

Law by the City of Hamburg on ship-generated waste and cargo residues¹
(City of Hamburg Ship Waste Disposal Law²)
of 17th December 2002

The Senate promulgates the following law passed by the City-State Parliament

First Part

General Provisions

Article 1

Objective, purpose, area of application

(1) The objective of this Law is to implement Directive 2000/59/EC of the European Parliament and of the Council of 27th November 2000 on port reception facilities for ship-generated waste and cargo residues (Official Journal of the European Communities No. L 332 page 81).

(2) The provisions shall, as far as possible, prevent the disposal of ship-generated waste and cargo residues at sea by port reception facilities for cargo residues and ship-generated waste being kept in readiness in the Free and Hanseatic City of Hamburg and their use being intensified.

(3) This law applies in respect of the Port of Hamburg within the meaning of Article 1 paragraph 2 of the Law on Harbour Traffic and Shipping³ of 3rd July 1979 (Hamburg Law Gazette page 177), last amended on 18th July 2001 (Hamburg Law Gazette pages 251, 257), as currently applicable and for ships within the meaning of Article 2 No. 1 which call at this port. It applies correspondingly also in respect of the Port of Neuwerk.

Article 2

Definitions

For the purpose of this Law

1. ship shall mean a seagoing vessel of any type whatsoever operating in the marine environment and shall include hydrofoil boats, air-cushion vehicles, submersibles and

¹ Hamburgisches Gesetz über Schiffsabfälle und Ladungsrückstände

² Hamburgisches Schiffsentsorgungsgesetz: HmbSchEG

³ Hafenverkehrs- und Schifffahrtsgesetz

floating craft. Excluded are warships, naval auxiliary ships, pilot ships or other ships being operated on government service;

2. MARPOL 73/78 shall mean the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 12th March 1996 (Federal Law Gazette II page 399) relating thereto, in its currently applicable version;
3. ship-generated waste shall mean all waste, including sewage, and residues other than cargo residues, which are generated during the service of a ship and fall within the scope of Annexes I, IV and V to MARPOL 73/78 and cargo-associated waste as defined in the Guidelines for the implementation of Annex V to MARPOL 73/78 (Transport Gazette⁴ 1991 page 505 No. 175, as amended by the Notice of 25th October 2001 (Transport Gazette page 485))
4. cargo residues shall mean the remnants of any cargo material on board in cargo holds or tanks which remain after unloading procedures and cleaning operations are completed and shall include loading/unloading excesses and spillage;
5. port reception facilities shall mean any facility, fixed, floating or mobile, which is capable of receiving ship-generated waste or cargo residues;
6. fishing vessel shall mean any ship equipped or used commercially for catching fish or other living resources of the sea;
7. recreational craft shall mean a ship of any type, regardless of the means of propulsion, intended for sports or leisure purposes.

Article 3

Port waste reception facilities

Port reception facilities shall be provided in the Port of Hamburg for ship-generated waste and cargo residues which are adequate for receiving the types and quantities of ship-generated waste from ships normally using the port, without causing undue delay to ships, taking into account the operational needs of the users of the port, the size and location of the port and the type of ships calling at the port.

⁴ Verkehrsblatt

Article 4

Waste reception and handling plan

(1) The Senate shall develop a waste reception and handling plan in respect of ship-generated waste and cargo residues for the Port of Hamburg. The content of the plan must meet the requirements contained in the Annex. Prior to adoption of the waste reception and handling plan interested parties must be consulted. In this regard the opportunity must be given to the users of the port or their representatives to state their views.

(2) The waste reception and handling plan shall be updated every three years and after significant changes in the operation of the port.

(3) The competent authority must make information available to port users in a suitable manner on

1. the fundamental importance of proper delivery of ship-generated waste and cargo residues;
2. the location of the port reception facilities applicable to each berth with an appropriate map;
3. ship-generated waste and cargo residues normally handled;
4. contact points, operators and services offered;
5. the procedures involved in the delivery and disposal of ship-generated waste and cargo residues;
6. the charging system;
7. the procedure for reporting alleged inadequacies of the port reception facilities and
8. the waste reception and handling plan, and in particular where it may be inspected.

