



February 17, 2012

Water Docket
US Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Ave. NW
Washington DC 20460

ATTENTION: Docket ID No.: EPA-HQ-OW-2011-0141

To Whom It May Concern:

Thank you, US Environmental Protection Agency (EPA), for putting considerable quality effort into the Draft National Pollutant Discharge Elimination System 2013 Vessel General Permit (VGP2). The Wisconsin Department of Natural Resources (Wisconsin DNR) appreciates the opportunity to submit formal written comments. Please accept these comments to be incorporated into the record in addition to the oral comments Susan Sylvester, Water Quality Bureau Director, made at the public meeting on January 23, 2012, held in Chicago, Illinois.

Ballast water that large oceangoing commercial ships carry to steady themselves is the primary source of new species invasions to the Great Lakes. Wisconsin DNR has ongoing concerns about the health and integrity of the Great Lakes ecosystem and in preventing the introduction and spread of aquatic invasive species (AIS) from ballast water within the ecosystem. This is a serious environmental and economic threat. The estimated annual cost of controlling one AIS, the zebra mussel, in the Great Lakes now ranges from 100 to 400 million dollars. AIS threaten to dramatically change the Great Lakes ecosystem. AIS have competed with, preyed upon, infected and substantially altered the environment of our native species of plants, fish and wildlife. Furthermore, they have harmed recreational and commercial fishing as well as tainted water supplies. EPA must strive to diminish and ultimately eliminate the impact of ballast water discharges on both the economy and ecology of the Great Lakes.

Wisconsin DNR appreciates EPA's inclusion in the draft VGP2 items of highest concern to Wisconsin DNR, including Ballast Water Exchange (BWE) or saltwater flushing, best management practices (BMPs) for confined Great Lakes vessels (Lakers), and the International Maritime Organization (IMO) technology based effluent limit (TBEL) numeric standard.

Much progress has been made in regulating ballast water discharge under the 2008 VGP2 program. However, there is still a lot of work to be done. Wisconsin DNR continues to support a national standard for ballast water discharge that adequately protects the water resources of the Great Lakes and St. Lawrence River ecosystem. The burden of controlling ballast water discharge and the potential release of new species must be upon those who may introduce such organisms into this ecosystem, and not on the taxpayers. This can most effectively be done by creating a robust national regulatory system rather than a state-by-state approach, and implementing a strong enforcement program that will deter violators.

Wisconsin DNR strongly recommends that EPA and the U.S. Coast Guard (USCG) coordinate their efforts to develop a national ballast water regulatory framework that adequately protects the Great Lakes and St. Lawrence River ecosystem.

The following formal written comments are provided by Wisconsin DNR on the VGP2 that was published in the Federal Register on December 8, 2011:

Nationwide Permit

The Department strongly supports the development of national performance and permitting standards for ballast water discharges. Nationwide standards are needed that are implemented consistently on the Great Lakes and in all national waters. Furthermore, because the transfer of non-indigenous species via ballast water is an international issue, regulations for the management of ballast water to prevent introductions will be most effective if applied internationally. Recognizing the need for EPA to act now, Wisconsin DNR supports the national application of ballast water discharge standards and their regulations through the NPDES permit process. Furthermore, it is essential that EPA publish effluent limitations guidelines for ballast water discharges.

Ballast Water Exchange or Flushing

The proposed permit will require some oceangoing vessels to perform mid-ocean ballast water exchange or saltwater flushing before entering the Great Lakes – St. Lawrence Seaway system. Ballast water exchange or saltwater flushing is an important intermediate step that will reduce the risk of release of AIS into the Great Lakes and other ports and waterbodies in the United States. Vessels crossing the Atlantic fully loaded with cargo frequently have no ballast on board (NOBOB). The threat posed by NOBOBs is that they contain small amounts of ballast water, generally from their last port of departure. Even if the vessel last took on ballast over 30 days ago, Wisconsin DNR proposes that NOBOBs still be required to do saltwater flushing. Organic material may survive for longer than 30 days in a ballast tank and pose a significant threat of invasion once it is discharged in the Great Lakes. To decrease risk and provide an increased level of protection to the Great Lakes and St. Lawrence Seaway ecosystem, Wisconsin DNR proposes that the VGP2 require BWE or saltwater flushing as a standard BMP for all VGP2-eligible vessels transiting from beyond the Exclusive Economic Zone (EEZ) that enter the Great Lakes – St. Lawrence Seaway system, whether treatment systems are installed or not, and regardless of when the vessel last ballasted in freshwater ports. The argument can be made that BWE in addition to treatment can provide protection that is greater than the IMO standard for freshwater ballast water organisms which are of greatest risk.

