

TRANSPORT OF FUEL IN THE GULF OF EILAT

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Crude petroleum, fuels, and oils (hereafter - fuel) are transported by sea in tankers carrying tens of thousands, even hundreds of thousands, of tons of cargo. Maritime accidents, particularly near the shore, are liable to cause pollution and environmental damage to the land and sea near the accident site.

Most of the fuel imported by Israel is discharged at Mediterranean ports, with a small and steadily decreasing amount being discharged at the Eilat terminal of the Eilat Ashkelon Petroleum Pipeline Company (hereafter - the Company). The majority of tankers arriving at the Gulf of Eilat (hereafter - the Gulf) unload the fuel at the terminal of the Company, which operates pursuant to a concession and is entitled to transport approximately 40 million tons of fuel a year through the pipeline.

The fuel is imported in tankers that are, for the most part, old (built at least twenty years ago), unsafe, and fly “flags of convenience.”¹

Sea pollution in the Gulf area (hereafter - incident) can have extremely serious consequences: the pollution is liable to be prolonged and to require huge expenditures of money, because of the prohibition on using chemicals, to repair the damage; the Gulf contains a unique preserve of coral and fish that is liable to be irreversibly harmed; Eilat’s economy relies principally on tourism, which provides hundreds of millions of revenue dollars to the city, and damage to the Gulf and its shore is liable to seriously damage tourism and the city’s image; pollution is also liable to impair relations with Jordan and Egypt.

Israel has laws, regulations, and procedures intended to minimize the risk of pollution resulting from the transport of fuel in tankers (see

¹ Registration of sea vessels in a foreign country. This is done for several reasons, among them considerations relating to security, taxation, licensing, and the law that applies to the vessel and the people working on it.

below). In addition, Israel is party to international conventions that establish uniform safety standards for maritime vessels, ports, and terminals, and applies these standards in accordance with the special conditions found in Israel.

The handling of supervision of the transport of fuel in the Gulf and of the environmental aspects resulting therefrom is primarily entrusted to three state bodies:

1. The Sea and Shores Department in the Ministry of Environment (hereafter - the Department) which is engaged, *inter alia*, in areas related to prevention of sea and shore pollution and is responsible for legislation, standardization and treatment of environmental nuisances, and their prevention. The Department operates a station in Eilat that is manned by inspectors who examine the vessels, ports, anchorage, maritime fuel terminals, and refueling facilities on shore, and conduct land and sea patrols along the Gulf coast.

The Department acts pursuant to the Pollution of Seawater by Oil (Prevention) Ordinance [New Version], 5740 - 1980, and the regulations enacted in accordance therewith; the Prevention of Sea Pollution (Dumping of Waste) Law, 5743 - 1983, and the regulations enacted in accordance therewith; the Prevention of Sea Pollution by Land Sources Law, 5738 - 1988, and the regulations enacted in accordance therewith; and the Ports Regulations (Loading and Discharging of Oil), 5736 - 1975.

2. The shipping and Ports Administration in the Ministry of Transport (hereafter - the SPA), is empowered by law to supervise and ensure the safety of sea vessels that visit Israel. The SPA is also in charge of implementing the international conventions and directives of the International Maritime Organization. These conventions and directives cover, *inter alia*, the prevention of sea pollution and safety inspections of sea vessels, including tankers, before entry into port. To perform its duties, the SPA employs fourteen boat-safety inspectors and eight external inspectors to examine sea vessels. The SPA represents the State in international matters relating to participation in the international maritime conventions and in conforming Israel's laws

to meet the requirements upon becoming a party to these conventions, among them laws regarding prevention of pollution by sea vessels.

3. The Ports and Railways Authority (hereafter - the PRA) , which operates pursuant to the Ports Regulations (Loading and Discharging of Oil), - 1975, and according to the procedures on the “handling of sea pollution by fluids.” The PRA is in charge of the procedures for entering coastal waters and ports and while the vessels are in the terminal, primarily regarding the particulars of the cargo, means of access, means of fire prevention and extinguishing, procedures for cargo flow, and the proper condition of the terminal and its facilities.

In March - October 2000, the State Comptroller’s Office audited the preparations to prevent pollution resulting from the transport and discharge of fuel at the Eilat Port, and to handle and clean up the pollution. The examination focussed primarily on implementation of the recommendations of an inter-ministerial team that examined the environmental aspects of discharging fuel in the Gulf. The audit was carried out at the Ministry of Environment, the Sea and Shore Department in Haifa, and the Department in Eilat (hereafter - the station). Supplemental examinations were made in the SPA.

