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**BR 48/2005**

**MERCHANT SHIPPING ACT 2002**

**2002 : 35**

**MERCHANT SHIPPING (PREVENTION OF POLLUTION BY  
GARBAGE) REGULATIONS 2005**

ARRANGEMENT OF REGULATIONS

1	Short title	10	Garbage management plan
2	Interpretation	11	Garbage record book
3	Application	12	Inspection of ships and installations
4	Disposal of garbage outside Special Areas (plastics)	13	Inspection of garbage record books
5	Disposal of garbage outside Special Areas (other than plastics)	14	Offences
6	Disposal of garbage within Special Areas	15	Service of documents
7	Disposal of garbage into the sea within 500 metres of fixed or floating installations	16	Power to detain
8	Restrictions on Bermuda ships entering the Antarctic area	17	Harbour master or inspector's powers
9	Placards	18	Restriction on jurisdiction over offences outside Bermuda limits
		19	Suspension of proceedings at flag State request
		20	Defences

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The Minister of Tourism and Transport, in exercise of the powers conferred by section 122 of the Merchant Shipping Act 2002, makes the following regulations:

**Short title**

1 These Regulations may be cited as the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 2005.

**Interpretation**

2 (1) In these Regulations —

"Act" means the Merchant Shipping Act 2002;

"Bermuda ship" means a ship which —

- (a) is registered in Bermuda; or
- (b) is not registered under the law of any country but is wholly owned by persons each of whom is either a Bermudian or a body corporate which is established under the laws of Bermuda and has its principal place of business in Bermuda;

"certified" means, in relation to a ship, certified in accordance with the Convention;

"controlled waters" means the waters specified as areas within which the jurisdiction and rights of Bermuda are exercisable under the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2004 and the Bermuda (Territorial Sea) Order in Council 1988;

"Convention" means the International Convention for the Prevention of Pollution from Ships 1973, including its protocols and Annex V (but no other Annex) and appendices thereto as amended by the Protocol of 1978 to that Convention and includes all the amendments adopted by the Organisation's Marine Environment Protection Committee before September 1997 and any subsequent amendment which is considered by the Minister to be relevant from time to time;

"from the nearest land" means, in relation to all land other than the part of Australia specified, from the nearest baseline from which the territorial sea of any territory is established in accordance with international law; and in relation to the part of the north-eastern coast of Australia which lies between the points 11°00'S, 142°08'E and 24°42'S, 153°15'E, means from

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the nearest of the straight lines joining consecutively the following points —

11°00'S, 142°08'E; 10°35'S, 141°55'E; 10°00'S, 142°00'E; 9°10'S, 143°52'E; 9°00'S, 144°30'E; 13°00'S, 144°00'E; 15°00'S, 146°00'E; 18°00'S, 147°00'E; 21°00'S, 153°00'E and 24°42'S, 153°15'E;

"garbage" means all kinds of victual, domestic and operational wastes excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically except sewage originating from ships;

"harmful substances in packaged form" means those substances which are identified as marine pollutants in the IMDG Code and which are in the form of containment specified in the schedules of that Code;

"IMDG Code" means the 1994 edition of the International Maritime Dangerous Goods Code published by the International Maritime Organisation, as amended;

"inspector" means a person appointed as an inspector by the Minister for the purposes of these Regulations under section 217 of the Act or regulation 12(4);

"installation" means any drilling or production platform or any other platform used in connection with the exploration, exploitation or associated offshore processing of seabed mineral resources;

"mile" means an international nautical mile, or a distance of 1,852 metres;

"non-polluting substance" means a substance listed in Chapter 17 or 18 of the IBC Code having against it in column "c" the entry III;

"noxious liquid substance" means a substance listed as such in either MEPC Circular 2/CIRC.1 or a Category A, B, C or D substance;

"oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals which are subject to the provisions of Annex II of the Convention);

"oily mixture" means a mixture with any oil content;

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"operational wastes" means all maintenance wastes, cargo associated wastes and cargo residues except residues or wastes from oil or oily mixtures, noxious liquid substances, non-polluting liquid substances or harmful substances in packaged form;

"Organisation" means the International Maritime Organisation;

"overall length" means the extreme length of the hull measured between the foremost part of the bow and the aftmost part of the stern;

"plastics" includes, but is not limited to, synthetic ropes, synthetic fishing nets, plastic bags and foam plastics (polystyrene and styrofoam);

"required standard" means, in relation to comminuted or ground garbage, comminuted or ground sufficiently fine to be capable of passing through a screen with openings no greater than 25 millimetres;

"sea" includes any estuary or arm of the sea;

"ship" means a vessel of any type whatsoever operating in the marine environment including submersible craft, floating craft and hovercraft.

