



İstanbul :

15.01.2014

Sayı

Our Reference : 221

Konu

Subject : Amerika Deniz Ticaret Odası Aralık 2013 Raporu Hk.

Sirküler No: 35 / 2014

Sayın Üyemiz,

**İlgi:** Uluslararası Deniz Ticaret Odası'ndan (ICS) alınan 09.01.2014 tarih ve ICS(14)02 sayılı yazı.

**İlgi yazıda, ICS Üyeleri, Amerika Deniz Ticaret Odası'ndan (Chamber of Shipping of America - CSA) alınan, yazı Ekindeki raporu, özellikle balast suyu gereklilikleri bakımından dikkate almaya davet edilmektedirler.**

Amerika Deniz Ticaret Odası'nın en son aylık raporu ekte sunulmaktadır. Rapor aşağıdaki hususları içermektedir:

1. CSA, IMO'nun 28. Genel Kurulu'nda Balast Suyu Yönetimi Konvansiyonu'nda yapılan değişikliklerin, uygulama tarihlerini ve ABD Sahil Güvenlik Komutanlığı (US Coast Guard – USCG) mevzuatında ya da Amerika Birleşik Devletleri Çevre Koruma Dairesi (Environmental Protection Agency – EPA) Gemi Genel İzni'nde (Vessel General Permit – VGP) yer alan “mevcut” (existing) ve “yeni” (new) gemi tanımlarını etkilemeyeceğini teyit etmektedir.
2. USCG balast suyu uygulama planı tarihinin uzatılması hususunda bir rapor. CSA, başta uygulama tarihinin 1 Ocak 2016'ya kadar uzatılması olmak üzere, bazı süre uzatmalarının verilmesini anlayışla karşılarken, söz konusu uygulama tarihinin “kesin” bir uygulama tarihi olup olmadığı ya da süreyi 1 Ocak 2016 tarihinden sonra ilk olarak kuru havuza (dry docking) alınmaya kadar uzatıp uzatmadığı henüz bilinmemektedir.
3. EPA'nın, bir geminin balast suyu yönetimi sistemi uygulama planı ile ilgili olarak, USCG'nin süre uzatımına yasal olarak bağlı olmayacağını belirten pozisyonunun yarattığı ikilemin üstesinden gelmek için CSA'nın gösterdiği çabalara dair bir güncelleme bulunmaktadır. EPA tarafından 27 Aralık 2013 tarihinde yayınlanan politika belgesinin analizi ve anılan politika belgesine yönelik önerilen cevap sunulmaktadır.
4. USCG'nin, ABD tip onaylarının ultraviyole ışınları kullanan balast suyu yönetimi sistemleri için verilir verilmeyeceği hususundaki pozisyonuna dair açıklaması yer almaktadır. Açıklamada, aksine dair söylentilere rağmen, ultraviyolenin bir arıtma süreci olarak genel kabulüne ya da özel olarak herhangi bir ultraviyole tabanlı balast suyu yönetimi sisteminin kabul edilebilirliğine ilişkin herhangi bir kararın henüz alınmamış olduğu belirtilmektedir.
5. USCG, tankerler dışındaki gemilerin acil müdahale planları (Non-Tank Vessel Response Plans – NTVRP) ile uyumlu petrol sızıntısı acil müdahale planlarının hazırlanması ve teslim edilmesine yönelik gereklilikler için süre sonunun 30 Ocak 2014 olduğunu hatırlatan Deniz Emniyeti Bilgi Bülteni'ni (Marine Safety Information Bulletin – MSIB 42-13) yayınlamıştır.



