

An Overview of the Saint Lawrence Seaway Development Corporation¹

I. INTRODUCTION

The Saint Lawrence Seaway Development Corporation (SLSDC) was created in 1954 with the passage of the Saint Lawrence Seaway Act (Seaway Act). The SLSDC was created as a wholly-owned government corporation operating within the Department of Transportation.² The Department of Transportation regulations explain that the SLSDC is in charge of the development, operation, and maintenance of the part of the Seaway that is in the territorial limits of United States.³

The following memorandum gives an overview of the SLSDC. It reviews the organization's structure, budget, authority, and relationship with Canada, and explains how the public can get involved with the SLSDC.

II. THE SLSDC'S AUTHORITY TO REGULATE THE SEAWAY IS DERIVED FROM THE SEAWAY ACT AND THE PORT AND TANKER SAFETY ACT

In its regulations, the SLSDC cites both the Seaway Act and the Port and Tanker Safety Act (Tanker Act) as granting it statutory authority to promulgate rules. (Section III below explains what it means for an agency to cite a statute in a regulation as a source of authority.) Understanding these two statutes is crucial to understanding how the SLSDC does act and how it should act. Important aspects of the Seaway Act and Tanker Act are explained below.

A. *The Saint Lawrence Seaway Act Created The SLSDC And Gave it Authority to Regulate the Seaway*

The Seaway Act created the SLSDC for a limited purpose and gave it limited statutory powers.⁴ When the Seaway Act was passed in 1954, the Seaway was considered a crucial element to the national security of the United States.⁵ President Eisenhower urged Congress to pass the Seaway Act in 1954 because he considered the Seaway a vital part of the U.S. security and economy.⁶ As stated in the Seaway Act, the purpose of the SLSDC is to construct, operate, and maintain deep-water navigation works in cooperation with the Saint Lawrence Seaway Management Corporation (SLSMC) of Canada. Some of the other statutory powers provided to

¹ Prepared by the Conservation Law Center, Inc. in Bloomington, Indiana (2008).

² 33 U.S.C. § 981 (2008).

³ 49 C.F.R. § 1.4 (2008).

⁴ *Halverson v. Slater*, 129 F.3d 180, 182 (D.C. Cir. 1997).

⁵ See discussion in *Canadian St. Regis Band of Mohawk Indians v. New York*, 640 F.Supp. 203, 206 (N.D.N.Y. 1986).

⁶ *Id.*

the SLSDC in the Seaway Act include the power to enter into contracts to conduct business,⁷ the power to acquire, sell and lease property,⁸ the power to establish and operate a toll bridge company and to collect and retain tolls for eventual reinvestment in the Seaway,⁹ the power to issue bonds,¹⁰ and the power to make payments to states and local governments in lieu of property taxes.¹¹

The Seaway Act also expressly allows the SLSDC to sue and be sued in its corporate name. However, since the SLSDC operates as part of the U.S. government, plaintiffs who are aggrieved by actions of the SLSDC can sue the U.S. government directly. In one case, SLSDC employees sued the U.S. government directly because the SLSDC failed to pay the employees wages they were due. The court held that it was appropriate for the plaintiffs to sue the United States directly and to recover damages from it, rather than just recovering damages from the SLSDC.¹² For the purposes of suing the SLSDC for other actions, a plaintiff *must* sue the U.S. government directly.¹³ The Federal Tort Claims Act provides that when an agency is sued for negligence, it cannot be sued in its own name – a plaintiff must sue the U.S. government directly.¹⁴ In another case, a Canadian Indian tribe sued the SLSDC for violating the 5th Amendment of the U.S. Constitution and taking land by submerging some islands.¹⁵ The court held that this suit should really have been brought against the United States since the SLSDC was acting as a government entity.¹⁶ The SLSDC is considered a federal agency for the purposes of the Federal Torts Claim Act and may not be sued under that Act as a corporation separate from the government.¹⁷

