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Practice Group:
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IMO 2020 Is Here – Compliance & Enforcement of MARPOL Annex VI in the United States

Top 10 Considerations for Foreign Flag Vessels Calling on U.S. Ports and U.S. Flag Vessels Operating Worldwide (Detailed Discussion)

By Barry M. Hartman, Jeffrey S. King, George K. Kontakis, and Luke M. Reid

For almost a decade we have been discussing MARPOL Annex VI and the new global cap on sulphur emissions that was implemented by IMO and accepted by all signatory countries (“Global Sulphur Cap”). As another year in shipping begins, the maritime industry is undoubtedly anticipating what lies ahead in 2020. The IMO Global Sulphur Cap—which took effect on January 1, 2020—may be among the greatest regulatory challenges to face the maritime industry in recent memory. The ban on the carriage of non-compliant fuel—which takes effect on March 1, 2020—will likely have even more significant enforcement ramifications. Implementation of the new low sulphur fuel requirements has been anticipated for years, but persistent concerns regarding the availability of fully compliant fuel and the uncertain operational and safety issues that may result from using new fuel blends has weighed heavily on many in the industry. In our prior alerts, we discussed these new requirements, how the IMO and other regulators attempted to address these uncertainties, and set forth steps owners and operators could take to mitigate risk in preparation for the new requirements.¹ The operational and economic realities of compliance are now upon us.

In December 2019, the U.S. Coast Guard (“Coast Guard”) held a public meeting to further discuss how the new Global Sulphur Cap would be consistently implemented and enforced. On January 13, 2020, the Coast Guard issued updated MARPOL Annex VI enforcement guidance.²

Many questions persist, and only time will tell how some of these uncertainties will actually play out. In the meantime, there is clarity on many issues. In this regard, as these new requirements are implemented and begin to be enforced, there are a number of key issues owners, operators, and charterers should focus on to best mitigate the risk of potential violations of MARPOL Annex VI. These issues include:

¹ Our prior alerts on this topic can be accessed with these links: <http://www.klgates.com/international-maritime-organization-imo-approves-authority-for-us-to-impose-stringent-new-air-emission-standards-for-large-oceangoing-vessels-04-06-2010/>

<http://www.klgates.com/do-you-clearly-see-whats-coming-07-06-2018/>

<http://www.klgates.com/2020-global-low-sulfur-fuel-12-05-2018/>

http://www.klgates.com/files/Publication/87dd0cd7-93fe-4669-bdfa-f8d9fb6f42a7/Presentation/PublicationAttachment/7191ea3d-0055-49cf-b406-fd869ab1699c/Ship_Implementation_Plans.pdf

<http://www.klgates.com/industry-predictions-for-2020-from-the-maritime-professionals-at-kl-gates-01-23-2020/>

² U. S. Coast Guard Office of Commercial Vessel Compliance work instruction CVC-WI-022(1), “Implementation of Compliance/Enforcement Policy for MARPOL Annex VI Regulation 14, including IMO 2020 Sulphur Cap,” dated January 13, 2020 (hereinafter “USCG IMO 2020 Compliance/Enforcement Policy”). This updated guidance may be accessed [here](#).

IMO 2020 Is Here – Compliance & Enforcement of MARPOL Annex VI in the United States

1. ECA Sulphur Limit Remains Unchanged:

- a. The sulphur limit applicable to vessels operating in the North American and Caribbean Emissions Control Areas (“ECA”) remains unchanged.³ For vessels operating in the ECA, any fuel oil consumed onboard ships must not exceed 0.10% m/m. See Regulation VI/14.4.3.
- b. The advisory for vessels entering into and operating in the ECA, contained in U.S. Coast Guard Marine Safety Alert 13-15, remains in effect.⁴ Vessel owners and operators are encouraged to review this advisory.

2. Means of Compliance With Global Sulphur Cap: For vessels operating outside the ECA, there are generally two ways to comply with the Global Sulphur Cap:

- a. ensure fuel oil used on board ships does not exceed 0.50% m/m in accordance with Regulation VI/14.1.3; or
- b. ensure the vessel is equipped with an equivalent means of compliance, approved in accordance with Regulation VI/4 (e.g. Exhaust Gas Cleaning System (“EGCS” or “Scrubbers”).

