



CHALOS & Co.
International Law Firm



U.S.C.G. MARPOL ENFORCEMENT

Michael G. Chalos, Esq.

Chalos & Co, P.C.

Law and Regulations

- **MARPOL 73/78**
 - United States is a party, but the treaty is not self-executing;
- **The Act for the Prevention of Pollution from Ships, (“APPS”) 33 U.S.C. §§ 1901 – 1911**
 - APPS is the law implementing MARPOL in the United States
 - 33 C.F.R. 151.25



USCG: MARPOL/APPS Investigations

The United States has no jurisdiction over actions in international waters, but charges U.S. crimes for false record books, obstruction of justice, conspiracy, and other crimes through cooperation between USCG and DOJ.



USCG: MARPOL/APPS Investigations

- Oil Record Books Part I and II
- Garbage Record Book
- Sulphur Emissions and Bunker Delivery Records
- Ballast Water Regulations / VGP
- Clean Water Act Violations
- Clean Air Act Violations
- Hazardous Condition - PWSA



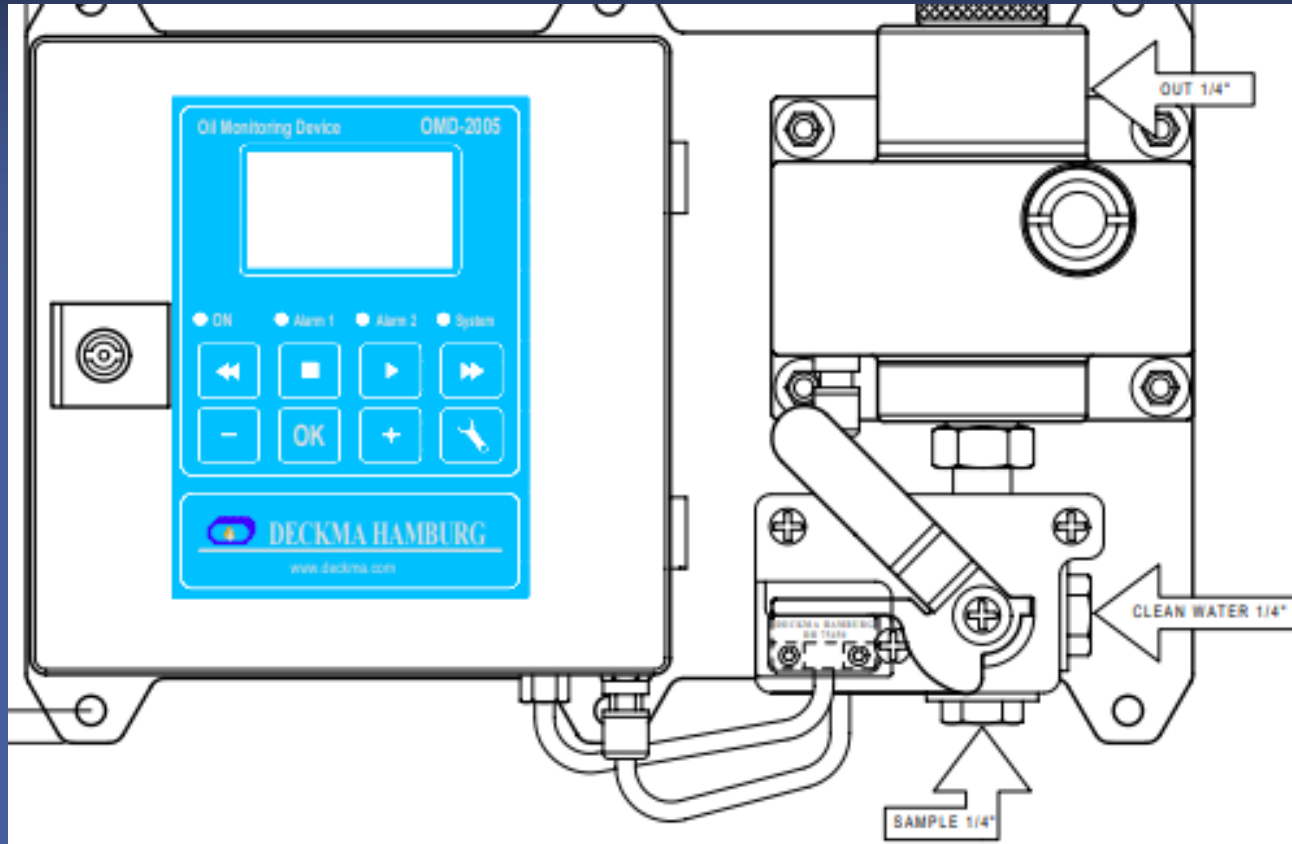
Engine Room – Oily Water Separator



- Flexible hoses
- Portable pumps
- Bypass of OWS



Engine Room – Oil Content Meter



- Tricking of the OCM with a metal plate
- Manipulating the sample/freshwater line
- Throttling back the sample valve input

