



A LOOMING THREAT

It's time to harmonize discharge regulations

Last July Great Lakes ports called on Congress to end years of regulatory chaos and simplify vessel discharge regulations for the Great Lakes and the nation. In doing so, we joined a national coalition of voices working to enact the Vessel Incidental Discharge Act (VIDA). This critical legislation would maintain existing ballast treatment requirements on ocean-going vessels in the Great Lakes and provide a geographic exemption for those vessels that never leave the system. It would consolidate regulatory oversight of ballast water and other vessel discharges into the U.S. Coast Guard and would pre-empt state regulation.

The bill has been approved by the Senate Commerce Committee and was included in the House-passed version of the National Defense Authorization Act (NDAA). Similar legislation has passed the House of Representatives in a bi-partisan fashion in several of the last Congresses.

Under current law, the U.S. Coast Guard, the Environmental Protection Agency (EPA) and 25 states regulate vessel discharges under two different federal statutes and a variety of state statutes. While some of these rules are harmonized, many are not. This chaotic stew of regulatory requirements threatens the future of maritime commerce on the Great Lakes.

Of particular concern is the folly of state regulation of interstate and international commerce. There is no better example than the State of Michigan. Enacted in 2005, Michigan's ballast discharge regulations took effect in 2007. To discharge in Michigan waters, the rules require ocean-going vessel operators to install one of four Michigan-approved ballast treatment technologies. No shipowner has sought to comply. Instead, operators have ceased carrying export cargoes from Michigan ports.

New York provides another example of the threat of misguided state regulation. In December 2008, the state proposed rules requiring all vessels operating in New York

waters to install ballast water treatment technology by 2012. Such technology was to achieve a water quality standard 100 times more stringent than federal standards. No such technology exists. Of key significance, the State of New York extended its regulatory requirements not only to ships discharging in New York waters, but also to vessels transiting New York waters destined for the ports of other Great Lakes states and provinces. After two years of intense lobbying, including pressure from both the U.S. and Canadian federal governments, the state ultimately backed off and harmonized its rules with federal regulations.

Beginning in 2018, both Minnesota and Wisconsin will require lakers to install ballast water treatment systems. This is not only a technically problematic requirement, but its cost will be considerable and its benefit minimal. Lakers do not operate beyond the Great Lakes and do not present a risk of introducing invasive species.

Regulatory problems can be found in other states such as Ohio and Wisconsin, where state ballast regulations prohibit the discharge of saltwater even though both states require ocean-going vessels to conduct mid-ocean ballast exchange with the specific goal of filling ballast tanks with saltwater.

As these examples illustrate, the threat of inconsistent regulation is very real and the next wave of regulatory chaos is coming. Under the EPA's so-called vessel general permit, national regulatory requirements are established for ballast water and other vessel discharges. Each state is then allowed to add additional requirements to the underlying federal rules. Because this process repeats itself every five years, the threat of new, inconsistent regulation will also repeat itself. The EPA's first vessel general permit was issued in 2008, the second in 2013. By 2018, the agency must put in place the next permit, which means that debate on the new requirements will begin in 2017.

There is further cause for concern. After

the last vessel general permit was issued by EPA in 2013, the agency was sued by environmental groups arguing that the agency's rules were not tough enough. In October 2015, a federal appeals court agreed and ordered EPA to reconsider a number of issues when it formulates its next permit for 2018. Key among those issues is EPA's reliance on international (IMO) water quality standards for ballast discharges, an exemption for lakers operating exclusively in the Great Lakes and a failure to consider onshore treatment options. Each of these issues is of huge concern for the Great Lakes maritime industry.

Ports should be particularly leery of the court's opinion regarding onshore treatment. For more than two decades, policymakers have focused on shipboard treatment options. By launching a discussion of shore-side treatment, the court could very well initiate a new regulatory approach, one that shifts costs from the vessel owners to ports, terminals or local government.

While these inconsistencies in state regulation are annoying, the true folly of state regulation lies in its underlying premise—that individual states can protect their waters. This is simply not true. State waters of the Great Lakes are contiguous with those of other states and provinces. True environmental protection can only be achieved through federal regulation.

The Vessel Incidental Discharge Act will establish a single, comprehensive federal program to protect the environment while eliminating the regulatory chaos that threatens commerce. Congress should approve this critical legislation as soon as possible. ■

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