

2005 DRAFTING REQUEST

Bill

Received: **06/17/2005**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Louis Molepske (608) 267-9649**

By/Representing: **Stepanie Hilton**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - nav. waters**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Molepske@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Regulating the discharge of ballast water

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	btradewe 06/28/2005	lkunkel 06/28/2005	pgreensl 06/28/2005	_____	Inorthro 06/28/2005		State
/1	btradewe 06/29/2005 pgrant 09/16/2005	lkunkel 06/29/2005	pgreensl 06/29/2005	_____	mbarman 06/29/2005	mbarman 06/29/2005 _____ 09/16/2005	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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09/16/2005

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Intro.

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*Please
jacket
for
assembly*

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/?	rkite 06/28/2005 btradewe	/l/mk 6/28	6/28 P8	6/28 P8/RS			

FE Sent For:

<END>

Tradewell, Becky

From: Hilton, Stephanie
Sent: Wednesday, June 15, 2005 12:05 PM
To: Tradewell, Becky
Cc: Christopher, Marc; Hilton, Stephanie
Subject: Bill draft request for Rep. Molepske RE: Disallowing dumping of ballast water into the Great Lakes

Dear Becky,

Rep. Molepske is requesting that a bill be drafted to reduce the amount of non-native species that are introduced into the Great Lakes every year through the dumping of ballast water of oceangoing ships.

The introduction and spread of non-native species has a devastating impact on the Great Lakes. These species do not have any natural predators, which allow the species to spread and usurp the food supplies and habitats of native species of plants and fish. Non-native species disrupt natural habitat, which adversely impacts the fishing and tourism industries in Wisconsin. June is Invasive Species Awareness Month, so this bill is very timely. Rep. Molepske would like to introduce the bill as soon as possible to coordinate with this awareness month.

This is a summary of what Rep. Molepske would like the bill to do:

This legislation would disallow oceangoing vessels with port operation in the state of Wisconsin from dumping ballast water into the Great Lakes. The vessels would need to prove that they would not discharge the water, or prove that they have the ability to treat the water to ensure that non-native species are not dumped into the Great Lakes. Violators will be assessed \$25,000 per day.

In addition, it needs to be clear who has the authority to give citations to these vessels, as well as who determines what are acceptable methods of treating ballast water to ensure the water is environmentally sound if it is dumped.

He would like this bill to mirror the impact of Michigan House Bill No. 4603, and the link to that bill and its history is below:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4603>

If you need any more information, please feel free to contact me.

Thanks,

Stephanie

Stephanie R. Hilton
Legislative Assistant
Office of Rep. Louis Molepske, Jr.
Room 111 North
(608) 267-9649

*ballast water
05-1773
need a permit
to operate
in order to
get permit
He ~~can~~ show:
or
1. never take
on ballast
water
2. ~~stop~~ ~~stop~~
to land heat
water
to eliminate
invasive
species*

Legislative Analysis



Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

AQUATIC NUISANCE SPECIES

House Bill 4603 (Substitute H-1)
Sponsor: Rep. David Palsrok

Senate Bill 332 (Substitute H-1)
Sponsor: Sen. Patricia L. Birkholz
House Committee: Natural Resources, Great Lakes, Land Use and Environment
Senate Committee: Natural Resources and Environmental Affairs

Revised First Analysis (5-4-05)

BRIEF SUMMARY: Senate Bill 332 would require oceangoing vessels to obtain a permit from the DEQ for the discharge of aquatic nuisance species, and would facilitate the formulation of an aquatic nuisance coalition with other Great Lakes states. House Bill 4603 specifies that the discharge of ballast water, except as otherwise authorized, would be prima facie evidence of a violation of Part 31 of NREPA.

FISCAL IMPACT: The proposed legislation would not have a significant potential fiscal impact on the Department of Environmental Quality and would have no fiscal impact on local governmental units. The Great Lakes Aquatic Nuisance Species Coalition can be supported within the department's existing budget, and the rule requirements added can be implemented with existing fiscal resources. Senate Bill 332 provides fee revenue. Annual revenue should be sufficient to cover department workload related expenses.

THE APPARENT PROBLEM:

The introduction of aquatic nuisance species into the Great Lakes is, by most accounts, the principal threat to the ecosystem of the Great Lakes. These species are waterborne, non-native organisms that threaten the diversity or abundance of existing native species and the ecological stability of impacted waters. They also adversely affect many commercial, agricultural, aquacultural, and recreational activities that rely heavily on a strong and stable ecosystem. Moreover, the Department of Environmental Quality notes that these species have the potential to cause significant ecological problems because they have been introduced into a habitat in which there are no natural controls, such as pathogens, parasites, and predators.

Since the 1800's, at least 160 known aquatic nuisance species have been introduced into the waters of the Great Lakes, irreversibly altering its ecological balance. In addition, the invasion rate of an aquatic nuisance species has markedly increased in recent years, and it is estimated that, on average, a new nuisance species invades the Great Lakes every six to eight months. Once introduced into the Great Lakes, many aquatic nuisance species can find their way into inland lakes, rivers, wetlands, and other waterways, thus greatly compounding the problems associated with nuisance species.

The single largest source of the unintentional introduction of aquatic nuisance species into the waters of the Great Lakes has been from oceangoing vessels. These vessels often originate in foreign areas, and aquatic nuisance species often attach themselves to the ship's hull or are carried in ballast water taken on by the ship. Ballast water is used by oceangoing vessels to redistribute the weight of the vessel while it is at sea, thereby maintaining its stability and maneuverability, and to offset increases and decreases in weight while the vessel is at port transferring its cargo. A cargo vessel operating in the Great Lakes can contain as much as 14 million gallons of ballast water, while oceangoing vessels can typically hold double that amount.

The problem is that vessels take in ballast water in one port, transporting a variety of aquatic organisms in its ballast tanks, and then discharge that ballast water while at port. When discharged, the ballast water also introduces these non-native species into the ecosystem. The zebra mussel, one of the most harmful aquatic nuisance species, is believed to have been introduced into the Great Lakes through ballast water discharges.

In recent years, a variety of federal laws have been enacted to help stem the introduction and further spread of aquatic nuisance species into the waters of the United States. However, many contend that federal administration and enforcement of these laws has thus far been inadequate and ineffective. As a result, legislation to strengthen existing state regulations regarding ballast water discharge and facilitate the formation of a Great Lakes coalition on aquatic nuisance species has been introduced.

THE CONTENT OF THE BILL:

House Bill 4603

The bill would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act (MCL 324.3109) to specify that, except as authorized by the Department of Environmental Quality, the discharge of ballast water from an oceangoing vessel into the waters of the state would be considered prima facie evidence of a violation of Part 31. A violation would be subject to the penalties prescribed in Section 3115 of the act.

(Under Section 3115, the DEQ may request the Attorney General to commence a civil action for appropriate relief for a violation of the act or a provision of a permit or order issued or rule promulgated under the act. In addition to any other relief, the court must impose a civil fine of at least \$2,500 and may award reasonable attorney fees and costs to the prevailing party. The maximum fine the court may impose is \$25,000 per day of violation.

