

September 2004

Oily water separators

In many countries it is becoming increasingly common for port state control officers to target the oily water separator (OWS) for close scrutiny when carrying out ship inspections. Indications that the equipment may have been bypassed, tampered with or used incorrectly may result in serious ramifications.

If fresh or chipped paint is found in the vicinity of such equipment the authorities may require pipes to be uncoupled or valves to be dismantled in order to check whether oil is present. Flexible hoses, even if disconnected, may generate similar suspicions if deemed to be capable of circumventing the OWS. In addition, inspectors are generally wise to the fact that older OWS units may be deceived by flushing clean water past the sensors. Waste oil disposal and incinerator records may also be examined to determine whether or not they correspond with the declared operation of the OWS.

Although negative findings may result in serious consequences anywhere in the world, the United States is particularly robust in its response to OWS violations. In addition to civil penalties, shipping companies may face criminal prosecution and individuals on board the ship and in the office ashore may also be charged. United States law also provides for large whistle blower awards in certain instances, presenting shipboard personnel with a significant incentive to report OWS misconduct. Therefore, although the recommendations outlined in this Bulletin relate to OWS issues in general, the situation in the United States is considered at length.

Penalties

If an illegal discharge of oil is believed to have taken place within US waters, there are several options open to the prosecutors. Under the Act to Prevent Pollution from Ships, a deliberate breach of MARPOL by an individual is punishable by a term of imprisonment of up to 10 years and a fine not exceeding \$250,000. Companies may be fined up to \$500,000 and the vessel may be sold to meet any penalty imposed.

The intentional or negligent discharge of oil in territorial seas may also lead to prosecution under the Clean Water Act which provides for up to 5 years imprisonment for failing to report such an event. In addition, senior managers who ought to have known of a violation or who could have and should have taken steps to prevent such an occurrence may be held criminally liable under the Responsible Corporate Officer Doctrine.

If it is believed that the Oil Record Book (ORB) contains fabricated information, criminal charges may be brought under the False Statements Act irrespective of whether the vessel was within or outside US territorial waters at the time of the alleged wrongdoing. Many indictments have been based on this premise. Other charges which have been brought in the past include witness tampering, supplying government representatives with false information (obstruction) and conspiracy. Conviction for any of these offences may lead to a substantial fine and/or a prison sentence for shipboard personnel and even shore staff.

Recent Examples

OWS violations relating to passenger vessels have been well publicised, but cases involving cargo ships have not always been promulgated to the same extent. The following examples represent some, but by no means all, of the prosecutions and convictions resulting from OWS and/or ORB offences in the United States in recent years:

- US Coast Guard officers in Longview, Washington boarded a bulk carrier after being advised by the Canadian Royal Air Force that an oil sheen had been seen in the vicinity of the vessel a few days earlier. Hoses which may have been used to bypass the OWS were found. The Chief Engineer subsequently acknowledged that oily water had been pumped overboard and that false entries had been made in the ORB. He was sentenced to twelve months imprisonment (2002).

- Acting on advice from a former crewmember, US government officials boarded a car carrier in Portland, Oregon and discovered a flexible hose which had been used to bypass the OWS. Furthermore, the overboard discharge valve was found to have been freshly painted in the area where the bypass hose had been disconnected. The First Assistant Engineer, the officer responsible for the disposal of waste oil, initially denied all knowledge of the arrangement. However, he was charged with making a false statement and was detained in Portland for six months pending a hearing at which he pleaded guilty. The officer was sentenced to two years on probation. The ship's Chief Engineer, who was prosecuted for falsifying the ORB, was imprisoned for three months (2002).
- Following the discovery of ORB discrepancies aboard a bulk carrier in Vancouver, Washington, the Chief Engineer admitted that he had instructed crewmembers to discharge oily water into the sea via a bypass hose. The shipowner was ordered to pay a criminal fine of \$750,000, was required to implement a comprehensive environmental compliance plan and received a sentence of four years on probation (2003).
- US Coast Guard officers attended a vessel in Kalama, Washington to carry out a routine port state control inspection. A flexible hose with a flange at each end was found in the vicinity of the OWS, and chipped paint was observed on nearby joints and in the region of the overboard discharge valve. The inspectors also concluded that the ship's incinerator was incapable of burning all of the oil sludge produced each day in spite of entries in the ORB to the contrary. The shipowner entered into a plea agreement amounting to a criminal fine of \$200,000, a requirement to develop an environmental compliance plan for its entire fleet, the payment of \$50,000 into an escrow account to fund the implementation and monitoring of the compliance plan and three years on probation (2003).
- A large shipping company pleaded guilty to seven criminal charges regarding the falsification of records and the concealment of evidence by one of its ships while calling at various ports in California and Washington. If the plea agreement is approved, the company will be required to pay a fine of \$3.5 million, develop a comprehensive environmental compliance plan for its fleet and serve four years on probation. The charges were brought after the Second Engineer admitted instructing other crewmembers to bypass the OWS by using a flexible pipe assembled on board and to paint the fittings after disconnection. The officer was sentenced to 30 days in custody plus two years of supervised release (2004).
- During a routine inspection of a bulk carrier in Portland, Oregon, a US Coast Guard officer found a pipe running between the OWS and the overboard discharge valve to be caked with oil sludge. It also became evident that the ship's incinerator had not been used as often as stated. During the investigation the Chief Engineer confirmed that the OWS had been bypassed and that improper records had been maintained, and was sentenced to one month in prison. The company subsequently pleaded guilty to four felonies arising from this incident and was fined \$2 million (2004).