3. Submit Fuel Oil Non-Availability Reports (“FONAR”) to the Coast Guard (not EPA): For vessels which are unable to purchase compliant fuel oil, the ship is required to notify the competent authority in the port of destination and the flag state. See Regulation VI/18.2.4. The IMO has provided guidelines and a recommended format for reporting fuel oil non-availability.⁵ The Coast Guard recommends use of the format set forth in Appendix I to IMO Resolution MEPC.320(74).⁶

- a. Foreign Flag Vessels Calling on U.S. Ports: For all foreign flag vessels calling on U.S. ports that are unable to purchase compliant fuel prior to entry, a FONAR must be submitted to the local Coast Guard Captain of the Port.⁷ Foreign flag vessels are also reminded to submit such reports to their respective flag Administration in accordance with Regulation VI/18.2.4. Such reporting requirements might also apply to fuel that was thought to be compliant when purchased but subsequent testing reveals that it is not. (See paragraph 8.b below for further information.)
- b. U.S. Flag Vessels Wherever They Operate: When a U.S. flag ship encounters a situation where compliant fuel oil could not be purchased while in a U.S. or foreign port, the ship is required to inform the Coast Guard. Vessels should submit such reports to the Coast Guard’s Office of Commercial Vessel Compliance (if calling on a foreign port) or the Coast Guard Captain of the Port if calling on a U.S. port. U.S. flag ships on foreign voyages are reminded they must also submit such reports to the competent authority at their foreign port of destination.
- c. Submission of FONAR Is Not an Exemption or Waiver: Submission of a FONAR is not a “get out of jail free card.” It is, instead, an acknowledgement of non-compliance,

³ The ECA in the United States is generally 200 nm from the North American Coast and Hawaii and roughly 50 miles from the U.S. Caribbean coast (e.g., the Commonwealth of Puerto Rico and the U.S. Virgin Islands).

⁴ U.S. Coast Guard Marine Safety Alert 13-15 is available [here](#).

⁵ See IMO Resolution MEPC.320(74), Guidelines for Consistent Implementation of the 0.5% Sulphur Limit Under MARPOL Annex VI (2019), at Section 5 and Appendix 1. These guidelines are available [here](#).

⁶ See U.S. Coast Guard Marine Safety Bulletin 005-19 (“USCG MSIB 005-19”), available [here](#).

⁷ As of June 30, 2019, FONARs are no longer submitted to the EPA. See USCG MSIB 005-19.

IMO 2020 Is Here – Compliance & Enforcement of MARPOL Annex VI in the United States

and one factor port state and flag state authorities may consider when assessing a company's "best efforts"⁸ to obtain compliant fuel and determining whether to pursue an enforcement action. To demonstrate that the company has undertaken "best efforts" in good faith, vessel owners and operators should be prepared to present to the Coast Guard the actions it took to achieve compliance, including evidence that they attempted to purchase compliant fuel oil in accordance with the vessel's voyage plan.⁹ A Ship Implementation Plan, described below, may be evidence of these efforts and a significant factor in the Coast Guard's determination of what enforcement sanction is appropriate.

- d. Failure to File a FONAR: The Coast Guard has made clear in its enforcement guidance that the failure to file a FONAR, when required, could result in a control action (e.g. detention) and/or enforcement proceedings.

4. Vessels Fitted with EGCS or Other Equivalency – Flag Administration Approvals:

Vessels fitted with EGCS or similar equivalent means of compliance must ensure its flag Administration's approval of the equivalency is available on the public area of IMO's Global Integrated Shipping Information System ("GSIS"). The Coast Guard has indicated it will use the GSIS portal to confirm the validity of an Annex VI equivalency.¹⁰ Thus, prior to calling on a U.S. port, owners and operators of foreign flag vessels equipped with EGCS or other equivalent means of compliance should verify that the equivalency approval has been posted on the IMO's GSIS portal by its flag Administration.¹¹ Failure to ensure the equivalency approval is so published on the portal could result, at a minimum, in an unnecessary delay or possibly lead to further targeted or expanded examinations.

