S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. KOON, FIELDS, PHEFFER, CAHILL -- Multi-Sponsored by -- M. of A. GLICK -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to ballast water management

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The legislature finds that some nonindigenous species and certain pathogens have the potential to cause economic, environmental and health and safety damage to the state and that current efforts to stop the introduction of nonindigenous species and certain pathogens from shipping vessels do not adequately reduce the risk of new introductions into New York's waters. New York's interest in protecting the health, safety and welfare of its citizens, its natural resources and environment is a legitimate local interest falling well within the traditional police powers of the several states.

The legislature, however, recognizes the international ramifications and the rapidly changing dimensions of this issue, as well as the difficulty that any one state has in either legally or practically managing this issue. However, congress, recognizing that the states and the federal government should work in concert on this issue, inserted into the National Indigenous Species Act of 1996, 16 U.S.C. S 4701 et seq., a specific provision, at 16 U.S.C. S4725, which disclaims congressional intent to preempt states from acting to control nonindigenous species. Acknowledging the possible limits of state jurisdiction over international waters, the legislature declares its support for the efforts of the United States coast guard and international maritime organizations. New York intends to complement the United States coast guard's ballast water management program.

S 2. Article 17 of the environmental conservation law is amended by adding a new title 21 to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD02463-01-9

TITLE 21
BALLAST WATER MANAGEMENT

SECTION 17-2101. SHORT TITLE.
17-2103. DEFINITIONS.
17-2105. APPLICATION.
17-2107. AUTHORIZED BALLAST WATER DISCHARGE.
17-2109. REPORTING AND SAMPLING REQUIREMENTS.
17-2111. VIOLATIONS AND PENALTIES.

S 17-2101. SHORT TITLE.

THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "BALLAST WATER MANAGEMENT ACT".

S 17-2103. DEFINITIONS.

AS USED IN THIS TITLE:

1. "BALLAST TANK" MEANS ANY TANK OR HOLD ON A VESSEL USED FOR CARRYING BALLAST WATER, WHETHER OR NOT THE TANK OR HOLD WAS DESIGNED FOR THAT PURPOSE.

2. "BALLAST WATER" MEANS ANY WATER AND MATTER TAKEN ON BOARD A VESSEL TO CONTROL OR MAINTAIN TRIM, DRAFT, STABILITY OR STRESS OF THE VESSEL, WITHOUT REGARD TO THE MANNER IN WHICH IT IS CARRIED.

3. "EMPTY/REFILL EXCHANGE" MEANS TO PUMP OUT UNTIL THE BALLAST TANK IS EMPTY OR AS CLOSE TO EMPTY AS THE MASTER OR OPERATOR OF THE VESSEL DETERMINES IS SAFE, THE BALLAST WATER TAKEN ON IN PORTS, ESTUARINE, OR TERRITORIAL WATERS, AND THEN REFILLING THE BALLAST TANK WITH OPEN SEA WATERS.

4. "FLOW THROUGH EXCHANGE" MEANS TO FLUSH OUT BALLAST WATER BY PUMPING IN MIDOCEAN WATER AT THE BOTTOM OF THE BALLAST TANK AND CONTINUOUSLY OVERFLOWING THE BALLAST TANK FROM THE TOP UNTIL THREE FULL VOLUMES OF WATER HAVE BEEN CHANGED TO MINIMIZE THE NUMBER OF ORIGINAL ORGANISMS REMAINING IN THE BALLAST TANK.

5. "NONINDIGENOUS SPECIES" MEANS ANY SPECIES OR OTHER VIABLE BIOLOGICAL MATERIAL THAT ENTERS AN ECOSYSTEM BEYOND ITS NATURAL RANGE.

