



**MEMORANDUM OF UNDERSTANDING BETWEEN
UNITED STATES COAST GUARD AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGARDING ENFORCEMENT OF ANNEX VI
AS IMPLEMENTED BY THE ACT TO PREVENT POLLUTION FROM SHIPS**

1. SCOPE.
 - a. This Memorandum of Understanding (MOU) applies to interagency compliance enforcement policies as it pertains to the Act to Prevent Pollution from Ships (APPS), Title 33 U.S.C. §§ 1901–1915.
 - b. This MOU neither amends nor repeals any other requirement or authority conferred by any other provision of law. Nothing in this MOU shall limit, deny, amend, modify or repeal any other remedy available to the United States or any other person.
2. PARTIES. The parties to this Agreement are the United States Environmental Protection Agency (EPA) and the United States Coast Guard (USCG).
3. AUTHORITY. This Agreement is established under the provisions of 33 U.S.C. §§ 1901–1915, 14 U.S.C. § 93(a)(20), 14 U.S.C. § 141, 46 U.S.C. Chapter 63 and 46 C.F.R. Part 8.
4. PURPOSE. The purpose of this MOU is to set forth the terms by which the USCG and EPA will mutually cooperate in implementation of Annex VI to MARPOL as implemented by APPS.
5. BACKGROUND. The International Convention for Prevention of Pollution from Ships (MARPOL) is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. Annex VI of MARPOL regulates air pollution from ships (Annex VI). Annex VI is enacted in the United States by APPS.
6. DEFINITIONS. Unless otherwise specifically provided herein, the definitions set forth in Annex VI and APPS shall apply to this MOU.
 - a. Authorized Classification Society (ACS). A classification society recognized under 46 C.F.R. Part 8 that has been delegated the authority to perform certain functions on behalf of the USCG.

- b. Ship examination. A ship examination or inspection, whether conducted at the pier, anchorage or underway, to verify shipboard compliance with the requirements of Annex VI including engine compliance under Regulation 13.
 - c. Facility inspection. An inspection to verify compliance with the requirements of Annex VI including fuel oil quality under Regulation 18 and proper collection of wastes under Regulation 17.
 - d. Survey. An action performed by an authorized classification society on board a ship to conduct tests and examinations required for initial and in-service inspections for certification, periodic reexamination, dry-dock examinations or other events where the presence of an authorized classification society representative is needed.
 - e. Investigation. For the purposes of this MOU, an investigation is any action taken by either party beyond examination or inspection to determine whether a ship or a facility has been operating in accordance with, and has not emitted any substance in violation of, the provisions of Annex VI.
7. GENERAL PROVISIONS. Except as provided in Paragraph 8 pertaining to specific provisions, the USCG and EPA agree that enforcement and other activities within the scope of this MOU will be conducted as follows:
- a. Establishment of protocols. The EPA and USCG will jointly develop and mutually agree upon protocols for carrying out enforcement activities on board ships, in ports and at facilities, including protocols, as necessary, for the matters set forth in Paragraphs 8, 9 and 10 of this MOU. EPA will use its expertise to develop protocols for (i) inspection of engines installed on ships, (ii) review of and retention of documents and (iii) other matters specifically within its expertise and provided for under APPS and Annex VI. The USCG has primary responsibility for creating procedures and guidelines for adapting appropriate EPA protocols into the USCG's established ship and facility examination and investigation programs.
 - b. Provision of information. Information regarding inspections, examinations and investigations will be shared between the USCG and EPA, pursuant to protocols developed jointly by the parties. EPA will notify the USCG when an Engine International Air Pollution Prevention (EIAPP) certificate is modified, revoked or becomes invalid for any reason. Upon a USCG or EPA determination that a violation exists, information regarding the nature of the violation, the evidence supporting the violation and the responsible entities will be provided to the other party pursuant to the provisions of Paragraph 9. The USCG will forward to EPA notification of detentions under Annex VI within the scope of this MOU, including non-U.S. ships detained by the USCG and U.S. ships detained by other parties to Annex VI. Both agencies may make reasonable requests for information from the other and these requests will be responded to within 30 days.

- c. Enforcement of violations. As set forth in Paragraph 9, the investigation and enforcement of violations discovered during inspections, examinations and investigations may be done with the cooperation of both the USCG and EPA. Each party will cooperate with the other in making enforcement referrals, provision of evidence and in providing necessary expertise. As set forth in Paragraph 13, nothing herein limits the statutory enforcement rights or authorities of either party.
- d. Procedures regarding delegated USCG functions including the Alternate Compliance Program. Nothing contained herein will be construed as constituting a delegation of any EPA authority to a classification society including any authority to issue, revoke or modify an engine certificate.

