

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

United States Courts
Southern District of Texas
FILED

MAY 25 2011

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA

v.

NOKA SHIPPING COMPANY, LIMITED

§
§
§
§
§

CRIMINAL NUMBER

C-11-534

INDICTMENT

THE GRAND JURY CHARGES THAT:

INTRODUCTION

At all times material to this Indictment,

A. THE ACT TO PREVENT POLLUTION FROM SHIPS

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 "MARPOL 73/78" (MARPOL).

2. MARPOL was the result of an international consensus that the release of oil and other harmful substances from ships constitutes a serious source of pollution. It is the stated desire of the United States and other party nations to MARPOL to achieve the complete elimination of international pollution of the marine environment by oil and other harmful substances. Parties to MARPOL were required to implement the provisions of the treaty. The Act to Prevent Pollution from Ships, 33 U.S.C. Section 1908(a), makes it a crime for any person to knowingly violate the

MARPOL Protocol, APPS, or regulations promulgated under APPS. Federal regulations implement MARPOL and serve to prevent pollution in international waters and in the ports and navigable waters of the United States. 33 U.S.C. § 1907(c)(1) and (c)(2); 33 C.F.R. §§ 151.01 *et seq.* These regulations apply to all commercial vessels operating in United States waters or while at 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.

3. All ocean-going (non-oil tanker) vessels of 400 gross tons or more were required under MARPOL and applicable federal regulations to maintain an Oil Record Book. 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. Bilge waste consists of water originating from spills and leaks from piping, machinery, tanks, or from other sources, which has been contaminated with oil, oil residue, lubricating fluids, and other liquids that seep out, leak and drip from pipes, machinery and hoses that run throughout the ship. Because large vessels are continuously producing bilge waste, the waste is often transferred from the bilge to a bilge holding tank for storage until a discharge can be made. To facilitate the disposal of oily bilge waste without causing pollution, virtually all large ships are required to be equipped with a pollution-control device known as an oily water separator, including an oil content meter, which processes oil-contaminated bilge wastes by separating the oil from water and retaining the oily waste onboard.

4. MARPOL and regulations implemented pursuant to APPS provided that only machinery space wastewater containing no more than fifteen (15) parts per million (ppm) of oil or less may be discharged from certain vessels directly to the sea. 33 C.F.R. § 151.10(a)(5) and (b)(3). Oil residue removed by the operation of an oily water separator must be properly

disposed of, for example, by collecting it in a tank for proper disposal on land upon a ship's entry into port. 33 C.F.R. § 151.10.

5. To assure that oily bilge waste is properly processed and disposed of, the regulations implemented pursuant to APPS and MARPOL provide that, with regard to ocean-going (non-oil tanker) vessels of 400 gross tons or more, the person or persons in charge of an operation are required to fully record without delay, on a tank-to-tank basis, the disposal of oil residue, discharges overboard and disposals otherwise of oily mixtures, slops from bilges and bilge water that accumulated in machinery spaces in a special engineering log known as an Oil Record Book. MARPOL and each Oil Record Book contains directions as to how entries are to be completed and how the Oil Record Book is to be maintained. Oil Record Book 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 a holding or other tank, and tank-to-tank. Similarly, upon processing the oily bilge waste in the oily water 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 Oil Record Book. Any transfer or disposal of waste oil sludge must also be recorded in the Oil Record Book. 33 C.F.R. §§ 151.25(a), (d), and (h). The Oil Record Book also must record any emergency, accidental, or other exceptional discharges of oil or mixtures. 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).

6. "Flag states" (i.e. nations that register vessels) certify their vessels' 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. An inspection of a foreign vessel by a port state is referred to as a "port state control inspection."

7. The United States Coast Guard was authorized to conduct inspections to determine whether vessels in United States waters and ports are in compliance with MARPOL, APPS and other applicable federal regulations. In connection with such inspections, the Coast Guard was authorized to examine the vessel's International Oil Pollution Prevention Certificate, the vessel's Oil Record Book and other engineering logs 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). In conducting inspections, the Coast Guard relies on a ship's documents, including the Oil Record Book, statements of the crew and inspection of the ship's machinery including the pollution control equipment and tanks to determine whether the vessel's crew was properly handling oil contaminated water and its disposal in compliance with law. 33 C.F.R. § 151.23(c).

8. The United States Coast Guard 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).

B. THE PORTS AND WATERWAYS SAFETY ACT

9. The Ports and Waterways Safety Act ("PWSA"), 33 U.S.C. §§ 1221, et seq., was enacted in recognition of the fact that increased supervision of vessel and port operations was

necessary to reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment. 33 U.S.C. § 1221(c)(I). Pursuant to 33 U.S.C. § 1232(b)(1), any person that willfully and knowingly violates a regulation promulgated under the PWSA commits a class D felony. PWSA regulations govern a wide variety of vessel operations. One such regulation requires that the owner, agent, master, operator, or person in charge of a vessel must immediately notify the nearest United States Coast Guard office whenever there is a hazardous condition, either aboard a vessel or caused by the vessel or its operation. 33 C.F.R. § 160.215. "Hazardous condition" is defined as:

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. 33 C.F.R. § 160.204.

10. The requirement to notify the United States Coast Guard of hazardous conditions is applicable to non-U.S. vessels when those vessels are bound for or are departing from ports or places in the United States. 33 C.F.R. § 160.202(a).

