

# MARPOL fines for oil pollution and operational best practice

Members are reminded that club cover for fines under the International Convention for the Prevention of Pollution from Ships (MARPOL) is discretionary. They should not expect the club's board to approve reimbursement, save for under truly exceptional circumstances. The board may also impose a penalty to reflect a member's culpability.



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In recent years, the club has seen an increase in both the number of fines for MARPOL violations in respect of oil pollution and also the level of fines. This is particularly so in the USA, where MARPOL fines have run into millions of dollars.

## Basis of liability

The illegal practices that result in MARPOL investigations and prosecutions usually involve:

- bypassing the oily water separator when dealing with bilge water or the discharge of sludge overboard rather than by incineration or disposal ashore
- unauthorised alterations to the piping arrangements in the engine room
- the use of flexible hoses or so-called 'magic pipes'
- the provision of false statements and records, conspiracy and obstruction of justice (witness tampering and destruction of evidence).

A shipowner can be found guilty of MARPOL violations even if it was unaware of the crew's actions, if those actions benefitted the company (generally interpreted to mean saving money) and were related to the crew's responsibilities. It is then for the shipowner to demonstrate that it had in place adequate environmental policies and procedures to prevent this.

## Club cover

To have any prospect of recovery from the club, a member needs to satisfy the board that it had taken all such steps as appear to the board to have been reasonable to avoid the event giving rise to the fine. This is a very difficult test to meet and involves detailed scrutiny of the circumstances of the offence, as well as an assessment of the environmental policies and procedures in place.

There will be no recovery in the event of any personal act or default on the part of a member (or its managers) or where there has been wilful misconduct. Because cover for MARPOL fines is discretionary, the club will only provide security as a last resort and a member will need to provide adequate counter-security, usually by way of a bank guarantee.

In terms of claims handling, a member would be expected to act as a 'prudent uninsured' in responding to proceedings. Any claim for reimbursement could then be submitted for the board's consideration at the conclusion of the matter.



MARPOL is the main international convention covering the prevention of pollution of the marine environment by ships. The club has covered the MARPOL requirements in previous publications, which are available on its [website](#).

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### Operational best practice

The [December 2007 Standard Bulletin](#) and [October 2014 Standard Safety](#) provided a summary of MARPOL operational best practice. The main issues to be addressed are:

- a clear environmental statement that places proper oil waste management practices above cost savings and operational expediency
- a no-blame culture, with open reporting of all illegal practices
- shore-side management supervision, with a senior person in the company responsible for environmental compliance reporting to the chief executive and/or the board
- recognition of the critical role of ship superintendents in monitoring compliance with environmental procedures and, in particular, detailed analysis of discharge records through oil record books and the ship's documentation
- effective on-board management of oil waste systems by the chief engineer and master
- installation of the most up-to-date equipment with an effective maintenance programme, prompt procurement of spares, adequate holding tank capacity and shoreside discharge facilities, if required
- periodic testing of equipment and tamper-proof measures to make bypassing difficult and detectable
- accurate and honest documentation of oil waste management practices, with prompt reporting of any problems to shoreside management for possible escalation to flag or port authorities
- formal training on MARPOL requirements, both on board and ashore – this should be provided on a regular basis and be supported by safety publications
- audits and inspections for MARPOL compliance conducted by superintendents and external inspectors, with proper testing of equipment and interviews with engineering crew – results should be clearly documented for review by senior management, with recommendations for improvements.

### Conclusion

Ensuring MARPOL compliance is of critical importance for members, given the potential for very harsh civil and criminal penalties which will likely not be covered by insurance. Clear, robust written policies and procedures supported by training, supervision and effective senior management oversight are essential.

However, it is the establishment and maintenance of a company-wide culture of compliance among ship and shoreside staff, actively promoted by the chief executive and other members of senior management, that is the key to mitigating risk in this area.

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