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Fuel flashpoints: is your bunker supply an explosive issue?

An emerging issue

In recent months an intersection between two of this century's existential threats, climate change and COVID, has caused concern in the shipping industry. The IMO has imposed much stricter emissions targets on shipping, resulting in the widespread adoption of new low sulphur fuel oils. The world-wide lockdowns to suppress the COVID pandemic have destroyed demand for aviation and other light fuels. In response, suppliers are using these surplus, lighter fractions to blend marine fuel and the result is that the supply of some low sulphur bunkers has been reported to have a much lower flashpoint than the SOLAS ChII regulatory minimum of 60°C.

Voices within the bunker supply industry are advocating a review of the flashpoint threshold and are even questioning the viability of using flashpoint as a measure of risk. Is this pragmatism or expediency? And how should charterers respond to a report of a bunker delivery having a lower than permissible flashpoint?

The current standard is being contested

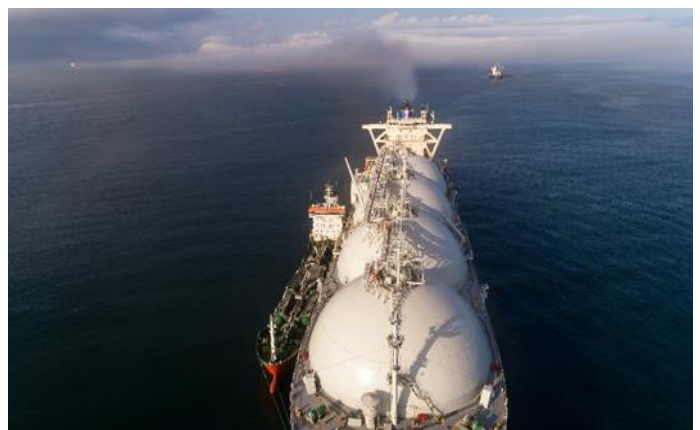
The flashpoint of a combustible liquid is the lowest temperature at which its vapour will ignite in the presence of a source of ignition. Fuels used on board ships have, since the early 1980s, been required to have a flashpoint of over 60°C to minimise the risk of spontaneous fire and explosion.

To give the 60°C standard some context, petrol has a flashpoint of 21°C, aviation fuel 38°C, automotive diesel 52°C, and barbeque lighter fluid 62°C.

It is possible to use a low flashpoint fuel at sea, LNG and ethanol being good examples. However, to do so safely a ship must be constructed to the standards laid out in the International Code of Safety for Ships using Gases or other Low Flashpoint Fuels (IGF Code).

A prolonged debate is in progress at the IMO regarding the minimum flashpoint requirement and simplified measures to mitigate the risks on board ships.

The fuel supply industry points to the lack of an international standard for the flashpoint of road



diesel (which varies from 35°C in India to 55°C in the EU) as an example of the arbitrary nature of these limits. The current stance of the IMO is that to use a lower flashpoint requires IGF Code compliance.

A warning from the P&I Clubs

The P&I Clubs have been proactive in notifying their members of low flashpoint fuel in the supply chain. However, the problem is that these warnings have considerable latency as the real flashpoint of a

sample is often not discovered until after the ship's sample is tested. Statements of conformity issued by bunker suppliers at the point of supply have, on occasion, been inaccurate.

No flag state, port state or classification society would countenance the use of marine fuel with a lower flashpoint. Charterers who supply fuel are therefore exposed both to their contractual counterparties in the case of delay or additional costs, and to Hull and Machinery underwriters who may seek to recover the costs of a claim via subrogation.

Charterers' position is not an easy one. Bunkers are usually procured via a broker or a lead supplier who will then sub contract locally. Bunker supply terms are heavily weighted in favour of the supplier, with short time bars and low limitations of liability being commonplace.

The mostly costly scenario for Charterers is discovery of low flashpoint fuel only once it has been stemmed and the ship has resumed its voyage. Owners may want to divert for alternative fuel supplies and the offending stem will need to be offloaded. There will then be little residual value in parcels of the off-specification fuel.

Ideally, an off specification stem will be intercepted prior to supply. Although this may result in delay, either because of the necessary wait at the bunker port for a new supply or a voyage to an alternative port of supply, the cost is likely to be less than for late discovery. Either way, there will be an impact upon the profitability of the voyage.

Minimising and mitigating risk

Here are a few pointers for Charterers to manage the risk of supply of off specification marine fuels:

- Know your supplier. Carry out due diligence. Structure voyage orders so that bunker stems are taken in reputable locations and from reputable suppliers. Make sure they have insurance for credit risk, professional indemnity and product liability.
- Know the supply chain. Who does your supplier contract with? How do their quality procedures deal with sub-contractors? Make sure local rules and regulations are specifically excluded and that the contractual jurisdiction is expressly agreed at the outset.

- Be precise about the fuel specification you require and that it complies with the relevant ISO specification, currently ISO 8217 2017. There should be an express term in the contract that fuel is warranted to be free of contaminants and MARPOL compliant. Insist on a fuel quality certificate at the point of supply and engage your own surveyor. The contract should allow your surveyor to take drip samples at the ship's manifold.
- Ensure your contract allows for the ship's sample to be tested, not just the supplier's sample which is often prepared in advance. Be clear on the test standards. Ideally, have the laboratory identified in the contract.
- Renegotiate any punitive time bars for quality claims to allow for any discrepancies to be detected within the time bar.
- Watch for low limitations of liability. Given the costs of restitution are likely to be high, make sure the limits are realistic. The limits should apply mutually to both parties.
 - Avoid terms that allow for the supplier to place a lien on the bunkers in case of dispute.
 - Ensure your terms in the charterparty are properly back to back.

In summary, bunker disputes caused by low flashpoint fuel can be very expensive to resolve, particularly if unfavourable contractual terms leave you exposed. The recommendations set out in this article are not exhaustive, so if you would like further advice then please do get in touch with your usual Stephenson Harwood contact.

Contact us



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