Preparations for preventing and handling sea pollution

In January 1993, the Directors General of the Ministry of Transport , Ministry of Environment, and Ministry of Energy and Infrastructure appointed an inter-ministerial team (hereafter - the team) to examine the prevention of fuel pollution in the Gulf, as part of an overall examination of the environmental aspects of transporting and discharging petroleum. The team was composed of representatives of the SPA, the Department, and the Ministry of Energy and Infrastructure. The team was given the task, *inter alia*, of examining and recommending procedures for discharging fuel at the Eilat Port and of examining the existing regulations and laws on sea pollution in Israel and at ports of other countries. The team also examined ways to reduce the risk of pollution by fuel along the shore elsewhere in Israel.

In August of that year, the team submitted its report to the aforementioned Directors General. The main part of the report comprised a review of the relevant international conventions and the degree to which they have been implemented in Israel; the laws and regulations applying in Israel regarding the prevention of sea pollution; the existing laws and regulations applying in other ports of the world regarding pollution; the procedures for the discharge of crude petroleum and the inspection procedures in the Eilat Port; the special conditions in the Gulf and in Eilat Port; the quantity of fuel imported into Israel; and the quantity, quality, and level of safety of tankers that enter Israeli ports.

Because of the uniquely sensitive character of the Gulf, the team noted the importance that all the relevant government ministries take immediate joint action to reduce the great risk to the Israeli coastline from pollution resulting from an oil spill. The team distinguished between the safety requirements in Mediterranean seaports and the requirements in the Gulf, and pointed out the need to institute stricter safety requirements for tankers discharging at the terminal in the Gulf.

The head of the team submitted the report's recommendations to the Directors General of the relevant ministries, who adopted the recommendations and directed that they be implemented. The State Comptroller's Office examined certain subjects that the team raised, the manner of implementation of its recommendations, and aspects related to preparations for the prevention and treatment of pollution, and observed as follows:

Preparations for handling sea pollution

1. The fuel imported to Israel from Egypt is conveyed by tankers via the Gulf and is unloaded at the Company in Eilat. The Company operates the terminal and is responsible for discharging the fuel, the safety of the facilities, and the prevention of pollution when the tanker is anchored at the terminal. The quantity of fuel transported to the terminal has decreased in the past five years and now stands at some four million tons a year. In 1999, the amount was even less, only some

1.5 million tons (of the 12-14 million tons annually imported into Israel).

According to Department figures, in 1999, just three tankers, carrying 80,000 – 90,000 tons of fuel each visit, used the Company's terminal a total of only 17 times. Consequently, the danger of pollution in the Gulf certainly fell, but, because the tankers were at least twenty years old and did not meet the strict standards applying in the United States and the European Community, they are liable to cause an incident in the Gulf. It should be noted that, although Israeli legislation does not contain the appropriate provisions and regulations, the tankers arriving at the Company's terminal are inspected for safety and level of maintenance. On the initial visit of a tanker to Eilat, SPA inspectors examine the vessel in accordance with the internal procedures of the Company and of the Ministry of Transport .

2. To prepare against the danger of pollution when tankers visit the Company's terminal, the station places barriers in the water. These barriers are supposed to encircle the area in which the fuel is discharged in order to block the spread of fuel that is liable to spill during discharge and spread toward the coral preserve, which is south of the terminal. Also, the station's inspectors patrol the terminal area daily around the clock while the tanker remains in the Gulf. In its response of August 2000 to the State Comptroller's Office, the Department stated that the Company is supposed to place a permanent barrier to be connected to a buoy outside the terminal, but that it fails to do this. The Ministry of Environment indicated in its response that the Ministry is discussing this matter with the Company.

The station is located between the fuel terminal and the port on the one side, and the marine nature preserve on the other side, and operates twenty-four hours a day. When necessary, the staff at the station is increased by the addition of employees from the Company and other bodies, and the station can also immediately recruit independent contractors. The equipment at the station is intended to treat pollution resulting from spills of only tens or hundreds of tons. The station is unable to prevent the spreading of larger quantities of fuel in the Gulf. Furthermore, because of the wind and currents in the Gulf, the station would not be able to handle, with the means available to it, major

pollution that is liable to occur in the open sea (and not while discharging at the terminal) resulting from a collision of tankers or a rupture in the side of the tankers before they are tied up at the terminal. It is certainly difficult to treat a rupture in a tanker at other ports as well, but, for the aforementioned reasons, the consequences of such an incident in the Gulf is liable to be grave.

3. A project for regional cooperation for the treatment of pollution in the northern part of the Gulf is being carried out. Israel, Jordan, and Egypt are involved in the project, which is manned by an environmental-quality working group as part of the multi-lateral peace talks. The project requires that each state be prepared to handle pollution resulting from 200 tons or more of fuel in the Gulf. When a country is unable to handle the pollution by itself, or when the oil spill is liable to damage the coast of more than one country, the affected state is entitled to request assistance, additional forces, and cooperation from its neighbors. In addition, each country is required to establish centers to fight sea pollution, equip them with the appropriate equipment, train personnel, and prepare a “regional plan for readiness and response to fuel pollution in the Gulf of Eilat” (hereafter – the readiness and response plan).

