

Statement of

Thomas A. Allegretti
President & CEO
The American Waterways Operators
801 North Quincy Street, Suite 200
Arlington, VA 22203
(703) 841-9300

Before the
Subcommittee on Coast Guard and Maritime Transportation and
Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC

July 13, 2011

Good morning, Chairman LoBiondo, Chairman Gibbs, Ranking Members Larsen and Bishop, and Members of the Committee. I am Tom Allegretti, President & CEO of The American Waterways Operators. AWO is the national trade association for the inland and coastal tugboat, towboat, and barge industry. On behalf of AWO's 350 member companies, thank you for the opportunity to testify at this very important hearing.

I am also here today to testify on behalf of the Shipping Industry Coalition, an alliance of maritime trade associations, including AWO, that together represent over 90 percent of all vessels calling at U.S. ports, in both the domestic and international trades. The Coalition is committed to working with legislators, regulators, and environmental groups to develop environmentally sound and economically practicable solutions to prevent the introduction and spread of invasive species in U.S. waters.

Today's hearing is aptly titled "Reducing Regulatory Burdens, Ensuring the Flow of Commerce, and Protecting Jobs: A Common Sense Approach to Ballast Water Regulation." Our nation urgently needs the common sense approach for which your subcommittees are looking. If we fail to identify and enact such a common sense approach, the flow of essential maritime commerce will be constrained, American jobs will be jeopardized, regulatory burdens on businesses and workers will proliferate, and American taxpayers will continue to foot the bill to support duplicative and sometimes contradictory regulatory programs. The bipartisan leadership of these two subcommittees is crucial to ensure that our nation avoids these unwanted outcomes.

The subject matter before this committee today can be described as addressing three fundamental issues: 1) streamlining duplicative regulations so companies and professional mariners can comply with the law; 2) protecting the environment in which mariners work every day; and, 3) strengthening the foundation of our national economy and protecting jobs. The bad news is that the current patchwork of authorities with respect to the regulation of vessel discharges is antithetical to all of these objectives. The good news is that Congress has the opportunity to change this situation by enacting

legislation that is good for U.S. businesses and American mariners, that is good for the environment, and that is good for the American economy and jobs. We are hopeful that this hearing today will serve as the foundation and the catalyst for the introduction and passage of legislation that accomplishes these basic objectives.

Streamlining Regulations and Providing Clarity to Companies and Mariners

The tugboat, towboat, and barge industry is the largest segment of America's maritime fleet. The industry operates over 4,000 towing vessels and more than 27,000 dry and liquid cargo barges on every commercially navigable inland waterway in the heartland of the United States and throughout the ports, harbors, and coastlines of the Atlantic, Pacific, Gulf of Mexico, and the Great Lakes. More than 30,000 American mariners are employed as crewmembers on towing vessels; these are good, family-wage jobs that offer great potential for career and economic advancement.

To fully appreciate the impact of the issue before this committee today, it is essential to understand that the 4,000 towing vessels in our industry provide a home to mariners for two-thirds of the year. Professional men and women in our industry work, sleep, eat, cook, and clean onboard vessels. Like Americans everywhere, mariners must use water to live and work. The problem with the situation that mariners find themselves in today is that two federal agencies (the U.S. Coast Guard and the Environmental Protection Agency) and some 26 states have established overlapping and sometimes conflicting rules about how to use and discharge water on vessels that are operating in interstate commerce.¹

This situation is confusing and unfair for hard-working mariners and legally treacherous for law-abiding companies who must train their marine workforce for regulatory compliance. Even more serious is the fact that mariners and companies are at risk of

¹ The Coast Guard regulates the discharge of ballast water under the National Invasive Species Act (NISA); the Environmental Protection Agency regulates ballast water and 25 other vessel discharges under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permit program; and, because neither NISA nor section 402 of the Clean Water Act preempts state regulation of vessel discharges, dozens of states have established their own regimes governing vessel discharges.

unwittingly committing a felony in federal and state jurisdictions because of the patchwork of requirements that differ from one side of an invisible line in a waterbody to another. For example, a tug-barge unit on a typical Northeast coastal voyage moving petroleum from an oil refinery at the Port of New York/New Jersey to a terminal in Portland, Maine must traverse the waters of seven states (New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Maine). Under the Vessel General Permit, issued by EPA under the Clean Water Act's NPDES program, the vessel is required to comply not only with federal standards established by EPA, but with state – and sometimes waterbody-specific – conditions established by each of the states through which it is passing. The vessel is also subject to Coast Guard regulations for ballast water management and reporting. In this example, each of the seven states the vessel transits have added supplementary conditions to the federal requirements. Failure to comply with these rules is a crime.

