

November 1997

TO ALL MEMBERS

Dear Sirs,

UNITED STATES OIL POLLUTION Vessel Response Plans - Contracts for Services

This circular is addressed to all shipowner Members including owners of dry cargo vessels and tankers.

Previous advice to Members on the terms of contract which are required under the Federal regulations on vessel response plans in the United States has concentrated on four issues which are of importance to the Associations, as well as to the Member. These are the scope of indemnities contained in these contracts, provisions for control of the contractor's operations by the owner, provisions for funding of the contractor's invoices and warranties by the contractor that he is competent to perform the contracted service.

In the course of preparation of Members' Vessel Response Plans (VRPs) during 1993, a large number of contracts for various services, particularly of companies acting as "qualified individual" (QI) and oil spill response organisations (OSROs) were reviewed by the Managers of the Associations/Clubs in the International Group either at the request of individual Members or the contractors themselves. In many cases this review process included a discussion with the contractor concerned on modification of the originally proposed contract terms so as to conform with the general guidelines suggested by the Managers/Clubs. These guidelines are attached as Appendix 1 to this circular.

As a result of this review process many contracts were confirmed (a) to contain an indemnity which could be covered by the Association and (b) generally, in respect of other provisions in the contract, not to conflict with the guidelines suggested by the Managers/ Clubs. It is inevitable that this confirmation has been regarded by contractors and Members alike as "approval by the International Group of P&I Clubs".

The present position is that many contractors have made amendments to their contracts and the following comments may be helpful to clarify the significance of "approval" by the International Group of P&I Clubs in this context.

(1) Indemnity provisions

“Approval” of the wording of an indemnity provision in the contract is an affirmative statement that the owner’s liability to indemnify the contractor pursuant to that clause is covered by the Association under the rule covering liabilities under certain contracts and indemnities, subject, as always, to the owner not being in breach of the Rules or his terms of entry.

Conversely, the absence of confirmation from the Club that the terms of an indemnity have been “approved” means that Club cover does not fully extend to the liabilities that may be incurred under the indemnity. Such liabilities must either be separately insured or, if not, cover is at the sole discretion of the Association in the event of the owner becoming liable for a claim under the indemnity.

Any Member being requested to sign a variation of a contract submitted to and “approved” by the Association is advised where appropriate to check with the Club to ensure that such variations do not cause the initial “approval” to become invalid.

(2) Control of the contractor’s operations

The Club continues to suggest that it is important for such contracts clearly to give the owner the right to control the operations of the contractor (rather than allowing the contractor to proceed with the contracted operations at his own discretion and to charge the owner accordingly). Contracts which have been “approved” by the Club contain provisions which are considered adequate to give such control to the owner. However, Members should note that some contractors offer more than one service. Members are therefore recommended to ensure that the entities appointed by them to perform the various services named in the VRP remain independent of each other, e.g. that persons performing the roles of QI/Spill Managers are genuinely independent from OSROs.

The extent to which control can actually be exercised over a contractor may depend upon the circumstances of a particular incident. To the extent that a Member fails in practice to exercise adequate control over a contractor, the Member may still be liable for the costs that are incurred under the contract but will be at risk of failing to make a complete recovery from the Association in respect of those costs to the extent that adequate control has not been exercised.

(3) Funding of contractors’ services

Certain contractors have requirements concerning proof of financial viability to be given either on signing the contract or prior to the contractor performing services. Reliance should not be placed on the Association to provide any form of financial guarantee or evidence of insurance, other than the normal Certificate of Entry for the ship. In particular, some of the contracts which have been “approved” contain a provision that enables the contractor to request that payment for his services is secured by means of a deposit or a Club letter of guarantee as a condition of continuing to perform. “Approval” of a contract containing such a term does not constitute a commitment by the Association to provide such a Club letter of undertaking on behalf of the Member. As in all cases, the provision of Club security is at the discretion of the Association and agreement to provide such a letter of undertaking and the terms on which it is to be provided can only be determined by the Association in the light of all the circumstances of the incident. In addition to the usual pre-conditions of agreement to provide security, the Association will also need to be satisfied that the Member is exercising sufficient control over the operations of the contractor so that the costs incurred can form a proper claim on the Association.