B. The Port and Tanker Safety Act Gave the SLSDC Authority to Regulate the Seaway

The Port and Waterways Safety Act was passed in 1972 and was amended in 1978 by the Port and Tanker Safety Act (Tanker Act). It applies generally to all ports under the jurisdiction of the United States and to all the navigable waters of the United States. The Tanker Act amendments were a response to the increased vessel traffic in United States waterways. Its purposes are to improve vessel and port safety and security and to increase protection of the marine environment.¹⁸ The Tanker Act was passed partly in response to the increase in vessel traffic and use of oil – the increase in the amount of oil being transported and the decrease in the

⁷ 33 U.S.C. § 984(a)(5) (2008).

⁸ 33 U.S.C. § 984(a)(8) (2008).

⁹ 33 U.S.C. § 984(a)(10) (2008).

¹⁰ 33 U.S.C. § 985 (2008).

¹¹ 33 U.S.C. § 986 (2008).

¹² *Breitbeck v. U.S.*, 500 F.2d 556 (Ct.Cl. 1974).

¹³ *Handley v. Tecon Corporation*, 172 F.Supp. 565 (D.C.N.Y. 1959).

¹⁴ *Id.*

¹⁵ *Canadian St. Regis Band of Mohawk Indians v. New York*, 640 F.Supp. 203 (N.D.N.Y. 1986).

¹⁶ *Id.* at 207..

¹⁷ *Handley v. Tecon Corporation*, 172 F.Supp. 565 (D.C.N.Y. 1959).

¹⁸ 33 U.S.C. § 1221 (2008).

maneuverability of the oil tankers was becoming a source of concern to Congress.¹⁹ Although other legislation was being passed that addressed some problems of increased oil spills, that new legislation addressed cleanup. The Tanker Act was important because it focused on prevention.²⁰ “The emphasis of H.R. 8140 [what is now known as the Tanker Act] is on new standards and regulations to prevent damage to the environment.”²¹

The authority in the Tanker Act is generally delegated to the Secretary of the department in which the Coast Guard is operating (currently the Department of Homeland Security),²² but several sections are explicitly delegated to the Secretary of Transportation²³ who in turn has delegated them to the SLSDC (as they relate to the operation of the Saint Lawrence Seaway).²⁴ The sections delegated to the SLSDC are essentially the core of the Tanker Act. They include vessel operating requirements, considerations by Secretary, security, investigatory powers, regulations, and enforcement. The authority delegated to the SLSDC from the Tanker Act is very specific. For example “[the SLSDC] may construct, operate, maintain, improve, or expand vessel traffic services, consisting of measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment . . . may control vessel traffic in areas . . . which the Secretary determines to be hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances”²⁵

The authority that the SLSDC has from the Tanker Act is subject to several requirements. Under the section of the Tanker Act called “Considerations by Secretary,” if the SLSDC acts pursuant to the example authority in the prior paragraph, it must also “take into account all relevant factors concerning navigation and vessel safety, protection of the marine environment, and the safety and security of United States ports and waterways, including but not limited to . . . variations in local conditions of geography, climate, and other similar factors . . . environmental factors . . . local practices and customs, including voluntary arrangements and agreements within the maritime community.”²⁶ In addition, under the Tanker Act, the SLSDC must also “at the earliest possible time, consult with and receive and consider the views of representatives of the maritime community, ports and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed actions.”²⁷

¹⁹ S. Rep. 92-724.

²⁰ *Id.*

²¹ *Id.*

²² 33 U.S.C. § 1222 (2008).

²³ 33 U.S.C. § 1229 (2008).

²⁴ 49 C.F.R. § 1.52(a) (2008). The C.F.R. refers to “sections 4, 5, 6, 7, 8, 12 and 13 of section 2 of the Port and Tanker Safety Act” These sections correlate to 33 U.S.C. §§ 1223, 1224, 1225, 1226, 1227, 1231, and 1232.

