

8 September 1999

## **TO ALL MEMBERS**

Dear Sirs

### **OIL POLLUTION : UNITED STATES NEW LEGISLATION IN CALIFORNIA FOR DRY CARGO SHIPS ARRANGEMENTS WITH SPILL MANAGEMENT FIRMS/RESPONSE ORGANISATIONS**

Further to the circulars of 22 and 28 July, a letter received from the Administrator of California's Office of Spill Prevention and Response (OSPR) is attached advising that the Non-tank Vessel Contingency Plan regulations and the Certificate of Financial Responsibility (COFR) regulations would not be approved by the 1 September 1999 regulatory deadline and therefore he would not expect the non-tank vessel industry to comply with the contingency plan submission requirements until 30 days after the regulations had been approved. The Managers have just received new information that he does not expect the regulations to be finalised until late September or early October.

#### **COFRs**

Members will see from the attached letter that the OSPR Administrator strongly recommends that applications for COFRs be made as soon as possible; and advises that the COFR application form can be accessed on the Internet at the following address:

<http://www.dfg.ca.gov/Ospr/regulation/ntcplans/index.html>

Members who do not have access to the Internet may request COFR application forms by faxing the OSPR at: +1 916 3233 4727.

#### **Oil Spill Contingency Plans**

Members were advised in the circular of 22 July that oil spill contingency plans may be prepared for an individual vessel, or on a fleet basis for several vessels which transit substantially the same route, or on a state-wide basis if prepared by a non-profit maritime association; and that a non-profit maritime trade association based in San Francisco, the Pacific Maritime Shipping Association (PMSA), was developing a "state-wide" fleet plan available for all owners or operators to join on a fleet basis. PMSA have advised that their charge for enrolment into this programme will be \$165 per vessel visit to California.

Members should be aware that the PMSA vessel enrolment agreement does not conform with International Group guidelines and nor do the majority of sub-contracts referred in this agreement. Since PMSA have advised the Group that they are not prepared to negotiate with their sub-contractors, it presently appears unlikely that the PMSA contract will be approved by the Group in the near future.

P.T.O.

In the earlier circulars, the Managers informed Members of offers received from spill management firms to provide non-tank vessel owners with a package of services in order to comply with the new California requirements, and also covering the whole of the United States, including the preparation of a vessel response or spill contingency plan, qualified individual and spill management team services, and arrangements with an oil spill response organisation (OSRO)/contractor of the owner's choice.

### **Response Organisations - MSRC and NRC**

Members were also advised in the circular of 22 July that some Clubs had negotiated membership or retainer agreements on behalf of all or any of their entered dry cargo ships with one or both of the two nation-wide spill response organisations, Marine Spill Response Corporation (MSRC) and National Response Corporation (NRC), giving dry cargo ship Members access to these organisations, without cost to them individually, and the right to access their services and the right to name these organisations in their vessel response or spill contingency plans as their response contractors for the whole of the United States.

MSRC and NRC are the two largest private spill response organisations operating in US waters. MSRC is funded by a grant from its parent organisation, Marine Preservation Association (MPA), which is derived from members' dues paid by shipowners. NRC is also funded by members' annual dues. MSRC is a not-for-profit organisation while NRC is a commercial organisation run on a for-profit basis.

MSRC is an independent organisation that maintains and operates its own equipment from 44 sites around the USA (including Hawaii, Puerto Rico and US Virgin Islands, but excluding Alaska). NRC own response equipment located on the US East, West and South Coasts and Caribbean. Members of the NRC Independent Contractor Network (ICN) maintain and operate the equipment on behalf of NRC. NRC directly maintains and operates its fleet of Oil Spill Response Vessels and Barges (OSRV/OSRB). On the US West Coast NRC operates through Clean Pacific, a jointly owned company with Crowley Marine Services, to provide coverage for this area. Membership of NRC confers membership of Clean Pacific.

In California MSRC maintains the largest stocks of specialised response equipment, including over 25,000 ft of offshore boom, 17 offshore skimmers and 29,000ft of near-shore boom. This equipment is sited at 8 locations in California. Richmond and Port Hueneme are also the home port for two of MSRC's 210ft dedicated, purpose built response vessels. In addition to the above resources, MSRC maintains 12 dedicated shallow water barge systems for shallow water response and storage as well as 2 dedicated ocean-going barges for storage capacity in state.

NRC/Clean Pacific operate one dedicated response barge in California. This incorporates 2,500ft offshore boom and 1 offshore skimmer. However they are able to call on substantial non-dedicated resources through Seacor Smit Inc, the parent company of NRC, and Crowley.

As regards enhanced near-shore and on-shore response in California NRC/Clean Pacific is able to call on participants of its ICN - currently about 50 companies nationally - and on a number of West Coast response co-operatives with which it has made arrangements. MSRC, in addition to its own in-state resources, has established a network of Spill Team Area Responders (STARs) - currently about 70 companies nationally and 17 companies within the State of California - to provide additional resources where required.

NRC/Clean Pacific will only respond to a spill from a vessel which is owned by a non-member via its agreement with the US Coast Guard at substantially higher rates. MSRC will only respond to a spill from a non-member if the threat is less than 1,200 bbls. For a threat greater than this volume MSRC will only respond to a request from the US Coast Guard.

At the request of several Members, the London Club has decided also to enter into direct agreements with these organisations and the Managers are presently reviewing the proposed contractual arrangements, which are described below.

### **MPA/MSRC**

It is proposed that the Club will sign a Confirmation of Insurer's Membership with the Marine Preservation Association (MPA), thereby becoming an Insurer Member of MPA. This organisation, which was originally set up by the oil companies, provides the funds necessary for the MSRC to function as an emergency clean-up contractor. Insurer Membership gives Club Members the right to cite MSRC in response/contingency plans and to call it out in the case of a spill.

