

CHAMBER OF
MARINE COMMERCE



CHAMBRE DE
COMMERCE MARITIME

February 21, 2012

Water Docket
Environmental Protection Agency
Mailcode: 4101T
1200 Pennsylvania Ave., NW.
Washington, DC, 20460
Attention: Docket ID No. EPA-HQ-OW-2011-0141
(By Email / Original to follow by mail)

Dear Sir/Madam:

The Chamber of Marine Commerce is pleased to provide the following commentary and suggestions in reply to the United States Environmental Protection Agency (EPA) Federal Register publication, **Docket ID No. EPA-HQ-OW-2011-0141**, seeking public input on the Draft National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Vessels.

The Chamber of Marine Commerce

The Chamber of Marine Commerce (CMC) is a bi-national marine transportation industry association with a membership of approximately one hundred and fifty companies comprised of Canadian, U.S. and international ship owners and ship operators, Canadian and U.S. ports, industrial shippers (in particular grain, iron ore, steel, cement, aggregate, salt, sugar, etc.,) Canadian and U.S Seaway corporations, as well as terminals, elevators, logistics and marine-related companies.

CMC's advocacy on marine and transportation issues extends to the Canadian and provincial governments as well as to U.S. federal and state governments and agencies.

In 2009, CMC celebrated it's 50th anniversary as an association representing the marine transportation industry.

(CMC's Membership List is attached as Appendix 'A')

A. Executive Summary

As a broadly-based, bi-national (Canada-U.S.) marine transportation industry association, the Chamber of Marine Commerce is, first and foremost, pleased to finally see some degree of harmonization in the U.S. for ballast water discharge standards. The EPA's proposal to align ballast water treatment standards with International Maritime Organization ballast water convention standards (as well as U.S. Coast Guard draft Phase I ballast water treatment standards) is a positive step in terms of regulatory harmonization, especially in light of the past number of years where the overlap, duplication, disharmony and resulting uncertainty perpetuated by the lack of singularity of standards has been costly to industry and society as a whole.

Notwithstanding the apparent convergence of ballast water standardization, there still remains much work to be done. As noted in the sections of this submission dealing with collaboration with the USCG and on timing and type approval, it is unfortunate that industry is being asked to evaluate and comment on regulatory proposals that offer no proof nor assurance that they have been completely aligned with a federal regulatory agency (USCG) who's imminent rulemaking could theoretically render these draft proposals almost irrelevant.

Another issue CMC has focused on and hopes will be addressed in the Final 2013 VGP is for language to be added to clarify and remove any ambiguity whatsoever that the VGP and the state-wide 401 certification process are regulatory instruments that are confined exclusively to discharges of defined pollutants and can not be manipulated, interpreted or otherwise used in any way to impede a vessel's simple transit between inter-state, inter-provincial or international jurisdictions, especially considering the egregious latitude the State of New York has been afforded through these regulatory instruments.

B. Introduction

The Chamber of Marine Commerce (CMC) represents a broad cross-section of the bi-national marine transportation industry. Not only does CMC membership consist of Canadian, U.S. and international shipping companies, our umbrella covers Canadian and U.S. ports, Seaway corporations, terminals, elevators, ancillary service organizations like legal and insurance companies. And significantly, fully one third of CMC's membership is comprised of the customers for many of these organizations which in most cases are large, industrial shippers that rely on our waterways to get their grain, iron ore, salt, sugar, cement, aggregate, coal and many other bulk commodities, semi-finished or finished goods to and from the North American heartland. Given such a broad, multi-sectoral grouping of stakeholders, CMC necessarily focuses its commentary in this submission to generally a somewhat higher level of principle –based observations, critique and recommendations.

Although the EPA's draft 2013 VGP covers many different pollutants which may be introduced via many different vectors, CMC's submission focuses solely on those sections of the draft VGP that pertain to ballast water discharge, the most significant regulatory issue to our broad membership.

CMC readily acknowledges that shipboard ballast water is an important variable in the control and spread of aquatic nuisance species (ANS). However, whereas the science to conclusively demonstrate scope and magnitude of ANS transfer and spread via ships is less than clear and conclusive, the statistics on the scope and magnitude of benefits to society of commercial shipping is significantly more certain and obvious.



