



Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | 651-282-5332 TTY | www.pca.state.mn.us | Equal Opportunity Employer

August 29, 2012

TO: INTERESTED PARTIES

RE: Federal Clean Water Act Section 401 Water Quality Certification of the U.S. Environmental Protection Agency Vessel and Small Vessel General Permits

On August 28, 2012, the Minnesota Pollution Control Agency (MPCA) Citizens' Board voted to approve the Findings of Fact, Conclusions of Law, and Order approving the Federal Clean Water Act Section 401 Water Quality Certification of the U.S. Environmental Protection Agency (EPA) Vessel and small Vessel General Permits. The Findings of Fact, Conclusions of Law, and Order document concludes that the decision to issue the Federal Clean Water Act Section 401 Water Quality Certification of the U.S. Environmental Protection Agency Vessel and Small Vessel General Permits satisfied the requirements of Minn. R. 7001.1470.

We appreciate the time and effort of those who submitted comments on the 401 Water Quality Certification of the Vessel and small Vessel General Permit.

Sincerely,

A handwritten signature in blue ink, reading "John Linc Stine", is positioned above the printed name of the Commissioner.

John Linc Stine
Commissioner

JLS/KF:rm

**STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY
IN THE MATTER OF THE DECISION
ON THE APPROVAL FOR SUBMITTAL
OF A 401 WATER QUALITY CERTIFICATION
TO THE US ENVIRONMENTAL PROTECTION
AGENCY FOR THE DRAFT 2013
VESSEL GENERAL PERMIT AND THE
DRAFT 2013 SMALL VESSEL GENERAL PERMIT**

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER**

The above-entitled matter came before the Minnesota Pollution Control Agency (MPCA) Citizens' Board at a regular meeting held in St. Paul, Minnesota on August 28, 2012. Based on the MPCA staff review, comments and information received during the comment period, and other information in the record of the MPCA, the MPCA hereby makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

This matter involves the proposed Clean Water Act Section 401 Water Quality Certification (401 Certification) of the federal draft 2013 Vessel General Permit and small Vessel General Permit (2013 VGP) for the discharge to Minnesota waters of wastewater incidental to the normal operation of vessels. The MPCA must decide under applicable statutes and rules whether to certify, certify with conditions, waive or deny the 401 Certification.

JURISDICTION

1. The MPCA is authorized and required to administer and enforce all laws relating to the pollution of any waters of the State. Minn. Stat. § 115.03, subd. 1(a).
2. The MPCA is authorized under Section 401 of the Clean Water Act (33 USC 1251 et seq.), Minn. Stat. chs. 115 and 116, and Minn. R. 7001.1400 through 7001.1470, to examine the 2013 VGP to determine whether it can certify, in accordance with Minn. R. 7001.0140, that the 2013 VGP will achieve compliance with all applicable state and federal pollution control statutes and rules administered by the agency, and that all applicable requirements of Minnesota Statutes, chapter 116D, and the rules adopted under Minnesota Statutes, chapter 116D, have been fulfilled.

BACKGROUND

3. Ballast water discharges to Minnesota waters from vessels may contain aquatic invasive species (AIS) that could survive in their new location, upsetting the local aquatic ecosystem.
4. Aquatic invasive species compete with native species for food and habitat, alter aquatic ecosystems, and cause significant economic impact.

