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The garbage revolution

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There was a revolution at IMO Headquarters in July 2011 – and few noticed. While all the attention was focused on greenhouse gas issues, such as the Energy Efficiency Design Index (EEDI) and the Ship Energy Efficiency Management Plan (SEEMP), changes to MARPOL Annex V raised little controversy. In IMO's official summary of the 62nd session of Marine Environment Protection Committee (MEPC), which occurred on 11-15 July 2011, adoption of the revised MARPOL Annex V (garbage) merited only three sentences – and the revolutionary provision was reported in the following phrase: "the inclusion of a new requirement specifying that discharge of all garbage into the sea is prohibited, except as expressly provided otherwise". The import of this phrase was not discussed in the IMO report, or in any report that I have seen issued by IMO member states or maritime organizations that closely follow IMO developments.

This revision, which comes into effect on 1 January 2013, represents the official adoption of the precautionary principle into the International Convention for the Prevention of Pollution Sea by Ships (MARPOL Convention). The precautionary principle (also referred to as the precautionary approach) was previously incorporated into the London Dumping Convention by means of the 1996 Protocol. As stated in that Protocol, the precautionary approach is intended to take preventative measures when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relationship between the inputs and their effects.

In other words, the precautionary principle reverses the burden of proof so that the proponent of discharging a certain type of material must now prove that such discharge will not cause harm to the marine environment. Previously, garbage of almost any type could generally be discharged into the ocean unless there was a provision banning or limiting such discharge.

A number of new terms are being added to the definitions regulation of revised Annex V. Among the new terms are: cargo residues, domestic wastes, en route, food wastes, incinerator wastes, and operational wastes. The definitions of these terms are not surprising, but, when conjoined with the precautionary principle, it significantly impacts what can be disposed of legally at sea and under what conditions. Failure to include any particular material within the revised definitions results in a prohibition against disposal at sea of that material as garbage.

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Inclusion of a particular material as a particular type of garbage may increase the restrictions on disposal even when allowed.

A prime example of how routines are being turned on their heads is dunnage. Under the current version of MARPOL Annex V, dunnage is treated as general garbage that will float. Outside of special areas, it is to be disposed of as far as practicable from the nearest land, but, in any case, at least 25 nautical miles from land. Under the revised version of Annex V, disposal at sea of dunnage will be prohibited. This will leave the master with two options: (1) incinerate it; or (2) transfer it ashore when in port for land-based processing. Many break-bulk ships, among others, utilize large quantities of dunnage in the carriage of their commercial cargoes. Currently, most dunnage is disposed of at sea when no longer serviceable. Few ships will have the capability to incinerate significant amounts of dunnage. Disposal ashore can be expensive. Carriers and shippers should ensure that the added expense of disposal ashore is adequately addressed in charter parties, contracts of affreightment, and bills of lading so as to eliminate future surprises and disagreements.

At the same time, ports and facilities must start planning now for the increased demand placed on shoreside reception facilities. The revision to Annex V clearly will result in a quantum increase in the volume of garbage being offloaded by ships during their port calls. Reception facilities will be expected to handle the greater volume, while not delaying ships and cargo-handling facilities with their already tight schedules.

Cargo residues that cannot be recovered using commonly available methods of unloading may be discharged, outside of special areas, more than 12 nautical miles from the nearest land, but only if those residues do not contain any substances classified as harmful to the marine environment.

In a concession to livestock exporting nations, the revised Annex V provides that, outside of special areas, animal carcasses may be discharged as far from the nearest land as possible.

Cleaning agents or additives contained in cargo hold, deck, and external surface wash water may be discharged into the sea, but only if those substances are not harmful to the marine environment, and then only when the vessel is not in a special area. This change will make many standard cleaning agents and additives obsolete and will open up new markets for companies that can supply conforming cleaning agents and additives.

The requirement for a garbage management plan is also being changed. Previously, such plans were only required for ships of 400 gross tonnage and above. Under the revised Annex V, the requirement for a garbage management plan is being extended to ships of 100 gross tonnage and above and to fixed and floating platforms. It should be noted that the expansion of the categories of garbage in the definitions regulation will result in an expansion of the potential provisions in the garbage management plan. The garbage record book is being changed to more closely resemble the oil record book. In addition to the inclusion of the new categories of

garbage added by adoption of new terms in definitions regulation, entries must now also reflect discharges to shoreside reception facilities.

As shipboard garbage becomes increasingly regulated, stakeholders must exercise caution. Various nations, but particularly the United States, have adopted a strict enforcement policy regarding operational discharges of oil into the water. As ballast water management has progressed, a similar approach is taking place in that arena. Masters and chief engineers have gone to jail and ship owners and operators have incurred significant fines and penalties for violation of those requirements. The same hardline approach will undoubtedly be taken with regard to garbage management after requirements imposed by the garbage revolution enter into force. Owners, operators, masters, and officers on ocean-going ships need to prepare now.