

附件二

中国海事[2011]版 China MSA [2011]Version

协议编号:

Agreement No.:

船舶污染清除协议

(样本)

Agreement for Ship Pollution Response

(Sample)

中华人民共和国海事局制

Printed by Maritime Safety Administration of the People's Republic
of China

协议样本说明

Introduction to the Sample Agreement

一、为了有效实施船舶污染清除协议管理制度，根据《中华人民共和国船舶污染海洋环境应急防备和应急处置管理规定》第二十九条的规定,制定船舶污染清除协议样本（以下简称本协议）。

1. This Sample Agreement for Ship Pollution Response (hereinafter referred to as “this Agreement”) is formulated in accordance with the provisions of Article 29 of the Regulations of the People’s Republic of China on Emergency Preparedness and Response on Marine Environment Pollution from Ships for the purpose of effectively implementing the regime of agreement for ship pollution response.

二、船舶所有人、船舶管理人或者船舶的实际经营人（甲方）与取得相应资质的船舶污染清除单位（乙方），应当根据《中华人民共和国防治船舶污染海洋环境管理条例》第三十三条以及《中华人民共和国船舶污染海洋环境应急防备和应急处置管理规定》、《中华人民共和国海事局船舶污染清除协议管理制度实施细则》的有关规定，在船舶作业前或者进出港口前签订船舶污染清除协议。

2. The owner, manager or actual operator of a ship (Party A) shall, prior to ship’s operation or entering into or leaving from a port, conclude this Agreement with a qualified ship pollution response organization (Party B) in accordance with Article 33 of the Regulations of the People’s Republic of China on Administration of the Prevention and Control of Marine Environment Pollution from Ships, relevant provisions of the Regulations of the People’s Republic of China on Emergency Preparedness and Response on Marine Environment Pollution from Ships and relevant provisions of the Detailed Rules of Maritime Safety Administration of the People’s Republic of China on the Implementation of the Administration Regime of Agreement for Ship Pollution Response.

三、本协议中的权利义务条款为强制性条款，协议双方不得更改其内容。本协议未尽事项，协议双方可另行补充约定，但不得违反国家有关法律、法规、规章规定以及本协议中甲乙双方的

基本权利义务的约定。本协议的签订不得影响甲乙双方根据有关法律、法规和规章的规定所享有的包括责任限制等在内的权利以及应承担的义务。

3. The articles on rights and obligations of this Agreement are mandatory and both parties shall not change the contents of these articles. For matters not covered in this Agreement, the parties may reach a separate supplementary agreement. In no case should such supplementary agreement violate relevant provisions of laws, regulations and rules as well as stipulations in this Agreement concerning both parties' fundamental rights and obligations. The conclusion of this Agreement shall not prejudice the rights and obligations that shall be enjoyed or borne by both parties in accordance with relevant laws, regulations and rules, including the right of limitation of liability.

四、对协议文本中括号中需要选择的内容以及空格部位需要填写的内容，双方应当协商确定。对于双方选择的，在中括号以划√方式选定，或者在空格中填写；对于双方不选择的，应在中括号或空格部位打×，以示删除。

4. Choices of options with square brackets and the contents to be filled in blank spaces shall be determined by both parties through negotiation. As for the choices, options shall be chosen by marking a “√” in the square brackets, or filling in the blank spaces. With respect to those that both parties do not apply or choose, a “×” shall be marked in the square brackets or in blank spaces, indicating deletion.

