



UNITED STATES GREAT LAKES
SHIPPING ASSOCIATION

6619 S. BOUNDARY ROAD, PORTAGE, INDIANA 46368

RECEIVED
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STUART H. THEIS
EXECUTIVE DIRECTOR
7714 WOODSTAR LANE
CONCORD TOWNSHIP
OH 44077-8993
440/357-9104

BY:.....

July 28, 2008

Minnesota Pollution Control Agency
Industrial Division, SP-5
520 Lafayette Road
St. Paul, MN 55155
Att. Mary Jean Fenske, P.E.

VIA FAX 651/296-8717
AND GROUND

RE: Proposed Ballast Water Discharge Permit

This will serve to supplement prior comments provided by the United States Great Lakes Shipping Association in the subject proceedings. Our Association represents vessel agents across the United States Great Lakes serving the commercial vessel industry with customers being primarily foreign flag

We wish to urge MPCA and its legislative colleagues to consider carefully and take official notice of certain recent developments which we believe provide the foundation for decisions which could contribute to the avoidance of a potentially chaotic set of regulatory circumstances on the Lakes. Those developments are as follows

1) The decision of the U.S. Ninth Circuit Court of Appeals in Northwest Environmental Advocates, et al., vs. EPA which upheld a lower court decision which invalidated the Ballast Water Exemption contained in the Clean Water Act and ordered that regulations be promulgated no later than September 30, 2008 ("Appeal Decision").

2) The announcement by the Environmental Protection Agency of a Notice of Proposed Rulemaking covering the Federal permitting of, among other matters, the same vessel ballast water the State of Minnesota seeks to regulate in this proceeding with a targeted effective date of September 30, 2008. ("EPA Proposals")

3)) The release by the United States Coast Guard of a Report of the Great Lakes Ballast Water Working Group, setting forth a detailed description of current practices being carried out by USCG in cooperation with the U.S. St. Lawrence Seaway Development Corp., the Canadian St. Lawrence Seaway Management Corp. and Transport Canada-Marine Safety. The practices which are described and which are currently being enforced are reportedly resulting in virtually all aquatic invasive species being prevented from entry in to the Lakes/Seaway System in ballast water ("Coast Guard Report").

4) The release of a report from the National Academies – Transportation Committee (U.S. National Research Council and National Academy of Sciences) which, in rejecting the proposition that the Lakes be closed entirely to shipping, recommends a coherent shared Federal policy between the United States and Canada (National Academies Report).

These documents covering these items are hereby incorporated herein by reference; copies already in MPCA possession.

THE CONTENT OF THE NATIONAL ACADEMIES REPORT AND THE COAST GUARD REPORT, COUPLED WITH THE RECENT EPA PROPOSALS MAKE IT CLEAR THAT NOT ONLY IS THE AIS INTRODUCTION INTO THE LAKES ALEADY BEING BROUGHT UNDER CONTROL BUT ALSO THAT CONSISTENTLY APPLIED FEDERAL ATTENTION TO THIS MATTER IS APPROPRIATE AND IMMINENT.

The National Academies Report makes it clear that closure of the Lakes to commercial activity is impractical as well as economically unwise. Rather, it recommends a multi pronged attack on the AIS issue primarily through strong cooperation at the Federal levels by both the US and Canadian governments. Indeed, as described in the Coast Guard Report, the mandatory exchange of ballast water at sea followed by tank testing for salinity by Canadian and US authorities prior to entering the Seaway, has proven to be successful in essentially eliminating new introduction of AIS. Additionally, the announcement of the EPA Proposals fortifies the notion that Federal action (mandated through the Appeal Decision) is now going to be taken very soon. Finally, Coast Guard has reported that its issuance of ballast

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water standards are in final review status which should have an important impact on what direction regulations might take. With good control being demonstrated at the entrance of the Seaway and the EPA Permitting imminent, is a further layer of Minnesota even necessary?

THE APPEAL DECISION OFFERS EPA AN OPPORTUNITY TO PETITION TO DELAY THE SEPTEMBER 30 MANDATED EFFECTIVE DATE. MPCA SHOULD ENCOURAGE EPA TO DO SO TO ALLOW MORE TIME FOR COORDINATION WITH FEDERAL EPA PROPOSALS.

Even from the inception of this Permit development exercise, MPCA has recognized publicly that it would be far better if Federal Standards for Ballast Water Management be established as opposed to individual States taking the matter up with potentially chaotic consequences. However, because of the existence of the mandate contained in the lower court decision which is the basis of the Appeal Decision, as well as frustration with the Federal Legislative process, there appeared to be little choice but to move ahead. Additionally, since it had been unknown how and when EPA was going to act on the matter, the States have felt compelled to be ready by September 30 even if EPA was not. While the Appeal Decision confirms the lower court ruling, including the September 30, 2008, deadline, an opportunity appears to exist in the Appeal Decision for the possibility of EPA seeking to extend that deadline. An extension in the deadline would provide an increased opportunity for the State to participate in the development of Federal standards and may even lead to the conclusion that those standards could suffice, thereby achieving the stated preference for only Federal treatment in the first place.

MPCA SHOULD CONSIDER BUILDING INTO ANY FINAL PERMIT, A MECHANISM WHICH WOULD EITHER POSSIBLY DEFER TO FEDERAL REGULATIONS WHEN PROMULGATED OR PERHAPS CONTAIN AN EXPIRATION DATE WHICH WOULD PERMIT A NEW LOOK SOMETIME DOWN THE ROAD TO DETERMINE IF THEN EXISTING FEDERAL STANDARDS ALONE ARE ACCEPTABLE

Because the timing as to when Federal standards will actually become effective given the possibility of the September 30, 2008, deadline being

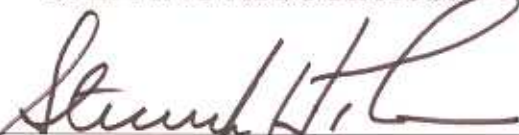
extended as well as State legislative mandates, it may be impractical to be able to halt the Minnesota process at this juncture. If that is the case, it still may be possible to build into any issued permit, a mechanism which would allow for either preemption by the Federal standards when finally issued or a "sunset" provision which would allow Minnesota to decide how it may continue permitting in some form designed to work with the Federal standards or possibly decide that State permitting is no longer necessary.

In summary, we believe that based upon the referenced recently emerging information demonstrating the increasing likelihood of Federal standards becoming effective soon, and that great progress has been made to stem the introduction of AIS, MPCA should examine and investigate all avenues to see if it can appropriately manage an outcome that would allow permitting and regulation of AIS on a uniform Lakes wide basis.

Thank you for the opportunity to participate in this process.

Respectfully submitted,

THE UNITED STATES GREAT LAKES
SHIPPING ASSOCIATION

By 
Stuart H. Theis, Executive Director