



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

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Agenda item 20

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REPORTS ON OIL RECEIPTS

Note by the Director

Introduction

1 Under Article 15.2 of the Fund Convention, each Contracting State shall communicate, at a time and in the manner to be prescribed in the Internal Regulations, to the Director the name and address of any person who in respect of that State is liable to contribute to the IOPC Fund pursuant to Article 10 of the Fund Convention, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.

2 Internal Regulation 5.1 provides that the form annexed to the Regulations should be used for the reports on oil receipts and that the reports should reach the Director not later than 31 March each year. Explanatory notes have been elaborated to accompany the forms.

3 Since the levy of contributions is based on the reports on receipts of contributing oil submitted by Member States, these reports are crucial for the functioning of the IOPC Fund. After ten years of operations, the Director considered it appropriate to examine the system used hitherto for reporting oil receipts. For this reason, he employed a consultant <1> to make a detailed study of the reporting system and to make proposals for improving the system.

Consultant's Report

4 In his report, the consultant expressed the opinion that, although the system used by the IOPC Fund's Secretariat for recording reports of contributing oil was wholly satisfactory, it could be made more efficient if certain proposals made in his report were implemented. He noted that the Secretariat follows up with Member States any obvious anomalies or

<1> Mr C Walder, former Director of the Oil Companies International Marine Forum (OCIMF). Mr Walder represented OCIMF as an observer at the 1971 Diplomatic Conference which adopted the Fund Convention.

incomplete reports and seeks clarification of inconsistencies insofar as the Secretariat is aware of them. He considered that, whilst it is probable that not all errors and omissions in reports made by Member States are identified and corrected, the figures presented to the Assembly for the purpose of levying contributions appear to contain no major errors or discrepancies and are not inequitable between contributors. The consultant drew attention to the fact that many Member States do not submit their reports in time and that a number of reports are incomplete. He pointed out that this places a major workload on the Secretariat which has to resort to protracted correspondence in its endeavour to have correct reports from all Member States. He also emphasised that no invoices can be issued to contributors in a Member State which has not submitted its reports.

Director's Assessment of the Situation

5 On the basis of the consultant's report and in the light of the experience gained by the IOPC Fund's Secretariat over the years, the Director has re-examined the system used for reporting contributing oil receipts. He shares the view expressed by the consultant that, in general, the system is functioning satisfactorily. However, the Secretariat is constantly facing problems due to the fact that some reports are not submitted in time and that many reports are incomplete. The Director considers that certain measures should be taken for the purpose of improving the system. To this end, he suggests certain amendments to the procedures followed so far for the reporting of contributing oil receipts by Member States. These proposals are set out below.

Problems to be Addressed

Failure to Submit Reports

6 As stated in the Director's report to the Assembly (document FUND/A.11/3, paragraph 5.5), a number of Member States do not submit their reports on contributing oil in time. On 31 March 1988 (the date on which reports should be submitted under the Internal Regulations) only 12 of the 37 Member States had submitted their reports on contributing oil received in 1987. As at 15 September 1988, ten States had not submitted any reports and the reports from three other States were incomplete. In addition, some Member States have not submitted their reports for 1986 and a few States have not even submitted their reports for 1985.

7 It should be recalled that, at its 6th and 7th sessions, the Assembly urged Member States to take the necessary steps to ensure that the reports on oil receipts are submitted in time (documents FUND/A.6/16, paragraph 4.3 and FUND/A.7/14, paragraph 4.2). The situation has not improved since the 7th session of the Assembly.

8 For the smooth operation of the IOPC Fund, it is imperative that Member States comply with their obligations under the Fund Convention and the Internal Regulations in this regard. The Director proposes that the Assembly adopts a resolution to the effect that Member States be urged to submit their reports on contributing oil at the time and in the manner prescribed in the IOPC Fund's Internal Regulations. A draft resolution is attached at Annex I for consideration.

Reports from Contracting States in which No Contributing Oil Is Received

9 Reports have not been submitted by some Member States in which, presumably, no contributing oil is received, and where, in effect, no person is liable to pay contributions to the IOPC Fund. It is important that these States actually submit reports confirming that this is the case. Member States which fall into this category should therefore submit reports certifying that during the relevant calendar year no person in the State in question received contributing oil in a quantity which makes him liable to pay contributions. This matter is also dealt with in the draft Resolution attached at Annex I.

Incomplete Reports

10 In some cases, Member States have failed to report all persons liable to contribute under Article 10. The Secretariat endeavours to check whether the reports are complete in this regard. However, this is a very difficult task, especially with regard to receivers whose oil receipts fluctuate above and below the minimum quantity of 150 000 tonnes from one year to another. The Secretariat often has to resort to protracted correspondence before it is satisfied that the reports are complete.

