

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	Crim. No. 1:19-cr-58-RGA
)	
Plaintiff,)	
v.)	
)	
CHARTWORLD SHIPPING)	
CORPORATION,)	
)	
Defendant.)	

MEMORANDUM OF PLEA AGREEMENT

The United States of America, by and through David C. Weiss, United States Attorney for the District of Delaware, Jean E. Williams, Deputy Assistant Attorney General for the Environment and Natural Resources Division, Edmond Falgowski, Assistant United States Attorney for the District of Delaware, David P. Kehoe, Senior Trial Attorney, and Stephen Da Ponte, Trial Attorney for the Environmental Crimes Section of the Department of Justice, (collectively referred to herein as the "government"), and the Defendant Chartworld Shipping Corporation ("Chartworld"), by and through its authorized representative, enter into the following Memorandum of Plea Agreement ("Agreement") pursuant to Rule 11(c)(1)(C) and Rule 11(c)(3) of the Federal Rules of Criminal Procedure:

1. Legal Framework

The United States is part of an international regime that regulates the discharges of oil from vessels at sea known as the International Convention for the Prevention of

Pollution from Ships, as modified by the Protocol of 1978 (MARPOL Protocol). The MARPOL Protocol was enacted into United States law by the Act to Prevent Pollution from Ships (APPS). 33 U.S.C. § 1901, *et seq.* APPS and its regulations apply to foreign-flagged vessels like the M/V NEDERLAND REEFER while operating in United States waters, or while at a port or terminal under the jurisdiction of the United States. 33 C.F.R. § 151.09(a)(5). To facilitate enforcement, the United States Coast Guard (USCG) is empowered under 14 U.S.C. § 522(a) to board vessels and conduct inspections and investigations of potential violations of international and United States law, including the MARPOL Protocol and APPS. The USCG is specifically authorized to examine the vessel and vessel's required record books to determine, among other things, whether the vessel has operable pollution prevention equipment and appropriate operating procedures; whether it poses any danger to United States' ports and waters; and whether the vessel has discharged any oil or oily mixture in violation of the MARPOL Protocol, APPS, or any applicable federal regulations. 33 C.F.R. § 151.23(a)(3) and (c).

The operations of large marine vessels like the M/V NEDERLAND REEFER generate oily bilge water 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 (OWS) and oil-sensing device known as an Oil Content Monitor (OCM). Pursuant to MARPOL, bilge waste may only be discharged overboard after passing through an OWS to ensure that it contains 15 parts per million (ppm) or less of oil, as measured by the OCM. If the OCM detects an oil content of greater than 15 ppm in the effluent, it sounds an alarm, and shuts down the pumps and/or diverts flow back to the bilges or bilge holding tanks in order to prevent the discharge of greater than 15 ppm of oil overboard.

MARPOL and APPS regulations require that vessels other than oil tankers with a weight of more than 400 gross tons such as the M/V NEDERLAND REEFER, maintain a record known as an Oil Record Book (ORB). The ORB must fully record, on a tank-to-tank basis, all operations involving the discharge overboard and disposal of bilge water that has accumulated in machinery spaces, and thus may be contaminated with oil. 33 CFR § 151.25(d) and (h); MARPOL, Annex I Regulation 17 and Appendix III (Form of ORB). The ORB must also record internal transfers of bilge water to holding tanks prior to it being discharged overboard or being otherwise disposed of.

2. Criminal Charges. The Defendant shall enter a guilty plea to Counts 1 and 2 of the Indictment. At sentencing, the government will dismiss the Counts Three through Six of the Indictment.

