



# Lake Carriers' Association

*The Greatest Ships on the Great Lakes*

**JAMES H. I. WEAKLEY, PRESIDENT**

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November 28, 2012

Via E-mail: [Darin.LeCrone@Illinois.gov](mailto:Darin.LeCrone@Illinois.gov)

Mr. Darin LeCrone, P.E.  
Manager, Industrial Unit, Permit Section  
Division of Water Pollution Control  
Illinois Environmental Protection Agency  
1021 North Grand Avenue West  
P.O. Box 19276  
Springfield, IL 62794-9276

Dear Mr. LeCrone:

**Subject: NPDES Vessel General Permit – Discharges Incidental to the Normal Operation of Vessels, Section 401 Certification.**

Lake Carriers' Association ("LCA") represents 17 American companies that operate 57 U.S.-flag vessels ("lakers") on the Great Lakes and carry the raw materials that drive the nation's economy: iron ore and fluxstone for the steel industry, aggregate and cement for the construction industry, coal for power generation, as well as salt, sand and grain. Collectively, our members can transport more than 115 million tons of dry-bulk cargo per year and employ more than 1,600 men and women, all of whom are U.S. citizens or legally admitted aliens, and provide annual wages and benefits of approximately \$125 million. In turn, the cargos our members carry generate and sustain more than 103,000 jobs in the eight Great Lakes states and have an economic impact of more than \$20 billion.

Great Lakes shipping is very important to Illinois' future economic well-being. A recent study (*The Economic Impacts of the Great Lakes – St. Lawrence Seaway System*, October 18, 2011, Martin Associates, Lancaster, PA) determined that nearly 7,200 jobs in Illinois depend on shipping on the Great Lakes. The majority of those jobs – 5,356 – are dependent on cargos moved by our members. In 2011 our members loaded 3,166,372 tons of coal at terminals in Chicago and delivered 400,000 tons of cement to that great city.

We are pleased that Illinois' Section 401 Certification of the EPA's draft of the next Vessel General Permit ("VGP") did not impose unrealistic requirements on our members' vessels. There are no ballast water treatment systems available now or likely during the term of the next VGP that can accommodate our ballast water flow rates. The largest vessels can pump out at rates approaching 80,000 gallons per minute. While there are ballast water treatment systems coming on the market, none of them can cope with our operational requirements. The Lakes freshwater environment and cold water temperatures from December to April also pose challenges that still need to be addressed before our members could ever treat their ballast water. In other words, there is no currently economically achievable or technically feasible means of carrying out ballast water treatment on lakers.

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***The Association Representing Operators of U.S.-Flag Vessels on the Great Lakes Since 1880***

AMERICAN STEAMSHIP COMPANY • ANDRIE, INC. • ARMSTRONG STEAMSHIP COMPANY • BELL STEAMSHIP COMPANY  
CENTRAL MARINE LOGISTICS, INC. • GRAND RIVER NAVIGATION COMPANY, INC. • GREAT LAKES FLEET/KEY LAKES, INC.  
INLAND LAKES MANAGEMENT, INC. • THE INTERLAKE STEAMSHIP COMPANY • LAKES SHIPPING COMPANY  
LAKE MICHIGAN CARFERRY SERVICE • PERE MARQUETTE SHIPPING • PORT CITY MARINE SERVICES • PORT CITY STEAMSHIP SERVICES  
SOO MARINE SUPPLY, INC. • UPPER LAKES TOWING COMPANY, INC. • VANENKEVORT TUG & BARGE INC.

We must, however, register an objection to provision no. 7 of Illinois' Section 401 Certification of the VGP, which states that the Illinois Environmental Protection Agency will waive, modify or issue a new certification if the U.S. EPA, U.S. Coast Guard, or other duly authorized Federal agency or multi-national governing body adopts, approves or revises ballast water treatment technologies. It is our understanding that the CWA does not permit the modification of Section 401 Certifications during the life of a general permit. Under EPA regulations, if a Section 401 Certification is received after final agency action on the permit, EPA may modify the permit "only to the extent necessary to *delete* any conditions . . . invalidated" by a court or State agency. 40 C.F.R. § 124.5(b) (emphasis added).<sup>1</sup> EPA has specifically stated, with respect to the first VGP, that states may not unilaterally modify certifications other than by deleting them. Letter from Barbara Finazzo, EPA, to Scott Brubaker, New Jersey Department of Environmental Protection at 2 (Jan. 30, 2009). (Copy included as Attachment C to this letter). As a practical matter, this means any changes can only be addressed when the U.S. EPA begins to draft the third iteration of the VGP.