BMPs for Lakers

EPA has developed and is proposing specific BMP requirements for confined Lakers. The BMPs include sediment management, minimizing ballast uptake near shore, and sea chest inspections and maintenance. Wisconsin DNR proposes additional BMPs such as a requirement to move seachests further up and forward on the vessel (during drydock) for all Lakers, when practicable. Additionally, we request EPA to consider requiring freshwater flushing for Lakers, as feasible. Furthermore, Wisconsin DNR believes that treatment systems need to be installed onboard Lakers as soon as possible and supports EPA's proposal to re-evaluate this issue. Dosing has already been tested onboard Lakers, and entire Laker fleets are currently making plans to install treatment systems.

Numerical Limitations and Environmentally Protective Standards

The proposed permit is not consistent with other Clean Water Act discharge permits that are issued by states and by the federal government. The State of Wisconsin has been required since the inception of the Clean Water Act in the 1970s, to issue discharge permits which contain numerical limitations, when effluent limit guidelines were available, that are protective of water quality standards or provide an administrative process that assures that water quality standards are achieved over the term of the permit. We cannot afford to wait any longer for additional research. Invasive problems like viral hemorrhagic septicemia (VHS) are appearing and forcing states to react quickly to try to stop the spread. AIS differ from chemical pollutants in that they are a self-replicating form of pollution. Invasions of new species begin on a small scale, but the problem grows over time as the organisms reproduce. We strongly recommend that national numeric water quality based effluent limits (WQBELs) for live organisms in ballast water discharges that are protective of water quality in the entire Great Lakes basin be adopted and imposed.

Reasonable Potential Determination for Ballast Water Discharges

Wisconsin DNR agrees with EPA's assessment that there is reasonable potential for discharges subject to the TBEL to cause or contribute to violations of water quality standards and, further, encourages EPA to establish a more protective, numeric WQBEL and to develop effluent limitations guidelines.

Compliance Schedule

Wisconsin DNR disagrees with EPA's proposal to phase in the requirement to comply with the IMO standard because it poses an economic and environmental threat to Wisconsin. Allowing vessels to wait until regularly scheduled drydocking (every five years or so) to install a treatment system leaves the Great Lakes system vulnerable to new aquatic species introductions and invasions for too long. (If a vessel is drydocked on December 31, 2015, it will not have to comply until it drydocks next, five years later, January, 2021.) Wisconsin DNR's inspectors have observed that vessels drydock about every five years. However, vessels often get extensions until the end of the next shipping season, or for another year.) EPA's proposed alternatives to installing treatment systems are to use onshore treatment, use potable water sources (US and Canada water only), or to not discharge while in waters subject to the permit, all of which, at this point, appear to be infeasible options. Thus, Wisconsin DNR recommends that the compliance schedule should be effective immediately.

Enforcement

Wisconsin DNR requests that EPA work closely with USCG and with states to ensure effective implementation of the discharge permit program. Thorough compliance inspections and consistent enforcement of permit provisions will be the foundation of successful efforts to protect the integrity of the Great Lakes ecosystem. EPA has a Memorandum of Understanding (MOU) with USCG that designates USCG to inspect and enforce the VGP2. However, at this time, state and federal efforts are not coordinated to make the best use of limited staff resources. Wisconsin DNR supports and will participate in the development of coordinated inspection protocols and work plans to maximize effectiveness. Also, because the control of AIS is a high priority in Wisconsin, we strongly recommend that EPA request, as part of future budget submittals, additional grant resources for states to cooperatively implement these requirements. An increase in Section 106 funding without earmarks is the most appropriate vehicle to accomplish this. Additional federal resources may be a key factor to Wisconsin's active involvement in the future.

