



July 30, 2008

Mary Jean Fenske
Minnesota Pollution Control Agency
Industrial Division
520 Lafayette Road North
St. Paul, MN 55155-4194

**RE: State Disposal System (SDS) Permit MNG300000
Ballast Water Discharge General Permit**

Dear Ms. Fenske:

The Shipping Federation of Canada, which represents over 90 percent of oceangoing vessels (international cruise and cargo) trading to and from ports in Atlantic Canada, the St. Lawrence and the Great Lakes, is writing to offer its comments regarding the current language of the Minnesota Pollution Control Agency's (MPCA) proposed ballast Water Discharge General Permit (MNG300000).

First of all, we would first like to commend the MPCA for the significant work it has done to amend the original version of the permit in response to stakeholder concerns. We refer, in particular, to the integration of key elements of the international regulatory framework and to the modification of certain provisions to account for the industry's operational constraints.

However, despite these changes, the current version of the permit is still impractical on a number of levels. Not only does it continue to contain a number of requirements that are incompatible with international shipping operations, but its scope has been expanded to cover **all** vessels with ballast water on board which transit the Minnesota waters of Lake Superior. Furthermore, vessels transiting in full ballast are prohibited from discharging saltwater in Minnesota waters, while no such requirement exists at the federal level (in U.S. 33 CFR 151 Subpart C). Finally, the Minnesota Pollution Control Agency allocates to

itself a number of approval powers over several documents which are (at best) impractical for global traders.

1. General Observations

As you are undoubtedly aware, the Environmental Protection Agency (EPA) released a proposal on June 17 for a general permit under the *Clean Water Act* to cover discharges incidental to vessel operations. Under this proposal, commercial vessels transiting into U.S. waters will be required to apply for a general permit under the National Pollutant Discharge Elimination System (NPDES) as of September 30th. Among other things, the permit will implement new monitoring, inspection and reporting measures, as well as requirements for annual inspections and dry dock inspections and reports.

Although the scope of this permit is considerably larger than that of the MPCA, ballast water is one of the operational discharges that it was designed to cover. Given the development of this federal initiative, it is difficult to understand why the MPCA continues to find it necessary to proceed with a distinct state permit for ballast water discharges, particularly since an integrated federal approach to environmental protection is far preferable to a state-by-state piecemeal approach. Nevertheless, should Minnesota decide to move forward with a separate ballast water permit proposal, it should in the very least model such a permit on the EPA's general permit proposal.

In our comments on the original version of the MPCA permit proposal, we directed attention to a number of scientific research reports which confirm the efficiency of ballast water exchange as an effective solution for preventing the introduction of aquatic invasive species in the Great Lakes system. The most recent of these reports, entitled *Great Lakes Shipping, Trade and Aquatic Invasive Species*, was issued on July 16th by the National Academies after being commissioned by the Great Lakes Protection Fund. The committee of experts who worked on this report were mandated with identifying and exploring options for enhancing the potential for global trade in the Great Lakes, while eliminating any further introduction of AIS by vessels transiting the St. Lawrence Seaway. The key strategies proposed by the committee include:

- Implementing prevention measures for all ships that pose a risk;
- Creating uniform standards;
- Improving AIS monitoring;
- Creating feedback mechanisms for improving the program.

It is worth noting that none of these recommendation involve the imposition of additional reporting and paperwork requirements on international carriers transiting the Seaway and the Great Lakes. Moreover, the report specifically advocates the adoption of ballast water exchange and performance standards identical to those in the IMO's *International Convention for the Control and Management of Ships' Ballast Water and Sediments*, which supports our position on avoiding regulatory fragmentation. Given the foregoing, we would have hoped that the program developed by the MPCA would have been harmonized with current practices and regulatory requirements.

2. Specific Comments on the Permit

Given that the MPCA has no choice but to regulate ballast water discharges from ships due to the April 21st Ramsey Court decision vacating Minnesota R. 7001.1030 as of October 1st, 2008, we would like to offer the following comments on specific sections of the permit (as per the June 30th document), with a view to harmonize the State permit with the federal approach and improving the overall application and implementation process.

