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ECA for all

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On March 27, the United States and Canada submitted a joint proposal to the International Maritime Organization (IMO) in London to designate as an emission control area (ECA) virtually all coastal waters of the two nations out to 200 nautical miles of their coasts, in accordance with provisions of Annex VI to the MARPOL Convention. When the proposal has been approved (approval is virtually guaranteed) and comes into effect, it will create the third and by far the largest ECA in the world. The two current ECAs are the Baltic Sea and the North Sea. Within an ECA, ships engaged on international voyages are required to reduce harmful air emissions by adopting one of three alternatives. The ship may either: (1) utilize fuel the sulphur content of which does not exceed 1.5%; (2) utilize an exhaust gas cleaning system approved by its flag Administration in accordance with IMO guidelines; or (3) adopt any other technological method that is verifiable and enforceable and has been approved by its flag Administration in accordance with IMO guidelines. The sulphur content restrictions will ratchet up over time.

While the joint US-Canada proposal for designation of an ECA was far-reaching, it did not include all coastal waters of the two nations. For Canada, waters of the Canadian Arctic were omitted. For the United States, omissions included the following: the US Pacific territories; the northwestern Hawaiian Islands (largely unpopulated); the Commonwealth of Puerto Rico; the US Virgin Islands; western Alaska (including Kodiak); the Aleutian Islands; and the US Arctic. In its news release announcing the proposal, the EPA acknowledged that these omitted areas experience impacts from ship-generated air emissions, but stated that further information must be gathered to properly assess these areas and determine how ECA controls can help. This will involve additional air quality and environmental impact studies. A separate proposal would be submitted to the IMO if this analysis supports ECA designation under the criteria contained in MARPOL Annex VI.

MARPOL Annex VI and APPS

Assertions regarding potentially deleterious effects of air emissions from ships have been heard for years. At the same time, the maritime industry rightly points out that ships are the least ecologically harmful mode of transportation. Internationally, the issue rose to the top of the political agenda with adoption of the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships (MARPOL Convention). This Protocol consisted of the

Regulations for the Prevention of Air Pollution from Ships (commonly referred to as Annex VI) and the NOx Technical Code.

After several years of indecision and debate, the United States Senate gave its advice and consent to the Protocol on April 7, 2006 and, on July 21, 2008, Congress enacted the Maritime Pollution Prevention Act of 2008 to implement MARPOL Annex VI domestically. The statute, which amends the Act to Prevent Pollution from Ships (APPS), divides responsibilities and enforcement authorities between the Environmental Protection Agency (EPA) and the US Coast Guard. The legislation does not designate which agency is in charge of the ECA program, but does state that the Annex VI requirements apply to a ship that is bound for, or departing from, a port, shipyard, offshore terminal, or the internal waters of the United States, and is in (among other places) "an emission control area designated pursuant to section 4 [of APPS]."

Who's in charge?

While neither the Coast Guard nor the Environmental Protection Agency (EPA) have promulgated air emission control regulations, the Coast Guard has issued guidelines for ensuring compliance with Annex VI. The USCG guidelines include provisions for checking compliance by US-flag vessels with ECA requirements worldwide. The guidelines also include provisions for checking foreign-flag compliance "when the United States establishes SECAs". Use of the word "when" rather than "if" is noteworthy because the guidelines predated the petition. The compliance checks for both domestic and foreign vessels includes bunker samples, bunker delivery notes, and (if fitted) exhaust cleaning technology.

Regulating bunkering companies

It is currently unclear which of the two US agencies will enforce the MARPOL Annex VI requirements applicable to bunker suppliers in the United States. Enforcement authority in Canada is also unclear. Annex VI provides, in pertinent part, that Parties thereto undertake to ensure that appropriate authorities designated by them:

1. Maintain a register of local suppliers of fuel oil;
2. Require local suppliers to provide the bunker delivery note and sample as required, certified by the supplier that the fuel oil meets the requirements of the regulations;
3. Require local suppliers to retain a copy of the bunker delivery note for at least three years for inspection and verification by the port State as necessary;
4. Take action as appropriate against fuel oil suppliers that have been found to deliver fuel oil that does not comply with that stated on the bunker delivery note;
5. Inform the flag Administration of any ship receiving fuel oil found to be non-compliant with the requirements of Annex VI;
6. Inform the IMO of all cases where fuel oil suppliers have failed to meet the requirements specified in Annex VI;

7. In connection with port state inspections carried out by the Party, that Party undertakes to inform the government of any nation under whose jurisdiction a bunker delivery note was issued of cases of delivery of non-compliant fuel oil, giving all relevant information; and
8. In connection with port state inspections carried out by a Party, ensure that remedial action as appropriate is taken to bring non-compliant fuel oil discovered into compliance.

As evidenced by the strenuous efforts of the Singapore Maritime and Port Authority (MPA), maintaining the integrity of the bunker fuel supply system is not a cake-walk. It will require constant vigilance. It is expected that in the United States much of the detailed grunt work involved will be delegated to one or more private entities, but actual enforcement will remain with either the EPA or the Coast Guard.

Availability of compliant fuels

Due to the widespread use of low-sulphur diesel fuel in the United States and Canada, there should be few problems with availability of ECA-compliant marine diesel fuel. Availability of other ECA-compliant marine fuels, though, may be more problematical. The other problem for ship operators is that the ECA-compliant fuel must, in many instances, be obtained prior to sailing for a US or Canadian port. After all, the obligation to utilize the low-sulphur oil will arise when the ship comes within 200 nautical miles of the US or Canada, and remains in effect until the ship is at least 200 nautical miles off the coast. Numerous ships come to the US and Canada from ports all over the world. It is unclear whether ECA-compliant fuel is readily available in all these ports. Query whether ships will be required to carry ECA-compliant fuel at all times so as to be continually available to call in the US and Canada in the event of a last-minute diversion.

Returning to the bunker supplier issue, it is unclear whether bunker suppliers in the US and Canada have yet fully implemented the internal procedures required by MARPOL Annex VI. Provision of bunker samples and bunker delivery notes is not rocket science, but full compliance with Annex VI involves a higher level of attention to detail than past practice. Again, the experience of Singapore provides valuable lessons.

Summary

The petition of the United States and Canada to establish an ECA was not unexpected. The speed with which the petition was submitted and its breadth were somewhat surprising. It will require diligence by all involved: the US and Canadian enforcement agencies (and any delegates), the ship operators, and the bunker suppliers. There will be inevitable hiccups and missteps along the way, but there is little doubt that the new ECA will be approved by the IMO and implemented by the two nations. There is even the possibility that implementation of this ECA will lead to a flurry of petitions by other nations and regional groups of nations for additional ECAs.