

MARPOL ANNEX V

Introduction

In this section of the paper compensation issues are put to one side and attention is turned to regulatory affairs. Regulations to prevent pollution of the marine environment are regularly reviewed and amended, and one recent change which has prompted many inquiries concerns disposal of cargo residues at sea. This has come about from amendment of MARPOL Annex V.

MARPOL is of course the acronym for the International Convention for the Prevention of Pollution from Ships 1973, as amended by the MARPOL Protocol of 1978. This is the main source of international regulation on the subject. The detail of the regulations is contained in six annexes to the Convention as follows:

Annex I: Prevention of pollution by oil

Annex II: Control of pollution by noxious liquid substances in bulk

Annex III: Prevention of pollution by harmful substances carried in packaged forms

Annex IV: Prevention of pollution by sewage from ships

Annex V: Prevention of pollution by garbage from ships

Annex VI: Prevention of air pollution from ships

Over the years the regulations with the most widespread implications have been those in Annex I concerned with preventing pollution by oil and oily wastes from ships' cargoes, bunkers, tank washings and machinery spaces.

Annex V originally had a relatively narrow focus. It contains regulations to prevent pollution from ships by "garbage", defined as "all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically ..."⁶

Every ship of 400 gross tons or above, and every ship certified to carry more than 15 people, is required to have a Garbage Management Plan which the crew must follow, together with a Garbage Record Book in a specified form.⁷

Historically these rules have had little to do with ships' cargoes and were mainly concerned to reduce the disposal at sea of plastics and other non-biodegradable materials by cruise ships and fishing vessels.

However the scope of Annex V has been gradually extended, and it has now been widened significantly by the most recent amendments. These were adopted by the IMO in July 2012 and came into effect on 1 January 2013. To appreciate the effect of the new rules references is needed to three main documents:

⁶Annex V, Reg. 1(1).

⁷Reg. 9.

- The revised MARPOL Annex V,
- Guidelines adopted by the IMO for the implementation of Annex V, and
- A Circular published by the IMO regarding the implementation of Annex V and the classification of solid bulk cargoes (MEPC.1/Circ.791).

Annex V now sets out a blanket prohibition on disposal of any “garbage” at sea, including cargo residues as defined therein, subject to certain limited exceptions. The revised Annex prohibits the discharge of all types of garbage into the sea unless explicitly permitted under the Annex.

Under previous versions of Annex V disposal of garbage at sea was generally permitted, subject to certain exceptions and conditions. Disposal of cargo residues at sea is now generally prohibited unless either

- a) The cargo concerned falls within one of the other MARPOL Annexes, and residues are discharged in accordance with the discharge controls which these prescribe, or
- b) It is not harmful to the marine environment for the purposes of the new Annex V.

If the case falls into neither of these categories, the residues will need to be discharged into shore reception facilities. Annex V requires contracting states to make such facilities available, and provides for notification of all concerned parties where they are alleged to be inadequate.⁸ Despite this, the availability of suitable facilities is generally very limited. As a result, disposal of residues ashore can involve significant cost and delay. This can make it very important to establish whether residues can be discharged at sea, but unfortunately the regulations are very complex and in some respects uncertain in their effect.

The implications of this can conveniently be considered separately in relation firstly to oil and other bulk liquid cargoes, and secondly in relation to dry bulk cargoes.

Oil and other bulk liquid cargoes

Oil and other bulk liquid cargoes fall within the regulations contained in MARPOL Annexes I and II. In general, therefore, they fall outside Annex V, and disposal of their residues at sea is permissible subject to compliance with the discharge controls contained in those Annexes.

Questions have however arisen as to whether certain oil products fall within Annex I, or are subject instead to the restrictions of Annex V. This has been the case for example with some types of solid petrochemical product.