Part 2. General Ballast Water Permit Authorization

Section 4: We urge the MPCA to remove any requirement for ships to apply for a permit to transit through Minnesota waters, as this would contradict Article 1 of the 1909 *Boundary Waters Treaty*, which provides that "... the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships...". Our particular concern is with respect to vessels that may transit through Minnesota waters in order to call at a Canadian port (however unlikely this may be), and the need to ensure that such vessels are not required to have a permit unless they plan to discharge ballast water in Minnesota waters. We therefore recommend that section 4 be reworded as follows:

- "This permit authorizes, subject to the terms and conditions of this permit, the discharge of ballast water to Minnesota State waters of Lake Superior after receiving a written NOC from the MPCA."

Section 5: We would like to have additional clarification as to how the MPCA will manage authorizations under a general permit as opposed to an individual permit. Our understanding is that the general permit will apply to several vessels, and a Notice of Coverage will be sent out along with a copy of the permit for all vessels included in the application form. Additional information on the application process would be appreciated, as most global traders are not familiar with the State Disposal System (SDS) program requirements.

Section 10: As highlighted in both our past submission and in the current document, research efforts have shown sea water exchange to be an effective means of preventing the introduction of aquatic invasive species, and we are not aware of any research proving that such exchange has had a negative impact on harbor aquatic ecosystems. If the MPCA were to move ahead with banning ships fully ballasted with sea water from discharging their ballast water to Minnesota harbors it should provide sound scientific evidence to support its assertion that "sea water has the potential to be toxic for freshwater organisms".

Part 3. Ballast Water and Sediment Management Plan, Ballast Water Treatment

Section 11: Regulation B-1 of the IMO *International Convention for the Control and Management of Ships' Ballast Water and Sediments* (IMO Ballast Water Convention) describes the information to be included in the Ballast Water Management plan, which is specific to each ship and includes a detailed description of the actions that are necessary to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices. However, given that it would be virtually impossible for global traders to develop Ballast Water Management plans for each region in which they trade, we recommend that:

- The requirements for the Ballast Water and Sediment Management Plan required by the MPCA be consistent with the requirements spelled out in Regulation B-1 of the *IMO Ballast Water Convention* and Appendix A of the current U.S. Coast Guard Navigation and Vessel Inspection Circular.
- More specifically, provision d) should be removed and provision f) should be modified according to the U.S. Coast Guard Navigation and Vessel Inspection Circular provisions.

Section 13: We have serious concerns with the requirement that the Ballast Water Treatment Plan be submitted to the MPCA for review and approval. The installation of treatment systems on vessels, as long as they are in compliance with the IMO Ballast Water Convention and with U.S. Coast Guard requirements, should be sufficient to fulfill MPCA requirements, especially in light of the MPCA's adoption of the IMO's biological performance standards in Table A.

We recommend that Section 13 be amended to require vessels to submit a notice to the MPCA 180 days before the installation of a ballast water treatment system – but that this requirement be tempered with the understanding that vessels which call Minnesota ports only on occasion may be unable to comply with such a timeline.

Section 14: As stated elsewhere in this submission, regulatory fragmentation is counterproductive for global traders. Given the very stringent testing protocols that have been developed by the IMO, and the treatment standard and testing protocols that the U.S. Coast Guard will (hopefully) release before the end of this year, we would argue that confirmation of the treatment system's performance under the EPA's Environmental Technology Verification Program is unnecessary, particularly since the biological performance standards in Table A are consistent with the IMO standard.

Section 18: According to Regulation B-2 of the *IMO Ballast Water Convention*, each completed page of the Ballast Water Record Book must be signed by the master – and not the owner or operator - of the vessel. We would recommend that provision b) be modified accordingly.

Section 19: According to Regulation B-2 of the *IMO Ballast Water Convention*, the ballast water record book must remain on board the vessel for a minimum of two years after the date of the last entry, and in the company's control for a minimum of three years afterwards. We suggest that section 19 be amended accordingly, thereby reducing the period that the book shall remain on the vessel from three years to two years. We also recommend that the party responsible for the ballast water record book after its retention on board the vessels be changed from the vessel owner to the company (which, in the IMO Convention, includes not only the owner, but also the manager or bareboat charterer).

