

### **HELCOM RECOMMENDATION 6/13**

(supplemented by HELCOM Recommendations 10/8 and 16/2)

Adopted 13 March 1985, having regard to Article 13, Paragraph b) of the Helsinki Convention

### **RECOMMENDATION CONCERNING CO-OPERATION IN INVESTIGATING VIOLATIONS OR SUSPECTED VIOLATIONS OF DISCHARGE AND RELATED REGULATIONS FOR SHIPS AND DUMPING REGULATIONS**

#### **THE COMMISSION,**

**RECALLING** Regulation 2 of Annex IV of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1974, (Helsinki Convention) concerning co-operation in investigating violations of the existing legislation on anti-pollution measures,

**RECALLING ALSO** Paragraph 6 of Article 9 of the Helsinki Convention concerning co-operation in investigating dumpings suspected to be in contravention of the provisions of Article 6 of the Helsinki Convention,

**RECALLING FURTHER** Article 6 of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) concerning cooperation in detection of violations and enforcement of that Convention,

**RECOGNIZING** the need for the establishment of guidelines for the co-operation between the Contracting Parties to the Helsinki Convention in investigating contraventions of existing discharge and associated regulations as well as dumping regulations,

**RECOGNIZING ALSO** that such guidelines would facilitate the collection of evidence for the investigation of violations of these regulations and the possible prosecution of offenders,

**RECOMMENDS** that the Governments of the Contracting Parties to the Helsinki Convention should apply the attached guidelines when co-operating in investigating violations or suspected violations of discharge and related regulations for ships and dumping regulations.

## ATTACHMENT

### GUIDELINES FOR CO-OPERATION IN INVESTIGATING VIOLATIONS OR SUSPECTED VIOLATIONS OF DISCHARGE AND RELATED REGULATIONS FOR SHIPS AND DUMPING REGULATIONS

#### INTRODUCTION

According to Regulation 2 of Annex IV of the Helsinki Convention the Contracting Parties shall, without prejudice to Paragraph 4 of Article 4 of the Convention, as appropriate, assist each other in investigating violations of the existing legislation on anti-pollution measures, which have occurred or are suspected to have occurred within the Baltic Sea Area. This assistance may include, but is not limited to inspection by the competent authorities of oil record books, cargo record books, logbooks and engine logbooks, and taking oil samples for analytical identification purposes.

The assistance envisaged in Regulation 2 of Annex IV relates to violations of the provisions of this Annex (oil, noxious liquid substances in bulk, harmful substances in packaged forms, sewage and garbage). Furthermore, Paragraph 6 of Article 9 of the Helsinki Convention states that in case of dumping suspected to be in contravention of the provisions of Article 6 the Contracting Parties shall co-operate in investigating the matter in accordance with Regulation 2 of Annex IV of the Convention.

The guidelines, as described in the following paragraphs, are applicable only to ships flying the flags of the Baltic Sea Countries. However, in the case of violations of the dumping provisions which have occurred or are suspected to have occurred within the Baltic Sea Area, the guidelines are also applicable to ships not flying the flags of the countries-parties to the Helsinki Convention:

- a) loading, within the territories or territorial seas of the Contracting Parties, matter which is to be dumped, or
- b) believed to be engaged in dumping within the territorial seas of the Contracting Parties.

The guidelines are also applicable to ships not flying the flags of the Contracting Parties to the Helsinki Convention violating or believed to have violated the discharge provisions of Annex I to MARPOL 73/78 within the Baltic Sea Area. In case of investigations of the alleged violation of MARPOL provisions which took place at the high sea, the guidelines are applicable only to ships flying the flags of the countries-parties to MARPOL 73/78.

#### GENERAL

For the purposes of these guidelines, "discharge" in relation to harmful substances or effluents containing such substances (Regulation 4-8 of Annex IV of the Helsinki Convention), means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying. Discharge does not include dumping, or release of harmful substances directly arising from the exploration, exploitation and associated off-shore processing of sea-bed mineral resources, or release of harmful substances for purposes of legitimate scientific research into pollution abatement or control.

"Dumping" means any deliberate disposal at sea of waste or other matter from vessels, aircraft, platforms or other man-made structures at sea or any deliberate disposal at sea of vessels, aircraft,

platforms or other man-made structures at sea. Dumping does not include the disposal at sea of waste or other matter incidental to or derived from normal operation of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other structures. Nor does dumping include placement of matter for the purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of the Helsinki Convention.