Tankers: Oil Discharge Monitoring Equipment



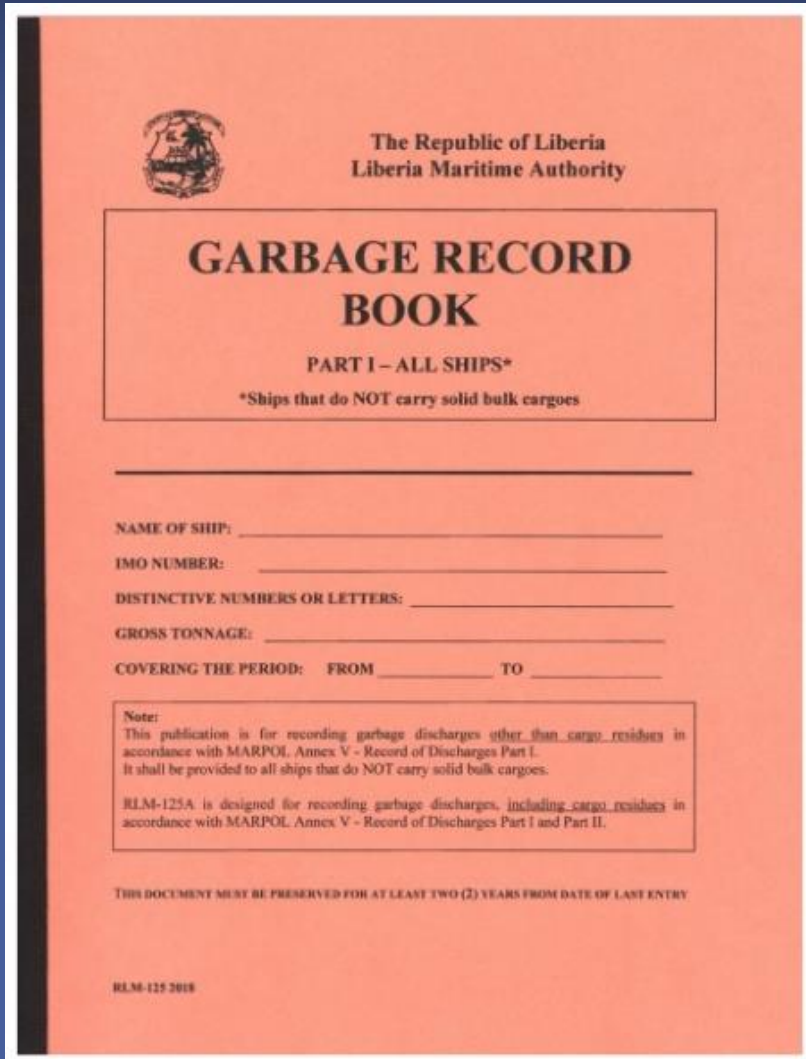
- Tampering with sample line
- Switching ODME to manual mode

Oil Record Books

- **ORB Part I and II**
- **33 C.F.R. 151.25(e)** – requires recording all transfers in the Oil Record Book.
- **33 C.F.R. 151.25(h)** – requires each transfer to be signed by the person completing the operation.
- **33 C.F.R. 151.25(j)** – Master is the person tasked with “maintenance” of the Oil Record Book.



Garbage Record Books



The cover of the Garbage Record Book is orange with a black border. At the top left is the emblem of the Republic of Liberia. To its right, the text reads "The Republic of Liberia" and "Liberia Maritime Authority". In the center, a black-bordered box contains the title "GARBAGE RECORD BOOK" in large, bold, black capital letters, followed by "PART I - ALL SHIPS*" in smaller black capital letters, and a footnote "*Ships that do NOT carry solid bulk cargoes" in even smaller black capital letters. Below this box, there are several lines for ship information: "NAME OF SHIP:", "IMO NUMBER:", "DISTINCTIVE NUMBERS OR LETTERS:", "GROSS TONNAGE:", and "COVERING THE PERIOD: FROM TO". Below these lines is a "Note:" section with two paragraphs of text. At the bottom of the cover, it states "THIS DOCUMENT MUST BE PRESERVED FOR AT LEAST TWO (2) YEARS FROM DATE OF LAST ENTRY" and "RLM-125 2018".

The Republic of Liberia
Liberia Maritime Authority

**GARBAGE RECORD
BOOK**

PART I - ALL SHIPS*
*Ships that do NOT carry solid bulk cargoes

NAME OF SHIP: _____

IMO NUMBER: _____

DISTINCTIVE NUMBERS OR LETTERS: _____

GROSS TONNAGE: _____

COVERING THE PERIOD: FROM _____ TO _____

Note:
This publication is for recording garbage discharges other than cargo residues in accordance with MARPOL Annex V - Record of Discharges Part I. It shall be provided to all ships that do NOT carry solid bulk cargoes.

RLM-125A is designed for recording garbage discharges, including cargo residues in accordance with MARPOL Annex V - Record of Discharges Part I and Part II.

THIS DOCUMENT MUST BE PRESERVED FOR AT LEAST TWO (2) YEARS FROM DATE OF LAST ENTRY

RLM-125 2018

- **33 C.F.R. 151.55** – All discharges of garbage must be recorded:
 - Reception facility;
 - Incineration;
 - Discharge into sea;
 - Accidental or exceptional discharge
- Improper disposal of plastics.
- Improper burning of garbage on deck and disposal of rags, ash, and barrels overboard.



