

# MARITIME MIDNIGHT DUMPERS

## Crisis in Maritime Environmental Compliance



**Criminal Enforcement of Environmental Laws  
American Law Institute/American Bar Association**

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Washington, D.C.**

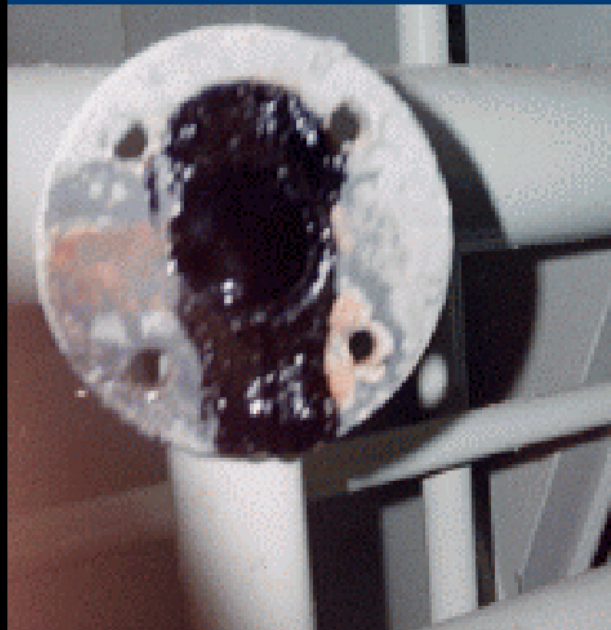
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# Defiance of MARPOL Regime

- MARPOL based on presumption that vessel owners and operators will make good faith efforts to ensure compliance
- Annex I in force for 23 years and Annex V in force for 19 years.

***But:***

- **Epidemic of cases involving intentional MARPOL violations**
  - Bypassing or disabling of pollution prevention equipment
  - Falsification of vessel records to conceal intentional illegal discharges
- Cases in United States involve criminal charges for -
  - Intentional discharge of waste oil, sludge, plastics and other pollutants
  - False statements, obstruction, destruction of evidence and witness tampering in United States ports



Each of these vessels was ISM certified and had passed Class, Flag and Port State inspections.



# Recent Enforcement in United States

- All types of commercial vessels
- United States and foreign flag
- Since 1998 -
  - Over \$200 million dollars in corporate criminal penalties
  - Hundreds of vessels operating under court-supervised ECPs
  - Individuals sentenced to over 23 years incarceration



# Law Enforcement Response

- Increased coordination
  - Inspectors, investigators and prosecutors in key United States ports
- Investigative focus on responsible corporate officials
- Enhanced sanctions, where warranted
- Expanded training
- Enhanced inspections and vessel records analysis
- Expanded international cooperation
  - Referrals to and from other Port States
  - IMO and INTERPOL
  - Bi-lateral efforts