五、协议采用14位数字编号（如01-1001-2011-0001），其中，前两位表示直属海事局代码，第3位表示船舶污染清除单位资质等级，分别用1、2、3、4对应一、二、三、四级船舶污染清除单位的资质，第4至6位表示船舶污染清除单位代码，由各直属海事局确定，第7至10位表示签订协议的年份，第11至14位表示协议序号，由各船舶污染清除单位确定。

各直属海事局代码分别为：辽宁局01，天津局02，河北局03，山东局04，江苏局05，福建局06，上海局07，浙江局08，广东局09，深圳局10，广西局11，海南局12。

5. The Agreement adopts fourteen numbers as its serial number (such as

01-1001-2011-0001), amongst which the first two numbers represent the code of a MSA directly under the P.R China MSA; the third number represents the qualification level of the ship pollution response organization, 1, 2, 3 and 4 respectively represents level-1, level-2, level-3 and level-4; the fourth to sixth number represents the code of the ship pollution response organization and shall be determined by the MSA directly under the P.R China MSA; the seventh to tenth represents the year in which the Agreement is concluded; the eleventh to the fourteenth represents the sequence number of the Agreement and shall be determined by the ship pollution response organization.

6. Codes of MSA directly under the P.R China MSA are as follows: Liaoning MSA: 01, Tianjin MSA: 02, Hebei MSA: 03, Shandong MSA: 04, Jiangsu MSA: 05, Fujian MSA: 06, Shanghai MSA: 07, Zhejiang MSA: 08, Guangdong MSA: 09, Shenzhen MSA: 10, Guangxi MSA: 11, Hainan MSA: 12.

甲方： _____

Party A: _____

住所地： _____

Domicile: _____

法定代表人： _____

Legal representative: _____

联系人： _____

Contact person: _____

通讯地址： _____

Correspondence address: _____

电话： _____ 传真： _____

Telephone: _____ Fax: _____

电子信箱： _____

E-mail: _____

乙方： _____

Party B: _____

资质等级及服务区域： _____

Qualification level and service area: _____

住所地： _____

Domicile: _____

法定代表人： _____

Legal representative: _____

联系人： _____

Contact person: _____

通讯地址： _____

Correspondence address: _____

电话： _____ 传真： _____

Telephone: _____ Fax: _____

电子信箱： _____

E-mail: _____

根据《中华人民共和国合同法》、《中华人民共和国海洋环境保护法》、《中华人民共和国防治船舶污染海洋环境管理条例》、《中华人民共和国船舶污染海洋环境应急防备和应急处置管理规定》、《中华人民共和国海事局船舶污染清除协议管理制度实施细则》（以下简称《细则》）等有关法律、法规和规章的规定，甲乙双方经过友好协商，在真实、充分地表达各自意愿的基础上，达成如下协议，并由双方共同恪守。

In accordance with relevant provisions of the Contract Law of the People's Republic of China, the Marine Environment Protection Law of the People's Republic of China, the Regulations of the People's Republic of China on Administration of the Prevention and Control of Marine Environment Pollution from Ships (hereinafter referred to as "the Regulations"), the Regulations of the People's Republic of China on Emergency Preparedness and Response on Marine Environment Pollution from Ships (hereinafter referred to as "the Rules") and the Detailed Rules of Maritime Safety Administration of the People's Republic of China on the Implementation of the Administration Regime of Agreement for Ship Pollution Response (hereinafter referred to as "the Detailed Rules") and other laws and regulations, Party A and Party B agree to reach the following agreement after equal consultation and on the basis of truthfully and/or completely expressing respective intentions, and the said agreement shall be abided by both Party A and Party B.

第一条 甲方的权利义务

Article 1 Rights and Obligations of Party A

1、甲方应当向乙方提供本协议框架下接受服务船舶（以下简称协议船舶，见附录一）的基本信息，并按照双方约定方式和内容，在协议船舶进入乙方服务区域前的____天内，向乙方提供船舶有关动态信息。甲方应当在协议船舶驶离乙方服务区域前小时，将船舶有关动态信息告知乙方。甲方应当书面确认已收到乙方按照本协议第二条第二款提供的应急待命相关信息。

1. Party A shall provide Party B with basic information of the ships (hereinafter referred to as "the agreed ships", Appendix I) to receive services under this Agreement, and shall, within ____days prior to the

agreed ships' entry into Party B's service area, inform Party B of the agreed ships' dynamic information in accordance with the time, way and contents agreed by both parties. Party A shall, ___ hours prior to the agreed ships' departure from Party B's service area, inform Party B of the agreed ships' relevant dynamic information. Party A shall confirm in writing the receipt of information on relevant emergency standby provided by Party B in accordance with stipulations of paragraph 2 of Article 2 of this Agreement.