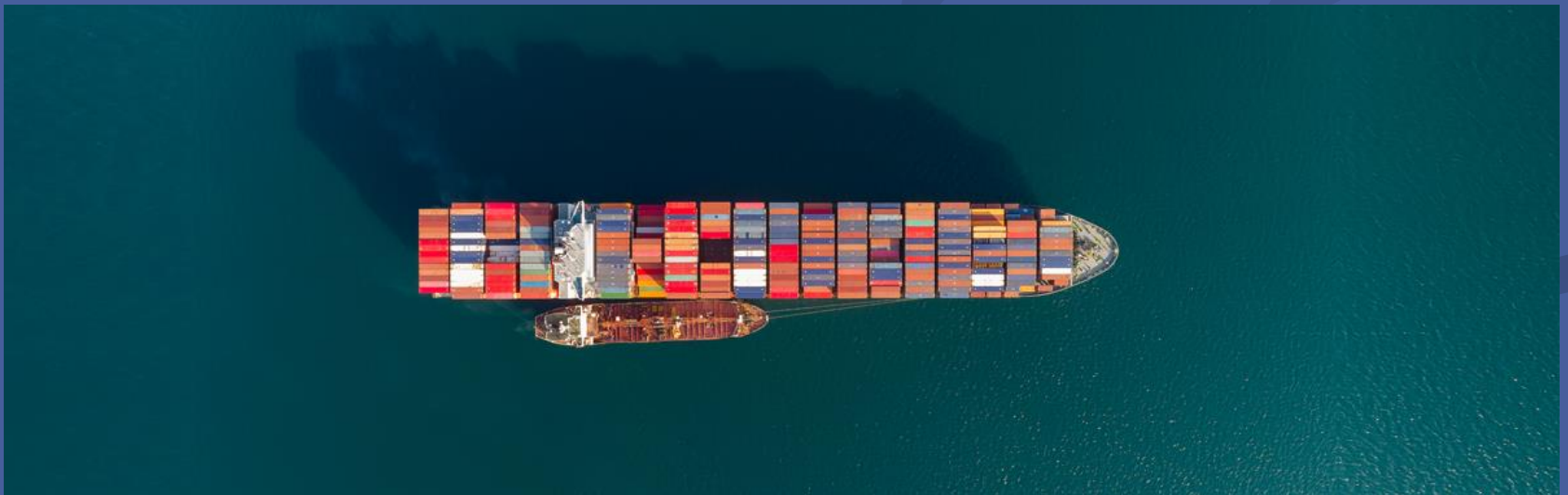
Ports & Waterways Safety Act

- Pursuant to 33 C.F.R. § 160.216, the Master, Owner, Operator, or Person in charge must immediately notify the nearest U.S. Coast Guard Sector when there is a hazardous condition onboard a vessel or caused by a vessel.
- 33 C.F.R. 160.202 – “Hazardous condition” means any condition that may adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable waterway of the United States. It may, but need not, involve collision, allision, fire, explosion, grounding, leaking, damage, injury or illness of a person aboard, or manning-shortage.



Ports & Waterways Safety Act

- **Failure** to report the “hazardous condition” is a violation of the Ports and Waterways Safety Act. 46 U.S.C. 70036. U.S. government uses the existence of an actual or potential hazardous condition as a predicate to include a PWSA charge as additional charge(s) to MARPOL/APPS investigation.
- Does not have to be a marine casualty, the threat of a hazardous condition can be enough to trigger the reporting requirements

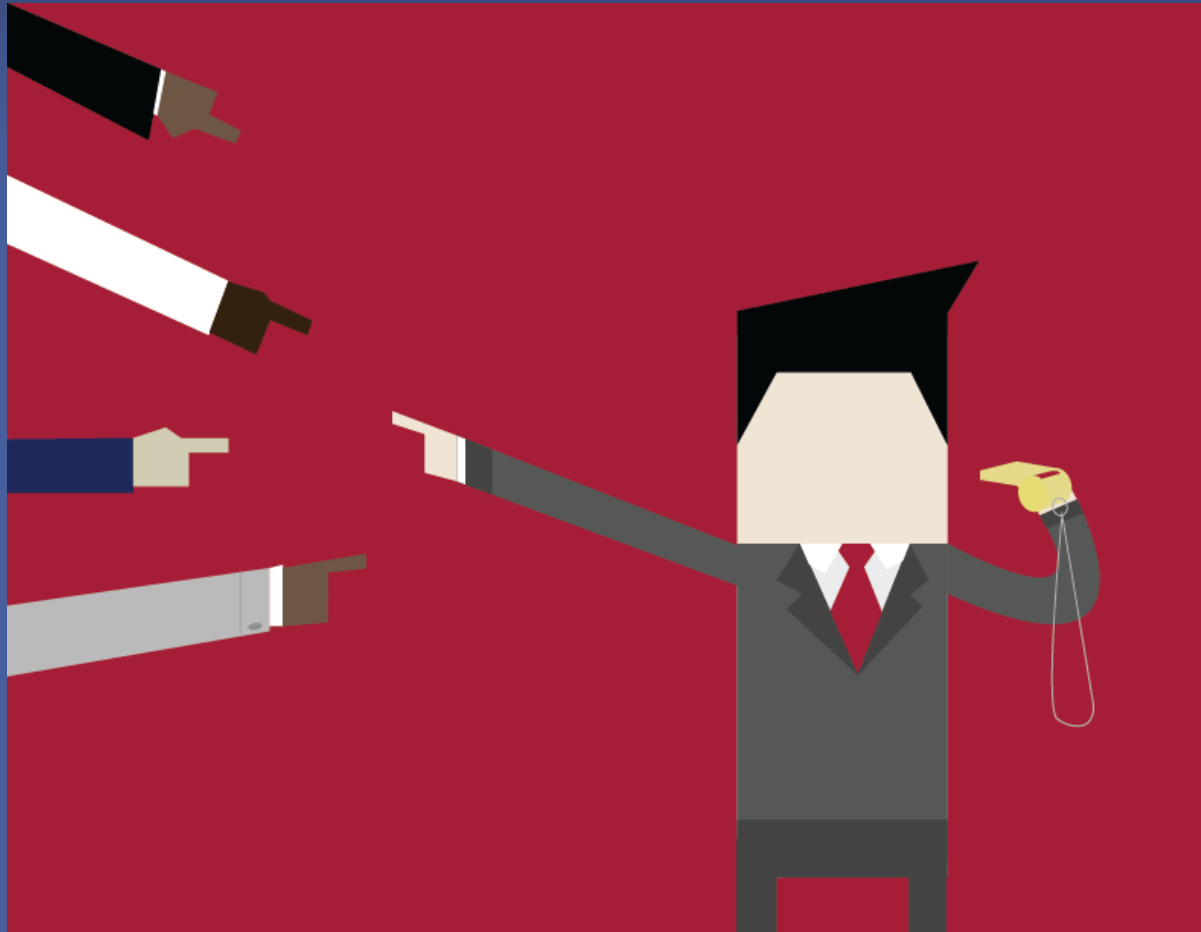


March 11, 2021 – Mississippi River

- **Failure** by crew to report that a pressure relief valve was malfunctioning, had leaked during maneuvers, and was “plugged” until the crew could perform repairs.
- Coast Guard wrote up a deficiency and the government pursued criminal charges even though none of the Coast Guard agents perceived an actual danger or hazardous condition at the time. It was simply an operational issue. Ten days later, the prosecutors pursued criminal charges.



Whistleblower Dilemma



APPS Reward Incentive

- U.S. Coast Guard “tip” – before or during a PSC Inspection.
- **Reward Incentive – 33 USC 1908(a)** “In the discretion of the Court, an amount equal to not more than 1/2 of such fine may be paid to the person giving information leading to conviction.”
- In the 25 years between 1993 – 2018, whistleblowers received approximately \$540 million dollars in 72 cases.



C/E USED
MAGIC PIPE
FOR PUMP
OUT BILGE
WATER
EVEN IN
SPECIAL
AREA
I SHOW YOU
THE PICTURE

Whistleblower Reward Incentive

- *United States v. Overseas Shipholding Group, Inc.*, 06-CR-10423 (D. Mass. 2006): Twelve (12) crewmembers each received \$437,500 (total in whistleblower rewards of \$5.25 million dollars)
- *United States v. OMI Corporation*, 04-cr-00060 (D.N.J. 2004): award of \$2 million to one (1) crewmember.
- *United States v. Target Ship Management Pte Ltd., et al.*, 11-CR-0368 (S.D. Ala. 2012): award of \$250,000 awarded to be split between seven (7) crewmembers.
- *United States v. Hiong Guan Navegacion Japan Co., Ltd.*, 08-CR-494 (M.D. Fla. 2009): award of \$253,125 to the vessel's Fourth Engineer and \$84,375 to the vessel's Third Engineer.
- *United States v. BSM*, 20-cr-0004, (D. Haw. 2020): award of \$300,000 for Fourth Engineer (government had requested \$500,000)

U.S. Department of
Homeland Security
United States
Coast Guard



Commander
United States Coast Guard
Sector Delaware Bay

1 Washington Ave
Philadelphia, PA 19147-4395
Phone: 215 271-4800
Fax: 215 271-4833

16200

MAR 15 2019

Attn: Master M/V [REDACTED]
[REDACTED]
[REDACTED]

Dear Sir or Ma'am:

The Coast Guard has exercised its authority under 33 USC 1908(e) to request the withholding of the clearance, permit to proceed, or permit to depart of the vessel M/V [REDACTED] because on or about March 11, 2019, the U.S. Coast Guard determined there was reasonable cause to believe that the M/V [REDACTED], its owners, operators, or person in charge may be subject to a fine or civil penalty under 33 USC 1901 et. seq. and relevant regulations found in 33 CFR Subchapter O.

