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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Environment and Natural Resources (SC-ENR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (August 2012)

June - 2014



WISCONSIN STATE REPRESENTATIVE
Louis J. Molepske, Jr.
71ST ASSEMBLY DISTRICT

Date ?

**Written Testimony of Representative Louis J. Molepske, Jr.
Senate Bill 119**

I want to begin by thanking Chairperson Miller and the members of the Senate Environment and Natural Resources Committee for scheduling a public hearing for this important legislation. I am thankful that Senators Wirsch and Cowles have introduced this proposal in the Senate. As you know I have introduced Assembly Bill 86 on the same subject.

We cannot read the papers or listen to our constituents without hearing the words "invasive species" and the ecological and economical disasters that follow. These invaders are not staying put in the Great Lakes, but are finding their way to lakes, rivers and other water bodies throughout Wisconsin. From Minocqua Lake in Oneida County to Lake Geneva in Walworth County, water-borne invasive species are causing havoc to the multi-billion dollar tourism, recreation and commercial fishing industries. We have recently witnessed the discovery of VHS, a deadly disease that affects the fish population, in Wisconsin. Scientists have suggested that VHS may have been introduced to North America via ballast water.

There are currently **183** aquatic nuisance species in the Great Lakes, including the zebra mussel, sea lamprey and spiny water flea. On average, a new species is introduced to the Great Lakes every **six and a half months**. The statistics regarding both the ecological and economic impact that invasive species have had are staggering. For example:

- From 1992 to 2000, **80%** of the plankton in Lake Michigan has been lost as a direct result zebra muscles.
- According to the National Wildlife Federation, invasive species have cost citizens and businesses in the Great Lakes region as much as **\$10,000,000 billion dollars** in the past ten years.
- It has been estimated that the cost of dealing with zebra and quagga mussels in the Great Lakes alone has been approximately \$2 billion.
- On the state level, since the fiscal year 2004, the Wisconsin Department of Natural Resources has awarded **\$2,451,198 million dollars** worth of grants aimed at combating the effects of invasive species in our State. When combined with local matching funds, volunteer donations and in-kind services, the total approaches **\$5,000,000 dollars**.

On the national level, a recent Federal Court decision ruled that the Environmental Protection Agency (EPA) is required to protect the Great Lakes by regulating the ways in which ships can dispose of ballast water. The judge also concluded that the discharged water should be considered **biological pollution** because of the invasive species found in the ballasts of freighters.

Although there are limited federal regulations in place, huge loopholes in the law still allow for approximately 80% of ships entering the Great Lakes to be exempt from treating their ballast water, suspended solids or biological particulates.

How much greater must the problem get before we act?

The federal government and the shipping industry have had ample opportunity to address this problem, but unfortunately they have been unwilling to do so. As such, as a fellow Great Lakes state, we have an *obligation* to take immediate action to protect our environment *and* our economy. According to a recent study completed by the Army Corps of Engineers, recreational boating in the Great Lakes region is a **\$5.5 billion dollar** industry. The eight Great Lakes states are home to nearly **4.3 million** private boats, nearly a third of the number of private boats in the United States. Commercial navigation on the Great Lakes generates nearly **\$3.4 billion dollars** in business revenue per year. Unless we take immediate action to address this critical issue, we put that invaluable industry at tremendous risk. Thus, as you can see, contrary to what the shipping industry may tell you, it is important to remember that this legislation *is not* anti-shipping, *but rather anti-shipping that destroys lakes.*

As you all know, Michigan passed Senate Bill 332 in 2005 with overwhelming support, including that of the Michigan Chamber of Commerce, to address this problem. In response to that legislation, the shipping industry has filed a lawsuit against the State of Michigan under the Commerce Clause. However, according to Senator Patricia L. Birkholz, the author of Senate Bill 332, “[i]f anything...it should be the State of Michigan suing the shippers for bringing in so many unwanted organisms.” By not working with the State of Wisconsin in cleaning up ballast water, the shipping industry is externalizing a cost of doing business to the Great Lakes ecosystem; the Wisconsin fishing industry, both professional and recreational; the Wisconsin tourism industry; the multiple users of water, both municipally and private; and to each of Wisconsin’s 72 counties’ inland water bodies.

Thank you very much for your time this morning. Along with my testimony, I have included copies of the following documents:

- The federal case requiring ballast water to be regulated under the Clean Water Act;
- A recent *U.S. News & World Report* article detailing state efforts to clean up ballast water;

- A resolution passed by one of Wisconsin's 72 counties requesting a fishing license increase to cover the costs of damages caused by invasive species;
- Testimony from Senator Patricia L. Birkholz, author of the Michigan legislation on ballast water, offering her full support for Wisconsin's efforts to take action on this critical Great Lakes initiative;
- A resolution passed by the Wisconsin State Division of the Izaak Walton League of America supporting the enactment of both Senate Bill 119 and Assembly Bill 86;
- A resolution passed by the Portage County Land Conservation Committee supporting State efforts to address the non-native aquatic invasive species problem;
- A Final Determination and Notice Regarding Ballast Water Treatment for Oceangoing Vessels on the Great Lakes prepared by the Director of the Michigan Department of Environmental Quality;
- A 2007 List of Vessels Reported as Complying with the Requirements of 1994 PA 451, Section 3103a of the Natural Resources and Environmental Protection Act; and
- A copy of the 2007 Ballast Water Management Practices Report Form for the State of Michigan.

I would be happy to answer any questions that you may have.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHWEST ENVIRONMENTAL
ADVOCATES; THE OCEAN
CONSERVANCY; and WATERKEEPERS
NORTHERN CALIFORNIA and its projects
CENTER FOR MARINE CONSERVATION, and
SAN FRANCISCO BAYKEEPER and
DELTAKEEPER,

No. C 03-05760 SI

**ORDER GRANTING PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT;
DENYING DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

Currently pending before this Court are the parties’ cross-motions for summary judgment. Having carefully considered the argument of the parties and the papers submitted, the Court hereby GRANTS plaintiffs’ motion and DENIES defendant’s motion.

BACKGROUND

In 1972, Congress enacted significant amendments to the Clean Water Act (“CWA” or “Act”) in order “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The CWA prohibits the discharge of any pollutant from a “point source” into navigable waters of the United States without a National Pollutant Discharge Elimination Systems (“NPDES”) permit. Northern Plains Resource Council v. Fidelity Exploration & Development Company, 325 F.3d 1155, 1160 (9th Cir. 2003).

1 The term "point source" includes a "vessel or other floating craft." 33 U.S.C. § 1362(14). "Discharge
2 of any pollutant" is defined as: "(A) any addition of any pollutant to navigable waters from any point source,
3 [and] (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source
4 other than a vessel or other floating craft." 33 U.S.C. § 1362(12). The term "pollutant" includes "biological
5 materials." 33 U.S.C. § 1362(6). The CWA excludes from the definition of "pollutant" any "sewage from
6 vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces." 33 U.S.C. §
7 1362(6).

8 The Environmental Protection Agency ("EPA") has primary authority to implement and enforce the
9 CWA. 33 U.S.C. § 1251(d). Pursuant to this authority, the EPA implemented 40 C.F.R. § 122.3(a), which
10 states:

11 The following discharges do not require NPDES permits:

12 (a) Any discharge of sewage from vessels, effluent from properly
13 functioning marine engines, laundry, shower, and galley sink wastes, or
14 any other discharge incidental to the normal operation of a vessel. This
15 exclusion does not apply to rubbish, trash, garbage, or other such
16 materials discharged overboard; nor to other discharges when the vessel
17 is operating in a capacity other than as a means of transportation such as
18 when used as an energy or mining facility, a storage facility or a seafood
19 processing facility, or when secured to the bed of the ocean, contiguous
20 zone or waters of the United States for the purpose of mineral or oil
21 exploration or development.

22 40 C.F.R. § 122.3(a).

23 The portion of 40 C.F.R. § 122.3(a) that is particularly relevant in this matter is its exclusion from the
24 NPDES permitting requirements for "any other discharge incidental to the normal operation of a vessel." In
25 particular, the EPA has relied on this regulation to exempt a variety of pollutant discharges, including ballast
26 water, from NPDES permitting requirements. Ballast water is taken on or discharged by ships in order to
27 accommodate changes in its weight when cargo is loaded and unloaded. Ships collect ballast water in
28 dedicated ballast water tanks, empty cargo tanks, or empty fuel tanks. A tanker ship in the Great Lakes can
contain as much as 14 million gallons of ballast water, which would be discharged at port when the ship takes
on cargo. Seagoing tankers can have double the amount of ballast water. The amount of ballast water
discharged in this country's waters exceeds 21 billion gallons each year. See Sivas Decl., Ex. C, EPA, Aquatic
Nuisance Species in Ballast Water Discharges: Issues and Options ("EPA Report") at 4 (Draft Report,

1 September 10, 2001).

2 The impact of this immense amount of ballast water discharged in this country's waters each year is that
 3 "more than 10,000 marine species each day hitch rides around the globe in the ballast water of cargo ships."
 4 Id. In fact, "the primary vector for ANS [Aquatic Nuisance Species] transport at this time is probably ballast
 5 water." Id. Invasive species transported by ballast water have "taken over wetland habitats, and deprived
 6 waterfowl and other species of food sources." United States General Accounting Office, Invasive Species:
 7 Obstacles Hinder Federal Rapid Response to Growing Threat, GAO-01-724, July 2001) at 3 (hereinafter
 8 "GAO Report").

9 The GAO Report stated that: "Zebra mussels are a widely known aquatic invasive. Transported into
 10 the Great Lakes in ships' ballast water, zebra mussels have clogged the water pipes of electric companies and
 11 other industries; infestations in the Midwest and Northeast have cost power plants and industrial facilities almost
 12 \$70 million between 1989 and 1995." Id. Other governmental agencies have recognized that "[t]he ecological
 13 damage caused by invasive species can be enormous." EPA Report at 9.

14 In January 1999, plaintiffs, among others, filed a petition requesting the EPA to repeal 40 C.F.R. §
 15 122.3(a) because it conflicts with the Clean Water Act, which does not exempt "discharges incidental to the
 16 normal operation of a vessel" from the requirement to obtain an NPDES permit. Sivas Decl., Ex. J ("Petition
 17 to Repeal 40 C.F.R. § 122.3(a)") at 1-2. In response to the petition, the EPA prepared the EPA Report for
 18 public comment. After considering public comments, the EPA denied the petition to repeal the exemption. 68
 19 Fed. Reg. 53,165 (September 9, 2003).

20 After the denial of its petition, plaintiffs filed a complaint in this Court against the EPA, requesting a
 21 declaration that the EPA's failure to rescind 40 C.F.R. § 122.3(a) in response to plaintiffs' petition was in clear
 22 violation of the CWA, and an injunction directing the EPA to repeal and rescind 40 C.F.R. § 122.3(a).¹
 23 Plaintiffs assert two claims: 1) that the EPA's promulgation of 40 C.F.R. § 122.3(a) is inconsistent with the
 24 EPA's statutory authority in the CWA and thus unlawful and subject to review under the Administrative
 25

26 _____
 27 ¹ Apparently in recognition of the subject matter jurisdiction issues discussed below, plaintiffs filed an
 28 alternative petition for review with the Ninth Circuit in December 2003. The Ninth Circuit granted plaintiffs'
 motion for voluntary dismissal without prejudice to reinstatement on May 4, 2004, in order to allow this Court
 to reach a final judgment in this case.

