glenn Guardian waste disposal vessel inspected in Subic Bay was not "dumping toxic waste" but releasing previously treated waste water. "We handle domestic water from ships. This is the waste that comes from toilets and kitchens," he said. Before the waste water is handed over to the company, Mayuga explained, it

²⁹ *Ibid.* 4

is pre-treated by the client -- in this case the US Navy -- so "the resulting fluid is (...) rendered inert or harmless and ready to be released at sea."³⁰

On November 16, however, Capt. Glenn Pendrick, commanding officer of the submarine tender USS Emory S. Land, told Akbayan Rep. Walden Bello and SBMA Chair Roberto Garcia that the ship "has no waste treatment facility [which is why] we hire third party contractors."

The hauled waste was definitely not pretreated, therefore.

But can the dumped substance be considered toxic waste?

Since this is a broad and somewhat subjective term, the Subic Chamber tried to determine the composition of the waste from USS Emory S. Land.

The *Physical and Chemical Analyses of Sewage (Effluent)* performed by Subicwater on October 17 showed high levels of BOD, COD, Oil & Grease, and Total Suspension Solids.³¹ **There seemed to be no question that the samples tested were effluents from domestic waste or sewage.**

Republic Act 9275, otherwise known as the *Philippine Clean Water Act of 2004*, defines sewage and effluent as:

Sewage - means water-borne human or animal wastes, excluding oil or oil wastes, removed from residences, building, institutions, industrial and commercial establishments together with such groundwater, surface water and storm water as maybe present including such waste from vessels, offshore structures, other receptacles intended to receive or retain waste or other places or the combination thereof.

Effluent - means discharge from known sources which is passed into a body of water or land, or wastewater flowing out of a manufacturing plant, industrial plant including domestic, commercial and recreational facilities.

Effluent standard - means any legal restriction or limitation on quantities, rates, and/or concentrations or any combination thereof, of physical, chemical or biological parameters of effluent which a person or point source is allowed to discharge into a body of water or land.

The testing performed by Subicwater is in accordance with *Section 5. Conventional and Other Pollutants Affecting Aesthetics and Oxygen Demand* of the DENR Department Administrative Order 35 (DAO-35). From *Table 2A-Effluent Standards: Conventional and Other Pollutants in Protected Waters*, it used the standards under the classification *Protected Waters, Category II, NPI*.³²

However, the Subic Chamber cannot discount the fact that sewage can also be contaminated by chemicals and other deleterious substances. DAO-35, under *Section 4. Heavy Metals and Toxic Substances* describes the effluent standards under *Table 1-Effluent Standards: Toxic and Other*

³⁰ *Ibid.* 16

³¹ *Ibid.* 4

³² "Administrative Order No. 35 – Revised Effluent Regulations of 1990." *Department of Environment and Natural Resources (DENR) 1990.*

Deleterious Substance. It enumerates the parameters of *Toxic and Other Deleterious Substance* including Arsenic, Cadmium, Chromium, Cyanide, Lead, Mercury, PCB, and Formaldehyde.³³

From the foregoing, it seems clear that for effluents to be considered toxic and deleterious, it must contain more than the permissible limits of the parameters as previously described; otherwise, it will fall under *Conventional and Other Pollutants*.

On November 16, the Subic Chamber requested the SBMA Ecology Center to take another sample from USS Emory S. Land. The purpose is to test for toxic and other deleterious substances.

Since Mr. Mayuga, on November 14, questioned the accuracy of the results of laboratory tests on the wastewater samples that the SBMA collected from its vessel, saying the integrity of the sample used and the procedure applied in testing it needed verification,³⁴ the Subic Chamber decided to include the re-testing for conventional effluent pollutants, similar to the testing that Subicwater did.

Present as witnesses during the sample extraction were a representative from the Subic Chamber and two councilors from the City of Olongapo. The sample was transported to SGS in Manila. Present during the entire trip were a representative from the Subic Chamber and the City of Olongapo.

