

CIRCULAR

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TO MEMBERS OF THE ASSOCIATION

Dear Member:

ENTRY INTO FORCE OF MARPOL 73/78 ANNEX VI

Members are alerted to the entry into force on May 19, 2005 of MARPOL 73/78 Annex VI, *Regulations for the Prevention of Air Pollution from Ships*, which concern issues of ship design and operation and set limits on sulphur oxide and nitrogen oxide emissions from ships' exhausts. Members are advised to discuss the specific requirements of Annex VI with their flag administration(s) and classification society(ies) to ensure compliance in respect of those matters requiring specific action.

MARPOL Annex VI and the Technical Code on the Control of Emissions of Nitrogen Oxides from Marine Diesel Engines are mandatory for vessels flying the flag of signatory states or entering waters under the jurisdiction of a signatory state. For a full list of the signatory parties to Annex VI, please refer to IMO's website at www.imo.org/includes/blastDataOnly.asp/data_id%3D11666/status.xls.

Annex VI sets out different requirements respectively for ships built (keel-laid) before January 1, 2000; on or after January 1, 2000 but before May 19, 2005; and on or after May 19, 2005.

Ships built before January 1, 2000 of more than 400 gross tons are subject to specific surveys and inspections, and are to be issued, *inter alia*, with an International Air Pollution Prevention (IAPP) Certificate. Please refer to regulations 5 and 6 of Annex VI for further details.

It should be noted that any deliberate emissions of ozone-depleting substances to the atmosphere are prohibited.

Fuel quality

Regulations 14 and 18 on sulphur oxides (SO_x) and fuel oil quality deserve special attention given that they may have a direct impact on vessels employed under charterparties calling for bunkers after the new regime takes effect (i.e. from May 19, 2005).

Marine fuel used on board ships must not exceed 4.5% m/m in sulphur content. The limit is 1.5% for ships operating in designated SO_x Emission Control Areas (e.g. the Baltic Sea) unless an approved exhaust gas cleaning system or other method to limit SO_x emissions is used. Fuel is to be obtained from petroleum refining (save as specifically provided for in regulations 13 and 14); is to be free from inorganic acid; and must not include any added substance or chemical waste worsening its impact on ship, people and environmental safety.

In states signatory to Annex VI, fuel is to be provided by local suppliers listed in a register maintained by authorities designated by the flag state administration. A bunker delivery note setting out the sulphur content should accompany any bunker supply and is to be kept onboard for at least three years. Samples of fuel should also be retained and kept on board for a period of not less than one year from delivery and, in any event, until the fuel is consumed.

The provisions set out by Annex VI in relation to fuel are particularly important for those vessels subject to the new Annex VI requirements and trading under charterparties, where charterers call for bunkers after May 19, 2005. In those cases, owners must ensure that any fuel supplied on board is in compliance with the requirements set out in the regulations described above.



Charterparties and MARPOL Annex VI

The provision of bunkers under time charters is normally for the account of charterers. Even though the charterparty under which the vessel is employed may set out bunker specifications not in compliance with Annex VI regulations – for the simple reason that at the time of entering the charterparty Annex VI was not in force, and thus the contractual obligation of charterers in respect of bunkers may be different from owners' obligations to comply with international conventions – owners should *not* accept bunkers which do not comply with the terms of Annex VI after May 19, 2005.

Charterparties often contain provisions whereby owners have a contractual duty toward charterers to ensure compliance with international conventions, the breach of which will result in a breach of charterparty rendering owners liable for any loss of time and additional expenses arising therefrom. Accordingly, any such provision imposes on owners a duty explicit in the charterparty (in addition to a general duty under a relevant convention, for which see further below) requiring bunkers supplied on board to comply with the requirements set out in Annex VI.

Given that Annex VI is directly binding upon owners in cases where MARPOL 73/78 is mandatory, where bunkers delivered onboard do not comply with its requirements, owners will be in violation of the Convention (as well as in breach of charterparty as explained above) punishable by the state in whose jurisdiction the violation has occurred, or by the vessel's flag state. In addition, any such violation may result in the detention of the vessel and owners will be responsible for all consequences arising therefrom.

It is expected that, in due course, new standard clauses ensuring compliance with MARPOL 73/78 Annex VI will be adopted in time charters after May 19, 2005. INTERTANKO and BIMCO, for instance, have already drafted specific clauses for time charters dealing with Annex VI requirements (respectively the "INTERTANKO Bunker Emission Clause" and the BIMCO "Fuel Sulphur Content Clause for Time Charter Parties"). The latter is quoted below for Members' ready reference.

"Fuel Sulphur Content Clause for Time Charter Parties

Notwithstanding anything else contained in this Charter Party, the Charterers shall supply fuels of such specifications and grades to permit the Vessel, at all times, to meet the maximum sulphur content requirements of any emission control zone when the Vessel is trading within that zone. The Charterers shall indemnify, defend and hold harmless the Owners in respect of any loss, liability, delay, fines, costs or expenses arising or resulting from the Charterers' failure to comply with this Clause.

For the purpose of this Clause, "emission control zone" shall mean zones as stipulated in MARPOL Annex VI and/or zones regulated by regional and/or national authorities such as, but not limited to, the EU and the US Environmental Protection Agency."

Finally, those vessels built on or after January 1, 2000 but before May 19, 2005 and vessels built on or after May 19, 2005 are subject to supplementary provisions requiring certificates and records to be kept on board in respect of engines and incinerators. In addition, vessels built on or after May 19, 2005 are required to have an appropriate IAPP Certificate before they are put into service.

Should Members have any queries in respect of these developments, they are invited to contact the Managers at their offices in New York, London or Piraeus.

Yours faithfully,

A handwritten signature in black ink, which appears to read "Joseph E.M. Hughes". The signature is written in a cursive, flowing style and is positioned above a horizontal line that serves as a separator between the signature and the typed name below.

Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB