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BWM.2/Circ.38/Rev.1
8 October 2012

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

**Twenty-fourth meeting (regular) of the GESAMP* – Ballast Water Working Group
established in accordance with the Procedure for approval of ballast water
management systems that make use of Active Substances (G9)
to be held from 10 to 14 December 2012 at IMO Headquarters**

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water management systems that make use of Active Substances (G9)* (resolution MEPC.126(53)), which was subsequently superseded by the revised Procedure (G9) (resolution MEPC.169(57)) adopted at MEPC 57. Section 8 of the Procedure sets out the methodology to be followed for the approval of such systems 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 decides 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 Based on the previous practice agreed by the MEPC, the GESAMP-BWWG aims to hold its meetings 20 weeks before the MEPC session that is expected to decide on the approval of the proposals made by the Member Governments. Consequently, a 28-week deadline has been established for the submission of the proposals for approval (including the complete application dossiers). This allows eight weeks for the preparation of the meeting and enables interested parties to provide information that is relevant to the evaluation in accordance with the provisions of paragraph 8.1.2.6 of Procedure (G9). In this respect, Members are invited to submit the non-confidential description of their ballast water management systems that make use of Active Substances to the MEPC session before the one expected to decide on the approval or, if this is not possible, at their earliest opportunity

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

after that, but not later than the 28-week deadline established above. A timetable for activities related to the GESAMP-BWWG meetings is attached as annex 1 to this circular for easy reference.

5 Bearing in mind the newly agreed dates for MEPC 65 (document MEPC 64/23, paragraph 19.22), MEPC 64 agreed to change the deadline for submission of proposals for approval of ballast water management systems that make use of Active Substances indicated in BWM.2/Circ.38 to 26 October 2012. **This revised circular reflects the changes above.**

Twenty-fourth meeting of the GESAMP-BWWG

6 As MEPC 65 will be held from 13 to 17 May 2013, the twenty-fourth GESAMP-BWWG meeting is tentatively scheduled **from 10 to 14 December 2012**, subject to submission of relevant documents and application dossiers by Member Governments and subject to appropriate payment of the fees described in paragraph 11 below. The GESAMP-BWWG will review the application dossiers received before 26 October 2012, which represents the 28-week deadline for MEPC 65. The report of the Group will be reviewed by the GESAMP itself and submitted to MEPC 65 for its consideration.

7 It should be noted that the application dossiers will be reviewed in the chronological order of their submission and the GESAMP-BWWG will endeavour to review as many proposals as possible submitted before the above deadline. If more than four proposals for approval of ballast water management systems are received before 26 October 2012, an additional meeting of the GESAMP-BWWG (i.e. the twenty-fifth meeting) would be organized to review the proposals not reviewed during the twenty-fourth meeting. Any proposal for approval that is not reviewed in the twenty-fourth meeting and the additional meeting due to time constraints will be reviewed at the earliest meetings of the Group after MEPC 65 and reported to MEPC 66.

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 10 of this circular and the complete application dossiers, as soon as possible but **not later than 26 October 2012**, taking into account the relevant provisions of Procedure (G9), the terms of reference attached as annex 2 to this circular and the "Methodology for information gathering and conduct of work of the GESAMP-BWWG" contained in the technical circular BWM.2/Circ.13 or BWM.2/Circ.13/Rev.1, as applicable, to:

International Maritime Organization
Marine Environment Division
4 Albert Embankment
London SE1 7SR
United Kingdom
Tel.: +44 (0)20 7587 3247
E-mail: dpughiuc@imo.org

9 Member Governments are reminded that, as a prerequisite of the review, a description of their proposals for approval containing the non-confidential data related to the respective ballast water management system that makes use of Active Substances should also be submitted **to MEPC 65 before 26 October 2012**, to enable interested parties to provide information that is relevant to the evaluation by the GESAMP-BWWG.

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 application 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 an application dossier. After the deadline mentioned in paragraph 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 covers the costs related to the services provided by the Group and by the GESAMP, the support of the Secretariat to process the submissions and to assist the Group during its deliberations, the production of the report, and all the associated costs incurred by IMO. Bearing in mind the cost recovery character of the fee associated with the GESAMP-BWWG meetings, in case a proposal is not recommended for Basic or Final Approval in the first instance, any supplemental information should be evaluated by the Group as a new proposal and should be subjected to a new fee.

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 in advance for detailed information on the payment procedures and any other issues relating to their submissions.

Dates for future GESAMP-BWWG meetings

13 As MEPC 66 and MEPC 67 are tentatively scheduled in March 2014 and October 2014, using the timetable described in paragraph 4 and contained in annex 1 to this circular, the next regular meetings relating to the sessions above are tentatively planned for October 2013 and May 2014, with the deadlines for submission of the proposals for approval in August 2013 and March 2014, respectively. The final dates will be circulated in due course.

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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 **[please insert the name of the ballast water management system]** produced by **[please insert the name of the manufacturer]**, the undersigned hereby confirms, on behalf of the maritime Administration of **[please insert the name of the submitting country]**, that the application dossier regarding the ballast water management system that makes use of Active Substance(s) mentioned above 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.169(57) and, in particular, to approve the proposed ballast water management systems that make use of Active Substances. 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 maritime Administration:

Typed/Printed name:

Title/Position/Organization/Country:

Date of signature:

**Name and address
for fees invoicing:**

ANNEX 1

**TIMETABLE FOR ACTIVITIES
RELATED TO THE GESAMP-BWWG MEETINGS**

Timeline	Activity
28 weeks before MEPC	Deadline for submission of application dossiers and related documents to be reviewed by the GESAMP-BWWG
(8 weeks)	Preparation of the meeting, including circulation of any relevant information provided by other delegations
20 weeks before MEPC	GESAMP-BWWG Meeting
(1 week)	Editing and completion of the draft report of the meeting
(3 weeks)	Review and approval of the report by the GESAMP including response/clarification by the working group
(1 week)	Administrations confirm that no confidential data are contained in the report
(1 week)	Produce the final report
13 weeks before MEPC	Submission of the report of the meeting of the GESAMP-BWWG in accordance with the 13-week deadline (bulky documents) for MEPC

ANNEX 2

TERMS OF REFERENCE FOR THE GESAMP-BWWG

1 Consideration of development of necessary methodologies and information requirements in accordance with the *Procedure for approval of ballast water management systems that make use of Active Substances (G9)* for consideration by MEPC 65.

2 For Basic Approval, the Group should review the comprehensive proposal submitted by the Members 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 and 8.1.2.4 of Procedure (G9));
- .2 scientific evaluation of the assessment report contained in the proposal for approval (see paragraph 4.3.1 of Procedure (G9));
- .3 scientific evaluation of the risks to the ship and personnel to include consideration of the storage, handling and application of the Active Substances (see paragraph 6.3 of Procedure (G9));
- .4 scientific evaluation of any further information submitted (see paragraph 8.1.2.6 of Procedure (G9));
- .5 scientific review of the risk characterization and analysis contained in the proposal for approval (see paragraph 5.3 of Procedure (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 Procedure (G9)); and
- .7 preparation of a report addressing the above-mentioned aspects for consideration by the MEPC (see paragraph 8.1.2.10 of Procedure (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 Substances remains valid. The evaluation will be reported to the MEPC (see paragraph 8.2 of Procedure (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.