

Frequently Asked Questions prohibited Asbestos Containing Materials found on seagoing ships

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Version 2.0

Background

The Netherlands Shipping Inspectorate (NSI) as part of the Human Environment and Transport Inspectorate (ILT) receives more and more requests regarding exemptions for asbestos containing materials (ACM) on board ships. Reasons are:

- Inventory for Hazardous Materials (IHM) studies often result in the inventory of ACM that was not previously known to be present;
- The Recognized Organizations (ROs) received a draft for the amended ItoRO no.24 and they request if they can anticipate on this.

The amended instruction is expected to be ready in the first half of 2021. To provide an answer to the most frequent questions, this Frequently Asked Questions (FAQ) was drafted to provide clarity in the meantime.

Principles / responsibilities

Asbestos is a prohibited and harmful substance and the IMO has, via the SOLAS Convention, banned the use of asbestos for almost 20 years now.

An important principal is that the responsibility for safe working conditions lies with the ship owner/manager, who is responsible for controlling the risks as a result of the (possible) presence of asbestos. For example in the context of the Risk Inventory & Evaluation (RI&E).

NSI is responsible for issuing exemptions in the correct manner and on the correct legal grounds. Therefore documents sent to the NSI shall contain all the correct information and a complete application, which is the responsibility of the owner/manager. The RO shall process the request and verify all submitted information against applicable legislation and instructions, before forwarding its well-founded recommendation. NSI will only verify the completeness and correct principles of the application / exemption request.

The current ItoRO no.24 (on NeRF) is in effect in combination with the information in this FAQ until the amended instruction is completed and published.

Frequently Asked Questions

1 - When is it necessary to issue an exemption?

An exemption is only necessary if ACM is found which was placed on board a ship subject to, and placed contrary to the prohibition provisions in the SOLAS Convention (regardless of the keel laying date). In the Netherlands, this also applies to other ships for which SOLAS is to be applied e.g. cargo vessels below 500 GT and larger than 24 meters (Regulation Safety Seagoing Vessels - article 3a.1). For all other ACM the Netherlands Labour Regulations are applicable (see question 6).

2 - Is the removal of all ACM compulsory?

The SOLAS Convention only comprises provisions on the prohibition of placement of the ACM and contains no requirements for the removal of ACM. IMO MSC/Circ.1374 recommends the way a Member State should deal with the situation once prohibited ACM is found on board. This includes the removal of all identified ACM within a timeframe of a maximum of three years and the issuance of an exemption for this period.

A result of the presence of ACM contrary to the provisions of SOLAS is that the Safety (Construction) Certificate of the ship ceases to be valid and it is not allowed to sail anymore until the removal of the ACM has taken place or mitigating measures are in place. If any prohibited ACM remains on board for any reason, an exemption under the Safety (Construction) Certificate is compulsory.

3- Is IHM sampling according to the EU Ship Recycling Regulation (SRR) equivalent to asbestos-sampling as stipulated in ItoRO no.24?

NSI has received numerous requests for asbestos exemptions due to the fact that ACMs were found as a result of SRR/IHM-certification, while no sampling/investigation in accordance with the specific Netherlands' instructions (ItoRO no.24) has taken place.

Mostly this concerns vessels which were delivered after the 1st of July, 2002 but no later than the 1st of January 2011, which already were certified under the Netherlands Flag before the 1st of December 2011.

For **this category of vessels** the existing Netherlands' ItoRO no.24 paragraph 2.3 states:

"The ship owner is obliged to make a risk inventory, part of the Risk Inventory and Evaluation², to identify hazardous situations on board. Asbestos containing materials are part of this inventory. This requirement is applicable for all ships under Netherlands flag. In case asbestos containing materials are detected, the MSC.1/Circ.1374 and MSC./Circ. 1379 are applicable and exemptions may be issued by the RO, according to paragraph 6.

Furthermore it is stated, in paragraph 6, what is necessary for an exemption:

- a. *Procedures according paragraph 2 [this is an asbestos investigation according to ItoRO no.24] of this document are to be followed, resulting in a report according paragraph 4 [this is testing and reporting according to ItoRO no.24].*

As a result thereof, it is required to perform an asbestos investigation, testing and reporting in accordance with existing ItoRO no.24 in cases where asbestos is found during SRR/IHM-investigation to be eligible for the issuance of an exemption.

Meanwhile it has become clear that the Netherlands' minimum requirements for IHM/SRR-investigation are such that these are not equivalent with the requirements of the existing ItoRO no.24. However, it is understood that some Recognized Organizations have additional requirements in place in relation to IHM/SRR-investigation.

Therefore in cases where the RO dealing with the SRR/IHM-survey and certification confirms in writing that, due to their additional requirements (e.g. according to EMSA IHM Guideline standards), these investigations are at least equivalent to the requirements of the existing ItoRO no.24, this can be accepted by NSI and an exemption should be issued in accordance with the requirements of the ItoRO no.24.

In all other cases (the existing ItoRO no.24 shall be complied with and, in order to arrange this, a temporary exemption or issuance of a short term Safety (Construction) Certificate may be issued for a maximum period of three months.

