



Shipping update

EU low-sulphur fuel deadline approaches

December 2009

A key deadline in the drive to limit the impact of marine fuel emissions is fast approaching. From 1 January 2010 all ships using ports within the EU will be required to use low-sulphur fuel of less than 0.1%. However, important questions are currently being asked about whether the industry is ready for this change and whether there are safety issues that may impact upon implementation.

Background

MARPOL 73/78, Annex VI details the Regulations for the Prevention of Air Pollution from Ships that entered into force in May 2005 imposing both global and local limits for the sulphur content of bunker fuel.

MARPOL 73/78, Annex VI, Regulation 14 requires that the sulphur content of any marine fuel oil does not exceed 4.5%. In addition the regulation provides that vessels within a Sulphur Emission Control Area (SECA) do not use fuel oil with a sulphur content that exceeds 1.5% unless an exhaust gas cleaning system or equivalent is fitted. SECAs covering the Baltic Sea and the North Sea are already in force.

The EU incorporated MARPOL Annex VI Regulations 14 & 18 regarding sulphur emissions into Council Directive 2005/33/EC of 6th July 2006. However, in doing so the EU also introduced additional requirements of its own, including the restrictions on fuel to be used in port that are about to come into force.

The EU port regulations

Council Directive 2005/33/EC provides that after 1st January 2010 all ships berthed or at anchor for longer than two hours in EU Ports must use low sulphur fuel of less than 0.1%. Vessels may be exempted from this requirement if they connect up to shore power whilst alongside (cold-ironing). There will be a period of grace after arrival and prior to sailing whilst vessels carry out necessary fuel changeover operations.

In practice this means that for many vessels it will be necessary to switch from residual fuel oil (heavy fuel oil) to distillate fuel, such as marine gas oil, when in port.

Practical problems

The new regulation poses significant practical problems for the shipping industry and it is possible that this will have an impact on the implementation of the new measures. The difficulty is that boilers that are constructed for the use of HFO can generally not be used with MGO without some form of modification. At its most extreme, the switch between different fuel types in a boiler that is designed for use with HFO could lead to a risk of explosion.

Recent experience in California appears to support these concerns. Since 1 July 2009, state-level regulation in California has required ships to switch to low-sulphur fuel before entering port. In the first three months of application there have been reports of 15 casualty investigations into fuel switching incidents, compared with the normal rate of one per month.

Although many vessels no longer use boilers / steam turbines for propulsion, the problem is particularly serious for LNG carriers where boilers are still commonly used for propulsion to enable the use of boil-off cargo as fuel. In addition, larger boilers are common on tankers where they are used for heating cargo and to drive steam turbine pumps. When the many smaller boilers commonly found on vessels for auxiliary purposes are also taken into account it follows that the problem of boiler conversion facing the industry is a significant one.

The EU commission has received representations from various parties, including hull insurers, about the potential risks. Some have been lobbying for an additional twelve month phase-in period beyond the January deadline to ensure that all necessary modifications can be made and to minimise safety risks. However, it seems that no such extension will be granted by the Commission.

Contractual issues

The Directive will undoubtedly create difficulties for Owners and Charterers in determining where the cost risk of the regulation lies. Where the issue of compliance is not addressed directly in the charterparty, it will be necessary to consider a range of terms including those relating to specification (particularly in relation to auxiliary engines and bunkers), trading limits, the nature of the service provided, loading/unloading obligations and costs, as well as, where applicable, vetting clauses. In practice:

- Where vessels are on time charterparties which extend into the New Year, Owners and Charterers should ensure they have a common understanding of how the charterparty will work in the context of the regulations introduced by the Directive;
- Charterparties presently under negotiation should be checked to ensure they address the consequences of the Directive satisfactorily; and
- From an operational perspective, both Owners and Charterers would be well advised to fully brief their management and crews as to what is and is not acceptable from a health and safety standpoint. It seems inevitable that, under pressure, people will be prepared to take risks, and that there will be incidents (as demonstrated by the Californian experience).

Future developments

It remains to be seen how the new fuel sulphur limits for ships in port in the EU will be enforced immediately after the deadline. In the absence of any deadline extension by the EU Commission, it will be up to individual states to determine how strictly to treat enforcement issues having regard to the safety concerns that have been raised within the industry. Article 12 of the EU Directive states that it is left to Member States to determine the applicable penalties for breach, subject to the requirement that these must be effective, proportionate and dissuasive. This would appear to leave States with some room for manoeuvre should it be felt that some leniency during initial implementation is desirable.

There will also be further changes in the New Year. From 1st July 2010, the reduction of applicable fuel sulphur limits in the North Sea and Baltic SECAs from 1.5% to 1.0% will come into force, thus posing additional compliance problems for shipowners and charterers.

Looking further ahead, a reduction in the global fuel sulphur limit applicable outside the SECAs to 3.50% from the current 4.50% will apply from 1 January 2012 under MARPOL, Annex VI.

With the IMO and EU now also turning their attention to CO2 emissions (and the possible introduction of emissions trading schemes) it is clear that the operational and legal challenges for the shipping industry posed by environmental regulation are set to continue.

Further information

If you would like further information on any issue raised in this update please contact:

Andrew Preston
andrew.preston@clydeco.com

Captain Barry Turner
barry.turner@clydeco.com

Clyde & Co
51 Eastcheap
London EC3M 1JP

Tel: +44 (0) 20 7623 1244
Fax: +44 (0) 20 7623 5427

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