# Responses of Other Port States

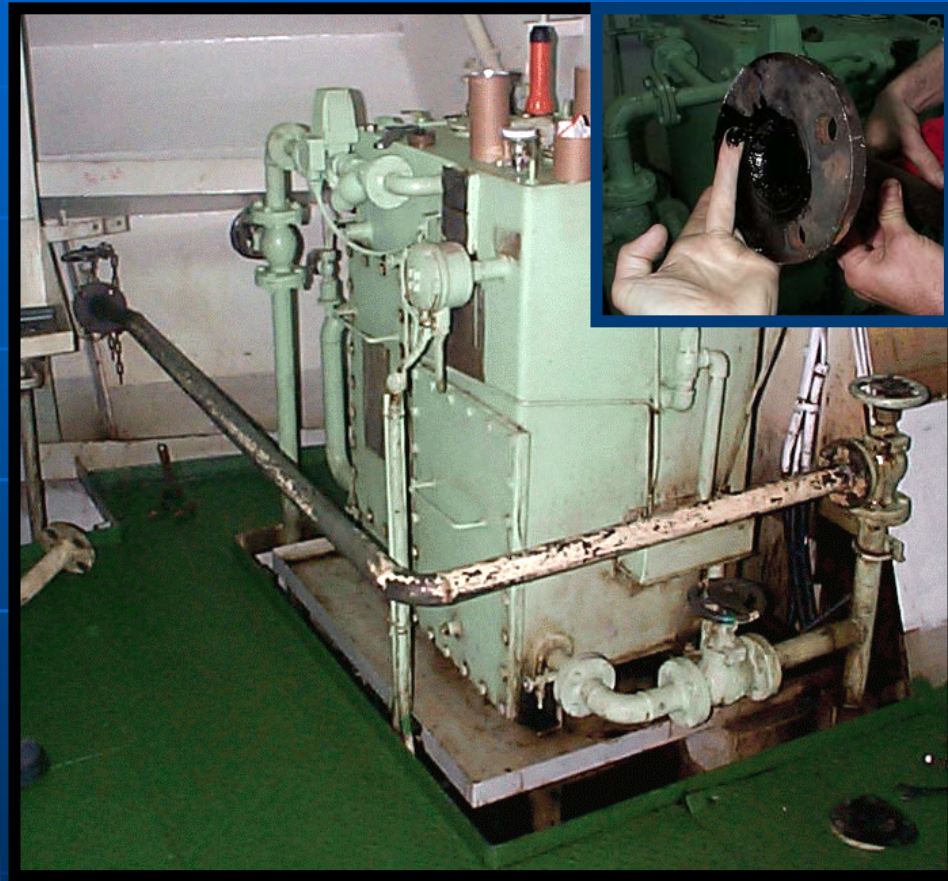
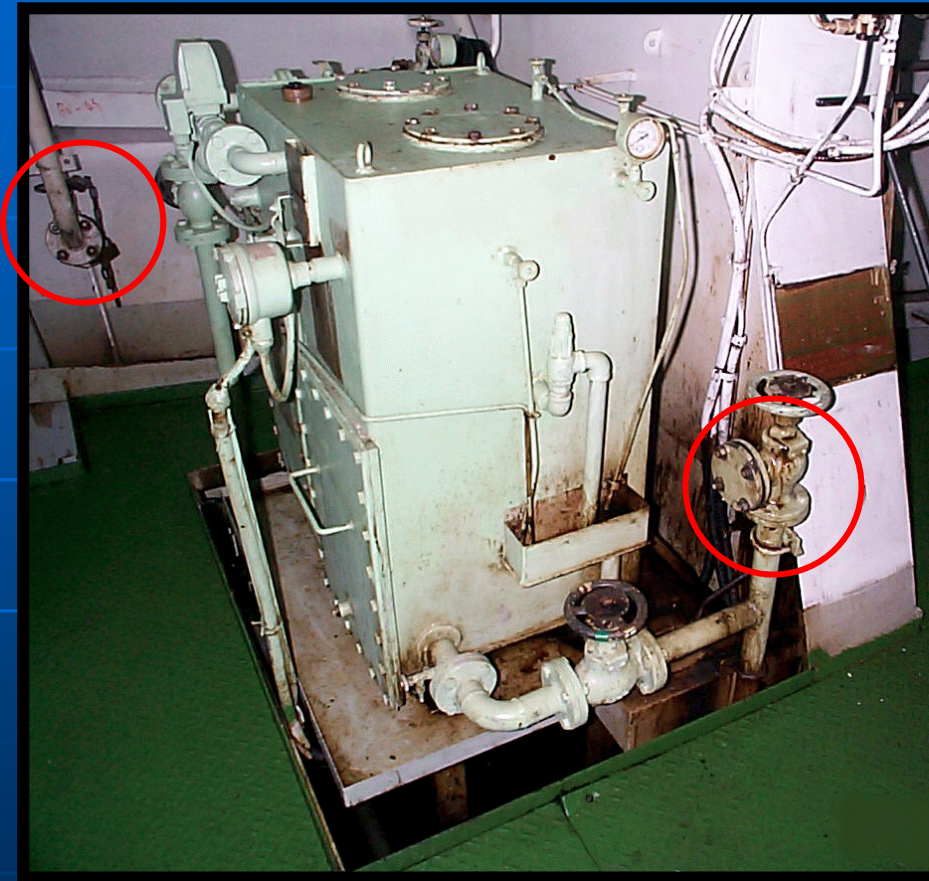
- Canada - enhanced enforcement authority for maritime pollution
- EU – new authority to pursue criminal sanctions for intentional acts of maritime pollution
- France - increased penalties for intentional and accidental maritime pollution
- Australia - escalated enforcement efforts to address intentional maritime pollution
- Taiwan – training of Coast Guard, harbor authorities and related agencies to detect and prosecute intentional acts of vessel pollution