2、甲方应当将本协议留存协议船舶上，并确保船上有关人员熟悉协议内容及乙方制定的污染清除作业方案。

2. Party A shall keep this Agreement onboard the agreed ships, and make sure that relevant staffs onboard the ships are familiar with the contents of this Agreement and the contents of Pollution Response Operation Plan formulated by Party B.

3、甲方应当配合乙方按照《细则》规定开展船舶污染应急演练。

3. Party A shall cooperate with Party B to carry out ship pollution emergency response exercises as required by the Detailed Rules.

4、甲方应当在协议船舶发生污染事故时，立即通知乙方并组织开展污染控制和清除行动。甲方应当在行动结束后，配合乙方开展污染清除行动评估。

4. Party A shall, when a pollution accident happens to the agreed ship, inform Party B immediately and organize to carry out the pollution control and cleanup action. Party A shall, after the termination of such actions, cooperate with Party B to carry out the evaluation on such actions.

第二条 乙方的权利义务

Article 2 Rights and Obligations of Party B

1、乙方应当具有海事管理机构批准的资质，并保持相应的应急清污能力。

1. Party B shall possess relevant qualification approved by Maritime Safety Administration (MSA), and maintains its corresponding capability of pollution response.

2、乙方应当书面确认已收到甲方按照第一条第一款约定提供的协议船舶的基本信息和动态信息，并按照双方约定的时间、方式和内容将乙方应急待命的相关信息告知甲方。

2. Party B shall confirm in writing the receipt of the agreed ships' relevant basic information and dynamic information provided by Party A in accordance with stipulation of paragraph 1 of Article 1, and inform Party A of information on relevant emergency standby provided by Party B in accordance with the time, way, and contents agreed by both parties.

3、乙方应当在接收到协议船舶驶入服务区域的通知后，保证应急船舶、设备和人员处于待命状态。接到甲方协议船舶驶离服务区域的通知后，乙方可取消待命。

3. Party B shall, upon receiving the notice concerning the agreed ships' entry into the service area, make sure that the emergency ships, facilities and staffs are standby. After receiving the notice that the agreed ships of Party A have departed from the service area, Party B may cancel such standby status.

4、乙方应当在签订本协议时，将其制定的污染清除作业方案中英文文本向甲方提供。

4. Party B shall, when concluding this Agreement, provide Party A with a Chinese and/or English version of the Pollution Response Operation Plan formulated by Party B.

5、协议船舶发生污染事故时，乙方应当在甲方的组织下开展污染控制和清除行动。乙方应当在行动结束后，配合甲方开展污染清除行动评估。

5. Once a pollution accident happens to the agreed ships, Party B shall, under the command of Party A, carry out pollution control and cleanup actions. And shall, after the completion of the cleanup operation, cooperate with Party A to conduct the evaluation on such actions.

第三条 费用

Article 3 fees and expenses

1、甲方应按照双方约定的收费标准（见附录二）和支付方式向乙方支付船舶污染清除协议费用，用于应急防备的合理支

出。

1. Party A shall pay Party B the ship pollution response agreement fees in accordance the rates (appendix II) and mode of payment agreed by both parties for the purposes of compensating Party B the incurred reasonable cost of emergency preparation.

2、协议船舶发生污染事故，乙方根据本协议开展污染控制和清除行动，甲方应当向乙方支付实际发生的合理的污染控制和清除费用。

2. If Party B carries out pollution control and cleanup actions in accordance with this Agreement after a pollution accident happens, Party A shall pay Party B the actual and reasonable expenses incurred in such actions.

