

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)	Criminal No. <u>06-213</u>
)	
)	<u>Violations:</u>
)	18 U.S.C. § 371
v.)	18 U.S.C. § 1001
)	33 U.S.C. § 1908(a)
WALLENIUS SHIP MANAGEMENT PTE.)	33 C.F.R. §§ 151.25(a) & (h)
LIMITED,)	18 U.S.C. § 2
)	
)	
)	
Defendant.)	
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JOINT FACTUAL STATEMENT

Introduction

Defendant Wallenius Ship Management Pte. Ltd. (“Defendant” or “Wallenius Ship Management”) and the United States Attorney’s Office for the District of New Jersey and the Environmental Crimes Section of the United States Department of Justice (“the United States” or “the government”), hereby agree that this Joint Factual Statement is a true and accurate statement of the Defendant’s criminal conduct in this matter and that it provides a sufficient basis for the Defendant’s pleas of guilty to the charges contained in the Criminal Information. The Defendant’s guilty pleas are to be entered pursuant to the Plea Agreement signed and dated this same day.

Defendant Wallenius Ship Management, a Singapore corporation, was the operator and manager of a fleet of approximately twelve (12) automobile transport ships or “car carriers,” registered in Singapore. Wallenius Ship Management was jointly owned by Singapore Shipping Corporation Ltd. and Wallenius Marine, AB, a Swedish corporation. The M/V Atlantic Breeze (“Atlantic Breeze”) was a 41,891 gross ton ocean-going car carrier, registered in Singapore, and identified by International Maritime Organization (“IMO”) Number 8507614. From at least as early as in or about July 2002, to in or about November 2005, the Atlantic Breeze traveled regularly to ports in Asia, Europe, the Mediterranean Region, South America, and both the east and west coasts of the United States. Among other United States port calls, the Atlantic Breeze called at Port Newark, New Jersey, several times each year.

On or about November 9, 2005, the United States Coast Guard (“Coast Guard”), having received information from crew members that the Atlantic Breeze had been involved in various environmental offenses, boarded the vessel in Port Newark, New Jersey, to conduct a Port State

control inspection. Once onboard the vessel, the Coast Guard discovered equipment that had been specially fabricated and used to bypass the ship's pollution prevention equipment and to discharge oil waste directly into the ocean. As set forth below, the crew of the Atlantic Breeze referred to this bypass equipment as the "Magic Pipe." A federal investigation by the Coast Guard, the United States Attorney's Office for the District of New Jersey, and the Environmental Crimes Section of the Department of Justice Environment and Natural Resources Division revealed that the Atlantic Breeze had been deliberately and unlawfully discharging oil-contaminated bilge waste and plastic into the ocean. The discharges of oil-contaminated bilge waste date back to 2002, and the discharges of plastic occurred in 2005.

The unlawful discharges were made in violation of the MARPOL Protocol, a treaty to which the United States, Singapore, and a large number of other nations are parties. The discharges were actively concealed through the falsification of records, which were required to be maintained onboard the vessel. As described below, while the defendant's vessel was in the District of New Jersey, the knowing failure to fully maintain certain records was a violation of the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a), and 33 C.F.R. § 151.25. Further, during the investigation by the Coast Guard, Wallenius Ship Management engineers and other crew members lied to Coast Guard inspectors and took other steps in an effort to obstruct the investigation.

Background

Engine room operations on vessels like the Atlantic Breeze generate, among other things, waste oil. Oil sludge is accumulated continuously from the purification of fuel and lubricating oil that takes place aboard the vessel. Impurities including sludge and oily water are sent to various waste oil tanks. On the Atlantic Breeze, these tanks included, but were not limited to, the Bilge Holding Tank and Bilge Separator Oil Tank or "B.S.O.T." tank. Waste oil is also generated through leaks and dripping of oil from various operating equipment. This waste oil, together with water, detergents, and other wastes, accumulates in the bottom of the vessel known as the "bilge." This oil-contaminated bilge waste is collected, stored and then processed to separate the water from the oil and other wastes using a pollution prevention control device known as an Oily Water Separator. Oil sludge can either be incinerated on board the vessel or offloaded in port for proper disposition.

