

GN. R. 134
GG18631
23 January 1998

MARINE POLLUTION (PREVENTION OF POLLUTION FROM SHIPS) ACT, 1986 (ACT No. 2 OF 1986)

MARINE POLLUTION (BCH CODE) REGULATIONS 1998

The Minister of Transport has, under section 3 of the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986), made the regulations in the Schedule.

SCHEDULE

Interpretation

1.(1) In these regulations, any word or expression given a meaning in the Act has that meaning and, unless the context indicates otherwise-

Annex II means Annex II to MARPOL 1973/78 as set out in the Schedule to the Act;

Authority means the Director-General: Transport or as respects his or her functions being discharged by another authority or person, that authority or person;

BCH Code means the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (1993 Edition) published by the International Maritime Organisation, as amended from time to time;

Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate and Cargo Ship Safety Radio Certificate mean respectively the certificates so entitled issued in conformity with the International Convention for the Safety of Life at Sea, 1974, as amended, and, in the case of a South African ship, under or pursuant to the Merchant Shipping Act, 1951 (Act No. 57 of 1951);

Category A, Category B and Category C, in relation to a substance, mean respectively the category to which a substance listed in column "a" of the table in Chapter VI of the BCH Code is assigned by having against it in column "c" of that table an entry "A", "B" or "C" respectively;

Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, in relation to-

- (a) a South African ship, means a certificate issued pursuant to regulation 5; and
- (b) any other ship, means a certificate issued in conformity with Chapter 1 of the BCH Code by or on behalf of the government of the State in which the ship is registered;

chemical tanker means a self-propelled cargo ship of 25 gross tons or more constructed or adapted and used for the carriage in bulk of any liquid substance listed in Chapter VI of the BCH Code, but excludes offshore support vessels or dry cargo ships with deep tanks;

clearance includes any clearance or transire referred to in the Customs and Excise Act, 1964 (Act No. 91 of 1964);

constructed, in relation to a ship, means having its keel laid or being at a similar stage of construction; and "similar stage of construction" means the stage at which-

- (a) construction identifiable with a specific ship begins; and
- (b) assembly of that ship has commenced, comprising at least 50 tons or one percent of the estimated mass of all structural material, whichever is less;

in bulk means directly and without intermediate form of containment in a tank forming a structural part of or permanently attached to a ship;

internationally-trading means engaged otherwise than as a South African-trading ship;

MARPOL 1973/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as amended;

principal officer has the meaning given in section 2(1) of the Merchant Shipping Act, 1951;

South African-trading means engaged solely on voyages between ports or terminals in the Republic;

surveyor has the meaning given in section 2(1) of the Merchant Shipping Act, 1951;

the Act means the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986).

- (2) In interpreting the BCH Code-
 - (a) the requirements having been made mandatory under regulation 3 the language thereof is to be construed accordingly;
 - (b) the definitions set out in Chapter 1, paragraph 1.4 thereof, apply;
 - (c) the footnotes to Part A of Chapter II, to paragraphs 2.14.1, 2.15.6(b), 3.137 3.14, 3.15.2, 3.16.4 and Chapter VI must be read as an integral part of the BCH Code;
 - (d) references to the Administration, in relation to South African ships, and to the Port Administration, in relation to all ships in the Republic, are references to the Authority;
 - (e) for the second sentence of the footnote to paragraph 3.13 there is substituted:

"All chemical tankers constructed after 20 May 1980 but before 1 September 1984 are to comply with section 3.13 of the 1980 edition of this Code."

Application

- 2.(1) Subject to subregulations (2) and (3), these regulations apply to chemical tankers constructed before 1 July 1986 that carry Category A, B or C substances.
- (2) These regulations apply to all ships specified in subregulation (1) that are South African ships, wherever they may be, and to other such ships while they are in the Republic or its territorial waters; but in the case of a ship registered in a State not party to MARPOL

1973/78 they do not apply by reason of the ship's being in the Republic or its territorial waters if it would not have been there but for stress of weather or any circumstances that could not have been prevented by the owner, the master or the charterer (if any).

- (3) These regulations do not apply to any ship to which the Merchant Shipping/Marine Pollution (IBC Code) Regulations 1998 apply by virtue of regulation 2(1)(b) or (c) thereof (ships converted or undergoing major modifications after 1 July 1986).