11 In order to facilitate the task of the Secretariat, it is suggested that Member States should not only report the quantities of contributing oil received by any person liable to contribute, but also explain any significant variations in these quantities and any changes in the persons liable to contribute, compared with the reports submitted in respect of the preceding year. In particular, the Assembly may wish to invite Member States to indicate, in connection with the submission of reports, any person who was reported in the preceding year but for whom no report is made in the current year, because his receipts have fallen below the quantity of 150 000 tonnes, as well as to list persons who have ceased to trade or who have gone out of business.

"Associated Persons"

12 A particular problem is caused by the provisions in the Fund Convention which deals with "associated persons" (Article 10.2(b)). In principle only persons who receive more than 150 000 tonnes of contributing oil in a given calendar year are liable to contribute to the IOPC Fund. However, where the quantity of contributing oil received in the territory of a Member State by any person in a calendar year, when aggregated with the quantity of contributing oil received in the same Member State in that year by any associated person or persons, exceeds 150 000 tonnes, such a person shall pay contributions in respect of the actual quantity received by him, notwithstanding that that quantity did not exceed 150 000 tonnes. "Associated person" means any subsidiary or commonly controlled entity. The question of whether a person falls within this definition shall be determined by the national law of the State concerned.

13 The Assembly may wish to draw the attention of Member States to the fact that they should ensure that those persons who receive less than 150 000 tonnes are also reported, if they are liable to pay contributions pursuant to the special provisions on "associated persons".

14 In this context it should be noted that, although each "associated person" should be reported, there is no objection to the parent company of a group of associated persons paying the contributions in respect of all such persons within the group.

Manner of Signing the Forms

15 When the present form was designed, it was intended that the form should be completed and signed by an officer of the person liable to contribute; alternatively, if the government or a government authority completed the form, an officer of the contributing person should sign it as certification that the figures were correct. In addition, the form should be counter-signed by a government official for the purpose of obtaining confirmation that the figures were correct and that the name and address of the contributor were also accurate.

16 However, in respect of a number of Member States this procedure is not carried out correctly. In some cases the figures on oil receipts are submitted to the IOPC Fund by telex or by letter without any accompanying forms, and thus without signature or counter-signature. In some instances, this has resulted in the person liable to contribute later disputing the figures on the basis of which contributions were levied against him.

17 In the opinion of the Director, it is essential that the form adopted by the Assembly is actually used for the reports and that the form is signed in the correct manner. A reference to the obligation of Member States to use the prescribed form is made in the draft Resolution (see Annex I).

Revised Report Form

18 The form used at present for reports on receipts of contributing oil was adopted by the Assembly in 1979, at its 2nd session, in connection with the adoption of the Internal Regulations. In view of the experience gained in examining the reports in recent years, the Director considers that this form could be improved. For this reason, he submits a draft revised form to the Assembly for consideration and approval. This draft form is attached at Annex II. If approved, it would replace the present form referred to in Internal Regulation 5.1 and would be annexed to the Internal Regulations for information.

19 The Assembly may wish to consider whether the Director should be authorised to revise this form, from time to time, in the light of experience.

New Notes to Accompany Report Form

20 When the form for reports on oil receipts was adopted by the Assembly in 1979, the Assembly also adopted explanatory notes to accompany the form. These notes were later supplemented by the Director, so as to include the interpretation of the term "received" as agreed by the 4th Inter-sessional Working Group and endorsed by the 1st extraordinary session of the Assembly (documents FUND/A/ES.1/8, Annex, paragraphs 3 and 4 and FUND/A/ES.1/13,

paragraph 10). In view of the experience gained in recent years, the Director is of the opinion that these notes should be redrafted so as to facilitate the task of contributors and government authorities in completing the forms. Draft revised notes are set out in Annex III for consideration by the Assembly.

21 The Director will finalise the text of these notes, in the light of observations made by the Assembly and any comments received otherwise, and will revise the notes, from time to time, in the light of experience.

