

KISH P & I LOSS PREVENTION CIRCULAR KPI-LP-76-2012 **(New Marpol Annex V & cargoes Harmful for Marine Environment)**

The amendments to Marpol Annex V have entered into force on 01.01.2013 & the cargo carriage contracts shall take effect from the changes.

There are a lot of enquiries in relation to bulk cargo that may now be considered harmful to the marine environment (HME) as a result of the new Marpol Annex V regulations.

So far there is no list available for substances that are harmful to the marine environment under Marpol Annex V.

Under Marpol Annex V shippers are responsible for classifying whether or not solid bulk cargoes are harmful to the marine environment and for declaring this to the vessel. This information should be included in the shipper's declaration in the usual way.

The discharge of waste regulations require that cargo residues containing cargo designated as HME by shippers cannot be discharged at sea. Under Regulation 8 of Annex V, governments must ensure that adequate port reception facilities for garbage from ships are provided and should facilitate and promote their use. Cargo residues that contain cargo that is HME may require special handling not normally provided by reception facilities. Ports and terminals receiving such cargoes should have adequate reception facilities for all relevant residues, including when contained in wash water.

Prior to loading, it is advisable to liaise with charterers, shippers and ports of discharge to determine whether the cargoes they are carrying have been classified as HME under MARPOL Annex V and if so, that suitable reception facilities are available.

In most occasions as experience shows, there is no guarantee that suitable reception facilities will be available. Intercargo, BIMCO and the International Chamber of Shipping submitted a paper to the IMO in July 2012 expressing concern at survey findings that suggested ports and terminals receiving cargoes declared as HME under MARPOL Annex V did not have adequate port reception facilities for cargo residues, including cargo hold washing water containing the remnants of any dry cargo material.

It is anticipated that the new rules will lead to operational problems and costs for ship operators carrying HME cargoes and the potential for commercial disputes may arise. A number of scenarios such as payment of disposal costs for cargo residues containing HME cargo, lack of suitable reception facilities at a port, and coast state authorities investigating cargo that may or may not be HME could all give rise to disputes over costs and/or delays.

In relation to the issue; two standard clauses have been produced & recommended by reputable claims handlers in order to assist the industry, one in relation to voyage charter parties and the other for use with time charter parties that may form a basis for negotiation between owners and charterers and bring added certainty to these situations.

One: SOLID BULK CARGO HME for Voyage Charter-parties:

***It is a condition of this Charter-party that the cargo to be loaded is not harmful to the marine environment as defined by MARPOL Annex V and breach of this condition shall entitle owners to terminate this Charter-party and / or claim damages.**

***At the load port, Charterers shall provide the ship's Master, or his representative, with a declaration signed by the Shipper that the cargo is not harmful to the marine environment and such declaration shall be included in the information required in section 4.2 of the IMSBC Code prior to the commencement of loading. Owners shall not be obliged to load any cargo where no such a declaration is given.**

***Any time lost due to Charterer's failure to comply with the above shall count as used lay-time or time on demurrage as appropriate and all expenses incurred waiting to load cargo (including any shifting expenses) because no such declaration has been given shall be for Charterer's account.**

***Charterers shall indemnify owners against all costs and expenses (including any shifting expenses) arising as a consequence of any authority investigating or determining that the cargo is harmful to marine environment and any time lost shall count as used lay-time or time on demurrage as appropriate.**

Two: SOLID BULK CARGO HME clause for Time Charter-parties:

1-Charterers recognise that solid bulk cargoes should be classed and declared by the Shipper as to whether or not they are harmful to the marine environment. Such declaration should be included with the information required in section 4.2 of the IMSBC Code.

*Prior to the commencement of loading, Charterers shall provide the ship's Master, or his representative, with such declaration signed by the Shipper.

*Owners shall not be obliged to load any cargo where no such declaration is given and any time lost / and all expenses incurred waiting to load cargo because no such declaration had been given shall be for Charterer's account.

