



İstanbul :

Sayı
Our Reference: 4561

20.11.2015

Konu
Subject : Amerika Deniz Ticaret Odası Ekim 2015 Raporu Hk.

Sirküler No: 808 / 2015

Sayın Üyemiz,

İlgi: Uluslararası Deniz Ticaret Odası'ndan (ICS) alınan 11.11.2015 tarih ve ICS(15)49 sayılı yazı ve Eki.**İlgi yazıda, ICS Üyeleri, Amerika Deniz Ticaret Odası'ndan (Chamber of Shipping of America - CSA) alınan, yazı Ekindeki raporu dikkate almaya davet edilmektedir.** Rapor, özetle aşağıdaki hususları içermektedir:

1. ABD Sahil Güvenlik Komutanlığı'nın (USCG) balast suyu arıtma sistemleri tip onayı ile ilgili faaliyetleri hakkında bilgi veren CSA, ultraviyole (UV) tabanlı sistemlerin tip onayını engelleyen meseleleri ele almakta ve UV tip onayının 2016 yılının ilk yarısında muhtemelen gerçekleşmeyeceğini ileri sürmektedir. UV olmayan sistemlerin ise, test paketlerini USCG'a henüz teslim etmiş olmalarına rağmen, tip onaylarını öncelikli olarak alabilecekleri belirtilmektedir.
2. USCG, gemilerin balast suyu yönetimi uygulama süresinin uzatılması taleplerinin bildirilmesi usulüne ilişkin 13-01 sayılı Politika Belgesini havuzlama tarihlerini açıklığa kavuşturmak amacıyla ikinci kez revize edecektir. 22 Ekim 2015 tarihli Deniz Güvenliği Bilgilendirme Bülteni'nde (MSIB) yer alan bilgilere göre, 13-01 sayılı yeni CG-OES Politika Belgesi'ne (2. Revizyon) entegre edilecek olan havuzlama tarihleriyle ilgili belirli konular açıklığa kavuşturulmaktadır. Anılan bülten <https://www.uscg.mil/msib/> internet adresinde yer almaktadır. Bununla birlikte CSA, bültende ele alınan bazı hususların USCG'ın balast suyu yönetimi hakkındaki son kararına zemin hazırlayan kayıtlar tarafından desteklenmemesi nedeniyle, planlanan ilk havuzlamaya bağlı uygulama tarihlerine ilişkin kararlar verilirken bültendeki bilgilere şüpheyle yaklaşılması gerektiğini vurgulamaktadır.
3. Kaliforniya Parlamentosu, Kaliforniya sularına giren gemilerdeki balast suyu artırma sistemleri için uygunluk tarihlerini bir kere daha uzatmak amacıyla Denizlerdeki İstilacı Türler Yasası'nda (Marine Invasive Species Act) değişiklik yapmıştır. Geçici balast suyu boşaltım performans standardı, yeni gemiler için ve ilk havuzlamaya 1 Ocak 2020'de ya da daha sonra gidecek olan mevcut gemiler için 1 Ocak 2016'dan 1 Ocak 2020'ye ertelenmiştir. Nihai balast suyu boşaltım performans standardı, 1 Ocak 2020'den 1 Ocak 2030'a kadar ertelenmiştir. Bununla birlikte, tarihler ileriye atılırken performans standartlarının değişmediği ve başarılması ve/veya ölçülmesi imkânsız seviyelerde kalmaya devam ettiği belirtilmektedir. Denizcilik endüstrisi, mevcut teknoloji ve ölçüm kurallarıyla başarılı standartların kabul edilmesini desteklemeyi sürdürmektedir.

Bilgilerinizi arz ve rica ederiz.

Saygılarımızla,

Murat TUNCER
Genel Sekreter**EKLER:**

Ek-1: İlgi yazı ve Eki



İstanbul :

Sayı
Our Reference :

Konu
Subject :

DAĞITIM:

Gereği:

- Tüm Üyelerimiz (Web Sayfasında)
- Türk Armatörler Birliği
- S/S Gemi Armatörleri Motorlu Taş. Koop.
- Vapur Donatanları ve Acenteleri Derneği
- 22,24,25,27,28,29 No.'lu Meslek Komite Bkş.
- İMEAK DTO Şubeleri
- Türk Loydu Vakfı
- GİSBİR
- 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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11 November 2015

ICS(15)49

TO: ALL FULL AND ASSOCIATE MEMBERS

**Copy: Shipping Policy Committee
Marine Committee
Labour Affairs Committee
Construction & Equipment Sub-Committee**

US DEVELOPMENTS - OCTOBER 2015

Action required: To note the attached report from the Chamber of Shipping of America (CSA).

