

U.S. Department
of Transportation

United States
Coast Guard



Commandant (G-MPS-1)
United States Coast Guard

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(202) 267-0495

COMDTINST M16450.31
31 MAY 1989

COMMANDANT INSTRUCTION M16450.31

SUBJ: MARPOL 73/78 ANNEX V Garbage Reception Facility Certification and
Enforcement Program

Ref: (a) 33 CFR Parts 151, 158

1. PURPOSE. This instruction provides guidance and procedures for administering and enforcing regulations for garbage reception facilities during the initial implementation period of Annex V of MARPOL 73/78.
2. DIRECTIVES AFFECTED. NONE
3. BACKGROUND. This instruction, along with Commandant Instruction M16450.30, provides program policy and guidance on implementation of the requirements of MARPOL 73/78, Annex V. The initial implementation period will be for 120 days after the publication of the interim rules. During this period, applicable ports and terminals will be given the opportunity to apply for an receive approval of their waste reception facilities. All Certificates of Adequacy (COAs) will be issued by Commandant (G-MPS-1) during this period. At the end of the implementation phase, COTPs will receive additional or revised guidance on the issuance of COAs by COTPs, for all the MARPOL 73/78 Annexes in force. For guidance concerning investigation and enforcement of the discharge provisions for vessels and for definitions of terms used in this instruction, refer to Commandant Instruction M16450.30.

4. RESPONSIBILITIES.

- a. Commandant (G-MPS-1) shall issue COAs for Reception Facilities for Garbage as per guidance in Chapter 2.
- b. District Commanders shall:
 - (1) coordinate activities for the implementation and management of the garbage reception facility program (use of boater education resources in local Coast Guard Auxiliary flotillas, U.S. Power Squadrons, and State boating authorities is encouraged); and
 - (2) take action as set forth in 33 CFR 158.190 on appeals submitted to the district from terminal(s)/port(s).
- c. Commanding Officers of MSOs and COTPs shall:
 - (1) commence an information and assistance program to educate the public, commercial shippers and port authorities on the requirements of the new regulations;
 - (2) assist local terminal(s)/port(s), with the exception of fishing terminal(s)/port(s), in completing Form CG5401C, "Form C - Application for Certificate of Adequacy (COA) for Garbage Reception Facilities";
 - (3) review and act upon waiver requests in accordance with guidance in Chapter 2;
 - (4) take enforcement action in accordance with guidance in Chapter 3;
 - (5) establish contact with National Marine Fisheries Service (NMFS) to ensure smooth flow of information for preliminary investigations of reports of inadequate reception facilities at fishing terminals/ports as described in Chapter 2; and
 - (6) forward any change of information submitted by terminals/ports (preferably a copy of the application) required by 33 CFR 158.165 to Commandant (G-MPS-1) ATTN: Reception Facility Desk.

5. ACTION. District Commanders and Commanding Officers of MSOs and COTPs shall ensure adherence to the requirements contained in this Instruction.

6. REPORTS/FORMS REQUIRED. Commanding Officers of MSOs and COTPs shall submit information about waiver approvals as found in Chapter 2 of this Instruction. Forms CG-5401C and CG-5401 are available from Commandant (G-MPS-1). Form CG-5401C may be locally reproduced. A change to the PSS/MER Quarterly Activities Report, CG-4957, RCS-G-MP-14013 allowing entries concerning Coast Guard resources spent on facility certification and investigation will be initiated by Commandant (G-MPS-3).

J. D. SIPES
Rear Admiral, U.S. Coast Guard
Chief, Office of Marine Safety,
Security and Environmental Protection

Encl: (1) Nat'l Marine Fisheries Service Law Enforcement Offices
(2) NOAA letter to Captain Shiro dtd 6 FEB 1989

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Chapter 1. REGULATIONS EXPLAINED AND COAST GUARD INTERPRETATIONS