When a Contracting Party receives a report that a discharge or dumping other than permitted under the Helsinki Convention or a discharge other than permitted under Annex I to MARPOL 73/78, have occurred or are suspected to have occurred within the Baltic Sea Area, that Contracting Party should take the necessary steps to investigate the matter.

Such reports can be received from several sources and these include:

- reports from masters of ships and pilots of aircraft according to Paragraph 2 of Regulation 5 of Annex VI of the Helsinki Convention;
- reports from masters or other persons having charge of ships involved in an incident according to Paragraph 3 of Regulation 5 of Annex VI of the Helsinki Convention;
- reports from maritime inspection vessels and aircraft and other appropriate services according to Paragraph 4 of Regulation 5 of Annex VI of the Helsinki Convention;
- reports from other Contracting Parties in case of a casualty or the presence of spillages of oil or other harmful substances according to Paragraph 5 of Regulation 5 of Annex VI of the Helsinki Convention;
- reports resulting from surveillance activities according to Regulation 3 of Annex VI of the Helsinki Convention;
- reports from other sources.

Reports on discharges or dumpings other than permitted under the Helsinki Convention or MARPOL 73/78 Annex I which have occurred or are suspected to have occurred within the Baltic Sea Area, submitted according to Regulation 5 of Annex VI of the Helsinki Convention, should be drawn up and transmitted according to the guidelines adopted by the Helsinki Commission.

#### SCHEME OF CO-OPERATION

Situations may arise during a Contracting Party's investigation of an incident reported in accordance with the preceding Chapter, when the necessary information/evidence cannot be obtained by that Contracting Party itself.

In such cases the investigating Contracting Party can request other Contracting Parties to assist in obtaining the necessary information.

When a Contracting Party receives a request for assistance, that Contracting Party (assisting party) shall render legal or administrative assistance in order to produce the requested information/evidence to the extent possible and submit it to the requesting Contracting Party (requesting party).

Requests for such legal or administrative assistance could include the following actions:

- search for a suspected ship, identification of the master and/or other responsible persons;
- reporting of a possible discharge;
- taking of oil samples from ships and/or spillages;
- analyses of samples;
- inspection and/or copying of ship's documents (log book, oil record book, etc.);
- obtaining of statements from ship's personnel;
- inspection of certain equipment on board ships;
- inspection of slop and oily-water collecting tanks;
- inspection of cargo (dumping);
- verification of registration, owner of ship, insurance, etc.; and
- collection of other evidence.

The legal or official administrative assistance should be directed towards the gathering of sufficient evidence to establish whether the ship has violated the discharge requirements. Guidelines for the optimal collection of evidence can be found in Appendix 2 to IMO Assembly Resolution A.542.(13) which is attached as Annex 1.

These IMO guidelines are related to possible evidence on alleged contravention of MARPOL 73/78 Annex I discharge provisions and are, therefore, suitable for similar purposes relating to Regulation 4 of Annex IV of the Helsinki Convention. However, parts of the document will also be of value when collecting evidence under other regulations in Annex IV, as well as under Article 9 of the Convention.

When communicating results of actions requested by another Contracting Party, it should be borne in mind that evidence provided should be presented in such a way as to facilitate legal proceedings against the offender by the flag state and/or by the Contracting Party under whose jurisdiction the offence has taken place.

It should also be noted that the agreed IMO procedures for reporting to flag states should be observed in addition to the procedures initiated under these guidelines.

The national authorities co-operating within these guidelines are listed in Annex 2.

## **ATTACHMENT**

### **Annex 1**

(APPENDIX 2 to IMO Assembly Resolution A.542.(13))

