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U.S. Congress Considers Uniform Ballast Water Standards

Following an unsuccessful court challenge, industry groups have taken their fight for uniform ballast water standards to the U.S. Congress. On October 13, the Transportation and Infrastructure Committee of the United States House of Representatives approved H.R. 2840, the Commercial Vessel Discharges Reform Act of 2011. H.R. 2840, which was introduced in the House by Coast Guard and Maritime Transportation Subcommittee Chairman Frank LoBiondo (R-NJ), would amend the Clean Water Act (CWA) to set a single nationwide performance standard for the treatment of vessel ballast water. If passed, the bill would trump the myriad state-specific standards upheld in the *Lake Carriers' Association v. Environmental Protection Agency* decision. See [U.S. Court Rejects Industry Challenge to Ballast Water Provisions](#) (August 2011). The bill would require the U.S. Coast Guard to set an implementation schedule requiring vessel owners to install treatment technology certified to conform to the standards set by the International Maritime Organization (IMO). The bill permits a review of the performance standard every 10 years or upon petition from the states.

The proposed legislation is a direct result of the *Lake Carriers* ruling, in which the D.C. Circuit Court of Appeals upheld the states' ability to impose their own ballast regulations under the CWA. Under the proposed bill, vessels entering U.S. waters would be exempt from the ballast requirements of the CWA. Currently, each of the roughly 29 coastal states have enacted their own, independent ballast water requirements. One of the most stringent of these standards was adopted by New York and requires vessel owners to install technology on existing vessels by August 1, 2013, to treat ballast water to a level 100 times more stringent than the IMO standard. The New York rules further require vessel owners to install technology on any vessels built after January 1, 2013, to treat ballast water to a level 1,000 times more stringent than the IMO standard. These rules apply not only to vessels visiting New York ports, but also to ships passing through New York waters. Concerned with the impact the New York regulations would have on commercial shipping in both the United States and Canada, the governors of three states, Wisconsin (Scott Walker), Ohio (John Kasich), and Indiana (Mitch Daniels), recently sent a letter to New York Governor Andrew Cuomo requesting that New York ease its ballast water requirements. The New York standards are particularly problematic for vessels transiting the well-traveled St. Lawrence Seaway, which provides passage between the Upper Great Lakes and the Atlantic Ocean. A recent industry study reported that the New

York standards could threaten thousands of jobs and billions of dollars in revenues on both sides of the border if trade along the Seaway is choked off.

In contrast, environmental groups, particularly in the Great Lakes region, have applauded New York's ballast water standard and voiced opposition to H.R. 2840. These groups have argued that the bill would not be protective of the environment, would effectively open up U.S. ports to foreign invasive species, and would strip states of their rights to protect their own waters.

Further complicating the status of the ballast water regime in the U.S., the Environmental Protection Agency (EPA) has committed to publishing its new draft Vessel General Permit (VGP) by November 30, which would include numeric limits for ballast water from commercial vessels. If passed, however, H.R. 2840 would likely nullify the EPA's new ballast regulations. Until the EPA's new VGP is issued and/or H.R. 2840 is passed, vessel owners remain subject to state-specific regulations, which remain in effect and may subject vessel owners to penalties for failure to comply.

Click to view a copy of [H.R. 2840](#).

FOR MORE INFORMATION

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