²⁵ 33 U.S.C. § 1223(a) (2008).

²⁶ 33 U.S.C. § 1224(a) (2008).

²⁷ 33 U.S.C. § 1224(b) (2008).

III. THE SLSDC OPERATES UNDER THE U.S. DEPARTMENT OF TRANSPORTATION AS A GOVERNMENT CORPORATION

Under U.S. Department of Transportation (DOT) regulations, the SLSDC is one of the 13 “operating elements” under the DOT and is “responsible for the development, operation, and maintenance of that part of the Seaway within the territorial limits of the United States.”²⁸ Because the SLSDC operates within the DOT, it is subject to the direction and supervision of the Secretary of Transportation²⁹ and the SLSDC Administrator reports directly to the Secretary of Transportation.³⁰

There is no explicit indication of how much control the DOT actually exerts on the SLSDC, but there is some evidence as to the level of control. For example, SLSDC must have its budget approved by Congress every year, it is required to submit an annual report to the DOT, and SLSDC employees participate on many of the DOT committees.³¹ In a report by the General Accounting Office, the SLSDC emphasized how much time was spent doing DOT related activities and reports.³² When the SLSDC was considered for Performance Based Organization (PBO) status, the report indicated that the SLSDC was hoping that PBO status would give it greater autonomy from the DOT.³³ Some of the DOT oversight measures mentioned in the report include: yearly accountability contracts between the Secretary of the DOT and the SLSDC Administrator which document expected levels of SLSDC performance, yearly assessments of SLSDC’s success in meeting DOT-wide performance targets, budget assessments, Presidential Management Agenda ratings, and efforts at addressing weaknesses or challenges the SLSDC is facing.

Some general overarching control is demonstrated by the SLSDC’s attention to DOT and Administration goals. For example, in its budget request for this year, SLSDC states that its request supports all applicable President’s Management Agenda initiatives and the DOT strategic goals of global connectivity and security.³⁴ Additionally, SLSDC has stated that it works to

²⁸ 49 C.F.R. § 1.3 (2008); 49 C.F.R. § 1.4(g) (2008).

²⁹ 33 U.S.C. § 981 (2008).

³⁰ 49 C.F.R. § 1.3 (2008).

³¹ *Performance Based Organizations: Issues for the Saint Lawrence Seaway Development Corporation Proposal*, General Accounting Office report:

<<http://books.google.com/books?id=uX4xucYCQAUC&pg=PA20&lpg=PA20&dq=slsdc+relationship+dot&source=web&ots=0U5pkfC4RC&sig=s2QZ-IZQ4NuOupVb9mw920QQfns&hl=en#PPP1,M1>> Last accessed 4/18/08.

³² *Id.*

³³ *Id.*

³⁴ Department of Transportation: Budget Estimates Fiscal Year 2008 for the Saint Lawrence Seaway Development Corporation: <<http://www.seaway.dot.gov/SLSDC%20FY%202008%20Congressional%20Justification.pdf>> Last Accessed 4/19/08.

implement the agency-wide goals and policies of the DOT, and support the vision, mission, and goals of the DOT and the Administration.³⁵

A. *SLSDC is a Government Corporation*

The SLSDC was designated as a wholly-owned government corporation under the Seaway Act when the SLSDC was established in 1954.³⁶ The Government Corporation and Control Act³⁷ lists the SLSDC as one of the wholly-owned government corporations. A government corporation (as opposed to an agency) is usually created when an organization plans to conduct activities that generate revenue and are intended to be self-sustaining.^{38,39} The SLSDC, like the Panama Canal Corporation and the Postal Service, is designed to function in a business-like manner. Some examples of other wholly-owned government corporations are the Government National Mortgage Association, the Tennessee Valley Authority, and the Federal Crop Insurance Corporation.⁴⁰ There are no set criteria that typify a government corporation; however, most government corporations have the following four things in common: “they are (1) predominately of a business nature; (2) produce revenue and are potentially self-sustaining; (3) involve a large number of business-type transactions with the public; and (4) require a greater flexibility than the customary type of appropriations budget ordinarily permits.”⁴¹

