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April 29, 2008

Ms. Mary Jean Fenske
PE Program Coordinator
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

RE: MPCA PRELIMINARY DRAFT BALLAST WATER DISCHARGE GENERAL PERMIT

Dear Ms. Fenske:

The Polish Steamship Company ("Polsteam") appreciates the opportunity to provide this comment letter through its counsel Carter Ledyard & Milburn LLP on the preliminary draft Ballast Water Discharge General Permit ("Preliminary Draft Permit"), which was released to the stakeholders on or around April 11, 2008 by the Minnesota Pollution Control Agency ("MPCA"). Polsteam is one of the four major ocean-going shipping companies that transits through the Saint Lawrence Seaway into the Great Lakes. Accordingly, Polsteam is very pleased that MPCA included Polsteam and the other ocean-going shipping companies as part of its stakeholder process.

Polsteam believes that the most suitable approach to address the issue of aquatic invasive species during the interim period before ballast water treatment technology becomes commercially available is for ocean-going vessels to comply with the mandatory ballast water best management practices, including salt water exchange of ballast tanks 200 miles out at sea prior to their entry into the Saint Lawrence Seaway, as recently adopted by the Saint Lawrence Seaway Development Corporation. Polsteam also recognizes that all vessels must install the appropriate ballast water treatment technology once such technology is approved by the International Maritime Organization ("IMO") and the United States government (i.e., U.S. Coast Guard) and is commercially available, with the expected timeframe to be in approximately five to eight years. Therefore, Polsteam generally agrees with the approach MPCA has set forth in developing its Preliminary Draft Permit in recognizing salt water exchange as the appropriate control for the initial period of NPDES permitting followed by the installation of ballast water treatment technology in the future.

Nonetheless, Polsteam suggests that the Preliminary Draft Permit should be changed prior to its release as a draft permit for public comment to ensure that the permit, when adopted,

is more consistent with international and domestic requirements. The following modifications are discussed in more detail in the attached list of comments: (a) the draft permit should incorporate the Saint Lawrence Seaway Development Corporation's monitoring requirements until commercially available ballast water treatment technology is installed on vessels; and (b) the draft permit should require a vessel to file its plan for the installation of ballast water treatment technology with its renewal NPDES permit application (which would occur 12 to 18 months prior to permit expiration) instead of within the first year of permit issuance.

Finally, Polsteam recognizes that MPCA has moved forward with the development of a draft permit because, to date, no permit has been released by the U.S. Environmental Protection Agency ("EPA") even though the exemption for discharges incidental to the normal operation of vessels will be deleted from EPA's NPDES regulation on September 30, 2008 (*see Northwest Environmental Advocates v. EPA,* N.D. Cal., No. C 03-5760, 63 ERC 1915 (September 18, 2006) (on appeal before Ninth Circuit)). Accordingly, Polsteam is encouraged that MPCA has moved forward to address a significant issue for shipping companies if that exemption to the NPDES regulation expires this fall, and hopes that MPCA can work with the other Great Lake states on a similar solution. However, if EPA does adopt a general permit for all vessels before September 30, 2008, then Polsteam respectfully requests that MPCA not finalize its general permit but instead rely on the federal permit. For vessels that must call at a port in multiple states, the most effective and efficient solution to the aquatic invasive species problem is for the vessels to be regulated under one federal program.

Attached are Polsteam's specific comments on the Preliminary Draft Permit. Polsteam appreciates the opportunity MPCA has provided to the regulated community to participate on the development of a NPDES permit program.

Sincerely,

Christine A. Fazio

Attachment

cc: Jan Rutkiewicz, President, Polsteam USA Inc.
Donald J. Kennedy, Esq.

ATTACHMENT
COMMENTS ON PRELIMINARY DRAFT PERMIT

1. Once the EPA develops a NPDES general permit for ballast water discharges, Polsteam respectfully suggests that MPCA no longer has a need to require its own permit. One federal permit for vessels that call at a port in multiple states is all that should be required. If EPA does not develop such a permit, Polsteam suggests that MPCA work closely with the other Great Lake states so that either a regional general permit is developed or that the requirements among the Great Lake states are consistent.