6. "OPEN SEA EXCHANGE" MEANS AN EXCHANGE THAT OCCURS FIFTY OR MORE NAUTICAL MILES OFFSHORE. IF THE UNITED STATES COAST GUARD REQUIRES A VESSEL TO CONDUCT AN EXCHANGE FURTHER OFFSHORE, THEN THAT DISTANCE IS THE REQUIRED DISTANCE FOR PURPOSES OF COMPLIANCE WITH THIS TITLE.

7. "RECOGNIZED MARINE TRADE ASSOCIATION" MEANS THOSE TRADE ASSOCIATIONS IN THE STATE THAT PROMOTE IMPROVED BALLAST WATER MANAGEMENT PRACTICES BY EDUCATING THEIR MEMBERS ON THE PROVISIONS OF THIS TITLE, PARTICIPATING IN REGIONAL BALLAST WATER COORDINATION, ASSISTING THE DEPARTMENT IN THE COLLECTION OF BALLAST WATER EXCHANGE FORMS, AND THE MONITORING OF BALLAST WATER.

8. "SEDIMENT" MEANS ANY MATTER SETTLED OUT OF BALLAST WATER WITHIN A VESSEL.

9. "UNTREATED BALLAST WATER" MEANS EXCHANGED OR UNEXCHANGED BALLAST WATER THAT HAS NOT UNDERGONE TREATMENT.

10. "VESSEL" MEANS A SELF-PROPELLED SHIP IN COMMERCE OF THREE HUNDRED GROSS TONS OR MORE.

11. "VOYAGE" MEANS ANY TRANSIT BY A VESSEL DESTINED FOR ANY PORT IN THE STATE.

12. "WATERS OF THE STATE" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVISION 2 OF SECTION 17-0105 OF THIS ARTICLE.

S 17-2105. APPLICATION.

1. THIS TITLE SHALL APPLY TO ALL VESSELS CARRYING BALLAST WATER INTO THE WATERS OF THE STATE FROM A VOYAGE, EXCEPT:

A. A VESSEL OF THE UNITED STATES DEPARTMENT OF DEFENSE OR UNITED STATES COAST GUARD SUBJECT TO THE REQUIREMENTS OF SECTION 1103 OF THE

NATIONAL INDIGENOUS SPECIES ACT OF 1996, OR ANY VESSEL OF THE ARMED FORCES, AS DEFINED IN 33 U.S.C. SEC. 1322(A)(14), THAT IS SUBJECT TO THE UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES UNDER 33 U.S.C. SEC. 1322(N);

B. A VESSEL (I) THAT DISCHARGES BALLAST WATER OR SEDIMENT ONLY AT THE LOCATION WHERE THE BALLAST WATER OR SEDIMENT ORIGINATED, IF THE BALLAST WATER OR SEDIMENT DOES NOT MIX WITH BALLAST WATER OR SEDIMENT FROM AREAS OTHER THAN OPEN SEA WATERS; OR (II) THAT DOES NOT DISCHARGE BALLAST WATER IN WATERS OF THE STATE;

C. A VESSEL TRAVERSING THE INTERNAL WATERS OF THE STATE, (I) BOUND FOR A PORT IN CANADA, AND NOT ENTERING OR DEPARTING A UNITED STATES PORT, OR (II) A VESSEL IN INNOCENT PASSAGE, WHICH IS A VESSEL MERELY TRAVERSING THE TERRITORIAL SEA OF THE UNITED STATES AND NOT ENTERING OR DEPARTING A UNITED STATES PORT, OR (III) A VESSEL NOT NAVIGATING THE INTERNAL WATERS OF THE UNITED STATES; OR

D. A CRUDE OIL TANKER THAT DOES NOT EXCHANGE OR DISCHARGE BALLAST WATER INTO THE WATERS OF THE STATE.

2. THIS TITLE SHALL NOT BE DEEMED TO AUTHORIZE THE DISCHARGE OF OIL OR NOXIOUS LIQUID SUBSTANCES IN A MANNER PROHIBITED BY STATE, FEDERAL, OR INTERNATIONAL LAWS OR REGULATIONS. BALLAST WATER CONTAINING OIL, NOXIOUS LIQUID SUBSTANCES, OR ANY OTHER POLLUTANT SHALL BE DISCHARGED IN ACCORDANCE WITH THE APPLICABLE REQUIREMENTS.

