

## Pollution Fines and Recommendations in Turkey

In Turkish waters, environmental protection sense is developing so that significant fines are applicable for the vessels which offend against Turkish anti-pollution regulations.

The administrative fines will be given in accordance with the Turkish Environmental Code 1983 law no. 2872.

Every year the fine amounts are revised as per the declaration in the Official Gazette at the start of the respective year. According to declaration of the Ministry of Environment and Urbanization, published in Official Gazette dated 28<sup>th</sup> of December 2014 no. 2919, the pollution fines between 1<sup>st</sup> of January 2015 and 31<sup>st</sup> of December 2015 were updated as follows:

- 1) Pollution from petroleum tankers and derivatives (raw petroleum, fuel oil, bilge, oil mud, refined product oil waste etc.)

Up to 1000 (inclusive) Gross Ton	77.46 TL /per Ton
Between 1000-5000 (inclusive) Gross Ton	Additional 19.32 TL /per Ton
Over 5000 Gross Tons	Additional 1.86 TL /per Ton

- 2) Dirty ballast discharged to sea by tankers

Up to 1000 (inclusive) Gross Tons	58.08 TL /per Ton
Between 1000-5000 (inclusive) Gross Tons	Additional 11.58 TL /per Ton
Over 5000 Gross Tons	Additional 1.86 TL /per Ton

- 3) Pollution from ships and other sea vessels that release petroleum derivatives (Bilge, oil mud, freight mud, fuel oil, oil waste or dirty ballast)

Up to 1000 (inclusive) Gross Tons	38.71TL /per Ton
Between 1000-5000 (inclusive) Gross Tons	Additional 7.71 TL /per Ton
Over 5000 Gross Tons	Additional 1.86 TL /per Ton

- 4) Garbage and sewage discharged to sea by vessels or any other sea vehicles

Up to 1000 (inclusive) Gross Tons	19.32 TL /per Ton
Between 1000-5000 (inclusive) Gross Tons	Additional 3.82 TL /per Ton
Over 5000 Gross Tons	Additional 0.73 TL /per Ton

\* Fine amount will double at the first repetition and triple at the second and subsequent repetitions of the pollution by the same vessel within three years.

\*\*\* In case any hazardous substances and waste are disposed to sea, the fine will be calculated ten (10) times of the amount calculated as per the category of Petrol and Petroleum Products fines.

## **Important Notes**

- The ship owners are entitled to lodge an appeal before the competent Administrative Court within 30 calendar days beyond the fine notification date. However, appealing the fine decision will not result in lifting of the arrest order for the vessels imposed with pollution fine. Generally there are very low prospects of success in the appeal proceedings.
- Under the relevant code, the “EPA” is entitled to ask for cash payment of the fine amounts and generally they do not accept any form of security to release the ships. Exceptionally, they may accept bankers draft and/or payment guarantees to be issued by the ship agents payable within max.1-2 days and without any conditions.
- In some of previous cases, the authorities confirmed that they will release the vessel against the LOU to be issued by the P&I Clubs or Insurance Companies recognised by the Turkish Government. However, they have asked for the original of the LOU and its notarised official translation. Considering time differences / delivery time of the original LOU and formalities for notarised translation of the LOU, the vessel may delay unnecessarily.
- We generally recommend the owners to effect payment of the fine amount less 25% discount so that the vessel would sail without any delays. Remitting the fine amount will not be considered as acceptance of liability and the Owners may still appeal the fine decision.
- Any video footage, pictures taken by environmental officers, coast guards etc. can only be released by a court order.

