

## D.C. Court Holds Coast Guard MARPOL Security Agreements Are Unreviewable

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On July 18, 2014, the U.S. District Court for the District of Columbia dismissed a challenge to the U.S. Coast Guard's authority to impose non-financial departure conditions on a foreign-flagged vessel detained for suspected pollution offenses, finding that such disputes are nonjusticiable under the Administrative Procedure Act.

Plaintiff Watervale Marine Co. was the owner and operator of four foreign-flagged vessels that the Coast Guard detained at various U.S. ports for suspected MARPOL-related violations. As has become standard practice in such cases, the Coast Guard required as a condition of releasing the vessels from detention that the plaintiffs file a security bond and execute a Security Agreement that imposed several non-monetary requirements on Watervale, such as paying crew wages, housing, and transportation costs associated with the detention of crew members in the U.S.; encouraging the crew to cooperate with criminal investigators; assisting the government to serve subpoenas on foreign crew members located outside of the U.S.; waiving objections to jurisdiction; entering an appearance in federal district court; and other obligations.

Watervale complained that the Coast Guard lacked statutory authority to impose such non-financial conditions for vessel clearance. However, the court noted that the governing statute lacks any statutory standard by which a court could assess the circumstances under which the Coast Guard may (or may not) grant departure clearance in such cases. Accordingly, the court held that the actions of the Coast Guard in imposing Security Agreements with non-monetary conditions is a matter "committed to agency discretion by law."

The decision in *Watervale Marine Co. v. U.S. Dep't of Homeland Security* is consistent with other judicial decisions concluding the Coast Guard has broad authority to detain vessels suspected of MARPOL-related violations and to impose non-monetary conditions on the clearance of detained vessels. The court did leave open the possibility of challenges based on constitutional grounds, such as the right to due process, or the rights against self-incrimination or unreasonable search and seizure. However, the court did not find that any of the Coast Guard's usual Security Agreement conditions violated such constitutional protections, so the likelihood of any meaningful relief in the near future seems unlikely.

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Washington, DC

## Related Topics

MARPOL

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Maritime & Admiralty

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