

De-bunkering in The Netherlands

Introduction

Over the years Gard has observed an increase in the number of claims arising from bunker fuel not complying with the stated specifications¹ (off-spec fuel). Gard has also noted that Dutch authorities are increasingly concerned about the de-bunkering of off-spec fuel in Dutch waters due to perceived risk that the off-spec fuel contains hazardous waste. The Dutch authorities have therefore required de-bunkered off-spec fuel to be treated, handled and disposed of as waste unless there has been proof to the contrary. There have been reports that heavy fines have already been imposed on shipowners/charterers not following this practice.

Recent cases of de-bunkering operations in The Netherlands

There are reports of recent cases in The Netherlands where de-bunkering was performed based on standard practice² but where the authorities intervened as the documents necessary for waste disposal were not completed and the fuel oil was not collected by a licensed waste disposal firm. In these cases the shipowners/charterers were the recipients of large fines and in one case the authorities detained the entire parcel of fuel oil and ordered that it be transferred to the facility of a licensed waste disposal firm. The company involved went to Court to challenge the actions of the authorities, but the Dutch District Court in question concluded that the actions taken by the authorities were lawful and justified. Of particular concern to the Dutch authorities is apparently the rising demand for the use of blend components in order to meet the desired fuel specifications. The more you blend different components in order to meet the required specifications, the greater is the risk of unusual, and sometimes hazardous, contaminants being present in the fuel. Of concern is also the fact that current sampling and analysis practices used in the bunker fuel and trading supply chain are in many cases not able to detect such contamination.³

"Waste" is defined as *"any substance or object which the holder discards or intends or is required to discard"* (Waste Framework Directive 2008/98/EC). Unfortunately, Dutch authorities have not provided any clear guidelines as to when off-spec bunker fuel is to be considered as waste. It is therefore unclear if this applies to all de-bunkering cases or if these recent cases are to be considered as the exception rather than the norm. As far as Gard has been informed, the only available advice from the authorities is that bunker fuel should be handled and disposed of as waste *"if the bunker fuel is found not to be suitable for consumption on board the vessel and the vessel makes the decision to de-bunker for that reason"*. It should be noted that fuel may be unsuitable for a particular vessel but can be used by another vessel without modification due to differences in the engine requirements. Whether in such a case, the fuel is to be considered waste is uncertain. However, discussions are apparently ongoing and additional information from the authorities may become available in the future.

Recommendations and advice

Members and Clients arranging for de-bunkering of off-spec bunker fuel in The Netherlands should be aware that the authorities may require the off-spec fuel to be handled or disposed of as waste necessitating the fuel oil to be collected by a licensed waste disposal firm and to be accompanied by the required waste disposal documents in accordance with European and Dutch legislation.

Prior to the de-bunkering, Members and Clients should check with local sources and/or their local agents for any additional or new information available from the authorities, in particular when it comes to guidelines as to when off-spec bunker fuel is to be considered as waste. However, if in doubt, and given the uncertainties and the potential judicial implications when waste is not treated as such, in order to be on the safe side it is advisable that off-spec bunker fuel is regarded and treated as waste.

Gard should be notified when Members and Clients require de-bunkering to be undertaken in The Netherlands.

¹ Fuel specifications typically include requirements by ISO 8217 and MARPOL Annex VI as well as company specific requirements and environmental requirements stipulated by local regulators in certain territorial waters.

² Return of the off-spec bunker fuel to the bunker supplier or to another buyer is considered as "standard practice" herein.

³ Reference is made to "[Blending and Bunkering – an analysis of the bunker fuel supply chain](#)", issued in May 2011 by CE Delft on behalf of the Dutch VROM-Inspectorate ([Ministry of Infrastructure and the Environment](#)).