The United States is a signatory to the MARPOL Protocol, an international treaty, which 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 the MARPOL Protocol, APPS, or regulations promulgated under APPS. 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.

MARPOL and APPS set the legal standard for the maximum amount of oil permitted to be discharged overboard by a vessel, namely, 15 parts per million ("ppm"). Therefore, under MARPOL, wastes can be discharged overboard into the ocean only if they contain less than 15

ppm of oil. MARPOL also requires that vessels use an oil-sensing device (or oil content meter), such as that found on an Oily Water Separator, to prevent the discharge of a mixture containing more than the legally permitted concentration of oil. When the Oily Water Separator sensor detects more than 15 ppm oil, it redirects that mixture to a storage tank onboard the vessel.

Under MARPOL and applicable federal regulations, each non-tanker vessel of more than 400 gross tons must record all internal transfers of oil and overboard discharges of oil and bilge water in an "Oil Record Book." In the event of an emergency, or accidental or other exceptional discharge of oil or an oily mixture, a statement must be made in the Oil Record Book explaining the reasons and circumstances for the discharge. The captain of the vessel is required to sign every completed page of the Oil Record Book. The Oil Record Book must be maintained onboard the vessel for not less than three years, and must be kept onboard the vessel and readily available for inspection at all reasonable times.

"Flag states" (nations that register vessels) certify the vessel's compliance with international laws. "Port states" (nations visited by the vessels), such as the United States, inspect vessels to assure compliance with the law within their ports and waters. The 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 and inspect vessels in United States waters to determine compliance with, and investigate potential violations of, the MARPOL Protocol, APPS, and related regulations. Failure to comply with international standards, including MARPOL, 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 has been determined that the vessel does not present an unreasonable threat to the marine environment. 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 Oil Record Book. The United States Coast Guard is specifically authorized to examine a vessel's Oil Record Book to determine, among other things, whether the vessel has operable pollution prevention equipment and appropriate procedures, whether it poses any danger to United States ports and waters, and whether the vessel had discharged any oil or oily mixtures in violation of MARPOL, APPS, or any other applicable federal regulation.

Being an ocean-going automobile transport vessel weighing over 400 gross tons, the Atlantic Breeze was subject to MARPOL, APPS, and other applicable regulations requiring, among other things, the maintenance of an Oil Record Book. The Atlantic Breeze's Engine Department was headed by a Chief Engineer, assisted by a Second Engineer, Third Engineer, and Fourth Engineer, all of whom were assisted by unlicensed crew members referred to in the industry as "oilers." The Chief Engineer reported directly to the Master of the vessel and to shore-based managers and had overall responsibility for the operations of the Engine Department, including the supervision of daily operations, formulation and implementation of engine room procedures, and verification that all systems, including the Oily Water Separator were functioning properly. The Chief Engineer was also responsible for maintaining the ship's Oil Record Book, while the Chief Mate was responsible for maintaining the Garbage Record Book.

Inspection of the Atlantic Breeze at Port Newark

On or about November 9, 2005, when the Atlantic Breeze arrived at Port Newark, New Jersey, Coast Guard boarding officers reviewed the ship's official records, including the Oil Record Books, and found no apparent violations. The ship's Oily Water Separator did not function properly, however, despite the Chief Engineer's repeated attempts to operate it over the course of several hours. Although, prior to the ship being permitted to leave port, the problem was rectified. The boarding officers asked the Chief Engineer to produce any sounding logs (logbooks used to record "soundings" or the level of the contents in waste oil tanks, which typically are recorded daily) so that they might compare records of the levels of the tanks' contents on any given day with the entries in the Oil Record Book. The Chief Engineer falsely advised that no sounding logs were used on the vessel.

