

**CALENDAR ITEM
C47**

A Statewide

08/20/10
W9777.234
W9777.290

S Statewide

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**CONSIDER AMENDMENTS TO REGULATIONS TO ADOPT FORMS TO GATHER
INFORMATION ABOUT THE INSTALLATION AND USE OF BALLAST WATER
TREATMENT SYSTEMS IN CALIFORNIA WATERS**

PROPOSAL:

Pursuant to Public Resources Code (PRC) Sections 71205(g) and 71201.7, Commission staff is proposing to amend the California Code of Regulations, Title 2, Division 3, Chapter 1, Article 4.7, titled "Regulations Establishing Performance Standards for the Discharge of Ballast Water for Vessels Operating in California Waters." Commission staff is proposing to adopt Section 2297.1 which would add new requirements for the master, owner, operator, agent, or person in charge of a vessel that has a ballast water treatment system installed on board, and has or will discharge treated ballast in waters of the state, to submit information to the Commission on the installation, maintenance and use of that ballast water treatment system in California waters. Submission of this information would be required via the "Ballast Water Treatment Technology Annual Reporting Form" and the "Ballast Water Treatment Supplemental Reporting Form." The forms are incorporated by references through the proposed adoption of Section 2297.1.

BACKGROUND:

The Coastal Ecosystems Protection Act (Act) of 2006 expanded the Marine Invasive Species Act of 2003 to more effectively address the threat of nonindigenous species introductions through ballast water discharge. The Act charged the California State Lands Commission to implement performance standards for the discharge of ballast water and to prepare a report assessing the efficacy, availability, and environmental impacts, including water quality, of currently available ballast water treatment technologies. The performance standards regulations were adopted in October 2007, and the first technology assessment report was approved by the Commission in December 2007.

CALENDAR ITEM NO. C47 (CONT'D)

In preparation for initial implementation of California's performance standards on January 1, 2010, the Commission provided a second technology assessment report to the Legislature in January 2009. In this report, the Commission requested that the Legislature provide the Commission with the authority to amend the ballast water reporting requirements via regulation. Specifically, the Commission requested the authority to collect information about the installation and use of ballast water treatment system on board vessels operating in California waters. This information is necessary in order to effectively implement California's performance standards for the discharge of ballast water.

In 2009, Assembly Bill 248 (Lowenthal) was proposed in response to the Commission's 2009 technology assessment report. Assembly Bill 248 was signed by the Governor in the fall of 2009 (Chapter 317, Statutes of 2009) and added Section 71205(g) to the Public Resources Code. Section 71205(g) requires the Commission to adopt forms, via regulation, to gather information about the installation and use of ballast water treatment systems on vessels operating in California waters. The proposed amendments to Title 2, Division 3, Chapter 1, Article 4.7, would adopt Section 2297.1 and fulfill the legislative requirements set forth in PRC Section 71205(g).

The amendments to Article 4.7 will allow the Commission to gather valuable information about the installation and use of ballast water treatment systems in California waters, and will enhance the ability of the Commission to verify vessel compliance with the performance standards, and minimize the transport of NIS into the waters of the State of California.

ISSUES OR CONCERNS:

During the initial 45-day comment period, Commission staff received three comment letters sufficiently related to the proposed regulatory action. The first two letters required no response because they supported or offered no comment on the proposed regulation. The third letter provided eight comments on the proposed rulemaking. Commission staff accepted seven comments and modified the language of the forms and associated instructions accordingly. One comment was rejected. The comment suggested the removal of Question 6 on the Ballast Water Treatment Technology Reporting Form (Exhibit B). Question 6 asks whether or not a vessel is in compliance with the requirement to maintain a ballast water treatment performance log on board. The question is necessary to assist staff in determining whether vessel operators are in compliance with applicable laws and regulations. Since PRC Section 71205(h) requires that an operator maintain a ballast water treatment performance log on board, the operator either is or is not in compliance. Additionally, Staff do not believe it is necessary to include comment space on the form for the operator to explain why the vessel is out of compliance. Staff will follow-up with all non-compliant vessels.

CALENDAR ITEM NO. C47 (CONT'D)

After the close of the 45-day comment period, Staff discovered the omission of the authority and reference citations in Section 2297.1(a) and 2297.1(b). The citations were added to the proposed regulation. The amended regulation, including the citations and the modifications in response to public comment, were mailed out for a 15-day comment period on July 7, 2010. The comment period closed on July 26, 2010. One comment was received during that time period which was identical to the previously rejected comment suggesting the removal of Question 6 on the Ballast Water Treatment Technology Reporting Form (Exhibit B). The comment was rejected again for the same reasons previously described.

