

This article is copyright Informa UK Limited and is reproduced with permission. Reproduction, retrieval, copying or transmission of this article is not permitted without the publisher's prior consent. Informa UK Ltd does not guarantee the accuracy of the information contained in this article nor does it accept responsibility for errors or omissions or their consequences.



Tangible damage clouds concern over HNS threat

The potential for accidents involving hazardous and noxious substances is still failing to win significant attention, writes Sandra Speares

Section: Law

Release Date: Wednesday December 04 2002

[[Print Article](#)]

AS liability and compensation for oil spills tops the agenda again following the Prestige oil spill, little attention has been paid to potential accidents involving hazardous and noxious substances (HNS), according to John Wren of the Department for Transport.

Work has been going on in the European Union context with a decision expected in the next few weeks on setting a time frame for implementation of the Hazardous and Noxious Substances Convention in Europe, with a possible date of 2006.

While everyone can relate to oiled sea birds, "HNS is invisible," Mr Wren said.

Mr Wren was speaking at a seminar on the HNS convention organised by the London Shipping Law Centre and hosted by Ince & Co.

Although the HNS convention was adopted by the International Maritime Organisation in 1996, it still has only two signatories.

Former Ince senior partner and Comite Maritime International president Patrick Griggs suggested that the length of the document might be one of the reasons why more countries had not ratified it.

There have been relatively few incidents involving HNS but one of the most serious in recent times was that of the Ievoli Sun in 2000 which, while the subject of a successful salvage effort by Smit, carried an enormous risk of pollution from a hazardous and noxious substance, in this case styrene.

Another potentially disastrous HNS accident was the 1999 collision between the Norwegian Dream and the boxship Ever Decent, which had cyanide on board.

The Civil Liability and Fund Conventions covering liability and compensation for victims of oil spills were "probably the most successful of the regimes introduced by the IMO", Mr Wren said.

One of the main benefits of the HNS convention was that a substantial sum of money would be available to claimants from the start, Mr Wren explained.

While costs in the Ievoli Sun case were largely covered by cargo interests, without a convention, and in the event of an expensive spill, compensation would be likely to prove inadequate.

While there have been accidents, there has not been the media coverage like that surrounding the Prestige and, in the case of the convention "for once the governments are getting ahead of an incident".

The HNS convention was modelled closely on the CLC and Fund conventions, and includes a two-tier system by which the owner would be liable up to a certain limit based on the gross tonnage of the ship and cargo interests would pay the second tier of compensation.

The owner is normally entitled to limit liability under the convention to 10m SDR (\$7.5m) for a ship not exceeding 2,000 gt and for ships between 2,001 and 50,000 gt 1,500 SDR for each unit of tonnage and 360 SDR in excess of 50,000 gt. The aggregate amount of the owner's liability should not exceed 100m SDR. Claims over those amounts would be paid by the HNS fund and funded by cargo receivers up to a maximum of 250m SDR.

The HNS fund will have four accounts covering oil, LNG, LPG and a general account with two sectors covering bulk solids and other HNS products. Each account would meet the cost of compensation payments due to damage caused by substances contributing to that account and there would be no-cross subsidisation. Liability to contribute to the fund would arise for a given receiver once receipts exceed fixed thresholds for each sector.

These are:

- 150,000 tonnes for persistent oil;
- 20,000 for non-persistent oil;
- 20,000 tonnes for LPG;
- 20,000 tonnes for bulk solids and other HNS; and

- no minimum quantity for LNG.

From the political perspective there is a "great deal of concern" about the gap in the convention family because the bunker convention and the HNS convention have yet to come into force.

To come into force, contributors in the states that have ratified the convention must between them have received during the preceding year a minimum of 40m tonnes of cargo. Twelve states must have ratified including four states with a registered ship's tonnage of at least 2m gt each.

So far, only the Russian Federation and Angola have ratified the convention. Mr Wren said one possible reason for there being so little apparent progress was initial concerns that a few states might end up carrying the burden. There is a feeling that all states will want to ratify at the same time for fear of being disadvantaged.

"The UK has taken enabling powers to ratify, the question is when," Mr Wren said.

According to Mr Griggs, one problem relating to the convention was that the chemical industry was much more fragmented which was why relatively high thresholds were included.

Ray Grainger of the European Chemical Industries Council urged consideration not just of the liability and compensation issue but "higher standards of ships".

There had, he said been "a lot of debate on the desirability of a second tier" HNS , he felt was justified but one should not lose track of the the fact that "hitting people in their pockets works".

HNS cargos, he said, were carried by more than 8,000 ships and "many of those ships were not insured with international P&I clubs".

Compulsory insurance for owners is included in the convention, a point that Mr Grainger said was "very important". He was concerned that it might prove difficult to verify and guarantee that owners had the necessary insurance. He welcomed the higher owner liability limits laid down in the convention: "The industry wants to be sure the owner can pay his share." It would be the task of governments to ensure adequacy of cover and police the systems, he said. Verification would, he feared be difficult because HNS products were not exclusively shipped on specialist vessels and could be carried by general cargo ships which might be "of doubtful standard".

However, would governments check the security of small ships flying flags of convenience in other areas of the world? he asked. He suggested that HNS certificates be required on all cargo ships.

[[Close Window](#)]