

SHIP MANAGEMENT INTERNATIONAL

Issue No 84 March/April 2020

A hand holding a magnifying glass over a map of Cyprus. The background is a blue-tinted image of a hand holding a magnifying glass over a map of Cyprus. The magnifying glass is positioned over the island of Cyprus, which is highlighted in a darker shade of blue. The hand is visible in the foreground, and the magnifying glass is held at an angle, focusing on the map. The overall image has a blue color scheme.

Enhancing Blue Growth in Cyprus

Steady, positive and
on the right track



By Jeanne Grasso (left) and Kierstan Carlson (right), of law firm Blank Rome

MARPOL enforcement shifting focus to Annex VI in the United States

MARPOL enforcement cases in the US historically have involved violations of Annex I, such as oily water separator bypasses and falsified oil record books (ORBs), coupled with post-incident misconduct by crew members, such as destroying/altering records or lying to the US Coast Guard (USCG). While these cases are likely to continue (as they have for three decades), we also expect enforcement authorities to target Annex VI violations.

The US brought the first Annex VI criminal case in 2019. That case is likely to be a bellwether, particularly now that the worldwide sulphur cap of 0.50% and carriage ban are in effect. Ship owners/operators must ensure compliance with Annex VI, which includes comprehensive training for crew on policies, procedures, and recordkeeping requirements, to avoid becoming a target during the next US port call.

There is a wide range of penalties for violations of Annex VI, ranging from letters of warning, with no penalty; to notices of violation, with penalties up to \$10,000; to civil penalties up to \$74,552 per violation; to criminal enforcement, which can result in substantial fines, a comprehensive Environmental Compliance Plan, and even imprisonment.

In August 2019, the US finalised the first Annex VI criminal prosecution. Two shipping companies were convicted and sentenced to pay \$3 million for using non-compliant fuel, presenting an inaccurate ORB and falsified bunker delivery notes (BDNs) to the USCG, and obstructing the USCG's investigation. Per court documents, vessel officers directed crew to siphon high sulphur oil from cargo tanks to burn as fuel and create fake BDNs to make it appear that the fuel had been loaded shoreside. The USCG discovered the violation during a port State control (PSC) inspection because the false BDNs showed the ship was burning non-compliant fuel.

The key takeaway here is that the US will aggressively look for Annex VI violations during PSC examinations and investigate and prosecute Annex VI violations the same way it handles Annex I violations – focusing on false documentation

and cover ups of non-compliance. and, similar to Annex I, whistleblower rewards are available and whistleblower reports will almost certainly prompt the USCG to conduct an expanded MARPOL examination.

In terms of what to expect, USCG guidance indicates how PSC officers will verify Annex VI compliance, which is similar to how the North American and US Caribbean ECA requirements are enforced: the USCG will review BDNs, fuel change-over procedures, and other documentation, as well as the crew's understanding of the requirements and procedures; and if red flags are detected (e.g., missing BDNs, BDNs showing use of non-compliant fuel, or issues of crew competency), the USCG will conduct an expanded inspection. While not required, the USCG also has stressed the importance of a Ship Implementation Plan, the absence of which may be grounds for an in-depth inspection.

Separately, the USCG may enforce the carriage ban (which became effective 1st March), by requiring the vessel to offload non-compliant fuel if non-compliant fuel is found onboard a vessel without an exhaust gas cleaning system or the ECGS is non-operational.

The USCG's focus on Annex VI compliance increases the risk that violations will be discovered, and that crew could expose the company to liability by falsifying documents or lying to the USCG. With this enforcement shift, ship owners/operators should take steps now to reduce their risk, including:

- Ensuring that compliance training includes Annex VI requirements, policies, and procedures;
- Instructing superintendents to scrutinize Annex VI records;
- Planning for potential problems in procuring compliant fuel or ECGS inoperability;
- Implementing systems to identify, investigate, and promptly fix non-compliances, which may necessarily include transparency with PSC officials about the findings and plans to come into compliance. ●