

Alerts & Publications

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Recent Developments in Maritime Environmental Law (December 2012 edition)

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We are pleased to provide this update on developments in the areas of maritime environmental law, regulation, compliance, and enforcement.

New IMO Garbage Restrictions Start January 1, 2013

New International Maritime Organization (“IMO”) regulations imposing stricter restrictions on the discharge of marine solid waste go into effect on January 1, 2013. The regulations were initially adopted by the Marine Environment Protection Committee (“MEPC”) in 2011 and provide a new and different approach to the management of garbage in that, for the first time, there is a general prohibition on discharge unless specifically allowed by the regulations. In the past, all discharges from vessels and platforms were allowed unless specifically prohibited. The four categories of allowable discharges include food waste, cargo residues, cleaning agents considered not harmful to the marine environment, and carcasses of animals that died while being carried as cargo.

The new regulations may create challenges for operators, who will have to store increased quantities of waste onboard, and for port authorities, which will have to provide increased garbage services when ships arrive in port. Garbage management plans will now be required for all vessels of 100 tons gross weight or greater (the current requirement applies to ships of 400 gross tons or greater).

EU Delays GHG Regulations

The European Commission has placed on hold a proposal to regulate

greenhouse gas emissions (“GHG”) from shipping in the European Union (“EU”) until at least 2013. The proposal was originally scheduled to be published by the end of 2012, with the Commission suggesting that maritime emissions might be included in the existing EU Emissions Trading System. Instead, it is now likely that a maritime emissions monitoring and reporting plan will be proposed that would serve as a basis for an initial step to help the EU prepare for possible maritime emissions reduction measures and discussions in the IMO. The IMO previously warned that an EU plan to unilaterally regulate shipping emissions could jeopardize international talks on the issue.

EU Approves Cleaner Maritime Fuels

On September 11, European Parliament lawmakers approved a law that will phase in tighter limits on sulfur in shipping fuels through 2020. In keeping with current IMO sulfur limits, shipping fuels used in European waters would be required to have a sulfur content of no greater than 0.5 percent by 2020, compared to a limit of 3.5 percent in force since January 1, 2012.

Certain areas, including the Baltic Sea, the North Sea, and the English Channel, have been designated “sulfur emission control areas,” where the limit will be 0.1 percent by 2015, compared to 1 percent currently. Approval by the EU Council is still required, and is expected to occur in the near future.

In a related development, the European Commission has reported that an EU rule restricting the amount of sulfur in fuel used by ships at berth has led to improvements in harbor air quality. Air quality measurements carried out before and after the rule went into effect in 2010 show a 60 percent reduction in sulfur dioxide emissions. By comparison, tests during the same period in the north African port of Tunis showed no reduction in sulfur dioxide levels, indicating to researchers that reductions in EU ports were a direct consequence of the application of the EU requirements. The EU fuel limit of 0.1 percent sulfur by weight started in January 2010 and was approved in 2005 as an amendment to a 1999 EU directive (1999/32/EC).

Canada Releases Interim Rules for Air Emissions Fuel limits, Grey Water Discharges on Emissions, and New Vessel Energy Efficiency

The Canadian government has established interim measures limiting sulfur content in fuel for vessels operating in Canadian waters effective August 1, 2012, until such time that proposed Regulations Amending the Vessel Pollution and Dangerous Chemicals Regulations are finalized.

The Interim rules call for a maximum allowable sulfur content in marine vessel fuels of 3.5 percent from January 1, 2012 to December 31, 2019, and 0.5 percent on or after January 1, 2020, and would also implement sulfur limits in Canada’s portion of the North American Emission Control Area (“NA-ECA”).

Application of the sulfur oxide emissions standards to vessels using inland

waters, such as the Great Lakes and St. Lawrence River, are based on a fleet averaging approach and would require a progressive decrease in sulfur content of fuel oil of 1 percent per year, starting from 1.5 percent and decreasing to 0.1 percent by January 1, 2020.

The proposed Regulations are required to implement the NA-ECA that was adopted under Annex VI to the International Convention for the Prevention of Pollution from Ships (“MARPOL”). The NA-ECA entered into force on August 1, 2012, and set a 1 percent limit on the sulfur content of marine fuel, followed by a 0.1 percent limit in 2015.