- A. Terminal Requirements. The new regulations in 33 CFR 158 require all terminals and ports to be capable of receiving garbage from visiting ships which normally do business with the terminal or port.
1. Applicability. The new interpretation of "terminal" as it applies to the Annex V requirements in 33 CFR 158 and the existing definition of "port", greatly increase the number of commercial entities which must provide garbage reception facilities as compared to the number of reception facilities under Annex I (oil) and II (chemicals) of MARPOL 73/78. The reception facility requirements for Annex V are very broad. It is easier to describe those terminals that are not required to provide reception facilities for garbage. They are: recreational boating facilities that are capable of providing wharfage or other services for less than 10 recreational vessels at the same time; and a place or facility containing only an unattended launching ramp. All other waterfront facilities where ships can tie up in the navigable waters and all waters subject to the jurisdiction of the U.S. out to the Exclusive Economic Zone (EEZ) and where the owner/operator of the facility is conducting business with ships must be capable of receiving garbage from visiting ships. This would include: fishing terminals; fixed or floating facilities supplying petroleum products or other services; waterfront facilities servicing the offshore oil industry; recreational boating facilities that are capable of providing wharfage or other services for 10 or more recreational vessels at the same time; commercial waterfront facilities servicing commercial ships; and offshore structures that receive ships like the Louisiana Offshore Oil Platform (LOOP).
 2. Required Services. Terminals/ports are expected to make all arrangements necessary to provide reception facilities after notification of the need for such services by ships. With the exception of hazardous waste and medical waste, simply providing a list of capable waste handlers is not considered adequate. Reception facilities provided for the purposes of Annex V must be able to remove all garbage generated on board the ship, with some exceptions. Reception facilities do not have to be provided to ships whose sole interest is in disposing of garbage. Reception facilities for Annex V would not be expected to receive those wastes covered by other Annexes of MARPOL 73/78 that are already in force in the U.S. or large amounts of spoiled cargo. The ship requesting garbage reception facilities must be one that engages in business with the terminal/port. Reception facilities do not have to be provided to ships whose sole interest is in disposing of garbage. The terminal/port must ensure that garbage does not re-enter the water once brought ashore. The terminal/port must also insure that its reception facility disposes of the garbage legally in accordance with applicable local, state, and federal requirements. Medical wastes, hazardous wastes and those wastes co-mingled with them require special handling. For these wastes, terminals/ports must provide to the ship only the names and means of contacting capable hazardous waste haulers that can receive such wastes.

3. Ship Discharge Option. There is no requirement that the ship must offload its waste when visiting a terminal/port. The ship has the option to retain the garbage for

1.A.3. (cont'd) disposal elsewhere. In addition, the ship has the option to hire a different company from the one offered by the terminal/port. However, the regulations do not compel the terminal/port to authorize the use of its facilities under such an alternative arrangement.

B. Ports. Certain terminals may not be financially able to support the kind of additional services needed by the garbage reception facility requirements. The regulations allow individual terminals to group together in any size, number, or wherever geographically located for better management of their reception facility responsibilities. In many cases, terminals will form ports to share mobile reception facilities. These cooperatives are called "ports" in 33 CFR 158. When the term "port" is used in this guidance it is used as it is defined in 33 CFR 158. The definition of port has no geographic significance (with the exception of COTP designated Ports). For example, the geographic Port of Seattle may have several "ports" as defined in 33 CFR 158 which are groups of terminals that have voluntarily grouped together. This definition is unchanged since the Annex I regulations were written. "Ports" which were formed for Annex I and II may be different from those that may be formed for Annex V.

EXAMPLE:

Terminals "A", "B" and "C" may be a "port" for purposes for Annex I but for Annex V it is possible that only "A" and "C" may have formed a separate "port".

C. COTP Designated Ports. The requirement to supply garbage reception facilities can apply to lightering, anchorage operations, or other cargo transfer operations which take place between two ships offshore, if so designated by the local COTP. In this case, the lightering vessel organization or company may have to ensure that garbage reception capability is afforded to ships being serviced. COTPs should designate offshore operations as "COTP designated ports" only when the ship is not visiting a terminal that can supply the garbage reception facility services while on its normal route, and the lack of these services would cause hardships or sanitary problems for the ship's crew.

D. Reception Facilities. A reception facility is the actual resource that a terminal or port must provide in order to remove garbage from a ship and dispose of it in a way consistent with local, state and federal requirements without causing undue delay to the ship.

1. Third Party Contracts. A reception facility may consist of resources owned by the terminal/port or they may be resources that are third party contracted. The Coast Guard is not concerned with the contractual arrangement that a terminal/port has with a third party arranged reception facility.

