

L.N. 450 of 2020

**TERRITORIAL WATERS AND CONTIGUOUS ZONE ACT
(CAP. 226)**

**MERCHANT SHIPPING ACT
(CAP. 234)**

**AUTHORITY FOR TRANSPORT IN MALTA ACT
(CAP. 499)**

**Oil and Hazardous and Noxious Substances Pollution Preparedness,
Response and Co-operation Regulations, 2020**

IN EXERCISE of the powers conferred by article 7 of the Territorial Waters and Contiguous Zone Act, article 308A of the Merchant Shipping Act and article 43 of the Authority for Transport in Malta Act, the Prime Minister, acting on the advice of the Minister for Transport, Infrastructure and Capital Projects, in consultation with the Authority for Transport in Malta, has made the following regulations:-

1. (1) The title of these regulations is the Oil and Hazardous and Noxious Substances Pollution Preparedness, Response and Co-operation Regulations, 2020. Citation, commencement and scope.

(2) These regulations shall come into force on 1st January, 2021.

(3) The purpose of these regulations is to:

(a) establish, in accordance with the provisions of the OPRC Convention and the OPRC-HNS Protocol, as amended from time to time, a regulatory framework for the applicability of the said Convention and Protocol; and

(b) provide for the applicability of the National Contingency Plan and for the requirement to have in place marine pollution response emergency plans for marine terminals, marine facilities and ports.

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Interpretation.

Cap. 499.

2. In these regulations, unless the context otherwise requires:

"Act" means the Authority for Transport in Malta Act;

"Authority" means the Authority for Transport in Malta established under the Act;

"hazardous and noxious substances" shall have the same meaning assigned to it in the OPRC-HNS Protocol;

"internal waters" shall have the same meaning assigned to it in the Act;

S.L. 499.12.

"marine facility" shall have the same meaning assigned to it in the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations;

S.L. 499.12.

"marine terminal" shall have the same meaning assigned to it in the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations;

"National Competent Authority" means the national competent authority appointed under regulation 4;

"National Contingency Plan" means the National Marine Pollution Contingency Plan prepared by the Authority, as amended from time to time;

"OPRC Convention" means the International Convention on Oil Pollution Preparedness, Response and Co-operation signed in London on 30th November, 1990;

"OPRC-HNS Protocol" means the Protocol of 2000 to the OPRC Convention relating to Pollution Incidents by Hazardous and Noxious Substances signed in London on 15th March, 2000;

"oil" shall have the same meaning assigned to it in the OPRC Convention;

"pollution" means a marine pollution incident involving oil or any other type of hazardous and noxious substance;

"pollution emergency plan" means a marine pollution response emergency plan prepared by the Authority, marine terminal or marine facility setting out arrangements for responding to incidents which cause or may cause marine pollution by oil or other hazardous and noxious substance, with the aim to prevent such pollution or minimise its effect;

"pollution incident" means an occurrence or a series of occurrences having the same origin, including fire or explosion, which results or may result in a discharge, release or emission of oil or hazardous and noxious substances and which poses or may pose a threat to the marine environment, or to the coastline or to the related interests, and which requires emergency action or other immediate response;

"port" shall have the same meaning assigned to it in the Act;

"ship" shall have the same meaning assigned to it in the Act; and

"territorial waters" means the waters described in article 3(1) of the Territorial Waters and Contiguous Zone Act and includes any waters enclosed between the base lines therein mentioned and the coast. Cap. 226.

3. (1) The National Contingency Plan, as may be amended from time to time, shall, unless otherwise provided in these regulations and notwithstanding the provision of any other law, form part of and be enforceable as part of the Laws of Malta. National Contingency Plan.

(2) The National Contingency Plan shall apply to all marine terminals, marine facilities and to all ships whilst they are in the internal and territorial waters of Malta.

4. The National Competent Authority responsible to implement, maintain, update and enforce the National Contingency Plan is the Authority for Transport in Malta. National Competent Authority.

5. The National Competent Authority shall have the power to: Functions and powers of the National Competent Authority.

(a) advise, liaise and consult with marine terminals and with marine facilities in the development, implementation, maintenance and updating of their pollution emergency plans;

(b) approve the pollution emergency plans of marine terminals and marine facilities;

(c) monitor marine terminals and marine facilities in the effective development, implementation, update and maintenance of their pollution emergency plans;

(d) monitor marine terminals and marine facilities and coordinate with them in the organisation of training and drills in pollution emergency and response;

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(e) organise periodical national training and drills in pollution emergency and response;

(f) approve and coordinate training in pollution emergency and response for the personnel of marine terminals and marine facilities;

(g) ensure that the plans of marine terminals and marine facilities are consistent with and part of the National Contingency Plan; and

(h) publish, from time to time, additional plans that complement with and give better effect to the National Contingency Plan.

Obligations of the Authority.

6. (1) The Authority shall be responsible for preparing pollution emergency plans for the ports under its jurisdiction, administration, management and control.

(2) The Authority shall have the emergency plans in place within twelve months from the date of coming into force of these regulations.

(3) The provisions of sub-regulations (5), (6) and (9) of regulation 7 shall apply, *mutatis mutandis*, to the Authority.

Obligations of marine terminals and marine facilities.

