



Four Flips and a Flop Make an Operator's Jaw Drop: A Heavy Fine for Magic Pipe

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On Monday, August 24th, 2010, United States District Judge James C. Dever, III, sentenced the Chief Engineer of a tanker for illegally discharging oily waste. It all began on March the 29th of 2010, when the United States Coast Guard (USCG) conducted a Port State Control Inspection (PSCI) of the M/T *Chem Faros*, a Marshall Islands flagged tanker. As should be expected, the USCG inspected the tanker's documents, namely the Oil Record Book (ORB). The ORB did not indicate an improper discharge.

However, during the course of the PSCI, an oiler passed a handwritten note to a member of the PSCI team. The note read:

Good morning sir, I would like to let you know this ship discharging bilge illegally using by Magic Pipe, if you want to illegal pipe there in workshop five meters long with rubber. Sir, I hope if you don't mind. We have a security for our safety. (errors in original)

Additionally, several crewmembers relayed to the PSCI team that the bypass utilized a "Magic Pipe" and an elbow. Subsequently, the PSCI team located both the Magic Pipe and the elbow, both of which were covered in oil. Having located the apparatus, the PSCI team requested assistance from the USCG Investigative Service (CGIS). The CGIS interviewed crewmembers and developed an understanding of how the alleged bypass of the Oily Water Separator (OWS) and accompanying illegal discharge took place. There was no evidence that the alleged discharge took place in U.S. territorial waters.

Nonetheless, the CGIS took several samples from the tanker's systems and holds, the Magic Pipe, and the elbow, while several crewmembers offered corroborating statements in support of the whistleblowing oiler's note and assertion. Accompanying a guilty plea in the Eastern District of North Carolina, the Chief Engineer admitted that he continued the deceptive practices of the previous Chief Engineer. He further admitted to discharging over 70 cubic meters of waste through the bypass, while also admitting to the falsity of entries in the ORB to mask the real volume of waste. The Court sentenced the Chief Engineer to one year of probation and seven days of house arrest, with a small assessment of USD 100.00.

The operator, who shares the same president as the owner of the tanker, was charged with Count (1) Violating the Act to Prevent Pollution from Ships and Count (2) Making, Using, and Causing the Making and Use of Material False Writings. Thereafter, the operator of the tanker entered a guilty plea. The Court ordered the operator to pay USD 800.00 in assessment costs and a criminal fine of USD 850,000.00. The Court attributed USD 500,000.00 for Count (1) and USD 200,000.00 for Count (2); the Court added a Community Service Payment of USD 150,000.00, payable to the National Fish and Wildlife

Foundation. In addition to the fines, the Court ordered the operator to "develop, adopt, implement, and fund a comprehensive Environmental Compliance Plan" for the duration of its five year probation, which is still a pending matter.

In addition to the fines and probation, the Court awarded the whistleblowers who informed the PSCI team of the alleged illegal discharge. Four crewmen were each paid USD 50,000.00 for their disclosures to the PSCI team. As a reminder, the Courts have the discretion to award such whistleblowers, and the recent events in the Gulf of Mexico have made PSCI teams hypervigilant in their inspection efforts. Thus, the PSCI teams' potential to present an imposing authority and the financial incentive for crewmen to blow the whistle constitutes an ongoing and potentially costly concern for owners and operators.

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