# Nature of Deficiency

- Commercial shipping industry compares unfavorably to most United States shore-based industries with respect to management of environmental compliance
- Absence of waste stream analysis and volumetric data
- Failure to invest in adequate technology
- Failure of shore-side accountability for environmental compliance
- Failure of ISM and SMS procedures
- Failure of Class, Flag State and Port State certification and inspection procedures
- Crimes committed for financial motives
- Companies have not dedicated necessary personnel or financial resources to achieve and sustain compliance



# Absence of Shore-side Accountability

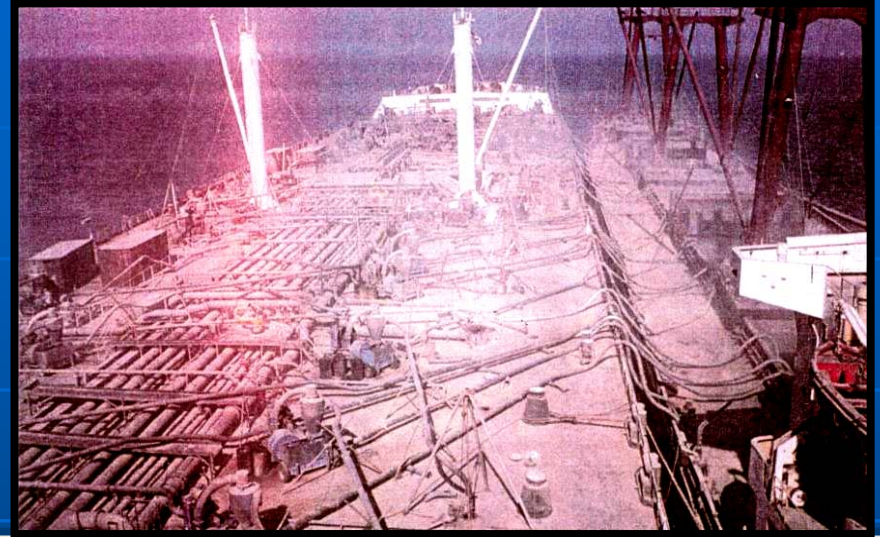




# *United States v. Stickle, et al.,*

*355 F. Supp. 2d 1317(S.D. Fla.), aff'd, 454 F. 3d 1265 (11<sup>th</sup> Cir. 2006)*

- 442 MT of wheat cargo contaminated with diesel
- Shore-side disposal bid \$156,000
- Dumped into ocean
- Obstructed investigations
- Chairman, President, Marine Superintendent, Captain and Chief Officer convicted
- Chairman/CEO sentenced to 33 months incarceration
- Court of Appeals rejected legal challenges to APPS



# United States v. Overseas Shipholding Group, Inc.

- Referral from Transport Canada
- Intentional MARPOL violations in six districts
- Multiple violations aboard 12 tankers in fleet
- Numerous oil discharges in United States waters
- \$37 Million criminal penalty
- Extensive environmental compliance plan for world-wide fleet for three years probation
- Interlocutory appeal of dismissal of APPS counts on jurisdictional grounds pending in Fifth Circuit