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6. USCG Houston-Galveston Bölgesi tarafından, bu bölgede MARPOL alım tesislerinin elverişliliğine ilişkin şikayetlere karşılık yayınlanmış olan MSIB 11-13'de iki temel soruna işaret edilmektedir. Sorunlardan ilki, mevcut alım tesislerinin makul bir fiyatta olmamasıdır. IMO'nun 'Liman Alım Tesisi Sağlayıcıları ve Kullanıcıları İçin Kullanım Kılavuzu'na (Guide to Good Practice for Port Reception Facility Providers and Users) atıfta bulunularak, alım tesisi hizmetlerinin makul bir bedelle sağlanmasının gerekli olduğu belirtilmiştir. USCG alım tesislerine, gemiler 24 kez bildirimde bulunduğu sürece, alım tesisinin MARPOL alım hizmetlerini makul bir fiyatla sunması gerektiğini hatırlatmaktadır. İkinci sorun ise, bazı tesislerin, Zehirli Sıvı Maddeler (Noxious Liquid Substances – NLS) boşaltan gemilerin yük hortumları ve boru sistemlerindeki atıkları terminaldeki tesise aktarmalarına müsaade etmemeleridir.

Bilgilerinizi arz ve rica ederiz.

Saygılarımızla,

Murat TUNCER  
Genel Sekreter

**EKLER:**

Ek-1: İlgili yazı ve Eki

**DAĞITIM:**

**Gereği:**

- Tüm Üyelerimiz (Web Sayfasında)
- Türk Armatörler Birliği
- S/S Gemi Armatörleri Motorlu Taş. Koop.  
-18, 19, 20, 21, 22, 23, 24, 25 No.'lu  
Meslek Komitesi Bşk.
- Vapur Donatanları ve Acenteleri Derneği
- İMEAK DTO Şubeleri
- Türk Uzakyol Gemi Kaptanları Derneği
- Gemi Sahibi Firmalar

**Bilgi:**

- Ulaştırma, Denizcilik ve Haberleşme Bakanlığı  
Deniz ve İçsular Düzenleme Genel Müdürlüğü
- Sn. Sefer KALKAVAN  
TOBB DTO'ları Konsey Başkanı
- Meclis Başkanlık Divanı
- Yönetim Kurulu Başkanı ve Üyeleri
- Sn. Erol YÜCEL  
TOBB Türkiye Denizcilik Meclisi Bşk.
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9 January 2014

ICS(14)02

**TO: ALL FULL MEMBERS AND ASSOCIATE MEMBERS**  
**Copy to: Marine Committee**  
**Shipping Policy Committee**  
**Environment Sub-Committee**

## US DEVELOPMENTS – DECEMBER 2013

***Action required: To note the attached report from the Chamber of Shipping of America (CSA), in particular with respect to ballast water requirements.***

**Attached at Annex A** please find the latest monthly report from CSA. The report contains:

1. CSA confirmation that the amendments to the IMO Ballast Water Management Convention introduced by the Resolution passed at Assembly 28 will not impact on the implementation dates and definitions of 'existing' and 'new' vessels under the United States Coast Guard (USCG) regulations or the Environmental Protection Agency (EPA) Vessel General Permit (VGP).
2. A report on the status of USCG ballast water implementation schedule extensions. Whilst CSA understands that some extensions have been granted, with most extending the implementation date to 1 January 2016, it is not yet known if this is a 'hard' implementation date or whether it extends to the first drydocking after 1 January 2016.
3. An update on CSA's efforts to overcome the dilemma caused by the EPA's position that it will not be 'legally bound' by a USCG extension for a vessel's ballast water management system implementation schedule. CSA provides its analysis of, and proposed response to, a policy letter issued by the EPA on 27 December 2013.
4. Clarification from the USCG regarding its position on whether US type approvals would be granted for ballast water management systems using ultraviolet (UV) radiation. The clarification advises that despite rumours to the contrary, no decision has yet been made regarding the general acceptability of UV as a treatment process, or the specific acceptability of any UV-based ballast water management systems for the purposes of USCG type approval.
5. News that the USCG has published a Marine Safety Information Bulletin (MSIB 42-13) as a reminder that the requirements for preparation and submission of oil

spill response plans compliant with the Non Tank Vessel Response Plans (NTVRP) are due by January 30 2014.

6. Information on MSIB 11-13, which has been issued by the USCG Sector Houston-Galveston in response to complaints regarding the availability of MARPOL reception facilities in the area.

