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Coast Guard Publishes Interim Rule with Request for Comments on Pollution Prevention Equipment

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New Development

On January 16, 2009, the U.S. Coast Guard published an Interim Rule ("IR") establishing new oil pollution prevention equipment ("PPE") performance standards to make them consistent with the International Maritime Organization's ("IMO") guidelines and specifications issued under Annex I of the International Convention for the Prevention of Pollution from Ships ("MARPOL"). See <http://edocket.access.gpo.gov/2009/pdf/E9-802.pdf>. The standards address the testing, certification, and approval for PPE, including discharge monitors. In short, the IR requires: (1) oceangoing vessels replacing or installing oily-water separators ("OWS") and bilge alarms, and (2) newly constructed oil tankers installing oil discharge monitoring and control systems, to meet new IMO PPE standards. Most of the IR's provisions were effective on March 17, 2009, however, the provisions relating to OWSs and bilge alarms installed on vessels constructed on or after January 1, 2005, are not effective until October 13, 2009. Comments are due April 16, 2009.

Background

For years concerns have been expressed that existing pollution prevention equipment, especially technology related to oil-water separator systems, does not work properly. Of particular concern is the processing of oily bilge waste and the methods by which the oil content of the effluent is measured.

In response to those concerns, the IMO issued MEPC.107(49), "Revised Guidelines and Specifications for Pollution Prevention Equipment for Machinery Space Bilges of Ships" in 2003. In addition in 2003, IMO issued MEPC No.108(49), Revised Guidelines and Specifications for Oil Discharge Monitoring and Control Systems for Oil Tankers, which upgrades tank vessel oil monitoring PPE standards. Subsequently, in April 2005, the Coast Guard issued MOC Policy Letter No. 04-13, which provides guidance on implementation of MEPC.107(49). See <http://www.blankrome.com/index.cfm?contentID=37&itemID=70> for a discussion of the IMO guidelines and Coast Guard policy. The IMO standards became effective internationally as an amendment to MARPOL on April 1, 2007.

The Interim Rule

OWS and Bilge Alarm

The IR requires all newly constructed oceangoing vessels constructed on January 1, 2005 or later to meet the new OWS and bilge alarm standards. In most circumstances, existing oceangoing vessels replacing OWSs and bilge alarms on or after January 1, 2005 must install equipment that meets the new IMO standards. OWS and bilge alarm PPE on existing vessels that are still in good working order under the old IMO guidance (i.e. MEPC.60(33)) are not affected by the IR.

The Coast Guard is delaying the implementation of the new OWS and bilge alarm equipment standards on PPE installed on or after January 1, 2005 because this aspect of the revised Annex I was not reflected in its proposed rule. With regard to this issue, the IR regulatory language specifies that replacement OWS and bilge monitor PPE "installed" on a ship constructed before 2005 must meet the new IMO standards unless "it would be unreasonable or impractical." Interestingly, the preamble does not discuss or provide any guidance with regard to this exception language in circumstances in which it would be unreasonable or impractical to replace equipment meeting the new standards. The IR states that the Coast Guard is seeking comments on this aspect of the IR and may revise these provisions depending on the comments it receives because it, in essence, would be retroactive.

It was unclear in the proposed rule whether a replacement of a component, as opposed to the whole system, would trigger the new requirements. For example, applicability was unclear when only parts of an oily-water separator are replaced. Under the IR, it appears that any PPE-related equipment installed on a vessel constructed before 2005 must meet the new IMO standards after these provisions go into effect on October 13, 2009, unless it would be unreasonable or impracticable. This seems to give owners and operators some flexibility when replacing OWSs or bilge alarms.

Tank Vessel Oil Monitor Systems

Newly-constructed tank vessels must install oil monitoring systems that meet these revised standards. Oil monitoring systems installed on tank vessels built before January 1, 2005 may meet either the new or previous standards when replaced.

Conclusions and Recommendations

Owners, operators, manufacturers, and other interested parties should review the IR to ensure compliance with these new PPE standards. In addition, we recommend that interested parties file comments, even if submitted after the comment period, concerning the IR provisions related to OWS and bilge monitor PPE installed on a ship constructed before 2005, and request that the Coast Guard provide guidance with regard to interpreting what it considers to be "unreasonable or impracticable." We also recommend that if owners or operators decide to install PPE equipment meeting the old standards in circumstances it believes would be unreasonable or impractical to do so, that it seek pre-

approval from class or the Coast Guard to ensure that the Coast Guard does not second guess such a decision.

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