



## Maritime Transport Act 1994

### Marine Protection Rules

#### Part 143— Shipboard Marine Pollution Emergency Plans for Noxious Liquid Substances

Pursuant to sections 223, 387, 388 and 390 of the Maritime Transport Act 1994  
I, Harry James Duynhoven, Minister for Transport Safety, hereby make the following  
marine protection rules.

Signed at Wellington

this 9<sup>th</sup> day of July 2007

by HARRY JAMES DUYNHOVEN

Minister for Transport Safety

#### Contents

Part Objective	143.9	Modifications to a noxious liquid substances plan
Extent of Consultation		
<b>Section 1 Preliminary</b>		<b>Section 3 Foreign Ships</b>
143.1 Entry into Force	143.10	Requirement to carry emergency plans
143.2 Definitions		
143.3 Application		<b>Section 4 Miscellaneous Provisions</b>
<b>Section 2 New Zealand Ships and Warships</b>		143.11 Identification of a probable discharge or escape
143.4 Requirement for a noxious liquid substances plan	143.12	Reporting a discharge (supplemental)
143.5 Application for approval of a noxious liquid substances plan		
143.6 Approval and duration of a noxious liquid substances plan		<b>Schedule</b>
143.7 Custody of a noxious liquid substances plan		<b>Contents of a Noxious Liquid Substances Plan</b>
143.8 Testing and review of a noxious liquid substances plan		



## Part Objective

The objective of Part 143 is to prescribe requirements for shipboard marine pollution emergency plans for noxious liquid substances. Part 143 applies to ships of 150 gross tons or more that carry noxious liquid substances in bulk as cargo.

Part 143 prescribes the contents of noxious liquid substances plans and makes provision for the approval, maintenance, testing and review of such plans.

Noxious liquid substances plans are intended to –

- assist personnel in dealing with actual or probable discharges of noxious liquid substances;
- enable the initiation of actions to halt, minimise or mitigate the discharge or escape of noxious liquid substances; and
- promote timely and effective response to spills by local, regional and national authorities.

In addition, Part 143 contains supplemental provisions to –

- enable the master to determine if a noxious liquid substance spill is probable; and
- provide further contacts when the responsible authority cannot be contacted or is unknown.

Part 143 will give effect to Regulation 16 of Annex II of the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL).

The authority for Part 143 is found in sections 223, 387, 388 and 390 of the Maritime Transport Act 1994.

*Rules subject to Regulations (Disallowance) Act 1989*

Marine Protection rules are subject to the Regulations (Disallowance) Act 1989. Under that Act, the rules are required to be tabled in the House of Representatives. The House of Representatives may, by resolution, disallow any rules. The Regulations Review Committee is the select committee responsible for considering rules under the Regulations (Disallowance) Act 1989.

## Extent of Consultation

On 14 January 2006, Maritime New Zealand published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed Part 143. A notice was also published in the *New Zealand Gazette* on 12 January 2006. The Authority then made its Invitation to Comment and draft Part 143 available to the public with approximately 360 copies being sent to interested parties. Comments on the draft Part were requested by 10 March 2006.

Five written submissions were made on the draft. All submissions and any oral comments were considered, and where appropriate, the proposed Marine Protection Rule Part 143 was amended to take account of the comments made.

## Section 1 – Preliminary

### 143.1 Entry into force

This Part comes into force on 9 August 2007.

### 143.2 Definitions

(1) In this Part –

**Act** means the Maritime Transport Act 1994;

**administration** means the government of the state –

(a) under whose authority the ship is operating; or

(b) whose flag the ship is entitled to fly;

**(in) bulk** means carried in the cargo or other spaces of a ship without any intermediate form of containment or packaging;

**Category X, Y, Z and OS substance** mean, respectively, any liquid substance –

(a) listed and categorised as a Category X, Y, Z and OS substance in the IBC Code; or

(b) otherwise categorised or provisionally categorised as a Category X, Y, Z and OS substance –

(i) in Annex II of MARPOL;

(ii) by the International Maritime Organisation; or

(iii) by the Director under rule 140.28;

**discharge** includes any release, escape, disposal, spilling, leaking, pumping, emitting or emptying; but does not include –

