



BERMUDA

MERCHANT SHIPPING (OIL POLLUTION PREPAREDNESS, RESPONSE AND CO-OPERATION CONVENTION) REGULATIONS 2019

BR 13 / 2019

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	Requirements for an oil pollution emergency plan in respect of an offshore installation

The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 122(1) of the Merchant Shipping Act 2002, makes the following Regulations:

Citation

1 1. These Regulations may be cited as the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 2019.

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Interpretation

2 In these Regulations—

“Authority” means the Bermuda Shipping and Maritime Authority (BSMA);

“Bermuda ship” has the meaning given by section 16(3) of the Merchant Shipping Act 2002;

“combined operation” means—

- (a) any well or supplementary unit connected to an offshore installation; and
- (b) within an offshore installation’s safety zone—
 - (i) any associated structure or device which is connected to the installation;
 - (ii) any apparatus or works on, or affixed to, the main structure of the installation; and
 - (iii) any pipeline apparatus or works attached to the installation;

“Convention” means the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990;

“GT” means gross registered tonnage, and the gross registered tonnage of a ship having alternative gross registered tonnages shall be taken to be the larger of those tonnages;

“major environmental incident arising from a major accident” means a major environmental incident which is caused by an event involving a fire, explosion, loss of well control or the release of a dangerous substance causing, or with a significant potential to cause death or serious personal injury to persons on an offshore installation or engaged in an activity on or in connection with it, and includes—

- (a) an event involving major damage to the structure of the offshore installation or plant affixed to it or any loss in the stability of the offshore installation;
- (b) the collision of a helicopter with the offshore installation;
- (c) the failure of life support systems for diving operations in connection with the offshore installation, the detachment of a diving bell used for such operations or the trapping of a diver in a diving bell or other subsea chamber used for such operations; or
- (d) any other event arising from a work activity involving death or serious personal injury to five or more persons on the offshore installation or engaged in an activity in connection with it, and for the purposes of determining whether an event constitutes a major accident under subparagraph (a) or (b), an offshore installation that is normally unattended, is to be treated as if it were attended;

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“National Contingency Plan” means the national plan for pollution emergencies prepared by the Minister pursuant to section 2(1) of the Merchant Shipping Act 2002;

“non-production installation” means an offshore installation other than a production installation;

“offshore installation” means a stationary, fixed or mobile facility, or a combination of facilities permanently inter-connected by bridges or other structures, which is—

(a) in offshore waters; and

(b) used for offshore oil and gas operations or in connection with such operations,

but only includes mobile offshore drilling units when they are stationed in offshore waters for drilling, production or other activities associated with offshore oil and gas operations;

“offshore waters” means waters comprising the territorial sea of Bermuda and includes waters outside the Bermuda territorial sea, within which Bermuda registered oil rigs and platforms operate;

“oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

“oil handling facility” means a facility which presents a risk of an oil pollution incident and includes inter alia, an oil terminal, pipeline and any other facility handling oil;

“oil pollution emergency plan” means a contingency plan (other than the National Contingency Plan) setting out arrangements for responding to incidents which cause or may cause marine pollution by oil, with a view to preventing such pollution or reducing or minimising its effect;

“oil pollution incident” means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interests of Bermuda and which requires emergency action or other immediate response;

“operator”—

(a) in relation to an oil handling facility, means a person having, for the time being, the management of such facility in Bermuda; and

(b) in relation to well operations, means the well operator;

“Organization” means the International Maritime Organization (IMO);

“production installation” means an offshore installation used for the offshore extraction of oil and gas from the underground strata of the area covered by a

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licence, including offshore processing of oil and gas and its conveyance through connected infrastructure;

“responsible person” means in relation to—

- (a) a production installation and its connected infrastructure, subject to paragraph (b), the operator in relation to the installation or connected infrastructure;
- (b) a non-production installation and its connected infrastructure, subject to paragraph (c), the person entitled to control the operation of the installation; and
- (c) well operations, the well operator,

and “matters for which a responsible person is responsible” shall be construed accordingly;

“standard reporting requirements” means the requirements stated in—

- (a) part 2 (Standard Reporting Format and Procedures); and
- (b) sections 3.1, 3.2 and 3.3 of part 3 (Guidelines for Detailed Reporting Requirements);

of the Appendix to the Annex to Resolution A. 648(16) adopted by the Assembly of the International Maritime Organization on 19th October 1968;

[Regulation 2 definitions "Convention" and "Organization" inserted by BR 179 / 2021 reg. 2 effective 29 December 2021]