1. Count One: Failure to notify of a hazardous condition. Specifically, between on or about February 9, 2019, and February 22, 2019, in the Breakwater

Anchorage, Delaware Bay, Delaware, and within the District of Delaware, and elsewhere, the Defendant, acting through its agents and employees who were acting within the scope of their agency and employment and for the intended benefit of the Defendant at least in part, did willfully and knowingly fail to notify the United States Coast Guard that a hazardous condition existed on board the M/V NEDERLAND REEFER, namely a hull breach below the water line of the vessel that occurred on or about December 29, 2018, and the subsequent incursion of seawater into the vessel's Bilge Holding Tank, in violation of Title 46, United States Code, Section 70036(b)(1); Title 18, United States Code, Section 2; and Title 33, Code of Federal Regulations, Section 160.216.

2. Count Two: Knowing failure to maintain an accurate Oil Record Book, for the M/V NEDERLAND REEFER. Specifically, on or about February 21, 2019, in the Breakwater Anchorage, Delaware Bay, Delaware, and within the District of Delaware, and elsewhere, Defendant, acting through at least one agent or employee who was acting within the scope of his agency or employment and for the intended benefit of the Defendant, at least in part, did knowingly cause the failure to maintain an accurate Oil Record Book for the M/V NEDERLAND REEFER while in U.S. waters in which all disposals of oil residue, overboard discharges and disposals otherwise of oily mixtures, slops from bilges and bilge waste that accumulated in machinery space were fully recorded. Specifically, the Defendant caused to be maintained an Oil Record Book that: (1) failed to record the transfer of oily bilge water between the vessel's Bilge Holding Tank and Aft Peak Ballast Tank on or about December 30, 2018, (2) failed to record the subsequent discharge overboard of the contents of the Aft Peak Ballast Tank, and (3) falsely recorded that discharges of machinery space bilge water had been properly made through the required pollution prevention equipment, in violation of Title 33, United States Code, Section 1908(a), Title 18, United States Code, Section 2, Title 33 Code of Federal Regulations, Section 151.25, and MARPOL Annex I, Regulation 17.

3. The Penalties. The Defendant understands that the statutory penalties applicable to a corporate defendant for each felony count to which it is entering a plea of guilty are as follows: a maximum fine of either \$500,000, or twice the gross pecuniary gain or loss resulting from the unlawful conduct, pursuant to 18 U.S.C. § 3571(c) and (d), a term of probation of five years, pursuant to 18 U.S.C. § 3561(c)(1), and a special

assessment of \$400, pursuant to 18 U.S.C. § 3013(a)(2)(B). The Defendant understands that, in addition to any other penalty, the Court may order the payment of restitution to any victim of the offense pursuant to the provisions of Title 18, United States Code, Section 3663. The parties are not aware of any identifiable victims of this offense.

4. Applicability of Sentencing Guidelines. The Defendant understands and acknowledges that, at sentencing, the Court is required to consider the United States Sentencing Guidelines (U.S.S.G.), together with the other sentencing goals set forth in Title 18, United States Code, Section 3553(a). The Defendant understands and acknowledges that the government contends that the U.S.S.G., including Chapter Eight that provides guidance for the sentencing of corporate defendants, may be considered by the Court, except that, pursuant to U.S.S.G. §§ 8C2.1 and 8C2.10, the guidelines which pertain to the sentencing of organizations do not determine the fine range in cases involving environmental crimes. Instead, the fine is to be determined under 18 U.S.C. §§ 3553 and 3571. All other sections of Chapter Eight of the Sentencing Guidelines that are applicable to corporate defendants are applicable to this case.

5. Sentencing. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, and in return for the complete fulfillment by the Defendant of all of its obligations under this Agreement, the government and Defendant agree that the sentence to be imposed by the Court includes a total monetary penalty of \$900,000 plus

the mandatory special assessment discussed below. The parties agree that the sentence should be imposed as follows:

a. Criminal Fine: The parties stipulate and agree that the \$900,000 total criminal fine shall be apportioned as follows: (1) \$450,000 for Count One, and (2) \$450,000 for Count Two.

b. Mandatory Special Assessment: Defendant Nederland shall pay a total special assessment of \$800.

