

Dealing with pollution from ships



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
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- 1 This report focuses on the pollution contingency planning and response activities of the Maritime and Coastguard Agency (the Agency), an executive agency of the Department for Transport, Local Government and the Regions (the Department). One of the Agency's responsibilities is to minimise the risk of pollution of the marine environment from ships and, where pollution occurs, minimise its impact on UK waters, coastlines and economic interests. The Agency works closely with the Department of Trade and Industry (DTI), which is responsible for regulating and licensing offshore installations, including minimising the risk of pollution.
- 2 The UK's 10,000-mile coastline is one of the largest in Europe, and the UK economy relies on shipping for 95 per cent of its visible trade. The UK is therefore at particular risk from marine pollution, and has suffered 3 of the world's 20 largest recorded oil spills, the most recent of which was the *Sea Empress* incident at Milford Haven in 1996 when 72,000 tonnes of oil were spilled. These incidents have serious consequences for people, property and the environment. Oil is a major source of environmental damage from ships. However, vessels transporting hazardous materials also present a risk. Waste produced in the day-to-day operation of ships can also be a pollutant if it is discharged into the sea rather than being properly disposed of in waste reception facilities in port.



- 3 The UK also has obligations under two key international conventions concerned with protecting the marine environment from pollution. The 1973 International Convention for the Prevention of Pollution from Ships (adopted by the International Conference on Marine Pollution, hence known as the "MARPOL Convention") aims to control pollution of the sea by oil, chemical and other harmful substances that might be discharged during the course of a ship's operations or when a ship is damaged. Signatories to the Convention are required to inspect ships in port and at sea, trace and prosecute polluting ships and ensure there are adequate port facilities for receiving waste from ships.
- 4 The 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (the "OPRC Convention") requires signatories to inspect ships, maintain a national contingency plan for responding to oil pollution incidents and provide technical assistance to other signatories in the event of such incidents. Ports and harbours, ships and offshore installations are required to have their own approved oil pollution contingency plans and to report pollution incidents when they occur. They, and signatory governments, must

put in place equipment for combating incidents, hold training exercises and have communication facilities to allow them to respond without delay to pollution incidents. These conventions are reflected in UK merchant shipping legislation (Appendix 1).

Main findings

- 5 The UK's marine pollution record has improved considerably over recent years, with no major chemical or oil spills occurring in UK waters since 1996. The Agency also has a good record in dealing with pollution incidents, recovering its costs and prosecuting offenders. The Agency has put in place a new National Contingency Plan for dealing with pollution incidents, in consultation with the relevant departments and other stakeholders. This sets out a framework for dealing with major oil or chemical pollution incidents that threaten UK interests, and the roles and responsibilities of a wide range of national and local bodies in responding to an incident, reflecting their varied interests and priorities. The Agency has also taken steps to enhance its capacity for dealing with pollution incidents and to ensure that ports and harbours are properly prepared, and that they and the Agency comply with relevant international conventions. Our key findings are as follows:

The Agency needs to do more to ensure that port, harbour and local authorities are ready to deal with pollution incidents

- i At the outset of our examination, the Agency could not demonstrate that all ports and harbours covered by the OPRC Convention were meeting fully the Convention's requirements. Through our survey of ports and harbours and subsequent follow-up, we obtained evidence that, by May 2002, all ports and harbours subject to the OPRC regulations had contracts in place for dealing with a medium sized spill. All but one port had a harbourmaster who had been trained to the appropriate level; the remaining port had arranged for its harbourmaster to attend the specified training in June 2002.
- ii Although local authorities have a general duty to act in response to emergencies or disasters, they are not under any statutory obligation, nor do they receive any specific funding, to prepare and maintain a contingency plan for oil or chemical pollution affecting their shorelines. Nor does the Agency have any powers to enforce oil spill contingency planning on local authorities, or a statutory responsibility for ensuring that local authorities' oil spill contingency plans are of an appropriate quality. The Agency helps local authorities put appropriate plans in place, in recognition of the



responsibility accepted by the Government that it should help authorities prepare for pollution incidents. The contingency plans for 53 coastal local authorities are between 5 and 11 years old and hence are unlikely to be consistent with the current National Contingency Plan for dealing with pollution incidents. All but one of these authorities were writing new plans. A further six coastal local authorities either did not have a plan or had not provided the Agency with information on the status of their contingency planning. The absence of complete, up to date plans might hinder effective response should an incident occur. Local authority attendance on the Agency's training courses concerning oil spill contingency planning has also been limited to around 40 per cent of the 170 coastal local authorities around the country.

- iii Although the National Contingency Plan covers oil and chemical pollution, ports' and harbours' contingency plans need only cover oil pollution. This gap is expected to be addressed by a protocol on hazardous and noxious substances (the HNS Protocol). The Protocol, however, might not be enforced internationally until 2005 although it might be possible to bring the requirements of the Protocol into UK law by the end of 2004. The Agency would then need to ensure that all major ports and harbours put measures in place to deal with incidents involving hazardous and noxious substances.

