

## **PORT AUTHORITY REGULATION (NAP)**

NAP.SUMAS.OPR.023.2024, APRIL 11, 2024

### **REGULATION FOR THE MANAGEMENT CONTROL AND COMPLIANCE OF BALLAST WATER OF SHIPS AND VESSELS OPERATING IN THE PORT OF SANTOS**

#### **Chapter I - Purpose**

**Art. 1** The purpose of this regulation is to establish the required procedures for the discharge of ballast water within the boundaries of the Organized Port of Santos and to regulate the provision of technical services for the issuance of compliance certificates for ballast water management of ships and vessels using information technology.

**Art. 2** To properly demonstrate compliance as required in the previous article, only Compliance Certificates issued by companies accredited by APS will be accepted, in accordance with the terms established in this Regulation.

#### **Chapter II - Definitions**

**Art. 3** For the purposes of this Regulation, the following terms are defined as:

I. **Port Authority of Santos:** The entity responsible for the management, operation, and regulation of the Organized Port of Santos;

II. **Ballast Water:** Water with its suspended particles carried onboard a vessel in its ballast tanks for controlling trim, heel, draft, stability, or stresses on the vessel;

III. **BWM – Ballast Water Management:** The acronym in English for Ballast Water Management, the guidelines of which are based on the International Convention enacted by Federal Decree No. 10,980 of February 25, 2022, and regulated by Maritime Authority Regulation (NORMAM) No. 401/DPC (formerly NORMAM No. 20/DPC), according to Ordinance DPC/DGN/MB No. 107 of August 30, 2023;

IV. **BWM Compliance Certificate (AC-BWM):** A document issued by a company accredited by the Port Authority of Santos containing data on ballast water management, in accordance with the premises of NORMAM 401/DPC, as outlined in the minimum content established in Chapter VI of this Regulation;

V. **BWM Compliance:** Demonstration of regularity in ballast water management of ships and vessels operating in the Organized Port of Santos, in relation to the guidelines established by NORMAM-401/DPC;

VI. **Ballast Water Management Compliance Certification:** A service to be provided by a company accredited by the Port Authority of Santos using information technology resources to verify the BWM Compliance of ships and vessels operating in the Organized Port of Santos;

VII. **Accreditation:** An administrative procedure through which a company is qualified by the Port Authority to provide ballast water management compliance certification services for ships and vessels and to issue the BWM Compliance Certificate, under the terms established in this Regulation; and

VIII. **Accredited Company:** A public or private legal entity qualified and licensed by competent authorities and accredited by the Port Authority to provide ballast water

management compliance certification services for ships and vessels operating in the Organized Port of Santos.

### **Chapter III - Management of Ballast Water and Sediments of Ships and Vessels**

**Art. 4** The discharge of Ballast Water in the Organized Port of Santos is prohibited unless it complies with the International Convention for the Control and Management of Ships' Ballast Water and Sediments, enacted by Federal Decree No. 10,980, dated February 25, 2022.

**Art. 5** The management of Ballast Water and Sediments of Ships must comply with the guidelines established by NORMAM No. 401/DPC, without prejudice to the obligations established by other intervening Authorities, such as those provided in Anvisa RDC Resolution No. 72, of December 29, 2009.

**Art. 6** In cases where ships or vessels present a BWM Compliance Certificate (AC-BWM) with a "FAILED" status, they will not be authorized to berth in the Organized Port of Santos and must take the necessary management measures in compliance with NORMAM No. 401/DPC.

**Art. 7** The discharge of Ballast Water that meets the premises of Articles 4 and 5 of this Regulation shall not be performed under the following conditions:

- I. On docks or piers where the ship is moored, requiring discharge on the side opposite to the docking structure;
- II. During the execution of port support activities requiring preventive containment due to the risk of compromising containment; and
- III. When the ballast water shows apparent color, odor, turbidity, or presence of chemical substances. In such cases, the ballast must be managed as waste, following NAP.GEMAM.OPR.002, or discharged outside the territorial sea, provided it meets the premises of the International Convention for the Prevention of Pollution from Ships.

**Art. 8** The discharge of sediments from ships and vessels into the waters of the Organized Port of Santos is prohibited. If disposal is required, the Shipowner (or their Maritime Agent) shall manage the sediment as waste, to be collected by accredited companies in accordance with NAP.GEMAM.OPR.002.