2. Fixed Versus Mobile. A reception facility may be fixed, as with an incinerator or

- 1.D.2. (cont'd) mobile, as with a garbage trucking or barge company. The reception facility may be located at the terminal or, in the case of a port, located at one of the terminals owned or operated by a member of the port. For a small terminal such as a recreational boating facility the reception facility could be a dumpster or a trash barrel. In the case of a remotely located reception facility, the arrangement must not cause undue delay to the ship. The reception facility could be a facility (such as a mobile barge) at the mouth of a river which provides garbage services to all ships visiting terminals upstream.
 3. Costs. The costs of these services will probably be borne by the ship. The Coast Guard is not involved in price setting nor in the contractual arrangement between the facility and the ship. On the other hand, COTPs should be alert to attempts to circumvent garbage reception responsibilities through artificially high costs for garbage handling.
- E. APHIS. The Animal and Plant Health Inspection Service (APHIS) operates under the Department of Agriculture (DOA). Local APHIS officers are often referred to as Plant Protection and Quarantine (PPQ) officers. In almost every port in the U.S., PPQ officers board nearly all commercial ships arriving from outside the continental U.S. (except Canada). Their primary role is to prevent the introduction of animal and plant pests or diseases that would pose a serious threat to our domestic livestock and agricultural products.
1. Requirements. APHIS requirements are detailed in 7 CFR 330.400 and 9 CFR 94.5. The APHIS regulations require that any type of food material of plant or animal origin and any other refuse of any kind that has been mixed, co-mingled, stored or otherwise been in contact with such food must either remain aboard the ship in a closed leakproof container or removed in a manner approved by APHIS. Such approved shoreside disposal methods include removal in tight, leakproof containers and disposal by incineration to ash, grinding into an approved sewage system, or sterilization (cooking garbage at 212 F for 30 minutes). For rural areas which may not have APHIS disposal facilities nearby, special transportation procedures have been developed which allow the garbage to be moved to distant APHIS approved facilities. Inquiries involving APHIS regulations should be directed to the local APHIS office.
 2. Interface With MARPOL Annex V. Prior to the requirements of Annex V of MARPOL 73/78, many ports did not have shoreside APHIS - approved disposal facilities. In these ports PPQ officers, until now, simply refused to allow foreign food stuffs or garbage that had come into contact with foreign food stuffs to come ashore. The garbage remained aboard the ship and was disposed of at sea. With the new regulations implementing Annex V of MARPOL 73/78, ports and terminals must now ensure that ships visiting their terminal have a shore disposal option. If the terminal receives ships from foreign ports, then they must have reception facilities which meet APHIS approval. Since there are not enough facilities presently, new ones will have to be approved in conformance with APHIS's regulatory requirements. Most likely

- 1.E.2. (cont'd) the APHIS reception facility arrangements will be separate from non-APHIS facilities.
 3. Compliance Agreements. Reception facilities that must meet APHIS approval must have an APHIS Compliance Agreement for both the means of conveyance from ships and for the device which incinerates, sterilizes or grinds the garbage.
 4. Advance Notice. Since APHIS facilities may not be immediately available upon arrival of ships in all ports, 33 CFR 151 requires ships to give the terminal at least 24 hours advance notice of the need for such services.
- F. Certificates Of Adequacy (COA).
1. Purpose. COAs are issued to certain terminals/ports to ensure that the U.S. fulfills its commitment to the international shipping community to publish a list of adequate garbage reception facilities for international shipping, to give notice to fishing fleets where they might deposit their old nets, and to comply with congressionally mandated reporting requirements of the Marine Plastic Pollution Research and Control Act of 1987.
 2. Difference From Annex I and II. It cannot be overemphasized that even though a terminal/port may not be required to hold a COA it has the same responsibilities to provide adequate

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2. Difference From Annex I and II. It cannot be overemphasized that even though a terminal/port may not be required to hold a COA it has the same responsibilities to provide adequate reception facilities, as noted previously, as the terminal/port which is required to hold a COA. This is radically different from the Annex I and II requirements where only terminals and ports required to hold a certificate had to provide reception facilities.
3. How To Apply. See Chapter 2
4. Who Must Apply. A terminal must apply for and hold an Annex V (GARBAGE) COA if it receives:
(1) oceangoing tankers of any tonnage or any other oceangoing ship of 400 gross tons or more carrying residues and mixtures containing oil (this includes terminals which receive ships that may have only oily bilge slops like dry cargo carriers or break bulk

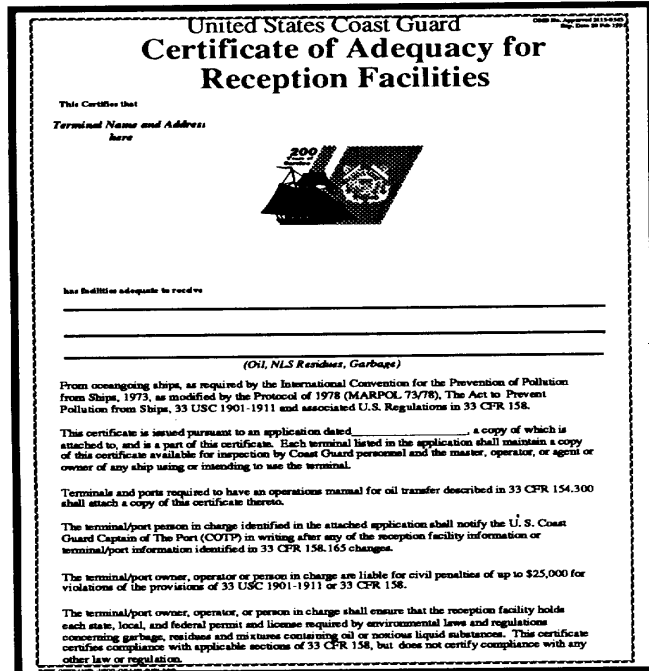


Figure 1-A

1. F. 4. (cont'd) ships)(same as Annex I requirements); (2) oceangoing ships carrying noxious liquid substances (same as Annex II requirements); and (3) commercial fishing vessels which offload more than 500,00 pounds of commercial fishery products from all ships during a calendar year.

