Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

Application of the United States Environmental Protection Agency for a Clean Water Act Water Quality Certification for Issuance of a National Pollutant Discharge Elimination System Vessel General Permit for Regulating Discharges Incidental to the Normal Operation of a Vessel	Case No. IH-12-41

NOTICE OF TELEPHONE PREHEARING CONFERENCE

On December 8, 2011, the United States Environmental Protection Agency (USEPA) requested a water quality certification under Section 401 of the Federal Clean Water Act (33 U.S.C. § 1341) for a permit reissuance of the National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) from the Department of Natural Resources (DNR). The proposed permit would incorporate ballast water management, exchange and treatment requirements as well as supplemental requirements for vessels that carry ballast water. The proposed permit would also maintain or expand requirements for twenty-six other incidental discharge types including deck runoff, bilgewater and graywater discharge. The proposed permit also outlines further requirements for seven specific classes of vessels, such as cruise ships, research vessels and large ferries. Additionally, the proposed VGP would include requirements for corrective actions, inspections, monitoring, reporting and recordkeeping.

The DNR issued Public Notice of Issuance of a Clean Water Act Section 401 Water Quality Certification for the USEPA Vessel General Permit which stated that the DNR had had made a preliminary determination to conditionally grant a Clean Water Act Section 401 water quality certification for the USEPA VGP on the Waters of the State of Wisconsin.

A Petition for a contested case hearing of said permit was filed with the DNR on May 1, 2012, by Petitioners Andy Buchsbaum, Regional Executive Director of the National Wildlife Federation, George Meyer, Executive Director of the Wisconsin Wildlife Federation, Henry Henderson, Program Director of the Natural Resources Defense Council and Attorney Dennis M. Grezezinski on behalf of the Midwest Environmental Advocates.

On May 21, 2012, the DNR granted a hearing with respect to one issue:

> Whether WDNR's conditional water quality certification determination regarding the United States Environmental Protection Agency's Proposed Vessel General Permit reasonably assures that ballast water discharges will comply with

Wisconsin water quality standards, pursuant to s. NR 299.04(1)(b), Wis. Adm. Code.

By letter dated June 8, 2012, Attorney Dennis M. Grzezinski, on behalf of the Petitioners requested that the DNR expand the issues for hearing and reconsider and restate the issue that will be the subject of the hearing. By letter dated June 18, 2012, the DNR denied the request. On June 19, 2012, Attorney Grezezinski filed a Petition for Judicial Review and Declaratory Judgment of the denial. On June 22, 2012, Attorney Grezezinski filed an Amended Petition for Judicial Review and Declaratory Judgment.

On July 19, 2012, the DNR filed a Request for Hearing with the Division of Hearings and Appeals.

NOTICE IS HEREBY GIVEN that pursuant to Wis. Stat. § 227.42, 29.601, 29.604, 30.12 and 283.35 and Wis. Admin. Code chs. NR 1, 102-106, 205, 207 and 299, the State of Wisconsin Division of Hearings and Appeals will initiate a telephone prehearing conference in regard to the above matter on **Wednesday, August 8, 2012, at 10:30 a.m.** Any person, organization or governmental unit wishing to become a party to this proceeding must appear at the conference in person or by an authorized representative. To so participate, said persons must write to the Division of Hearings and Appeals in care of the undersigned and indicate a phone number where they can be reached at the above mentioned time. If necessary, the purpose of the prehearing conference will be to identify parties to the proceeding, to simplify the issues which may be contested at the hearing, establish a discovery schedule and set a date for hearing. No testimony will be heard at the prehearing conference; however, a date may be set for the hearing on the merits at the conference.

When the hearing is held, it will be a Class 1 contested case pursuant to Wis. Stat. § 227.01(3)(a), and the fair play provisions of Wis. Stat. ch. 227 will apply. The procedures relating to contested cases set forth in Wis. Admin. Code ch. NR 2 will be followed. The procedure that will be followed at the public hearing will closely resemble that normally followed at a court hearing. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the public hearing.

The Administrative Law Judge will open the hearing, make a concise statement of its scope and purposes and state what procedures will be followed during the course of the hearing. Thereafter, the petitioner shall present evidence to the Division which is in support of the allegations made in the petitions. All interested persons or their representative shall be afforded an opportunity to present facts, views or arguments relevant to the issues raised by the petitioner and cross-examination shall be allowed.

Information relating to the file for the Clean Water Act Section 401 water quality certification, including the general permit and fact sheet may be inspected and copied at the offices of the Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, holidays excepted. Copies of documents on file for the permit action may be obtained by writing to the Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707-7921. Reasonable costs will

be charged for copies of all information other than the Section 401 water quality certification, general permit and fact sheets.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-3865 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin on July 23, 2012.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: Jeffrey D. Boldt

Jeffrey D. Boldt
Administrative Law Judge

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