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News from the USA Fall 2007

San Francisco spill leads to proposed new legislation

In typical fashion for the U.S. Government, a high profile incident has led to the proposal of new laws and regulations. In the wake of the *M/V Cosco Busan's* allision and oil spill in the San Francisco Bay on November 7, 2007, two U.S. Senators from California have introduced new bills to further tighten regulations in an effort to prevent future incidents. Senators Barbara Boxer (D-CA) and Dianne Feinstein (D-A) have collaborated to introduce the **Maritime Emergency Prevention Act** and the **Oil Spill Accountability Act**. The Maritime Emergency Prevention Act would strengthen the authority and the resources of the Coast Guard's Vessel Traffic Service (VTS). This bill ensures that the Coast Guard has the authority to order ships to change speed or course in an emergency or during hazardous conditions. The measure also authorizes \$20 million in funding for the Coast Guard to upgrade VTS technology, and would, where necessary, require pilots to have their own navigational laptop computers.

Sen. Boxer said, *"If the Coast Guard VTS sees a ship like the Cosco Busan, headed in the wrong direction and traveling too fast, they should have the authority to intervene. We're talking about situations where seconds and minutes can make all of the difference in the world—there isn't time for second-guessing and ambiguity."*

Sen. Feinstein added, *"This legislation makes it clear that the Coast Guard has the authority to intervene if a ship is in imminent danger or distress. Therefore, there is no doubt that the captain of a port can stop a ship in the event of an emergency."*

One must wonder how the **Master's Overriding Authority** as mandated in ISM Code 5.2 and in 2004 SOLAS Chapter V: Regulation 34.3 would figure in to such legislation, and to what extent the VTS watchstanders will be trained to be qualified to give orders to Master Mariners and Pilots.

The Oil Spill Accountability Act is "designed to reduce the risk of oil spills and increase the incentive for making cargo ships safer." This legislation would increase the U.S. liability limits for clean-up costs and other damages. Under Oil Spill Liability Trust Fund, current caps are set at \$1,900/gt for double-hulled tankers, \$3,000/gt for single-hull tankers, and \$950/gt for other cargo ships. The new bill as proposed By Sen. Boxer and Sen. Feinstein would raise the liability limits for cargo ships to the same level as oil tankers, theoretically providing new incentive to use double-hulled ships.

CSI will follow the progress of these proposed bills and keep you advised accordingly.



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Ballast Water Reporting Forms:

Ballast Water Reporting forms must be submitted to the National Ballast Information Clearinghouse (NBIC) prior to arrival at all U.S. Ports during a voyage. A separate form must be submitted for each U.S. port during voyages with multiple port calls.

Copies of the fax confirmation or e-mail receipt should be attached to the reporting forms .

Full requirements for ballast water reporting can be found in 33 CFR 151.2045



IMPORTANT NUMBERS

National Response Center:
(202) 267-2675

National Vessel Movement Center:
(304) 264-2502

MTSA / ISPS Help Desk:
(877) 687-2243

CSI Tip:

When contacting CSI to conduct a Qualified Individual (Q.I) Drill or to report an actual incident, please use our **24-Hour Response Telephone Number (912-233-8181)** as our primary point of contact. This number is monitored 24 hours a day, seven days a week. If for some reason, this number connects you to voice mail, please leave a message or call one of us on our mobile phone as directed by the message.



USCG Voluntary Disclosure Policy

On November 14, 2007, the U.S. Coast Guard issued its Environmental Crimes Voluntary Disclosure Policy. This policy is designed to “enhance the protection or human health and the marine environment by encouraging regulated entities to voluntarily discover, disclose, correct, and prevent violations of U.S. environmental requirements and regulations. The Disclosure Policy applies to criminal violations under all of the U.S. environmental regulations that the USCG enforces. The Policy outline factors for consideration that will guide the USCG in the exercise of its enforcement discretion. The Disclosure Policy uses the term “compliance management system” instead of “due diligence” in order to conform the Policy language to terminology more commonly in the industry to refer to a systematic management plan or systematic efforts to achieve and maintain compliance. No substantive difference is intended by substituting the term “compliance management system” for “due diligence” as the Policy clearly indicates that the compliance management system must reflect the Company’s due diligence in preventing, detecting, and correcting violations.

The Voluntary Disclosure Policy may provide companies an avenue to potentially avoid prosecution by establishing a compliance management system in which non-compliances and violations are discovered and reported to earn “Disclosure Credit” from the USCG, giving the USCG discretion to forego reporting the violation to the U.S. Department of Justice (DOJ) for prosecution. Please note, however, that the DOJ may still prosecute environmental crime cases without the referral or recommendation of the USCG. Also, the Policy offers possible protection for Companies, but the USCG may still recommend the prosecution of individual managers or employees.

Under the Policy, a company must document their systematic efforts to prevent, detect, and correct violations through all of the following:

- * Compliance policies, standards, and procedures that identify how vessel employees and agents are to meet the requirements of laws, regulations, enforceable agreements and other sources of authority for environmental requirements;
- * Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance aboard each vessel;
- * Mechanisms for systematically assuring that compliance policies, standards, and procedures are being carried out, including monitoring and auditing systems reasonably designed to direct and correct violations, periodic evaluation of the overall performance of the compliance management system, and a means for employees or agents to report violations of environmental requirements without fear of retaliation;
- * Efforts to communicate effectively the Company’s standards and procedures to all employees and other agents;
- * Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards, and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and
- * Procedures for the prompt and appropriate correction of any violations, and any necessary modifications to the regulated entity’s compliance management system to prevent future violations.