The interim regulations include new standards for sulfur oxides and nitrogen oxides air emissions, energy efficiency, and discharges of grey water, that is, wastewater deriving from washing, laundering, bathing or showering. Also included in the draft regulations are updates to the safety standards for the transfer of oil between tankers at sea, making them consistent with international regulations, and new minimum requirements for managing grey water discharges under the Canada Shipping Act 2011.

Energy efficiency standards applicable to ships for which construction contracts are placed after June 30, 2013 will implement the Energy Efficient Design Index, International Energy Efficiency Certificate, and Ship Energy Efficiency Management Plan provisions in MARPOL Annex VI. Standards for grey water discharges prohibit ships operating in waters under Canadian jurisdiction from depositing solids or causing any sheen on the water. They also require new vessels capable of carrying 500 or more passengers to ensure that grey water is treated by a certified marine sanitation device and then discharged no fewer than three nautical miles from shore.

Japan Seeks Tighter Discharge Limits

The Japanese government is seeking tighter restrictions on the disposal of garbage and wastewater from oceangoing ships and is also proposing new requirements for documenting carbon dioxide emissions, both starting January 1, 2013.

Japan’s proposed changes are designed to enforce provisions of MARPOL. The IMO’s MEPC adopted revised MARPOL Annex V regulations for the prevention of pollution by garbage from ships and Annex VI regulations for the prevention of air pollution from ships, both of which will enter into force January 1, 2013.

The proposal calls for Japan’s Maritime Policy Division to draft technical standards for determining carbon dioxide emissions and emission targets for vessels with gross tonnage exceeding 400 tons. The carbon dioxide regulations would apply to both coastal and oceangoing vessels, including bulk carriers, LNG tankers, chemical carriers, container ships, freezer/refrigerator carriers, passenger ships, roll-on-roll-off carriers, and trawlers.

Russia Accedes to IMO’s Anti-Fouling Convention

Russia has acceded to the IMO's anti-fouling convention and will begin ship inspections to ensure the compliance with anti-fouling systems pursuant to international standards. Russia's Agency of Sea and River Transport will organize the testing of ships, regardless of their flag, for compliance.

Certain anti-fouling paints and other treatments used to coat the bottoms of ships have been found to leach chemicals into the water, resulting in harm to aquatic life. The anti-fouling convention, which entered into force in 2008, bans the use of such toxic compounds.

California Legislators Oppose Pilot Program on Alternative Sulfur Limits

Key members of California's federal congressional delegation are opposing a proposal to create a federal pilot program for marine vessel emissions averaging as an alternative to compliance with low-sulfur fuel limits for vessels operating off U.S. coasts.

Sens. Barbara Boxer and Dianne Feinstein and Rep. Henry Waxman oppose a proposal that would establish a 48-month pilot program for the NA-ECA allowing vessels to meet MARPOL requirements through "fleet averaging, weighted averaging, weighted and unweighted emissions averaging calculations, and such other measures as determined appropriate" by the U.S. Environmental Protection Agency ("EPA") administrator.

In their opposition letters, Boxer, Feinstein, and Waxman stated that the low-sulfur fuel standard is "technically feasible and cost-effective." They argue that the low-sulfur fuel standard is "absolutely essential for the state of California."

The EPA issued the final standard in 2010 for the sulfur content of diesel fuel burned by ships within 200 nautical miles of the U.S. coastline.

In a related development, the EPA is proceeding with a rule allowing petroleum refiners to produce higher-sulfur diesel fuel for older locomotive and marine engines beyond 2014. The agency plans to issue a proposed rule and direct final rule at the same time, allowing "transmix" processors to produce marine diesel fuel containing up to 500 parts per million of sulfur for use in older engines outside of the Northeast Mid-Atlantic Area and Alaska after 2014. Transmix is a mixture of finished fuels that no longer meets the specifications for a particular fuel, and usually results from petroleum products mixing together during pipeline transportation. The 500 ppm diesel fuel could only be used in older engines that can tolerate higher sulfur levels.

