

1
2 **UNITED STATES DISTRICT COURTS**
3 **FOR**
4 **THE DISTRICT OF OREGON**
5 **THE WESTERN DISTRICT OF WASHINGTON**
6 **THE EASTERN DISTRICT OF LOUISIANA**
7

8 **THE UNITED STATES OF AMERICA,**) **Case No. _____ (D. Oregon)**
9) **Case No. _____ (W.D. WA)**
10 **v.**) **Case No. _____ (E.D. LA)**
11)
11 **The NATIONAL NAVIGATION**)
12 **COMPANY**)
13 **Defendant.**)

14 **JOINT FACT STATEMENT**

15 **I. Introduction**

16 The United States of America, by and through the United States Attorneys for the District
17 of Oregon, the Western District of Washington, the Eastern District of Louisiana, and the
18 Environmental Crimes Section of the United States Department of Justice (collectively referred
19 to herein as "the United States" or "the government"), and the Defendant NATIONAL
20 NAVIGATION COMPANY, (referred to herein as "NNC", or "Defendant"), hereby agree that
21 this Joint Factual Statement is a true and accurate statement of the criminal conduct committed
22 by Defendant's employees, acting within the scope of their employment and for the benefit of the
23 Defendant, and that it provides a sufficient basis for the Defendant's pleas to Informations filed
24 this same date in the District of Oregon, Western District of Washington and Eastern District of
25 Louisiana. The Defendant's guilty pleas are to be entered pursuant to the Plea Agreement signed
26 and dated this same day.
27
28

1 Defendant is an Egyptian company headquartered in Cairo. Defendant is currently the
2 owner, operator and manager of approximately thirteen vessels, including dry bulk carriers, a
3 container ship, general cargo vessels and passenger ferries. As set forth below, the Defendant's
4 employees made and used false and fictitious Oil Record Books, a required ship log book in
5 which all overboard discharges are to be recorded, while in United States ports. The Oil Record
6 Book falsely claimed that overboard discharges were being made properly and failed to disclose
7 the use of bypass equipment and procedures that completely circumvented required pollution
8 prevention equipment.

9 A. The Handling of Waste Oil on Ocean-Going Vessels and the Regulatory Program

10 All vessels operated by the defendant had engine departments headed by a Chief
11 Engineer. The Chief Engineer had overall responsibility for engine room operations including
12 supervising daily operations, formulating and implementing engine room procedures, and
13 verifying engine room systems were functioning properly. He reported directly to the Captain
14 and to shore-based managers. The Chief Engineer was assisted by a Second Engineer and a
15 Third Engineer who in turn were assisted by laborers often referred to in company documents as
16 "mechanics", all of whom were employees and agents of Defendant NATIONAL NAVIGATION
17 COMPANY.

18 Normal operations of marine vessels like those operated by the Defendant produce large
19 quantities of oily sludge. Oily sludge is generated during the process of purifying or preparing
20 fuel oil, lubricating oil, and other petroleum products for use in the engines. Oily sludge
21 generated by these processes must be stored on board the vessel in sludge tanks. The oily sludge
22 can be burned on board the vessel through use of an incinerator or auxiliary boiler or offloaded
23 onto barges or shore-side facilities for disposal. The vessels operated by the Defendant were
24 equipped with an incinerator capable of burning oily sludge.

25 In addition to oily sludge, waste oil together with water and other liquids accumulate in
26 the bottom or "bilges" of the vessel. This oily water typically drains into the "bilge wells,"
27 compartments set into the bottom of the engine room space. The bilge waste is collected and run
28

1 through various processes designed to separate the oil and other wastes from the water. These
2 processes include settling tanks and an oil water separator (OWS), a pollution control device
3 designed to remove oil from water to facilitate discharge of the processed water directly to the
4 sea. Properly processed bilge water containing very small amounts of oil may be legally
5 discharged overboard. The vessels owned by the Defendant were equipped with an OWS
6 capable of processing oily water.

