

Response received from the secretariat of the International Maritime Organization

[The Basel Convention Secretariat communication to the International Maritime Organization] refers to decision VIII/9 which was adopted by the eighth meeting of the Conference of the Parties to the Basel Convention, and which invited the Organization to provide information and views on:

- a) the competencies of the MARPOL Convention in respect of hazardous wastes and other wastes;
- b) any gaps between the Basel Convention and the MARPOL Convention in respect of hazardous wastes and other wastes; and
- c) any option for addressing those gaps.

Firstly, it is relevant to note that the MARPOL Convention was established, *inter alia*, in order to prevent the pollution of the marine environment by discharges into the sea of harmful substances, or effluents containing such substances from ships. The term “harmful substance” is defined in Article 2 of the Convention as meaning: “any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by the present Convention”. The six technical Annexes of the MARPOL Convention contain detailed regulations with respect to the handling on board ships and in respect to any discharge into the sea or release into the atmosphere of six main groups of harmful substances, i.e. Mineral oils (Annex I), Noxious Liquid Substances (NLS) carried in bulk (Annex II), Harmful substances carried in packaged form (Annex III), Sewage (Annex IV), Garbage (Annex V) and Air Emissions (Annex VI). Within the context of bulk liquids, MARPOL Annex I and II apply.

The MARPOL Convention requires that operational wastes, that cannot be discharged into the sea in accordance with relevant requirements, shall be delivered to port reception facilities and also requires port States to provide adequate port reception facilities. The relevant regulations are: Annex I regulation 38; Annex II regulation 18; Annex IV regulation 12; Annex V regulation 7; and Annex VI regulation 17. Our further comments are restricted to Annexes I and II.

The following six categories of wastes generated in ships' engine rooms and cargo spaces are envisaged as needing port reception facilities under MARPOL Annex I:

1. oily bilge water;
2. oily residues (sludge);
3. oily tank washings (slops);
4. dirty ballast water;
5. scale and sludge from tanker cleaning; and
6. oily mixtures containing chemicals.

The above wastes often contain water which may be discharged at sea following separation and subject to controls on operational discharges specified by MARPOL Annex I.

Categories 1 and 2 arise from engine room operations on all ship types and not only on tankers.

Categories 3, 4 and 5 arise from the cargo spaces of oil and product tankers and all involve cargo residues.

Of these three categories the most common one by far is that of oily tank washings (and recoveries of cargo residues) (slops), which are pumped into slop tanks from where they are discharged to shore reception facilities.

The category "dirty ballast water" arises from the now almost extinct non-segregated ballast tankers and also on very rare occasions when tankers need to take additional ballast water to increase their draft in particularly severe weather and also when particular design tankers conduct operations under some established exceptional cases. For tankers constructed with slop tanks the dirty ballast water is pumped to the slop tanks prior to its discharge to shore reception facilities.

The category "scale and sludge from tanker cleaning" arises from tanks cleaning operations which are conducted prior to conducting surveys or repairs.

The sixth category, "oily mixtures containing chemicals", arises either from cleaning of engine room machinery and spaces, or from washing tanks for oil or for products with water mixed with chemical substances. The mixtures arising from operations in the engine room are collected in appropriate tanks (e.g. bilge water collection tanks for oily bilge water, or sludge tanks for oily residues) while mixtures arising from cargo tank washings are collected in slop tanks prior to being discharged ashore.

Similarly, under MARPOL Annex II, the following three categories of wastes are envisaged as needing port reception facilities: washings of tanks containing Noxious Liquid Substances (NLS); cargo residues of NLS; and dirty ballast. In this context it should be noted that NLS is a term that encompasses any bulk liquid chemical that does not meet the definition for oil as defined in MARPOL Annex I and covers, *inter alia*, petrochemicals, solvents, waxes, lube oil additives, vegetable oils and animal fats.

Of the three categories, washings of tanks containing NLS occur very frequently, whereas cargo residues and dirty ballast occur on rare occasions only. Cargo residues obviously will consist of a single NLS, but it will be on rare occasions that such residues will have to be discharged to a shore reception facility instead of being used as a product. Dirty ballast on the other hand would contain very low concentrations of NLS but as most chemical ships have segregated ballast tanks or double hull spaces this means that ballast water contaminated with NLS in ports is very rare. Therefore the main category of MARPOL Annex II wastes in need of shore reception facilities is washings of tanks containing NLS. These washings contain mostly water with very low concentrations of product.

NLS cargoes are categorized by the International Bulk Chemical Code in terms of the degree of hazard each individual cargo poses to either marine resources or to human health. According to this categorization, Annex II prohibits, limits, or permits the discharge into the marine environment of NLS substances depending on the degree of hazard to either marine resources, or human health, or amenities. Operational requirements do apply when MARPOL Annex II limits the discharge into the marine environment.

It is relevant to note that MARPOL Annex II requires that washings of tanks containing NLS must be discharged to a reception facility at the port where the relevant NLS cargo was unloaded (unless it is confirmed in writing that alternative arrangements have been made with a suitable reception facility at another port or terminal). This is an important difference to the operational requirements of Annex I which does not specify the location or time to discharge wastes to a port reception facility.

In the context of the **Probo Koala** incident it is noted that gasoline is a MARPOL Annex I cargo while a cargo of caustic soda solution would fall under MARPOL Annex II.