

OREGON TASK FORCE on the SHIPPING TRANSPORT of AQUATIC INVASIVE SPECIES

January 14th, 2010

1:30 – 3:00pm

1. **In attendance:** Mark Sytsma (chair), Frank Holmes, Ralph Breitenstein, Jim Townley, Marla Harrison, Jessica Keys, Val Brenneis, Rian Hooff, Jeff Christensen
On the phone: Allen Pleus

2. **Recap of USCG Notice of Proposed Rulemaking (NPRM)**
 - Public Comment period ended in mid-December.
 - STAIS Task Force letter/position was similar in tone and content to the letters submitted by ODEQ, and Washington (WDFW/WDOE/Puget Sound Partnership). The letter submitted by California was much more detailed in advocating for the discharge standards and implementation timeline already established for their state.
 - Oregon/Rian declined to sign on to a multi-state letter (NY, NJ, Conn, Mich, Wisc, CA) that generally shared similar concerns as our letter(s), however, the multi-state letter was advocating for implementation of phase II standards at a more aggressive schedule than has yet been discussed/proposed for our state.

3. **Updates from Pacific Ballast Water Group Meeting (Jan 12-13 2010 in Vallejo, CA)**
 - ❖ **USCG**
 - NPRM
 - >400 submissions >>>> 2400 ‘statements’ and 100’s of substantive comments that require official response.
 - Outlook: will take a significant amount of time to review/respond to comments and to finalize rules for approval by various federal agencies/entities. Some suggest this process could take up to 2 years.
 - Proposed 2013 completion of practicality review will be bumped (as will all other timeline dates) if NPRM final rule is released later than 2010.
 - General conclusion: Ballast water exchange will continue to be a primary management strategy for quite some time (2020 or beyond).
 - IMO Ballast Convention
 - USCG drafted NPRM with ratification in mind

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Rian Hooff, OR DEQ
(503)229-6865 or hooff.rian@deq.state.or.us*

- No Federal legislation has yet been introduced for US ratification
- Current progress toward ratification of the convention:
 - a. 21 member nations have signed on (30 required)
 - b. Represents 22% of int'l tonnage (need 35%)

❖ EPA VGP

- Estimated 70,000 vessels covered
- Over 50,000 Notice of Intent documents have been submitted to EPA
- Currently no inspection component to VGP. Only possible way for enforcement action to be pursued would be if non-compliance were Id'd by EPA field staff, state partners, or citizens. (on-line submittal system available).
- Discussion underway for possible partnership w/ USCG for inspection/enforcement MOA.
- Moratorium for fishing vessels expires July 2010; studies underway.
- EPA administrator Jackson has recently stated intent to take a hard look/review at VGP.
- EPA is currently drafting plans for NPDES v. 2 (2013 or sooner?). Focus will be on greater outreach with states for 401 certification process.
- Lawsuits pending (enviro and industry), but current status/developments remain confidential.
- States may seek/request authorization to issue/implement VGP for their state if they wish to do so.

❖ Federal Outlook in General?

- USCG authority for ballast water (from National Invasive Species Act of 1996) and EPA authority over incidental vessel discharges including ballast water (from Clean Water Act) are completely independent and the two agencies have not ability to 'work it out themselves'. No immediate proposal/solution to remedy problem of having two parallel regulatory authorities in place. A Federal legislative fix is required and none have been introduced to date.
- CWA interests/advocates unlikely to back down, thus it is very unlikely that the NPDES VGP will 'go away'.
- Regional coordination continues to be necessary; whether it's based on independent state programs or via state implementation of VGP.

❖ Canada

- With US partnership; they are committed to inspecting 100% of arrivals to GL/SLSeaway for compliance with ballast water regulations.
- Pursuing ratification of IMO.

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- However, concern over vulnerability of freshwater ecosystems may result in a federal proposal to require additional ballast management if sourcing ballast from freshwater and discharging into freshwater (e.g. BWE + IMO BWT).

❖ **West Coast Governors Agreement on Ocean Health**

- Rec'd \$500k for FY 2010
- Regional ocean partnerships are in OMB '11 budget for \$10 million.
- Distribution of WCGAOH monies will be competitive grant-based open to the action groups/teams identified in the action plan.
- Since the Pacific Ballast Work Group was identified as a pre-existing organization best suited to addressing shipping related issues, the PBWG should be equally eligible/competitive for WCGAOH grant monies as newly created action teams (according to Amy Vierra representing CA on WCGAOH issues).

❖ **Group Discussion**

- Marla asked about the NPDES VGP numbers quoted by EPA, and whether that was permittees or vessels since a permittee may file for a fleet of vessel. Upon further investigation, I am confident that the numbers are for total number of vessels (e.g. NOI's have been filed for 50,000 vessels).
- Allen provided some follow up comments about the status of rulemaking activities in Washington, including the intent to go forward with discharge standards and implementation timelines that would essentially adopt the USCG proposed phase II standards and implementation timeline.

4. Task Force Report

❖ **Proposed Outline**

- Updates on Regulations (International, Federal, State)
- Shipping & Discharge Trends for Oregon Waters
- Biofouling
- Emerging Issues
- Conclusions & Recommendations* (primary focus for Task Force)

❖ **Proposed Timeline**

- *Jan-Mar*: Propose/Discuss/Refine
- *Early April*: Distribute First Draft
- *Late April*: Review/Revise Report
- *Late May*: Submit Final Report to Legislature

❖ **Group Discussion**

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5. Ballast Management Rulemaking (OAR 340-143)

❖ Proposed Topics/Issues

- Definitions
 - Regulated vessels; coastal exchange; common waters, etc.
- Reporting Requirements
 - Revise/Clarify acceptable submittal process and file type/formats
- Potable Water Exemption
- Require Ballast Water Management Plan (including log book)
- Enforcement
 - Expedited ticketing
 - Penalty calculation schedule/structure
- Emergency Response
 - Definitions
 - Advance notification requirements
 - Framework for decision analysis
- Discharge Standards and Implementation Timeline
 - Rian noted that he has included this as a potential placeholder in our rulemaking efforts, but that he has not been planning on pursuing this rulemaking topic in 2010.