Additionally, a person who at the time of the violation knew or should have known that he or she discharged a substance contrary to the act, or contrary to a permit, order, or rule, is guilty of a felony and must be fined between \$2,500 and \$25,000 for each violation. The court may impose an additional fine of up to \$25,000 for each day the unlawful discharge occurred. For a subsequent conviction, the court must impose a fine

of between \$25,000 and \$50,000 per day of violation. The court also may sentence the defendant to imprisonment for up to two years or impose probation.

If the court finds that a civil defendant's actions pose or posed a substantial endangerment to the public health, safety, or welfare, the court must impose an additional fine of between \$500,000 and \$5.0 million. If the court finds that a criminal defendant's actions pose or posed a substantial endangerment to the public health, safety, or welfare, the court must impose an additional fine of at least \$1 million and a sentence of five years' imprisonment.)

MCL 324.3109

Senate Bill 332

The bill would amend Part 31 of the NREPA (MCL 324.3103 et al.) to require oceangoing vessels to obtain a permit from the Department of Environmental Quality, and would require the DEQ to facilitate the formation of a Great Lakes Aquatic Nuisance Species (ANS) Coalition.

Permit

The bill would require, beginning January 1, 2007, that all oceangoing vessels engaging in port operations in Michigan to obtain a permit from the DEQ. The permit would be issued only if the applicant demonstrates that the vessel will not discharge aquatic nuisance species or, if the vessel discharges ballast water or other waste or waste effluent, the vessel will use environmentally sound methods, as determined by the DEQ, to prevent the discharge of aquatic nuisance species. In establishing standards for protecting against the discharge of aquatic nuisance species, the DEQ would cooperate with other Great Lakes states and Canadian provinces, the Great Lakes Panel on Aquatic Nuisance Species, the Great Lakes Fishery Commission, the International Joint Commission, and the Great Lakes Commission

The fee schedule for the permit would be the same for certain NPDES permits established in Section 3120 of NREPA. For an individual permit, the application fee would be \$750 and the annual fee would be \$8,700. For a general permit, the application fee would be \$75 and the annual fee would be \$150.

Section 3120 imposes certain time requirements on the DEQ when reviewing the NPDES applications. These requirements would also be applied to applications for permits required by the bill. The DEQ would be required to either grant or deny a permit, within 180 days after receiving a complete application, or by September 30 of the year following the submittal of a complete application for the reissuance of a permit. If the DEQ does not make a decision within the time required, the application fee would be returned to the applicant and the annual permit fee would be discounted 15 percent. The DEQ could promulgate related administrative rules.

ANS Coalition

The bill would also require the DEQ to facilitate the formation of a Great Lakes Aquatic Nuisance Species Coalition with other Great Lakes States to enforce water pollution laws throughout the Great Lakes basin that prohibit the discharge of aquatic nuisance species into the Great Lakes from oceangoing vessels. The DEQ would have to seek to enter into an agreement that becomes effective not later than January 1, 2007, and would be required to consult with the Department of Natural Resources (DNR) before entering into the agreement. Upon entering into the agreement, the DEQ would be required to notify the Canadian Great Lakes provinces of the terms of the agreement. To implement the formation of the coalition, the DEQ would seek funding from the Great Lakes Protection Fund authorized under Part 331 of NREPA.

MCL 324.3103 et al.

BACKGROUND INFORMATION:

Clean Water Act

In 1972, the Federal Water Pollution Control Act, now commonly known as the Clean Water Act (CWA), was substantially amended to prohibit the discharge of any pollutant from a "point source" into the navigable waters of the U.S. without first obtaining a National Pollutant Discharge Elimination System Permit (NPDES). The majority of facilities with point-source discharges are industrial and commercial facilities and municipal treatment facilities that receive domestic sewage from residential and commercial customers. However, relevant to these bills, the CWA (33 U.S.C. 1362) defines "point source" to mean any discernible, confined, and discrete conveyance from which pollutants are or may be discharged including, among other things, a vessel or other floating craft. The CWA further defines "pollutant" to mean, among others, biological materials, though it does not mean sewage from vessels or a discharge incidental to the normal operation of a vessel of Armed Forces. Pursuant to its authority to administer the CWA, the federal Environmental Protection Agency implemented a regulation – 40 C.F.R. § 122.3(a) – which specifically exempts from the NPDES permit requirements "any discharge of sewage from vessels, effluent from properly function marine engines, laundry, shower, and galley sink wastes, *or any other discharge incidental to the normal operation of a vessel*" [emphasis added]. The EPA has used this regulation to exempt ballast water discharges from the NPDES permit requirements.

In 1999, several environmental organizations petitioned the EPA to repeal its regulation asserting that it is in direct conflict with the Clean Water Act. After the EPA denied the petition to repeal the regulation, the organizations filed a complaint with the federal District Court of the Northern District of California. On March 30, 2005 the court issued its opinion in the case, finding that the EPA clearly overstepped its authority under the CWA, noting that Congress has "directly spoken" on the CWA and specifically requires NPDES permits for vessels discharging pollutants into the nation's waters, including

discharges incidental to the operation of a vessel. The court also required the EPA to repeal its regulation.

No Ballast On Board (NOBOB)

In response to the introduction of the zebra mussel into the waters of the Great Lakes, Congress and the President enacted a variety of measures during the 1990's aimed at stemming the introduction and spread of aquatic nuisance species into the waters of the U.S. The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA, Title I of P.L. 101-646) was established with five overarching purposes: (1) prevent the unintentional introduction of aquatic nuisance species; (2) coordinate research, control, and information dissemination; (3) develop and carry out environmentally sound control methods; (4) minimize the economic and ecological impact of aquatic nuisance species; and (5) establish a research and technology program to benefit state governments. Among other things, the act established a federal program to control the spread of aquatic nuisance species requiring the Coast Guard, EPA, the U.S. Fish and Wildlife Service, Army Corps of Engineers, and the National Oceanographic and Atmospheric Administration to, jointly, identify areas where ballast water exchange can occur without adversely impacting the environment and determine the need for controls on vessels entering U.S. waters other than the Great Lakes. The act also established a ballast water management program for the Great Lakes. Regulations pertaining to the program were first established by the U.S. Coast Guard in 1993. (See 33 C.F.R. 151)

The NANPCA was subsequently reauthorized and amended in 1996 with the enactment of the National Invasive Species Act (NISA, P.L. 104-332). That act established a national ballast water management program whereby all ships entering U.S. waters are required to undertake mid-ocean ballast water exchange or use alternative measures, pre-approved by the Coast Guard, that are at least equally as effective in treating ballast water.

The current Great Lakes federal ballast water management regulations only apply to vessels carrying pumpable ballast water that enter the Great Lakes after operating outside of the U.S. Exclusive Economic Zone (EEZ) – an area extending approximately 200 nautical miles from the U.S. coastline and over which the U.S. has claimed sovereign rights and jurisdiction. These vessels are required to undertake a ballast exchange in the waters beyond the EEZ, retain the ballast water on board throughout the vessel's voyage along the Great Lakes, or use an alternatively sound method of ballast water management that is approved by the Coast Guard.

The regulations do not apply, however, to vessels that report having "no ballast on board" (NOBOB). These vessels have the potential to transport aquatic nuisance species in residual ballast water or accumulated sediments in empty ballast tanks. Once these ships enter the waters of the Great Lakes, they take in and discharge ballast water that has mixed with the residual water or sediment as it loads and unloads cargo, creating another avenue for the further introduction of aquatic nuisance species into the waters of the

Great Lakes. The problem is that most of the ships entering the Great Lakes report having no ballast on board and much of the ballast water that is discharged is carried by those vessels. Federal regulations do not apply to most of the ship traffic in the Great Lakes.