The results from the SGS test came out on November 27. Except for Cyanide and Formaldehyde, all the parameters required under *Table 1-Effluent Standards: Toxic and Other Deleterious Substance* of DAO-35 were tested. The levels of the parameters tested were within permissible limits stated under DAO-35.

The BOD and COD from the SGS test, while numerically lower than the Subicwater test, were still way beyond the permissible limits, however.

In short, while the Subic Chamber considers anything that is harmful to health and beyond permissible limits as toxic, DAO-35 clearly indicates that the effluents from USS Emory Land were conventional pollutants and technically, were not toxic and deleterious substances.

Question 4: If the waste was dumped outside of the confines of Subic Bay, was it dumped outside the Philippine Territorial Waters?

Finding: Yes, but still inside the Philippine Exclusive Economic Zone (EEZ).

Rationale:

The United Nations Convention on the Law of the Sea (UNCLOS), of which the Philippines is a signatory, states, under Article 3 that, "Every State has the right to establish the breadth of its

³³ *Ibid.*

³⁴ Gonzaga, Robert. "Contractor questions Subic tests on wastewater samples." *Inquirer Central Luzon* 15 Nov 2012.

territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.”³⁵

Article 56 & 57, however, mentions that the exclusive economic zone shall extend up to 200 nautical miles but not beyond, and that States has jurisdiction insofar as the protection and preservation of the marine environment, among others, is concerned.³⁶

Glenn Defense itself admitted that they dumped the waste 17 nautical miles from the nearest shoreline. **It is evident that it was dumped inside the Philippine exclusive economic zone which is still covered by the Philippine Clean Water Act of 2004 which prohibits discharging of materials which could cause water pollution, directly into water bodies.**

Question 5: Did Glenn Defense dump the waste in accordance with MarPol and Philippine Coast Guard regulations?

Finding: No

Rationale:

The *International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978* (“MarPol”), under Annex IV, Regulation 11, states that the discharge of sewage into the sea is prohibited, except when treated (comminuted and disinfected), but should still be discharged at a distance of more than 3 nautical miles from the nearest land.³⁷

Untreated sewage, on the other hand, should be discharged at a distance of more than 12 nautical miles from the nearest land at a moderate rate when the ship is *en route* and proceeding at not less than 4 knots.³⁸

As opined on the SBFCC President’s Blog, if you look closely at MarPol’s regulation, the provision allowing the discharge of sewage to sea 12 nautical miles out is only for ships *en route*—an unassuming but nevertheless, important wording of the provision.³⁹

“It did not state that a ship could intentionally go out of a port, dump sewage to sea, and then come back in. When a ship is already inside the jurisdiction of a country, then the laws and regulations of that country apply. Correspondingly, the Philippine Clean Water Act of 2004 prohibits discharging of materials which could cause water pollution, directly into water bodies.”⁴⁰ **The Subic Chamber believes, therefore, that Glenn Defense did not discharge the waste in accordance with Regulation 11 of MarPol.**

³⁵ “Territorial and Contiguous Zone.” *United Nations Convention on the Law of the Sea (UNCLOS)*, Part II, Section 2, Article 3.

³⁶ “Exclusive Economic Zone.” *United Nations Convention on the Law of the Sea (UNCLOS)*, Part V, Articles 56-57.

³⁷ “Regulations for the Prevention of Pollution by Sewage.” *International Convention for the Prevention of Pollution From Ships (Marpol 73/78)*, Annex IV, Regulation 11.

³⁸ *Ibid.*

³⁹ *Ibid.* 13

⁴⁰ *Ibid.* 13

On the same Regulation 11, MarPol states that the “rate of discharge shall be approved by the Administration based upon standards developed by the Organization.”⁴¹ In this regard, Annex 14 of the Marine Environment Protection Committee (MEPC), under Resolution MEPC.157(55) adopted on 13 October 2006, made recommendations on standards for the rate of discharge of untreated sewage from ships.⁴²

As described in Subic Chamber President Piano’s letter to SBMA Chairman Garcia,⁴³

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)

Basing from the pictures taken on October 15, the draft of MT Glenn Guardian is 2.6 meters. The waterline breadth, on the other hand, should be close to 9 meters (the ship’s total width is 9.2 meters). Assuming 4 knots speed during the discharging process, the maximum discharge rate, using the MarPol-provided formula above, should be around 0.87 cubic meters per hour.

