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Environment Protection Act 1970

WASTE MANAGEMENT POLICY (SHIPS' BALLAST WATER)

Order in Council

The Governor in Council under section 16A(1) of the **Environment Protection Act 1970** and on the recommendation of the Environment Protection Authority declares the Waste management policy (Ships' Ballast Water) contained in the Schedule to this Order. This Order comes into effect on 1 July 2004.

Dated 27 April 2004

Responsible Minister
JOHN THWAITES
Minister for Environment

DIANE CASEY
Clerk of the Executive Council

SPECIAL

Environment Protection Act 1970

Act No. 8056/1970

WASTE MANAGEMENT POLICY (SHIPS' BALLAST WATER)**SCHEDULE TO THE ORDER IN COUNCIL*****Preamble***

Victoria has a unique and diverse marine environment. This supports a range of environmental, social and economic values including unique plants and animals and water for swimming, recreation, fishing, aquaculture and boating. Marine environments are also the setting for a range of commercial activities, including ports and shipping. These activities rely on the State's marine environment to supply resources and form an integral part of Victoria's economy.

The introduction of marine pests into Victorian State waters threatens the biodiversity and ecological processes of Victoria's marine ecosystems. This can pose risks to human health, and may jeopardise the social and economic benefits derived from the marine environment.

This Policy introduces ballast water management arrangements that will enable the shipping industry to help contain and reduce the spread, through domestic ballast water, of marine pests that are established in other locations in Australia. These arrangements complement the current national regulations for internationally sourced ballast water, which is managed by the Australian Quarantine Inspection Service. This Policy will help to protect Victoria's marine environments both now and into the future, by preventing the discharge of any high risk domestic ballast water into Victorian State waters.

1. TITLE

This Order may be cited as the Waste management policy (Ships' Ballast Water), and is referred to below as the Policy.

2. COMMENCEMENT

This Order comes into effect on 1 July 2004.

3. DEFINITIONS

Unless inconsistent with the context or subject matter the following definitions apply to the Policy:

"the Act" means the **Environment Protection Act 1970** (Vic.);

"ballast water" means water, including any entrained marine organisms and other sediments and solids, used to alter the draft, trim, manoeuvrability and stability of ships. Ballast water is an industrial waste in Victoria;

"beneficial use" means beneficial use as defined in the Act;

"domestic ballast water" means ballast water that originates from an Australian port or within the territorial sea of Australia;

"Environment Protection Authority" means the Environment Protection Authority as established under the Act;

"high risk domestic ballast water" means domestic ballast water that if discharged is considered to pose a high risk of introducing a marine pest to the receiving waters;

"international ballast water" means ballast water that originates from international ports or waters outside the territorial sea of Australia;

"marine pest" means aquatic animals, plants or pathogens that if introduced to waters outside their natural or previous distribution, may pose a risk to human health or the environment, and may affect the biodiversity and ecological processes of the marine ecosystem and impact on any other beneficial uses;

“**non-compliant ship**” means a ship that is unable to comply with the Policy;

“**Protocol for Environmental Management — Domestic Ballast Water Management in Victorian State Waters**” means the publication referred to in clause 14 of the Policy, published by the Environment Protection Authority in 2004 as amended from time to time;

“**ship**” means a ship as defined in the Act;

“**ship’s master**” means ‘master’ as defined in the **Marine Act 1988**;

“**ship’s owner**” means ‘owner’ as defined in the **Marine Act 1988**;

“**Victorian State waters**” means:

- (a) the territorial sea adjacent to the State,
- (b) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State, and
- (c) waters within the limits of the State.

4. **APPLICATION OF THE POLICY**

The Policy:

- (1) applies to all ships;
- (2) applies in Victorian State waters and any adjoining land used to service, maintain or provide facilities for ships;
- (3) does not relieve any party of obligations under any other national or international instrument; and
- (4) does not diminish the responsibility or authority of the Australian Quarantine and Inspection Service with respect to its quarantine responsibilities under the **Quarantine Act 1908** (Cth).