In July 1999, the Department completed the readiness and response plan and conducted one sea pollution exercise. The plan also included personnel and equipment of the Company, the SPA, and the IDF, who are supposed to reinforce the station’s staff when an incident occurs. However, at the time of the audit, the acquisition of the appropriate equipment necessary to handle medium- and large-scale pollution had not yet been completed. As part of the regional cooperation framework, a maritime exercise was conducted in March 1998 with Jordan’s sea-pollution combat unit. No other exercises had been conducted prior to the completion of the audit.

4. The readiness and response plan for the Mediterranean Sea calls for the SPA to cooperate in rescue and recovery operations.² However, according to the plan for the Gulf, the SPA is not supposed to participate in rescue and recovery when an incident occurs. The State

² Rescue – rescue of humans at sea. Recovery - rescue of property and survivors from drowning at sea.

Comptroller's Office is of the opinion that consideration should be given to integrating the SPA in preparations for these actions also in the Gulf.

5. The report submitted by the team recommended that "an external research body examine the economic and environmental significance of cessation of transport of fuel via the Gulf of Eilat." It should be noted that, although there is a substantial decrease in movement of tankers in the Gulf and in the quantity of fuel that they transport, and that, over the years, there has not been a significant incident resulting from the transport of petroleum, the danger that an incident in the Gulf will occur continues to exist. Political considerations are also taken into account regarding continuation of use of the Company's terminal. In the opinion of the State Comptroller's Office, consideration should be given to conducting the research recommended by the team and, in accordance with its results, to the ways to reduce the risk of sea pollution.

Safety of sea vessels transporting fuel

The team recommended "establishing procedures under the responsibility of the Ministry of Transport and in coordination with other bodies to prevent the entry of unsafe tankers into Israel and to enforce the procedure" and "to prohibit the entry of tankers twenty or more years old to discharge or load in the Gulf of Eilat. Within two years, this prohibition will apply to tankers over fifteen years old (or as shall be set when the time comes)."

At the time of completion of the audit, the safety requirements for tankers visiting the Gulf and those visiting other Israeli ports had not been adapted to meet the team's recommendations, as described below:

Following discussions between the Ministry of Environment and the Ministry of Transport, which continued until 1998, some five years after the team submitted its report, the Ministry of Transport submitted a proposal to amend the Ports Regulations (Vessel Safety), 5753 - 1982 (hereafter - the Regulations), that restricts the "entry of chemical tankers and oil tankers into the coastal waters of Israel, the

objective being to protect Israel's coastal waters from oil and chemical pollutants." According to the proposed amendment, "entry of a tanker conveying crude oil to the port of Eilat shall not be allowed unless its beam was laid or was in the comparable stage of construction after January 1, 1980." In August 1999, the proposed amendment was submitted to the Knesset's Economic Affairs Committee. During the debate on the proposed amendment, a dispute arose between the Ministry of Transport and the Ministry of Environment, which sought to apply the Regulations at all Israeli ports. The Economic Affairs Committee decided to postpone the debate. At the time of completion of the audit, at the end of 2000, some seven years after the team submitted its recommendations, discussions with the Ministry of Justice ended, as did consultations with the STA on formulating an agreed-upon draft of the amendments to be submitted to the Economic Affairs Committee. Therefore, despite the importance of the matter, there is still no legal course to prevent outdated tankers from transporting fuel in the Gulf.

In its response of December 2000 to the State Comptroller's Office, the Ministry of Transport stated, that after agreement had been reached with the other relevant government ministries and after the matter had been coordinated with the principal fuel importers, the Minister of Transport is prepared to submit to the Economic Affairs Committee the draft of a regulation prohibiting the entry into Israeli ports of vessels built more than twenty years ago.

Insurance covering damage resulting from sea pollution

1. As mentioned, maritime accidents are liable to cause serious environmental damage to sea and land. In five incidents that occurred in the world in 1996-1997, suits were filed demanding compensation of hundreds of millions of pounds sterling for each incident. It should be noted that these incidents occurred in the ocean - in the open seas. An incident in the Gulf is liable to cause greater damage, both because the Gulf is closed and because of its environmental sensitivity and economic importance to Israel. In light of the grave economic consequences that such a financial burden is liable to cause to states along whose coastal areas the accidents occur, international

organizations organized to handle the liability of the owners of sea vessels and the compensation to be paid as a result of these incidents.

2. In 1969, the Civil Liability Convention - which requires owners of oil transfer to insure against damage caused by fuel spills at sea - was signed. In 1971, the International Fund Convention was signed. This convention established a supplemental fund to provide compensation in the event of damage, the fund being financed by the member states engaged in the trade or importation of fuel.

