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California: the incredible green hulk

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California politicians have once again shown that they are masters at playing up to the vocal minority. Governor Schwarzenegger signed into law a bill adopted by the state legislature that will impose severe discharge restrictions all virtually all large vessels calling at California ports. Any improvement of the California environment as a result of this legislation will be marginal at best. One is reminded of the 1960's television show where the 700-pound Incredible Hulk plodded around beating up smaller individuals and saving the world.

The Clean Coast Act, which comes into effect on January 1, 2006, will prohibit oceangoing ships from conducting onboard incineration while operating within three miles of the California coast. The law will also prohibit oceangoing ships from releasing hazardous waste, graywater, sewage, sewage sludge, and oily bilgewater into marine waters of the state. If there is a release of such material from an oceangoing ship into marine waters of the state, the owner or operator must, within 24 hours, notify the State Water Resources Control Board. Upon the departure of an oceangoing ship from its first port or place of call in California for 2006 and the future, the master, owner, or operator must maintain on board selected information regarding the ship, its graywater and blackwater systems, and California port of call information. This same information must be communicated to the State Lands Commission. The term "oceangoing ship" means a private, commercial, government, or military vessel of 300 gross registered tons or more calling on California ports or places.

Large cruise ships operating out of California ports have been subject to similar restrictions for several years, but this is the first time any jurisdiction has attempted to impose such sweeping conditions on all classes of vessels. Inclusion of government and military vessels is particularly interesting, given the exemption or waiver generally accorded federal activities by state governments. These restrictions obviously go far beyond the international provisions found in the MARPOL Convention.

Practical problems regarding the prevention of such discharges will present themselves on many ships, particularly with regard to graywater. The statute defines "graywater" as drainage from dishwasher, shower, laundry, bath, and washbasin drains, but does not include drainage from toilets, urinals, hospitals, or cargo spaces. While drainage from toilets and urinals on ships feed into the sewage system, the same is not generally true for graywater discharges.

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On many ships, particularly older ones, control of graywater discharges is complex. Ships calling at California ports will soon be faced with penalty actions if they don't successfully turn off all possible graywater discharge lines. They will also be faced with the problem of where to store the graywater until they sail out of California waters. If the ship spends much time at anchorage, the graywater collection may quickly exceed tankage capacity.

The unique recordkeeping and reporting requirements will prove daunting for a ship with a small and overworked crew. In this regard, those requirements will become a Catch-22 situation. If California suspects an improper discharge, they can prove it with the ship's own records. If the state can't prove an illegal discharge, they can probably find a paperwork violation. If the ship doesn't make timely and accurate reports, that is a separate violation. The maximum civil penalty authorized by the statute is \$25,000 for each violation.

Why does the State of California engage in such behavior? Its politicians seem to be constantly vying to out-do each other with regard to proving their "Green" credentials. Ships, particularly foreign ships, are easy targets with no political downsides. Neither the politicians nor the small but vocal environmental advocacy groups care that such things as graywater discharges from ships with 20-person crews are minuscule. Tackling real environmental problems such as agricultural pollution in the San Joaquin Valley would mean taking on powerful opponents with hefty political and financial clout. Better to attack a small issue that lacks the political capability of fighting back.

The position taken above does not represent a defense of pollution of the environment. Rather, it is a call for common sense. Ships have been the target of attacks for oil spills for years. All the data show, though, that the large majority of oil entering waters of the United States comes from land-based sources – particularly what are called no-point sources. The federal and state environmental enforcement agencies, though, have yet to come to grips with this fact. They continue to pound the ship owners and operators, largely because it is easier than tackling real problems, the solution of which will provide measurable benefits.

In 1996, Congress amended the Federal Water Pollution Control Act (FWPCA) to preempt states and political subdivisions from regulating discharges from military vessels covered by uniform national discharge standards promulgated by the Secretary of Defense, in consultation with the Administrator of the Environmental Protection Agency (EPA). The regulations have gotten bogged down in the face of other priorities, but the concept is excellent. Military vessels have to be able to operate unimpeded worldwide. State and local jurisdictions can not be allowed to impose unique requirements on military vessels.

The same philosophy holds true for commercial vessels. Standards must be uniform so that a ship in compliance in one port of the United States will be in compliance in all U.S. ports. It may be time for the maritime community to seek the consistency that would be provided by the uniform discharge standards.