

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA)
)
 v.)
)
 PORTLINE BULK INTERNATIONAL)
 S.A.,)
)
 Defendant.)

Case No. 2:19-cr-00434

PLEA AGREEMENT

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), this Plea Agreement is made this 26th day of April, 2019, between the United States of America (“Government”) as represented by United States Attorney Sherri Lydon, and Assistant United States Attorney Matt Austin, Environmental Crimes Section Trial Attorney Christopher Hale, and the defendant, Portline Bulk International S.A. (“PORTLINE”), and its attorney, Ryan Gilsenan;

IN CONSIDERATION of the mutual promises made herein, the parties agree as follows:

1. CHARGES. The defendant agrees waive indictment and arraignment, and plead guilty to Count One, Violation of the Act to Prevent Pollution from Ships (“APPS”) for the knowing failure to maintain an accurate the Oil Record Book for the *M/V Achilles* (33 U.S.C. § 1908(a), 18 U.S.C. § 2) and Count Two, Obstruction (18 U.S.C. § 1519), of the Bill of Information in the above-captioned matter.

2. ELEMENTS. In order to sustain its burden of proof, the Government is required to prove the following elements beyond a reasonable doubt:



Count One - APPS Failure to Maintain Oil Record Book

- (a) The vessel in question is 400 gross tons and above;
- (b) The defendant, through the acts and omissions of its agents and employees, who acted, at least in part for the benefit of the defendant, knowingly failed, or caused the failure, to maintain an accurate Oil Record Book; and
- (c) The failure to maintain an accurate Oil Record Book occurred within the navigable waters or a port or place within the District of South Carolina.

Count Two - Obstruction

- (a) Within the District of South Carolina;
- (b) The defendant, through the acts and omissions of its agents and employees, who acted, at least in part for the benefit of the defendant, did knowingly conceal, cover up, and falsify, and make false entries in a record and document; and
- (c) With the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States.

3. MAXIMUM PENALTIES. Pursuant to 18 U.S.C. § 3571(c)(2), (c)(3) & (d), as Defendant PORTLINE is a corporation, the maximum penalty for Counts One and Two, on a per count basis, is a fine of the greater of \$500,000, or twice the gross gain or loss. The defendant is also subject to five years of probation. There is a mandatory special assessment of \$400 per count, which is due at sentencing.

4. FACTUAL BASIS. The defendant, by and through the acts and omissions of its agents and employees, acting within the scope of their agency and employment and with the intent to benefit defendant, voluntarily accepts criminal responsibility for the offenses set forth in Counts One and Two of the Information. The defendant is pleading guilty because it is in fact guilty. The defendant also admits and stipulates that the following joint factual statement (subparagraphs (a)-(g) below) is a true and accurate statement, which provides a sufficient basis for defendant's plea of guilty to Counts One and Two. Defendant agrees and understands that the

factual basis below is not the entirety of the Government's evidence. Defendant further agrees that had this matter proceeded to trial, the following facts would be established beyond a reasonable doubt through competent evidence and testimony:

(a) The *M/V Achilles* (IMO No. 9228021) was a 28,718 gross ton, ocean-going bulk carrier flagged in Malta and owned by a Maltese corporation. The vessel was managed and operated by the defendant, a Portuguese company, Portline Bulk International S.A. See photo of vessel.



Photo 1. *M/V Achilles* anchored in the Port of Charleston, August 2018.

(b) The *M/V Achilles*, like many vessels of its size and age, generated large quantities of water (e.g., from leaks, spills, and condensation) within the machinery spaces of the Engine Room. This wastewater accumulated in the bilges of the ship. In addition to the wastewater, the bilges contained oily wastes and petroleum residues from spills and leaks that eventually flowed down into the bilges. Multiple witnesses onboard the *M/V Achilles* confirmed that liquid within both the bilges and bilge tank were contaminated with visible oil.

