

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

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

- Petty
- Minor
- Misdemeanor
- Felony

E-filing

PENALTY:
See Attached

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

FILED
JUL 16 2010

DEFENDANT

DIMITRIOS DIMITRAKIS

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

DISTRICT COURT NUMBER
CR10-00552 DLJ

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
U.S. Coast Guard and Environmental Protection Agency

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:

U.S. ATTORNEY DEFENSE

SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person Furnishing Information on this form
Joseph P. Russoniello

U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned)
AUSA CHINHAYI CADET

DEFENDANT

IS NOT IN CUSTODY

- 1) Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
- 5) On another conviction } Federal State
- 6) Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No } If "Yes" give date filed

DATE OF ARREST
Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY
Month/Day/Year

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

Bail Amount: _____

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: July 26, 2010 Before Judge: Hon. Judge Beeler

Comments:

Penalties

Defendant TRANSMAR SHIPPING CO, S.A.

Count One – Failing to Maintain an Oil Record Book, in violation of 33 U.S.C. § 1908(a)

Maximum fine: \$500,000 (or twice the gross gain or loss)
Maximum probation term: 5 Years
Mandatory special assessment: \$400
Restitution as ordered by the Court

Count Two – Making a False Statement, in violation of 18 U.S.C. § 1001

Maximum fine: \$500,000 (or twice the gross gain or loss)
Maximum probation term: 5 Years
Mandatory special assessment: \$400
Restitution as ordered by the Court

Defendant DIMITRIOS DIMITRAKIS

Count One – Failing to Maintain an Oil Record Book, in violation of 33 U.S.C. § 1908(a)

Maximum prison sentence: 6 Years
Maximum fine: \$250,000
Maximum supervised release term: 3 Years
Mandatory special assessment: \$100

Defendant VOLODOMYR DOMBROVSKYY

Count One – Aiding and Abetting the Failure to Maintain an Accurate Oil Record Book, in violation of 33 U.S.C. § 1908(a)

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BY: COMPLAINT INFORMATION INDICTMENT
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OAKLAND

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Name of Assistant U.S. Attorney (if assigned) AUSA CHINHAYI CADET

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BY: COMPLAINT INFORMATION INDICTMENT
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33 U.S.C. § 1908(a) - Act to Prevent Pollution from Ships; 18 U.S.C. § 1001 - False Statements

- Petty
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1 JOSEPH P. RUSSONIELLO (CBN 44332)
2 United States Attorney

3
4
5 E-filing

FILED

JUL 16 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 CR10-00552 DLJ
12 No.

12 UNITED STATES OF AMERICA,)
13 Plaintiff,)
14 v.)
15)
16 DIMITRIOS DIMITRAKIS,)
17 VOLODYMYR DOMBROVSKYY, and)
18 TRANSMAR SHIPPING CO, S.A.)
19 Defendants.)

VIOLATIONS: 33 U.S.C. § 1908(a) – Act
to Prevent Pollution from Ships; 18 U.S.C.
§ 1001 – False Statements
OAKLAND VENUE

20 INFORMATION

21 The United States Attorney charges:

22 INTRODUCTION

23 At all times relevant to this Information:

24 1. The *M/V New Fortune* (hereinafter, "*New Fortune*") is a 26,136 gross ton ocean-
25 going bulk cargo ship that is approximately 613-feet in length. The *New Fortune* was built and
26 sent to sea in 1994. The vessel was operated by defendant, TRANSMAR SHIPPING CO, S.A.
27 ("TRANSMAR"). The *New Fortune* was registered in the Marshall Islands, and has an
28 International Maritime Organization ("IMO") number of 9082946. The *New Fortune* was

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1 engaged in the carriage of bulk products in world-wide commerce. It had a crew of
2 approximately twenty-four people who served either on the deck or in the engine room.

3 2. A crew of about nine seamen worked in the engine room of the *New Fortune*. By
4 order of rank, those seamen included, the Chief Engineer, the Second Engineer, the Third
5 Engineer, the Fourth Engineer, the Electrician, three Oilers, the Fitter, and, at times, the Wiper.
6 The entire crew was led by the Captain—sometimes called “the Master”—of the vessel.

7 3. Defendant DIMITRIOS DIMITRAKIS was the Chief Engineer aboard the *New*
8 *Fortune*. He served as the vessel’s Chief Engineer since coming aboard on March 1, 2009. As
9 Chief Engineer, defendant DIMITRAKIS had overall responsibility for the operations of the
10 engine room, including the supervision of daily operations, formulation and implementation of
11 engine room procedures, and verification that all systems were functioning properly. Defendant
12 DIMITRAKIS was also responsible for keeping and maintaining the vessel’s Oil Record
13 Book—which is a required log regularly inspected by the United States Coast Guard (“U.S.
14 Coast Guard”). As Chief Engineer, defendant DIMITRAKIS supervised all engine room crew
15 members. He shared responsibility with the Second Engineer for the operation of the ship’s Oil
16 Water Separator and incinerator.

