



26 February 2025

To whom it may concern:

Comments of the International Chamber of Shipping in Relation to Santos Port Authority (APS) Normative NAP.SUMAS.OPR.023.2024

The International Chamber of Shipping (ICS) submits the following comments to highlight concerns about the recently reinstated rule requiring all ships to submit a new additional certificate of compliance with international ballast water management (BWM) standards, i.e. in addition to the current certification and verification requirements under the International Ballast Water Management Convention (BWMC), to get access into the Port of Santos pursuant to APS Normative NAP.SUMAS.OPR.023.2024.

ICS respects the right of a local port authority, such as APS, to verify compliance with international conventions to protect the marine environment. ICS also recognises the importance of effective BWM in protecting marine ecosystems and supports compliance with the BWMC.

ICS respectfully submits however that the approach taken by APS is unnecessary and does not align with the aims of the BWMC, particularly Article 7(2) of BWMC which in effect provides that vessels must not be subjected to redundant certification procedures when already meeting the international standards¹ and requests for APS Normative NAP.SUMAS.OPR.023.2024 to be annulled.

About ICS

ICS is the global trade association for shipowners and operators, representing the world's national shipowner associations from 40 countries and over 80% of the world merchant fleet comprising all sectors (passenger, tanker, bulk carriers, etc) and trades. ICS was established to ensure the development and application of best practices throughout the shipping industry to ensure high operational standards and safe shipping. To that end, ICS strives for a regulatory environment which embraces safe shipping operations, seafarer welfare, protection of the environment, maintenance of open markets and adherence to internationally adopted standards and procedures. ICS has actively contributed to the development and implementation of the BWMC, adopted by the International Maritime Organisation (IMO) in 2004, and is also actively participating in IMO discussions relating to the review of the BWMC, which should result in the amended BWMC being approved and adopted by IMO by December 2026.

Background

ICS has been monitoring closely the ongoing legal and regulatory developments concerning additional ballast water certification requirements at the Port of Santos. In April 2024, the APS, the federal public company managing the port, introduced Normative NAP.SUMAS.OPR.023.2024, mandating that all vessels obtain a statement of compliance, referred to as BWM Compliance Certificate (AC-BWM), from an APS-accredited private company to verify adherence to ballast water regulations under the BWMC and NORMAM-401/DPC

¹ Under Article 7 (2) of the BWMC, "A Party implementing measures pursuant to Article 2.3 and Section C of the Annex shall not require additional survey and certification of a ship of another Party, nor shall the Administration of the ship be obliged to survey and certify additional measures imposed by another Party. Verification of such additional measures shall be the responsibility of the Party implementing such measures and shall not cause undue delay to the ship".

in the Port of Santos. This new requirement, which officially took effect on 21 August 2024, is set out as a condition to obtain permission from APS to enter the Port of Santos.

Under the regulation, ships must email directly to the APS accredited company the following documents:

- the International Ballast Water Management Certificate (IBWMC);
- the first five pages of the Ballast Water Management Plan (BWMP);
- the Ballast Water Reporting Form (BWRP), referred to as Annex B form, which contains information about the ship, the ballast water (BW) tanks, the BWM indicating the method of BWM, the details of the onboard Ballast Water Treatment System (BWTS) and the Ballast Water Exchange (BWE) as well as the quantity of ballast water taken at source and discharged; and
- the type approval certificate of the Ballast Water Management System (BWMS), which the IMO has approved and issued, directly to the licensed company.

After receiving the documents listed above, the APS-accredited company will have 24 hours to analyse the case using an AI verification system and issue the AC-BWM for the ship to upload on the Paperless Port System (PSP), the digital platform implemented by the Brazilian government to streamline port operations, to obtain permission from the port authority to enter the Port of Santos. The APS accredited company has the right to charge a fee for the provision of the AC-BWM which, will be freely negotiated.

To date, however, only one service provider has been authorised by APS to issue this certification. Moreover, while the timeframe for analysis and issuance of the AC-BWM by the accredited company is relatively short with certificates being issued within 30 to 50 minutes of submission of the relevant documentation, the cost is disproportionately high, between USD 1,390 and USD 1,700 per ship and which is levied each time the vessel calls at the port.