Joe Francombe  
Policy Officer

## CHAMBER OF SHIPPING OF AMERICA

### MONTHLY REPORT FOR THE INTERNATIONAL CHAMBER OF SHIPPING

#### FOR DECEMBER 2013

**NOTE TO THE READER:** References to the Federal Register may be found at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>. Please note new address and format for Federal Register retrieval due to upgrade in US government website.

References to legislation may be found at <http://thomas.loc.gov/> by entering the bill number (HR 802, S 2841) in the "search bill text" block found at the center of the page.

#### **Impacts (or lack thereof) of IMO Assembly Resolution Realigning Ballast Water Convention Implementation Dates on USCG Ballast Water Regulations and EPA Vessel General Permit Provisions.**

As most are aware the IMO Assembly finalized a Resolution which essentially reschedules the implementation schedule of the Ballast Water Management Convention. The Resolution essentially ties the application dates of the Convention to its yet to be determined entry into force date and essentially makes all vessels constructed before the entry into force date "existing" vessels which then allows for the installation of a BW treatment system at the first renewal survey following entry into force. CSA has received a number of questions on what the impact of this Resolution will have on the implementation schedule and related definitions of "existing" and "new". CSA has posed this question to the USCG and EPA and for practical purposes the resolution will NOT change the implementation dates and definitions of "existing" and "new" vessel under both the USCG regulations and the EPA's vessel general permit. It is important to recall that the US definitions and implementation schedules are based on the first drydocking (not necessarily the first renewal survey) after 1 January 2014 (for mid-range ballast water capacities) and 1 January 2016 (for the low and high ballast water capacities) while the definition of "new" vessel under both sets of requirements is defined as a vessel constructed on or after 1 December 2013.

#### **Status of USCG Extensions**

CSA understands that over 200 applications for extension of the ballast water implementation schedule have been received by the US Coast Guard. It is anticipated that most of these applications have been submitted by vessels which have BWT system implementation dates in 2014. US Coast Guard has advised that these applications are being reviewed and decisions will be issued "shortly". We understand that a few extensions have already been granted with most extending the vessel implementation date to 1 January 2016. We have not been able to obtain a copy of any extension letter at this time and thus it is not known if this extension date reference to 1 January 2016 is a hard implementation date or

extends the vessel implementation date to the first drydocking after 1 January 2016. We would expect to obtain copies at a later date and will advise as to contents although it should be noted that contents of one extension letter for a specific vessel may not be the same as one issued to another vessel.

**Enforcement Response Policy for EPA's 2013 Vessel General Permit:  
Ballast Water Discharges and US Coast Guard Extensions under 33 CFR  
Part 151**

USCG ballast water regulations include provisions that a vessel may apply for and receive an extension to its BWT implementation date where a good faith effort has been made to acquire a US type approved system suitable to use on that particular vessel. However, EPA has stated that while it will take a USCG extension into account, it will "not be legally bound" by it. This results in the situation where a vessel is compliant with the provisions of the USCG regulations but would not be compliant with the VGP.

On December 27, 2013, the EPA Assistant Administrator for Enforcement and Compliance Assurance issued an enforcement policy letter addressing the conundrum summarized above. The memorandum indicates that EPA will "consider" a USCG granted extension when (1) a vessel has applied for and received an extension from the USCG (2) the vessel is not in compliance with its ballast water discharge limits per the 2013 VGP (KJM note: by implication this condition can only be fulfilled after the implementation compliance date as contained in the VGP) and (3) the vessel is otherwise in compliance with all other provisions of the 2013 VGP. The memorandum further enumerates considerations that EPA enforcement personnel should take into account (conducts complete BWE 200 nm from any shore, otherwise meets USCG regulations including BWM plan, recordkeeping and reporting provisions, and complies with all other ballast water management requirements under relevant USCG and EPA regulations. The EPA will then "consider" these violations of the VGP a "low enforcement priority". However, this policy will not apply to "grossly excessive ballast water discharges" (whatever that term means) or discharges which present an "imminent and substantial endangerment" (whatever that term means) or other violations of the Clean Water Act, judicial or administrative orders. EPA also reserves the right to change this policy at any time.