(4) Contractors' warranties

In general terms, contracts which have been "approved" do contain some form of warranty on the part of the contractor that he is legally and professionally competent to perform the contracted service.

However, in no case has the Club been able to verify the legal or technical qualifications of any contractor and "approval" of the contract in no way constitutes a recommendation that a particular contractor or contract should be used by the Member concerned. In the event that the contractor fails to perform the contracted service, "approval" of the contract does not constitute a commitment by the Association to cover the Member against the potential consequences of his contractor's failure.

It should also be noted that, although a number of contracts do contain schedules or appendices of rates to be charged by the contractor for his services, in no case does the Club's "approval" of the contract extend to agreement that all rates quoted are reasonable.

Whilst under Federal law Vessel Response Plans are only required from tanker owners, under State law such plans are sometimes required from owners of other vessels. A list of VRP requirements for individual States is attached as Appendix 2. States which are not mentioned on the list do not have separate requirements.

Attached as Appendix 3 is a schedule of those contractors whose contracts have been "approved" within the terms of the circular. Appendix 4 lists contractors whose contracts have been considered by the International Group but have not been "approved".

A circular in similar terms is being sent by all the other Clubs in the International Group.

Yours faithfully,
A.BILBROUGH & CO. LTD.
(MANAGERS)

INTERNATIONAL GROUP GUIDELINES ON VRP CONTRACTS

1. **Control**

It should be clear in the contract that the ultimate control of the clean-up operation remains with the owner.

2. **Funding (particularly important for contracts with OSROs)**

The Association will not provide advance funding guarantees. It may be possible in the appropriate cases to guarantee payment by the Member of invoices relating to the services provided under the contract in accordance with the contract terms within a reasonable time after the incident. Such a guarantee will be subject to the following provisos:

- (i) A fixed US dollar amount.
- (ii) A fixed time limit for the services, i.e. the letter would guarantee expenses incurred in providing response services up to a fixed period of time as appropriate (e.g. seven days from the incident date) subject to extension by written agreement of the Association; and
- (iii) A haul-off clause which provides for the Association's liability to be terminated upon 24 hours' notice.

3. **Insurance and Indemnity**

The Association will not agree to provide co-assurance for OSROs or to warrant the owners' cover directly to the contractor.

It will agree to provide cover for limited indemnities to QIs and OSROs in the following form:

- (i) Contractor indemnifies owner/operator for liabilities arising from gross negligence or wilful misconduct of contractor or a breach of the contract, or breach of the applicable law or regulation by the contractor.
- (ii) Owner/operator indemnifies the contractor against liabilities arising from gross negligence or wilful misconduct or a breach of the contract, or breach of the applicable law or regulation by the owner/operator.
- (iii) Owner/operator indemnifies the contractor against liabilities for removal costs and damages arising out of a discharge of oil from the vessel, except to the extent that:
 - (a) responder immunity applies under Federal or State law;
 - (b) the liabilities arise from the gross negligence or wilful misconduct of the contractor;
 - (c) owner/operator would not have been liable if sued direct;
 - (d) owner/operator would have been able to limit his liability; and
 - (e) the liability arises in respect of death or personal injury.

It is advisable that the contracts include a limit so that the total aggregate of all liabilities incurred cannot exceed the limit of Club cover.

4. **Warranties**

Contracts should contain warranties that the contractors (particularly for removal actions) will have and maintain all necessary Federal and State approvals/licences/ classifications.

5. **Classification**

The OSRO contract should contain a warranty that the OSRO maintains classification under Federal and State law (if applicable).

6. **Insurance**

Care should be taken to ensure that the contractor maintains adequate insurance.

7. **Law and jurisdiction**

With regard to choice of law and jurisdiction it is preferable to name the State of New York.

