

# 'At berth' sulphur regulations trigger safety fears

The bunker market has been given a vivid illustration of how complicated regulating marine fuel can be.

The problems raised by toughening regulations for the bunker market have been brought into sharp focus by developments in Europe.

The final provisions of the European Union's (EU) Directive 2005/33/EC, also referred to as the EU Sulphur Directive, came into force at the beginning of the year. They required ships at berth in EU ports to use fuel with a sulphur content not exceeding 0.1%.

The regulation appeared clear enough in outline. But weeks before coming into effect, the fuel testing agency Lloyd's Register FOBAS published a circular addressing what it said were 59 frequently asked questions. They covered a wide range of issues including basic definitions, the types of fuel that could be used, through to more complex operational problems and even speculation about how inspectors might choose to monitor compliance.

Although it had been four-and-a-half years since the sulphur directive was published, a cloud of confusion was gathering in the countdown to implementation of the 'at berth' provision. Three months later, with the provision already in force, controversy about the regulation, specifically about its implementation and enforcement and its impact on safety, was showing no sign of dying down.

## Leniency

In December, a few weeks before the 'at berth' 0.1% sulphur provision was due to be implemented, the independent tanker owners association INTERTANKO welcomed what it saw as evidence that there would be flexibility in applying the new rules. It pointed to an announcement from the European Commission (EC), the executive arm of the EU, advising that leniency be shown to shipowners who could demonstrate a plan for compliance. The association said it "warmly welcomed" the advice "coming after five years of continuous pressure from INTERTANKO and others in the shipping industry to highlight the potential operational and safety problems" associated with the 'at berth' directive.

But just over a month later, when the directive was 'live', the International Bunker Industry Association (IBIA) issued a statement warning against what it said were "misrepresentations" of the European Union (EU) position. IBIA referred to "the apparent confusion currently surrounding implementation" of EU Directive 2005/33/EC.

"We have heard various rumours, including one which suggests that the deadline for implementation of the EU

directive has been postponed by six months," said IBIA chief executive Ian Adams. "Nothing could be further from the truth. The directive came into force on January 1, and applies to all ships operating to EU ports."

He went on: "Ships are not exempt on the ground that the fuel changeover is unsafe because modifications have not been made to its boilers, or to the ship itself. Clearly in such cases the expectation is not that the ship should engage in an unsafe practice but simply that it will not berth. Similarly, there is no automatic dispensation for ships which have made arrangements to carry out the necessary modifications but have not yet implemented them."

## No exceptions

Even before the IBIA statement, the EC had explained to Bunkerworld there could be no official transition period in applying the 'at berth' provision. All the EC had done was to recognise the potential dangers associated with vessels switching to

Its Scandinavian neighbour Norway gave slightly different guidance. A notice from the Norwegian Maritime Directorate said the requirement to use fuel with a maximum 0.1% sulphur content at berth was "an absolute demand" but added that the authorities would take the EC recommendation into account. Evidence of a ship's compliance plan would be a factor "when considering if sanctions were to be implemented, and the extent of potential sanction", but only until August.

## Safety 'sacrificed'

Public discussion about the the directive fell silent in February only to flare into life in early March. This time the focus was on the Italian port of Trieste and, once again, INTERTANKO was playing a leading part. It claimed that a report that the Port of Trieste would prosecute any vessel breaking the terms of the directive, without exception, showed "ship and port safety may be sacrificed purely in order to generate local harbour funds."

INTERTANKO said ships not yet mod-

safely on distillate fuels. "The same (mis)information was also given to the regulators," INTERTANKO said.

## Complex role

The European Commission's recommendation on the safe implementation of the use of low sulphur fuel, issued in December, acknowledged that technical difficulties might prevent some types using 0.1% sulphur and therefore invited member states to consider the existence of a compliance plan for ships when assessing of penalties.

It also urged they raise awareness "of the safety risk related to fuel changeover in the absence of any necessary technical adaptation to a ship's fuel system and the necessity for training to be provided." In effect, member states were being given the complex role of enforcer and educator and, in some instances, lenient judge.

Andy Wright, a consultant on Fuel and Air Pollution Controls at Lloyd's Register FOBAS, gave the following advice to ship operators: if in doubt about compliance,

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**- Ian Adams, IBIA chief executive**

0.1% sulphur fuel in port and had gone on to recommended that EU member states enforce the regulations with flexibility, taking into account any evidence that ship operators had plans for compliance. But observers pointed out that the EC could only recommend. The directive was in force and it was up to EU member states to enforce it.

If there was confusion about the directive among industry associations, some national governments were determined there should be no misunderstandings as to their intentions. The Swedish Transport Agency said in January that the Swedish government would not allow exceptions.

"The current wording of the regulation leaves no room for interpretation," an announcement said. "As the regulation is part of the Swedish Environmental Code the Swedish Transport Agency's personnel are obligated to report any suspected violation to public prosecution."

ified to use 0.1% sulphur marine gas oil (MGO) were left with three options. "Either they may choose to use 0.1% MGO and do their utmost to manage the associated risks; or they may emphasise safety and use low sulphur HFO in their boilers but face prosecution and fines; or they may simply refuse to call at Trieste until modifications have been completed," it said and noted that all the options penalised the owner/operator for prioritising safety.

INTERTANKO raised another issue, unconnected with the Trieste ruling. It said owners were at the mercy of boiler manufacturers who had been slow to respond to requests for modifications to boilers to allow them to run safely on low sulphur distillates.

It claimed that many owners and operators only initiated the modifications process almost a year ago, having been misled by earlier advice from boiler manufacturers that their boilers would work

they should always explain their position to the authority prior to port arrival; if given permission to burn a fuel with higher sulphur content, they should not be complacent about future visits to the same country, as interpretation of enforcement could change over time or even depending on individual port state control officers.

Wright added that vessels with a retrofit plan in place, but not yet implemented, should still be prepared for penalties. If some vessels are allowed to continue burning high sulphur fuel oil while at berth they might be seen to have a commercial advantaged over those that have taken the necessary steps for full compliance, Wright noted. "It should never be less costly to not comply than to comply," he concluded. ■

*Nick Jameson*