

MARINE ENVIRONMENT PROTECTION
COMMITTEE
66th session
Agenda item 6

MEPC 66/6/15
7 February 2014
Original: ENGLISH

**CONSIDERATION AND ADOPTION OF AMENDMENTS TO
MANDATORY INSTRUMENTS**

**Comments concerning potential amendments to the
effective date of the Tier III NO_x Standards of MARPOL Annex VI**

Submitted by BIMCO and the World Shipping Council (WSC)

SUMMARY

Executive summary: This document comments on the draft amendment relating to the effective date of the NO_x Tier III requirements of MARPOL Annex VI as presented in document MEPC 66/6/3 and discussed in documents MEPC 66/6/6 and MEPC 66/6/10. This document outlines the adverse impacts to the Organization and the shipping community that could occur if the draft amendments were adopted as proposed.

Strategic direction: 7.3

High-level action: 7.3.2

Planned output: 7.3.2.1

Action to be taken: Paragraph 16

Related documents: MEPC 66/6/3, MEPC 66/6/6, MEPC 66/6/10, MEPC 66/INF.4; MEPC 65/4/7, MEPC 65/4/8, MEPC 65/4/27, MEPC 65/4/32 and MEPC 65/INF.10

Introduction

1 This document is submitted in accordance with the provisions of paragraph 6.12.5 of the *Guidelines on the organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.4/Rev.2) and provides comments on the draft amendments to regulation 13 of MARPOL Annex VI and information presented in documents MEPC 66/6/3, MEPC 66/INF.4, MEPC 66/6/6 and MEPC 66/6/10.

Background

2 The adoption of the 2008 Amendments to MARPOL Annex VI was motivated by two central objectives of the IMO. The first was to establish effective international air emission

standards that would address significant air quality problems globally and, where appropriate, at the regional level through emission control areas and the application of uniform standards in those areas, including the control of nitrogen oxides where deemed necessary and approved by the parties. The second objective was to produce an international regulatory structure and set of standards that would promote a stable regulatory environment for the shipping industry.

3 Adoption of the draft amendments to the effective date of the NO_x Tier III requirements as proposed in document MEPC 66/6/3 would undermine these achievements and would invite the introduction of new and different standards outside the regulatory regime established by the IMO.

4 To date only two emission control areas have been designated and approved to control NO_x at the Tier III level under MARPOL Annex VI: the North American Emission Control Area and the United States Caribbean Sea Emission Control Area. No other existing ECAs are currently designated to control NO_x. A decision to pursue designation of such controls in the Baltic, North Sea, or other ECAs not yet created, would need to be first made by the relevant coastal States, which has not occurred.

Availability of Tier III compliant technologies

5 An IMO correspondence group undertook an extensive examination of technology to meet the Tier III standards and concluded that Tier III compliant technologies will be commercially available for ships built after 1 January 2016 (MEPC 65/4/7).

6 EUROMOT and the two largest marine engine manufacturers in the world, MAN Diesel & Turbo and Wärtsilä Corporation, have also made it clear that different technology pathways are available: namely, exhaust gas recirculation (EGR), selective catalytic reduction (SCR) and dual-fuel engines that will meet or exceed the Tier III emission standards for new builds operating in an area designated for application of the Tier III NO_x controls (MEPC 66/INF.4 and MEPC 66/6/6).

7 Companies that are members of the co-sponsors and have ordered new builds for delivery in 2016 and later report that Tier III compliant technologies are available to ships that may operate in the two ECAs designated to control NO_x at the Tier III level. Member companies anticipate some difficulties that can be expected with the introduction of most new technologies, but there has been no indication that technologies are unavailable or that the available technologies present fundamental performance problems.

8 During the discussion of this issue at MEPC 65, a number of States supporting the proposed amendments did so without reference to technical problems or a lack of available technology, but instead noted concerns about how designation of an area (not yet designated to control NO_x) may lead to increased transportation costs. How significant such costs may be and what effect those costs may have on regional transportation patterns are understandable concerns and appropriate subjects of analysis. Those concerns are appropriate points of consideration in deciding whether a particular area should be designated as a Tier III NO_x Emission Control Area and MARPOL Annex VI currently allows for the consideration of such costs and implications. Those concerns are fundamentally different from the question of whether technology is available to comply with the Tier III standard.