U.S. Navy Tests Biofuels

A U.S. Navy aircraft carrier group utilized biofuel instead of traditional petroleum products for the first time during training exercises held in July 2012. The Navy paid about \$26 per gallon for 450,000 gallons of a biofuel created from a blend of used cooking oil and algae, eliciting criticism from Republican lawmakers who note that the biofuel blend is more expensive

than conventional fuel. These lawmakers have sponsored the 2013 National Defense Authorization Act currently under consideration in Congress, which would bar the purchases of alternative fuels that carry a higher price tag than oil or gasoline.

Sen. John McCain (R-Ariz.) in a letter to Navy Secretary Ray Mabus labeled the purchase as “unauthorized” by Congress and a misplacement of priorities.

U.S. EPA Actions

The EPA is declining to proceed with rulemakings aimed at determining whether greenhouse gas emissions from aircraft, ships, and nonroad vehicles endanger public health and welfare. Such an endangerment finding is a preliminary step to regulating emissions from these sources.

The EPA’s decision came on the heels of a legal action taken by the Center for Biological Diversity, Friends of the Earth and other organizations, which had requested that a federal court reconsider their Clean Air Act suit against the EPA, alleging a failure to regulate greenhouse gases from certain mobile sources. The groups argued that because the EPA had introduced new methods for assessing power plant emissions, it could apply the methods to other sources and that the new methods constituted new evidence in an earlier-decided case. However, the judge determined that because the EPA’s emissions evaluation methods had not been finalized, they did not constitute new evidence.

U.S. EPA Approves Use of LNG Fuel for Maritime Shipper

A Seattle-area cargo shipper operating between Puget Sound and Alaska has reached an agreement with the EPA and U.S. Coast Guard that will allow it to phase in the use of liquefied natural gas (“LNG”) as fuel instead of switching to low-sulfur marine fuel.

The shipper, Totem Ocean Trailer Express, negotiated an agreement with the EPA providing for conversion to LNG in lieu of using low-sulfur fuel. It is believed to be the first conversion in the world of this type of marine vessel. The deadline for completion of the conversion is September 2016. LNG generally has lower emissions of nitrogen oxides and particulates than low-sulfur fuel, and sulfur emissions are typically negligible.

Currently, low-sulfur fuel is required in large ships while traveling within 200 miles of southern Alaska. The 200-mile limit is part of the NA-ECA requirements designed to limit air emissions of sulfur oxides and nitrogen oxides. Alaska has filed a lawsuit challenging the fuel mandate, calling the EPA’s regulation unconstitutional because it is based on a treaty amendment that has not been ratified by the U.S. Senate. The state also argued that the regulation was enacted without proper scientific and economic analysis.

Port of Los Angeles Establishes Clean Ships Initiative

The Port of Los Angeles and six shipping companies have joined together

to provide incentives for the use of newer and cleaner vessels visiting the harbor.

Evergreen, Hamburg Süd North America, Hapag-Lloyd AG, Maersk Line, Nippon Yusen Kabushiki Kaisha, and Yang Ming have joined in the Environmental Ship Index (“ESI”) program, developed through the International Association of Ports and Harbors’ World Ports Climate Initiative. That program focuses on reduction of sulfur oxide, nitrogen oxide, and carbon dioxide emissions.

Ships that meet the International Maritime Organization’s Tier II or Tier III standards, or participate in a test program to improve vessel emission reduction technology, earn quarterly credits ranging from \$250 to \$5,250 per ship. Incentives are also based on engine specifications, emissions certifications, use of low-sulfur fuel, power technology, and adoption of a Ship Energy Efficiency Management Plan. The Port is developing plans to cut diesel particulate emissions by 77 percent from 2010 levels by 2023.

The Environmental Ship Index program has been utilized at several European ports prior to its implementation in Los Angeles.

Ship Designers Seek Greater Efficiency

Cargo ship designers have begun looking to wind power to improve efficiency and reduce GHG emissions. The University of Tokyo unveiled a model of its UT Wind Challenger at a recent Japanese trade show. The model has nine masts, each 164 feet tall, with five rigid sails made of aluminum and fiber-reinforced plastic. B9 Shipping in Northern Ireland also