5. Update the Vessel's Safety Management System and Adopt a Ship Implementation Plan:

Vessels should already have in place procedures in its Safety Management System ("SMS") to facilitate compliance with the provisions of applicable safety and environmental rules and regulations, including MARPOL Annex VI. However, it is essential that the vessel's SMS be updated to reflect the latest MARPOL Annex VI requirements, including being integrated with procedures adopted under the vessel's Ship Implementation Plan ("SIP").

- a. Safety Management System: A key functional requirement of a vessel's SMS is that it provide "instructions and procedures to ensure the safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation." International Safety Management Code ("ISM"), Part A, 1.4. It is essential such instructions and procedures be adopted and implemented into the vessel's SMS. Deficiencies found in vessel's SMS is among the most common reasons for vessel detentions in the United States.¹² Recent Coast Guard enforcement guidance is clear that vessel owners and operators are expected to

⁸ See Regulation VI/18.1.2.

⁹ A more detailed description of information likely to be sought by Coast Guard port state control officers to assess "best efforts" is contained in IMO Resolution MEPC.321(74), 2019 — Guidelines for Port State Control Under MARPOL Annex VI, Chapter 3, at pp. 12–13, which is available [here](#). See also USCG IMO 2020 Compliance/Enforcement Policy at pp. 5–6.

¹⁰ See USCG IMO 2020 Compliance/Enforcement Policy at pp. 4–5.

¹¹ IMO's GSIS portal may be accessed [here](#).

¹² See U.S. Coast Guard Port State Control Annual Report (2018), at p. 16. This report may be accessed [here](#).

IMO 2020 Is Here – Compliance & Enforcement of MARPOL Annex VI in the United States

- update their SMS to address MARPOL Annex VI compliance, which will be a factor taken into account when making their enforcement decisions.¹³
- b. **Ship Implementation Plan:** A Ship Implementation Plan (“SIP”) should be instituted for vessels, outlining how the ship has prepared to comply with the required sulphur content limit of 0.50%. In our prior maritime alert dated December 5, 2018, we advised regarding the importance of instituting a SIP, prior to the Global Sulphur Cap taking effect. Though not specifically required by law, the IMO encourages vessel owners and operators to develop a SIP, in order to mitigate risks and better ensure compliance with the Global Sulphur Cap.¹⁴ U.S. authorities will take into account the SIP when verifying compliance and when determining whether the vessel owner and operator have made good faith efforts to comply.
- 6. Equipment Casualty or Failure – MARPOL Annex VI Safety Exemption:** In the event of a failure or casualty involving vessels, including those vessels fitted with an approved EGCS,¹⁵ the following considerations are pertinent:
- a. **MARPOL Annex VI Safety Exemption:** Vessel safety remains of paramount concern to regulators and vessel owners/operators alike. When a casualty or equipment failure occurs, depending on the circumstances, it may become operationally necessary to temporarily burn non-compliant fuel or discontinue use of an EGCS. Regulation VI/3 provides an exemption to compliance with the requirements of Annex VI when “necessary for the purpose of securing the safety of a ship or saving life at sea.” This safety exemption is generally narrowly construed by the Coast Guard. In this regard, in its enforcement policies, it has stated that it expects owners and operators to implement a certain degree of redundancy so that the ship may continue to operate in compliance.
- b. **Required Reporting of Casualties/Failures:** Apart of the applicability of the safety exemption, Regulation VI/5.5 may independently require reporting of such casualties or failures to the flag Administration, which may require an interim compliance scheme.¹⁶ Depending on the circumstances of the casualty or failure, foreign flag vessels calling on U.S. ports and U.S. flag vessels (operating anywhere) may also be required by law to report such incidents to the Coast Guard. See 46 CFR Part 4 (reporting of marine casualties) and 33 CFR § 160.216 (reporting of a “hazardous condition” as defined in 33 CFR § 160.202). Failure to make such reports may subject the owner and operator to civil and/or criminal penalties in the United States.
- 7. Carriage Ban Takes Effect March 1, 2020:** In October 2018, the IMO amended MARPOL Annex VI to completely prohibit the carriage of non-compliant fuel oil for combustion purposes (for propulsion or other operation on board a ship), unless the ship

¹³ USCG IMO 2020 Compliance/Enforcement Policy at enclosure (1).