STATES REQUIRING VESSEL RESPONSE PLANS

1. ALASKA

Vessel Response Plans (VRP), called “Oil Discharge Prevention and Contingency Plans”, must be submitted and carried on board all tank vessels and oil tank barges.

2. CALIFORNIA

Vessel Response Plans, called “Vessel Contingency Plans”, must be submitted and carried on board all tank vessels. A federally-approved VRP will be accepted as long as the additional information required by California is contained in an addendum to the plan.

3. FLORIDA

Vessel Response Plans, called “Spill Prevention and Control Contingency Plans”, must be carried on board all vessels capable of carrying 10,000 gallons or more of pollutants as fuel or cargo. A federally-approved ship-specific contingency plan will be accepted.

4. LOUISIANA

Owners or operators of tank vessels are required to submit and carry on board Vessel Response Plans prepared in accordance with OPA 90.

5. MAINE

All tank vessels must carry on board and have available for inspection, but need not submit, Vessel Response Plans prepared in accordance with OPA 90.

6. MARYLAND

All vessels must carry on board, but need not submit, Vessel Response Plans prepared in accordance with OPA 90.

7. NEW JERSEY

Vessel Response Plans, consisting of “Discharge Prevention, Control and Countermeasure Plans” and “Discharge Response, Clean-up and Removal Contingency Plans”, are not required to be carried on board or submitted unless hazardous substances, including oil, are transferred between vessels.

8. NEW YORK

Vessel Response Plans, consisting of “Habitat Protection Plans”, not required to be carried on board or submitted unless petroleum is transferred between vessels.

9. OREGON

Vessel Response Plans, called “Oil Spill Prevention and Emergency Response Plans”, must be submitted and carried on board all tank vessels, and all cargo and passenger vessels of 300 gross tons or more.

10. RHODE ISLAND

Vessel Response Plans currently are not required to be submitted, but may be required in the future pursuant to draft regulations that are under development.

11. TEXAS

Any vessel with the capacity to carry 10,000 gallons or more of oil as fuel or cargo must carry on board but need not submit federally-approved vessel-specific response plans.

Vessels required to prepare VRPs in accordance with OPA 90, must submit certain sections from the VRP: General Information & Introduction; Notification Procedures; List of Contacts; Geographic-Specific Appendices for applicable COTP zones in Texas; Vessel-Specific Appendices; and Shore-Based Response Activities. In addition, the vessel must submit a letter from the individual who submitted the VRP to the Coast Guard verifying that the sections submitted conform with those submitted to the Coast Guard, along with approval correspondence from the Coast Guard.

12. VIRGINIA

Vessel Response Plans, called "Oil Discharge Contingency Plans", must be submitted and carried on board all tank vessels transporting or transferring oil upon state waters having a maximum storage, handling or transporting capacity of at least 15,000 gallons of oil. Tank vessel operators required to prepare VRPs in accordance with OPA 90 may submit copies of their U.S. Coast Guard-issued VRP approval letters in lieu of separate state plans.

13. WASHINGTON

Vessel Response Plans, called "Vessel Contingency Plans", must be submitted and carried on board by tank vessels (including those operating on the Columbia River), and all cargo vessels and passenger vessels of 300 or more gross tons that are operating on waters of the State. Cargo vessels and passenger vessels may join a Columbia River or Washington State oil spill co-operative in lieu of submitting a VRP. Tank vessels also must submit separate "Oil Spill Prevention Plans".

**CONTRACTS CONFORMING WITH THE INTERNATIONAL GROUP
GUIDELINES ON VESSEL RESPONSE PLAN CONTRACTS**

(The date of the "approved" version or other means of identification is inserted in the right hand column)

QUALIFIED INDIVIDUAL

	Identification
ABS	(5.2.93 - Rev. 1700)
Compliance Systems Inc	
Eco-Tankships	
Norwegian Marine Services	(1.6.93)
Rapid Response Corporation	(19.5.94)
SMQI	