(c) Direct discharge of oily bilge water is pollution and is prohibited by the MARPOL treaty and the Act to Prevent Pollution from Ships. In order to legally discharge oily bilge water into the ocean, the crew first needed to have run the effluent through the ship's Oil Water Separator (in order for the resulting discharge to have no more than 15 parts per million of petroleum within the solution). According to the MARPOL treaty, to which both the United States and Malta are parties, all overboard discharges from the vessel's bilges had to be accurately recorded in the *M/V Achilles*'s Oil Record Book, even if those discharges bypassed the Oil Water Separator. Failure to record overboard discharges made via bypassing the Oil Water Separator made the Oil Record Book false and inaccurate. These discharges resulted in oceanic discharges of petroleum in excess of the MARPOL limits. On the *M/V Achilles*, the Chief Engineer would complete and maintain custody of the Oil Record Book, and the Captain of the vessel would sign at the bottom of each completed page on a periodic basis.

(d) Starting at least by April 1, 2017, senior members of the Engine Department, to include the Chief Engineer and Second Engineer, (1) ordered underlings to perform illegal bypasses of the Oil Water Separator, (2) gave authority and consent to ongoing illegal bypasses, or (3) otherwise directly participated in bypassing the vessel's Oil Water Separator in order to unlawfully discharge oily bilge wastes into the ocean. These bypasses were achieved by utilizing a plastic yellow hose that connected the bilge pump manifold to a pipe which subsequently led to an overboard discharge valve. Consistent with common industry parlance, some members of the crew referred to the yellow hose as a "magic pipe" or "magic hose." Due to the sometimes-malfunctioning condition of the bilge pump, the bypass operation utilized the fire pump and the eductor (also known as an ejector). *See* Photos 2 and 3.



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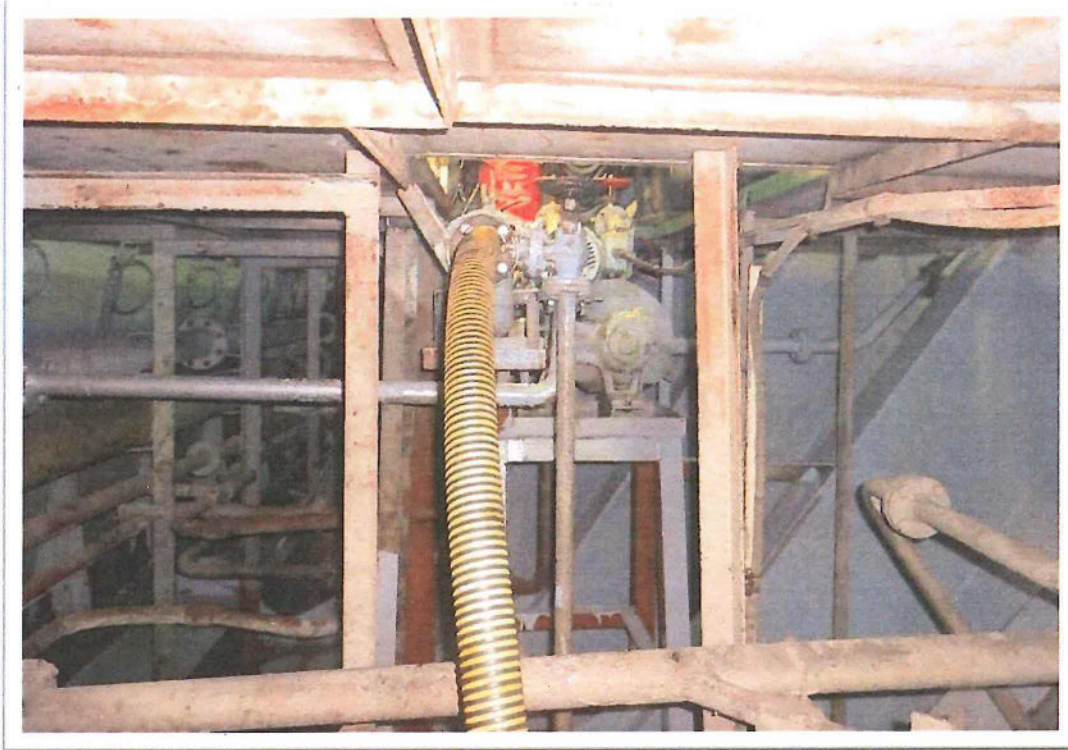


Photo 2. Bypass hose connected to the bilge pump manifold. Input side of magic hose.

