

What Ship Owners Need to Know About... Operational Oil Discharges

Pollution and the preservation of the environment are big concerns for the shipping industry. A growing number of new environmental regulations are being considered and enacted by a number of countries, particularly the United States, Canada and the European Union.

U.S.A.

Clean Water Act

The Clean Water Act requires ***that any spill or discharge that results in a sheen on the navigable waters in the contiguous zone*** (24 nautical miles from baseline) of the United States, ***be immediately reported*** to the National Response Center by telephone (1-800-424-8802) or other means.

Oil Pollution Act of 1990 (OPA '90)

The OPA'90 established limits of liability for cleanup costs and damages to be paid by responsible parties in oil spills. However, because of the availability of strict liability criminal sanctions as well as criminal sanctions for simple negligence under United States laws for spills in United States navigable waters, ***vessel crewmembers and corporate officers of corporations that own or operate vessels face potential criminal liability for practically any oil spill. This is true even when the spill is small or the resulting environmental damage is minor.***

Polluters pay. The responsible party (the owner, operator or charterer of a vessel) must pay for the cleanup within certain liability caps. Parties that fail to notify the proper authorities of a spill are now subject to greater fines and longer prison terms. Civil penalties have also been toughened, with the owner of a vessel or facility that discharges oil or a hazardous substance liable for up to \$25,000 a day in fines.

National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Vessels (Dec. 18, 2008)

The NPDES Vessel General Permit is issued pursuant to EPA's authority to issue permits under Clean Water Act Section 402. Clean Water Act Section 402 and its implementing regulations contain standards that govern EPA's imposition of NPDES permit conditions.

The regulations cover 26 separate types of discharges-including some never before covered. Vessel owner/operators often use lubricants to maintain the functionality and structure of equipment such as wire rope and other mechanical equipment. As a requirement of this permit, vessel owner/operators must apply lubricants and maintain all seals so that discharges do not result in a visible sheen or are otherwise harmful.

They create new reporting requirements and carry "extensive" civil and criminal penalties for violations, including jail time. Violations can carry "extensive" civil and criminal penalties. These may include fines of up to \$37,500 a day for each violation per vessel. Some violations carry jail sentences and could lead to debarment from federal contracts.

Penalties resulting from violations of federal, state or local environment laws in the United States come in many forms – ***criminal (such as fines or jail terms), civil (such as civil and judicial penalties) and administrative (such as loss of government contracts or permits).*** Additionally, there can be other adverse reactions such as ***bad public relations or insurance problems.***

Environmental enforcement remains one of the few areas in which government resources continue to GROW rapidly. Strict liability criminal statutes in the US applying to a large number of oil spills and other vessel source pollution incidents greatly increases the risk of potential criminal liability for these incidents. Even when environmental statutes require that the government prove intent or negligence in criminal prosecutions, the standard of intent or negligence is minimal.

Sources

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www.marisec.org/pubs/pubslst.htm

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Canada

In Canada, when an oil slick is detected within the Canadian 200-mile exclusive economic zone and a ship is suspected of being the source of the slick, MARPOL can be enforced. Under current Canadian legislation, oil polluters can be charged under the Canada Shipping Act (CSA), the Migratory Bird Convention Act (MBCA), the Canadian Environmental Protection Act (CEPA), and the Fisheries Act (FA). Dozens of reports concerning offshore oil pollution are received by Transport Canada and Environment Canada every year. Enforcement officers and pollution prevention officers (PPOs) are empowered to turn a ship back to any port to allow further investigation, and to detain the ship once it arrives in port.

The new Bill C-15 raised the maximum fines in the MBCA for illegal releases of harmful substances into areas frequented by migratory birds from \$100 000 to \$300 000 for a summary conviction and from \$250,000 to \$1,000,000 for an indictable offence.

TABLE 2: REGIME OF MAXIMUM FINES UNDER CANADIAN LEGISLATION FOR ILLEGAL DISCHARGES OF OIL AT SEA

ACT	OFFENCE	SUMMARY CONVICTION	INDICTABLE OFFENCE
CSA	poor shipping practice	\$250,000 and/or up to 6 months in prison	\$1 million and/or up to 3 years in prison
CEPA	dumping of any substance unless permitted by law	\$250,000 and/or up to 6 months in prison	\$1 million and/or up to 3 years in prison
FA	altering, disrupting, or destroying of fish habitat, discharging of deleterious substance in water frequented by fish	\$300,000 and/or up to 6 months in prison for subsequent offences	\$1 million and/or up to 3 years in prison for subsequent offences
MBCA	depositing of oil or oily wastes in any waters frequented by migratory birds	<ul style="list-style-type: none">• \$100,000/day/bird for a corporation, plus amount of benefits due to commission of the offence• \$50,000/day/bird for an individual and/or 6 months in prison, plus amount of benefits due to commission of the offence• double for subsequent offences	<ul style="list-style-type: none">• \$250,000/day/bird for a corporation, plus amount of benefits due to commission of the offence• \$100,000/day/bird for an individual and/or 5 years in prison, plus amount of benefits due to commission of the offence• double for subsequent offences

EU member states

International laws require enforcement:

1) MARPOL ANNEX 1

2) The European Union Directive on “Ship Source Pollution” [EU/2005/35]

- **The EU parliament claimed “that member states shall take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest”**
- **The OSPAR Commission called to “move towards the target of cessation of discharges, emissions and losses of hazardous substances by the year 2020.**

Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements addresses the punitive side of non-compliance with MARPOL. It reproduces the MARPOL standards and provides that any intentional or seriously negligent infringement of those standards, whether in the coastal waters of the Member States or on the high seas, shall be effectively dealt with by EU Member States. (Marpol 73/78 discharge regulations relating to discharges of oil and noxious liquid substances, as referred to in Article 2.2).

