

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
2008 NOV -7 PM 2:54
CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA
EAS

UNITED STATES OF AMERICA

v.

CASE NO. 8:08-Cr- 00494-1-23 EAS
33 U.S.C. § 1908(a)
18 U.S.C. § 371
18 U.S.C. § 1001

HIONG GUAN NAVEGACION
JAPAN CO., LTD.,

Defendant.

INFORMATION

The United States Attorney charges:

A. Introduction

At all times material to this Information:

**THE ACT TO PREVENT POLLUTION FROM SHIPS
REQUIREMENT THAT VESSELS MAINTAIN AN OIL RECORD BOOK**

1. The Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. §§ 1901 *et seq.*, was enacted by Congress in 1980 to implement two related international treaties to which the United States is a signatory: (1) the 1973 International Convention for the Prevention of Pollution from Ships, and (2) the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships. Together, these treaties were known as the "MARPOL Protocol."

2. The MARPOL Protocol was the result of an international consensus that ships in international waters were a significant source of pollution that could be effectively addressed only if the participating nations each passed laws to enforce the MARPOL Protocol's rules and regulations. APPS made the MARPOL Protocol applicable to vessels while in the navigable waters of the United States. The United

States Coast Guard's ("USCG") implementing regulations serve to assure compliance with the MARPOL Protocol and to prevent pollution in United States waters. 33 U.S.C. §§ 1907(c)(1) and (c)(2); 33 C.F.R. § 151.01 *et seq.*

3. All ocean-going transport vessels exceeding 400 gross tons were required under MARPOL and applicable federal regulations to maintain a special engineering log known as an Oil Record Book ("ORB"). During a typical voyage, large amounts of oily water collect in a ship's bilges and must be discharged for the ship to remain seaworthy. To facilitate the discharge of oily bilge wastes without causing pollution, virtually all large ships were equipped with a pollution-control device known as an Oily-Water Separator which processes oil-contaminated bilge wastes by separating oil from water.

4. In addition, the normal operation of a ship produces a significant quantity of oil sludge through the purification of fuel oil and lubricating oil. This waste-oil sludge, once it has been removed by the purifiers, cannot be processed through an Oily-Water Separator and must be either off loaded to shore or burned in the ship's incinerator.

5. The MARPOL Protocol and regulations implemented pursuant to APPS provided that only water containing no more than fifteen parts per million (ppm) of oil may be discharged from certain vessels directly to the sea. 33 C.F.R. §§ 151.10(a)(5) and (b)(3). Oil residue created by the operation of an Oily-Water Separator must be properly disposed of, for example, by collecting it in a tank for proper disposal upon a ship's entry into port. 33 C.F.R. § 151.10.

6. To assure that oily bilge waste is properly processed and disposed of, the regulations implemented pursuant to APPS and the MARPOL Protocol provide that, with regard to nontanker vessels of more than 400 gross tons, the person or persons in

charge of an operation are required to fully record every operation, including all operations involving the transfer of oil-contaminated waste, on a tank to tank basis, in the ORB. ORB entries must include the date of each operation, the time of day when the operation began and ended, and the quantity of oil-contaminated water pumped from the bilges to the tank. Similarly, upon processing the oily bilge waste in the separator, the responsible officer is required to record the time and date of that operation, the quantity of oil-contaminated water processed, the latitude and longitude at which the operation began and ended, and to sign or initial his name after every entry in the ORB. Any transfer or disposal of waste oil sludge must also be recorded in the ORB. 33 C.F.R. §§151.25(a), (d), and (h).

7. "Flag states" (*i.e.*, nations that register vessels) certify the vessel's compliance with international laws. "Port states" (*i.e.*, nations visited by the vessels), such as the United States, inspect vessels to assure compliance with the law within their ports and waters. The USCG is authorized to conduct inspections to determine whether vessels in United States waters are in compliance with MARPOL, APPS and other applicable federal regulations. In connection with such inspections, the USCG is authorized to examine the vessel's ORB to determine, among other things, whether the vessel had operable pollution prevention equipment, whether it posed any danger to United States ports and waters, and whether the vessel had discharged any oil-contaminated water in violation of law. 33 C.F.R. §§ 151.23(a)(3) and 151.23(c). In conducting inspections, the USCG relies on a ship's ORB and statements of the crew to determine whether the vessel's crew was properly handling oil-contaminated water and its disposal. 33 C.F.R. § 151.23(c).

