

**New Orleans Bar Association Maritime & International Law Committee**  
***Civil and Criminal Liability for Maritime Environmental Offenses***  
Wednesday, September 13, 2017

The New Orleans Bar Association’s Maritime & International Law Committee recently hosted a panel discussion CLE titled *Civil and Criminal Liability for Maritime Environmental Offenses*. The panel was composed of Dan Tadros with Chaffe McCall and Cayce Peterson with The Lambert Firm, and was moderated by Jason Waguespack with Galloway. Dan and Cayce provided unique perspectives from the blue and brown water industries, respectively, and compared and contrasted the similarities and differences from both sides of the bar (defense and plaintiff, respectively).

The discussion focused on government actions against employers and operators in the blue and brown water industries, the events that trigger prosecution, the resulting investigative process, prosecution, and practical considerations for defending and representing those in the government’s cross-hairs or harmed by environmental offenses.

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**How do environmental offenses come to the attention of the federal government?**

First, the panel discussed how the government and the agencies tasked with enforcing environmental offenses are initially made aware of alleged violations. In the “brown-water” context, workers fearing prosecution call the Bureau of Safety and Environmental Enforcement (“BSEE”), which is an agency that has the authority to investigate, levy penalties, and cancel or suspend activities in the area. Employers of workers who alert BSEE to illicit activity typically identify the whistleblower after some time and either dismiss the employee or relocate him or her to a less favorable situation. The employee will then usually file an environmental employment retaliation claim.



**Figure 1: Oil Record Book** (source: <https://officerofthewatch.com/2012/11/27/uscg-and-ows-violations/>)

In the typical “blue-water” situation, a vessel crew member will inform an official from the United States Coast Guard (“USCG”) that the oil-water separation log book has been falsified during the vessel’s routine inspection upon its arrival at port. If the USCG suspects that the vessel has discharged oil overboard anywhere in the world, it will quickly task a 10-15 person team to begin investigating the vessel.

A prudent owner will send a lawyer(s) aboard the vessel to investigate the incident and attempt to speak with the crew as soon as possible. The owner-retained attorney must take special care to make the distinction between representing the owner and representing individual crewmembers, and in many cases separate criminal defense attorneys should be retained to represent the crew.

**What conduct implicates criminal penalties in the United States, and what is the incentive to dump oil at sea when such activity invites the risk of prosecution?**



Figure 2: Oily Water Separator (source: <https://officerofthewatch.com/2012/11/27/uscg-and-ows-violations/>)

- 1) *The crew of a vessel with a large amount of oily water to separate will dump some to meet the ship's schedule.*

Under APPS, only a miniscule 15 parts per million may be dumped from the vessel (approximately twice that amount may be dumped from production platforms). A machine called the Oily Water Separator cleans the water, but the process of separating the oil from the water is both time-consuming and labor-intensive. The crew of a vessel that is carrying a large amount of residue oil may construct a “magic pipe” that bypasses the Oily Water Separator and sends the dirty bilge water over the side.

Vessel owners could stow extra bilge tanks onboard to allow crewmembers to store excess bilge water that they would not be able to run through the Oily Water Separator, but this extra measure is often cost-prohibitive. Instead, owners ensure that the crew is thoroughly trained to avoid polluting.

- 2) *Crewmembers are caught when they present a falsified oil record book to the USCG.*

Presenting a falsified oil record book is most often what triggers civil penalties under the Act to Prevent Pollution from Ships (“APPS”), so it is often the first document the USCG checks when the vessel comes to port. Any hint of suspicious logs in the record book triggers the USCG’s formal investigation of illicit oil-dumping activity.

**Key Takeaway:**

It is paramount that the owner-retained attorney investigate the incident as quickly and efficiently as possible, but not at the expense of treating regulatory officials with professionalism, courtesy, and deference. Positive interactions between the attorney and the government will expedite the release of the vessel and ensure mutual cooperation between the parties for the duration of the process. These officials wield a tremendous amount of discretion in such situations, and their relationship with the attorney can often have a profound impact on the ultimate outcome.

*\*\* For a more comprehensive summary of the topics discussed at this CLE, please contact Amy Gonzales of the New Orleans Bar Association at [agonzales@neworleansbar.org](mailto:agonzales@neworleansbar.org). \*\**