Application

3 (1) In their application to harbours and oil handling facilities, these Regulations apply to—

- (a) any harbour for which there is a statutory harbour authority having an annual turnover of more than \$2 million;
- (b) any other harbour, and any oil handling facility, offering berths alongside, on buoys or at anchor, to ships of over 400 GT or oil tankers of over 150 GT;
- (c) any other harbour, and any oil handling facility, in respect of which the Minister has served the harbour authority or operator (as the case may be) with a notice stating that he is of the opinion that maritime activities are undertaken at that harbour or facility, which involve a significant risk of discharge of over 10 tonnes of oil; and
- (d) any other harbour or oil handling facility in respect of which the Minister has served the harbour authority or operator (as the case may be), with a notice stating that he is of the opinion that it is located in an area of significant environmental sensitivity, or in an area where a discharge of oil or other substances could cause significant economic damage.

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(2) These Regulations apply to—

- (a) every offshore installation and its connected infrastructure in offshore waters; and
- (b) every oil handling facility which—
 - (i) is a pipeline; or
 - (ii) would be an offshore installation were it in Bermuda offshore waters.

(3) These Regulations do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

[Regulation 3 paragraph (3) inserted by BR 179 / 2021 reg. 3 effective 29 December 2021]

Oil pollution emergency plans

4 (1) Every—

- (a) harbour authority of a harbour to which these Regulations apply;
- (b) operator of an oil handling facility to which these Regulations apply;
- (c) operator of an offshore installation and its connected infrastructure or well operations to which these Regulations apply;

shall have an oil pollution emergency plan in accordance with this Regulation.

(2) There shall be a separate plan for each harbour and oil handling facility except that—

- (a) there may be joint plans between harbour authorities and operators of oil handling facilities, within an area;
- (b) there may be joint plans in respect of a number of offshore installations and their connected infrastructure; and
- (c) there may be joint plans in respect of an offshore installation and its connected infrastructure and any of their related oil handling facilities where such a facility—
 - (i) would be an offshore installation were it within offshore waters; or
 - (ii) is a pipeline.

(3) Within 15 months of the coming into force of these Regulations, every harbour authority and every operator of an oil handling facility and every responsible person shall submit an oil pollution emergency plan relating to its harbour or oil handling facility, to the Authority for approval or to an authority designated by the Authority.

(4) In preparing an oil pollution emergency plan, a harbour authority, an operator of an oil handling facility or a responsible person shall take into account, any guidance issued by the Authority.

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(5) An oil pollution emergency plan in respect of an offshore installation must comply with the Schedule.

(6) Where, after the coming into force of these Regulations a harbour or an oil handling facility comes into being, or operations relating to an offshore installation, its connected infrastructure or well operations, are commenced, paragraph (3) shall apply so as to require the submission of a plan, at least two months before—

- (a) such harbour or oil handling facility comes into being;
- (b) operations relating to the offshore installation or connected infrastructure are commenced; or
- (c) well operations are commenced.

(7) In relation to a harbour referred to in paragraph (6), where there is no harbour authority at that time, paragraph (3) shall apply so as to require submission of a plan by the promoter of the proposed harbour.

(8) Where an oil pollution emergency plan is submitted in accordance with paragraph (3) or (6), any approval by the Minister of that plan is valid only when that installation is in Bermuda waters.

(9) Every person required to submit an oil pollution emergency plan under these Regulations, except where paragraph (12) applies, shall fully review its oil pollution emergency plan not later than 5 years after submission of the plan and re-submit a plan within that period.

(10) Where any major change occurs, which affects or could affect the validity or effectiveness of a plan to a material extent, then the harbour authority or operator of the oil handling facility or responsible person in question, shall submit a new plan, or amendments to the existing plan, within 3 months of such change becoming known, to that authority.

(11) Paragraph (12) applies to—

- (a) every responsible person; and
- (b) every operator of an oil handling facility which—
 - (i) would be an offshore installation were it in offshore waters; or
 - (ii) is a pipeline.

(12) Where this paragraph applies, the responsible person or the operator of an oil handling facility must carry out a full review of the oil pollution emergency plan for which the person or operator is responsible—

- (a) within 5 years of the date on which the Minister first approved the plan; and
- (b) thereafter, at intervals of not more than 5 years after the date on which the Minister approved the plan, after conducting a full review of the plan, under this paragraph.