Since the amount of domestic waste on-board the MT Glenn Guardian is 50,000 gallons or about 190 cubic meters, it would have taken the vessel 218 hours or 9 full days to discharge the waste properly. Even if we assume that it discharged the waste at the ship’s Sea Speed of 8 knots, it still would have taken it close to 5 days. It could not possibly be back to Sattler Pier in just one day had it discharged the sewage in the manner specified by regulations.

[The specifications of MT Glenn Guardian was uncovered by researching its previous name, which turned out to be Tamami Maru. Information about Tamami Maru was found on a Japanese website. The Subic Chamber commissioned the translation of the Japanese text into English to get the English specifications of the vessel.]

In short, MT Glenn Guardian could not have possibly discharged the waste in accordance with MarPol regulations regarding the proper rate of discharge of untreated sewage from ships.

But has Glenn Defense at least followed the Philippine Coast Guard regulations?

Memorandum Circular 01-2006 titled, "Rule prohibiting the dumping and discharging of wastes and other harmful matters," allows the discharge of sewage subject to conditions and permits.⁴⁴ The dumping coordinates provided for the Coast Guard District NCR-Central Luzon is exactly at a Latitude of 14°20.0'N and Longitude of 120°00.0'E.⁴⁵ This is about 26 nautical miles from the Silanguin area of San Antonio, Zambales.

⁴¹ *Ibid.* 37

⁴² “Recommendations on Standards for the Rate of Discharge of Untreated Sewage from Ships.” *Marine Environment Protection Committee (MEPC)*, Resolution MEPC.157(55), adopted on 13 October 2006.

⁴³ *Ibid.* 18

⁴⁴ “Rule prohibiting the dumping and discharging of wastes and other harmful matters,” Memorandum Circular 01-2006.

⁴⁵ *Ibid.*

The 17 nautical miles from the nearest land area (Silanguin, San Antonio) where Mr. Mayuga said MT Glenn Guardian dumped the waste is actually 9 nautical miles short of the PCG-designated dumping point.

It is evident from the foregoing that Glenn Defense did not dump the sewage in accordance with both the MarPol and Philippine Coast Guard regulations.

Question 6: Does Glenn Defense have the necessary government permits to haul and dump waste on marine waters?

Finding: No

Rationale:

For any company dealing with waste and getting away with not having an Environmental Compliance Certificate (ECC) is quite unbelievable. However, that is exactly the case with Glenn Defense. According to the DENR during the technical conference on November 12,⁴⁶ in San Fernando, Pampanga, Glenn Defense only has a Certificate of Non-Coverage (CNC) since their application is only for a small office.

Glenn Defense also has not applied for any dumping permit from the Philippine Coast Guard. This is a clear violation of MC 01-2006 where under Regulatory Requirement under Polices, states that:

(4) Regulatory Requirements:

- (a) Disposal of wastes shall be subject to evaluation and other requirements as may be determined by the PCG and other government agencies;
- (b) The dumping of harmful substances or wastes containing substances listed in Annex II and Annex III shall be allowed by a permit issued by the Commander, Marine Environmental Protection Command or the appropriate District Commander or his authorized representative, as the case may be or his duly authorized representative.

The PCG, during the technical conference mentioned that they had not given any dumping permit to Glenn Defense nor have they received any request from Glenn Defense to dump waste.

In short, no, Glenn Defense does not have the necessary government documents to haul and dump waste on Philippine marine waters. The company seemed to have gotten away with it by invoking cover through the VFA, as they have similarly done so in their reply to the SBMA's show-cause order.

