



Outstanding Oil Reports and Deferment of Compensation Payments: New 1992 Fund Policy

The failure of a number of IOPC Funds' Member States to submit oil reports has been a very serious issue for a number of years. At its October 2008 session, the 1992 Fund Assembly therefore decided to adopt a new policy on the deferment of compensation payments in States which have outstanding oil reports.

Background

The 1992 Fund is financed by contributions paid by any person who has received in the relevant calendar year in excess of 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in a 1992 Fund Member State, after carriage by sea. The levy of contributions is based on reports on oil receipts in respect of individual contributors (oil reports) which the Governments of Member States are obliged to submit annually to the Fund Secretariat under Article 15 of the 1992 Fund Convention and Internal Regulation 4 of the 1992 Fund. Contributions are paid by the individual contributors directly to the 1992 Fund. Governments are not responsible for these payments, unless they have voluntarily accepted such responsibility.

Both the IOPC Funds' governing bodies and the joint Audit Body have repeatedly expressed their very serious concern as regards the number of Member States which had not fulfilled their treaty obligation to submit oil reports, since the submission of these reports is crucial to the functioning of the IOPC Funds. At the time of the Assembly's last meeting in October 2008, 27 out of the 101 States which were Members of the 1992 Fund at that time had outstanding oil reports in respect of 2007 and/or previous years.

When the 2003 Supplementary Fund Protocol was developed, provisions on the withholding of compensation in States with outstanding oil reports were inserted. However, the 1992 Fund Convention does not contain any similar provisions.

New Policy

At its October 2008 session, the 1992 Fund Assembly therefore adopted the following policy which had been developed by the Audit Body in order to address this issue:

Where a State is two or more oil reports in arrears, any claim submitted by the Administration of that State or a public authority working directly on the response or recovery from the pollution incident on behalf of that State will be assessed for admissibility but payment will be deferred until the reporting deficiency is rectified.

In developing the policy, the Audit Body emphasised that payment of any such claims would be made once the reporting deficiency had been fully rectified and that all legitimate claims made by other victims, including other public authorities in that State, would be unaffected by the policy. The Audit Body also considered that a State should be two or more annual oil reports in arrears for payment of approved claims to be deferred, since it recognised that there could be valid or extenuating reasons for a State to be late in submitting reports and that an outstanding report may be in the course of preparation.

The Assembly decided to apply this policy after a grace period of 90 days. This policy will therefore apply as of 28 April 2009 to all relevant claims in Member States with outstanding oil reports.

The Assembly instructed the Director to distribute this Circular to all Member States and to bring the policy to the attention of Member States by any other appropriate means.

Further information

Further details on the background to the policy described in this Circular can be found in documents 92FUND/A.13/13/1 (Submission of Oil Reports - Note by the Audit Body) and 92FUND/A.13/25 (Record of Decisions of the thirteenth session of the 1992 Fund Assembly), which are available on the IOPC Funds' Document Server at www.iopcfund-docs.org

Further information on the membership and operation of the IOPC Funds can be found on its website at www.iopcfund.org.
