



IS THIS ANY WAY TO TREAT A FRIEND?

Ballast water regulation requires cooperation with Canada

Canada. What does the name of that country bring to mind if you are a citizen of the U.S.? A loyal and steadfast ally, our largest and most important trading partner (\$1.9 billion in daily cross-border commerce), the longest unarmed common border in the world, a bastion of western values and protector of democracy and freedom, the birthplace of hockey, the greatest sport ever invented (OK, one of the greatest sports ever invented).

Given this strong and mutually advantageous relationship, what behavior do you think Canada should expect and deserve from us? Respect, friendship and dignity, to name a few, as well as careful consideration of its laws, customs and traditions?

Well, in many cases we have—and do—treat Canada that way.

Unfortunately, in certain cases we have not—in fact, just the opposite.

A recent example of this is the treatment of Canada with respect to the regulation of ballast water carried by ships plying the St. Lawrence Seaway—a binational system which has been operated and governed since its inception in 1959 with a spirit of binational cooperation and deference to the sovereignty and dignity of each country. When sailing from the head of the Seaway in Montreal to the Welland Canal, a ship crosses the international border 27 times. There is no other waterway in the world quite like it. Binational cooperation for the operation of the Seaway is not just a “nice-to-have,” it is a “must-have.” And yet, in the area of ballast water, we Americans seem to be more intent on finding ways to exacerbate national distinctions rather than looking for mutually satisfactory outcomes that best serve our common economic and environmental objectives.

Let me explain.

At the end of November, the U.S. Environmental Protection Agency (EPA) published its Draft Vessel General Permit (VGP),



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which will govern the discharge of ballast water for commercial ships operating in U.S. waters, including the Seaway and the Great Lakes. Kudos to the EPA for understanding the importance—and necessity—of going with the International Maritime Organization’s D-2 discharge standard. Elsewhere in the proposal, however, I found myself asking if more could have been done to coordinate with Canada to fashion a regulatory approach for the Great Lakes that best serves both countries’ interests. While not explicitly differentiating between the laker fleets based on nationality, the end effect of the draft VGP is to do just that, since under its requirements, many U.S.-flagged lakers would be exempt from installing ballast water treatment systems and all Canadian-flagged carriers would not.

What would our reaction be if Canada were to take similar action?

At the state level, New York through its Department of Environmental Conservation (DEC), has exhibited even more cavalier behavior towards our friend to the north. Under proposed DEC rules, Canadian ships that merely transit New York waters, but do not stop or discharge ballast water at New York ports, would be required to install ballast water treatment systems. Again, I ask myself if a less unilateral approach to the common challenge of preventing the introduction and spread of invasive species would not have been more productive. One would hope the DEC, in taking such a drastic step, would at least have conferred with the Government of Canada in order to understand the Canadian point of view on this issue.

In hockey, teammates work together on a common goal: put the puck in the opponent’s net. The best way to do that is to pass the puck to your teammate, who will pass it back. When it comes to the issue of ballast water regulation, Canada is ready to “receive the pass.” We, on the other hand, seem more interested in “hogging the puck” rather than being a good teammate. A practical and effective ballast water regulatory regime for the Great Lakes/Seaway system will require Canada’s active cooperation to achieve. We would do well by Canada—and ourselves—to remember that. ■

Since the time this article was written, the New York Department of Environmental Conservation has amended its ballast water regulations to become consistent with Canadian and International Maritime Organization standards.

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