5. **CONTENTS OF THE POLICY**

The Policy is divided into parts as follows —

1. Title
2. Commencement
3. Definitions
4. Application of the Policy
5. Contents of the Policy

PART I — POLICY FRAMEWORK

6. Policy Purpose
7. Policy Principles
8. Policy Intent

PART II — ATTAINMENT PROGRAM

9. General requirements for domestic ballast water management
10. Ship owner’s and master’s responsibilities
11. Port responsibilities
12. Environment Protection Authority responsibilities
13. Department of Sustainability and Environment responsibilities
14. Protocol for Environment Management
15. Domestic Ballast Water Accreditation Agreements
16. Compliance with the Policy
17. Review

PART I — POLICY FRAMEWORK**6. POLICY PURPOSE**

The purpose of the Policy is to help protect the beneficial uses of Victorian State waters, by:

- (1) minimising the risk of marine pest introductions via domestic ballast water from ships entering Victorian State waters visiting a Victorian port; and
- (2) ensuring that comprehensive risk-based domestic ballast water management arrangements are in place for ships entering Victorian State waters visiting a Victorian port.

7. POLICY PRINCIPLES

The Policy is guided by the following principles of environment protection:

- (1) *Principle of integration of economic, social and environmental considerations.*
 - (a) Sound environmental practices and procedures should be adopted as a basis for ecologically sustainable development for the benefit of all human beings and the environment.
 - (b) This requires the effective integration of economic, social and environmental considerations in decision-making processes with the need to improve community well-being and the benefit of future generations.
 - (c) The measures adopted should be cost-effective and in proportion to the significance of the environmental problems being addressed.
- (2) *The precautionary principle.*
 - (a) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
 - (b) Decision making should be guided by—
 - (i) a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and
 - (ii) an assessment of the risk-weighted consequences of various options.
- (3) *Principle of intergenerational equity.*

The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- (4) *Principle of conservation of biological diversity and ecological integrity.*

The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making.
- (5) *Principle of improved valuation, pricing and incentive mechanisms.*
 - (a) Environmental factors should be included in the valuation of assets and services.
 - (b) Persons who generate pollution and waste should bear the cost of containment, avoidance and abatement.
 - (c) Users of goods and services should pay prices based on the full life cycle costs of providing the goods and services, including costs relating to the use of natural resources and the ultimate disposal of wastes.
 - (d) Established environmental goals should be pursued in the most cost effective way by establishing incentive structures, including market mechanisms, which enable persons best placed to maximise benefits or minimise costs to develop solutions and responses to environmental problems.

- (6) *Principle of shared responsibility.*
- (a) Protection of the environment is a responsibility shared by all levels of government and industry, business, communities and the people of Victoria.
 - (b) Producers of goods and services should produce competitively priced goods and services that satisfy human needs and improve quality of life while progressively reducing ecological degradation and resource intensity throughout the full life cycle of the goods and services to a level consistent with the sustainability of biodiversity and ecological systems.
- (7) *Principle of product stewardship.*
- Producers and users of goods and services have a shared responsibility with Government to manage the environmental impacts throughout the life cycle of the goods and services, including the ultimate disposal of any wastes.
- (8) *Principle of wastes hierarchy.*
- Wastes should be managed in accordance with the following order of preference:
- (a) avoidance;
 - (b) re-use;
 - (c) re-cycling;
 - (d) recovery of energy;
 - (e) treatment;
 - (f) containment;
 - (g) disposal.
- (9) *Principle of integrated environmental management.*
- If approaches to managing environmental impacts on one segment of the environment have potential impacts on another segment, the best practicable environmental outcome should be sought.
- (10) *Principle of enforcement.*
- Enforcement of environmental requirements should be undertaken for the purpose of:
- (a) better protecting the environment and its economic and social uses;
 - (b) ensuring that no commercial advantage is obtained by any person who fails to comply with environmental requirements; and
 - (c) influencing the attitude and behaviour of persons whose actions may have adverse environmental impacts or who develop, invest in, purchase or use goods and services that may have adverse environmental impacts.
- (11) *Principle of accountability.*
- (a) The aspirations of the people of Victoria for environmental quality should drive environmental improvement.
 - (b) Members of the public should therefore be given:
 - (i) access to reliable and relevant information in appropriate forms to facilitate a good understanding of environmental issues; and
 - (ii) opportunities to participate in policy and program development.