A recent study on the economic impact of shipping activity in the bi-national Great Lakes – St. Lawrence Seaway¹ found that commercial shipping through these waters was responsible for 227,000 jobs, \$14.1 billion per year in personal income, \$33.5 billion per year in business revenue, \$1.5 billion per year in state/provincial/local taxes and \$3 billion per year in federal taxes. Besides the economic contribution of shipping to society, the comparative environmental benefits derived from shipping – especially via short sea shipping routes – should not be taken for granted as shipping is by far the most environmentally friendly mode of transportation. Certainly, given that the typical Great Lakes-Seaway sized vessel carries as much cargo as approximately 870 heavy trucks, it would be sadly ironic if excessive regulation of shipping caused such an increase in freight rates that these vessels were replaced with tens of thousands of additional heavy trucks to North America's already overburdened highway infrastructure.

Indeed, while the marine transportation industry is eager to continue working with governments and other stakeholders towards a progressive evolution in environmental operations, we must remember that all such advancements must be balanced against what ultimately is practical and economically feasible. It is through this balanced lens that the Chamber of Marine Commerce respectfully provides the following observations and recommendations on the EPA's draft 2013 VGP.

C. Observations and Recommendations

i. Adoption of IMO ballast water convention standards

CMC supports EPA's proposal in the draft 2013 VGP for its ballast water discharge standards to be in line with those numeric, technology-based effluent limitations as set out in the International Maritime Organization International Convention for the Control and Management of Ships' Ballast Water and Sediments (IMO D-2 discharge standard). Although CMC recognizes that the EPA has no control over the number of regulating authorities that have jurisdiction over ship's ballast water, it should nonetheless publicly declare its support for a world-wide, unified and consistent ballast water regime. Adoption of the IMO standard at a Federal level in the United States is a positive step in that direction, but there remain state-wide jurisdictions that have and still can promulgate different ballast water standards. Such a potential patchwork regulatory structure will continue to pose a nightmare scenario for industry that requires certainty, clarity and harmony in legal systems in order to efficiently operate within legal boundaries.

ii. EPA Coordination with U.S. Coast Guard

CMC further notes that, although the EPA stated throughout various sections of the "Proposed 2013 Vessel General Permit Fact Sheet" (Fact Sheet) that it was working closely with the U.S. Coast Guard (USCG), ostensibly in order to align regulatory standards, it is nonetheless troubling that this draft permit is not more closely coordinated with the USCG Final Rulemaking.

Recognizing the importance that both agencies' regulatory actions have on a significant portion of global industrial activity and the unfortunate overlap in their regulatory ambit over ship's ballast water, it would seem incumbent upon EPA and USCG to work much more closely together and to not only agree on ballast water standards and timelines, but also to release their regulatory

¹ *The Economic Impacts of the Great Lakes St. Lawrence Seaway System*, Martin & Associates, Lancaster, PA, October 18, 2011.



proposals in tandem. Instead, industry and the public are forced to evaluate and comment on EPA's regulatory proposals without any certainty over what the USCG's Final Rulemaking will entail or when it is going to be published and effectively become law. In light of this misalignment in timing, CMC suggests that EPA consider a supplementary public comment period for the draft 2013 VGP after the USCG final rulemaking has been published.

iii. Exemptions for constrained lakers upstream of the Welland Canal

With respect to the exemption for lakers upstream of the Welland Canal, the CMC refers the EPA to the submission of the Canadian Shipowners Association.

iv. Timing and type approval

As noted above, CMC is encouraged by the EPA's proposal in the draft 2013 VGP to adhere to IMO ballast water treatment standards. Notwithstanding, vessels can only install technology that is technologically sound, available, economically feasible and ultimately approved for use on vessels and in circumstances for which it was designed.

So while it is gratifying to see EPA propose alignment of ballast water regulations via the VGP with IMO convention ballast water standards and timelines as well as apparent U.S. Coast Guard (USCG) Phase I ballast water regulatory proposals (re. USCG Notice of Proposed Rulemaking for the U.S. Coast Guard Ballast Water Standard), such regulatory standards are meaningless if the technology they mandate does not exist, is technically or economically impractical or ultimately has not been approved for its intended application.

At a practical level, a number of shipowner members of the Chamber of Marine Commerce are now in the process of significant fleet renewal. Thanks in large part to the Government of Canada's removal of a longstanding punitive tariff of 25% on the value of foreign-built vessels, Canada's Great Lakes - St. Lawrence Seaway domestic shipping industry has invested in approximately a dozen new vessels for the Great Lakes. On top of that, the largest Canadian-based ocean-going shipping company trading in the Great Lakes is adding three (3) new vessels. Given that the orders for these vessels are currently being processed (2012-2013), EPA's 2013 VGP effectively necessitates ballast water treatment system installation during the initial construction of these ships. Thus, pursuant to the draft VGP, these shipping companies must choose and install treatment systems without having any such systems previously approved by the U.S. Coast Guard. Furthermore, given how time-consuming and complex the USCG type approval process can be, several years could elapse before such an approval process and resulting system approvals are complete.