Summary of the Director's Proposals

22 The Director's proposals can be summarised as follows:

- (a) The Assembly is invited to adopt a Resolution urging Member States to fulfil their obligations under the Fund Convention by submitting their reports on contributing oil in time, in the manner prescribed in the Fund Convention and in the Internal Regulations (paragraph 8 and Annex I).
- (b) Member States in which no person is liable to contribute to the IOPC Fund should be urged to submit reports certifying this fact (paragraph 9 and Annex I).
- (c) In addition to the reporting of the quantities of contributing oil received in the relevant calendar year by any persons liable to contribute, Member States should be invited to explain any significant variations in these quantities and any changes in the persons liable to contribute, compared with the preceding year, and to indicate persons previously reported who have ceased to trade (paragraph 11).
- (d) The attention of Member States should be drawn to the special provisions on "associated persons" (paragraphs 12 and 13).
- (e) Member States should be urged to use the prescribed forms when submitting the reports and to ensure that they are signed in the correct manner (paragraphs 15 - 17 and Annex I).
- (f) A revised form for the submission of oil reports is proposed to replace the present form annexed to the Internal Regulations (paragraphs 18 and 19 and Annex II).
- (g) New explanatory notes to the revised form are submitted for consideration by the Assembly (paragraphs 20 and 21 and Annex III).

Action to be Taken by the Assembly

23 The Assembly is invited to consider the Director's proposals to improve the system for the submission of reports on receipts of contributing oil by Member States and to take such decisions as it considers appropriate.

ANNEX I

Draft Resolution

adopted by the Assembly on .. October 1988
at its 11th session

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

HAVING CONSIDERED the system used hitherto for the submission by Member States of reports on receipts of contributing oil, in accordance with Article 15.2 of the Fund Convention,

RECOGNISING that these reports are crucial for the functioning of the IOPC Fund, as the levy of contributions is based on these reports,

NOTING that some Member States do not always fulfil their obligation under the Fund Convention to submit the reports at the time and in the manner laid down in the IOPC Fund's Internal Regulations and that some reports are incomplete,

URGES Member States to take the necessary steps to ensure that the reports on contributing oil received in their territory are submitted in time, using the prescribed forms, and that the reports contain the particulars prescribed in the Fund Convention and in the Internal Regulations,

REQUESTS Member States in which no person is liable to contribute to the IOPC Fund to submit reports certifying that this is the case in respect of the State concerned.

* * *

ANNEX IIDraft Form

REPORT ON CONTRIBUTING OIL RECEIPTS

made pursuant to Article 15.1 of the International Convention on the Establishment of an
International Fund for Compensation for Oil Pollution Damage

STATE:

CALENDAR YEAR OF OIL RECEIPT:

PERSON RECEIVING CONTRIBUTING OIL:

ADDRESS (FOR INVOICING):

Associated Persons

Is the reporting person an "associated person" as defined in note 5? Yes/No

If yes, name parent company of group:

1	Contributing oil (crude oil and fuel oil as defined) received directly after carriage by sea	Quantity (metric tonnes)	Total (metric tonnes)
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Received from other States

Received otherwise

SUBTOTAL

2	Contributing oil (crude oil and fuel oil as defined) received from a non-Contracting State by modes of transport other than carriage by sea
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State(s) from which received	Mode of transport	Quantity (metric tonnes)
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SUBTOTAL

TOTAL QUANTITY OF CONTRIBUTING OIL RECEIVED

Competent officer of company or
other body receiving the oil:

Certifying Government official:

Signature:

Signature: Date:

Name:

Name:

Title:

Title:

Telex/Telefax:

Ministry or Government agency:

ANNEX IIIDraft

NOTES RELATING TO REPORTS ON OIL RECEIPTS

TO BE SUBMITTED TO THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

- 1 This report should be submitted to the Director of the International Oil Pollution Compensation Fund (IOPC Fund), to reach him not later than 31 March of the year following that to which the figures refer. It must be certified by the Government or competent government authority before submission to the IOPC Fund.
- 2 A report should be submitted in respect of each "person" for whom the total quantity of contributing oil received during the relevant calendar year exceeds 150 000 metric tonnes.
- 3 However, a report should also be submitted in respect of any "person" who received contributing oil in a quantity not exceeding 150 000 tonnes in the relevant calendar year, if the quantity of contributing oil received by that person in that calendar year, when aggregated with quantities received in the same reporting State in that same calendar year by a person or persons "associated" with that person, exceeds 150 000 tonnes. The notion of "associated person" is defined in note 7 below.
- 4 "Person" means any individual or partnership, or any public or private body, whether corporate or not, including a State or any of its constituent sub-divisions.
- 5 "Associated person" means any subsidiary or commonly controlled entity. The question whether a "person" comes within this definition shall be determined by the national law of the State concerned.
- 6 The full postal address, to which invoices based on this form should be sent, should be given.
- 7 Quantities of contributing oil should be given in metric tonnes and rounded off to the nearest tonne.
- 8 "Contributing Oil" means crude oil and fuel oil as defined under (a) and (b) below:
 - (a) "Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).

