



WORKING TO ACHIEVE A BALANCE

Great Lakes shipping industry confronts two proposed major regulatory changes

August 28, 2009: a day that saw two important regulatory proposals published in the Federal Register, both of which carry significant impact for Great Lakes Seaway System shipping.

On that day, the long-awaited U.S. Coast Guard (USCG) ballast water management regulations were proposed. In addition, the U.S. Environmental Protection Agency (EPA) acted to propose extending new air emission rules to the Great Lakes. Both of these proposed rules fundamentally affect the commercial maritime industries that ply the Great Lakes and the St. Lawrence Seaway. In fact, no one I've spoken to can recall a time when two proposed rules of such significance were published simultaneously to confront the industry.

Comedy is not the only discipline where timing and context are vitally important—they are equally determinative in how regulation affects the industries being regulated. When it comes to these two important proposed environmental regulations, however, nobody is laughing, and it is important to remember that effective regulation seeks to achieve a balance. Here, that is a balance between the very real need for effective environmental regulation and the equally real global competitive pressures that affect the day-to-day operations of the industry.

The Coast Guard is proposing to establish standards for the allowable concentration of living organisms in ships' ballast water discharged in U.S. waters. It also proposes to amend its regulations for approving engineering equipment by establishing an approval process for ballast water management systems. It is a two-phase rule-making. The first phase adopts the draft International Maritime Organization standard for ballast water discharges. Phase two, to take effect in 2016, would adopt a more stringent standard, modeled on standards developed by several states. Based on technological developments, a practicability review would be conducted to determine if the implementation date for phase two

might be advanced or relaxed. The proposed rule applies to vessels with ballast tanks that operate in U.S. waters, unless they are in innocent passage.

The EPA regulations propose new air emission rules on large ocean-going vessels and will have far-reaching implications for Great Lakes shipping. The proposal applies a new Emission Control Area or ECA designation to the Great Lakes that requires transiting ships to meet significantly stricter air emissions and fuel standards. It will affect companies that manufacture, sell or import into the U.S. new marine compression-ignition engines with per cylinder displacement at or above 30 liters (Category 3 marine diesel engines) for use on vessels flagged or registered in the U.S.; companies and persons that make vessels that will be flagged or registered in the U.S. and use these types of engines; and the owners or operators of these U.S. vessels. The new Clean Air Act program would not apply to marine diesel engines on foreign vessels that enter U.S. ports. The near-term standards for newly-built engines would apply beginning in 2011; long-term standards would begin in 2016. Additionally, sulphur content in fuel would have to be reduced from 1 percent in 2012 and to 0.1 percent in 2015 for Category 3 marine vessels, forcing the shipping industry to move from residual fuel oil to refined diesel fuel by 2012.

Both of these regulatory proposals are significant steps forward in the effort to improve the environment. Yet, they will also raise the costs of doing business for the commercial maritime industry, which will affect the industry's ability to remain competitive in a fierce global marketplace. How much they will affect that competitiveness is a question that needs to be answered. Moreover, both proposed regulations raise the question of unintended consequences, particularly in the form of potential modal shifts (as the cost of water transportation increases, will cargo move

from the water to surface roads and rails, and if so, how much?).

In the case of the ballast water regulations proposed on August 28, the USCG has provided 90 days to receive well-thought-out answers to these contextual questions. It is incumbent upon all those with a stake in the system's commercial maritime industry to provide the USCG with thorough answers by the end of the comment period, which closes on December 4. EPA provided only 30 days for comments to its air emissions rule, which closed on September 28. While some stakeholders were able to file comments, many others sought an extension in order to conduct a proper scientific review and analysis of such a far-reaching proposal. In both rule-making procedures, there will be a review of comments, revisions to the Notice of Proposed Rulemaking and the publication of the Final Rule for each proposal.

Environmental groups rightly call for steps by the commercial maritime industry to conduct their business in more environmentally-friendly ways. At the same time, the severe recession of the past two years has greatly restricted the commercial maritime industry's ability to invest in costly new fuels and technologies. Moreover, recent polls indicate that rarely, if ever before, has the issue of the competitiveness of the American economy and its ability to sustain and create jobs been more important. With all these factors in play as we move forward to establish new national rules on ballast water and air emissions, it is critical that all interested stakeholders, particularly those from industry, communicate their positions on these proposals so that the gravity of their impact can be fully understood. ■

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