5. Aquatic invasive species are not found uniformly in the Great Lakes. Of the more than 125 non-native aquatic species established in the Great Lakes, only about 1/3 are found in Lake Superior.
6. Discharges of ballast water from commercial vessels have been identified as the primary source of recorded introductions of aquatic invasive organisms into the Great Lakes since the St. Lawrence Seaway was opened in 1959.
7. More ballast water is discharged into the Port of Duluth/Superior than any other Great Lakes port. On average, ships discharge millions of gallons of ballast water every day to Minnesota waters during the shipping season.
8. The Duluth Seaway Port Authority estimates that approximately 5 percent of the ballast water discharged to Lake Superior is from oceangoing vessels (Salties) and approximately 95 percent comes from Great Lakes-only vessels (Lakers).
9. Ballast water from oceangoing vessels can introduce aquatic invasive species from foreign ports into waters where the ballast tanks are discharged.
10. Until ballast water treatment technology is in place on vessels discharging ballast water, the MPCA recognizes that ballast water management techniques, such as ballast water exchange and salt water flushing, are appropriate interim steps for preventing the introduction of AIS from oceangoing vessels. Most ballast experts believe that ballast water (treatment) technology will ultimately provide the best protection for the Great Lakes and all of the nation's waters.
11. Due to the large volume of ballast water that Lakers transport around the Great Lakes annually, the U.S. and Canadian Laker fleets also play a role in spreading and dispersing species already introduced and established in the Great Lakes. Lakers can take on ballast water with AIS in one of the Great Lakes and discharge those AIS into Lake Superior via ballast water.
12. Therefore, the untreated discharge of ballast water from both Salties and Lakers represents a risk to the Minnesota waters.
13. To address the threat of the introduction of AIS into Minnesota State waters of Lake Superior and Minnesota's inland waters through ballast water discharges, the MPCA issued State Disposal System (SDS) General Permit No. MNG300000 in September 2008. The SDS permit includes numeric discharge limits for ballast discharges.
14. In December 2008, the U.S. Environmental Protection Agency (EPA) issued, under the National Pollutant Discharge Elimination System (NPDES) Permit Program, the 2008 Vessel General Permit (2008 VGP).
15. The 2008 VGP regulates discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation. The 2008 VGP includes general effluent limits applicable to all discharges, including ballast water. The general effluent limits in the 2008 VGP are applicable to 26 specific discharge streams. The 2008 VGP does not include numeric discharge limits for AIS in ballast discharges.

16. Through Public Law 110-299 and Public Law 111-215, US Congress exempted most commercial fishing vessels and vessels less than 79 feet from the NPDES permit requirement until December 18, 2013. The EPA has developed a Small Vessel General Permit (sVGP) for these vessels.
17. In part to address the lack of numeric discharge limits for ballast discharges in the 2008 VGP, EPA began work to reissue the NPDES vessel discharge permit well-prior to its expiration date.
18. EPA issued both the 2013 VGP and sVGP for public comment from November 30, 2011, until February 21, 2012. The MPCA and Minnesota Department of Natural Resources (DNR) submitted joint comments to the EPA regarding the draft permit. The EPA requested that the states submit 401 Water Quality Certifications, as applicable by June 30, 2012. This date was recently extended to October 1, 2012.¹
19. Prior to a federal permit being issued for activities that could impact waters of the United States, affected states must first provide a 401 Certification determination to ensure that activity would be in compliance with state water quality standards. In Minnesota, the MPCA administers the 401 Certification Program. Minn. R. 7001.1440 subp.1 requires a 401 Certification to be available for public notice for a minimum of ten days, include the name and address of the certificate holder and a statement that the agency has examined the section 401 certification application and any other information and certifies that there is reasonable assurance that the terms and conditions required to ensure that the 401 Certification will be consistent with water quality standards.
20. The MPCA finds that the proposed 2013 sVGP and proposed reissued VGP, when implemented under the proposed conditional 401 Certification, will reasonably assure compliance with water quality standards, provided that substantial changes are not made to the permits as a result of public comments.

401 CERTIFICATION APPLICABILITY AND CONDITIONS

21. The 401 Certification applies to vessels covered by the vessel general permits, including all discharges incidental to the normal operation of commercial and non-commercial vessels greater than or equal to 79 feet in length (2013 VGP), as well as those vessels covered by the NPDES Small Vessel General Permit (2013 sVGP).
22. The 401 Certification Conditions include the following:
 - A. Compliance with Minnesota SDS permit for ballast water;
 - B. No additional requirements for a Numeric Water Quality Based Effluent Limitation (WQBEL) Determination for Ballast Water Discharges at this time, though Minnesota remains interested in the development of data via ongoing monitoring, which could be used to inform the process of establishing a water quality standard in the future;

¹ The MPCA has questioned whether it is appropriate for states to certify a permit that does not contain final terms and conditions. As a result, the MPCA must reserve the right to amend its 401 Certification to address any terms and conditions that are changed by EPA when the final permits are promulgated.