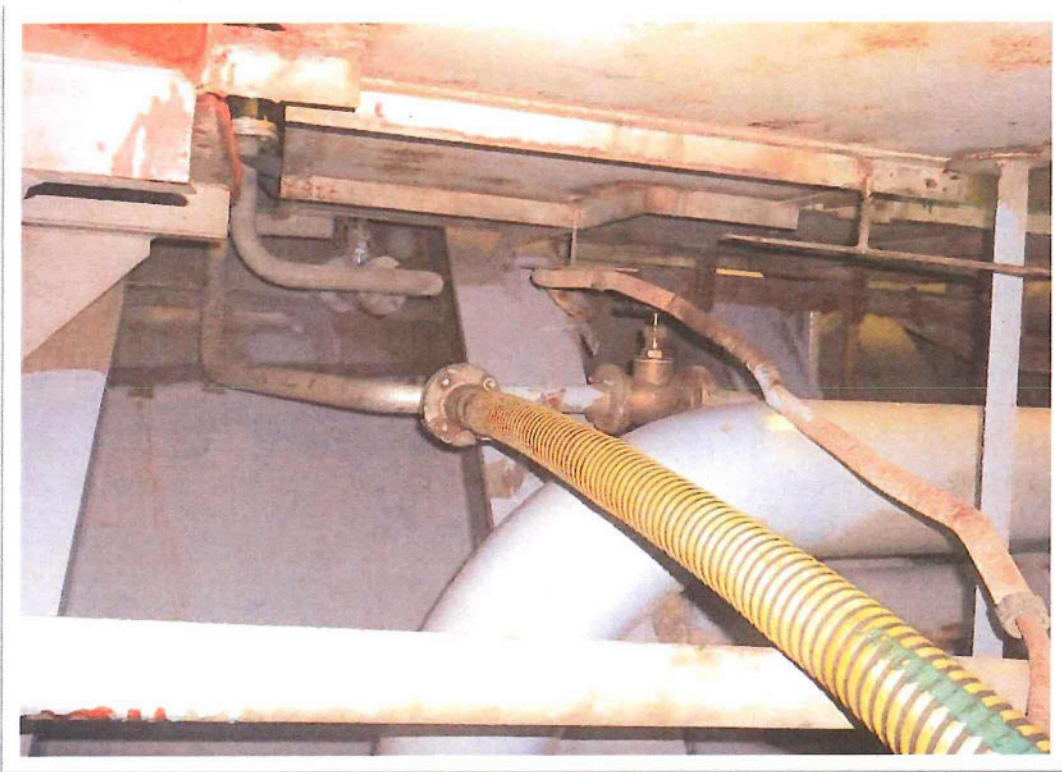


Photo 3. Bypass hose connected to the pipe leading to the eductor. Discharge side.

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(e) The illegal bypass operations took place under the tenures of at least three different Chief Engineers. The frequencies of bypasses varied, but over approximately sixteen months, there were at least forty bypass operations. At times, the bypass frequency was as often as once a week. The practice was to hook up the bypass hose a day or two after the ship left port and leave it connected, under the deck plates, during the oceanic voyage. Before entering a new port, the hose was disconnected and hidden in a storage room.

(f) In order to further conceal the illegal overboard discharges, members of the Engine Department would occasionally run the Oil Water Separator. However, this was simply a ruse, as the Oil Water Separator was not actually processing bilge waste. One crewmember stated that the Oil Water Separator was “for display only, just for show.” Instead, the Oil Water Separator was infused with clean water to simulate a legitimate operation in order to fool the vessel’s electronic monitoring systems, *e.g.*, alarm log and Oil Content Meter. If these electronic monitoring systems were inspected, port authorities would be fooled into believing that the Oil Water Separator was actually being used in accordance with MARPOL. Using the Oil Water Separator in this deceptive fashion also resulted in a false Oil Record Book because the entries corresponding to the use of the Oil Water Separator were false. In addition, the illegal bypasses were not recorded in the Oil Record Book. Further, the bilge tank levels were consistently falsified in the Oil Record Book to cover up the illegal overboard discharges of oily bilge water.