¹⁴ For further guidance on the development of a SIP, see IMO Circular MEPC.1/Cir. 878 (2018), Guidance on the Development of a Ship Implementation Plan for the Consistent Implementation of the 0.50% Sulphur Limit Under MARPOL Annex VI. This guidance may be accessed [here](#).

¹⁵ In the case of an approved EGCS that encounters failures or other malfunctions prior to arriving at or while in U.S. ports, owners and operators should consult and follow IMO reporting and other guidelines in IMO Circular MEPC.1/Circ.883, Guidance on Indication of Ongoing Compliance in the Case of the Failure of a Single Monitoring Instrument, and Recommended Actions to take if the Exhaust Gas Cleaning System (EGCS) Fails to Meet the Provisions of the 2015 EGCS Guidelines (Resolution MEPC.259(68)). This guidance may be accessed [here](#).

¹⁶ Further guidance on such reporting is contained in USCG IMO 2020 Compliance/Enforcement Policy at p. 7.

IMO 2020 Is Here – Compliance & Enforcement of MARPOL Annex VI in the United States

has been fitted with an approved EGCS (“Carriage Ban”).¹⁷ The Carriage Ban does not apply to non-compliant fuel oil being carried as cargo.

- a. General: The Carriage Ban takes effect on March 1, 2020, and may have more significant ramifications for potential enforcement actions in the United States than the initial January 1 compliance date. Generally speaking, provided all records are accurate and no other violations occur, violations of the Global Sulphur Cap found to have occurred onboard foreign flag vessels outside of U.S. jurisdiction (i.e. outside the U.S. ECA) are likely going to be referred by the Coast Guard to the flag state for enforcement action.
- b. Consequences of Non-Compliance: After the Carriage Ban takes effect on March 1, 2020, with the exception of vessels equipped with an approved EGCS, all vessels calling on U.S. ports with any non-compliant fuel oil onboard are subject to U.S. enforcement actions for violations of the Carriage Ban (even if those vessels have not burned non-compliant fuel). U.S. flag vessels are subject to enforcement of these requirements by U.S. authorities wherever they operate. In addition to traditional enforcement actions (i.e. civil and criminal penalties), based on the totality of the circumstances, the Coast Guard has announced it may institute any of the following additional control actions for non-compliance with the Carriage Ban:
 - require the vessel to offload non-compliant fuel at U.S. port;
 - require the onload of compliant fuel appropriate for the length of subsequent voyage;
 - allow vessel to sail utilizing compliant fuel, then require offload of non-compliant fuel at a subsequent destination, in coordination with the destination port authorities; and
 - take other actions consistent with IMO Guidelines [MEPC.321\(74\)](#) and [MEPC.1/Circ.881](#).
- c. Coastwise Trade/Cabotage Restrictions: Special complications may arise in the case of a foreign flag vessel that has non-compliant fuel onboard that was previously purchased in a U.S. port. It is unclear whether U.S. Customs & Border Protection and/or the Coast Guard will consider non-compliant fuel to be “merchandise” when carried onboard, in which case the coastwise laws of the U.S.—commonly known the Jones Act—may apply.¹⁸ This issue could further complicate and limit a foreign flag vessel’s ability to offload the cargo at a U.S. port without violating the coastwise laws, a situation that may well cause disruption to the vessel’s operation, additional delay, and potentially enhanced enforcement consequences.
- d. Conclusion: The cost of de-bunkering non-compliant fuel, cleaning tanks, and bunkering with compliant fuel, as described above, could be very costly and time consuming, not to mention the liability associated with potential penalties. For this

¹⁷ See IMO Resolution MEPC.305(73) (2018), Prohibition on the Carriage of Non-Compliant Fuel Oil for Combustion Purposes for Propulsion or Operation On Board a Ship. These amendments may be accessed [here](#).

