

## **OIL SPILLS**

Oil spills from vessels can have serious consequences, not only on the environment, but also on the bank account of vessel owners and masters.

### **Recent Reforms:**

In 1998 the Government revamped of the laws governing discharges from vessels. The laws govern the discharge of a wide variety of items including sewerage and garbage, but this article will focus on discharge of oil, or water contaminated with oil. The significant penalties introduced indicate the seriousness with which discharges into the marine environment are viewed by Parliament and as a result Courts are under an obligation to deal seriously with offenders convicted of oil spill offences. Maximum penalties are a term of imprisonment or a fine of up to \$200,000.00. Even accidental spills, where responsible operators have taken precautions to prevent a spill, can result in liability for the costs of cleanup and fines running into thousands of dollars. Sophisticated diagnostic techniques mean that oil spills can be traced back to their source with a high degree of certainty. Accordingly vessel owners and skippers should always be aware of the obligation to avoid oil spills. They should obviously take steps to avoid spills in the first place, but also must be aware of obligations which arise if a spill occurs and the matters that will be taken into account by a Court if they are convicted of an offence.

The legal changes implemented in 1998 involved repealing the Marine Pollution Act and replacing it with provisions in the Resource Management Act and the Marine Transport Act. In summary oil spills which occur within 12 nautical miles of the shore (and in particular those which occur within harbours) will be dealt with by the relevant Regional Council under the Resource Management Act and Regulations made under the Act. If the spill takes place outside the 12 nautical mile limit then it will be dealt with by the Maritime Safety Authority (MSA), pursuant to the Marine Transport Act and Maritime Protection Rules made under that Act. One reason for bringing in the amendments was so that New Zealand could become a party to MARPOL (an international convention for the prevention of pollution from ships).

### **Oil Spills in Harbours:**

As many of the oil spills which ultimately lead to prosecution take place in harbours, the emphasis of this article will be on dealing with harbour spills. Section 15B of the Resource

Management Act provides that no person may discharge a harmful substance (this includes oil), or contaminant, from a ship into water unless the discharge is permitted (under regulations, regional coastal plan or plan, or a resource consent) or, after reasonable mixing, the discharge is not likely to give rise to physical effects such as oil or grease films, scums or foam. Obviously in the sheltered environment of a harbour the amount of oil that would be required to cause these physical effects is minimal. Section 15B also provides that no person shall discharge water from a vessel into water, unless the discharge is permitted under various Rules or Regulations or, after reasonable mixing, the water discharge is not likely to give rise to any significant adverse effects on aquatic life.

Discharges will only be authorised in strictly controlled situations. For example under the Resource Management Marine Pollution Regulations a person may only discharge oil, or mixtures containing oil, from a ship if:

- (a) The oil is not derived from the cargo of the ship; and
- (b) The ship is proceeding on route; and
- (c) The oil content of a discharge before dilution with any other substance does not exceed 15 parts per million.

If an oil spill (ie an unauthorised discharge) does occur, the owner or master should immediately notify either the MSA or the relevant Regional Council. If you have any reason to suspect that the spill may have come from your vessel, then you should also immediately contact a lawyer with expertise in the area, to take advice as soon as possible. You should take all reasonable steps to contain the spill.

### **Confirming the Source:**

The Regional Council will take samples of the water affected by the spill and also to take samples from vessels which the Council suspects may have caused the spill. The samples are analysed by ESR in Lower Hutt using what are referred to as "*fingerprint tests*". Petroleum oils contain a complex group of chemicals known as bio-markers and the diversity and complexities of the bio-markers allows them to be used as a "*fingerprint*" of the oil. The technique is so accurate that the "*fingerprints*" can often identify the exact ship from which the spilled oil came. This is particularly so where the oil is discharged from the bilge, as the bilge contents will normally contain a combination of oils and

lubricants which will be unique to that vessel. Scientific advice indicates that the tests have a high level of integrity.

### **Strict Liability:**

If an oil spill does occur and the source of the spill is ascertained, then the offence provisions of the Resource Management Act come into play. The master, owner, charterer, manager, or operator of a vessel may be exposed to charges.

These offences are strict liability offences where the grounds of defence are limited. The prosecution does not have to prove the Defendant intended to commit the offence. However it is a defence if a Defendant can prove that the discharge was for the purpose of preserving life or the vessel or if the discharge took place as a consequence of damage to the vessel, which occurred without the negligence of the Defendant. In most cases, an owner will be responsible for the acts of its agents, but may be able to avoid liability if it can show it exercised due diligence by establishing proper systems to avoid spills.

### **Serious Penalties:**

If a conviction is entered, then the Defendant may face a term of imprisonment not exceeding 2 years, or a fine not exceeding \$200,000.00. And, if the offence is a continuing one, a further fine not exceeding \$10,000 for every day during which the offence continues.

In assessing the level of fine to actually impose, the Court will look at a wide variety of factors. Fines must act as a deterrent, therefore nominal fines would not be appropriate. The Courts will look at the reasons why the spill occurred and will obviously deal most seriously with deliberate discharges and less seriously with accidental discharges. The level of negligence involved in an accidental spill will be relevant. The Courts will also look at issues such as:

- (1) The amount of oil spilled and the resulting environmental damage.
- (2) Efforts taken by the Defendant to clean up the spill.
- (3) Whether any systems were in place before the spill designed to reduce or eliminate likelihood's of spills.

- (4) The Defendant's general conduct, in particular whether it immediately notified the authorities of the spill and co-operated with them investigating the cause.
- (5) An early guilty plea.
- (6) Whether the Defendant profited in any way from the spill.
- (7) Whether the Defendant has any previous convictions for spills.
- (8) The Defendant's financial means.

It would obviously take an extremely serious and deliberate spill before the Courts would consider imprisonment or a fine at anywhere near the maximum level. However, fines in the order of \$10,000 to \$20,000 (plus costs) have been imposed. Costs of cleanup can also be significant (often in the region of \$4,000 to \$8,000 even for relatively minor spills).

The rules applying to discharges outside the 12 nautical mile limit administered by the MSA are similar to the inshore provisions.

### **Summary:**

In summary, oil spills can lead to prosecutions which are difficult to defend and can lead to substantial fines. To guard against these prosecutions vessel owners and masters should always ensure the vessel's equipment is in good condition and that the crew are adequately trained. Systems should be in place governing at risk activities, particularly those associated with bunkering.

However, even with the best of systems in place spills can still occur. Accidental spills are often associated with bilge pump systems (no doubt partly as a result of the automatic features of many of the systems) and therefore the vessel should always have contingency plans developed so that personnel can react rapidly if a spill does occur. Vessel owners should also talk to their insurers about the possibilities of arranging insurance cover, covering the consequences of a spill.

The above is only a very general review of the law for more detailed information it is suggested that you contact the writer, the MSA, or your local Regional Council.