

## Pollution Fines in Turkish Waters

■ *by Müge Anber, Esq.\**

Turkey considers sea pollution emanating from ships as a major threat to its waterways, and especially the Turkish Straits system. Therefore in Turkey the requirements of regulations concerning pollution caused by ships are very stringent. Fines are applied to tankers, ships and other sea-going vessels in cases where sea pollution is caused as set forth by the Environmental Act. The procedures for establishing sea pollution and the imposition of administrative fines are promulgated by the “Regulation on Determination of Breaches and Imposition and Collection of Administrative Fines as per the Environmental Law (“RDBCAF”).”<sup>1</sup> Under RDBCAF, direct or indirect discharge of ballast, bilge water, or any kind of pollutant, is prohibited within Turkish territorial waters, free and exclusive economic zones, internal waterways, streams, lakes, canals etc. The regulation, however, does not detail the actions which cause pollution or count the types of pollutants. The liability of the pollutant is strict, that is regardless of culpability.

### I. FINES IMPOSED ON THE VESSELS CAUSING SEA POLLUTION

The amount of the administrative fine is compounded *pro rata* based on the polluting vessel’s gross registered tonnage (rather than the severity of pollution) and strictly imposed by the Council of Ministers.

As per Article 20 of Environmental Act, as of 1 January 2009 fine amounts can be expected as follows:

\* Claims Executive / Asst. Vice President Shipowners Claims Bureau Inc., managers for American Steamship Owners Mutual Protection and Indemnity Association, Inc.

<sup>1</sup> Published by the Official Gazette, edition 26482 dated 3 April 2007. Published by the Official Gazette, edition 27096 dated 30 December 2008. Administrative fine amounts may be updated by January 1st, 2010 via new regulations.

***Petroleum and petroleum derivatives (crude oil, fuel, bilge, sludge, slop, refined product, oily waste etc.) discharged into sea by tankers:***

Gross Registered Tonnage	Fine amount per gross ton
1,000 ton or less	51.76 TRY
Between 1,000 and 5,000 ton	12.93 TRY <i>(in addition to the above initial fine)</i>
5,000 ton or more	0.127 TRY <i>(in addition to the above initial fine)</i>

***Dirty ballast discharged into sea by tankers:***

Gross Registered Tonnage	Fine amount per gross ton
1,000 ton or less	38.11 TRY
Between 1,000 and 5,000 ton	7.75 TRY <i>(in addition to the above initial fine)</i>
5,000 ton or more	0.127 TRY <i>(in addition to the above initial fine)</i>

***Petroleum derivatives (bilge, sludge, slop, fuel, oily waste etc.) or dirty ballast discharged into sea by ships or other sea-going vessels:***

Gross Registered Tonnage	Fine amount per gross ton
1,000 ton or less	25.88 TRY
Between 1,000 and 5,000 ton	5.17 TRY <i>(in addition to the above initial fine)</i>
5,000 ton or more	0.127 TRY <i>(in addition to the above initial fine)</i>

***Solid wastes or domestic waste waters discharged into sea by tankers, ships or other sea-going vessels:***

Gross Registered Tonnage	Fine amount per gross ton
1,000 ton or less	12.93 TRY
Between 1,000 and 5,000 ton	2570 TRY <i>(in addition to the above initial fine)</i>
5,000 ton or more	0.51 TRY <i>(in addition to the above initial fine)</i>

If the polluting vessel discharges any dangerous substances or disposals (defined as those which would have negative physical, chemical and/or biological effects on the local ecology) in to sea, the fine will be calculated 10 times the published rate for the category of petrol or petroleum products fines.<sup>2</sup>

Pursuant to the Environmental Act, should a ship repeat the pollution offense within 3 years, for the second offense the fine amount will

<sup>2</sup> Environmental Act, Article 20.

be doubled, and fines imposed for further offenses will be twice that amount again.