8. SPECIFIC PROVISIONS.

- a. Ship and engine certification procedures. The EPA has the sole authority to issue, modify and revoke an EIAPP certificate authorized under APPS to any applicable engines of a ship, or any part of an applicable engine. APPS at 33 U.S.C. § 1903(b)(1). The USCG has the authority to issue, modify and revoke an International Air Pollution Prevention (IAPP) certificate to any applicable ship and a Certificate of Adequacy (COA) to any applicable facility. 33 U.S.C. §§ 1903(a) and 1904(a).
- b. Enforcement on board ships. The USCG, pursuant to APPS at 33 U.S.C. § 1907(f), has the authority and responsibility to conduct ship inspections, examinations and investigations, and to undertake enforcement action. The EPA has the authority specified in 33 U.S.C. § 1907(f), to enforce Annex VI.
 - 1) The USCG performs ship inspections and examinations during the course of flag State and port State examinations.
 - 2) If there is reason to believe that a suspected violation exists, the provisions for violation and enforcement in Paragraph 9 will apply.
 - 3) The USCG may request that EPA attend or assist on any ship inspection, examination or investigation applicable to this MOU. The EPA may request that it be allowed to attend or assist on any ship inspection, examination or investigation applicable to this MOU. Each party will use reasonable efforts to comply with requests under this provision.
- c. Enforcement on reception facilities. The EPA and the USCG have authority and responsibility to conduct inspections and investigations of reception facilities, in accordance with Regulation 17 of Annex VI and APPS at 33 U.S.C. § 1907(f).
 - 1) The USCG performs these inspections during the course of reception facility inspections.

- 2) If there is reason to believe that a suspected violation exists, the provisions for violation and enforcement in Paragraph 9 will apply.
 - 3) Either party may request that the other attend or assist on any reception facility inspection or investigation applicable to this MOU. Each party will use reasonable efforts to comply with requests under this provision.
- d. Enforcement of fuel oil availability and quality. The EPA and the USCG have authority and responsibility for fuel oil availability and quality (as those terms are discussed in Regulation 18), including the bunker delivery note and fuel sample, in accordance with Regulation 18 of Annex VI and APPS at 33 U.S.C. § 1907(f).
- 1) The EPA will verify compliance with fuel oil availability and quality, and will maintain a register of local suppliers of fuel oil.
 - 2) The USCG will examine bunker delivery notes during the course of a flag State inspection or port State examination.
 - 3) If there is reason to believe that a suspected violation exists, the provisions for violation and enforcement in Paragraph 9 will apply.
 - 4) Either party may request that the other attend or assist on any inspection or investigation related to fuel oil availability and quality applicable to this MOU. Each party will use reasonable efforts to comply with requests under this provision.
 - 5) The USCG will share with EPA notifications received regarding fuel oil availability and quality issues, as reasonably practicable.
- e. Point of contact for foreign governments. The USCG is the point of contact for foreign governments through its Port State Control (PSC) program.
- f. Provision of VOC reports to IMO. The USCG will provide Volatile Organic Compounds (VOC) reports to the International Maritime Organization (IMO) per obligations under Regulation 15 of Annex VI codified in APPS and will provide an update to IMO annually. A copy of all VOC reports will be provided concurrently to EPA.

9. DETECTION OF VIOLATIONS AND ENFORCEMENT.

- a. Suspected violations. If an inspection or examination indicates that a violation has occurred (hereinafter "suspected violation"), then the following actions will be carried out:
 - 1) For a suspected violation that is reported to or detected by the USCG, or referred by EPA to the USCG, the procedures in 33 C.F.R. § 1.07-10 for investigation or 33 C.F.R. § 1.07-11 for notice of violation will be followed.

- 2) For a suspected violation that is reported to or detected by the EPA, or referred by USCG to EPA, EPA will proceed with any investigation and potential enforcement action in accordance with its authority under APPS, 33 U.S.C. § 1901 *et seq.*, and the Clean Air Act, 42 U.S.C. § 101 *et seq.*, as applicable.
- b. Referral. Each party may refer a suspected violation to the other party having the technical expertise to investigate as described in the following table.
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|-----------------------------|---|
| 1) USCG expertise: | 2) EPA expertise: |
| (a) IAPP | (a) EIAPP |
| (b) Certificate of Adequacy | (b) NOx technical code |
| (c) VOC management plan | (c) Bunker delivery note |
| | (d) Fuel samples |
| | (e) Fuel oil availability & quality |
| | (f) Reception facilities for ozone depleting substances |
- 3) Referral of a suspected violation between parties should take place in a prompt and efficient manner, within five days of initial report or detection, or as soon as reasonably practicable under the circumstances.
- 4) Prior consultation between parties is required when there are multiple suspected violations for which technical expertise of both parties is required to mutually consider the types and seriousness of each suspected violation and to mutually agree on which party will initiate action pursuant to 9.a., above. If the parties do not agree, the party that received the initial report or detected the suspected violation will take action pursuant to 9.a., above.
- c. Notification. With respect to suspected violations pursuant to 9.a., above, each party will notify the other party of any suspected violations and the final adjudication or resolution of enforcement proceedings, if any, including the assessment or other relief.

