

# **COMMENTS ON THE DRAFT TECHNICAL GUIDELINES ON ENVIRONMENTALLY SOUND MANAGEMENT FOR FULL AND PARTIAL DISMANTLING OF SHIPS (TWG 19, REV. 02)**

**BASEL ACTION NETWORK (BAN)**

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## **I. Introduction and Summary**

BAN maintains a strong interest in the shipbreaking issue, as it is one of today's most serious abuses of the international toxic trade. As such we have worked to expose the problem and call for dramatically improved conditions in shipbreaking yards. More importantly, to facilitate a remedy for the abuse we continue to demand that the economic dumping of ships containing hazardous wastes be prohibited from trade to non-OECD countries in line with the repeated decisions of the Basel Parties found in decisions I/22, II/12, and III/1. Finally, we have called repeatedly for an upstream solution to be enacted at the earliest opportunity to ensure that hazardous substances are removed from all future built ships and that they are better designed for recycling.

BAN sees the technical guidelines ("Guidelines") on shipbreaking as a necessary, but only a partial response to the serious problem of shipbreaking. For it is a fact that the serious abuse to human health and the environment now witnessed daily in the shipping/shipbreaking industry seen in South Asia cannot ultimately be resolved by simply improving "environmentally sound management" (ESM) downstream while continuing the *status quo* that allows the free trade in toxic ships and toxic ship design and construction upstream. Rather, it is vital to bear in mind the soundness of the Basel Convention's fundamental principles that call first and foremost for a minimization of hazardous waste generation and a minimization of their transboundary movements. These are, in fact, the most fundamental principles of ESM, and yet these fundamentals have been largely left out of the Guidelines.

While it is understood that these guidelines are technical guidelines and the issue of the legality of trade in toxic ships under the Basel Convention will be dealt with elsewhere, there is in fact no justification for leaving out of the Guidelines the vital issue of hazardous waste avoidance. Nor is it justified to leave out the actions that should be taken by shipowners to remove onboard hazardous materials prior to the final voyage for disposal. As is always the case, ESM must first and foremost take place upstream by mandating toxic-free and recycling-friendly design in countries that control ship finance, ownership and ship building. Working ships that already unfortunately possess hazardous materials in their construction must have those substances removed by owners and operators in developed countries upstream from the final destination as well.

In summary, we find these Guidelines to be painfully one-sided in that they appear to only stipulate actions on behalf of ESM that *developing* countries must make – once again relegating to the victims of hazardous manufacturing, the task of solving this global problem. In fact, developed countries bear *more* responsibility for this problem and this should be reflected more evenly in the Guidelines by more fully addressing upstream issues. For example, there should be a full elaboration of two very crucial issues: a) Hazardous Waste Avoidance, and b) Removal of Hazards Prior to Breaking.

The shipbreaking technical guidelines, even if followed to the letter, cannot be seen as a real solution, but at best, simply a bandage over a festering sore. Real solutions must involve national self-sufficiency in hazardous waste management, and in eliminating toxic wastes by avoiding toxic inputs. Likewise, these Guidelines can never justify economic dumping of ships-as-hazardous-waste from OECD to non-OECD countries, as this works as a disincentive to solving the problems upstream, and serves as a mechanism for transferring deadly pollution to developing countries.

BAN has been happy to be given the opportunity to comment directly several times, and as recently as December of 2001, on these Guidelines and we note that many of our comments have been taken on board. For this, we thank the authors for their attention to our concerns. However, many of the most pressing concerns remain unaddressed. These comments will highlight these outstanding concerns.

## **II. Primary Concerns**

### **1. Section on Hazardous Waste Avoidance is Missing**

All ESM guidelines in the Basel Convention are meant to have a special section devoted to waste avoidance. This is a required element as stipulated in the Basel “Guidance Document on the Preparation of Technical Guidelines for the Environmentally Sound Management of Wastes Subject to the Basel Convention”. With respect to ships this will mean a very important exploration of issues involving ship design for recycling and toxics-use reductions in ship design.

A good place to insert this chapter is under, or adjacent to, the heading “Specific challenges for ship-dismantling in relation to ESM”. If this vital and required chapter can not be produced within the perceived deadline for this document, then a provision should be placed in the Guidelines that refers to the fact that they will include this chapter at the earliest possible date, and further a decision should be taken that the Parties should begin work at once to accomplish the chapter.