Furthermore, the State must also recognize that any physical modifications to commercial vessels require lengthy advanced review and approval by the U.S. Coast Guard, American Bureau of Shipping, and other classification societies. Any proposed changes to the VGP and Illinois' Section 401 Certification must provide for extensive lead time. We recognize that technology does not stand still, but even if the long-sought "magic bullet" materializes tomorrow, its application and installation on vessels is necessarily a long process. The proposed U.S. Coast Guard type approval process alone will take at least 30-36 months. Then, and only then, could manufacturers ramp up production. Naval architects and marine engineers would need significant time to draw the plans for installation on vessels. There are very few real "sisterships" in the fleet; most projects will require a totally new analysis and engineering plan. There is also a question if there would be sufficient shipyard capacity. Therefore, it is likely that the total time required for the development of any "new" technology which could either potentially achieve a more stringent standard or have wider application to lakers would exceed the term of a 5-year permit, let alone one that could potentially be shortened considerably.

We note too that the 5-year term is what governs all other discharges under the NPDES program.

### **When Treatment Systems Are Available For Lakers**

If technology advances to the point that a ballast water management system becomes available that can treat cold, fresh water being pumped in/out at 80,000 gallons per minute, we respectfully submit that a requirement that lakers install such a system must be preceded by a thorough review of all scientific facts. We would anticipate the review to conclude that it is unnecessary that lakers treat their ballast. U.S.-flag lakers never leave the system. Most never sail any farther east than the Ohio/Pennsylvania line in Lake Erie. A few deliver cargo to Buffalo and there is an occasional voyage onto Lake Ontario, but the vast majority of voyages are conducted between Duluth, Minnesota/Superior, Wisconsin, and Conneaut, Ohio.

Once an aquatic nuisance species ("ANS") has taken root, it can and will migrate independent of commercial navigation. Take for example the ruffe. Since 1993, it has been migrating along the southern shore of Lake Superior at a rate of about 25 miles per year. Once the ruffe reaches the St. Marys River, the rest of the Great Lakes lie before them.

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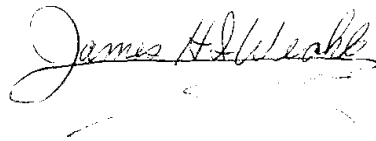
<sup>1</sup> This anticipates a circumstance where a condition is included in the VGP, then successfully challenged in state court, after which EPA may delete it from the VGP. See *Lake Carriers Ass'n v. Illinois EPA*, Case No. 09-MR-140 (June 17, 2011) (finding that the Illinois EPA exceeded its authority when it attempted to amend its Section 401 Certification).

Another critical factor to consider is that lakers' ballast is but one of many means of introducing and spreading ANS. The U.S. Geological Survey has identified 64 and ballast is but one. (See Attachment A.)

The Great Lakes Maritime Task Force, the largest labor/management coalition ever to promote Great Lakes shipping, recently adopted a position paper that calls for Federal regulations that prevent additional introductions of non-indigenous species.<sup>2</sup> (See Attachment B.) The paper stresses that those that have taken root are here to stay, and since lakers never leave the system, treating their ballast is unnecessary and ineffective in controlling the spread of established exotics and pointless in blocking additional introductions.

We appreciate the opportunity to review and comment on Illinois' Section 401 Certification.<sup>3</sup> Our members respect the environment and operate their vessels accordingly. LCA voluntarily developed many of the Best Management Practices for ballast water that have been incorporated in the EPA's VGP and the ballast water regulations issued by the U.S. Coast Guard in March of this year. We may over time identify additional measures that can be voluntarily implemented on lakers, but a requirement that our members treat their ballast is unnecessary.

Very Respectfully,

A handwritten signature in black ink, reading "James H. I. Weakley". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

James H. I. Weakley  
President

Cc: LCA Board

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Attachments

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<sup>2</sup> Illinois members are ArcelorMittal, Chicago Port Council, CN, and Illinois International Port District.

<sup>3</sup> It should be noted that the Illinois Section 401 Certification was only made available for public review and comment for seven (7) days, including the Thanksgiving holiday and weekend. LCA does not believe this provided interested parties with adequate notice and opportunity to comment. When Illinois noticed the 2008 VGP Section 401 Certification, the public was given twice as long (fourteen (14) days) to submit comments.