3、为保证污染控制和清除行动顺利进行，如果乙方开展的污染控制和清除行动超过了___个工作日，乙方可以要求甲方就已经开展的污染控制和清除行动，每隔___个工作日向乙方支付一笔临时费用。临时费用应在乙方向甲方开具临时费用账单后个工作日内汇到乙方指定账户，并从双方最后结算的污染控制和清除费用中扣除。

3. When a pollution control and cleanup action lasts more than___working days, to ensure the smooth performance of the actions by Party B, Party B may demand Party A to pay an interim sum every____working days for the actions that has been carried out by Party B. This interim payment shall be remitted to the account appointed by Party B within___working days after Party B issues the invoice to Party B and such interim payment should be deducted from the final invoice.

4、在污染控制和清除行动结束后，乙方应向甲方提交已产生的费用清单和证明这些费用的文件，甲方应及时支付双方没有争议部分的费用；对双方存在争议的费用，由甲方提供适当的担保。

4. Upon terminating the pollution control and cleanup actions, Party B shall present to Party A a breakdown and preliminary evidence for the expenses incurred. Party A shall timely pay the undisputed sum and provide an appropriate security for the sum in dispute.

第四条 联络人

Article 4 Contact Person

1、甲乙双方应当指定联络人，并确保联络人在根据本协议开展应急防备和应急处置过程中保持联系和沟通。乙方提供的联系电话应当为应急联系电话，并保持值守状态。

1. Both parties shall make arrangement for their own contact persons, and ensure that such contact persons can keep in touch with each other in the course of the emergency preparedness and response as per this Agreement. The telephone number provided by Party B shall be an emergency number, and the number shall be kept attended.

2、甲乙任何一方需要变更联络人或联系方式的，应当及时书面通知另一方，在得到对方确认后，方可变更。

2. Where any Party of the two parties needs to change its contact person or the contact person's contact detail, such party shall inform the other party by a written notice in a timely manner and no alteration shall be made until receiving the other party's notice for confirmation.

第五条 保密义务

Article 5 Confidentiality Obligation

本协议签订后，无论本协议是否失效、终止，甲乙双方应当负有保守对方提供的所有资料、信息秘密的义务。除了海事管理机构等可依法取得该资料、信息的政府主管机关外，甲乙双方不得向其它第三方公开资料、信息内容。

After conclusion of this Agreement, no matter whether this Agreement is in effect or not, or no matter whether this Agreement is terminated, both parties are obliged to keep all the materials and information provided by the other party confidential. Except that such government authorities as the MSA may obtain the said materials and information in accordance with law, both parties shall not make in public the contents of such materials and information.

第六条 生效、变更和终止

Article 6 Entry into Effect, Modification and Termination of Agreement

1、本协议有效期为：

【 】 固定期限为_____年（或月）；

【 】 协议船舶的_____个航次（每一航次时间另行约定）。

本协议自双方签字盖章后生效。

1. The validity of this Agreement is:

[] Fixed term of_____years (or months);

[] _____voyages of the agreed ships (the time of each voyage shall be determined by separate agreement).

This Agreement shall enter into effect as of signed and stamped by both parties.

2、甲乙双方如需变更或终止协议，应当按照约定的时间和方式通知对方，经双方协商一致后以书面形式确认。但是，协议船舶进入乙方服务区域后，任何一方不得变更或终止本协议。

2. In case Party A or Party B needs to modify or terminate the Agreement, the other party shall be informed in accordance with the agreed time and way, and such modification or termination shall be confirmed in writing by both parties' consensus intention through negotiation. However, after the agreed ship(s) has (have) entered into the service area of Party B, neither party shall modify or terminate this Agreement.

3、甲乙双方终止本协议，或者因一方违约导致本协议无效的，应当立即向海事管理机构报告。

3. Where both parties terminate this Agreement, or where this Agreement becomes invalid due to one party's breach of this Agreement, it shall be reported to MSA immediately.