Terminals which must apply for a COA under the criteria mentioned above may group together and form a port and submit a single application using Form C.

5. Remote Terminals. In remote areas where a single terminal may not be able to justify having its own garbage facility, the terminal would have to apply for a waiver of the requirements. However, MARPOL 73/78 does not allow complete waivers but requires equivalent alternatives to be substituted in areas where complete compliance is not possible. The following are examples of how some remote terminals are complying:

- a. terminals upstream of another port are using the reception facilities in the down-stream port area or are using a waste hauler to deliver the garbage to the other port area;

- b. some communities are planning to have barge services available for an entire river system. Ships transiting the river may receive garbage services upon entering or exiting the system at the mouth of the river. The terminals in this case would still need to apply as a port and would receive a COA but the port's reception facilities would be located away from many of the individual terminals. This requires a great deal of coordination on the part of the port and the entire procedure would have to be outlined in a combined application; and

- c. some remote terminals have requested waivers because all ships that visit the terminal have dedicated routes that allow the offloading of their waste at other convenient terminal/ports which have adequate reception facilities. The terminal must submit a waiver request in order to be exempt from providing any

APPLICATION FOR A CERTIFICATE OF ADEQUACY
FOR
GARBAGE RECEPTION FACILITIES
FORM C

Call for Approval Form 1544
Erg. Oct. 1981/82

The form should take no longer than 15 minutes to complete

The Act to Prevent Pollution From Ships (33 USC 1901) authorizes the Department of Transportation to issue certificates to terminals and ports verifying their adequacy to receive operational garbage from ships. Regulations implementing this program are in 33 Code of Federal Regulations Part 156. To continue to receive ships at a port or terminal, an applicant must hold a Certificate of Adequacy for Garbage if it receives oceangoing tankers, or any other oceangoing ship of 400 gross tons or more, carrying residues and materials containing oil; if it receives oceangoing ships carrying noxious liquid substances; or if it receives fishing vessels which offload more than 500,000 pounds of commercial fish products during a calendar year. To receive a Certificate of Adequacy for Garbage Reception Facilities application is required on this form.

DEFINITIONS:
"Terminal": an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance. The definition of "navigable waters" for the purposes of this section may be found in 33 CFR 2.05-25. Garbage is considered a harmful substance under MARPOL 73/78.
"Port": (1) a group of terminals that combines to act as a unit and be considered a port for purposes of this part; or (2) a port authority or other organization that chooses to be considered a port for purposes of this part; and (3) a place (i.e. lightning track) or facility that has been specifically designated as a port by the Captain of the Port.

1 Complete this section if you are applying as a single "Terminal."

A. Terminal Section:

Name of Terminal _____
Street Address _____
City _____ State _____ Zip _____

Name of Terminal Person in charge _____
Phone number area code _____

Name of reception facility (if subcontracted) _____
Location of reception facility (City, State) _____

2 Check the following boxes if the terminal receives or discharges any of the following commodities from or to ships visiting the terminal:

<input type="checkbox"/> Oil or petroleum products	<input type="checkbox"/> Discharge	<input type="checkbox"/> Receive
<input type="checkbox"/> Bulk dry cargoes	<input type="checkbox"/> Discharge	<input type="checkbox"/> Receive
<input type="checkbox"/> Bulk chemicals	<input type="checkbox"/> Discharge	<input type="checkbox"/> Receive
<input type="checkbox"/> Fish	<input type="checkbox"/> Discharge	<input type="checkbox"/> Receive
<input type="checkbox"/> Liquefied gases	<input type="checkbox"/> Discharge	<input type="checkbox"/> Receive
<input type="checkbox"/> General cargo	<input type="checkbox"/> Discharge	<input type="checkbox"/> Receive
<input type="checkbox"/> Other _____	<input type="checkbox"/> Discharge	<input type="checkbox"/> Receive

3 Check the following boxes if the terminal handles or services any of the following ships:

<input type="checkbox"/> Ships of foreign registry	<input type="checkbox"/> Inmanned barges
<input type="checkbox"/> U.S. ships in domestic trade	<input type="checkbox"/> Chemical ships
<input type="checkbox"/> U.S. ships in foreign trade	<input type="checkbox"/> Container ships
<input type="checkbox"/> Passenger ships	<input type="checkbox"/> Break bulk ships
<input type="checkbox"/> Vessels serving the offshore	<input type="checkbox"/> Dry bulk
<input type="checkbox"/> Mineral and oil industry	<input type="checkbox"/> Fishing vessels

After completing this section go to Section C.