#### CONTRAVENTION OF DISCHARGE PROVISIONS

1. Experience has shown that information furnished to the flag State as envisaged in Chapter 3 of the present Procedures is often inadequate to enable the flag State to cause proceedings to be brought in respect of the alleged violation of the discharge requirements. This Appendix is intended to identify information which is often needed by a flag State for the prosecution of such possible violations.
2. It is recommended that in preparing a port State report on deficiencies as set out in Appendix It, where contravention of the discharge requirements is involved, the authorities of the coastal or port State be guided by the itemized list of possible evidence as shown in the Addendum to this Appendix. It should be borne in mind in this connection that:
  - .1 the report aims to provide the optimal collation of obtainable data; however, even if all the information cannot be provided, as much information as possible should be submitted;
  - .2 it is important for all the information included in the report to be supported by facts which, when considered as a whole, would lead the port or coastal State to believe a contravention had occurred.
3. In addition to the port State report on deficiencies, a report should be completed by a port or coastal State, on the basis of the itemized list of possible evidence. It is important that these reports are supplemented by documents such as:
  - .1 a statement by the observer of the pollution. In addition to the information required under section 1 of the Addendum to this Appendix, the statement should include considerations which lead the observer to conclude that none of any other possible pollution sources is in fact the source;
  - .2 statements concerning the sampling procedures both of the slick and on board. These should include location of and time when samples were taken, identity of person(s) taking the sample and receipts identifying the persons having custody and receiving transfer of the samples
  - .3 reports of analyses of samples taken of the slick and on board; the reports should include the results of the analyses, a description of the method employed, reference to or copies of scientific documentation attesting to the accuracy and validity of the method employed and names of persons performing the analyses and their experience;
  - .4 a statement by the inspector on board together with his rank and organization;
  - .5 statements by persons being questioned;
  - .6 statements by witnesses;

.7 photographs of the oil slick;

.8 copies of relevant pages of Oil Record Books, logbooks, discharge recordings, etc.

All observations, photographs and documentation should be supported by a signed verification of their authenticity. All certifications, authentications or verifications shall be executed in accordance with the laws of the State which prepares them. All statements should be signed and dated by the person making the statement and, if possible, by a witness to the signing. The names of the persons signing statements should be printed in legible script above or below the signature.

4. The report referred to under paragraphs 2 and 3 above should be sent to the flag State. If the coastal State observing the pollution and the port State carrying out the investigation on board are not the same, the State carrying out the latter investigation should also send a copy of its findings to the State observing the pollution and requesting the investigation.

## ADDENDUM TO APPENDIX 2

### ITEMIZED LIST OF POSSIBLE EVIDENCE ON ALLEGED CONTRAVENTION OF THE MARPOL 73/78 ANNEX I DISCHARGE PROVISIONS

#### 1. ACTION ON SIGHTING OIL POLLUTION

##### 1.1 Particulars of ship or ships suspected of contravention

- 1.1.1 Name of ship
- 1.1.2 Reasons for suspecting the ship
- 1.1.3 Date and time (GMT) of observation or identification
- 1.1.4 Position of ship
- 1.1.5 Flag and port of registry
- 1.1.6 Type (e.g. tanker, cargo ship, passenger ship, fishing vessel), size (estimated tonnage) and other descriptive data (e.g. superstructure colour and funnel mark)
- 1.1.7 Draught condition (loaded or in ballast)
- 1.1.8 Approximate course and speed
- 1.1.9 Position of slick in relation to ship (e.g. astern, port, starboard)
- 1.1.10 Part of the ship from which discharge was seen emanating
- 1.1.11 Whether discharge ceased when ship was observed or contacted by radio

##### 1.2 Particulars of slick

- 1.2.1 Date and time (GMT) of observation if different from 1.1.3
- 1.2.2 Position of oil slick in longitude and latitude if different from 1.1.4
- 1.2.3 Approximate distance in nautical miles from the nearest landmark
- 1.2.4 Approximate overall dimension of oil slick (length, width and percentage thereof covered by oil)
- 1.2.5 Physical description of oil slick (direction and form, e.g. continuous, in patches or in windrows)
- 1.2.6 Appearance of oil slick (indicate categories)
  - Category A: Barely visible under most favourable light condition
  - Category B: Visible as silvery sheen on water surface
  - Category C: First trace of colour may be observed
  - Category D: Bright band of colour
  - Category E: Colours begin to turn dull
  - Category F: Colours are much darker
- 1.2.7 Sky conditions (bright sunshine, overcast, etc.), light fall and visibility (kilometres) at the time of observation
- 1.2.8 Sea state
- 1.2.9 Direction and speed of surface wind
- 1.2.10 Direction and speed of current

##### 1.3 Identification of the observer(s)

- 1.3.1 Name of the observer
- 1.3.2 Organization with which observer is affiliated (if any)
- 1.3.3 Observer's status within the organization
- 1.3.4 Observation made from aircraft/ship/shore/otherwise
- 1.3.5 Name or identity of ship or aircraft from which the observation was made

- 1.3.6 Specific location of ship, aircraft, place on shore or otherwise from which observation was made
- 1.3.7 Activity engaged in by observer when observation was made, for example: patrol, voyage, flight (en route from ... to ... ), etc.

