



Ship Type: All      Trade Area: USA

## **Bulletin 247 - 05/02 - Oily Water Separator Investigations (Update) - USA**

Further to our earlier bulletin 195 - 06/01, Fowler Rodriguez & Chalos, Counsellors at Law, New York issued a bulletin on May 14<sup>th</sup> 2002. The following is extracted from their bulletin and is particularly relevant to all vessels trading on the US coast:

Since the tragic events of September 11<sup>th</sup>, pursuant to a directive of the Office of Homeland Security, the U.S. Coast Guard has undertaken a comprehensive program of boarding foreign flag-state vessels calling U.S. ports. As a result of the new heightened security measures, there has been a significant increase in the scrutiny in which vessels, and their records/logs, are being inspected. Such scrutiny, rightly or wrongly, has led to a rash of vessel/crew detentions, as well as criminal allegations and charges against vessel Owners, Operators, Managers, Officers and Crew.

Additionally, we have learned that the U.S. Coast Guard has recently established an Oily Water Separation Systems Task Force (OWSSTF) to examine a wide range of issues related to oily water separation equipment and its use on vessels in U.S. waters. Coast Guard personnel and other law enforcement personnel are scrutinizing the use and functionality of oily water separation systems more carefully than ever before, and U.S. authorities have made it clear that they will seek jail sentences for Masters and Chief Engineers of ships committing pollution offences. Many times, even if no pollution incident has occurred, the Coast Guard and U.S. prosecutors, upon the mere "discovery" of flexible hose in the engine room, will commence a Grand Jury investigation seeking to prosecute an alleged illegal by-passing of the oily water separation system and/or the presentation of an Oil Record Book containing "false entries."

### U.S. Government's *Modus Operandi*

Coast Guard investigators and prosecutors appear to have focused their efforts on alleged bypasses of shipboard oily-water separation equipment through the use of flexible hoses and flanges in order to effect illegal overboard discharges. While the U.S. has no jurisdiction over unauthorized discharges by foreign-flag vessels in international waters in violation of MARPOL, it does, indeed, vehemently investigate and prosecute false Oil Record Book entries, obstruction of justice and witness tampering.

### Criminal Sanctions

There is a broad array of criminal sanctions available to the U.S. government in the investigation and prosecution of cases involving a suspected criminal offence. Recently, there has been an exorbitant number of investigations regarding alleged MARPOL and other environmental offences. The United States treats such violations seriously, and has demonstrated that it will spare no expense in the investigation of such matters.

### **Recommendations for Owners/Operators/Managers and Shipboard personnel to avoid and respond to U.S. authorities inspections and criminal investigations**

- 1. Owners/Operators/Managers and Shipboard personnel must, at all times, obey all international and U.S. environmental regulations;***
- 2. As a matter of practice and procedure, all flanges should be removed from any flexible hoses maintained on board vessels, so as to avoid creating wrongful suspicion of an illegal by-pass of the oily-water separation equipment;***
- 3. Blank-off any flanges located at or near the oily-water separating equipment and overboard discharge valves, which may exist as original or modified construction, but are not used as a matter of course;***

4. *All entries in the Oil Record Book must be truthful, and in compliance with MARPOL requirements;*
5. *All shipboard personnel must be truthful and forthcoming during all port state inspections;*
6. *Owners/Operators/Managers must not attempt to influence officers and/or crew as to their discussions with the authorities, other than to insist that the officers and crew are honest and forthright with all authorities; and*
7. *Legal assistance, including criminal counsel, must be engaged as soon as possible in order to assess the situation and provide advice to the Owner/Operators/Managers/ Officers and Crew, including engaging individual counsel for all officers and crew, as necessary and appropriate.*

Source of Information: Fowler Rodriguez & Chalos - <http://www.frc-law.com>  
Through Joseph O'Connor, Thomas Miller (Miami)