

Low Sulfur Fuel Requirements for Cruise Ships in Sydney Harbour



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Background

The NSW Government is implementing a suite of initiatives to reduce the health impacts of fine particles and diesel emissions, including emissions from shipping. Reducing sulfur is the key to reducing sulfur oxide and fine particle pollution, which can impact on the health of local communities.

One of these initiatives is a requirement for cruise ships to use low sulfur fuel when in Sydney Harbour. These requirements are similar to those applying in Emission Control Areas in parts of North America and Europe.

The NSW Government's initial focus is on cruise ships in Sydney Harbour, given their proximity to densely populated areas. Options to reduce emissions at other NSW ports and from other ships are also being explored.

Purpose of this brochure

This brochure has been developed by the NSW Environment Protection Authority (EPA) to assist the cruise ship industry in understanding and complying with the low sulfur fuel requirements. It provides a summary of the requirements, an overview of the EPA's compliance activities and links to further information.

This document is intended as a guide only and should be read in conjunction with the legislation referred to below. Note that changes to legislation may have occurred since this document was published. You should consider obtaining legal advice if you are unsure of any obligations you may have under this legislation.

New regulations relating to low sulfur fuel use by cruise ships

Requirements relating to low sulfur fuel use by cruise ships commenced on 1 October 2015 and are specified in Part 6A of the Protection of the Environment Operations (Clean Air) Regulation 2010 (the Clean Air Regulation). The Clean Air Regulation is made under the *Protection of the Environment Operations Act 1997* (the POEO Act). The full regulation and the POEO Act can be found at www.legislation.nsw.gov.au.

In addition to specifying low sulfur fuel requirements, Part 6A of the Clean Air Regulation also includes:

- exemptions from the low sulfur fuel requirements, which can be sought from the EPA under specified circumstances
- approvals, which can also be sought from the EPA, for the use of alternative technologies (e.g. scrubbers) instead of low sulfur fuel
- refuelling requirements
- documentation requirements for cruise ships and fuel suppliers
- penalties for non-compliance.

The low sulfur fuel requirements

The Clean Air Regulation low sulfur fuel requirements apply only to cruise ships. These ships are defined as passenger ships that do not have a cargo deck and are designed exclusively for commercial transportation of more than 100 passengers in overnight accommodation on a sea voyage. There is an obligation on both the master and owner of a cruise ship to comply with these requirements.

The low sulfur fuel requirements for cruise ships apply in two stages. Stage 1 commenced on 1 October 2015 and requires that all cruise ships use low sulfur marine fuel (fuel with a sulfur content of 0.1% or less by weight) while berthed within Sydney Harbour. These requirements start one hour after the ship is berthed and end one hour prior to departure.

Stage 2 takes effect from 1 July 2016 and requires all cruise ships to use low sulfur marine fuel at all times while within Sydney Harbour (i.e. the waters west of a line between North and South Head). Cruise ships will be required to switch to low sulfur fuel before entering Sydney Harbour.

If the master is unable to obtain low sulfur fuel, the master must notify the EPA's Environment Line on 131 555 (or +61 2 9995 5555) at least 48 hours before the ship's arrival at a berth, or as soon as practicable after arrival if earlier notification is not possible. The notification must include all relevant details of the steps taken to obtain low sulfur fuel.

Defences against an offence of failing to use low sulfur fuel

The Clean Air Regulation includes specific defences that the master or owner of a cruise ship can use in any prosecution by the EPA for failing to use low sulfur fuel. A defence applies if compliant fuel was unavailable for use by a cruise ship in Sydney Harbour other than while berthed and the master or owner took all reasonable steps to obtain compliant fuel.

A further defence applies in specified, reasonably unforeseeable circumstances. These include safety risks associated with refuelling operations, problems with the refuelling equipment, unexpected delays or port visits, or emergencies.

MARPOL

The International Convention for the Prevention of Pollution from Ships (MARPOL), including the Annex VI requirements relating to fuel sulfur levels, is implemented in Australian Commonwealth waters by the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth). This legislation can be found at www.comlaw.gov.au.

Some of the requirements under Part 6A of the Clean Air Regulation which apply in Sydney Harbour are consistent with, or cross-reference, MARPOL Annex VI or related International Maritime Organisation (IMO) requirements or guidelines.