A number of issues are presented within the text of this policy letter that justify concern by the ship owner including:

- Vessel owner may be subject to citizen suits.
- EPA can change this policy at any time presumably without prior notice or providing the ability of the regulated community to comment or otherwise impact EPA's decision to modify or cancel this policy.
- At least two terms (noted above) negate application of this policy to certain situations. At the very least, EPA needs to define what is meant by these terms e.g. "grossly excessive ballast water discharges" and "those that present an imminent and substantial endangerment".

- This policy does not become effective until after such time that a vessel is non-compliant with the VGP BW discharge requirements (2<sup>nd</sup> bullet in policy letter) and thus a vessel is at the mercy of EPA as to whether they will adjudge the specific case to be one of low enforcement priority.
- This policy is not effective if the vessel is non-compliant with any other provisions of the 2013 VGP whether related to ballast water discharges or not. Arguably, even a failure to "dot an i" or "cross a t" in any of the required recordkeeping or reports would negate application of this policy even though they were unrelated to ballast water discharges.
- Even in spite of this policy letter, a vessel with a perfectly good USCG extension is technically non-compliant with the provisions of the VGP (the policy letter simply suggests that EPA would consider it a low enforcement priority).
- Many if not all P&I Club policies may not cover instances where a vessel has knowingly violated laws/regulations (as would be the case here) thus insurance cover may be in jeopardy for any fines/penalties assessed for non-compliance of the VGP as well as legal fees to defend any action against the vessel.
- Significant negative commercial implications may result from this non-compliance situation where charterer vetting inspections and cargo owners/shippers incorporate non-compliance events into vessel evaluations.

Assuming the maritime industry deems this EPA "solution" relating to enforcement policy inadequate to provide the necessary certainty and protection from legal liability, a number of options (all with inherent risks) are available as noted below. The industry coalition is examining possible alternatives to determine if agreement can be reached on industry actions noted in the list of options below.

- Vessel may apply for an individual permit
- Vessel may enter into a consent decree with EPA
- Industry may petition EPA to reopen the VGP to properly address this issue
- Industry may seek legislative solution to resolve the conflict.
- Industry may solicit assistance from Congress and/or the White House Council on Environmental Quality to urge more appropriate solution.

CSA will continue to advise of further developments in our efforts to resolve this problem in a manner suitable to all.

### **USCG Clarification Regarding Type Approval of Ballast Water Management Systems Using Ultraviolet (UV) Radiation**

Recently a number of questions have arisen relative to the USCG perspective on whether US type approvals would be granted for systems using UV. We and others have posed these questions to the USCG and recently they published a clarification as to their position on this issue which is reproduced in its entirety below.

**[QUOTE]** Recently the Coast Guard has been responding to rumors that type approval of ballast water management systems (BWMS) that incorporate ultraviolet radiation (UV) as a disinfection process will not be possible under Coast Guard type approval requirements.

These rumors are not true. The Coast Guard has made no decision regarding the general acceptability of UV as a treatment process or the specific acceptability of any UV-based BWMS for purposes of type approval under the Coast Guard's March 2012 Ballast Water Discharge Standard Final Rule.

We believe this misunderstanding has arisen due to differences between the type approval testing that has been conducted in accordance with the International Convention for the Management of Ships' Ballast Water and Sediments adopted by the International Maritime Organization in 2004, and the Coast Guard's type approval testing procedures as established in the Ballast Water Discharge Standard Final Rule, specifically in 46 Code of Federal Regulations (CFR) Part 162.060. Some individuals are under the impression that UV systems with type approval granted by other Administrations on the basis of numbers of "viable organisms" will not pass the Coast Guard's "living organism" threshold, and therefore cannot be type approved by the Coast Guard.