1 Procedure Act (“APA”), 5 U.S.C. § 706(2); and 2) that the EPA’s denial of plaintiffs’ petition was arbitrary,
2 capricious, and an abuse of discretion given the CWA and subject to judicial review under § 706(2) of the
3 APA.

4 The parties have since filed cross-motions for summary judgment. The Court has granted the Great
5 Lakes States’ request to file an amicus curiae brief in support of plaintiffs’ motion for summary judgment.
6 These motions are now before the Court.

8 LEGAL STANDARD

9 1. Summary judgment

10 Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions
11 on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that
12 the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party bears
13 the initial burden of demonstrating the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett,
14 477 U.S. 317, 323 (1986). The moving party, however, has no burden to negate or disprove matters on which
15 the non-moving party will have the burden of proof at trial. The moving party need only point out to the Court
16 that there is an absence of evidence to support the non-moving party’s case. See id. at 325.

17 The burden then shifts to the non-moving party to “designate ‘specific facts showing that there is a
18 genuine issue for trial.’” Id. at 324 (quoting Fed. R. Civ. P. 56(e)). To carry this burden, the non-moving party
19 must “do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita
20 Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). “The mere existence of a
21 scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could reasonably find for
22 the [non-moving party].” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

23 In deciding a motion for summary judgment, the evidence is viewed in the light most favorable to the
24 non-moving party, and all justifiable inferences are to be drawn in its favor. Id. at 255. “Credibility
25 determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury
26 functions, not those of a judge [when she] is ruling on a motion for summary judgment.” Id.

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1 Defendant, however, contends that there is an alternative court to review the EPA's action. Defendant
2 claims that the Courts of Appeals have exclusive jurisdiction over this matter under 33 U.S.C. § 1369(b)(1):

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5 Review of the Administrator's action . . . (E) in approving or promulgating
6 any effluent limitation or other limitation under section 1311, 1312, 1316,
7 or 1345 of [the Act], [and] (F) in issuing or denying any permit under
8 section 1342 of [the Act] . . . may be had by any interested person in the
9 Circuit Court of Appeals of the United States for the Federal judicial
10 district in which such person resides or transacts business which is directly
11 affected by such action upon application by such person.

12
13 Defendant claims that §§ 1369(b)(1)(E) and (F) both provide that plaintiffs' claims are within the Ninth
14 Circuit's exclusive jurisdiction. Plaintiffs respond that the review channeling provisions of § 1369(b)(1) should
15 be narrowly construed, and that they do not apply under the circumstances surrounding this case.

16
17 **A. 33 U.S.C. § 1369(b)(1)(E)**

18 Defendant argues that subsection (E) places jurisdiction with the Court of Appeals because 40 C.F.R.
19 § 122.3(a) involves "effluent limitations and other limitations" contained in NPDES permits. Defendant relies
20 on Natural Resources Defense Council, Inc. v. United States Environmental Protection Agency, 673 F.2d 400
21 (D.C. Cir. 1982) ("NRDC v. EPA") in support of its argument that "effluent limitations" include regulations that
22 implement NPDES permit programs. In NRDC v. EPA, the D.C. Circuit found that it had original jurisdiction
23 under § 1369(b)(1)(E) to review NPDES regulations that established "a complex set of procedures for issuing
24 or denying NPDES permits." Id. at 402. The court held that original jurisdiction in the Courts of Appeals was
25 proper because a contrary finding would "produce the truly perverse situation in which the court of appeals
26 would review numerous individual actions issuing or denying permits . . . but would have no power of direct
27 review of the basic regulations governing those individual actions." Id. at 405-06. See also Environmental
28 Defense Center, Inc. v. United States Environmental Protection Agency, 344 F.3d 832, 843 (9th Cir. 2003)
29 ("EDC v. EPA") (Ninth Circuit had jurisdiction under § 1369(b)(1) to hear challenge to EPA regulation
30 regarding NPDES permits for storm sewers, which excluded certain facilities from regulation).

31 Plaintiffs argue that § 1369(b)(1)(E) does not apply in this case because the provision in 40 C.F.R. §

1 122.33(a) that “any discharge incidental to the normal operation of a vessel” is exempted from NPDES permit
2 requirements cannot be construed as an “effluent limitation or other limitation” under § 1369(b)(1)(E). Plaintiffs
3 assert that an outright exemption for an entire class of discharges is not a limitation, because “limitation” is
4 defined as “[t]he act of limiting; the state of being limited” or a “restriction.” Black’s Law Dictionary (7th Ed.
5 1999).

6 The Court recognizes that the Ninth Circuit has “counseled against the expansive application of §
7 1369(b).” League of Wilderness Defenders v. Forsgren, 309 F.3d 1181, 1190 n. 8 (9th Cir. 2002).
8 Defendant has not cited any cases that deal with an exemption from NPDES permit requirements for an entire
9 class of discharges. In NRDC v. EPA, the court found that the regulations issued by the EPA “restrict who
10 may take advantage of certain provisions or otherwise guide the setting of numerical limitations in permits . .
11 . [T]he [regulations] are a limitation on point sources and permit issuers and a restriction on the untrammelled
12 discretion of the industry.” 673 F.2d at 404-05. In the current case, the exemption in question cannot be
13 classified as presenting any restriction or any limitation; instead, it is a categorical exemption for all discharges
14 incidental to the normal operation of a vessel, including ballast water discharges.

15 In EDC v. EPA, the EPA issued regulations regarding storm sewer systems. The regulations required
16 permits for a variety of storm sewer systems, including small municipal systems and construction sites. 344
17 F.3d at 842. As a result, municipal governments brought a challenge against the permit requirements, and an
18 environmental advocacy group argued that the permit process did not provide for adequate public oversight.
19 Id. at 843, 852. The environmental advocate plaintiffs also challenged the EPA’s decision to delegate to local
20 authorities supervision of a small group of commercial and governmental facilities. Id. at 858-59. Defendant
21 argues that this last claim by the plaintiffs in EDC v. EPA is similar to the plaintiffs’ claim in this case, and,
22 therefore, § 1369(b)(1)(E) applies.

23 The Court finds EDC v. EPA distinguishable, because that case involved a complicated regulatory
24 structure for storm sewer systems. Although the EPA exempted a narrow group of facilities from NPDES
25 permit requirements, it clearly limited the amount of storm sewer pollutants, unlike the case before this Court.
26 EDC v. EPA also contained permit requirements for storm sewer pollutants, unlike the blanket exemption for
27 ballast water discharges in this case. Therefore, the Court finds that 40 C.F.R. § 122.3(a) is not an “effluent
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1 limitation . . . [e]ven under the expansive definition of NRDC v. EPA.” Environmental Protection Information
2 Center v. Pacific Lumber Company, 266 F.Supp.2d 1101, 1119 (N.D. Cal. 2003) (“EPIC”) (EPA regulation
3 that exempted a number of silvicultural activities from the definition of “silvicultural point source” did not
4 constitute an “effluent limitation” under § 1369(b)(1)(E)).

5 Given that the EPA regulation in question did not constitute an “effluent limitation or other limitation,”
6 the Court finds that the Court of Appeals does not have exclusive jurisdiction over the matter under §
7 1369(b)(1)(E).

8
9 **B. 33 U.S.C. § 1369(b)(1)(F)**

10 Although it acknowledges that the provision is “not without ambiguity,” defendant argues that
11 § 1369(b)(1)(F) locates plaintiffs’ claims within the Ninth Circuit’s exclusive jurisdiction because the regulation
12 in question deals with the issuance or denial of a permit under § 1342. Def.’s Mot. at 14. Defendant claims
13 that the review of the regulation requires a court to define the scope of the applicability of the NPDES
14 permitting program, which has been recognized by the Ninth Circuit as subject to review under subsection (F).

15 Defendant relies primarily on two Ninth Circuit cases, NRDC v. EPA, 966 F.2d 1292 (9th Cir. 1992)
16 and American Mining Congress v. EPA, 965 F.2d 759 (9th Cir. 1992) (“AMC v. EPA”). In both cases, the
17 court relied on subsection (F) to review EPA regulations. In NRDC v. EPA, plaintiffs challenged EPA
18 regulations which related to storm water discharges by industrial activities and municipalities and which
19 exempted some activities from immediate NPDES permitting requirements. 966 F.2d at 1301-1308. In AMC
20 v. EPA, the challenged regulations imposed permit requirements for discharges from inactive mines, but
21 contained exceptions for two types of inactive coal mines pending expiration of a storm water permit
22 moratorium in October 1992. 965 F.2d at 762-3.

23 However, both NRDC v. EPA and AMC v. EPA involved temporary exclusions from the NPDES
24 permit requirements, not the permanent exclusions found in this case. Therefore, these cases do not support
25 defendant’s assertion that the regulation in question, which eliminates an entire type of discharge from the
26 NPDES permit requirements, is a provision governing the issuance of permits or regulates the underlying permit
27 procedures. There is no discharge subject to the permit requirements in this case, so it is not possible for the
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1 EPA to have procedures or permits for the court to evaluate under subsection (F).

2 This Court has already addressed this issue in factual circumstances very similar to the current case.
3 In EPIC, an environmental group brought an action challenging 40 C.F.R. § 122.27(b)(1), which exempted
4 from NPDES permitting requirements a number of silvicultural activities, such as nursery operations,
5 reforestation, surface drainage, and road construction and maintenance from which there is natural runoff. 266
6 F.Supp.2d at 1107-08. Defendants brought a motion to dismiss, claiming that the district court lacked subject
7 matter jurisdiction because the challenge was a review of an EPA action under subsection (F). Id. at 1113.
8 Judge Patel, in a carefully reasoned opinion, found that subsection (F) did not apply because “the EPA action
9 at issue is properly characterized as a regulation identifying a class of silvicultural sources that do not require
10 NPDES permits.” Id.

11 As is true in the current case, the plaintiffs’ challenge in EPIC dealt with a wholesale exclusion from the
12 NPDES permit requirements: in EPIC, surface drainage from silvicultural activities; in this case, ballast water
13 discharges. In EPIC, Judge Patel found that NRDC v. EPA and AMC v. EPA were distinguishable, because
14 in those cases “the regulations directly governed permit procedures by determining when permitting would
15 occur. In the action at bar, there can be no underlying permit procedures for silvicultural sources, because they
16 are not subject to an NPDES program.” Id. at 1115. For the same reason, the court rejected defendants’
17 argument that there would be an illogical tension between district court and circuit court review:

18 Given the specific language of the jurisdictional provision and the rationale
19 behind circuit court review of underlying procedures, however, such an
20 outcome is reasonable. Because [plaintiff] challenges a decision that in
21 effect excludes sources from the NPDES program, the circuit courts will
22 never have to confront the issuance or denial of a permit for these sources
23 Thus, a district court taking jurisdiction over a challenge to the
24 silvicultural regulation does not create the same awkwardness for a circuit
25 court as that described in the D.C. Circuit case of NRDC v. EPA [673
26 F.2d 400 (D.C. Cir. 1982).

