

PMC/RAU/vd USAO#2011R00195

FILED
 U.S. DISTRICT COURT
 DISTRICT OF MARYLAND
**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MARYLAND**

2011 DEC -1 A 11: 14

UNITED STATES OF AMERICA

v.

EFPLOIA SHIPPING CO. S.A.

Defendant

:
:
:
:
:
:
:
:
:
:
:
:
:
:

CLERK'S OFFICE
 AT BALTIMORE
CRIMINAL NO. MJG-11-0652
 BY _____ DEPUTY

**Violations: Obstruction of Justice,
 18 U.S.C. § 1505; Act to Prevent
 Pollution from Ships, 33 U.S.C. §
 1908(a); False Statements, 18 U.S.C.
 § 1001(a)(2)**

...0000000...

CRIMINAL INFORMATION

Introduction

The United States Attorney for the District of Maryland and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice hereby charge:

At all times relevant to this Criminal Information:

1. Defendant Efploia Shipping Co. S.A. ("Efploia Shipping") was a Republic of the Marshall Islands corporation with its sole office and headquarters in Greece. Efploia Shipping was the technical manager of the *M/V Aquarosa*.
2. The *M/V Aquarosa* was a 33,005 gross ton ocean-going bulk carrier cargo ship built in China and delivered in June 2010. The *M/V Aquarosa* was approximately 623 feet in length, was registered in Malta and had an International Maritime Organization (IMO) number of 9506708.
3. The *M/V Aquarosa* had an engine department headed by a Chief Engineer, and

assisted by a Second Engineer, Third Engineer, Fourth Engineer, Wiper, Oiler, Electrician and Fitter. The Chief Engineer reported directly to the Master of the vessel and to shore-based managers and had overall responsibility for the operation of the engine department, including making entries in the Oil Record Book.

4. The operation of large marine vessels like the *M/V Aquarosa* generates large quantities of oily sludge and oily waste:

- a. Oily sludge is generated during the process of purifying fuel oil, lubricating oil, and other petroleum products, so that these products can be used in the engines on board the vessel. The oily sludge generated as a result of this process is stored on board the vessel in sludge tanks. Sludge may properly be disposed of either by incineration on board the vessel or by offloading it at a port through the use of a licensed hauler and disposal facility.
- b. Engine Department operations also generate large quantities of oil contaminated bilge waste created when water mixes in the bottom of the vessel, known as the "bilges," with oil that has leaked and dripped from the machinery and the lubrication and fuel system for the engines. These "oily mixtures" are often referred to as "bilge waste," "bilge slops," and "slops from bilges," and are collected, stored, and processed to separate the water from the oil and other wastes using a pollution prevention control device known as an Oily Water Separator (often referred to as an O.W.S.) and oil-sensing device known as an Oil Content Monitor. Bilge waste may only be discharged overboard after passing through an Oily Water Separator to ensure that it contains fifteen (15) parts per million

("ppm") or less of oil, as measured by the Oil Content Monitor. If the Oil Content Monitor detects an oil content of greater than 15 ppm in the effluent, it sounds an alarm, and shuts down the pumps or diverts flow back to the bilges in order to prevent the discharge of greater than 15 ppm of oil overboard.

LEGAL FRAMEWORK

5. The United States is part of an international regime that regulates the discharge of oil from vessels at sea: the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (together "MARPOL"). MARPOL is embodied in agreements that the United States has ratified and has been implemented in the United States by the Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. §§ 1901, *et seq.* APPS makes it a crime for any person to knowingly violate MARPOL, APPS, or regulations promulgated under APPS. These regulations apply to all commercial vessels operating in the navigable waters of the United States or while in a port or terminal under the jurisdiction of the United States, including vessels operating under the authority of a country other than the United States.

6. MARPOL Annex I established international standards governing the treatment and disposal of oily mixtures generated from the machinery spaces of a vessel. Under MARPOL, machinery space waste may be discharged overboard into the ocean only if it does not exceed fifteen (15) ppm of oil and the ship has in operation required pollution prevention equipment, to include oil filtering equipment an alarm and an automatic stopping device known as an Oily Water Separator and Oil Content Monitor to prevent the discharge of a mixture containing more than 15 ppm oil, the legally permitted concentration of oil.

