

MARINE ENVIRONMENT PROTECTION  
COMMITTEE  
74th session  
Agenda item 10

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## POLLUTION PREVENTION AND RESPONSE

### **Need for clarifications in case of discrepancy on fuel oil compliance between data on the bunker delivery note (BDN) and test results on fuel oil samples taken during fuel oil delivery**

**Submitted by INTERTANKO and ICS**

#### **SUMMARY**

*Executive summary:* This document comments on the report from PPR 6 addressing a practical situation ships will most probably continue to experience in the future. This is related to situations of discrepancy between data on the BDN provided to ships and the data from tests performed by accredited laboratories on fuel oil samples taken during fuel oil delivery. Such discrepancies have been experienced by many ships, i.e. according to the BDN, fuel oil is compliant with the sulphur content required, while laboratory tests results may indicate non-compliance. This document suggests possible clarification in such situations.

*Strategic direction, if applicable:* 1

*Output:* 1.17

*Action to be taken:* Paragraph 18

*Related documents:* PPR 6/20, PPR 6/WP.5 and MEPC 74/10

#### **Introduction**

1 This document is submitted in accordance with the provisions of paragraph 6.12.5 of the document on *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5/Rev.1) and comments on document MEPC 74/10 (Secretariat).

2 This document addresses a practical situation ships experience when receiving fuel oils which, according to the BDN are compliant in terms of sulphur content as required by regulation 14 of MARPOL Annex VI, but which, according to the test results performed by accredited laboratories on fuel oil samples taken during the fuel oil delivery indicate the sulphur content might be over the required limit.

3 As a due diligence measure, ships take samples of fuel oils during bunkering and send them to an accredited laboratory for testing. The test results become available five to seven days after ships sent the fuel samples to laboratories. The majority of ships in such a situation would have already left the bunkering ports. As a general rule, ships do not use the new fuel before test results are made available. However, that precautionary action does not address the problem in case test results would indicate new fuel oil is not compliant. Ships have to proceed on their voyages and may not have the sufficient amount of the original compliant fuel to complete the voyage without using the new fuel oil received.

4 This is the most common challenge experienced by ships trading in ECA since 2015. Similarly, many ships experienced such a challenge during the first six months with fuels required to have 3.50% sulphur content after 1 January 2012. These ships experienced a dilemma on whether they were or they were not having compliant fuel on board. The situation is likely to continue to occur and needs clarification.

5 INTERTANKO submitted a similar document and suggested a solution to PPR 6 but the Sub-Committee was not able to provide an answer. Since there is no doubt that such situations will happen in the first period after 1 January 2020, the co-sponsors reiterate the request that both ships and port State control need guidance on how to address these situations in a consistent manner.

6 So far, ships which have found themselves in such a situation followed the procedure in paragraph 2.1.5 of resolution MEPC.181(59), whereby ships should document and report their experience through a Notification to their flag Administration, provide copies of the Notification to the port authority where the fuel oil was delivered and retain a copy of the Notification to be presented to the PSC of the next port of call. In most of these cases, based on evidence provided by ships, PSC has taken these situations into consideration and decided to take no action.

7 It would appear that the same practice should continue to apply. However, clarity is required because of the complexities introduced by the amendment to regulation 14 of MARPOL Annex VI on the carriage ban of non-compliant fuel that will enter into force in March 2020.

8 The scenario, which the Committee is invited to consider, relates to ships that have left the last bunkering port believing (based on BDN data) that the fuel received was in compliance with regulation 14 and 18, but find out a few days after they left the port, that according to fuel test results the fuel might be non-compliant. Ships in such a situation may not have sufficient compliant fuel on board and, in order to complete the remainder of the voyage, will have to use a fuel oil which test results indicate might be non-compliant.