23 Id. at 1115-16.

24 The Court agrees with Judge Patel’s analysis, and finds that subsection (F) does not apply in the current
25 case because of the EPA’s wholesale exclusion of ballast water from the NPDES permit requirements.
26 Although § 1369(b)(1) is not a “model of clarity,” it is not so cloudy as to require this Court to find that
27 plaintiffs’ challenge to 40 C.F.R. § 122.3(a) is a review of an EPA action “in issuing or denying any permit
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1 under § 1342”; the EPA could never issue or deny a permit for ballast water discharges given that they are
2 exempt from the NPDES permit requirements and absolutely no procedures exist to provide such permits.

3 Therefore, the Court finds no basis in § 1369(b)(1)(F) to require that initial review of plaintiffs’
4 challenge to 40 C.F.R. § 122.3(a) be had in the Court of Appeals.

5
6 **2. Statute of limitations**

7 Plaintiffs have brought two causes of action against defendant pursuant to 5 U.S.C. § 706(2). The first
8 cause of action asserts that the EPA’s promulgation of 40 C.F.R. § 122.3(a) was “inconsistent with, and in
9 excess of EPA’s statutory authority under, the Clean Water Act.” Compl. at ¶ 29. The second cause of action
10 alleges that the EPA’s denial of plaintiffs’ January 13, 1999 petition requesting repeal of 40 C.F.R. § 122.3(a)
11 was “arbitrary, capricious, an abuse of discretion and not in accordance with the Clean Water Act.” *Id.* at ¶
12 32.

13 Defendant does not challenge the timeliness of the second cause of action. Defendant does, however,
14 argue that the first cause of action, challenging EPA’s initial promulgation of the regulation, is untimely under
15 the six year statute of limitations provided in 28 U.S.C. § 2401(a) (“Except as provided by the Contract
16 Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the
17 complaint is filed within six years after the right of action first accrues. . .”). Section 2401(a) does generally
18 apply to actions brought under the APA. *Wind River Mining Corp. v. United States*, 946 F.2d 710, 713 (9th
19 Cir. 1991). Given that 40 C.F.R. § 122.3(a) was first promulgated in 1973, defendant argues that the cause
20 of action is clearly time-barred. *See* 38 Fed.Reg. 13, 528 (May 22, 1973).

21 In *Wind River*, the Ninth Circuit held that challenges to procedural violations in the adoption of
22 regulations and policy-based challenges must be brought within six years of a regulation’s promulgation. *Wind*
23 *River*, 946 F.2d at 715-16. It also held, however, that a substantive challenge to an agency decision alleging
24 that the agency lacked constitutional or statutory authority to make the decision may be brought within six years
25 of the application of that agency decision to the challenger, as an “as applied” challenge. *Id.* In so deciding,
26 the Ninth Circuit specifically approved the reasoning of the D.C. Circuit in *Oppenheim v. Coleman*, 571 F.2d
27 660 (D.C. Cir. 1978).

1 Cases following Wind River, including cases from other circuit courts, have specifically allowed *ultra*
2 *vires* challenges to regulations when filed within six years after the agency takes action based on the regulation.
3 See Natural Resources Defense Council, Inc. v. Evans, 279 F.Supp.2d 1129, 1148 (N.D. Cal. 2003); Gifford
4 Pinchot Task Force v. U.S. Fish and Wildlife Service, 378 F.3d 1059, 1075-76 (9th Cir. 2004); Legal
5 Environmental Assistance Foundation, Inc. v. U.S. Environmental Protection Agency, 118 F.3d 1467, 1473
6 (11th Cir. 1997)(“LEAF v. EPA”); Public Citizen v. Nuclear Regulatory Commission, 901 F.2d 147, 152
7 (D.C. Cir. 1990).

8 The parties dispute whether this case can fairly be classified as an “as applied” challenge. Defendant
9 argues that it cannot, because the EPA did not “apply” 40 C.F.R. § 122.3(a) to plaintiffs. Plaintiffs argue that
10 the case should be classified as an “as applied” challenge, since the EPA could not deny plaintiffs’ petition
11 without applying the regulation in the process.

12 This Court agrees with plaintiffs, and with the numerous courts which have held that “a claim that
13 agency action was violative of statute may be raised outside a statutory limitations period, by filing a petition
14 for amendment or rescission of the agency’s regulations.” Public Citizen, 901 F.2d at 152; LEAF v. EPA, 118
15 F.3d at 1473; Advance Transp. Co. v. United States, 884 F.2d 303, 305 (7th Cir. 1989); EPIC, 266
16 F.Supp.2d at 1121.

17 Here, plaintiffs clearly brought a petition to the EPA requesting rescission of the regulation in question,
18 based on the EPA having acted in excess of its statutory authority by issuing it. The Court finds that plaintiffs’
19 challenge is an “as applied” challenge, which accrued when the EPA rejected its petition on September 9,
20 2003. Therefore, this Court finds, as did the Eleventh Circuit in LEAF v. EPA, that it can “entertain [plaintiffs’]
21 contention that the regulations upon which EPA relies are contrary to the statute and therefore invalid,
22 regardless of the fact that [plaintiffs’] challenge is brought outside the statutory period for a direct challenge to
23 the regulations.” 118 F.3d at 1473.

24 Plaintiffs’ claim under the first cause of action is not time-barred under 28 U.S.C. § 2401(a).

25
26 **3. Review of 40 C.F.R. § 122.3(a)**

27 Under Chevron, plaintiffs argue that Congress “has directly spoken to” the issue of whether the EPA
28

1 must implement NPDES permit requirements for discharges incidental to the operation of a vessel, including
2 ballast water. Plaintiffs refer to the language of the Clean Water Act in support of their claim. The Court
3 agrees that the language of the Clean Water Act directly states that the EPA must form NPDES permit
4 requirements for discharges incidental to the normal operation of a vessel, including ballast water.
5

6 **A. The Clean Water Act**

7 The CWA prohibits the “discharge of any pollutant” except as authorized by an NPDES permit. 33
8 U.S.C. §§ 1311(a), 1342(a). An activity is subject to NPDES permit requirements when it 1) discharges, i.e.
9 adds, 2) a pollutant 3) to navigable waters 4) from 5) a point source. Committee to Save Mokelumne River
10 v. East Bay Municipal Utility District, 13 F.3d 305, 308 (9th Cir. 1993). The term “discharge of any pollutant”
11 is defined by the CWA as “any addition of any pollutant to navigable waters from any point source.” 33
12 U.S.C. § 1362(12)(A). The term “pollutant” includes solid waste, sewage, garbage, and biological materials.
13 33 U.S.C. § 1362(6). The “navigable waters” include “the waters of the United States, including the territorial
14 seas.” 33 U.S.C. § 1362(7). A “point source” under the CWA includes “any . . . vessel or other floating craft,
15 from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

16 First, ballast water discharges constitute a “discharge” or “addition” under the CWA. If a pollutant has
17 been introduced into navigable waters “from the outside world,” it meets the definition of “addition” under the
18 CWA. Catskill Mountains Chapter of Trout Unlimited v. City of New York, 273 F.3d 481, 491 (2d Cir.
19 2001). Ballast water discharges clearly introduce biological materials from outside sources, as demonstrated
20 in the introduction of the zebra mussel in the Great Lakes Region. GAO Report at 3.

21 Second, the discharged ballast water and other discharges incidental to the operation of a vessel
22 constitute “pollutants” under the CWA. See National Wildlife Federation v. Consumers Power Co., 862 F.2d
23 580, 583, 586 (6th Cir. 1988) (finding that fish and fish remains are “pollutants” because they constitute
24 “biological materials” under the CWA). It is not contested that ballast water can contain “biological materials,”
25 such as fish and other forms of aquatic life. EPA Report at 4.

26 Third, defendant does not dispute that the rivers, lakes and harbors where ballast discharges occur are
27 “navigable waters” under the CWA. Plaintiffs specifically reference the San Francisco Bay and the Great
28

1 Lakes, which clearly constitute “the waters of the United States” under 33 U.S.C. § 1362(7).

2 Finally, ballast water discharges clearly arise “from” a “point source,” as vessels are specifically
3 referenced in 33 U.S.C. § 1362(14).

4 The two exemptions for vessel discharges from the CWA do not apply in this case. The CWA
5 excludes from the definition of “discharge of a pollutant” the addition of a pollutant to the “contiguous zone” or
6 “ocean.” 33 U.S.C. § 1362(12)(b). The “contiguous zone” refers to the zone three miles from shore and
7 extending for twelve miles. 33 U.S.C. § 1362(9). The “ocean” extends beyond the “contiguous zone.” 33
8 U.S.C. § 1362(10). The CWA also excludes from the definition of “pollutant” any “sewage from vessels or
9 a discharge incidental to the normal operation of a vessel of the Armed Forces” 33 U.S.C. § 1362(6)(a).
10 These discharges are regulated by 33 U.S.C. § 1322.

11 The challenged regulation does not pertain to these exemptions. Instead, given the clear language of
12 the CWA, the statute requires that discharges of pollutants from non-military vessels into the nation’s lakes,
13 rivers, and harbors occur only under the regulation of an NPDES permit. The Court finds that the language
14 of the CWA demonstrates the “clear intent” of Congress to require NPDES permits before discharging
15 pollutants into the nation’s navigable waters.

16 17 **B. Congressional acquiescence**

18 Defendant does not contest this interpretation of the language of the CWA with respect to its passage
19 in 1972. Instead, defendant argues that its denial of the plaintiffs’ petition in 2003 was reasonable because
20 Congress has assented to the EPA’s interpretation of the CWA in 40 C.F.R. § 122.3(a) in the thirty years since
21 its promulgation.

22 Defendant argues that the length of time the regulation has been in effect, and Congress’ failure to revise
23 or repeal the regulation exempting “any other discharge incidental to the normal operation of a vessel” from
24 NPDES permit requirements, constitute persuasive evidence that Congress intended the interpretation taken
25 by the EPA. This argument fails for a number of reasons.

26 First, defendant asks the Court to consider the length of time that the regulation has been in effect to
27 determine Congressional intent, relying on National Muffler Dealers Association, Inc. v. United States, 440
28

1 U.S. 472 (1979). However, National Muffler is a pre-Chevron case. Moreover, in that case the Court found
2 that the statute in dispute “ha[d] no well-defined meaning . . . It is a term so general as to render an interpretive
3 regulation appropriate.” Id. at 477. By contrast, in this case the discharges that fall within the NPDES permit
4 requirements under the CWA are clearly articulated and there is a “well-defined meaning.” Therefore, under
5 Chevron, the Court is not required to determine whether the EPA’s decision on plaintiffs’ petition was a
6 “reasonable” interpretation; rather, the Court is required to determine if the regulation reflects the
7 “unambiguously expressed intent of Congress.”

8 Defendant then asserts that Congress has repeatedly addressed the CWA and discharges incidental
9 to a vessel, which gave rise to 40 C.F.R. § 122.3(a); therefore, Congress’ refusal to override the EPA’s
10 construction of the regulation demonstrates that it “acquiesced” to the EPA’s interpretation. This argument is
11 factually and legally flawed.

12 Defendant relies primarily on two cases, United States v. Riverside Bayview Homes, Inc., 474 U.S.
13 121 (1985) and Bob Jones University v. United States, 461 U.S. 574, 601 (1983). In Riverside Bayview,
14 plaintiffs challenged an Army Corps of Engineers regulation, promulgated under the CWA, which included
15 definitions of “wetlands” and “waters of the United States” in the course of regulating discharges of fill material
16 into wetlands adjacent to navigable waters. The Court found through the legislative history that Congress
17 acquiesced to the agency’s definition and upheld the regulation. Id. at 138. In Bob Jones University, the Court
18 found that Congress, by failing to pass bills overturning the regulatory provision, had “affirmatively manifested
19 its acquiescence” in an IRS policy revoking tax-exempt status for a university that engaged in racial
20 discrimination.