STATUTORY AND OTHER REGULATIONS:

- A. Public Resources Code Section 71200 through 71271

PERMIT STREAMLINING ACT DEADLINE:

Notice of Rulemaking was published on January 21, 2010. Commission staff must submit the final file to the Office of Administrative Law no later than January 21, 2011.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

2. The proposed regulatory amendments do not affect small businesses as defined in Government Code Section 11342, subsection (h), because all affected businesses are transportation and warehousing businesses having annual gross receipts of more than \$1,500,000, as specified under Government Code Section 11342, subsection (h)(2)(I)(vii).

EXHIBITS:

- A. Text of Proposed Modified Regulations
- B. Ballast Water Treatment Technology Annual Reporting Form
- C. Ballast Water Treatment Supplemental Reporting Form

CALENDAR ITEM NO. C47 (CONT'D)

IT IS RECOMMENDED THAT THE COMMISSION:

1. Find that the activity is not subject to the requirements of CEQA pursuant to Title 14, California Code of Regulations, Section 15060(c)(3) because the activity is not a project as defined by Public Resources Code Section 21065 and Title 14, California Code of Regulations, Section 15378.
2. Find that the amendment will not affect small businesses as defined in Government Code Section 11342(h), because all affected businesses are transportation and warehousing businesses having annual gross receipts of more than \$1,500,000, as specified under Government Code Section 11342(h)(2)(I)(VII).
3. Find that the amendment will not have a significant impact on the creation or elimination of jobs or new or existing businesses within California, nor will they have an adverse economic impact on business, including the ability of California businesses to compete with businesses in other states.
4. Find that no alternative would be more effective in carrying out the purpose for which the amendment is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.
5. Adopt the proposed amendment, which would add Section 2297.1, to Title 2, Division 3, Chapter 1, Article 4.7 of the California Code of Regulations, substantially in the form of those set forth in Exhibits "A, B and C," to become effective immediately after they have been filed with the Secretary of State.
6. Authorize Commission staff to make modifications in the amendment in response to recommendations made by the Office of Administrative Law.
7. Direct Commission staff to take whatever action is necessary and appropriate to comply with provisions of the Government Code regarding adoption of regulations and amendments and to ensure that the amendment becomes effective.
8. Direct Commission staff to take whatever action is necessary and appropriate to implement the amendment at such time as it becomes effective.

STATE LANDS COMMISSION

TEXT OF MODIFIED REGULATIONS

The Commission has illustrated changes to the original text noticed to the public in the following manner: regulation language originally proposed is underlined; deletions from the language originally proposed are shown in strikethrough using a “-”; and additions to the language originally proposed are double underlined.

TITLE 2, DIVISION 3, CHAPTER 1 ARTICLE 4.7. PERFORMANCE STANDARDS FOR THE DISCHARGE OF BALLAST WATER FOR VESSELS OPERATING IN CALIFORNIA WATERS

Section 2297.1. Ballast Water Treatment Technology Reporting Requirements

(a) Ballast Water Treatment Technology Annual Reporting Form

(1) The following form “Ballast Water Treatment Technology Annual Reporting Form (Revised July 1, 2010)” is hereby incorporated by reference, and shall be used to comply with the provisions of Public Resources Code Section 71205(g) by the master, owner, operator, agent, or person in charge of a vessel that has a ballast water treatment system installed on board and has discharged treated ballast in waters of the state.

(2) The “Ballast Water Treatment Technology Annual Reporting Form” shall be submitted to the Commission in written or electronic form based on the following schedule: within 60 days of receiving a written or electronic request from the Commission.

(A) No later than March 1 each year; or

(B) Within 60 days of receiving a written or electronic request from the Commission.

Authority Cited: Sections 71201.7 and 71205, Public Resources Code

Reference: Sections 71201.7 and 71205(g), Public Resources Code

(b) Ballast Water Treatment Supplemental Reporting Form

(1) The following form “Ballast Water Treatment Supplemental Reporting Form (Revised July 1, 2010)” is hereby incorporated by reference, and

shall be used to comply with the provisions of Public Resources Code Section 71205(g) by the master, owner, operator, agent, or person in charge of a vessel that has a ballast water treatment system installed on board and has discharged treated ballast in waters of the state.