7 The United States is part of an international regime that regulates discharges of oil from
8 vessels at sea: the International Convention for the Prevention of Pollution from Ships, as
9 modified by the Protocol of 1978 (the "MARPOL Protocol"). The MARPOL Protocol is
10 embodied in numerous agreements that the United States has ratified and implemented into law
11 by the Act to Prevent Pollution from Ships (APPS), Title 33, United States Code, Sections 1901,
12 et seq. APPS makes it a crime for any person to knowingly violate the MARPOL Protocol,
13 APPS, or regulations promulgated under APPS. These regulations apply to all commercial
14 vessels operating in United States waters or while at a port or terminal under the jurisdiction of
15 the United States, including vessels operating under the authority of a country other than the
16 United States. APPS regulations require that vessels of more than 400 gross tons, such as those
17 owned by the Defendant, maintain a document known as the Oil Record Book. Vessel personnel
18 must use the Oil Record Book to fully and accurately record transfers of oil, disposals of sludge
19 and waste oil, and overboard discharges of oil contaminated water that accumulated in machinery
20 spaces. Title 33, Code of Federal Regulations, Section 151.25(d). Ship personnel must also fully
21 and accurately record any emergency, accidental, or other exceptional discharges of oil. Title 33,
22 Code of Federal Regulations, Section 151.25(g). In addition, the Oil Record Book must be
23 maintained on board the vessel for not less than three years, and be readily available for
24 inspection at all reasonable times. Title 33, Code of Federal Regulations, Section 151.25(k).

25 "Flag states" (i.e., countries that register marine vessels) certify a vessel's compliance
26 with international laws. "Port states" (i.e., countries visited by marine vessels), such as the
27 United States, inspect vessels to assure compliance with the law within their ports and waters.

1 The United States Coast Guard, an agency of the United States Department of Homeland
2 Security, is charged with enforcing the laws of the United States and is empowered under Title
3 14, United States Code, Section 89(a) to board vessels and conduct inspections and
4 investigations of potential violations and to determine compliance with MARPOL Protocol,
5 APPS, and implementing regulations.

6 The Coast Guard conducts Port State Control Examinations which involve boarding a
7 vessel and conducting inspections and investigations of potential violations. Failure to comply
8 with international standards, including MARPOL, can provide the basis of an order refusing to
9 allow a vessel to enter port, or to prohibit the vessel from leaving port without remedial action
10 and assuring authorities the vessel does not present an unreasonable threat to the marine
11 environment. Title 33, Code of Federal Regulations, Sections 151.07(b) and 151.25(b). Coast
12 Guard personnel rely on crew member statements and vessel documents when conducting
13 inspections and investigations. They are specifically authorized to examine a vessel's Oil Record
14 Book to determine, among other things, whether the vessel has operable pollution prevention
15 equipment, whether it poses any danger to United States ports and waters, and whether the vessel
16 discharged any oil or oily mixtures in violation of MARPOL, APPS, or any other applicable
17 federal regulations. Title 33, Code of Federal Regulations, Sections 151.23(a)(3) and (c).

18 B. Overview of the Offense Conduct

19 As set forth below, the government's investigation of Defendant was initiated based upon
20 information learned by the United States Coast Guard, Sector Portland, during an inspection of
21 the M/V Wadi Al Arish, a dry bulk carrier owned by the defendant, which began on November
22 19, 2007. The investigation spread to include evidence of deliberate violations of the MARPOL
23 Protocol and United States law on the following six vessels: the M/V Al Wadi Al Gadeed, the
24 M/V Edfu, the M/V Wadi Al Arish, the M/V Wadi Al Karnak, the M/V Wadi Halfa and the M/V
25 Wadi Sudr.

26 The crew members who served aboard each of these ships, including senior ship
27 engineers, engaged in deliberate discharges of waste oil sludges, machinery space bilge water
28

1 and/or bilge slops, oily wastes, and oil residues (hereinafter collectively referred to as “oily
2 mixtures”) in a manner that intentionally circumvented required pollution prevention equipment
3 and environmental requirements for handling of oily waste.

4 During the period 2001 through November 2007, NNC’s crew members deliberately and
5 routinely discharged oily sludge directly into oceans throughout the world. Specifically,
6 engineering crews regularly discharged oily sludge by installing a bypass pipe which allowed
7 crews to pump oily sludge directly from waste tanks aboard vessels into the ocean.