(2) For the purposes of these Regulations the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red sea area, the "Gulfs area", the North Sea area, the Antarctic area and the Wider Caribbean Region, including the Gulf of Mexico and the Caribbean Sea, which are defined as follows —

- (a) the Mediterranean Sea area means the Mediterranean Sea proper including the gulfs and seas therein with the boundary between the Mediterranean and the Black Sea constituted by the 41° N parallel and bounded to the west by the Straits of Gibraltar at the meridian 5° 36' W;
- (b) the Baltic Sea area means the Baltic Sea proper with the Gulf of Bothnia and the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57° 44.8' N;
- (c) the Black Sea area means the Black Sea proper with the boundary between the Mediterranean and the Black Sea constituted by the parallel 41° N;
- (d) the Red Sea area means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by

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- the rhumb line between Ras si Ane (12°28.5' N, 43°19.6' E) and Husn Murad (12°40.4' N, 43°30.2' E);
- (e) the Gulfs area means the sea area located north-west of the rhumb line between Ras al Hadd (22°30' N, 59°48' E) and Ras al Fasteh (25°04' N, 61°25' E);
- (f) the North Sea area means the North Sea proper including seas therein with the boundary between —
- (i) the North Sea southwards of latitude 62° N and eastwards of longitude 4° W;
- (ii) the Skagerrak, the southern limit of which is determined east of the Skaw by latitude 57° 44.8' N; and
- (iii) the English Channel and its approaches eastwards of longitude 5° W and northwards of latitude 48° 30' N;
- (g) the Antarctic area means the sea area south of latitude 60° S;
- (h) the Wider Caribbean Region, as defined in article 2, paragraph 1 of the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena de Indias, 1983), means the Gulf of Mexico and Caribbean Sea proper including the bays and seas therein and that portion of the Atlantic ocean within the boundary constituted by the 30° N parallel from Florida eastward to 77° 30' W meridian, thence a rhumb line to the intersection of 20° N parallel and 59° W meridian, thence a rhumb line to the intersection of 7° 20' N parallel and 50° W meridian, thence a rhumb line drawn south-westerly to the eastern boundary of French Guiana.

(3) In the application of these Regulations to a hovercraft, references to the master of a ship shall be taken to include references to the captain of the hovercraft.

**Application**

3 These Regulations apply to —

- (a) Bermuda ships wherever they may be; and
- (b) other ships while they are in Bermuda waters, controlled waters or, in relation to regulations 4 to 7, any other waters which is sea.

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**Disposal of garbage outside Special Areas (plastics)**

4 The disposal of any plastics from a ship to the sea outside any Special Area is prohibited.

**Disposal of garbage outside Special Areas (other than plastics)**

5 Subject to regulation 7, the disposal of garbage other than plastics from a ship into the sea outside any Special Area is prohibited except where it is made as far from the nearest land as is practicable, and —

- (a) in the case of dunnage, lining and packing materials which will float, not less than 25 miles from the nearest land; or
- (b) in the case of food wastes and all other garbage including paper products, rags, glass, metal, bottles, crockery and similar refuse, not less than 12 miles or, if such wastes and other garbage have been ground or comminuted, not less than 3 miles from the nearest land: such ground or comminuted garbage shall be capable of passing through a screen with openings no greater than 25mm.

**Disposal of garbage within Special Areas**

6 (1) Subject to paragraph (2), the disposal of any garbage from a ship into the sea within any Special Area is prohibited.

(2) The disposal of food wastes from a ship into the sea within any Special Area except the Antarctic area is permitted if the disposal is made as far as practicable, and in any case not less than 12 miles, from the nearest land.

**Disposal of garbage into the sea within 500 metres of fixed or floating installations**

7 The disposal of any garbage into the sea from a fixed or floating installation, or from any other ship alongside or within 500 metres of such installation, is prohibited except that food wastes which have been comminuted or ground to the required standard may be disposed of into the sea from such installations or ships if the installation in question is located more than 12 miles from the nearest land.

**Restriction on Bermuda ships entering the Antarctic area**

8 A Bermuda ship shall not enter the Antarctic area unless —

- (a) it has sufficient capacity for the retention on board of all garbage while operating in the area; and

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- (b) it has concluded arrangements for the discharge of retained garbage at a reception facility after it has left the area.

**Placards**

9 (1) Every ship of 12 metres or more in overall length shall display placards which notify the crew and passengers, if any, of the disposal requirements of regulations 4 to 7.

(2) In the case of a Bermuda ship, the information on the placards shall be written in English and, if different, the working language of the crew.

(3) In the case of a ship which is not a Bermuda ship, the information on the placards shall be written in the working language of the ship and, where the ship is engaged on voyages to ports or offshore terminals under the jurisdiction of a party to the Convention other than its flag State, in English, French or Spanish.