But what could more concerning, albeit speculatively, is that this may have gone unchecked since Glenn Defense started operating many years back. The Subic Chamber hopes that this is not the case for the sake of the environment. Documents obtained by the Subic Chamber indicated that Glenn Defense had serviced 103 vessels since 2009.

⁴⁶ *Ibid.* 14

Question 7: Is Glenn Defense covered by the Visiting Forces Agreement (VFA)?

Finding: No

Rationale:

Glenn Defense clearly invoked the VFA in their reply to SBMA Ecology Center's show-cause order. It was stated on their reply letter that, "...its Support Vessels are not commercial vessels that are subject to the regulation of your office [SBMA]. Rather, the Support Vessels solely operate for the benefit of the US armed forces under the stated provisions of the VFA."⁴⁷

However, this was disputed by the following:

1. Assistant Secretary Raul Hernandez of the Department of Foreign Affairs (DFA), on November 9, stated that, "The VFA only covers US military personnel and US civilian personnel who are individuals employed by the US Armed Forces or those that accompany them such as employees of the American Red Cross and United Services Organization."⁴⁸
2. Presidential Spokesperson Edwin Lacierda, on November 10, stated that, "The VFA applies only to US personnel, but since the alleged dumping was not done by US personnel but by other nationalities, then the VFA does not apply."⁴⁹
3. United States Ambassador to the Philippines Harry Thomas Jr., on November 11, said, "These people are contractors, they are not under the Visiting Forces Agreement (VFA)."⁵⁰

Despite clear assertions to the contrary, on November 12, Glenn Defense CEO Mateo Mayuga, finally said, "We are not claiming cover under the VFA. We service only US Navy ships but we are not in any way included in VFA arrangements."⁵¹ So no, they are definitely not covered by the VFA.

Even VFA Commission Executive Director Edilberto Adan, on November 20, mentioned in his letter to Sen. Legarda that, "It is our position that Glenn Defense cannot invoke the VFA to escape liability for possible violation of the Philippine laws."⁵²

⁴⁷ *Ibid.* 7

⁴⁸ *Ibid.* 10

⁴⁹ *Ibid.* 11

⁵⁰ *Ibid.* 12

⁵¹ *Ibid.* 16

⁵² *Ibid.* 22

RECOMMENDATIONS

There seemed to be no question that Glenn Defense committed violations when they dumped waste without any permit and not in accordance with Philippine Coast Guard and MarPol regulations. The Subic Chamber will, however, not make recommendations as to what penalties should be imposed. This is better left to concerned government agencies.

The Subic Chamber will, in any case, provide recommendations that hopefully will provide systemic solutions that will mitigate the recurrence of the issue at hand.

1. Vessels that already entered the Philippine territorial waters are subject to Philippine laws. As such, the Subic Chamber recommends that the untreated waste of such vessels should no longer be allowed to be dumped on Philippine waters but should be hauled by land and treated prior to disposal. If possible, ports should have waste reception facilities.
2. At present, only sea vessels that are more than 300 gross tonnage are required to have transponders (the MT Glenn Guardian is only 190 GRT). The Subic Chamber recommends that all commercial sea vessels, except small-time fisher folks, should be required to have transponders so that their whereabouts and tracks can be monitored.
3. All ports should be required to have satellite-based vessel tracking devices.
4. Husbanding companies should be thoroughly checked by the DENR and if the services being provided include waste and/or garbage collection, such companies should be required to acquire Environmental Compliance Certificates.
5. Since the protection of the environment is of everybody's concern, the Subic Chamber recommends that Multi-Partite Monitoring Teams (MMT) should be formed by concerned government agencies and affected local government units (LGU) to monitor Philippine waters, or at least to be on the lookout for possible environmental violations.

For and on behalf of the SBFCC Board of Directors:


Prof. DANNY J. PIANO
SBFCC President

Disclaimer: The Subic Bay Freeport Chamber of Commerce's investigations and interim findings discussed and examined in this document are for the sole purpose of validating the Subic Chamber's action against Glenn Defense in terms of its membership to the organization.