Section 20: We already described the current regulatory requirements and reporting procedures for ships transiting the Seaway (i.e. all oceangoing vessels) in our submission of April 23, 2008. As such, the addition of another reporting procedure when all the information necessary has already been compiled in the pre-entry forms and the ballast water record book would create an undue workload for the crew. Thus, rather than requiring an additional report from ships calling Minnesota ports, we would suggest that the MPCA simply access the required information through a request to the National Ballast Information Clearinghouse.

Section 21: We suggest that the reporting requirements under this section be postponed until the development and approval of ballast water treatment systems, as these requirements may well be covered under the ballast water record book, while the system's annual verification may be covered by the vessel's classification society.

Section 22: Same as above.

Part 5. Surface Discharge Limitations and Monitoring Requirements

Table A, Note 1: Costs associated with the sampling procedures should be absorbed by the MPCA.

Part 7. General Requirements

Section 55: We recommend that the MPCA keep the same level of confidentiality as that currently granted by the Seaway corporations, the U.S Coast Guard and Transport Canada.

Before closing, we take this opportunity to reiterate our commitment to the environmental protection of the waters in which our ships trade, while underlining the need to ensure that the actions of individual states should not unduly complicate operations for oceangoing vessels calling at Minnesota ports. For reference purposes, we have attached our April 23, 2008 and May 1, 2008 submissions, which supplement the information included in this submission.

We thank you for the opportunity to provide our views on the MPCA's proposed general permit for ballast water discharges, and would be pleased to provide any additional clarification or information you may require.

Respectfully submitted,

Caroline Gravel
Director, Environmental Affairs
Shipping Federation of Canada

Attachments: April 23, 2008 Submission
May 1, 2008 Submission

The Shipping Federation of Canada (The Federation), incorporated by an Act of Parliament in 1903, acts as the pre-eminent voice of shipowners, operators and agents involved in Canada's world trade. Its overall objective is to work towards a safe, competitive and environmentally sustainable marine transportation system. As an industry leader on marine environmental issues, the Federation serves as a frontline information resource on environmental regulations, policies and practices applicable to ships trading in Canadian waters; promotes the importance of international conventions and standards as the optimal means of responding to environmental challenges; and provides operational know-how and expertise in the development of best practices and management systems.

The Federation's membership consists of the Canadian companies that own, operate or act as agents for 95 percent of ocean vessels trading to and from ports in Atlantic Canada, Newfoundland & Labrador, the St. Lawrence River and the Great Lakes – vessels which are responsible for transporting virtually all of the trade moving between eastern Canada and ports overseas. The Federation's members also represent virtually all the international cruise vessels calling at eastern Canadian ports.



April 23, 2008

Mary Jean Fenske
Minnesota Pollution Control Agency
Industrial Division
520 Lafayette Road North
St. Paul, MN 55155-4194

RE: Possible Amendment to Rules by Removing the State Exemption from National Pollutant Discharge Elimination System Permitting for Vessel Discharges Codified in *Minnesota Rules 7001.1030*, subpart 2(A)

Dear Ms. Fenske:

The Shipping Federation of Canada, which represents over 90 percent of oceangoing vessels (international cruise and cargo) trading to and from ports in Atlantic Canada, the St. Lawrence and the Great Lakes, wishes to make the following comments on the possible amendment captioned above. Given that a significant proportion of our members either transit from overseas to the Great Lakes through the Seaway, or have U.S. based operations, the question of whether they will have to abide by a new permitting requirement is of tremendous importance.

We agree with the Minnesota legislature, the Minnesota Pollution Control Agency (MPCA) and the general population that the risk of introducing and propagating aquatic nuisance species should be eliminated. The international shipping industry has participated in many of the mitigation efforts that have been developed over the past twenty years, both from a regulatory perspective and in terms of technology development. It is worth noting that the International Maritime Organization (IMO) has already done a significant amount of work on a global level by adopting (in 2004) the *International Convention for the Control and Management of Ships' Ballast Water and Sediments*, and developing a series of guidelines to implement the Convention in a uniform manner. The Convention requires new ships to be equipped with on-board ballast water treatment technologies as of 2011, with a gradual phase-in until 2016. While progress in approving ballast water treatment

systems has been slow, we are optimistic that **at least one** system will be approved by the end of 2008.