Article 5

Delivery of ship-generated waste

(1) The master of a ship that is not exempt from the obligation to deliver ship-generated waste pursuant to Article 5 in conjunction with Section D Item 15 of the Annex to the Ship Safety Law⁵ of 9th September 1998 (Federal Law Gazette I page 2860), as last amended on

⁵ Schiffssicherheitsgesetz

29th October 2001 (Federal Law Gazette I pages 2785 and 2846) shall, before leaving the port, make use of the port reception facilities provided in the Port of Hamburg for the delivery of the ship-generated waste which is on board.

(2) The obligation imposed under paragraph 1 does not exist if the notification given in accordance with Section D Item 15 of the Annex to the Ship Safety Law, together with Article 6 and Annex II to Directive 2000/59/EC, discloses that there is sufficient dedicated storage capacity for all ship-generated waste that has been accumulated and will be accumulated during the intended voyage until the port of delivery.

Article 6

Delivery of cargo residues

For the delivery of cargo residues in accordance with the provisions of MARPOL 73/78, the master of a ship must make use of the port reception facilities provided in the Port of Hamburg. Use takes place at the user's own expense. Articles 7 to 11 do not apply.

Second Part

Financing of the port reception facilities for the disposal of ship-generated waste

Article 7

Obligation to pay charge

(1) The Free and Hanseatic City of Hamburg shall levy a charge per ship to cover the costs of the port reception facilities for the disposal of ship-generated waste in the Port of Hamburg; the charge shall not be levied on fishing vessels and recreational craft authorised to carry no more than 12 passengers.

(2) The shipowner, operator or charterer of a ship are under an obligation to pay the charge.

(3) The obligation to pay the charge arises with each arrival of the ship in the Port of Hamburg. Those liable for the charge must notify the competent authority in writing, by the time limit specified in sentence 1, of the relevant facts for calculating the charge, insofar as these have not already been communicated in the notification pursuant to Article 5 paragraph 2.

(4) The competent authority shall, on request, grant exemptions from the obligation to pay the charge for ships that

1. call at the Port of Hamburg on a scheduled service with a regular timetable at least twice per month or 24 times per year, or in relation to which a permanent berth was assigned by the competent authority in the Port of Hamburg on more than 60 successive days in the year;
2. prove by the submission of disposal agreements or other relevant documentation that the proper delivery of ship-generated waste and the payment of waste disposal fees in the Port of Hamburg or in another port along the ship's route are guaranteed.

The competent authority shall, on request, grant an exemption in other cases if there are special circumstances whereby the levying of the charge would lead to undue hardship. The granting of exemptions can be for a fixed period and ancillary provisions may be attached.

Article 8

Calculation criteria; level of the charge

(1) The charge shall be calculated on the basis of criteria that indicate what quantity of ship-generated waste requiring disposal is normally generated in the case of the properly run service of a ship (standard disposal). The basis of assessment can, in particular, be set as the size of the ship according to gross tonnage or gross registered tonnage or another suitable measure.

(2) The level of the charge shall be determined on the basis of the estimated annual revenue from ships, the estimated annual quantity of ship-generated waste to be delivered for the purpose of standard disposal and the costs for the disposal of ship-generated waste in the port waste reception facilities in the Port of Hamburg. The costs include, in particular, the provision and upkeep of the port waste reception facilities, the collection, transportation, interim storage and treatment of the ship-generated waste, whether in the port waste reception facilities themselves or by third party waste contractors, together with personnel and other costs connected with the collection, safekeeping and disbursement of the charge. The level of the charge can be differentiated on the basis of ship type, category or size, trading areas, fitting out or duration of laytime, insofar as a differing use of the port waste reception facilities in the Port of Hamburg can be thereby inferred.

