



A New Regime in China: the Agreement on Ship Pollution Preparedness and Response between Shipowners and SPROs

Xudong CONG

China Maritime Safety Administration

Xudong CONG

Executive Deputy Director
Supervision Department II
Yantai Maritime Safety Administration of China
Tel: +86-535-6683637
Mobile: +86-13791201499
E-mail: congxudong@sina.com



Outline

1. Background
2. Legal Basis
3. License of SPROs
4. Conclusion of Agreement
5. Implementation of the Agreement
6. Problems

1. Background

Current situation:

- Heavy marine pollution
- Increasing public wishes on marine environment
- Increasing claims for marine pollution damage

1. Background

Aims:

- To implement the national laws and international conventions more effectively
- To improve the image of China government
- To set up private ship pollution response organizations (key point)
- To enhance the capabilities of ship pollution preparedness and response
- To decrease the damage to marine environment caused by ship pollution

1. Background

National laws:

- Marine Environment Protection Law of the People's Republic of China (1 Apr. 2000)
- Emergency Response Law of the People's Republic of China (1 Nov. 2011)

1. Background

International conventions:

- International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990 (OPRC 1990)
- Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS protocol)
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969
- Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil, 1973

2. Legal Basis

National laws:

- Regulations on Administration of Prevention and Control of Pollution to the Marine Environment by Vessels (Decree No.561 of the State Council of the P.R. China, 1 Mar. 2010)

Regulations of Ministry of Transport:

- Regulations on Emergency Preparedness and Response on Marine Environment Pollution from Ships (Decree No.4 of the Ministry of Transport, 2011, 1 Jun. 2011)

2. Legal Basis

Rules of China MSA:

- Detailed Rules of Decree No.4 of the Ministry of Transport, 2011 (1 Jun. 2011)
- Guidelines on Assessment of the Response Capabilities of SPROs (technical document)
- The Sample Agreement for Ship Pollution Preparedness and Response (for reference)

2. Legal Basis

Decree No. 561 of the State Council:

- Article 33 The operator of a ship carrying bulk liquid pollution hazard cargo or the operator of any other ship with a gross tonnage of not less than 10,000 shall, before commencing operations or entering or leaving a port, conclude a pollution clean-up agreement with a unit that has obtained the qualifications for pollution clean-up operation, whereby the rights and obligations of both parties for pollution clean-up in case of a ship-source pollution accident are clearly stipulated.

3. License of SPROs

Decree No.4 of the Ministry of Transport, 2011:

- Chapter IV Ship Pollution Resposne Organizations
- Chapter V The Agreement on Ship Pollution Preparedness and Response
- Chapter VI Emergency Response (in part)

3. License of SPROs

Decree No.4 of the Ministry of Transport, 2011:

- Article 17 A ship Pollution Response Organization is a company that acquires the license to conclude agreements with ships, and provides ship pollution preparedness and response for the ship.

(Definition of SPROs)

3. License of SPROs

- The requirements on the response facilities that SPROs of each level shall equip with, see the table in the appendix of Decree No.4 of the Ministry of Transport, 2011

(Requirements on qualification of SPROs)

3. License of SPROs

Key aspects in the license of SPROs:

- Level of response capability
- geographic coverage

Competent authorities:

- China Maritime Safety Administration

3. License of SPROs

The number of SPROs in each level:

- Level 1: 88
- Level 2: 25
- Level 3: 3
- Level 4: 2

(Announced by China MSA on 28 Feb. 2012)

4. Conclusion of Agreement

Decree No.4 of the Ministry of Transport:

Article 17

- Based on different response sea area and response capacity, SPROs are divided into four levels and level one is the highest.
- Level 1: Oil and HNS spill response within the sea areas under the jurisdiction of the People's Republic of China.
- Level 2: Oil and HNS spill response within the 20 nm sea areas from shoreline.
- Level 3: Oil spill response in a port.
- Level 4: Oil spill response in certain area in a port or in an independent wharf.

4.

Conclusion of Agreement

Decree No.4 of the Ministry of Transport:

- Article 25 – 28: correspondence of an agreement among sea areas, ships and SPROs of each level

4.