(a) dumping in accordance with a permit issued by the Director under section 262 of the Act; or

(b) release of harmful substances for the purposes of legitimate scientific research into pollution abatement and control;

**exclusive economic zone of New Zealand** has the meaning given to it in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977;

**IBC Code** means the IMO's *International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*, as revised or re-issued from time to time by the IMO;

**IMO** means the International Maritime Organisation;

**IMO Assembly Resolution A.851(20)** means IMO Resolution A.851(20), adopted by the Assembly at its 20th session on 27 November 1997, entitled *General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Reporting Incidents involving Dangerous Goods, Harmful Substances and/or Marine Pollutants*, as revised or replaced from time to time by the IMO;

**internal waters of New Zealand** has the meaning given to it in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977;

**MARPOL** means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto; and includes any subsequent protocol, amendment or revision of that convention accepted or ratified by New Zealand;

**New Zealand jurisdiction** means –

- (a) the internal waters of New Zealand;
- (b) the territorial sea of New Zealand;
- (c) the exclusive economic zone of New Zealand; and
- (d) the waters above the continental shelf but beyond the outer limits of the exclusive economic zone of New Zealand;

**noxious liquid substance** means –

- (a) any Category X substance;
- (b) any Category Y substance;
- (c) any Category Z substance;
- (d) any other substance, except –
  - (i) clean ballast;
  - (ii) segregated ballast;
  - (iii) any category OS substance; and
- (e) any mixture containing a noxious liquid substance;

**noxious liquid substances plan** means a New Zealand shipboard emergency plan for noxious liquid substances;

**official logbook** means a logbook –

- (a) required under rule 73.4;
- (b) in the form prescribed in the Appendix to Part 73;

**owner**, in relation to a ship, includes –

- (a) any legal owner or equitable owner;
- (b) any person in possession of the ship, which may include a salvor or a servant or agent of a salvor;
- (c) any charterer, manager or operator; and
- (d) any other person (other than a pilot) responsible for the navigation or management of the ship;

**Part** means a group of rules made under the Act; and

**territorial sea of New Zealand** has the meaning given to it in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.

- (2) For the purpose of section 225 of the Act, a noxious liquid substance is a “harmful substance” and a “noxious liquid substance”, as defined in subrule (1).

### **143.3 Application**

- (1) Part 143 applies to ships of 150 tons gross tonnage or more carrying noxious liquid substances in bulk as cargo.
- (2) Section 2 applies to New Zealand ships and warships of the New Zealand Defence Force.
- (3) Section 3 applies to foreign ships in New Zealand jurisdiction.

## **Section 2 – New Zealand ships and Warships**

### **143.4 Requirement for a noxious liquid substances plan**

- (1) The owner and the master must ensure that there is, carried on board the ship at all times, a shipboard emergency plan for noxious liquid substances –
  - (a) approved by the Director;
  - (b) having the contents prescribed in the Schedule; and
  - (c) tested and reviewed and kept in accordance with this Part.
- (2) In the case of any ship to which Part 130A also applies, the noxious liquid substances plan may be combined with the shipboard marine oil spill contingency plan in a shipboard marine pollution emergency plan.

### **143.5 Application for approval of a noxious liquid substances plan**

- (1) Every application for approval of a noxious liquid substances plan –
  - (a) must be made by the owner;
  - (b) may be made by letter or in such other form as the Director may allow;
  - (c) must be in English;
  - (d) must include the applicant's –
    - (i) address for service in New Zealand;
    - (ii) telephone number;
    - (iii) fax number (if any);
    - (iv) email address (if any);
  - (e) must include the contents of the proposed plan in electronic and hard copy; and
  - (f) is an application for the purpose of section 269(1) of the Act.
- (2) The Director may require any additional information he or she considers necessary to support an application for approval of a noxious liquid substances plan.
- (3) If the Director requires any additional information, he or she must advise the applicant, in writing, of –
  - (a) the details of the required information; and
  - (b) the reason(s) why this information is required, no later than 15 working days from the date of receipt of the application.

