

Notices to Members

No. 16 2011/2012 - US Pollution MSRC - Agreement Concerning Use of Dispersants

August 2011

Dear Sirs,

US Pollution: MSRC – Agreement Concerning Use of Dispersants

Members will be aware that United States Coast Guard regulations now require vessel response plans for tank vessels to include an oil spill response organisation (“OSRO”) capable of applying dispersants by air as part of a clean up operation. Pending finalisation of the fine detail of the regulations and their implementation however both main OSRO’s – NRC and MSRC – received permission to have their customers’ plans continue without a dispersant capability for a period of six months. That period expires on 22 August 2011 and from which date operators of tank vessels must include a dispersant capability in their plans.

On 10 August 2011 and unfortunately without prior notice to the International Group, MSRC issued notice to its customers that they are amending their service agreement to include a “dispersant addendum”. They have requested that the addendum be signed forthwith by all tank vessel operators who cite MSRC as OSRO in their plans and also cautioned that the addendum would need to be signed by operators of other vessel types on an ad hoc basis if and when the Federal authorities require the application of dispersants in a spill from a non-tank vessel.

This action is said to have been taken in reaction to law suits issued against MSRC and others in the aftermath of the Deepwater Horizon event, where claimants are alleging adverse health effects of exposure to dispersant chemicals. The defendants are seeking shelter under the “responder immunity” principles of OPA ‘90 but have yet to perfect such defences and hence the new addendum.

The Managers are concerned however that the terms of the Addendum are widely drafted and include a full indemnity in favour of MSRC for injury and illness claims arising out of an oil spill event after a dispersant has been used. These terms would fall outside of Club cover.

The International Group is in urgent discussion with MSRC in an effort to have the addendum changed. A further Notice will be issued as soon as possible to update Members on the outcome of those discussions and the position on Club cover. In the interim, and as recently confirmed by MSRC in their message of 15 August 2011, Members are strongly advised not to sign the addendum – it is reiterated that doing so may give rise to liabilities that fall outside of Club cover.

The Managers are not presently aware of any such issues with NRC.

Yours faithfully

For: **West of England Insurance Services (Luxembourg) S.A.**
(As Managers)

A Paulson
Director