



## Maritime shipping industry conference

### Asbestos on board - what to do?

# Compilation of a ship owner's obligations when operating an asbestos-contaminated ship

To implement the regulation EU 1257/2013 on the recycling of ships, ship inspections by the flag state are required to obtain an Inventory of Hazardous Materials certificate (IHM certificate). In some cases, materials containing asbestos are detected in different areas during these inspections. This is possible regardless of the ship's age, and sometimes even despite the existence of asbestos-free certification. These findings result in a mandatory need for the affected ship owners to take action. This applies both to ship owners operating asbestos-contaminated ships under the German flag as well as to ship owners, employing insured employees by virtue of assignment on asbestos-contaminated ships under a foreign flag.

#### Legal situation:

The use of asbestos is generally prohibited. The ban on asbestos is regulated in the EU judicial area as follows:

- Based on production and use being restricted according to Article 67 in conjunction with Annex XVII of Regulation (EC) No. 1907/2006 as well as according to § 16 and Annex II Number 1 of the Ordinance on Hazardous Substances (GefStoffV) of 15.11.2016 and
- According to Annex XVII Item 6.2 of Regulation (EC) No. 1907/2006: The use of articles containing asbestos fibers referred to in paragraph 1 which were already installed and/or in service before 1 January 2005 shall continue to be permitted until they are disposed of or reach the end of their service life. However, Member States may, for reasons of protection of human health, prohibit the use of such articles before they are disposed of or reach the end of their service life.

#### Ship owners' obligations:

The legal basis for the obligations of an affected ship owner is the provisions of the Chemical Act and the Ordinance on Hazardous Substances (GefStoffV) including the corresponding Technical Rules for Hazardous Substances (TRGS). Contrary to occupational safety and health legislation, the legislation on hazardous substances for maritime shipping does not include any provisions regarding a subsidiary validity and can therefore be directly applied in maritime shipping.

- Carrying out a risk assessment according to § 6 and Annex I Number 2 of the GefStoffV and Number 4 of the TRGS 519 "Asbestos – Demolition, reconstruction or maintenance work"
- Proof of expertise and technical qualification according to Number 5 or Numbers 2.14 to 2.16 of the TRGS 519
- Compilation of an asbestos register according to Number 4.1 (1) of the TRGS 519 →



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- Notification of the responsible authority (Ship Safety Division) and a copy to the responsible German Social Accident Insurance (BG Verkehr) according to Annex I Number 2 Item 2.4.2 of the GefStoffV and Number 3 of the TRGS 519
  - Preventive occupational medical care in cooperation with the occupational health physician regarding the risk assessment according to Number 13.1 of the TRGS 519
  - Implementation of occupational medical and toxicological consultation, e.g. as part of the instruction of employees according to Number 13.2 of the TRGS 519
  - Implementation of obligatory examinations within the framework of preventive occupational medical care according to the Ordinance on Occupational Health Care (ArbMedVV) and according to Number 13.3 of the TRGS 519
  - Instruction and briefing of the employees according to Annex I Number 2 Item 2.4.5 of the GefStoffV and Numbers 11 and 12 of the TRGS 519
  - Preparation of a work plan before starting activities with asbestos according to Annex I Number 2 Item 2.4.4 of the GefStoffV and Number 4.2 of the TRGS 519
  - Determination of the asbestos concentration by an accredited monitoring body according to Number 4.3 of the TRGS 519
  - Coordination in case of contracting out work to other employers according to § 15 Section 4 of the GefStoffV and Number 6 of the TRGS 519
  - Application and compliance with the organizational, safety-related and personal protective measures according to Numbers 7 to 9 of the TRGS 519 as well as Annex I Number 2 Item 2.4.3 of the GefStoffV
  - Compliance with the hygiene measures according to Number 10 of the TRGS 519
  - Compliance with the special regulations for maintenance work on asbestos products according to Numbers 17.1 to 17.3 of the TRGS 519
  - Compliance with the specific requirements for activities with asbestos-containing waste according to Number 18 of the TRGS 519
- Notes:**
- According to § 6 (5) of the GefStoffV, the risk assessment must also take into account activities for which the possibility of a hazard exists after all technical protective measures have been exhausted. This particularly applies to maintenance work including servicing. In addition, other activities such as operating and monitoring work must also be taken into account if they can lead to employees being exposed to hazardous substances.
  - In the sense of TRGS 519 Number 2.2, maintenance includes all measures to maintain the target condition (maintenance), to determine and assess the actual condition (inspection) and to restore the target condition (repair). Maintenance work includes the ancillary work required for this purpose.
  - According to Number 2.4 of the TRGS 519, ancillary work is all preparatory, accompanying and final work related to demolition, reconstruction and maintenance work covered by the TRGS during which exposure to asbestos is possible, e.g.:
    - entering rooms contaminated with asbestos dust,
    - sampling (material samples, air measurement),
    - clearing out rooms contaminated with asbestos dust,
    - setting up construction sites, insofar as a release of asbestos fibers cannot be ruled out in the process,
    - cleaning rooms and objects contaminated with asbestos dust,
    - operational transport as well as storage of asbestos materials.
  - As long as an employee is exposed to asbestos in the company, the employer is obliged to organize preventive occupational medical care in compliance with the Ordinance on Preventive Occupational Health Care (ArbMedVV). →



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Workplace exposure to asbestos constitutes a particularly hazardous activity. Asbestos exposure results in the legal obligation for employers to organize and for employees to cooperate with compulsory preventive occupational medical care. The employer may only allow work to be carried out, if the employee has taken part in compulsory preventive care. If the compulsory precautionary care certificate is not available, there is effectively a ban on employment.

- The compulsory preventive medical check-up should be carried out during working hours and not together with examinations which serve to prove health suitability for occupational requirements (e.g. fitness for sea service):
  - Within a period of three months before the start of the activity,
  - then after twelve months at the latest,
  - and after that every 36 months, the compulsory preventive medical check-ups must be organized by the employer and completed by the employee.
  - After leaving the hazardous activity, affected persons must be offered follow-up preventive care, even if they are still employed with the company but are no longer exposed to asbestos. The employer transfers this obligation by means of a notification form to the employer's Social Accident Insurance, which then reviews this notification form and arranges the follow-up examinations via the Gesundheitsvorsorge (GVS; Healthcare Institution).

### Additional information:

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The Technical Rules for Hazardous Substances (TRGS) 519 "Asbestos – Demolition, reconstruction or maintenance work" can be found on the website of the Federal Institute for Occupational Safety and Health (BAuA) in German and in English:

<https://www.baua.de/DE/Angebote/Rechtstexte-und-Technische-Regeln/Regelwerk/TRGS/TRGS-519.html>

<https://www.baua.de/EN/Service/Legislative-texts-and-technical-rules/Rules/TRGS/TRGS-519.html>

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