(2) The “Ballast Water Treatment Supplemental Reporting Form” shall be submitted to the Commission in written or electronic form upon departure of that vessel from a California port or place of call if that vessel discharged treated ballast water into the waters of the state.

Authority Cited: Sections 71201.7 and 71205, Public Resources Code

Reference: Sections 71201.7 and 71205(g), Public Resources Code



California State Lands Commission
Marine Invasive Species Program
Ballast Water Treatment Technology Annual Reporting Form
 Public Resources Code Section 71205(g)
 January 20 July 1, 2010

Vessel Name:
Official / IMO Number:
Responsible Officer's <u>Person's</u> Name and Title:
Date Submitted (DD/MM/YYYY):

Treatment System Information

1. List the treatment system installed on board the vessel:

Manufacturer/Company: _____

Product Name: _____

Model Number: _____

1a. Mode(s) of Action (check all that apply):

Filtration <input type="checkbox"/>	Cavitation <input type="checkbox"/>	Hydrocyclone <input type="checkbox"/>	Deoxygenation <input type="checkbox"/>
Active Substance/Biocide <input type="checkbox"/>	Ultra Violet Irradiation <input type="checkbox"/>	Heat <input type="checkbox"/>	
Other <input type="checkbox"/> , please describe:			

1b. List all substances (i.e. chemicals, biocides, flocculants, neutralization agents) created or used by the treatment system (if any), and indicate whether or not the Material Safety Data Sheet is kept on board for each substance.

Substance	MSDS on Board?
	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
N/A <input type="checkbox"/> , No substances used by system.	

Official/IMO Number: _____

1c. Are manufacturer's technical guides, publications and/or manuals for the treatment system kept on board? Yes No

2. When did the system installation receive classification society approval?

Date (DD/MM/YYYY): _____

3. Did the system installation occur (check all that apply):

As part of a scheduled out of water dry docking? Yes No

During a special/non-routine out of water dry docking? Yes No

Without the need for out of water dry docking? Yes No

4. Has there been any significant upgrade/modification to the system since classification society approval? (Do not include repairs. See instructions for more information and definition of significant.)

Yes <input type="checkbox"/>	Date of Upgrade (DD/MM/YYYY):
Describe upgrade:	
No <input type="checkbox"/>	

5. Has any unscheduled or emergency maintenance been performed on the system since classification society approval (or since the previously submitted Ballast Water Treatment Technology Annual Reporting Form)?

Yes <input type="checkbox"/>	Date of Most Recent Event (DD/MM/YYYY):
Describe most recent maintenance event:	
No <input type="checkbox"/>	

6. Is the vessel in compliance with the requirement to maintain a ballast water treatment performance log on board? (This log may be incorporated into the existing ballast water management log. See form instructions for minimum requirements). Yes No

7. Is system performance (i.e. biological efficacy) verified on a regular basis? Verification is not a requirement by the State of California, however, regular performance testing will allow the vessel to ensure the system is working properly.

Yes <input type="checkbox"/>				
How often:	Weekly <input type="checkbox"/>	Monthly <input type="checkbox"/>	Yearly <input type="checkbox"/>	Every 2 years <input type="checkbox"/>
Other <input type="checkbox"/> , describe:				
No <input type="checkbox"/>				

**California State Lands Commission
Marine Invasive Species Program
Ballast Water Treatment Technology Annual Reporting Form
Public Resources Code Section 71205(g)
~~January 20~~ July 1, 2010
Instructions for Completing Annual Reporting Form**

Text of Modified Regulations

The Commission has illustrated changes to the original text noticed to the public in the following manner: deletions from the language originally proposed are indicated using double-strikeout; and additions to the language originally proposed are double-underlined.

**BALLAST WATER TREATMENT TECHNOLOGY ANNUAL REPORTING FORM
TO BE SUBMITTED ANNUALLY BY VESSELS THAT HAVE A BALLAST WATER
TREATMENT SYSTEM INSTALLED ON BOARD, AND HAVE OR WILL BE
DISCHARGING TREATED BALLAST IN WATERS OF THE STATE**

**FORM MUST BE SUBMITTED by ~~March 1~~ of each year, OR within 60 days of
receiving a written or electronic request from the Commission**

SUBMIT THE COMPLETED FORM TO:

California State Lands Commission
Marine Facilities Division
200 OceanGate, Suite 900
Long Beach, CA 90802
FAX: 562-499-6444
Email: bwform@slc.ca.gov

Treatment System Information

Question 1: Provide the requested information for each ballast water treatment installed on the vessel. **NOTE:** If more than one treatment system is installed on board the vessel, the form must be filled out separately for each system.