¹⁸ The “Jones Act” broadly prohibits the transportation of “merchandise” between points in the United States, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, i.e. a coastwise-qualified vessel. See 46 U.S.C. § 55102(a). Such “merchandise” is subject to forfeiture, or penalties may be imposed for amounts up to the value of the merchandise. See 46 U.S.C. § 55102 (c).

IMO 2020 Is Here – Compliance & Enforcement of MARPOL Annex VI in the United States

reason, it is imperative that non-compliant bunkers be removed from all vessels (that are not equipped with EGCS) and properly disposed of, before the Carriage Ban comes into force on March 1, 2020.¹⁹

8. Inspections by the Coast Guard & Fuel Oil Sampling: The basic framework and manner in which vessel examinations are conducted in the United States are well known and are not expected to fundamentally change with implementation of the Global Sulphur Cap and associated Carriage Ban. Such examinations are generally conducted in accordance with established IMO and Coast Guard regulations and policies.²⁰ In 2019, the IMO adopted new guidelines for conducting port state control examinations under MARPOL Annex VI, which the Coast Guard is expected to follow.²¹ Additionally, on January 13, 2020, the Coast Guard published its MARPOL Annex VI compliance check sheet, which Coast Guard port state control officers and marine inspectors will typically follow.²²

The starting point for all such examinations typically includes a review of required records and statutory certificates, to initially assess their validity and accuracy. Among the most important documents required to be maintained by the vessel is the Bunker Delivery Note (“BDN”).²³ Due to the importance of the BDN, owners and operators should take note of the following:

a. Purchase Fuel from Reputable Suppliers: Procurement of high-quality, compliant fuel from a reputable supplier is, in the first instance, an essential step in ensuring safe and compliant operation of the ship. In this regard, procedures for the purchase of fuel by vessel owners, operators, and charterers should conform, to the greatest extent practicable, to IMO best practices guidance.²⁴ Charter party agreements should be reviewed, to ensure that they clearly allocate responsibility in regard to obtaining compliant fuel.²⁵ Furthermore, adequate steps should be taken to ensure samples are taken and tested in accordance with applicable IMO guidelines.²⁶

¹⁹ As noted, the Carriage Ban does not apply to non-compliant fuel oil being carried as cargo. Thus, tankers may have greater flexibility to transfer non-compliant bunker fuel into cargo tanks for carriage as cargo before the Carriage Ban takes effect. Under U.S. law, cargo vessels and other non-tank vessels may be permitted, under limited circumstances, to carry some amount of fuel oil as cargo if the Coast Guard issues a permit or other authorization to do so. See 33 CFR § 30.01-5(a). It is unclear how the Coast Guard will address this. Thus, such vessels anticipating having non-compliant fuel oil onboard as cargo after the Carriage Ban takes effect should take steps to secure U.S. Coast Guard and flag Administration approval, as appropriate, as far in advance as possible in order to avoid potential delays or violations.

²⁰ See U.S. Coast Guard CG-543 Policy Letter 09-01, dated February 4, 2009 (Guidelines for Ensuring Compliance With MARPOL Annex VI). This policy letter may be accessed [here](#).

²¹ See IMO Resolution MEPC.321(74), 2019 Guidelines for Port State Control Under MARPOL Annex VI, Chapter 3. These guidelines may be accessed [here](#).

²² See USCG IMO 2020 Compliance/Enforcement Policy at enclosure (1).

²³ The BDN includes a declaration signed and certified by the fuel oil supplier’s representative that the fuel oil supplied is in conformity with regulation MARPOL Annex VI and that the sulphur content of the fuel oil supplied does not exceed applicable standards (e.g. 0.50% m/m or 0.10% m/m). The BDN is therefore a foundational document that will be reviewed during all MARPOL Annex VI examinations.

²⁴ See IMO Circular MEPC.1/Cir. 875, 2018 Guidance on Best Practice For Fuel Oil Purchaser/Users For Assuring The Quality of Fuel Oil Used On Board Ships. This guidance may be accessed [here](#).