17 4. Defendant VOLODYMYR DOMBROVSKYY was the Second Engineer aboard
18 the *New Fortune*. He served as the vessel’s Second Engineer since coming aboard on March 1,
19 2009. As Second Engineer, defendant DOMBROVSKYY was second in superiority to the Chief
20 Engineer in the engine room. He shared responsibility with the Chief Engineer for the operation
21 of the ship’s Oil Water Separator and incinerator.

22 5. On February 16, 2010, the *New Fortune* arrived at the Port of Oakland in
23 Oakland, California. On that same day, the U.S. Coast Guard boarded the *New Fortune* at the
24 Port of Oakland and began conducting a regulatory inspection.

25 **MARINE CARGO SHIP OPERATIONS**

26 6. The engine department operations of a large marine cargo vessel such as the *New*
27 *Fortune* generate large quantities of sludge during the process of purifying fuel oil, lubricating
28 oil, and other petroleum products that are used in the vessel’s engines. That resulting sludge is

INFORMATION

1 transferred to a sludge tank that is located in an area in the bottom of the vessel. The sludge is
2 generally disposed of either by incineration in the vessel's incinerator or by off-loading it at a
3 shore-based disposal port facility.

4 7. The engine department operations of a large marine cargo vessels such as the *New*
5 *Fortune* also generate large quantities of oil-contaminated bilge waste when water collects and
6 mixes in the bottom of the vessel, with oil leaked and dripped from the engine's lubrication and
7 fuel systems. These "oily mixtures" are also known as "bilge slops" and "slops from bilges" and
8 are collected, stored, and processed to separate the water from the oil and other wastes. If done
9 in accordance with the law, the water separation involves the use of a pollution prevention
10 control devices known as an Oil Water Separator and an oil-sensing device known as an Oil
11 Content Meter. The Oil Water Separator works by separating the oil from the water. After the
12 Oil Water Separator separates the oil from the water, the oil is transferred to a bilge holding tank
13 near the sludge tank, and a sample of the water is transferred to the Oil Content Meter. The Oil
14 Content Meter then evaluates the oil content in the water sample of the effluent that comes from
15 the Oil Water Separator. If the Oil Content Meter determines that the oil content of the effluent
16 exceeds fifteen (15) parts per million ("ppm"), then an audio and visual alarm would sound
17 thereby triggering a solenoid three-way valve to redirect the unclean effluent to a storage tank in
18 the vessel. If the Oil Content Meter determines that the oil content of the effluent is fifteen (15)
19 ppm or less, then the effluent is sufficiently clean and is discharged overboard.

20 LEGAL FRAMEWORK

21 8. The United States is part of an international agreement known as the International
22 Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (the
23 "MARPOL Protocol") that regulates the discharge of oil, garbage, and other substances from
24 vessels at sea. The MARPOL Protocol was embodied in agreements that the United States
25 ratified and was implemented in the United States by the Act to Prevent Pollution from Ships
26 ("APPS"), 33 U.S.C. § 1901, *et seq.* APPS makes it a crime for any person to knowingly violate
27 the MARPOL Protocol, APPS, or regulations promulgated under APPS. These regulations apply
28 to all commercial vessels operating in the navigable waters of the United States or while in a port

INFORMATION

1 or terminal under the jurisdiction of the United States, including vessels operating under the
2 authority of a country other than the United States.

3 9. The MARPOL Protocol established an international regime for the treatment and
4 disposal of oily mixtures generated from the machinery spaces of vessels. Under the MARPOL
5 Protocol, machinery space waste would be discharged overboard into the ocean only if it did not
6 exceed fifteen (15) ppm of oil and the ship had in operation the required pollution prevention
7 equipment, including oil filtering equipment (*e.g.*, an Oil Water Separator), an alarm, and an
8 automatic stopping device (*e.g.*, an Oil Content Meter and a solenoid three-way valve) to prevent
9 the discharge of a mixture containing more than the legally permitted concentration of oil.

10 10. Consistent with the MARPOL Protocol requirements, the APPS regulations
11 require that a ship of 400 gross tons or more, such as the *New Fortune*, maintain a written record
12 known as an Oil Record Book, and record the transfer and disposal of all oil-contaminated waste
13 and the discharge overboard and other disposal of sludge, oily mixtures, slops from bilges and
14 bilge waste water that have accumulated in machinery spaces. 33 C.F.R. §§ 151.09(a)(5), 151.25
15 (a) and (d); MARPOL Annex I, Regulation 20 and Appendix III. The person in charge of the
16 operation must fully and accurately record all discharges from the machinery spaces of a ship
17 without delay in the Oil Record Book. 33 C.F.R. § § 151.25(d) and (h). Likewise, the person in
18 charge is required to record any emergency, accidental, or other exceptional discharges of oil or
19 mixtures, including a statement of the circumstances of, and reasons for, the discharge into the
20 Oil Record Book. 33 C.F.R. § 151.25(g). The person in charge must maintain the Oil Record
21 Book on board the vessel for not less than three years, and ensure that it is readily available for
22 inspection at all times. MARPOL Annex I, Regulation 20(5).

