

UNDERSTANDING

The Consequences of Violating Environmental Laws:

A Seafarer's Guide





To report a pollution incident involving your vessel, you should contact the National Response Center.

The National Response Center (NRC) is the sole federal point of contact for reporting oil and chemical spills.

To report a spill, contact the NRC via their toll-free number **+1 800-424-8802** or complete an online spill-report

form at **<http://www.nrc.uscg.mil>**. The NRC website contains additional information on reporting requirements and procedures.

For those without 800 access, please contact them at **+1 202-267-2675**. The NRC operates 24 hours a day, 7 days a week, 365 days a year.

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The Center for Seafarers' Rights at the Seamen's Church Institute (SCI) publishes this and other resources on environmental issues to equip you with information on your rights while employed. This particular guide outlines the consequences of violating United States pollution laws. The U.S. takes pollution violations very seriously. A number of laws allow the U.S. to prosecute even if the actual pollution incident does not occur in U.S. waters.

We encourage questions, comments and suggestions from readers.

Some provisions of these laws may have changed since publication. These materials summarize portions of U.S. laws and regulations. They do not replace either the full text of the laws or the advice of qualified counsel.



VIOLATIONS

What happens if you or another crew member violates a U.S. pollution law?

In the last few years, seafarers entering United States waters have encountered vigorous and frequent investigations into and prosecutions of environmental crimes and related offenses. These prosecutions usually involve a charge of deliberate discharge of oil by someone (or multiple people) aboard the vessel. More often, officials bring charges against persons who tried to cover up the action through false record book entries.

A variety of reasons can lead to the belief that violating a law might not be a bad idea: saving time, saving money for the company, or saving a job (because of an order from a superior). But generally a violation has the opposite effect, leading to large fines for the company and seafarers, long trials and possible jail time.

While most seafarers behave honorably throughout the course of their employment, it is critical for all seafarers to understand the importance of protecting the marine

environment, the United States' laws that govern pollution offenses and the consequences of violating those laws. Seafarers may also find themselves serving as witnesses in pollution cases, possibly having to stay in the U.S. until they can give their testimony.

VIOLATIONS

Coast Guard Boarding

Most seafarers have experienced a routine inspection by the United States Coast Guard (USCG) while in a U.S. port. **The USCG has responsibility for enforcing the laws of the United States and under U.S. law can board vessels, conduct inspections, investigate potential violations and seize evidence.**¹

The USCG may board a merchant vessel for one of several reasons—ranging from inspecting vessels suspected of violating U.S. laws to conducting routine inspections to check on a vessel's operational condition.



¹ 14 U.S.C. § 89(a).

Investigations

Sometimes, the USCG may conduct an investigation because they suspect that a pollution incident has occurred aboard a vessel or that the vessel is not in compliance with U.S. or international environmental regulations. To report a violation on board, you should contact the **National Response Center** or alert the **Coast Guard**.²

INVESTIGATIONS

What happens to mariners during an investigation?

As a seafarer, **you must obey U.S. and international environmental regulations**, and you must speak truthfully to government officials. The USCG must investigate all reports of incidents regardless of who reported them. If needed, the USCG conducts three main types of investigations (beyond the preliminary investigation): **Data Collection**, **Informal** and **Formal**. The USCG will request different information depending on the level of investigation.

² Assistant Commandant for Marine Safety, Security and Environmental Protection (GM)
Main Number +1 202-267-2200, Fax Number: +1 202-267-4839.

The USCG may ask for (and the vessel **must** maintain) the following records:

- Deck and engine room logs
- Bell books
- Navigation charts and workbooks
- Gyro records and compass deviation cards
- Stowage plans
- Night order books
- Radiograms sent and received
- Radio logs
- Crew and passenger lists
- Official logs and articles of shipment.

