

U.S. Coast Guard and EPA Announce MOU for Joint Enforcement of MARPOL Annex VI Air Pollution Regulations

JUNE 28, 2011

On June 27, 2011, the U.S. Coast Guard and the Environmental Protection Agency signed a Memorandum of Understanding with regard to the enforcement of air pollution from vessels in U.S. waters under Annex VI of MARPOL. Under the MOU, the EPA will develop protocols for the inspection of engines on vessels and the review and retention of documents, while the Coast Guard will adapt those protocols into its customary vessel inspection and port state control and facility examination procedures.

The MOU provides that the Coast Guard will retain primary responsibility for enforcement of International Air Pollution Prevention Certificate requirements and Volatile Organic Compound control procedures applicable to tankers and oil terminals, while the EPA will have primary responsibility for issues involving Engine International Air Pollution Prevention Certificates, the NOx Technical Code, Bunker Delivery Notes, fuel samples, fuel oil availability and quality, and reception facilities for ozone depleting substances. Although not specifically addressed in the MOU, we expect that the Coast Guard will likely take primary responsibility for reviewing fuel change-over compliance but will consult with the EPA with regard to technical issues that may be raised in such cases.

The agencies have agreed to keep in close communications regarding suspected violations; although notably the MOU does not include a consultation process with regard to criminal referrals. Instead, the MOU states that each agency will make determinations on referrals for criminal prosecutions in accordance their own internal policies and procedures.

An accompanying joint letter from the Coast Guard and the EPA summarizes the various requirements of Annex VI and the North American Emission Control Area that will go into effect in August 2012, and notes that the EPA is seeking the approval of the International Maritime Organization to designate a U.S. Caribbean ECA, which could go into effect as early as January 2014. The letter also reminds the industry that violations of Annex VI may be enforced by either agency through civil penalties of up to \$25,000 for each violation, and by criminal liability for knowing violations of MARPOL.

A copy of the MOU and the accompanying joint letter is available via the attached pdf.

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