Customs and Border Protection has withheld departure clearance for the vessel M/V [REDACTED] as required by 33 USC 1908(e), 46 USC 60105, and 19 CFR 4.66a. Clearance may be granted upon the filing of a surety satisfactory to the Secretary, which includes a financial bond and other pledges and promises. The bond amount shall be forfeited if, upon proper notice to the U.S. agent designated to accept service, the owner or operator fails to meet the terms of surety satisfactory. Any movement of your vessel prior to acceptance of the surety is prohibited except as authorized by the Captain of the Port Sector Delaware Bay.

The Fifth Coast Guard District Legal Office will coordinate negotiations with the vessel owner and operator to obtain surety satisfactory to the Secretary. Once surety is received, you will be notified so that clearance may be granted to the vessel. CDR Robert Pirone is your point of contact for this matter. He can be reached at (757) 651-5857.

I request that you forward this letter to the Owner/Operator of the M/V [REDACTED] or their designated representative. You may appeal the decision to withhold departure clearance or the underlying examination in accordance with the processes set out in 33 CFR 160.7 or 46 CFR 1.03-20, respectively. Should you have any questions or concerns, please contact the legal officer above.

Sincerely,

S. E. Anderson
Captain, U. S. Coast Guard
Captain of the Port

Captain of the Port Letter

Pursuant to 33 U.S.C. 1908(e) –
U.S. Coast Guard requests
Customs and Border Protection
to withhold the Vessel's
departure clearance upon the
filing of a “surety satisfactory to
the secretary.”



CHALOS & Co, P.C.
International Law Firm

Agreement on Security

Surety – Not just financial obligation in the form of a bond.

1. House, feed, pay crew for unknown and unlimited time;

2. Waiver of jurisdictional challenges;

3. Agreement to authenticity of documents and records seized from the vessel.

22 E. The Owner, Operator, and the United States, as parties to this Agreement,
23 desire to arrange for security to be posted to secure the performance of this Agreement
24 and to permit CBP to issue the Vessel's departure clearance.

25 AGREEMENT

26 This Agreement in its entirety constitutes surety satisfactory to the Secretary of
27 Homeland Security ("Secretary") per 33 U.S.C. § 1908(e). As consideration for surety
28 satisfactory to the Secretary for the release of the Vessel, the undersigned parties agree as
29 follows:

30 1. Owner and Operator shall jointly post a Surety Bond in the amount of ONE
31 MILLION UNITED STATES DOLLARS (USD) (\$1,000,000.00), as security for any
32 adjudicated potential fines or penalties for the Alleged Violations and to ensure
33 performance of this Agreement. The Surety Bond shall be posted prior to the Vessel's
34 departure from Wilmington, DE and delivered to the U. S. Coast Guard, to the attention
35 of Commander Robert Pirone, Commander (dl), Fifth Coast Guard District, 431
36 Crawford St, Portsmouth, VA 23704, or to the Eighth Coast Guard District Legal Office,
37 500 Poydras Street, New Orleans, LA 70130. When the U. S. Coast Guard receives the
38 Surety Bond, and upon receipt of an executed copy of this document, the U. S. Coast
39 Guard will promptly notify U. S. Customs that departure clearance of the Vessel may be
40 granted as it relates to the violations alleged in the U. S. Coast Guard's letter to the
41 Master of the Vessel dated February 22, 2019. The Surety Bond shall be paid out to the
42 United States as provided for in the Surety Bond and as follows:

43 (a) Subject to any right of appeal, if a penalty is assessed by a United States court
44 or authorized administrative body in a civil, criminal, or administrative action

gm
RMP

Applicable Criminal Statutes

- APPS (33 USC § 1901 *et seq*)
- Ports and Waterways Safety Act (46 USC § 70001 *et seq*)
- False Statement Act (18 USC § 1001)
- Conspiracy (18 USC § 371)
- Obstruction of Justice (18 USC § 1505)
- Witnesses Tampering (18 USC § 1512)
- Sarbanes-Oxley Act of 2002 (18 USC § 1519)



What NOT To Do

- DO NOT fire or harshly discipline any crew members on the way to the US.
- DO NOT remove or destroy any documents, piping, flanges or other potential evidence and DO NOT give instructions to do so.
- DO NOT instruct crew members to lie about or cover up alleged violations.
- DO NOT try to “fix” the problem by misleading the U.S. Coast Guard.
- DO NOT just plead guilty because it is “easier”.

