

Offshore Energy Law

Hazardous and Noxious Substances Liabilities for LNG

The purpose of the 1996 Hazardous and Noxious Substances by Sea Convention (the "Convention") is to provide compensation for damage resulting from the maritime transport of hazardous noxious substances.

The Convention has not yet entered into force and the required conditions for this are not close to being met, as there is an insufficient number of ratifications from states. This delay is because the way that the Convention had been structured initially presented serious difficulties to the world's maritime administrations, including the requirement that for LNG cargoes, the contributor to the compensation fund should be the cargo owner, but, the cargo owner may very well not be within the jurisdiction of a contracting state and therefore could not be compelled to contribute.

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A Protocol to the Convention was adopted in 2010 to address these difficulties, and a solution of sorts has been arrived at. The changes made to the original Convention included for LNG cargoes, shifting responsibility for payment to the receiver in that state of any quantity of LNG¹, unless a person who is the "titleholder" as specified in Article 11(2)(b) of the Protocol is responsible for the contribution.

The adjustments have not succeeded in persuading states to contract in, because of:

1. Jurisdictional and enforcement inconsistencies between the Convention and EU regulations.
2. The compensation scheme for oil pollution damage in the 2003 Supplementary Fund is

better than that offered by the HNS Convention covering more serious types of damage, such as injury or loss of life.

3. The uneven application and interpretation of the HNS Convention particularly with respect to LNG cargoes, because contracting states can adopt their own definition of "receiver" when considering compensation fund contributions.
4. The requirement for cargo receivers in a contracting state to make initial contributions to the compensation fund for incidents occurring prior to ratification, which is a more onerous condition than that for the receivers of oil cargoes.

The risk to life and the environment posed by the transportation by sea of dangerous goods in bulk or in packaged form is real, and it is regrettable that as things stand there is a large gap in the liability and compensation regime caused by the lack of progress with the HNS Convention.

LNG is increasingly popular as a marine fuel and is set to be carried as bunkers in significant quantities. LNG, as a marine fuel, is not cargo and is not covered by the HNS Convention. It is not oil and is not covered by the Bunker Convention. The only applicable convention is the LLMC Convention, which may provide owners with a mechanism for dealing with liabilities arising from carrying LNG as a marine fuel, such as damage to property arising from an LNG bunker spill.

¹ Article 11(2)(a) of the Protocol.

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Although this seems odd, it should be remembered that LNG is, in environmental terms, not a pollutant. It is a greenhouse gas and a large escape of methane would be undesirable. There does not appear to be any mechanism whereby a coastal state or other entity could seek compensation for such a loss. LNG is, at the right concentrations in air, flammable, but these effects are likely to be localised; unlike, for example, the loss of an entire cargo of styrene into the sea. The safety record of the LNG transportation industry is exemplary, and the lessons learned transporting LNG by sea over 60 years are being passed to the bunker industry.

In conclusion, as things currently stand there is no immediate prospect of the LNG transportation industry having to comply with the HNS Convention but if it were ever ratified, the separate LNG account for the compensation fund should ensure that the industry is not cross-subsidising other sectors. The only issue for the industry would be to seek certainty and uniformity with the definition of 'cargo receiver'. LNG, as a marine fuel, lies outside any compensation or liability scheme. Liabilities of owners using LNG as fuel may in certain cases be limited by the LLMC Convention in the usual way.



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