

THE CANADIAN MARITIME LAW ASSOCIATION

L'ASSOCIATION CANADIENNE DE DROIT MARITIME

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TANKER SAFETY EXPERT PANEL
c/o Tanker Safety Panel Secretariat
330 Sparks Street, Place de Ville Tower C (AAM)
OTTAWA, ON
K1A 0N5

RE: Canada's Marine Spill Preparedness and Response Regime

Dear Sirs:

The Canadian Maritime Law Association ("CMLA") was founded in 1951 by Canadians interested in Canadian and international maritime law. Our mandate is to promote effective modern maritime laws within Canada and internationally. CMLA is Canada's representative association to Comité Maritime International ("CMI"), a private non-governmental international organization founded in Belgium in 1897 whose main purpose is the promotion of uniformity in and unification of international maritime law.

CMLA has two groups of members – individual and constituent. Our individual members represent all facets of the Canadian marine industry including maritime lawyers, members of the marine insurance community, marine average adjusters, ship operators and suppliers and others. Our constituent members are associations with particular but varying interests in maritime matters. They include: The Association of Average Adjusters of Canada, the Association of Maritime Arbitrators of Canada, the Canadian Bar Association, the Canadian Board of Marine Underwriters, the Canadian International Freight Forwarders Association, the Canadian Merchant Service Guild, the Canadian Shipowners Association, the Chamber of Shipping of British Columbia, the Company of Master Mariners of Canada and the Shipping Federation of Canada.

Preparedness and Response

The CMLA has consistently spoken out in favour of pollution control since Canada's first marine pollution legislation was enacted in the 1970s. We took an active role in the re-drafting of the *Canada Shipping Act, 2001* which is Canada's principal legislation prohibiting ship-sourced pollution. We have also been actively engaged with respect to all amending legislation proposing changes to that Act or to the *Marine Liability Act*.

CMLA is pleased to take the occasion to make the present submissions to the Tanker Safety Expert Panel ("Panel") with regard to its review of Canada's marine spill preparedness and response regimes. The Panel has requested the views of stakeholders on the sufficiency of Canada's present oil spill preparedness and response regime, currently consisting of a private response organization model certified in respect of spills of up to 10,000 tons of oil. Public funding and Coast Guard assistance would be involved for larger spills.

The CMLA is not in a position to make technical comments with regard to the sufficiency of the present oil spill clean-up regime but, statistically, the 10,000-ton level appears to be sufficient in that no spill in Canada has ever exceeded that quantity. It would always be preferable to be even more prepared for larger spills. However, the CMLA believes that the next step in preparedness and response should concern hazardous and noxious substances and that any investment that can be made should focus on these products considering that the HNS Convention will soon be ratified by Canada. Consequently, the CMLA believes that the immediate needs with regard to preparedness and response to spills could focus more on HNS cargoes than on increasing capacity for oil.

The HNS Convention

The Canadian government has recently given clear signals that it intends to ratify the 2010 HNS Convention. Bill C-57, recently tabled before Parliament, proposes amendments to the *Marine Liability Act* in order to incorporate the provisions of the HNS Convention. The CMLA understands that stakeholders are also invited to make comments with regard to HNS preparedness and response.

CMLA submitted its comments on HNS preparedness and response in 2012 in response to a discussion paper tabled by Transport Canada in October 2011. CMLA submitted that Canada's oil spill response regime, including the response organization concept, would be a useful model for addressing HNS incident preparedness and response. CMLA submitted that Canada should aim for a single, integrated response regime applicable to both oil and HNS. The number of HNS substances is enormous, but the CMLA recommended that preparedness and response for spills of HNS cargoes commence with those cargoes currently carried to and from Canada in bulk, which represent only a tiny fraction of HNS substances.

The CMLA still adheres to this recommendation and believes that existing oil preparedness response regimes could be adapted to prepare for spills of these principal HNS cargoes carried in bulk. As the receivers of HNS bulk cargoes are the only contributors to the HNS Fund under the new convention, it appears that a regime similar to the oil regime would

allow a cargo fee to be collected for each ton of bulk HNS cargo discharged in Canada in order to fund the extra training and equipment required to allow response organizations to respond to HNS spills.

The Ship-Source Oil Pollution Fund

In our response to the 2011 discussion paper, the CMLA recommended that the Ship-Source Oil Pollution Fund ("SOPF") be made to play the same role for HNS cargoes as it does for oil. The SOPF could be a fund for ship-sourced spills in general both under the Civil Liability Convention and under the HNS Convention. The CMLA believes that the SOPF would also be able to make contributions to the HNS Fund in a way similar to the role which it plays at present with regard to contributions to the International Oil Pollution Compensation Fund.

An Integrated Preparedness and Response System

The CMLA believes that if HNS and oil preparedness and response were combined into an integrated system involving response organizations and the SOPF, Canada would be able to phase in HNS cargoes as required in order to prepare for and respond to spills most likely to cause serious damage to our waters. It is not in the CMLA's view taking away from oil preparedness and response to extend the same level of readiness to the principal HNS cargoes carried to and from Canada.

Joining HNS preparedness and response to existing capacities will involve more preparation and training and new techniques of preparedness and response. However, the CMLA believes that the way forward is an integrated system allowing a quick and efficient response to spills from tank vessel, whether the cargo be crude oil, a refined oil product or one of the HNS cargoes most likely to be encountered on our waterways.

The CMLA thanks the Panel for this occasion to make its submissions and for having allowed the undersigned to attend in person before the Panel for our preliminary exchange of ideas.

We hope to be consulted again as the Panel progresses through the various stages of its mandate and would be pleased to provide any further information that may be required.

In the meantime, we remain,

Yours Truly,



John G. O'Connor

President

The Canadian Maritime Law Association