8. The USCG is authorized to detain a vessel, deny it entry into a United States port, or take other action with regard to vessels that were not in substantial compliance with MARPOL or APPS. 33 C.F.R. § 151.07(b).

THE DEFENDANT

9. Defendant HIONG GUAN NAVEGACION JAPAN CO., LTD., (hereinafter "HIONG GUAN") is a Japanese company headquartered in Tokyo, Japan. Defendant HIONG GUAN was the operator of approximately 25 cargo ships registered in various countries, including Panama. Defendant HIONG GUAN operated the Motor Vessel (*M/V Balsa-62*) pursuant to a contract between HIONG GUAN and the vessel's owners. Under that contract, HIONG GUAN is responsible for hiring all crew members serving on the vessel, and is responsible for performing and paying for all maintenance for the vessel, including paying for the discharge of wastes to shore.

THE M/V BALSAS-62

10. The *M/V Balsa-62* was an oceangoing bulk carrier ship weighing approximately 4,355 gross tons and was subject to APPS and the implementing regulations. The vessel was registered in Panama and bore Registry number IMO 916-3166. From in or about Spring 2007 to May 31, 2008, the *M/V Balsa-62* sailed a route that included stops in several United States' ports, including Tampa, Florida; Houston, Texas; New Orleans, Louisiana; Baltimore, Maryland; and Savannah, Georgia. The *M/V Balsa-62* had a crew of approximately 20 people. About ten seamen of different ranks worked in the vessel's engine department, including a Chief Engineer, First Engineer, Second Engineer, Third Engineer, Fourth Engineer, Three Oilers and a Wiper. The Oilers and Wiper typically assisted the engineers in cleaning and maintaining engineering machinery.

OCTOBER 2007 BERTHING IN TAMPA

11. On or about October 31, 2007, the *M/V Balsa-62* berthed in the Port of Tampa. At that time, the ORB contained a number of false statements regarding the use of the incinerator to burn sludge and the use of the Oily-Water Separator to discharge bilge water and other oily wastes. Moreover, the ORB did not reflect numerous occasions when a bypass pipe had been used to unlawfully discharge sludge and oily mixtures directly overboard. The purpose of these false statements and omissions was to conceal the use of the bypass pipe and to make it appear that the *M/V Balsa-62* was properly disposing of oily sludge and waste mixtures.

MAY 2008 USCG BOARDING IN TAMPA

12. On or about May 31, 2008, the *M/V Balsa-62* berthed in the Port of Tampa and was boarded by the USCG and subjected to a MARPOL investigation. Several days before this boarding, the USCG had received information indicating that crew members in the Engine Room of the *M/V Balsa-62* had used a so-called "magic pipe" to discharge oily waste directly overboard, bypassing the incinerator and the Oily-Water Separator. When it was in use, this bypass pipe was purportedly connected on one end to the sludge/bilge pump and on the other end to an overboard discharge valve in the aft of the vessel.

13. During the boarding in Tampa, USCG inspectors discovered a section of flexible hose, approximately 17 feet in length, in the Crane Room on deck level. The USCG inspectors also subsequently located a metal flange. These items contained oil residue. USCG inspectors measured the distance between the sludge/bilge pump and the aft overboard discharge valve normally used for osmosis system water discharges; the distance between these two objects was approximately 17 feet.

14. During the boarding, USCG inspectors questioned Engine Room officers and "ratings" (a term for non-commissioned crew members) on board the *M/V Balsa-62*. Several of these officers and ratings provided the USCG with false statements regarding their knowledge of the existence and use of equipment to bypass the vessel's incinerator and Oily-Water Separator. One crew member told the USCG inspectors that the Chief Engineer had instructed him to hide the section of flexible hose in the Crane Room so that the USCG would not find it.

15. Subsequent investigation revealed that, despite some crew members' initial protestations to the contrary, every member of the Engine Room crew knew about the existence and/or use of the "magic pipe" aboard the *M/V Balsa-62* since at least June 2007. The crew members who had initially denied any knowledge of the bypass pipe reported that they were afraid that if they told the truth they would lose their jobs. The investigation also revealed that the current and predecessor Chief Engineers had specifically instructed certain crew members to connect and disconnect the "magic pipe" to bypass the incinerator and/or Oily-Water Separator. The Chief Engineers had specifically instructed the crew to use the bypass pipe at night, when the discharge of oily waste into the ocean could not be visibly detected.