7. Consistent with the requirements contained in MARPOL, APPS regulations

require that vessels such as the *M/V Aquarosa* maintain a record known as an Oil Record Book in which the disposal of oil residue and the discharge overboard and disposal otherwise of oily mixtures, slops from bilges and bilge water that has accumulated in machinery spaces must be recorded. 33 C.F.R. § 151.25(d). Discharges from the machinery spaces must be fully and accurately recorded in the Oil Record Book without delay by the person in charge of the operations. 33 C.F.R. §§ 151.25 (d) and (h). The Oil Record Book also must record any emergency, accidental, or other exceptional discharges of oil or mixtures, including a statement of the circumstances, and reasons for, the discharge. 33 C.F.R. § 151.25(g). The Oil Record Book must be maintained onboard the vessel for not less than three years, and be readily available for inspection at all reasonable times. 33 C.F.R. § 151.25 (k).

8. Consistent with the requirements contained in MARPOL Annex V, APPS regulations prohibit the discharge overboard of plastic or garbage mixed with plastic, including plastic bags. 33 C.F.R. § 155.67. The APPS regulations require that vessels such as the *M/V Aquarosa* maintain a written record known as a Garbage Record Book in which the discharge overboard and discharge to shore of garbage must be recorded, including the date and time, volume and, if discharged at sea, the latitude and longitude. 33 C.F.R. § 151.55. Overboard discharges involving plastic must be described in the Garbage Record Book.

9. The United States Coast Guard (U.S. Coast Guard), an agency of the United States Department of Homeland Security, is charged with enforcing the laws of the United States and is empowered under Title 14, United States Code, section 89(a) to board vessels and conduct inspections and investigations of potential violations and to determine compliance with the MARPOL, APPS, and related regulations. In conducting inspections, U.S. Coast Guard

personnel rely on the statements of the vessel's crew and documents, including information contained in the Oil Record and Garbage Record Books. The U.S. Coast Guard is specifically authorized to examine a vessel's Oil Record Book. 33 C.F.R. §§ 151.23(a)(3) & (c).

COUNT 1

(Obstruction of Justice – 18 U.S.C. § 1505)

10. Between on or about February 20, 2011, and on or about February 22, 2011, in the Port of Baltimore and within the District of Maryland, the defendant,

EFPLOIA SHIPPING CO. S.A.,

by and through the acts of its agents and employees, including senior ship engineers, acting within the scope of their agency and employment and at least in part for the benefit of the defendant, did corruptly influence, obstruct and impede, and endeavor to influence, obstruct, and impede the due and proper administration of the law under a pending proceeding by the United States Coast Guard and the Department of Homeland Security, to wit, during a vessel inspection of the *M/V Aquarosa* to determine the vessel's compliance with United States law the defendant:

- a. Presented to the U.S. Coast Guard a false, fictitious and misleading Oil Record Book for the *M/V Aquarosa* that did not fully and accurately record and otherwise concealed internal transfers, discharges overboard of oil-contaminated sludge and bilge waste made without the use of the ship's pollution prevention equipment, and contained false entries indicating that oily sludge had been burned in the incinerator when the incinerator was in fact not used;
- b. Presented to the U.S. Coast Guard a false, fictitious and misleading Garbage Record Book for the *M/V Aquarosa* that did not fully and accurately record and otherwise concealed overboard discharges of plastic.
- c. Made material false, fictitious and misleading statements denying overboard discharges and the use of bypass equipment statements to U.S. Coast Guard personnel and claiming the proper use of required pollution prevention equipment;

- d. Directed subordinate crew members including the Fourth Engineer and Wiper to lie to U.S. Coast Guard personnel by denying the use of bypass equipment to make overboard discharges of waste oil, including threatening to inform the company and send the Fourth Engineer home if the Fourth Engineer disclosed information about the use of the bypass to the U.S. Coast Guard.
- e. Presented to the U.S. Coast Guard engine room equipment that had been altered to conceal and destroy physical evidence of overboard discharges of oil contaminated sludge and bilge waste.

All in violation of Title 18, United States Code, Section 1505.