8 The Defendant’s crew members also deliberately and routinely discharged oil-
9 contaminated bilge waste water directly into oceans throughout the world during the period 2001
10 through November 2007, in a manner that intentionally circumvented required pollution
11 prevention equipment, including ships’ Oily Water Separators and Oil Content Monitors. On
12 some vessels, crews discharged oily bilge waste by reconfiguring piping so that the waste could
13 be pumped directly overboard through an emergency valve, using a pump known as the “fire
14 pump” or “general service pump.” On other vessels, crews discharged oily bilge waste using the
15 ship’s “sludge pump” and a bypass hose.

16 The illegal discharges were deliberately concealed by crew members through the use of
17 false Oil Record Books, a required log, that are regularly inspected by the Coast Guard.
18 Discharges were also concealed by other means such as making discharges at night, and hiding
19 bypass equipment during port calls. Had the Coast Guard known the truth - that required
20 pollution prevention equipment was being intentionally circumvented and that official ship
21 records were being deliberately falsified - the agency could have detained the ships, refused port
22 entry and required repairs.

23 Numerous NNC crew members over an extended period of time participated in serious
24 crimes, including those serving as Chief Engineer, the senior-most person in command of the
25 Engine Department. While these crew members engaged in the knowing and deliberate violations
26 of the law, Defendant's shore-side management failed to provide and exercise sufficient
27 supervision and management controls to prevent or detect criminal violations by its employees.

1 According to many of the crew members, they participated in illegal conduct despite
2 Defendant's explicit policies forbidding such activities and in contravention of their training and
3 licensing because they feared that their employment would be terminated if they did not follow
4 the orders of the ship's Chief Engineer.

5 Illegal discharges were by no means universal on voyages of the Defendant's ships.
6 Rather, there appear to have been two types of Chief Engineers who served in the Defendant's
7 fleet: those who regularly discharged oily sludge and/or oily bilge waste, and those who worked
8 to strictly comply with MARPOL. Interviews with crew members working for the Defendant
9 identified nine Chief Engineers who appear to have discharged oily waste illegally as a standard
10 operating procedure, and several others who did so upon occasion. Several others were
11 identified as never permitting illegal discharges.

12 The MARPOL-related crimes committed by the company's crew members benefitted
13 NNC financially. Costs avoided included paying for the cost of off-loading sludge and oily waste
14 in port, and, perhaps most significantly, the time (and related costs) needed to make
15 arrangements to offload waste in port. The value of the crime can additionally be viewed in a
16 different light since Defendant gained the use of United States ports and waters through the use
17 of the false Oil Record Books.

18 **II. Defendant's Cooperation**

19 But for Defendant's timely acceptance of responsibility and cooperation in the
20 government's investigation, the United States would have sought a substantially larger criminal
21 fine, additional criminal counts of conviction and a longer term of probation. Defendant's
22 acceptance of responsibility and cooperation efforts were substantial and are credited by the
23 United States.

24 Defendant's efforts began at the very outset of the investigation.

25 (A) First, Defendant directed its employees aboard the M/V Wadi Al Arish - the first
26 vessel inspected in the investigation – to be truthful in their discussions with government
27 investigators and the Grand Jury. This cooperation led some crew members that had minimized
28

1 the extent of the violations to recant their prior statements and provide more incriminating
2 information about NNC. This truthful testimony from crew members of the M/V Wadi Al Arish
3 was critical to the government’s fact-finding efforts.

4 (B) Second, Defendant admitted very early in the investigation that the problem of illegal
5 discharges aboard its vessels appeared to be fleetwide or nearly fleetwide. By taking
6 responsibility for its potentially fleetwide illegal conduct early in the investigation, Defendant
7 played a critical role in revealing the scope of the illegal conduct at issue, and in taking
8 responsibility for the full scope of illegal conduct.

9 (C) Third, Defendant removed multiple crew members from two different vessels, and
10 maintained these crews in the United States to be available for appearances before grand juries in
11 the Oregon and Washington (which required Defendant to incur costs of maintaining these crews
12 in the United States, as well as travel and salary costs for replacement crew members). In
13 summary, Defendant's care and payment of expenses for employee witnesses, including salaries,
14 travel and accommodation costs, and legal representation expenses, has been significant and
15 cooperative in the investigative process.

