June 2018

Pollution

The Ballast Water Management Convention 2004

Introduction
The International Convention for the Control and Management of Ships’ Ballast Water and Sediments (BWM Convention) entered into force on 8 September 2017. As of that date, 66 states had ratified the BWM Convention representing 75% of the world’s tonnage.

The BWM Convention
The purpose of the BWM Convention is to promote a safer and more effective management of ballast water to eliminate the risk of invasive aquatic organisms spreading from one part of the world to another.

Scope and Requirements
The BWM Convention applies to all international trading ships (including submersibles, floating craft, floating platforms, FSUs and FPSOs) using ballast water, except:

1) Ships not designed or constructed to carry ballast water;
2) Ships that only operate in local waters of a single coastal state, or in local waters of a single coastal state combined with voyages to and from international waters (with authorisation);
3) Warships and other ships owned and operated by states on non-commercial services; and
4) Ships with sealed or permanent ballast water tanks.

The BWM Convention requires ships to implement a ballast water management plan according to which the ship should manage their ballast water and sediments to certain standards. Ships with a gross tonnage exceeding 400 GT will need approval of their BWM plan after a survey in order to obtain a BWM Certificate. Ships with a gross tonnage below 400 GT must have an approved BWM plan on board. Surveys and certification for these ships will be subject to the requirements as set by the administration of each member state.

The BWM systems must be approved by national authorities as well as the IMO in accordance with Guidelines G8 and G9. If a BWM system fulfils the appropriate provisions contained in the BWM Convention’s Guidelines, it is awarded a Type Approval Certificate allowing the BWM system to be used on board a ship.

As of August 2017, over 70 BWM systems had received approval by the IMO. A comprehensive list of these BWM systems can be found on the IMO website.

Compliance with the BWM Convention – Revised Implementation Schedule
A revised implementation schedule (included in an amended Regulation B-3 of the BWM Convention) now contains the following deadlines:

- Vessels constructed (keel laid) on or after 8 September 2017 should have a BWM system installed on delivery;
- The revised compliance date for existing vessels (keel laid before 8 September 2017) will depend on when the IOPP renewal survey occurs; and
- For vessels constructed before 8 September 2017 and which are not subject to the MARPOL IOPP renewal survey, compliance with the D-2 standard shall be no later than 8 September 2024.

Shipowners are responsible for ensuring compliance with the BWM Convention. To do so, they must:

1) Develop a BWM plan;
2) Install an approved BWM system;
3) Carry a valid BWM Certificate;
4) Maintain a BWM record book; and
5) Train crew on BWM operations.
The US BWM Regulations

The United States is not a party to the BWM Convention. Vessels discharging ballast water in US territorial waters (12 nautical miles seaward of the baseline) must comply with the US BWM regulations, regardless of the vessel’s status under the BWM Convention. The US Coast Guard (USCG) Regulations require the installation on most ships operating in US waters of a BWM system that meets the USCG strict testing standards.

The USCG has approved a small number of BWM systems which have also received IMO approval.

The State of California is expected to implement even stricter BWM standards from 1 January 2020.

Non-Compliance and Potential Liability

What happens if a shipowner is found to be non-compliant? The Flag State/member states are entitled to impose fines and in extreme circumstances, the shipowner may even be subject to criminal proceedings in line with the local laws of the Flag State/member states.

When could a shipowner potentially be non-compliant? A shipowner may be held liable for damage arising from a ballast water discharge and/or be subject to penalties/fines in the following circumstances:

1) Failure to have any ballast water treatment facilities when such are required by Flag State;
2) Having ballast water treatment facilities that are not type-approved even though they operate as intended;
3) Having ballast water treatment facilities that are approved under IMO regulations but not under domestic law (in a non-member state to the BWM Convention);
4) Having ballast water treatment facilities that are approved under domestic law but not under IMO regulations; and
5) Having fully type-approved ballast water treatment facilities but reliable analysis show ballast water does not meet the requirements of the BWM Convention.

P&I Club Cover

Club cover for fines involving non-compliance with ballast water requirements (except for accidental discharges) will be discretionary (similar to MARPOL violations). In order to recover, a member would need to satisfy the board that all reasonable steps had been taken to avoid the event giving rise to the fine. In addition, any amount reimbursed would be subject to the board’s discretion.