²⁵ While having appropriate and clear charter party clauses is important for allocating commercial responsibility and risk, it should be noted that under U.S. law, responsibility for compliance with MARPOL Annex VI cannot be delegated by contract. Vessel owners, operators, and charters (and potentially others) could all be potentially subject to enforcement action depending on the facts.

²⁶ See IMO Resolution MEPC.182(59), 2009 Guidelines for the Sampling of Fuel Oil for Determination of Compliance with the revised MARPOL Annex VI. These guidelines may be accessed [here](#).

IMO 2020 Is Here – Compliance & Enforcement of MARPOL Annex VI in the United States

- b. **Fuel Quality Disputes With Suppliers Must Be Well Documented:** For a variety of reasons, it is essential that any dispute with the bunker supplier, regarding the accuracy of the BDN and the fuel's sulphur content be fully documented. This is particularly important if test results received after a vessel is underway are different than those provided by the supplier when the fuel was received onboard. From a compliance standpoint, the Coast Guard has recommended that, when such disputes arise, owners or operators should consider filing a Letter or Note of Protest with the bunker supplier in order to assist in adequately documenting the facts.²⁷ Owners and operators should also consider making any necessary reports—either in the form of a FONAR or other report—to its flag Administration and the competent authority in the destination port. When MARPOL samples and their associated BDNs are subsequently reviewed on arrival in the United States, such documentation will be relevant to the Coast Guard's assessment of an owner or operator's good-faith efforts to comply (and will be taken into account in making enforcement decisions).
- c. **Marginal Exceedances:** In order to validate the accuracy of the BDN, Coast Guard inspectors may seek to obtain and test onboard fuel oil samples, consistent with applicable IMO guidelines.²⁸ As a practical matter, all fuel oil testing is subject to certain inherent variations. Thus, even though the BDN may accurately state a sulphur content of 0.50% m/m or below for the MARPOL delivered sample taken at the time of bunkering, testing of an onboard sample during a later port state control inspection may yield a slightly different result, potentially above 0.50% m/m. For example, an onboard sample may yield test results with a sulphur content of 0.52% m/m and may be construed to be non-compliant, despite the BDN showing sulphur content of 0.50%. Owners and operators may have experienced similar situations involving ECA compliant fuels when sampling procedures result in marginal exceedances (i.e. slightly more than 0.10 % m/m sulphur content). To account for such variations in test results, in May 2019, the IMO took steps to amend the port state control verification procedures, which are set forth in Appendix VI to MARPOL Annex VI. Under these verification procedures,²⁹ testing of onboard samples which result in sulphur content up to 0.53% m/m (for the Global Sulphur Cap) and 0.11% m/m (for ECA) may, in some cases, be deemed compliant by the Coast Guard. Accordingly, owners and operators should be familiar with these verification procedures and refer to them when encountering instances of apparent marginal exceedances during Coast Guard inspections.
9. **Be Transparent and Maintain Accurate Records:** This cannot be emphasized enough. The overwhelming majority of MARPOL enforcement actions in the United States involve records that were inaccurately maintained, either intentionally or negligently. The Coast Guard has long maintained an intention to enforce the new

²⁷ See U.S. Coast Guard Office of Commercial Vessel Compliance, Frequently Asked Questions: North American Emission Control Area, revised February 11, 2014, at p. 11.

²⁸ Regulation VI/18.8.2 requires port state control authorities to obtain and analyze representative samples in accordance with Appendix VI of MARPOL Annex VI (Fuel Verification Procedure for MARPOL Annex Fuel Samples).

²⁹ The new verification procedures were adopted by IMO Marine Environment Protection Committee in May 2019, but have not yet technically entered into force. On July 27, 2019, the IMO issued Circular MEPC.1/Circ. 882, Early Application of the Verification Procedures For a MARPOL Annex VI Fuel Oil Sample. This Circular sets forth the new verification procedures, and calls for early application, in advance of their entry into force. The Coast Guard should recognize these verification procedures in assessing any marginal exceedances. These verification procedures may be accessed [here](#).