23 11. Port states, such as the United States, conduct inspections, known as Port State
24 Control Examinations, to verify compliance with MARPOL requirements and other international
25 standards in their ports and navigable waters. Failure to comply with MARPOL requirements
26 can form the basis of an order to refuse to allow a ship to enter port, to prohibit the ship from
27 leaving port without remedial action, to refer the matter to the flag state or, where appropriate,
28 prosecution in the United States. MARPOL Articles 4, 5, 6.

INFORMATION

1 12. The U.S. Coast Guard, an agency of the United States Department of Homeland
2 Security, is charged with enforcing the laws of the United States and is empowered under Title
3 14, United States Code, Section 89(a), to board vessels and conduct inspections and
4 investigations of potential violations and to determine compliance with the MARPOL Protocol,
5 AAPS, and related regulations. In conducting inspections, U.S. Coast Guard personnel rely on
6 statements of the vessel's crew and documents, including the information contained in the Oil
7 Record Book. The U.S. Coast Guard is specifically authorized to examine a vessel's Oil Record
8 Book, 33 C.F.R. § § 151.23(a)(3) and (c).

9 **THE OFFENSES**

10 COUNT ONE: (33 U.S.C. § 1908 (a) – Act to Prevent Pollution from Ships, Failing to
11 Maintain an Oil Record Book, Aiding and Abetting the Failure to Maintain
12 an Accurate Oil Record Book)

13 13. The allegations contained in paragraphs 1 through 12 are realleged and
14 incorporated herein.

15 14. Beginning on a date unknown, but no later than on or about March 1, 2009, and
16 continuing until on or about February 16, 2010, in the Northern District of California and
17 elsewhere, defendants

18 DIMITRIOS DIMITRAKIS, VOLODYMYR DOMBROVSKYY,

19 and TRANSMAR SHIPPING,

20 acting through its agents and employees who were acting within the scope of their agency and
21 employment, and for the benefit of TRANSMAR SHIPPING, and others known and unknown,
22 did knowingly fail to maintain and cause the failure to maintain an accurate Oil Record Book for
23 the *New Fortune*, namely by failing to disclose that defendants had caused the discharge of
24 sludge, oily mixtures, slops from bilges and bilge water that accumulated in machinery spaces
25 through the use of a by-pass hose and procedures that circumvented the ship's Oil Water
26 Separator, Oil Content Meter, and incinerator and by falsely stating that sludge, oily mixtures,
27 slops from bilges and bilge water that accumulated in machinery spaces had been properly treated
28 and disposed of through an Oil Water Separator, oil sensing equipment, and an incinerator.

INFORMATION

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

3
4 COUNT TWO: (33 U.S.C. § 1001 – False Statement)

5 15. The allegations contained in paragraphs 1 through 12 are realleged and
6 incorporated herein.

7 16. From on or about March 1, 2009, through on or about February 16, 2010, in the
8 Northern District of California and elsewhere, defendant

9 TRANSMAR SHIPPING CO, S.A.,

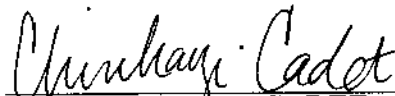
10 acting through its agents and employees who were acting within the scope of their agency and
11 employment, and for the benefit of TRANSMAR, did knowingly and willfully make and use and
12 cause the making and use of materially false writings and documents, in a matter within the
13 jurisdiction of the U.S. Coast Guard and Department of Homeland Security, namely, a false and
14 fictitious Oil Record Book for the *New Fortune* that falsely stated that sludge, oily mixtures,
15 slops from bilges and bilge water that accumulated in machinery spaces had been properly treated
16 and disposed of through an Oil Water Separator, oil sensing equipment, and an incinerator, when,
17 as the defendants well knew, the waste had been discharged directly overboard through a by-pass
18 hose that circumvented the Oil Water Separator and the Oil Content Meter.

19 All in violation of Title 18, United States Code, Section 1001, and Title 18, United States
20 Code, Section 2.

21
22 Dated: July 15, 2010

23 JOSEPH P. RUSSONIELLO
United States Attorney

24 
25 MAUREEN BESSETTE
Chief, Oakland Branch

26 (Approved as to form: )

27 AUSA CHINHAYI CADET
28

INFORMATION