In addition, it is proposed that the Club, as the Insurer Member, will sign a Memorandum of Understandings with MSRC whereby that organisation's spill response resources will be made available to the Club's Members for their non-tank vessels which exceed 300 gt. This agreement provides that the Club will issue a Certificate listing each "Assured, all Covered Entities that the Assured, as the Company choses to recognise as such, and Covered Vessels". In this respect, the Managers propose to list as Assureds and their Covered Entities names of registered owning companies, and any other companies named as co-assureds in the certificates of entry whom Members wish to be listed, and, as Covered Vessels, non-tank ships entered in the Club which exceed 300 gt. The Club is also required to list "the Authorised Representative for each Covered Vessel listed therein, as well as the Authorised Representative of the Assured and each Covered Entity". In this respect, the Managers propose to list the individual(s) named by the Member companies as the person(s) authorised by them to make immediate decisions on their behalf in response to an actual spill.

This agreement further provides that the Club's Certificate shall constitute a representation that the Assureds (Members) listed have agreed to be bound by the terms and conditions of MSRC's Standard Form of Service Agreement and that this Agreement (as amended by the Memorandum) shall constitute a contract between each Assured (Member) and MSRC for the provision by MSRC of response services in the case of a spill in United States waters.

The Service Agreement and its appendices, which have been approved by the International Group as conforming with its guidelines for such contracts, consists of 61 pages. The Managers would be pleased to forward a copy to any Member who requires it.

MSRC has advised the Managers that three Clubs have already become Insured Members of MPA and that they are in the process of finalising arrangements with other Clubs as well. They have also advised that the term of the MPA Agreement is up to 31 December 2000.

### **NRC**

It is proposed that the Club should sign an Agreement for non-tank Member cover with NRC. This agreement provides that the Club "shall offer each of its non-tank Members the opportunity to identify NRC as an oil spill response contractor in their response plans, conditioned upon such non-tank Member's execution and return to the Club of the

Response Agreement Acceptance Form” and that the Club “shall, from time to time ... provide NRC with a list of all non-tank Members that have satisfied the conditions set forth” above. The effect of this agreement is that it will create separate agreements or contracts between NRC and the Club’s non-tank Members who have executed the Response Agreement Acceptance Form for the provision of response resources which NRC owns or procures by sub-contract on the terms of NRC’s Response Agreement.

The Managers would be pleased to forward a copy of NRC’s Response Agreement for non-tank vessels to any Member who requires it. This Agreement has been approved by the International Group as conforming with its guidelines.

NRC has advised the Managers that five Clubs have already become clients of NRC and that they are in the process of finalising arrangements with other Clubs as well. NRC has not required a multi-year contract, but has offered discounts in exchange for longer-term contracts.

### **Information Required from Members**

The Managers would be grateful if any Member with dry cargo ships entered in the Club who wishes to contract with MSRC or NRC or both through the Club, and thus acquire the right of naming these organisations in their vessel response or spill contingency plans in respect of a spill anywhere in the United States as their response contractors and to have access to their response resources and services at membership rates, would contact the Managers advising them of the names of the companies which they wish to be provided to these organisations as Assureds and Covered Entities, the names of the ships which they wish to enrol as Covered Vessels and the individuals within these companies whom they wish to designate as Authorised Representatives with authority to give response instructions to the response contractors in the case of an actual spill.

It would be helpful if Members requiring the Managers’ assistance in this respect could complete and return the attached questionnaire.

The Managers are aware that a number of Club Members do wish to enrol with either MSRC or NRC, through the Club, and the Managers look forward to receiving an early response.

In the previous circulars the Managers advised Members of the offers received from a number of spill management firms for packages of services, including the writing of vessel specific response or spill contingency plans; and it is apparent that strong competition between these firms has produced a number of attractive offers to shipowners.

If Members require individual guidance from the Managers as to which spill management firm to select, the Managers would be pleased to assist with their comments.

Yours faithfully  
A BILBROUGH & CO LTD  
(MANAGERS)

**Information required from Members with dry cargo ships  
trading to California, USA**

**California**

1. Are any of your dry cargo ships entered in the Club likely to trade to California between now and 20 February 2001?

Yes

No

2. If so, what arrangements are you making to comply with the new California Regulations relating to dry cargo ships for Certificates of Financial Responsibility (COFRs) and spill contingency plans?

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3. Do you require any assistance from the Club's Managers in making these arrangements?

Yes

No

**USA**

1. Are any of your dry cargo ships entered in the Club likely to trade to the United States of America between now and 20 February 2001?

Yes

No

2. If so, do you wish to make arrangements with a spill management firm for the provision of qualified individual/spill management services and with an oil spill response organisation (OSRO)/contractor for response services to your entered dry cargo ships in the case of a spill - and for a vessel response plan (VRP)/spill contingency plan to be written for your ships incorporating these arrangements?

Yes

No

3. If yes, please state the arrangements:

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4. If yes, do you wish to have access to either MSRC or NRC or both, through the Club?

MSRC

NRC

Both

5. If so please provide the following information:

(i) Names of Companies you wish us to provide to the response organisations as Assureds:

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(ii) Names of other Companies named in the certificates of entry whom you wish to be provided to the response organisations as Covered Entities:

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(iii) Names of vessels you wish to be provided to the response organisations as Covered Vessels:

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(iv) Names of persons with authority to give response instructions in the case of a spill on behalf of Assureds, Covered Entities and Covered Vessels you wish to be provided to response organisations as Authorised Representatives:

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**Please address your replies and any related enquiries to  
Mr M G Edmiston and/or Mr D Avenell at A Bilbrough & Co Ltd.**