Safeguards

Clearly, MARPOL requirements should be strictly observed at all times. It should also be recognised that minor oversights, documentary errors or unusual piping arrangements may result in close scrutiny by port state control officers in any jurisdiction, not just the USA. Given the possibility of costly fines and, in certain countries, the prospect of criminal penalties, the following recommendations may minimise exposure to such risks:

- The Oil Record Book must be completed with care. The same applies to the ship's incinerator records. Entries should always be scrupulously accurate and completely up to date, and all receipts regarding the disposal of sludge and oily water should be retained. Such details may be examined by port state control officers to ascertain whether the records concur with the operation and capability of the OWS and other equipment.
- Company Safety Management Systems and standing orders should be reviewed to ensure that OWS operating procedures and responsibilities are stated clearly.
- Ships' personnel responsible for operating the OWS and the incinerator should be mindful that they may be questioned by port state control officers to establish the extent of their knowledge. Evidence of unfamiliarity may be regarded as suspicious.
- Efforts should be made to dispose of any flexible hoses which might be construed as being capable of bypassing the OWS, particularly if fitted with a flange at each end.
- The OWS Oil Content Monitor should be calibrated regularly in accordance with manufacturers' recommendations. Test results should always be documented and all calibration records should be maintained with care.
- Engine room pipelines, particularly lines connected directly or indirectly to the overboard discharge valve, should be compared with the relevant plans. If any discrepancies are found, checks should be made to verify that the arrangements comply with current statutory and classification society requirements prior to updating the drawings. It is worth noting that some companies require their vessels to paint all lines connected to the OWS in a distinctive colour to facilitate the examination of the system.
- Redundant pipelines linked to the OWS or the overboard discharge valve should either be removed permanently or cleaned internally and blanked off.
- Valves which normally remain shut (eg overboard discharge, emergency bilge) may be secured in the closed position with a seal marked with a unique serial number. The number and location of each seal and the date it was applied may be recorded in the ORB and the engine room log thereafter. The information may also be forwarded to the company for monitoring purposes.
- Officers should be aware that signs of fresh paint or new or recently turned bolts may be regarded as suspect. If pipes and valves are opened for inspection or maintenance, all particulars including details of any repainting should be recorded in full and retained on board.

- Superintendents should pay close attention to the OWS and the ORB when making ship visits. Any apparent lapses should be discussed with the Master and Chief Engineer and rectified. Additional checks may be made during ISM internal audits.
- Ships' personnel should always be honest when answering questions asked during port state control inspections, and shore management should never attempt to influence their replies. Acting against this advice may exacerbate the consequences if contradictory evidence is subsequently found.

Important

In countries such as the United States where negative findings regarding the OWS and/or the ORB may lead to both civil and criminal action, it is imperative that the Club or the local P&I correspondent is notified immediately so that legal representation may be arranged without delay. Ships' personnel should not provide statements or agree to be interviewed by the authorities unless advised to do so by the lawyer(s) appointed to act for the vessel.

Even if the evidence is circumstantial or if it appears that incorrect conclusions have been drawn, the Master should not hesitate to involve the Club from the outset.

Members should also be aware that any fine or penalty imposed may not be covered by the Club if the discharge of oil was not accidental or if the Member disregarded or failed to take reasonable steps to prevent the incident or activity leading to the imposition of a fine.