第七条 违约及侵权责任

Article 7 Liability for Breach of Contract and Tort

1、甲乙任何一方因违反本协议的约定或在履行本协议的过程中因过错给对方造成损失的，应根据本协议向对方承担违约责任或依照有关法律的规定向对方承担侵权责任。

1. Where a Party causes any damage or loss to the other Party due to its breach of this Agreement or fault in the course of performing this Agreement, such Party shall, in accordance with this Agreement, bear the liability for breach of contract to the other Party, or be liable to the other Party for infringement of rights in accordance with provisions of relevant laws.

2、在履行本协议的过程中，甲乙双方造成第三人损害，或者第三人造成甲方或乙方损害的，应当依照有关法律的规定承担相应的责任。

2. Where Party A or Party B causes any damage or loss to a third party due to performance of this Agreement, or where a third party causes any damage or loss to Party A or Party B, the party concerned shall bear corresponding liability in accordance with provisions of relevant laws.

3、甲方或者乙方因执行船舶污染事故应急指挥机构或者海事管理机构的指令或要求而未能履行或未能完全履行本协议约定的义务的，可免除其承担违约责任，但是，对于乙方根据本协议已经履行的污染控制和清除行动的部分，甲方应当根据第三条的约定支付污染控制和清除费用。

3. Where Party A or Party B fails to perform or completely perform the obligations under this Agreement due to executing the orders or requirements of Ship Pollution Accident Emergency Commanding Organ or MSA, such party may be exempted from undertaking the liability for breach of contract. However, Party A shall, in accordance with the stipulation of Article 3 of this Agreement, pay Party B the expenses incurred for pollution control and cleanup actions that Party B has actually conducted in accordance with this Agreement.

第八条 适用法律及管辖

Article 8 Applicable Law and Jurisdiction

1、本协议及其项下争议适用中华人民共和国法律。

1. Laws of the People's Republic of China shall be applied to this Agreement and disputes arising from this Agreement.

2、双方对本协议及其项下的争议，由双方协商解决；协商不成的，按照下述方式解决：

申请海事管理机构调解;

提交中国海事仲裁委员会,按照申请仲裁时该会现行有效的仲裁规则在_____ (地点) 进行仲裁;

依法向中华人民共和国有管辖权的法院起诉。

2. Any and all disputes arising from this Agreement shall be solved through both parties' mutual negotiation; where no resolution is reached after negotiation, such dispute shall be resolved in accordance with the following:

Submit such dispute to MSA for mediation;

Submit such dispute to the China Maritime Arbitration Commission for arbitrating at_____(location) in accordance with the arbitration rules effective at the time of arbitration;

Bring an action before a court in the People's Republic of China that has jurisdiction.

第九条 本协议未尽事项,由双方约定后签订补充协议(见附录三)。

Article 9 With respect to matters not covered in this Agreement, both parties may conclude a supplementary agreement. (Appendix III)

第十条 协议份数

Article 10 Copy of this Agreement

本协议正本一式___份,具有同等法律效力,甲方持___份,乙方持___份,一份由乙方提交当地港口的海事管理机构。

This original Agreement is in_____ ; each copy bears the same legal effect. Party A holds___copy (copies), Party B holds___copy (copies), and a copy shall be submitted the local MSA at the port.

甲方(盖章): _____

Party A (seal): _____

法定代表人/委托代理人(签名): _____

Legal representative/Entrusted representative: (signature) _____

年 月 日

Date:

乙方(盖章): _____

Party B (seal): _____

法定代表人/委托代理人(签名): _____

Legal representative/Entrusted representative: (signature)_____

年 月 日

Date:

附录一：

协议船舶名单

船名	IMO编号/船舶呼号	其它需要说明的事项

Appendix I:

List of the Agreed Ships

Name of vessel	IMO number/ Call sign	Other matters to be Remarked

附录二：船舶污染清除协议费用

Appendix II Rates on the Ship Pollution Response Agreement

附录三：补充协议（如有）

Appendix III Supplementary Agreement (if any)