

26 July 2000

## **TO ALL MEMBERS**

Dear Sirs

### **OIL POLLUTION : UNITED STATES NEW LEGISLATION IN ALASKA FOR NON-TANK VESSELS FINANCIAL RESPONSIBILITY REQUIREMENTS : DRAFT REGULATIONS**

In May 2000 the state of Alaska followed the recent example of California in passing legislation requiring non-tank self-propelled vessels operating in Alaskan waters and exceeding 400 gt to demonstrate proof of financial responsibility for oil spills occurring in Alaskan waters. The effective date of the Financial Responsibility Act is 1 September 2000.

Proof of financial responsibility must be established for non-tank vessels operating in Alaskan waters in the following amounts:

- (a) For vessels carrying predominately persistent product, \$300 per incident for each barrel of oil storage capacity, or \$5,000,000, whichever is greater.
- (b) For vessels carrying predominately non-persistent product, \$100 per incident for each barrel of oil storage capacity, or \$1,000,000, whichever is greater.

The Act applies to non-tank vessels over 400 gt which by definition covers self-propelled vessels including commercial fishing vessels, passenger and cargo vessels. Barges are excluded, as are public vessels unless "engaged in commerce".

The Alaska Department of Environmental Conservation (ADEC) have proposed draft regulations to implement the financial responsibility requirements. ADEC predicts that their regulations will not become final until September or early October 2000 but the effective date for the new law remains 1 September 2000. A summary of the draft regulations is set out below:

#### **Interim applications and Documentation for Proof of Financial Responsibility**

An interim application procedure is set out in ADEC's letter of 17 July 2000, which is attached. Owners or operators of non-tank vessels covered by the new law must submit a completed application and documentation of financial responsibility in the appropriate dollar amount not later than 31 August 2000.

P.T.O.

Acceptable financial responsibility may include the following:

- a. Affidavit of self-insurance and most recent audited financial statement;
- b. Insurance certificate and insurance policy;
- c. Surety bond;
- d. Financial guarantee, accompanied by guarantor's evidence of self-insurance;
- e. Letter of credit;
- f. Certificate of entry evidencing coverage by a Protection and Indemnity Club; or
- g. Certificate of deposit with assignment of negotiable interest.

### **Interim Approval**

A completed application form and appropriate documentation evidencing proof of financial responsibility which is submitted by 31 August 2000 will be deemed approved by ADEC for purposes of meeting the 1 September 2000 deadline. Following adoption of final regulations, ADEC will review each application to ensure that it meets the requirements of the statute and regulations. A formal approval will be given to those vessels which qualify, and non-qualifying applicants will be given 30 days to submit additional information as requested by the Department.

### **Application Form**

A copy of ADEC's application form is attached. In Section (C), paragraph 1(b), proof of financial responsibility by entry in a P&I Club must include a Certificate of Entry and must include "all addenda pertaining to the amount and applicability of oil pollution cover and amount of deductibles."

### **Deductibles**

With respect to deductibles, paragraph 1(c) of the application asks for proof of financial responsibility for any deductible, such as a certificate of deposit, or other "financial information." It thus appears that ADEC will require some evidence of financial responsibility for any deductible as is presently required by ADEC's draft regulations.

ADEC is presently considering whether to allow an interim application which does not have separate proof of financial responsibility for a deductible. However, at this juncture Owners and operators with insurance deductibles should probably plan to submit separate proof of financial responsibility for any deductible. There are likely to be further developments on this issue and Members will be kept advised.

The Managers intend to issue a further circular when these regulations become final.

In the meantime, Members may contact Mr Douglas R Davis of the Association's correspondents at Anchorage, Alaska:

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for further assistance. Mr Davis has filed submissions to ADEC on behalf of the International Group in relation to the draft regulations, and can assist Members with applications.

Yours faithfully  
A BILBROUGH & CO LTD  
(MANAGERS)