According to the relevant provisions, the samples taken (from the polluted site and the pollutant vessel) by the authorized inspection teams should be analyzed in an authorized laboratory, and should be checked and controlled to determine whether they contain pollutants.<sup>3</sup> An Administrative Sanction Decree may be taken only upon evaluation of laboratory test results, and other relevant documents (such as photographs/videos of the polluted site and the pollutant vessel; Memorandum of Facts). Pursuant to the regulations, in order to impose the pollution fines these conditions precedent must be met: (1) official authorities must establish that the substance dumped from the vessel into sea must be included in the list of pollutants (as listed hereto above, as per Article 20), and (2) the substance discharged into the sea must have been dumped in such a manner so as to cause harm to the environment and in a breach of the standards specified by the relevant regulations.

Notwithstanding, *in practice*, the official Authority issues its Administrative Sanction Decree before obtaining the analysis results, or even sending the samples to a laboratory. It is also of concern that the authorized laboratories, which analyze the samples, are not completely independent from the Authority that determines the amount of the penalty.

## **II. FINES MUST BE SETTLED BY CASH TO RELEASE THE VESSEL**

The relevant laws and regulations are very strict. In order to allow the vessel to sail the fine must be settled. Even though the new regulations provide that certain types of guarantees, such as Bank Guarantees or Club Letters of Undertaking, would be acceptable to secure the shipowner's obligation to pay the fines, *in practice*, immediate cash payment of the fine still seems to be only way of getting clearance to depart. The delay in payment of the fines extends the vessel's detention time by the official authorities.

If the fine is paid within 30 days of notification of the Administrative Sanction Decree, the ship owner may realize a benefit of 25% reduction off the total fine amount. In order to receive this reduction, we suggest our Members ensure settlement of the pollution fines within the specified period.

## **III. CHALLENGING THE FINES MAY NOT BE FEASIBLE**

Payment of the fine is mandatory, but does not waive the ship owners' rights to appeal the legal proceedings against the penalty decree. Commencing an action against the penalty will not stop the Authori-

<sup>3</sup> See RDBCAF Articles 11(1), 13(3) and 14(1).

ties from collecting the fines.

The pollution fines are appealable before the competent Administrative Court within 30 days from the notification of Administrative Sanction Decree issued by the Administrative Authority. However, the chance of success is very small in cases where the pollution is observed or established by the Authority. Also, even if the appeal concludes in the ship owner's favor, a possible reimbursement will be made in Turkish Liras, without any interest. Furthermore, in order to collect the monies upon a successful appeal, the ship owner will have to initiate a separate action against the Authority. This judicial process to recover the fines paid by the ship owner could last for *1 or 2 years* and the nominal amount reimbursed would be considerably devalued in the interim. Therefore, when pollution is evident or the recoverable amount is minimal appeal is not advisable to pursue. On the other hand, ship owners have succeeded in appealing several fines, which had been unsupported by evidence and arbitrarily imposed by the Authority.

#### **IV. MEASURES TO PREVENT THE FINES**

The vessel's agents, upon their nomination, often notify the ship owners or the masters of the vessels transiting or waiting at anchorage or calling at Turkish Ports, especially prior to the vessels entering Canakkale (Dardanelles) Straits, that the masters should take precautions not to cause any pollution incident.

We have seen various incidents where the fines were imposed but the vessels did not indeed discharge polluting substance (listed by the regulations); for instance, washing accommodation decks and windows with sea water, discharging through the cooling seawater outlet, grey water discharge etc. In order to avoid the fines, masters of the vessels must pay utmost attention and take all steps not to cause any pollution by leakage or spillage of any kind of materials (i.e., paintings, oil, bilges, clean ballast, dirty ballast, all kind of residues, garbage, dirty waters, sewage waters, laundry waters with detergent, lavatory soap waters, shower waters, dust, rust etc.). Ship's crews must be reminded what not to do while in Turkish waters and must be advised against spilling any water, either clear or dirty, over the ship's side.

We have been notified of the considerable increase of the number of the vessels charged with pollution fines at the Shipyard region Tuzla, Istanbul. Hence, it would be the ship owners benefit to agree on a clause to be inserted in the Job Agreement with the shipyard for the vessel's repairs, where the shipyard will bear liability for any pollution incident and subsequent fines imposed against the vessel under the shipyards control.