



Criminal and Civil Liability a Possibility for Vessel Owners Following Unix Line Decision and Transition to Electronic Records

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A recent Northern District of California case, *United States v. FGL Moon Marshal Limited et al.*, No. 4:19-cr-00559, demonstrates the potential for individual liability associated with violations of the International Convention for the Prevention of Pollution from Ships (MARPOL) stemming from the failure to properly record discharges in the oil record book. On April 19, 2021, a jury in California found a crewmember of the Singaporean shipping company Unix Line PTE Ltd. guilty of helping to intentionally dump oily bilge into the Pacific Ocean. Over a year earlier, the same incident led Unix to plead guilty to violating the Act to Prevent Pollution from Ships for illegal discharges and for intentionally failing to include such discharges in the oil record book. As a result, the District Court for the Northern District of California imposed a \$1.65 million fine and four years of probation on Unix. As part of the four-year probation, Unix must also abide by a comprehensive environmental compliance plan.

This incident predated amendments to the International Maritime Organization's (IMO) International Convention for the Prevention of Pollution from Ships (MARPOL) explicitly allowing for the use of electronic records, including electronic oil record books. While the U.S. Coast Guard is expected to issue guidance on the use of electronic oil record books, vessel owners and operators may want to tread carefully when switching to electronic recordkeeping to ensure compliance with Coast Guard requirements in light of the significant potential financial and individual liability for civil and criminal violations.

Background

In February 2019, the Coast Guard boarded the Unix ocean-going oil tankship M/T *Zao Galaxy* in California for inspection. A *Zao Galaxy* crewmember allegedly handed Coast Guard officials a note during the inspection, alerting the Coast Guard of the use of a "magic pipe." Unix later admitted that a ship officer, Gilbert Dela Cruz, directed crewmembers to discharge oily bilge water overboard using a magic pipe that bypassed the vessel's oil water separator (a device that filters oil out of water prior to releasing it into the ocean). The discharges were knowingly not included in the vessel's oil record book when it was presented to the Coast Guard during inspection. Two cooperating former crewmembers, including the crewmember who initially notified the Coast Guard of the pollution, will split a \$825,000 whistleblower award.

The California jury found the ship officer who directed the illegal discharges, Gilbert Dela Cruz, guilty of aiding and abetting the environmental crime. He is set to face sentencing on June 11, 2021.

Practical Implications

This Dela Cruz case poses interesting implications for the future of vessel pollution cases in light of recent [amendments](#) allowing for the use of electronic record books under MARPOL. The U.S. accepted these amendments through the tacit acceptance process, and the Coast Guard is expected to issue guidance on the use of electronic records in the near future.

Dela Cruz and Unix were charged with violating the Act to Prevent Pollution from Ships, which implements MARPOL domestically. Those cases hinged on not just the actual discharge, but the intentional failure to include the discharges in the oil record book. While Dela Cruz was found criminally liable based on his knowing failure to record discharges in the oil record book, civil liability may also attach for incomplete oil record book entries. Therefore, this case highlights the importance of making accurate oil record book entries and maintaining complete records of such entries. Electronic record books may provide an opportunity for more accurate record keeping in the long term, but the transition

to electronic record keeping could create additional enforcement risk – due to accidental omissions, errors in maintaining electronic documents, or deleting files that are required to be maintained.

So what does this mean for vessel owners and operators? Vessel owners and operators may want to review any current and/or modified plans to comply with the Act to Prevent Pollution from Ships as well as Coast Guard implementing regulations for oil record books. In addition, vessel owners and operators that plan to enter a U.S. port in the coming years, and choose to switch to electronic records, should carefully watch for Coast Guard guidance on the use of electronic record books and carefully evaluate any procedures in place for the preservation of electronic files. While the MARPOL amendments did include voluntary [Guidelines](#) for electronic records, Coast Guard guidance is expected to offer critical additional direction to ensure that records are accurate and readily inspectable to confirm that accuracy. The Coast Guard has charged many individuals and companies for inaccuracies in hard-copy oil record books – it is reasonable to expect that the agency will continue these enforcement efforts for inaccurate electronic records.

For More Information

Van Ness Feldman closely monitors and counsels clients on water, air, and other environmental regulatory developments. If you would like more information about vessel environmental compliance, please contact [Rachael Lipinski](#), [Jenna Mandell-Rice](#), or [Mike Farber](#).

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