



Circular

Ref: 7/11

MAY 2011

OUTLINE

- The outstanding detailed rules relating to China's recent marine pollution legislation have now been issued
- The requirement to contract with an approved clean-up contractor will be enforced in all Chinese ports from 1st January 2012
- The Club recommends Members do not enter into arrangements with a clean-up contractor until the "approved" list is made available.
- A model mandatory contract is attached to this circular by annex
- This circular refers to previous circulars 26/10, 14/10, 15/09 & 12/09. Legal briefing "Chinese marine pollution laws" of July 2010 provides an overview of this legislation

TO THE MEMBERS

Dear Sirs

REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PREVENTION & CONTROL OF MARINE POLLUTION FROM SHIPS

We refer Members to previous circulars on the Regulations of the People's Republic of China (PRC) on the Prevention and Control of Marine Pollution from Ships ("the Regulations"), and the postponement of the requirement that owners/operators of (a) any ship carrying polluting and hazardous cargoes in bulk or (b) any other vessel above 10,000 gt enter into a pollution clean up contract with a Maritime Safety Agency (MSA) approved pollution response company before the vessel enters a PRC port.

These requirements were postponed pending additional rules to be issued by the MSA. These Detailed Rules on the Implementation of the Regime of Agreement for Ship Pollution Response have now been issued by the China MSA, on 20 May 2011, with an accompanying Notice and mandatory contract which owners/operators must enter into with a clean up contractor as approved by the China MSA. A copy of the mandatory, model contract which includes the different levels of contractors (as contained in Attachment III to the contract) is contained in the Annex to this Circular.

Approved clean up contractors will be categorised by the MSA in accordance with their qualifications and response capabilities and will be assigned level 1, 2, 3 or 4 status. Operators will need to contract with an approved clean up contractor in accordance with the size and type of vessel.

However, the list of clean up contractors approved in each Chinese port has still not been issued by the China MSA. The MSA Notice states that the lists of level 2, 3, and 4 contractors - which will appear on the dedicated MSA website: www.osp.cn¹ - will be issued by 31 August 2011 with the list of level 1 contractors to be issued during the course of the year. The requirement to contract with an approved clean up contractor will then be enforced in all Chinese ports from 1st January 2012. As previously advised, there will therefore be a "grace" period until 1st January next year before enforcement of the requirement to contract with an approved clean up contractor.

We also refer Members to the previous recommendation not to enter into contractual arrangements with a clean up contractor for the purposes of ensuring compliance with the Regulations for the time being, that is, until the list of approved clean up contractors is issued. The International Group is currently reviewing the model contract to determine whether it conforms with the International Group guidelines concerning spill response contracts and a further update to Members with detailed guidance on the contract will be provided in this regard following the completion of the review. The International Group will also consider the development of supplemental clauses for inclusion in the contract since the model contract provides that the operator and clean up contractor may negotiate and include supplemental clauses in the contract if such clauses are not already included.

In the meantime, the International Group can also confirm that the term “operator” for the purposes of concluding and signing the contract with a clean up contractor is defined by the China MSA as the owner, manager or actual operator of a ship. In respect of those operators not domiciled in China, the MSA requires that a branch company, office or agent located in mainland China (not Hong Kong, China or Macau, China) conclude and sign the clean up agreement with the approved contractor.

The cleanup contract must be kept on board the ship since it may be necessary to present the agreement to local MSA officials upon entry into port, unless it has been submitted to the local MSA by the ship’s operator in advance of the ship’s entry into port.

Ships entering a Chinese port from 1 January 2012 that have not contracted with an approved, relevant clean up contractor where necessary will be subject to administrative penalties and other possible measures.

Members should note that the abovementioned spill response contract requirements are different to the China MSA’s measures in relation to the discharge of ship’s garbage, residue water waste, oil waste and sludge. Specific reference is made to the Regulations on Administration of the Prevention and Control of Marine Environment Pollution caused by Ships and their Relevant Operations² which became effective on 1st February 2011 and requires owners/operators of all vessels to discharge all their waste residues (primarily sludge) at least once at a PRC port, whenever on a voyage to the PRC. Ships which intend to carry out such “Regulated Operations”.³ A list of such service providers should be posted in due course on each local MSA’s website. The Shanghai MSA has issued Interim Regulation of Receipt of Ship Pollutants and the list of such providers in Shanghai is posted on the Shanghai MSA website.

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

Yours faithfully

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CONTACT

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¹ The list of approved contractors will also appear on the China MSA website: www.msa.gov.cn

² <http://msa.gov.cn/Notice/Notice/3f0a2284-4463-4c41-bdef-0412bd8408ad> This website currently only provides a Chinese text.

³ “Regulated Operations” include tank cleaning operations, collection and disposal of residue oil, oily water, water that contains toxic and harmful substances, garbage, sewage and exhaust gas.” are required to sign a contractual agreement with a service provider to provide such services.