Attached at **Annex A**, please find the monthly report from CSA for October 2015.

The report contains:

1. An update on the status of USCG activities related to the type approval of ballast water treatment systems. CSA reports on the ongoing issues preventing type approval of UV-based systems and suggests that UV type approval is unlikely to occur before mid-2016. Non-UV systems may be the first to receive type approvals, despite the fact that no non-UV systems have yet submitted complete test packages to the USCG.
2. Notice that the USCG will make a second revision to its Policy Letter (No. 13-01) on the format for submission of vessel extension requests from the USCG ballast water management implementation schedule, in order to make clarifications relative to drydocking dates.
3. News that the Environmental Protection Agency (EPA) has published its final rule requiring reporting of all NPDES programme information, including that associated with the Vessel General Permit (VGP).
4. A summary of the court case between the Natural Resources Defence Council (NRDC) and the EPA following the filing of petitions regarding the 2013 VGP. CSA kindly summarises the key issues addressed by the court and the practical impacts its decision will have on the VGP regime in the future.
5. The new compliance dates that will apply following the California legislature's decision to amend its Marine Invasive Species Act to further extend compliance dates for ballast water treatment systems.
6. A link to the Animal and Plant Health Inspection Service (APHIS) final rule on user fees for agricultural quarantine and inspection services, which will take effect on 28 December 2015.

7. Information on how to submit comments to a National Transportation Safety Board Study to assess the effectiveness of the Vessel Traffic Service (VTS) operated by the USCG.
8. An update on the status of the USCG final rule on seafarer access.

Joe Francombe
Senior Adviser



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MONTHLY REPORT FOR ICS

OCTOBER 2015

NOTE TO THE READER: Reference 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.

Status of USCG Activities relating to BWTS Type Approvals

CSA continues to monitor the status of US ballast water treatment system type approvals, or in the instant case, the lack thereof. As noted in previous updates, we are aware that three completed test packages have been submitted to the USCG for US type approval, all three packages being for UV based treatment systems. We also understand from discussions in the margins during recent ballast water conferences, that several chemical based systems are hoping to have complete test packages to submit to the USCG no later than the first quarter of 2016.

Confounding the delays associated with decisions on the UV based systems (the earliest having been submitted in March 2015) is the yet to be published recommendation of the Expert Group evaluating the use of the Most Probable Number (MPN) methodology for assessing the efficacy of UV based systems. Although the MPN methodology has been used by other national type approval programs to assess the efficacy of UV based systems, at this time, it does not appear that the US based scientific community conducting this assessment has been able to agree on an MPN based methodology as an alternative to the "living/dead" methodology used for non-UV based systems. This lack of agreement suggests at this point in time that no UV based systems will be granted a US type approval unless they can pass the more traditional "living/dead" assessments applied to non UV based systems.

Given the above noted complications, CSA does not believe a US type approval is imminent and is unlikely to occur before the middle of 2016. While we hope we are wrong in this prediction, what is known thus far, is that non UV based systems are likely to receive the first US type approvals unless and until the MBN controversy is resolved.



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**Pending Update of USCG Policy Letter "Extensions of Implementation
Schedule for Approved Ballast Water Management Methods"**
**(Expected to be published as CG-OES Policy Letter 13-01 (Rev 2);
information now contained in MSIB 13-15)**

As noted in our prior update, the USCG had revised its Policy Letter No. 13-01 (current issues is Rev 1) which outlined the requirements and formats for submission of vessel extension requests to the ballast water management implementation schedule found in current USCG regulations. Based on information contained in a recently published Marine Safety Information Bulletin (MSIB 13-15 dated October 22, 2015), certain clarifications have been made relative to drydocking dates which will ultimately be integrated into a new CG-OES Policy Letter 13-01 (Rev 2) as per our discussions with USCG. A copy of the MSIB is available at <https://www.uscg.mil/msib/>. Due to some issues addressed in this bulletin that we and others do not feel are supported by the record leading up to the USCG final rule on ballast water management, we would urge caution in using this information to make decisions on implementation dates tied to "first scheduled drydocking" as well as those contained in issued extension letter. It is also important to note that this bulletin has been released for information only and the actual text of the changes addressed in this bulletin will be included in the new edition of CG-OES Policy Letter 13-01 (Rev 2).