Shipboard Technology Evaluation Program (STEP)

Wisconsin DNR encourages the extension of STEP or the creation of a new pilot program that would be a strong incentive for vessel owners to install treatment systems onboard their vessels as soon as possible. Wisconsin DNR believes it is critical to install treatment systems onboard immediately. The idea of grandfathering participants of the program in future renditions and requirements of the permit may be considered.

Unmanned Barges

Wisconsin DNR agrees with EPA that treatment system installation on unmanned barges is currently infeasible and acknowledges unique challenges of regulating unmanned vessels that change "operators" frequently. It is important to require BMPs that will adequately address the transport and introduction of AIS. Wisconsin DNR proposes to include BMPs that would require regular visual inspections and patching holes in the frequently damaged ballast tanks, as needed.

Sediment Removal and Disposal Records

Wisconsin DNR supports EPA's proposal to require sediment removal and disposal records to be kept and stored onboard the vessel. Wisconsin DNR's inspectors have found recordkeeping to be a frequent area of non-compliance, where vessels have not yet had sediment removed in drydock, or the sediment removal and disposal records are not available.

Ballast Water Management Plans (BWMPs)

Wisconsin DNR supports the proposed permit requirement of vessel-specific BWMPs. Our inspectors have found that general carriers' associations' BWMPs are lacking in detail and substance and are applied too broadly to have significant effectiveness or meaning.

Recordkeeping

For better compliance checking, Wisconsin DNR recommends that BWMPs be available online. This will allow inspectors (USCG or state) to review the plans thoroughly before and after inspecting a vessel.

Training for vessel crews

The "adequately trained" requirement is ambiguous. Wisconsin DNR recommends a minimum annual training requirement.

Ballast Water Treatment System (BWTS) Approval

Wisconsin DNR believes it is imperative during the type approval process of BWTSs to specifically type approve for freshwater conditions, as well as for temperature variances. Currently, IMO requires testing at different salinities, but it does not require testing in freshwater conditions. Testing in freshwater conditions is critical to protect the Great Lakes.

Mandatory BMPs

Wisconsin DNR has several questions about some of the mandatory BMPs. How is a vessel operator expected to learn about local infestations, harmful pathogens, algal blooms, sewage outfall locations, dredging operations, poor tidal flushing, etc.? Wisconsin DNR recommends that this be specifically spelled out in the permit. Is mid-ocean dumping of sediments a safe and environmentally protective practice that EPA wants to promote? Would drydocking and (land) removal of sediment be a more appropriate practice?

Holding Time Requirement for Samples

Are there specific temperature requirements as well?

Motor Gasoline and Compensating Discharge

Wisconsin supports EPA's proposal to require BMPs and not allow any visible oily sheen discharge.

Seawater Piping Biofouling Prevention

"Seawater piping" is not a term Wisconsin DNR staff are entirely familiar or comfortable with. For clarity, Wisconsin DNR recommends adding a definition for "seawater piping."

Definition, Clarification Needed

Use of the word "minimize" is frequent throughout the draft VGP2, however it is vague on what is actually required or expected. A definition would be helpful.

Insufficient Data

In areas where data is absent or insufficient, Wisconsin DNR's inspectors would like to work with EPA, USCG and research institutes to help gather data as they inspect and board permitted vessels. Wisconsin DNR is currently assisting the University of Minnesota – Duluth in sampling efforts. Although Wisconsin DNR only has two inspectors (Lake Michigan, Lake Superior), it is willing to offer this resource. Please let us know how Wisconsin DNR can help fill data gaps.

Again, thank you for the opportunity to provide formal comments on this VGP2 permit proposal. Wisconsin DNR encourages you to carefully consider our comments and recommendations as you finalize the permit.

Sincerely,



Cathy Stepp, Secretary

Wisconsin Department of Natural Resources