Exemptions from the low sulfur fuel requirements

The owner or master of a cruise ship can apply to the EPA for an exemption from the low sulfur fuel use requirements under two circumstances:

- compliance would present a significant risk to the safety of the ship
- engineering modifications are scheduled to be carried out within a dry dock to enable a cruise ship to comply with requirements and these cannot be completed by 30 June 2016 (this exemption applies to Stage 2 only).

Information on the application process can be obtained from the EPA's website. Cruise ships must continue to use low sulfur fuel until any exemption has been granted (except in circumstances where a defence applies). Exemptions may also be subject to conditions.

Use of alternative technologies such as scrubbers

The master or owner of a cruise ship can apply to the EPA for approval to use alternative methods that will achieve sulfur oxide and fine particle emissions that are equal to or below the levels that would have been achieved if the ship used low sulfur fuel.

Information on the application process can be obtained from the EPA's website. Cruise ships must continue to use low sulfur fuel until any approval has been granted. Approvals may be subject to conditions that must be complied with for the approval to remain valid.

Cruise ships using gaseous fuel

If a cruise ship uses liquefied natural gas, compressed natural gas or liquefied petroleum gas as its primary fuel source, then the fuel sulfur content limits are not applicable. The first time a ship using gaseous fuel intends to enter Sydney Harbour, the master or owner must notify the EPA at least 48 hours in advance of the ship's arrival at a berth or Sydney Harbour, or as soon as practicable after arrival if earlier notification is not possible. Notification is to be via the EPA's Environment Line on 131 555 (or +61 2 9995 5555).

Related requirements applying to cruise ships

The following requirements apply to cruise ships under Part 6A of the Clean Air Regulation:

- the master or other appropriate officer of a cruise ship must ensure that they are available on the ship at all reasonable times, to answer questions and provide information to an EPA authorised officer
- specified information must be included in the ship's log book
- fuel switching records and fuel system information must be kept on board
- low sulfur fuel bunker delivery notes must be retained for three years
- fuel samples must be retained for 12 months.

The ship's master and owner are responsible for ensuring that these documents and samples are maintained on a cruise ship.

Requirements applying to fuel suppliers

Under Part 6A of the Clean Air Regulation, low sulfur fuel suppliers to a cruise ship must:

- provide the master with a bunker delivery note in accordance with Appendix V of Annex VI of MARPOL, and keep a copy of the note for at least three years
- supply the fuel in accordance with the bunker delivery note
- provide the master with a representative sample of the fuel following the refuelling operation.

Fuel samples must be taken in accordance with Appendix V of Annex VI of MARPOL and the *IMO 2009 Guidelines for the Sampling of Fuel Oil for Determination of Compliance with the Revised MARPOL Annex VI*. The fuel sample must be taken in addition to any other sample required under other legislation.