Conclusion of Agreement

Three factors in the correspondence of an agreement among sea areas, ships and SPROs of each level:

- Sea area
- Ship type
- Gross tonnage of a ship

4.

Conclusion of Agreement

Detailed Rules of Decree No.4 of the Ministry of Transport (China MSA):

- Article 15 – 17: more detailed correspondence

The appendix of the Sample Agreement for Ship Pollution Preparedness and Response

	Ships carrying oil in bulk (Oil tanker)			Ships carrying liquid pollution hazardous cargo in bulk other than oil (Chemical tanker)		Ships carrying cargo other than liquid cargo in bulk (Other ships)	
	In port	entry and leaving port	Loading, unloading, transferring out of port	entry and leaving port	Loading, unloading, transferring out of port	entry and leaving port	Loading, unloading, transferring out of port
1		GT: over 10,000	Beyond 20 nm	GT: over 10,000	Beyond 20 nm	GT:over 50,000	Beyond 20 nm
2	GT:2,000 -10,000	GT: under 10,000	Within 20 nm	GT: under 10,000	Within 20 nm	GT:30000-50,000	Within 20 nm
3	GT:600-2,000					GT:20,000-30,000	
4	GT: under 600					GT:10,000-20,000	

4. Conclusion of Agreement

Notice No. 211 of China MSA, 2011:

- SPROs with a high level can conclude the agreement of the low levels within their geographic coverage.

4. Conclusion of Agreement

The usual two ways of concluding an agreement:

- Single voyage agreement
- Fix term agreement by year

Announcement No. 3 of China MSA, 2011:

- SPROs shall conclude the agreement with ship operators in accordance with single voyage or fixed term by month, season or year, and charge proper fees.

Sample of Charge Standard

Capacity level	Fees for single voyage (RMB)	Discount rate for fixed agreement by year (11-20 voyages)	Discount rate for fixed agreement by year (21-50 voyages)	Discount rate for fixed agreement by year (>=51 voyages)
Level one	3000	90%	80%	40%
Level two	2000	90%	80%	40%
Level three	1500	90%	80%	40%
Level four	900	90%	80%	40%

Yantai Far East Marine Environment Co.
(Valid date: 1 Jan. 2012 to 31 Dec. 2012)



4. Conclusion of Agreement

Two type of fees for the Agreement:

- Fees for preparedness
- Fees for response to pollution incident

Announcement No. 2 of China MSA, 2011:

- SPROs shall announce charge standard of fees for the agreement both in Chinese and in English, and submit to MSA for the record.

4. Conclusion of Agreement

Announcement No. 3 of China MSA, 2011:

The domestic ship operators shall conclude the agreement directly with SPROs.

4. Conclusion of Agreement

Detailed Rules of Decree No.4 of the Ministry of Transport, 2011:

- The ship operators out of China shall conclude with SPROs and confirmed by its branch or representative office in China if any.
- For those operator who hasn't such branch or representative office in China, ships or agents of ship operators may conclude on behalf of ship operators.

5. Implementation of the Agreement

Entry into force: 1 Jan. 2012 (not 1 Jun. 2011)

Information announced by China MSA at its official website (www.msa.gov.cn):

- List of SPROs, and
- Agents of ship operators for the record, and
- Domestic branches, agencies and representative offices authorized by the ship operators out of China to conclude the agreement for the record

5. Implementation of the Agreement

Detailed Rules of Decree No.4 of the Ministry of Transport, 2011:

Article 25 Before a ship calling a port or carrying out operation, agreement shall be concluded and submitted to MSA for verification.

If the agreement has been submitted to MSA for the record, verification is exempt. (usually fixed term agreement)

5. Implementation of the Agreement

In practice:

- For some reason, if a ship has not concluded the agreement before calling a port, it will not be forbidden to enter the port.
- However, the ship shall submit the agreement to MSA while leaving the port.

(The agreement shall not cause a ship delay)

6. Problems

- SPROs do not have a uniform charge standard
- Vicious competition among SPROs with the same geographic coverage
- No charge in some ports in China.
- The agreement exerts additional burden on ship owners/operators especially under the global shipping recession
- A large number of SPROs, but low response capacity in reality

Questions

Comments

THE END