21 More recently, however, the Supreme Court has cautioned that courts should recognize congressional
22 acquiescence only “with extreme care.” Solid Waste Agency of Northern Cook County v. United States Army
23 Corps of Engineers, 531 U.S. 159, 169 (2001) (“SWANCC”). The Court noted that there is a tenuous
24 relationship between the actions of the session of Congress that enacted the statute and later actions or inactions
25 by other sessions of Congress. Id. at 170. Because “subsequent history is less illuminating than the
26 contemporaneous evidence. . . [the agency] face[s] a difficult task in overcoming the plain text and import of
27 [the statute].” Id.

28

1 As in Riverside Bayview, SWANCC addressed regulations relating to the definition of “navigable
2 waters” under the CWA as applied to wetlands. In light of the high standard which applies, the Court found
3 that the agency’s expansion of the definition of “navigable waters” to include nonnavigable, isolated waters
4 under the CWA was in excess of its jurisdiction. The Court distinguished Riverside Bayview because in that
5 case Congress had demonstrated its “unequivocal acquiescence to, and approval of, the Corps’ regulations
6 interpreting the CWA to cover wetlands adjacent to navigable waters . . . We found that Congress’ concern
7 for the protection of water quality and aquatic ecosystems indicated its intent to regulate wetlands ‘inseparably
8 bound up’ with the ‘waters’ of the United States.” Id. at 167.

9 In order to demonstrate the difficulty in proving congressional acquiescence, the Court in SWANCC
10 distinguished Bob Jones University:

11 In Bob Jones University v. United States, 461 U.S. 574 (1983), for
12 example, we upheld an Internal Revenue Service Revenue Ruling that
13 revoked the tax-exempt status of private schools practicing racial
14 discrimination because the IRS’ interpretation of the relevant statutes was
15 “correct”; because Congress had held “hearings on this precise issue,”
16 making it “hardly conceivable that Congress—and in this setting, any
17 Member of Congress—was not abundantly aware of what was going on”;
18 and because “no fewer than 13 bills introduced to overturn the IRS’
19 interpretation” had failed. Absent such overwhelming evidence of
20 acquiescence, we are loath to replace the plain text and original
21 understanding of a statute with an amended agency interpretation.

22 Id. at 170.

23 In this case, nothing defendant presents in support of its congressional acquiescence theory comes close
24 to the “overwhelming evidence of acquiescence” required by the Supreme Court in SWANCC. For example,
25 defendant presents no evidence of Congress’ consideration of and refusal to pass a statute overturning the
26 EPA’s exemption for discharges incidental to the normal operation of a vessel found in 40 C.F.R. § 122.3(a).

27 Instead, defendant points to congressional enactment of two other statutes – (1) the Non-indigenous
28 Aquatic Nuisance Prevention and Control Act (“NANPCA”), 16 U.S.C. § 4701, as re-authorized and
amended by the National Invasive Species Act of 1996 (“NISA”); and (2) the Act to Prevent Pollution from
Ships (“APPS”), 33 U.S.C. §§ 1901 et. seq., which was enacted in 1980 – to demonstrate that Congress has
acquiesced to the regulation by dealing with invasive species. Neither performs the “difficult task [of]
overcoming the plain text and import of” the CWA. Id. at 170.

1 NANPCA/NISA (hereinafter "NISA") established a program to develop regulatory requirements for
2 ballast water to control invasive species and directed the Coast Guard, instead of the EPA, to oversee the
3 program. However, NISA clearly was not intended to limit the CWA with respect to ballast water discharges;
4 Congress so stated in the text of NISA itself.³ Additionally, NISA only addresses aquatic nuisance species
5 from ballast water. It does not address the many other types of pollutants found in ballast water, such as
6 sediment, debris, rust, and interior coatings that have flaked off the inside walls of ballast tanks. See Andrew
7 N. Cohen and Brent Foster, The Regulation of Biological Pollution: Preventing Exotic Invasions From Ballast
8 Water Discharged into California Coastal Waters, 30 Golden Gate U. L. Rev. 787, 790-92, 799-801 (2000).
9 Therefore, the Court finds that NISA does not demonstrate Congress' intent to recognize the EPA's regulation
10 under 40 C.F.R. 122.3(a), as it specifically prevents preemption of the CWA.

11 The other statute defendants rely on, APPS, implements the provisions of the 1973 "International
12 Convention for the Prevention of Pollution from Ships" ("MARPOL"). With APPS, Congress established a
13 regulatory mechanism to implement domestic responsibilities under MARPOL, which was delegated to the
14 Coast Guard. However, the law contained a savings clause which is inconsistent with the argument that APPS
15 demonstrates Congress' intent to limit the CWA: "Remedies and requirements of this chapter supplement and
16 neither amend nor repeal any other provisions of law, except as expressly provided in this chapter." 33 U.S.C.
17 § 1907(f). Defendant argues that the savings clause tips in its favor, because 40 C.F.R. § 122.3(a) was in
18 effect at the time of APPS's passage and so the savings clause must endorse the regulation as written.
19 However, a general savings clause regarding the CWA cannot be read to endorse an action taken by an agency
20 that directly contradicts the CWA. At the very least, the general savings clause does not present
21 "overwhelming evidence of acquiescence."

22 Defendant also argues that Congress must have recognized 40 C.F.R. § 122.3(a) because Congress
23 has "comprehensively revisited" the CWA in 1997, 1981, and 1987, and has not overridden the regulation.
24

25
26 ³See 16 U.S.C. § 4711(b)(2)(C) ("The regulations issued under this subsection shall . . . not affect or
27 supersede any requirements or prohibitions pertaining to the discharge of ballast water into waters of the United
28 States under the Federal Water Pollution Control Act") and 16 U.S.C. § 4711 (c)(2)(J) ("The voluntary
guidelines issued under this subsection shall . . . not affect or supersede any requirements or prohibitions
pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution
Control Act . . .").

1 However, this is not the Overwhelming evidence required by SWANCC; indeed, Congress did not directly
2 discuss regulation of ballast water discharges and other discharges incidental to the operation of a vessel, nor
3 did Congress reject a bill overturning 40 C.F.R. § 122.3(a). Nor does excluding vessels of the Armed Forces
4 from NPDES permit requirements (see 33 U.S.C. § 1322(a)(12)) suggest approval of or application to non-
5 military vessels.

6 The Deep Seabed Hard Mineral Resources Act ratified the EPA's regulation that asserted CWA
7 jurisdiction over discharges from vessels associated with commercial recovery or exploration. 30 U.S.C. §
8 1419(e). Under the statute, these vessels will not be considered a "vessel or other floating craft" under 33
9 U.S.C. § 1362(12)(B), a provision that exempts the discharge of pollutants by "vessels" in the contiguous zone
10 or the ocean from the definition of "discharge of a pollutant" under the Act. Therefore, by implementing 30
11 U.S.C. § 1419(e), Congress expanded NPDES permit requirements to include discharges by vessels
12 associated with commercial recovery or exploration beyond three miles from the shoreline. Defendant argues
13 that this expansion of the NPDES permit requirements simultaneously endorses the EPA's drastic exclusion
14 from the NPDES system by 40 C.F.R. § 122.3(a). Defendant does not provide any legislative history
15 suggesting that Congress was faced with a bill proposing the rejection of 40 C.F.R. § 122.3(a), nor does
16 defendant explain how the expansion of the scope of the CWA in this instance implicitly ratified the regulation
17 in question.

18 Therefore, the Court finds, after evaluating defendant's claim with "extreme care," that defendant has
19 not demonstrated "overwhelming evidence of acquiescence" by Congress with respect to the NPDES permit
20 exemption in 40 C.F.R. § 122.3(a), as required by SWANCC.

21
22 **C. Summary**

23 The Court finds that the Congress has "directly spoken" in the CWA and specifically requires NPDES
24 permits for vessels discharging pollutants in the nation's waters. The Court also rejects defendant's argument
25 that Congress acquiesced to the EPA regulation exempting "discharges incidental to the operation of a vessel"
26 in 40 C.F.R. § 122.3(a). Given the Court's finding that Congress has "directly spoken" on the question before
27 the Court today, it is "the end of the matter" and the Court, as well as the EPA, must give effect to the
28



1 unambiguously expressed intent of Congress. Chevron, 467 U.S. at 842-43.
 2 Therefore, the Court finds that EPA acted in excess of its statutory authority under 5 U.S.C. §
 3 706(2)(C) in exempting an entire category of discharges from the NPDES permit program and denying
 4 plaintiffs' petition to rescind 40 C.F.R. § 122.3(a). See NRDC v. Costle, 568 F.2d 1369, 1377 (D.C. Cir.
 5 1977) (EPA did not have authority to exclude categories of point sources from NPDES permit program).
 6 Based on this finding, the Court GRANTS plaintiffs' motion for summary judgment; DECLARES that the
 7 EPA's exclusion from NPDES permit requirements for discharges incidental to the normal operation of a vessel
 8 at 40 C.F.R. § 122.3(a) is in excess of the agency's authority under the Clean Water Act; and ORDERS the
 9 EPA to repeal the regulation.

*ie! EPA Must Enforce
 Clean H₂O Act & Ballast H₂O
 CONCLUSION
 Needs NPDES permits*

12 For the foregoing reasons, the Court DENIES defendant's motion for summary judgment [Docket #
 13 37]; GRANTS plaintiffs' motion for summary judgment [Docket # 12]; and ORDERS the defendant to repeal
 14 40 C.F.R. § 122.3(a).

15 The parties are ordered to appear for a further case management conference on Friday, April 15,
 16 2005 at 2:30 p.m. to discuss further proceedings in this action.

19 **IT IS SO ORDERED.**

21 Dated: March 30, 2005

S/Susan Illston
 SUSAN ILLSTON
 United States District Judge

United States District Court

For the Northern District of California

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Wednesday, May 23, 2007

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Nation & World

Invasion of the Zebra Mussels

How political gridlock is helping a pesky mollusk gum up the Great Lakes

By Bret Schulte

Posted 2/25/07

The increasingly clean water of the Great Lakes would appear to signal a healthy ecosystem. In Lake Erie, water clarity now goes as deep as 30 feet. But under that crystal surface lurks a dark reality: The sparkling water is the result of an explosion of zebra mussels, a Russian mollusk that sucks up nutrients with ruthless efficiency. The result is chaos for the fishing industry and other wildlife, as well as growing maintenance problems for boats and port facilities. One key link in the food chain—the tiny crustacean diporeia—has plummeted 99 percent in some lake areas since the mussels began taking hold in the late 1980s. "Diporeia are being starved," says Jennifer Nalbone of the environmental group Great Lakes United, "because the zebra mussel is consuming their food."