NSW EPA compliance activities relating to the new requirements

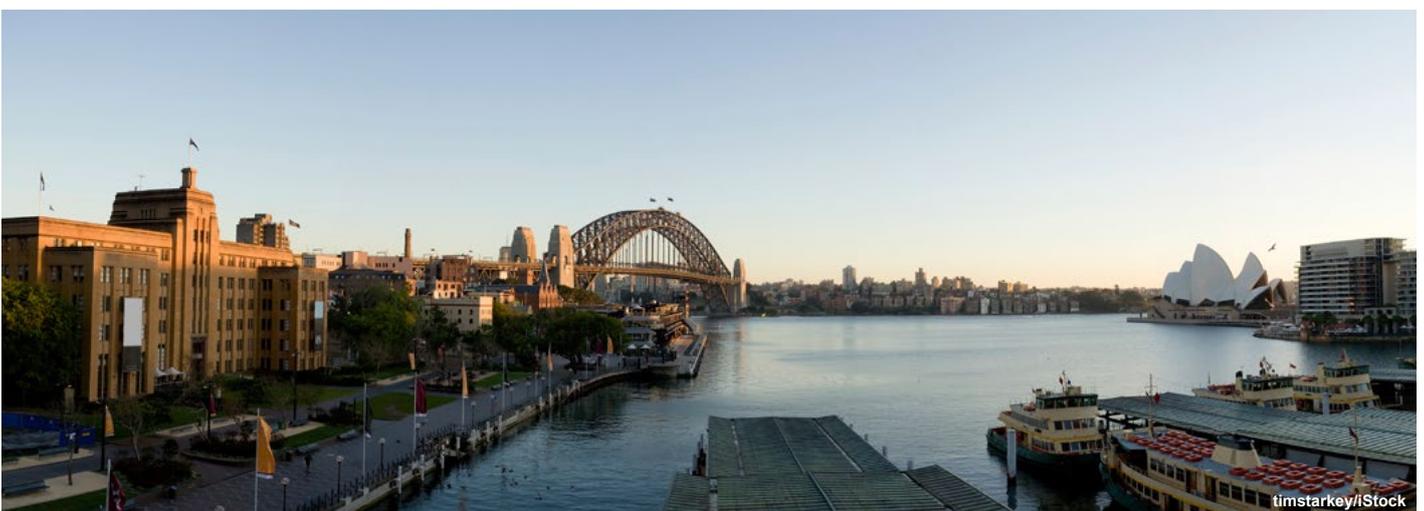
The NSW EPA and its authorised officers are responsible for ensuring compliance with Part 6A of the Clean Air Regulation, including the low sulfur fuel requirements. The EPA is the primary environmental regulator for the state of New South Wales. The primary purpose of the EPA is to improve environmental performance for New South Wales. The EPA is responsible for enforcing environment protection legislation, including investigating, reporting and prosecuting alleged non-compliances.

EPA authorised officers

Authorised officers are individuals appointed by the EPA under the POEO Act. They have specific powers relating to the ability to enforce the POEO Act and its regulations. They can undertake investigations, audits and other compliance-related activities. EPA authorised officers have identification cards which they will produce when requested.

Powers available to authorised officers include:

- boarding a vessel to undertake compliance inspections
- requiring a person to provide information or records, or answer questions
- taking photographs or video films
- inspecting, testing or sampling any substance
- seizing documents and other evidence.



Under the POEO Act, it is an offence to:

- fail to provide information or records to an authorised officer when requested by a notice
- fail to answer questions from an authorised officer
- fail to provide your name and address when requested by an authorised officer
- provide information to an authorised officer that is knowingly false or misleading
- wilfully delay or obstruct an authorised officer in the lawful exercise of their powers.

Compliance inspections by EPA authorised officers

EPA authorised officers will carry out announced and unannounced compliance inspections of a proportion of cruise ships in Sydney Harbour. During these inspections an authorised officer may request:

- the ship's log book or oil record book
- fuel changeover documentation and fuel system information
- fuel tank level readings, and fuel system and engine monitoring information
- low sulfur fuel bunker delivery notes
- any fuel samples collected to comply with the Clean Air Regulation.

The authorised officer may take photos of documents and may also take the fuel sample for laboratory testing. A receipt will be provided if the sample is taken.



The EPA's response to non-compliances

The EPA's response to any alleged non-compliances or offences under the Clean Air Regulation will be guided by the EPA's 'Compliance Policy' and 'Prosecution Guidelines' (both available on the EPA website). These documents will guide the EPA's response to:

- any non-compliance with the requirements under Part 6A of the Clean Air Regulation (e.g. failure to use low sulfur fuel when required)
- any related offences under the POEO Act (e.g. obstructing an authorised officer).

Responses to non-compliances may include warning letters, official cautions, penalty notices issued to the master or owner, prosecution of the master or owner, or both.

Fines for low sulfur fuel offences

The maximum fines that a court can impose for failing to use low sulfur fuel are A\$22,000 for an individual and A\$44,000 for a corporation. Penalty notices issued by the EPA for these offences are A\$15,000. Penalties also apply for other related offences under the Clean Air Regulation and the POEO Act.

Further information

For further information, see the EPA website www.epa.nsw.gov.au or call Environment Line on 131 555 within Australia or +61 2 9995 5555 outside Australia.

For Australian Commonwealth Government requirements relating to fuel use in Commonwealth waters (i.e. not NSW inland waters), see the Australian Maritime Safety Authority (AMSA) website www.amsa.gov.au or call AMSA on (02) 6279 5000 within Australia or +61 2 6279 5000 outside Australia.