## Attachment A

### Vectors for Introduction and Spread of Non-Indigenous Species Identified by U.S. Geological Survey

Accidental	Hitchhiker - Plants	Released – Packing Material
Canal	Hitchhiker - Platforms	Released - Pet
Dispersed	Hitchhiker - Scuba Gear	Shipping
Dispersed - Flood	Hitchhiker - Oysters	<b>Shipping - Ballast Water</b>
Dispersed - Ocean Current	Hitchhiker - Stocked Fish	Shipping - Hull Fouling
Dispersed - Waterfowl	Hitchhiker With Tunicates	Shipping - Solid Ballast
Escaped Captivity	Hybridized	Stocked
Escaped Captivity - Aquaculture	Ocean Currents	Stocked - Aquaculture
Escaped Captivity - Farm	Planted	Stocked - Aquarium
Escaped Captivity - Fur Farm	Planted - Erosion Control	Stocked - Escaped
Escaped Captivity - Pet	Planted - Food	Stocked - For Biocontrol
Escaped Captivity - Pond	Planted - Forage	Stocked - For Conservation
Escaped Captivity - Research	Planted - Ornamental	Stocked - For Exhibit
Escaped Captivity - Zoo	Planted - Restoration/Mitigation	Stocked - For Food
Gulf Stream Drift	Planted - Wildlife Habitat	Stocked - For Forage
Hitchhiker	Released	Stocked - For Research
Hitchhiker - Fishing, Boating	Released – Aquarium	Stocked - For Sport
Hitchhiker - Aquaculture	Released - Bait	Stocked - Illegally
Hitchhiker - Aquatic Plants	Released - Fish Food	Stocked - Misidentified
Hitchhiker - Imported Logs	Released - Biocontrol	Stream Capture
Hitchhiker - Imported Plants	Released - Food	Unknown
Hitchhiker - Packing Material	Released - Lab Animals	

Source: U. S. Geological Survey database Great Lakes Aquatic Non-Indigenous Species Information System

Attachment B



# *GREAT LAKES MARITIME TASK FORCE*

## **2013 POSITION PAPER**

### **FEDERAL REGULATION OF BALLAST WATER**

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**GOAL:** Enact Federal legislation establishing ballast water regulations that prevent additional introductions of non-indigenous species to the Great Lakes.

**BACKGROUND:** The U.S. Coast Guard and U.S. EPA have issued regulations governing the discharge of ballast water in U.S. waters. While both set standards for ballast water treatment that appear attainable on oceangoing vessels, the states have the authority to add additional requirements which may be unachievable now or in the foreseeable future. For example, at one point New York was going to require systems that could meet a standard 1,000 times higher than that imposed by the recently enacted Federal regulations, and apply to all vessels transiting its waters, not just those that ballast in New York state waters.

Lakers are in the most unenviable position under the current regime. There are no systems, even on the drawing board, that can handle lakers' volumes and flowrates, a fact acknowledged by the Coast Guard and EPA and reflected by the requirement to continuing employing Best Management Practices such as rinsing anchors and chains upon raising, running ballast water through impellers to macerate any fish that was able to get passed seachest screens.... However, since neither agencies' regulations pre-empt state law, the states can require lakers to treat their ballast, as soon as 2014 under the EPA's Vessel General Permit. Furthermore, both the Coast Guard and EPA have indicated they may expand their treatment requirements to include lakers should systems become available.

The uncertainties confronting vessel operators demand that Congress pass legislation that reflects the reality of the situation on the Great Lakes. First and foremost, the overriding goal must be to stop future introductions of exotics. Eradication of a non-indigenous species once established is virtually impossible.

Second, even containment is out of the question on the Great Lakes. The Lakes are interconnected, so non-indigenous species can and do migrate independent of commercial navigation.

The ruffe is a case in point. The fish is migrating along the southern shore of Lake Superior at the rate of about 25 miles per year. Once it reaches the St. Marys River, the path to the lower Lakes is clear.

The ballast water treatment systems that will be required on oceangoing vessels by the Coast Guard and EPA regulations should protect the Lakes from future introductions. The companies that trade to the Lakes from overseas need an assurance that the systems they will soon install will meet regulatory requirements for the life of the vessel.

U.S.-flag lakers should never be required to install ballast water treatment systems. They never leave the system. The majority confine their operations to ports between Duluth/Superior and Conneaut. Only a few vessels transit the Welland Canal and St. Lawrence Seaway. None ever go overseas. U.S.-flag lakers will never introduce an exotic and those non-indigenous species capable of expanding their range will do regardless if lakers treat their ballast to any standard.

