

NEWS

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Government Reaches Novel Plea Agreement with Maritime Corporation in Vessel Pollution Case

Clipper Marine Services Agrees to Pay \$4.75 Million Fine, Retrofit Ships and Implement Remote-Monitoring System

(More)

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NEWARK – In a case involving illegal discharges of oily waste from an ocean-going vessel that entered Port Newark in June 2006, a federal judge in Newark accepted a plea agreement today between the government and Clipper Marine Services A/S, a Danish company, U.S. Attorney Christopher J. Christie announced.

In addition to making a total monetary payment of \$4.75 million, the company has agreed to retrofit certain ships with state-of-the-art oily water separators and implement a pilot program involving a cutting-edge real-time remote monitoring system to track oil waste levels and the usage of oil waste processing equipment on board five of its ships.

Of the \$4.75 million, \$1.5 million is being directed to the National Fish and Wildlife Foundation, to which the U.S. Attorney's Office has directed other such community service payments in environmental cases prosecuted in the District of New Jersey.

Clipper Marine Services was indicted along with two related companies on March 20, 2007, in connection with an attempt by crew members of the *M/T Clipper Trojan* to cover up illegal discharges of oily waste in international waters.

In a plea entered today in U.S. District Court before U.S. District Judge Peter G. Sheridan, Clipper Marine Services pleaded guilty and admitted that it conspired to defraud the U.S. Coast Guard by maintaining a false Oil Record Book on board the *M/T Clipper Trojan* that concealed overboard discharges of oil sludge and oil-contaminated bilge water between February and June of 2006. Clipper Marine Services also acknowledged that it was responsible for the actions of the ship's Chief Engineer, who maintained the false Oil Record Book and presented it to the U.S. Coast Guard during a port state control inspection at Port Newark on June 15, 2006. The company also acknowledged that the discharges aboard the *M/T Clipper Trojan* were attributable, at least in part, to its failure to manage the vessel so as to ensure compliance with MARPOL and U.S. law and regulations, and its failure to diligently enforce company policies prohibiting such conduct.

The dumping of oily waste violates the MARPOL Protocol, an international treaty regulating the handling and disposal of oil waste at sea. Ocean-going vessels like the *M/T Clipper Trojan* are required by international and U.S. law to maintain an accurate Oil Record Book that records any transfer or disposal of oily waste.

In a precedent-setting plea agreement, the company agreed to retrofit four of its oldest vessels with new, higher capacity Oily Water Separators to bring any discharges within the amounts allowable under MARPOL and U.S. law. The company also agreed to implement a remote monitoring system aboard five of its vessels. The system will allow the Coast Guard and on-shore employees of the company to monitor waste levels and the use of oil waste processing equipment in real-time using data transmitted via satellite. Such monitoring should help detect and deter improper discharges of oil waste.

“Clipper Marine Services has agreed to install real-time monitoring equipment and upgrade environmental controls on various ships as a result of today’s plea agreement,” said Ronald J. Tenpas, Assistant Attorney General for the Justice Department’s Environment and Natural Resources Division. “This is an important step towards compliance with U.S. and international law that will become the standard for the industry.”

“The Coast Guard is satisfied that Clipper Marine Services is taking responsibility for the crimes it has committed,” said Rear Admiral Timothy S. Sullivan, Commander, First Coast Guard District, U.S. Coast Guard. “The terms of this agreement demonstrate that Clipper Marine Services is directly targeting and improving problem areas, and I am encouraged by their willingness to retrofit the latest OWS and monitoring technologies. The commercial shipping industry would be well served to follow Clipper Marine Services’s example.”

The total monetary payment of \$4.75 million is apportioned between a fine of \$3.25 million and a community service payment of \$1.5 million. The community service payment will be made to the National Fish and Wildlife Foundation, to be designated for the “protection, scientific study, and restoration of marine and aquatic resources in the District of New Jersey....”

The plea agreement also provides for a deferred fine of \$1.25 million in the event the company fails to implement the remote monitoring system. But the amount of the deferred fine is to be reduced by the direct costs of implementing the pilot system.

The company also agreed to implement an Environmental Compliance Plan for the entire 3-year period of probation. The ECP will require annual environmental audits aboard any vessels that the company manages and which employ an Oily Water Separator. It also requires that the company implement a variety of policies and management practices designed to ensure compliance with MARPOL. These include crew member and employee compliance training; a system of open reporting by which crew members can anonymously report illegal discharges; the creation of a Corporate Compliance Manager to oversee the implementation of the ECP; and the use of an environmental tagging system in which overboard discharge valves are fitted with numbered tags which are logged in order to track their usage.

Since the incident in June, Clipper Marine Services already had implemented a number of new compliance measures, many of which were incorporated into the ECP. The company’s willingness to implement new compliance measures helped make possible the use of innovative terms in the plea agreement.

Charges against the other two defendants, Clipper Wonsild Tankers Holding A/S and Trojan Shipping Co. Ltd., were dismissed. The case had been set for trial on Feb. 19, when the parties reached a preliminary agreement to resolve the matter on February 8, 2008.

Clipper Wonsild Tankers Holding A/S and Clipper Marine Services A/S are Danish companies that commercially operated and technically managed the *M/T Clipper Trojan*. The Trojan

Shipping Co. Ltd., a Bahamas company, is the registered owner of the *M/T Clipper Trojan*. All three companies are part of The Clipper Group A/S, a global shipping consortium based in Denmark.

Chief Engineer Fernando Magnaye pleaded guilty on Feb. 2, 2007 to charges of presenting a false document to the Coast Guard and attempting to obstruct a Coast Guard inspection. During a plea hearing before Judge Mary L. Cooper in Trenton, Magnaye admitted that he knew about illegal discharges of oil sludge and contaminated bilge waste but nonetheless failed to record those discharges in the *M/T Clipper Trojan's* Oil Record Book. Magnaye also admitted that he presented the false Oil Record Book to the Coast Guard and falsely claimed to Coast Guard inspectors that the book was accurate.

Christie credited Special Agents of the U.S. Coast Guard Investigative Service, under the direction of Special Agent in Charge Jon C. Finnegan, and Marine Inspectors and Investigators from U.S. Coast Guard Sector New York, under the command of Captain Robert O'Brien, with the investigation. The Coast Guard's investigation was guided by the First Coast Guard District Inspections and Investigations Branch and Legal Office, and Coast Guard Headquarters's Office of Maritime and International Law and Office of Investigations and Analysis.

The Government is represented by Assistant U.S. Attorney Bradley A. Harsch of the Criminal Division in Newark, David P. Kehoe, Senior Trial Attorney of the Justice Department's Environmental Crimes Section, and Lieutenant Christopher L. Jones, Special Assistant U.S. Attorney, of the First Coast Guard District Legal Office.

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Defense Counsel: Thomas M. Russo and Michael Fernandez, Freehill, Hogan & Mahar LLP, New York, New York.