In early January 2005, the Coast Guard published notice of a public meeting and request for comments regarding ballast water management strategies for vessels entering the Great Lakes reporting to have no ballast on board. According to the public notice (Federal Register - Volume 70, No.5) the Coast Guard will use information gathered from this notice to develop a comprehensive program to reduce the threat of introducing aquatic nuisance species into the Great Lakes through vessels reporting to have no ballast on board. The notice further states that "the identification of strategies to address invasion risks from residual ballast water and sediments must take into account vessel safety and stability, the full range of vessel types entering the Great Lakes, costs associated with implementing strategy options, and the need to evaluate the effectiveness of these strategies in actually preventing the introduction of [nonindigenous invasive species] into the Great Lakes." The public meeting is scheduled for May 9, 2005 at the Celebreeze Federal Building in Cleveland, Ohio.

ARGUMENTS:

For:

The bills are necessary to help prevent the introduction and spread of aquatic nuisance species into the waters of the Great Lakes. Once introduced, these species can have a devastating impact on the Great Lakes, both ecologically and economically. With no known natural controls, these species can live uninhibited, disrupting the food chain and irreversibly altering the habitat. The resulting damage, then, adversely impacts the many industries, such as fishing and tourism, that rely on the Great Lakes and a vibrant natural habitat. Additionally, the costs incurred by the state, local municipalities, and businesses to respond to the introduction of an aquatic nuisance species has been quite significant, and the cost alone to respond to the invasion of the zebra mussel has been several billion dollars.

The bills require oceangoing vessels with port operations in the state to first obtain a permit from the DEQ if it is shown that the vessel will not discharge aquatic nuisance species or, if the vessel discharges ballast water or other waste or waste effluent, the vessel will use environmentally sound methods, as determined by the DEQ, to prevent the discharge of aquatic nuisance species. These provisions are quite similar to what would be required under EPA and Coast Guard regulations, if federal administration of ballast water and aquatic nuisance species laws were not so clearly lacking. While the recent district court decision and the Coast Guard's notice of a public meeting indicate that federal administration of ballast water discharges into the Great Lakes may soon be required, it may be quite some time before the EPA and Coast Guard actually take the steps necessary to fully regulate ballast water discharges into the Great Lakes. The EPA may appeal the district court decision, thereby staying that decision and delaying the repeal of its ballast water exemption. In addition, the federal rule promulgation process

can be quite time consuming. However, in the time it takes for a court decision or agency rules to be finalized and rules, another two or three aquatic nuisance species will be introduced into the Great Lakes. Immediate action is necessary to prevent the introduction and spread of aquatic nuisance species. By enacting these bills, the state is taking an affirmative step toward ensuring that oceangoing vessels will not bring aquatic nuisance species into the waters of the Great Lakes, thus greatly reducing the principal method of transmission.

For:

The bill facilitates the formation of a Great Lakes basin-wide coalition, involving other Great Lakes states and, to the extent possible, Canadian provinces. This coalition will foster the development of a region-wide, cooperative effort among the states, to combat the spread of aquatic nuisance species into the waters of the Great Lakes, the protection of which each Great Lakes state and province has a vested interest. Michigan cannot successfully act alone to prevent the introduction and further spread of aquatic nuisance species into the Great Lakes.

Response:

It is not entirely clear how creating yet another entity will improve upon the work already being undertaken by other organizations. Since 1991, in response to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, the Great Lakes Commission has convened a panel on aquatic nuisance species. That panel includes representatives from U.S. and Canadian federal agencies, the eight Great Lakes states and the province of Ontario, regional agencies, user groups, local communities, tribal authorities, commercial interests, and the university/research community. That panel, convened under federal authority, includes a wide array of stakeholders, including numerous Canadian officials. How would the coalition envisioned by the bill be any different or more effective? In addition to the Great Lakes Commission panel, the Council of Great Lakes Governors established an aquatic invasive species task force in 2001.

POSITIONS:

The following organizations indicated support for the bills on 4-28-05: the Michigan Chamber of Commerce; the Michigan Manufacturers Association; the Michigan Townships Association; Consumers Energy; and DTE Energy.

Legislative Analyst: Mark Wolf
Fiscal Analyst: Kirk Lindquist

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

SUBSTITUTE FOR
HOUSE BILL NO. 4603

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 3109 (MCL 324.3109).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3109. (1) A person shall not directly or indirectly
2 discharge into the waters of the state a substance that is or may
3 become injurious to any of the following:

4 (a) To the public health, safety, or welfare.

5 (b) To domestic, commercial, industrial, agricultural,
6 recreational, or other uses that are being made or may be made of
7 such waters.

8 (c) To the value or utility of riparian lands.

9 (d) To livestock, wild animals, birds, fish, aquatic life, or
10 plants or to ~~the growth, propagation, or the~~ **THEIR** growth or

1 propagation. ~~thereof be prevented or injuriously affected; or~~
2 whereby

3 (E) TO the value of fish and game. ~~is or may be destroyed or~~
4 ~~impaired.~~

5 (2) The discharge of any raw sewage of human origin, directly
6 or indirectly, into any of the waters of the state shall be
7 considered prima facie evidence of a violation of this part by the
8 municipality in which the discharge originated unless the discharge
9 is permitted by an order or rule of the department. If the
10 discharge is not the subject of a valid permit issued by the
11 department, a municipality responsible for the discharge may be
12 subject to the remedies provided in section 3115. If the discharge
13 is the subject of a valid permit issued by the department pursuant
14 to section 3112, and is in violation of that permit, a municipality
15 responsible for the discharge is subject to the penalties
16 prescribed in section 3115.

17 (3) Unless authorized by a permit, order, or rule of the
18 department, the discharge into the waters of this state of any
19 medical waste, as defined in part 138 of the public health code,
20 ~~Act No. 368 of the Public Acts of 1978, being sections 333.13801 to~~
21 ~~333.13831 of the Michigan Compiled Laws— 1978 PA 368, MCL 333.13801~~
22 ~~TO 333.13831,~~ is prima facie evidence of a violation of this part
23 and subjects the responsible person to the penalties prescribed in
24 section 3115.

25 (4) **UNLESS A DISCHARGE IS AUTHORIZED BY A PERMIT, ORDER, OR**
26 **RULE OF THE DEPARTMENT, THE DISCHARGE INTO THE WATERS OF THIS STATE**
27 **FROM AN OCEANGOING VESSEL OF ANY BALLAST WATER IS PRIMA FACIE**

House Bill No. 4603 as amended May 18, 2005

1 **EVIDENCE OF A VIOLATION OF THIS PART AND SUBJECTS THE RESPONSIBLE**
2 **PERSON TO THE PENALTIES PRESCRIBED IN SECTION 3115.**

3 (5) ~~-(4)-~~ A violation of this section is prima facie evidence
4 of the existence of a public nuisance and in addition to the
5 remedies provided for in this part may be abated according to law
6 in an action brought by the attorney general in a court of
7 competent jurisdiction.

