

MARPOL fines in the US



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This article is a reminder that club cover for fines arising from breaches of MARPOL is discretionary and, given the well-known enforcement practices of the US authorities, the huge penalties and the absolute requirement to have effective shore-side and on-board management systems, members should not expect the board to approve reimbursement of such liabilities, save in very exceptional circumstances.

In December 2007, the club published a special **Standard Bulletin** highlighting the increasing number of multimillion dollar fines imposed on ships entering US ports for breaches of MARPOL requirements relating to oil waste management. This problem is by no means confined to the US, but the zero-tolerance attitude of the US Coastguard to the enforcement of MARPOL legislation has resulted in an unprecedented number of such fines being imposed on shipping companies of every nationality, flag, trade and size of operation.

Illegal practices

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'

Financial impact

The following are examples of the fines and other penalties that have been imposed over the past 15 years for MARPOL breaches:

1988	Cruise operator	False statements, false records, conspiracy, obstruction of justice	\$27m fine for fleet-wide violations, 5 years probation and EMS plan
2001	Container ship operator	False statements	\$3m fine, 3 years probation and EMS plan
2002	General cargo operator	Obstruction of justice, false statements and witness tampering	\$5m fine, 5 years probation and \$0.5m for EMS plan

- Suppression of alarms designed to detect concentrations of oil in excess of the permitted 15ppm

Other aspects to be aware of:

- Few prosecutions involve illegal discharges in US waters: nearly all stem from false entries in oil record books for ships entering US ports that falsely document compliance with MARPOL requirements or fail to record illegal discharges that have taken place in international waters
- False statements by crew members to Coastguard inspection teams and prosecutors, destruction or concealment of bypassing equipment, and incriminating records are a feature of many prosecutions and add considerably to the level of fines incurred
- Whistle-blowers are a vital source of evidence in many cases. Their motives vary from genuine concern for the environment to disaffection borne of employment disputes, as well as the undoubted financial benefits that can be obtained following the imposition of substantial fines of which they may receive up to a 50% share



2004	Container ship operator	False statements	\$4.2m fine, 3 years probation and EMS plan
2005	Container ship operator	Obstruction of justice, false statements	\$25m fine, 3 years probation and EMS plan
2006	Container ship operator	False statements, obstruction of justice, conspiracy, destruction of evidence	\$10m fine, \$0.5m community service, 3 years probation and EMS plan
2006	Car carrier operator	False statements, false records, conspiracy, obstruction of justice	\$5m fine, \$1.5m community service and EMS plan
2006	Tanker operator	Conspiracy, false statements, false records	\$37m fine
2010–2012	Container ship and tanker operator	Four ships implicated in illegal discharges of sludge and oily bilge waste, falsification of records	\$10.4m fine, 4 years probation
2010	In May 2010, a Norwegian ship was banned from US waters for one year and further calls at US ports, subject to development of an environmental compliance plan acceptable to the Coastguard		
2011	In April 2011, an owner found guilty of various MARPOL violations was banned from trading to the US for five years		
2012	Container ship operator	Illegal discharge, equipment malfunction falsification of records	\$2m fine

Basis of shipowners' liability

In many cases, an owner/operator blames the crew for MARPOL breaches, citing laziness or wilful disobedience with laid-down procedures by engineers who are considered to have failed to live up to the high standards of the company. This may or may not be true, but it is important to understand the nature of the obligations imposed on the shipping companies under US law. The concept of corporate vicarious liability means that the owner/operator is liable for the acts of its crew where a court considers that:

- Those acts were performed for the 'benefit' of the company (generally considered by reference to any operational cost savings), and
- They were directly related to the duties that the crew member was employed to perform.

If both of these requirements are met then the owner/operator will be vicariously liable for the acts of its crew even where these are in direct contravention of written procedures and the owner/operator had no knowledge of such illegal practices prior the criminal

investigation. The burden is not on the prosecutor in such cases to prove the lack of an effective environmental compliance plan as the basis of criminal responsibility. Rather, it is for the defendant to establish the existence of an effective plan either as a means of showing that one of the two requirements for a finding of vicarious liability are not present or, alternatively, as mitigation in relation to any penalties imposed following a successful prosecution.

MARPOL best practice

As with all aspects of safe and efficient ship operations, the key to ensuring successful compliance with MARPOL regulations lies in recognition of the importance of strong and proactive management. This goes well beyond the imposition of written procedures and involves the core culture of the shipping company.

The 2007 *Standard Bulletin* provided an outline of MARPOL best practice. This must be given the highest priority rather than be treated as just another operational process. Members should therefore address the following areas in their Safety Management

Systems (SMS) in order to avoid huge fines and other financial losses for which they are very unlikely to be reimbursed by the club:

- Clear environmental statement that places proper oil waste management practices above cost savings and operational expediency
- 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 chief engineer and master (whose role is often ignored in this context)
- Installation of the most up-to-date equipment with an effective maintenance programme, prompt procurement of spares, adequate holding tank capacity and shore-side discharge facilities, if required
- Periodic testing of all such 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 shore-side 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 supported by safety publications
- Audits and inspections for MARPOL compliance should be 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
- The club will run a series of articles in 2014 on all the MARPOL annexes to review new regulations in various jurisdictions and their safety and loss implications