4 Complete this section if you are applying as a "Port."

B. Port Section:

Name of Port _____ Name of reception facility (if subcontracted) _____
Name of Port person in charge _____ Location of reception facility (City, State) _____
Street Address _____
City _____ State _____ Zip _____ Number of Terminals which will be members of this Port? _____
Phone number area code _____

DEPT. OF TRANSPORTATION LOCAL 82920

Section B continues on the next page →

Figure 1-B

1.F.5.c. (cont'd) garbage reception capacity. In addition, the COTP could require the terminal to list the ships that are involved, require statements from the operators of the ships saying that they do not object to the lack of reception facilities at the terminal, and describe what other arrangements the ships have available to dispose of their waste. In this case, the COTP may want to confirm that arrangements have been made for the receipt of garbage in the other port.

6. Where To Mail Applications. Until August 27, 1989 all COAs will be issued by Commandant (G-MPS-1). Form C applications for COAs must be submitted to:

Commandant (G-MPS-1)
U.S. Coast Guard Headquarters
2100 Second Street S.W.
Washington, D.C., 20593-0001
Attention: Annex V Reception Facility Desk

COTPs should assist local terminals/ports in understanding the regulations and completing the application.

7. Reports To COTPs. As the program proceeds, COTPs will receive lists of facilities that have applied for and received COAs from Commandant (G-MPS-1). The list will contain information the terminal supplied on their application. In addition, copies of any COAs issued will be forwarded to the appropriate COTPs.

8. Future Guidance. Prior to the end of the initial implementation period, COTPs will receive additional guidance possibly in the form of a draft change to the Marine Safety Manual. This material will include instructions to COTPs on the issuance of COAs for all the MARPOL 73/78 Annexes in force.

G. The Great Lakes. Annex V requirements apply to U.S. waters in the Great Lakes. The important change that these new regulations bring to the Great Lakes is the requirement for reception facilities to handle garbage. Since the Great Lakes are considered internal waters, the Great Lakes will continue to be a no discharge zone for garbage.


H. Ship Repair Yards. The reception facility requirements apply to ship repair yards. Ship repair yards are obligated to provide reception facilities but are not under any response time constraints as long as the reception facilities are provided before the ship leaves the yard. Local health ordinances may, however, require more timely removal of the garbage from the ship.

Chapter 2. WAIVERS

A. Waiver Requests.

1. Background. In accordance with 33 CFR 158.150, persons in charge of terminals/ports may request relief from the reception facility requirements, whether or not they must apply for a COA. The waiver authority allows COTPs flexibility in applying the regulatory requirements for situations when it is physically or economically impractical to comply. Waivers allow alternatives to operational requirements which in the judgement of the COTP provide an equivalent level of protection to the marine environment and do not cause undue delay to ships.
2. Terminals Not Required To Apply For COAs. Requests for waivers of the regulations from terminals, such as marinas, not required to obtain a COA, should be mailed directly to the local COTP. For these waiver requests, COTPs should follow the waiver review procedures contained herein and issue waiver letters approving or disapproving the waiver. The COTP waiver letter shall state each alternative requested and approved, the requirement waived and expiration dates if applicable. A copy of the waiver letter should be forwarded to Commandant (G-MPS-1).
3. Terminals Required To Have COAs. Requests for waivers of the regulations from terminals/ports, required to apply for a COA, must submit any waiver request together with their application (FORM C) to Commandant (G-MPS-1). Upon receipt of this information Commandant will record the waiver request and application information into its database and telefax the waiver request to the local COTP for review. Accompanying the waiver request will be a Waiver Review Letter (see Figure 2-A.). COTPs will review the waiver request in accordance with the "Waiver Review Procedures" noted in paragraph B and:
 - a. if the waiver is approved, COTPs shall complete the Waiver Review Letter and forward it to Commandant (G-MPS-1);
 - b. if the waiver request is disapproved, COTPs should notify the terminal/port and indicate the reasons why the request was denied. In addition, the terminal/port should be advised of the appeal procedures specified in 33CFR 158.190. If a waiver was disapproved and the terminal/port then takes action to comply with the requirements, the terminal/port must re-apply for a COA. The COTP shall complete the Waiver Review Letter and forward it to Commandant (G-MPS-1).
 - c. If additional information is needed from the terminal/port, COTPs shall correspond directly with the terminal/port. COTPs shall complete the Waiver Review Letter and return it to Commandant (G-MPS-1) no later than 15 working days after receipt of the waiver request from Commandant (G-MPS-1); and
 - d. if waiver review takes more than 15 working days, COTPs shall copy the Waiver Review Letter and place the copy in a unit tickler file. The original letter

2. A. 3. d. (cont'd) shall be completed indicating that the waiver is temporarily disapproved and forwarded to Commandant (G-MPS-1). The Waiver Review Letter, in this case, will suffice as an interim report. When the COTP has completed a review of the waiver request, the copied Waiver Review Letter shall be completed and submitted to Commandant (G-MPS-1).



