

The “Grey Water” Mark

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The impact of “grey water” discharge on the marine environment has become a significant concern of some environmental groups in recent years and a focus of the cruise ship industry. “Grey water” is waste water including galley, laundry, bath and sink water but does not include “black water” or sewage from human waste and medical facility sink drainage. Untreated grey water often contains elements of hydrocarbons, oils and greases, metals such as copper, nickel and zinc, fecal coliform bacteria and various other pollutants which may be hazardous if introduced into the ocean improperly and in substantial volume.

The question of what quantity or quality of untreated grey water constitutes a hazard to the marine environment is a technical issue beyond the scope of this article. This article examines whether grey water discharge, assuming it is discharged in sufficient quantity and quality to render it hazardous to the marine environment, is considered a prohibited polluting substance under current environmental legislation and if so, what ramifications follow.

Because of the division of governmental powers in Canada, our domestic environmental protection regime is made up of a complex web of legislation. Responsibility for coastal zone management is distributed among a number of federal regulatory bodies charged with administering over 40 pieces of legislation relating to the marine environment. Such bodies include the Canadian Coast Guard, Environment Canada, Transport Canada, Health Canada, the Department of Fisheries and Oceans and various port authorities. Legislation relevant to grey water discharge includes the *Canada Shipping Act*, the *Canadian Environmental Protection Act, 1999* (CEPA), the *Fisheries Act* and the *Oceans Act*.

It will become apparent when considering the broadly-framed definitions of waste, pollution, pollutants, discharge and disposal discussed below that the intent of the legislation is to capture a wide array of substances and materials considered harmful to the marine environment.

Part XV of the *Canada Shipping Act* prescribes pollution prevention and response measures and authorizes regulations to be passed to implement the London Convention¹ and the

OPRC Conventionⁱⁱ. Discharge of a “pollutant” from a ship into the water, either directly or indirectly, by spilling, leaking, pumping, pouring, emitting, emptying, throwing and dumping is prohibited. A “pollutant” is defined very broadly to include any substance that would degrade or alter the quality of any waters to an extent that is detrimental to their use by man or to any animal, fish or plant that is useful to man.

A pollution prevention officer is empowered to detain a ship if the officer believes on reasonable grounds that the ship has discharged a pollutant. The officer also has the power to require the ship’s personnel within Canadian waters to provide information about the ship’s condition and equipment and to take such measures as are deemed necessary in order to repair, remedy, minimize or prevent pollution damage.

Section 664 of the Act makes it an offence to discharge a pollutant from a ship. An offence under the Act may be prosecuted as either a summary or an indictable offence. If the offender is a company, the maximum penalty is \$250,000 for a summary offence and \$1,000,000 for an indictable offence. Ship owners may limit their liability if the pollution occurred without their fault or involvement; however such a defence may be difficult to establish if the discharge occurs in the ordinary course of ship operations.

CEPA is a consolidation of the *Environmental Contaminants Act*, the *Air Quality Act*, the *Canada Water Act*, the *Ocean Dumping Act* and the *Department of the Environment Act*. Part VI of CEPA implements the London Convention and prohibits ocean dumping without a permit, except in prescribed emergencies. The Act prohibits the importing, exporting and loading of a substance into a ship for the purpose of disposal in the sea as well as the actual disposal or incineration of a substance at sea, unless the disposal and incineration are done in accordance with a Canadian permit and the substance in question is “waste or other matter”.

In this case, the definition of “waste and other matter” are materials that are *not* harmful to the marine environment and therefore are acceptable if disposed of or incinerated at sea. For example, “waste and other matter” includes dredged material, fish waste or other organic matter resulting from industrial fish processing operations, inert, inorganic geological matter and uncontaminated organic matter of natural origin.

Disposal is also broadly defined to include not only its traditional meaning but also storage of a substance. Prohibited forms of disposal do not include disposal that is incidental to

or derived from the normal operations of a ship or any equipment thereon or placing a substance in the sea for a purpose other than its mere disposal. However, prohibited disposal extends to the seabed, in the subsoil of the seabed, or on the ice in any area of the sea.

Enforcement provisions authorize officers to conduct inspections where they have reasonable grounds to believe a substance is being disposed of at sea or is being loaded for the purpose of disposal at sea, to stop and detain ships for the purpose of inspection and to board and travel on a ship within Canadian waters where there is belief on reasonable grounds that the ship has on board a substance to be disposed of at sea. CEPA also authorizes search and seizure warrants which can be issued against ships suspected of carrying substances for disposal at sea or disposing of substances at sea and the issuance of environmental protection compliance orders.ⁱⁱⁱ Section 240 empowers the federal government to recover the costs and expenses reasonably incurred to remedy or mitigate damage caused by waste disposal at sea.

