



MARPOL / APPS Prosecutions in the USA – Keeping Ahead of the Curve



Reports of vessel operators facing prosecution by the US Department of Justice (DoJ) in connection with MARPOL/APPS violations, including the falsification of records, continue to feature prominently in industry media.

Over 10 cases have been reported during 2009 alone, with most culminating in a Plea Agreement (some are still being processed), which subjected the Company to a period of probation (usually 3-4 years) involving the implementation of an Environmental Compliance Plan (ECP), with auditing and oversight by an External Audit Group (EAG), Third Party Auditor (TPA) and Court Appointed Monitor (CAM).

In most cases, the Companies placed under probation have had little or no experience with this sort of scenario. Our experience with these cases has shown that prior exposure to the basic requirements of ECP implementation, as well as an advanced level of familiarity with the various audit regimes while under probation, can provide a significant advantage to companies that may be in a similar situation down the line following a MARPOL/APPS violation. Companies that do not face such an unfortunate turn of events can also enjoy a tangible benefit, as explained in point (4) below.

ECM are extremely well versed with the content and implementation of various Plea Agreements/ECPs, having been appointed by the DoJ and serving in one or more of all three auditor/monitor roles (EAG, TPA and CAM) in over 20 cases, arguably more than any other similar organization in this industry. In addition, we have provided consultancy services to several companies that are not part of any Plea Agreement, which have chosen to have their Environmental Management Systems (EMS) voluntarily reviewed by a third party and evaluated for compliance with a typical ECP and/or other relevant industry standard.



Our experience has shown that companies who have availed of our services could benefit in multiple ways, by:

- 1) Obtaining an objective assessment of their current EMS, with a gap analysis where necessary.
- 2) Enhancing the content and scope of their EMS to match typical ECP standards, which requires considerable focus on machinery spaces, bilge sampling, OWS testing, seals & tagging systems, open reporting, EMS familiarization, etc.
- 3) Utilizing the platform provided by the USCG's Voluntary Disclosure Policy (Section V.5.a) to their benefit, if/when an environmental violation is noted, or even suspected.
- 4) Dissuading ship staff from taking any potential shortcuts, and encouraging them to report any violations (or potential violations) as soon as possible. This (especially the latter) is achieved by stressing upon the nature of punitive and onerous requirements imposed by the DoJ on operators, a lot of which is felt first-hand by the vessels' crew. Other than possible whistleblowers, every single person on board, as well as those involved with the EMS ashore will bear an additional burden due to an ECP being imposed. This does not include the considerable financial burdens companies bear separately, due to the fines levied.
- 5) The degree of familiarity and understanding achieved through such services (by way of office reviews + ship audits) provides companies with a significant head start in the event that they do have to consider entering into a Plea Agreement in the future. It has been seen that companies which have implemented the terms of the ECP as early as possible and demonstrated a unilateral intent to comply with requirements without delay have been successful in shortening the period of their probation.

Our services in this regard vary between training presentations and typical ECP implementation gap analyses. The latter involves an office review/audit (including branch offices, if required) plus shipboard audits aboard select vessels. During the office audit(s) management systems, including documentation as well as management structure and responsibilities, will be closely reviewed and compared with typical ECP requirements [e.g. designation and duties of the Corporate Compliance Manager (CCM), Operations Compliance Officer (OCO), Operational Integrity (OI) Dept., Machinery Space checks, etc]. Recommendations will be made to close any gaps noted during the review. On completion of office and vessel audits, a Report of Findings will be submitted (incorporating these written recommendations) for management to act upon, or use as a reference tool for later implementation and/or training.

Our audit teams and trainers are available on fixed assignment as well as daily rates, depending upon the scope of services. In case you would like more information or a quotation, please contact Michael Minogue or Nishit Kapoor at : ecm@ecmmaritime.com .