The Coast Guard is not aware of a validated testing method to determine the viability of the many types of organisms in ballast water after undergoing treatment by a UV BWMS, but during development of the Final Rule the Coast Guard anticipated that new testing methods and approaches would arise over time. Therefore, 46 CFR 162.060-10 (b)(1) allows the Coast Guard to consider proposed alternative approaches to the published testing requirements. In response to requests from UV BWMS manufacturers, the Coast Guard proposed and the EPA ETV Program established, in June 2013, a technical panel to evaluate an alternative method for testing UV BWMS that will ensure an equivalent level of protection consistent with the approach of the current ETV protocol.

The UV technical panel (including representatives from UV manufacturers, Coast Guard, academic and private sector research communities, and BWMS testing facilities) is actively engaged in this effort. Updates on the progress of the panel will be posted on the Coast Guard's Homeport Ballast Water Management Program web page (<https://Homeport.uscg.mil>); on the left, click on "Environmental", then on "Ballast Water Management Program"). **[END QUOTE]**

**USCG Marine Safety Information Bulletin (MSIB 42-13)**  
**Non Tank Vessel Response Plan (NTVRP) Implementation Date Reminder**

The US Coast Guard has published MSIB 42-13 as a reminder that the requirements for preparation and submission of oil spill response plans compliant with the NTVRP are due by January 30, 2014. In this bulletin, the USCG notes that it does not intend to extend the implementation date but further notes that due to recent developments creating challenges for vessel owners/operations, they will be using



Interim Operating Authorizations (IOAs) of 6 month duration to assist vessel owners and operators to meet the deadline. In order to receive an IOA by the January 30, 2014 deadline, certain minimum requirements contained in the bulletin must be met. A copy of the bulletin is available for review and download at <http://www.uscg.mil/msib/?y=2013>

**USCG Marine Safety Information Bulletin (MSIB 11-13) Issued by Coast Guard Sector Houston-Galveston Regarding MARPOL Reception Facility Inadequacies**

The US Coast Guard Sector Houston-Galveston has published MSIB 11-13 in response to a number of complaints from the shipping industry relative to availability of MARPOL reception facilities in the Houston-Galveston area. While this bulletin applies only to operations in Houston-Galveston, the legal provisions supporting the approach outlined in the bulletin are applicable to all ports in the US.

Specifically, two problem areas are addressed. The first relates to the issue where reception facilities are provided but at an unreasonable price. Citing the IMO "Guide to Good Practice for Port Reception Facility Providers and Users" (MEPC.1/Circ.671/Rev.1), it is noted that "reception facility services should be provided at a reasonable cost". Thus, the USCG reminds reception facilities that as long as vessels provide 24 notice, the facility should provide MARPOL reception services at a reasonable cost.

The second problem area regards certain facilities not allowing vessels unloading Noxious Liquid Substances (NLS) to drain residues from cargo hoses and piping system back to the terminal facility. Citing 33 CFR 158.500, the USCG notes that the facility shall "ensure that each cargo hose and each piping system containing NLS received from each oceangoing ship carrying NLS cargo is not drained back into the ship further noting that MARPOL Annex II, Regulation 18 states that "NLS residues from ship cargo hoses and piping systems shall not be drained back to the ship".

Finally, the USCG notes that violations of these provisions may subject a facility of up to \$50,000 per day, imprisonment for up to five years or both as well as revocation of a facility's Certificate of Adequacy (COA) resulting in termination of the facility's marine operations.

Issuance of this bulletin is welcomed by the shipping industry and is relevant in showing the need for reporting of inadequacy findings by vessels in particular ports so the local USCG may take appropriate action to remedy this situation.

A copy of the bulletin is available for review and download at:

[https://homeport.uscg.mil/mycg/portal/ep/contentView.do?contentType=2&channelId=-18313&contentId=472330&programId=12632&pageTypeId=16440&BV\\_SessionID=@@@@1763625274.1389125117@@@&BV\\_EngineID=cccfadflmeegmjgcfngcfkmdfhdfgo.0](https://homeport.uscg.mil/mycg/portal/ep/contentView.do?contentType=2&channelId=-18313&contentId=472330&programId=12632&pageTypeId=16440&BV_SessionID=@@@@1763625274.1389125117@@@&BV_EngineID=cccfadflmeegmjgcfngcfkmdfhdfgo.0)