In 1992, the International Maritime Organization approved two new international conventions.³ These conventions replace the previously mentioned conventions. The two new conventions expanded the areas of coverage and increased the amount of compensation paid to injured parties. As of February 1999, ninety-one states, Israel among them, had become party to the new conventions.

3. Until 1997, no Israeli legislation existed that incorporated the provisions of these international conventions into domestic Israeli law. Israel was party to voluntary safety arrangements that were initiated and funded by the owners of the tankers and the owners of fuel cargo. In 1997, these arrangements expired. Since then, there have been no binding regulations covering this matter. As a result, Israel is not part of any framework that provides insurance coverage for maritime ecological damage. Thus, the country is exposed to suit by injured parties for enormous financial damage resulting from pollution by fuel spills in state territorial waters from tankers that do not have proper insurance coverage.

4. In 1998, the Ministry of Transport began to prepare a Liability of Owners of Sea Vessels for Oil Pollution Damage Law. The law is intended to establish the absolute liability (without proof of fault being necessary) of the owner of a vessel that was built or was adapted to transport oil and causes pollution; and also to enable establishment of a fund that would provide for arrangements to ensure payment of compensation for pollution resulting from oil spills from sea vessels.

³ The International Convention on Civil Liability of Oil Pollution Damage and the International Convention on the Establishment Fund for Compensation for Oil Pollution Damage.

The proposed law is based on the two new international conventions and will enable Israel to apply these provisions and thereby participate in the international effort to cope with the responsibility of owners of sea vessels to pay compensation for such damage.

The proposed law includes provisions that enable enactment of regulations concerning the responsibility of owners of sea vessels or their exemption there from, provisions which require the purchase of an insurance policy or issuance of a bank guarantee limiting their responsibility. The law is intended to establish legal means to pay compensation for sea pollution damage, and the insurance amounts will be used to pay the compensation claimed. The law is also intended to regulate the legal status of the international fund for compensation for oil pollution damage, as set forth in the 1992 convention.

Preparation of the proposed law continued from 1998 to 2000 because of the prolonged discussions regarding the sources of money to finance the fund each year and the manner in which the money is to be collected. It was not before June 2000 that the Ministerial Committee on Legislation approved the proposed law. In July 2000, the government adopted the Committee's decision. Because of the extensive delay in enacting the primary legislation, it was impossible to enact regulations that would enable collection and transfer of the payments (the premiums) to implement the convention and participation in the international fund. Until the law is not enacted and as long as the proper insurance arrangements are not made, the state will not be sufficiently insured against potential financial damage caused from a maritime ecological disaster. In its response of December 2000 to the State Comptroller's Office, the Ministry of Transport stated that, "At the current time, a proposed law has been submitted by the government that will enable participation in the civil liability conventions and the International Fund Convention."

5. For the period until a law is passed that will make application of the convention possible pursuant to Israeli law in order to enable liability insurance covering owners of vessels that cause oil pollution, the SPA published, in the beginning of 1997, directives to vessels about to enter Israel's territorial waters. These directives provide that every such vessel must have a certificate of insurance, issued by the

country whose flag the vessel flies, covering liability for oil pollution damage.

The said provisions were disseminated in accordance with regulation 71 of the Ports Regulations, 5731 – 1971, which provides that “the port manager may prohibit the entry of sea vessels into the port if the owner or master of the vessel did not prove that the vessel is insured, to the satisfaction of the port manager, against any damage that it is responsible for and which is liable to be caused by the vessel in the port.” The port manager is authorized to prohibit the entry of uninsured vessels.

Although these directives serve as a substitute for the interim period until enactment of the legislation, they enable the entry of vessels that are liable to constitute a danger and cause sea and coastal damage, even if they have a certificate indicating that they purchased insurance in their countries. The reason is that the insurance is often sufficient to cover pollution of a smaller dimension than those stated in the international conventions. Also, inspection of the vessels and presentation of the required proper insurance certificate are done when the vessels are already within the coastal waters near the port, and are thus unable to prevent unnecessary risk inherent in the entry of outdated and unsafe vessels that have insufficient insurance coverage.

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In light of the acute environmental, economic, and political situation in the Gulf of Eilat, Israel must expand its laws, regulations, and procedures and conform them to those customarily found in western European states, based on the international conventions to which Israel is party. As long ago as 1993, an inter-ministerial team recommended to the relevant officials that, in light of the exposure of the Gulf to concrete safety hazards, immediate

action be taken to improve the situation. However, as of the completion of the audit, only some of the team's recommendations had been implemented. The Department and other bodies in charge of maritime activity in the Gulf are not sufficiently prepared to handle medium- and large-scale pollution. The use of outdated tankers continues and the legislation to regulate this matter has not yet been passed. In addition, Israel is currently insufficiently insured to cover incidents of substantial damage from pollution. In this matter, too, the legislative process has not yet been completed.