(Address of Unit)

From: (CUIP address)
 To: Commandant (G-MPS-1) ATTN: Reception Facility Desk 16450
 Subj: REVIEW OF WAIVER REQUEST FROM ANNEX V GARBAGE RECEPTION FACILITIES

Ref: (a) COMDTINST M16450.31
 (b) Your letter dated (date) concerning a request for waiver of Annex V requirements from(terminal name).
 (c) 33 CFR 158.150(b)

1. In accordance with reference (a) we have reviewed reference(b). Provided herein is our response which (if approval is indicated) fulfills the requirement in reference (c) for an approval letter.

Returned - This terminal/port is not in our zone. COTP who should review this waiver. _____
(enter COTP number from page three of FORM C)

Approved

Cite to be Waived	Description of Cite	Alternative Proposed By Terminal/Port	Expiration Date of Waiver (7 years or less)

Subject to following consideration(s)/condition(s).

Pending:
 This office is corresponding with the terminal/port to resolve the situation locally. This form has been copied and the original hereby returned. This unit will forward the copied form when the case is resolved.
 Estimated resolution date _____
(mo/day/yr)

Disapproved
 The terminal has been notified by separate correspondence of the disapproval of the waiver.
 The terminal will submit a new application (Form C) to Commandant (G-MPS-1).

BOAL SPANISH TIBETO, TR, TT, OIL, PM, LE, BR, AL, SE, TR, AK, DP, BO, GULF, RD, MW, RE, RES

 Typed Name of Captain of the Port

 Signature of Captain of the Port

 (mo/day/year)
 Date

Figure 2-A. Waiver Review Letter

- 2.A. 4. COTP Notification. In order to confirm the status of waiver requests, lists of those terminals/ports which have pending waiver requests will be supplied periodically to COTPs from Commandant (G-MPS-1).
5. APHIS Facilities. If terminal/ports required to have APHIS facilities available, do not have them, but expect to prior to the end of the initial implementation period, they should delay applying for a COA so as not to have to request a waiver.
- B. Waiver Review Procedures. When reviewing waiver requests, COTPs should consider;
1. if information required by 33 CFR 158.150 is supplied;
 2. the availability of mobile reception facilities and the travel distance involved;
 3. the implications for ships visiting the terminal;
 4. future changes in technology, cost of equipment, vessel traffic and types at the terminal/port, etc.;
 5. the impacts upon vessel operations and scheduling;
 6. the threat of pollution to the marine environment; and
 7. whether the cost of compliance jeopardizes the economic viability of the company.

Chapter 3. ENFORCEMENT GUIDANCE.

- A. Enforcement Authorities. Violations of MARPOL 73/78, the Act to Prevent Pollution from Ships, or the regulations in 33 CFR 158 carry civil penalties of up to \$25,000 per day per violation and criminal penalties of up to \$50,000 and 5 years in prison. In addition, ships may be denied entry to terminals/ports not having adequate reception facilities. The enforcement penalties apply equally to both terminals/ports which are required to have a COA and those that are not required to hold a COA but must provide reception facilities.
- B. Recommended Enforcement Action. Although the law allows for stiff penalties for non-compliance with Annex V requirements, COTPs should primarily strive for cooperation with terminal/port and ship owners and operators to achieve compliance. This involves the use of escalating enforcement methods when cooperation is not forthcoming. In general, on-site correction and letters of warning are preferred prior to the use of civil/criminal penalty procedures and denial of entry provisions. Figure 3-A. is a list of sample major and minor violations and the recommended enforcement action for the garbage reception facility requirements of 33 CFR 158. Repeated flagrant minor violations may escalate to the level of a major violation. The types of reception facility violations are categorized as either major or minor according to their impact upon the adequacy of the reception facility, the potential for delaying ships and the severity of threat to the marine environment. The listing of violations is not all-inclusive. For violations not listed, the COTP should assess the seriousness of the discrepancy, classify it as either major or minor and decide upon the appropriate enforcement action(s), taking into consideration the enforcement actions recommended for similar violations. In taking enforcement action, COTPs may modify the guidance herein to better suit the specifics of the violation, the circumstances surrounding the violations and the local conditions. Violation cases should clearly state the problem and the apparent result of non-compliance.
- C. Targeting. To achieve compliance and balanced administration of the reception facility program, it is important to direct Coast Guard enforcement efforts towards those failing to meet their regulatory responsibilities. Each violation case requires careful investigation to identify the responsible party or parties prior to taking enforcement actions. Enforcement actions should not be restricted to only the terminal/port owner, operator, or person in charge of a terminal/port where a COA is issued. The COTP can process a violation report for violations of 33 CFR 151 and 158, as appropriate, against:
1. the terminal/port who is not required to have a COA but must supply reception facilities;
 2. the terminal/port to whom a COA is issued;
 3. a third party company who is on contract or has an agreement from the terminal/port to supply reception facilities;
 4. a person in charge of any of the above.

