



JUNE 2011

U.S. MARPOL Enforcement Remains Strong through First Half of 2011

Through the combined efforts of the U.S. Coast Guard (USCG) and the Department of Justice (DOJ), the first six months of 2011 witnessed a surge in MARPOL enforcement. In only a three-month span, three shipping companies and a chief engineer either pleaded guilty or were sentenced for a variety of criminal violations. The cases involved a mix of statutory offenses, repeat offenders, and whistleblowers, and most have resulted in onerous probation requirements. The trend reflects the U.S. government's commitment to enforcing the Act to Prevent Pollution from Ships (APPS) for violations within its jurisdiction and abrogating to itself the lead role in policing the international MARPOL Protocol.

In a periodic series of updates, this article recaps the chief cases of 2011 to date, discusses other developments in the maritime enforcement arena, and offers some observations from the perspective of U.S. defense counsel.

PROSECUTIONS

Stanships

In the most significant case to date this year, on April 12, 2011, Stanships and three of its affiliated companies based in New York, Greece, and the Marshall Islands pled guilty to a total of 32 felony violations of the APPS, the Ports and Waterways Safety Act (PWSA), and obstruction of justice. Under the plea agreement, the corporate owners and the operator of the *M/V Americana* will pay a \$1 million penalty and be banned from doing business in the United States for five years. In an unprecedented provision in a maritime case, the plea agreement also imposes a personal five-year ban on Paul Sa, a corporate officer of the various entities, from owning or managing any ships that trade to the United States.

The plea, taken in federal court in Louisiana by Judge Carl Barbier, who oversees the consolidated cases involving the Deepwater Horizon oil spill, is the second MARPOL-related offense for Stanships in the past year. On September 29, 2010, the company pled guilty to falsifying an oil record book on the *M/V Doric Glory* and associated offenses. In that case,

Stanships was sentenced to an \$825,000 penalty, required to implement a strict Environmental Management System and Compliance Program (EMS/ECP), and placed on a three-year period of probation.

Koo's Shipping

In a "routine" APPS case, on March 31, 2011, Koo's Shipping Company, a Taiwanese corporation, pled guilty to a series of APPS and false statement violations and was sentenced to pay a \$1 million penalty and placed on a three-year period of probation, which requires the adoption and implementation of a comprehensive EMS/ECP. Less routine was the U.S. port where the vessel was inspected and detained: Pago Pago on American Samoa, some five thousand miles from the U.S. West Coast. There, the USCG Marine Safety Detachment boarded the *M/V Syota Maru* and learned from inspecting the engine room and interviewing crewmembers that the vessel had been discharging oily water without using the required pollution prevention equipment. More egregious, during the multi-day inspection USCG personnel witnessed the vessel dump bilge waste directly into Pago Pago harbor. The special agent in charge of Coast Guard Investigative Service in the Pacific Region hailed the prosecution for "demonstrating the importance of continued joint efforts by federal law enforcement to enforce violations of U.S. and international maritime laws throughout the vast area of the South Pacific." Because American Samoa, like the U.S. Virgin Islands and Guam, is an American protectorate, the case was prosecuted in Washington, D.C.

Dimitrios Grifakis, Chief Engineer, M/V Capitola

On May 4, 2011, Dimitrios Grifakis, chief engineer of the *M/V Capitola*, pled guilty to a single count indictment charging him with obstruction of justice. On June 16, Grifakis was sentenced to six months in prison and ordered to undergo two years of supervised release. Based on a joint factual statement, Grifakis instructed his subordinates to illegally pump oily waste directly into the ocean using a bypass hose. The defendant also created a false oil record book and during a port state examination in Baltimore, Maryland, in May 2010, Grifakis presented the false book to USCG inspectors and instructed other members of the engine room to lie to government officials. While these facts also would support charges of the APPS and false statement violations, the single count plea appears to reflect a negotiated resolution to the case.

Earlier this year, Cardiff Marine Inc., a Liberian-registered shipping company, was sentenced to pay a \$2.4 million penalty in connection with the *M/V Capitola* case and was placed on a three-year probation term, subject to an EMS/ECP.

Noka Shipping

On June 7, 2011, Noka Shipping, headquartered in Greece, pled guilty to a series of APPS and PWSA violations and was sentenced to pay a \$900,000 criminal fine. Noka also was barred from trading to the United States for five years. In addition to illegal discharges and the presentment of a false record book, the *M/V Florin* failed to notify the USCG of hazardous conditions in connection with excessive amounts of oil in the vessel's machinery spaces and bilges, excessive oil leaks on the vessel's main engine and generators, and oil in the vessel's fire suppression system—all in violation of the PWSA. Many of these deficiencies were noted by USCG inspectors in connection with a June 15, 2010, port call in Houston but were not corrected and Noka failed to report these conditions when the vessel called on the port of

Corpus Christi three months later.