To take another example, a towboat pushing barges on a typical voyage from Pittsburgh to New Orleans via the Ohio and Mississippi river systems must travel through the waters of 11 states: Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Missouri, Tennessee, Arkansas, Mississippi, and Louisiana. Under the current system of overlapping authorities, each of these states may adopt its own laws or regulations, or add its own conditions to EPA's federally enforceable VGP, in addition to the federal requirements established by EPA and the Coast Guard governing vessel discharges. In this illustration, the vessel must comply with substantive conditions added to the VGP by five of the 11 states it transits, in addition to federal regulations.

This important fact bears repeating and must be addressed by Congress: the lack of clear, uniform federal rules for managing vessel discharges, including ballast water that is used for maintaining the safety and stability of vessels while underway, creates ambiguity that makes it difficult for companies and mariners to comply with environmental regulations and puts hard-working Americans at risk of losing their jobs and becoming implicated in civil or criminal enforcement actions. This simply is not the right way to regulate an industry that is so vital to the American economy.

As a matter of good public policy, the NPDES permit program is the wrong framework for the regulation of discharges from vessels. The program, as EPA itself has acknowledged, was designed to manage pollution from fixed, land-based facilities, not mobile sources that transit the waters of multiple states. For the first 35 years of the NPDES program's existence, vessel discharges were specifically exempted from the program by EPA regulation. (EPA went to court to retain the exclusion of vessel discharges from this facility-focused regulatory program, but was denied that option by the Ninth Circuit Court of Appeals.) Congress can right this wrong and replace the current patchwork of overlapping and ill-fitting regulatory requirements with a national program for the management of vessel discharges that is consistent, effective, practical, and clear.

Protecting the Environment

Marine transportation is the safest and most energy-efficient mode of transporting the vital bulk commodities that are the building blocks of our national economy. AWO is committed to building on the natural advantages of marine transportation and leading the development of higher standards of marine safety and environmental protection.

Seventeen years ago, AWO became the first transportation trade association to adopt a code of safe practice and environmental stewardship for member companies, called the AWO Responsible Carrier Program. Today, third-party-audited compliance with the AWO RCP is a condition of membership in the association.

As already mentioned, AWO has been an active participant in the Shipping Industry Coalition since its inception almost ten years ago. The Coalition has long advocated that the issue of aquatic invasive species be addressed through the passage of uniform standards for vessels.

This history and these organizational characteristics inform our approach to the management of vessel discharges. We seek to protect the marine environment in which

our vessels operate and our mariners live and work, but the current regulatory situation actually undermines this objective. Faced with overlapping federal and state authorities and the absence of uniform, practical national standards for the management of ballast water, for example, we have witnessed a competition among states to establish the most stringent treatment standards on the books. Under the logic of this competition, if the International Maritime Organization standard is good, a standard 100 or 1000 times more stringent than the IMO standard must be better.

There are two big problems with this thinking: 1) the technology to achieve those standards – or even the science to measure them – simply does not exist; and, 2) no responsible business can invest anywhere from hundreds of thousands of dollars (for a towing vessel) to millions of dollars (for a container ship) per vessel to install a ballast water treatment system that might be acceptable in some states but not others. The result: even vessel owners who are prepared to make the enormous investment to install ballast water treatment technology on their vessels have not done so. Meanwhile, companies that are in the business of moving economically critical cargo and providing jobs to American workers must expend precious resources to closely monitor ever-changing state deadlines while developing detailed justifications for why they are unable to install treatment systems that do not exist, or why they cannot reengineer their vessels in infeasible ways. And American taxpayers must pay for the enforcement of duplicative federal and state regulatory programs that do not enhance environmental protection. American companies, mariners, and taxpayers deserve better from their government.

