

Amendment #1 to H.R. 2380 - Ballast Water Treatment Act of 2008

Insert, on page 186, a new section 11, as follows (and renumber the subsequent sections):

(11) INTERIM TESTING PROTOCOLS - Until such time as the Coast Guard, in consultation with the Administrator, issues Final Regulations for the testing and certification of ballast water treatment equipment, technologies and biocides, and the Coast Guard certifies to Congress, and to the Office of Management & Budget, that it is able to conduct such testing and certification within 60 days of that equipment, technology or biocide being submitted to the Coast Guard, any of the following testing protocols enumerated in subsections (a), (b), (c), (d) or (e) shall be used. A test report, signed by the director, or the director's designee, of that facility shall constitute certification of that equipment, technology or biocide meets the ballast water treatment standards of this Act:

- a. Any testing protocol or procedure established, or accepted by, the National Oceanic & Atmospheric Administration, for any ballast water treatment equipment, technology or biocide that was used in conjunction with the development and testing of that technology, equipment or biocide pursuant to any funding provided by, or through, the National Oceanic & Atmospheric Administration.
- b. Any testing protocol or procedure established, or approved by, the American National Standards Institute for any ballast water treatment equipment, technology or biocide that was used in conjunction with the development and testing of that technology, equipment or biocide.
- c. Any testing protocol or procedure, the use of which was audited by the Department of Transportation's John A. Volpe National Transportation Systems Center.
- d. Any testing protocol used by the Environmental Protection Agency as a part of its Environmental Testing & Verification program.
- e. Any testing protocol that has been accepted by any state environmental protection agency pursuant that state's state ballast water treatment statute or regulations.

Need for Amendment #1 to HR 2380

Section 11(A) of H.R. 2380's is vague and indefinite. This defect will significantly delay the installation of treatment technology on all ships. Therefore the threat posed by invasive ANS will continue long after it could have ended.

Even with the new language added to the bill in Manager's bill, the current section 11(A) still does not set any definitive standards. This is still left to the Coast Guard and EPA. It is probable, even with specific 90 day deadline, that there will be substantial delays, in EPA and/or the Coast Guard issuing the required interim regulations. EPA has had 2 years to issue ballast water treatment regulations in compliance with the U.S. District Court's Order in the San Francisco lawsuit. There is no reason to expect that it will be able to act any faster in this instance.

Moreover, the current section 11(A)'s bar against review under the APA will not prevent the filing of citizen suits on the grounds that the interim regulations do not meet the requirements of the Clean Water Act. Unless language is added to the bill making it the sole federal law regulating the treatment of ballast water, this probability cannot be discounted. Such litigation will, inevitably, further delay the installation of treatment technology and an end to the ANS problem.

This proposed amendment provides for interim regulations that will take effect, automatically, upon passage of the Act. This will enable ship owners to far more rapidly comply with the bill's ballast water treatment requirements.

Moreover, The Ballast Water Management Demonstration Program, the STEP Program and EPA's ETV program have *not* been notably successful in getting treatment technologies approved for use. Therefore, the alternative testing protocol regime, involving non-federal laboratories using their own testing protocols ought to become the interim protocol testing and certification standards.

There is no objection, as such, to using the ETV or STEP Program regulations as alternatives, if that is Congress' wish. But, there need to be additional, proven, alternatives, as well. This amendment provides them.

Nothing in this amendment would bar the Coast Guard and/or EPA from issuing (its) their own final testing and certification regulations when those agencies are ready to do so.

Amendment #2 to H.R. 2380 - Ballast Water Treatment Act of 2008

Redesignate section (12) as section (13). Delete current sections 11(B) and 11(C) on page 185. Insert, in lieu thereof and insert, on page 185, a new subsection 13(B), as follows:

(B) INTERIM APPROVAL OF NON-FEDERAL LABORATORIES

Until such time as the Secretary issues Final Regulations for the approval of non-federal laboratories, the following laboratories are approved to conduct such certification testing:

- (i) Any commercial laboratory previously approved by the Coast Guard to test water treatment equipment for use on board ships subject to Coast Guard regulation for compliance with water quality discharge standards.
- (ii) ~~Any~~ independent or university laboratory that has, prior to the effective date of this legislation, conducted ballast water treatment technology, equipment or biocide testing for a recipient of a grant from any federal agency for the development, testing or design of such treatment technology, equipment or biocide.
- (iii) Any other independent or university laboratory that is approved by the Administrator, or by a state environmental protection or health agency pursuant to delegation to it by the Administrator under the Clean Water Act, to conduct water quality testing and that is certified to test water for the presence of phytoplankton and zooplankton.

Need for Amendment #2

Again, H.R. 2380's current language relating to this issue is indefinite. This fact will significantly delay the installation of treatment technology on all ships.

Even with the language contained in the bill in Manager's bill, the section 11(B) still does not set any definite standards for certifying independent laboratories to do the testing. It is likely that there will be substantial delays in EPA and/or the Coast Guard issuing interim regulations for approving these independent laboratories, as is authorized by section 11(C) of the current bill.

Moreover, the bar to APA review, contained in the current section 11(A) of the bill does not appear apply to this aspect of the bill's regulatory regime. It is entirely possible that APA lawsuits could be filed challenging the possible certification of independent laboratories and/or their testing protocols. Nor does that language end the possibility of citizen suits being filed under the Clean Water Act.

Amendment #3 to H.R. 2380 - Ballast Water Treatment Act of 2008

Insert, on page 186, a new section (13), as follows:

(13) INTERIM TESTING FOR SAFETY FOR USE AT-SEA - Until such time as the Coast Guard issues Final Regulations for certifying treatment technology, equipment or biocides as being safe for use on-board a ship at-sea, the safety certification by any recognized ship classification society shall be accepted.

Need for Amendment # 3

In addition to certifying equipment as meeting the established treatment standards, the Coast Guard will also be required to certify treatment equipment as meeting applicable safety for use at-sea. It is not clear that the Coast Guard has such regulations, for ballast water technology in place, as it already does for example, in the case of oily water separation equipment.

It is essential that such regulations be in place as soon as this legislation takes effect. No ship owner could install such equipment absent that certification. Even if it were authorized by statute to do so, the shipper's damage to the ship/liability insurance policy would, likely, bar it from doing so. Hence the need for interim safety certification standards, as well.

Ship owners and their insurance carriers have, historically, relied upon certifications made by ship classification societies such as the American Bureau of Ships, Lloyd's, Norsk Veritas and other recognized foreign ship classification societies. There is every reason to take advantage of their technical expertise until such time as the Coast Guard issues its own safety regulations for ballast water treatment technology.