2. Pages 1 and 11 (Conditions 15-17) of Preliminary Draft Permit: The Preliminary Draft Permit proposes to require on-board ballast water treatment technology no later than five years after permit issuance (essentially before the first five-year term of the NPDES permit expires), but it requires that the vessel owner file its ballast water treatment technology plans and the installation schedule within one year of permit issuance (e.g., by September 2009). Given that IMO is just now approving certain technologies and many more are still subject to approval and the U.S. Coast Guard has not yet approved any (and it is not even clear what federal standards will be required), one year is not sufficient time for vessel owners to decide what technology should be installed on their vessels. The installation of ballast water treatment technology will be expensive for vessel owners and vessel owners need to ensure that they are investing in the appropriate technology that will meet standards in all countries where they discharge ballast water. Polsteam suggests that this decision should be made prior to the expiration of the first term of the NPDES general permit (i.e., 12 to 18 months before the permit expires) so that the most proven and effective technology can be incorporated into the renewed NPDES permit along with the pollutant discharges that must be monitored from the selected technology. The schedule should also permit the installation of the technology to be made over a five- to eight-year period, which is consistent with the IMO requirements.

3. The Preliminary Draft Permit is not clear as to whether MPCA needs to approve the ballast water treatment technology proposed before it can be purchased and installed. Polsteam suggests that any technology approved by IMO or the U.S. Coast Guard does not need pre-approval by MPCA because such review and approval process would be duplicative.

4. Page 5 of Preliminary Draft Permit, Table A: This proposed condition would require monitoring of biological materials within one year of permit issuance, apparently requiring a sample taken of the ballast water discharge twice a year for certain organisms. How is such monitoring to occur? Is a MPCA inspector going to go on a vessel twice a year to do the sampling or is MPCA suggesting that the vessel's crew, who are not currently trained in such testing, must perform this monitoring? In addition, the permit is not clear as to what approved technology and equipment is to be used for such testing, particularly since all vessels require U.S. Coast Guard approval for all equipment on-board. Polsteam suggests, instead, that the monitoring/reporting conducted by the vessel's crew should be consistent with the requirements of the U.S. Coast Guard and Saint Lawrence Seaway Development Corporation (see comment number seven below). For scientific research and statistical data collection, however, Polsteam

does not object to MPCA inspectors periodically taking samples of the ballast water during discharges as Polsteam recognizes that it is important for MPCA to obtain such data, as long as such testing does not delay its vessels' port operations.

5. Page 7 of Preliminary Draft Permit, Conditions 8 - 10. The Preliminary Draft Permit proposes to require that after a vessel owner/operator files an application to be covered under MPCA's General Permit, the owner or operator will receive a Notice of Coverage ("NOC") from MPCA and that no ballast water discharge can occur in Minnesota waters until the NOC has been received. Polsteam generally agrees with this approach; however, Polsteam is concerned about the initial period when this permit program takes effect. Because the exemption from NPDES permitting for discharges incidental to the normal operation of vessels expires on September 30, 2008 and this new permit program will be finalized probably just before that date, there will be a time period in which vessels already in transit to the Great Lakes will not have received a NOC from MPCA. Therefore, Polsteam respectfully requests that there be some form of a grace period during the fall 2008 shipping season prior to when an NOC needs to be on board a vessel. One suggestion is that for the first six months, any vessel that has filed an application will be automatically covered under the general permit even if it has not received a NOC. In other words, as the Minnesota program will be an entirely new program this fall such that MPCA will receive a large number of applications immediately, it is important that this new program not disrupt the fall shipping business before the Great Lakes shipping closes in the winter. A grace period will permit commercial shipping operations this fall with the expectation that all vessels will have their NOCs on board by the spring 2009 shipping season. In addition, MPCA should accept document copies on-board vessels as the document original.