c. Payments: Defendant further agrees that if the terms of this Rule 11(c)(1)(C) Plea Agreement are accepted by the Court, that the criminal fine and special assessment shall be paid within thirty days of sentencing, unless otherwise ordered by the Court. Payment of the criminal fine and special assessment is to be made in the form of a check payable to "United States District Court Clerk" or in the form of a wire transfer if deemed acceptable by the Court Clerk.

d. APPS Monetary Award. Section 1908(a) of APPS provides that, in the discretion of the Court, an amount of not more than one-half of such fine attributable to the APPS count may be paid to a person or persons giving information leading to conviction. The Defendant agrees that they will not oppose any motion that the government may file in this case recommending that the Court exercise its discretion and issue a monetary award to any crewmember(s) who served on board the M/V NEDERLAND REEFER and provided information leading to the conviction.

e. Probation: The Defendant will be placed on probation for a period of four years from the date of sentencing pursuant to 18 U.S.C. § 3561(c)(1) and U.S.S.G. §§ 8D1.1 and 8D1.2. The terms of probation shall include the following specific provisions, in addition to the Court's standard conditions for defendant corporations:

(1) No Further Violations. The Defendant agrees that it shall commit no further violations of the MARPOL Protocol, federal, state or local law, and shall conduct all its operations in accordance with environmental laws of the United States.

(2) Payments. The Defendant agrees to make payment in full of the monetary amounts set forth herein, including all special assessments and fines.

(3) Environmental Compliance Plan. The Defendant agrees to fund and implement an Environmental Compliance Plan ("ECP") applicable to Defendant's vessels, during Defendant's term of probation, consistent with sentencing policies set forth in U.S.S.G. § 8D1.4. The ECP is set out at Exhibit B.

6. Application of the Agreement. This Agreement shall bind the Defendant and all its successors and assigns. No change in name, change in corporate or individual control, corporate reorganization, change in ownership, merger, change of legal status, sale or purchase of vessels, signing or termination of ship management contracts, or similar action shall alter the responsibilities of the Defendant under this

Agreement. The Defendant shall not engage in any action to seek to avoid the obligations and conditions set forth in this Agreement.

7. Cooperation. As part of this Agreement, the Defendant agrees that it will cooperate in any further investigation and/or prosecution of individuals in connection with potential violations of MARPOL, APPS, and any related acts of obstruction involving the M/V NEDERLAND REEFER.

8. Statements. This Agreement does not limit the right of the Defendant or the government to speak at the time of sentencing consistent with the provisions set forth in this Plea Agreement, and to provide the Court and the United States Probation Office with evidence of all relevant conduct committed by the Defendant. The parties agree that at sentencing each will support the agreed disposition set forth in this Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure.

9. Non-Prosecution of Additional Offenses. As part of this Agreement and the promises made by the Defendant in this Agreement, the United States Attorney's Office for the District of Delaware and the Environmental Crimes Section of the United States Department of Justice agree to forgo criminal prosecution against the Defendant and Defendant's corporate parent(s), subsidiaries, affiliated or related companies, successors, or assigns for any additional offenses or related offenses, including but not limited to, falsification of oil record books or violations of APPS occurring before the date of this Agreement and which are known to the government at the time of acceptance of

this Agreement by the Court, whether relating to the M/V NEDERLAND REEFER. The Defendant understands and agrees that neither this paragraph nor this Agreement limit the prosecuting authority of any other sections or divisions of the Department of Justice, including the United States Attorney of any judicial district not a party to this Agreement, or any other federal, state or local regulatory or prosecuting authorities. Furthermore, this Agreement does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including but not limited to: fines, penalties, claims for damages to natural resources, suspension, debarment, listing to restrict rights and opportunities of the Defendant to contract with or receive assistance, loans, and benefits from United States agencies, licensing, injunctive relief, or remedial action to comply with any applicable regulatory requirement. This Plea Agreement has no effect on any proceedings against any individuals.