16 (D) Fourth and most importantly, Defendant acted with unprecedented speed to take
17 responsibility for its conduct. Large scale, fleetwide vessel pollution cases have in the past taken
18 years to resolve and have not involved the early and full acceptance of responsibility displayed by
19 this Defendant. Within weeks of the initiation of the government’s investigation Defendant
20 admitted that the problem of illegal discharges aboard its vessels appeared to be fleetwide or
21 nearly fleetwide. By taking early responsibility for crimes that could not yet be proven by the
22 government, Defendant both cooperated and accepted responsibility in an unusual manner that
23 helped to expedite the government’s investigation. *The speed with which this Defendant acted –*
24 *negotiating a plea agreement to fleetwide criminal conduct in just weeks after the violations*
25 *were initially discovered – forms the critical basis for the limited criminal penalty the*
26 *government will recommend in this case.* By adoption of the remedial measures set forth in the
27
28

1 Environmental Compliance Plan, a requirement of the plea agreement, Defendant is also
2 embracing a change in the culture and organization that led to these violations.

3 **III. Factual Background**

4 The government's investigation has uncovered evidence of violations aboard six vessels,
5 as set forth below. Each of these vessels knowingly failed to fully maintain an accurate Oil
6 Record Book while conducting business in United States ports. The following facts support the
7 pleas of guilty to the individual counts contained in the Informations to be filed in connection
8 with this case. These individual counts and facts constitute a representative sample of the
9 conduct on the below-listed vessels.

10 A. The M/V Wadi Al Arish

11 On November 19, 2007, the M/V Wadi Al Arish was inspected by the United States
12 Coast Guard in Portland, Oregon. Inspectors found substantial evidence of illegal discharges of
13 oily sludge and oily bilge waste. Inspectors found sludge in the shipboard side of the vessel's
14 overboard "skin" valve and found that the piping between the Oily Water Separator and the
15 overboard valve was caked with rust. The Oil Record Book of the M/V Wadi Al Arish also
16 showed obvious signs of falsification, including repeated identical entries. After discovering
17 these problems, inspectors searched the ship and ultimately discovered a bypass hose, which fit
18 perfectly between the sludge pump and the overboard valve and had been used to completely
19 circumvent the Oily Water Separator and Oil Content Monitor. An examination of the overboard
20 side of the overboard "skin" valve also revealed oily sludge. Inspectors ultimately examined the
21 filter of the Oily Water Separator and found that it was utterly non-functional – caked in oil, torn
22 and riddled with holes.

23 Crew members initially denied that the M/V Wadi Al Arish had engaged in illegal
24 discharges. However, after a senior manager from the Company admonished the crew to be
25 truthful in conversations with the government, crew members admitted that the M/V Wadi Al
26 Arish had discharged oily sludge and oily bilge waste into the Atlantic Ocean and the Pacific

1 Ocean on multiple occasions. These crew members also disclosed and corroborated similar
2 crimes on a total of six NNC vessels.

3 The government's investigation determined that illegal discharge of oily sludge and oily
4 bilge waste have taken place from the M/V Wadi Al Arish since at least 1999 and continued until
5 the government's investigation in November 2007. Oily sludge was discharged using a bypass
6 hose, connected to the sludge pump and overboard valve – which was then used to discharge
7 waste oil sludge from the ship's waste oil tank directly into the ocean. Bilge waste was
8 discharged by removing a spindle from a valve in the ship's piping so that bilge waste could be
9 discharged directly into the ocean, bypassing the Oily Water Separator. These deliberate
10 discharges of oily sludge and bilge waste into the ocean were not recorded in the vessel's Oil
11 Record Book. Instead, the Oil Record Book contained false entries that were intended to create
12 the false appearance that the ship was complying with MARPOL and United States law. During
13 this time, the M/V Wadi Al Arish was trading in United States ports.

14 B. The M/V Al Wadi Al Gadeed

15 The government's investigation determined that illegal discharge of oily sludge and oily
16 bilge waste have taken place from the M/V Wadi Al Gadeed between 2001 and 2007 on at least
17 two specific voyages to the United States. These discharges were made by the Chief Engineer
18 who used a hose to bypassed the ship's Oily Water Separator and make overboard discharges
19 directly into the ocean. Discharges of oily sludge and oily bilge waste into the ocean were not
20 recorded in the vessel's Oil Record Book.