However, although we share the MPCA's goal of eliminating the risk of introducing new aquatic nuisance species, we are concerned that the current initiatives may be premature, and will result in a patchwork of conflicting regulations on ballast water management and discharges in the United States. Our concerns are based on the following factors:

- **Pending Federal ballast water legislation:** Representative Oberstar has proposed federal legislation that would provide the Great Lakes with the level of protection it requires. We cannot over-emphasize the fact that, from the viewpoint of an international shipowners / operators, federal legislation makes far more sense than a series of regulations from individual states.
- **Proposals for ballast water management are being developed by the United States Coast Guard:** The USCG, which is the federal agency responsible for regulating ballast water management and discharges, is currently developing a water quality standard for ballast water discharged in U.S. waters. We view this as a positive development as the USCG standard would apply in all States.
- **Existing requirements:** We are concerned that the MPCA has not taken into account the fact that oceangoing vessels transiting Lake Superior are already required to exchange their ballast water, as per the Seaway regulations, the Canadian regulations and the U.S. Coast Guard regulations:
 - These regulations require all ships bound for Great Lakes ports from beyond the Exclusive Economic Zone to have exchanged their ballast water while at sea.
 - Enforcement is carried out by both Transport Canada and the U.S. Coast Guard.
 - Vessels carrying only residual water in their tanks are required to perform saltwater flushing of those tanks.
 - As such, all oceangoing vessels transiting Lake Superior from ports located outside of the U.S., regardless of whether they are in full ballast or only carrying residual water, have performed ballast water management.
- **Studies have proven the efficiency of ballast water exchange as a means of reducing the risk of introducing aquatic nuisance species:** As confirmed by the National Oceanic and Atmospheric Administration in a [report](#) published last September, exchanging ballast water at sea is the optimal means of mitigating this risk of introductions at the present time.
- **The United States Environmental Protection Agency is currently developing an NPDES permit:** We believe that it is premature to develop a state permit to address an issue that is being simultaneously addressed at the federal level – especially when the order mandating the permit is being appealed. Should the

appeal fail, the agency needs to have the permit ready by September 30, 2008, and has already undertaken steps towards its development.

We also take this opportunity to note that the current NPDES program is designed for **stationary** point sources (such as municipal and non-municipal dischargers) rather than **mobile** sources (such as ships). Although stationary sources discharge relatively consistent components into the water, such predictability does not exist with respect to ships. While discharges can be relatively consistent for a given ship, such consistency does not apply across ship types, trades and sizes. A system that would require a vessel to apply for and obtain multiple state permits would soon become an administrative nightmare.

Before closing, we would like to reiterate our commitment to the development and promotion of an environmentally responsible and sustainable marine transportation system, and our willingness to collaborate with the State of Minnesota in addressing the aquatic nuisance species issue. We thank you for the opportunity to provide our views on the removal of the State exemption from the National Pollutant Discharge Elimination System, and would be pleased to provide any additional clarification or information you may require.

Respectfully submitted,

Caroline Gravel
Director, Environmental Affairs
Shipping Federation of Canada

The Shipping Federation of Canada (The Federation), incorporated by an Act of Parliament in 1903, acts as the pre-eminent voice of shipowners, operators and agents involved in Canada's world trade. Its overall objective is to work towards a safe, competitive and environmentally sustainable marine transportation system. As an industry leader on marine environmental issues, the Federation serves as a frontline information resource on environmental regulations, policies and practices applicable to ships trading in Canadian waters; promotes the importance of international conventions and standards as the optimal means of responding to environmental challenges; and provides operational know-how and expertise in the development of best practices and management systems.

The Federation's membership consists of the Canadian companies that own, operate or act as agents for 95 percent of ocean vessels trading to and from ports in Atlantic Canada, Newfoundland & Labrador, the St. Lawrence River and the Great Lakes – vessels which are responsible for transporting virtually all of the trade moving between eastern Canada and ports overseas. The Federation's members also represent virtually all the international cruise vessels calling at eastern Canadian ports.