### **143.6 Approval and duration of a noxious liquid substances plan**

- (1) If the Director is satisfied that the noxious liquid substances plan complies with the requirements of this Part, the Director may approve the plan for a period not exceeding 3 years.
- (2) If an application for a new approval is made, by the holder of an existing approval, at least 2 months before the existing approval expires, the duration of the existing approval is extended until the Director determines the application.
- (3) The Director's written approval of a noxious liquid substances plan is a marine protection document for the purposes of the Act.

### **143.7 Custody of a noxious liquid substances plan**

The owner must –

- (a) keep the Director’s written approval with the noxious liquid substances plan at all times and make both documents available to the Director on request;
- (b) ensure that a copy of the Director’s written approval and the noxious liquid substances plan is kept and made available on the ship; and
- (c) immediately it is issued, supply a hard copy of the Director’s written approval, together with the noxious liquid substances plan, to the District Chief Fire Officer and Harbourmaster for every region that the ship routinely visits, and prior to arrival in any other port.

### **143.8 Testing and review of a noxious liquid substances plan**

- (1) The owner and the master must ensure that –
  - (a) (i) the noxious liquid substances plan is tested not less than once every 12 months; and
  - (ii) the test demonstrates that procedures or actions in the plan are workable and effective;
  - (b) details of every test and its results are recorded in –
    - (i) the official logbook; or
    - (ii) if no logbook is required for the ship, the noxious liquid substances plan.
- (2) The owner must review the ship’s noxious liquid substances plan not less than once every 12 months to verify its currency and completeness.
- (3) After every review, and subject to rule 143.9(3), the owner must ensure that –
  - (a) any information in the plan, which is not current, is updated; and
  - (b) any new information is incorporated in the plan.
- (4) The owner must evaluate the effectiveness of the ship’s noxious liquid substances plan as soon as practicable after every use of the plan in response to any actual or probable discharge of any noxious liquid substance.
- (5) After every test, review or evaluation, the owner and the master must –
  - (a) determine any modifications that would increase the effectiveness of the noxious liquid substances plan; and
  - (b) implement those modifications, subject to rule 143.9(3).

### **143.9 Modifications to a noxious liquid substances plan**

- (1) As soon as possible after every modification of the noxious liquid substances plan, the owner must notify the Director and every other person holding a copy of the plan under rule 143.7 of the changes.
- (2) The owner must keep a record of the action(s) taken to meet the obligation in subrule (1).
- (3) The owner must apply for re-approval of the noxious liquid substances plan if the owner proposes to modify or change the use of the ship in a way that could –

- (a) increase the risk of discharge or escape of noxious liquid substances;
  - (b) increase the amount of noxious liquid substances that can be carried; or
  - (c) render the ship's noxious liquid substances plan less effective.
- (4) Rule 143.5 and the Schedule apply to an application for re-approval of a noxious liquid substances plan.

## **Section 3 – Foreign Ships**

### **143.10 Requirement to carry emergency plans**

- (1) In the case of a ship registered in a state party to MARPOL, the owner and the master must ensure that there is carried on board the ship –
- (a) a current noxious liquid substances plan approved by the administration; or
  - (b) in the case of a ship to which Part 130A applies, a current shipboard marine pollution emergency plan approved by the administration combining a noxious liquid substances plan and a shipboard oil pollution emergency plan.
- (2) In the case of a ship registered in a state that is not a party to MARPOL, the owner and the master must ensure that there is carried on board the ship –
- (a) a current emergency plan for –
    - (i) responding to noxious liquid substances incidents; and
    - (ii) containing and cleaning up noxious liquid substances spills from the ship,together with evidence, acceptable to the Director, that the emergency plan complies with the standards prescribed by Regulation 16 of Annex II of MARPOL; or
  - (b) in the case of a ship to which Part 130A applies, a current marine pollution emergency plan combining shipboard marine pollution emergency plans for noxious liquid substances and oil pollution, together with evidence, acceptable to the Director, that the emergency plan complies with the standards prescribed by Regulation 26 of Annex I and Regulation 16 of Annex II of MARPOL.

