

December 5, 2007

Petition for Amendment of Administrative Rule

To the Department of Natural Resources:

The undersigned hereby petition the Natural Resources Board pursuant to section 227.12, Wisconsin Statutes and NR 2.05 (2) (b), Wisconsin Administrative Code for the amendment of rule: NR 200.03 (3) (b), WAC, which currently reads: "Sewage discharged from vessels".

The grounds for this petition are: As repeatedly indicated by the Natural Resources Board and the staff of the Department, the discharge of ballast water from international ships into the Great lakes has resulted in many aquatic invasive species being introduced into both the Wisconsin portions of Lake Michigan, Lake Superior and eventually into the inland waters of the state.

The Natural Resources Board has most recently acknowledged in the attached resolution adopted on April 25, 2007, that the aquatic invasive species introduced into Wisconsin waters as a result of ballast water discharges threaten "the health, welfare and stability of the ecological systems that are present in Wisconsin waters" and have caused substantial "added societal costs for Wisconsin residents". It is believed that 186 invasive species have been introduced into the Great Lakes by international ships. Species include the zebra mussel, the round goby, the spiny water flea, the quagga mussel and the white perch. It is possible that the disease VHS was also introduced into the Great Lakes through the ballast water from international ships. These invasive species and diseases have been recognized by the Natural Resources Board as threatening the \$2.9 billion sport and commercial fishing economy in the state.

While the Natural Resources Board has supported state and federal legislation regulating the discharge of ballast water discharges from international ships into the Great Lakes, the Wisconsin Natural Resources Board itself has full authority, without further state or federal legislation, to require permits and treatment for the discharge of ballast water into those portions of Lake Michigan and Superior which are within the territorial limits of the State of Wisconsin.

The legal background for the above assertion is as follows:

Chapter 283, Wisconsin Statutes, creates the Wisconsin Pollutant Discharge Elimination System, which implements the state version of the Federal Clean Water Act that is administered by the U.S. Environmental Protection Agency. Section 283.31, Stats., provides "(t)he discharge of any pollutant into any water of the state...is unlawful unless such discharge...is done under a permit issued by the department under this section or s.

283.33.” (Section 283.33, Stats., regulates storm water discharge permits and is not applicable to ballast water discharges.)

Ballast water and the aquatic invasive species and viruses therein meet the definition of “discharge” and “discharge of pollutants” under subsections 283.01 (4) and (5), Stats. Also aquatic invasive species and viruses contained in ballast water are “biological materials” and thereby within the definition of “pollutant” as provided in subsection 283.01 (13), Stats. (See Northwest Environmental Advocates v. U.S. EPA ---The State of Wisconsin was also a prevailing plaintiff in that lawsuit.)

However to-date the Department of Natural Resources has not required permits and wastewater treatment for the discharge of ballast water from international ships into Wisconsin waters under that legal authority. The second sentence of the above-referenced section 283.31, Stats., provides; “(t)he department may by rule exempt certain classes or categories of vessels from this section” and its language requiring a discharge permit. Therefore the discretion as to whether or not an exemption for WPDES permits for the discharge of ballast water from international ships on the Great Lakes and the treatment thereof rests with the Wisconsin Natural Resources Board.

The Natural Resources Board’s exercise of this discretion resulted in the adoption of subsection NR 200.03 (3) (b) WAC, which specifically exempts from the requirement to apply for a discharge permit for “(b) (s)ewage discharged from vessels”.

That leaves the question as to whether “ballast water” from international ships that contains “biological materials” is indeed “sewage” for the purposes of the exemption in subsection NR 200.03 (3) (b), WAC.

There is no definition of the term “sewage” in either chapter NR 200, WAC, or its enabling chapter 283, Stats. The closest statutory definition of “sewage” is in another water quality chapter, subsection 281.01 (13), stats.: “‘(s)ewage’ means the water-carried wastes created in and to be conducted away from residences, industrial establishments and public buildings as defined in s. 101 (12), with such surface water or groundwater as may be present.”

This is a very broad and inclusive definition. As stated in the cover letter, the undersigned do not believe that the definition of “sewage” is determinative of whether a discharge permit is required. However, in any event, the Natural Resources Board still has the current authority under subsection 283.31, Stats., to clarify the scope of the current exemption in NR 200.03 (3) (b), WAC, by expressly stating that it does not include ballast water from international ships.

The modification requested is: the modification of NR 200.03 (3) (b). WAC. to read “(b) (s)ewage discharged from vessels except ballast water, sludge and biological materials from international ships.” The result of this language would be to clarify the scope of the current exemption for a WPDES discharge permit for that type of discharge. As a result

of the permit process, the Department can require both interim and long-term treatment measures be applied to the discharge of such materials.

The petitioners' interest in the request: The petitioners are individuals and organizations that have many varied interest in the protection of the Great Lakes and Wisconsin inland lakes and streams. Of particular interest is the protection of Wisconsin's fisheries from the serious adverse impact of foreign invasive species and diseases. The individuals involved are recreational users of the Great Lakes and many fish in both the Great Lakes and inland waters threatened by the invasive species and diseases brought into Wisconsin waters by the ballast water of international ships. Many of the signed individuals and the members of the organizations that they represent are part of the 1.6 million individuals who purchase various fishing licenses and stamps that contribute to the \$69 million a year license account which is used to manage and protect the fisheries of both the Great lakes and inland streams and lakes. The unregulated discharge of ballast water from international ships into the Wisconsin waters of the Great Lakes have seriously threatened both the recreational and economic interests of the petitioners.

Date: December 4, 2007

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