<<Enacting section 1. This amendatory act takes effect January 1,
2007.>>

8 Enacting section <<2>>. This amendatory act does not take effect
9 unless Senate Bill No. 332 of the 93rd Legislature is enacted into
10 law.

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 332

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 3103, 3104, and 3112 (MCL 324.3103, 324.3104,
and 324.3112), sections 3103 and 3112 as amended by 2004 PA 91 and
section 3104 as amended by 2004 PA 325.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3103. (1) The department shall protect and conserve the
2 water resources of the state and shall have control of the
3 pollution of surface or underground waters of the state and the
4 Great Lakes, which are or may be affected by waste disposal of any
5 person. The department may make or cause to be made surveys,
6 studies, and investigations of the uses of waters of the state,
7 both surface and underground, and cooperate with other governments
8 and governmental units and agencies in making the surveys, studies,

1 and investigations. The department shall assist in an advisory
2 capacity a flood control district that may be authorized by the
3 legislature. The department, in the public interest, shall appear
4 and present evidence, reports, and other testimony during the
5 hearings involving the creation and organization of flood control
6 districts. The department shall advise and consult with the
7 legislature on the obligation of the state to participate in the
8 costs of construction and maintenance as provided for in the
9 official plans of a flood control district or intercounty drainage
10 district.

11 (2) The department shall enforce this part and may promulgate
12 rules as it considers necessary to carry out its duties under this
13 part. However, notwithstanding any rule-promulgation authority that
14 is provided in this part, **EXCEPT FOR RULES AUTHORIZED UNDER SECTION**
15 **3112(6)**, the department shall not promulgate any additional rules
16 under this part after December 31, 2006.

17 (3) The department may promulgate rules and take other
18 actions as may be necessary to comply with the federal water
19 pollution control act, ~~chapter 758, 86 Stat. 816,~~ 33 USC 1251 to
20 ~~1252, 1253 to 1254, 1255 to 1257, 1258 to 1270, 1281, 1282 to 1293,~~
21 ~~1294 to 1299, 1311 to 1313, 1314 to 1330, 1341 to 1345, 1361 to~~
22 ~~1377, and 1381 to 1387,~~ and to expend funds available under such
23 law for extension or improvement of the state or interstate program
24 for prevention and control of water pollution. This part shall not
25 be construed as authorizing the department to expend or to incur
26 any obligation to expend any state funds for such purpose in excess
27 of any amount that is appropriated by the legislature.

1 (4) Notwithstanding the limitations on rule promulgation under
2 subsection (2), rules promulgated under this part before January 1,
3 2007 shall remain in effect unless rescinded.

4 Sec. 3104. (1) The department is designated the state agency
5 to cooperate and negotiate with other governments, governmental
6 units, and governmental agencies in matters concerning the water
7 resources of the state, including, but not limited to, flood
8 control, beach erosion control, ~~and~~ water quality control
9 planning, development, and management, **AND THE CONTROL OF AQUATIC**
10 **NUISANCE SPECIES**. The department shall have control over the
11 alterations of natural or present watercourses of all rivers and
12 streams in the state to assure that the channels and the portions
13 of the floodplains that are the floodways are not inhabited and are
14 kept free and clear of interference or obstruction that will cause
15 any undue restriction of the capacity of the floodway. The
16 department may take steps as may be necessary to take advantage of
17 any act of congress that may be of assistance in carrying out the
18 purposes of this part, including the water resources planning act,
19 42 USC 1962 to 1962d-3, and the federal water pollution control
20 act, 33 USC 1251 to 1387.

21 (2) **IN ORDER TO ADDRESS DISCHARGES OF AQUATIC NUISANCE SPECIES**
22 **FROM OCEANGOING VESSELS THAT DAMAGE WATER QUALITY, AQUATIC HABITAT,**
23 **OR FISH OR WILDLIFE, THE DEPARTMENT SHALL FACILITATE THE FORMATION**
24 **OF A GREAT LAKES AQUATIC NUISANCE SPECIES COALITION. THE GREAT**
25 **LAKES AQUATIC NUISANCE SPECIES COALITION SHALL BE FORMED THROUGH AN**
26 **AGREEMENT ENTERED INTO WITH OTHER STATES IN THE GREAT LAKES BASIN**
27 **TO IMPLEMENT ON A BASIN-WIDE BASIS WATER POLLUTION LAWS THAT**

1 PROHIBIT THE DISCHARGE OF AQUATIC NUISANCE SPECIES INTO THE GREAT
2 LAKES FROM OCEANGOING VESSELS. THE DEPARTMENT SHALL SEEK TO ENTER
3 INTO AN AGREEMENT THAT WILL BECOME EFFECTIVE NOT LATER THAN JANUARY
4 1, 2007. THE DEPARTMENT SHALL CONSULT WITH THE DEPARTMENT OF
5 NATURAL RESOURCES PRIOR TO ENTERING INTO THIS AGREEMENT. UPON
6 ENTERING INTO THE AGREEMENT, THE DEPARTMENT SHALL NOTIFY THE
7 CANADIAN GREAT LAKES PROVINCES OF THE TERMS OF THE AGREEMENT. THE
8 DEPARTMENT SHALL SEEK FUNDING FROM THE GREAT LAKES PROTECTION FUND
9 AUTHORIZED UNDER PART 331 TO IMPLEMENT THE GREAT LAKES AQUATIC
10 NUISANCE SPECIES COALITION.

11 (3) ~~(2)~~ The department shall report to the governor and to
12 the legislature at least annually on any plans or projects being
13 implemented or considered for implementation. The report shall
14 include requests for any legislation needed to implement any
15 proposed projects or agreements made necessary as a result of a
16 plan or project, together with any requests for appropriations. The
17 department may make recommendations to the governor on the
18 designation of areawide water quality planning regions and
19 organizations relative to the governor's responsibilities under the
20 federal water pollution control act, 33 USC 1251 to 1387.

21 (4) ~~(3)~~ A person shall not alter a floodplain except as
22 authorized by a floodplain permit issued by the department pursuant
23 to part 13. An application for a permit shall include information
24 that may be required by the department to assess the proposed
25 alteration's impact on the floodplain. If an alteration includes
26 activities at multiple locations in a floodplain, 1 application may
27 be filed for combined activities.

1 (5) ~~(4)~~ Except as provided in subsections ~~(5)~~, (6), (7),
2 and ~~(8)~~ (9), until October 1, 2008, an application for a
3 floodplain permit shall be accompanied by a fee of \$500.00. Until
4 October 1, 2008, if the department determines that engineering
5 computations are required to assess the impact of a proposed
6 floodplain alteration on flood stage or discharge characteristics,
7 the department shall assess the applicant an additional \$1,500.00
8 to cover the department's cost of review.

9 (6) ~~(5)~~ Until October 1, 2008, an application for a
10 floodplain permit for a minor project category shall be accompanied
11 by a fee of \$100.00. Minor project categories shall be established
12 by rule and shall include activities and projects that are similar
13 in nature and have minimal potential for causing harmful
14 interference.

15 (7) ~~(6)~~ If work has been done in violation of a permit
16 requirement under this part and restoration is not ordered by the
17 department, the department may accept an application for a permit
18 for that work if the application is accompanied by a fee equal to 2
19 times the permit fee required under subsection ~~(4)~~ (5) or ~~(5)~~
20 (6).

21 (8) ~~(7)~~ The department shall forward fees collected under
22 this section to the state treasurer for deposit in the land and
23 water management permit fee fund created in section 30113.

24 (9) ~~(8)~~ A project that requires review and approval under
25 this part and 1 or more of the following is subject to only the
26 single highest permit fee required under this part or the
27 following:

1 (a) Part 301.

2 (b) Part 303.

3 (c) Part 323.

4 (d) Part 325.

5 (e) Section 117 of the land division act, 1967 PA 288, MCL
6 560.117.

7 Sec. 3112. (1) A person shall not discharge any waste or waste
8 effluent into the waters of this state unless the person is in
9 possession of a valid permit from the department.

10 (2) An application for a permit under subsection (1) shall be
11 submitted to the department. Within 30 days after an application
12 for a new or increased use is received, the department shall
13 determine whether the application is administratively complete.
14 Within 90 days after an application for reissuance of a permit is
15 received, the department shall determine whether the application is
16 administratively complete. If the department determines that an
17 application is not complete, the department shall notify the
18 applicant in writing within the applicable time period. If the
19 department does not make a determination as to whether the
20 application is complete within the applicable time period, the
21 application shall be considered to be complete.

22 (3) The department shall condition the continued validity of a
23 permit upon the permittee's meeting the effluent requirements that
24 the department considers necessary to prevent unlawful pollution by
25 the dates that the department considers to be reasonable and
26 necessary and to assure compliance with applicable federal law and
27 regulations. If the department finds that the terms of a permit

1 have been, are being, or may be violated, it may modify, suspend,
2 or revoke the permit or grant the permittee a reasonable period of
3 time in which to comply with the permit. The department may reissue
4 a revoked permit upon a showing satisfactory to the department that
5 the permittee has corrected the violation. A person who has had a
6 permit revoked may apply for a new permit.

7 (4) If the department determines that a person is causing or
8 is about to cause unlawful pollution of the waters of this state,
9 the department may notify the alleged offender of its determination
10 and enter an order requiring the person to abate the pollution or
11 refer the matter to the attorney general for legal action, or both.

12 (5) A person who is aggrieved by an order of abatement of the
13 department or by the reissuance, modification, suspension, or
14 revocation of an existing permit of the department executed
15 pursuant to this section may file a sworn petition with the
16 department setting forth the grounds and reasons for the complaint
17 and asking for a contested case hearing on the matter pursuant to
18 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
19 to 24.328. A petition filed more than 60 days after action on the
20 order or permit may be rejected by the department as being
21 untimely.

22 (6) BEGINNING JANUARY 1, 2007, ALL OCEANGOING VESSELS ENGAGING
23 IN PORT OPERATIONS IN THIS STATE SHALL OBTAIN A PERMIT FROM THE
24 DEPARTMENT. THE DEPARTMENT SHALL ISSUE A PERMIT FOR AN OCEANGOING
25 VESSEL ONLY IF THE APPLICANT CAN DEMONSTRATE THAT THE OCEANGOING
26 VESSEL WILL NOT DISCHARGE AQUATIC NUISANCE SPECIES OR IF THE
27 OCEANGOING VESSEL DISCHARGES BALLAST WATER OR OTHER WASTE OR WASTE

1 EFFLUENT, THAT THE OPERATOR OF THE VESSEL WILL UTILIZE
2 ENVIRONMENTALLY SOUND TECHNOLOGY AND METHODS, AS DETERMINED BY THE
3 DEPARTMENT, THAT CAN BE USED TO PREVENT THE DISCHARGE OF AQUATIC
4 NUISANCE SPECIES. THE DEPARTMENT SHALL COOPERATE TO THE FULLEST
5 EXTENT PRACTICAL WITH OTHER GREAT LAKES BASIN STATES, THE CANADIAN
6 GREAT LAKES PROVINCES, THE GREAT LAKES PANEL ON AQUATIC NUISANCE
7 SPECIES, THE GREAT LAKES FISHERY COMMISSION, THE INTERNATIONAL
8 JOINT COMMISSION, AND THE GREAT LAKES COMMISSION TO ENSURE
9 DEVELOPMENT OF STANDARDS FOR THE CONTROL OF AQUATIC NUISANCE
10 SPECIES THAT ARE BROADLY PROTECTIVE OF THE WATERS OF THE STATE AND
11 OTHER NATURAL RESOURCES. PERMIT FEES FOR PERMITS UNDER THIS
12 SUBSECTION SHALL BE ASSESSED AS PROVIDED IN SECTION 3120. THE
13 PERMIT FEES FOR AN INDIVIDUAL PERMIT ISSUED UNDER THIS SUBSECTION
14 SHALL BE THE FEES SPECIFIED IN SECTION 3120(1)(A) AND (5)(A). THE
15 PERMIT FEES FOR A GENERAL PERMIT ISSUED UNDER THIS SUBSECTION SHALL
16 BE THE FEES SPECIFIED IN SECTION 3120(1)(C) AND (5)(B)(i). PERMITS
17 UNDER THIS SUBSECTION SHALL BE ISSUED IN ACCORDANCE WITH THE
18 TIMELINES PROVIDED IN SECTION 3120. THE DEPARTMENT MAY PROMULGATE
19 RULES TO IMPLEMENT THIS SUBSECTION.

20 Enacting section 1. This amendatory act does not take effect
21 unless House Bill No. 4603 of the 93rd Legislature is enacted into
22 law.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)

Act 451 of 1994

324.3101 Definitions. *Part 31*

Sec. 3101. As used in this part:

- (a) "Aquatic nuisance species" means a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.
- (b) "Ballast water" means water and associated solids taken on board a vessel to control or maintain trim, draft, stability, or stresses on the vessel, without regard to the manner in which it is carried.
- (c) "Ballast water treatment method" means a method of treating ballast water and sediments to remove or destroy living biological organisms through 1 or more of the following:
- (i) Filtration.
 - (ii) The application of biocides or ultraviolet light.
 - (iii) Thermal methods.
 - (iv) Other treatment techniques approved by the department.
- (d) "Department" means the department of environmental quality.
- (e) "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the United States department of labor, bureau of labor statistics.
- (f) "Emergency management coordinator" means that term as defined in section 2 of the emergency management act, 1976 PA 390, MCL 30.402.
- (g) "Great Lakes" means the Great Lakes and their connecting waters, including Lake St. Clair.
- (h) "Group 1 facility" means a facility whose discharge is described by R 323.2218 of the Michigan administrative code.
- (i) "Group 2 facility" means a facility whose discharge is described by R 323.2210(y), R 323.2215, or R 323.2216 of the Michigan administrative code.
- (j) "Group 3 facility" means a facility whose discharge is described by R 323.2211 or R 323.2213 of the Michigan administrative code.
- (k) "Local health department" means that term as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.
- (l) "Local unit" means a county, city, village, or township or an agency or instrumentality of any of these entities.
- (m) "Municipality" means this state, a county, city, village, or township, or an agency or instrumentality of any of these entities.
- (n) "National response center" means the national communications center established under the clean water act, 33 USC 1251 to 1387, located in Washington, DC, that receives and relays notice of oil discharge or releases of hazardous substances to appropriate federal officials.
- (o) "Nonocean-going vessel" means a vessel that is not an ocean-going vessel.
- (p) "Ocean-going vessel" means a vessel that operates on the Great Lakes or the St. Lawrence waterway after operating in waters outside of the Great Lakes or the St. Lawrence waterway.
- (q) "Primary public safety answering point" means that term as defined in section 102 of the emergency telephone service enabling act, 1986 PA 32, MCL 484.1102.
- (r) "Sediments" means any matter settled out of ballast water within a vessel.
- (s) "Sewage sludge" means sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.
- (t) "Sewage sludge derivative" means a product for land application derived from sewage sludge that does not include solid waste or other waste regulated under this act.
- (u) "Sewage sludge generator" means a person who generates sewage sludge that is applied to land.
- (v) "Sewage sludge distributor" means a person who applies, markets, or distributes, except at retail, a sewage sludge derivative.
- (w) "St. Lawrence waterway" means the St. Lawrence river, the St. Lawrence seaway, and the gulf of St. Lawrence.
- (x) "Threshold reporting quantity" means that term as defined in R 324.2002 of the Michigan administrative code.
- (y) "Waters of the state" means groundwaters, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the jurisdiction of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1997, Act 29, Imd. Eff. June 18, 1997;—Am. 2001, Act 114, Imd. Eff. Aug. 6,

