

## Court Upholds Coast Guard's Broad Authority Over Foreign Tank Vessels in U.S. Waters



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On March 27, 2013, in *Wilmina Shipping AS v. U.S. Dept' of Homeland Security*, the U.S. District Court for the District of Columbia upheld the Coast Guard's broad authority to revoke a tank vessel's Certificate of Compliance, a certificate needed by tank vessels to enter ports in the U.S. Although the court went on to reject the Coast Guard's assertion that it has authority to ban a ship for a term of years, it also held that the Coast Guard had broad discretion to set conditions for the reinstatement of a revoked Certificate of Compliance. The case arose when a whistleblower on the MT WILMINA alleged that the engineers onboard had used a bypass hose to carry out an illegal discharge of oily waste from the ship. Although the government initially started a criminal investigation into the allegations, that process came to an abrupt halt when the whistleblower was found to have downloaded child pornography on his cell phone along with the video of the alleged bypass. With the collapse of the potential criminal case, the Coast Guard acted on its own to punish the allegedly wrongful conduct by ordering the vessel banned from the U.S. for a period of three years, or until the vessel owner implemented an approved Environmental Compliance Plan and accomplished one year of successful audits.

In addition to challenging the Coast Guard's authority to ban ships from U.S. waters, the Plaintiffs also argued that the Coast Guard had violated their due process rights under the Fifth Amendment by failing to provide adequate notice and a pre-revocation hearing. While the court found that Plaintiffs have a constitutionally protected property interest in the Certificate of Compliance, it went on to hold that the combination of various layers of administrative appeal and a post-deprivation hearing provided sufficient opportunity to challenge the Coast Guard's actions. The court paid little heed to the Plaintiffs' underlying contention that they should have the right to examine the witnesses prior to their vessel being banned from the U.S. The next step in the litigation will address the Plaintiffs' substantive challenges to the Coast Guard's actions. The Plaintiffs have complained that the Coast Guard's actions were arbitrary and capricious, and not supported by the record. That standard of review is a narrow one, under which the court will uphold the Coast Guard actions unless the Plaintiffs can show that the agency failed to consider the relevant evidence or to articulate a satisfactory explanation for its actions, including a rational connection between the facts found and the decisions made. A copy of the court's opinion is attached.

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