

Ballast Water Discharges – Protecting New York’s Waters from Aquatic Invasive Species

by Donald E. Tuxill

Non-native invasive species, a form of biological pollution, are defined as species that are “non-native to the ecosystem under consideration, whose introduction causes or are likely to cause economic or environmental harm or harm to human health.” Populations of invasive species, of which the zebra mussel is probably the most well known, may grow rapidly, competing with and negatively impacting the survival of organisms native to the Great Lakes and other New York waters. Ballast water discharges are a significant pathway for the introduction of these aquatic invasive species and are thought to be the source of at least 65 percent of the new introductions into the Great Lakes since the opening of the St. Lawrence Seaway in 1959.

As part of the fight against the incursion of invasive species, New York has been pressing the US Environmental Protection Agency (EPA) for measures to control ballast water. On December 19, 2008, ballast water and other vessel discharges formerly exempted from EPA’s permitting became subject to regulations under the Clean Water Act (CWA) when EPA issued the Vessel General Permit (VGP) for vessels at least 79 feet in length. The VGP establishes effluent limits and Best Management Practices (BMPs) for ballast water and other vessel incidental discharges.

As part of the CWA, individual

states can attach conditions to a federal permit to maintain and protect the state’s water quality standards. New York State did this by requiring the installation of ballast water treatment technology to treat the water to meet state specific ballast water discharge standards.

New York’s conditions for the discharge of ballast water apply to any vessel in its waters, whether vessels discharge ballast water or not. Some municipalities and shipping groups filed a legal challenge to New York’s conditions attached to the VGP citing, among other things, that ships not discharging within New York waters should not be required to install ballast water treatment technology. The NYS Supreme Court reviewed the case and ruled that the state regulation was sound and binding, and this ruling was upheld in the State Appellate Division and the State Court of Appeals.

New York State’s Conditions for Ballast Water:

1. Ballast water exchange and/or flushing for all vessels is required in entering New York’s waters, not just vessels from outside 200 miles of New York’s coast.
2. All vessels, except military vessels, will comply with ballast water discharge standards starting on January 1, 2012, which will require the installation of ballast water treatment.
3. Ships constructed on or after January 1, 2013 are to employ technology to meet ballast water discharge standards, which are even more protective of New York’s waters.

There are safety exemptions and time extensions available, if



Right: The well known zebra mussel, example of an invasive species in the Great Lakes

Source: NYCDEC webpage



An example of a laker vessel that travels the Great Lakes with ballast discharge permit requirements

Nicole Meys, Northwest-Midwest Institute

justified, and certain exemptions are provided for vessels operating exclusively within the Great Lakes, New York Harbor and Long Island Sound.

New York recognized that some ships cannot quickly adapt to the new regulation and discharge standards, and will require some time for refurbishment to install the treatment technology. The deadline for submitting extension requests was June 30, 2010. The state's Department of Environmental Conservation (NYSDEC) received approximately 1,400 requests.

On February 7, 2011, the state granted a general extension until August 1, 2013 for Condition 2. The extension stated explicitly that the ship operators are expected to play an active role in ensuring the timely availability of technology needed to comply with Condition 2 and in installing compliant treatment systems on vessels. Several industry publications have been released to assist vessel operators in selecting appropriate ballast water treatment technology for their fleets. These include: "Ballast Water Treatment Advisory" by the American Bureau of Shipping; "Ballast Water Treatment Technology: Current Status" and "Ballast Water Treatment Systems: Guidance for Ship Operators on Procurement, Installation and Operation" by Lloyd's Register; as well as several other International Maritime Organization and company specific guidance documents. Additionally, New York has named a technology capable of meeting New York's discharge standards for Condition 2.

In consideration of the commercial capacity to install ballast water treatment systems to meet New York's standards, additional time extensions may be granted, if the vessel owner/operator can demonstrate vessel specific data and difficulty causing the installation delay, and documentation showing the vessel owner/operator has been

working with ballast water treatment vendors in advancing the treatment technology. The NYSDEC will continue to engage the shipping industry on the issue of ballast water treatment technology.

Next Draft and Final VGP

The EPA plans to release the draft of the next VGP Fall 2011, and finalize the permit Fall 2012. Visit NYSDEC's website at: <http://www.dec.ny.gov/permits/72399.html>, for further updates.

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