

Revised MARPOL Annex V



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- New rules introduced on 1 January 2013 create various obligations
- From 1 January 2015, shippers are to provide a complete classification for cargo to be shipped
- Clear contractual terms setting out responsibilities are encouraged.

Stricter controls on bulk cargo wash water discharge at sea but who should deal with the garbage?

A new order

As of 1 January 2013, various **amendments** to MARPOL Annex V Regulations for the Prevention of Pollution by Garbage from Ships mean that shippers have new responsibilities regarding cargo classification. Since this date, shippers have had to consider whether or not cargo residues present in hold wash water may be harmful to the marine environment (HME) and consequently whether it is permissible for crew to discharge hold wash water into the sea.

Prior to the amendments, bulk carrier operators were, in most instances, allowed to clean their holds of cargo residues with wash water and discharge this waste into the sea, regardless of the cargo that they had been carrying. As a result of the changes to MARPOL Annex V, cargo residues are now included within the definition of 'Garbage' in Regulation 1.9 and, therefore, discharge at sea for cargo residues is only permitted provided that certain criteria are met. Where the cargo or the washing material used is classified as HME, the cargo residues cannot be discharged into the sea.

Under MARPOL Annex V, shippers are responsible for classifying whether or not cargoes are HME and for declaring this to the ship, pursuant to section 5.4 of the International Maritime Solid Bulk Cargoes Code. Cargo classified as HME may only be disposed of at a suitable

reception facility. From 1 January 2015, shippers are under a duty to provide a complete classification for cargo to be shipped. It is also necessary to ensure that, in circumstances where the cargo is not HME, the cleaning agents are also not HME.

Practical considerations

In light of these developments, it is recommended that owners liaise with charterers, shippers and discharge ports to determine whether the cargo intended to be carried is classified as HME under MARPOL Annex V prior to loading and, if it is, to ensure suitable reception facilities are available. However, due to the current lack of suitable reception facilities, the revised regulations are likely to cause problems in the operation of ships, which in turn may result in disputes between the parties involved under the respective contracts, i.e. owners and charterers, sellers and buyers.

Contracting arrangements

The potential costs related to disposing of HME cargo are not usually allocated in standard form charterparties, so it is often uncertain where responsibilities will fall in the case of a dispute. In response, BIMCO has helpfully provided a cargo residues clause (for time charters), which deals with the issue as to where the costs will fall. This clause potentially allows owners to deviate from the scheduled route, at charterers' expense, to dispose of

cargo residues, where reception facilities are not available at the next scheduled discharge port. From a charterers' perspective, it is advisable to seek back-to-back arrangements with any sub-charterers down the contractual chain.

It is important to consider what will happen if cargo is not correctly disposed of, or indeed is incorrectly declared, and this leads to a pollution incident, or to the imposition of fines or penalties for a regulatory violation. In these circumstances, the consequences could be very serious for whichever party (owners or charterers) retains responsibility. For that reason, it is advisable that clear contractual terms are agreed to determine where responsibility and associated costs will fall in such cases.

Interim period

Due to a reported current lack of adequate reception facilities, discharge of HME cargo residues contained in hold wash water is permissible until 31 December 2015 outside the MARPOL defined 'Special Areas' (Mediterranean, Baltic Sea, Black Sea, Red Sea, Gulfs area, North Sea, wider Caribbean region and the Antarctic) pursuant to MEPC Circular 810 providing that:

- On the basis of information from the relevant port authorities, the master determines that there are no adequate reception facilities at the receiving terminal or at the next scheduled port
- The ship is en route and as far as practicable at least 12nm from the nearest land
- Before washing, solid bulk cargoes are removed (and bagged for discharge ashore) as far as practicable and the holds swept
- Filters are used in bilge wells to collect any remaining solid particles
- The discharge is recorded in the garbage record book and the relevant Flag State is notified utilising the revised consolidated format for reporting alleged inadequacies of port reception facilities stated in MEPC.1/Circ.469/Rev.2.

Club support

If members are uncertain as to any existing or proposed charterparty arrangements and terms that may make express reference to such circumstances, they should contact their usual club contact for appropriate guidance.

ITOPF has prepared a helpful advisory note on the requirements as well as the concept and process of classification of cargoes as HME, which can be found on its [website](#).