### **Chapter IV - Ballast Water Management Compliance Certification Service**

**Art. 9** The ballast water management compliance certification service must be carried out by companies accredited by the Port Authority of Santos.

**Sole Paragraph.** The choice of company to perform the service, among those accredited by the Port Authority of Santos, is up to the Shipowner or their Maritime Agent.

**Art. 10** The service must be provided using information technology resources that can identify the ballast water management method adopted by the ship (Standard D-1 or Standard D-2) and verify compliance with the general guidelines of the adopted standard, following the provisions of NORMAM No. 401/DPC.

**Art. 11** The adopted solution must demonstrate that the ship or vessel operating in the Organized Port of Santos fully complied with ocean exchange or treatment procedures (according to the adopted standard) throughout its journey to the Organized Port of Santos.

**Art. 12** Demonstration of the system's efficiency, based on information technology, will be a mandatory condition for the accreditation process, requiring the interested company to present proof of concept, using a random sample selected by the Port Authority of Santos, covering no fewer than 50 ships or vessels.

**Art. 13** Based on the results of the ballast water management compliance certification service, the accredited company shall issue the BWM Compliance Certificate (following the minimum content established in Chapter VI), indicating whether the ship or vessel has been "APPROVED" or "FAILED".

**Art. 14** The system developed and maintained by the accredited company must have Information Security elements, with cryptographic key and information validation, maintaining a user-friendly interface that allows access to the Port Authority, Shipowners, Maritime Agents, and interested third parties.

**Art. 15** Reports generated by the accredited company and the issued BWM Compliance Certificates must be stored in a secure environment, with access guaranteed to the entire historical series, and must be kept for a minimum period of 10 (ten) years.

**Art. 16** Accredited companies must immediately forward the BWM Compliance Certificates to APS after their issuance via electronic message to the following email addresses: [sumas@portodesantos.gov.br](mailto:sumas@portodesantos.gov.br) and [aguadelastro@portodesantos.gov.br](mailto:aguadelastro@portodesantos.gov.br).

**Art. 17** It is up to the accredited company, whenever necessary, to obtain from the Shipowner or Maritime Agency contracting the BWM Compliance Certification service any additional information that may be essential for the completion of the service provided for in this Chapter.

## **Chapter V - Compliance Verification Procedure by APS**

**Art. 18** The BWM Compliance Verification is a mandatory procedure for authorizing access and berthing of ships and vessels in the Organized Port of Santos.

**Art. 19** It is the responsibility of the Environmental Management Department (GEMAM) of APS (or another department that may be delegated later) to verify the status of the BWM Compliance Certificate by consulting the applicable field for this purpose in the Paperless Port System.

**Art. 20** It is the responsibility of the Shipowner (or their Maritime Agent) to submit the BWM Compliance Certificate through the Paperless Port System at least 24 hours in advance of the scheduled date for berthing in the Organized Port of Santos.

**Art. 21** In case of non-compliance, the provisions of Article 6 of this Regulation must be observed.

## **Chapter VI - BWM Compliance Certificate**

**Art. 22** The BWM Compliance Certificate (AC-BWM) is a digital document, issued in PDF, controlled by cryptographic key and information validation tool, which must contain all results related to the BWM Compliance Certification service.

**Art. 23** The AC-BWM must contain, at a minimum:

- a) Ship's Name;
- b) IMO Number;

- c) Port of Origin;
- d) Cargo Carried;
- e) Volume of Ballast Water Carried;
- f) Ballast water management method adopted by the ship (Standard D-1 or Standard D-2);
- g) Location of Ocean Exchange (in the case of Standard D-1);
- h) Details of Compliance Verification Results for Ocean Exchange (in the case of Standard D-1);
- i) Ballast Water Treatment System adopted (in the case of Standard D-2);
- j) Details of Compliance Verification Results for Use and Efficiency of the Treatment System (in the case of Standard D-2);
- k) Volume of Ballast to be discharged in the Organized Port of Santos;
- l) Conclusive Opinion on the Compliance Certification Process ("APPROVED" or "FAILED");
- m) Signature of the Technical Responsible of the accredited company; and
- n) Contact Information of the accredited company.

## **Chapter VII - Accreditation of Companies**

**Art. 24** Companies interested in providing the services of Ballast Water Management Compliance Certification for ships and vessels operating in the Organized Port of Santos must request their accreditation with the Environmental, Health, and Safety Superintendence (SUMAS) of APS.