7. (1) Each marine terminal and each marine facility shall have their respective separate pollution emergency plan:

Provided that, there may be joint plans between the Authority and operators of marine terminals and operators of marine facilities located within the same port area.

(2) An operator of a marine terminal or of a marine facility must:

(a) develop, implement and maintain a pollution emergency plan;

(b) update his pollution emergency plan; and

(c) appoint and maintain in position a person, responsible for the development, implementation, maintenance and updating of the said pollution emergency plan and liaise with the National Competent Authority in this regard, and inform the said National Competent Authority of such appointment and of any changes thereto:

Provided that, such plans must be prepared and submitted to the National Competent Authority within twelve months from the date of coming into force of these regulations;

Provided further that, where a marine terminal or marine facility comes into operation after the coming into force of these regulations, such plans must be prepared and submitted to the National Competent Authority at least two months before the operations and activities are commenced.

(3) A pollution emergency plan or amendments thereto must be approved by the National Competent Authority before coming into effect and implemented.

(4) A pollution emergency plan must incorporate any direction or guidance given by the National Competent Authority; and shall also include all obligations under the provisions of the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations with respect to pollution plans. S.L. 499.12.

(5) A pollution emergency plan shall be revised every five years. Existing plans which are over five years old shall be revised within three years from the date of coming into force of these regulations and subsequently every five years.

(6) Where any major changes occur which affect or could affect the material validity or effectiveness of the pollution emergency plan, the marine terminal operator or the marine facility operator in question must immediately inform the National Competent Authority and submit a new plan, or amendments to the existing plan, within three months of becoming aware of such change. Furthermore, the operator is solely responsible to ensure that the National Competent Authority is immediately notified of any changes in the names and contact numbers of any of the key persons identified in the pollution emergency plan.

(7) Where the National Competent Authority considers that a pollution emergency plan or any amendments thereto are not:

(a) compatible with the National Contingency Plan in force; or

(b) appropriate for dealing with pollution incidents which may occur in the area in which the marine terminal or marine facility operates, has jurisdiction or exercises responsibility;

the National Competent Authority may, after consultation with the marine terminal or the marine facility concerned, order that

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such plan is amended accordingly, as may be necessary. The operator of such marine terminal or marine facility shall have the duty to amend the pollution emergency plan in accordance with the directions given to him.

(8) It shall be the duty of every marine terminal operator and marine facility operator to implement its approved pollution emergency plan in the event of a pollution incident.

(9) A marine terminal operator and a marine facility operator must:

(a) establish and have in place a minimum level of first-aid pollution response equipment corresponding with the risks involved as identified through a risk assessment;

(b) ensure that an adequate number of his personnel attend the necessary pollution response training at recognised and accredited training organisations in line with the directives of the National Competent Authority;

(c) organise periodical and at least once a year, training and drills in pollution incidents:

Provided that, a yearly schedule with the date and time of such training and drills must be given to the National Competent Authority by not later than 31st January of each calendar year; and

(d) participate, when requested to do so by the National Competent Authority, and at least once a year, in the national pollution response and emergency training and drills organised periodically by the National Competent Authority.

Duties of operators and masters.

8. (1) It shall be the duty of every marine terminal operator and marine facility operator who observe or are made aware of any polluting incident, to report without any delay such incident to the National Competent Authority.

S.L. 499.34.

(2) Every master of a ship whilst in the territorial waters or contiguous zone of Malta, shall have the duty of reporting any pollution incident in accordance with the Vessel Traffic Monitoring and Reporting Requirements Regulations.

Fees.

9. The fees payable under these regulations in respect of any approval, renewal or amendment of a pollution emergency plan, or for the late submission thereof, and for any inspection carried out by the National Competent Authority, shall be as established, from time to

time, by the National Competent Authority.

10. Any marine terminal operator or marine facility operator who fails to comply with the provisions of these regulations commits an offence and is liable, upon conviction, to a fine (*multa*) not less than two thousand and five hundred (2,500) euro and not exceeding one hundred thousand (100,000) euro for each offence; and in the case of a continuing offence, to a further fine (*multa*) not less than five hundred (500) euro and not exceeding one thousand and five hundred (1,500) euro for every day during which the offence persists.

Offences.

11. (1) The National Competent Authority shall also have the power to impose in respect of any breach of or non-compliance of these regulations an administrative fine in terms of the provisions of the Act.

Administrative fines.

(2) An administrative fine imposed by the National Competent Authority shall not be less than five hundred (500) euro for each breach or non-compliance; or less than two hundred and fifty (250) euro for each day or part thereof during which the breach or non-compliance subsists, from the date of the final decision of the National Competent Authority.

12. (1) The provisions of these regulations establishing offences and punishments in respect thereof shall be without prejudice to any liability arising from any other law or regulations; and shall not bar the infliction of further punishments contemplated by such other law or regulations.

Provisions with respect to offences.

(2) In particular, the provisions referred to in sub-regulation (1) shall not affect the application of any higher punishment under any other law or regulations.

13. (1) The provisions of these regulations are in addition to the provisions of other laws and regulations concerning pollution and emergencies and the contingencies related thereto.

Reservations.

(2) Nothing in these regulations shall be construed as effecting the validity of any other law or regulations laying down obligations on marine terminals and on marine facilities; or the powers of the Authority with respect to pollution emergency plans.

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