DAMAGE. Dead fish lie along the shore of Lake Michigan. ANDY KLEVORN-LUDINGTON DAILY NEWS/AP

From 1993 to 2003, rapidly multiplying zebra mussels caused \$3 billion in damage to the Great Lakes region, crippling the fishing industry while rapidly colonizing everything from turtles to boats. One Michigan town lost water for three days after a mussel colony clogged its water-intake pipe. The mussels are one of about 180 foreign species of all kinds that have invaded the Great Lakes, largely by hitching a ride on overseas shipping vessels. And many have spread through streams and lakes to affect other states. Locals say cries for federal help have yielded little in return. As a result, a patchwork quilt of tough state laws is emerging, frustrating the shipping industry and prompting Washington to take another shot at enacting blanket federal rules.

Ballast. At the heart of the battle is the shipping industry. When cargo vessels are light, they take on water for

stabilization. Called ballast water, it's often teeming with stowaways in the form of small organisms, eggs, and plant matter. When the water is released, so are they. The amount of ballast water may vary with the cargo; even laden ships still carry some water swishing in their tanks. The problem hit the Great Lakes with the 1959 opening of the St. Lawrence Seaway, which cleared a path for large cargo ships from the Atlantic. Congress attempted to stem the problem in 1990 with the Nonindigenous Aquatic Nuisance Prevention and Control Act, which forced ships to exchange ballast water hundreds of miles from shore before entering the Great Lakes. Though the law has been expanded to all U.S. waters, critics like Phyllis Windle of the Union of Concerned Scientists say that "it's increasingly behind the times." New technology such as ultraviolet light or deoxygenation can kill many organisms but is still not widely used. And while the law allows ships designated as "No Ballast on Board" to dock freely, these ships still carry low levels of water from which organisms seep out.

Many states have had enough. California, Oregon, and Washington have passed strict regulations for ballast water. But the toughest of all is Michigan, which as of January requires oceangoing vessels at its ports to obtain a permit by proving to officials they will not discharge contaminated water. Wisconsin, which has spent over \$5 million in the past four years fighting invasive species, may follow the lead. Wisconsin state Rep. Louis Molepske, who recently introduced legislation, says, "We will not sit back while our waters are destroyed."

The state rules have dismayed the shipping industry, which argues that the array of permits and regulations is costly and time consuming. The shipping industry took another blow in 2005, when a federal judge ruled that ballast water is a pollutant and must be regulated by the EPA under the Clean Water Act. The EPA is appealing, arguing the act is more appropriate for stationary pollution sources. Congress is looking at a permanent fix after several attempts in recent years were stalled by competing bills or key committee chairmen seeking to use the legislation as a trading chip for their own priorities.

In coming weeks, Michigan Sen. Carl Levin will introduce a bill with tough new standards on ballast discharge that he hopes will encourage vessels to install technology that kills a large percentage of biomatter. But even Levin's office worries about the proposal's fate. Because the legislation wouldn't supersede state laws, the shipping industry is likely to fight. That could mean more gridlock. "The integrity of the Great Lakes," laments Nalbene, "is being erased by our inability to act." The last best hope may be to find some integrity in Washington.

This story appears in the March 5, 2007 print edition of U.S. News & World Report.

640206

Vilas County Resolution # 02

The Problem: Aquatic Invasive Species (AIS) have become a major problem in Wisconsin waters. While there are local efforts to reduce and protect our waters from AIS, there is no secure statewide funding source for assistance.

Whereas, Aquatic Invasive Species pose a serious threat to our enjoyment of water resources, and

Whereas, local lake property owners, among others, have a valid concern that the State of Wisconsin has not addressed this issue in a manner that provides for protection and control of Aquatic Invasive Species, and

Whereas, there needs to be secure and adequate funding to address the problem Aquatic Invasive Species present to our public waters,

Now Therefore Be it Resolved, Vilas County, meeting this 10th day of April, 2006, do hereby urge the Wisconsin Department of Natural Resources to provide a dedicated funding source to combat Aquatic Invasive Species, by adding a one-dollar (\$1.00) surcharge to every resident and non-resident fishing license sold in Wisconsin.

Vilas County Vote: _____

Submitted by:

Ken Anderson

P.O. Box 294

Eagle River, WI 54521

715-479-2394

On Behalf of the Vilas County Aquatic Invasive Species Planning Partnership; 330 Court Street, Eagle River, WI 54521

Ted Ritter, Coordinator, 715-479-3738

AIS RESOLUTION



PATRICIA L. BIRKHOLOZ
MICHIGAN SENATE

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COMMITTEES:
CHAIR - NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS
VICE CHAIR - LOCAL, URBAN, AND STATE AFFAIRS
MEMBER - AGRICULTURE
MEMBER - ENERGY POLICY

May 22, 2007

The Honorable Louis Molepske, Jr.
71st Assembly District
State Capitol
P.O. Box 8953
Madison, WI 53708

Dear Representative Molepske:

I was heartened to hear that the Wisconsin legislature is on the verge of considering legislation that will implement ballast water controls similar to the laws we passed a few years ago. I am pleased to offer you my perspective on this, what I consider to be the most pressing threat on the health of our Great Lakes ecosystem.

The nation hailed the passage of the Federal Clean Water Act over thirty years ago as a new tool to help eliminate water pollution. Each state has passed its own versions of this law in an effort to partner with the federal government--the states and the federal government working together to end the dumping of contaminants into our waterways.

Good intentions?
Yes.

Significant progress made toward eliminating the dumping of chemicals into our waters? Yes.

A Resounding Success?
No.

Despite clear direction in federal law, the US EPA had to be sued by citizen groups to apply the Clean Water Act to the most dangerous form of contamination that our Great lakes face—biological pollution—namely aquatic nuisance species (ANS). This is without a doubt the number one environmental threat facing Michigan and the entire basin. ANS upsets native fishery and habitat, hurts water quality, recreation and the tourism industry; and increases costs for municipalities and utilities.

In fact, invasive species have cost citizens and businesses more than \$10 billion during the past decade. One report estimates that the Great Lakes fishery spends \$12 million a year to control sea lamprey, \$30 million to control zebra mussels and \$119 million a year because of the ruffe. Also, it costs each individual power company \$1 million per year to deal with zebra mussels on intake pipes. Transfer those costs down to the average citizen and you can see that we are all paying directly for EPA's refusal to stop biological pollution and the number one culprit? Ocean going vessels that discharge untreated ballast water into our waters

Because of years of federal inaction, I sponsored Senate Bill 332 in 2005. The bill flew through both chambers without opposition in committee and was signed into law. Our large business organizations all supported passage of this legislation due to the costs that invasive species have had on business operations in this state. Now Public Act 33, this measure formed a Great Lakes Aquatic Nuisance Species Coalition of the basin states to regulate ballast water discharge—essentially substituting state action for federal inaction. It also implemented a new permitting requirement that as of January 1, 2007 requires all ocean going vessels to obtain a permit before entering Michigan ports. They get a permit and a right to enter Michigan ports if they agree to clean ballast water or agree not to discharge.

Various interests representing the ocean going vessel industry claim that they need more time get the technology installed, and they speculate that closing access to our ports may cost jobs and hurt Michigan citizens. They also claim that without other states taking similar action, we will have a patchwork quilt of laws. Nonsense—permits have already been secured by foreign oceangoing vessels that readily acknowledge the need to end biological pollution from ANS. And if we allow others not as responsible more time to comply, every single ship coming into our ports brings with it the chance for real disaster. With Wisconsin taking steps to move forward with similar legislation and other basin states considering their own new legislative proposals, we may be on the verge of implementing the multi-state coalition I envisioned when we passed PA 33 of 2005

We already know the real costs that federal inaction has brought to our bear on our state and its citizens. With the implementation of PA 33, Michigan became the recognized leader in preventing ANS. It makes perfectly good sense for Wisconsin and other basin states to follow this lead and begin to work in concert on a plan to regulate ballast water discharges on a regional basis.

We must continue to work together to protect Michigan's most important natural resource, our Great Lakes. I applaud you for sponsoring this important legislation and for pressing for prompt action on legislation to help protect our lakes from this most dangerous form of biological pollution!

Sincerely,



Patty Birkholz
State Senator



WISCONSIN STATE DIVISION OF
The Izaak Walton League of America

INCORPORATED
DEFENDERS OF SOIL, AIR, WOODS, WATERS AND WILDLIFE



Wisconsin Division
Izaak Walton League of America
811 4th St.
Plover, WI 54467-2253
April 26, 2007

Representative Louis Molepske
Committee on Natural Resources
Room 111 North – State Capitol
P.O. Box 8953
Madison, WI 53708-8953

Dear Representative Molepske:

Enclosed is a resolution supporting the enactment of AB-86 and SB-119. This resolution was passed unanimously at annual meeting of the Wisconsin Division of the Izaak Walton League of America in Benton Wisconsin on April 14, 2007.

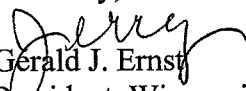
These bills relate to the management of vessel ballast water in Wisconsin's Great Lake Waters and would require all oceangoing vessels using ports in Wisconsin to obtain a permit from the DNR and be capable of treating ballast water to prevent the further introduction of invasive species.

This legislation is necessary because these alien organisms threaten the health of our waters and the recreational and commercial fishing industries that depend on them. In addition, invasions like the Zebra Mussel have cost our communities and industries millions of dollars to protect drinking water, utilities, and recreation facilities.

The Izaak Walton League is one of the oldest conservation organizations in the United States and we currently are celebrating our 85th anniversary. Our motto is "Defenders of soil, air, woods, waters and wildlife." We believe that this legislation is a vital step in protecting one of Wisconsin's most valuable resources, namely our Great Lakes and inland waters.

We urge your support of this important legislation and request fast action to move it out of committee.

Sincerely,


Gerald J. Ernst
President, Wisconsin Division



WISCONSIN STATE DIVISION OF
The Izaak Walton League of America

INCORPORATED
DEFENDERS OF SOIL, AIR, WOODS, WATERS AND WILDLIFE



Management of Ballast Water in Wisconsin's Great Lake Waters

The Great Lakes have been invaded by invasive (non-native) aquatic organisms and pathogens transported from foreign waters in oceangoing ships' ballast water. Over 160 non-native species have been introduced since the opening of the St. Lawrence Seaway in 1959. A new invasive species is identified in the Great Lakes every seven months according to a McGill University study. A University of Michigan study estimates that 1.5 billion gallons of foreign ballast water is discharged into the Great lakes annually.

The ballast water that harbors these invaders is used to stabilize ships when they are empty or partially loaded and is pumped in or out as needed. The average ship retains 42,000 gallons of ballast water and sludge when traveling the Great Lakes. Exotic organisms are flushed into the lakes as ships take on and discharge this ballast water in the course of their voyage.

Once introduced these foreign non-native organisms are expensive to control and almost impossible to eliminate. These invasive organisms threaten the sport and commercial fishing industries and force communities to spend millions to protect drinking water, power plants, and recreation facilities. To make matters worse, some of these organisms have also infected our inland waters.

On February 22, 2007 Assembly Bill 86 was introduced and on March 28, 2007 Senate Bill 119 was introduced in the Wisconsin Legislature. Both of these bills require operators of oceangoing vessels using ports in Wisconsin to get a permit from the Department of Natural Resources. To obtain the permit it must be demonstrated that the vessel is not capable of taking on ballast water or that the vessel is equipped with technology that the DNR determines can prevent the introduction of aquatic nuisance species into the Great Lakes. This legislation carries a fine of up to \$25,000 per day for violations.