8. POLICY INTENT

The intent of the Policy is to protect the beneficial uses of Victorian State waters by:

- (1) minimising the risk of marine pest introductions into Victorian State waters via domestic ballast water;

- (2) establishing risk-based management arrangements in Victoria for domestic ballast water. These arrangements will complement existing Commonwealth requirements for international ballast water;
- (3) ensuring that domestic ballast water management arrangements in Victoria contribute to current and emerging national arrangements to establish a simple administrative approach that can be applied nationally;
- (4) ensuring a cooperative approach for ballast water management between Government, the shipping and port industries and communities; and
- (5) providing certainty, consistency and guidance to industry of its responsibilities for domestic ballast water management and to promote a sustainable shipping industry.

The protection of beneficial uses needs to be achieved while acknowledging that the safety of ships and life at sea are of paramount importance.

PART II — ATTAINMENT PROGRAM

This Attainment Program outlines how the purpose of the Policy is to be met. It describes the implementation and operation of Victorian domestic ballast water management arrangements and specifies the responsibilities of government, and shipping and port industries for domestic ballast water management in Victorian State waters.

9. GENERAL REQUIREMENTS FOR DOMESTIC BALLAST WATER MANAGEMENT

- (1) High risk domestic ballast water must not be discharged into Victorian State waters.
- (2) Those responsible for domestic ballast water discharges, including the owners and masters of ships, must manage their domestic ballast water in accordance with the Policy and the Protocol for Environmental Management — Domestic Ballast Water Management in Victorian State Waters.

10. SHIP OWNER'S AND MASTER'S RESPONSIBILITIES

- (1) Ship owners and masters must manage their domestic ballast water in accordance with the Policy and the Protocol for Environmental Management — Domestic Ballast Water Management in Victorian State Waters. It is of paramount importance that the management of domestic ballast water is undertaken in a manner that does not compromise the safety of the ship and its crew.
- (2) Without limiting the generality of clause 10(1), ship owners and masters visiting a Victorian port must:
 - (a) undertake a ballast water risk assessment on a voyage by voyage basis, to assess whether their ships' domestic ballast water is either high or low risk;
 - (b) provide accurate and comprehensive information on the status of any ballast water and management processes undertaken for all domestic ballast water to the Environment Protection Authority on a voyage by voyage basis;
 - (c) employ ballast water treatment methods that are acceptable to the Environment Protection Authority, to manage high risk domestic ballast water;
 - (d) cooperate with the Environment Protection Authority in compliance monitoring programs; and
 - (e) not cause or permit the discharge of high risk domestic ballast water into Victorian State waters.

11. PORT RESPONSIBILITIES

Owners, operators and managers of Victorian ports must:

- (1) disseminate to port users relevant information regarding statutory responsibilities for domestic ballast water management arrangements in Victoria and refer them to the Environment Protection Authority when appropriate;
- (2) provide regular advice to the Environment Protection Authority regarding expected shipping arrivals; and
- (3) incorporate domestic ballast water management arrangements in port environment management plans.

12. ENVIRONMENT PROTECTION AUTHORITY RESPONSIBILITIES

The Environment Protection Authority has a responsibility to enable the protection of the beneficial uses of Victoria's environment through employing a range of measures under the **Environment Protection Act 1970**. In relation to domestic ballast water management, these responsibilities include:

- (1) the regulation of domestic ballast water management arrangements for Victoria;
- (2) providing guidance and information to assist shipping and port industries and government agencies to implement the Policy;
- (3) providing appropriate risk-assessment tools and information to ship owners, masters and agents to enable them to undertake domestic ballast water risk assessments on a voyage by voyage basis;
- (4) establishing and maintaining effective communication channels between shipping and port industries, Government and communities, and using these to provide information on domestic ballast water management;
- (5) working with and supporting government agencies, industry and research bodies to develop and enhance domestic ballast water management and treatment methods;
- (6) developing and implementing a compliance monitoring program to assess compliance with the Policy;
- (7) using enforcement measures provided under the **Environment Protection Act 1970**, in relation to the management of domestic ballast water in Victorian State waters;
- (8) reporting on the implementation of the Policy to Government, industries and communities and its effectiveness in minimising the risk of introduction of marine pests from domestic ballast water; and
- (9) working cooperatively with shipping and port industries to reduce the administration cost to industry in complying with Victorian domestic ballast water requirements.

