

MURPHY, ROGERS,  
SLOSS & GAMBEL

A PROFESSIONAL LAW CORPORATION

ONE SHELL SQUARE  
701 POYDRAS STREET  
SUITE 400  
NEW ORLEANS, LOUISIANA 70139  
TELEPHONE (504) 523-0400  
FACSIMILE (504) 523-5574

200 WEST THOMAS STREET  
HAMMOND, LOUISIANA 70401  
TELEPHONE (985) 340-2007  
FACSIMILE (985) 340-2005  
EMAIL FIRM@MRSNOLA.COM

ROBERT H. MURPHY  
E. CARROLL ROGERS  
PETER B. SLOSS  
GARY J. GAMBEL  
PETER B. TOMPKINS  
CHARLES L. WHITED, JR.  
JOHN H. MUSSER, V  
RONALD J. WHITE  
MOLLY B. HALLORAN  
JEFFREY A. RAINES  
EMILY STEVENS HARDIN  
MARK T. MAHFOUZ  
DONALD R. WING  
LEAH R. RHODES  

---

OF COUNSEL  
SCOTT E. OLIPHANT

26 June 2007

The Japan Ship Owners' Mutual Protection  
& Indemnity Association

Re: **MARPOL AND OIL WASTE MANAGEMENT ONBOARD VESSELS –  
A UNITED STATES PERSPECTIVE**

Dear Sirs,

As the Association's Members are well aware, for more than two (2) decades the prevention of marine environmental pollution by vessels has in large part been governed by the *International Convention for Prevention of Marine Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)*. Also commonly known as the MARPOL Protocol ("MARPOL"), it entered into force on the 2<sup>nd</sup> of October 1983 in respect of mandatory Annex I (Regulations for the Prevention of Pollution by Oil). Annex II (Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk) is also mandatory for a party accepting / ratifying MARPOL, and it entered into force on the 6<sup>th</sup> of April 1987, while voluntary Annexes III (Harmful Substances in Packaged Form), IV (Sewage), V (Garbage), and VI (Air Pollution), entered into force on 1 July 1992, 27 September 1993, 31 December 1988, and 19 May 2005, respectively. Annexes I and II of MARPOL have been adopted by some 140 countries, including the United States ("U.S."), representing the overwhelming majority -- about 98% -- of the world's tonnage. Annexes III through VI have also been adopted by a large number of contracting states, or countries, representing a large majority of the world's tonnage. Since MARPOL came into force in 1983, there have been numerous amendments to the Annexes. The focus of this short Circular is the U.S. perspective regarding MARPOL's enforcement, and the possible repercussions for vessel interests when not complying fully with its regulations. Furthermore, this Circular is not meant to be exhaustive -- so much has already been written on the topic -- but it will briefly touch on issues which are of particular concern to U.S. authorities.

The Japan Ship Owners' Mutual Protection  
& Indemnity Association

26 June 2007

Page 2

An obvious and stated aim of MARPOL is the elimination of pollution from vessels, whether caused by accident or deliberately done. Its well publicized enforcement in the U.S. has drawn considerable international attention recently, particularly the very large fines / penalties totaling many millions of U.S. Dollars imposed on vessel interests, and the prison sentences received by certain crewmembers for knowingly violating MARPOL, and U.S. laws and regulations. MARPOL has been implemented in the U.S. by the Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. 1901 *et seq.* Not only did APPS make MARPOL applicable to U.S. vessels, but to foreign flagged vessels operating in U.S. waters, or while at a port / terminal under U.S. jurisdiction. Knowingly violating MARPOL or APPS is a felony crime in the U.S.

Of paramount interest to U.S. authorities, particularly the United States Coast Guard ("USCG"), has been the proper management onboard vessels of the large amounts of oil contaminated water and oil waste / sludge generated by oceangoing vessels, and the accurate maintenance of the related vessel records / documents. To assist in that management, and to prevent pollution of the marine environment, virtually all vessels must be equipped with a fully operative Oily Water Separator ("OWS"), which equipment processes the oil contaminated water that collects in the vessel's bilges, and removes enough oil and impurities such that the processed water can be legally disposed of overboard. The oil / impurities remaining from the OWS process are kept in a waste oil tank on the vessel to be properly discharged later at a reception facility (at a subsequent port of call), while the collected oil sludge can also be disposed ashore, or incinerated on the vessel. In addition to the OWS, certain vessels must have an oil-sensing device, or an oil content meter / monitor, whose primary purpose is to prevent the discharge into a marine environment of water containing excessive amounts of oil, i.e., water with oil greater than 15 parts per million. When the amount of oil in the water exceeds 15 parts per million, the contaminated water cannot be discharged overboard, and is instead sent to a storage tank onboard the vessel.

As discussed in the preceding paragraph, the proper maintenance of vessel records / documents is required by MARPOL and APPS. It is typically the vessel's Chief Engineer who is responsible for keeping an accurate, truthful, and detailed Oil Record Book ("ORB") that records all oily water and waste transfer, processing, discharge, disposal, and related

The Japan Ship Owners' Mutual Protection  
& Indemnity Association

26 June 2007

Page 3

information. Furthermore, the ORB is to be kept onboard the vessel for not less than three (3) years, and it must be readily available for USCG inspection. U.S. laws / regulations permit the USCG to go onboard a vessel while it is in the U.S. to examine the ORB, and interview the vessel's crew for purposes of ascertaining whether or not the vessel is in compliance with MARPOL and APPS regulations. Where the USCG finds that the vessel is not in conformity, and is considered a threat to the environment, the vessel can be denied entry to the U.S., or prevented from sailing from the U.S., until it complies with existing regulations. In extreme circumstances, a vessel's crew, and / or its Owners / Operators / Managers, including overseas / foreign corporate officers and personnel, can be criminally prosecuted for violating MARPOL and APPS. Furthermore, a large amount of financial security may be required before the USCG allows the vessel to sail from the U.S.