Wholly-owned government corporations like the SLSDC are usually treated like agencies and are subject to executive control.⁴² The SLSDC is a corporation that is essentially an ‘instrumentality’ of the United States because it performs a governmental function⁴³ and is considered to be an agency under some federal law.⁴⁴ In a 1995 GAO report on government corporations, SLSDC stated that it considered itself subject to FOIA and the Privacy Act of 1974, but not subject to the Government in the Sunshine Act since the SLSDC is managed by one administrator (not constituting a “collegial body comprised of two or more individual members” to which the law applies).⁴⁵

³⁵ *United States Department of Transportation Performance Report, FY 2007*; Saint Lawrence Seaway Development Corporation Fiscal Year 2007/2008 Strategic Plan, <http://www.greatlakes-seaway.com/en/pdf/slsdc_stratplan.pdf> Last accessed on 4/18/08.

³⁶ 33 U.S.C. § 981 (2008).

³⁷ 31 U.S.C. § 9101 (2008).

³⁸ Government Corporations and Government Sponsored Enterprises Workbook

By Thomas H. Stanton online at <<http://www.jhu.edu/ccss/toolsworkbooks/workbk5.html>> last accessed on 3/29/08

³⁹ Please see Appendix A for a chart comparing public and private corporations.

⁴⁰ 31 U.S.C. § 9101(3) (2008).

⁴¹ FLETCHER-CYC § 69.10.

⁴² A. Michael Froomkin, *Reinventing the Government Corporation*, 1995 U. Ill. L. Rev. 543, 554 (1995).

⁴³ *Handley v. Tecon Corporation*, 172 F.Supp. 565 (D.C.N.Y. 1959); H.R. Rep. 83-1215 (1954 U.S.C.C.A.N. 2197)

⁴⁴ 28 U.S.C. § 2671 (2008).

⁴⁵ U.S. GAO, *Government Corporations: profiles of Existing Government Corporations* (1995).

B. The SLSDC Has a Managing Administrator

The Administrator of the SLSDC is the individual with the power to manage the corporation.⁴⁶ The Administrator is appointed by the President and must be confirmed by the Senate.⁴⁷ The term length for the Administrator is seven years.⁴⁸ The Administrator reports directly to the Secretary of Transportation.⁴⁹ The current Administrator, Collister Johnson, Jr., is the ninth Administrator of the SLSDC.⁵⁰

C. The SLSDC Has a Five Member Advisory Board

The SLSDC advisory board is made up of five members who are all appointed by the President.⁵¹ They are required to meet at least once every three months.⁵² During these meetings, they are supposed to review the policies of the SLSDC and advise the Administrator about the policies.⁵³ These meetings are open to the public and are advertised in the Federal Register. More information about public participation in SLSDC Advisory Board proceedings is included in Section IV of this memorandum.

D. The SLSDC Has a Simple Organizational Structure With Headquarters in New York and Washington, D.C.

The SLSDC is one of thirteen operating administrations under the U.S. Department of Transportation. It operates out of two main headquarters: the Policy Headquarters in Washington, D.C. and the Operations Headquarters in Massena, New York. The SLSDC employs a total of 157 FTEs including an Administrator, a Deputy Administrator, a Chief of Staff, and other employees who work in both the New York office and the Washington office. Please see Appendix C for the SLSDC organization chart.

