

Egyptian Company Sentenced to \$7.25 Million Fine, Four Year Probation



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On April 29, 2008, the U.S. District Court for the District of Washington sentenced the National Navigation Company to a fine of \$7.25 million for 15 counts of MARPOL violations and false statements, resulting from an investigation of six vessels in three U.S. judicial districts. The sentence also included a comprehensive and intrusive environmental compliance plan and a term of probation of four years. NNC, an Egyptian bulk carrier company, agreed to plead guilty within two weeks after the charges were filed, and the speed with which the company cooperated with investigators and accepted responsibility for the offenses was cited by the prosecutors as a key reason why the fine was not substantially higher. *A copy of the indictment is attached.*

The charges stemmed information learned by the Coast Guard during a routine inspection onboard one of the NNC ships that began on November 19, 2007. During that inspection, the inspectors discovered that the ship's engineers had been routinely discharging oily sludge and oily bilge water through the use of bypass hoses. The investigation that followed expanded to uncover evidence of intentional, unlawful discharges on six NNC ships. Although the company had an explicit policy forbidding such actions and the engineers were aware that it was wrongful, and although some engineers complied with MARPOL, several others did not follow MARPOL regulations as a matter of practice. The investigators also found that NNC's shoreside management had failed to exercise sufficient supervision and management over the fleet, thereby failing to detect and deter those criminal violations by the company's employees.

As has become common in these cases, the crew initially attempted to hide the unlawful discharges by making false oil record book entries and lying to government officials. However, once NNC became aware of the scope of the environmental compliance problem in its fleet and shoreside offices, it acted quickly to mitigate the consequences. The company quickly accepting responsibility for the wrongful conduct, agreed to cooperate with government investigators, directed employees to be truthful and cooperative, and removed crewmembers and made them available for testimony.

Following the investigation, the government filed criminal charges against NNC in Louisiana and Washington on March 25, 2008, and in Oregon on March 28. By April 7, NNC had reached agreement with the government on a plea agreement, and on April 29, 2008, the court accepted NNC's plea and imposed sentence. Notably, the prosecutors stated in their sentencing submission to the court that "but for Defendant's timely acceptance of

responsibility and cooperation in the government's investigation, the United States would have sought a substantially larger criminal fine, additional criminal counts of conviction and a longer term of probation."

Nevertheless, in addition to the fine, the court also imposed a stringent Environmental Compliance Plan as a condition of the company's probation. Among other things, the Environmental Compliance Plan will require NNC to:

“ •designate a senior corporate official as the “Corporate Compliance Manager” with full access to the company president and board of directors, with the responsibility and authority to oversee the company's environmental compliance programs; •establish an “Operational Integrity Department” to conduct regular audits and investigate reports of non-compliance; •fully implement an “Environmental Management System,” including policy development, training, evaluation, and improvement; •provide a system for receiving anonymous reports of non-compliance and investigating all reports received through the system; •pay for a court-appointed monitor, and staff, to report on the company's compliance throughout the probation period; •engage and pay for an “External Audit Group” to conduct a series of exceptionally rigorous audits of all company vessels, including underway observations and testing; and to also audit all company shoreside facilities; •engage a “Third Party Auditor” to conduct final audits towards the end of the probation period; •report all discrepancies and observed violations to the probation office; •comply with certain environmental compliance technical requirements, including environmental tags and piping markings; •provide regular samples from oily waste and bilge tanks for testing to verify that such fluids can be processed by the OWS equipment; •participate in research and testing of prototype equipment for managing oily wastes; •develop, test and install an “Environmental Logging System” intended to record various discharge related actions, such as valve movements, oil content readings, tank levels, incinerator operation, and other data; •maintain additional record books; •provide extensive crew and shoreside staff training; and •conduct engineering surveys; ”

The entering of a plea agreement in less than two weeks after the filing of charges, and sentencing just three weeks later appears to be a record for the rapid prosecution and sentencing for MARPOL offenses in the U.S. Notably, the prosecutors seem to have reacted to the uncertainty created by earlier opinions in the *U.S. v. Jho* matter by charging not only MARPOL violations under the Act for the Prevention of Pollution from Ships, but also charging the company with false statements under 28 USC 1001.

The **Joint Statement of Facts** and the **Environmental Compliance Plan** make for interesting reading.

3 Min Read

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