(4) Every fixed or floating installation shall display placards which notify all persons on board of the disposal requirements of regulation 7.

(5) The information on such placards shall be written in English and, if different, the working language of the crew.

**Garbage management plan**

10 (1) This regulation applies to —

- (a) every ship of 400 tons gross tonnage or above;
- (b) every ship which is certified to carry 15 persons or more; and
- (c) every fixed or floating installation.

(2) Any ship or installation to which this regulation applies shall carry a garbage management plan which shall —

- (a) provide written procedures for collecting, storing, processing and disposing of garbage, including the use of equipment on board;
- (b) designate the person in charge of carrying out the plan;
- (c) be in accordance with the guidelines developed by the Organisation; and
- (d) be in the working language of the crew.

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(3) The crew of a ship or installation which is required to carry a garbage management plan under paragraph (2) shall follow that plan.

**Garbage record book**

11 (1) This regulation applies to —

- (a) every ship of 400 tons gross tonnage or above;
- (b) every ship certified to carry 15 persons or more which is engaged on voyages to ports or offshore terminals under the jurisdiction of a party to the Convention other than its flag State; and
- (c) every fixed and floating installation.

(2) Any ship or installation to which this regulation applies shall carry a garbage record book, whether as part of the ship's official logbook or otherwise, in the form specified in the Convention.

(3) The officer in charge of a discharge operation, or incineration, shall make and sign an entry in the garbage record book in respect of the discharge or completed incineration on the date of the discharge or incineration in question.

(4) Such entries in the garbage record book shall include —

- (a) the date and time the discharge or incineration occurred;
- (b) the position of the ship at the time of the discharge or incineration; and
- (c) a description of, and the estimated amount of the garbage discharged or incinerated.

(5) If a discharge, escape or accidental loss within the meaning of regulation 20(2)(a) occurs an entry shall be made in the garbage record book of the circumstances of and the reasons for the discharge, escape or accidental loss.

(6) Any entries made in the garbage record book shall —

- (a) in the case of a Bermuda ship, be in English and, if different, the working language of the crew;
- (b) in the case of a ship which is not a Bermuda ship, be in the working language of the ship and in English, French or Spanish: the entries in the working language of the ship shall prevail in a discrepancy between the different language entries; and



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(c) in the case of an installation, be in English and, if different, the working language of the crew.

(7) Each completed page of the garbage record book shall be signed by the master of the ship or the installation manager (as appropriate).

(8) The garbage record book shall —

(a) be kept on board the ship or installation and in such a place as to be available for inspection in a reasonable time; and

(b) be preserved by the ship's or installation's owner for a period of two years after the final entry is made in it.

(9) The Minister may waive the requirement for a garbage record book in respect of —

(a) any ship certified to carry 15 persons or more engaged on a voyage of one hour or less in duration; or

(b) any fixed or floating installation.

**Inspection of ships and installations**

12 (1) An inspector may inspect any ship to which these Regulations apply in any port in Bermuda.

(2) An inspector may investigate any operation regulated by these Regulations if he has clear grounds for believing that the master or crew is not familiar with the ship's on-board procedures for preventing pollution by garbage.

(3) If the inspector is satisfied, following any such inspection of a ship, that either the master or crew is not familiar with the ship's on-board procedures for preventing pollution by garbage he shall take such steps as he considers necessary, including detaining the ship, to ensure that the ship does not sail until the situation has been brought into accordance with the requirements of these Regulations.

(4) The Minister may appoint any person, either generally or in relation to a particular case, as an inspector under these Regulations in relation to fixed and floating platforms.

(5) Any person appointed under paragraph (4) may at all reasonable hours go on board a platform and inspect it for the purpose of seeing that these Regulations are complied with.

**Inspection of garbage record books**

13 (1) An inspector may require —

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(a) in respect of a ship to which regulation 11 applies, the owner, master or any member of the crew of the ship, while the ship is in any Bermuda port or offshore terminal; and

(b) in respect of an installation to which regulation 11 applies, the installation manager or any member of the crew of the installation,

to produce the garbage record book for inspection.

(2) An inspector may make a copy of any entry in the garbage record book and may require the master of the ship or installation manager to certify that the copy is a true copy of such an entry.

(3) Any copy so made which has been certified by the master of the ship or installation manager as a true copy shall be admissible in any judicial proceedings as evidence of the facts stated therein.

(4) The inspection of a garbage record book and the taking of a certified copy by the inspector under this regulation shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

#### **Offences**

14 (1) Any breach of the requirements of these Regulations (other than of the requirements of regulations 4, 5, 6 or 7) —

(a) in respect of a ship, shall be an offence on the part of the owner, manager, demise charterer and master of the ship; and

(b) in respect of an installation, shall be an offence on the part of the owner and installation manager,

punishable on summary conviction by a fine not exceeding \$10,000.00 or on conviction on indictment by a fine.