SPILL MANAGER

	Identification
NRC	Amendment No. 4

QI / SPILL MANAGER

	Identification
Corbett & Holt	September 22, 1997
ECM/Hudson	Rev. 6/97
ECM/Hudson	Rev. 8/97 (similar to Rev. 6/97)
Gallagher Marine Systems	
Jamestown Tanker Contract	9 June 1997
Jamestown Non-tanker Contract	9 June 1997
Marispond (oil tankers)	20.2.95
Marispond non-tanker	May 1997
OOPS tanker	(28.1.93 Standard RM)
OOPS/O'Brien	(28.1.93 Standard QI)
OOPS for vessels other than tankers	Revised January 1, 1995
SMQI	

OIL SPILL RESPONSE ORGANISATIONS

	Identification
Clean Coastal Waters	Indemnity clause "approved"
Clean Harbors Environmental Services Inc	OGC080393
Clean Seas Contract Response Agreement	03/25/96 (pages 1 - 48) Attachment "A" - September 14, 1993 Attachment "B" - September 3, 1993 Attachment "C" - 10/01/95 Attachment "D" - 12/20/95
Donjon	
Donjon Environmental Marine Services	Version 8.1A

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Foss Environmental Service Company (Tankers)	Vessel COTP Response Services Agreement 1/9/93 Number 6361 (General contract not "approved")
Garner Environmental Services Inc	Contract "approved" on (28/7/93) New contract not "approved"
Marispond (Tankers)	2-8-93
Marine Pollution Control (MPC)	Contract "approved" on (26/9/93)
Marine Spill Response Corporation (MSRC)	Version submitted 27/9/96
National Response Corporation Standard (Tankers)	July 1, 1994
National Response Corporation (Dry cargo)	October 1, 1995
NRC Pacific Alliance	Addendum 3
Pacific Environmental Corp (Hawaii) (Penco)	Contract "approved" on 13/10/93 (New contract not "approved")
Riedel Environmental Services	August 3, 1993 - Legal Department 0876 (New contract not "approved")

SALVAGE, FIREFIGHTING AND EMERGENCY CONTRACTS

	Identification
Donjon Marine Co Inc	(Not 1996 version)
Smit Americas Inc	None. Effective as from 12.8.93 None. Effective as from 1.1.96 Rev. 3-96
Marine Response Alliance (MRA) Response per diem Salvage Towage	(15.2.94) There exists an amended agreement which has not been "approved"
Marine Response Alliance capacity lightering - tendering	There exists an amended agreement which has not been "approved"
Resolve Towing and Salvage	
Titan	
Titan Maritime Industries Inc.	
Weeks Jamestown	9 June 1997

PERSON IN CHARGE - TEXAS

	Identification
ECM/Hudson	Rev. 6/97
ECM/Hudson	Rev. 8/97 (similar to Rev. 6/97)
SMQI	

WILDLIFE REHABILITATION CONTRACTS

	Identification
Entrix	Agree1.doc
International Bird Rescue Research Center (IBRRC)	N.B. a not "approved" version is also circulating

CANADA

	Identification
Burrard Clean Western Canada (Marine Response Corporation) (Non-Bulk Oil)	Standard Ship (Non-Bulk), WCMRC September 29, 1995
Burrard Clean Western Canada (Marine Response Corporation) (Bulk Oil)	Standard Bulk Oil, WCMRC September 29, 1995
Eastern Canada Response Corporation Ltd Ship (Bulk Oil) Membership Agreement	Standard Bulk Oil ECRC August 31, 1995 Standard Ship Bulk Oil, ECRC April 1, 1996
Eastern Canada Response Corporation Ltd (Non-Bulk Oil)	Standard Ship (Non-Bulk) ECRC August 31, 1995 Standard Ship Non-Bulk, ECRC April 1, 1996
Great Lakes Response Corporation (Bulk Oil)	Standard Ship (Bulk Oil) GLRC April 1, 1996
Great Lakes Response Corporation (Non-Bulk Oil)	Standard Ship (Non-Bulk) GLRC August 31, 1995 Standard Ship (Non-Bulk) GLRC April 1, 1996

A new combined contract for ECRC, GLRC, Point Tupper and Alert for non-bulk oil shipments has been "approved" and will be issued shortly.

