

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

UNITED STATES OF AMERICA)
)
 v.)
)
 NAVIMAX CORPORATION,)
)
 Defendant.)
 _____)

Crim. No. 18-86-UNA

INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT ONE

Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a)

FACTUAL BACKGROUND

At all times relevant herein,

1. Defendant **Navimax Corporation (Navimax)** was incorporated under the laws of the Republic of the Marshall Islands. Defendant **Navimax** was a ship management company that provided commercial operation and efficiency oversight to a fleet of ocean-going vessels, thus qualifying it as an operator of those vessels, including the Motor Tanker (M/T) *NAVE CIELO*, as defined in 33 U.S.C. §1901(a)(9).

THE MOTOR TANKER *NAVE CIELO*

2. The M/T *NAVE CIELO* was a 42,514 gross ton ocean-going tank ship, with International Maritime Organization (IMO) Number 9301976, and registered under the flag of the Cayman Islands. The M/T *NAVE CIELO* had a crew of approximately 23 individuals, who were citizens of Ukraine, Greece, and the Philippines. Approximately 13 crew members handled cargo, navigated, and maintained the ship. An additional nine crew members worked in the engine room, operating and maintaining the ship's primary and auxiliary engines and equipment.

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3. On or about December 7, 2017, the U.S. Coast Guard (Coast Guard) conducted an inspection of the *M/T NAVE CIELO* in Delaware Bay to determine compliance with U.S. and international law. Prior to the inspection, Coast Guard officials received information from a crewmember that the vessel had illegally discharged oil cargo-residue overboard during a prior voyage from the United States to Belgium. During the course of the Coast Guard inspection on December 7, 2017, Coast Guard inspectors gathered evidenced that corroborated the crewmember's information and determined that the vessel's Oil Record Book failed to properly record all discharges of oil cargo-residue as required by U.S. and international law.

LEGAL FRAMEWORK

4. The United States is part of an international regime that regulates 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). MARPOL was enacted into United States law by the Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. §§ 1901-1915. The regulations promulgated under APPS apply to all tank ships over 150 gross tons while 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. 33 C.F.R. § 151.09(a)(5).

5. On large tank ships carrying oil cargo in bulk, such as the *M/T NAVE CIELO*, the oil cargo tanks are periodically cleaned using salt water or fresh water. The washing mixture of oil and water, known as slops or oil cargo-residue, settles in the cargo tanks and then is transferred to separate storage tanks, referred to as slop tanks, for later disposal. The slop tanks contain oily mixtures, the discharge of their contents to the sea is prohibited under MARPOL and U.S. law unless specific conditions are met. To lawfully and properly discharge the contents of the slop

tanks to the sea, the ship must be more than 50 nautical miles from the nearest land; proceeding en route; the instantaneous rate of oil content in the discharge must not exceed 30 liters per nautical mile at any time during the discharge operation; the total quantity of oil discharged must not exceed 1/30,000 of the total quantity of cargo previously carried; the point of discharge must be monitored visually and the discharge promptly terminated when oil is detected in the discharge; the ship must have in operation an oil discharge monitoring and control system designed to ensure the mixture being discharged is in compliance; and, the ship must be outside the "Special Areas" defined in MARPOL. 33 C.F.R. § 157.37(a). The oil discharge monitoring and control system, including all of its components, is collectively known as the Oil Discharge Monitoring Equipment ("ODME"). The only other option for disposal of oil cargo residue is to transfer it ashore for processing.

6. Pursuant to MARPOL and the APPS regulations, a tank vessel of 150 gross tons and above, such as the *M/T NAVE CIELO*, must have in operation an ODME that functions effectively and automatically under all environmental conditions normally encountered by oil tankers such that the discharge of oil-contaminated water from the cargo tank areas cannot take place unless the ODME is in the normal operating mode. 33 C.F.R. § 157.12d(a). The monitoring system must be comprised of: an "oil content meter" to measure the oil content of the effluent; a "flow-rate indicating system" (or "flow meter") to measure the rate of effluent being discharged; a "ship's speed indicating device;" a "ship position indicating device;" a sampling system to convey a representative sample of the effluent to the ODME; an "overboard discharge control" to stop the discharge; an "interlock" to prevent the discharge overboard of any effluent unless the system is fully operational; and, a control system that processes the information. 33 C.F.R. § 157.12d(a)(4).

7. The APPS regulations provide for manually-operated alternatives to the automated ODME in the event of equipment malfunction, to include failure of the flow meter. 33 C.F.R. § 157.12d(j). The discharge monitoring system may be operated manually only if: (1) the automatic system fails during a ballast voyage; (2) the failure is recorded in the Oil Record Book; (3) the master of the vessel ensures the discharge is constantly monitored visually and promptly terminated when oil is detected in the discharge; and, (4) the system is operated manually only until that voyage is completed, at which point the vessel should have the malfunction repaired. 33 C.F.R. § 157.37(a)(6).