❖ Target Dates/Timeline

- Feb 2010: Presentation to EMT
- Mar-Jul 2010: Develop Rulemaking Package
- Aug 2010: Formal release of public notice
- Sep-Oct 2010: Complete review/revision of Rulemaking Proposal
- Dec 2010: EQC Meeting to adopt rules
- Jan 2011: Implementation of new/revised rules

❖ Group Discussion

- Marla noted the importance of keeping in mind not only the environmental protection responsibilities that we have, but also any potential economic implications that our rules may impose.
- In the absence of discharge standards proposed by USCG or EPA, Mark suggested that we consider pursuing the topic with the 2010 rulemaking package. Specifically, to closely coordinate with Washington efforts.
- Jim commented that even though coastwise consistency is desired, that we also must not lose sight of environmental/ecological differences that may require some different accommodations. Specifically, the freshwater nature of the

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Columbia River ports may necessitate a different approach than what is being pursued for California or in Puget Sound.

- Rian also suggested that we consider the freshwater system proposal being discussed in Canada (see above PBWG Mtg. notes) and/or any need to remove language from our regulations that allow for carte blanche use of USCG approved technology.
- Multiple task force members voiced some concern that the timeline may be overly ambitious. Rian noted that the proposed timeline is based on an assumption that discharge standards would not be included. If we choose to pursue discharge standards, the timeline will likely be longer.

6. DEQ Ballast Program Funding Challenges/Options

- ❖ Based on one of the primary program development recommendations from the 2008 Task Force, Rian prepared and presented slides aimed at encouraging discussion about the funding challenges that the program is facing and potential solutions that may address those concerns.
- ❖ Specifically, the problems are three-fold; 1) No supplemental funds have been allocated to the ballast water program, yet various program activities require a relatively minor increase in program resources (approximately \$20,000 per year), 2) The fact that the programs only personnel resources (1.0 FTE) are based on general fund support has become a problem in this economic downturn and decreased state revenue. If further general fund cuts are mandated, the ballast water program is vulnerable, and 3) a single FTE has been deemed insufficient for meeting the wide variety of ballast water program activities. Program objectives, stakeholder support/services, and improved invasive species management coordination could be achieved with the one additional FTE dedicated to these issues at DEQ.
- ❖ DEQ is currently exploring options that could 1) reduce program reliance on general fund support, and 2) increase program resources in order to meet program objectives and provide sufficient services and regulatory efficacy.
- ❖ Rian led a discussion of a diverse list of potential sources of revenue/resources that could assist ballast water program goals, but many are uncertain, unlikely, or out of the hands of DEQ. The one option that is most in-line with how DEQ operates with other regulatory programs is to enact fees on the industry that is being regulated. With this in mind, Rian presented various fee-based options to encourage discussion amongst task force members and to provide some concrete estimates of the magnitude of fees that would be necessary to reach various revenue targets (\$20k, \$120k or \$220k per year). For example, revenue to support 2 FTE and necessary supplemental funds (\$220k per year) could be generated with a \$132 fee on ship arrivals to Oregon waters (based on

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2006-2009 average), using a similar accounting system/approach that is already in place for the DEQ Oil Spill Response Program. Alternatively, we should also consider the pros/cons of trying to craft a fee schedule that attempts to more specifically target those vessel (or vessel types) that represent a greater risk for introducing AIS. For example, Rian also presented fee options based on volume of ballast discharged (\$/m³).

- ❖ DEQ has begun internal discussions about potential proposal option packages for the 2011 Legislative session that could address these funding challenges and is encouraging input/discussion from the task force on how best to achieve program goals.
- ❖ **Group Discussion**
 - Jessica asked if the ballast water program manager position is on the DEQ 10% reductions options list. Ans: No, not at this time.
 - Marla suggested that environmental staff from Port of Portland may be available to assist DEQ ballast program activities in some capacities, yet to be determined.
 - Jim voiced tentative encouragement for these discussions, and that industry may be amenable to helping/seeking solutions to support the ballast program at DEQ.
 - Marla noted the importance of being careful about projected vessel arrival numbers and how volatility in shipping practices could jeopardize program funding if program were solely reliant on arrival numbers. It was also noted that even if cargo rates remained constant, vessel arrival numbers could decline with the use of larger ships (e.g. response to channel deepening).
 - Mark suggested that a per volume discharge approach may be the most logical/fair approach, noting that this is where the risk lies, and that if no discharge were occurring there would no longer be a need for a program.
 - Allen commented that California had considered a per volume discharge approach for their vessel fees but opted for arrival fees (currently \$825/arrival) based on the argument that report monitoring and data management is required for all vessels (regardless of discharge status), all vessels are subject to inspection/verification that they are doing what they report, and furthermore, that non-discharging vessels still represent an AIS risk for biofouling organisms.
 - Ralph voiced tentative support for a discussion about industry fees, but suggested that we provide Jim, Frank, Marla or others from industry to provide their suggestions/proposals at our February meeting.

NEXT MEETING: Thursday February 11th, 2010 (1:30) at DEQ Headquarters

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