10. CRIMINAL PENALTIES. Each party should make determinations on referrals for criminal prosecutions in accordance with their own internally established policies and procedures for those matters over which they have cognizance.

11. POINTS OF CONTACT.

a. For USCG:

Office of Vessel Activities (CG-543)
 U.S. Coast Guard
 2100 2nd Street, S.W., Stop 7581
 Washington, DC 20593-7581
 (Or designee)

b. For EPA:

Director, Air Enforcement Div. (2242A)
 U.S. Environmental Protection Agency
 1200 Pennsylvania Avenue, N.W.
 Washington, DC 20460
 (Or designee)

12. FUNDING AND RESOURCES. As required by the Anti-deficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by EPA and USCG in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates either party to expend appropriations or to enter into any contract, assistance agreement, interagency agreement or incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations and procedures under separate written agreements. This MOU will be incorporated by reference or included as an enclosure to any reimbursable agreement between the USCG and EPA resulting from this MOU.

13. OTHER PROVISIONS.

- a. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the parties, or any department in which these parties may be operating, nor any such laws, regulations or directives that may be promulgated hereafter. If a term in this Agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions shall remain in full force and effect.
- b. Notwithstanding any terms of this Agreement, nothing herein shall be construed to diminish or supersede any rights or authorities available to the parties.
- c. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against USCG or EPA, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of USCG or EPA.
- d. Each party agrees that should a third party claim arise under the terms and conditions of the Federal Tort Claims Act (FTCA), Title 28, U.S.C. §§ 1346 and 2671 *et seq.*, or of the laws of any state based on negligence or a wrongful act or omission, the party whose employee(s)' conduct gave rise to the claim shall be responsible for the investigation and disposition of said claim. For claims involving conduct of employees of more than one party arising out of a joint activity conducted pursuant to this MOU, the parties agree to work cooperatively to determine which entity will be primarily responsible for the investigation and disposition of the claim.
- e. To carry out the joint activities described in the MOU, a party may need to disclose proprietary information to the other party. Proprietary information is defined as information that an affected business claims to be confidential and is not otherwise available to the public. The parties agree to clearly identify confidential business information disclosed to each other in writing; and to clearly memorialize in writing, within a reasonable time, any confidential information initially disclosed orally. The parties agree not to disclose, copy, reproduce or otherwise make available in any form whatsoever to any other person, firm, corporation, partnership, association or other entity, information designated as proprietary or confidential information without consent of the other party except as such information may be subject to disclosure under the Freedom of Information Act (5 U.S.C. § 552), and EPA's regulations at 40 C.F.R. Part 2, or as otherwise authorized by law.

14. EFFECTIVE DATE. The terms of this Agreement shall become effective upon the signature of both parties.

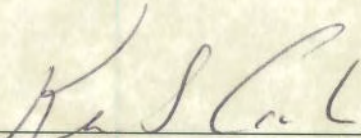
15. MODIFICATION. This Agreement may be modified upon the mutual written consent of the parties.

16. TERMINATION. The terms of this Agreement, as modified with the written consent of both parties, will remain in effect until terminated by the mutual written consent of the parties. Either party upon written notice to the other party may terminate this Agreement.

Agreed to and entered into by the undersigned.

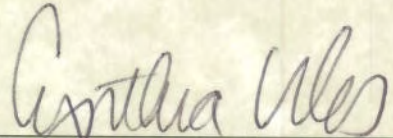
For U.S. Coast Guard

For U.S. Environmental Protection Agency



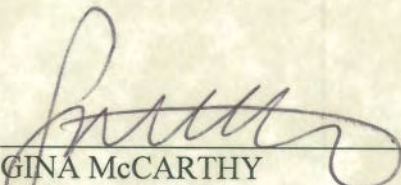
KEVIN COOK
Rear Admiral, U.S. Coast Guard
Director of Prevention Policy

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CYNTHIA GILES
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