- (b) "Fuel Oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D396-69)", or heavier.

A list of contributing oil and non-contributing oil, which may serve as a guide, is attached.

- 9 "Contributing Oil Received" includes all contributing oil received during the relevant calendar year:
- (a) in the ports or terminal installations in the territory of the reporting State if such oil was carried by sea to such ports or terminal installations.
- (b) in any installation situated in the territory of the reporting State if such oil has been carried by sea and discharged in a port or terminal installation of a non-Contracting State and has thereafter been carried to the reporting State from the non-Contracting State by modes of transport other than by sea (eg by pipeline, non-seagoing barge, road or rail transport) provided, however, that in such cases oil receipts shall only be taken into account on first receipt in a Contracting State.
- 10 Discharge into a floating tank within the territorial waters of a Contracting State (including its ports) constitutes a receipt of oil, irrespective of whether the tank is connected with on-shore installations via pipeline or not. Ships are considered to be floating tanks in this connection only if they are 'dead' ships, ie if they are not ready to sail.
- 11 Movement within the same port area shall not be considered as carriage by sea.
- 12 Ship-to-ship transfer shall not be considered as receipt, irrespective of where this transfer takes place (ie within a port area or outside the port but within territorial waters) and whether it is done solely by using the ships' equipment or by means of a pipeline passing over land. This applies for a transfer between two sea-going vessels as well as for a transfer between a sea-going vessel and an internal waterway vessel and irrespective of whether the transfer takes place within or outside a port area. When the oil, after having been transferred in this way from a sea-going vessel to another vessel has been carried by the latter to an on-shore installation situated in the same Contracting State or in another Contracting State, the receipt in that installation shall be considered as a receipt of oil carried by sea. However, in the case where the oil passes through a storage tank before being loaded to the other ship, it has to be reported as oil received at that tank in that Contracting State.
- 13 Imports should be entered under "Received from other States" and receipts from other sources under "Received otherwise".

- 14 "Received otherwise" includes movements from terminals at sea, from floating storage, from off-shore oil fields by vessel or after cabotage (ie after coastal movement of crude or fuel oil within the same State).
- 15 "Non-Contracting State" means a State for which the Fund Convention is not in force. When completing the report, States for which the Convention enters into force after 31 March of the year when the report is submitted shall be considered non-Contracting States.
- 16 The report should specify the non-Contracting State from which contributing oil was received and the mode of transport by which received. Only such oil which has at some stage been carried by sea should be considered as "contributing oil".

SIGNATURE AND COUNTERSIGNATURE OF REPORT

- 17 The form should be completed and signed by an officer of the company or other person being reported upon. If the form is completed by a Government or Government authority of the State, it should, nevertheless, be signed by an officer of the company or person as certification that the figures are correct.
- 18 The form should be countersigned by a responsible official of the Government or competent Government authority to indicate that the Government or authority is satisfied that the information contained therein is correct and complete. .

List of Contributing Oil and Non-Contributing Oil

Contributing Oil

Crude Oils

All naturally occurring crude oils
Topped crudes
Spiked crudes
Reconstituted crudes

Finished Products

N°4 fuel (ASTM)
Navy special fuel
Light fuel oil
N°5 fuel (ASTM) - light
Medium fuel oil
N°5 fuel (ASTM) - heavy
Bunker C fuel oil
Heavy fuel oil
Marine fuel oil
N°6 fuel oil (ASTM)
Blended fuel oils by viscosity
or sulphur content

Intermediate or Process Stocks

Fuel oil blend stocks

Non-Contributing Oil

Crude Oils

Natural gas liquids
Condensate
Casinghead naphtha
Natural gasoline

Finished Products

LNG and LPG
Aviation gasolines
Motor gasoline (petrol, essence)
White spirit
Kerosene
Aviation kerosene
- Jet 1 A
- N°1 fuel (ASTM)
Gas oil
Heating oil
N°2 fuel (ASTM)
Marine diesel
Lubricating oil

Intermediate or Process Stocks

Straight run naphthas
Light cracked naphtha
Heavy cracked naphtha
Platformate
Reformate
Steam-cracked naphtha
Polymers
Isomers
Alkylates
Catalytic cycle oil
Reformer feed
Steam cracker feed
Gas oil blend stocks

(Place to depend on the decision
to be taken by the Assembly as to
the interpretation of the notion
of "contributing oil")

Catalytic cracker feedstock
Visbreaker feedstock
Aromatic tar