BAN is not convinced by the argument that this issue is solely the province of the IMO, particularly when no IMO Guidelines have yet been produced on this subject, nor to our knowledge is there one planned. The argument also falters before the fact that the Basel Convention’s own guidelines demand it, and indeed within the Basel Declaration, the issue of waste minimization has been emphasized. When and if such a paper is produced by the IMO on this subject, it can certainly be integrated into the Guidelines. In the meantime, it is the job of the Basel Convention to ensure that this material is provided now to give guidance and impetus to the shipping industry as a matter of importance and expediency.

Dealing with waste avoidance at source, cannot be put-off, as some have advocated, as a future or long-term goal. Even though ships have a lifetime of 20 years, each day that this issue remains unaddressed equates to additional days (after the 20-year lifespan) in which future workers and environments will inevitably be exposed to harmful levels of ship-borne pollutants.

In summary, it is unacceptable that the Guidelines avoid the issue of hazardous waste avoidance in relation to ships.

## 2. Section Discussing Prior Removal of Toxics in Non-shipbreaking Locations Needed

Buried in these Guidelines, in the section under India and its “legislative frames”, is a statement that is highly significant. There it is stated that the High Powered Committee on Management of Hazardous Waste in India has made recommendations that a ship receive proper consent from the concerned authority or the State Maritime Board *stating that the ship does not contain hazardous waste or radioactive substances prior to its import*. Earlier, the Central Pollution Control Board in Delhi indicated these same criteria in their Environmental Guidelines for Shipbreaking Industries (which should also be noted in the guidelines). This demand is absolutely consistent with the Basel Ban Amendment and Basel decisions I/22, II/122 and III/1. Clearly, as developing countries are indeed seeking assurances that the ships they receive are properly emptied of hazardous materials and wastes prior to their import for breaking, it is incumbent upon the Guidelines to properly address this subject and provide some guidance to ship owners on how and where to accomplish this.

In this regard, it is imperative, that a new section entitled “Removal of Hazards Prior to Final Voyage for Disposal” be placed in the Guidelines. Indeed, it is the responsibility of Parties who have jurisdiction over owners to implement regulations, policies and codes of practice that require the life-cycle and pre-disposal removal of hazardous materials and wastes to the extent possible. This will require that the activities and subsequent disposal of wastes take place at the cost of the owner and operator of ships and in the best facilities available worldwide and to the highest standards.

This concept is extremely important with respect to the obligations under the Basel Convention and its decisions, and it requires technical elaboration that remains sorely lacking. It is inappropriate that the onus of these technical guidelines as drafted seems to rest solely with developing countries. The guidelines fail to discuss shipbreaking operations in OECD countries such as those now employed in the United States, nor is there a discussion of hazard-removal operations in developed countries. Along with the needed chapter on Waste Avoidance by Ship Re-design this remains a serious omission that must be addressed before the Guidelines can be considered final.

### 3. Leaving out Adequate Health and Safety Issues

BAN wishes to once again note its strong opposition to the idea that the Basel Convention guidelines need only primarily address matters of “environment” and not of “human health.” There can be no legal or practical justification for this. The Basel Convention text starting with its preamble gives ample reference to its scope being “environment and human health” and indeed the very definition of ESM (and these are ESM guidelines) clearly defines ESM as:

*“...Taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment....”*

Further, as the issues of environment and human health are indistinguishable from an implementation standpoint, it is inappropriate to try drawing an artificial line between environment and human health matters. If the rationale for this separation rests in a division of labor between ILO and the Basel Convention, then that separation makes sense *only* in the preparation of the work and *not* in the final product. Users of this document need to simultaneously address worker safety and health issues with environmental concerns. It makes little sense for such end-users to have to refer to two documents particularly when the issues are so strongly interrelated.

Thus, we would strongly urge the Parties to decide to incorporate at the earliest future date the occupational and safety issues and have these concerns integrated into the text to produce one final Guideline.

#### 4. The Guidelines Fail to Designate Beaching and other Non-Containment Scenarios as Not Being Environmentally Sound Management

It continues to baffle BAN that these Guidelines cannot state the obvious – that the preferred method of containment is dry-docking and that methods that allow dismantling operations to take place without separation from the marine environment, beaches and inter-tidal zones as failing to meet the definition of ESM. The Guidelines do make unhelpful statements such as, “maintaining containment is largely dependent upon facility specifics: docking (dry-docks), mooring at pier, beaching...” yet fails to seriously discuss the advantages and severe limitations of some of these “facility specifics”.