3. NOTHING IN THIS TITLE SHALL BE CONSTRUED TO RELIEVE THE MASTER OR OPERATOR IN CHARGE OF A VESSEL OF THE RESPONSIBILITY FOR ENSURING THE SAFETY AND STABILITY OF THE VESSEL OR THE SAFETY OF THE CREW AND PASSENGERS.

S 17-2107. AUTHORIZED BALLAST WATER DISCHARGE.

1. THE OWNER OR OPERATOR IN CHARGE OF ANY VESSEL COVERED BY THIS TITLE SHALL BE REQUIRED TO ENSURE THAT THE VESSEL UNDER ITS OWNERSHIP OR CONTROL DOES NOT DISCHARGE BALLAST WATER INTO THE WATERS OF THE STATE EXCEPT AS AUTHORIZED BY THIS SECTION.

A. DISCHARGE OF BALLAST WATER INTO WATERS OF THE STATE IS AUTHORIZED IF THE VESSEL HAS CONDUCTED AN OPEN SEA EXCHANGE OF BALLAST WATER. A VESSEL IS EXEMPT FROM THIS REQUIREMENT IF (I) THE VESSEL'S MASTER REASONABLY DETERMINES THAT SUCH A BALLAST WATER EXCHANGE OPERATION WILL THREATEN THE SAFETY OF THE VESSEL OR THE VESSEL'S CREW OR PASSENGERS, OR (II) DISCHARGE IS NOT FEASIBLE DUE TO VESSEL DESIGN LIMITATIONS OR EQUIPMENT FAILURE. IF A VESSEL RELIES ON THIS EXEMPTION, THEN IT MAY DISCHARGE BALLAST WATER INTO WATERS OF THE STATE, SUBJECT TO THE REQUIREMENTS OF TREATMENT UNDER PARAGRAPH B OF THIS SUBDIVISION AND SUBJECT TO SECTION 17-2109 OF THIS TITLE.

B. AFTER JULY FIRST, TWO THOUSAND ELEVEN, DISCHARGE OF BALLAST WATER INTO WATERS OF THE STATE IS AUTHORIZED ONLY IF THERE HAS BEEN AN OPEN SEA EXCHANGE OR IF THE VESSEL HAS TREATED ITS BALLAST WATER TO MEET STANDARDS SET BY THE DEPARTMENT. WHEN WEATHER OR EXTRAORDINARY CIRCUMSTANCES MAKE ACCESS TO TREATMENT UNSAFE TO THE VESSEL, CREW OR PASSENGERS, THE MASTER OF A VESSEL MAY DELAY COMPLIANCE WITH ANY TREATMENT REQUIRED UNDER THIS SUBDIVISION UNTIL IT IS SAFE TO COMPLETE THE TREATMENT.

2. THE REQUIREMENTS OF THIS SECTION DO NOT APPLY TO A VESSEL DISCHARGING BALLAST WATER OR SEDIMENT THAT ORIGINATED SOLELY WITHIN THE WATERS OF THE STATE.

S 17-2109. REPORTING AND SAMPLING REQUIREMENTS.

THE OWNER OR OPERATOR IN CHARGE OF ANY VESSEL COVERED BY THIS TITLE IS REQUIRED TO ENSURE THAT THE VESSEL UNDER ITS OWNERSHIP OR CONTROL COMPLIES WITH THE REPORTING AND SAMPLING REQUIREMENTS OF THIS SECTION.

