Canadian Pollution Regulations

March 2000

Members will be aware that, with effect from 4th April 1995, Regulation 26 of Annex I of the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 (MARPOL 73/78), requires all tankers of 150 tons gross tonnage and above and every other vessel of 400 tons gross tonnage and above, to have on board an oil pollution emergency plan, as approved by the vessel’s flag state administration.

This requirement was enacted into Canadian law under an amendment to the Canada Shipping Act, which also placed a number of additional requirements on the above mentioned vessels, including:-

1. Each vessel must enter into an agreement with a certificated response organisation capable of responding to a spill equal to the amount of oil carried on board up to a maximum of 10,000 tons of oil for any and each area south of latitude 60°N in which the vessel will operate. (The Canadian Coastguard remains responsible for dealing with spills in Arctic Waters).

2. Each vessel must maintain on board, in addition to and separate from the oil pollution emergency plan, a declaration:-
   - identifying the vessel’s oil pollution insurer;
   - evidencing an agreement with a certificated response organisation;
   - identifying every person authorised to implement the vessel’s oil pollution emergency plan. Persons so authorised must include the Master or other person in charge of the vessel;
   - identifying every person authorised to implement the vessel’s arrangements with the response organisations. Persons so authorised need not be based in Canada but must be available on a 24 hour basis.

Five such response organisations were set up in Canada, all of which have been certificated by the Canadian Coastguard for the maximum 10,000 ton response capability.

Each of the response organisations covered a separate area, as follows:-

- West Canada Marine Response Corporation (WCORC) covers the waters bordering the province of British Columbia including the shorelines associated with such waters and excluding waters north of 60°N.
- Eastern Canada Response Corporation (ECRC) covers James Bay, Hudson Bay, Ungava Bay and the waters in the province of Quebec including the St. Lawrence Seaway from the western border of the primary area of response of the port of Montreal to the Gulf of St. Lawrence and the Atlantic provinces excluding the waters north of 60°N and the primary areas of response of Saint John, N.B. and Point Tupper, N.S.
- Great Lakes Response Corporation (GLRC) covers the waters of the Canadian Great Lakes system within the province of Ontario including Lake Superior, the St. Mary’s River, Lake Huron, the St. Clair River, Lake St. Clair, the Detroit River, Lake Erie, Lake Ontario and the St. Lawrence river from Kingston, Ontario to the western border of the primary area of response of the port of Montreal, the waters of Lake Winnipeg, the Athabasca River from Fort McMurrary to Lake Athabasca and the waters of Lake Athabasca.
- Atlantic Emergency Response Team Inc. (ALERT) covers the primary area of response of the port of Saint John, New Brunswick
- Point Tupper Marine Services Ltd (PTMS) covers all waters within a 50 n.m. radius of Bearhead Light (45°33’N 61°17’W) but not extending North of the Camp Causeway into St. Georges Bay and the contiguous landmass and, for greater certainty, not including the waters of Bras d’Or Lakes, St. Andrew’s Channel, St. Patrick’s Channel, Great Bras d’Or and other waters internal to Cape Breton Island.

It is apparent that these response areas do not overlap. However, a vessel is required to have entered into an agreement with a response organisation covering every area through which it sails within Canada’s 200 mile EEZ. Accordingly, vessels visiting Point Tupper or St. John will necessarily have to sail through waters covered by ECRC and will, therefore, be required to enter into an agreement with that organisation.

It is important to note that this new legislation also shifted the emphasis on who should be responsible to respond to any oil spill involving a vessel. Previously, a shipowner responsible for a pollution incident could elect either to manage any clean-up operation himself or to leave control of the clean-up operation to the Canadian Coastguard, who would subsequently seek to recover any clean-up expenses from the shipowner. In view of the Canadian Coastguard’s expertise in this area, most clean-up operations were managed by them.

However, under the amending legislation, the shipowner is responsible for the management and control of all oil spill response activities. He is required to take reasonable measures to implement his oil pollution emergency plan and appoint an On-Scene Commander to instigate the necessary response measures. The Canadian Coastguard is unwilling to accept nomination as the On-Scene Commander by the shipowner. However, it will monitor any oil spill incident and, if the polluter is unidentified, unable, or unwilling to conduct an effective response, will assume control of the situation. The shipowner is not obliged to invoke his arrangement with any of the certificated response organisations, provided that his response measures are adequate. However, any failure on the part of the shipowner to implement his oil pollution emergency plan, and thus conduct an effective response, may result in a fine of up to C$250,000. Therefore, in order to minimise the risk of penalty, in the event that the shipowner wishes to select a competent response organisation other than one with which he has an existing arrangement, it is recommended that the shipowner’s arrangement with any certified response organisation is kept separate from and not referred to in his oil pollution emergency plan.