IMO 2020 Is Here – Compliance & Enforcement of MARPOL Annex VI in the United States

Global Sulphur Cap and related Annex VI regulations. The maritime industry was reminded of this once again at the Coast Guard's December 2019 public meeting on enforcement. However, the Coast Guard is also well aware of the technical complexity and operational challenges associated with compliance with these new requirements. In this regard, the Coast Guard has typically been disinclined to pursue aggressive enforcement actions against those owners and operators which it deems to have made a genuine, good faith effort at compliance, and whose crewmembers operate transparently and keep accurate records. By contrast, they have historically taken more aggressive enforcement actions when clear non-compliance is identified through an inspection or other means, inaccurate records are identified, required reports are not made, or they believe the crew has not been transparent and forthright during an inspection or investigation. This usually is accompanied by the vessel's failure to abide by its SMS, implemented under the ISM Code. This enforcement concept is incorporated into several policy documents promulgated by the Coast Guard (and IMO) in its implementation of the Annex VI regulations.

For this reason, owners and operators should ensure FONARs are submitted as required and contain accurate information if the vessel was unable to obtain compliant fuel, as described above. In addition, owners should take necessary steps to ensure all records are accurately maintained, in accordance with the vessel's SMS and SIP, particularly:

- International Air Pollution Prevention Certificate (Regulation VI/6);
- BDN (Regulation VI/18);
- Fuel Changeover Procedures/Logs for Entering/Departing ECA (Regulation VI/14.6);
- Oil Record Book Parts I and II (Regulations I/17.6, I/36.7); and
- EGCS flag Administration approvals and related logs/documentation.

10. Enforcement: The Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901-1915 ("APPS"), implements MARPOL (including Annex VI) in the United States. The Coast Guard has a range of enforcement options (beyond control actions) it may pursue under this law to address non-compliance with MARPOL Annex VI. These options were discussed at the Coast Guard's December 2019 public meeting on consistent implementation and enforcement. Such options include:

- a. Letter of Warning – This carries no monetary penalty.
- b. Notice of Violation (NOV) — An NOV may be issued for a total penalty up to \$10,000.
- c. Civil Penalties
 - A civil penalty may be assessed up to \$74,552 for each violation.
 - Each day of a continuing violation may be charged as a separate violation.

IMO 2020 Is Here – Compliance & Enforcement of MARPOL Annex VI in the United States

- The Coast Guard may itself pursue civil penalties or may refer the case to EPA for civil penalty enforcement.³⁰
- d. Refer the matter to U.S. Department of Justice for Criminal Enforcement.
- Reserved for knowing, intentional violations.
 - Penalties up to \$500K per violation, and jail time of up to six years for individuals, including potentially officers and management.
 - Depending on the facts, owners, operators, and charterers (and potentially others) may be separately liable.
 - Vessels may be detained for long periods of time, and typically the Coast Guard may attempt to withhold the vessel's departure clearance on the condition that owner and/or operator provide housing, pay, and other support for crew while in the United States during the pendency of an investigation.
 - Under APPS an award of up to 1/2 the total fine amount may be awarded to the person giving information leading to conviction (a so-called “whistleblower” award).

The above represents a continuum of enforcement options. The Coast Guard's decision to enforce a case, and which enforcement option it chooses, is determined by the facts and circumstances of the alleged non-compliance, including the factors described in paragraph 9 above.

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Authors:

Barry M. Hartman

barry.hartman@klgates.com
+1.202.778.9338

Jeffrey S. King

jeffrey.king@klgates.com
+1.617.261.3179

George K. Kontakis

george.kontakis@klgates.com
+1.212.536.4021

Luke M. Reid

luke.reid@klgates.com
+1.617.951.9108

³⁰ Under existing law, the U.S. Coast Guard may take civil penalty enforcement action itself or, at its discretion, it may refer the matter to the EPA for civil penalty enforcement. [See](#) 33 U.S.C. § 1907(f)(2). Each agency has its own separate regulations under which such civil penalties are processed and adjudicated. In June 2019, the Coast Guard and the EPA revised their protocols under which the Coast Guard would refer cases to EPA for civil enforcement. These new protocols may be accessed [here](#).

IMO 2020 Is Here – Compliance & Enforcement of MARPOL Annex VI in the United States

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