- C. Exchange and flushing for voyages originating beyond the Exclusive Economic Zone (EEZ);
- D. Emergency Control of Ballast Water discharge;
- E. Monitoring and use of Best Management Practices (BMP) for Vessels that operate exclusively in the Great Lakes;
- F. Monitoring Requirements both for vessels installation treatment technology, as well as for vessels that are not required to install treatment technology;
- G. Control of Biocide usage;
- H. Compliance with any other applicable state regulations, specifically Minn. Stat. § 115.1703.

The MPCA is not requiring a WQBEL Determination for Ballast Water Discharges at this time due to lack of data sufficient to support such a WQBEL, although Minnesota remains interested in the development of data via ongoing monitoring which could be used to inform the process of establishing a water quality standard in the future. The proposed conditions include the requirement for monitoring that will assist in development of a WQBEL in the future.

NONDEGRADATION

23. The MPCA completed the nondegradation review consistent with all applicable Minnesota Rules including Minn. R. 7050.0180 (Nondegradation for Outstanding Resource Value Waters) and Minn. R. 7052.0300 (Lake Superior Basin Water Standards-Nondegradation.) The Permits prevent the introduction and spread of AIS in Minnesota waters of Lake Superior and do not expand the authority to discharge. Nondegradation review is required for new and expanding discharges as defined in Minn. R. 7050.0180. New discharges to Lake Superior are those that were not in existence on November 5, 1984, the date on which Lake Superior was designated as an outstanding resource value water. Because ballast water discharge is an ongoing activity that existed before November 5, 1984, that is being limited by the proposed permits, the MPCA finds that ballast water discharges are not properly viewed as “new or expanded.” To the extent that new types of AIS that may be present in ballast water are viewed as a “new discharge,” the MPCA concludes there are no prudent and feasible alternatives to ballast water discharge at this time. See response to Comment 8-1 for more discussion regarding this topic.

PUBLIC NOTICE/PUBLIC COMMENT

24. In accordance with the requirements of Minn. R. 7001.0100 and Minn. R. 7001.0210, subp. 4, the MPCA prepared a draft 401 Certification of the draft 2013 VGP and sVGP and gave the public an opportunity to comment on the draft 401 Certification. The draft 401 Certification was on public notice May 7 to May 28, 2012.
25. The MPCA received 16 written comment correspondences during the comment period. Copies of the comments are provided in Appendix A.
26. Several comments were received in the following areas: 1) concerns that State regulation will be inconsistent throughout the Great Lakes region and that federal regulation is the preferred approach; 2) whether Laker vessels should be excluded from the ballast water treatment requirements referenced in the 401 Certification (see SDS Permit); 3) concerns that some ballast water exchange and flush requirements are confusing or not feasible; 4) concerns that the

implementation schedule to install ballast water treatment is either too long or too short; and 5) whether the biological performance standards in the Permit are stringent enough to protect Minnesota waters.

MPCA CONSIDERATION OF PUBLIC COMMENTS

27. The MPCA reviewed each of the comments and provided a detailed response to each. The responses of the MPCA staff are set out in the Responses to Comments document (Appendix B).
28. All comments are identified and responses are provided in Appendix B to these findings. Some specific comments and the MPCA response to those comments are summarized below.
29. The MPCA concurs with the reasoning of the MPCA staff in its Responses to Comments document (Appendix B) and adopts that reasoning by reference in these findings.

