

New York State Department of Environmental Conservation

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Alexander B. Grannis
Commissioner

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U.S. Department of Homeland Security
United States Coast Guard
Environmental Standards Division
2100 2nd St. S.W. Rm 1601
Washington, DC 20593-0001

Re: Proposed Ballast Water Discharge Standard

To whom it may concern:

The New York State Department of Environmental Conservation (henceforth "the Department"), appreciates the opportunity to review and provide comments on the U.S. Coast Guard's proposed "Standards for Living Organisms in Ship's Ballast Water Discharged into U.S. Waters." The establishment of a strong, environmentally protective, national ballast water discharge standard is a critical and necessary component of the nation's invasive species programs. The goal of these programs is to prevent the introduction of invasive species, a form of biological pollution, to provide for their control, and to minimize the economic, ecological, and human health impacts that invasive species cause.

While the Coast Guard's process to develop such a national standard, mandated by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, has taken longer than would be ideal, we are pleased that a proposed standard has been made publicly available, along with a draft programmatic environmental impact statement. In addition, we urge the Coast Guard to release an updated Environmental Technology Verification Protocol, one of the remaining key elements of the Coast Guard's ballast management program, for public comment such that an approved final protocol can be established for the verification of ballast water treatment technology.

The Department is pleased to note that the Coast Guard proposes to establish a concentration-based numerical discharge standard. A concentration-based standard is clearly needed as a replacement for ballast water exchange and flushing because the results of exchange and flushing are so highly variable. However, the Department considers the Coast Guard's proposed "phase one" numerical standard, equivalent to the International Maritime Organization's (IMO) D-2 ballast water discharge standard, to be far too weak. In the Coast Guard's own words, the "phase one" standard would provide only "minor to moderate reductions" in introductions of invasive species.

The Department considers the Coast Guard's proposed "phase two" standard to be much more protective of our waters. This standard is 1000 times more environmentally protective than the IMO D-2 ballast water discharge standard. The proposed "phase two" standard is similar to the standard the U.S. delegation to the IMO Convention requested, as well as the ballast water discharge standards currently adopted by the State of California and proposed by the State of Wisconsin via legislative authority, and by the States of Pennsylvania and New York via 401 water quality certifications to the Environmental Protection Agency's (EPA) Vessel General Permit (VGP). The establishment of a national discharge standard equivalent to the most stringent state standards currently in place would result in a consistent national regulatory framework for vessels that navigate in U.S. waters. In addition, the establishment of a strong, environmentally protective standard will result in the development and production of advanced technology to meet product demand. Numerous examples of similar technology-driven environmental regulations exist, demonstrating the practicality of such policies.

We urge the Coast Guard to increase the initial "phase one" standard to a more environmentally protective standard than the IMO D-2 standard proposed, such as 100 times IMO, and to increase the implementation schedule for such an improved "phase one" standard to a timeline that is not only responsive to the urgency of the problem but also consistent with existing state requirements. The 100 X IMO standard is the most protective of the three "phase one" alternatives presented in this proposed rule. Alternatively, the Coast Guard could bypass "phase one" and go directly to the 1000 X IMO "phase two" standard. New York State's 401 certification to the EPA VGP requires existing vessels to install ballast water treatment technology that meet a discharge standard of 100 X IMO by 2012 and 1000 X IMO for new vessels beginning 2013. More than forty ballast water treatment technology products have been developed, or are in development, a number of which already have the capability to treat to a standard 1000 times more stringent than the proposed phase one IMO D-2 standard.

The Department supports the Coast Guard approach of applying the proposed discharge standard to all waters of the United States. That being said, some New York waters have been particularly vulnerable to invasion, as demonstrated by the more than 180 nonnative species that have become established within the Great Lakes. Ship ballast water has been the source of introduction for between 55 and 70 percent of the total documented aquatic invasive species within the Great Lakes. Although the Coast Guard's mandatory ballast water management program partially reduced the risk of new introductions from ocean going vessels, it was not until the implementation of recent Seaway regulations in 2008 that all vessels entering the Great Lakes were required to conduct ballast water exchange and/ or flushing. The fact that the Great Lakes are a drinking water source, and an irreplaceable freshwater natural resource, warrants implementation of strong environmental regulations to protect such waters from the introduction of new biological pollutants, such as invasive species, and from the establishment of new populations of existing invasive species within these waters. Implementation of a national ballast water discharge standard needs to protect all waters, including the most vulnerable. A sufficiently environmentally protective standard, such as 1000 X IMO, is particularly appropriate

for vessels operating within the St. Lawrence Seaway and/ or the Great Lakes. Although we recognize the technical challenges that freshwater environments pose to treatment technology and the difference in construction between ocean going and laker vessels, these should be viewed as challenges to be met rather than excuses for inaction. In considering whether the Coast Guard's "phase one" standard, and the equivalent IMO D-2 standard, are adequately protective of New York and U.S. waters, it is important to recall that, only a few years ago, the Coast Guard took the position that the IMO standard was not adequate and favored the much stricter standard we now call 1000 X IMO.

In closing, the New York State Department of Environmental Conservation would like to thank the U.S. Coast Guard for providing us the opportunity to review and comment on the proposed ballast water discharge standard. While we are pleased to see the proposed discharge standard published for public comment, we would emphasize the importance of achieving greater control of ship ballast mediated invasive species introductions and population expansions by implementing strong national discharge standards such as 100 X or 1000 X IMO in the near future. The U.S. Coast Guard's final ballast water discharge rule needs to be more environmentally protective than the proposed IMO D-2 standard and needs to be implemented on a schedule that more closely mirrors existing state requirements, while maintaining the goal of a national standard of 1000 X IMO.

In addition to the comments presented today, the Department plans to submit written comment pertaining to various details of the proposed standard, and the associated draft environmental impact statement, to the docket prior to the December 4 deadline.

Sincerely,



James M. Tierney
Assistant Commissioner