



Maritime Law

MARAD Employing New Procedure in Connection with a Foreign Vessel Transfer

The U.S. Maritime Administration (MARAD) is employing a new procedure in connection with foreign vessel transfers and its Request For Transfer of Ownership, Registry and Flag, or Charter of U.S. Documented Vessels process, otherwise known as an MA-29 Application. Based on our recent experiences, MARAD is notifying the Environmental Protection Agency (EPA) of every Request for Transfer that it receives. It does not matter whether the transfer is for the recycling or scrapping of the vessel or for future commercial use.

Since the industry is just learning of the new procedure, this added layer of agency review has led to confusion and significant delays. Members of the industry were not consulted or involved in formulating the new procedures and no official announcement has been made. This procedure will affect the shipowner's ability to sell the vessel and the timing of transactions.

The timing to receive the Transfer Order from MARAD has been moved from 30 days to 60 days. We are advising clients to conservatively plan on 90 days.

MARAD will not issue its foreign Transfer Order unless it receives written approval from the EPA. Based on our experience, the EPA will assign the review to a



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Regional EPA office. The Regional office will review the history of the vessel and other pertinent information such as construction records and surveys.

One could argue that the EPA may not have jurisdiction over a vessel that is already overseas or that MARAD is acting ultra vires in adopting this new procedure. In any event, practically speaking, if one wants to get a deal accomplished, the best tactic to take seems to be cooperating with the EPA and MARAD. There are no time limits on the EPA review, as far as we know, and MARAD has extended its anticipated review time.

The EPA is concerned about violations of the Toxic Substance Control Act (TSCA) whereby any distribution into commerce or export for disposal of ships that contain PCBs (over 50 ppm) is a violation of the law. Vessels built prior to 1979 are particularly reviewed since the use of PCBs was prohibited starting in 1979.

Our maritime and environmental lawyers can assist in navigating this process. Until specific guidelines or regulations are adopted, the industry is in the dark with no input into the process. This radical departure from past practices needs to be publicized so owners can plan their agreements and "drop dead dates" accordingly.

Sandra L. Knapp, Esquire

Gawthrop Greenwood, PC Attorneys at Law

17 E. Gay Street Suite 100 PO Box 562 West Chester PA 19381 - 0562
Phone 610.696.8225 Ext. 126 Fax 610.344.0922 sknapp@gawthrop.com