

**Client Alert 03-2015**  
**January 20, 2015**

**U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)**  
**PENALTY POLICY FOR EMISSIONS CONTROL AREA (ECA) VIOLATIONS**

The United States Environmental Protection Agency (EPA) has released a **penalty policy for violations of the NORTH AMERICAN AND CARIBBEAN EMISSIONS CONTROL AREA (ECA) regulations.**

The policy applies to violations of MARPOL Annex VI emission standards from ships and is **effective from January 15<sup>th</sup>, 2015** for all vessels that have no pending settlement or penalty negotiations with the U.S. government. In cases where action is pending, the policy may be applied retroactively at the discretion of the case team.

The EPA has stated that this policy covers civil penalties (not those where a complaint has been filed) and is intended to :

- a) Deter potential violators, and
- b) Ensure that the EPA assesses fair and equitable penalties and allow for the swift resolution of claims arising from noncompliance, while enforcing marine emission standards.

The EPA's Office of Enforcement and Compliance Assurance has voiced their commitment towards working with the U.S. Coast Guard to enforce air emissions standards for vessels operating in U.S. waters. With the ECA regulations having been in place and enforceable since July 2012, the EPA has received a considerable number of reported violations from Port State Control (PSC) activity and/or the submission of Fuel Oil Non-Availability Reports (FONAR). While some vessel operators who filed FONARs have been subpoenaed in the past by the EPA and these cases are ongoing, no monetary penalties have reportedly been imposed for ECA violations. This recently-released penalty policy is the first regulatory document that specifies such penalties, as well as the process by which they are to be calculated.

Some important points mentioned in the policy document are:

- 1) **The EPA may assess a civil penalty of up to \$25,000 per violation, per day.** Civil penalties must be calculated "taking into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters as justice may require."
- 2) **Penalties will not be limited to fuel Sulfur-content violations** (MARPOL Annex VI, Reg 14.4). They can also be imposed upon vessels for :
  - i) Failing to maintain a written fuel change-over procedure (Reg 14.6)
  - ii) Not maintaining Bunker Delivery Notes (BDN) on board for a period of 3 years from the date the fuel was delivered (Reg 18.6)
  - iii) Not maintaining a sealed bunker sample on board for a period of 12 months after delivery (Reg 18.8.1)**Note** : Each of the above would be treated as a separate violation
- 3) **As is customary with U.S. government agencies, penalties are assessed to deter future violations. The assessment will contain two components :**
  - i) Economic benefit : The EPA will ensure that any economic gains made by using non-compliant fuel (instead of acquiring more expensive compliant fuel) will be erased.
  - ii) Gravity of violation : The EPA will take into consideration several factors in setting the appropriate penalty amount, including the nature, circumstances, extent and gravity of the violation, culpability of the violator, history of past violations, ability to pay, etc.

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**Note** : While finalizing the penalty amount in accordance with the aforementioned factors, the EPA will also take into account the following aspects relating to the company in question, which could result in a lowering of the total fine:

- Degree of willfulness or negligence;
- Degree of cooperation;
- History of noncompliance;
- Litigation risk and other unique factors;
- Ability to pay; and
- Performance of a supplemental environmental project (SEP).

The above categories and details of penalty calculations are fully explained in the complete penalty policy document, which is attached and can also be found online at : [EPA - Marine ECA Penalty Policy, January 2015](#) . We recommend that your Safety + Quality as well as Insurance + Claims departments study this closely, to gain a better understanding of the EPA's new penalty policy.

Please direct queries (if any) to [ecm@ecmmaritime.com](mailto:ecm@ecmmaritime.com) .

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