## **Section 4 – Miscellaneous Provisions**

### **143.11 Identification of a probable discharge or escape**

In determining whether the discharge of any noxious liquid substance into the sea is probable and, accordingly, whether a report should be made under –

- (a) section 228 of the Act;
- (b) rule 140.30; and
- (c) rule 140.32,

the master must consider the following factors, as a minimum –



- (i) the nature of the damage, failure or breakdown of the ship, machinery or equipment;
- (ii) the location of the ship and its proximity to land or other navigational hazards;
- (iii) the weather, tide, current and sea state; and
- (iv) shipping traffic density.

**143.12 Reporting a discharge (supplemental)**

(1) If, in the event of an actual or probable discharge of any noxious liquid substance –

- (a) the noxious liquid substances plan contains no contact details for a coastal state; or
- (b) there is any undue delay in contacting the responsible authority by the means prescribed by rule 140.32,

the master must contact the nearest –

- (i) radio communication station;
- (ii) designated ship movement reporting station; or
- (iii) rescue coordination centre,

by the fastest telecommunications channels available and with the highest possible priority.

## Schedule

### Contents of a Noxious Liquid Substances Plan

#### 1 Language

Every noxious liquid substances plan must be in –

- (a) English; and
- (b) the working language of the crew.

#### 2 Elements of the noxious liquid substances plan

Every noxious liquid substances plan must contain –

- (a) the procedures to be followed by the master to report an actual or probable discharge of noxious liquid substances;
- (b) a detailed description of the actions to be taken immediately by persons on board to reduce or control any discharge or escape of noxious liquid substances; and
- (c) the procedure and point of contact on the ship for coordinating shipboard response activities with national or local authority response activities to an actual or probable discharge of noxious liquid substances.

#### 3 Reporting a discharge or escape

(1) Every noxious liquid substances plan must require that a report is made in accordance with section 227 or 228 of the Act, rule 140.29 or rule 140.30 and rule 140.32, in the case of every –

- (a) actual or probable discharge of noxious liquid substances –
  - (i) resulting from damage to the ship or its equipment; or
  - (ii) for the purpose of securing the safety of a ship or saving life at sea; or
- (b) actual discharge of noxious liquid substances during the operation of the ship, contrary to –
  - (i) Part 140; or
  - (ii) regulations made under section 360 of the Resource Management Act 1991.

(2) Every noxious liquid substances plan must –

- (a) specify the form and content of reports in accordance with the IMO Assembly Resolution A.851(20);
- (b) include, or have appended to it, a sample report form; and
- (c) require that –
  - (i) initial reports are supplemented;
  - (ii) information concerning further developments is provided; and
  - (iii) requests from affected states for additional information are complied with,in accordance with IMO Assembly Resolution A.851(20).

#### **4 Identification of probable discharge or escape**

Every noxious liquid substances plan must require the master to consider, in accordance with rule 143.11, the factors prescribed in that rule for determining whether a discharge of noxious liquid substances is probable and, accordingly, whether a report should be made.

#### **5 Contact information**

- (1) Every noxious liquid substances plan must include, or have appended to it, a contact list, suitable to the range of the ship's operation, for reporting actual or probable discharges of noxious liquid substances into the sea.
- (2) The contact list must identify –
  - (a) state agencies, statutory bodies or officials of the maritime administrations of coastal states responsible for receiving and processing reports of actual or probable discharges of noxious liquid substances into the sea;
  - (b) local agencies and representatives, concerned with the operation of the ship, at the ports visited by the ship on a regular basis; and
  - (c) other parties, whose interest(s) in the ship, are, in the owner's view, likely to be affected by an actual or probable discharge of noxious liquid substances into the sea.
- (3) The contact list must –
  - (a) provide 24 hour contact information;
  - (b) provide alternatives to the designated contacts; and
  - (c) specify the preferred means of communication.
- (4) The plan must require the master to contact the nearest radio communication station, designated ship movement reporting station or rescue coordination centre in accordance with rule 143.12 if the plan contains no contact details for a coastal state in whose jurisdiction a spill may occur, or there is any undue delay in contacting the responsible authority by direct means.
- (5) Upon arrival in a port for which no local agency contact information is listed in the plan, the master must obtain details of local reporting procedures and update the plan accordingly.