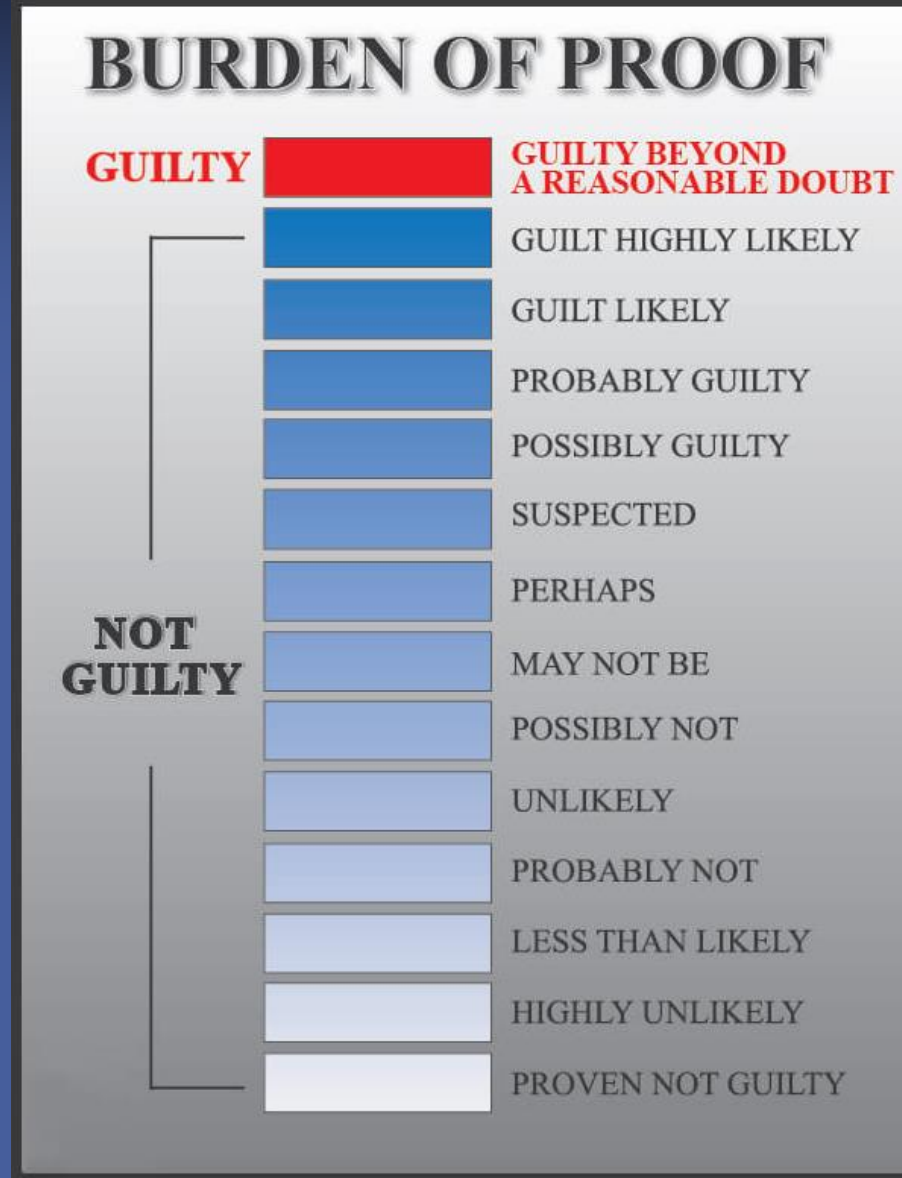


Presumption of Innocence

- A defendant is to be presumed to be innocent unless the government proves the defendant guilty beyond a reasonable doubt.
- ***Beyond a reasonable doubt is generally defined as proof so convincing, a person would not hesitate to rely upon it in making the most important decisions of his or her life.*



Presumption of Innocence



VICARIOUS LIABILITY

A Company may be held criminally liable for the alleged unlawful conduct of the Master, Chief Engineer, and/or other crewmembers ONLY if the government proves beyond a reasonable doubt:

1. The underlying alleged criminal conduct occurred (and all elements proven beyond a reasonable doubt against the individual);
2. The individual(s) were agents or employees of the Company;
3. The individual(s) were acting within the course and scope of their agency or employment authority;
4. The crewmembers intended, at least in part, to benefit the Company.



ECP – The Hidden Cost of APPS

TABLE OF CONTENTS

I. APPLICABILITY AND PURPOSE	1
A. Applicability	1
B. Persons to Whom Applicable	1
C. Purpose	1
D. Incorporation	2
E. Supplementation of Crews and Shore Side Resources	2
F. Consequences of Employee Obstruction of ECP	2
G. Submission of Documents	2
H. Modifications	3
I. Obligation to Maintain Copies of ECP and EMS	3
J. Right of Inspection	3
II. CORPORATE STRUCTURE AND RESPONSIBILITIES	3
A. Corporate Compliance Manager ("CCM")	3
B. Quality Assurance and Operational Integrity Group	5
C. Reporting of Non-Compliance by Employees and Crew Members (Open Reporting)	6
D. Corporate Accountability	6
E. Full Company-Wide Cooperation	7
III. VESSEL PERSONNEL	7
A. Chief Engineer	7
B. Master	8
IV. SHORE SIDE PERSONNEL SERVING IN ANY CAPACITY	9
A. Operation, Maintenance and Repair Personnel	9
B. Engineering Personnel	10
C. Spare Parts Identification and Rapid Replacement Program	10
V. COURT APPOINTED MONITOR	10
A. Selection of Court Appointed Monitor	10