When all conditions of Section V.5 of the Policy are met, the USCG will not recommend prosecution providing that the USCG determines that the violation

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is not part of a pattern or practice that demonstrates a prevalent management philosophy or practice that conceals or condones environmental violations; or a high-level corporate official's or manager's conscious involvement in, or willful blindness to violations of U.S. environmental law. The conditions detailed in Section V.5 include voluntary disclosure, prompt disclosure, discovery and disclosure independent of government or third party involvement, correction and remediation, and measures to prevent recurrence.

The Policy bars repeat offenders from receiving Disclosure Policy credit. If the same, or a related, violation has occurred previously within the past three years involving the same vessel, or has occurred within the past five involving multiple vessels operated by the same company, disclosure credits will not be granted. For this purpose, a violation is defined as "a violation of Federal, State, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction, or plea agreement;" or "any act or omission for which the regulated regulated entity has previously received leniency from the Coast Guard or a State or local agency." Also, there are some violations which are excluded from the Voluntary Disclosure Policy. Violations resulting in serious actual harm, or may have presented an imminent and substantial endangerment to human health or the environment will be excluded from benefiting from the Voluntary Disclosure Policy. Also, any violation which violates specific terms of any judicial or administrative order, consent agreement, or plea agreement will be excluded.

In order for a Company or a vessel to benefit from the Voluntary Disclosure Policy, there must be close cooperation between the involved parties and the USCG. The Company must cooperate with the USCG and provide it with the information needed to determine Disclosure Policy applicability. The Company must not hide, destroy, or tamper with possible evidence following discovery of potential environmental violations.

At CSI, we believe that a Compliance management System is good protection against criminal sanctions for illegal waste oil operations. Regarding the disclosure aspect of the policy, we strongly advise that you consult with your attorneys prior to making any voluntary disclosure to the USCG. CSI has assisted a number of companies in developing Environmental Management System / Compliance Programs. If your Company is interested in preparing and implementing such a Compliance Program, please contact us.

The full Voluntary Disclosure Policy may be found online at:

<http://www.uscg.mil/foia/docs/CH-4%20Appendix%20V.pdf>

Ship Security Officer: Proof of Training

Effective January 1, 2008, officers designated as Ship Security Officer (SSO) will be required to have documentation certifying that he is "qualified" to hold that position. Evidence of qualification will include a course completion certificate and a company letter or certificate attesting to the qualifications. The USCG has determined that any training completed in accordance with 33 CFR 104.215 is substantially equivalent to the STCW requirements, therefore no additional training should be required. The USCG has informed Port State Control worldwide of this arrangement.



ISPS Tip:

Most Ship Security Plans require that a Visitors' Log be maintained by the gangway watch detailing persons who board the vessel, the purpose of their visit, and their arrival and departure time. Frequently, we have observed the gangway watchman handing a pen to the visitor to make the entry. We recommend that the gangway watchman make all Visitors' Log entries himself to ensure that the entries are correct and legible.

USCG Inspection Tip:

During a U.S. port call, the ship's agent will take several certificates ashore for Customs clearance. We recommend that the vessel retain copies of all certificates taken ashore in case the USCG comes aboard for an inspection. Copies of U.S. Customs tonnage tax and user fee receipts are not necessary for a USCG inspection.

“Wallpaper”



With the implementation of the onboard Safety Management System, ISPS shipboard security, Bridge Team Management, and environmental management and prevention it is easy to understand why the bulkheads on the bridge, engine room, and passageways are covered with policies, procedures, safety warnings, Standing Orders, vessel plans, and so on. On many ships the posted notices are starting to look like wallpaper. Most, if not all of the postings are there for an important purpose: to inform, instruct, and prevent crewmen onboard from performing a mistake that was learned from someone else's earlier mistake. The problem is that with the wallpaper effect, crewmen onboard are not able to readily identify and locate a specific policy, procedure, plans, or Standing Order that the company has requested the crew to post. During audits, it is not uncommon to ask a crewman to locate a procedure or standing order, and watch him run in circles trying to locate it.

Q.I. Reminder:

Occasionally, State regulators, particularly on the U.S. West Coast, will board vessels to conduct unannounced pollution exercises. Some states, such as Oregon, require the Q.I. To actually make notification calls to the U.S. National Response Center and/or the OSRO.

If a state or local official boards your vessel to conduct an unannounced drill, be sure to contact your Q.I. If Compliance Systems is your Q.I., contact us on our **24-Hour response telephone number: (912) 233-8181.**

To overcome this, we recommend the operators and crew designate a specific area on the bridge, engine room, passageways, mess rooms, etc... where the crew can readily identify individual subjects relating to policies, security, pollution prevention, safety, standing orders, etc.... We recommend the heading for each of these designated subject areas be in a **LARGE BOLD HEADING** so crewmen would be able to identify the area from across the room. The vessel's crew and/or company could generate an index page to be posted which would provide easy reference for the crewman to locate the information he is searching for. If the company has a large fleet, having a standardization location of onboard-posted material would allow crew going from one vessel to another to readily locate the necessary material on another fleet vessel.



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