Therefore be it resolved that the Wisconsin Division of the Izaak Walton League of America at their annual meeting in Benton Wisconsin on April 14, 2007 urge the Wisconsin Legislature and Governor to pass and enact AB-86 and SB-119 to manage ballast water in Wisconsin waters. Be it further resolved that copies of this resolution be mailed to the Assembly Committee on Natural Resources members, Senate committee on Environment and Natural Resources members, and Governor Doyle.

RESOLUTION NO. _____

TO THE HONORABLE CHAIRMAN AND MEMBERS OF THE PORTAGE COUNTY BOARD OF SUPERVISORS:

RE: SUPPORTING STATE EFFORTS TO ADDRESS THE NON-NATIVE AQUATIC INVASIVE SPECIES PROBLEM

WHEREAS, Wisconsin's lakes, rivers, streams, and wetlands are in jeopardy due to the spread of non-native aquatic invasive species within the State of Wisconsin; and

WHEREAS, the non-native aquatic invasive species can threaten the diversity and abundance of native species, alter our ecosystems, affect our ability to utilize public waters for recreational activities, and threaten our tourism industry; and

WHEREAS, the Department of Natural Resources Lake Planning Grants, and the Department of Natural Resources Lake Protection Lake Classification Grants are currently funded at 75% State cost-share rate; and

WHEREAS, the Department of Natural Resources Aquatic Invasive Species (AIS) grants only provide a 50% State cost-share rate to local governments, requiring them to fund the remaining 50%; and

WHEREAS, because these are State waters and non-native aquatic invasive species are a problem that needs to be addressed throughout Wisconsin, and because counties may be unfairly burdened with the cost of attempting to control these species simply as a result of the natural distribution of our lakes, rivers, streams, and wetlands; the State should shoulder the majority of the responsibility for funding these non-native aquatic invasive species grants; and

WHEREAS, local units of government, including lake associations and not-for-profit conservation groups, are currently eligible for other Department of Natural Resources Lake grants.

NOW, THEREFORE, BE IT RESOLVED, that the Legislature of the State of Wisconsin support local efforts to prevent the spread of non-native aquatic invasive species by increasing the percentage for the Department of Natural Resources Aquatic Invasive Species (AIS) grants from 50% to 75%, which is the State rate already established for the other Department of Natural Resources lake planning, protection, and classification grants, and to revise the eligibility criteria to allow qualified lake associations and other not-for-profit conservation organizations to be eligible for these AIS grants; and

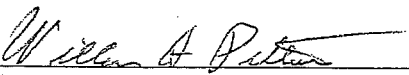
BE IT FURTHER RESOLVED, that the Portage County Board of Supervisors supports increasing the State cost-share rate and expanding the eligible groups to address the non-native aquatic invasive species problems in our State waters; and

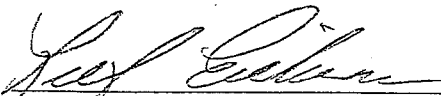
BE IT FURTHER RESOLVED, that a copy of this resolution be provided to the Wisconsin Department of Natural Resources Secretary, Scott Hassett, Governor James Doyle, members of the Legislature representing Portage County, and the Wisconsin Land and Water Conservation Association.

Dated this 21st day of September 2005


Respectfully submitted,

PORTAGE COUNTY LAND CONSERVATION COMMITTEE

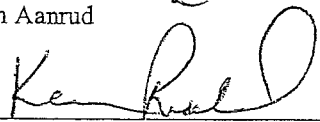

 William Peterson, Chair


 Leif Erickson, Vice-Chair


 Robert Brilowski, Secretary


 Don Aanrud


 Charles Gussel


 Kevin Ruehl

**FINAL DETERMINATION AND NOTICE
REGARDING
BALLAST WATER TREATMENT FOR OCEANGOING VESSELS
ON THE GREAT LAKES**

In accordance with the authority vested in me pursuant to Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, I determine the following:

1. Protection of the Great Lakes from new introductions of aquatic invasive species (AIS) is an economic and ecological imperative. Ballast water and sediment releases from ships coming into the Great Lakes will result in new introductions of AIS unless and until appropriate regulatory responses are implemented. Previous introductions of invasive species, such as zebra mussels via vessels' untreated ballast water, have cost the state of Michigan millions of dollars in damage to municipal, industrial and recreational infrastructure, loss of fisheries, and loss of recreational water uses. These costs are continuing to incur, because once invasive species are introduced to an ecosystem, their negative effects are permanent. In addition to the economic damages, the damage to Michigan's aquatic ecosystems by invasive species is profound and permanent. All across Michigan and the Great Lakes there are examples of aquatic ecosystems undergoing dramatic and deleterious changes, including changes to the critical lower food web as a result of invasive species. Currently required ballast water management practices, such as ballast water exchange, are an important component of effective actions, but are too variable to be fully protective of the Great Lakes by themselves. Alternatives to management practices such as ballast water treatment must be used as soon as possible to protect the Great Lakes from the likelihood of introducing new invasive species.
2. Michigan passed legislation in 2001 (PA 114) requiring ships on the Great Lakes to report on whether they are using ballast water management practices to reduce aquatic invasive species. The legislation also requires the Michigan Department of Environmental Quality (MDEQ) to make a determination whether there is ballast water treatment that could be used by oceangoing ships on the Great Lakes. Michigan's legislation addresses safety (for the vessel, crew and passengers) and effectiveness (prevention of introductions). There are, however, a number of other considerations, including the ability of the treatment to meet eventual national or international discharge standards, the importance of national applicability of treatment methods for both environmental and economic reasons, the practicality of shipboard installation and operation, and ease of regulatory enforcement. The best way to concurrently address all considerations is to aggressively pilot treatment methods on board oceangoing vessels and to work to improve such systems.
3. Ballast water treatment is a complex issue. Not all treatments are appropriate for all types, sizes, and ages of vessels or in all ballast conditions. National discharge standards are under development in the United States by the U.S. Coast Guard and in the ratification stage by member states of the International Maritime Organization through its

Convention for the Control and Management of Ships' Ballast Water and Sediments. The next step is for shipping companies to choose and install treatment methods that could be used on board oceangoing ships and rigorously test them in the interest of protecting the Great Lakes from future introductions of aquatic invasive species.

4. Based upon extensive survey work conducted by the MDEQ, it is apparent that a wide variety of treatments are undergoing testing worldwide, including physical and chemical technologies. A few, such as ultraviolet light and filtration, have undergone evaluation on board operating ships. Other treatments have been tested on ship platforms, in laboratories, or in ship-side or shore-side facilities and are ready for evaluation on operating ships. Some technologies such as de-oxygenation have the potential for lowering ship operating costs as a result of reduced corrosion in ballast tanks, once fully tested. Other systems use technologies well-proven in non-ship applications and are undergoing research on adaptation to ship use, such as biocides. An ultra violet light with filtration system has been approved for treatment on board a cruise ship under the state of Washington's ballast water regulation legislation. Much of the work on ballast water treatment has been accomplished with public funding in partnership with industry. The next steps are for industry to install treatments that could be used on board oceangoing ships and to rigorously test the systems under operating conditions.
5. The timing of this determination is based on results of a ballast water treatment study on sodium hypochlorite by the MDEQ in 2001-2004, the adoption (and early ratification by two countries) of a Convention for the Control and Management of Ships' Ballast Water and Sediments by the International Maritime Organization in 2004, implementation in 2004 of the state of Washington's ballast water treatment regulations, inception of the U.S. Coast Guard's Shipboard Technology Evaluation Program (S.T.E.P) in 2004, and results of a survey of principal investigators conducted by the Office of the Great Lakes on treatment technology progress worldwide in 2003. This determination is an opportunity to use the momentum from these events to push ahead with treatment installation and refinement. The MDEQ looks forward to working with the oceangoing shipping industry to take advantage of this momentum and put in place ballast water treatment to prevent new introductions of aquatic invasive species to the Great Lakes.

Determination

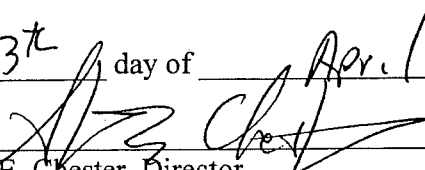
The determination under Public Act 451 of 1994; Sec. 3103a; 324.3103a (2)(d)(i) is that one or more ballast water treatment methods which protect the safety of the vessel, its crew, and its passengers could be used by oceangoing vessels to prevent introductions of aquatic invasive species into the Great Lakes. "Oceangoing vessel" means a vessel that operates on the Great Lakes or the St. Lawrence waterway after operating in waters outside of the Great Lakes or the St. Lawrence waterway. This determination does not approve a particular treatment. The decision on which treatment to install will have to be made by shipping companies for individual ships and based on the considerations in Section 2, above.

Under Sec. 3103a; 324.3103a (2)(d)(ii) of the same act, the MDEQ must also determine a date after which ballast water treatment could be used by all oceangoing vessels operating on the

Ballast Water Final Determination
Page 3

Great Lakes. The date is determined to be January 1, 2007. In addition, under Public Act 451 of 1994; Section 324.3103a (3)(a), the MDEQ must compile and maintain a list of all oceangoing vessels that, after the date specified in Subsection (2)(d)(ii), have been using one of these ballast water treatment methods during the previous 12 months. Therefore, as of the opening of the St. Lawrence Seaway navigation season in 2008, all oceangoing vessels must report to the MDEQ on whether ballast water treatment is being used. The MDEQ will make available the necessary forms and will post the list of ships reporting on the MDEQ ballast water reporting Web site.

Issued this 13th day of April, 2005

By: 
Steven E. Chester, Director
Michigan Department of Environmental Quality

224 total

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Related Content

- 2006 List of vessels reported as complying with the requirements of PA 451, Section 310 of the Natural Resources & Environmental Protection Act
- Final Determination Notice Regarding Ballast Water Treatment for Ongoing Vessels
- Great Lakes **PDF**
- 2005 List of vessels reported as complying with the requirements of PA 451, Section 310 of the Natural Resources & Environmental Protection Act
- 2004 List of vessels reported as complying with requirements of 1994 requirements of 1994, Section 3103a of Natural Resources & Environmental Protection Act
- Frequently Asked Questions
- Ballast water management practices provided by Shipping Federation of Canada (Attachment B)
- Ballast water management practices provided by Lake Carriers' Association and the Canadian Shipowners' Association (Attachment B)

2007 List of vessels reported as complying with the requirements of 1994 PA 451, Section 3103a of the Natural Resources and Environmental Protection Act

This Ballast Water Reporting list is authorized by Section 3103 of the NREPA 1994 PA 451, as amended. Any vessel owner and/or operator, and any persons who have contracts for transportation of cargo with an operator that is not on this list are not eligible for a new grant, loan, or award administered by the Michigan Department of Environmental Quality (MDEQ).

For ongoing vessels: The following vessels have stated compliance with the Code of Best Management Practices for Ballast Water Management provided by the Shipping Federation of Canada (Attachment A).

For nonongoing vessels: The following vessels have stated compliance with Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species within the Great Lakes by United States and Canadian Domestic Shipping, provided by the Lake Carrier's Association and the Canadian Shipowners' Association to the MDEQ (Attachment B).

