

Lewis-Manning lamented.

In 2006 Canada and the US launched joint inspections of all vessels entering the St Lawrence Seaway to ensure ballast tanks did not carry aquatic pests. Since then, no new nuisance species have entered the Great Lakes. That system should continue to apply until all ships have access to reliable and affordable ballast treatment technology, argued the CSA president.

Canadian shipping has had a history of concerns with US ballast water rules. Transport Canada has raised ballast water issues with Washington in the past, especially about efforts by state governments (particularly New York State) to impose onerous restrictions.

"Our members have tried to find solutions to comply with a problem that has yet to be quantified clearly with science," said Lewis-Manning. "We are calling on the government to continue working with us to develop a flexible, bi-national non-discriminatory regime that will keep ships sailing while protecting the environment."

The EPA rules "could damage our business by increasing costs through currently unavailable technology requirements, disrupting Canadian commodity movements and Canadian vessel trading patterns".

> Comment:

Lien powers can work a treat

Tug owners can use the lien clause if hirers fail to pay, say solicitor **Simon Tatham** and **Mike Lacey**, who originally drafted TOWCON, of Tug Advise

Getting paid in full is always a worry in shipping. In the present challenging market, margins are tight and charterers, known as hirers in most towage contracts, can argue over the final amounts due.

The question for tug owners is often whether they can exercise a possessory lien over the tow – that is, refuse to release the tow until final payment is made. Take for example a scrap tow. The prospect of subsequently enforcing payment will be remote and the same may be the case for a unit being towed into a legally unfriendly jurisdiction.

The point about exercising a lien is that it forces the hirer to act to obtain physical delivery. What's more, while lawfully exercising a lien, the tug owner can charge his delay rate (the equivalent of demurrage) pending release, together with associated costs.

Often, a hirer is itself waiting on payments from its client, so the tug owners' exercise of a lien can be a useful device to extract monies due,



Simon Tatham: challenge is to exercise a lien legally

Onir Black

arrival at the destination. If there are delays en route, payment of the delay rate also needs to be collected, along with any port disbursements.

The challenge for tug operators is to exercise the lien legally and at just the right moment. If they do not act legally, they will find themselves in breach and liable for damages – risking arrest of the tug. Furthermore, once physical possession is lost, the lien disappears, which is why a tug will keep its line attached until the last moment.

Usually stage payments en route are routinely made, so the crucial time comes at the voyage's end. Tug owners are advised to ensure that the final payment is not due on final delivery, but, for example, two days prior to that. To avoid issues with receivers that may have strong commercial influence in the local jurisdiction, the best place to lien is usually just outside territorial waters. It usually works a treat. [F](#)

in turn, out of the end user. However, as with most powerful tools, it needs to be handled with caution.

Short or emergency tows may be done under the terms of the TOWHIRE agreement, but most are done under TOWCON, which typically involves three or four lump sum payments on signing and arrival of the tug at the departure port, or on departure of the tow, and ultimately on or about the time of

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