INVESTIGATIONS



If the USCG boards your vessel, remember a few important things:

- Stay calm, and tell the truth. Make sure you understand the questions the USCG investigator asks and seek clarification or an interpreter if necessary. In most MARPOL (the International Convention for the Prevention of Pollution from Ships) cases, convictions occur due to crew members and shipping companies not telling the truth or presenting false records to the USCG—not for the actual dumping in the sea.
- Cooperate and be forthcoming with the USCG inspector. Hindering an investigation could result in charges of obstruction of justice.
- **Don't try to influence other crew in their discussions with the USCG.** Insist that all crew members tell the truth when talking to the USCG or other authorities.

INVESTIGATIONS

- Protect your rights. You have the right to refuse to answer any question from the USCG that might incriminate you. This right applies only to you. You don't have the right to refuse to answer a question

that might incriminate someone else. Don't expect to receive a Miranda warning like you see in American films and television. The law does not require Miranda warnings unless the person interviewed is in custody, and U.S. courts decided that USCG investigations on vessels are not custodial interrogations requiring a Miranda warning.

- If you have any questions about your rights, especially if there is a chance that you might be suspected of committing a crime, you should get advice from a lawyer. Each crew member has the right to consult with a lawyer before speaking to U.S. authorities. You have the right to get advice from a lawyer who represents your interests only—not the interests of others. Conflicts can come up between you, the shipping company and other crew members. Make sure that you get advice from a lawyer who represents your interests.

Ultimately, the **U.S. Department of Justice** makes the final decision on whether (and under what conditions) to prosecute criminal violations of marine safety and environmental laws.

Witnesses

In order to complete its investigation, the USCG and the U.S. Department of Justice sometimes need to have seafarers remain in the United States. This may keep you from home for an extended period of time—even if you are not responsible for the pollution yourself. Your employer is responsible for providing you with lodging, food and wages during your stay in the

U.S. as a witness. Your employer may also provide you with an attorney or one will be assigned to represent you. Some seafarers have expressed concern when they are serving as a witness against the company and the company provides a



lawyer. Lawyers have a duty to protect the interests of their clients—regardless of who pays for their services.

The Act to Prevent Pollution from Ships (APPS) contains a provision that individuals who report pollution violations aboard ships may collect up to half of a criminal fine assessed to the ship owner.³ It is important to note that the judge in the case has discretion as to whether to award anything, so a financial award is not guaranteed.

If you have any questions about the process, you should consult with your attorney. You may also contact the Seamen's Church Institute or your local seafarers' welfare center for support during your stay.

INVESTIGATIONS



³ 33 U.S.C. § 1908(a).

What consequences do lawbreakers face?

A number of U.S. laws cover pollution incidents and penalties. Below, we list some of the civil and criminal penalties that those laws include, as well as other laws that cover offenses such as lying to government officials. If you are concerned about the actions of others on the vessel, you may want to share this information with them. Most offenses involve making untrue statements to investigators, and/or intentionally altering or falsifying record books before an investigation begins.

Mariners have recently faced jail time of up to six years, fines of up to \$250,000 and bans on entering the United States for three years.

Criminal Enforcement

The U.S. Department of Justice makes the final decision on whether (and under what conditions) to prosecute criminal violations of marine safety and environmental laws.

CONSEQUENCES

Consequences of making false or misleading statements

Seafarers must always keep an accurate Oil Record Book and tell the truth to government officials investigating possible pollution crimes. If they do not, they face possible prosecution under a variety of obstruction of justice statutes in the U.S.

- **False Statements:** If a vessel owner, operator and/or individual crew member presents a false statement (orally or in writing, in a **log book** for example) to the authorities—either directly or indirectly through other crew members on the vessel—the owner and/or operator can be fined an additional \$5,000 for each false declaration. The court can assess a separate violation and a fine for each day the violations continue.⁴
- **Conspiracy:** If two or more crew members (or company employees) work together to commit an offense against the U.S. (or any U.S. agency) and act to carry it out, he or she faces a fine or imprisonment up to five years, or both.⁵
- **Obstruction of Justice:** If you or anyone else involved in the investigation (another crew member, owner, agent) tries to use threats or force to influence or obstruct an investigating agency of U.S. (including USCG inspection/investigation), you may face a criminal penalty of imprisonment up to five years, a \$250,000 fine, or both.⁶
- **Witness Tampering:** U.S. authorities vigorously investigate and prosecute individuals and corporations suspected of tampering with witnesses in connection with an ongoing investigation of pollution and/or illegal discharge incidents.