The boarding officers, only with assistance from certain junior crew members, who, acting cautiously to avoid detection by the senior supervisory crew members, located a series of pipes, valves and a hose, which comprised a bypass system used to circumvent the ship's Oily Water Separator. The bypass system, or "Magic Pipe," ran from a manifold accessing the valves of multiple waste oil tanks, underneath the deck plating, to a thru-hull in the starboard side of the ship called the "boiler blow-down valve," through which the waste oil was pumped out into the ocean bypassing the Oily Water Separator altogether. The component parts of the bypass system had been disassembled and concealed in various places throughout the engine room. The same junior crew members also successfully recovered the ship's Daily Tank Sounding Logbook, which had been concealed on board the vessel during the Coast Guard boarding, and delivered it to the Coast Guard.

According to engineers, oilers, and other engine room crew members, the "Magic Pipe" typically was connected during any voyage of more than a few days. It was connected upon leaving port, and operated as needed over the course of any open water voyage. The evidence collected reflects that the waste discharges were documented in the Daily Tank Sounding Logbook, often indicated by a written notation "p/p out." According to certain engine room crew members, "p/p out" denoted a "pump out" of oil-contaminated waste directly overboard. The government contends that over the course of approximately three and one-half years, oil-contaminated waste had been discharged directly overboard. According to the crew members, the discharges were made pursuant to the orders of the Chief Engineers and Second Engineers on the vessel at the time of those discharges.¹ The Chief Engineers designated to what levels the tanks needed to be reduced. The oilers, acting on those instructions, then activated the bypass system to pump the tanks' contents directly out into the ocean using the "Magic Pipe." Crew members explained that discharges were made at night to conceal any oil sheen that might result. Further, by connecting the bypass pipe to the boiler blow-down valve, steam from the boiler could be channeled through the valve, thereby cleaning the valve of any oil residue. Also, the

¹More than one Chief Engineer and Second Assistant Engineer served on the Atlantic Breeze between July 2002 and November 9, 2005.

manifold of valves for various tanks to which the bypass system connected allowed for seawater to be pumped through the system as well, in an effort to clean it. Laboratory analysis by the Coast Guard's Marine Safety Laboratory of samples collected on board the vessel from the bypass system components revealed the presence of fuel and lubricating oil.

According to Engine Department crew member witnesses, when the vessel prepared to enter a port, the bypass system was disassembled and the component pieces concealed in various places throughout the engine room to avoid its being detected during inspections. Also, according to engine room crew members, when the vessel entered a port, the Daily Tank Sounding Logbook was concealed within a bookcase, tucked between other volumes so that it was not readily visible. The vessel also routinely lawfully discharged some oil waste in ports, usually in Korea, Europe, and Brazil. The Defendant's shore-side management, in consultation with the ship's Captain, primarily designated the ports at which the vessel would discharge sludge and oil waste. According to the Defendant, it also adopted a policy prohibiting the use of the ship's incinerator to dispose of sludge via incineration. The Defendant contends that the policy was part of the Defendant's environmental compliance program to reduce air pollution emanating from the vessel.

According to all available engine room crew member witnesses, the Oily Water Separator on board the vessel was not used for its intended purpose of processing oil-contaminated bilge water while they served on the vessel. According to some of the engine room crew member witnesses, however, at intervals, pure sea water was run through the Oily Water Separator for the purpose of activating the flow meter on the machine and creating the impression that the machine was used regularly and, therefore, that the vessel was properly processing its oil-contaminated bilge waste.

Falsification of the Record Books

The investigation revealed that crew members onboard the Atlantic Breeze falsified entries in the ship's Oil Record Books dating back to at least in or about July of 2002. The Oil Record Book was maintained by a succession of Chief Engineers on the Atlantic Breeze from in or about 2002 through in or about 2005, and was signed by the vessel's Captain. None of the direct overboard discharges of oil-contaminated bilge waste were recorded in the vessel's Oil Record Books. The Oil Record Books contained false entries indicating that the Oily Water Separator was being used regularly to process oil-contaminated bilge water. According to crew members, at least two Chief Engineers who served the Defendant on board the Atlantic Breeze, one of whom is also a defendant and has agreed to plead guilty to related charges, maintained and presented the fictitious Oil Record Books knowing them to contain material false, fictitious and fraudulent statements and entries, to create the overall false impression that the Atlantic Breeze was operated properly in compliance with the laws of the United States and International law. The effect of the false entries was to conceal unlawful overboard discharges without the use of an Oily Water Separator. The Oil Record Books were falsely maintained by the ship's Chief Engineer, acting within the scope of his employment and for the intended benefit of the Defendant. As is normally part of the Coast Guard's port state control inspections, the Oil

Record Book was presented to the Coast Guard on or about November 9, 2005, during the Coast Guard inspection and relied upon by the inspectors.