As an example, New York State was recently forced to delay the implementation date of one of its state conditions to the federal VGP. The state required existing vessels operating in New York waters after January 1, 2012, to install ballast water treatment systems that meet a standard 100 times more stringent than the IMO standard. As the EPA Science Advisory Board has confirmed, such technology does not exist. However, New York still expects its requirement to take effect in August 2013, and the state claims that its conditions apply to every vessel that transits its waters, even if the vessel does not actually discharge ballast water in New York state waters. This is ludicrous, in our view.

The situation in New York State is noteworthy, but it is only one data point in a complicated map of overlapping, conflicting, and sometimes downright infeasible state requirements for the management of vessel discharges.

- In 2010, Pennsylvania and Iowa requested that EPA delete several of their infeasible conditions to the VGP. Notably, Iowa, a land-locked state, had required vessels discharging ballast water in the state to conduct an open sea ballast exchange, an obvious impossibility on the inland river system.
- In 2009, after extensive outreach, and subsequent legal action from AWO and other maritime stakeholders, three states – Illinois, New Jersey and California – removed many of their unachievable conditions from the VGP on the eve of its implementation date, narrowly avoiding a total shutdown of waterborne commerce in their waters.

Simply put, we have spent much of the last several years arguing about, and sometimes litigating, fantasy standards, instead of promulgating and implementing effective ones. That is as bad for the environment as it is bad for business.

The problem is not that vessel discharges are regulated, it is how they are regulated. We are hopeful that the recently released recommendations of the National Research Council and the forthcoming final report of the EPA Science Advisory Board can shed needed light on the controversies of the past several years and serve as the basis for a consensus standard on ballast water treatment in which all stakeholders can have confidence. The studies point a way forward, but Congressional leadership will be needed to replace the broken regulatory system that exists today with an effective and practical one.

Strengthening the Economy and Protecting American Jobs

We hope that Congress will seize the opportunity to fix this broken system because the economic stakes are very high. Each year, barges and towing vessels – just one segment of the domestic and international maritime industry that is harmed by the current regulatory patchwork – safely and efficiently move more than 800 million tons of cargo critical to the U.S. economy, such as coal, grain, petroleum products, chemicals, steel, aggregates, and containers. The economic impact of this commerce extends far beyond the maritime industry, to the shippers, producers, and communities that rely on the safe, efficient, and cost-effective transportation of critical commodities, including commodities for export.

The companies that operate the vessels and employ the men and women who move this economically critical cargo are, overwhelmingly, small businesses. In a 2009 analysis, the Congressionally-authorized Towing Safety Advisory Committee estimated that almost 90 percent of barge and towing companies qualify as small businesses under the Small Business Administration definition. The regulatory burdens on these small businesses are complex to the point of crushing, and will only become more so unless Congress acts to consolidate the current hodgepodge of overlapping and inconsistent regulation into something that is uniform, effective, and practical. “VGP 2.0,” the second iteration of the 5-year Vessel General Permit, will be proposed later this year. States will then have another opportunity to layer their own waterbody-specific requirements on top of the federal standards. Unless Congress acts now, companies and mariners will again face the prospect of layers of federal and state standards that overlap, duplicate, and even conflict. For example, an inland barge tow moving coal from a terminal in Cincinnati to a plant in Tennessee travels through the waters of six states (Ohio, Indiana, Illinois, Kentucky, Missouri, and Tennessee), four of which have together added more than two dozen conditions to the VGP. The current situation is untenable.

Conclusion

On behalf of the American businesses that operate tugboats, towboats, and barges, that carry the cargo that fuels our economy, that provide high-quality jobs for men and women throughout this country, and that seek to protect the marine environment while keeping our businesses viable, we respectfully urge the Subcommittees to take the lead in righting a regulatory, environmental, and economic wrong. We urge you to introduce and pass legislation that establishes a consistent, practical, science-based framework for the regulation of vessel discharges.

We thank you for taking the essential first step of holding this hearing and we stand ready to assist you in the development and passage of legislation that is good for American businesses and workers and good for the environment and economy of our country. We believe that is a much needed and an achievable goal.