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(13) Where there has been a material change—

- (a) to the safety case which is associated with an offshore installation and its connected infrastructure;
- (b) to any of the documents associated with an offshore installation and its connected infrastructure; or
- (c) in respect of an offshore installation, connected infrastructure or well operations, the responsible person in respect of the installation, infrastructure or operations, as the case may be, must submit to the Minister, a new oil pollution emergency plan, or amendments to the existing plan, within 3 months of such change becoming known to the responsible person.

(14) The Minister may, by written notice, require a responsible person to review an oil pollution emergency plan which has been approved in respect of any matters for which that person is responsible.

(15) A notice under paragraph (14) must include the date by which an amended plan must be submitted to the Minister for approval, in accordance with paragraph (16) and may impose requirements on that person, relating to the carrying out of that review, including—

- (a) the manner in which the review is to be carried out; and
- (b) specific matters that must be included within the review.

(16) Where the Minister requires a review under paragraph (14), the person required to carry out that review must review the oil pollution emergency plan in accordance with the requirements of the Minister and must submit to the Minister, an amended plan for approval.

(17) Where an oil pollution emergency plan in respect of an offshore installation or its connected infrastructure must be amended by reason of the particular nature or location of a well, the operator of that well must—

- (a) submit to the Minister for approval, an amended plan or an adequate description of the amendment to be made to the plan; and
- (b) make that submission, together with the relevant notification of well operations.

(18) Where a non-production installation is to be used for carrying out combined operations, the operator of any production installation and the owner of any non-production installation involved in those combined operations must—

- (a) submit to the Minister for approval an amended oil pollution emergency plan for that installation so that it covers the combined operations; and
- (b) make that submission together with the relevant notification of combined operations.

(19) Paragraph (20) applies where a responsible person fails to comply with—

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- (a) any obligation in paragraphs (12) to (18), to submit either an amended oil pollution emergency plan or an adequate description of such a plan; or
- (b) a requirement in a notice under paragraph (14), relating to the carrying out of a review.

(20) Where this paragraph applies, the plan in respect of which the amendment or adequate description should have been submitted, ceases to be approved for the purposes of this Regulation, on the date by which the amended oil pollution emergency plan, or adequate description as the case may be, was required to be submitted to the Minister, for approval.

(21) Where the Authority or the Ministry responsible for the Environment considers that any plan, adequate description or amendment, submitted under paragraphs (3) to (18) is—

- (a) not compatible with the National Contingency Plan in force; or
- (b) not appropriate for dealing with oil pollution incidents which may occur in the area in which the harbour authority or operator of the oil handling facility or responsible person has jurisdiction or exercises responsibility,

the Authority may, after consultation with the harbour authority or operator of the oil handling facility or responsible person, direct that the plan be altered accordingly and the harbour authority or operator shall alter the plan in accordance with any such direction.

(22) In relation to an offshore installation and its connected infrastructure, and oil handling facility which would be an offshore installation were it in offshore waters, well operations and oil handling facilities which are pipelines, this Regulation shall apply, with the substitution for any reference to the Authority, of a reference to the Minister.

(23) Every operator of an oil handling facility and every harbour authority of the oil handling facility or responsible person shall implement its oil pollution emergency plan approved or altered under this Regulation, in the event of an oil pollution incident.

(24) Every responsible person must—

- (a) maintain equipment and expertise relevant to the oil pollution emergency plan which is approved in respect of matters for which the person is responsible;
- (b) ensure that such equipment and expertise is available for use at all times;
- (c) make such equipment and expertise available to the authorities responsible for the execution of the National Contingency Plan;
- (d) undertake exercises to maintain relevant expertise for the implementation of the plan, including interaction with the National Contingency Plan;
- (e) retain evidence of those exercises; and
- (f) provide such evidence to the Minister, if so required by the Minister, by written notice.

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(25) Every responsible person must ensure that no operations relating to an offshore installation, its connected infrastructure or well operations for which that person is responsible, are carried out, unless they are the subject of an oil pollution emergency plan approved by the Minister, under this Regulation.

(26) Every operator of an oil handling facility that—

(a) is a pipeline; or

(b) would be an offshore installation were it in offshore waters,

must ensure that no activities that present a risk of an oil pollution incident are undertaken, unless those activities are the subject of an oil pollution emergency plan approved by the Minister, under this Regulation.

Reporting of incidents: ships

5 (1) The master of a Bermuda ship, who observes or becomes aware of any event involving the discharge of oil at sea from another ship or from an offshore installation, shall report it immediately to the Bermuda Maritime Operations Centre, if the ship is in Bermuda controlled waters, or to the nearest coastal state, if the ship is outside Bermuda controlled waters.