1. VESSELS COVERED BY THIS TITLE MUST REPORT BALLAST WATER MANAGEMENT INFORMATION, INCLUDING INDIVIDUAL BALLAST TANK SAMPLE DATA FOR EACH VOYAGE, TO THE DEPARTMENT USING BALLAST WATER MANAGEMENT FORMS THAT ARE ACCEPTABLE TO THE UNITED STATES COAST GUARD. THE FREQUENCY, MANNER, AND FORM OF SUCH REPORTING SHALL BE ESTABLISHED BY THE DEPARTMENT BY RULE.

2. ALL VESSELS COVERED BY THIS TITLE MUST SUBMIT NONINDIGENOUS SPECIES BALLAST WATER MONITORING DATA TO THE DEPARTMENT. THE MONITORING, SAMPLING, TESTING PROTOCOLS, AND METHODS OF IDENTIFYING NONINDIGENOUS SPECIES IN BALLAST WATER SHALL BE DETERMINED BY THE DEPARTMENT BY RULE.

3. ALL DATA SUBMITTED TO THE DEPARTMENT UNDER SUBDIVISION TWO OF THIS SECTION SHALL ADHERE TO THE SAMPLING AND TESTING PROTOCOLS AS ADOPTED BY THE DEPARTMENT.

4. THE DEPARTMENT SHALL ADOPT RULES TO IMPLEMENT THIS SECTION. THE RULES AND RECOMMENDATIONS SHALL BE DEVELOPED IN CONSULTATION WITH THE STATE DEPARTMENT OF HEALTH, REGULATED INDUSTRIES AND POTENTIALLY AFFECTED PARTIES, INCLUDING BUT NOT LIMITED TO SHIPPING INTERESTS, PORTS, SHELLFISH GROWERS, FISHERIES, ENVIRONMENTAL INTERESTS, INTERESTED CITIZENS WHO HAVE KNOWLEDGE OF THE ISSUES, AND APPROPRIATE GOVERNMENTAL REPRESENTATIVES INCLUDING THE UNITED STATES COAST GUARD.

A. THE DEPARTMENT SHALL SET STANDARDS FOR THE DISCHARGE OF TREATED BALLAST WATER INTO THE WATERS OF THE STATE. SUCH STANDARDS SHALL ENSURE THAT THE DISCHARGE OF TREATED BALLAST WATER POSES MINIMAL RISK OF INTRODUCING NONINDIGENOUS SPECIES. IN DEVELOPING SUCH STANDARDS THE DEPARTMENT SHALL CONSIDER THE EXTENT TO WHICH THE REQUIREMENT IS TECHNOLOGICALLY AND PRACTICALLY FEASIBLE. WHERE PRACTICAL AND APPROPRIATE, THE STANDARDS SHALL BE COMPATIBLE WITH STANDARDS SET BY THE UNITED STATES COAST GUARD AND SHALL BE DEVELOPED IN CONSULTATION WITH FEDERAL AND STATE AGENCIES TO ENSURE CONSISTENCY WITH THE FEDERAL CLEAN WATER ACT, 33 U.S.C. S 1251-1387.

B. THE DEPARTMENT SHALL ADOPT BALLAST WATER SAMPLING AND TESTING PROTOCOLS FOR MONITORING THE BIOLOGICAL COMPONENTS OF BALLAST WATER THAT MAY BE DISCHARGED INTO THE WATERS OF THE STATE UNDER THIS TITLE. THE SAMPLING AND TESTING PROTOCOLS MUST CONSIST OF COST-EFFECTIVE, SCIENTIFICALLY VERIFIABLE METHODS THAT, TO THE EXTENT PRACTICABLE AND WITHOUT COMPROMISING THE PURPOSES OF THIS TITLE, UTILIZE EASILY MEASURED INDICES, THAT INDICATE THE POTENTIAL PRESENCE OF NONINDIGENOUS SPECIES OR PATHOGENIC SPECIES. THE DEPARTMENT SHALL SPECIFY APPROPRIATE QUALITY ASSURANCE AND QUALITY CONTROL FOR THE SAMPLING AND TESTING PROTOCOLS.