NPDES Electronic Reporting Rule
(Final Rule, Federal Register, October 22, 2015 pgs. 64064-64158)

The US EPA has recently published its final rule which will require electronic reporting of all NPDES program information including that associated with the Vessel General Permit. CSA will provide a more detailed analysis of the lengthy final rule as soon as our evaluation is completed. For those wishing to view the final rule sooner, please note the Federal Register hotlink at the top of this report which will link you to the appropriate site at which point you link to the October 22, 2015 document and then to the Environmental Protection Agency section of that Federal Register. The final rule is available for download in either text or PDF format.

NRDC vs. EPA (VGP Case)

The Natural Resources Defense Council (NRDC) and two other environmental groups filed petitions for review of the 2013 vessel general permit (VGP) on the grounds that EPA acted "arbitrarily and capriciously" in issuing the 2013 VGP in a number of areas which will be discussed in greater detail below. The Lake Carriers' Association and Canadian Shipowners Association joined the case as intervenors. The court remands these issues to EPA for further action by the



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agency to remedy the deficiencies noted in this opinion. The current 2013 VGP remains in effect until such time as EPA issues a new VGP.

Future action on this decision is limited to three options. The first option is that the parties accept the decision and take no further legal action in which case EPA will begin the task of incorporating the necessary changes into a new VGP. Given the time expected to remedy the deficiencies, from a practical matter, it is expected that EPA would integrate these considerations into the preparation of the next VGP which would be implemented in 2018 (EPA's work on preparation of the 2018 VGP is expected to begin in early 2016). The second option is that a party will request a rehearing (rarely granted) with the deciding court. The third option is that a party will seek a writ of certiorari from the US Supreme Court which is granted only if certain legal conditions exist to warrant the Court's time e.g. conflicting decisions across circuit courts or unique questions of law. It is unclear at this time what, if any action, the parties will take.

To be clear, this analysis is in no way intended to be a legal analysis of the court's decision and the justification for that decision. Rather, this analysis is meant to summarize the key issues addressed by the court and to identify the practical impacts on EPA's future work on the VGP and the regulated community e.g. vessels covered under the VGP.

The specific issues addressed in the decision are as follows:

EPA's issuance of Technology-Based Effluent Limits (TBELs) was arbitrary and capricious. TBELs set effluent limits on point sources covered under a permit based on how effectively technology can reduce the pollutant being discharge e.g. ballast water. These effluent limits are based on the "best available technology economically achievable" or "BAT" and considerations in establishing BAT include cost, equipment and facilities involved, and engineering considerations. On this issue, the court found that EPA acted in an arbitrary and capricious manner when it incorporated the IMO performance standard in the VGP (as BAT) without adequately explaining why standards higher than the IMO standard should not be used given other available technologies. In reaching this decision, the court noted conclusions in the Science Advisory Board (SAB) report which suggested that available technologies did exist which could meet standards higher than the IMO standard including shipboard and shore based ballast water treatment systems. On a practical note, it should be made clear that the court did not find that EPA made the wrong decision in incorporating the IMO standard as BAT, but rather did not fully explain why the other available technologies were unworkable and thus should not constitute BAT. In short, EPA did not create the necessary record to support their decision to incorporate the IMO standard as BAT and discount other available technologies. In the words of the court "EPA failed to



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give fair and thorough consideration to both onshore and shipboard treatment systems in setting the standard in the 2013 VGP, and we remand to EPA to give full consideration to the issue now”.

EPA’s issuance of Water Quality-Based Effluent Limits (WGBELs) was arbitrary and capricious. If TBELs are found to be insufficient to attain or maintain water quality standards, EPA must also include in the permit, water quality based effluent limits to ensure permitted discharges do not violate water quality standards. Of note here is the established fact that WQBELs are set without regard to cost or technology availability. On this issue, EPA chose to create narrative standards rather than numeric standards citing their position that numeric standards were infeasible to calculate. The environmental groups argued and the court agreed that the narrative language in question (“discharge must be controlled as necessary to meet applicable water quality standards...”) did not ensure compliance with water quality standards and provided no guidance to shipowners as to what was actually required to ensure compliance with these standards. The court noted that scientific uncertainty does not allow EPA to avoid their responsibilities for ensuring compliance with water quality standards and thus some documented attempts at better defining the WGBELs through meaningful actions to be taken by shipowners to ensure compliance was legally required.