#### **6 Action to mitigate damage and control discharges or escapes**

- (1) The noxious liquid substances plan must contain separate sections dealing with –
  - (a) operational spills;<sup>1</sup> and
  - (b) spills resulting from accidents.<sup>2</sup>
- (2) Each section must include guidance to the master on the appropriate action to mitigate damage or control the discharge or escape of noxious liquid substances; and that guidance must require the consideration of all relevant factors.
- (3) The noxious liquid substances plan must include procedures for safe removal of noxious liquid substances and guidance for proper disposal of recovered substances and clean-up materials.

---

<sup>1</sup> For example, noxious liquid substances spilled and contained on deck, pipe leakage and tank overflow.

<sup>2</sup> Accidents such as grounding, fire, explosion, collision, hull damage or failure and excessive list.

## **7 Personnel responsibilities**

- (1) The noxious liquid substances plan must define the personnel duties for dealing with actual or probable discharges of noxious liquid substances including response duties and reporting responsibilities under Part 140.
- (2) The owner and the master must ensure that:
  - a) personnel responsible for implementing the emergency plan and dealing with spills of noxious liquid substances receive training appropriate to their responsibilities under the plan;
  - b) a record of that training is kept; and
  - c) that sufficient personal protective equipment appropriate for the noxious liquid substances carried as cargo is available to personnel identified in the emergency plan.
- (3) The owner and the master should ensure that sufficient equipment is available for personnel to deal with a noxious liquid substances spill at a level appropriate to –
  - (i) the risks presented on board; and
  - (ii) the response options identified in the emergency plan.

## **8 Priority actions**

The noxious liquid substances plan must provide the master with ship-specific guidance and information for –

- (a) determining priority actions to –
  - (i) ensure the safety of personnel and the ship (in the case of an actual or probable discharge);
  - (ii) prevent the escalation of an actual or probable discharge; and
  - (iii) where possible, stop a discharge at its source;
- (b) assessing the damage sustained by the ship;
- (c) determining whether or not a noxious liquid substances spill can be contained or cleaned up using the resources available to the master or any other person responsible for implementing the plan;
- (d) deciding what remedial action to take;
- (e)
  - (i) identifying the stability and stress consequences of remedial actions; and
  - (ii) referring to the owner, in those cases where the stability and stress consequences of remedial actions cannot be determined;
- (f) making damage stability and damaged longitudinal strength assessments; and
- (g) undertaking the transfer of all or part of the cargo to another ship, subject to any authority required from the coastal state.

**9 Ship's information to be appended to noxious liquid substances plan**

The noxious liquid substances plan must –

- (a) have appended to it diagrams, drawings, and ship-specific details showing the general arrangement of the ship and the location of tanks;
- (b) show the location of current cargo, bunker and ballast information (including quantities and specifications);
- (c) show the quantities and location of any protective, containment, neutralisation and response equipment carried on board; and
- (d) provide material safety data sheets for all noxious liquid substances carried on board in bulk as cargo, including specifications, physical properties and internationally recognised identifier numbers.

**10 Coastal state authorisation and requirements**

- (1) The noxious liquid substances plan must identify the circumstances in which the master must seek authorisation from the coastal state before undertaking specific actions to mitigate marine pollution from noxious liquid substances.
- (2) If the ship trades to, or in the vicinity of, any coastal state that requires the owner to initiate the response to marine pollution from noxious liquid substances, the owner must provide the master with guidance of sufficient detail and appropriate equipment to allow the master to initiate that response.

## **Marine Protection Rules**

### **Part 143**

#### **CONSULTATION DETAILS**

(This text does not form part of the rules contained in Part 143. It provides details of consultation undertaken in making the rules.)

#### **Summary of Consultation**

Copies of the proposed Part 143 were circulated to approximately 360 organisations with an invitation to comment. These included all regional & district councils, shipping companies, fishing companies, NZ Shipping Federation, chemical terminals (Marstel Terminals, Bulk Storage Terminals, Kaneb Terminals and Pacific Terminals), chemical carriers (Stolt-Nielsen, Dorval Tankships, Odfjell Tankers, Botany Bay Tankers), chemical companies (Akzo-Nobel, Orica Chem-net, Methanex), Royal NZ Navy, NZ Fire Service, Class Societies (with exclusive NZ Surveyors), Port Companies, P&I Club, harbourmasters, Ministry for the Environment, Ministry of Fisheries, Te Puni Kokiri, Ministry of Civil Defence & Emergency Management, Department of Conservation and Ministry of Foreign Affairs & Trade.