1.4 Method of observation and documentation

- 1.4.1 Visual
- 1.4.2 Conventional photographs
- 1.4.3 Remote sensing records and/or remote sensing photographs
- 1.4.4 Samples taken from slick
- 1.4.5 Any other form of observation (specify)

Note: A photograph of the discharge should preferably be in colour. Photographs can provide the following information: that a material on the sea surface is oil, that the quantity of oil discharged does constitute a violation of the Convention, that the oil is being, or has been discharged from a particular ship, the identity of the ship.

Experience has shown that the aforementioned can be obtained with the following three photographs:

- .1 Details of the slick taken almost vertically down from an altitude of less than 300 m with the sun behind the photographer.
- .2 An overall view of the ship and "slick" showing oil emanating from a particular ship.
- .3 Details of the ship for the purposes of identification.

1.5 Other information if radio contact can be established

- 1.5.1 Master informed of pollution
- 1.5.2 Explanation of master
- 1.5.3 Ship's last port of call
- 1.5.4 Ship's next port of call
- 1.5.5 Name of ship's master and owner
- 1.5.6 Ship's call sign

2. INVESTIGATION ON BOARD

2.1 Inspection of the IOPP Certificate

- 2.1.1 Name of ship
- 2.1.2 Distinctive number or letters
- 2.1.3 Port of registry
- 2.1.4 Type of ship
- 2.1.5 Date and place of issue
- 2.1.6 Date and place of endorsement

Note: If the ship is not issued with an IOPP Certificate as much as possible of the requested information should be given.



- 2.2 Inspection of supplement of the IOPP Certificate
- 2.2.1 Applicable paragraphs of sections 2, 3, 4, 5 and 6 of the supplement (non-oil tankers)
- 2.2.2 Applicable paragraphs of sections 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the supplement (oil tankers)
- Note: If the ship does not have an IOPP Certificate, a description should be given of the equipment and arrangements on board, designed to prevent marine pollution.
- 2.3 Inspection of Oil Record Book (O.R.B.)
- 2.3.1 Copy sufficient pages of the O.R.B. - Part I to cover a period of 30 days prior to the reported incident.
- 2.3.2 Copy sufficient pages of the O.R.B. - Part II (if on board) to cover a full loading/unloading/ballasting and tank cleaning cycle of the ship. Also copy the tank diagram.
- 2.4 Inspection of logbook
- 2.4.1 Last port, date of departure, draught forward and aft
- 2.4.2 Current port, date of arrival, draught forward and aft
- 2.4.3 Ship's position at or near the time the incident was reported
- 2.4.4 Spot check if positions mentioned in the logbook agree with positions noted in the O.R.B.
- 2.5 Inspection of other documentation on board
- 2.5.1 Other documentation relevant for evidence (if necessary make copies) such as:
- recent ullage sheets
  - records of monitoring and control equipment
- 2.6 Inspection of ship
- 2.6.1 Ship's equipment in accordance with the supplement of the IOPP Certificate
- 2.6.2 Samples taken. State location on board.
- 2.6.3 Traces of oil in vicinity of overboard discharge outlets
- 2.6.4 Condition of engine room and contents of bilges
- 2.6.5 Condition of oily water separator, filtering equipment and alarm, stopping or monitoring arrangements
- 2.6.6 Contents of sludge and/or holding tanks
- 2.6.7 Sources of considerable leakage

On oil tankers the following additional evidence may be pertinent:

- 2.6.8 Oil on surface of segregated or dedicated clean ballast
- 2.6.9 Condition of pump-room bilges
- 2.6.10 Condition of COW, system
- 2.6.11 Condition of IG system
- 2.6.12 Condition of monitoring and control system
- 2.6.13 Slop tank contents (estimate quantity of water and of oil)

## 2.7 Statements of persons concerned

If the O.R.B. - Part I has not been properly completed information on the following questions may be pertinent:

- 2.7.1 Was there a discharge (accidental or intentional) at the time indicated on the incident report?
- 2.7.2 Is the bilge discharge controlled automatically?
- 2.7.3 If so, at what time was the system last put into operation and at what time was the system last put on manual mode?
- 2.7.4 If not, what were date and time of the last bilge, discharge?
- 2.7.5 What was the date of the last disposal of residue and how was disposal effected?
- 2.7.6 Is it usual to effect discharge of bilge water directly to the sea, or to store bilge water first in a collecting tank? Identify the collecting tank.
- 2.7.7 Have oil fuel tanks recently been used as ballast tanks?

