

October 1992

**TO ALL MEMBERS OF CLASS 3 -
PROTECTION AND INDEMNITY**

The Britannia Steam Ship
Insurance Association Limited

United States Oil Pollution - Vessel Response Plan (VRP) Regulations

Although final regulations for vessel response plans under the Oil Pollution Act 1990 have not yet been published, the US Coast Guard on 15 September issued interim guidelines for preparation of these plans. These apply to all ships which handle, store or transport oil in bulk as cargo, or cargo residue, operating in the navigable waters of the United States or transferring oil in the Exclusive Economic Zone of the United States. After 18 February 1993, a ship may not transport oil to the US unless a response plan for it, which meets the requirements of the VRP regulations, has been submitted by the owner or operator to the US Coast Guard for approval. After 18 August 1993 a ship may not transport oil unless it is operating in compliance with the plan filed with the US Coast Guard. For a period of up to two years from the date of submission of the plan, a ship may continue to transport oil even though the plan has not yet been approved, if the owner or operator has certified that it has ensured by contract the availability of private personnel and equipment sufficient to respond to a worst case spill.

In accordance with the guidelines, plans are to be divided into the following ten elements:

1. General information and introduction
2. Notification procedures
3. Shipboard spill mitigation procedures
4. Shore-based response activities
5. List of contacts
6. Training procedures
7. Drill procedures
8. Plan review and update procedures
9. Geographic-specific appendices for each COTP (Captain of the Port) zone in which a ship operates
10. Appendices for vessel-specific information.

The general section and the shipboard plans are broadly consistent with the recommendations of IMO and other bodies such as OCIMF and ITOPF.

However, the guidelines will also provide for the plan to incorporate detailed information on the shore-side response which the owner will implement in the event of a spill in any area which the ship visits. Central to this part of the plan is the identification of a "qualified individual" who must be resident in the United States and must have full written authority from the owner to implement the response plan. This includes activating contracts with spill removal organisations, liaison with the Federal authorities and obligating the funds required to carry out all removal activities.

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The guidelines also provide for the owner to identify in the plan the shore-based organisational structure which will be used to manage the response actions. Each plan must then contain a separate "geographic-specific" appendix for each zone in which the ship will operate. This will identify the spill management team and the contractors or others who will supply the equipment and resources required to deal with three categories of oil spill in that area, the average most probable discharge, the maximum most probable discharge and the worst case discharge. Detailed criteria are published in the guidelines for determining the equipment and resources necessary for planning purposes in each of these cases.

In preparing these guidelines the US Coast Guard appears to have ignored the comments of the International Group and other organisations who have suggested that these detailed shore-based plans are better prepared by the appropriate shore-based authorities or the terminal facility which will in any event be required to have its own response plan. The Group has also pointed out that it is effectively impossible for owners to make these plans consistent with the National Contingency Plan and the Area Contingency Plans as required by the Oil Pollution Act 1990 when the National Contingency Plan has not yet been revised and the Area Contingency Plans are not yet prepared. However, the US Coast Guard has stated in the interim guidelines that the current National Contingency Plan and the existing Local Contingency Plans of each On Scene Co-ordinator in force on 18 August 1992 should be used for the purpose of plans submitted to meet the 18 February 1993 deadline.

The Clubs in the International Group are not in a position to provide a "qualified individual" for Members and it remains to be seen whether any reputable organisations offer this service to Members. It may be that the potential liabilities attracted by the qualified individual will act as a disincentive to those thinking of offering this service. It should be noted that the Clubs are not able to give specific additional cover for the liabilities of a qualified individual acting in this capacity either directly or by way of an indemnity from the Member.

In view of the potential direct exposure of Clubs to claims arising out of improper preparation of these plans, the Clubs will not become involved in detailed advice to Members in the preparation of their response plans, although it is anticipated that a number of independent firms in the United States will offer assistance in this respect. Again, it should be noted that the Clubs' cover is not designed to provide insurance for liabilities arising out of the failure to prepare an adequate plan or liabilities incurred solely as a result of a plan failing to work in practice. However, certain elements of the plan, such as provisions for liaison with the Club correspondents and the rates for clean-up contractors' services will clearly affect the Clubs. Members are recommended to discuss such aspects of their draft plans with the Club before submission to the Coast Guard. In addition, Members are advised that any contract with a response contractor should not contain an indemnity provision which transfers to the Member the results of any negligence on the part of the contractor, since liabilities arising under such an indemnity will not be covered by the Clubs.

Similarly Members should be prepared to abide by the terms of any payment conditions in such contracts without reliance on the Club for funding since the Clubs are unable to guarantee in advance of an incident that the Club will provide funding for the clean-up. To do so would be contrary to the principle that the Clubs act only as indemnity insurers which is central to the Clubs' attitude to certification under OPA 90.

Issued by the Clubs comprising the International Group.