

New York Ballast Water Regulations Policy

March 28, 2011

Issue

As originally enacted, the State of New York imposed new ballast water regulations which were to come into effect on January 1, 2012. As of that date, all vessels operating in New York waters would be required to install environmental technology that could clean or treat ballast water to meet a new water quality standard. The State of New York's standard is 100 times more stringent than international standards established by the International Maritime Organization (IMO) in 2004. It is accepted that at this time there is no known technology which can meet New York's standards. Therefore, as all vessels entering the Great Lakes / St. Lawrence Seaway must pass through New York waters, these regulations would effectively shut down all vessel transits into and out of the Seaway. This would dramatically affect many large ports in Ontario including Windsor, Hamilton, Thunder Bay and Toronto.

Recognizing that the proposed regulations and time frame were unachievable, the State of New York has delayed implementation by 18 months, to August 1, 2013. This extension of the deadline does not solve the problem for the marine industry, it merely delays it.

Background

When not fully loaded, cargo ships must take on water (ballast) to maintain their stability. Once pumped onboard, ballast water is stored in narrow cavities (ballast tanks) built into the hull of a ship. Ballast water pumped onboard in one port may inadvertently contain aquatic organisms that are then released when the ballast is discharged in another port. In most cases, these organisms die; however, in some cases they thrive in their new environment. Multiplying out of control, some non-indigenous species disrupt the local aquatic ecosystem, killing or displacing native fish and plant life. As global trade expands, concern over the movement of aquatic organisms is also growing.

The shipping industry is well aware of the role it plays in moving organisms around the globe and is committed to taking steps to minimize and eventually eliminate the problem.

Today, vessels entering the Great Lakes region undergo the most stringent ballast management and inspection regulations in the world. All vessels entering the Great Lakes from abroad are

required to exchange (pump out) their ballast water while still at sea and flush any empty tanks with ocean water. This practice helps to physically remove organisms from ballast tanks. Further, seawater (which has a high salinity) will kill many freshwater organisms.

To ensure compliance, the US and Canadian governments stop, inspect and test every foreign ship entering the Great Lakes in Montreal – the gateway to the St. Lawrence Seaway. Since these protections were put in place in 2006, there have been no new discoveries of aquatic nuisance species in the Great Lakes.

The Great Lakes marine industry is committed to doing more to eliminate the risk of non-native species entering the Great Lakes through ballast water. The industry supports international rules requiring ocean-going vessel owners to install environmental technology to clean ballast water to standards established by the International Maritime Organization (IMO) in 2004. The IMO is the maritime arm of the United Nations and coordinates international shipping policy.

In October, 2008, the New York Department of Environmental Conservation (NYDEC) proposed state regulations governing the discharge of ballast water from commercial vessels operating in New York's jurisdiction. The regulations seek to address the problem of aquatic nuisance species being introduced into New York waters via ship's ballast water. It is important to note that the state legislation played no role in creation of these regulations. NYDEC regulations were promulgated under authority granted to the state by the federal Clean Water Act. After a brief public comment period, the regulations were finalized on December 17, 2008.

Under New York's rules, by August 1, 2013, all vessels operating in New York waters will be required to install environmental technology that can clean or treat ballast water to meet a specific water quality standard. The State of New York's ballast water quality standard is 100 times more stringent than standards established by the International Maritime Organization (IMO) in 2004. No technology exists to meet this requirement.

NYDEC's rules apply to vessels that call on New York ports, and vessels that transit New York waters destined for ports in other states or provinces. The requirements apply to all vessels regardless of flag. The requirements apply to vessels engaged in both international and domestic trade.

The regulations are impossible for ship owners to comply with because no ballast water treatment technology exists to meet the water quality standards proposed by the NYDEC. The net result is closure of New York ports and closure of the St. Lawrence Seaway.

All commercial vessels operating into / out of the Great Lakes must pass through New York waters on the St. Lawrence River. The State of New York seeks to impose its regulations on all vessels operating in its waters, even if a vessel is not destined for a New York port or is not discharging ballast water.

In this manner, New York's rules will impede the foreign commerce of Ontario and all Great Lakes states, cripple Great Lakes ports, cause job loss in the maritime sector, and make Ontario, the Prairie Provinces and the U.S. Midwest manufacturers and farmers less competitive.

The State of New York seeks to impose its regulations on Canadian vessels sailing from one point in Canada to another point in Canada – even though such vessels may never stop in New York or visit a U.S. port.

Recommendations

That the Federal and Ontario governments:

1. Adopt the position that the State of New York's regulations are beyond the powers of the state (*ultra vires*) because they impede international trade with Ontario and are unenforceable because there is no known technology to meet the standards proposed.
2. Adopt the position that any legislation imposing ballast water standards on vessels utilizing the Great Lakes / St. Lawrence Seaway should be enacted bi-nationally by the Canadian and United States Federal governments, and not unilaterally by individual States and Provinces.
3. Undertake full consultations with affected marine industry interests before any such legislation is enacted and that such legislation must be technologically feasible and economically viable for the marine industry.
4. Take all necessary steps to ensure that the State of New York's regulations are not implemented as proposed and that negotiations with the US government are entered into as soon as possible to facilitate a bi-national solution to this critical issue.