



STEAMSHIP MUTUAL

To the Members

May 2011

Dear Sirs,

REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PREVENTION AND 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 following 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 1 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.

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

L.159

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 1 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 Operations³” are required to sign a contractual agreement with a service provider to provide such services. 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,

THE STEAMSHIP MUTUAL UNDERWRITING
ASSOCIATION LIMITED

² <http://msa.gov.cn/Notice/Notice/3f0a2284-4463-4c41-bdef-0412bd8408ad>

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.

Annex

Agreement No.:

Agreement for Ship Pollution Response

(Sample)

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

Introduction to the Sample Agreement

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.
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.
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.
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 "x" shall be marked in the square brackets or in blank spaces,

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indicating deletion.

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.

Party A:

Domicile:

Legal representative:

Contact person:

Correspondence address:

Telephone: _____ Fax:

E-mail:

Party B:

Qualification level and service area:

Domicile:

Legal representative:

Contact person:

Correspondence address:

Telephone: _____ Fax:

E-mail:

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.

Article 1 Rights and Obligations of Party A

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

Article 2 Rights and Obligations of Party B

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

Article 3 fees and expenses

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. 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. 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. 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.

Article 4 Contact Person

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. 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.

Article 5 Confidentiality Obligation

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.

Article 6 Entry into Effect, Modification and Termination of Agreement

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. 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. 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.

Article 7 Liability for Breach of Contract and Tort

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. 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. 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.

Article 8 Applicable Law and Jurisdiction

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

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

Article 10 Copy of this Agreement

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.

Party A (seal):

Legal representative/Entrusted representative: (signature)

Date:

Party B (seal):

Legal representative/Entrusted representative: (signature)

Date:

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Appendix I:**List of the Agreed Ships**

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

Appendix II Rates on the Ship Pollution Response Agreement**Appendix III Supplementary Agreement (if any)**

Attachment III

Service Scope and Rating table of Ship Pollution Cleanup Unit

Type of vessel Service area Level of pollution response organization	Vessel carrying oil in bulk			Vessel carrying bulk liquid cargo apt to cause pollution damage other than oil		Vessel carrying liquid cargo apt to cause pollution damage not in bulk	
	Port area	Enter into or depart from a port	Ship-to-ship transfer of, loading or discharging cargo outside a port	Enter into or depart from a port	Ship-to-ship transfer of, loading or discharging cargo outside a port	Enter into or depart from a port	Ship-to-ship transfer of, loading or discharging cargo outside a port
Level-1		Above 10,000GT	Beyond 20 nautical miles	Above 10,000GT	Beyond 20 nautical miles	Above 50,000 GT	Beyond 20 nautical miles
Level-2	2,000 GT to 10,000 GT	Below 10,000 GT	Within 20 nautical miles	Below 10,000 GT	Within 20 nautical miles	30,000 GT to 50,000 GT	Within 20 nautical miles
Level-3	600 GT to 2,000 GT					20,000 GT to 30,000 GT	
Level-4	Below 600 GT					10,000 GT to 20,000 GT	

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