In addition to maintaining accurate vessel records, U.S. regulations require that crewmembers answer truthfully when questioned by U.S. authorities. Knowingly making false verbal representations, and conspiring to lie to USCG inspectors can result in criminal prosecution and conviction in the U.S. Also, knowingly failing to provide / concealing requested available documents and evidence, can similarly result in prosecution and conviction.

The seriousness with which U.S. authorities, including the USCG, the U.S. Department of Justice ("DOJ"), and the Environmental Protection Agency, among others, view MARPOL / APPS violations is illustrated by a case prosecuted by the Environmental Crimes Section of the DOJ, where a tanker company pleaded guilty for concealing deliberate vessel pollution. This case is one of several that has been recently prosecuted in the U.S., and among the case's highlights are the following:

1. The tanker company agreed to pay US\$37,000,000 in fines / penalties, which is the largest amount to date for deliberate pollution, in respect of pollution from nine (9) vessels, and false pollution log entries for three (3) vessels;
2. The tanker company agreed to a three (3) year probation period whereby it will implement an environmental compliance program that includes a Court-appointed monitor. The company's vessels will also be audited by an independent auditing firm;

The Japan Ship Owners' Mutual Protection  
& Indemnity Association

26 June 2007

Page 4

3. Not only did the tanker company plead guilty to criminal violations of APPS and the Clean Water Act / Oil Pollution Act, but it also pleaded guilty to charges related to illegal dumping of waste oil, conspiracy, false statements and obstruction of justice;

4. The following specific violations, among others, were committed by the vessels' crewmembers:

a. At the request of a vessel's Chief Engineer, a fitter onboard one vessel made a bypass or "magic" pipe to bypass the OWS so that oily water could be dumped overboard. The fitter fabricated the "magic" pipe only after his employment was threatened, and he was so upset at the Chief Engineer's request, that he kept a secret journal to record the illegal discharges;

b. A First Engineer on another vessel wrote a letter to the vessel's Managers informing them that the Chief Engineer had been illegally dumping sludge at sea;

c. A Second Engineer on a further vessel contacted the USCG and informed them that a vessel's Chief and First Engineers had been tampering with the vessel's Oil Content Meter;

d. A Third Engineer and Electrician on yet another vessel had been ordered to recalibrate the vessel's Oil Content Meter;

e. Oil Record Books were falsified on several vessels;

f. The OWS on a vessel was "tricked" by flushing an oil detecting sensor with fresh water;

5. 12 current and former crewmembers were each awarded US\$437,500 for notifying the U.S. authorities that illegal oil waste management practices had taken place on numerous vessels. These "Whistleblower" awards are provided for by APPS, and APPS' provisions permit the individual providing information concerning illegal activity leading to conviction

The Japan Ship Owners' Mutual Protection  
& Indemnity Association

26 June 2007

Page 5

to be awarded up to one-half of the criminal fine;

6. While the U.S. authorities assessed the tanker company with the largest fines / penalties to date for deliberate pollution, the authorities also recognized the tanker company's efforts for certain cooperative acts and remedial measures. Even though the U.S. authorities found the tanker company's criminal conduct to be "systemic, repetitive, and longstanding" such that it amounted to a "serious failure of corporate and shore-side management," the DOJ prosecutors also credited the tank company's "self-disclosures, cooperation and compliance measures taken by proposing fewer charges and reduced criminal fines."

It is clear from the above discussion that the U.S. authorities view very seriously deliberate acts of pollution, the falsification of vessel documents, knowingly making false verbal representations, conspiring to lie to USCG inspectors, and knowingly failing to provide / concealing requested available documents and evidence. Such acts can result in the criminal prosecution and conviction in the U.S. of not only the crewmembers who commit such crimes, but of shored based company officials who participate in such crimes, or engage in "willful blindness."

In order to avoid the many problems associated with the criminal prosecution of the tanker company used as an example in this Circular, and the resulting large fines / penalties, it is of the utmost importance that the Association's Members fully comply with the provisions of MARPOL and APPS. It is essential that a vessel's OWS and related equipment always be fully functioning and up to standards, that the Engine Room personnel be properly trained to correctly operate the equipment, and that Members' shore based technical staff periodically confirm that the vessel's pollution equipment is performing as intended. Any problems with the equipment should be immediately repaired, and if it cannot be done onboard the vessel, then the problem should be reported at once to Members' offices, and the needed repairs performed at the next port of call. In addition, crewmembers should be encouraged to fully comply with MARPOL and APPS standards, and seek Members' help without delay should they have any questions whatsoever regarding those laws and the equipment's operation.

The Japan Ship Owners' Mutual Protection  
& Indemnity Association

26 June 2007

Page 6

In the event that it appears that the USCG, and / or other U.S. authorities are investigating a vessel and / or its crew for possible MARPOL / APPS violations, the vessel's Master is to immediately notify the vessel's Owners / Managers, who, in turn, are to inform the Association at once. In addition, the vessel's Master should contact the local steamship agents and P&I correspondents so that the vessel's / crew's / Members' interests are fully protected during any investigation.

Should the Association's Members have any questions concerning this Circular, please contact the Association for assistance.

Yours faithfully,

MURPHY, ROGERS, SLOSS & GAMBEL

A handwritten signature in black ink, appearing to read "Charles L. Whited, Jr." with a stylized flourish at the end.

Charles L. Whited, Jr.