SELECTED PUBLIC COMMENTS AND MPCA RESPONSES

30. Comment regarding implementation schedule for ballast treatment systems - Regarding the treatment requirement for vessels constructed prior to January 1, 2012, the commenter reiterates that they do not believe there will be available treatment systems which will be effective on Lakers by the January 1, 2016, implementation date. Further, regarding the treatment requirement for vessels constructed after January 1, 2012, the commenter states that, due to the US Coast Guard type approval system, treatment systems will likely not be available to install on vessels until January 2015 at the earliest.

The MPCA responds that though the Great Lakes states coordinated 401 Certification development, each state's 401 Certification must include region or state-specific priorities. As the receiver of the vast majority of ballast water discharge from Lakers, and the potential for spread of invasive species from the lower lakes to Minnesota Waters, Minnesota remains interested in Lakers being considered as part of the fleet to which numeric ballast discharge limits are applicable to protect our water resources. The 401 Certification requires vessels to acquire and comply with the current SDS Ballast General Permit. The current SDS Ballast General Permit will expire in September 2013. The MPCA plans to begin the reissuance process in 2012 and will review all requirements, including availability of treatment technologies for Lakers, during the reissuance of the permit. Vessel owners that plan to build vessels subject to the January 1, 2012, deadline are encouraged to contact the MPCA as soon as possible to discuss these situations on a case-by-case basis.

31. Comment regarding availability of treatment technology for lakers - The commenter states that there is a lack of available ballast water management systems available to Lakers and no treatment technologies are foreseen at this time. The commenter states that other Great Lakes states have also concluded that no treatment technologies are currently available for Lakers, due to the unique characteristics of the Lakers, including high discharge flow rates, short voyages, operation within wide temperature ranges, the potential for corrosion damage from biocides used as treatment, and fresh water considerations.

The MPCA responds that though the Great Lakes states coordinated 401 Certification development, each state's 401 Certification must include region or state-specific priorities. As the receiver of the vast majority of ballast water discharge from Lakers, and the potential for spread of invasive species from the lower lakes to Minnesota Waters, Minnesota remains interested in Lakers being considered as part of the fleet to which numeric ballast discharge limits are applicable to protect our water resources.

32. Comment regarding feasibility of ballast water exchange requirements for vessels operating within the EEZ. The commenter states that Condition 3 of the 401 Certification is confusing and may cause challenges for those vessels that originate from certain coastal ports where vessels may have difficulty locating a suitable area to conduct exchange in a timely manner without significant deviation in routing. The commenter requests a reduction in the distance to 25 nautical miles from shore required for these vessels and, preferably, for MPCA to align the 401 Certification with the US Coast Guard Final Rule.

The MPCA responds that the MPCA has received several comments regarding the requirement for vessels operating within the Exclusive Economic Zone (EEZ) to conduct ballast water exchange after treatment systems have been installed. After further review, the MPCA has determined that the requirement, as written, may not apply to any vessels. In addition, while discussed among several states, no other Great Lakes state has included such a requirement in a draft 401 certification. The MPCA has therefore removed Requirement number 3 entirely. Requirement number 5 (Emergency Control of Ballast Water Discharge) provides an adequate mechanism to address the environmental concerns associated with this requirement until further analysis and collaboration can occur.

33. Comment regarding the MPCA ability to assure compliance with this 401 Certification and the potential requirement of a nondegradation review – the MPCA should certify 2013 VGP only if the MPCA can certify that the discharges it authorizes will comply with Minnesota water quality standards and that MPCA's certification conditions assure that dischargers will comply with Minnesota water quality standards. The MPCA's draft certification that its conditions provide "reasonable assurance" of compliance with Minnesota water quality standards is insufficient to satisfy the requirements of § 401 of the Clean Water Act (CWA).