<p align="center">RECOMMENDED ENFORCEMENT ACTION FOR VIOLATIONS OF ANNEX V OF MARPOL 73/78</p>	<p align="center">RECOMMENDED ENFORCEMENT ACTION</p>	<p align="center">REGULATORY CITE</p>
<p>Major Violations:</p>		
<p>1. COA applicant intentionally provides false information.</p>	<p align="center">A</p>	<p align="center">33 CFR 151.04(b)</p>
<p>2. Reception facility does not hold all federal, state, or local permits.</p>	<p align="center">E</p>	<p align="center">33 CFR 158.41004(a)(6)</p>
<p>3. Terminal or port unable to receive all of ships garbage.</p> <p align="center">1st offense or low impact on vessel</p> <p align="center">2nd offense or medium impact on vessel</p> <p align="center">Multiple offenses or major impact on vessel</p>	<p align="center">B</p> <p align="center">C</p> <p align="center">A,C</p>	<p align="center">33 CFR 158.420</p>
<p>Minor Violations:</p>		
<p>1. Terminal or port fails to notify the COTP of change of information noted on "FORM C".</p> <p align="center">1st offense</p> <p align="center">Multiple offenses</p>	<p align="center">B</p> <p align="center">C</p>	<p align="center">33 CFR 158.165(b)(3)</p>
<p>2. Terminal or port fails to return suspended/revoked COA.</p>	<p align="center">C</p>	<p align="center">33 CFR 158.163(b)(1)</p>
<p>3. Waiver if issued, not attached to COA.</p> <p align="center">1st offense</p> <p align="center">Multiple offenses</p>	<p align="center">D</p> <p align="center">B,C</p>	<p align="center">33 CFR 158.178</p>
<p>A. If COA issued, suspend. If no COA issued, initiate civil penalty action and possible denial of entry.</p> <p>B. Issue letter of warning.</p> <p>C. Initiate civil penalty action.</p> <p>D. Verbal warning.</p> <p>E. Contact applicable agencies with enforcement authority. If Coast Guard missions areas are impacted, consider suspension of COA and civil penalty action.</p>		

Figure 3-A

- D. During Waiver Review. If the local COTP is reviewing a waiver request, entry should not be denied to ships at the terminal/port nor should any other enforcement action be taken against the terminal/port so long as the terminal/port is making good faith efforts, within time constraints specified by the COTP, to resolve the waiver request.
- E. APHIS Facilities. The activities of the terminal/port, required to make available APHIS facilities, should be closely monitored to ensure that good faith efforts are being made to comply with the requirements in a timely manner. Each case should be handled on an individual basis. Any initial efforts to attempt to circumvent these requirements with a waiver request should be discouraged. This phase-in period is the time for terminals/ports and local communities to attempt to comply with the requirements to make available shoreside disposal options to vessels rather than to seek a waiver of the requirements. The guidelines for waiver requests should be strictly adhered to. Not having existing APHIS facilities is not a satisfactory excuse to grant a waiver of these requirements. COTPs must be convinced that APHIS facilities will not be requested or used by vessels before granting a waiver from this requirement.
- F. Fishing Terminals/Ports. Reports of inadequate reception facilities at fishing terminals should be forwarded to the local National Marine Fisheries Service (NMFS) enforcement agent for preliminary investigation. Lists of local NMFS offices are provided in Enclosure (1). A letter from the Department of Commerce to Commandant is included for information purposes (see enclosure (2)). The NMFS agent will perform an initial investigation and will forward a summary of the findings to the local COTP. COTPs should allow 30 days for completion of the investigation by NMFS agents.
- G. Recreational Boating Facilities. Reports of inadequate waste reception facilities at recreational boating facilities will be handled on an as-resources-permit basis. Commandant (G-MPS-1) is in the process of encouraging states to adopt parallel legislation so local and state law enforcement agencies will be able to enforce the provisions of Annex V for recreational boats and marinas.
- H. Inspection. The regulations in 33 CFR 158 allow but do not require Coast Guard inspection of terminals and ports and their associated reception facilities prior to issuance of an Annex V COA. COAs will be issued by CG Headquarters without prior inspection by local COTPs. Except for reports of inadequate reception facilities or any other reports which would require investigation of the terminal or port and its reception facilities, routine inspection to verify compliance with the provisions of 33 CFR 158 will not be conducted during the implementation period covered by this instruction, except as part of the regular COTP facility inspection.
- I. Suspension And Revocation Of A COA. The term "suspension and revocation" used here and in 33 CFR 158 pertains to actions by the COTP against a Certificate of Adequacy issued for oil, NLS, or garbage waste reception facilities. This term should not be confused with the Suspension and Revocation procedures in 46 USC Chapter 77 for the suspension and revocation of merchant mariner's license and documents. Suspension and revocation

3.I.(cont'd) of a COA is a serious enforcement action that may lead directly to the denial of entry of ships to a terminal or port. Suspension of a COA is the temporary invalidation of a COA, and revocation is the permanent invalidation of a COA. Suspension i.e., temporary invalidation of a COA, is appropriate for major violations and for recurring or continuing minor violations. Procedures to initiate suspension and revocation of a COA are contained in 33 CFR 158.170 - 180.