Investigation further revealed that in addition to discharging oil-contaminated bilge waste directly overboard, according to both engine room and deck-side crew members, various types of garbage – including scrap metal, pieces of cable, wooden pallets, pieces of furniture, plastic buckets full of sludge from the bilge well, oily rags from the engine room, and plastic bags containing garbage of various sorts – also were routinely thrown overboard when the vessel was at sea in or about 2005. While the Defendant's shore-side management equipped the Atlantic Breeze with bins to sort and store garbage on the vessel, these were regarded by some crew members as insufficient to handle the volume of garbage generated on board. Defendant's policy regarding the ship's incinerator, which according to the Defendant was part of an environmental compliance program to reduce air pollution emanating from the vessel, prohibited the incineration of garbage as well as waste oil. While an official Garbage Record Book was maintained on board the vessel by a senior deck-side crew member acting within the scope of his employment and for the intended benefit of his employer, none of the overboard disposals described above were recorded within it. Instead, the entries in the Garbage Record Book falsely stated that only food waste was disposed of directly overboard, and that all other garbage was retained on board for disposal on shore. As is normally part of the Coast Guard's port state control inspections, the Garbage Record Book was presented to the Coast Guard on or about November 9, 2005, during the Coast Guard inspection and relied upon by the inspectors.

False Statements and Obstruction of the Investigation

In addition to presenting the Coast Guard with materially false and fictitious documents, and concealing physical and documentary evidence of the practice of illegally discharging waste oil and garbage from the ship as described above, several crew members made false verbal representations to the Coast Guard boarding officers, and several junior crew members were encouraged by their senior engineers to withhold the truth about "illegalities" occurring in the engine room on board the ship.

During the boarding and inspection of the ship by the Coast Guard, the Chief Engineer on the vessel was asked for the vessel's sounding logs. The Chief Engineer replied that they did not keep soundings, rather the crew only kept the daily readings on a white board in the engine control room and erased it each day to replace it with the new day's readings. This statement caused the Coast Guard to believe that no sounding logs existed. Only when a junior crew member mentioned the existence of the Daily Tank Sounding Logbook, did the Coast Guard learn that the Chief Engineer's earlier statement was untrue. The Daily Tank Sounding Logbook was passed from crew member to crew member while the Coast Guard's inspection was progressing on board the vessel. Certain crew members sought to deliver the logbook to the Coast Guard, but the Chief Engineer sent other crew members to find the logbook and return it to him. Once the logbook was delivered to the Chief Engineer, he did not provide it to the Coast Guard boarding officers. Instead, the logbook remained hidden on the ship until retrieved by a junior crew member. This junior crew member then undertook, of his own accord and without

instruction from any other crew member, to obscure certain entries signaling that the contents of some tanks were pumped out on particular days, by painting over those entries with liquid paper "white out." The junior crew member then wrote over those entries with numerical ones that falsely created the impression that the tank levels continued to rise incrementally consistent with the lawful discharging of oil waste. Only a handful of entries were obscured in this manner before the junior crew member handed over the log book to other crew members who ultimately delivered it to the Coast Guard. According to these same crew members, they photocopied the logbook some ten days prior to the vessel's arrival in the United States. One of those crew members produced the photocopy to the Coast Guard.