**Art. 25** The accreditation process will consist of the following steps, detailed in this Regulation:

- I. Protocol of required documentation;
- II. Documentation analysis by the APS technical team;
- III. Sampling Selection and Proof of Concept; and
- IV. Approval or denial of the request, considering all data obtained in the previous steps.

**Art. 26** Companies interested in providing the services covered by this Regulation must request their accreditation with APS, through the following documentation:

- I. Accreditation request letter, dated and signed by the company's legal representative or proxy, specifying the type of service to be provided. If by proxy, a power of attorney must also be submitted. Both documents must have notarized signatures or digital certification;
- II. Articles of Incorporation, demonstrating the company's focus on system development;
- III. Must meet the legal qualification, technical qualification, and fiscal regularity requirements provided for in APS internal regulations;
- IV. Technical Proposal, based on Information Technology, demonstrating the functionality of the Ballast Water Compliance Certification System for Ships and Vessels;
- V. Demonstration of the system's security and stability, to ensure full and uninterrupted operation, avoiding potential logistical bottlenecks in the operation of the Organized Port of Santos; and
- VI. Proof of payment of the Port Fee related to the company's accreditation process, when applicable.

**Art. 27** During the documentation analysis, the interested company may be requested to provide additional documents if the APS technical team deems it pertinent.

**Art. 28** If the APS technical team considers the Technical Proposal and system security satisfactory, a random sample of at least 50 ships (operating or en route to the Organized Port of Santos) will be selected to conduct the Proof of Concept verification of the system.

**Art. 29** From the receipt of the random sample mentioned in the previous paragraph, the accredited company must provide the analytical result for the set of selected ships within a maximum of 24 hours, including the BWM Compliance Certificates, as established in Chapter VI of this Regulation.

**Sole Paragraph.** Demonstrating the ability to process the indicated sample universe within a maximum of 24 hours aims to verify the system's ability to handle the high dynamics of the Port of Santos' movement without becoming a logistical bottleneck.

**Art. 30** The multidisciplinary technical team of APS, involving the environmental, port operations, and information technology sectors (and any others as necessary), under the coordination of SUMAS, shall proceed with the analysis of the Proof of Concept and may, if deemed necessary, conduct investigations with Shipowners, Maritime Agents, or direct inspections on the selected ships.

**Art. 31** Upon completion of the document analysis process, APS will send a letter to the interested company informing them of the approval or denial of the request, considering all data obtained in the previous steps.

**Sole paragraph.** In case of approval, the name of the accredited company will be published on the Port Authority's website for consultation by users of the Organized Port of Santos.

**Art. 32** The period for analyzing documentation and approving or denying the accreditation request will be up to 90 (ninety) calendar days, counted from the complete digital protocol of the documentation listed in Article 26.

**Art. 33** The accreditation will be valid for 1 (one) year, and may be renewed successively for equal periods.

**Sole Paragraph.** Companies that do not request the renewal of their accreditation will have their registration suspended at the end of the term, and may, within 60 (sixty) days from expiration, request reactivation by presenting the documents pertinent to the renewal request. After this period, the accreditation will be definitively canceled, and the company may, at any time, submit a new accreditation request to APS.

## **Chapter VIII - BWM Non-Compliance**

**Art. 34** The requirement for the AC-BWM will be operationalized upon the accreditation of the first company that meets the requirements established in this Regulation.

**Art. 35** Until there are accredited companies (or in case of future complete deaccreditation of companies), compliance with Article 6 of this Regulation will not be required.

**Art. 36** During the first 12 (twelve) months of this Regulation's validity, ships and vessels presenting the AC-BWM with a "FAILED" status will not be prevented by the Port Authority of Santos from berthing.

**Art. 37** After the transition period provided in Article 36, the provision established in Article 6 will come into full effect.

**Art. 38** In the case of disapproval of the AC-BWM, the right to contradict and a broad defense will be assured.

**Art. 39** The Ship's Master, directly or through their Maritime Agent, or through their Lawyers, may submit a formal defense and a new Environmental Compliance Certificate to the Port Authority within a maximum period of 48 (forty-eight) hours.

**Art. 40** The analysis, in the first instance, will be conducted by the Environmental, Health, and Safety Superintendence (SUMAS) of APS, which may rely on the technical support of the Port Operations, Information Technology, and other sectors involved in the subject of the defense presented.