E. Most of the SLSDC's Funding is Federal Money From the Harbor Maintenance Trust Fund

The SLSDC's actual budget for FY 2006 was \$16,121,000 of federal money derived from the Harbor Maintenance Trust Fund (which is funded primarily by a user fee for commercial users of certain U.S. ports) and \$1,109,000 from non-federal revenues which came

⁴⁶ 33 U.S.C. § 982(a) (2008).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Performance Based Organizations: Issues for the Saint Lawrence Seaway Development Corporation Proposal*, General Accounting Office report:

<<http://books.google.com/books?id=uX4xucYCQAUC&pg=PA20&lpg=PA20&dq=slsdc+relationship+dot&source=web&ots=0U5pkfC4RC&sig=s2QZ-IZQ4NuOupVb9mw920QQfns&hl=en#PPP1,M1>> Last accessed 4/18/08; 33 U.S.C. § 981 (2008).

⁵⁰ St. Lawrence Seaway Development Corporation website: <<http://www.greatlakes-seaway.com/en/management/slsdc/board/index.html>> Last accessed on 3/31/08.

⁵¹ 33 U.S.C. § 982(b) (2008).

⁵² *Id.*

⁵³ *Id.*

from investment interest, rental payments, pleasure-craft tolls, tug services and duty-free store revenues. The budget request for FY 2008 is \$17,392,000 of federal money and \$900,000 of non-federal revenues. The \$18,292,000 FY 2008 requested budget is allocated as follows: \$4,291,000 for administrative expense, \$13,261,000 for non-administrative operations and maintenance activities and \$740,000 for replacements and other improvements.⁵⁴

IV. THE SLSDC HAS THE AUTHORITY TO PROMULGATE REGULATIONS

The SLSDC's authority to promulgate regulations comes from two statutes: the Seaway Act and the Tanker Act. The Seaway Act gives the SLSDC general authority to promulgate or repeal rules and regulations that "govern the manner in which [SLSDC's] business may be conducted and the powers vested in [the SLSDC] may be exercised."⁵⁵ The Tanker Act gives authority to the Secretary of Transportation to promulgate, amend, or repeal regulations, and that authority in turn is delegated to the SLSDC.⁵⁶

A. The SLSDC's Existing Regulations are Found in 33 C.F.R. Part 401 and in the Seaway Handbook

Existing regulations for the SLSDC are found in 33 C.F.R. Part 401 (called the Seaway Regulations). These regulations are the same as the regulations in the Seaway Handbook, which is a joint publication of the SLSDC and the SLSMC. The Seaway Handbook contains U.S. regulations 33 C.F.R. § 401.1 through § 401.97 and some additional Canadian regulations. These regulations address topics such as the conditions of vessels, pre-clearance and security for tolls, seaway navigation, radio communications, dangerous cargo, toll assessment and payment, information and reports, detention and sale, and navigation closing procedures.⁵⁷ Some examples of the Seaway Regulations which pertain to the environment are 'Disposal and Discharge Systems,' 'Ballast Water and Trim,' and 'Pollution.'

B. SLSDC Must Comply with Statutory Requirements in its Authority-Granting

The regulatory authority derived from the Seaway Act does not include any criteria for the SLSDC to follow when promulgating regulations. The authority derived from the Tanker Act, however, includes a list of requirements with which the SLSDC must comply when promulgating, repealing, or amending regulations. When rulemaking under the authority of the Tanker Act, the SLSDC must establish procedures for consulting with, receiving and considering the views of all interested parties including the following: "interested Federal departments and

⁵⁴ Department of Transportation: Budget Estimates Fiscal Year 2008 for the Saint Lawrence Seaway Development Corporation: <<http://www.seaway.dot.gov/SLSDC%20FY%202008%20Congressional%20Justification.pdf>> Last Accessed 4/19/08.

⁵⁵ 33 U.S.C. § 984(a)(4) (2008).

⁵⁶ 33 U.S.C. § 1231(a) (2008).