**SPILL MANAGER
AUTHORISED INDIVIDUAL**

	Identification
ECM/Hudson	Rev. 6/97
ECM/Hudson	Rev. 8/97 (similar to Rev. 6/97)
Jamestown Tanker Contract	9 June 1997
Jamestown Non-Tanker Contract	9 June 1997
Marispond Non-Tanker Contract	May 1997
OOPS (Tankers)	Canadian Addendum, February 1996
OOPS (Non-Tankers)	Canadian Addendum
SMQI	

**LIST OF CONTRACTORS WHO HAVE SUBMITTED CONTRACTS TO THE
INTERNATIONAL GROUP WHICH HAVE NOT BEEN CONSIDERED TO COMPLY
WITH INTERNATIONAL GROUP GUIDELINES**

SPILL MANAGER

	Identification
ERST	
Global Protection Services Inc.	

PERSON IN CHARGE - TEXAS

	Identification
ABS	Rev. 15 February 1996

OIL SPILL RESPONSE ORGANISATIONS

D Contract not "approved" but indemnity clause "approved"

A&A Waste Oil Company (Environmental Services) Maryland
Alaska Chadux
Ancon
Ashco, Guam
Clean America Inc, Maryland
<i>D</i> Clean Bay Incorporated Associate Members
<i>D</i> Clean Coastal Waters Inc Associate Members
Clean Islands Council (Hawaii)
Clean Sound Co-operative
Cook Inlet Spill Prevention & Response, Alaska
Coos Bay, Oregon
Crowley Marine Services (Puerto Rico)
Delaware Bay S River Co-operative, Pennsylvania
Diversified Environmental Services, Tampa, Florida
Emergency Environmental Services
Environmental Recovery Group Inc
Florida Spill Response Corporation, Florida
Garner Environmental (new)
Guardian Environmental Service, Delaware
Guam Response Services (Ashco) (see above)
H&H
Industrial Clean-up Inc
International Technology Corporation
Marine Fire and Safety Association / Clean Rivers Co-operative
Marine Logistics Inc
Marine Response Alliance
Newport (Oregon) Enrollment Agreement
OVAC Inc, Louisiana
Penco new
Petrochem Recovery Services Inc
P.O.R.T.
Port of Newport / Yaquina Bay Oil Response Plan

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Remac USA, Delaware
Riedel new
Seacoast Ocean Services (SOS), Maine
So-Cal Ship Services California
SEAPRO (South East Alaska Petroleum Resource Organisation)
WSMC – Washington State Maritime Co-operative Vessel Enrollment Agreement

SALVAGE, FIREFIGHTING AND EMERGENCY CONTRACTS N/A

	Identification
Marine Response Alliance (new)	
Marine Pollution Corporation (MPC)	
OMI Petrolink	

SALVAGE N/A

	Identification
Wijsmuller	

WILDLIFE REHABILITATION CONTRACTS N/A

	Identification
Tristate Bird Rescue	

CANADA

OSROS

	Identification
<i>D</i> Point Tupper (Bulk Oil)	Indemnity Clause “approved”. Final sentence of Cl. 6.9 (b) which deems charge out costs to be reasonable should be withdrawn.
<i>D</i> Point Tupper (Non-Bulk Oil)	Indemnity Clause not “approved”. Final sentence of Cl. 6.9 (b) which deems charge out costs to be reasonable should be withdrawn.
<i>D</i> Alert (Bulk Oil)	Indemnity Clause “approved”. Word “reasonable” should be inserted before “fees charged” in Clause 8.1.
<i>D</i> Alert (Non-Bulk Oil)	Indemnity Clause “approved”. Word “reasonable” should be inserted before “fees charged” in Clause 11.1.

AUTHORISED INDIVIDUAL

	Identification
ABS	
Gallagher Marine Systems Inc.	
Norwegian Marine Services	