- List the system manufacturer or company (For example - Acme Incorporated).
- List the product name, if applicable (For example - Acme Ballast Water Treatment System).
- List the model number, if applicable (For example - Acme Model # 5454). Do not provide the serial number.
- **Question 1a.** Check ALL appropriate boxes that describe the mode(s) of action that the system uses to treat ballast water. For example, if the system first filters the water and then uses ultraviolet radiation, check both "filtration" and

“ultraviolet irradiation.” If the system uses a mode of action not described, check “Other” and then describe the mode of action.

- **Question 1b.** If applicable, please provide the name(s) of all substances (chemicals or biocides that kill or inactivate organisms in ballast water, flocculating agents, and/or neutralizing agents) manufactured by or associated with the use of the ballast water treatment system (e.g. hypochlorite, sodium bisulfate...). If no substances are used by the system, check “N/A” and move to Question 1c. Some systems may use multiple substances. Please list all of them. Refer to the Material Safety Data Sheets (MSDS) as necessary to answer this question. Additionally, indicate whether or not the MSDS is kept on board for each substance, if applicable.
- **Question 1c.** Check the appropriate box to indicate if the vessel maintains the ballast water treatment system manufacturer’s technical guides, publications and/or manuals on board.

Question 2: Indicate the date (DD/MM/YYYY) when the ballast water treatment system installation received classification society approval for operation on the vessel.

Question 3: Please mark “yes” or “no” for each of the following:

- Was the ballast water treatment system installed during the regularly scheduled out of water dry docking of the vessel (For example - in conjunction with a dry docking scheduled for a classification society inspection or hull maintenance/repair)?
- Did the vessel require a special (non-routine) out of water dry docking that was scheduled exclusively for the installation of the ballast water treatment system?
- Was the ballast water treatment system installed without the need for out of water dry docking (For example - while the vessel was still in the water or while underway)?

Question 4: Since receiving classification society approval, has the ballast water treatment system been “significantly” modified or upgraded. For the purposes of this question, “significant” means a modification to the system:

- Which changes its volumetric capacity to treat ballast water by 15 percent or greater; or
- Which changes the mode of action of the treatment system; or
- Which is projected to prolong the life of the ballast water treatment system by 10 years or more; or
- Which results in a modification to the ballast water treatment system other than component replacement-in-kind.

If the answer is “Yes” to ANY of the bullets above, then check “Yes” and fill in information for date of upgrade and generally describe the nature and extent of the update/modification to the ballast water treatment system. (For example - Filtration unit was enlarged to handle 20% more capacity of incoming ballast water).

If the answer is “No” to ALL of the bullets above, check “No” and proceed to Question 5.

Question 5: Check the appropriate box to indicate whether or not the system has undergone any unscheduled or emergency maintenance since the system was commissioned.

- If “Yes” was selected, describe the most recent emergency or unscheduled maintenance event. What type of malfunction occurred? How was it addressed? Provide the date (or dates) of when this event occurred.
- If “No” was selected, proceed to Question 6.

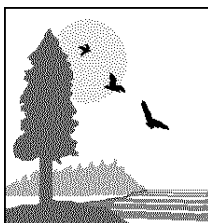
Question 6: Check the appropriate box to indicate whether the vessel is in compliance with the requirement to maintain a ballast water treatment performance log on board. The ballast water treatment performance log may be maintained as part of the ballast water management log or as an independent document.

At a minimum, the ballast water treatment performance log must include:

- The dates, times, and locations of the starting and stopping of the system for the purpose of treating ballast water.
- Dates, time and descriptions of any system malfunctions, including problem resolution.
- Dates, times and locations of both scheduled and unscheduled maintenance of the system.
- All relevant measures of system performance recorded during system operation. For example - UV transmittance, residual chemical concentration.

Question 7: Check the appropriate box to indicate whether system performance (i.e. biological efficacy) is verified (either by the vessel, the system manufacturer or a third party organization) on a regular basis. The State of California does not require vessels to conduct system performance verification, however, regular performance testing will allow the vessel to ensure the system is working properly.

- If “Yes” was selected, check the appropriate box to indicate the frequency with which the performance/efficacy of the ballast water treatment system is verified. If the system is verified on a different schedule, check “Other” and describe that schedule.
- If system performance verification is not conducted, select “No.”



