NEW OIL SPILL WARNINGS

BY MARTY LOGAN

Two recent prosecutions by the Canterbury Regional Council arising from oil spills in Lyttelton Harbour highlight once again the financial consequences of such spills for operators.

In both cases substantial fines were imposed and in one case warnings were given that the level of fines might be raised even further for future spills. Accordingly, operators should be reviewing their oil spill prevention and response procedures and tightening them if at all possible.

Both prosecutions involved spills of relatively small amounts of light fuel oil into Lyttelton Harbour during bunkering operations.

The first prosecution involved two spills, the first between 50 and 100 litres, the second for some 300 litres, which occurred some four hours apart. On both occasions there was an overflow through the breather tube which was able to make its way into the water. The engineer had apparently relied on a manometer system which proved unreliable.

After the first spill, the council staff warned the vessel's operators to be more careful. The vessel, the *Cometa*, had not intended to call at Lyttelton, but she had experienced a very rough passage from Argentina and had to call in at short notice to refuel before continuing on to Australia. Her officers and crew were exhausted by the rough weather.

Both the owner and the manager of the vessel were prosecuted. The Canterbury Regional Council sought fines in the region of $110,000 to $120,000. Eventually fines of $65,000 were imposed after the owner paid a $5000 allowance for the clean-up costs.

The second prosecution, involving the vessel *Melilla 201*, involved very similar circumstances. There was an overflow which was able to make its way into the water, and about 50 litres was spilt. The spill was contained and all reasonable efforts made to clean it up. The owner had been issued with an infringement notice some months earlier as the result of an earlier spill.

The CRC attempted to argue that foreign charter vessels should be fined at a higher level than New Zealand vessels, but the court rejected this. However, combined fines totalling $22,000 were imposed against the owner and charterer.

Many members of the maritime industry have expressed dismay at the level of these fines, and claimed that local authorities and the courts are out of touch with the realities facing the maritime industry, and are imposing fines which are out of all proportion to the damage caused by minor accidental spills in harbour environments.

They have pointed out that it is very difficult to prevent all oil spills when operating complex machinery such as ships, and that most oil slicks look a lot worse than they are because a small amount of light fuel oil can spread across a very large surface area of water. Regardless of the merits of these views, they are not likely to get much sympathy from the courts. The courts are also not interested in the commercial realities imposed by the need for fast turn-arounds to maintain the viability of vessel operations.

On most occasions the regional councils will be able to argue that there was another preventative device that could have been installed, or another consultant retained to prevent the spill. The cost of these measures is not their concern.

For the past six years the starting point for fines relating to spills in the 0 to 1000 litre category has been $30,000. This means in theory that the court starts with a figure of $30,000 in mind, and then either reduces or increases the fine, depending on mitigating or aggravating circumstances.

Having said this, the method of fixing the final fine is more a work of art than a science. The costs of cleaning up can, in effect, be treated as part of the fine. While it is always difficult to compare directly the facts behind different prosecutions, the two recent prosecutions are the first time where the fine level has actually approached the benchmark figure of $30,000.

This alone indicates a hardening of the court's attitude (at least in Christchurch). In addition, in the *Cometa* case the court gave a clear warning that the starting points for fines involving spills of between 100 and 1000 litres will be reviewed in any future cases.

Some other points arise from these prosecutions. Charterers, even time charterers who have not operational involvement in the vessel's activities, can be prosecuted and fined.

Beware of infringement notices. Given that they only carry a $1000 fine, it can be tempting to treat them lightly and not dispute them where there are possible grounds, or alternatively not take any steps to remedy the problem that led to the infringement notices. However, if there is a second event, such as a second spill, they take on significant importance, as they are treated as a warning which becomes an aggravating factor in any later prosecution.

Obviously operators should do all they can to avoid spills in the first place, but they should also be ready to take immediate steps to contain and treat any spill that does occur (in conjunction with the port authority personnel), as post-spill reactions by officers and crew can have a significant influence on judges.

If any incidents do occur, we strongly advise that concrete steps be taken to show that the vessel's operational regime has been changed. You need to avoid any suggestion that it was just "business as usual" after the spill.

by Marty Logan, of the marine law specialists OceanLaw New Zealand - MS Sullivan and Associates, reports on aspects of maritime law that affect our readers.