

Comments on:

Minnesota Vessel Discharge Permits

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This commentary is the thoughts and reflections of Bradley N. Clifford from North Star Community Development Corporation. North Star CDC for 30 years has actively been a micro economic development and business assistance resource in the Duluth/Superior area. One activity is to participate in the analysis of change and its effects on economic opportunities as well as identify emerging "green economic development opportunities". With this effort to express opinion on the proposed ballast discharge initiative, this commentary does not represent the opinions of the Board of Directors or other sponsors of North Star Community Development Corporation.

The Duluth Superior Harbor has been a powerful economic engine for the Twin Ports for over 140 years. Even though today the port has closure and abandonment of 12 to 14 docks or slips the tonnage and shipping volume has maintained sustainable levels. It may be important to conduct a feasibility study of the economic impact that this ballast discharge issue may create before any enforcement begins.

The maritime business operations and jobs in Duluth Superior are vital to the overall northern Minnesota economy. The solutions for clean water are equally important. Finding a balance to this complex issue requires a grasp of capacity to retrofit current fleets, technologies that are available and can deliver solutions today as well as be managed by acceptable standards that other industries have perhaps defined already. The assessment of the current research and development that is going has not been presented well and further investigation is being done as this comment period proceeds.

On fundamental problem with this Minnesota permitting issue is the confusion and interference with interstate commerce that it most likely creates. To have standards define between different states void of U.S Federal plans and Canadian plans as well as acknowledgments to the

research, processes, objectives, and achievements of the International Maritime Organization may create impotence with one standard over another, or worse one law over another. That being a potential collision to be argued in the courts is one complexity not clear to this commentary. Simple challenges to this issue in the appropriate court may prove to defeat the basic intent of this permitting issue.

These comments are based on conversations with technologists, environmentalists, property owners, fleet operators and transportation specialists who have expertise and greater knowledge of this issue than the author.

The expertise offered in this commentary at the end of the window for comments will hope to contribute an insight and understanding of the economic analysis, capacity to retro fit, timelines, job creation, ongoing management solutions and reporting, and perhaps the cost benefit analysis that must be measured against the feasibility to achieve the objectives of "good stewardship" of Lake Superior as well as the other Great Lakes.

1. **Applicability...**The cause and distribution of invasive species has been shown to be attributed to small recreational vessels as well as larger commercial vessel. Therefore, any regulations and permitting should address this fact. It would be most equitable. If all vessels become subject to water management methods, inspections and fees that could be based on a scale or base rates per class of vessel and a per gallon surcharge this perhaps could achieve the ongoing need to fund enforcement.
2. **Discharge Standards...**The reference is obtuse and vague "Best Management Practices" will generally have two or three schools of thought with logic, rational and arguments that address a criteria of environmental, economic, management expertise, technology, and basic market influence.
3. **Discharge Standards...**The safety and vessel management needs at docks as well as at sea must not be marginalize or compromised. The well being of vessels and safety of individuals aboard should always secure waiver for discharge if in distress. A method of protocols for call, confirmation, reporting and review would perhaps best serve to maintain this principle.

4. **Discharge Standards...**To make reference to something that does not exist now would be as practical as statements like..."When the transporter can achieve a level of energy to load vessel with one transmission from shore into vessel with a distance of no more than 300' feet distance..." This comment is clearly fantasy and not practical. If the technology simply does not exist and therefore we seek to address the regulation "suggesting" standards may be premature and impractical. To take it another step, one may even state that it could be considered irresponsible to inject wording without scientific veracity and proven acceptable management methods as well as other considerations such as testing and inspection. (note: 'Transporter' a "Star Trek" Technology)

A better approach perhaps would be to reference that these regulations would be reviewed and amended periodically to address new technologies and methods. Also, it could better serve the industry and community that there were wording that includes considerations for any vessel, which has made best efforts to meet the retrofitting upgrades for this new permitting, and in doing so fails to be able to comply. Would they be granted that their system would be grandfathered for the useful life of the vessel or system and not have to suffer any further undue financial burdens for operations in good faith toward compliance?

5. **Definition of Terms are lacking...**If the MPCA were to address this regulation and permit policy with any intent to achieve objectives, perhaps some of the fundamental terms could be defined and delivered. This would best serve those who need to address compliance, management, enforcement, and adjudication. Any undefined term may find its own definition.
6. **Part I: Permit Coverage Applicability Criteria (2)...**In reference to "vessel that fail to comply...may be excluded from coverage under general permit and required to apply for coverage under an individual permit." This makes no sense to this reader. With ambiguity like this the court will have three different interpretations that may or may not achieve objectives of regulation and permit process.
7. **Part I: Permit Coverage Exclusion 3 (b); Waiver for the Armed Forces...**This flies in the face of exclusiveness that is disproportionate and intolerable. The U.S. Government or any

agency operating under its permission must not be excused or allow to operate above the law. Equal Justice for All! It makes absolutely no sense that one vessel over another will not contribute to the problem. To allow any vessel to operate outside the parameters described may potentially defeat any effectiveness of the regulation's objectives. To imagine that invasive species are able to discern one vessel from another because of exclusions meets absolutely no scientific acceptance. This is simply not acceptable language. This issue perhaps needs to address ALL vessels, small, experimental, academic, armed forces; commercial...there can be different classifications for size but not in reference to ownership.

8. **Part I: 4 Permit Coverage Exclusions 4; Addressing on shore Ballast water treatment systems...**This type of exclusion would need to be granted by the use of a certified on shore ballast water treatment system. The MPCA or EPA would need to define the standards and certification of such a facility. Reporting and logs must be maintained to MPCA standards for the vessels using such facilities.
9. **Part I: 6 Prohibited Discharge...**except in the situation as previously described for safe passage of the vessel and to protect life. Protocols need to be defined.
10. **Part II: Surface Discharge Stations...** It is apparent that all of the technologies are not readily available to meet these standards. The time table to comply consequently is not practical. Perhaps this time table needs to be created in a manner where two or three steps to achieve tolerances could be incorporated. This may not be practical either. If by 2011 a new technological breakthrough is achieved and compliance could be delivered at a much more cost effective and easier means to monitor and manage why would we impede any advancement in the environment equation?
11. **Part III: General Ballast Permit Authorization 8**
(a)... "...the discharge of ballast water to Lake Superior in water that is contiguous to Minnesota or Minnesota facilities and associated harbors....can we reach to the shore of Wisconsin?

- 12. Part IV: Ballast Water Management Practice 11-17...** This should perhaps simply stipulate the Vessel must comply and be ready for Certified Minnesota and/or Federal Agencies that require Federal Statutes compliance. To attempt to preempt the Federal guidelines or define them may cause Constitutional conflicts and would be counter productive.
- 13. Part V: Compliance Schedule...**It is not appropriate to dictate any compliance when we all understand that the dry dock capacity simply does not exist for retrofitting all vessels. Unless the U. S Maritime Administration is willing to invest capital to bring facilities back into operations or invest in an adequate plan to meet any schedule that defines practicality of these efforts. If they are not willing to make this investment, then this permitting procedure may be deem impotent or creation of an undue burden or even illegal against any vessel that is engaged in interstate commerce. If it were to be challenged in any appropriate court what really could or would happen?
- 14. Part IV: General Permit Language:** This should perhaps simply stipulate the Vessel must comply and be ready for Certified Minnesota and/or Federal Agencies that require Federal Statutes compliance. To attempt to preempt the Federal guidelines or define them may cause Constitutional conflicts and would be counter productive. In the event that any additional burdens are incorporated, then the state of Minnesota may be interfering with interstate commerce or international trade.
- 15. Other Thoughts:** This matter will have its assertions and conflicts in the argument of remedy. Technologies are coming, management systems are being integrated and designed, methods of testing and standards for all of this is needed. This is not a chicken or egg argument. Rather it is one that addresses the need to stop the unnatural distribution of various species down to the smallest biota.

The Brookings Institute just released an excellent study on the Great Lakes Region and the need for a capital investment of over \$26 Billion. This investment will have impact on the vital and yet late responsibility to guard this fresh water treasure. This investment can perhaps assist the economic development factors that are involved with this very issue.

It will be very difficult to say to the 35 million people who live around this beautiful fourth coast that we can not achieve the objectives set up because we just did not have the money to develop the technologies needed. Recovery, restoration, and remediation are vital concerns for every one of us. This author supports that principal.

To achieve any compliance to the Court's ballast discharge permit order in a manner that is void of the practical issues is just not reasonable. To reject project management issues of having testing methods, documentation, database management, technological realities defined and in place is the "cart before the horse" thinking. The result of this kind of process is someone later says "gee, wouldn't it had been cool to have a harness so as we could actually pull that cart eh?"

The practicality of forward looking expectations of those who have been working on this problem for many many years may be unjust. To disregard the infrastructure capacity, the levels of trained skilled workforce required and measuring this against the current economic conditions is not going to serve our environment. If this does serve us then how is it that the very agency seeking these comments turns a biased eye on deliberate acts that have perhaps caused greater damage or harm to our environment?

The ongoing management of this herculean task requires careful study and analysis. If do not see this data forth coming. When the critical questions are asked the answers must be available. When they are not available we must stop and find them.

The suggestion that this commentator makes in conclusion, is that the State of Minnesota needs to seek a continuance from the September 2008 deadline to come up with a permitting program. It must address a full economic feasibility in reference to the cost benefits of the environmental objectives and the ability for enforcement. This issue can not and with all reasonable concerns for the environment must not attempt a patch work "Band-Aid" that in the end will not achieve the intent of the Court. A continuance is a reasonable request. If the judge denies this continuance we must appeal.