B. Staff Qualifications	11
C. Reports and Notifications	11
D. Tasks and Responsibilities	11
VI. THIRD PARTY AUDITOR	13
A. Selection of Third Party Auditor	13
B. Marine Engineer Requirement	13
C. Prior Services	13
D. Duties and Qualifications	13
E. Contractual Independence	13
F. Adequacy of Staff	14
G. Access to Records	14
H. TPA Auditing Process	14
I. TPA'S REPORT OF FINDINGS	16
VII. AUDITING PROCESS	17
A. AUDIT PHASES	17
B. Timing and Numbers of Audits	17
C. TPA ACCESS	18
D. Initial Audit	18
E. Ongoing Audits	23
F. Final Audits	23
G. Deficiencies/Non-Conformities	24
H. Major Non-Conformities	24
VIII. ENGINEERING REQUIREMENTS	24
A. Time of Implementation	24
B. Environmental Tag System	24
C. Bilge-Main Cross Connections	25
D. Emergency Bilge Suctions	26
E. Blank Flanges	26
F. Bilge/OWS Cleaning and Maintenance	26

ECP – The Hidden Cost of APPS

G.	Ship Source Pollution Research and Development Project	27
H.	Additional OWS / OCM Requirements	27
I.	Record Keeping	28
J.	Oil Record Book Entries	28
K.	Tank Sounding Record Book	28
L.	Fuel Oil/Lube Oil Purifier Settings and Line Breaks	29
M.	Oil-to-Sea Interfaces	29
N.	Fleet Engineering Survey	30
IX.	TIME REQUIREMENTS – SUBMITTAL OF ENVIRONMENTAL MANAGEMENT SYSTEM	30
A.	Updated Environmental Management System	30
B.	Obligation to Submit Copies of EMS	31
C.	Comments on EMS	31
D.	Obligation to Submit Proposed EMS Revisions	31
E.	Review of Proposed EMS Revisions	31
X.	CHANGES IN OWNERSHIP AND OPERATION	31
A.	Notification of Changes	31
B.	Acquiring Additional Vessels	31
XI.	SELF-ENFORCEMENT	32
A.	Self-Enforcement Procedures	32
XII.	SCHEDULE	33
A.	Requirement to Comply With Schedule	33
XIII.	REPORTS AND COMMUNICATIONS	33
A.	Submission of Documents	33
XIV.	ACKNOWLEDGEMENT	33

Third Party Auditor

Court Appointed Monitor

Corporate Compliance Manager

Quality Assurance and Operational Integrity Group

Fleet-wide Audits annually;

Office Audits annually;

Training Center Audits annually

Minimum four (4) years of probation



What To Do

- ✓ Make sure and conduct regular analysis of bilge and sludge production and discharges to ensure the numbers “look right.”
- ✓ Compare sister vessels.
- ✓ 3-month and 6-month analysis and compare across different chief engineers for historic vessel comparison.
- ✓ If sounding logs are maintained onboard; they should be routinely transmitted to the office for review.
- ✓ Comparative analysis of sounding logs compared to Oil Record Book to ensure the accuracy.
- ✓ Voluntary Reporting when an Incident or Condition is found or reported by crew.



USCG Voluntary Disclosure Program

- CG-VDP established by Coast Guard to reward compliance management programs that “train and motivate employees to prevent, detect and correct violations.” Applies to all criminal violations of Federal environmental statutes that the Coast Guard regulates.



When to Report?



Emergency Oil Spills



When to Report?