⁵⁷ 33 C.F.R. Part 401 (2008).

agencies; officials of State and local governments; representatives of the maritime community; representatives of port and harbor authorities or associations; representatives of environmental groups; any other interested parties who are knowledgeable or experienced in dealing with problems involving vessel safety, port and waterways safety, and protection of the marine environment; and advisory committees consisting of all interested segments of the public when the establishment of such committees is considered necessary because the issues involved are highly complex or controversial.”⁵⁸

V. THE PUBLIC CAN GET INVOLVED WITH THE SLSDC DECISION-MAKING PROCESS BY STAYING INFORMED OF SLSDC PLANS, PARTICIPATING IN RULEMAKING, AND SUBMITTING REQUESTS FOR INFORMATION

A. *The Public Can Stay Informed by Checking the Federal Register for SLSDC Advisory Board Meeting Notices and Participating in the Meetings*

The Saint Lawrence Seaway Development Corporation’s Advisory Board (Advisory Board) is required to meet quarterly and is composed of five members who are appointed by the President.⁵⁹ During these meetings the Advisory Board “shall review the general policies of the Corporation, including its policies in connection with design and construction of facilities and the establishment of rules of measurement for vessels and cargo and rates of charges or tolls; and shall advise the Administrator”⁶⁰ (in whom the management of the Corporation is vested⁶¹). These quarterly meetings are announced approximately two weeks in advance in the Federal Register.⁶² The meeting notice includes date, time, location, and very general non-substantive agenda information.⁶³ The meeting notices state the meeting is open to the public and remind citizens that “[a]ny member of the public may present a written statement to the Advisory Board at any time.”⁶⁴ According to the SLSDC, these meetings can only be attended in person, though the meeting minutes (if there are any) should be available to the public.⁶⁵ The SLSDC currently requires a FOIA request for meeting minutes.⁶⁶

⁵⁸ 33 U.S.C. § 1231(b) (2008).

⁵⁹ 33 U.S.C. § 982(b) (2008).

⁶⁰ *Id.*

⁶¹ E.g., 33 U.S.C. § 982(a) (2008).

⁶² E.g., 73 FR 18, Jan. 28, 2008. To check the Federal Register for Meeting Notices, go to <www.gpoaccess.gov>, click on Federal Register, and type “Saint Lawrence Seaway Development Corporation” into the search bar then hit enter. Look for entries titled “Advisory Board”. Last accessed on 4/18/08.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Phone call with Carrie Mann, SLSDC Chief Counsel, on Wednesday, April 16th, 2008.

⁶⁶ *Id.*

B. *The Public Can Comment on Rules Proposed by the SLSDC*

When the SLSDC proposes a rulemaking, it must publish a general notice of the proposed rulemaking in the Federal Register.⁶⁷ The notice is supposed to inform the public of the time, location, and nature of the rulemaking proceedings, the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved.⁶⁸ After reviewing this information, the public is free to comment on the proposed rule “through the submission of written data, views, or arguments.”⁶⁹

This right to comment is based on the idea that public comments will “assur[e] that the agency will have before it the facts and information relevant to a particular administrative problem, as well as suggestions for alternative solutions.”⁷⁰ Because the purpose of allowing comments from the public is to better inform the agency, an agency must respond to “significant comments” or “comments of cogent materiality” by revising the rule or explaining why it will not.⁷¹ The APA requires that an agency only respond to or discuss the relevant comments that it receives in some way that addresses the commenter’s concern.⁷² In cases where agencies have received too many comments to be managed, the agency has not been required to comment on all of them.⁷³ Comments that require agency response “must be significant enough to step over a threshold requirement of materiality before any lack of agency response or consideration becomes of concern.”⁷⁴ This standard is a matter of agency discretion but is reviewable.⁷⁵

A final agency rule is required to be published in the Federal Register no later than 30 days before the date that the rule is to take effect.⁷⁶ Once a rulemaking process has begun by publication of the proposed rule in the Federal Register, the rule will be assigned a docket number and all future related documents in the Federal Register regarding that rule will be listed under the same docket number.⁷⁷

⁶⁷ 5 U.S.C. § 553(b) (2008).

⁶⁸ 5 U.S.C. § 553(b)1-3 (2008).

⁶⁹ 5 U.S.C. § 553(c) (2008).