There is scope for the Agency to adopt a more strategic approach to its counter-pollution activities

- iv The Agency has in place a number of contracts to help it deal with pollution incidents, covering, for example, surveillance and dispersant spraying aircraft, emergency towing vessels, counter pollution equipment and stocks of dispersants. The Agency achieved savings of £1.7 million by renegotiating its aerial surveillance and dispersant spraying contract with a commercial firm. There may, however, be scope to achieve further efficiencies in counter pollution activities. For example, although surveillance aircraft are shared with the Department of Trade and Industry (which regulates offshore installations), the Department for Environment, Food and Rural Affairs (DEFRA) also uses surveillance aircraft to police fishing quotas, as do their Scottish counterparts. The Agency has suggested that their respective requirements are too different but we noted that two of the Agency's successful prosecutions between 1999 and 2001 were incidents initially identified by surveillance aircraft operated by DEFRA and the Scottish Fisheries Protection Agency. There might also be scope for savings by sharing counter pollution equipment with, or contracting out the provision of equipment to, commercial companies such as those that supply ports and harbours in responding to a medium sized oil spill in their waters.



- v The Agency believes that it has put in place enough resources to be able to deal with more than one major pollution incident at the same time, whilst also being able to deal with minor incidents. However, no recent incident has involved significant oil or chemical pollution. It is six years since the UK experienced a pollution incident on a large scale, with the grounding of the *Sea Empress* and the loss of 72,000 tonnes of crude oil in 1996. The Agency has strengthened the resources at its disposal since that incident. However, it has not quantified how big an incident it would be able to handle with its own resources, before needing to call on commercial companies and neighbouring maritime authorities for assistance, or how much more capacity such assistance would bring. There is therefore scope for a more strategic review of the resources at the Agency's disposal, including an assessment of the number and size of incidents it would be able to deal with at any one time. The Agency also needs to improve the means by which it measures its performance, particularly in regard to the amount of pollution it prevents when it responds to incidents.

The Agency and the Department need to tackle the factors that inhibit their ability to recover costs, so that the polluter pays, and to prosecute offenders

- vi The Agency has a good record in making polluters pay compensation for the cost of responding to incidents, recovering some 90 per cent of its costs in the 23 claims that it has settled since 1998. The Agency has, however, taken too long to compile some of its claims. Recovery of costs is also made more difficult by limitations in international compensation arrangements which do not cover pollution by bunker oil carried by vessels for their own use, and by "pay to be paid" insurance policies and "one ship companies". In the case of "pay to be paid" insurance policies, the insurers are only liable for a claim once it has been paid by the owners of the vessel. The Agency therefore has to seek recovery from vessel owners and may be unsuccessful if the owners dispute liability and refuse to pay the Agency's claim. This may require the Agency to go to court to recover its costs. In the case of "one ship companies", if the vessel has been scrapped there are potentially no further assets that can be used or arrested to pay the Agency's claims. There are also major areas around the UK coast that are not covered by oil pollution regulations, preventing the Agency from prosecuting pollution offences that occur landward of the baseline designating the start of the UK's 12-mile territorial waters. These factors therefore hinder the Agency's ability to recover costs from, and prosecute, offenders.



Principal recommendations

- 6 On the basis of our report, we make the following principal recommendations. The Agency should:
 - i Be able to demonstrate that the UK is meeting its commitments under international counter-pollution conventions by ensuring that all ports and harbours have appropriate contingency plans in place to deal with a medium sized oil spill and that they have trained staff to an appropriate degree of skill and regularly tested their plans.
 - ii Explore the scope for achieving efficiencies in counter-pollution activities, for example through sharing surveillance aircraft with other regulatory bodies, sharing counter-pollution equipment or contract for supply of such equipment from the commercial sector; and undertake a strategic review of the overall counter-pollution resources at its disposal, to assess in aggregate terms its ability to deal with large incidents and in particular with more than one major incident at a time.
 - iii As part of its post-incident evaluations, record as key performance measures the volume of pollution that the Agency has prevented or the effects of pollution that it has mitigated in responding to and dealing with pollution incidents.
 - iv Work closely with the Department to bring the requirements of the Protocol on hazardous and noxious substances into UK law, and to ensure that all major ports and harbours put measures in place to deal with the incidents involving hazardous and noxious substances, as soon as possible.
 - v Explore with the Department and other maritime authorities the scope for prohibiting "pay to be paid" insurance policies, and whether wider recovery powers could be granted in the case of "one ship companies" where there are sister companies.
 - vi Revise the Merchant Shipping legislation to ensure that pollution incidents may be prosecuted under the UK's oil pollution regulations, wherever incidents occur within the UK Pollution Control Zone.
- 7 The Department should consider the case for taking powers to require all coastal local authorities to have up to date oil spill contingency plans consistent with the National Contingency Plan, so that the UK as a whole is properly prepared to deal with marine pollution incidents in compliance with international conventions.
- 8 Our other recommendations are set out in Appendix 6.