



Ref. T5/1.22

BWM.2/Circ.6
23 October 2006

**INTERNATIONAL CONVENTION FOR THE CONTROL AND
MANAGEMENT OF SHIPS' BALLAST WATER AND
SEDIMENTS, 2004**

**Third meeting of the GESAMP* – Ballast Water Working Group
established in accordance with resolution MEPC.126(53)**

Background

1 The Ballast Water Management Convention (BWM Convention), in its regulation D-3 provides that Ballast Water Management systems, which make use of Active Substances to comply with the Convention shall be approved by IMO based on a procedure developed by the Organization.

2 MEPC 53 adopted the 'Procedure for approval of Ballast Water Management Systems that make use of Active Substances (G9)' by resolution MEPC.126(53). Section 8 of the Procedure sets out the methodology to be followed for the approval of Active Substances and requests IMO to establish a Technical Group to review the proposals submitted by Members and report to the Organization on its findings. Based on the report of the Group, the Marine Environment Protection Committee should decide on the approval of a proposal submitted by a Member of the Organization.

3 MEPC 53 agreed that a GESAMP-Ballast Water Working Group (GESAMP-BWWG), financed through a fee scheme paid by relevant industries requesting approval for a Ballast Water Management system that makes use of Active Substances, could best serve the needs of the shipping industry. The fee mentioned above is to be based on the recovery of the costs incurred by the Organization in respect of the scientific services provided by the Group.

4 As instructed by MEPC 53, the Secretariat approached the GESAMP Inter-Secretariat, comprised of the Chairman, Vice-Chairman and Technical Secretaries of the sponsoring Organizations, which has agreed on the formal establishment of the GESAMP-BWWG. The GESAMP Inter-Secretariat has also agreed to request the Chairman and Vice-Chairman of GESAMP to identify, together with the IMO Secretariat, appropriate independent scientific experts to conduct the work. The GESAMP-BWWG met twice since its establishment and reviewed five proposals for approval.

* GESAMP stands for 'IMO/FAO/UNESCO-IOC/WMO/WHO/IAEA/UN/UNEP Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection'.

Third meeting of the GESAMP-BWWG

5 For its third regular meeting, tentatively scheduled for 19 to 23 February 2007, subject to appropriate submission of relevant documents and dossiers by Member States, the GESAMP-BWWG was tasked to complete the development of its 'Methodology for information gathering and the conduct of work' and to review the proposals for approval of Active Substances received by 15 December 2006. The report of the Group will be reviewed by GESAMP itself and submitted to MEPC 56 (9 to 13 July 2007) for its consideration.

6 Recognizing the possibility that more than three proposals may be submitted for the Group's review and approval by MEPC 56 and that, based on previous experience, a maximum of three proposals could be reviewed by GESAMP-BWWG at one meeting, MEPC 55 agreed to hold an additional GESAMP-BWWG tentatively scheduled for 15 to 19 January 2007.

7 In this regard, Members are invited to submit their proposals for approval and all the documents mentioned in paragraphs 8, 9 and 10, as soon as possible, but not later than:

- a) 17 November 2006 for the meeting from 15 to 19 January 2007. This would allow the review of the proposal pending from the second meeting of the Group, the supplementary information on the system which did not receive Basic Approval at MEPC 55 and any one new proposal if these last two are submitted in time for the above deadline;
- b) 15 December 2006 for the meeting from 19 to 23 February 2007. These submissions will be reviewed in chronological order according to the date of their submission and the time available at the regular meeting in February 2007.

In case no other proposals, in addition to those mentioned in paragraph 7(a) above, are received by 15 December 2006 there will be no need for the additional meeting and the proposals will be reviewed at the regular meeting in February 2007.

8 Member Governments are invited to submit their proposals for approval of Ballast Water Management systems that make use of Active Substances together with the Letter of Agreement referred to in paragraph 9 and the complete application dossiers of the respective substances, by 17 November or 15 December 2006, as appropriate, taking into account relevant provisions of the Procedure (G9) and the Terms of Reference attached at the annex of this Circular, to:

Director,
Marine Environment Division
International Maritime Organization
55 Victoria Street
London SW1H 0EU
United Kingdom
Tel. +44 (0)20 7587 3247
E-mail: dpughiuc@imo.org

9 The Member Governments are reminded that, as a prerequisite of the review, a document on their proposals for approval containing all the non-confidential data related to the respective Ballast Water Management System that makes use of Active Substance, needs to be submitted to MEPC 56 by 17 November or 15 December 2006, as appropriate, to enable interested parties to provide information that is relevant to the evaluation of that particular substances.

10 It should be noted that the approval of Ballast Water Management systems that make use of Active Substances is part of the regulatory function of the Organization and its Committees and that the GESAMP-BWWG has only an advisory role. A Letter of Agreement concerning the nature of the financial arrangements, the assertion of intellectual property rights, the settlement of disputes and the privileges and immunities of the Organization, shall be signed and submitted by the Members of the Organization together with their respective dossiers when proposing an approval. The draft text of such a Letter of Agreement is attached as an Appendix to this Circular for the guidance of interested parties.

11 A non-refundable registration fee of US\$50,000 should be paid together with each submission of a dossier for an Active Substance. After the deadline mentioned in paragraphs 5 and 7 above and based on the number of proposals received, the submitting Administrations will be advised on any additional amount needed to ensure the financing of the meeting. The total amount paid for one specific meeting is not expected to exceed US\$100,000, which covers the costs related to the services provided by the Group, the professional secretarial support to process the submissions and to assist the Group during its deliberation, the production of the report and the administrative and operational support (AOS) costs incurred by IMO.

