

CIRCULAR REF: 2013/004

**CIRCULATED TO ALL MEMBERS, BROKERS AND DIRECTORS
ATTENTION INSURANCE DEPARTMENT**

**1 FEBRUARY 2013
BA/CJG**

**NEW MARPOL ANNEX V - CARGOES HARMFUL TO THE MARINE ENVIRONMENT
RECOMMENDED CHARTERPARTY CLAUSES**

The Club has received a number 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.

Unfortunately no list of substances that are harmful to the marine environment under Marpol Annex V exists.

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.

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, Members are advised 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.

However, 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.

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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 order to assist Members, the Club has produced two standard clauses, 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.

Recommended SOLID BULK CARGO HME for Voyage Charterparties:

It is a condition of this Charterparty 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 Charterparty and / or claim damages.

At the loadport, 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 laytime 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 laytime or time on demurrage as appropriate.

Recommended SOLID BULK CARGO HME clause for Time Charterparties:

- a. 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.

- b. 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.
- c. 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.
- d. 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.

- e. 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.
- f. 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.
- g. 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.

For more information, please contact Barry Ayliffe or Colin Gillespie.

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