Vessels listed by name: [A-C](#) [D-I](#) [J-P](#) [Q-Z](#)

Vessel Name	Owner or Operator	IMO Number	Flag
A-C			
A-410	Andrie, Inc.	6511374	USA
Adam E. Cornelius	American Steamship Company	7326245	USA
Agawa Canyon	Algoma Central Marine/Seaway Marine Transport	7028556	Canada
Algocape	Algoma Central Marine/Seaway Marine Transport	6703214	Canada
Algoeast	Algoma Tankers Limited	7526924	Canada
Algoisle	Algoma Central Marine/Seaway Marine Transport	5417820	Canada
Algolake	Algoma Central Marine/Seaway Marine Transport	7423093	Canada
Algomarine	Algoma Central Marine/Seaway Marine Transport	6816607	Canada
Algonorth	Algoma Central Marine/Seaway Marine Transport	7028104	Canada

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- > Wastewater Construction
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- > Water Management
- > Water Quality Monitoring
- > Wetlands Protection

inside DEQ

key topics



11	Algontario	Algoma Central Marine/Seaway Marine Transport	5301980	Canada
12	Algoport	Algoma Central Marine/Seaway Marine Transport	7810844	Canada
13	Algorail	Algoma Central Marine/Seaway Marine Transport	6805531	Canada
14	Algosar	Algoma Tankers Limited	7634288	Canada
15	Algosoo	Algoma Central Marine/Seaway Marine Transport	7343619	Canada
16	Algosteel	Algoma Central Marine/Seaway Marine Transport	6613299	Canada
17	Algoville	Algoma Central Marine/Seaway Marine Transport	6800919	Canada
18	Algoway	Algoma Central Marine/Seaway Marine Transport	7221251	Canada
19	Algowood	Algoma Central Marine/Seaway Marine Transport	7910216	Canada
20	Algototia	Algoma Tankers Limited	9273222	Canada
21	Algosea	Algoma Tankers Limited	9127198	Canada
22	Alpena	American Transport Leasing, Inc.	5206362	U.S.
23	Amélia Desgagnés	Transport Desgagnés	7411167	Canada
24	American Century	American Steamship Company	7923196	USA
25	American Courage	American Steamship Company	7634226	USA
26	American Fortitude	American Steamship Company	5105843	USA
27	American Integrity	American Steamship Company	7514696	USA
28	American Mariner	American Steamship Company	7812567	USA
29	American Republic	American Steamship Company	7914236	USA
30	American Spirit	American Steamship Company	7423392	USA
31	American Valor	American Steamship Company	5024738	USA
32	American Victory	American Steamship Company	5234395	USA
33	Anna Desgagnés	Transport Desgagnés, Inc.	8600507	Canada
34	Antikeri	Orion Shiptrade S.A. Marshall Islands	8200503	Maltese
35	Arthur M. Anderson	Great Lakes Fleet, Inc.	5025691	USA
36	Assiniboine	Canada Steamship Lines	7413218	Canada
37	Atlantic Castle	W.W. Chartering Services GmbH & Co. KG	9216602	Antigua & Barbuda
38	Atlantic Erie	Canada Steamship Lines	8016639	Canada
39	Atlantic Huron	Canada Steamship Lines	8025680	Canada
40	Balchik	Navigation Maritime Bulgare	9039975	Bulgaria
41	Barbara Andrieu/ Tankbarge A-390	Andrieu, Inc.	5097187/4914	USA
42	Bayridge Service	Hornbeck Offshore Transportation, LLC	8101654	U.S.

• 2002 List of vessels reported as complying the requirements of PA 451, Section 310 the Natural Resources Environmental Protection Act

• 2003 List of vessels reported as complying the requirements of PA 451, Section 310 the Natural Resources Environmental Protection Act

• Ballast Water Report Legislation - Natural Resources and Environmental Protection Act (Act 451, Part 31 Section 3103a) **DOC**

43	Bogdan	Navigation Maritime Bulgare	9132492	Bulgaria
44	Buffalo	American Steamship Company	7620653	USA
45	Burns Harbor	American Steamship Company	7514713	USA
46	Calliope Patronicola	Westwind E.N.E.	8315229	Greece
47	Calumet	Grand River Navigation Company	5244807	USA
48	Canadian Enterprise	Upper Lakes Group/Seaway Marine Transport	7726677	Canada
49	Canadian Leader	Upper Lakes Group/Seaway Marine Transport	6719330	Canada
50	Canadian Miner	Upper Lakes Group/Seaway Marine Transport	6601674	Canada
51	Canadian Navigator	Upper Lakes Group/Seaway Marine Transport	6707961	Canada
52	Canadian Olympic	Upper Lakes Group/Seaway Marine Transport	7432783	Canada
53	Canadian Progress	Upper Lakes Group/Seaway Marine Transport	6821999	Canada
54	Canadian Prospector	Upper Lakes Group/Seaway Marine Transport	5426663	Canada
55	Canadian Provider	Upper Lakes Group/Seaway Marine Transport	5407277	Canada
56	Canadian Ranger	Upper Lakes Group/Seaway Marine Transport	6723771	Canada
57	Canadian Transfer	Upper Lakes Group/Seaway Marine Transport	6514869	Canada
58	Canadian Transport	Upper Lakes Group/Seaway Marine Transport	7711737	Canada
59	Captain Henry Jackman	Algoma Central Marine/Seaway Marine Transport	8006323	Canada
60	Cason J. Callaway	Great Lakes Fleet, Inc.	5065392	USA
61	Catherine Desgagnés	Transport Desgagnés, Inc.	5133979	Canada
62	Cécilia Desgagnés	Transport Desgagnés, Inc.	7034828	Canada
63	Cedarglen	Canada Steamship Lines	5103974	Canada
64	Charles M. Beeghly	Interlake Steamship Company	5322518	USA
65	Cuyahoga	Lower Lakes Towing Ltd.	815560	Canada
66	D-1			
67	Daviken	Viken Lakers II As	8505848	Bahamas
68	Edgar B. Speer	U.S. Bank National Association	7625952	USA
69	Edward L. Ryerson	Indiana Harbor Steamship Company	5097606	USA
70	Edwin H. Gott	Great Lakes Fleet, Inc.	7606061	USA
71	Elise Oldendorff	Aruba Maritime Inc.	9134816	Liberia
72	Energy 5501	Hornbeck Offshore Transportation, LLC	8646989	U.S.

Energy 6505	Hornbeck Offshore Transportation, LLC	8646941	U.S.
English EN-US; mso-bidi-language: AR-SA">River	Lafarge	5104382	Canada
Federal Agno	Baffin Investments Ltd.	8316522	Hong Kong
Federal Asahi	Baffin Investments Ltd.	9200419	Hong Kong
Federal Danube	Canada Venus Shipping Company, Ltd.	9271511	Cyprus
Federal Elbe	Canada Antares Shipping Company, Ltd.	9230000	Cyprus
Federal Ems	Canada Moon Shipping Company, Ltd.	9229984	Cyprus
Federal Fuji	Viken Lakers AS	8321931	Bahamas
Federal Hudson	Federal Oceans Ltd.	9205902	Hong Kong
Federal Hunter	Federal Oceans Ltd.	9205938	Hong Kong
Federal Katsura	Redrose Navigation, S.A.	9293923	Panama
Federal Kivalina	Federal Oceans Ltd.	9205885	Hong Kong
Federal Kumano	Mi-Das Line S.A.	9244257	Hong Kong
Federal Kushiro	Wealth Line, Inc.	9284702	Panama
Federal Leda	Canadian Sirius Shipping Company, Ltd.	9229996	Cyprus
Federal Maas	Federal Atlantic Ltd.	9118135	Barbados
Federal Mackinak	KG MS Baltic Castle Schiffahrtsgesellschaft mbH & Co.	9299460	Liberia
Federal Manitou	Reederei M. Lauterung GmbH & Co. KG MS Lake Ontario	9283538	Antigua & Barbuda
Federal Margaree	Pacific Castle Shipping Ltd.	9299472	Liberia
Federal Matane	Reederei M. Lauterung GmbH & Co. KG MS Lake Erie	9283540	Antigua & Barbuda
Federal Mattawa	Ocean Castle Shipping Ltd.	9315537	Liberia
Federal Miramichi	Reederei M. Lauterung GmbH & Co. KG MS Lake St. Clair	9315549	Antigua & Barbuda
Federal Nakagawa	Inter-Oceans Co. Ltd.	9278791	Hong Kong
Federal Oshima	Federal Oceans Ltd.	9200330	Hong Kong
Federal Patroller	Pentium Pro Navigation Company, Ltd.	9190092	Cyprus
Federal Pioneer	Aspire Navigation Company, Ltd.	9190080	Cyprus
Federal Polaris	Viken Lakers II AS	8231929	Canada
Federal Power	Acer Pro Navigation Company, Ltd.	9190119	Cyprus
Federal Pride	Pentium Pro Navigation Company, Ltd.	9190107	Cyprus
Federal Rhine	Federal Atlantic Ltd.	9110925	Barbados
Federal Rideau	Federal Oceans Ltd.	9200445	Hong Kong
Federal Saguenay	Federal Atlantic Ltd.	9110913	Barbados
Federal Sakura	Tateyama Naviera S.A.	9288291	Panama
Federal Scheide	Federal Atlantic Ltd.	9118147	Barbados

107	Federal Seto	Salter Shipping, S.A.	9267209	Hong Kong
108	Federal Shimanito	Wealth Line, Inc.	9218404	Panama
109	Federal St. Laurent	Federal Atlantic Ltd.	9110896	Barbados
110	Federal Welland	Federal Oceans Ltd.	9205926	Hong Kong
111	Federal Weser	Canada Sun Shipping Company, Ltd.	9229972	Cyprus
112	Federal Yoshino	Wealth Line, Inc.	9218416	Panama
113	Federal Yukon	Federal Oceans Ltd.	9205897	Hong Kong
114	Frontenac	Canada Steamship Lines	6804848	Canada
115	G.L. Ostrander	Lafarge North America	7501106	U.S.
116	Gisela Oldendorff	Aruba Maritime Inc.	9134804	Liberia
117	Gordon C. Leitch	Upper Lakes Group/Seaway Marine Transport	6815237	Canada
118	Goviken	Viken Lakers II As	8505850	Bahamas
119	Great Lakes Trader	VanEnkevort Tug & Barge	1091839	USA
120	H. Lee White	American Steamship Company	7366362	USA
121	Halifax	Canada Steamship Lines	5120075	Canada
122	Hannah-3601	Hannah Marine Corporation	542885	USA
123	Hannah-5101	Hannah Marine Corporation	570990	USA
124	Hannah-6301	Hannah Marine Corporation	629735	USA
125	Herbert C. Jackson	Interlake Steamship Company	5148477	USA
126	Indiana Harbor	American Steamship Company	7514701	USA
127	Innovation	Andrie, Inc.	1184532	USA
128	Integrity	Lafarge North America	1044267	U.S.
129	Invincible - Tug/ McKee Sons - Barge	Grand River Navigation Company	7723819/ 5216458	USA
130	Inviken	Fednav International	8212087	Bahamas
131	J-P			
132	J.A.W. Iglehart	American Transport Leasing, Inc.	5139179	U.S.
133	James R. Barker	Interlake Steamship Company	7390290	USA
134	James Norns	Upper Lakes Group/Seaway Marine Transpo	5169124	Canada
135	John B. Aird	Algoma Central Marine/Seaway Marine Transport	8002432	Canada
136	John D. Leitch	Upper Lakes Group/Seaway Marine Transport	6714586	Canada
137	John G. Munson	Great Lakes Fleet, Inc.	5173670	USA
138	John J. Boland	American Steamship Company	7318901	USA
139	Joseph H. Thompson	Upper Lakes Towing Company	949094	SA
140	Joseph L. Block	Indiana Harbor Steamship Company	7502320	USA
141	Kamenitza	Navigation Maritime Bulgare	8006256	Bulgaria
142	Katia	Katia Shipping Co. Ltd.	9235490	Antigua and Barbuda