6. Pages 8 and 9 of Preliminary Draft Permit, Conditions 12 and 13: The interim requirements should also be based on the Saint Lawrence Seaway Development Corporation's recently adopted regulations. A copy of that regulation as published in the Federal Register at 73 Fed. Reg. 9950 (Feb. 25, 2008) is enclosed. This regulation requires vessels, including vessels with no ballast water on board, to conduct salt water flushing of each ballast water tank that contains residual amounts of water or sediment so that the remaining residual water in each tank has a salinity level of at least 30 parts per thousand. This regulation essentially adopted the existing Canadian standards (which align with the Coast Guard best practices guidance). Accordingly, in addition to referring to 33 CFR 151.2035, the permit should reference 33 CFR 401.30.

7. Page 16, Condition 50: During the interim period, vessels should be able to use the ballast water management forms currently utilized to enter the Seaway (i.e., the Canadian, Seaway, Coast Guard forms -- "St. Lawrence Seaway Ballast Water Reporting Form"). A copy of such form is enclosed. In addition, for the sampling of biological materials addressed in Table A of the Preliminary Draft Permit (at page 5), it is important for MPCA to recognize that ocean going vessels, after unloading their cargo in various ports in the Great Lakes, then take-in ballast water that will later be discharged at other ports within the Great Lakes. Therefore, the sampling for biological species will contain ballast water that has been flushed at sea as well as fresh water from the Great Lakes, which will then contain indigenous species. Therefore, Polsteam suggests that vessels also record ballasting activities that occur within the Great Lakes, which will not be

addressed in the St. Lawrence Seaway Ballast Water Reporting Form. Vessels can report such information to MPCA by submitting a log book abstract that describes the ballasting activities. No additional monitoring/reporting forms should be required until after the new ballast water treatment technology is installed on a vessel and other discharges (i.e., temperature, pH, chlorine) must be monitored and reported as applicable. As discussed above, Polsteam suggests that the additional discharges to be monitored can be included in the second five-year term of the NPDES permit -- with the permit renewal.

8. Page 17, Condition 51: Because of the unpredictability of shipping patterns, monthly reporting is not recommended. Unlike stationary sources, an ocean-going vessel might only be in the Great Lakes a few times a year, or perhaps just one time during the year and not at all the following year.[1] Accordingly, there is no need for more than an annual report to be sent to MPCA provided that the vessel called in a Great Lakes port during the reporting period. Such annual report can enclose copies of the Ballast Water Reporting Form provided for the Saint Lawrence Seaway Development Corporation as well as the vessel's log book abstract regarding ballasting activities within the Great Lakes. Alternatively, MPCA inspectors can come on board a vessel when at port and review the Ballast Water Reporting Form. Polsteam notes that either a St. Lawrence Seaway, Canadian or U.S. Coast Guard inspector comes on board all vessels that enter the Seaway and this inspector both tests the ballast water tanks and reviews the monitoring reports. Accordingly, MPCA can rely on this inspection report for its purposes.

With regard to the later phase of the NPDES permit, when the ballast water treatment technology is installed on a vessel and additional pollutants must be monitored, Polsteam suggests annual reporting is also adequate in the event that the vessel calls at a Great Lakes port during the reporting period.

9. Many of the boilerplate general conditions beginning at page 11 are not applicable to ocean vessels and should only apply to stationary sources. These include Conditions 18, 51, 53, 54, 67, 68, 70, 76. MPCA also might want to wait until permit renewal when more information is available on the IMO/Coast Guard approved technologies before including General Permit Conditions 24-31, 46, 47, 48, 50, 72, 74.

[1] The preliminarily proposed condition, however, might be appropriate for vessels that regularly call at ports within the Great Lakes.