16. When the *M/V Balsa-62* berthed in the Port of Tampa on May 31, 2008, the vessel's ORB contained a number of false statements regarding the use of the incinerator to burn sludge and the use of the Oily-Water Separator to discharge bilge water and other oily wastes. Moreover, the ORB did not reflect a number of occasions when a bypass pipe had been used to unlawfully discharge sludge and oily mixtures directly overboard. The purpose of these false statements and omissions was to

conceal the use of the bypass pipe and to make it appear that the *M/V Balsa-62* was properly disposing of oily sludge and waste mixtures. Investigation revealed that Chief Engineer Bagatela, who was on board the *M/V Balsa-62* from January 20, 2007, through February 25, 2008, had instructed a fellow Engine Room officer to sign off on false entries in the ORB, indicating that sludge had been incinerated or passed through the Oily-Water Separator when in fact it had been discharged overboard through the bypass pipe.

COUNT ONE
(Conspiracy - 18 U.S.C. § 371)

17. The United States Attorney re-alleges and incorporates by reference herein Paragraphs 1 through 16 of this Information and further charges:

18. Beginning on an unknown date, but including from on or about June 1, 2007, and continuing through on or about May 31, 2008, within the Middle District of Florida,

HIONG GUAN NAVEGACION JAPAN CO., LTD.,

defendant, by and through the acts of its agents and employees, specifically, senior engineers and other crew members responsible for engine room operations of the *M/V Balsa-62*, whose actions were within the scope of their duties, did knowingly and willfully combine, conspire, confederate, and agree to violate the laws of the United States as set forth below:

A. **False Statements**: To knowingly and willfully make false statements and use false writings, in a matter within the jurisdiction of the USCG and Department of Homeland Security, knowing the same to contain materially false,

fictitious, and fraudulent entries, to wit: the ORB for the *M/V Balsa-62* contained materially false statements and from which other material information was omitted for the purpose of concealing overboard discharges of oil sludge and oil-contaminated bilge waste and creating the overall false impression that the vessel was being operated properly, and was properly maintaining the ORB, in violation of Title 18, United States Code, Section 1001; and

B. Failure to Maintain ORB: To knowingly fail to maintain an ORB for the *M/V Balsa-62* in which all operations involving the transfer of oil, including all overboard discharges of oil sludge and oil-contaminated bilge waste, were fully recorded, in violation of Title 33, United States Code, Section 1908(a), and Title 33, Code of Federal Regulations, Sections 151.25(a) and 151.25(h).

B. Manner and Means

19. Among the manner and means used by the defendant and co-conspirators, both known and unknown, to effectuate this conspiracy and to further its objectives were the following:

a) It was part of the conspiracy that HIONG GUAN, by and through the acts of its agents and employees, discharged and caused the discharge from the *M/V Balsa-62* of oil sludge directly into the ocean, at various times and places, using a bypass pipe (the "magic pipe") designed aboard the vessel.

b) It was part of the conspiracy that HIONG GUAN, by and through the acts of its agents and employees, discharged and caused the discharge of oil-contaminated bilge waste directly into the ocean, at various times and places, using equipment and procedures that bypassed the Oily-Water Separator including the use of a bypass pipe and a portable pump.

c) It was further part of the conspiracy that HIONG GUAN, by and through the acts of its agents and employees, failed to maintain an accurate ORB for the *M/V Balsa-62*.

d) It was further part of the conspiracy that HIONG GUAN, by and through the acts of its agents and employees, made or caused to be made material false statements to the USCG.

e) It was further part of the conspiracy that HIONG GUAN, by and through the acts of its agents and employees, made or caused to be made discharges of sludge and oily bilge waste through the bypass pipe during the evening and night hours.

