U.S. Department of Homeland Security

United States Coast Guard

Commandant
United States Coast Guard

2703 Martin Luther King Jr. Ave. S.E.
Stop 7501
Washington, DC 20593-7501
Staff Symbol: CG-CVC
Phone: (202) 372-1221
Email: CG-CVC-1@uscg.mil

16711/Serial No. 1636
CG-CVC Policy Letter 18-02

FEB 14 2018

From: J. F. Williams, CAPT
COMDT (CG-5PC)

To: Distribution

Subj: GUIDELINES FOR EVALUATING POTENTIAL COURSES OF ACTION WHEN A VESSEL BOUND FOR A PORT IN THE UNITED STATES HAS AN INOPERABLE BALLAST WATER MANAGEMENT (BWM) SYSTEM

1. Purpose. This Policy Letter provides guidance to vessel masters, owners, operators, agents, and persons in charge of vessels subject to Subparts C and D of Part 151 of Title 33 of the Code of Federal Regulations (33 CFR 151 Subparts C and D) as well as Coast Guard personnel when evaluating potential courses of action when a vessel destined for a U.S. port has an inoperable ballast water management system (BWMS). This Policy Letter does not address situations where the inoperable BWMS is the result of an emergency situation caused by weather, vessel casualty, flooding, etc.

2. Background.

   a. As a reminder, the United States is **not** a party to the International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) and will not accept BWM Convention certificates as equivalent to U.S. domestic requirements. Accordingly, vessels discharging ballast water (BW) into the waters of the U.S. must comply with the requirements of 33 CFR 151 Subparts C and D, as applicable.

   b. 33 CFR 151 Subparts C and D provide vessels a list of approved ballast water management (BWM) methods including the use of a BWMS, use of ballast water from a U.S. public water system (PWS) that meets the requirements of 40 CFR parts 141 and 143, performing complete ballast water exchange (BWE) in an area 200 nautical miles from any shore, retaining all BW while in the waters of the U.S., or discharging to a shoreside facility or another vessel for the purpose of treating the BW. (See 33 CFR 151.1510 and 33 CFR 151.2025.)

   c. This guidance applies to ships using a Coast Guard approved BWMS or a BWMS accepted by the Coast Guard as an Alternate Management System (AMS).

   d. This guidance may also be followed when the Coast Guard finds a vessel entering port or in port with an inoperable BWMS.

3. Discussion.

a. A vessel that HAS NOT passed its compliance date[1] and has an inoperable BWMS may use any of the other BWM methods set forth in 33 CFR 151.1510(a) or 33 CFR 151.2025(a), as appropriate. Such a vessel remains eligible to claim the route exemption allowed by 33 CFR 151.2040(a) and not perform ballast water exchange (BWE) if its voyage will not take it beyond 200 nautical miles from shore for enough time to perform BWE.

b. A vessel that HAS passed its compliance date and has an inoperable BWMS may use one of the other BWM methods outlined in 33 CFR 151.2025(a). If the vessel intends to use 33 CFR 151.2025(a)(3), BWE, it must obtain approval from the District Commander or Captain of the Port (COTP) first. The route exemption provided in 33 CFR 151.2040(a) is not available to a vessel using BWE pursuant to 33 CFR 151.2040(b).

c. If the vessel is otherwise unable to comply with 33 CFR 151.1510(a) or 33 CFR 151.2025(a), the person directing the movement of a vessel must ensure that the inoperable BWMS is reported to the nearest COTP or District Commander as soon as possible. Using guidance provided in the vessel's BWM Plan, the person making the report should be prepared to discuss alternative BWM strategies available to the vessel based on its capabilities, route and voyage duration. An alternative strategy that results in the discharge of untreated BW into the waters of the U.S. will only be authorized for safety or stability concerns, and should not be implemented unless authorized by the COTP or District Commander.

d. The regulations in 33 CFR 151 Subparts C and D provide an exhaustive list of options available to ships subject to those regulations for non-safety related situations. Alternative strategies should be derived from the BWM methods identified in 33 CFR 151.1510(a), 33 CFR 151.2025(a), or 33 CFR 151.2055, as applicable.

e. While 33 CFR 151.1515 and 33 CFR 151.2040 require the person directing the movement of the vessel to report an inoperable BWMS to the nearest COTP or District Commander, the Coast Guard recommends the person directing the movement of the vessel also contact the COTP at the next port of call, if different than the nearest COTP, ***as soon as practicable***.

f. A lack of consumables that render a BWMS inoperable does not meet the intent of "stops operating properly" as used in 33 CFR 151.1510 or 33 CFR 151.2040 and will not be justification to employ an alternative management method.

g. Submitting a BWM report to the National Ballast Information Clearinghouse (NBIC) does not fulfill the requirement to notify the COTP; NBIC is not a USCG unit and does not have the capability of notifying the COTP of the failure.

