



BALLAST WATER DEVELOPMENTS

A dose of reality in substance and in tone

The current capabilities and limitations of ballast water science and technology are finally being better understood by more people. Several recent developments underscore this encouraging step in the right direction after years of misinformation and missteps. These developments—each the result of determinations based on scientific research and facts—is changing the substance and tone of the ballast water discourse in a helpful and productive way.

In December, the Wisconsin Department of Natural Resources (WDNR) released its ballast water feasibility report that addressed two primary questions: 1) Is there technology available today to meet the WDNR proposed standard that is 100 times more stringent than the standard proposed by the International Maritime Organization (IMO); and, 2) Is it feasible to install such technology on existing and new commercial vessels?

To its credit, the WDNR sought to base its recommendation on scientific research and only after consulting with a wide variety of interested stakeholders. Wisconsin relied, in part, on the assistance of the Great Lakes Ballast Water Collaborative (BWC) to confer with many of the leading scientists in the world regarding ballast water treatment and verification. The BWC is comprised of Great Lakes stakeholders, including representatives from state and provincial governments, U.S. and Canadian federal regulatory agencies, representatives from the U.S.-flag, Canadian-flag and international fleets, leading ballast water scientific researchers, non-governmental organizations and ballast water treatment system vendors. The BWC meets periodically in an effort to facilitate an open and substantive discussion about how to better protect against the introduction and spread of aquatic invasive species.

In addition to gathering critical information, the WDNR also carefully listened to all Great Lakes stakeholders—no small

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- Testing protocols are not currently available to verify compliance with Wisconsin's standard
- Treatment technologies to meet its standard are not commercially available at this time
- It is not feasible to install ballast water treatment systems on existing or new vessels at this time. Open-ocean saltwater flushing has been proven to be effective in helping reduce the threat of aquatic non-indigenous species to U.S. waters. As a result, the WDNR will retain this practice for the long term in an effort to better protect Wisconsin waters.

Based on these findings, the WDNR proposed that its permit be modified to harmonize with the IMO Regulation "D-2 Standard," effective in 2012 for new ocean-going vessels and in 2014 for existing ocean-going vessels entering Wisconsin waters.

Significantly, the WDNR also concluded that no commercial vessel would install any treatment system unless and until that system received "type approval" from the U.S. Coast Guard (USCG). Because they cannot operate without insurance, commercial ships transiting the Great Lakes will not install a ballast water treatment system

unless it is approved by the USCG. No insurer will underwrite a vessel to operate in U.S. waters with a treatment system that has not been type-approved. This finding by the WDNR is important because it acknowledges that the states must work with federal regulators when promulgating standards or installation timetables. Failure to recognize this fact is a failure to recognize reality and the crucial role of the USCG in this regulatory process.

In another important development, the California State Lands Commission (CSLC) released a report in early January announcing its intention to reexamine its proposed discharge standard in light of the scientific evidence that calls into question the standard's feasibility. Even prior to the publication of the December 2008 Vessel General permit by the U.S. Environmental Protection Agency, the State of California has been actively involved in addressing the threat of aquatic invasive species released into its waters. The CSLC was one of the first state agencies to establish aggressive ballast water discharge standards—through state law—that other states relied on to support their own aggressive standards. Earlier CSLC reports had determined that there are ballast water treatment technologies available that could "potentially" meet its discharge standards and that its performance standard of "zero detectable living organisms" was achievable.

The most recent CSLC report, however, acknowledges for the first time that these

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determinations need to be reconsidered. As a result of this significant development, those who have pointed to California's justifications to defend comparable standards will now have to acknowledge this change of position and how it affects them.

Forward progress is being made on the federal rulemaking front as well. It was publically announced that the USCG is preparing to issue its ballast water final rule by the end of April. The promulgation of a national standard has been long-awaited by both industry and the environmental community. The USCG's herculean efforts to consult and rely on science will help ensure that this standard can be fairly and effectively implemented.

One might say that rationality and constructive, respectful discourse are breaking out in the realm of ballast water, where hyperbole once was the order of the day. Thanks to the many individuals and institutions that have sought to bring scientific research and fact into the discussion, an environmentally responsible and commercially feasible way forward is emerging. Due to their responsible and persistent efforts, science is now center-stage and clearly making a decidedly positive contribution to the process. ■



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