National Marine Fisheries Service**Law Enforcement Offices**

ANCHORAGE	AK	907-271-5006	OTIS AFB	MA	508-563-5721
JUNEAU	AK	907-586-7225	SALISBURY	MD	301-749-3545
KODIAK	AK	907-486-3298	SILVER SPRING	MD	301-427-2300
SITKA	AK	907-747-6940	PORTLAND	ME	207-780-3241
EUREKA	CA	707-445-0456	ROCKLAND	ME	201-594-7742
SANTA ROSA	CA	707-578-3740	ATLANTIC BEACH	NC	919-247-4549
TERMINAL ISLAND	CA	213-514-6690	PORTSMOUTH	NH	603-436-0171
TERMINAL ISLAND	CA	213-514-6688	BRIELLE	NJ	201-528-3315
WATSONVILLE	CA	408-761-2560	MARMORA	NJ	906-390-8303
KEY WEST	FL	305-294-7444	HAMPTON BAYS	NY	516-728-1171
MIAMI	FL	305-361-4549	UPTON	NY	516-282-4221
PORT ST. JOE	FL	904-227-1879	ASTORIA	OR	503-325-5934
ST. PETERSBURG	FL	813-893-3244	COOS BAY	OR	503-269-1861
ST. PETERSBURG	FL	813-893-3841	NEWPORT	OR	503-867-3777
ST. PETERSBURG	FL	813-893-3145	PORTLAND	OR	503-230-5427
TITUSVILLE	FL	407-453-4827	GUAYNABO	PR	809-790-6078
BRUNSWICK	GA	912-265-0108	WAKEFIELD	RI	401-789-8423
GLYNCO	GA	912-267-2485	WAKEFIELD	RI	401-789-8022
AGANA	GUAM	671-472-1311	CHARLESTON	SC	803-724-4528
HONOLULU	HI	808-541-2727	CORPUS CHRIST	TX	512-888-3362
NEW ORLEANS	LA	504-589-4538	NEWPORT NEWS	VA	804-441-6760
BOSTON	MA	617-565-6591	ST. THOMAS	VI	809-774-5226
GLOUCESTER	MA	508-281-3600	BELLINGHAM	WA	206-676-9268
GLOUCESTER	MA	508-281-3600	PORT ANGELES	WA	206-457-0229
NEW BEDFORD	MA	508-992-7711	SEATTLE	WA	206-526-6133
			SEATTLE	WA	206-764-3485

Encl (2) to COMDTINST M16450.31
FEB 6 1989

UNITED STATES DEPARTMENT OF
COMMERCE
National Oceanic and
Atmospheric
Administration
NATIONAL MARINE FISHERIES
SERVICE
Silver Spring, Maryland 20910

Captain M.J. Schiro
Acting Chief, Office of Marine Safety
Security and Environmental Protection
U.S. Coast Guard
2100 2nd Street, S.E.
Washington, D.C. 20593

Dear Captain Schiro:

Thank you for your letter regarding program maintenance and enforcement responsibilities under the proposed regulations implementing the provisions of Annex V of MARPOL 73/78.

I am aware that issuing Certificates of Adequacy (COAs) is a one-time administrative burden. I know that in previous Annexes of the MARPOL 73/78 convention, the Coast Guard Captains of the Port (COTP) issued COAs. I understand that once your Headquarters office issues the initial COAs under Annex V, future COAs--those issued after June 30, 1989--will be delegated to your local COTP offices. I believe this procedure should apply to all COAs issued under this program for which you are responsible. This will assure successful implementation, effective management and consistent application of the goals and objectives of Annex V.

Regarding enforcement, NOAA Fisheries resources are severely limited (95 agents nationwide) and overburdened with our current responsibilities. However, our agents will assist you on a case by case basis as their workload permits by investigating reports of inadequate reception facilities at fishing ports. This investigation, as I understand it, will involve the agent conducting a cursory inspection, completing a form and sending the form to the local COTP. We agree that supplementing the Coast Guard's Annex V enforcement efforts in this manner is an effective use of our joint resources.

Sincerely,

James W. Brennan
Assistant Administrator
for Fisheries