(2) A responsible person, an operator of an oil handling facility which would be an offshore installation were it in offshore waters, or an operator of an oil handling facility which is a pipeline, who observes or becomes aware of any event involving discharge of oil at sea from another installation or a ship, shall without delay report it to Bermuda Maritime Operations Centre.

(3) In this Regulation “controlled waters” means waters specified as areas within which the jurisdiction and rights of Bermuda are exercisable.

Action on receiving an oil pollution report

5A (1) On receipt of an oil pollution report from any source, the Minister shall—

(a) assess the event, to determine whether it is an oil pollution incident;

(b) assess the nature, extent and possible consequences of the oil pollution incident; and

(c) without delay, inform all States whose interests are affected or likely to be affected by such oil pollution incident, together with—

(i) details of his assessments and any action he has taken, or intends to take to deal with the incident; and

(ii) any further information as appropriate,

until the action taken to respond to the incident has been concluded or until joint action has been decided by such States.

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(2) When the severity of such oil pollution incident so justifies, the Minister shall provide the Organization directly or as appropriate, through the relevant regional organisation or arrangements, with the information referred to in paragraph (1)(b) and (c).

(3) When exchanging information and communicating with other States and with the Organization, the Minister shall, insofar as it is practicable, comply with the reporting system contained in the Manual on Oil Pollution, Section II - Contingency Planning, appendix 2, developed by the Marine Environment Protection Committee of the Organization.

(4) Parties should use, as far as practicable, the oil pollution reporting system developed by the Organization when exchanging information and communicating with other States and with the Organization.

[Regulation 5A inserted by BR 179 / 2021 reg. 4 effective 29 December 2021]

Reporting of incidents: harbour authorities and oil handling facilities

6 (1) A harbour master, or other individual in charge of a harbour, and any individual in charge of an oil handling facility (except those which are pipelines or those which would be offshore installations, were they in offshore waters), who observes or is made aware of any event involving a discharge of or probable discharge of oil, or the presence of oil in the sea, shall without delay report the event, or the presence of oil, as the case may be, to the Bermuda Maritime Operations Centre.

(2) A report made under this Regulation shall so far as appropriate as to form and content, comply with the standard reporting requirements.

Reporting of incidents: maritime officials

6A (1) This regulation applies to—

- (a) an inspector appointed under section 217 of the Act;
- (b) a member of the Royal Bermuda Regiment Coastguard;
- (c) a customs officer; and
- (d) a police officer.

(2) A person to whom this regulation applies shall report without delay any observed event at sea or at a sea port or oil handling facility involving a discharge of oil into, or the presence of oil in, the sea or water, to the Bermuda Maritime Operations Centre.

[Regulation 6A inserted by BR 179 / 2021 reg. 5 effective 29 December 2021]

International co-operation in pollution response

6B (1) Upon the request of any Party affected or likely to be affected by an oil pollution incident, the Minister shall—

- (a) when, in the opinion of the Minister, the severity of the incident so justifies; and

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- (b) subject to the capabilities of the Government and the availability of relevant resources,

co-operate and provide advisory services, technical support and equipment, for the purpose of responding to the incident.

(2) The financing of the costs for such assistance shall be based on the provisions set out in the Annex to the Convention.

[Regulation 6B inserted by BR 179 / 2021 reg. 5 effective 29 December 2021]

Offences

7 (1) Any harbour authority or any operator of an oil handling facility or any responsible person who without reasonable cause—

- (a) fails to submit or re-submit an oil pollution emergency plan in accordance with Regulation 4;
- (b) does not maintain an oil pollution emergency plan, as approved (with alterations directed by the Authority or the Minister, if so directed) under Regulation 4,

commits an offence, punishable on summary conviction, by a fine not exceeding \$10,000 or on conviction on indictment, by a fine.

(2) Any person required to make a report under regulation 5, 6 or 6A who, without reasonable cause, fails to comply with all the requirements in the relevant regulation, commits an offence, punishable on summary conviction, to a fine not exceeding \$10,000 or on conviction on indictment, to a fine.

(3) Any responsible person who without reasonable cause—

- (a) fails to comply with a duty under Regulation 4(24); or
- (b) breaches an obligation in Regulation 4(25),

commits an offence punishable on summary conviction, by a fine not exceeding \$10,000 or on conviction on indictment, by a fine.

