

Pollution Fines and Recommendations in Turkey

In Turkish waters, environmental protection is developing and significant fines are applicable to vessels that violate Turkish anti-pollution regulations. As per the latest amendments brought into effect in April 2017, heavy fines are being issued by the authorities including the EPA (Environmental Protection Agency), Harbour Master and Public Prosecutor against the offending vessels and Masters.

In the event of sea pollution, the fines are being issued by the following authorities in Turkey:

A. POLLUTION FINE ISSUED BY TURKISH EPA

The administrative fines will be imposed 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 that respective year. According to the declaration of the Ministry of Environment and Urbanization, published in Official Gazette dated 28 December 2017 no. 30284, the pollution fines between 1 January 2018 and 31 December 2018 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	97.20 TL / per Ton
Between 1000-5000 (inclusive) Gross Ton	Additional 24.24 TL / per Ton
Over 5000 Gross Tons	Additional 2.32 TL / per Ton

- 2) Dirty ballast discharged to sea by tankers

Up to 1000 (inclusive) Gross Tons	72.88 TL / per Ton
Between 1000-5000 (inclusive) Gross Tons	Additional 14.54 TL / per Ton
Over 5000 Gross Tons	Additional 2.32 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	48.58 TL / per Ton
Between 1000-5000 (inclusive) Gross Tons	Additional 9.67 TL / per Ton
Over 5000 Gross Tons	Additional 2.32 TL / per Ton

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

Up to 1000 (inclusive) Gross Tons	24.24 TL / per Ton
Between 1000-5000 (inclusive) Gross Tons	Additional 4.78 TL / per Ton
Over 5000 Gross Tons	Additional 0.90 TL / per Ton

* Fine amount will double for repeated offenders and triple on subsequent recurrences of pollution by the same vessel within three years.

*** In the event any hazardous substances and waste are disposed to the 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 Administrative Court within 30 calendar days from the fine notification date. However, appealing the fine decision will not result in the lifting of the arrest order of the fined vessels. 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 amount and generally they do not accept any form of security to release the ships. On an exceptional basis, 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 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 asked for the original LOU and its notarised official translation. Considering the time taken to deliver the original LOU and its notarised translation, the vessel may delay unnecessarily.
- We generally recommend the Owners to affect payment of the fine amount less 25% so that the vessel would be able sail without any delay. Remitting the fine amount will not be considered as an admission 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. However, at times the officers release the same to P&I Club representatives and/or agents on an unofficial basis.

B. POLLUTION FINE ISSUED BY PORT HARBOUR MASTER

In the event of vessel not following local port regulations, as per Port law no: 618 / article no: 11, the Harbour Master has right to penalize the offending vessel an administrative fine between TL 500 to TL 20.000.

In addition, as per new addendum 39/12 added to the current Port regulations, enforced on 08.04.2017, in the event of sea pollution and/or any damage to Port facilities/equipment, the

Harbour Master has been given right to penalize the offending vessel an administrative fine up to TL 5.000.000.

- The ship owners are entitled to lodge an appeal before the Administrative Court within 15 calendar days from the fine notification date. However, appealing the fine decision will not result in the lifting of the arrest order of the fined vessels. Generally there are very low prospects of success in the appeal proceedings.
- We generally recommend the Owners to affect payment of the fine amount less 25% so that the vessel would be able sail without any delay.
- In case the subject fine is not paid by the Owner, the vessel can be put on sale by the relevant authorities as per law no: 4922 to recuperate the issued fine.

RECOMMENDATIONS AND GUIDELINES:

- De-ballasting operations should be avoided unless the ballast water was checked and confirmed 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 should not 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 outside Turkish waters.
- Cargo residues, cargo space cleaning residues, all garbage and other substances should not be disposed in Turkish waters.
- 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 vicariously liable for the pollution fine. Therefore the crew members should exercise care and they should immediately protest in writing to the shipyard where they believe pollution took place.

C. PUNISHMENT AS PER TURKISH CRIMINAL CODE (LAW NO: 5237)

In the event of pollution, the Public Prosecutor can bring forward a case against the offending vessels/Masters. The defendants will be prosecuted as per Turkish Criminal Code Law no: 5237, which can be summarized as below:

a. Polluting the environment with intent (Article 181 of Turkish Criminal Code)

1. Any person found deliberately releasing waste materials into soil, water or air outside the realms of disposal procedures/facilities provided through the local regulations causing harm to the environment, shall be punished by imprisonment for a period of six (6) months up to two (2) years.
2. Any person, who brings waste materials into the country without permission, can be punished with an imprisonment for a period of one (1) year up to three (3) years.
3. If illegally released waste materials become a permanent fixture in the soil, water or air, the above mentioned penalties can be increased by a factor of two.
4. In cases where the illegal process of waste disposal mentioned in the first and second items leads to the emergence of difficult to treat illnesses in humans or animals, impairment of reproductive ability or change in the natural habitat of flora and fauna, shall be sentenced to imprisonment for a minimum of five (5) years along with payment of judicial fine.

b. Polluting the environment with negligence (Article 182 of Turkish Criminal Code)

1. In the event of a person's act of disposing waste into soil, water or air with negligence causing harm to the environment, the person can be punished with a judicial fine. If this waste leaves a lasting effect on the soil, water or air, the person can be sentenced to imprisonment for a period of up to two (2) months.
2. In case of a person causing negligent disposal of waste into soil, water and air that leads to the emergence of difficult to treat illnesses in humans or animals, impairment of reproductive ability or change in the natural habitat of flora and fauna, shall be sentenced to an imprisonment for a period of one (1) year up to five (5) years.

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