MARPOL 73/78 legally recognized that certain sea areas have particular oceanographic and ecological characteristics, as well as conditions of sea traffic, that make them particularly vulnerable to ship-source pollution and that therefore warrant a need for a higher level of protection. The Convention therefore introduced a special regime applicable to Special Areas (including Mediterranean sea, Baltic sea, Black sea and Northwest European waters), wherein more stringent standards would apply to the discharge of substances regulated in the different Annexes. In Special Areas under Annex I all discharges of oil or oily mixtures are by and large prohibited to almost undetectable levels, except for minor and well-defined exceptions (safety of life emergencies). All ships operating in the Special Areas have to be fitted with special equipment (e.g., oil separation equipment or filters), and must retain oil residues that cannot be discharged into the sea or discharge these residues at designated port reception facilities.

By requiring EU Member States to implement effective, proportionate and dissuasive penalties for infringements of the MARPOL rules, the Directive provides an additional disincentive for ship operators and others to pollute the seas. Directive 2005/35/EC also calls for the development of an information system to ensure its effective implementation, and for common practices and guidelines for the monitoring and early identification of ships engaged in unlawful discharges.

The European Union and its Member States are continuously monitoring European coastal waters with the objective of spotting pollution incidents and identifying the polluters. The monitoring is done by using surface vessels, surveillance aircraft and remote sensing satellites. These capabilities are improving all the time, although much still needs to be done before they are able to provide a fully comprehensive, consistent and reliable picture of pollution in EU waters. Via Directive 2005/35/EC, EMSA is involved in the development of technical solutions and in the provision of technical assistance in relation to the implementation of the Directive. This includes actions such as tracing discharges by satellite monitoring, and the EMSA CleanSeaNet system now supplies satellite images and information on pollution to Member States. CleanSeaNet has become an important part of the pollution monitoring network and is continually improving its capabilities.

Source:

Kees (C.J.) Camphuysen. Royal Netherlands Institute for Sea Research, *Chronic oil pollution in Europe*. www.ifaw.org

OSPAR Convention

OSPAR is the mechanism by which fifteen Governments of the western coasts and catchments of Europe, together with the European Community, cooperate to protect the marine environment of the North-East Atlantic. The fifteen Governments are Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom.

The polluter pays principle is one of the central guiding principles of the OSPAR Convention and requires that the costs of pollution prevention, control and reduction measures must be borne by the polluter. The polluter pays principle is mainly implemented by means of command-and-control approaches but can also be applied via market-based mechanisms, e.g. for the development and introduction of environmentally sound technologies and products.

Recognised by the ministerial North Sea Conferences in 1984, the polluter pays principle was included in the 1992 OSPAR Convention. Internationally the polluter pays principle was introduced in the 1970s by the Organisation for Economic Co-operation and Development (OECD) and reaffirmed globally in the 1992 Rio Declaration on Environment and Development.

Source: www.ospar.org

France enacts pollution penalties

OWNERS who pollute off France could now go to prison, under legislation approved today.

The legislation would crack down on pollution with fines of up to €15M (\$23.9M) and prison sentences of up to a decade.

The tough anti-pollution penalties are part of a new environment responsibility law that was approved by French senators on 10 July 2008. Its adoption by the French lower house today brings the law into affect. It introduces the notion of 'grave negligence' for involuntary acts of pollution and allows French authorities to file civil law suits against owners found guilty of pollution.

France's opposition Socialists and greens voted against the law, which they said fails to provide a system of financial guarantees to ensure compensation payments for victims of pollution.

The idea is to dissuade lax procedures by hitting "the wallet of polluters" with fines, justice minister Rachida Dati said in Brest on Friday.

The law reflects European Union directive 2004/35/CE in drawing up a new range of fines and sanctions for polluters. Tankers and oil rigs found guilty of voluntary pollution would face maximum fines.

Fairplay Daily News - 22 Jul 2008

Oil discharge clamp-down

A concerted inspection campaign aimed at stamping out illegal oil discharge from vessels is to be launched by the Paris and Tokyo MOUs at the start of next month.

The MOU's twenty two member states are set to clamp down on the small scale oil pollution created by factors such as illegal overboard connections. For a period of three months, each port state control inspection in the Paris MOU region will involve a concentrated analysis of oil filtering equipment and record keeping. The campaign will run until 30 April.

Members of the Paris MOU said today previous inspections had revealed "regular" abuses such as overboard connections from sludge tanks, and illegal by-passes of oil filtering systems. Some 3,646 breaches of MARPOL Annex 1, which covers oil-filter equipment, were found in 2004. The MOU expects to carry out 4,500 inspections as part of the concentrated campaign.

Port State Control officers will use a checklist of 13 items when making the inspections. These will include inspection of discharge to reception facilities; illegal by-passes or connections; the ship's sludge capacity in relation to its intended voyage, and alarm functions on filtering systems.

If deficiencies are found, officers will extend the inspection to other areas of MARPOL, including the crew's operational performance.

At worst the ship could be detained in port until all deficiencies are corrected.

A similar campaign is now being planned for 2007 focusing on ISM-related deficiencies.

By [Liz Shuker](#) in London, *Tradewinds Daily News*

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