■ Accordingly, by the authority of 10 U.S.C., title 32 of the Code of Federal Regulations is amended by removing part 240:

PART 240—[REMOVED]

Dated: February 19, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E8–3479 Filed 2–22–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2007–0005]

RIN 2135–AA27

Seaway Regulations and Rules: Periodic Update, Various Categories

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Regulations and Rules in various categories. The changes will update the following sections of the Regulations and Rules: Condition of Vessels; Seaway Navigation; and, Information and Reports. The SLSDC is seeking to harmonize the ballast water requirements for vessels transiting the U.S. waters of the Seaway after having operated outside the exclusive economic zone (EEZ) with those currently required by Canadian authorities for transit in waters under Canadian jurisdiction of the Seaway. These amendments are necessary to take account of updated procedures and will eliminate the confusion regarding the requirements for saltwater flushing in the binational waters of the Seaway System.

DATES: The final rule will be effective March 26, 2008.

FOR FURTHER INFORMATION CONTACT: Carrie Bedwell Mann, Chief Counsel, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–0091.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Regulations and Rules in various categories. The changes will update the following sections of the Regulations and Rules: Condition of Vessels; Seaway Navigation; and, Information and Reports. The SLSDC is seeking to harmonize the ballast water requirements for vessels transiting the U.S. waters of the Seaway after having operated outside the exclusive economic zone (EEZ) with those currently required by Canadian authorities for transit in waters under Canadian jurisdiction of the Seaway. These updates are necessary to take account of updated procedures which will enhance the safety of transits through the Seaway and eliminate the confusion regarding the requirements for saltwater flushing of ballast tanks containing only residual amounts of water and/or sediment in the binational waters of the Seaway. Several of the amendments are merely editorial or clarification of existing requirements. Where new requirements or regulations are being made, an explanation for such a change is provided below.

Regulatory Notices: Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478) or you may visit *http://www.Regulations.gov.*

Discussion of Comments

From the Notice of Proposed Rulemaking, 72 FR 74247, we received 15 letters or other forms of correspondence on the proposed regulation requiring saltwater flushing of ballast water tanks that contain residual amounts of water and/or sediment. Comments were received from: Congressman Vernon J. Ehlers, Minnesota Pollution Control Agency, Great Lakes Commission, Wisconsin Department of Natural Resources, Shipping Federation of Canada, McCabe Chapter of IWLA, National Oceanic and Atmospheric Administration, National Environmental Coalition on Invasive Species, Great Lakes United/Save The River/Alliance for the Great Lakes, Natural Resources Defense Council, the Polish Steamship Company, Ontario Ministry of Natural Resources, and 3 private citizens: Bruce Lindgren, Claire Duquette, and Dick Schwab. Most letters contained more than one comment on this issue. These included general comments as well as specific comments. We address the general comments first and then the specific comments. We did not receive any comments on the remaining proposed revisions to the joint Seaway regulations.

General Comments

All 15 comments supported the proposed regulations. Eleven (11) of the commenters: Congressman Ehlers, McCabe Chapter of the IWLA, the Wisconsin Department of Natural Resources, Great Lakes Commission, National Oceanic and Atmospheric Administration, National Environmental Coalition on Invasive Species, Great Lakes United, National Wildlife Federation, National Resources Defense Council, Mr. Schwab and Mr. Lindgren, stated that while the regulation is an important step in the right direction, more needs to be done to reduce invasions of aquatic nuisance species (ANS).

The SLSDC agrees with these comments and wants to emphasize that this regulation is intended to be an interim solution while the U.S. Coast Guard, the lead Federal agency charged with regulating ballast water discharges, completes its ballast water discharge standard rulemaking and the U.S. Congress continues work on National legislation to address this important issue. We will continue to work with the U.S. Coast Guard and our Canadian counterparts on efforts to combat the introduction of aquatic nuisance species. We will share the comments received in this docket with the U.S. Coast Guard to aid in their efforts to develop a discharge standard.