May 1st, 2008

Mary Jean Fenske
Minnesota Pollution Control Agency
Industrial Division
520 Lafayette Road North
St. Paul, MN 55155-4194

RE: Minnesota Vessel Discharge General Permit – Current Working Draft Language

Dear Ms. Fenske:

The Shipping Federation of Canada, representing over 90 percent of oceangoing vessels (international cruise and cargo) trading to and from ports in Atlantic Canada, the St. Lawrence and the Great Lakes, would like to offer the following comments regarding the current language of the Minnesota Vessel Discharge General Permit. This is in addition to the comments regarding the rulemaking process that we previously submitted on April 23rd.

Legislative Developments at the Federal Level

First of all, we believe it is important to draw your attention to recent legislative developments at the federal level. Last week, the House of Representatives approved Bill H.R. 2830 (which was introduced by Minnesota Congressman James Oberstar), mandating ballast water treatment standards that are one-hundred times more stringent than those required by the IMO. This will ensure that Lake Superior has the level of protection it needs, while also providing a consistent federal framework for regulating ballast water that is more amenable to shipping operations than a fragmented, state-by-state approach. Given this combination of a national approach and an extremely stringent ballast water treatment standard, we believe that this legislation represents a “win-win” scenario for both the State of Minnesota and the shipping industry.

We would also draw your attention to the joint [proposal](#) regarding ballast water management that was recently developed by the U.S. Coast Guard & the Environmental Protection Agency (EPA). All U.S. and foreign-flagged vessels transiting into U.S. waters would be covered by this proposal, which also provides for the possibility of developing legislation on national uniform discharge standards that would serve as an alternative to regulating ships under the NPDES program. The proposal provides for a phased-in approach, with IMO standard D-2 applicable four years after enactment, and standards that are one-hundred times more stringent than D-2 becoming applicable four years thereafter (although these implementation dates could be advanced should treatment technologies become available earlier).

Given that both these regimes would go a long way towards ensuring the protection of the waters of Lakes Superior while simultaneously avoiding regulatory fragmentation, we strongly recommend that the Minnesota Pollution Control Agency delay implementation of its permit program while Bill H.R. 2830 and the joint U.S. Coast Guard / EPA proposal are being developed.

Specific Comments on the Draft Permit

First, we would like to make the following comments with respect to the language of the Working Draft General Permit:

1. Part 1

We forecast a number of enforcement issues arising from the current language of the permit, including the need for more specificity with respect to the definition of the “permittee.” As currently written, it is unclear whether it is the ship owner or the ship operator who would apply for the permit, and whether it is the “permittee” who would be held responsible for compliance with the permit provisions?

We would also like to highlight a number of considerations related to specific provisions of the permit:

- Part I, section 6(a): Our understanding is that the permit covers ballast water discharges only – as such, we do not understand the reference to sewage and industrial waste, especially since these discharges are already covered in other legislation.
- Part II, Table B: We would like to point out that there are currently no technologies approved by the U.S. Coast Guard, the Federal agency authorized by Congress to develop a national regulatory program to prevent the introduction and spread of aquatic non-indigenous species (NIS) into U.S. waters via ballast water discharges from vessels. We would therefore be interested in having more information on the data sources used by the MPCA in order to develop the effluent limitations included in Table B.
- Part IV, section 13 (a) and (b): add “or” in between the two items.

2. Part 2

We would recommend that either the language included in this provision be modified or that it be removed entirely. Although we understand that using language common to most water quality permits issued by the MPCA is intended to guide the permit development process, it nevertheless remains that vessels cannot be considered as stationary point sources of pollution and as such, the “facility” definition must be adapted to the maritime context.

Before closing, we take this opportunity to reiterate our commitment to protecting the waters of Lake Superior in a way that is both satisfactory to the Minnesota legislature, the MPCA and the state’s population, while ensuring that such actions do not unnecessarily complicate operations for oceangoing vessels calling at Minnesota ports.

We thank you for the opportunity to provide our views on the Working Draft Language of the Minnesota Vessel Discharge General Permit, and would be pleased to provide any additional clarification or information you may require.

Respectfully submitted,

Caroline Gravel
Director, Environmental Affairs
Shipping Federation of Canada

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