(3) The level of the charge shall be calculated in such a way that the estimated annual costs in accordance with paragraph 2 sentence 2 are covered. Additional receipts or shortfalls of income shall be netted out within the subsequent three years.

(4) In calculating the level of the charge appropriate consideration shall be given to the types of waste as per MARPOL 73/78 Annex 1 (oil), Annex IV (sewage) and Annex V (garbage).

Article 9

Fixing the amount of the charge

The charge shall be fixed by the competent authority by written notice. Objections and any action to set aside the notice have no suspensory effect.

Article 10

Purpose of use

The revenue generated by the charge shall, after deduction of personnel and other costs connected with the collection, safekeeping and disbursement of the charge, be paid to the port waste reception facilities in the Port of Hamburg to the extent of the expenditure necessary pursuant to Article 11 sentence 2 for standard disposals.

Article 11

Claim for disposal

Those persons liable for the charge have the right to have a standard disposal carried out in the port waste reception facilities in the Port of Hamburg designated by the competent authority for their ships which are subject to the obligation to pay the charge. The expenditure necessary in respect of a standard disposal shall be settled out of the revenue generated by the charge. The competent authority shall announce the port waste reception facilities within the meaning of sentence 1 in the official gazette.

Article 12

Power to issue subordinate legislation

The Senate is authorised to issue subordinate legislation

1. to set the basis of assessment and the level of the charge in accordance with Article 8;
2. to regulate the facts to be notified by those liable for the charge pursuant to Article 7 paragraph 3 and the way in which notification is to be given and

3. to determine the detailed terms for a standard disposal (Article 8 paragraph 1), the level of expenditure necessary in respect of a standard disposal in accordance with Article 11 sentence 2 and the particulars of payment (Article 10).

Third Part

Monitoring and breaches of regulations

Article 13

Monitoring and supervision

(1) The competent authority must monitor that masters of ships fulfil their obligations under this law. It shall adopt the measures that it considers necessary in its best judgment in the individual case in order to ensure the implementation of the provisions of this law. It can, in particular, order that a ship shall not leave the Port of Hamburg before the master has complied with his obligations under Articles 5 and 6.

(2) In the performance of their duties in accordance with paragraph 1 the officials of the competent authority are entitled to board the ship.

(3) The master must permit the officials of the competent authority to board the ship, provide necessary information on request and produce substantiating evidence, and allow inspection of the ship's papers.

(4) If a ship proceeds to sea without the master having fulfilled his obligations under Articles 5 and 6, the competent authority shall notify the competent body of the next port of call.

Article 14

Breaches of regulations

- (1) In breach of regulations is anyone who, intentionally or negligently,
1. contrary to Article 5 does not use the port reception facilities provided for the delivery of ship-generated waste prior to sailing from the Port of Hamburg;
 2. contrary to Article 6 does not use the port reception facilities provided for the delivery of cargo residues prior to sailing from the Port of Hamburg;

3. contrary to Article 13 paragraph 3 does not permit the ship to be boarded by officials from the competent authority, does not provide the necessary information on request, does not submit the necessary substantiating evidence or does not allow inspection of the ship's papers;
4. contravenes subordinate legislation enacted on the basis of this law, insofar as the subordinate legislation makes reference to the imposition of this administrative fine in particular circumstances.

(2) A breach of the regulations can be punished by an administrative fine of up to €50,000.

Fourth Part

Transitional and final provisions

Article 15

Transitional provisions in respect of sewage

The provisions of this law shall apply to sewage within the meaning of Article 2 Item 3 twelve months after the entry into force of Annex IV to MARPOL 73/78.

Article 16

Entry into force

Article 12 shall enter into force on the day after its promulgation. The other articles of this law shall enter into force on 1st January 2003.

Issued at Hamburg, 17th December 2002.

The Senate