12 Member Governments intending to submit proposals for approval of Ballast Water Management systems that make use of Active Substances are advised to contact the IMO Secretariat well in advance for detailed information on the payment procedures and any other issues relating to their submissions.

12 Member Governments are also invited to note that the above arrangements will be reviewed in due course and amended, as appropriate, in light of the experience gained.

ANNEX

TERMS OF REFERENCE FOR THE TECHNICAL GROUP

1 Consideration of development of necessary methodologies and information requirements in accordance with G9* for consideration by MEPC 56.

2 For Basic Approval, the Group should review the comprehensive proposal submitted by the Member of the Organization along with any additional data submitted as well as other relevant information available to the Group and report to the Organization.

In particular, the Group should undertake:

- .1 Scientific evaluation of the data-set in the proposal for approval (see paragraphs 4.2, 6.1, 8.1.2.3, 8.1.2.4 of G9);
- .2 Scientific evaluation of the assessment report contained in the proposal for approval (see paragraph 4.3.1 of G9);
- .3 Scientific evaluation of the risks to the ship and personnel to include consideration of the storage, handling and application of the active substance (see paragraph 6.3 of G9);
- .4 Scientific evaluation of any further information submitted (see paragraph 8.1.2.6 of G9);
- .5 Scientific review of the risk characterization and analysis contained in the proposal for approval (see paragraph 5.3 of G9);
- .6 Scientific recommendations on whether the proposal has demonstrated a potential for unreasonable risk to the environment, human health, property or resources (see paragraph 8.1.2.8 of G9); and
- .7 Preparation of a Report addressing the above-mentioned aspects for consideration by MEPC (see paragraph 8.1.2.10 of G9).

3 For Final Approval, the Group should review the discharge testing (field) data and confirm that the residual toxicity of the discharge conforms to the evaluation undertaken for Basic Approval and that the previous evaluation of the risks to the ship and personnel including consideration of the storage, handling and application of the active substance remains valid. The evaluation will be reported to MEPC (see paragraph 8.2 of G9).

4 The Group shall keep confidential all data, the disclosure of which would undermine protection of the commercial interests of the applicant, including intellectual property.

* G9 stands equivalent for MEPC 53/2/1 annex, as amended: Procedure for approval of ballast water management systems that make use of Active Substances (G9).

Appendix

LETTER OF AGREEMENT

**relating to a Ballast Water Management System that makes use of
Active Substances proposed for approval in accordance with regulation D-3,
paragraph 2 of the Ballast Water Management Convention**

Having received a satisfactory application on [name of product] produced by [name of the manufacturer], the undersigned hereby confirms, on behalf of the Administration of [name of the Administration], that the dossier regarding the Ballast Water Management system that make use of [name of product] as an Active Substance is subject to the following conditions:

1. **Financial arrangements:** The fee paid in connection with this proposal for approval is based on the recovery of costs incurred by the International Maritime Organization (Organization) in respect of the services provided by the GESAMP-Ballast Water Working Group. Fees will be invoiced in up to three tranches:
 - US\$50,000 immediately following receipt of this Letter of Agreement by the Organization;
 - an additional US\$50,000 immediately following the deadline for submissions, if only one submission has been made; and/or
 - a final invoice to recover costs over the initial cost estimate, if required.

All fees paid as described above will be retained in a Trust Fund established for this purpose.

2. **Intellectual Property Rights:** The Organization and the members of the GESAMP-Ballast Water Working Group will make every reasonable effort to prevent the disclosure of information which is clearly and prominently identified as being subject to an intellectual property right, subject to the condition that sufficient detail must be provided to the Marine Environment Protection Committee (MEPC) of the Organization to enable that body to perform its functions under resolution MEPC.126(53) and, in particular, to approve the proposed Active Substance. In this respect the members of the Group will be required to sign a declaration concerning the confidentiality of information acquired as a result of their affiliation with the Group. In any case, neither the Organization nor the members of the GESAMP Ballast Water Working Group can accept liability for damage or loss, which may result from disclosure of such information in the exercise of their responsibilities.
3. **Settlement of disputes:** The submitting Administration, the Organization, and the GESAMP-Ballast Water Working Group shall use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to the process established for reviewing Active Substances used for the management of ballast water or this Letter of Agreement, or the breach, termination or invalidity thereof. Where these parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules

then pertaining, or according to such other procedure as may be agreed between the parties. Any dispute, controversy or claim, which is not settled amicably shall be referred to arbitration in accordance with the UNCITRAL Arbitration Rules then pertaining. The place of the arbitration will be London, England.

4. **Privileges and immunities:** Nothing in or relating to the process established for reviewing Active Substances used for the management of ballast water or this Letter of Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the International Maritime Organization, including its officers, experts or subsidiary organizations or of the privileges and immunities to which the Administration is entitled under international law.

Members of the GESAMP-Ballast Water Working Group, when performing functions in connection with the terms of reference of the Group, shall be considered to be experts of the Organization pursuant to Annex XII of the Convention on Privileges and Immunities of the Specialized Agencies of the United Nations.

Authorized signature on behalf of the Administration: _____

Typed/printed name: _____

Title/Position: _____

Date of signature: _____

Fees Invoicing address: _____