The MPCA responds that in this comment, the commenter asserts that both state and federal law require a state certification that assures compliance with state water quality standards. The MPCA does not disagree. The commenter also asserts, however, that MPCA's certification rule, Minn. R. 7001.1450, subp. 1(A) is ineffective to meet the requirement that the state certification assure compliance with state water quality standards, because the rule makes reference to the certification being based on a "reasonable assurance" that the activity will not violate applicable water quality standards, whereas 33 U.S.C. § 1341 requires that the state certify that the discharge "will comply" with applicable water quality standards. The MPCA finds that there is no meaningful distinction between the standard articulated in the rule and the standard articulated in the statute. Any action taken by the MPCA must be supported by "substantial evidence" given the record in the matter. See Minn. Stat. § 14.69 (an agency decision that is "unsupported by substantial evidence in view of the entire record as submitted" may be overturned). As interpreted by the MPCA, if there is "substantial evidence" supporting an MPCA decision, it must be upheld. Similarly, if there is a "reasonable

assurance” that the action will result in the given standard being met, the MPCA’s action must be upheld. The MPCA also notes that although Congress did modify the first paragraph of 33 U.S.C. § 1341 to remove the “reasonable assurance” language, the “reasonable assurance” language remains in the statute in other places. Paragraph 3, for example, notes that a state, after having received notice of changes to a previously certified facility, can notify the federal agency that “there is no longer reasonable assurance that there will be compliance. . .”. See 33 U.S.C. § 1341(a)(3). Similarly, in Paragraph 4, the statute notes that a state can review the manner in which a facility or activity will be operated (if not governed by a federal operating license or permit) to ensure that conditions are being met. If the certifying state notifies the Administrator that the operation will violate applicable effluent limitations, and the license or permit is suspended, “it shall remain suspended until notification is received from the certifying State. . . that there is reasonable assurance that such facility or activity will not violate the applicable provisions. . .”. See 33 U.S.C. § 1341(a)(4). The fact that Congress left the “reasonable assurance” language intact suggests strongly that Congress did not intend for a different standard to be applied when it modified the statute in a manner that removed the phrase in the initial sentences. As a result, the MPCA finds that its rule (and 40 CFR 121.2) is adequate and that its finding is not legally deficient.

In this comment, the commenter also raises the issue of whether the MPCA should have performed a nondegradation review with regard to this certification. The MPCA did a nondegradation review when it issued its first ballast water SDS permit in September 2008. At that time, the MPCA concluded that the vast majority of ballast water discharges in Minnesota waters of Lake Superior are neither new nor expanded discharges because the discharges pre-date the designation of Lake Superior as an ORVW. The MPCA further concluded that even if ballast waters were considered new or expanded, there is no feasible and prudent alternative to such discharge because ships cannot operate without discharging ballast water and stopping shipping on the Great Lakes would be neither feasible nor prudent. Moreover, the MPCA concluded that by including the most stringent technologically achievable treatment limits, the controls in the permit satisfy the nondegradation rule requirements. The MPCA’s decision to issue the 2008 state ballast water permit was challenged by the Minnesota Center for Environmental Advocacy (MCEA). The Minnesota Court of Appeals upheld the MPCA’s decision to issue the permit, including its handling of the nondegradation analysis. See *In The Matter Of A Request For Issuance Of The SDS General Permit MNG3000000 For Ballast Water Discharges From Vessels Transiting Minnesota State Water Of Lake Superior*, 769 N.W.2d 312 (Minn. Ct. Ap. 2009) (“Ballast Permit Case”). The commenter now argues that the MPCA should have conducted a nondegradation review in connection with this certification decision. In making this assertion, the commenter essentially renews arguments that were addressed and rejected by the Minnesota Court of Appeals in the Ballast Permit Case. The MPCA finds that nothing significant has changed between the issuance of the 2008 ballast water permit as challenged in the Ballast Permit Case, and today. As a result, the MPCA concludes that a nondegradation analysis, if conducted, would reach the same conclusion as before. For this reason, it was reasonable for the MPCA to rely on its prior conclusions in deciding to issue this conditional certification.