Such a conundrum is absolutely untenable. EPA must understand that no company can afford to invest the millions of dollars necessary for such systems without absolute assurances that such systems will be granted USCG type approval for use in the Great Lakes.

Finally, given the tremendous cost that ballast water systems represent to ship owners, CMC suggests that the regulatory regime respect this investment by providing a grandfathering mechanism that assures that for an installed ballast water management system the discharge standards in place at the time of installation will remain applicable for the life of the system, assuming that it is maintained and operated in accordance with a type-approval process specific to the waters in which it operates.



v. Clarification on VGP applicability to transiting vessels

EPA's 2013 VGP specifically addresses regulatory aspects of the discharge of defined pollutants from waterborne transportation. And yet, at least one jurisdiction (the State of New York), has used its authority under the framework of the VGP and the Clean Water Act to broaden the applicability of the VGP over vessels simply transiting the state's waters with no intent to discharge ballast water. While the CMC has, and continues, to work with other stakeholders – including the Government of Canada – to argue against this unreasonable and, as we believe, unintended interpretation of the VGP, the EPA has largely remained silent. The resulting confusion has cast a huge cloud of uncertainty over the economic viability over all regions that benefit from marine commerce transiting through New York waters, including the U.S. Northeast and the entire bi-national Great Lakes-St. Lawrence region as well as mid-west regions of Canada and the U.S. that rely on such shipping routes to get commodities and materiel to and from markets in North America and around the world.

Such regulatory confusion and commercial uncertainty could easily be alleviated by the EPA adding clear, unequivocal language to the VGP which not only narrows the ambit of the VGP such that it, and individual state section 401 certifications, can only apply to vessel discharges, as well as specifying very clearly that the VGP can not be used to potentially impede a vessel's simple transit between inter-state, inter-provincial or international jurisdictions.

C. Conclusion

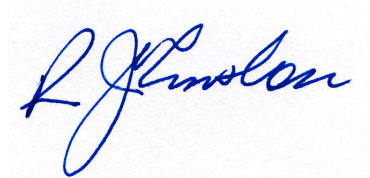
By its very nature, shipping is an international business, necessitating frequent transits across multiple jurisdictional boundaries. And yet, for many years now, the marine transportation industry has been burdened with inconsistent and often multiple, overlapping authorities crafting regulatory instruments over ballast water discharges. Throughout this timeframe, industry has been – and continues to be – steadfast in its goodwill to work with governments to arrive at sensible, practical, protective and economically sound regulations. But it must be noted and underscored that, to the extent evidenced in this draft VGP, while ballast water regulations appear to be moving in the right direction in terms of international harmonization, the continuing cumulative cost of the regulatory bureaucracy inherent in the lack of harmonization and coordination of regulatory processes to industry and society as a whole has been excessive.

With this point in mind, CMC looks forward to seeing greater collaboration by the EPA with agencies like the U.S. Coast Guard and the International Maritime Organization, as well as with other governments, particularly individual state governments as well as the Government of Canada and Transport Canada, so as to achieve regulatory objectives in as harmonized and inclusive a manner possible. Indeed, for the most part, industry generally enjoys collegial, professional and productive working relationships with governments and agencies as well as the science community and academia, all working towards advancements all the while mindful of economic imperatives.

The Chamber of Marine Commerce appreciates the opportunity to comment on EPA's draft 2013 VGP and looks forward to continue working with stakeholders like the EPA towards harmonized, practical and protective ballast water standards.



Sincerely,

A handwritten signature in blue ink, appearing to read "R. Johnston", is written over a light blue rectangular background.

Raymond W. Johnston
President





MEMBERSHIP LIST

SHIPPERS

- ADM-Agri Canada Ltd.
- Agrium Inc.
- AK Steel
- Alcan Smelters
- Aluminerie Alouette
- ArcelorMittal Dofasco
- ArcelorMittal U.S.A.
- Atlantic Minerals Limited

- Bunge Canada

- CGC Inc.
- Canadian Salt Company Ltd.
- Canadian Slag Services Inc.
- Canadian Wheat Board
- Cargill Limited
- Cargill Salt
- Carmeuse North America Group
- Casco Inc. (Canada Starch)
- CertainTeed Gypsum Canada
- Construction Aggregates Corporation of Michigan

- Elk Valley Coal Corporation
- ESSROC Italcementi Group

- Fairmount Minerals
- FeX Group, LLC

- Garnac Grain Company
- Georgia Pacific
- Grain Farmers of Ontario
- Grande Cache Coal Corporation

- Hansen Mueller Company
- Holcim (Canada) Inc.