11. The United States Coast Guard is empowered under 14 U.S.C § 89(a) to board vessels and conduct inspections and investigations of potential violations and to determine compliance with the PWSA, and related regulations. Additionally, under 46 U.S.C. § 3303, the United States Coast Guard has specific authority to perform foreign vessel inspections to determine compliance with United States and international law with regard to vessel safety. The United States Coast Guard can conduct Port State Control Examinations, which involve boarding a vessel and conducting inspections and investigations of potential violations of the law. Failure

to comply with international standards, including MARPOL or the International Convention for the Safety of Life at Sea, can form the basis of an order to refuse to allow a vessel to enter port, or to prohibit the vessel from leaving port without remedial action until it determines that the vessel is in compliance. In conducting their inspections, United States Coast Guard personnel rely on the statements of the vessel's crew and documents, including information contained in the vessel's records and certificates.

C. THE M/V FLORIN

12. The Motor Vessel (M/V) Florin was an ocean-going bulk carrier of approximately 29,414 gross tons and was therefore subject to MARPOL, APPS, PWSA, and the implementing federal regulations. The M/V Florin was registered in the Republic of Panama and bore International Maritime Organization Registry Number 7925869. The M/V Florin was equipped with an oil-water separator and oil content meter. The M/V Florin had a crew of approximately twenty (26) people. Approximately twelve (12) seamen of different ranks worked in the vessel's engine department, including a Chief Engineer, Second Engineer, Third Engineer, an Electrician, three (3) Fitters, three (3) Oilers and two (2) Wipers. The Fitters, Oilers and Wipers assisted the Engineers in operating, cleaning, and maintaining some of the engineering machinery.

D. THE CORPORATE DEFENDANT

13. The defendant, NOKA SHIPPING COMPANY, LIMITED ("NOKA SHIPPING"), is a company incorporated in Marshall Islands and its main operating office was 1 Charilaou Trikoupi Street, Piraeus 18536, Greece. The defendant, NOKA SHIPPING, operated the M/V Florin pursuant to an agreement between NOKA SHIPPING and the vessel's owners. Under that agreement, the Defendant, NOKA SHIPPING, by and through its shore-side employees and

senior crew members on board the M/V Florin, who were each acting within the scope of their employment and for the benefit of NOKA SHIPPING, provided management services to the owners of the M/V Florin and was responsible for, among other things, hiring and directing all crew members serving on the vessel, and paying all maintenance and repairs to the vessel, including the installation of new equipment, and environmental compliance. The Master and engine room officers were the on board employees and agents of the Defendant, NOKA SHIPPING, and acted at all times at the direction of and for the benefit of the Defendant.

COUNT ONE

14. The allegations contained in paragraphs 1 through 13 of the Introduction are re-alleged as though set forth in full and incorporated herein.

15. Beginning on or about June 15, 2010, in the Port of Houston, Texas, and continuing until September 27, 2010, in the Port of Corpus Christi, Texas, in the Southern District of Texas, and in the navigable and internal waters of the United States, the Defendant, NOKA SHIPPING, by and through its senior crew members on board the M/V Florin, who were each acting within the scope of their employment and for the benefit of the Defendant, did knowingly fail, and cause the failure, to fully maintain an Oil Record Book for the M/V Florin in which all operations were accurately recorded, including all disposals of oil residues and discharges overboard and disposals otherwise of oily mixtures, slops from bilges and bilge water that accumulated in machinery spaces involving the movement of oil, on a tank-to-tank basis, including all transfers of waste oil sludge and oil-contaminated bilge waste.

In violation of Title 33, United States Code, Section 1908(a); Title 33, Code of Federal Regulations, Section 151.25; and, Title 18, United States Code, Section 2.

COUNT TWO

16. The allegations contained in paragraphs 1 through 13 of the Introduction are re-alleged as though set forth in full and incorporated herein.

17. On or about September 27, 2010, in the Port of Corpus Christi, Texas, in the Corpus Christi Division of the Southern District of Texas, and in the internal waters of the United States, the Defendant, NOKA SHIPPING, acting through senior crew members on board the M/V Florin, acting within the scope of their employment and for the benefit of the Defendant, in a matter within the jurisdiction of the United States Coast Guard and the Department of Homeland Security, did knowingly and willfully fail to immediately notify the nearest United States Coast Guard Sector Office and United States Coast Guard Group Office that a hazardous condition existed aboard the M/V Florin. Specifically, while the M/V Florin was enroute to and entering into the Port of Corpus Christi, Texas, the Defendant, while aware of a hazardous condition aboard the vessel that may have adversely affected the safety of any vessel, bridge, structure, and shore area and the environmental quality of any port, harbor, and navigable waterway of the United States, namely, an unauthorized oil drainage system for the engine room, an oil leak on the vessel's heavy fuel oil purifier, excessive oil leaks on the vessel's main engine and all ship service generators, excessive amounts of oil in the vessel's machinery spaces and bilges, and oil in the vessel's water based fire suppression system, willfully failed to notify the nearest, or any, United States Coast Guard Sector Office and United States Coast Guard Group Office prior to or


during the vessel's entry into the Port of Corpus Christi, Texas.

In violation of 33 U.S.C. § 1232(b)(1) and 33 C.F.R. § 160.215.


A TRUE BILL:
ORIGINAL SIGNATURE ON FILE
FOREPERSON OF THE GRAND JURY

JOSE ANGEL MORENO
UNITED STATES ATTORNEY

By:



JEFFREY S. MILLER
Assistant U.S. Attorney



DAVID O'CONNELL
Trial Attorney
Environmental Crimes Section
Department of Justice