Seven (7) commenters: McCabe Chapter of the IWLA, Congressman Ehlers, Shipping Federation of Canada, Minnesota Pollution Control Agency, National Environmental Coalition on Invasive Species, Great Lakes United, National Wildlife Federation, acknowledge and support the need to harmonize the U.S. regulations with the Canadian regulations requiring saltwater

flushing for vessels transiting the Seaway. The Polish Steamship Company acknowledged that this regulation will not result in any economic hardship to the company since its vessels are already required to conduct saltwater flushing 200 miles out at sea.

We agree that harmonization of the saltwater flushing requirements for vessels transiting the binational waters of the Seaway system after having operated outside the EEZ will provide consistency between the U.S. and Canadian requirements for those vessels regardless of their port of destination. There has been a joint inspection program for both safety and environmental issues conducted in Montreal, Quebec for quite some time; however, this regulation will now provide inspectors with consistent requirements by both countries. Inspection personnel from all agencies will be inspecting vessels utilizing the same criteria.

Specific Comments

A majority of the commenters suggest making changes to the scope of the regulation. Six (6) commenters: Great Lakes Commission, Minnesota Pollution Control Agency, National Environmental Coalition on Invasive Species, Great Lakes United, National Resources Defense Council, Ontario Ministry of Natural Resources, propose that the requirements should apply to Canadian and U.S. flagged vessels that operate outside the EEZ. One commenter, Great Lakes United, further proposed harmonizing the proposed rule with the Canadian rules that state the regulations apply to every ship in waters under Canadian jurisdiction. Great Lakes United would like the regulation clarified to state that if vessels are not covered by the U.S. Coast Guard regulations, the Seaway regulations would apply. They believe that this creates a loophole and not all oceangoing vessels will be required to conduct saltwater flushing.

The intent of the U.S. regulation is to make consistent the requirements for vessels operating in the Seaway. The Canadian regulations require that Canadian vessels operating outside the EEZ conduct saltwater flushing. Additionally, the Canadian regulations apply to U.S. flagged vessels after operating outside the EEZ as well. We agree with the commenters and have modified the language of the rule to include U.S. and Canadian flagged vessels that have operated outside the EEZ in order to harmonize the rules with the Canadian requirements already in effect in the Canadian waters of the Seaway. Thus, all oceangoing vessels will be required to conduct saltwater flushing of ballast water tanks containing residual amounts of ballast water and/or sediment prior to entering the Seaway. The vessels are inspected at Montreal by the relevant agencies with jurisdiction over vessels en route to the Great Lakes, the two Seaway Corporations, U.S. Coast Guard, and Transport Canada, to ensure compliance with all ballast water requirements.

One commenter, Minnesota Pollution Control Agency, recommends modifying 401.30(f)(1) to include vessels with no pumpable ballast on board. The commenter suggested that the proposed language was not clear whether the saltwater flushing requirement would apply to vessels declaring "No Ballast Onboard" (NOBOB).

The joint regulation pertains to tanks containing residual amounts of water and/or sediment regardless of whether the vessel is a "Ballast on Board" (BOB) or NOBOB vessel. Again, it is important to note that the U.S. Coast Guard is the lead agency for regulating ballast water discharges and is working on a ballast water discharge standard that would apply to all ballast water discharges regardless of whether the discharge is from a full tank or one containing only residual amounts of water and/ or sediment.

Six commenters: Great Lakes Commission, Minnesota Pollution Control Agency, National Environmental Coalition on Invasive Species, Great Lakes United, National Wildlife Federation and the Ontario Ministry of Natural Resources, also suggested that the requirements should apply to all vessels including those operating exclusively within the U.S. and/or Canadian exclusive economic zone.

The rule is intended to be consistent with the Canadian requirements already in force for the Canadian waters of the Seaway. The Canadian requirements for saltwater flushing do not apply to vessels operating exclusively inside the Canadian EEZ. We will share these comments with Transport Canada and the U.S. Coast Guard.