143	Kaye E. Barker	Lakes Shipping Company	5097450	USA
144	Kent Pioneer	Aruba Maritime Inc.	9150731	Liberia
145	Kent Timber	Aruba Maritime Inc.	9150743	Liberia
146	KOM	Navigation Maritime Bulgare	9132480	Bulgaria
147	Lake Erie	Baffin Investments Ltd.	7901150	Marshall Islands
148	Lake Michigan	Baffin Investments Ltd.	7901150	Marshall Islands
149	Lake Ontario	Baffin Investments Ltd.	7901148	Marshall Islands
150	Lake Superior	Baffin Investments Ltd.	7910175	Marshall Islands
151	Laurentien	Canada Steamship Lines	7423108	Canada
152	Lee A. Tregurtha	Lakes Shipping	5385625	USA
153	Lewis J. Kuber	Buckeye Holdings LLC	5336351	U.S.
154	M.V. Earl W.	Wisconsin & Michigan Steamship Company	7366398	U.S.
155	M.V. David Z.	Wisconsin & Michigan Steamship Company	7329314	U.S.
156	M.V. Wolverine	Wisconsin & Michigan Steamship Company	7366403	U.S.
157	Malyovitza	Navigation Maritime Bulgare	8203359	Bulgaria
158	Manistee	Grand River Navigation Company	5294307	USA
159	Maria Desgagnés	Transport Desgagnés, Inc.	9163752	Canada
160	Maumee	Grand River Navigation Company	5057709	USA
161	Mélissa Desgagnés	Transport Desgagnés, Inc.	7356501	Canada
162	Mesabi Miner	Interlake Steamship Company	7390272	USA
163	Michigan - Tug/ Great Lakes - Barge	Keystone Great Lakes	8121795	USA
164	Michipicoten	Lower Lakes Towing Ltd.	5102865	Canada
165	Mississagi	Lower Lakes Towing Ltd.	5128467	Canada
166	Mljet	Atlaska Plovidba d.d.	8113372	Croatia
167	Montrealais	Upper Lakes Group/Seaway Marine	5241142	Canada
168	My Nogat	Nogat Shipping Ltd.	9154268	Cyprus
169	Nanticoke	Canada Steamship Lines	7902233	Canada
170	Niagara	Canada Steamship Lines	7128432	Canada
171	Okolchitza	Navigation Maritime Bulgare	8120375	Bulgaria
172	Olympic Melody	Occidental E.N.E.	8307674	Greece
173	Olympic Mentor	Mirastar E.N.E.	8307650	Greece
174	Olympic Merit	Pennine Special Maritime Enterprise	8315217	Greece
175	Olympic Miracle	Transpacific Special Maritime Enterprise	8307662	Greece

176	Orsula	Atlanska Plovidba d.d.	9110901	Croatia
177	Pathfinder	Interlake Steamship Company	5166768	USA
178	Paul R. Tregurtha	Interlake Steamship Company	7729057	USA
179	Perelik	Navigation Maritime Bulgare	9132507	Bulgaria
180	Pere Marquette 41	Pere Marquette Shipping	5073894	USA
181	Persenk	Navigation Maritime Bulgare	9132519	Bulgaria
182	Peter R. Cresswell	Algoma Central Marine/Seaway Marine Transport	8016641	Canada
183	Petrolia Desgagnés	Transport Desgagnés, Inc.	7382976	Canada
184	Philip R. Clarke	Great Lakes Fleet, Inc.	5277062	USA
185	Pineglen	Canada Steamship Lines	8409331	Canada
186	Presque Isle - Barge	GLF Great Lakes Corporation	102	USA
187	Presque Isle - Tug	GLF Great Lakes Corporation	7303877	USA
188	Q-Z			
189	Quebecois	Upper Lakes Group/Seaway Marine Transport	5287847	Canada
190	Rebecca Lynn	Andrie, Inc.	296818	USA
191	Reserve	Reserve Holding, LLC	5293341	USA
192	Robert F. Deegan	Port Richmond Marine, Inc.	1104404	USA
193	Roger Blough	Great Lakes Fleet, Inc.	7222138	USA
194	Rt. Hon. Paul J. Martin	Canada Steamship Lines	7324405	Canada
195	Saginaw	Lower Lakes Towing Ltd.	5173876	Canada
196	Sam Laud	American Steamship Company	7390210	USA
197	Samuel de Champlain	Andrie, Inc.	7433799	USA
198	Sandviken	Viken Lakers II As	8504882	Bahamas
199	Saunier	Algoma Central Marine/Seaway Marine Transport	7028499	Canada
200	Seneca	Olympia Navigation Co. Marshall Islands	8200486	Maltese
201	Smolyan	Navigation Maritime Bulgare	9046083	Bulgaria
202	Spar Garnet	Spar Shipholding AS	8319548	Norway
203	Spar Jade	Spar Shipholding AS	8319550	Norway
204	Spar Opal	Spar Shipholding AS	8319392	Norway
205	Spar Ruby	Spar Shipholding AS	8406913	Norway
206	St. Clair	American Steamship Company	7403990	USA
207	St. Marys Challenger	Wilmington Trust Company	5009984	USA
208	St. Marys Conquest	St. Marys Cement, Inc.	236823	USA
209	Stefania I	Heritage Shipping Co. Ltd	8406925	Malta
210	Stephen B. Roman	Essroc Italicement/Seaway Marine Transport	6514900	Canada
211	Stewart J. Cort	Wilmington Trust Company	532272	USA
212	Tadoussac	Canada Steamship Lines	6918416	Canada
213	Teteven	Navigation Maritime Bulgare	8915861	Bulgaria

214	Thalassa Desgagnés	Transport Desgagnés, Inc.	7382988	Canada
215	Tradewind Service	Hornbeck Offshore Transportation LLC	7612307	U.S.
216	Tulia	Tulia Shipping	9312729	Netherlands
217	Tuscarora	Lake Breeze Shipping & Trading Inc., Monrovia	8120698	Liberian
218	Utviken	Viken Lakers II AS	8212099	Bahamas
219	Véga Desgagnés	Transport Desgagnés, Inc.	7927960	Canada
220	Walter J. McCarthy, Jr.	American Steamship Company	7514684	USA
221	Wilfred Sykes	Indiana Harbor Steamship Company	5389554	USA
222	Yarmouth	Eastlanke Marine Ltd.	8316584	Marchall Islands
223	Yosemite	Yosemite Ltd.	8406901	Liberia
224	Yucatan	Yucatan Marine Ltd	9146819	Liberia

revised February 21, 2007

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MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
Office of the Great Lakes
2007 Ballast Water Management Practices Report Form

This form is authorized by Section 3103 of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. Completion of this form is required of any vessel owner and/or operator operating on the Great Lakes or St. Lawrence Waterway. Any persons who have contracts for transportation of cargo with an operator that does not report the use of the approved ballast water management practices are not eligible for a new grant, loan, or award administered by the Michigan Department of Environmental Quality (MDEQ).

1. Vessel Information		
Vessel Name	Owner	Vessel Type
IMO Number	Flag	
Is this vessel an oceangoing vessel operating on the Great Lakes and the St. Lawrence waterway?		
Is this vessel a nonoceangoing vessel operating on the Great Lakes and the St. Lawrence waterway?		
	Yes	No

2. Ballast Water Management	
For oceangoing vessels:	
During the last 12 months, has the vessel maintained compliance with the Code of Best Management Practices for Ballast Water Management provided by the Shipping Federation of Canada? (See Attachment A)	
	Yes No
Is the vessel currently complying with the ballast water management practices in Attachment A?	
For nonoceangoing vessels:	
During the last 12 months, has the vessel maintained compliance with the Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species within the Great Lakes by the United States and Canadian Domestic Shipping provided by the Lake Carriers' Association and the Canadian Shipowners' Association? (See Attachment B)	
	Yes No
Is the vessel currently complying with the ballast water management practices in Attachment B?	
	Yes No

3. Responsible Officer's Signature	
Please return this form to:	
Signature:	Office of the Great Lakes
Name (Printed):	Ballast Water Reporting Program
Title:	Department of Environmental Quality
Address:	Constitution Hall
	P.O. Box 30473
Email address:	Lansing, Michigan 48909-7973
	or fax to 517-335-4053
Date:	

The MDEQ will compile a list of vessels complying with the ballast water management practices identified above and post the list on the MDEQ Ballast Water Reporting web site (<http://www.michigan.gov/deqballastwaterprogram>).

Instructions for the 2007 Ballast Water Reporting Form

Section 1. Vessel Information

Vessel Name: Enter the name of the vessel.

IMO Number: Identification number of the vessel used by the International Maritime Organization.

Owner: Name of the registered owner(s) of the vessel. If under charter, enter operator name.

Vessel Type: Select specific vessel type. Use the following abbreviations: bulk (bc), ro-ro (rr), container (cs), tanker (ts), passenger (pa), oil/bulk ore (ob), general cargo (gc), reefer (rf).

Flag: Identify the full name of the country under whose authority the ship is operating. No abbreviations please.

Oceangoing Vessel: Indicate whether the vessel is an oceangoing vessel operating on the Great Lakes and the St. Lawrence waterway. Check Yes or No.

Nonoceangoing Vessel: Indicate whether the vessel is a nonoceangoing vessel operating on the Great Lakes and the St. Lawrence waterway. Check Yes or No.

Section 2. Ballast Water Management

For oceangoing vessels:

- Indicate whether during the last 12 months, the vessel maintained compliance with the Code of Best Management Practices for Ballast Water Management provided by the Shipping Federation of Canada. (See Attachment A) Check Yes or No.
- Indicate whether the vessel is currently complying with the ballast water management practices in Attachment A. Check Yes or No.

For nonoceangoing vessels:

- Indicate whether during the last 12 months, the vessel maintained compliance with the Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species within the Great Lakes by the United States and Canadian Domestic Shipping, provided by the Lake Carriers' Association and the Canadian Shipowners' Association? (See Attachment B) Check Yes or No.
- Indicate whether the vessel is currently complying with the ballast water management practices in Attachment B. Check Yes or No.

Section 3. Title and Signature

Responsible officer's signature, name and title and address: The responsible officer may be an owner, operator or agent. Enter signature, name, title address and date.

Please send a completed form for each vessel to:

Office of the Great Lakes
Ballast Water Reporting Program
Department of Environmental Quality
P.O. Box 30473
Lansing, Michigan 48909-7973

Also, the forms may be submitted by fax to 517-335-4053. This form may be submitted electronically by going to the following web site.
<http://www.michigan.gov/degballastwaterprogram>

The MDEQ will compile a list of vessels complying with the ballast water management practices identified above and post the list on the MDEQ Ballast Water Reporting web site at http://www.michigan.gov/deg/0,1607,7-135-3307_3667_8278-155135--,00.html
Any questions regarding this form should be forwarded to the Office of the Great Lakes at 517-335-4056.