Potential impacts on global shipping and regulatory stability

9 As Parties consider the proposed amendments, it is important to consider what the broader implications of adoption of the proposed amendments would likely be. The Parties and the international shipping community have long maintained that the Organization is the most appropriate and efficient forum to establish environmental standards applicable to shipping. This point has been especially relevant in the environmental protection arena, where the absence of effective IMO action could lead to national and regional governments establishing unique, different standards governing emissions from ships.

10 In 2007 the co-sponsors supported the Emission Control Area emission standards that were under consideration in the MARPOL Annex VI negotiations and later adopted in October 2008. The decision to support the amended Annex VI ECA standards was based on a recognition that adoption of environmentally protective, credible and timely air emission standards by the IMO was critical if uniform international operating rules were to be established for the shipping industry. The co-sponsors and other industry interests accepted and supported protective international standards at the IMO to obtain a stable regulatory environment where business decisions could be made with confidence that the regulatory landscape would not repeatedly change, based on unilateral actions by regulatory authorities around the world. The 2008 amendments to MARPOL Annex VI have since been widely cited by the international community as an outstanding example of establishing protective international air quality standards. As a result, IMO's standing as an effective international regulatory body has been strengthened and unilateral air emission standards have been limited since 2008.

11 If the proposed amendments were to be adopted, the effect of MARPOL Annex VI as a bulwark against unilateral national and regional regulation outside the scope of IMO instruments would be undermined. One possibility is that regulators in North America would move to make the current MARPOL Annex VI NO_x ECA regulations applicable through national law. It is also possible that North American regulators in that situation could consider different standards applicable to a different and wider set of ships than the standards established in MARPOL Annex VI. Indeed, the draft amendments proposed in document MEPC 66/6/3 have already resulted in a legal petition being filed with the United States Environmental Protection Agency seeking the establishment of unilateral United States standards under the United States national law, if IMO were to decide to adopt the proposed amendments. In short, adoption of the proposed amendments would invite new national regulatory initiatives and undermine the stability of the international regime that the IMO has achieved through MARPOL Annex VI.

Proposal outlined in document MEPC 66/6/10 by Norway and the Marshall Islands

12 In document MEPC 66/6/10, Norway and the Marshall Islands have proposed a compromise that would provide relief to large recreational ships and preserve the 2016 Tier III implementation date in those ECAs that have already been approved by the IMO to control NO_x emissions at the Tier III level. The compromise proposal would also delay the effective date for application of further Tier III NO_x controls to 2021 in other ECAs that may later be designated to control NO_x at the Tier III level.

13 The compromise proposal does raise the question of why NO_x controls should automatically be delayed in future areas, but Norway has offered that experience gained in the ECAs already designated to control NO_x at the Tier III level could offer valuable experience as well as confidence in the availability of Tier III technologies to states currently in doubt. Equally important, the proposal outlined in document MEPC 66/6/10 respects the decision already made at the IMO to control NO_x at the Tier III level in the North American

and the United States Caribbean ECAs. If the Parties determine that a compromise is appropriate, the proposal presented in document MEPC 66/6/10 should remove the significant risk of new and different standards being introduced in North America that could be expected should the Parties to MARPOL Annex VI decide to adopt the draft amendments to regulation 13 of MARPOL Annex VI proposed in document MEPC 66/6/3.

Conclusion

14 The Parties to MARPOL Annex VI, before designating an ECA, can and should give appropriate consideration to whether the regulatory standard is reasonable, whether technology is available to reliably meet the standard and whether the standard is cost effective when compared to other alternatives. However, the draft amendments proposed in document MEPC 66/6/3 are not necessary in order for the Parties to undertake those appropriate analyses as they may already do so. Instead, the draft amendments to MARPOL Annex VI, if adopted, would undermine the regulatory stability that MARPOL Annex VI has established, and it risks undermining the leadership that IMO has demonstrated in establishing protective and attainable air emission standards for the maritime sector.

15 Considering the views noted above, the co-sponsors respectfully suggest that it is not in the best interest of the public, the industry or the IMO to support the draft amendments as proposed in document MEPC 66/6/3. If the Parties deem it appropriate, the proposal outlined in document MEPC 66/6/10 may provide a way forward in the Committee that addresses the concerns outlined in document MEPC 66/6/6 and this document, as well as those concerns that led to circulation of the current draft amendments.

Action requested of the Committee

16 The Committee is invited to consider the views expressed in this document and take action as appropriate.
