

DOJ Reaffirms, Expands Vessel Pollution Initiative



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At a recent presentation in Washington, D.C., prosecutors from the U.S. Department of Justice Environmental Crimes Section reaffirmed the DOJ Vessel Pollution Initiative and signaled that the program would expand into new areas of vessel pollution, including air emissions and ballast water.

DOJ To Stay the Course On Vessel Pollution

Stacey Mitchell, the new head of the Environmental Crimes Section, emphasized the following points:

- the vessel and worker safety prosecution initiatives are continuing;
- environmental crimes and worker safety issues are related;
- therefore, the DOJ has targeted corporations that chronically violate safety and environmental statutes;
- the DOJ vessel pollution initiative has continued to grow.

According to Mitchell, this is just the beginning—“just the tip of the iceberg”—and DOJ will stay the course.

Midnight Dumpers

DOJ prosecutor Greg F. Linsin expressed his surprise that vessel oil pollution cases are continuing after all these years of aggressive prosecution. He likened shipowners to the notorious “midnight dumpers” of the early days of the Clean Water Act. He noted a persistent trend to continue the misconduct and to conceal it when the vessels call in the United States.

He revealed that on an almost weekly basis the DOJ receives new cases. He opined that this demonstrates an “epidemic” of violations. He underscored that what is really going on here is not merely recordkeeping violations, but rather the intentional disabling of the pollution prevention equipment. He described the misconduct as a “failure” of the international compliance system. According to Linsin, since 1998 the program has resulted in penalties totaling \$200 million in monetary penalties criminally and over 23 years of incarceration.

Linsin disclosed that the DOJ has concluded that the commercial shipping industry compares unfavorably to U.S. shore-based companies. That is, in the world of law enforcement, the shipping industry has emerged as a hard case that just hasn't gotten the message. This is a clear signal to the industry that DOJ will redouble its efforts to sanction the unlawful conduct.

Shoreside Management Failures Cited

Linsin pointed to what he described as the absence in some shipping companies of waste stream management and failures to invest in adequate technology. After years of prominent convictions, the DOJ considers the recurring violations demonstrative of a failure of shoreside management accountability. He said that DOJ believes that explicitly or implicitly the violations flow from management decisions to save money. Citing the Rick Stickle case where the Chairman/CEO and other high-ranking company officers were convicted of Marpol violations, the DOJ believes that the case illustrates how management tried to avoid paying \$156,000 to dispose of waste properly.

International Cooperation and Enforcement Expansion Promised

According to DOJ, it has encouraged improved coordination and cooperation in inspections, information-sharing, training, and investigations involving multiple agencies in the United States and abroad. Of course, the OSG conviction illustrates this because the initial referral came from Canadian authorities who found irregularities in vessel records. This kind of international cooperation will likely become a hallmark of future prosecutions as other port states realize that they have been hoodwinked.

Looking ahead, Linsin confirmed that Marpol Annex VI and ballast water discharges represent new areas for environmental enforcement. The same misconduct involving false records and false statements that have provided the basis for prosecutions in the United States can be applied equally as well to these new environmental regimes. This public statement by DOJ serves as a warning and underscores the critical importance for all shipping companies to aggressively train their personnel to not create false records and to not lie to officials, especially in the United States. The simple fact is that it is the lying that provides the basis for these prosecutions and without the lying, the United States would have no jurisdiction over the alleged environmental crimes unless they occurred in the waters of the United States.

DOJ Rejects Criticism of Industry's Defenders

At the presentation by DOJ, its tactics came under fierce attack by criminal defense lawyers. They criticized intimidation and deception of the seafarers by the Coast Guard, the whistleblower reward provision of the Act to Prevent Pollution from Ships (APPS), the detention of foreign seamen in the United States for many months, and the failure to abide by the Law of the Sea Convention, which does not permit incarceration.

Linsin rejected the critique. He said DOJ must keep the crew in the United States because once seafarers depart, DOJ will not likely see them again. And, he blamed defense counsel for investigative delays.

Conclusion

After a decade of high-profile prosecutions, both DOJ and the industry's defenders reflect heightened frustration at the alleged misdeeds of the industry and DOJ's prosecution tactics. Given its remarkable record of success, however, DOJ will not reverse course. Rather, its public position manifests determination to expand the vessel initiative beyond oil discharges. Whether or not the complaints of critics have merit, the new reality is that shipping companies must take aggressive affirmative steps to verify compliance and train their personnel not to lie. Otherwise, they needlessly run the risk of being caught in the enforcement net.

3 Min Read

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