



KALIMBASSIERIS MARITIME A.S.

TURKEY - ENVIRONMENTAL LAW AMENDMENTS FOR 2019

The following highlighted information concerns the recent amendments in the environmental law in Turkey and the respective pollution fines imposed.

The present circular aims to enhance awareness in respect of the amendments to the law and the consequences these bring for Owners, Charterers and their Insurers when their vessels are found to have caused pollution in Turkish ports.

SUMMARY

By way of a summary, depending on where it occurs (i.e. which port and whether within or outside the port limits), a pollution incident will cause an investigation by the State Authorities, which will result to:

- A. An **Administrative Fine**, according to the Law of Environment enforced in 1983, nr.2872, imposed against the polluting vessel by the Environmental Protection Agency (EPA), Harbor Master, Coast Guard or Metropolitan Municipalities, who patrol with boats and airplanes the anchorage areas, ports and shipyard regions on a round the clock basis.
- B. A potential **Penal Action**, as per Turkish Criminal Law Nr.5237, depending on the circumstances, against the vessel's Master, Chief Officer and/or other Crew Members involved with a pollution incident. The intentional pollution is penalized by imprisonment from 6 months up to 5 years.

The Article 8 of the Law of Environment states, in free English translation, that:

"It is banned to release any kind of waste directly or indirectly to the environment contrary to the standards and methods specified by the related regulations, to store, to transport, to remove and to get involved in similar activities.

Under circumstances when pollution probability exists, it is obligatory for the concerned parties to prevent pollution; in situations where pollution occurred, the polluter is obliged to take measures to stop pollution, to remove or to reduce the effects of the pollution."

Note the phrase *"any kind of waste"* in Art. 8, which is used to different types of pollutants including but not limited to grey waters and sewage. Clean ballast water (even rain water) discharged, that may be contaminated by rust or by debris or remnants of cargo will be considered as pollution by the authorities.





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RECENT FINE LEVELS AMENDMENTS

By means of the latest amendments made by the Ministry of Environment and Urbanization, which were put in effect on the 10th December 2018, and further increased by The Ministry of Treasury and Finance as of the 1st of January 2019, the administrative fine levels have been raised excessively, in comparison to the previous rates. It is assumed that the considerable increases were made with the scope to maintain the deterrence of fines after the recent devaluation of Turkish currency (fines are expressed in Turkish Lira).

The Administrative fines are customarily imposed, depending on the following criteria: a) Type of the vessel, b) gross tonnage, c) nature of the pollutant and d) whether the vessel has been involved in to similar pollution acts in the past.

According to the most recent amendments to the law, the fines will from now on also depend on whether they are imposed against “institutions, organizations and businesses”, in which case the remarkably increased fine rates, which we tabulate below, **will be tripled!**. The critical point in this new provision is that a vessel or ship management company is considered to be an “organization” or “business”, forming basis for the fines to be tripled.

A comparison of the new rates with the former ones is made in the appended tables (“*Turkey Amended Pollution Fines 2019*”).

PRECAUTIONARY ADVICE

- ✚ Especially for the vessels regularly and frequently calling Turkish Ports, it is recommended to make necessary modifications to allocate convenient tank(s) to collect cargo hold wash water, sewage, galley and grey water.
- ✚ If the source of a pollution is another vessel and/or shipyard or any other party, it is recommended to take photos and videos, to be used as evidence in a potential defense.
- ✚ When the vessel is in a shipyard, Crew watch is important to monitor the area for pollution.
- ✚ Painting or hull works like scrapping / chipping at anchorage will give grounds for pollution fines.
- ✚ It is recommended to try to avoid ballast operations even if the water is believed to be clean. If it is obligatory, pay great attention to overflows.
- ✚ It is recommended to avoid cleaning and washing down the decks and superstructure.
- ✚ Do not dispose / throw garbage, food wastes, cargo residues etc in to the sea or shore.
- ✚ Keep all overboard discharge valves securely closed.
- ✚ Keep all deck scuppers plugged.
- ✚ Hose test for ramps and hatch covers, hydrostatic test of any nature better be avoided.
- ✚ It is recommended to get a video record during bunkering, oil supply, sludge/bilge removal operations and similar nature, at least at the connection and disconnection of the apparatus.
- ✚ Maintain the Oil Record Book, Ballast Water Record Book and Garbage Record Book up to date and in order.
- ✚ Even though processed oily bilge water may be discharged to the sea, according to the MARPOL provisions, we recommend such discharge to be avoided – if possible – in the Turkish waters, in that even slight signs of pollution on the sea surface, will cause a fine.





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WHEN A POLLUTION OCCURS

In cases of pollution, we recommend:

- ✚ Careful collection and safe storage of substantial evidence, by the vessel's Command/Crew;
- ✚ Prompt notification to the relevant Authorities and cooperation during the investigation process;
- ✚ Immediate action by the Crew to stop the pollution source and clean the pollutant;
- ✚ Prompt appointment of clean-up contractors to deal with the pollutant, should this is not limited and cannot be dealt with effectively by the Crew/Shore personnel;

Our experience with pollution matters suggests that promptness, effectiveness and cooperation are factors taken into account by the Authorities and allows them to accept reductions, which are now more important to achieve than ever, given the fines increase at the beginning of 2019.

P&I Club correspondents and their nominated surveyors be better involved early, to assess the facts, cause, nature and extent of the pollution, and so that they can assist the Master during Authorities' investigation and the fine level determination. In the latest pollution case, we dealt with in March 2019, the initial fine imposed was tripled on the basis that vessel is considered as a business organization. Subsequently, and upon excessive negotiations, Authorities acknowledged the promptness of the vessel's interests and active participation to the clean-up operation and decided to divide the total fine to 1/3.

It is our general recommendation for the Owners to pay the fine as soon as possible to get advantage of 25% discount and enable their vessel to sail with the minimum delay. An appeal to the fine can be pursued after vessel's sailing, depending on the merits. An appeal though, should be considered as a long-lasting process and it incurs high legal costs.

In practice, the authorities will not release the vessel against any form of security but ask for cash payment. They rarely accept Bank Guarantee Letters and/or guarantees of agents and/or P&I correspondent, issued without any condition and payable within few days.

Although recognized by the Turkish Law, Clubs Letters of Undertaking are rarely accepted and if they are, they will likely be requested translated by sworn translators to Turkish, and legalized by notary public, which takes time that the vessel will have to spend waiting. There are a few instances only that we know, where authorities accepted LOU in English stamped and signed by the P&I Club and endorsed by the local correspondent and the Turkish version of the same, signed and stamped by the local correspondent.

Should you have any queries relating to this circular, please contact Oguz Kalkavan, email o.kalkavan@kalimbassieris.com; or tel.: Tel: (+90) 2164575600.

Yours Sincerely,

Kalimbassieris Maritime AS (Istanbul)

