



Circular

Ref: 12/10

AUGUST 2010

OUTLINE

- This circular applies to owners of tank vessels carrying oil calling at US ports
- The US Coast Guard Final Rule requires oil tanker owners/operators to submit their vessel response plans (VRPs) relating to salvage and firefighting by 22nd February 2011
- It also requires they ensure pre-contracted salvors & firefighters comply with 15 capability criteria. See Annex 1 of this circular.
- Guidance on use of Lloyds Open Form, contracts and funding agreements are provided in Annexes 2 & 3 of this circular.
- Annex 4 to this circular contains a comparison of rates and technical contract terms of four salvors
- All four annexes are reproduced on the Club website with this circular and are also available from the Manager's London agents but have not been reproduced in hard copy for reasons of economy.

TO THE MEMBERS

Dear Sirs

US Vessel Response Plans - Salvage and Marine Firefighting Requirements Final Rule - 31 December 2008 Deadline for implementation - 22 February 2011

Salvage agreements

This circular applies to owners of tank vessels carrying oil calling at US ports

Members are referred to Circular No.06/09 in which attention was drawn to the US Coast Guard (USCG) Final Rule amending the Vessel Response Plan (VRP) Salvage and Marine Firefighting requirements for tank vessels carrying oil (33 CFR part 155). This final rule became effective on 30 January 2009 and states that owners of tank vessels calling at US ports must enter into agreements with salvage and marine firefighting services and list these in the VRPs for such vessels. Owners and operators who are required to have a VRP now have until 22 February 2011 to prepare and submit revised plans that comply with these new salvage and marine firefighting requirements. Such amended plans can be filed from 1 September 2010. It is emphasised that unlike the position with regard to Oil Spill Response Organisations which are classified by the USCG, it is the responsibility of the shipowner or operator to ensure that the salvor and firefighter have capability measured against 15 criteria, and to certify to this effect. The criteria are listed in Annex 1. Owners and salvors have raised a number of questions concerning the Final Rule. The USCG has published FAQs and these are updated from time to time.

Please use the following link and instructions to access the FAQs:-

www.uscg.mil/vrp

- select 'General' under the heading Frequently Asked Questions
- select '**Salvage and Marine Firefighting Frequently Asked Questions** NEW'
- select PDF document: 'SMFF FAQ' (N.B. the latest version as at 18 August is July 09, 2010)

Final Rule

The Final Rule establishes new response times, requirements for each of the required salvage and marine firefighting services, establishes criteria for vetting salvage and marine firefighting service resource providers, and ensures that salvors and marine firefighters are adequate to provide the equipment and manpower needed for responding to incidents up to and including worst case scenarios.

The owner must file for a temporary waiver if the response times cannot be met.

Contract and Funding Agreement

The agreement must be by contract (or other approved means). The contract should expressly provide that the resource provider (Salvor) is capable of, and intends to commit to, meeting the plan requirements. As part of the contract the owners must enter into a written funding agreement. The purpose of a funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations at the time of an incident. The funding agreement must include a statement of how long the agreement remains in effect, and must be provided to the US Coast Guard for VRP approval. The USCG has indicated that it will accept Lloyd's Open Form (LOF) with certain conditions (see Annex 2). In effect this would seem to amount to LOF plus SCOPIC.

Although not primarily a matter relating to P&I cover, the International Group (IG) has drawn up a set of guidelines for evaluating these agreements and these are attached as Annex 3. These relate to such matters as indemnities, control, insurance etc. Against the background of these guidelines the VRP Working Group of the IG has reviewed four Salvor agreements namely those of:

- DonjonSmit – Version 7 June 2010
- MRA – Marine Response Alliance, LLC Dated 2 August 2010
- Resolve – Resolve Salvage & Fire (Americas), Inc. Dated 14 June 2010
- T&T Bisso - OPA 90 Ship Agreement Non-US - 22 April 2010
- T&T Bisso – OPA 90 Ship Agreement US Owners – 15 June 2010

We can confirm that these agreements conform with the guidelines. These salvors have also informed the VRP Working Group that the USCG has reviewed their agreements and stated that they meet the funding agreement requirements. The Salvors have been provided with letters from the USCG to this effect.

In addition the IG has commissioned a comparison of the rates in these agreements. This comparison is attached as Annex 4. These are provided purely for information purposes.

As will be seen the structures of these agreements show considerable variation and therefore the comparison is only illustrative. Members should refer to individual salvors for a comprehensive list of all rates and services.

Members are advised to consult their property underwriters with regard to selection of any particular contract/funding agreement and to check with the salvors that they are able to provide resources meeting the 15 criteria in all the geographic areas of the United States which their ships will visit.

All Clubs in the International Group of P&I Clubs have issued similar circulars.

Yours faithfully

THOMAS MILLER (BERMUDA) LTD.

CONTACT

- For Members requiring further information, contact Dr. Chao Wu at chao.wu@thomasmiller.com tel +44 20 7204 2157