For the purposes of Annex I, “Oil” is defined as:

“petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than those petrochemicals which are subject to Annex II of the present Convention and, without limiting the generality of

⁸Reg. 7.

the foregoing, includes the substances listed in appendix 1 to this Annex".⁹

In the case of some products it may not be entirely clear whether they fall within this definition, or are governed instead by Annex V. This question has arisen for example in relation to water released from a cargo of petcoke. This is a heavy residual product of the crude oil refining process, and is a solid used mainly as an industrial fuel. It does not naturally fall within any of the categories listed in the above definition – i.e. "*crude oil, fuel oil, sludge, oil refuse and refined products*" – and it does not fall within among any of the substances listed in appendix 1 to Annex I. However, neither list is exhaustive, and a non-listed substance may still be considered "oil" if it is "petroleum in any form". Although oil cargoes are normally carried in tankers, and if necessary are heated in order to flow during cargo operations, the definition contains nothing which restricts "oil" to substances in liquid form. Accordingly, the better view is probably that "oil" includes all petroleum products (refined and residual) of the refining process, whether liquid or solid.

These considerations suggest that a wide interpretation of "oil" is appropriate, but care is still needed when considering how the rules apply to unusual cargoes or new products, including new blends and by-products of the blending process.

Dry bulk cargoes

"Cargo residues" are defined in Annex V as:

"the remnants of any cargo which are not covered by other Annexes to the present convention....."

The only other relevant Annexes are I and II, which cover oil and other bulk liquids, and Annex III, which deals with substances carried in packaged forms. There is no other Annex which could cover dry bulk cargoes, and the disposal of their residues is therefore governed by Annex V.

Annex V permits discharge of cargo residues at sea provided –

- They cannot be recovered using commonly available methods for unloading"
- They are discharged at least 12 nautical miles from the nearest land (and not within a special area), and
- They do not contain any substances classified as harmful to the marine environment, taking into account Guidelines developed by the IMO.¹⁰

In practice the most common issue is whether hold washings containing residues of bulk cargo can be pumped overboard, or whether they have to be discharged into shore reception facilities. This depends on whether the residues are classified as harmful to the marine environment (HME).

⁹ Annex I, Reg. 1.1.

¹⁰ Annex V, Reg. 4.1.3.

The phrase “*harmful to the marine environment*” is not defined in Annex V itself, but guidance as to what constitutes a “harmful” substance for these purposes is set out in the Guidelines. These refer to the UN Globally Harmonized System of Classification and Labelling of Chemicals (UN GHS) and stipulate that solid bulk substances will be considered HME if they fail to meet any of seven GHS criteria. These are: acute toxicity, chronic toxicity, carcinogenicity, mutagenicity, reproductive toxicity, repeated exposure of specific target organ toxicity, and presence of plastics, rubber or synthetic polymers.¹¹

In practice, of course, it is not normally practicable for shipowners and masters to carry out their own testing of cargoes, and they will frequently have to rely on information from shippers and charterers as to whether the goods loaded contain any substances that are HME.

In this connection the Guidelines provide that “*solid bulk cargoes should be classified and declared by the shipper as to whether or not they are harmful to the marine environment*”.¹² The legal status of this provision may be considered “soft”, inasmuch as there is no such requirement in the Annex itself, and the Guidelines are non-mandatory. Nevertheless, shippers or charterers who provide incorrect information to the ship are at risk of being held liable to indemnify the owners for any consequences that may be suffered as a result.

Shippers are already bound to submit cargo declarations required by the International Maritime Solid Bulk Cargoes Code (IMSBC), and to arrange any testing of physical properties that may be needed for this purpose. The practical effect of the Guidelines is therefore that shippers should at the same time carry out any additional testing needed for HME and include an appropriate declaration on this issue.

A technical complication lies in the fact that, as matters stand, it is not always possible to obtain adequate and reliable data to establish whether a solid bulk cargo meets some of the relevant GHS criteria. This is recognised by the IMO, which has issued the Circular mentioned earlier, providing for the provisional classification of cargoes between 1 January 2013 and 31 December 2014.¹³

The main issues affecting classification involve complex technical questions beyond the scope of this paper. A very helpful advisory note on these questions has been published by ITOFF.¹⁴

¹¹ Guidelines Paragraph 3.2.

¹² Guidelines Paragraph 3.4.

¹³ MEPC.1/Circ.791.

¹⁴ See www.itopf.com.