2001;—Am. 2004, Act 90, Imd. Eff. Apr. 22, 2004;—Am. 2004, Act 142, Imd. Eff. June 15, 2004.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at § 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.3112 Permit to discharge waste into state waters; application determined as complete; condition of validity; modification, suspension, or revocation of permit; reissuance; application for new permit; notice; order; complaint; petition; contested case hearing; rejection of petition; oceangoing vessels engaging in port operations; permit required.

Sec. 3112. (1) A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department.

(2) An application for a permit under subsection (1) shall be submitted to the department. Within 30 days after an application for a new or increased use is received, the department shall determine whether the application is administratively complete. Within 90 days after an application for reissuance of a permit is received, the department shall determine whether the application is administratively complete. If the department determines that an application is not complete, the department shall notify the applicant in writing within the applicable time period. If the department does not make a determination as to whether the application is complete within the applicable time period, the application shall be considered to be complete.

(3) The department shall condition the continued validity of a permit upon the permittee's meeting the effluent requirements that the department considers necessary to prevent unlawful pollution by the dates that the department considers to be reasonable and necessary and to assure compliance with applicable federal law and regulations. If the department finds that the terms of a permit have been, are being, or may be violated, it may modify, suspend, or revoke the permit or grant the permittee a reasonable period of time in which to comply with the permit. The department may reissue a revoked permit upon a showing satisfactory to the department that the permittee has corrected the violation. A person who has had a permit revoked may apply for a new permit.

(4) If the department determines that a person is causing or is about to cause unlawful pollution of the waters of this state, the department may notify the alleged offender of its determination and enter an order requiring the person to abate the pollution or refer the matter to the attorney general for legal action, or both.

(5) A person who is aggrieved by an order of abatement of the department or by the reissuance, modification, suspension, or revocation of an existing permit of the department executed pursuant to this section may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the order or permit may be rejected by the department as being untimely.

(6) Beginning January 1, 2007, all oceangoing vessels engaging in port operations in this state shall obtain a permit from the department. The department shall issue a permit for an oceangoing vessel only if the applicant can demonstrate that the oceangoing vessel will not discharge aquatic nuisance species or if the oceangoing vessel discharges ballast water or other waste or waste effluent, that the operator of the vessel will utilize environmentally sound technology and methods, as determined by the department, that can be used to prevent the discharge of aquatic nuisance species. The department shall cooperate to the fullest extent practical with other Great Lakes basin states, the Canadian Great Lakes provinces, the Great Lakes panel on aquatic nuisance species, the Great Lakes fishery commission, the international joint commission, and the Great Lakes commission to ensure development of standards for the control of aquatic nuisance species that are broadly protective of the waters of the state and other natural resources. Permit fees for permits under this subsection shall be assessed as provided in section 3120. The permit fees for an individual permit issued under this subsection shall be the fees specified in section 3120(1)(a) and (5)(a). The permit fees for a general permit issued under this subsection shall be the fees specified in section 3120(1)(c) and (5)(b)(i). Permits under this subsection shall be issued in accordance with the timelines provided in section 3120. The department may promulgate rules to implement this subsection.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004;—Am. 2005, Act 33, Imd. Eff. June 6, 2005.

Popular name: Act 451

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.3120 New or increased use permit; application and annual permit fees; definitions.

Sec. 3120. (1) Until October 1, 2009, an application for a new permit, a reissuance of a permit, or a modification of an existing permit under this part authorizing a discharge into surface water, other than a storm water discharge, shall be accompanied by an application fee as follows:

(a) For an EPA major facility permit, \$750.00.
(b) For an EPA minor facility individual permit, a CSO permit, or a wastewater stabilization lagoon individual permit, \$400.00.

(c) For an EPA minor facility general permit, \$75.00.

(2) Within 180 days after receipt of a complete application for a new or increased use permit, the department shall either grant or deny the permit, unless the applicant and the department agree to extend this time period.

(3) By September 30 of the year following the submittal of a complete application for reissuance of a permit, the department shall either grant or deny the permit, unless the applicant and the department agree to extend this time period.

(4) If the department fails to make a decision on an application within the applicable time period under subsection (2) or (3), the department shall return to the applicant the application fee submitted under subsection (1) and the applicant shall not be subject to an application fee and shall receive a 15% annual discount on an annual permit fee required for a permit issued based upon that application.

(5) Until October 1, 2009, a person who receives a permit under this part authorizing a discharge into surface water, other than a stormwater discharge, is subject to an annual permit fee as follows:

(a) For an industrial or commercial facility that is an EPA major facility, \$8,700.00.

(b) For an industrial or commercial facility that is an EPA minor facility, the following amounts:

(i) For a general permit for a low-flow facility, \$150.00.

(ii) For a general permit for a high-flow facility, \$400.00.

(iii) For an individual permit for a low-flow facility, \$1,650.00.

(iv) For an individual permit for a high-flow facility, \$3,650.00.

(c) For a municipal facility that is an EPA major facility, the following amounts:

(i) For an individual permit for a facility discharging 500 MGD or more, \$213,000.00.

(ii) For an individual permit for a facility discharging 50 MGD or more but less than 500 MGD, \$20,000.00.

(iii) For an individual permit for a facility discharging 10 MGD or more but less than 50 MGD, \$13,000.00.

(iv) For an individual permit for a facility discharging less than 10 MGD, \$5,500.00.

(d) For a municipal facility that is an EPA minor facility, the following amounts:

(i) For an individual permit for a facility discharging 10 MGD or more, \$3,775.00.

(ii) For an individual permit for a facility discharging 1 MGD or more but less than 10 MGD, \$3,000.00.

(iii) For an individual permit for a facility discharging less than 1 MGD, \$1,950.00.

(iv) For a general permit for a high-flow facility, \$600.00.

(v) For a general permit for a low-flow facility, \$400.00.

(e) For a municipal facility that is a CSO facility, \$6,000.00.

(f) For an individual permit for a wastewater stabilization lagoon, \$1,525.00.