If the Guidelines cannot address such purely technical environmental issues head-on, it is not a technical guideline, but rather a political apology for existing non-ESM conditions worldwide. What occurs now in most of the shipbreaking operations in the world is not ESM. The Guidelines must have the courage to state this and to state why that is the case.

Ships contain hazardous materials and non-hazardous pollutants as well. No cleanup, unfortunately can remove 100% of these. Spills, leaks and releases will occur. Therefore, one of the most important design aspects of any ship dismantling yard are the measures to contain releases to within the confines of the yard and then collect the spilled or released materials. The model method for such containment is via secure, impermeable, solid, contained, -- that is, a *dry-dock* operation. Any method which allows direct contact or uncontrollable release to the marine environment, (e.g. beaching, or quayside dismantling) cannot be considered “taking all practicable steps” in accordance with the definition of environmentally sound management (ESM) under the Convention, and thus cannot be considered to be ESM.

Accordingly, the diagrams and sections on dismantling zone delineations are incorrect in that they: a) don’t show a solid line around the vessel indicating containment, but rather show a containment box outside of the ship; and b) these sections of the Guidelines fail to designate the containment area as a special unique zone. How can it ever be considered that the containment area where so much of the work is to take place is not a separate management zone?

The head in the sand approach utilized in the Guidelines on this subject until now is unacceptable. At the very least it must be emphatically stated that dry-dock type containment must be the goal of all facilities as all other methods *do not* constitute environmentally sound management.

#### 5. Some Time Frames for Establishing Certain Safeguards are Inappropriate

We fail to understand how such issues as proper removal and protection from asbestos can be relegated to the list of long, or medium-term actions. This reverse prioritisation of

the single most devastating health impact from shipbreaking is unconscionable. Likewise, we cannot agree with many of the activities (listed below) being classified as long-term or medium-term. Rather, we believe that many of these activities are of life and death urgency. People's lives are in jeopardy because of the lack of these actions. It is very simple; if the activities cannot be met as a matter of urgency then the facilities should be shut down in order to save lives:

Now Listed as Long-Term (10 years from now):

- Provide adequate treatment/disposal facilities for the different hazardous materials
- Complete containment/impermeable floors

Now listed as Medium-Term (5 years from now):

- Provide respirators approved for protection against airborne asbestos
- Create dedicated area for asbestos removal. Limit access
- Collect and contain all wastes resulting from asbestos removal processes. Pack asbestos in approved packaging system
- Decontaminate workers when leaving the asbestos removal area

We cannot help but note that operating under the above conditions for even one day, let alone years, in countries such as Norway or the Netherlands would not be acceptable or legal. Why then, is it seen as acceptable when the tacit understanding of this paper is that these conditions will be condoned, and consequently people's lives will be impaired, in countries in South Asia? Are these lives worth less than those of Western Europe?

All life-threatening situations such as those bulleted above as mid and long-term goals must be corrected *immediately* or the yard must cease operations until they are corrected.

#### 6. Section on "Existing Practices and Standards Seems to Justify Status Quo

In the same vein, the section on "Existing Practices and Standards" makes some rather imbalanced statements that seem to justify poisoning the local populace simply to maintain employment.

For example, it is important to add to the existing sentence:

*"There is no doubt that the impact of these industries on the local community and economy is considerable, and this should be taken into account when considering the introduction of any new measures or actions. It would be difficult to ignore the social implications if large volumes of ship-breaking from these existing operations were to be removed as they generate employment and revenue for the local economy."*

The following balancing statement:

*On the other hand, the environmental and occupational impact is also considerably detrimental and no economic argumentation should ever justify poisoning as a remedy to poverty. Allowing populations to face such a choice is a violation not only of the Basel Convention's principles but is a violation of human rights as well.*

Additionally in this section, where critical factors which influence how shipbreaking is able to operate in sub-standard ways in Asian countries are listed, it is important to add the fact that a) there is no organized labor force or rights of laborers to negotiate for better conditions; and b) there is a strong lack of awareness of toxic threats from toxic substances such as the chronic hazard from such materials as asbestos, the danger of burning certain materials, PCBs, etc.

#### 7. Statements Regarding the Basel Convention's Inability to Govern Trade for Ship Dismantling are not balanced

In the stakeholders section under UNEP, it is pointedly stated that some legal assessments have concluded that the Convention remains "ineffective" in its present form when applied to ship dismantling. We find this statement to be imbalanced as there are other legal analyses that *do not* find the Basel Convention to be so ineffective in this regard. It would be far more accurate to balance this rather one-sided statement as follows: "...it remains partially inconclusive in its present form...."

END

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