34. Comment regarding implementation of a numeric water quality-based effluent limitation - MPCA should revise Condition number 2 by adding a WQBEL for AIS that will prevent the introduction or spread of new aquatic nonindigenous species and the establishment or spread of new AIS. The MPCA should revise Conditions number 2 and 6 by adding a requirement that all vessels meet the WQBEL, including oceangoing vessels, vessels operating exclusively within the Great Lakes (lakers), vessels

travelling short distances, vessels that can carry no more than 8 cubic meters of ballast water, and unmanned barges. The MPCA should revise Conditions number 2 and 6 by adding a requirement that all vessels meet the WQBEL on or before the following deadlines:

- New small vessels (built on or after November 30, 2012): January 1, 2014
- New large vessels (built on or after November 30, 2012): January 1, 2015
- Existing vessels (built before November 30, 2012): January 1, 2016

The MPCA should revise Condition number 7 by imposing monitoring and reporting requirements that will make compliance with the WQBEL practically enforceable.

The MPCA responds that after careful review of the available data and studies completed to further define the threshold at which point the introduction of nonnative species impacts the quality of Waters of the State, MPCA and the DNR staff are unable to conclusively determine a numeric standard which would definitively protect water quality and an unaltered species composition of the ecosystem. This determination is consistent with the National Academies' National Research Council 2011 report Assessing the Relationship Between Propagule Pressure and Invasion Risk in Ballast Water. Therefore, a numeric WQBEL is not included in the final 401 certification.

401 CERTIFICATION REVISIONS BASED ON PUBLIC COMMENTS

35. Based on comments received during the public notice period, the MPCA has proposed numerous edits and revisions to clarify the applicability and intent of each requirement. In addition, three amendments are proposed as follows:
- A. Elimination of ballast water exchange requirement for vessels operating within the EEZ. The proposed elimination of this requirement is due to significant applicability and logistical challenges. Comments and concerns include confusion generated by the use of the term EEZ, feasibility concerns (particularly with the Canadian domestic fleet), potential negative environmental impact, and inconsistencies with other states' regulations. Further coordination and collaboration with other regulators is needed before a feasible proposal can be recommended.
 - B. Modification of monitoring requirements for vessels not required to achieve compliance with numeric ballast discharge limits. The 401 Certification requires annual monitoring of organisms discharged by vessels operating exclusively in the Great Lakes and exempted from ballast treatment requirements. An option was added for vessels owners to complete a biological study, in lieu of the annual monitoring, to evaluate the threat posed to Minnesota waters by ballast water discharges from these vessels.
 - C. Addition of requirement to comply with all state regulations. This requirement clarifies that obtaining coverage under the 2013 VGP does not release any person from the duty to comply with state laws, statutes and rules. All vessels must comply with the requirements of Minn. Stat. § 115.1703 and any other applicable state law, statute or rule. This requirement was added in response to several comments urging the MPCA to terminate the state's ballast water permit. The requirement ensures adequate mechanisms are established to enforce state regulations if the permit is terminated. The addition of this requirement should not be

interpreted as a decision to terminate the state ballast permit. Rather, it allows for the discussion to occur during the permit reissuance process expected in 2013.

FINAL DETERMINATION ON WHETHER TO ISSUE 401 CERTIFICATION

36. The MPCA's decision to issue the 401 Certification is governed by Minn. R. 7001.1450 subp. 1, which states:

Subpart 1. The agency shall make final determinations with respect to section 401 certifications by taking one of the following actions:

A. Issue, reissue, revoke and reissue, or modify a section 401 certification in accordance with part 7001.0140, subpart 1 and upon making a finding that the discharge which is the subject of the section 401 certification will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, United States Code, title 33, sections 1311, 1312, 1313, 1316, and 1317.

B. Deny or revoke a section 401 certification upon making the findings set forth in part 7001.0140, subpart 2 or the findings set forth in subpart 2.