OTHER DEVELOPMENTS

On May 11, 2011, it was announced that Prem Kumar, a citizen of India, was added to the U.S. Environmental Protection Agency's (EPA) Fugitive List for failing to surrender to federal law enforcement officials after being indicted for his role in the 2010 Fleet Management case. On September 9, 2010, Fleet Management pleaded guilty to a variety of charges in connection with an illegal discharge and was sentenced to pay \$3 million in fines and serve four years of probation. According to the indictment, Kumar, a shore side manager for Fleet, conspired to use a "dummy" sounding tube to conceal the contents of a center fuel oil tank. In addition, Kumar and ship engineers allegedly obstructed the USCG investigation by using a false sounding log to conceal the contents of the center fuel oil tank. Kumar resides outside the United States' jurisdiction.

The EPA's Fugitive List contains information about individuals who have failed to turn themselves in after having been indicted and charged with or convicted of violating environmental laws. Approximately half of the fugitives on the list are foreign nationals involved in vessel dumping cases. While it is unlikely that U.S. officials would invoke lengthy and complex extradition procedures to prosecute these individuals in the United States, their status as fugitives prevents them from traveling to the United States as they risk capture and arrest.

OBSERVATIONS

The DOJ continues to express its frustration that, despite vigorous enforcement efforts, vessels are still dumping oil at sea, fabricating records, and attempting to mislead USCG inspectors. Contacts within the USCG report that the agency remains committed to eradicating this misconduct and will only continue to ratchet up enforcement efforts. As a new report from the U.S. Maritime Administration shows a 13 percent increase in ocean-going vessels calling on U.S. ports, and the USCG's recent port detention report indicates that a number of vessels have been cited for deficient oily-water separators, the number of potential targets continues to grow. The following observations reflect some of the ways in which the MARPOL enforcement dynamic is evolving.

Probation Requirements

The imposition of an outright trading ban as part of a criminal plea has increased significantly and is a reflection of how probation terms have evolved in vessel dumping cases. In the earlier stages of the DOJ's marine enforcement initiative, a three-year probation period with a more generic EMS/ECP requirement was standard. As the USCG's model EMS/ECP became more complex and costly to implement, often requiring companies to hire a variety of consultants to serve a number of different roles, some companies elected instead to forego trading to the U.S. during the probation period, as the economic and operational burdens of implementing an EMS/ECP outweighed the commercial benefits of trading to U.S. ports. Even as five-year probation terms become more common, a number of companies are still accepting trading bans in their negotiated pleas.

Whistleblowers

The Stanships, Cardiff, and Noka cases all involved whistleblowers who tipped USCG personnel, or, in the Cardiff case, a clergyman who was on the *M/V Capitola* to provide

pastoral counseling. These cases are consistent with recent statistics suggesting that more than half of new APPS prosecutions stem from whistleblowers, who stand to receive up to half of any penalty paid for APPS violations. Given this powerful incentive, whistleblowers are encouraged to bring their concerns directly to the USCG rather than follow internal reporting protocols and the ISM Code, which would direct them to the Designated Person Ashore and/or the Flag State.

Charging Additional Violations

These recent cases indicate that the PWSA is an increasingly powerful tool for U.S. prosecutors investigating and charging vessel dumping cases. The factual underpinnings of an APPS prosecution often include serious mechanical issues on a vessel, for example ballast tanks contaminated with oil or elevated lower explosive limits (LELs). These conditions, if not reported to the USCG, give rise to a separate series of charges under the PWSA, as in the Stanships and Noka cases.

Vessel General Permit Enforcement

As discussed in a prior [Robinson & Cole maritime enforcement alert](#), earlier this year the USCG agreed to incorporate components of EPA's Vessel General Permit (VGP) program into its existing inspection protocols and procedures. The USCG also agreed to provide the enforcement arm of the EPA with information on potential violations observed during inspections for EPA evaluation and follow-up. While this interagency cooperation has not yet resulted in an independent EPA enforcement action, it likely is only a matter of time before VGP violations, which could be prosecuted under the Clean Water Act, are charged.

FOR MORE INFORMATION

Robinson & Cole LLP has represented vessel owners and managers on a wide variety of regulatory, compliance, and enforcement matters. For more information, please contact one of the following attorneys:

[Ronald W. Zdrojeski](#)
(860) 275-8240
rzdrojeski@rc.com

[Peter R. Knight](#)
(860) 275-8387
pknight@rc.com

© 2011 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson & Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson & Cole or any other individual attorney of Robinson & Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.

