



## Risk Management Strategies for Vessel Owners, Operators, and Managers – Compliance Audit Program

Compliance challenges within the maritime industry will continue to increase in the coming years as new regulatory requirements enter into force. The challenges will include requirements for ballast water management, air emissions and fuel sulfur limitations, and the U.S. Environmental Protection Agency's 2018 Vessel General Permit, as well as the continuing International Convention for the Prevention of Pollution from Ships ("MARPOL") enforcement actions. The additional technical, recordkeeping, and management requirements associated with these expanding regulatory regimes are being monitored closely by Port State Control officials and increase compliance risks.

Companies continue to face burdensome MARPOL investigations and, if a conviction results, the attendant multimillion dollar fines and years of intense oversight during a term of probation for alleged violations of U.S. environmental laws. Even some of the most well managed and compliant companies in the maritime industry have had to endure the business disruption and expense resulting from convictions under U.S. environmental laws. These convictions generally stem from actions of rogue crew members, commonly in connection with false entries in a vessel's Oil Record Book, intended to cover up illegal discharges of bilge water. Many of these investigations begin with crewmembers reporting MARPOL violations to the U.S. Coast Guard ("USCG"), instead of through the company's chain of command. It is well known in the industry that a crewmember can receive a substantial reward for reporting such activity to the USCG. This combination of factors can lead to a

challenging environment whereby even companies committed to environmental compliance can face liability for the actions of a rogue crewmember without having the opportunity to first address the wrongdoing.

To help our clients respond to such challenges, we have developed a Compliance Audit Program to provide comprehensive, targeted compliance counseling on a fixed-fee basis. The program is designed to provide individualized, privileged legal guidance to vessel owners, operators, and managers. The goal of the Compliance Audit Program is to identify vulnerabilities that should be remedied to reduce the risk of actions that could lead to a criminal or other investigation in the United States. This Compliance Audit Program has been developed based on our decades of experience with compliance counseling and enforcement cases, and examines areas where the USCG and U.S. Department of Justice focus when investigating and prosecuting MARPOL cases.

Another goal of the Compliance Audit Program is to identify areas where a company could implement policies and procedures to make it more difficult for the improper actions of a crewmember to lead to vicarious criminal liability for a company.

Blank Rome's Maritime Group has extensive experience in successfully representing vessel owners, operators, and managers that have struggled with regulatory compliance issues

or have become targets of aggressive enforcement actions. Our team has handled dozens of cases on behalf of vessel owners and operators, and thus can apply the government's own strategies in performing the Compliance Audit Program.

The Compliance Audit Program is flexible and scalable; it can readily be adapted to the particular needs and interests of individual clients. In sum, the program uses our extensive experience to provide proactive compliance counseling to our maritime clients, giving concrete, practical guidance for strengthening their regulatory compliance programs, and minimizing the risk of becoming an enforcement statistic.

## PROCESS AND PROCEDURE

### ANALYZE COMPANY'S SMS AND SHIPBOARD COMPLIANCE DOCUMENTATION

The Compliance Audit Program begins with a request for documents from the company. Our team will then undertake a critical analysis of the relevant sections of a company's existing safety management system ("SMS") and a representative sampling of the documentation maintained to demonstrate adherence to the company's SMS and compliance with environmental requirements.

The analysis also involves a review of the findings of selected internal and external compliance audits, Port State Control inspections, and hotline or other similar internal reports identifying regulatory compliance issues. To ensure accuracy and maximize efficiency, the audit team will conduct the document review and analysis in advance of a visit to the shoreside office,

in consultation with shoreside supervisory personnel designated by the company. The primary objectives of the document review are to evaluate the sufficiency of the SMS and to determine whether there are gaps that should be filled to strengthen the SMS and help avoid enforcement actions.

### SHORESIDE VISIT AND INTERVIEWS

After a critical analysis of the relevant documents, our team will use this information to conduct interviews in the company's headquarters with key personnel. These interviews will be based on our review of the relevant documents. This full-day visit is intended to identify any inconsistencies between the company's documented approach to environmental compliance and its actual implementation of the measures outlined in its environmental management system ("EMS") or SMS and company policies.

Our approach to the shoreside visit and interviews will be based on our experience in criminal investigations where prosecutors have used gaps in a company's practice of environmental compliance to buttress its claim of a company's vicarious liability for environmental crimes.

### AUDIT RESULTS AND FOLLOW UP

Following the shoreside visit, a privileged report containing the audit results will be prepared and submitted to senior company management for review and comment. The report is intended to provide practical recommendations to strengthen the company's existing compliance program and help insulate the company from future involvement in an enforcement action.



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