C. Waive the agency's authority to issue a section 401 certification in accordance with part 7001.1460.

37. Minn. R. 7001.0140 provides that:

*Subpart 1. **Agency action.** Except as provided in subpart 2, the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules administered by the agency, and conditions of the permit and that all applicable requirements of Minnesota Statutes, chapter 116D, and the rules adopted under Minnesota Statutes, chapter 116D, have been fulfilled.*

38. The MPCA finds that the proposed section 401 Certification meets the standard for approval established by Minn. R. 7001.0140. In particular, the MPCA finds that the activity to be permitted will be conducted in compliance with all applicable state and federal pollution control standards and the terms of the federal discharge permits as proposed and as modified by the conditions in the 401 Certification. No environmental review requirements in Chapter 116D or rules promulgated to implement Chapter 116D attach to this action.
39. The MPCA finds that the discharge which is the subject of the section 401 certification will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, United States Code, title 33, sections 1311, 1312, 1313, 1316, and 1317.
40. The MPCA finds that the terms of the proposed 401 Certification meet the requirements of for the terms of a 401 Certification established by Minn. R. 7001.1470.

41. These Findings, Conclusions of Law and Order, the MPCA Board Item and its various attachments constitute the report required by Minn. R. 7001.0125 and adequately fulfill the requirements of that rule.

Procedural History

42. Pursuant to Section 401 of the Clean Water Act and under authority of Minn. Stat. chs. 115 and 116, and Minn. R. 7001.1400-7001.1470, a 401 Water Quality Certification was prepared by the MPCA staff on the proposed permit.
43. The MPCA notified the public of the public comment period. The draft 401 Water Quality Certification was published in the State Register, on May 7, 2012. In addition, the 401 Water Quality Certification was made available for review on the MPCA Web site at <http://www.pca.state.mn.us/index.php/public-notices.html> on May 7, 2012.
44. The public comment period for the draft 401 Certification began on May 7, 2012, and ended on May 28, 2012. During the 21-day comment period, the MPCA received 16 comment letters from government agencies and received 0 comment letters from citizens.
45. The MPCA prepared responses to all comments received during the 21-day public comment period. Comment letters received have been hereby incorporated by reference as Appendix A to these findings. The MPCA responses to comments received are hereby incorporated by reference as Appendix B to these findings.
46. The MPCA finds that ongoing public regulatory authority will address any significant potential environmental effects that were identified as reasonably expected to occur.

CONCLUSIONS OF LAW

47. The MPCA has jurisdiction to issue this 401 Certification.
48. Adequate and timely public notice of the proposed 401 Certification was given in accordance with applicable rules and public comments on the draft 401 Certification have been addressed.
49. Areas where the potential for significant environmental effects may have existed have been identified and appropriate mitigation measures have been incorporated into the 401 Certification. The 2013 VGP and sVGP, with conditions established in the 401 Certification, are expected to result in compliance with all existing MPCA standards.
50. The MPCA reserves the right to modify requirements of the 2013 VGP, with conditions established in the 401 Certification if substantial changes are made to the 2012 VGP or sVGP upon issuance.
51. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

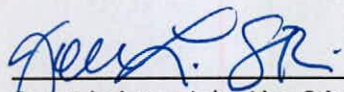
49. Areas where the potential for significant environmental effects may have existed have been identified and appropriate mitigation measures have been incorporated into the 401 Certification. The 2013 VGP and sVGP, with conditions established in the 401 Certification, are expected to result in compliance with all existing MPCA standards.
50. The MPCA reserves the right to modify requirements of the 2013 VGP, with conditions established in the 401 Certification if substantial changes are made to the 2012 VGP or sVGP upon issuance.
51. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ordered:

The Minnesota Pollution Control Agency approves the 401 Water Quality Certification for the EPA draft 2013 Vessel General Permit and 2013 Small Vessel General Permit.

IT IS SO ORDERED



Commissioner John Linc Stine
Chair, Citizens' Board
Minnesota Pollution Control Agency

8/29/12

Date