8. Consistent MARPOL and APPS regulations require that an oil tanker of 150 gross tons and above maintain an Oil Record Book Part II (“Oil Record Book”) in which is recorded all discharges of water from slop tanks, disposal of oil residue, and any failure of the ODME along with the reasons for the failure. 33 C.F.R. § 151.25(a), (e). Discharges of the contents of cargo and slop tanks must be fully recorded, without delay, in the Oil Record Book by the person in charge of the operations and each completed page of the Oil Record Book shall be signed by the master or other person having charge of the ship. 33 C.F.R. § 151.25(h). The Oil Record Book must also contain entries concerning any emergency, accidental, or other exceptional discharges of oil or oily mixtures including a statement of the circumstances of, and the reasons for, the discharge. 33 C.F.R. § 151.25(g). The Oil Record Book must be maintained onboard the vessel for not fewer than three years, and be readily available for inspection at all reasonable times. MARPOL Annex I, Regulation 36 and 33 C.F.R. § 151.25(i), (k).

9. The Coast Guard, an agency of the U.S. Department of Homeland Security, is charged with enforcing the laws of the United States and is empowered under 14 U.S.C. § 89(a) to board vessels and conduct inspections and investigations of potential violations of international and

United States law, including MARPOL and APPS. In conducting inspections, Coast Guard personnel rely on the statements of the vessel's crew and documents, including information contained in the Oil Record Book. The Coast Guard is specifically authorized to examine the vessel's Oil Record Book 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 in violation of the MARPOL Protocol, APPS, or any applicable federal regulations. 33 C.F.R. § 151.23(a)(3), (c). If the Coast Guard finds evidence that a vessel is not in substantial compliance with the MARPOL Protocol or APPS, it may deny a vessel's entry into a United States port or detain the vessel until it is determined that the vessel does not present an unreasonable threat to the marine environment. 33 C.F.R. §§ 151.07(b), 151.23(b).

10. On or about December 7, 2017, in the Port of Delaware City, Delaware, and within the District of Delaware, and elsewhere, Defendant

NAVIMAX CORPORATION

acting by and through its agents and employees, who were acting within the scope of their agency and employment and at least in part for the intended benefit of Defendant, did knowingly fail and cause the failure to maintain an Oil Record Book for the M/T *NAVE CIELO*.

Specifically, the Defendant maintained and caused to be maintained an Oil Record Book that failed to record: the failure of the ODME; the discharge of oil; and, that the ODME had been operated in manual mode and the reasons for such operation, in violation of Title 33, United States Code, Section 1908(a), Title 33 Code of Federal Regulations, Sections 151.25(c)(11), 151.25(g), and 157.37(a)(6).

COUNT TWO

Obstruction of Justice, 18 U.S.C. §1505

1. Paragraphs 1 through 9 of Count One of this Information are hereby re-alleged and incorporated by reference herein.

2. On or about December 7, 2017, in the Port of Delaware City, Delaware, and within the District of Delaware, and elsewhere, Defendant

NAVIMAX CORPORATION

acting by and through its agents and employees, who were acting within the scope of their agency and employment and at least in part for the intended benefit of Defendant, did corruptly influence, obstruct and impede the due and proper administration of the law under a pending proceeding by the Coast Guard, an agency within the Department of Homeland Security.

Specifically, on December 7, 2017, during a Coast Guard inspection of the *M/T NAVE CIELO* to determine the vessel's compliance with MARPOL and U.S. law, the Defendant:

- a. acting through the ship's Master and Chief Officer, maintained and presented and caused to be maintained and presented a falsified Oil Record Book that was examined and relied upon by Coast Guard personnel, knowing then and there that the Oil Record Book was false and would be examined and relied upon by the Coast Guard;
- b. acting through the ship's Master, maintained and presented and caused to be maintained and presented a falsified Bridge Log Book, in which all significant events occurring aboard the vessel are to be recorded, but which failed to discuss the vessel significantly slowing for several hours on November 3, 2017, so that the crew could clean oil cargo-residue from the side of the ship;

- e. acting through the ship's Master and Chief Officer, maintained and presented and caused to be maintained and presented a falsified record of the vessel's Safety Management System by purposefully refusing to complete and file a checklist for crewmembers working over the side of the vessel on November 3, 2017.

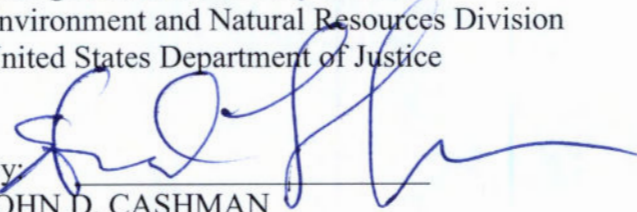
All in violation of Title 18, United States Code, Section 1505.

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By: 
EDMOND FALGOWSKI
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