10. Breach of the Agreement. If the Defendant has failed to comply with any provision of this Agreement before the judgment is rendered, or has committed any crime within the jurisdiction of the United States during the pendency of this Agreement before judgment is rendered, the government may, at its sole option, be released from its commitments to the Defendant under this Agreement in their entirety by notifying the Defendant, through counsel or otherwise, in writing. The government may also pursue all remedies available under the law against the Defendant irrespective of whether it elects to be released from its commitments under this Agreement. The

Defendant recognizes that no such breach by it of any obligation under this Agreement shall give rise to grounds for withdrawal of its guilty plea. The Defendant understands that should it commit any such breach of this Agreement, then the government will have the right to use against the Defendant before any grand jury, at any trial, hearing or for sentencing purposes, any statements made by Defendant's employees and agents, and any information, materials, documents or objects provided by the Defendant to the government pursuant to this Agreement without any limitation, except for any statements, information or documents provided in the course of settlement discussions pursuant to Rule 11 and Federal Rule of Evidence 410. In this regard, the Defendant hereby waives any defense to any charges which it might otherwise have under any statute of limitations, pre-indictment delay, or the Speedy Trial Act for one hundred twenty days following any breach of the Agreement, except to the extent that such defenses existed as of the date of the signing of this Agreement.

11. Information for Probation Office. The Defendant agrees to provide all available information requested by the United States Probation Office for the District of Delaware. The parties will jointly request the Court to waive a pre-sentencing report (PSR).

12. Withdrawal of Agreement. The Defendant's plea will be tendered pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. If the sentencing judge rejects this Agreement, then it shall be null and void at the option of

either the government or the Defendant. In this regard, the Defendant hereby waives any defense to any charges under any statute of limitations, for pre-indictment delay, or under the Speedy Trial Act for one hundred and twenty days following any nullification or voiding of the Agreement.

13. Corporate Authorization. The Defendant represents that it is authorized to enter into this Agreement and to bind itself to its terms. At the time of signing this Agreement, the Defendant shall provide to the government a written statement in the form of notarized legal document certifying that the Defendant is authorized to enter into and comply with all of the provisions of this Agreement. The resolution further shall certify that the Defendant's Board of Directors has authorized these actions, and that all corporate formalities for such authorizations have been observed.

14. Appellate and Other Waivers. The Defendant, through its authorized representative, is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every defendant certain rights to contest a conviction and/or sentence. Acknowledging those rights, the Defendant, in exchange for the concessions made by the government in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any proceedings under 18 U.S.C. § 2255. This waiver does not apply to claims of ineffective assistance of counsel, prosecutorial misconduct, or future changes in the law that affect the Defendant's sentence. This Agreement does not limit the government in its comments in or responses to any post-sentencing matters. After acceptance of this Plea Agreement by the Court,

the government will arrange for the return of all original documents, manuals, vessel equipment, and records seized from the vessel by the United States Coast Guard. The Defendant understands that the government might not preserve any evidence obtained in this case and in no way shall the Defendant rely on the government preserving evidence for any purpose. The Defendant hereby waives any claim to any physical evidence, papers, or electronic media in the possession, custody, or control of the government, with the exception of the previously referred-to originals and equipment which are to be returned on Defendant's acceptance of the plea. The Defendant waives any further disclosure or discovery from the government in this case. The Defendant further waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and further agrees not to file a request for case-related documents from any agency or department of the Executive Branch except as relates to a pending civil claim. Further, the Defendant waives any right to seek attorney's fees or litigation expenses under 18 U.S.C. § 3006A (the "Hyde Amendment"), and the Defendant acknowledges that the government's position in the instant prosecution was not vexatious, frivolous, or in bad faith. The Defendant further agrees that the Defendant and any agents acting on its behalf now or in the future, waives any and all claims against the United States Coast Guard, U.S. Department of Homeland Security, or agent, employee, or contractor of either governmental entity, which relate to any aspect of the inspection, examination, and detention of the M/V NEDERLAND REEFER, including any related surety or security

agreement except as relates to a pending civil claim. The United States Coast Guard will be notified and requested to make arrangements to return the original security bond of \$1,000,000 provided in accordance with the Security Agreement dated February 22, 2019. The Defendant waives all defenses and claims with regard to statute of limitations, laches, or any other arguments that any aspect of the charges is time-barred. Finally, the Defendant waives any challenge to venue.