Several commenters suggested strengthening the saltwater flushing requirements. One commenter, Great Lakes United, also proposes changing the word "should" in the definition of saltwater flushing to "shall" in two places. The commenter states that "given the limitation for safety, there is no reason not to require as much water as is safe rather than recommend it". Additionally, they suggest that there is no reason not to require taking care to eliminate fresh or brackish water.

The SLSDC agrees with this comment and has revised the proposed language in 401(f)(1) to reflect this suggestion.

One commenter, National Wildlife Federation, suggested adding more detail to the requirements for saltwater flushing such as:

- maximizing physical expulsion as well as salinity shock;
- specifying how quickly salinity of at least 30 parts per thousand (ppt) must be attained and how long residual organisms are exposed to salinity levels;
- clarifying that the salinity requirement applies to residual water that is already highly saline; and
- requiring saltwater flushing occur where the water depth is at least 2,000 meters.

The SLSDC appreciates receiving these suggestions that would strengthen the requirements for saltwater flushing; however, these requirements are not consistent with harmonizing the U.S. regulations with the Canadian regulations for vessels operating in the Seaway. We agree that effective ballast water management practices are necessary and will share these comments with the U.S. Coast Guard and Transport Canada.

One commenter, National Wildlife Federation, suggests that the salinity requirement should apply to sediment as well as resultant residual water.

This is in the definition of saltwater flushing taken from the Canadian and U.S. Coast Guard Best Management Practices.

Several comments centered on recordkeeping and compliance requirements. One commenter, Congressman Ehlers, urges vigorous enforcement of the new requirements through extensive monitoring and severe fines and penalties for violators. Three commenters: Minnesota Pollution Control Agency, Great Lakes United and the National Wildlife Federation, urge the SLSDC to strengthen the recordkeeping and reporting requirements related to achieving the required salinity in each tank to a minimum of 30 parts per thousand. The Minnesota Pollution Control Agency requests that the regulation be modified to explicitly require the measurements of salinity and records of the measurement time, date and geographic location of the vessel when the measurement was taken. One commenter, Great Lakes United, wants public access to information general from the reporting and enforcement.

The agencies with jurisdiction over vessels en route to the Great Lakes basin: the two Seaway Corporations, the U.S. Coast Guard and Transport Canada will be inspecting the vessels entering

the Seaway for compliance with ballast water management requirements. The inspectors will verify the accuracy of the information on the ballast water management report forms. The reporting form (and instructions) for ballast water management required to be completed prior to entering the Seaway will be available on the Seaway binational Web site at *http://www.greatlakes-seaway.com* prior to the opening of the 2008 navigation season. At the end of each navigation season, the agencies will publish a ballast water inspection report summary which will be made available to the public on the binational Web site.

One commenter, Great Lakes United, proposes revising § 401.30(g) by changing "taken aboard" to "while" to ensure that noncompliant ballast water will not be released in the St. Lawrence River or Great Lakes even if no additional water is taken on.

One (1) commenter, Shipping Federation of Canada, proposed revising the language in 401.30(f) to make it clear that the ballast water should be retained only in a tank that is found to be noncompliant as opposed to requiring the entire ship to retain all ballast water in all tanks, even compliant tanks.

The SLSDC agrees with this proposal and has modified the regulation to clarify that only a tank that is found noncompliant will be required to retain any ballast water while in the Seaway. In addition, the SLSDC revised the regulation based on the Great Lakes United suggestion to make clear that the water from the noncompliant tank is not to be discharged while the vessel is in the Seaway.

Several commenters noted a typographical error in 401.30(f)(1) regarding the definition of saltwater flushing. The proposed rule refers to mixing "freshwater" with ballast water, when it should say either "saltwater" or flush water".

The final rule has been corrected to state flushwater in order to be consistent with the Canadian definition.