[1] For the purpose of the Policy Letter, Compliance Date is also used to mean Extended Compliance date.

h. USCG units should promptly respond to a vessel that has reported its BWMS inoperable to gather details on the vessel's proposed interim BWM practices (e.g., the source of ballast water for a vessel wishing to use BWE) and a repair timeline for the inoperable BWMS, including details on the availability of repair parts and/or service technicians. While the Coast Guard cannot require a vessel to provide repair details, doing so can help expedite the COTP or District Commander's decision on alternatives and route approval. Conversely, without the repair details the Coast Guard may have to wait until the BWMS is repaired before allowing a vessel to continue on its route.

i. The COTP may accept one of the approved BWM methods pursuant to 33 CFR 151.2040(b)(1) after considering a variety of factors, such as the operating history of the vessel, the operating history of its BWMS (e.g., has the vessel reported the system inoperable in the past, and if so, how often), the training provided to the members of the crew who operate and maintain the BWMS, and the possibility of the system being repaired during the vessel's port visit.

j. A vessel past its compliance date and reporting its BWMS as inoperable for the first time may be allowed to use BWE in lieu of using the BWMS, provided the COTP is notified in advance and BWE is acceptable to the COTP. Absent safety or stability concerns BWE must occur in an area 200 miles from any shore. In cases where a vessel is past its compliance date, has more than one documented report that its BWMS was inoperable, and reports its BWMS as being inoperable on a subsequent voyage to the U.S., a COTP should validate: 1) the date of the most recent BWMS repair, 2) the date and location of when the BWMS was last operable, and 3) crew training records demonstrating competency in the operation and maintenance of the BWMS. After consideration of the totality of the vessel's record, a COTP may allow the vessel to employ an alternative BWM method, including BWE 200 nautical miles from any shore. However, vessel owner/operators and COTPs are reminded that the discharge of unmanaged BW[2] into waters of the U.S. is prohibited except in emergencies where the safety or stability of the vessel is jeopardized.

k. When the person directing the movement of a vessel presents a repair proposal, the COTP should evaluate it like any other repair proposal. After reviewing the proposal, the COTP may accept the work as proposed or suggest changes to the proposal that would make it more reasonable.

l. If the vessel has additional scheduled port calls in the U.S. prior to sailing foreign, the COTP may allow the vessel to continue its voyage if the repairs will not be completed prior to departing the COTP's zone. Any deficiency issued by the COTP should identify whether the vessel must perform BWE between BW discharge events. The original COTP should coordinate with other COTPs or District Commanders where the vessel intends to travel.

[2] Unmanaged ballast water is water that has not been managed in accordance with 33 CFR 151.1510(a) or 33 CFR 151.2025(a).

m. When entering the deficiency into MISLE, the Coast Guard unit should ensure that both the deficiency and a MISLE Special Note (good for two years) are created. While duplicative, both have value. The deficiency improves MISLE search results, while Special Notes are easier to spot for other MISLE users.

n. Any vessel past its compliance date must repair its BWMS before returning to the U.S. after sailing foreign if the BWMS is the vessel's primary BWM method.

4. BWMS Manufacturers Declaring Bankruptcy. Ships should not receive special consideration by field units if they request consideration pursuant to 33 CFR 151.2040 due to an inoperable BWMS manufactured by a company that had filed for protection under bankruptcy laws.

5. Conclusion. Vessel owners and operators must maintain the BWMS onboard their vessels in accordance with the manufacturer's specifications, 33 CFR 151.2025(a)(1). Additionally, they must train the master and crew on the application of ballast water and sediment management and treatment procedures, 33 CFR 151.2050(h). For the BWMS to operate reliably, they must be used regularly by crews trained to use the BWMS. The Coast Guard also highly encourages vessels to use their BWMS regularly, even if not bound to or departing from the United States. During discussions with many people involved in the marine industry, we continually hear of how difficult BWMS are to maintain, yet we also hear that the systems are only used during voyages to the U.S. and that some crews receive little or no training in operating and maintaining the system. For the systems to operate reliably, they must be used regularly by crews trained to use the system. Regular usage improves crew operational knowledge of the BWMS, thereby improving the BWMS' reliability.

#