⁷⁰ *American Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1044 (internal citation omitted)(D.C. Cir. 1987).

⁷¹ *United States v. Nova Scotia Food Products Corp.*, 568 F.2d 240 (2d Cir. 1977) (holding that when the FDA proposed a rule requiring food sanitization standards that Nova Scotia Food commented would destroy a specific fish product and FDA failed to discuss or respond to the comment, FDA violated §553 of the APA because a “concise general statement” is supposed to provide a safeguard against arbitrary decision making); *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 393-94 (D.C. Cir. 1973) (holding that when the EPA proposed a rule and received comments from over 200 parties, EPA did not have to respond to all comments, but did have to address significant comments or potential significance), cert. denied, 417 U.S. 921, 94 S. Ct. 2628, 41 L. Ed. 2d 226 (1974).

⁷² *United States v. Nova Scotia Food Products Corp.*, 568 F.2d 240 (2d Cir. 1977).

⁷³ *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 394 (D.C. Cir. 1973).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ 5 U.S.C. § 553(d) (2008).

⁷⁷ <www.gpoaccess.gov/fr/sections.html> Last accessed on 4/18/08.

C. *The Public Can Get Involved By Submitting Requests for Information to the SLSDC*

Under the Freedom of Information Act (FOIA), citizens have the right to request rules of procedure, substantive rules, and other general information from an agency.⁷⁸ There is no specific form needed to submit a FOIA request, although DOT regulations do have certain requirements.⁷⁹ The requesting citizen will often have to pay copying fees for the documents she requests, so if money is a concern, the requesting letter should limit the fees that she is willing to pay. The requester can also request a waiver of fees and the DOT will consider certain factors, including whether disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the government or is not primarily in the commercial interest of the requester.⁸⁰

The agency must respond within 20 days as to whether it will disclose the requested information; if disclosure is granted, the information should follow.⁸¹ FOIA exempts nine types of records from disclosure requirements—generally those that “protect against the disclosure of information that would harm national defense or foreign policy, privacy of individuals, proprietary interests of business, functioning of the government, and other important interests” are exempted from disclosure.⁸² If the agency does not respond within 20 days or denies the request, the requester can file an administrative appeal.⁸³ If the administrative appeal is denied, the requester then has the right to file a lawsuit in Federal District Court.⁸⁴

VI. THE SLSDC AND CANADA’S SLSMC JOINTLY REGULATE THE SEAWAY GUIDED BY STATUTES AND AGREEMENTS

As stated in its authorizing statute, the SLSDC is required to “make necessary arrangements to assure the coordination of its activities with those of the Saint Lawrence Seaway Authority of Canada.”⁸⁵ The power of the Saint Lawrence Seaway Authority of Canada was transferred to the Saint Lawrence Seaway Management Corporation (SLSMC) in 1998.⁸⁶ Another section of the SLSDC’s authorizing statutes also discusses the manner in which the SLSDC and the SLSMC divide toll money and other revenues.⁸⁷

⁷⁸ “Citizen’s Guide on Using the Freedom of Information Act”, Committee on Government Reform (2005); 5 U.S.C. § 552 (2008). The SLSDC does not have its own FOIA regulations, but DOT’s FOIA regulations are found at 49 C.F.R. 7(2008).

⁷⁹ 49 C.F.R. §7.14(2008). Some agencies have formal FOIA request forms, but they are not required to be used.

⁸⁰ 49 C.F.R. §7.41-.44(2008).

⁸¹ 49 C.F.R. §7.31(2008).

⁸² “Citizen’s Guide on Using the Freedom of Information Act”, Committee on Government Reform (2005).

⁸³ 49 C.F.R. §7.21(2008).

⁸⁴ *Id.*

⁸⁵ 33 U.S.C. § 983 (2008).

⁸⁶ Canada Marine Act, S.C. 1998 c. 10 § 80, *See also*, 132 C. Gaz. 21 (1998).