## **Criminal Proceedings**

- Under Turkish legislation, once a pollution fine is issued, the issuing public authority is under an obligation to file a criminal complaint with the competent public prosecutor's office and request that a public investigation is commenced pursuant to the Articles 181 and 182 of Turkish Criminal Code. Therefore, even if the pollution is minor, the file is referred to the Public Prosecutor's Office. Upon examination of the file, the Public Prosecutor decides either to reject the file or issue an indictment in order to initiate criminal proceedings.
- Please find below our general explanations with respect to the criminal procedure related to the pollution incidents. To begin with, articles 181 and 182 of Turkish Criminal Code read as follows:
  - Article 181 – Causing Environmental Pollution with Intent:
    - (1) A person, who intentionally releases waste or remnants into the soil, water or air other than through technical procedures determined in the relevant laws, causing damage to the environment shall be sentenced to imprisonment of from 6 months to 2 years.
    - (2) A person who brings waste or remnants into Turkey without permission shall be sentenced to imprisonment of from 1 year to 3 years.
    - (3) The sentences mentioned in the above sub-clauses shall be doubled if the waste or remnants reveal permanent characteristics in soil, water or air.
    - (4) In case the activities described in sub-clauses 1 and 2 are committed with wastes or remnants with characteristics that may cause illnesses to persons and animals which are difficult to cure or which causes atrophy in the ability of reproduction or alteration to the natural characteristics of animals or plants, such activity shall be punished by imprisonment of minimum 5 years and a judicial fine of up to thousand days.
    - (5) For legal entities, special security measures shall be ordered for activities stated in the clauses 2,3 and 4.
  - Article 182 – Causing Environmental Pollution with Negligence:
    - (1) A person who negligently causes discharge of wastes or remnants into the soil, water or air causing damage to the environment shall be subject to a judicial fine. In case those wastes or remnants have a permanent effect in the soil, water or air, such person shall be sentenced to imprisonment from 2 months to 1 year.

- (2) A person causing discharge of wastes or remnants into the soil, water or air with negligence with characteristics that may cause illnesses to persons and animals which are difficult to cure or which causes atrophy in the ability of reproduction or alteration to the natural characteristics or animals or plants, shall be punished by imprisonment of from 1 to 5 years.
- Please kindly be advised that this criminal action is a public prosecution the progress of which the parties cannot influence. However, it is possible that the attorney of the accused attends the proceeding and defends the application of the articles which are in favour of the accused.
- In light of the above explanations, we suggest that the criminal action is followed in order to avoid any outcome to the detriment of the Master.
- Possible Results of the Adjudication Process Under Turkish law
  - With regards to the crimes which foresee an imprisonment less than two years, the Code of Criminal Procedure provides that the Court may decide the deferment of the announcement of the verdict. However, we should underline that if the accused does not accept it, the Court cannot rule such deferment. Once the announcement of the verdict is deferred, the accused shall be kept under surveillance for five years. During this period, if the accused does not intentionally commit any crime, the verdict shall be removed.
  - Pursuant to Turkish Criminal Code, imprisonments of one year or less than one year are considered as short termed imprisonments. This kind of imprisonment may be converted to the judicial fine considering the personality of the accused, his socio-economic situation, his contrition during the adjudication process and the particularities of the commission of the crime.
  - The article 51 of Turkish Criminal Code provides under certain conditions the deferment of the imprisonment for the person who is condemned to the imprisonment of two years or less than two years.

## **Recommendations**

- De-ballasting operations should be avoided unless the ballast water has been checked and is determined to be clean.
- All overboard discharge valves should be closed and secured/sealed in closed position.
- All deck scuppers should be plugged and any gaps in the fish plate surrounding the deck should be closed.
- Hose test of hatch covers, hydrostatic test of deck pipes/hoses or other equipment shouldn't be performed.
- Washing of decks and superstructure should be avoided.
- Treated water from the sewage system and grey water should be transferred to a holding tank and should not be discharged until the vessel is clear of Turkish waters.
- Cargo residues, cargo space cleaning residues, all garbage and other substances should be prevented from reaching the water.
- The vessel's hull should not be scrapped, chipped or painted while alongside the pier or at anchor.
- While the vessel is at the shipyard or in dry dock, even if the pollution is caused by the negligence of the shipyard, its employees or agents, the ship may be held responsible for the pollution fine. Therefore the crew members should be careful and they should immediately protest in writing to the shipyard where they believe pollution took place.

Metropole Maritime & Trading Ltd. Co.