(g) For an individual or general permit for an agricultural purpose, \$600.00, unless either of the following applies:

(i) The facility is an EPA minor facility and would qualify for a general permit for a low-flow facility, in which case the fee would be \$150.00.

(ii) The facility is an EPA major facility that is not a farmers' cooperative corporation, in which case the fee would be \$8,700.00.

(h) For a facility that holds a permit issued under this part but has no discharge and the facility is connected to and is authorized to discharge only to a municipal wastewater treatment system, an annual permit maintenance fee of \$100.00. However, if a facility does have a discharge or at some point is no longer connected to a municipal wastewater treatment system, the annual permit fee shall be the appropriate fee as otherwise provided in this subsection.

(6) If the person required to pay an application fee under subsection (1) or an annual permit fee under subsection (5) is a municipality, the municipality may pass on the application fee or the annual permit fee, or both, to each user of the municipal facility.

(7) The department shall send invoices for annual permit fees under subsection (5) to all permit holders by December 1 of each year. The fee shall be based on the status of the facility as of October 1 of that year. A person subject to an annual permit fee shall pay the fee not later than January 15 of each year. Failure by the department to send an invoice by the deadline, or failure of a person to receive an invoice, does not relieve that person of his or her obligation to pay the annual permit fee. If the department does not meet the December 1 deadline for sending invoices, the annual permit fee is due not later than 45 days after receiving an invoice. The department shall forward annual permit fees received under this section to the state treasurer for deposit into the national pollutant discharge elimination system fund created in section 3121.

(8) The department shall assess a penalty on all annual permit fee payments submitted under this section after the due date. The penalty shall be an amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due.

(9) Following payment of an annual permit fee, if a permittee wishes to challenge its annual permit fee under this section, the owner or operator shall submit the challenge in writing to the department. The department shall not process the challenge unless it is received by the department by March 1 of the year the payment is due. A challenge shall identify the facility and state the grounds upon which the challenge is based. Within 30 calendar days after receipt of the challenge, the department shall determine the validity of the challenge and provide the permittee with notification of a revised annual permit fee and a refund, if appropriate, or a statement setting forth the reason or reasons why the annual permit fee was not revised. If the owner or operator of a facility desires to further challenge its annual permit fee, the owner or operator of the facility has an opportunity for a contested case hearing as provided for under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(10) The attorney general may bring an action for the collection of the annual permit fee imposed under this section.

(11) Within 30 days after the effective date of the amendatory act that added this section, the director of the department shall notify each person holding a permit under this part authorizing a discharge into surface water, other than a storm water permit, of the requirements of this section.

(12) As used in this section:

(a) "Agricultural purpose" means the agricultural production or processing of those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture, that incorporates the use of food, feed, fiber, or fur. Agricultural purpose includes an operation or facility that produces wine.

(b) "Combined sewer overflow" means a discharge from a combined sewer system that occurs when the flow capacity of the combined sewer system is exceeded at a point prior to the headworks of a publicly owned treatment works during wet weather conditions.

(c) "Combined sewer system" means a sewer designed and used to convey both storm water runoff and sanitary sewage, and which contains lawfully installed regulators and control devices that allow for delivery of sanitary flow to treatment during dry weather periods and divert storm water and sanitary sewage to surface waters during storm flow periods.

(d) "CSO facility" means a facility whose discharge is solely a combined sewer overflow.

(e) "EPA major facility" means a facility that is designated by the United States environmental protection agency as being a major facility under 40 C.F.R. 122.2.

(f) "EPA minor facility" means a facility that is not an EPA major facility.

(g) "Farmers' cooperative corporation" means a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98.

(h) "General permit" means a permit suitable for use at facilities meeting eligibility criteria as specified in the permit. With a general permit, the discharge from a specific facility is acknowledged through a certificate of coverage issued to the facility.

(i) "High-flow facility" means a facility that discharges 1 MGD or more.

(j) "Individual permit" means a permit developed for a particular facility, taking into account that facility's specific characteristics.

(k) "Industrial or commercial facility" means a facility that is not a municipal facility.

(l) "Low-flow facility" means a facility that discharges less than 1 MGD.

(m) "MGD" means 1,000,000 gallons per day.

(n) "Municipal facility" means a facility that is designed to collect or treat sanitary wastewater, and is either publicly or privately owned, and serves a residential area or a group of municipalities.

(o) "Wastewater stabilization lagoon" means a type of treatment system constructed of ponds or basins designed to receive, hold, and treat sanitary wastewater for a predetermined amount of time. Wastewater is treated through a combination of physical, biological, and chemical processes.

History: Add. 2004, Act 91, Imd. Eff. Apr. 22, 2004.

Popular name: Act 451



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3224/P1

RCT.....

lmk

Wanted Thurs (6/30), if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Note

GenCat

1 AN ACT ...; relating to: ballast water management, providing a penalty, and
2 making an appropriation. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 20.370^{(4) (aw)} of the statutes is created to read:

4 20.370^{(4) (aw)} Water resources — ballast water management. All moneys received
5 under s. 23.245 (2) (d) for ballast water management.

6 SECTION 2. 23.245^X of the statutes is created to read:

7 23.245 Ballast water management. (1) DEFINITIONS. In this section:

8 (a) "Aquatic nuisance species" has the meaning given in s. 30.1255⁽¹⁾.

9 (b) "Ballast water" means water and associated solids taken on board a vessel
10 to control or maintain the vessel's trim, draft, or stability, or to control stresses on the
11 vessel. ✓

1 (c) “International joint commission” means the commission established by the
2 boundary water agreement of 1909 between the United States and Canada. ✓

3 (d) “Oceangoing vessel” means a vessel that operates on the Great Lakes or the
4 St. Lawrence Waterway after operating in waters of the Atlantic Ocean. ✓

5 (e) “St. Lawrence Waterway” means the St. Lawrence River, the St. Lawrence
6 Riverway, and the Gulf of St. Lawrence. ✓

7 (2) PERMIT. (a) Beginning on January 1, 2007, an oceangoing vessel may not
8 use a port in this state unless the person operating the oceangoing vessel has a
9 permit from the department under this section for the oceangoing vessel. ✓

10 (b) The department may issue a permit for an oceangoing vessel only if one of
11 the following applies: ✓

12 1. The person operating the oceangoing vessel demonstrates to the department
13 that the oceangoing vessel is not capable of taking on ballast water. ✓

14 2. The person operating the oceangoing vessel demonstrates to the department
15 that the oceangoing vessel is equipped with environmentally sound technology the
16 use of which will prevent the introduction of aquatic nuisance species into the Great
17 Lakes, as determined by the department. ✓

18 (c) The department shall condition a permit for an oceangoing vessel that takes
19 on ballast water on the use of the technology described in par. (b) 2. ✓

20 (d) 1. A person applying for a permit under this section shall pay an application
21 fee of \$750. ✓

22 2. A person to whom the department issues a permit under this section shall
23 pay an annual fee of \$8,700. ✓

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(3) PENALTY. A person who violates sub. (2) (a) or who violates a permit issued under this section is subject to a forfeiture of not more than \$25,000 for each day of violation.

(4) COOPERATION. The department shall cooperate with other states, Canadian provinces, the International Joint Commission, the Great Lakes Commission, and other interested groups to ensure the development and use of methods for the control of aquatic nuisance species that are broadly protective of the waters of the state, as defined in s. 281.01 (18), and other natural resources.