Compliance with BCH Code

3. Every chemical tanker to which these regulations apply must comply with the requirements of the BCH Code as follows:

- (a)(i) Every internationally-trading chemical tanker for which the building contract was placed on or after 2 November 1973; and
(ii) every South African-trading chemical tanker constructed on or after 1 July 1983,

must be constructed, equipped and operated in accordance with the requirements relevant to it of Chapters II to VI of the BCH Code.

- (b)(i) Every internationally-trading chemical tanker for which the building contract was placed before 2 November 1973; and
(ii) every South African-trading chemical tanker of 1 600 gross tons or more constructed before 1 July 1983,

must be constructed, equipped and operated in accordance with the requirements relevant to it of the BCH Code, except to the extent provided in subparagraphs 1.7.3 (a) to (f) thereof.

- (c) Every South African-trading chemical tanker of less than 1 600 gross tons constructed before 1 July 1983 must be operated in accordance with the requirements of Chapters V and VA of the BCH Code.

Survey requirements

- 4.(1) The structure, equipment, systems, fittings, arrangements and material (other than items in respect of which a Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate or Cargo Ship Safety Radio Certificate is issued) of a chemical tanker must be subjected to the following surveys:

- (a) An initial survey before the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk is issued for the first time, which must include a complete examination of its structure, equipment, systems, fittings, arrangements and material in so far as the ship is covered by the BCH Code; an initial survey must be such as to ensure that the structure, equipment, systems, fittings, arrangements and material comply with the requirements of the BCH Code;
(b) a periodical survey at intervals not exceeding five years, which must be such as to ensure that the structure, equipment, systems, fittings, arrangements and material comply with the requirements of the BCH Code;
(c) a minimum of one intermediate survey during the period of validity of the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk; in cases where only one such intermediate survey is carried out in any one certificate validity period, K must be carried

out not before six months prior to, nor later than six months after, the half-way date of the certificate's period of validity; intermediate surveys must be such as to ensure that the equipment and associated pump and piping systems comply with the requirements of the BCH Code and are in good working order; a record of such surveys in the form appropriate to an intermediate survey included in the form entitled Endorsement for Annual and Intermediate Surveys set out in the appendix to the BCH Code must be endorsed by the surveyor on the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;

- (d) an annual survey within three months before or after the anniversary date of the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, which must include a general examination to ensure that the structure, equipment, systems, fittings, arrangements and material remain in all respects satisfactory for the service for which the ship is intended; a record of such survey in the form appropriate to an annual survey included in the form entitled Endorsement for Annual and Intermediate Surveys set out in the appendix to the BCH Code must be endorsed by the surveyor on the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;
 - (e) an additional survey, either general or partial according to the circumstances, must be made when it has been determined under regulation 6(3) to be necessary, or whenever any important repairs or renewals are made; such a survey must ensure that the necessary repairs or renewals have been effectively made, that the materials and workmanship of such repairs or renewals are satisfactory, and that the ship is fit to proceed to sea without danger to the ship or persons on board; a record of such survey must be endorsed by the surveyor on the Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk certifying that on completion of the survey the ship complied with the requirements of the BCH Code.
- (2) Every such survey of a South African ship must be carried out by a surveyor appointed by the Authority; and application for such a survey must be made by or on behalf of the owner to the Authority.

Issue of Certificate of Fitness

- 5.(1) Upon satisfactory completion of an initial or periodical survey under regulation 4 of these regulations and under regulation 10 of Annex II to MARPOL 1973/78 the Authority must issue to a ship that complies with the requirements of the BCH Code and of Annex II to MARPOL 1973/78 a certificate called a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk in the form so entitled set out in the appendix to the BCH Code. Such certificate must be issued for a period not exceeding five years beginning on the date of completion of the survey in question.
- (2) A certificate ceases to be valid-
 - (a) if any survey required by regulation 4(1)(c) or (d) is not completed within the period specified for that survey;
 - (b) if any survey required by regulation 4(1)(e) is not completed within such reasonable time as the surveyor may specify; or
 - (c) upon transfer of the ship to registry in another State.
 - (3) In either of the cases specified in subregulation (2)(a) or (b) the owner must surrender the certificate issued in relation to the ship to the Authority on demand.