COUNT TWO

(33 U.S.C. § 1908(a) – Act to Prevent Pollution from Ships)

1. The United States Attorney and the Assistant Attorney General re-allege and incorporate by reference herein paragraphs 1 through 9 of Count One and further charge:

2. On or about February 20, 2011, in the Port of Baltimore and within the navigable waters of the United States and in the District of Maryland, the defendant,

EFPLOIA SHIPPING CO. S.A.

by and through the acts of its agents and employees, acting within the scope of their agency and employment and at least in part for the benefit of defendant, did knowingly fail to fully maintain an Oil Record Book for the *M/V Aquarosa* in which all disposals of oil residue and discharges overboard and disposal otherwise of oily mixtures, slops from bilges and bilge waste that accumulated in machinery spaces were accurately recorded. Specifically, on or about February 20, 2011, the defendant failed to maintain an accurate Oil Record Book for the *M/V Aquarosa* while in the Port of Baltimore, by failing to disclose exceptional discharges overboard of oil residue and oily mixtures, including sludge, slops from bilges, and oily bilge waste made with the use of equipment and procedures that bypassed the Oily Water Separator and Oil Content Monitor.

All in violation of Title 33, United States Code, Section 1908(a), and Title 33, Code of Federal Regulations, Section 151.25.

COUNT THREE

(33 U.S.C. § 1908(a) - Act to Prevent Pollution from Ships)

1. The United States Attorney and the Assistant Attorney General re-allege and incorporate by reference herein paragraphs 1 through 9 of Count One and further charge:

2. On or about February 20, 2011, in the Port of Baltimore and within the navigable waters of the United States and in the District of Maryland, the defendant,

EFPLOIA SHIPPING CO. S.A.

by and through the acts of its agents and employees, acting within the scope of their agency and employment and at least in part for the benefit of defendant, did knowingly fail to maintain a Garbage Record Book and other written records for the *M/V Aquarosa* in which all disposals and overboard discharges of garbage and plastic were accurately recorded. Specifically, on or about February 20, 2011, the defendant failed to maintain an accurate Garbage Record Book while in the Port of Baltimore, by failing to disclose overboard discharges of approximately 12 plastic garbage bags filled with oily rags.

All in violation of Title 33, United States Code, Section 1908(a); Title 33, Code of Federal Regulations, Section 151.55 and MARPOL Annex V Regulation 9; and Title 18, United States Code, Section 2.

COUNT FOUR
(False Statements - 18 U.S.C. § 1001(a)(2))

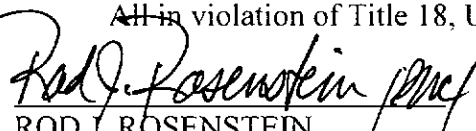
1. The United States Attorney and the Assistant Attorney General re-allege and incorporate by reference herein paragraphs 1 through 9 of Count One and further charge:


2. Between on or about February 20, 2011, and on or about February 22, 2011, in the Port of Baltimore and within the District of Maryland, the defendant,

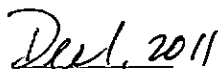
EFPLOIA SHIPPING CO. S.A.,

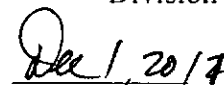
acting through the acts of its agents and employees, acting within the scope of their agency and employment and at least in part for the benefit of defendant, knowingly and willfully made and caused the making of a materially false statements in a matter within the jurisdiction of the United States Coast Guard and the Department of Homeland Security. Specifically, during a vessel inspection of the *M/V Aquarosa* to determine the vessel's compliance with MARPOL and United States law, the defendant made and used a false and fictitious Oil Record Book for the *M/V Aquarosa* that contained false entries claiming the proper use of required pollution prevention equipment including the Oily Water Separator and Oil Content Monitor and the Incinerator, and concealing by omission internal transfers and overboard discharges of waste oil made without the use of this equipment, knowing then and there that the required pollution prevention equipment was not being used and that overboard discharges of waste oil had occurred.

All in violation of Title 18, United States Code, Section 1001.


ROD J. ROSENSTEIN
United States Attorney for the
District of Maryland


IGNACIA S. MORENO
Assistant Attorney General
Environmental & Natural Resources
Division


Date


Date