⁸⁷ 33 U.S.C. § 988 (2008).

In 2003, the DOT and the Department of Transport of Canada signed a Memorandum of Cooperation in which they agreed to work with each other on objectives in furtherance of the success of the Saint Lawrence Seaway.⁸⁸ These objectives center around ensuring the continued viability of the Seaway, identifying factors and trends in marine transportation, assessing the engineering, economic, and environmental factors associated with the Seaway, and evaluating the reliability and condition of the Seaway.⁸⁹ It was this Memorandum of Cooperation (MOC) that led to the commencement of the Great Lakes Saint Lawrence Seaway (GLSLS) Study.⁹⁰ This MOC followed a Memorandum of Understanding (MOU) signed between the SLSDC, the U.S. Coast Guard, the SLSMC, and Transport Canada in 1997.⁹¹ The MOU was the inception of a program to expedite safe transit of ships through the Seaway by coordinating vessel inspection and enforcement activities.⁹² The SLSDC's current strategic plan includes information on its efforts and intentions to continue working with the SLSMC to perform many of its tasks on the Seaway.⁹³

A major joint project between the U.S. and Canada has been the Great Lakes Saint Lawrence Seaway Study which is focused on better understanding the economics, engineering, and environment of the Seaway and how it will continue to operate in the coming decades.⁹⁴ The SLSDC and the SLSMC also work together to:

- write rules and regulations for the Seaway;⁹⁵
- publish and administer the Saint Lawrence Seaway Tariff of Tolls;⁹⁶
- perform ship inspections;⁹⁷
- maintain the AIS (Automatic Vessel Identification System);⁹⁸
- construct and operate authorized power works and dams;⁹⁹
- maintain a joint website;¹⁰⁰ and

⁸⁸ Memorandum of Cooperation, signed by Department of Transport of Canada and U.S. Department of Transportation on May 1st, 2003.

⁸⁹ *Id.*

⁹⁰ <<http://www.glsls-study.com/English%20Site/faqs.html>> Last accessed on 4/18/08.

⁹¹ Statement by Administrator Albert S. Jacquez, St. Lawrence Seaway Development Corporation, to the Subcommittee on Water Resources and Environment of the House Committee on Transportation and Infrastructure, Feb. 26th, 2004, at 4.

⁹² *Id.*

⁹³ Saint Lawrence Seaway Development Corporation Fiscal Year 2007/2008 Strategic Plan, <http://www.greatlakes-seaway.com/en/pdf/slsdc_stratplan.pdf> Last accessed on 4/18/08.

⁹⁴ <<http://www.glsls-study.com/English%20Site/faqs.html>> Last accessed on 4/18/08.

⁹⁵ Saint Lawrence Seaway Development Corporation Fiscal Year 2007/2008 Strategic Plan, <http://www.greatlakes-seaway.com/en/pdf/slsdc_stratplan.pdf> Last accessed on 4/18/08.

⁹⁶ 33 U.S.C § 988, see also 33 C.F.R. § 402. E.g. <http://www.greatlakes-seaway.com/en/pdf/web_schedule_tolls.pdf> Last accessed on 4/18/08.

⁹⁷ <<http://www.greatlakes-seaway.com/en/news/press-releases/pr20080116.html>> Last accessed on 4/18/08.

⁹⁸ <<http://www.greatlakes-seaway.com/en/commercial/transiting/ais/index.html>> Last accessed on 4/18/08.

⁹⁹ 33 U.S.C. § 983(b) (2008).

¹⁰⁰ <<http://www.greatlakes-seaway.com>> Last accessed on 4/18/08.

- determine Seaway opening and closing dates.¹⁰¹

¹⁰¹ Saint Lawrence Seaway Development Corporation Fiscal Year 2007/2008 Strategic Plan, <http://www.greatlakes-seaway.com/en/pdf/slsdc_stratplan.pdf> Last accessed on 4/18/08.