



LP Bulletin

Friday 5th December 2014

Bulletin 1010 - 12/14 - Issues with Obtaining Compliant Fuel Oil for the North America Emission Control Area - USA

The EPA's Interim Guidance on the Non-Availability of Compliant Fuel Oil for the North American Emissions Control Area expects vessels entering the ECA to make "best efforts to obtain compliant fuel." The obligation to make best efforts arises when vessels are on notice (i.e. when they receive voyage orders) that they will be entering the ECA.

Owners and operators seem to be focused on what actions are **not** required; MARPOL and the EPA's Interim Guidance state that delay, deviation, and use of distillate fuels are not required. Such focus, however, is too narrow.

Owners and operators should be equally concerned with making and documenting best efforts to comply with the ECA so that, if the US government investigates non-compliance with ECA rules, there is sufficient evidence that owners and operators have satisfied their best efforts obligations. MARPOL Annex VI Regulation 18.2, as incorporated by reference in a federal regulation at 40 CFR § 1043.100, and the EPA's Interim Guidance specifically require that vessels present records and provide evidence that best efforts to purchase compliant fuel were made. It appears that it is typical within the industry for owners and operators to engage bunker brokers who then make inquiries to bunker suppliers by email, telephone, instant message, or text message. It is not customary, however, for bunker brokers to make and keep comprehensive records of all such inquiries. Perhaps, at the request of prudent owners or operators, bunker brokers provide one-sentence emails simply stating something like "LSFO is not available." Is that email sufficient evidence of owners and operators' best efforts to purchase compliant fuel?

Probably not. First, owners and operators must show that they engaged the services of bunker brokers to search for compliant fuel as soon as reasonably possible after vessels receive voyage orders to enter the ECA. This timing of these engagements should be documented in emails or telephone diaries prepared and kept by owners and operators. Second, owners and operators, regardless of whether they engaged the services of bunker brokers, must show that they searched for compliant fuel from every possible fuel supplier at every port along the planned voyage route until compliant fuel is received (or the vessels exit the ECA). These inquiries should be **comprehensively documented**. If bunker brokers are engaged, then owners and operators should require that bunker brokers make and forward such comprehensive records to the owners and operators. These comprehensive records should include, at the very least, the names of every possible fuel supplier contacted at every port along the planned voyage route, the dates of such contact, and the basis for knowledge that compliant fuel is not available (e.g. "Bunker supplier XYZ advised bunker broker ABC by telephone on [month day] that LSFO is not available at port DEF on or about [month day]" or "Based on bunker broker ABC's prior inquiries to bunker supplier XYZ on [month day] in relation to different vessels and voyages, bunker broker ABC already knows that LSFO is not available at port DEF on or about [month day]."). Third – and this item seems to be completely overlooked by owners, operators, and bunker brokers – when compliant fuel is not available, owners and operators, and their bunker brokers, should document their searches for the "next cleanest fuel oil possible"(i.e. lowest sulphur content fuel) to minimize emissions.

We know that, despite the US government's assessments, compliant fuel is not readily available in the North American ECA. This fact should make creating comprehensive records to document best efforts to purchase compliant fuel a top priority for owners and operators. Such documentation will likely become even more important when the sulphur limit for marine fuels in the ECA is decreased again on January 1, 2015 to 0.1%.

We strongly recommend that owners and operators (i.e. the Club's members) insist that their bunker brokers create comprehensive documentary evidence of best efforts to purchase compliant fuel. If owners or operators do not engage bunker brokers and instead conduct their own searches for compliant fuel, then they should keep their own comprehensive records as well.

There is a recent report coming out of EPA headquarters that vessel owners should expect heightened enforcement of the new standards in the first quarter of 2015, an initiative the Agency believes is supported by a majority of responsible vessel owners. The Agency's announcement comes amid suggestions that civil penalty assessments for non-compliance with the lower standards could be increased, given the significant competitive advantage obtained by vessel owners who skirt the rule and burn HSFO, or this year's LSFO, obtained a significantly lower cost. It is our expectation that there will be an increase in USCG inspections during the first quarter of CY 2015, along with swift, public enforcement action for parties found to be in violation of the standard. There also appears to be a significant interest developing among ship owners in the use of scrubbers in lieu of LSFO as a longer-range, lower cost compliance alternative.

Source of information

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