

# Maritime environmental management systems: Beyond compliance

ABS Consulting

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Awareness of the potential for water pollution and its prevention is essential in controlling it. For shipping companies, implementing an environmental management system (EMS) could be the most important preventative measure taken, and the cost of not acting could be detrimental.

Failure to comply with the provisions of international environmental protection laws (i.e. MARPOL) and national laws (i.e. the U.S. Clean Water Act) can result in massive fines and possible jail terms. Increased vigilance by the European Union, the U.S. Coast Guard and many Port State Authorities has led to several recent high-profile prosecutions of shipping companies and individuals.

In the United States, the Clean Water Act was enacted to protect U.S. waters and establishes a national policy that there should be no discharges of oil or hazardous substances into or

upon the navigable waters of the United States or adjoining shorelines. The act creates a comprehensive scheme of prohibitions, reporting requirements, penalties and clean-up obligations to implement this policy.

The U.S. Department of Justice (DOJ) is committed to protecting the environment and natural resources. Since 1998, the DOJ's Environmental Crimes Section imposed almost \$140 million in penalties and obtained sentences totaling 25 years of jail time for polluters violating the Clean Water and Oil Pollution Acts.

The DOJ's goals to prevent future offenses include assuring accurate ship records and oral statements to port authorities, deterring future criminal conduct, and punishing deliberate and intentional violations.

Most cases involve deliberate discharges of oily bilge water, sludge and other pollutants. As the department's Environmental Crimes Section continues to investigate and prosecute shipping companies that willfully pollute U.S. waters and do not adhere to MARPOL and U.S. laws, the criminal fines will continue to increase. Companies that do not adhere to laws are subject to extensive million-dollar fines and jail terms for polluting offenders.

The boards of shipping companies in their corporate governance role must take steps to benchmark their environmental management program as part of their due diligence. Tools and programs exist to assess both the condition and robustness of their EMS. ABS Consulting utilizes a two-stage audit process for the assessment.

Stage I focuses on understanding the level of preparedness and adequacy of the EMS. This is accomplished through an on-site documentation review (Tier I, lower tier documents and records are audited), confirmation of physical and product/services scopes, sampling of areas not common to other standards (e.g. EMS policy, full planning section and operational controls viewed from the environmental point of view). The main objective of Stage I is to provide a focus for planning Stage II by gaining an understanding of the EMS in the context of the organization's environmental aspects and associated impacts, policy and objectives.

Internal audits are reviewed to learn about corrective action plans already in place and any further information already collected by the organization. Results of the Stage I are documented in a report, which will include any non-conformities (NCs) generated during the audit.

NCs are classified and their resolution is verified during the next audit stage — Stage II.

Stage II is the core assessment used to audit all clauses of the standard through all levels of the organization. Evidence of conformance is gathered through interviews of personnel review of documents and inspections. The audit report documents the recommendation/conclusions reached by the audit team, and nonconformance statements list any deviations. The objectives of the Stage II audit are to confirm that the organization adheres to its own policies, objectives and procedures, and to confirm that the EMS conforms to all the requirements and achieves the organization's policy objectives.

Knowing where the program is in relation to the expectations of the board and the external stakeholders, such as coastal and port state administrations, is critical to the operational success of shipping companies. A less attractive alternative to the benchmarking and continuous improvement of a company's EMS would be to create a fund of millions of dollars to be used in the unlikely but possible event that a spill might occur.

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