- Iron Ore Company of Canada

- James Richardson International Ltd.

- Keystone Coal Canada Inc.
- Koch Carbon, LLC

- Lafarge North America Aggregates
- Lafarge North America Cement
- Les Grains Lac Supérieur Ltée.
- London Agricultural Commodities Inc.
- Louis Dreyfus Canada Ltd.

- Martin Marietta Materials
- Mid Continent Coal & Coke Company
- Mittal Sidbec
- Mosaic USA LLC

- National Material Trading
- Navigation Sonamar
- Norton Lilly International

- Omnisource Corporation
- OMYA, Inc.
- Ontario Wheat Producers Marketing Board
- Oxbow Carbon and Minerals LLC

- Parrish & Heimbecker Ltd.
- Pittsburgh Logistics Systems, Inc.
- Potash Corporation of Saskatchewan

- Qit-Fer et Titane Inc.

- Redpath Sugar Ltd.
- Rio Tinto Alcan
- Rio Tinto Marine

- SeverStal
- Sifto Canada Corp.
- Southwestern Sales Corporation Limited

- Town & Country Landscape, Inc.
- Transcor Coke, LLC
- Transtar, Inc.

- Unimin Canada Ltd.
- United States Gypsum
- United States Steel Corporation
- U.S. Steel Canada

- Venture Fuels
- Votorantim Cement North America

- Waterford Sand & Gravel

- Xcoal Energy & Resources



MARINE CARRIERS

- Algoma Central Corporation
- Canada Steamship Lines
- Fednav Limited
- Fettes Shipping Inc.
- Groupe Desgagnés Inc.
- Groupe Océan Inc.
- Lower Lakes Towing Ltd.
- McAsphalt Marine Transportation
- McKeil Marine Limited
- Provmar Fuels Inc.
- Purvis Marine Limited
- Rigel Shipping Canada Inc.
- Vanguard Shipping (Great Lakes) Ltd.

SEAWAY

- Saint Lawrence Seaway Development Corporation
- St. Lawrence Seaway Management Corporation

PORTS

- Belledune Port Authority
- Cleveland-Cuyahoga County Port Authority
- Detroit/Wayne County Port Authority
- Duluth Seaway Port Authority
- Hamilton Port Authority
- Illinois International Port District
- Montréal Port Authority
- Oshawa Harbour Commission
- Port of Green Bay
- Port of Milwaukee
- Port of Prescott
- Ports of Indiana
- Québec Port Authority
- Thunder Bay Port Authority
- Toledo - Lucas County Port Authority
- Toronto Port Authority
- Trois-Rivières Port Authority
- Windsor Port Authority

TERMINALS AND GRAIN ELEVATORS

- Les Élévateurs de Sorel
- Les Élévateurs des Trois-Rivières Ltée.
- Les Silos Port Cartier
- Logistec Corporation
- Mission Terminal Inc.
- Montréal Gateway Terminals Partnership
- Somavrac-Prommel Inc.
- Thunder Bay Terminals Ltd.



MARINE SERVICES

- Ansul / Tyco Fire Suppression & Building Products
- AON Reed Stenhouse Inc.
- Barda Marine & Mechanical Inc.
- Bell Marine & Mill Supply Ltd.
- BMT Fleet Technology Limited
- Corporation of the City of Port Colborne
- Corporation of the City of Sarnia
- DSS Marine Ltée.
- EMS-TECH Inc.
- Georgian College
- Germanischer Lloyd Canada Ltd.
- Hermont Marine Inc.
- Isaacs & Co.
- Latcham Marine Services / PML Foods
- Lighthouse Shipping Limited
- Lloyd's Register North America, Inc.
- Lock/Port Sales & Services Inc.
- Marine and Offshore Canada
- Marine Clean Ltd.
- Quality Belt Maintenance Ltd.
- Toromont Industries Inc.
- Walter Hildebrand Marine Services Ltd.
- Weir Marine Engineering
- Westpier Marine & Industrial Supply
- Young and Cunningham Canada Inc.

INDUSTRY ASSOCIATIONS

- American Great Lakes Ports (AGLP)
- Canadian Industrial Transportation Association (CITA)
- Canadian Shipowners Association
- Mining Association of Canada
- Ontario Marine Transportation Forum (OMTF)
- St. Lawrence Economic Development Council (SODES)
- Supply Chain & Logistics Association Canada (SCL)
- TransHub Ontario
- WESTAC - Western Transportation Advisory Council
- Western Grain Elevator / Lakehead Terminal Elevators Association