**California State Lands Commission
Ballast Water Treatment Supplemental Reporting Form
Public Resources Code Section 71205(g)**

July 1, 2010

ALL VESSELS MUST ALSO SUBMIT BALLAST WATER REPORTING FORM

IS THIS AN AMENDED REPORTING FORM? Yes No

Vessel Information

Voyage Information

Vessel Name:	Arrival Port:
Official/IMO Number:	Arrival Date (DD/MM/YYYY):

Ballast Water Treatment

1. Did the treatment system experience any malfunction that affected the treatment of ballast water to be discharged at this arrival port?

Yes , please provide the following information:

Date of malfunction (DD/MM/YYYY): _____

Explain the malfunction: _____

If applicable, how was the situation resolved? _____

No

2. Ballast Water Treatment History. Provide information for all ballast tanks that will be discharged at arrival port. Enter additional tanks on page 2. One tank per line. If none, go to Question #3.

Tanks/ Holds	BW Source			BW Discharge			BW Treatment		
	Date (DD/MM/YY)	Port/ <u>or</u> Lat-Long	Volume (Units)	Date (DD/MM/YY)	Port/ <u>or</u> Lat-Long	Volume (Units)	Date of 1st treatment (DD/MM/YY)	Date 2nd treatment (if applicable) (DD/MM/YY)	Volume Ballast Treated (Units)

Ballast Water Tank Codes: Forepeak = FP, Aftpeak = AP, Double Bottom = DB, Wing = WT, Topside = TS, Cargo Hold = CH, Other = O

**California State Lands Commission
Marine Invasive Species Program
Ballast Water Treatment Supplemental Reporting Form
Public Resources Code Section 71205(g)
July 1, 2010**

Instructions for Completing Supplemental Reporting Form

Text of Modified Regulations

The Commission has illustrated changes to the original text noticed to the public in the following manner: deletions from the language originally proposed are indicated using strikeout; and additions to the language originally proposed are double-underlined.

REMINDER: ALL VESSELS MUST SUBMIT BALLAST WATER REPORTING FORM

**BALLAST WATER TREATMENT SUPPLEMENTAL REPORTING FORM TO BE SUBMITTED
Upon departure from each port or place of call in California ONLY IF:**

- **Ballast Water Was Treated; AND**
- **Ballast Water Was Discharged Into California Waters**

Vessels that have ballast water treatment systems and discharge treated ballast into California waters must also annually submit:

**Ballast Water Treatment Annual Reporting Form
SUBMIT THE COMPLETED FORM(S) TO:**

California State Lands Commission
Marine Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802
FAX: 562-499-6444
Email: bwform@slc.ca.gov

Question 1: Check the appropriate box to indicate whether the vessel or the ballast water treatment system experienced any malfunction or unexpected situation (For example - UV bulbs burned out) that may have impacted the treatment of ballast water to be discharged at this arrival port.

- If Yes is selected, enter the date or dates (DD/MM/YYYY) when the problem occurred, describe the problem (malfunction) and how (if applicable) the situation was resolved.
- If No is selected, proceed to Question #2.

Question 2: Provide information about each ballast water tank that underwent treatment and was subsequently discharged into California waters during this port visit. Do not submit information on tanks that were not discharged into California waters.

TANK

Please list **all tanks and holds** that you have discharged into California waters. Follow each tank across the page listing all source(s), discharge and treatment events separately.

List each tank on a separate line. Use an additional page if necessary, being careful to include IMO number at the top of the second page (if necessary).

For tanks with multiple sources: List each source on a separate line.

BW SOURCE

Date: Report date of ballast water uptake (DD/MM/YY).

Port or latitude/longitude: Report location of ballast water uptake. **No abbreviations for ports.**

Volume: Report total volume of ballast water uptake, **with volume units.**

BW DISCHARGE

Date: Record date of ballast water discharge (DD/MM/YY).

Port or latitude/longitude: Report location of ballast water discharge. **No abbreviations for ports.**

Volume: Report volume of ballast water discharged, **with volume units.**

BW TREATMENT

Date of 1st treatment: Indicate the date (DD/MM/YY) when ballast water treatment was initiated for that tank. If treatment occurred over several days, list the day when treatment began.

Date of 2nd treatment: If applicable, provide the date (DD/MM/YY) when secondary ballast water treatment occurred. (For example - If ballast water was treated with UV both on uptake and discharge, put the date of treatment on uptake in the 1st column and the date of treatment on discharge in the 2nd column).

Volume: For each tank to be discharged, report total volume of ballast water treated by the ballast water treatment system, **with volume units.**

Question 3: Enter the responsible officer's name and title.