If the O.R.B. - Part II has not been properly completed information on the following questions may be pertinent:

- 2.7.8 What was the cargo/ballast distribution in the ship on departure from the last port?
- 2.7.9 What was the cargo/ballast distribution in the ship on arrival in the current port?
- 2.7.10 When and where was the last loading effected?
- 2.7.11 When and where was the last unloading effected?
- 2.7.12 When and where was the last discharge of dirty ballast?
- 2.7.13 When and where was the last cleaning of cargo tanks?
- 2.7.14 When and where was the last COW operation and which tanks were washed?
- 2.7.15 When and where was the last decanting of slop tanks?
- 2.7.16 What is the ullage in the slop tanks and the corresponding height of interface?
- 2.7.17 Which tanks contained the dirty ballast during the ballast voyage (if ship arrived in ballast)?
- 2.7.18 Which tanks contained the clean ballast during the ballast voyage (if ship arrived in ballast)?

In addition the following information may be pertinent:

- 2.7.19 Details of the present voyage of the ship (previous ports, next ports, trade)
- 2.7.20 Contents of oil fuel and ballast tanks
- 2.7.21 Previous and next bunkering, type of oil fuel
- 2.7.22 Availability or non-availability of reception facilities for oily wastes during the present voyage
- 2.7.23 Internal transfer of oil fuel during the present voyage

In the case of oil tankers the following additional information may be pertinent:

- 2.7.24 The trade the ship is engaged in such as short/long distance, crude or product or alternating crude/ product, lightening service, oil/dry bulk
- 2.7.25 Which tanks clean and dirty
- 2.7.26 Repairs carried out or envisaged in cargo tanks

Miscellaneous information:

- 2.7.27 Comments in respect of condition of ship's equipment
- 2.7.28 Comments in respect of pollution report
- 2.7.29 Other comments

### 3. INVESTIGATION ASHORE

#### 3.1 Analyses of oil samples

- 3.1.1 Indicate method and results of the sample analyses

#### 3.2 Further information

- 3.2.1 Additional information on the ship, obtained from oil terminal staff, tank cleaning contractors or shore reception facilities may be pertinent

Note: Any information under this heading is, if practicable, to be corroborated by documentation such as signed statements, invoices, receipts etc.

### 4. INFORMATION NOT COVERED BY THE FOREGOING

### 5. CONCLUSION

- 5.1.1 Summing up of the investigator's conclusions
- 5.1.2 Indication of applicable provisions of Annex I of MARPOL 73/78 which the ship is suspected of having contravened
- 5.1.3 Did the results of the investigation warrant the filing of a deficiency report?

**ATTACHMENT  
ANNEX 2**

**NATIONAL AUTHORITIES CO-OPERATING WITHIN THE GUIDELINES**

DENMARK  
Ministry of the Environment  
National Agency for Environmental Protection  
Strandgade 29  
DK-1401 COPENHAGEN K.

Phone 45+1+578310  
Telex 31209 miljoe dk

requests for  
assistance  
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Flag Officer Denmark (FOD)  
Postbox 483  
DK-8100 AARHUS C

Phone 45+6+123099  
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National Boar of Navigation  
Vuorimiehenkatu 1  
SF-00140 HELSINKI 14

Phone 358+0+18081  
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(outside office  
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PRC Finland  
Phone 358+0+1612029,  
Telex 124777 slmjk sf

GERMAN DEMOCRATIC  
REPUBLIC  
GDR Board of Navigation and  
Maritime Affairs  
Patriotischer Weg 120  
DDR-2500 ROSTOCK

Phone 37+81+52446  
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requests for  
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s a m e

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assistance  
(day and night)

s a m e

POLAND

Maritime Board in Gdynia  
Urząd Morski w Gdyni  
ul. Chrzanowskiego 10  
81-338 GDYNIA

Phone 48+58+216162  
206 911  
217 738

Telex 054285 umor pl

requests for  
assistance  
(day and night)

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SWEDEN

National Administration of Shipping and Navigation  
Maritime Inspectorate  
S-601 78 NORRKÖPING

Phone 46+11+191000  
Telex 64380 shipadm s

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assistance  
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Phone outside office hours:  
46+11+164000

UNION OF SOVIET  
SOCIALIST REPUBLICS

Emergency Division of the Baltic Shipping Co.  
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