**ACTION:** Seek Federal ballast water legislation that will prevent introduction of additional non-indigenous species to the Great Lakes in the 113<sup>th</sup> Congress.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

**JAN 30 2009**

Mr. Scott Brubaker, Acting Assistant Commissioner  
Land Use Management  
New Jersey Department of Environmental Protection  
401 East State Street  
P.O. Box 402  
Trenton, New Jersey 08625-0402

**Re: New Jersey's 401 Certification of the United States Environmental  
Protection Agency's Commercial Vessel General Permit**

Dear Mr. Brubaker:

Thank you for your January 26, 2009, letter regarding the New Jersey Department of Environmental Protection's Clean Water Act (CWA) section 401 certification of the Vessel General Permit (VGP). As you know, on February 6, 2009, discharges incidental to the normal operation of a vessel that had formerly been exempted from National Pollutant Discharge Elimination System (NPDES) permitting by a regulatory exclusion will be subject to the prohibition in CWA section 301(a) against the discharge of pollutants without a permit. In order to provide vessels with permit coverage when the regulation is vacated, the United States Environmental Protection Agency (EPA) issued the VGP on December 18, 2008.

Pursuant to Clean Water Act section 401(a) and EPA's implementing regulations, EPA may not issue a NPDES permit (including the VGP) until the appropriate State certifications have been granted or waived. 40 C.F.R. § 124.53(a). Through the certification process, States were given the opportunity, before the VGP was issued, to add conditions to the permit they believe are necessary to ensure that the permit complies with the Clean Water Act and other appropriate requirements of State law, including State water quality standards. EPA gave States (including New Jersey) reasonable time to respond to its requests for section 401 certification of the VGP, assisted the States as necessary with the section 401 certification process, and, in certain "unusual circumstances" as allowed by regulation, granted extensions for States to provide their certifications. As you noted in your letter, the Department issued its certification for the VGP on September 24, 2008. As required by CWA section 401(d), Part 6 of the final VGP incorporated the Department's two certification conditions that prohibited the discharge of graywater and bilgewater in New Jersey's waters.

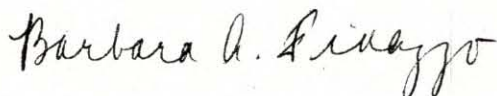


Your recent letter indicates that the Department "hereby stays" these two certification conditions, and also has issued a revised certification with three new conditions. In addition, you ask EPA to modify the VGP to incorporate New Jersey's new certification conditions. Unfortunately, our implementing regulations at 40 C.F.R. § 124.55(b) do not allow us to grant your request to modify the VGP to include your new certification conditions. As the regulations expressly state, EPA may modify the VGP based on a modified certification received after final agency action on the permit "only to the extent necessary to delete any conditions based on a condition in a certification invalidated by a court of competent jurisdiction or by an appropriate State board or agency." 40 C.F.R. § 124.55(b). A plain reading of the regulatory language indicates that the only changes EPA may make to a final permit based on a modified certification are those that "delete" conditions "invalidated" by the State. As an initial matter, we observe that your letter and revised certification do not clearly "invalidate" the two conditions included in your September 2008 certification; it merely "stays" them. More importantly, however, your letter does not request that we delete the September 2008 certification's two conditions. Instead, it requests that EPA modify the VGP to add three new conditions. The regulations simply do not allow us to do this.

Given these regulatory limitations and the ambiguity in your letter regarding the current status ("stayed" or "invalidated") of the two September 2008 conditions, we request that you provide us with additional instructions regarding your intent with respect to the VGP. As we see it, New Jersey has two options. First, if you confirm that under State law the two September 2008 conditions are no longer "valid," EPA is prepared (upon request of a permittee) to delete them from Part 6 of the VGP. If we delete these conditions from the current VGP, New Jersey would have the opportunity to add them (or other) conditions to the VGP when it is reissued in five years. New Jersey may also explore its ability under State law to apply those (or other) conditions to vessel operators at this time through available State mechanisms. Second, if upon reflection you tell us that New Jersey does not wish to "invalidate" the September 2008 conditions, we will make no changes to the VGP and the current certification conditions for New Jersey's waters will remain in place.

Please feel free to contact me at 212-637-3724, or have your staff contact Jeffrey Gratz, Chief of our Clean Water Regulatory Branch at 212-637-3873, if you have any questions.

Sincerely,



Barbara A. Finazzo, Director  
Division of Environmental Planning and Protection

cc: Debra Hammond, Chief, New Jersey Department of Environmental Protection,  
Water Monitoring and Standards, Bureau of Water Quality Standards  
and Assessment