A violation of CEPA anti-disposal provisions is an offense which may result in a maximum fine of \$300,000 or imprisonment for a maximum term of six months if convicted of a summary offence or a maximum fine of \$1,000,000 or imprisonment for a maximum term of three years if convicted of an indictable offence. CEPA also imposes civil liability on a person who owns or has the charge, management or control of a substance immediately before an environmental emergency for restoring any damage to the environment caused by the emergency and the costs and expenses incurred in preventing, repairing or minimizing the damage to the environment.

The *Fisheries Act* contains provisions aimed at protecting fish habitats by prohibiting the deposit of “deleterious substances” into Canadian fisheries waters unless the deposit is of a type, quality or concentration authorized by law. Depositing includes spilling, leaking, pouring, seeping, dumping, throwing, emptying and placing. A “deleterious substance” is one that would degrade or alter the quality of water so as to render it harmful to fish or fish habitat; clearly, a definition which would include grey water discharge.

The deposit of deleterious substances into Canadian fisheries waters is an offence punishable by maximum fines of \$300,000 or \$1,000,000 for a first time summary offence or indictable offence, respectively, and the possibility of maximum fines plus imprisonment for repeat offenders. Corporate officers and directors who direct, authorize, assent to, acquiesce in

or participate in the commission of an offence may also be subject to the fines and/or imprisonment.

While the *Oceans Act* does not contain provisions prohibiting dumping, it is worthy of mention because it empowers the Minister of Fisheries and Oceans to collaborate with other ministers and governmental bodies to develop and implement “a national strategy for the management of estuarine, coastal and marine ecosystems” in waters over which Canada has sovereign rights, including waters that are designated for special conservation and protection.

While marine environmental regulation falls primarily within the federal government’s jurisdiction over navigation and shipping and sea coast and inland fisheries, as well as the “peace, order and good government” provision, most provinces have enacted legislation prohibiting waste discharge, without a permit, such as the B.C. *Waste Management Act*. This Act prohibits the introduction of waste into the environment, including the marine environment, in such a manner or quantity as to cause pollution. Waste includes litter, effluent, refuse, biomedical waste and other wastes. Pollution means “the presence in the environment of substances or contaminants that substantially alter or impair the usefulness of the environment.” Permits may be issued to allow the discharge of waste into the environment or for the collection and disposal of waste, subject to environmental protection requirements.

The *Waste Management Act* also prescribes remedial and prevention measures such as restraining orders, pollution abatement orders, spill contingency plans and requires a person in possession, charge or control of a polluting substance to report the spill and pay for the reasonable costs of spill response actions taken by government. An unauthorized discharge of waste into the environment is an offence punishable by a maximum fine of \$1,000,000.

The legislation discussed above casts a wide net over the types of substances and materials that may be considered prohibited and environmentally hazardous substances. Although legislators may not have had grey water discharge specifically in mind when the various laws were drafted, the conclusion that grey water discharge could be considered a prohibited polluting substance under these laws is inescapable.

The consequences are severe for companies found in violation of prohibited discharge or disposal. However, despite the generous characterization of polluting substances and the serious consequences for offenders, there have been few cases (if any) in which cruise ship companies

have been prosecuted for grey water discharge. This raises the question of why authorities are not actively pursuing violations involving grey water discharge. One may speculate that the reasons for this are two-fold.

First, the cruise ship industry has been very proactive in dealing with the issue of grey water discharge. Members of the industry have designed mandatory waste management policies and procedures which have been adopted by many cruise ship companies. For example, members of the International Council of Cruise Lines (ICCL) have agreed to incorporate mandatory waste stream management standards into their Safety Management Systems thereby ensuring mandatory compliance as a condition of membership in the ICCL.^{iv} These standards include designing environmentally-friendly cruise ships, introducing onboard grey water treatment systems and adopting new technology aimed at treating and reducing production of grey water.

These voluntary measures, coupled with joint efforts between the cruise ship industry, the International Maritime Organization, American and Canadian regulatory bodies and environmental interest groups to establish waste management standards aimed at protecting and preserving the ocean environment, suggest that the cruise line industry is taking the issue of grey water discharge seriously and trying to develop methods of ameliorating the problems caused by grey water.

In addition, it would be somewhat inequitable for the authorities to prosecute violations involving grey water discharge by ships when grey water discharge of significant quantities in local coastal waters is not being subjected to regulatory enforcement. In the circumstances, regulatory authorities and the cruise ship industry are approaching the issue in as reasonable and realistic manner as one could expect. As discussed above, the cruise ship industry, regulatory bodies and environmentalists appear to share a common goal of protecting and preserving the marine environment, which will hopefully benefit us all.

ⁱ *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972*

ⁱⁱ *International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990*

ⁱⁱⁱ ss. 218-222, 225 and 234-239, *supra*

^{iv} ICCL Industry Standards E-01-01 (Revision 1), *Cruise Industry Waste Management Practices and Procedures*, revised December 1, 2001