5. THE DEPARTMENT SHALL UTILIZE MONITORING DATA TO MONITOR THE EFFECTIVENESS OF NATIONAL AND INTERNATIONAL EFFORTS TO PREVENT THE INTRODUCTION OF NONINDIGENOUS SPECIES, TO EVALUATE THE RISK OF NEW, NONINDIGENOUS SPECIES INTRODUCTIONS FROM THE DISCHARGE OF BALLAST WATER, AND TO EVALUATE THE ACCURACY OF BALLAST WATER EXCHANGE PRACTICES.

6. THE DEPARTMENT SHALL CONSULT WITH FEDERAL AND STATE AGENCIES, REGULATED INDUSTRIES AND POTENTIALLY AFFECTED PARTIES IN CARRYING OUT THE PROVISIONS OF THIS SECTION. TO THE EXTENT PRACTICABLE, THE DEPARTMENT MAY DEVELOP PILOT PROJECTS TO ENCOURAGE THE DEVELOPMENT OF EQUIPMENT OR METHODS TO TEST AND/OR TREAT BALLAST WATER.

S 17-2111. VIOLATIONS AND PENALTIES.

1. EXCEPT AS LIMITED BY SUBDIVISION TWO OR THREE OF THIS SECTION, THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY IMPOSE A CIVIL PENALTY OR WARNING FOR A VIOLATION OF THE REQUIREMENTS OF THIS TITLE ON THE OWNER OR OPERATOR IN CHARGE OF A VESSEL WHO FAILS TO COMPLY WITH THE REQUIREMENTS IMPOSED UNDER SECTION 17-2109 OF THIS TITLE. THE PENALTY SHALL NOT EXCEED FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN DETERMINING THE AMOUNT OF CIVIL PENALTY, THE DEPARTMENT SHALL CONSIDER IF THE

VIOLATION WAS INTENTIONAL, NEGLIGENT, OR WITHOUT ANY FAULT, AND SHALL CONSIDER THE QUALITY AND NATURE OF RISKS CREATED BY THE VIOLATION. THE OWNER OR OPERATOR IN CHARGE OF A VESSEL SUBJECT TO SUCH A PENALTY MAY CONTEST THE DETERMINATION BY REQUESTING AN ADJUDICATIVE PROCEEDING FROM THE DEPARTMENT WITHIN TWENTY DAYS OF THE IMPOSITION OF ANY CIVIL PENALTY IMPOSED BY THE DEPARTMENT. ANY DETERMINATION NOT TIMELY CONTESTED IS FINAL AND MAY BE REDUCED TO A JUDGMENT ENFORCEABLE IN ANY COURT WITH JURISDICTION. IF THE DEPARTMENT PREVAILS USING ANY JUDICIAL PROCESS TO COLLECT A PENALTY UNDER THIS SECTION, THE DEPARTMENT SHALL ALSO BE AWARDED ITS COSTS AND REASONABLE ATTORNEY'S FEES.

2. THE CIVIL PENALTY FOR A VIOLATION OF REPORTING REQUIREMENTS OF SECTION 17-2109 OF THIS TITLE SHALL NOT EXCEED FIVE HUNDRED DOLLARS PER VIOLATION.

3. ANY OWNER OR OPERATOR OR ANY MARINE TRADE ASSOCIATION WHO KNOWINGLY, AND WITH INTENT TO DECEIVE, FALSIFIES A BALLAST WATER MANAGEMENT REPORT FORM IS LIABLE FOR A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED FIVE THOUSAND DOLLARS PER VIOLATION, IN ADDITION TO ANY CRIMINAL LIABILITY THAT MAY ATTACH TO THE FILING OF FALSE DOCUMENTS.

S 3. This act shall take effect one year after it shall have become a law; provided that the department of environmental conservation shall promulgate any and all regulations necessitated by this act within one hundred eighty days after it shall have become a law.