21 C. The M/V Edfu

22 United States Coast Guard officials from Sector Seattle inspected the M/V Edfu on
23 approximately December 14, 2007. Inspectors obtained copies of Oil Record Books and
24 sounding logs maintained by the vessel. Coast Guard inspectors discovered a note, signed by
25 Defendant's prior attorney on behalf of the Defendant, who had been retained after the inspection
26 of the M/V Wadi Al Arish. The note was appended to the Oil Record Book of the M/V Edfu and
27
28

1 acknowledged that the Oil Record Books may not be accurate due to a failure to record
2 discharges of oily waste in violation of MARPOL.

3 After seeing the note from the Defendant's initial attorney, Coast Guard officials
4 conducted an analysis of the records and determined that the sounding logs (which record tank
5 volumes) revealed discharges of oily sludge and oily bilge waste that were not reflected in the Oil
6 Record Books. Specifically the sounding logs showed marked decreases in the amount of oily
7 sludge and oily bilge waste on board the M/V Edfu which were not reflected in Oil Record Book
8 entries. Crews aboard the M/V Edfu had falsified the ship's Oil Record Book and failed to
9 maintain the log as required. These violations also took place in at least 2004 and 2005 at the
10 direction of one of the ship's Chief Engineers who deliberately bypassed the ship's Oily Water
11 Separator to discharge oily bilge waste directly into the ocean and also used a bypass hose to
12 discharge oily sludge directly into the ocean. These discharges, made between 2004 and 2007
13 were not recorded in the vessel's Oil Record Book during which time the M/V Edfu was trading
14 in United States port and waters.

15 D. M/V Wadi Al Karnak

16 The M/V Wadi Al Karnak was also engaged in illegal discharges, including at least six
17 different voyages between 2001 and June 2007 during which time the ship was trading in United
18 States ports. These discharges were made at the direction and/or with the knowledge of multiple
19 Chief Engineers and were not recorded in the vessel's Oil Record Book.

20 E. M/V Wadi Halfa

21 The M/V Wadi Al Halfa was also engaged in illegal discharges, including at least three
22 different voyages between 2001 and June 2007 during which time the ship was trading in United
23 States ports. These discharges were made at the direction and/or with the knowledge of multiple
24 Chief Engineers and were not recorded in the vessel's Oil Record Book.

25 F. M/V Wadi Sudr

26 The M/V Wadi Al Sudr was also engaged in illegal discharges, including at least three
27 different voyages between 2003 and June 2007 during which time the ship was trading in United
28

1 States ports. These discharges were made at the direction and/or with the knowledge of multiple
2 Chief Engineers and were not recorded in the vessel's Oil Record Book.

3
4 AGREED AND ACCEPTED

5 KARIN J. IMMERGUT
United States Attorney for the District of Oregon

U.S. DEPARTMENT OF JUSTICE
Environmental Crimes Section

6
7 _____
8 Dwight C. Holton
Assistant United States Attorney

J. Ronald Sutcliffe
Trial Attorney

9 JEFFREY C. SULLIVAN
10 United States Attorney for the
11 Western District of Washington

JIM LETTEN
United States Attorney for the
Eastern District of Louisiana

12 _____
13 James D. Oesterle
Assistant United States Attorney

Dorothy M. Taylor
Assistant United States Attorney

14 JEFFREY C. SULLIVAN
15 United States Attorney for the
16 Western District of Washington

17 _____
18 LCDR Todd S. Mikolop, USCG
Special Assistant United States Attorney

19 FOR NATIONAL NAVIGATION COMPANY
20
21

22 _____
23 M. Shawky Younis
Chairman and Managing Director
National Navigation Company

Captain Hassan Elsherbiny
General Manager for Marine and
Technical Affairs
National Navigation Company

24
25 Witnessed by

26
27 _____
28 Taher Helmy,
Attorney for National Navigation Company,
Helmy Hamza and Partners/ Baker McKenzie

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

And Accepted by Counsel:

Robert C. Weaver, Jr.
Attorney to Defendant NNC

Samuel Kauffman
Attorney to Defendant NNC

Dated: March __, 2008
Portland, Oregon