CONSEQUENCES

If someone uses or tries to use physical force, intimidation, or threats to try to stop someone from giving testimony, to hide or destroy a document, or to

⁴ 18 U.S.C. § 1001.

⁵ 18 U.S.C. § 371.

⁶ 18 U.S.C. § 1505.

interfere with the communications to a U.S. law enforcement officer or judge, that person may face a fine, imprisonment from 3 to 20 years, or both. They may also face any punishment associated with the offense he or she tried to cover up.⁷

Falsification of Records/Obstruction of Justice

- If a court finds the records in a federal investigation have been destroyed, altered or falsified, it may impose a sentence of up to 20 years in prison for the person responsible.⁸

Penalties associated with violating U.S. environmental laws

For more specific information about U.S. laws, please refer to SCI's publication "U.S. Pollution Laws."

You may know about some of the environmental regulations you must follow while working aboard a vessel but not about what happens if you violate the law. Below are a few of the penalties contained in the common pollution laws affecting vessels in U.S. waters.

Act to Prevent Pollution from Ships (APPS)/MARPOL

Anyone who violates MARPOL or APPS may face a civil penalty of no more than \$25,000 for each violation. Each day of a continuing violation constitutes a separate violation. U.S. law classifies knowingly violating the provisions of MARPOL as a serious crime (a Class D felony) punishable by up to 6 years imprisonment and a fine of up to \$250,000 for an individual and \$500,000 for a corporation for each violation.⁹

CONSEQUENCES

⁷ 18 U.S.C. § 1512.

⁸ 18 U.S.C. § 1519.

⁹ 33 U.S.C. § 1311.

The Clean Water Act (CWA)

If a court finds a violation of the CWA due to criminal negligence (e.g., carelessness, inattentiveness), it will impose a fine—a minimum of \$2,500 with a maximum of \$25,000 fine per day for the first offence and a maximum fine of \$50,000 per day for the second offence. A violator may also face up to a year in prison.¹⁰

The Oil Protection Act of 1990 (OPA)

Failing to notify the appropriate federal agency of a discharge can result in severe consequences—penalties of \$250,000 for an individual or \$500,000 for an organization and/or a maximum prison sentence of five years.¹¹

The Refuse Act

Violating this act carries penalties ranging from \$500 all the way up to \$200,000 for corporations. Depending on the loss to another party from the violation, a judge may assess even higher fines.¹²

Violation of The Refuse Act is a strict liability offense, meaning it does not require proof that you or a fellow crew member meant to put a banned substance into the navigable waters of the United States. A court may convict solely on proof that a person or persons placed a banned substance into navigable waters of the United States (even if by accident).

CONSEQUENCES

¹⁰ 33 U.S.C. § 1319(1).

¹¹ 18 U.S.C. § 1519.

¹² 33 U.S.C. § 407.

Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)

A court can assess civil penalties for violations of CERCLA—commonly known as Superfund—up to \$25,000 per day for each day during which the violation continues.

The court may award up to \$10,000 to an individual who provides information leading to the arrest and conviction of a person for a violation of CERCLA.¹³

We hope this is a helpful general guide for you and your shipmates to protect the environment while promoting a safe and efficient workplace.

Remember, the actions of you and your fellow crew members can have a lasting impact—it's critical that communication on board is clear and constant.

To contact the Center for Seafarers' Rights, please email us at

csr@seamenschurch.org
or call **+1 973-589-5828**.

Douglas B. Stevenson, *Director*

The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the National Fish and Wildlife Foundation. Mention of trade names or commercial products does not constitute their endorsement by the National Fish and Wildlife Foundation.

CONSEQUENCES

¹³ 42 U.S.C. § 9609(d).



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