C. Overt Acts

20. In furtherance of the conspiracy and to effect the objects thereof, there was committed and caused to be committed by HIONG GUAN by and through the acts of two or more of its agents and employees, and at least one of the co-conspirators herein, within the Middle District of Florida, at least one of the following overt acts among others:

a) - c). On or about the following dates and places, each of which constitutes a separate Overt Act of the Conspiracy, HIONG GUAN, by and through the acts of its agents and employees, maintained and had available for inspection a materially false ORB for the *M/V Balsa-62* during its calls within the Middle District of Florida:

Overt Act	Date	Location
a)	July 14, 2007	Jacksonville, Florida
b)	October 31, 2007	Tampa, Florida
c)	May 31, 2008	Tampa, Florida

d) In or about June 2007, the Chief Engineer of the *M/V Balsa-62* instructed several crew members of the *M/V Balsa-62* how to use the "magic pipe" bypass equipment to discharge sludge and oily mixtures directly overboard.

e) Between June 2007 to March 2007, HIONG GUAN, by and through the acts of its agents and employees, discharged and caused the discharge of oil-contaminated bilge waste and/or sludge with the use of bypass equipment and procedures that circumvented the Oily-Water Separator and/or Incinerator approximately twice a month.

f) On or about October 31, 2007, HIONG GUAN, by and through the acts of its agents and employees, failed to maintain an accurate ORB when the *M/V Balsa-62* berthed in Tampa, Florida.

g) On or about February 25, 2008, HIONG GUAN assigned a new Chief Engineer to the *M/V Balsa-62* who, upon his arrival was advised by another vessel engineer of the "magic pipe" arrangement of the ship, which provided for the direct discharge of sludge and oily bilge waste into the ocean, bypassing the incinerator and Oily-Water Separator.

h) On or about May 31, 2008, during a USCG inspection of the *M/V Balsa-62* in the Port of Tampa, Florida, to determine the vessel's compliance with MARPOL and United States law, HIONG GUAN by and through the acts of its agents

and employees, and its agents falsely stated to USCG officials that: 1) bypass equipment had not been used on the vessel; and 2) that there had been no improper discharges of sludge or oily waste from the vessel.

i) On or about May 31, 2008, HIONG GUAN, by and through the acts of its agents and employees, presented an ORB to the USCG which contained a number of false statements about the disposal of sludge and oily bilge waste.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

(Failure to Maintain Oil Record Book - 33 U.S.C. §1908 (a))

21. The allegations contained in paragraphs 1 through 16 are realleged and incorporated herein.

22. On or about October 31, 2007, in the Port of Tampa, in the Middle District of Florida, and in the internal waters of the United States, the defendant,

HIONG GUAN NAVEGACION JAPAN CO., LTD.,

by and through senior crew members on board the *M/V Balsa-62*, who were each acting within the scope of their employment and for the benefit of the defendant, did knowingly fail to maintain an ORB for the *M/V Balsa-62* in which all operations involving the movement of oil, including all overboard discharges of waste oil sludge and oil-contaminated bilge waste, were fully recorded.

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

COUNT THREE

(False Statements - 18 U.S.C. §§ 1001 and 2)

23. The allegations contained in paragraphs 1 through 16 are realleged and incorporated herein.

24. On or about October 31, 2007, in the Port of Tampa, in the Middle District of Florida, and in the internal waters of the United States, the defendant,

HIONG GUAN NAVEGACION JAPAN CO., LTD.,

by and through senior crew members on board the *M/V Balsa-62*, who were each acting within the scope of their employment and for the benefit of the defendant, in a matter within the jurisdiction of the USCG and the Department of Homeland Security, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statements and representations, to wit: the ORB for the *M/V Balsa-62* falsely reported the volume of oil-contaminated bilge wastes that were processed in the vessel's Oily-Water Separator and that waste oil sludge had been burned in the vessel's incinerator, when in truth and in fact, as the defendant then and there well knew, some volume of the oil-contaminated bilge wastes and waste oil sludge not recorded in the ORB had been discharged overboard through a bypass pipe and that no waste oil sludge had been disposed of in the vessel's incinerator.

All in violation of Title 18, United State Code, Sections 1001(a)(2) and 2.

COUNT FOUR
(Failure to Maintain Oil Record Book - 33 U.S.C. §1908(a))

25. The allegations contained in paragraphs 1 through 16 are realleged and incorporated herein.

26. On or about May 31, 2008, in the Port of Tampa, in the Middle District of Florida, and in the internal waters of the United States, the defendant,

HIONG GUAN NAVEGACION JAPAN CO., LTD.,


by and through senior crew members on board the *M/V Balsa-62*, who were each


acting within the scope of their employment and for the benefit of the defendant, did knowingly fail to maintain an ORB for the *M/V Balsa-62* in which all operations involving the movement of oil, including all overboard discharges of waste oil sludge and oil-contaminated bilge waste, were fully recorded.

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


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