(4) Any operator of an oil handling facility who, without reasonable cause, breaches an obligation in Regulation 4(26), commits an offence, punishable on summary conviction, by a fine not exceeding \$10,000, or on conviction on indictment, by a fine.

[Regulation 7 paragraph (2) deleted and substituted by BR 179 / 2021 reg. 6 effective 29 December 2021]

Inspection of offshore installations

8 Any person authorised by the Minister, may inspect any offshore installation and its connected infrastructure or oil handling facilities, which are pipelines or oil handling facilities, which would be offshore installations were they in offshore waters, to which these Regulations apply.

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Transitional provisions

9 (1) Where an installation is a planned production installation, these Regulations apply in relation to an operator in respect of such installation and its connected infrastructure, from the date of the coming into force of these Regulations.

(2) These Regulations apply to an operator of a production installation which is an existing installation, in respect of that installation, from the earlier of—

- (a) the date of thorough review in relation to that installation; or
- (b) the date of the coming into force of these Regulations.

(3) Where a production installation which is not a planned production installation or an existing production installation, but in respect of which a current safety case applied before the date of the coming into force of these Regulations, these Regulations shall apply to an operator in respect of such a production installation and its connected infrastructure, from the date of the coming into force of these Regulations.

(4) In relation to a well operator who is planning or executing well operations, the provisions of these Regulations relating to the carrying out of well operations apply from the earlier of—

- (a) the date of thorough review in relation to the installation from which the well operations were planned or executed; or
- (b) the date of the coming into force of these Regulations.

(5) These Regulations apply to the owner of a non-production installation which is—

- (a) an existing installation, in respect of that installation, from the date of the coming into force of these Regulations; and
- (b) not an existing installation, in respect of that installation, from the date of the coming into force of these Regulations.

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SCHEDULE

(Regulations 4(5))

REQUIREMENTS FOR AN OIL POLLUTION EMERGENCY PLAN IN RESPECT OF AN
OFFSHORE INSTALLATION

- 1 The oil pollution emergency plan (“the plan”) must consider the risk assessment undertaken during preparation of the most recent safety case.
- 2 The plan must include the following information—
 - (a) positions of persons authorised to initiate emergency response procedures and the positions of persons directing the emergency response to an oil pollution incident;
 - (b) positions of persons responsible for liaising with the authority or authorities responsible for the National Contingency Plan;
 - (c) arrangements for training personnel in the duties they will be expected to carry out in the event of any incident where necessary, coordinating the training with the National Contingency Plan;
 - (d) a description of the potential worst case release of oil to the sea from the installation or connected infrastructure, arising from the scenarios identified in the safety case in respect of that installation or infrastructure; this must include any relevant details when two or more installations operate in combination, in a way that affects the major hazard potential;
 - (e) arrangements for limiting risks to the environment, including a description of equipment and arrangements for the protection of the environment from an incipient major accident and how warnings are to be given and the actions persons are expected to take on receipt of a warning;
 - (f) a description of the equipment and resources available to respond to a release of oil to the sea, including the equipment and resources available for the capping of any potential release from a well, including—
 - (i) a complete and up-to-date inventory of emergency response equipment pertinent to those operations; and
 - (ii) details of the ownership, the storage location, the arrangements for transport to, and mode of deployment at, the incident location of the equipment and resources;
 - (g) the measures in place to ensure that the response equipment and procedures are maintained in an operable condition;
 - (h) an estimate of the oil spill response effectiveness, including consideration of the following environmental conditions—
 - (i) weather, including wind, visibility, precipitation and temperature;

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- (ii) sea states, tides and currents;
- (iii) presence of ice and debris;
- (iv) hours of daylight; and
- (v) other known environmental conditions that might influence the efficiency of the response equipment or the overall effectiveness of a response effort;
- (i) evidence that prior assessment of any relevant chemical dispersants has been carried out to minimise public health implications and any environmental damage;
- (j) an assessment of the identified potential environmental effects resulting from a release of oil and a description of the technical and non-technical measures envisaged, to prevent, reduce or offset them, including monitoring; and
- (k) arrangements for providing early warning of a major environmental incident arising from a major accident, to the authority or authorities responsible for initiating the National Contingency Plan, including—
 - (i) details of the type of information that should be contained in any warning; and
 - (ii) the arrangements for the provision of more detailed information as it becomes available.

3 The plan must be consistent with the National Contingency Plan.

Made this 14th day of February 2019

Minister of Tourism and Transport

[Operative Date: 18 February 2019]

[Amended by:

BR 179 / 2021]