Discussion of Final Rule

In addition to the changes to the ballast water management requirements, the SLSDC is making changes to other sections of the joint regulations. The SLSDC is making one amendment to the Condition of Vessels section of the joint Seaway regulations. In § 401.12, "Minimum requirements—mooring lines and fairleads", the language is modified to provide vessels the option of using mooring lines that are either wire or synthetic based upon the length of the vessel. Since mooring lines can be wire or synthetic some smaller vessels have presented themselves for transit with a mix of mooring wires/and or synthetic lines. Synthetic lines or hawsers are sufficient to moor the smaller vessels and mooring wire is more than capable of mooring the smaller vessels, therefore the use of either wire or synthetic lines will be acceptable.

Several amendments to the joint regulations pertaining to Seaway Navigation are being made. In § 401.34, "Vessels in tow", the SLSDC is adding a provision that would require every vessel in tow be inspected prior to every transit. The SLSDC is making this amendment to ensure navigation safety through inspection of all vessels even when a vessel is in tow. Currently such vessels are being inspected; however, this change will make it a mandatory requirement.

As discussed above, the SLSDC is amending the joint regulations in § 401.30, "Ballast water and trim". The amendment seeks to harmonize the requirements for saltwater flushing of ballast water tanks containing residual amounts of ballast water and/or sediment with the requirements already in place for vessels transiting Canadian waters of the Seaway System. Vessels transiting the Seaway traverse Canadian and U.S. waters multiple times en route to ports in the Great Lakes St. Lawrence Seaway System. The amendments would make the requirements for oceangoing vessels to conduct saltwater flushing of each ballast water tank that contains residual amounts of ballast water and/or sediment the same whether the vessel is transiting U.S. or Canadian waters of the Seaway after having operated outside the EEZ. The requirement for saltwater flushing of ballast tanks is intended to mirror the regulations already in effect in waters under Canadian jurisdiction for vessels transiting the Seaway.

Specifically, the SLSDC, in agreement with the SLSMC, is amending the Seaway Regulations and Rules by adding new subsections (f) and (g) to § 401.30, "Ballast water and trim." These new subsections will require that, as a condition of transiting the Seaway, every vessel must conduct a saltwater flushing of its ballast tanks that contain residual amounts of ballast water in an area 200 nautical miles from any shore before entering waters under Canadian jurisdiction. Saltwater flushing is defined as the addition of midocean water to ballast water tanks: the mixing of the flushwater with residual water and sediment through the motion of the vessel; and the discharge of the mixed water. The resultant residual water remaining in the tank must have a salinity level of at least 30 parts per thousand (ppt). Further, each vessel must maintain the ability to measure salinity levels in each tank onboard the vessel so that final salinities of at least 30 parts per thousand can be ensured. Any vessel that has tanks that fail to reach this salinity level will be required to retain any water in those tanks until it exits the Seaway.

In addition, the SLSDC and SLSMC will continue to require that as a mandatory prerequisite for clearance of a vessel for transit of the Seaway System after operating beyond the EEZ, the vessel must agree to comply with the "Code of Best Practices for Ballast Water Management" of the Shipping Federation of Canada dated September 28, 2000.

In light of the amount of interest and activity regarding control of aquatic nuisance species (ANS) at all levels of government, especially in the U.S. Congress and the U.S. Coast Guard, the joint regulations will be reviewed and revised once either National legislation and/or regulations are issued that would pertain directly to this issue. In the meantime, this measure is intended to be an interim solution.

In § 401.40, "Entering, exiting, or position in lock", the SLSDC will prohibit a vessel, when it is being cast off in a lock, from departing in a manner that the stern passes the stop symbol on the local wall nearest the closed gates. Occasionally vessels drift backward in the lock while the mooring lines are being released; preventing the vessel's stern from passing the stop symbol will protect the vessel and the lock gates from possible damage.

Other changes made to the joint regulations, including one to the regulations pertaining to Information and Reports, are merely editorial or for clarification purposes.

Regulatory Evaluation

This regulation is significant because of significant public interest in measures that address aquatic nuisance species and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act Determination

I certify this regulation will not have a significant economic impact on a substantial number of small entities. The Saint Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.