(2) Any breach of the requirements of regulation 4, 5, 6 or 7 —

(a) in respect of a ship, shall be an offence on the part of the owner, manager, demise charterer and master of the ship; and

(b) in respect of an installation, shall be an offence on the part of the owner and installation manager,

and section 130(3) of the Act shall apply as it applies to an offence under that section, so that each of them shall be liable on summary conviction to a fine not exceeding \$500,000.00 or on conviction on indictment to a fine not exceeding \$1,000,000.00.

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**Service of documents**

15 Section 142(3) of the Act (which provides for service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under section 130 shall apply to proceedings for an offence under regulations 4, 5, 6 or 7 as it applies to proceedings for an offence under section 130 of the Act, as if —

- (a) in respect of an offence in respect of a ship, for the word "owner" there were substituted the words "owner, manager or demise charterer"; and
- (b) in respect of an offence in respect of an installation —
  - (i) for the word "ship" on the first occasion it occurs there were substituted the word "installation"; and
  - (ii) for the words "master of the ship" there were substituted the words "installation manager".

**Power to detain**

16 Where the steps taken by an inspector under regulation 12(3) involve detention of the ship, section 242 of the Act (which relates to the detention of a ship) shall have effect in relation to that ship, as if for the words "this Act" wherever they appear there were substituted the words "the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 2005."

**Harbour master or inspector's powers**

17 Where a harbour master or an inspector has reason to believe that the owner, manager, demise charterer or master of a ship has committed an offence under regulations 4, 5, 6 or 7 by the disposal from the ship of garbage, the harbour master, if the disposal was into the waters of the harbour, or an inspector, if the disposal was in any other waters, may detain the ship.

**Restriction on jurisdiction over offences outside Bermuda limits**

18 (1) Proceedings in respect of a ship other than a Bermuda ship for an offence of contravening any provision of regulations 4 to 6 which relates to a breach of the said provisions committed in the internal waters, Territorial Sea or Exclusive Economic Zone of a State outside Bermuda (in this regulation "the other State") shall not be instituted in Bermuda unless —

- (a) the other State, the flag State or a State damaged or threatened by the breach of the Regulations requests that proceedings be taken; or

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(b) the breach of the Regulations has caused or is likely to cause pollution in Bermuda waters or controlled waters.

(2) Where such proceedings have been instituted but not concluded they shall be suspended upon request by the other State and the Minister shall transmit all the evidence and court records and documents relating to the case, together with any sum paid or security given, to the other State.

**Suspension of proceedings at flag State request**

19 (1) This regulation applies to proceedings instituted but not concluded in Bermuda in respect of a breach of the Regulations committed outside Bermuda waters by a ship other than a Bermuda ship.

(2) Any such proceedings shall be suspended if the court is satisfied that the flag State has instituted proceedings corresponding to the proceedings in Bermuda in respect of the breach of the Regulations within six months of the institution of the proceedings in Bermuda.

(3) Paragraph (2) does not apply —

(a) where the breach of the Regulations resulted in major damage to Bermuda; or

(b) the Minister certifies that the flag State has repeatedly disregarded its obligations to enforce effectively the requirements of the Convention in respect of its ships.

(4) Where proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings shall be terminated.

**Defences**

20 (1) In any proceedings for an offence under these Regulations it shall be a defence for the person charged to prove —

(a) that he took all reasonable steps and exercised all due diligence to ensure that the Regulations were complied with;

(b) that the disposal was necessary for the purpose of securing the safety of the ship or installation or those on board, or of saving life at sea; or

(c) that the escape of garbage resulted from damage to the ship or installation or the ship's or installation's equipment and that all reasonable precautions were taken before and after the damage occurred to prevent or minimise the escape.

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(2) Without prejudice to paragraph (1), it shall be a defence for a person charged to prove —

(a) in any proceedings in respect of a ship for contravening regulation 4 or 6 by the disposal into the sea of synthetic fishing nets or synthetic material incidental to the repair of such nets, that the disposal was an accidental loss and that all reasonable precautions were taken to prevent the loss; or

(b) in any proceedings in respect of a ship for contravening any provision of regulations 4 to 6, that —

(i) the ship is not a Bermuda ship;

(ii) the offence took place outside Bermuda waters and controlled waters; and

(iii) the ship was in a port in Bermuda at the time of institution of proceedings by reason only of stress of weather or any other reason beyond the control of the master, owner, charterer or manager (if any).

Made this day the 3<sup>rd</sup> of October, 2005

Ewart F. Brown

Minister of Tourism and Transport