The Canadian Coastguard have now produced a pro forma document for use in making the on-board declaration referred to above, the text of which is quoted hereunder:

**CANADA**

**DECLARATION FOR A SHIP THAT IS IN WATERS SOUTH OF THE SIXTIETH PARALLEL OF NORTH LATITUDE**

Pursuant to subparagraph 660 (2)(c)(i) of the Canada Shipping Act, I declare that
a. with respect to pollution insurance coverage, the ship’s insurer is:

Name:
Address:
Telephone:
Facsimile:
After Hours:

b. in accordance with paragraph 660.2(2)(b) of the Canada Shipping Act, I have an arrangement with the certified response organisation known as:

c. the arrangement is in respect of [Number of Tonnes] tonnes of oil and in respect of the following waters [List waters in which the ship is operating]

d. pursuant to subparagraph 660.2(2)(c)(iii) of the Canada Shipping Act,

i. the following persons are authorised to implement the arrangement described in paragraph (b):

1. Vessel Master
2. *

Telephone:
Facsimile:
Telex:

(if required, attach additional pages)

ii. the following persons are authorised to implement the shipboard oil pollution emergency plan required by section 45.2 of the Oil Pollution Prevention Regulations:

1. Vessel Master
2. *

Telephone:
Facsimile:
Telex:

(if required, attach additional pages)

This declaration must be signed by the Master or Owner (Operator or Manager may sign if granted power of attorney by Owner)

Printed Name:
Signature:
Title (Master, Owner)
Date:

("The persons listed in (d)(i)(2) and (d)(ii)(2) need to be someone, other than the Master, who is in charge of the vessel and it is suggested that details of the vessel’s owner could be inserted here.)

All 5 certificated response organisations offer their services in 2 distinct forms:

- a bulk oil agreement for tankers
- a non-bulk oil agreement for non-tankers

The latest versions of the contracts issued by all these response organisations conform with International Group guidelines. However, as various versions of each contract exist, Members are advised to contact the Club in order to ensure that the versions of the contracts which they wish to sign are acceptable.

It was thought that the Canadian Coastguard would only certify a response organisation when its fee schedule had been finally approved. However, the response organisations were certificated soon after the abovementioned pollution regulations were enacted but the Canadian government chose not to enforce the regulations requiring shipowners to enter into agreements with certificated response organisations pending government approval of the fee schedules. Despite this, most shipowners were unaware that they were not yet required to comply and entered into contracts with these organisations.

The fee schedules initially published by the five response organisations all provided for a registration fee of C$450 per vessel per year. In addition, all of them, apart from PTMS, charged an initiation fee of C$200 per vessel. However, a bulk oil cargo fee levied by each organisation on a per voyage basis, based on the amount of bulk oil cargo being carried, varied widely, as can be seen below:

Bulk oil cargo fee:

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Fee per metric ton</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECRC</td>
<td>C$0.488</td>
</tr>
<tr>
<td>GLRC</td>
<td>C$1.950</td>
</tr>
<tr>
<td>WCMRC</td>
<td>C$1.520</td>
</tr>
<tr>
<td>ALERT</td>
<td>C$0.440</td>
</tr>
<tr>
<td>PTMS</td>
<td>C$0.325</td>
</tr>
</tbody>
</table>

PTMS also required a bunker capacity fee of C$100 per voyage.

Following the filing of a number of objections to the inequity of this fee structure, the Canadian authorities set up an investigative panel - the Oil Spill Response Organisation Fee Structure Investigation Panel - as provided for in the Canada Shipping Act.

This resulted in their review being published in April 1998, following which the Canadian government advised that they would be enforcing all the abovementioned regulations as from 15 September 1998. However, and although they have been involved with them since 1995, many
The governmental review proposed that substantial reductions in the bulk cargo fees be levied, as follows:

- ECRC C$0.343 per metric ton
- GLRC C$1.358 per metric ton
- WCMRC C$0.941 per metric ton
- ALERT C$0.140 per metric ton
- PTMS C$0.225 per metric ton

It also proposed that the bunker capacity fee charged by PTMS be dropped.

In addition, whilst it endorsed the annual registration fee of C$450 per vessel, it proposed that if the vessel visited more than one response area in any one year, a multiple registration fee of only C$750 will be charged.

When the eastern Canadian response organisations (ECRC, ALERT and PTMS – GLRC having been amalgamated within ECRC) published their fee schedules for 1998/9 these showed that they were willing to conform to the proposals contained in the governmental review. However, WCMRC, in their fee schedule for 1998/9 (published in the Canada Gazette on 19th September 1998) indicated that they were unwilling to abide by the multiple registration fee proposal and will charge C$450 for any vessel visiting their area, irrespective of whether the vessel has already paid C$450 or even C$750 to the other response organisations. However, few, if any vessels visit both the east and west coast of Canada in the same year.

The eastern Canadian response organisations, under the management of ECRC, are now jointly offering 3 new bulk oil and 3 new non-bulk oil agreements covering eastern Canada. These contracts, titled “SNBO 99-1”, “SNBO 99-2” and “SNBO-3”, all of which are dated January 1, 1999, cover all of Canada’s eastern seaboard, the Great Lakes region, and the Quebec/Maritimes/Newfoundland regions excluding the ports of Saint John and Point Tupper respectively. All 6 of these contracts conform with International Group guidelines.

(Click here for September 2001 update on Response Organisation fees)