**Art. 41** In a second and final instance, a defense may be submitted to the Infrastructure Directorate, which will issue a final and definitive position on the facts.

**Art. 42** Notwithstanding the provisions of Article 36, the Port Authority of Santos, once it has concluded that an irregularity has occurred (respected the right of contradiction and broad defense), will immediately inform the competent Authorities (Harbor Master's Office and Anvisa), without prejudice to the sanctions that these entities may adopt.

#### **Chapter IX - Costs of Environmental Compliance Certification**

**Art. 43** The prices charged for the provision of ballast water management compliance certification services will be freely negotiated.

**Sole Paragraph.** Without prejudice to the provisions of the head, APS may take measures to suppress acts and actions that constitute or may constitute imperfect competition or violations of economic order, under the terms of Law No. 12,529 of 2011, by informing CADE of the occurrence.

#### **Chapter X - Inspection of Services**

**Art. 44** The Port Authority, through its Environmental, Health, and Safety Superintendence (SUMAS), will inspect the services provided by accredited companies, relying on the technical support of the Port Operations, Information Technology, and other sectors involved in the nature of the service provided.

#### **Chapter XI - Penalties Applicable to the Accredited Company**

**Art. 45** Accredited companies that do not comply with the procedures set forth in this Regulation shall be subject to the penalties provided in Article 47.

**Art. 46** The penalties provided may be WARNING, SUSPENSION, or DECERTIFICATION, at the discretion of the Port Authority, observing the right of contradiction and broad defense, as described below:

- I. Findings of irregularities, not considered serious infractions, that are promptly remedied, will be sanctioned with a WARNING;
- II. In the case of serious infractions, here defined as those that challenge the truthfulness of the AC-BWM, that do not comply with the service provision premises established in this Regulation, or that unjustifiably harm port logistics:
  - a) The company may have its accreditation immediately SUSPENDED until the facts are duly investigated by the Port Authority and other bodies involved in the infraction;
  - b) Cautionary SUSPENSION of accreditation may also be determined in situations where the accredited company, while not committing a serious infraction, continues to engage in irregular conduct for which it was notified by APS;
  - c) The Cautionary SUSPENSION referred to in the previous items will last until the first-

instance decision of the administrative process initiated by APS to investigate the infraction, which will decide on maintaining or terminating the cautionary suspension, or for a maximum period of 60 (sixty) days, whichever occurs first;

d) The first-instance analysis will decide on lifting the suspension or the DECERTIFICATION of the company, depending on the severity of the infraction or the intentional violation of this regulation.

§1° If, after being notified and/or warned, the company continues to engage in irregular conduct, or if, within 06 (six) months, it repeats the same conduct (specific recurrence), the company will be subject to a SUSPENSION sanction for up to 180 (one hundred and eighty) days;

§2° A company that, within 12 (twelve) months, repeats the same conduct (specific recurrence) for which it has already been sanctioned with SUSPENSION, or a company that engages in infringing conduct considered serious under this regulation, will be subject to a DECERTIFICATION sanction for up to 01 (one) year, counted from the cautionary suspension, if applicable;

§3° In the case of recurrence, determined by the commission of new infractions within 36 (thirty-six) months, the terms of the sanctions provided for in this regulation will be doubled, except in the case of decertification due to specific recurrence referred to in the first part of the previous item.

**Art. 47** Upon finding indications of serious infractions, the Port Authority will formally notify the accredited company, setting a period of 10 (ten) days for the presentation of their formal defense.

**Art. 48** The defense must be submitted via a letter to be forwarded through the APS Digital Protocol (<http://protocolo.portodesantos.com.br/login>) and will be analyzed and decided by the Port Authority. The defense will be instructed and judged by SUMAS.

## **Chapter XII - General Provisions**

**Art. 49** Omitted cases will be evaluated by the Port Authority and addressed in accordance with applicable legal and regulatory provisions.

**Art. 50** Considering Direxe Decision No. 168.2024, in its 2425th Ordinary Meeting held on 04/10/2024, approving the revision of the Port Authority Regulation (NAP) SUMAS.OPR.021.2023,

**Art. 51** It was decided to repeal the Port Authority Regulation (NAP) - NAP.SUMAS.OPR.021.2023, and

**Art. 52** This Port Authority Regulation (NAP) comes into force on the date of its publication.

**Anderson Pomini**  
CEO

**Min.SUMAS – SDD No. 10332/2023**