www.fednav.com

FEDNAV LIMITED
Suite 3500
1000, rue de La Gauchetière Ouest
Montreal, Quebec
Canada H3B 4W5

Direct Telephone 514.878.6608
Direct Fax 514.878-6687

Telephone 514.878.6500
Fax 514.878.6642

April 30, 2008

Ms. Mary Jean Fenske
PE Program Coordinator
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Dear Ms. Fenske:

RE: MPCA PROPOSED VESSEL DISCHARGE GENERAL PERMIT

Further to our letter of March 12, 2008, and the meeting convened by the MPCA in St. Paul on April 15, 2008, Fednav wishes to offer the following comments on the MPCA's draft Vessel Discharge General Permit, which was issued on April 11, 2008.

First let me reiterate how much Fednav appreciates the efforts that the State of Minnesota is taking to first consult with stakeholders before proceeding with any final decision on requiring vessel discharge permits and, if it so decides, on the scope and content of such permits. At the April 15 meeting, Commissioner Moore reiterated the MPCA's preference for a federal solution. Let me re-emphasise that Fednav very much shares this view as it believes, and has stated on numerous occasions, that the most appropriate and effective way of regulating the discharge of ballast from ships entering the United States is at the federal level, and preferably internationally through the International Maritime Organisation's *International Convention for the Control and Management of Ships' Ballast Water and Sediments*. The passage by the House of Representatives of H.R. 2830, *Coast Guard Authorization Act of 2008* on April 24, 2008, and the provisions of Title V thereof, evidences the attention the ballast water issue is finally receiving in Washington.

Fednav is very cognisant of the growing level of frustration at the apparent inaction, until very recently, at the federal level. While we understand the complexities of the ballast water/AIS issue and sympathise with the challenges

facing the U. S. Coast Guard in addressing treatment standards and treatment technologies in an effective and responsible way, we have, albeit reluctantly, come to the conclusion that, all else considered, states, such as Minnesota, appear to believe that they have no choice but to impose state permits, absent federal legislative action or adoption of a national permit by the EPA. Therefore, the comments we offer on the draft Vessel Discharge General Permit should in no way be taken as our acceptance that Minnesota has no choice but to proceed with its own permitting process; rather, these comments are intended to ensure that if Minnesota does act, it will do so with as much pertinent information as is available for it to act in a reasonable and responsible manner.

Without attempting to address the specific wording in the draft Vessel Discharge General Permit, Fednav (on its behalf and with the support of Canfornav Inc.) offers the following comments on the permit's scope and intent.

1. There exists today for all oceangoing vessels entering the Seaway at Montreal federal regulations, both Canadian and U. S., requiring that all these vessels adhere and attest to best management practices, including conducting deep sea ballast exchange on all ballast tanks, be the vessel in ballast or NOBOB. Competent U. S. and Canadian federal officials enforce these regulations. The MPCA, an agency that one assumes has little, if any, experience in regulating oceangoing vessels, should, we respectfully submit, accept and incorporate by reference the existing federal regulations and the enforcement of those regulations by the existing Canadian and United States government and Seaway officials.

2. The IMO standards adopted by Minnesota are the standards against which technologies are currently being developed and, as I stated at the April 15 meeting, will likely result in at least three to five ship board treatment technologies receiving IMO Type Approval by the end of this

year, including, we believe, the OceanSaver, Alfa Laval's Pure Ballast, and Peraclean Ocean systems, and as well, Canfornav Inc. advises, the Techcross system being tested on its ship the M. V. *Greenwing* (see our letter to you of March 12, 2008), information on all of which can be obtained at the following Websites:

www.oceansaver.com
http://pureballast.alfalaval.tripnet.se/
http://www.peroxygen-chemicals.com/content/ballast_water_treatment.htm
http://www.techcross.net/eng_main/

The United States has yet to ratify the IMO *International Convention for the Control and Management of Ships' Ballast Water and Sediments*, and it is far from certain that it ever will. Canada, on the other hand, is most likely to ratify this Convention. The U. S. Coast Guard has for sometime undertaken to release proposed treatment standards with the latest information to the effect that it will release a range of standards during the course of this summer. The issue any oceangoing vessel owner seeking to enter Minnesota waters will face in deciding to install a treatment technology is to ensure that that technology satisfies not only Minnesota's requirements but those of the United States, Canada, all the other states, and ideally elsewhere in the world, which can only be assured by the U. S. Coast Guard's certification and approval of that technology. Until the U. S. Coast Guard is in a position to certify technologies, which presumably can only be after it establishes a standard or standards, it is, in our respectful opinion, unreasonable for the MPCA to require oceangoing vessel owners to identify treatment technologies for installation within one year of the MPCA's permit issuing. Indeed, it is only appropriate when the U. S. Coast Guard has certified treatment technologies that then become commercially available for installation within a reasonable period of time tied to vessels' scheduled dry-dockings.

3. To avoid the ill-conceived path that Michigan has chosen to follow, a state where little, if any, discharge of ballast water from oceangoing vessels occurs, it is incumbent on Minnesota, as the lead recipient state of discharged ballast water in the Great Lakes, to ensure that what it ultimately does is entirely consistent with what the states of Ohio and Wisconsin, being the other two principal Great Lakes states where ballast water is discharged from oceangoing vessels, choose to do.

4. Attached to this submission are copies of the actual report forms that were completed and the examination papers that were prepared and filed by U. S. and Canadian federal officials with respect to the M. V. *Federal Hudson* as it entered the Lakes last May, as well as the updated St. Lawrence Seaway Ballast Water Reporting Form currently in use for each oceangoing vessel entering the Seaway at Montreal. These forms, in our view, are more than adequate to confirm that each oceangoing vessel allowed to enter the Great Lakes through the Seaway has conclusively established that it has adhered to best management practices, including the deep see ballast exchange of the water in all of its ballast tanks. Minnesota can access all such documents, which, in our respectful opinion, should be more than satisfactory for its needs, and the MPCA should not require additional filings, given what Mr. Stollenwerk said at the April 15 meeting about avoiding “paperwork exercises” and “not reinventing the wheel.”

5. In principle, we have no objection to the MPCA’s initiating discharge monitoring for organisms if it wishes to do so. That said, it is for the MPCA to conduct such monitoring at its cost and in a manner that does not interfere with the ship’s operations or its schedule. Fednav will cooperate in facilitating access to its vessels to allow the MPCA to monitor discharges.

All of which is respectfully submitted,

FEDNAV LIMITED

Original signed by
Georges H. Robichon

Georges H. Robichon
Senior Vice-President
and General Counsel

/ot
Encl.

cc: Mr. Errol Francis, Vice-President (Operations), CANFORNAV INC.; and Mr. Robert B. Roche, Assistant Attorney General, STATE OF MINNESOTA