As a result of the formal consultation process one individual, Mr J Smallridge, one Maritime New Zealand member of staff, one industry association, the NZ Seafood Industry Council, and two regional councils, Auckland & Northland, provided written submissions.

Specific submissions not mentioned below were given serious consideration, but for reasons of either consistency or practicality, were not incorporated into Part 143.

#### **General**

**Auckland Regional Council (ARC)** requested that the term 'liquid' be removed from the rule, so that application could be made to solid & gaseous noxious substances

*Maritime NZ response: Part 143 is derived from Annex II of MARPOL, which is specifically for control of pollution by noxious liquid substances in bulk. As such, extension to solid cargoes would not be appropriate.*

**ARC** made several further comments on the need for more prescriptive requirements within Part 143.

*Maritime NZ response: Where these have been specifically provided for in the IMO Guidelines for the Development of Shipboard Marine Pollution Emergency Plans, the draft rule has been amended accordingly.*

**NZ Seafood Industry Council** commented that it was not immediately clear to which vessels Part 143 applied.

## **Marine Protection Rules**

*Maritime NZ response: It is agreed that the application could be more explicit, and was amended to clarify that the ships concerned must be carrying NLS in bulk 'as cargo'.*

**Mr Smallridge** submitted that vessel operators should be required to carry sufficient neutralisation agents to cancel impacts on the marine environment from a loss of cargo.

*Maritime NZ response: While there is an obvious need for operators to mitigate risks, it would be impractical to expect any vessel to carry enough resources to deal with a total loss of cargo. However, Part 143 has been amended to include additional provisions concerning training & equipping personnel identified with response duties, as well as ensuring an appropriate level of response equipment is available to undertake response actions outlined in the emergency plan.*

### **143.2 Definitions**

ARC requested several additions to the definitions.

*Maritime NZ response: Where the requested inclusions were repetitions to maintain consistency with other rules, it should be noted that Maritime NZ is working towards removal of repetition between rules, with intent to creating a generic 'Definitions' sections for common terms. Other terms were included*

### **143.5 Application for approval**

ARC submitted that the telephone and facsimile numbers for service in New Zealand should be included in the plan as well as the application.

*Maritime NZ response: It is considered that 24 hour contacts with alternates will provide for all eventualities, and simplify procedures during an emergency.*

### **143.6 Approval & Duration**

ARC submitted that a statutory timeframe for approval by the Director should be included.

*Maritime NZ response: Including this provision would be inconsistent with approvals procedures in other rules, and could raise problems if any aspect of the approval were delegated to an independent agency such as referral to Class.*

### **143.7 Custody**

ARC submitted that the Harbourmaster should also be provided with a copy of the plan.

*Maritime NZ response: Part 143 has been amended accordingly.*

### **143.8 Testing**

ARC suggested a number of changes concerning plan testing including; 1 - alignment with HSNO regulations to test every procedure; 2 - including investigations into causes of spills for prevention; and 3 - notifying Maritime NZ of tests.

*Maritime NZ response: Respectively; 1 - though there is obvious merit in tests being comprehensive, it was considered that the HSNO regulations were too prescriptive in requiring 'every' procedure or action. However, Part 143 was amended to reflect the general principle of the HSNO requirement without stipulating each plan must demonstrate 'every' procedure. 2 - While Part 143 requires plan modifications arising from lessons learned during testing, extending this to include investigations into spills was deemed to be beyond the scope of MARPOL Annex II Regulation 16. 3 - Since the majority of operators affected by Part 143 are foreign, requiring Maritime NZ be notified of tests was considered impractical.*

## **Schedule**

ARC stated that determining what had been spilled was one of the critical priority actions during a response, and as such, full product identification should be required. Furthermore, they suggested that an advisory circular would be helpful to assist applicants develop effective plans.

*Maritime NZ response: Part 143 has been amended accordingly.*