15. Voluntariness of the Plea. The Defendant, through its authorized representative, acknowledges that it has entered into this Agreement freely and voluntarily and that it has been fully advised by counsel, and that no threats or promises were made to induce the Defendant to enter into the guilty plea called for by this Agreement.

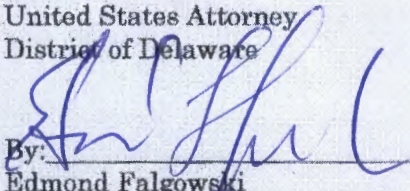
16. Factual Basis for Guilty Plea. The factual basis is contained in Exhibit A to this Plea Agreement. If this case were to proceed to trial, the government contends that it could prove each element of the offense beyond a reasonable doubt.

17. Completeness of Agreement. The government and the Defendant acknowledge that these terms constitute the entire Agreement between the parties. No promises, agreements or conditions have been entered into other than those set forth in this Agreement. This Agreement supersedes all prior understandings, whether written or oral. This Agreement cannot be modified other than in a written memorandum signed by the parties or on the record in Court. This Plea Agreement is

effective upon signature by the Defendant and all of the attorneys for the government.

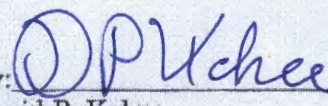
AGREED AND ACCEPTED

DAVID C. WEISS
United States Attorney
District of Delaware

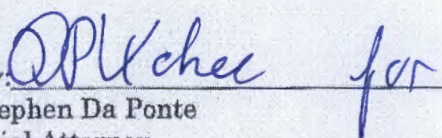
By: 
Edmond Falgowski
Assistant United States Attorney

Date: 10/15/19

JEAN E. WILLIAMS
Deputy Assistant Attorney General
Environment and Natural Resources Div.
United States Department of Justice

By: 
David P. Kehoe
Senior Trial Attorney
Environmental Crimes Section
United States Department of Justice

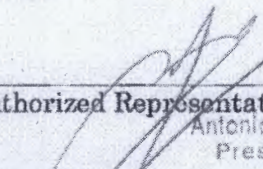
Date: 10/15/19

By:  for
Stephen Da Ponte
Trial Attorney
Environmental Crimes Section
United States Department of Justice

Date: 10/15/19

On behalf of the Defendant Chartworld Shipping Corporation ("Chartworld"), I have been authorized by a corporate resolution to sign this Agreement and bind Chartworld. Chartworld has been advised by its attorneys of Nederland's rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this

Agreement. Chartworld voluntarily agrees to all of the terms of this Agreement. No promises or inducements have been made to Chartworld other than those contained in this Agreement. No one has threatened or forced Chartworld in any way to enter into this Agreement. Chartworld is satisfied by the representation of its attorneys in this matter.

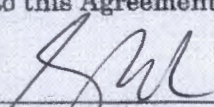


Authorized Representative

Antonios Stamos Faraklas
President / Director

Date: 14/10/2019

I am counsel for Chartworld Shipping Corporation ("Chartworld") and have discussed every part of this Agreement with authorized representatives of Nederland. Further, I have fully advised the authorized representatives of Chartworld of their rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, the decision of Chartworld to enter into this Agreement is informed and voluntary.



George M. Chalos
Chalos & Co, P.C.
Counsel for Defendant
Chartworld Shipping Corporation

Date: 10/15/19