(g) On or about August 3, 2018, the vessel entered the Port of Charleston in the District of South Carolina. The U.S. Coast Guard, an agency of the U.S. Department of Homeland Security, conducted an inspection thereafter, on or about August 14, 2018. That inspection was part of the Coast Guard’s administration of APPS as a Port State Control Authority. As part of the

inspection, the Chief Engineer presented the Coast Guard with the falsified Oil Record Book, which he knew to be false at the time.

5. FORFEITURE. Without prejudice to the collection of any fine or monetary judgment against the defendant, the Government is not seeking the forfeiture of any of the defendant's assets.

6. RESTITUTION. The Parties to this agreement are not aware of any applicable restitution.

7. SENTENCING GUIDELINES. The defendant understands that the Court has the jurisdiction and final authority to impose the sentence. In this Plea Agreement, the parties have agreed and stipulated to specific aspects of the sentence, *e.g.*, criminal fine, length and conditions of probation, and Environmental Compliance Plan. The parties agree that the 2019 U.S. Sentencing Commission Guidelines Manual will be used in this case. The parties further agree that the provisions of Chapter 8 of the Guidelines Manual, which pertain to fines imposed on corporate defendants, such as the defendant, do not apply to environmental or obstruction offenses. *See* USSG §8C2.1 and §8C2.10. The parties agree that the remaining provisions of Chapter 8 of the Guidelines Manual, including probation, apply to the defendant. *See* USSG §8B1.3.

8. PROBATION AND ENVIRONMENTAL COMPLIANCE PLAN. The defendant shall be sentenced to a probation term of four years. In addition to whatever probation conditions might be imposed by the Court, the defendant shall be subject to the following Special Conditions of Probation:

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Special Condition No. 1. At its own expense and at no expense to the Government, the defendant shall implement an Environmental Compliance Plan (“ECP”), attached as Exhibit A, and incorporated herein. The defendant shall fully implement the ECP within 30 days of the date of sentencing.

Special Condition No. 2. Even with a portion the Surety Bond being liquidated to satisfy the criminal fine, the defendant shall fully comply with the otherwise applicable provisions of the August 27, 2018 Agreement on Security between the defendant and the U.S. Coast Guard.

The Government agrees that the if the defendant fully complies with the terms of probation and the ECP for 36 months, that the Government will not oppose a good faith motion on the part of the defendant to modify or shorten the term of probation.

9. FINE. The defendant shall pay a criminal fine of \$1,500,000. The parties further agree that \$1,000,000 of the fine shall be deemed to have been derived from Count One. The parties agree and stipulate that the total fine and this allocation are consistent with the Alternative Fines Act, 18 U.S.C. § 3571(d). The defendant must pay the entire fine within thirty days of sentencing. At the defendant’s election, the defendant may satisfy a portion of the fine by liquidating \$1,000,000 of the Surety Bond referenced in the August 27, 2018 Agreement on Security, also known as the Surety Agreement, with the U.S. Coast Guard. Delays or difficulties associated with the liquidation of the \$1,000,000 portion of the Surety Bond shall not be as basis for delaying full payment of the criminal fine by the 30-day deadline.

10. ALLOCATION OF FINE. The Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a) & (g), provides that fines collected for violations of that statute be utilized for whistleblower awards (in this case \$500,000 is available) and for the Abandoned Seafarers Fund, 46 U.S.C. § 11113. Prior to sentencing, the Government will file a motion regarding specific allocations of the APPS portion of the criminal fine. The defendant agrees that it will not oppose

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or otherwise comment negatively on the Government's motion regarding whistleblowers or other allocations of the APPS fine.