After the Coast Guard boarded the vessel and commenced an inspection of it, the Chief Engineer on the vessel encouraged the Second Engineer to contact the other engine room crew members and urge them "not to mention about the magic pipe." The Second Engineer then called a junior crew member on the ship's telephone and encouraged him not to tell the truth if the Coast Guard came and "investigated" him but to say he had "no idea about the illegalities in the engine room" The Chief Engineer himself encouraged two other engine room crew members not to reveal to the Coast Guard "illegalities in the engine room" and whatever they were asked, "always say no."

Conclusions

As set forth above, Defendant Wallenius Ship Management, by and through the actions of senior ship engineers aboard the Atlantic Breeze who acted within the scope of their employment and for the perceived benefit of the Defendant, engaged in deliberate and repeated discharges of both oil-contaminated bilge waste and plastic in violation of MARPOL. The illegal discharges were deliberately concealed by Wallenius Ship Management, by and through the actions of crew members, including senior ship engineers aboard the Atlantic Breeze, who acted within the scope of their employment and with the intent to benefit the defendant, through various acts of concealment such as discharging at night and the systematic falsification of official ship records. The Defendant's crew members, including senior engineers, who falsified the Oil Record Book, knew that oil-contaminated bilge waste had been discharged directly overboard into the ocean through the use of a bypass, and that garbage, including plastic, had been thrown directly overboard from the vessel into the ocean. The Defendant's crew members, including senior engineers, undertook this action knowing that the Coast Guard regularly examined the ship's records, including the Oil Record Book and the Garbage Record Book, in order to determine whether the ship complied with the law or posed a threat to United States waters. The maintenance and presentation of the false Oil Record Book and false Garbage Record Book occurred at the direction of senior ship officers and engineers acting within the scope of their employment and for the perceived benefit of the Defendant. The perceived benefits included the savings of costs associated with offloading waste in some ports, the avoidance of costs associated with incurring delays in the vessel's shipping schedule occasioned by offloading waste in port, and the benefit of not having the vessel detained in port had the conduct become known.

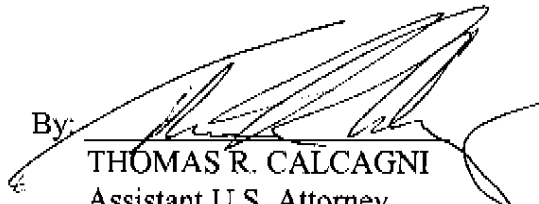
On or about November 9, 2005, when the ship was subjected to a rigorous Coast Guard


inspection in Port Newark, New Jersey, Wallenius Ship Management crew members, including senior supervisory ship engineers, conspired to lie to the inspectors and obstruct and impede the proper administration of the United States Coast Guard's inspection and investigation by presenting false and misleading records, making false statements during the inspection, and concealing evidence of the use of bypass pipes, valves and hose. These acts constitute violations of Federal law as set forth in the Criminal Information accompanying this Joint Factual Statement.

Dated this 22 day of March, 2006

CHRISTOPHER J. CHRISTIE
United States Attorney


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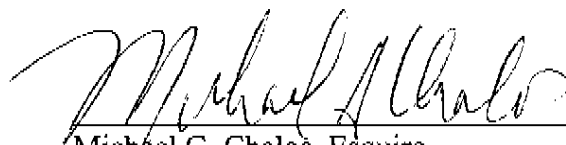
I am the Executive Director of WALLENIOUS SHIP MANAGEMENT PTE. LTD. empowered by corporate resolution to bind WALLENIOUS SHIP MANAGEMENT PTE. LTD. in this matter. I have read this Joint Factual Statement and have carefully reviewed every part of the document with counsel for WALLENIOUS SHIP MANAGEMENT PTE. LTD. I voluntarily agree that it constitutes a fair and accurate presentation of the facts.

22/03/2006
Date


CAPTAIN CHONG CHEE ENG,
Executive Director
WALLENIOUS SHIP MANAGEMENT PTE. LTD.

I am the attorney for WALLENIOUS SHIP MANAGEMENT PTE. LTD. I have carefully reviewed every aspect of this Joint Factual Statement with my client.

March 22, 2006
Date


Michael G. Chalos, Esquire
Attorney for the Defendant
FARLEN, RODRIGUEZ & CHALOS