- (4) In the case of a ship that has transferred from registry in another State to registry in the Republic the Authority may, subject to such requirements as to survey or otherwise as it thinks fit, if it is satisfied, notwithstanding that the surveys were not carried out by a surveyor appointed by the Authority as required by regulation 4(2), that-
- (a) the ship has already been subjected to a satisfactory initial or periodical survey and to any intermediate, annual or additional surveys required;
 - (b) the ship was issued by or on behalf of the government of that other State with a certificate of fitness that would, but for the change of registry, have remained valid;
 - (c) the condition of the ship and its equipment has been maintained in conformity with the requirements of the BCH Code; and
 - (d) since completion of the surveys referred to in paragraph (a) no change has been made in the structure, equipment, systems, fittings, arrangements and material covered by those surveys without the approval of the government of that other State or of the Authority, except by direct replacement;
- issue to that ship a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk for a period to be determined by the Authority, but expiring not later than the expiry date of the certificate referred to in paragraph (b).
- (5) The Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk must be kept available on board the ship for inspection at all reasonable times.

Maintenance of condition after survey

- 6.(1) The condition of the ship and its equipment must be maintained so as to conform to the requirements of the BCH Code.
- (2) After any survey of the ship under regulation 4 has been completed, no change may be made in the structure, equipment, systems, fittings, arrangements or material covered by the survey, without the Authority's approval, except by direct replacement.
- (3) Whenever an accident occurs to a ship or a defect is discovered, either of which affects the safety or integrity of the ship, the safety of the crew or the efficiency or completeness of the equipment required by Annex II to MARPOL 1973/78, the master or owner of the ship must report at the earliest opportunity to the Authority, which must determine whether an additional survey is necessary. If the ship is in a port of another State the master or owner must also report immediately to the appropriate authority of the government of that State.

Exemptions and equivalents

- 7.(1) The Authority may, either generally or subject to conditions, exempt any ship or class or description of ship from any of the requirements of the BCH Code and may, subject to giving reasonable notice, amend or cancel any such exemption.
- (2) Without limiting the generality of subregulation (1), where the BCH Code requires that a particular fitting, material, appliance, apparatus, Item of equipment or type thereof must be fitted or carried in a ship, or that any particular provision must be made, or any procedure or arrangement must be complied with, the Authority may permit any other fitting, material, appliance, apparatus, item of equipment or type thereof to be fitted or carried, or any other

provision, procedure or arrangement to be made in that ship, if it is satisfied by trial thereof or otherwise that such fitting, material, appliance, apparatus, item of equipment or type thereof, or that any particular provision, procedure or arrangement is at least as effective as that required by the BCH Code.

Loading and carriage in bulk of listed chemicals

8. No ship to which these regulations apply may load in bulk or carry in bulk any Category A, B or C substance unless-
 - (a) there is in force in respect of that ship a valid Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk covering the substance that the ship is loading or carrying and the loading and carrying is carried out in accordance with the terms of that certificate; or
 - (b) either the Authority or the government of a State party to MARPOL 1973/78 has given specific approval for its carriage and any conditions relevant to loading or carriage subject to which that approval was given are complied with.

Penalties

- 9.(1)(a) If there is a breach of regulation 3, 5(5), 6 or 8 then the owner and master of the ship are each guilty of an offence punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.
- (b) If there is a breach of regulation 4(2) or 5(3) then the owner of the ship is guilty of an offence punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.
- (2) It is a good defence for a person charged under these regulations to show that he or she took all reasonable steps to ensure compliance with the regulations.

Power to detain

- 10.(1) If on inspection of a ship to which these regulations apply a surveyor finds that, by reason of defect or deficiency, the ship fails to comply with the requirements of these regulations, he or she must serve notice in writing on the owner or master, specifying the defect or deficiency and directing that it be made good.
- (2) A copy of every notice so given must be transmitted by the surveyor to the principal officer at the port at which clearance for the ship may be requested, and a clearance may not be granted, and the ship is detained, until a certificate issued by a surveyor is produced stating that the defect or deficiency has been made good.

Short title and commencement

11. These regulations are called the Marine Pollution (BCH Code) Regulations 1998, and come into operation on 1 March 1998.