11. APPELLATE AND OTHER WAIVERS. The defendant 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 28 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 affect the rights or obligations of the Government as set forth in 18 U.S.C. § 3742(b). Nor does it limit the Government in its comments in or responses to any post-sentencing matters. 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. PORTLINE hereby waives any claim to any physical evidence, papers, or electronic media in the possession, custody, or control of the Government. The defendant waives any further disclosure or discovery from the Government. PORTLINE 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. 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 it and its agents waive any and all claims against the U.S.

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 Achilles*, including any related surety or security agreement. 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.

12. GOVERNMENT'S OBLIGATIONS. As part of this Agreement and solely because of the promises made by the defendant in this Agreement, the Government agrees not to criminally prosecute the defendant in the District of South Carolina for any of the other offenses set forth in the pending Information or for any other related environmental offenses that are known to the Government at the time of the signing of this Agreement. Defendant understands and agrees that neither this paragraph nor this Agreement limits the prosecuting authority of any other sections or divisions of the Department of Justice, including the U.S. Attorney of any other judicial district, 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 U.S. agencies, licensing, injunctive relief, or remedial action to comply with any applicable regulatory requirement. This Agreement applies only to crimes committed by the defendant and has no effect on any proceedings against any other defendant not expressly mentioned herein, including the actual or potential criminal liability of any individuals.

13. PARTIES BOUND BY THE PLEA AGREEMENT. This Plea Agreement is only binding upon Defendant PORTLINE, and the U.S. Attorney's Office of the District of South Carolina and the Environmental Crimes Section of the Environment and Natural Resources Division of the U.S. Department of Justice.

14. CORPORATE RESOLUTION. Contemporaneous with the execution of this Plea Agreement, the defendant has provided the United States with a corporate resolution, attached hereto as Exhibit B, (a) identifying the corporate representative, (b) authorizing the entry of the guilty plea, including the completion and signing of related exhibits, court forms, and paperwork, (c) acknowledging the financial obligations as to fine and special assessment, (d) pledging to make timely payments under the terms of the Plea Agreement, and (e) warranting that the resolution was in accordance with corporate formalities, company bylaws, and the business organization laws of the country of incorporation.


15. ORGANIZATIONAL CHANGES. The defendant shall not, through a change of name, business reorganization, bankruptcy, insolvency, receivership, sale or purchase of assets, divestiture of assets, or similar action, seek to avoid the obligations and terms set forth in this Plea Agreement. This Agreement, together with all of the obligations and terms hereof, shall inure to the benefit of and shall bind partners, assignees, successors-in-interest, or transferees of the defendant.


16. MERGER AND COMPLETE AGREEMENT. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Plea Agreement supersedes all prior promises, representations and statements of the parties; that this Plea Agreement shall not be binding on any party until the defendant tenders a plea of guilty to the court having jurisdiction over this matter; that this Plea Agreement may be modified only in writing signed by

all parties; and that any and all other promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void.


AGREED AND ACCEPTED BY ALL SIGNATORIES

SHERRI A. LYDON
United States Attorney


By: MATT AUSTIN
Assistant United States Attorney
Date: 5/6/2019


By: CHRISTOPHER L. HALE
Trial Attorney
Environmental Crimes Section
Date: 25 April 2019

On behalf of the Defendant Portline Bulk International S.A., I have been authorized by a corporate resolution to sign this Agreement and bind PORTLINE. PORTLINE has been advised by its attorneys of its rights, of possible defenses, of the applicable Sentencing Guideline provisions, and of the consequences of entering into this Agreement. PORTLINE voluntarily agrees to all of the terms of this Agreement, including the Factual Basis contained herein and the Environmental Compliance Plan


[Name] CRISTINA ALVES
[Title] MANAGING DIRECTOR
Portline Bulk International S.A.
Date 29 APRIL 2019

I am counsel for Portline Bulk International S.A. and I have discussed every part of this Agreement with its authorized representatives. I have fully advised the authorized representatives of PORTLINE of its rights, of possible defenses, of the applicable Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, the decision of PORTLINE to enter into this Agreement is informed and voluntary.


Ryan Gilsenan
Counsel for Defendant
Date 26 APRIL 2019