EPA’s issuance of monitoring and reporting requirements for TBELs are in accordance with the provisions of the Clean Water Act; however EPA’s monitoring and reporting requirements for WGBELs were arbitrary and capricious. Relative to TBELs, the court noted the functionality and biological monitoring requirements established in the 2013 VGP did in fact meet the legal requirements to ensure compliance with the established standards. This decision was based on the severe technological limitations and costs inherent with monitoring large volumes of ballast water to determine the concentration of living organisms. Rather, the court agreed that the existing monitoring provisions were a valid surrogate for determining compliance. As regards WGBELs, the court found the current requirements to report the expected date, location, volume and salinity of ballast water discharges, to be arbitrary and capricious as opposed to other viable options such as reporting the actual date, location, volume and salinity of ballast water discharges.

Notwithstanding further legal action by the parties, the following practical implications flow from this decision:

- EPA must remedy the deficiencies found by the court in the current VGP and as briefly summarized above.



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- Given that EPA's preparation of the next (2018) VGP will be in early 2016, and the likely 1-2 year time frame it would take to find solutions to these deficiencies, we expect any changes to be integrated into the 2018 VGP. It is important to note that, as was the case in the previous two VGPs, there will be a notice and comment period during which all stakeholders can provide comments.
- The worst case scenario is that EPA could decide with appropriate justification to create more stringent performance standards than those in current USCG regulations and the IMO Convention.
- The best case scenario is that EPA will continue to align the performance standards in the next VGP with USCG regulations/IMO Convention and provide the necessary record to support these decisions (which was obviously lacking in the current VGP record).
- The uncertainty associated with current challenges now made worse by the uncertainty associated with this decision makes passage of the Vessel Incidental Discharge Act (VIDA) all the more imperative.

California Assembly Bill 1312

At long last, the California legislature has amended their Marine Invasive Species Act to extend yet again the compliance dates for ballast water treatment systems on vessels trading in California waters. Specifically, the interim ballast water discharge performance standard (1000 times IMO) has been delayed from 1 January 2016 to 1 January 2020 for new vessels and to the first drydocking on/after 1 January 2020 for existing vessels. The final ballast water discharge performance standard (zero detect) has been delayed from 1 January 2020 to 1 January 2030. Remarkably, it should be noted that while the dates have been pushed back, the performance standards have not changed and remain at levels impossible to achieve and/or measure. The industry will continue our advocacy work in this respect to urge adoption of achievable standards consistent with the capabilities of current technology and measurement protocols. A full analysis of the enacted bill will be forthcoming. In the interim, a copy of the final bill may be reviewed at <http://www.slc.ca.gov/Programs/MISP.html> . Please also note the hotlink on this page for registration for a webinar to be held on November 17, 2015 to discuss these changes.



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**APHIS (Animal and Plant Health Inspection Service) User Fees for
Agricultural Quarantine and Inspection (AQI) Services; Final Rule**

The APHIS Final Rule was the same fee increase for commercial cargo vessels as proposed in NPRM from \$496 to \$825. As anticipated the rule also included an elimination of user fee caps on commercial cargo vessels. This Final Rule takes effect on December 28, 2015

Full text of the Final Rule available at <http://www.gpo.gov/fdsys/pkg/FR-2015-10-29/pdf/2015-27363.pdf>

APHIS also proposed, in a separate but related rulemaking, to increase overtime fees by 40 percent. Rule not final yet.

National Transportation Safety Board Vessel Traffic Service Study

NTSB's Safety Research Division is conducting a study to assess the effectiveness of Vessel Traffic Service (VTS) systems operated by the U.S. Coast Guard. The goal is to better understand how Coast Guard VTS impacts the overall safety of the day-to-day operations of your ships, and to hear their perspectives and any recommendations they may have to improve VTS effectiveness. Comments requested before December 1, 2015.

How to Submit Comments:

In order to ensure that your comments are received and read, please use only one of the following submission methods:

- **Website:** Go to www.nts.gov and click the button marked "Read More" on the NTSB News banner "Vessel Traffic Service (VTS) Safety Study." Follow the instructions provided.
- **Email:** VTStudy@nts.gov

You must include our agency's name (National Transportation Safety Board) and the NTSB Safety Study Number (DCA15SS001) at the beginning of your comments. In addition, please include the following:

- the type of operation where you work (e.g., pilotage, ferry, cruise ship, tug/tow, deep-water shipping, port authority, etc.);
- your occupation/role in that operation (e.g., master, pilot, harbor master, ship owner, etc.); and
- the VTS Area (or areas) where you routinely operate or have operated in the past.



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Seafarer Access Final Rule Update

The Seafarer Access Final Rule is making its way through the regulatory process. USCG expects it will be publishing w/in 90 days. Public comments on the NPRM focused on who, exactly, a facility had to provide access for. USCG is incorporating those comments into the Final Rule.