In September 2024, Brazil's National Agency of Waterway Transport (ANTAQ) nullified this regulation. ICS understands that APS has now obtained a ruling by the Federal Regional Court of the 1st Region in Brasilia that suspends ANTAQ's decision to nullify Normative NAP.SUMAS.OPR.023.2024. As of 13 February 2025, the rule of APS that requires ships to present an AC-BWM to enter the Port of Santos is reinstated. ANTAQ is now challenging the court's ruling in these procedures.

ICS Position on the APS Normative (NAP.SUMAS.OPR.023.2024)

The BWMC, which is already applicable in the Port of Santos by virtue of Brazil's ratification of the Convention on 14 April 2010 and entry into force on 8 September 2017, provides, in Articles 7 and 9, for a rigorous system of certification and verification to ensure compliance with the internationally accepted BWM standards. These are the same standards that the APS Regulation aims to enforce but that now must be certified through an additional certification regime.

Under the BWMC system, ships must always carry on board an IBWMC which is issued by the flag State and certifies that the ship carries out BWM in accordance with the BWMC and specifies which standard the ship is complying with, as well as the expiration date of the certificate. Additionally, in accordance with the BWMC requirements, ships have to carry a ship-specific BWMP, also approved by the flag State, and a Ballast Water Record Book (BWRB) to record when, and what quantity of, ballast water is taken on board, circulated or treated for BWM purposes, and discharged into the sea or a reception facility. Accidental or other exceptional discharges of ballast water must also be recorded.

Ships are also subject to port State control (PSC) in any port of a Party to the BWMC, such as Brazil. This inspection can be undertaken at any time while the ship is at the Port of Santos and allows PSC officers to verify compliance based on the requirements listed in Section B of the BWMC. While the details of those requirements are attached at ANNEX A, in brief, the PSC officers are entitled to verify that there is on board a valid IBWMC and an approved BWMP, review records in the BWRB, including those containing the details of the quantity of ballast water taken in and discharged, and take ballast water samples to verify the ballast

water meets discharge standards. The new additional compliance requirement introduced by the Normative only therefore duplicates existing certification and verification requirements under the BWMC (and which are commonly accepted by States and ports around the world, including Brazil), and without it seeming to provide any additional benefit to either the Port of Santos or the surrounding marine environment.

Additionally, and very significantly, under Article 7 (2) of the BWMC, a port authority in a State Party to the BWMC cannot require an additional survey and certification of foreign flagged ships.

In light of the above, ICS submits that the approach taken by APS is superfluous and does not align with the BWMC or its aims. It is worth noting that ICS is not aware that any other State or port in the world where the BWMC is in force has introduced such additional certification requirements. ICS is concerned that, if every State or port were to take a similar approach in relation to the BWMC or any other convention, then that would ultimately undermine the international regulatory framework that Brazil and others negotiate and agree at the IMO and other international forums, and within which global shipping operates – and precisely what Article 7(2) is intended to avoid.

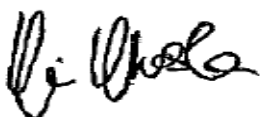
Aside from the legal considerations above, ICS questions the legitimacy of the fee being charged to obtain AC-BWM. As mentioned above, vessels are already required to hold internationally recognised certification under the BWMC, which is a declaration of compliance with BW regulation. Charging a fee which appears to be wholly disproportionate to the services provided, for an additional but redundant certification that only adds costs without providing any additional regulatory benefit, is inexplicable. If this practice continues, it is likely that it will negatively impact the smooth international maritime trade in the Port of Santos and increase the operational costs of those vessels that engage in the trade, which will ultimately be passed on to consumers including those in Brazil.

Conclusion

As mentioned earlier, ICS fully supports effective BWM practices through compliance across Brazilian ports, including the Port of Santos, with the BWMC to protect the marine environment. However, the above observations demonstrate that the approach taken by APS is not only unnecessary, but also does not align with the BWMC, Article 7(2) of which expressly ensures that vessels are not subjected to redundant certification procedures when already meeting the international standards. ICS would, therefore, respectfully request that the rule requiring ships to present an additional certificate of compliance with international BWM regulations requirements in the Port of Santos is annulled.

ICS trusts that the information above is of assistance when considering APS Normative (NAP.SUMAS.OPR.023.2024) in the light of, and against, the International Ballast Water Management Convention and stands ready to answer questions/provide further information and assistance. Any questions relating to the above should be sent to the undersigned via: kiran.khosla@ics-shipping.org and legal@ics-shipping.org.

Yours faithfully,



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