(END)

LPS: PLS
keep
words
upper-
cased

DNote

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3224/P1dn

RCT:.....

lmk

(date)

✓
Stephanie Hilton:

This is a preliminary version of the proposal to limit the introduction of invasive species into the Great Lakes by requiring permits for oceangoing vessels. The draft requires a permit from DNR. The enforcement procedure in ⁵⁵ 23.50 to ~~23.90~~ 23.90, which includes the authority to issue citations, would apply to this proposal. The Michigan legislation requires a permit for a vessel "engaging in port operations." I am uncertain of the meaning of that phrase, so I drafted the proposal to prohibit using a port in this state without a permit. ✓

The U.S. Coast Guard has imposed requirements concerning ballast water. It is possible that if enacted this proposal would be challenged as being beyond the authority of a state because of its effect on interstate and international commerce. Article I, section 8, of the U.S. Constitution, gives Congress the power to regulate commerce with foreign nations and among the states. A ship entering the Great Lakes could be subject to conflicting requirements relating to ballast water imposed by different states and this fact might influence a court's decision. ✓

Please let me know if you have any questions or want any changes in the draft. I will put it into introducible form when you are satisfied with the draft. ✓

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

imposing limitations
and imposing limitations
on the discharge of
ballast water

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3224/P1dn
RCT:lmk:pg

Stephanie Hilton:

This is a preliminary version of the proposal to limit the introduction of invasive species into the Great Lakes by requiring permits for oceangoing vessels imposing limitations on the discharge of ballast water. The draft requires a permit from DNR. The enforcement procedure in ss. 23.50 to 23.90, which includes the authority to issue citations, would apply to this proposal. The Michigan legislation requires a permit for a vessel "engaging in port operations." I am uncertain of the meaning of that phrase, so I drafted the proposal to prohibit using a port in this state without a permit.

The U.S. Coast Guard has imposed requirements concerning ballast water. It is possible that if enacted this proposal would be challenged as being beyond the authority of a state because of its effect on interstate and international commerce. Article I, section 8, of the U.S. Constitution, gives Congress the power to regulate commerce with foreign nations and among the states. A ship entering the Great Lakes could be subject to conflicting requirements relating to ballast water imposed by different states and this fact might influence a court's decision.

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6/29 Per Stephanie - Make a LF and jacket. No changes.
RET

Per Rep. Molske - add public nuisance.
RET



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3224/21
RCT:lmk:pg rmr
↑
Keep

Today, if possible

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

DNote

1 AN ACT *to create* 20.370 (4) (aw) and 23.245 of the statutes; **relating to:** ballast
2 water management, providing a penalty, and making an appropriation.

Analysis
inset

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows: X

3 SECTION 1. 20.370 (4) (aw) of the statutes is created to read:
4 20.370 (4) (aw) *Water resources — ballast water management.* All moneys
5 received under s. 23.245 (2) (d) for ballast water management.

6 SECTION 2. 23.245 of the statutes is created to read:
7 **23.245 Ballast water management.** (1) DEFINITIONS. In this section:
8 (a) "Aquatic nuisance species" has the meaning given in s. 30.1255 (1).
9 (b) "Ballast water" means water and associated solids taken on board a vessel
10 to control or maintain the vessel's trim, draft, or stability, or to control stresses on the
11 vessel.

1 (c) “International Joint Commission” means the commission established by the
2 boundary water agreement of 1909 between the United States and Canada.

3 (d) “Oceangoing vessel” means a vessel that operates on the Great Lakes or the
4 St. Lawrence Waterway after operating in waters of the Atlantic Ocean.

5 (e) “St. Lawrence Waterway” means the St. Lawrence River, the St. Lawrence
6 Riverway, and the Gulf of St. Lawrence.

7 **(2) PERMIT.** (a) Beginning on January 1, 2007, an oceangoing vessel may not
8 use a port in this state unless the person operating the oceangoing vessel has a
9 permit from the department under this section for the oceangoing vessel.

10 (b) The department may issue a permit for an oceangoing vessel only if one of
11 the following applies:

12 1. The person operating the oceangoing vessel demonstrates to the department
13 that the oceangoing vessel is not capable of taking on ballast water.

14 2. The person operating the oceangoing vessel demonstrates to the department
15 that the oceangoing vessel is equipped with environmentally sound technology the
16 use of which will prevent the introduction of aquatic nuisance species into the Great
17 Lakes, as determined by the department.

18 (c) The department shall condition a permit for an oceangoing vessel that takes
19 on ballast water on the use of the technology described in par. (b) 2.

20 (d) 1. A person applying for a permit under this section shall pay an application
21 fee of \$750.

22 2. A person to whom the department issues a permit under this section shall
23 pay an annual fee of \$8,700.

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3224/lins
RCT:.....

Analysis insert

This bill requires a person who operates an oceangoing vessel that uses a port in this state to obtain a permit from the Department of Natural Resources. ✓ To obtain a permit, the person must demonstrate to DNR that the vessel is not capable of taking on ballast water or that the vessel is equipped with technology that DNR determines will prevent the introduction of aquatic nuisance species into the Great Lakes. ✓ Aquatic nuisance species are plants and animals that are not native and that threaten the diversity or abundance of native species or the ecological stability of infested waters or that threaten commercial, agricultural, or recreational activities that are dependent on infested waters. ✓ A person who operates an oceangoing vessel without a permit or operates in violation of a permit is subject to a forfeiture (a civil monetary penalty) of up to \$25,000 for each day of violation. ✓

✓ For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

Insert 3-3

(4) PUBLIC NUISANCE. A vessel operated in violation of sub. (2) (a) or in violation of a permit issued under this section is a public nuisance. ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3224/1dn

RCT.....

lmk

(date)

✓
Rep. Molepske:

I have added a provision stating that a violation is a public nuisance. ✓ Section 823.02 ✓
of the statutes explains who can bring an action to enjoin a public nuisance. ✓ Please let
me know if you have any questions or want any additional changes in the draft. ✓

Rebecca C. Tradewell
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3224/1dn
RCT:lmk:pg

June 29, 2005

Rep. Molepske:

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Rebecca C. Tradewell
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Northrop, Lori

To: Hilton, Stephanie
Subject: LRB 05-3224/1 attached as requested

Attachments: 05-3224/1



05-32241.pdf

*Lori Northrop
Program Assistant
State of WS Legislative Reference Bureau
1 East Main Suite 200
Madison, WY., 53703
Phone 266-3561 fax 264-6948*

Emery, Lynn

From: Emery, Lynn
Sent: Thursday, January 05, 2006 11:35 AM
To: Rep.Molepske
Subject: LRB 05-3224/1 & 1dn (attached as requested)

Attachments: 05-3224/1; 05-3224/1dn



05-32241.pdf (18 KB)



05-32241dn.pdf (9 KB)

Lynn Emery
Program Assistant
Legislative Reference Bureau
(608) 266-3561

Emery, Lynn

From: Emery, Lynn
Sent: Monday, January 09, 2006 11:41 AM
To: Christopher, Marc
Subject: LRB 05-3224/1 & 1dn (attached as requested)

Attachments: 05-3224/1; 05-3224/1dn



05-32241.pdf (18 KB)



05-32241dn.pdf (9 KB)

Lynn Emery
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