13. DEPARTMENT OF SUSTAINABILITY AND ENVIRONMENT RESPONSIBILITIES

The Department of Sustainability and Environment will work with the Environment Protection Authority, the Department of Infrastructure, the Department of Primary Industries, other State government agencies and shipping and port industries, to enhance domestic ballast water risk assessment processes and tools. The Department will also work with these agencies and industries to contribute to developing acceptable national domestic ballast water management arrangements.

14. PROTOCOL FOR ENVIRONMENTAL MANAGEMENT

The Environment Protection Authority has developed the Protocol for Environmental Management — Domestic Ballast Water Management in Victorian State Waters (2004) as amended from time to time as an incorporated document to the Policy which:

- (1) identifies how the shipping industry, including ship owners and masters, can access risk-assessment tools to assess the risks associated with their ships' domestic ballast water;
- (2) provides eligibility criteria for domestic ballast water accreditation agreements;
- (3) provides details of compliance monitoring programs; and
- (4) details methods for the treatment of high risk domestic ballast water acceptable to the Environment Protection Authority.

15. DOMESTIC BALLAST WATER ACCREDITATION AGREEMENTS

- (1) A ship owner may apply to the Environment Protection Authority to enter into a domestic ballast water accreditation agreement.
- (2) The Environment Protection Authority will consider entering into a domestic ballast water accreditation agreement in circumstances where a ship is visiting Victorian ports on a regular basis, and where the ship's owner and master have, to the satisfaction of the Environment Protection Authority, demonstrated a high level of performance in domestic ballast water management.
- (3) In applying for a domestic ballast water accreditation agreement, the ship's master must demonstrate a good understanding of the statutory requirements for domestic ballast water management in Victoria.

16. COMPLIANCE WITH THE POLICY

- (1) Most ships will be able to manage ballast water in accordance with the Policy and must therefore do so. However, due to safety or structural limitations, some ships may not be able to fully comply with the Policy. If a ship cannot comply with the Policy, the Environment Protection Authority may permit the discharge of high risk domestic ballast water as a last resort.
- (2) If on a particular voyage a ship cannot comply with the Policy, the ship's owner or master must demonstrate to the Environment Protection Authority, prior to entering Victorian State waters, that the ship cannot comply on that voyage. The Environment Protection Authority, in consultation with the ship's master, may determine alternative arrangements for the management of that ship's domestic ballast water.
- (3) Non-compliant ships that operate regularly in Victorian State waters must develop and implement an environment improvement plan in accordance with the Guidelines for the Preparation of Environmental Improvement Plans (2002) as amended from time to time.
 - (a) An environment improvement plan must:
 - (i) include a specific assessment of the design, configuration and implementation of ballast water management arrangements for that ship, including any safety considerations, by a ship classification society;
 - (ii) identify any actions, including plans and specifications for any structural and engineering works for the ship, to be implemented as soon as practicable to comply with the Policy;
 - (iii) include contingency arrangements to reduce risks associated with the discharge of high-risk domestic ballast water;
 - (iv) be implemented by the ship's owner and master at all times until full compliance with the Policy can be achieved.
 - (b) Until an environment improvement plan is in place, the provisions of clause 10(2) apply.
- (4) Non-compliant ships will be required to contribute to programs to reduce risks associated with the discharge of high-risk domestic ballast water.

17. REVIEW

This Policy and relevant guidance documents will be reviewed:

- (1) within 10 years of the Policy's declaration, as required under the **Environment Protection Act 1970**;
 - (2) to assess compliance with domestic ballast water management requirements outlined in the Policy and relevant guidance documents;
 - (3) if information and monitoring data indicate that the Policy approach is not effective in minimising the introduction of marine pests via domestic ballast water; and
 - (4) in response to the development of acceptable national domestic ballast water management arrangements.
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