KEVIN V. RYAN
United States Attorney

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MMS CO., LTD., Defendant.	CR 04- _____ VIOLATION: 18 U.S.C. § 1908(a) – Failure to Maintain an Accurate Oil Record Book; 18 U.S.C. § 2(b) – Causing an Act to be Done OAKLAND VENUE

INFORMATION

The United States Attorney charges:

Introduction

At all times relevant to this Information:

A. The Defendant

1. Defendant MMS CO., LTD. ("MMS") is a Japanese corporation, which operated a marine vessel known as the motor vessel ("M/V") Spring Drake, a Panamanian-flagged freight ship weighing 27,011 gross tons owned by Grus Line Shipping, S.A. Over the last several years, the M/V Spring Drake made a number of port calls in the United States, including ports located in Long Beach, California, Alameda, California, and Portland, Oregon.

2. Engine room operations in large marine vessels such as the M/V Spring Drake produce waste oil as a result of the operation of machinery in the engine room. Some of the waste oil, together with water and other liquids, accumulates in the bottom or "bilges" of the vessel. This

waste liquid typically drains into the "bilge wells," small compartments set into the bottom of the engine room compartment. The bilge waste is then collected and run through various processes designed to separate the oil and other wastes from the water. These processes include settling tanks and a pollution control devices designed to remove or separate out the oil known as an "Oil Water Separator" or a "Bilge Water Separator." After processing by the Oil Water Separator, bilge water containing very small amounts of oil may be legally discharged overboard. Oil removed from the bilge waste, along with waste oils from the ship, are stored in a sludge tank. The sludge can be burned or offloaded to shore for proper disposal.

3. The M/V Spring Drake typically operated with a crew of approximately 22 persons. Ten crew members of different rank worked in the vessel's engine room, including a chief engineer, a first engineer, a second engineer, a third engineer, an electrician, a motorman, two oilers, a wiper, and an engine cadet. The first engineer supervised the lower-level crew members in the day-to-day operations of the engine room and was primarily responsible for properly disposing of waste oil that accumulated on board the vessel, including operating the vessel's Oil Water Separator and its incinerator. The first engineer reported to the chief engineer who had overall responsibility for engine room operations. The chief engineer reported directly to the captain, who was responsible for all vessel operations.

B. Legal Framework

4. The United States is a party to the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (hereafter, the "MARPOL Protocol"), which regulates the discharge of oil from vessels at sea. The MARPOL Protocol is embodied in numerous agreements ratified by the United States that depend on principles of reciprocity and has been implemented in the United States by the "Act to Prevent Pollution from Ships" (hereinafter "APPS"), 33 U.S.C. §§ 1901, et seq. The APPS makes it a crime for any person to knowingly violate the MARPOL Protocol, APPS, or the regulations promulgated under the APPS. These regulations apply to all non-military vessels, including vessels operating under the authority of a country other than the United States, when these vessels are operating in United States waters or while at a port or terminal under the jurisdiction of the United States.

5. The MARPOL Protocol and the APPS set the legal standard for the maximum amount of

oil permitted to be discharged overboard by a ship, which is 15 parts per million. MARPOL also requires an oil-sensing device, such as that found on an Oil Water Separator, to prevent the discharge of a mixture containing more than the legally permitted concentration of oil. When a sensor on an Oil Water Separator detects more than the allowable parts per million of oil, it redirects that effluent to a storage tank onboard the vessel. Oil-contaminated bilge water and other oily wastes that are not discharged through a properly operating Oil Water Separator must be retained onboard or disposed of onshore.

6. Under MARPOL and applicable federal regulations, each non-tanker vessel of more than 400 gross tons must record all internal transfers of oil and overboard discharges of oil and bilge water in a record known as an "Oil Record Book." In the event of an emergency, or accidental or other exceptional discharge of oil or an oily mixture, a statement must be made in the Oil Record Book explaining the reasons and circumstances for the discharge. The captain of the vessel is required to sign every completed page of the Oil Record Book. The Oil Record Book must be maintained onboard the vessel for not less than three years, and must be kept onboard the vessel and readily available for inspection at all reasonable times.

7. "Flag states" (i.e., nations which register vessels) certify the vessel's compliance with international laws. "Port states" (i.e., nations visited by the vessels), such as the United States, inspect vessels to assure compliance with the law within their ports and waters. The United States Coast Guard, an agency of the United States Department of Homeland Security, is charged with enforcing the laws of the United States and is empowered to conduct Port State Control Examinations. Federal regulations authorize the Coast Guard to board and inspect all vessels, including foreign vessels, in United States' waters to determine compliance with these regulations and the MARPOL Protocol. A Port State Control Examination involves boarding a vessel and conducting regular inspections and investigations of potential law violations. In conducting these inspections the Coast Guard considers, among other things, compliance with the MARPOL Protocol. Failure to comply with international standards, including MARPOL, can form the basis of an order to refuse to allow a ship to enter port, to prohibit the ship from leaving port without remedial action, or to refer the matter to the flag state. In conducting their inspections, Coast Guard personnel rely on the statements of the vessel's crew and documents,

including information contained in the Oil Record Book.

8. These Introductory Allegations are hereby realleged and incorporated by reference into each and every count of this Information.

COUNT ONE: (33 U.S.C. §§ 1908(a); 18 U.S.C. § 2(b) – Failure to Maintain an Accurate Oil Record Book)

9. On or about July 3, 2003, in San Mateo County, within the Northern District of California, defendant MMS CO., LTD., by and through its agents and employees, including the engine room crew of the M/V Spring Drake whose actions were within the scope of their duties, did knowingly fail to maintain an Oil Record Book for the M/V Spring Drake in which all disposals of oil residue, all overboard discharges, and all disposals of bilge water were fully recorded. Specifically, on that date, in Redwood City Harbor, California, defendant maintained an Oil Record Book that contained false entries regarding the use of the Oil Water Separator to process oily wastes properly before being discharged overboard, and omitted entries regarding overboard discharges of inadequately treated oil residue and bilge water, all in violation of Title 33, United States Code, Section 1908(a) and Title 18, United States Code, Section 2(b).

DATED: February 12, 2004

KEVIN V. RYAN
United States Attorney

CHARLES B. BURCH
Acting Chief, Oakland Division

(Approved as to form: _____)
AUSA BESSETTE