9 There exists no legal requirement for ships to test fuel samples taken during the fuel oil delivery. The testing is performed based on a commercial contracting agreement between ships and accredited test laboratories. As a matter of best practice, most shipowners and operators always test the fuel oils delivered to their ships. However, test laboratories and ships are not legally entitled to decide whether, based on the test results, the fuel delivered is not compliant. This is the reason this submission indicates that the fuel received, and of which test results indicate sulphur content higher than the required value, "might" be non-complaint.

10 As a consequence of such a scenario, ships may end up with insufficient, proven compliant fuel on board. This in turn may lead to unavoidable situations where they are forced to be in breach of regulation 14 of MARPOL Annex VI and, from 1 March 2020, in breach of the new amendments on the carriage ban of such a fuel which is of no fault of their own. Therefore, the co-sponsors highlight the need to clarify how such a situation could be qualified within the current regulatory framework, within the enforcement mechanism and/or how IMO guidelines could address it. The co-sponsors suggest that such a clarification should address the appropriate action ships and PSC officers should follow in these situations.

### **Suggested clarification**

11 With regard to the scenario under consideration, ships have the option to ignore the test results and assume the fuel received is compliant as per the BDN or to report the test results. The co-sponsors consider that the latter should be the best practice.

12 The co-sponsors encourage the Committee to acknowledge that ships need to report if test results indicate possible non-compliance. The only option is to issue relevant Notifications to their flag Administrations and provide copies to the relevant authorities at the port of bunkering and next port of call.

13 The co-sponsors believe that a FONAR cannot be used in these instances to report that test results indicate that the fuel delivered might be non-compliant. A FONAR is a reporting mechanism that ships can use only in cases of non-availability of compliant fuels. In the scenario under consideration, the affected ships believed they had identified and purchased compliant fuels according to the legal documents with which they have been provided.

14 Based on these observations, the co-sponsors invite the Committee to confirm that the use of FONAR is inappropriate in this situation and that ships in these situations should issue specific Notifications to their flag Administrations and present copies to other relevant authorities. The decision of the Committee is critical as ships facing this challenge will have no option but to use a possible non-compliant fuel and could be unfairly detained or fined at the next port of destination in case they do not report in advance.

15 Furthermore, regardless of the format used for reporting, the PSC Guidelines should also contain sufficient related guidance for port State control officers to avoid ships being penalized for a situation that was beyond their control.

16 The co-sponsors are of the view that the simplest way to address this issue in the PSC guidelines is through a specific Notification process and suggest the additional text given below be added to Section 2.1.5 of the PSC guidelines (added text is underlined):

## **"Chapter 2 INSPECTIONS OF SHIPS REQUIRED TO CARRY THE IAPP CERTIFICATE**

### **2.1 Initial inspections**

[...]

2.1.5 In the case where the bunker delivery note or the representative sample as required by regulation VI/18 presented to the ship are not in compliance with the relevant requirements (the BDN is set out in appendix V of MARPOL Annex VI), the master or officer in charge of the bunkering operation may have documented that through a Notification to the ship's flag Administration with copies to the port Authority under whose jurisdiction the ship did not receive the required documentation pursuant to the bunkering operation and to the bunker deliverer.

In addition, if the BDN shows compliant fuel, but the master has independent test results of the fuel sample taken by the ship during the bunkering which indicate non-compliance, the master should document this through a Notification to the ship's flag Administration with copies to the port of destination, the port Authority under whose jurisdiction the bunker deliverer is located and to the bunker deliverer.

In all cases, a copy may be retained on board the ship, together with any available commercial documentation, for the subsequent scrutiny of port State control."

17 The co-sponsors believe that these changes would address plausible scenarios whereby a ship will be innocent but is held liable for being in breach of two provisions of MARPOL Annex VI and provide a solution without creating any loopholes on the enforcement and implementation. It is a classic case where it is not the ship but the fuel oil delivered that may be non-compliant even though BDN indicates compliance.

### **Action requested of the Committee**

18 The Committee is invited to consider this predictable practical situation ships will encounter and the suggested solution in paragraph 16, and decide accordingly.

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