2-In the event that the cargo is declared by the Shipper as one which is not harmful to the marine environment, but is considered to be harmful to the marine environment, then,

and without prejudice to all and any rights / remedies owners shall have against the Shipper, Charterers shall indemnify and hold owners harmless against all and any consequences arising.

3-In the event that cargo is carried that is considered to be harmful to the marine environment, then Charterers warrant that adequate reception facilities exist at the discharge port(s) for all relevant residues, including when contained in wash water.

4-Owners shall have no liability for the fact that cargo residues remain on board the vessel on completion of discharge of any cargo (whether the residues are contained in wash water or not) and, prior to re-delivery, Charterers shall arrange and pay for cleaning gangs and equipment and anything else required (including any shifting expenses) in order to clean the holds of cargo residues considered as being harmful to the marine environment.

5-On completion of cleaning and prior to re-delivery, Charterers shall arrange and pay for discharge and disposal

of such cargo residues (whether the residues are contained in wash water or not). All time and costs of the same (including any shifting expenses) shall be for Charterer's account.

6-In the event hold cleaning is not possible, or reception facilities do not exist at the discharge port for the cargo residues (whether the residues are contained in wash water or not), Charterers shall still remain responsible for all costs and time, including deviation, if any, associated with the removal and disposal of cargo residues considered harmful to the marine environment and on demand shall indemnify owners immediately on presentation of all relevant invoices and shall compensate owners for all time lost.

7-In the event that any cleaning agents or additives are provided by Charterers which are considered harmful to the marine environment, Charterers shall arrange and pay for discharge and disposal of wash waters and residues containing such agents or additives

Simplified overview of the discharge provisions of the revised MARPOL Annex V (resolution MEPC.201(62)) which will enter into force on 1 January 2013

(for more detailed guidance regarding the respective discharge requirements please refer to the text of MARPOL Annex V or to the 2012 Guidelines for the Implementation of MARPOL Annex V)

Type of garbage	Ships outside special areas	Ships within special areas	Offshore platforms (more than 12 nm from land) and all ships within 500 m of such platforms
Food waste comminuted or ground	Discharge permitted ≥ 3 nm from the nearest land, en route and as far as practicable	Discharge permitted ≥ 12 nm from the nearest land, en route and as far as practicable	Discharge permitted
Food waste not comminuted or ground	Discharge permitted ≥ 12 nm from the nearest land, en route and as far as practicable	Discharge prohibited	Discharge prohibited
Cargo residues ¹ not contained in wash water	Discharge permitted ≥ 12 nm from the nearest land, en route and as far as practicable	Discharge prohibited	Discharge prohibited
Cargo residues ¹ contained in wash water	Discharge permitted ≥ 12 nm from the nearest land, en route and as far as practicable	Discharge permitted ≥ 12 nm from the nearest land, en route, as far as practicable and subject to two additional conditions ²	Discharge prohibited
Cleaning agents and additives ¹ contained in cargo hold wash water	Discharge permitted	Discharge permitted ≥ 12 nm from the nearest land, en route, as far as practicable and subject to two additional conditions ²	Discharge prohibited
Cleaning agents and additives ¹ in deck and external surfaces wash water	Discharge permitted	Discharge permitted	Discharge prohibited
Carcasses of animals carried on board as cargo and which died during the voyage	Discharge permitted as far from the nearest land as possible and en route	Discharge prohibited	Discharge prohibited
All other garbage including plastics, synthetic ropes, fishing gear, plastic garbage bags, incinerator ashes, clinkers, cooking oil, floating dunnage, lining and packing materials, paper, rags, glass, metal, bottles, crockery and similar refuse	Discharge prohibited	Discharge prohibited	Discharge prohibited
Mixed garbage	When garbage is mixed with or contaminated by other substances prohibited from discharge or having different discharge requirements, the more stringent requirements shall apply		

¹ These substances must not be harmful to the marine environment.

² According to regulation 6.1.2 of MARPOL Annex V the discharge shall only be allowed if: (a) both the port of departure and the next port of destination are within the special area and the ship will not transit outside the special area between these ports (regulation 6.1.2.2); and (b) if no adequate reception facilities are available at those ports (regulation 6.1.2.3).