Meanwhile, all the conditions (other than condition a. of paragraph 6, as provided in existing ItoRO no.24) in relation to the already found ACMs shall be complied with.

In addition the following is to be noted (and mentioned on the exemption if applicable):

- In cases where areas/installations/materials were excluded from the survey/sampling, these areas/installations/materials shall be considered and treated as asbestos-suspected until samples/analysis proves otherwise.
- All crew and possible contractors shall be informed about the current status of the asbestos investigation in relation to possible exposure to asbestos.
Unless IHM/SRR-investigation for the ship concerned is declared equivalent with ItoRO no.24, the probability that no ACM at all is detected during SRR/IHM-investigation is high. The ship owner should be very much aware of this fact

while preparing the vessels' risk inventory, as part of the Risk Inventory and Evaluation, to identify and mitigate (possible) hazardous situations on board. To avoid this situation it is highly recommended to perform asbestos investigation in accordance with ItoRO no.24 or equivalent.

4 – If a system to be sampled contains 25000 gaskets, do I need to sample 2500 of these?

This is of course not the case. The current ItoRO no.24 and also the IHM EMSA Guideline state clearly that this 10% samples is indicated as guidance and that it is subject to the expertise of the specialized sampling company to provide for a representative number of samples. Furthermore the ItoRO no.24 also provides for a maximum number of 20 (or 50 if ACM is found) samples per system.

ItoRO no.24:

"The amount of samples should be at least to the minimum as here specified, however may be increased to the satisfaction of the independent qualified and licensed asbestos investigation company."

"As guidance a minimum of 10% of the components per each system, according 3a, where asbestos containing materials are suspected should be sampled , with a maximum amount of 20 samples per each system. If one or more components prove to be Asbestos Containing Materials, a further 10% of other than the originally sampled components/types may be sampled, with a total maximum amount of 50 samples per each system".

5 - In the current situation, will an exemption be issued with a validity of more than 1 year?

Until the amended ItoRO no.24 has been published, NSI will continue to issue exemptions with a validity of a maximum of 1 year (or less, in accordance with the request of the applicant).

6 - How to deal with ships for which the SOLAS Convention is not applicable?

With regard to these ships, NSI has no legal base to issue an exemption for prohibited ACM found on board. If ACM is found on board these ships, the Netherlands' labour regulations are applicable and as a minimum the shipowner has the responsibility for safe working conditions and for controlling the risks as a result of the asbestos. This should addressed and mitigated in the ships' Risk Inventory and Evaluation (RI&E).

The possible required removal of ACM and related national provisions and conditions for these ships is still subject of investigation with the Ministry of SZW and will be updated in this FAQ, as soon as clarity is provided.

7 - May the RO issue an IHM certificate if prohibited ACM is found on board and no exemption has been issued?

An IHM certificate may be issued for 5 years, even if ACM is present and no exemption has been granted. However, a Safety (Construction) Certificate cannot be issued or must be withdrawn in case the ACM is installed contrary to the prohibition provisions in the SOLAS Convention (reference is made to FAQ no.3). Also in case where investigation in accordance with ItoRO no.24 is necessary and additional asbestos is found, the IHM documentation shall be amended accordingly. At all times, the provisions as mentioned in ItoRO no. 24 paragraph 6, items c., d. and e. must be in place, also for ACM which is not prohibited (installed before the entry into force of the

prohibition provisions) and when there is no health risk for the persons working in that area due to damaged asbestos containing materials and maintenance work on systems containing asbestos¹.

8 - How to deal with situations in which a shipowner, for example, applies for an exemption more than 3 months after the inventory report is dated ?

MSC 1374 is very clear regarding the maximum timeframe from the date from which the removal has to take place:

"The removal – assigned to professional asbestos removal companies – should take place within a time frame of 3 years from the date when the contravention is found".

The date the contravention is found, is seen as the date that the inventory report was dated. If the request for an exemption is done more than 3 months after this date, the RO should clearly identify while submitting the exemption-request. In case the ship is ISM certified, this occurrence should be treated as ISM non-compliance.

Furthermore, NSI will forward this information to its' Enforcement Department.

9 – Should ItoRO no.24 still be followed during the process of newbuilding if IHM/SRR is applied?

The prohibition of ACM according to SOLAS and the Inventory according to the Ship Recycle Regulation are two separate things (and of course different regulations). Installation of ACM under SOLAS should be prevented during newbuilding and maintenance of the ship (reference is made to MSC Circular 1426/Rev1), while SRR only stipulates that it should be listed in the Inventory.

If the RO dealing with the SRR/IHM-survey and certification confirms in writing that, due to their additional requirements (e.g. according to EMSA IHM Guideline standards), these investigations are at least equivalent to the requirements of the existing ItoRO no.24, this can be accepted by the NSI.

In all other cases ItoRO no. 24 shall be complied with.

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¹ Reference is made to MSC/CIRC.1045 - GUIDELINES FOR MAINTENANCE AND MONITORING OF ON-BOARD MATERIALS CONTAINING ASBESTOS.