

ISSUE BRIEF - New York regulations threaten Great Lakes trade and commerce

BACKGROUND:

Under the U.S. federal Clean Water Act, the U.S. Environmental Protection Agency (EPA) put in place a permitting system, effective February 2009 (“Vessel General Permit”), governing the incidental discharge of effluent from vessels in U.S. waters. This permitting system allows individual U.S. states to attach additional and/or more stringent regulations.

Throughout the U.S. Great Lakes and St. Lawrence River system, a number of states quickly availed themselves of this jurisdictional authority and have unilaterally put in place their own regulations.

In August 2009, the U.S. Coast Guard (USCG) also came forward with a proposed rulemaking regulating ship’s ballast water, but unfortunately such rules do not have authority over individual state regulations and thus still do not provide any uniform federal standard.

To date, the State of New York has put in place not only the most stringent regulations, but also the most unreasonable and crippling regulations. Such regulations

- require existing ships to use technology that has not even been developed in order to clean ballast water
 - 100 times greater than the International Maritime Organization (IMO) standard, by January, 2012
- require ships built after January 1, 2013 to use technology to clean ballast water
 - 1000 times greater than the IMO standard
- do not regulate a ship’s discharge of ballast water, but rather, the simple transit of ships containing ballast water through New York waters (i.e. Ballast water is not typically released from a vessel during transit.)

Legal Challenge: In December, 2008, a group of Great Lakes ports, vessel operators and marine industry associations challenged the New York ballast water regulations in state court on the grounds that New York exceeded its authority under the Clean Water Act and U.S. Constitution and failed to follow New York administrative law and environmental review requirements. On June, 1, 2009, the New York court rejected the petition with little explanation. In August, 2009, the same plaintiffs appealed the court’s decision. On February 4, 2010, the New York State Supreme Court Appellate Division - Third Department denied the appeal. Further legal action by the industry is currently under consideration.

IMPACT:

- **Closure of Great Lakes and St. Lawrence Seaway via New York blockade**

As all vessels transiting upbound into the Great Lakes through the St. Lawrence Seaway must pass through New York waters, effective January 2012, non-compliant ships could be prevented from passing through New York and thus the St. Lawrence Seaway, Great Lakes and all of the ports and industry in the entire system.

Today, no vessel in the world is able to comply with New York’s ballast water standard.

- **Disruption of U.S. Inter-State, Canadian inter-Provincial and international trade**

By preventing non-compliant ships from transiting through New York waters, these regulations could effectively prevent not only international trade but also trade between U.S. States and between Canadian provinces.

- **Threat to Great Lakes industry/manufacturing, economy, jobs**

Effective January 1, 2012, many of the Great Lakes' largest industrial and manufacturing companies may be unable to ship material to/from North American and international markets.

The Great Lakes' largest industrial companies – and the broader economy that depend on their raw materials – face severe disruption.

REQUIRED ACTION:

- **Stop the runaway regulatory patchwork**

New York and other U.S. states that are acting unilaterally must freeze/withdraw their proposed patchwork of regulations until a rational uniform federal standard can be developed.

- **Washington must act**

Despite the recent proposed rulemaking by the USCG, Washington has not taken any national leadership role on this issue. One way or another, Washington must put in place a uniform federal standard encompassing all State jurisdictions that is also ideally harmonized with international jurisdictions.