Collision, Allision, Grounding



CHALOS & Co, P.C.
International Law Firm

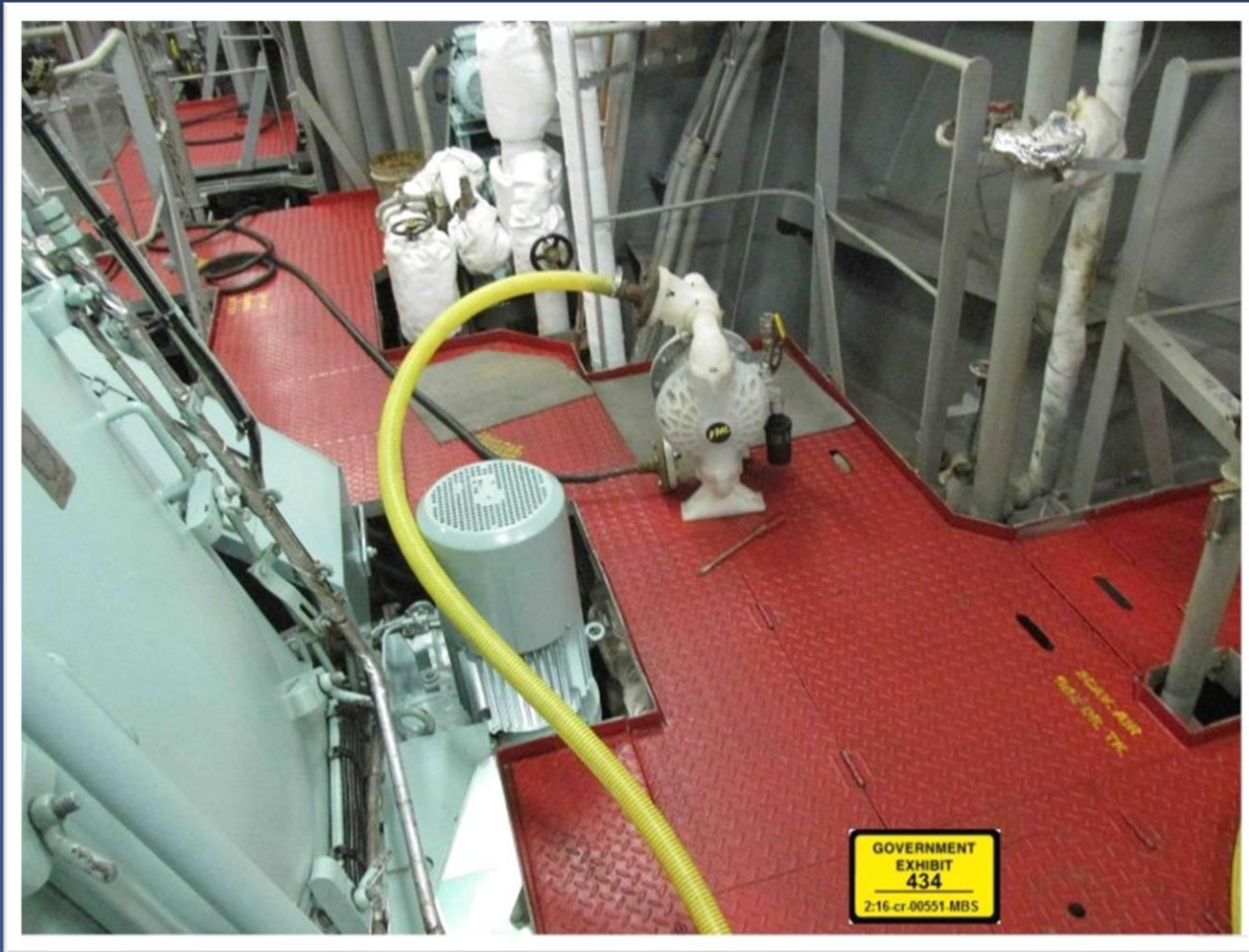
When to Report?



Condition Onboard



When to Report?



Violation Reported Onboard



Voluntary Reporting

- Always Report to Flag Administration
- Always Report to Classification Society
- If coming to or in U.S. Waters, make timely (within twenty-one (21) days) report to nearest U.S. Coast Guard Sector.
- We routinely assist clients with voluntarily reporting suspected MARPOL violations and/or operational 'hazardous conditions' to avoid issues with APPS/PWSA.



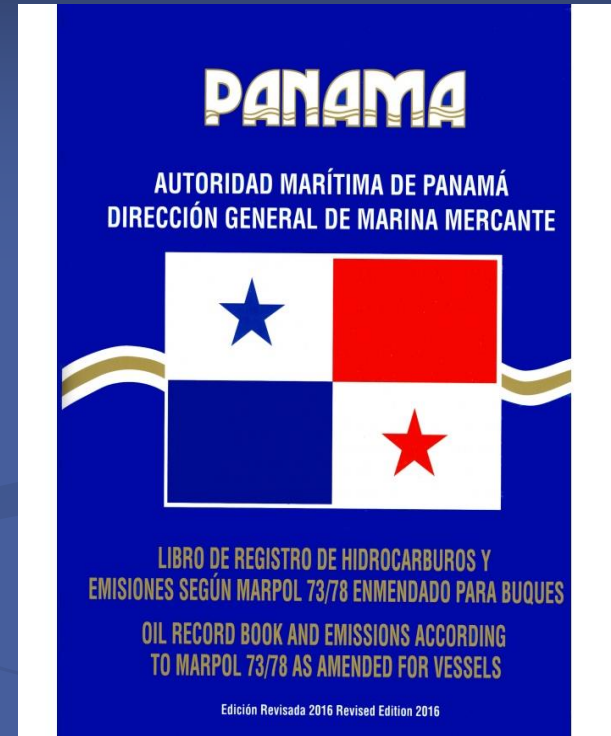
Incident Response by Office

- **Immediately Investigate the Incident**
 - Alert necessary individuals shoreside – DPA, HSQE, Technical Department, and Superintendents;
 - Identify as much factual information as possible;
 - Speak with Master, Chief Officer, and Chief Engineer and any other relevant crewmembers;
 - Engage competent counsel to assist;
 - Entry in ORB, if appropriate.



Oil Record Book Entry

On or about (date), in accordance with the vessel's safety management system and reporting requirements, the vessel's manager received a report from (who and about what), that the handling of the vessel's bilge water had not been accurately recorded in the Oil Record Book. The matter is under investigation and was reported to the vessel's Flag State Administration, who opened an investigation which is ongoing. One or more entry(s) in the oil record book may be inaccurate and/or have been omitted and the contents of the book should not be relied upon.



CG-VDP Benefits

- Good corporate citizenry and cooperative attitude with the U.S. Coast Guard.
- Coast Guard will not refer to U.S. Department of Justice for criminal prosecution.
- Generally, will not pursue administrative or civil penalties.



QUESTIONS?



CHALOS & Co, P.C.
International Law Firm