

RE: POLLUTION OF MARINE ENVIRONMENT IN GREECE

Penal Sanctions and Administrative Fines

Aiming to keep Insureds trading to Greece well aware of existing legal regime in country, Ingosstrakh provides the Owners of insured vessels with this Circular summarizing the current situation and examining the obligations falling on the vessel's interests in the event of a marine pollution incident in Greek waters. This Circular is prepared under assistance of local P&I Correspondent Kalimbassieris Maritime.

1. Legal Regime

Matters relating to pollution of marine environment have been traditionally regulated in Greece by the **Law 743/1977** of 17.10.1977, on the Protection of Marine Environment, as codified by **Presidential Decree 55/1998** of 20.03.1998, which remain in force even until today.

By virtue of **Presidential Decree 108/2019** of 09.12.2019, the upper limits of administrative fines, as determined by said **Presidential Decree 55/1998** have been substantially increased.

On a European level, the European Union introduced legislation on ship-source pollution and on penalties for such infringements, with the **Directive 2005/35/EC** of 7 September 2005. This was amended by the **Directive 2009/123/EC** of 21 October 2009.

The Hellenic Republic incorporated the provisions of the above two (2) Directives into the Hellenic legislation by virtue of **Law 4037/2012** of 30.01.2012, according to which the discharge of pollutant substances into the sea will be subject to both penal sanctions and administrative fines, as it had been already provided in **Presidential Decree 55/1998**.

In addition, by virtue of very recent **Presidential Decree 113/2019** of 31.12.2019, the administrative fines for infringement of the above **Law 4037/2012** on ship-source pollution have been accordingly increased, to coincide with the increases provided in **Presidential Decree 108/2019**.

The applicable legislation is listed in Appendix A, whereas its basic provisions follow hereunder:

2. Definition of Pollution

PD 55/1998: The presence in the sea of any substance, which alters the natural state of seawater or renders same harmful for human health or for fauna and flora of the seabed and generally unsuitable for its intended uses.

Law 4037/2012: The discharge of pollutant substances (oil or noxious liquid substances) from ships, resulting in the degradation of seawater quality.

3. Obligations of the polluter

In the event of pollution or potential risk of causing it, the Master (or the ship's representative, i.e. agent) should:

- Report immediately the incident to the competent Port Authority;
- Take any appropriate measures to prevent, restrict and respond to the pollution;
- Comply with existing plans for pollution response (follow Authorities' orders);
- Award immediately anti-pollution operations to recognized pollution response companies (in case ship's crew would be unable to take the necessary antipollution measures);
- If delays are encountered in dealing with the pollution incident, the Master will be in addition liable for the consequences of such delay.

4. Authority's reaction to a pollution incident

In cases of a pollution incident or apparent and imminent risk of pollution, the Authority:

- Takes all appropriate measures to prevent, limit and eliminate the consequences of the pollution;
- Orders the Master / Shipowner via the Agents to take necessary measures for eliminating the consequences of the pollution;
- Requests the assistance of organizations or private enterprises having experience and means to deal with such incidents;
- Coordinates and controls private resources utilized;
- **BUT**, the Authority does not bear the costs involved, which are to be covered by the ship or whoever in any way caused the pollution.

5. Criminal Sanctions

- The person who is arrested in the act of committing the offence (pollution), is subject to trial *in flagrante delicto*.
- Authorities initiate investigation, as part of which, crew statements are given (sworn or without oath). On completion of investigation, the Public Prosecutor decides whether criminal charges will be pressed and against whom.
- Normally, a criminal hearing before the competent Court is set for a future date and the accused are free to return onboard.
- Competent Court is considered the court of the place where the pollution occurred or the court of vessel's destination. In the event of pollution occurring in the open sea, competent court will be the courts of Piraeus.
- The engagement of a lawyer is necessary.

The criminal sanctions in relation to pollution incidents, which are currently in force, are summarized as follows:

A	In case the severity of the pollution poses risk of death or serious injury or widespread environmental disturbance or destruction:	Imprisonment up to ten (10) years and fine ranging from €3,000 to €300,000
B	In all other cases:	Imprisonment for at least one (1) year and fine ranging from €1,500 to €50,000
C	For cases as above A, when pollution is caused by negligence:	Imprisonment for at least six (6) months and fine ranging from €1,000 to €15,000
D	For cases as above B, when pollution is caused by negligence:	Imprisonment for at least three (3) months and fine ranging from €200 to €3,000
E	Reoccurring, small scale pollution incidents, which cumulatively cause degradation of the marine environment:	Imprisonment for at least six (6) months and fine ranging from €1,000 to €15,000
F	For cases as above E, when pollution is caused by negligence:	Imprisonment for at least three (3) months and fine ranging from €200 to €3,000

If the committer of the above mentioned violations takes steps to substantially restrict the pollution or contributes to the substantial reduction of the negative effects of pollution or degradation of sea water quality, with a timely notification to the Authorities, **the court may impose a reduced sentence, or to exempt him from any sentence.**

6. Administrative Sanctions

On the administrative side:

- The Authority summons the offender to provide his written plea within 24 hours from serving of the summons. The deadline is normally extended to 5 days.
- Polluters of sea or coast are punished with a fine, by a reasoned decision of the competent Authority.
- Those who do not take the appropriate measures to prevent, restrict or combat the pollution, even if no pollution has been caused, are also punished with a fine of the same amount.
- Until the fine is paid, **the ship is detained and her sailing prohibited**. The detention can be lifted after depositing to the Authority of a Bank Letter of Guarantee (BLG), equal to the amount of fine imposed or to the estimated amount of the fine.
- The only form of security acceptable to the Authorities is the BLG. Authorities **do not accept a Letter of Undertaking** issued by the vessel's P&I Club, instead of the BLG.

Note: Experience has shown that under certain circumstances (e.g. weekends), the Authority may accept a bank cheque in the amount of the fine instead of a BLG, for allowing the ship to depart, on the condition that this will be replaced with an equivalent BLG as soon as this becomes feasible (e.g. after few working days).

The upper levels of administrative fines in relation to pollution incidents, which are currently in force, are summarized as follows:

A	In cases of degradation of sea water quality:	Up to €100,000
B	In cases of serious pollution, i.e. cases that are deemed to have a serious detrimental effect to the marine environment:	From €100,000 up to €2,000,000
C	In addition to the above, when pollution has been intentionally caused for the benefit of a legal entity (company):	Up to €800,000
D	In case of continued pollution, daily fine for exceeding the deadline set by Authorities, for restoration of marine environment	€15,000 per day

7. Securing of State Demands

In cases where the Hellenic Coast Guard have been involved in the antipollution operation, engaging their own means:

- The cost for personnel, means, equipment, material used by the Hellenic Coast Guard, for responding to the pollution incidents is based on a tariff published in the Governmental Gazette;
- For securing demands related to pollution combatting operation, the ship may be detained;
- The detention may be lifted and ship allowed to sail out in case a Bank Letter of Guarantee (BLG) is lodged.

We remind our Insureds, that it is highly important to immediately inform Ingosstrakh on any incidents concerning subject matters.

Best regards,
P&I Department
Ingosstrakh Insurance Company