# United States v. Ionia Management S.A.

- In September 2007, following a two week trial, company convicted on thirteen APPS counts, three false statements, one obstruction of justice count and one conspiracy count
- Consolidated trial of indictments filed in four districts
- Evidence admitted of prior pollution incident in Netherlands
- At time of violations, company was on probation for earlier APPS violation
- Court rejected pretrial jurisdictional challenge to APPS charges

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# Recent Litigation Summary

- Five trials in last three years -
  - Three convictions (US v. Stickle, US v. Petraia, US v. Ionia Management S.A.)
  - One not guilty verdict (US v. Athenian Sea Carriers, et al.)
  - One mistrial (US v. Kiselyov)
- Two cases currently in trial –
  - US v. Humphries
  - US v. Georgakoudis
- Three cases pending trial –
  - US v. Fleet Management, et al.
  - US v. Kiselyov
  - US v. Trojan Clipper
- Jurisdictional challenges to APPS prosecutions have been rejected by all but one court
  - One adverse decision is on interlocutory appeal in 5<sup>th</sup> Circuit

# MARPOL Annex VI

## Control of Air Emissions from Vessels

- Annex VI of MARPOL into force in May 2005
- New regime of environmental regulation of vessel operations with extensive technical and operational implications
- United States Senate gave advice and consent in 109<sup>th</sup> Congress
- House has passed implementing legislation
- Bill referred to Senate committee
- Knowledge, planning and compliance efforts critical going forward
- Transparency and truthfulness critical now

# Toward a Resolution

Coast Guard and Department of Justice

- Conduct fair, even-handed inspections and investigations
- Seek to minimize disruption to vessels' schedules
- Expedite investigations and evaluation of evidence
- Recognize good faith efforts to ensure compliance and voluntarily disclose violations
- Respect rights of witnesses, subjects, targets and defendants
- Clearly articulate policies guiding exercise of discretion
- Seek to ensure that policies are applied consistently



# Toward a Resolution

## Vessel Owners and Operators

- Guidance on Oily Water Separators is positive start.
  - Technical approaches -
    - Waste stream minimization and audits
    - Best available technology
    - Control devices
  - Management approaches –
    - **Shore-side accountability for environmental compliance**
    - Flexible budgets for environmental compliance
    - Safety Management System
    - Internal/external audits
    - Meaningful training
    - Communication lines with crews
    - Reward compliance and penalize non-compliance.
    - Verification –
      - Enhanced physical inspections
      - Operational tests
      - Document analysis

# Toward a Resolution

## Vessel Owners and Operators

- Need to change corporate culture
  - Must understand and address motives of shipboard personnel who commit violations and shore based officials who direct, condone or ignore it
- Need to integrate environmental compliance as priority matter into strategic business plan
- Corporate leadership must convince every shipboard officer, non-rated crew members and all shore side managers that environmental compliance is a real and permanent priority of organization
- Voluntarily report violations detected
- Cooperate fully and candidly with inspections and investigations

# Toward a Resolution

## Cargo Owners

- Require through vetting process that carriers adopt and implement effective policies to ensure environmental compliance
- Penalize carriers who are found to have committed intentional MARPOL offenses
- Ensure that charter party agreements incorporate provisions for off-loading oily wastes to shore and fairly allocate costs



# Toward a Resolution

## Protection and Indemnity Clubs

- Consider whether clubs' rules should absolutely exclude compensation, even under discretionary authority, for fines resulting from intentional criminal violations
- Consider whether premium concessions may be appropriate for members who implement and sustain comprehensive environmental compliance measures
- Consider whether members who intentionally violate environmental laws should incur premium surcharge and/or be placed in provisional coverage status during probationary period

# Conclusions

- Port States adopting enhanced inspection protocols and will continue to prosecute intentional violations of Annex I and other environmental violations
- Department of Justice prepared to work constructively
  - to improve MARPOL compliance
  - to help level the playing field
  - to marginalize intentional violators
- Responsibility for compliance rests with vessel owners and operators
- Flag States and classification societies must critically review adequacy of inspection and certification procedures
- Other segments of industry must ensure that environmental compliance receives higher priority