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California Fuel Standards apply up to 24 Miles from Coast

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An earlier website article, *California - Regulations on Fuel Sulfur and Other Operational Requirements*, gives some background to this controversial state regulation. The latest development in this issue is the U.S. Court of Appeals Ninth Circuit decision which allows the application of the regulation up to 24 miles from the California coast. The decision is reported below.

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New Development

On March 28, 2011 the U.S. Court of Appeals for the Ninth Circuit rejected an appeal by the Pacific Merchant Shipping Association ("PMSA"), a mutual benefit corporation comprised of owners and operators of U.S. and foreign-flag vessels, in which it sought to prevent the state of California from expanding its enforcement of vessel fuel standards to 24 miles, well beyond the state's traditional 3-mile territorial limit. Unless PMSA successfully appeals this decision to the U.S. Supreme Court, a vessel en route to a California port will continue to need to switch to low-sulfur fuel once the vessel is within 24 miles of the California coast. As the Court itself stated in its opinion, "We are clearly dealing with an expansive and even possibly unprecedented state regulatory scheme. However, the severe environmental problems confronting California (especially Southern California) are themselves unusual and even unprecedented."

Background

Over the last few years, the state of California, led by its state agency known as the California Air Resources Board ("CARB"), has attempted to implement and enforce state regulations intended to reduce certain air emissions from oceangoing vessels. CARB has sought to enforce these regulations within 24 miles of the California coast, well beyond the traditional state territorial limits of 3 miles from the coastline. A series of court challenges and decisions resulted in CARB modifying these rules to require vessels calling in California ports to use low-sulfur fuel, rather than specifically regulating the air emissions from those vessels. On June 30, 2009, the U.S. District Court held, among other things, that the California low-sulfur fuel rules were not preempted by U.S. federal law and that states were allowed to adopt their own fuel mandates. PMSA appealed the District Court's ruling.

What Does This Mean for Vessel Owners and Operators?

Unless PMSA chooses to appeal this latest decision to the U.S. Supreme Court and is successful in its appeal, it appears unlikely that any changes will be made to these California vessel fuel rules. The rules currently require vessels to use either marine gas oil or marine diesel oil with a sulfur limit of 0.5% or less. After January 1, 2012, both fuels must not exceed 0.1% sulfur. There are also enhanced recordkeeping requirements and increased penalties for non-compliance.

The rules may have a limited shelf life, however. The North American Emissions Control Area ("ECA"), adopted by the IMO on March 26, 2010, will become effective in August 2012. This will result in all oceangoing vessels operating within 200 nautical miles of the coastlines of the United States, Canada, and Mexico to use fuel not exceeding the standard of 1% sulfur. In 2015 this standard will be reduced to 0.1% sulfur. The California vessel fuel standards regulations contain a "sunset" clause, which provides for termination of the regulations when CARB determines that the federal government has adopted and is enforcing requirements that will achieve similar air emission reductions to the California rules. As 0.1% sulfur fuel is the standard under both the California rules and the [MARPOL Annex VI rules governing the fuel standards in the North American ECA](#), it is possible that CARB will terminate its own regulations by 2015, if not sooner.

Conclusion

Vessel owners and operators whose ships are navigating in and out of California ports should be aware of the California fuel standards and the related recordkeeping and other requirements. Low-sulfur fuel is a necessity and a reality for vessels trading into California and, in just a few years, 0.1% sulfur fuel will be required within 200 nautical miles of the coasts of the United States, Canada, and Mexico.

Update - November 2011

With effect from 1 December 2011 CARB will be enforcing the amended Regulation. See *California - Enforcement of Vessel Fuel Standards up to 24 Miles from Coast*