



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #584

Ballast Water Discharge Permits and Fees (DNR -- Water Quality)

[LFB 2009-11 Budget Summary: Page 480, #11]

CURRENT LAW

Persons who discharge certain pollutants into the waters of the state from point sources must first obtain a water pollutant discharge elimination system permit from the Department of Natural Resources (DNR). A point source is a specific location, such as a pipe or a vessel, from which pollutants are discharged. DNR issues individual permits with specific conditions for an individual discharger. DNR is also authorized to issue a general wastewater discharge permit authorizing discharges from specified categories or classes of point sources.

DNR has begun the process of issuing a ballast water discharge general permit, and held public hearings and a public comment period on the draft general permit in March, 2009. While the statutes do not define ballast water, it generally means ocean or lake water that ships pump into, or discharge from, onboard tanks to balance the vessels as they load and unload cargo.

GOVERNOR

Create a ballast water discharge permit program as follows:

- a. Provide \$210,400 PR in 2009-10 and \$246,400 PR in 2010-11 with 3.0 positions, in a new appropriation that would receive all moneys from fees collected to administer and enforce the ballast water discharge permit program.
- b. Allow DNR to issue a general permit that authorizes a vessel that is 79 feet or longer to discharge ballast water into the waters of the state. Coverage under the general permit would be valid for five years, and the permit holder could apply for renewal of coverage.
- c. Direct that, if DNR issues a general permit for ballast water discharges, the

Department would charge a \$1,200 fee for an application for coverage under the general permit and \$345 paid upon initial coverage under the permit and annually in subsequent years. These fee amounts would not apply after June 30, 2013. The administration estimates the fees would generate revenue of \$787,000 during the biennium, including \$618,000 in 2009-10 (\$480,000 from the application fee and \$138,000 from the annual permit fee) and \$169,000 in 2010-11 (\$24,000 from the application fee and approximately \$145,000 from the annual permit fee).

d. Direct DNR to promulgate administrative rules on or before June 30, 2013, for application fees and annual fees for coverage under the general permit. Specify that the fees must be based on the Department's costs of controlling aquatic invasive species introduced into the state by the discharge of ballast water. DNR would charge the fees determined under the rule beginning on July 1, 2013.

DISCUSSION POINTS

1. Ships typically fill ballast water tanks when they unload cargo and discharge ballast water as they load cargo in order to balance the vessel in the water. When ships move from one body of water to another and the ship releases ballast water, the discharge can release aquatic invasive species into the second water body. A major example of invasive species introduced to the Great Lakes by ballast water is zebra mussels. Invasive species can cause damage to power plant pipes, drinking water facilities, marinas, native species, and ecosystems.

2. Much of the ballast water discharged into the Great Lakes by oceangoing vessels happens in the Lake Superior ports of Superior, Wisconsin, and Duluth, Minnesota. When ships load cargo such as corn, grain, iron ore, and coal, they discharge the ballast water they may have taken on when they unloaded in, for example, Detroit, Michigan (or other Great Lakes ports). Milwaukee and Green Bay are also major cargo loading ports in Wisconsin.

3. In 2005, the U.S. District Court for the Northern District of California ruled that EPA had exceeded its authority in maintaining a regulation which had exempted discharges incidental to the normal operation of a ship, from pollutant-discharge permitting under the Clean Water Act since 1973. In 2006, the Court issued an order vacating the EPA exemption of vessel discharges from regulation as of September 30, 2008. On July 23, 2008, the Ninth Circuit Court of Appeals upheld the earlier Court decisions. In response to the Court decisions, EPA developed a federal permit known as a vessel general permit (VGP), effective December 19, 2008. The District Court modified its order vacating the EPA exemption, and made the requirement for vessels to hold a permit effective February 6, 2009. The EPA permit requires ships entering U.S. waterways to exchange the water in ballast tanks at least 200 miles from shore or to rinse empty ballast tanks with salt water. Vessel owners will need to submit a notice of intent for coverage under the permit by September, 2009. There is no EPA permit fee.

4. U.S. Coast Guard regulations also require ships to exchange the water in their ballast tanks at sea. It is possible U.S. Coast Guard involvement in ballast water discharge permitting or

regulation could increase.

5. In 2004, the International Maritime Organization (IMO), the United Nations agency responsible for the safety of shipping and the prevention of marine pollution from ships, adopted a proposal for ballast water discharge management procedures and standards. The IMO standards would set requirements for how many living biological organisms are allowed in a specified volume of discharged ballast water after treatment. It would have the effect of international law 12 months after it is ratified by 30 nations. To date, it has been ratified by approximately 18 countries. The United States has not ratified it. The IMO standards would phase in ballast water management requirements by 2016, depending on when the ship was built and the capacity of the ballast water tank.

6. DNR completed a public hearing and public comment period for a draft general permit for ballast water discharge in March, 2009. The Department is in the process of preparing a response to comments received during the public comment period. DNR's draft ballast water discharge general permit states the Department is proposing the general permit because the requirements in the federal general permit are not stringent enough to protect Wisconsin's water quality.

7. Under DNR's draft general permit, ocean-going ships would have to meet the following standards for the ballast water they discharge in Wisconsin waters: (a) beginning in 2012, if commercially viable technology is available, existing ocean-going vessels would have to meet a standard for the number of living organisms in the ballast water they discharge in Wisconsin waters that is 100 times more protective than the proposed IMO standard, but if technology is not available permittees could request use of the IMO standards (the DNR standard is the same standard adopted by the state of New York, except New York does not allow for a lower standard if technology is not available); and (b) beginning in 2013, if commercially viable technology is available, new ocean-going vessels would have to meet a standard that is 1,000 times more protective than the proposed IMO standard (the same standard as adopted by California). Commercial vessels that travel only between Great Lakes ports would not have to meet the ballast water discharge standards but would have to use other best management practices.

8. DNR officials indicate the Department will likely begin to consider the comments received, but wait to finalize the general permit until after the biennial budget process is complete, because the budget would authorize fees for the permits and staff to administer the program. Under current law, DNR administration of wastewater permit discharge permit programs is funded with GPR and FED funding. Holders of individual wastewater permits (primarily government sewage treatment plants and industrial facilities) pay a wastewater discharge permit fee based on the amount of discharge, and the fee revenues are deposited in the general fund to partially offset administration of the wastewater permit program.

9. The following table shows the estimated revenue and expenditures under the ballast water discharge permit program from 2009-10 through 2012-13 under the fee levels included in the bill. DNR estimates that under the general permit, there would be 400 applications for coverage in

2009-10, and 20 new applications in each of the following three years, for a total of approximately 460 vessels obtaining coverage under the general permit during the next four years. The exact number is unknown, and could decrease from the current number of ships using Wisconsin ports if some vessels were to decide to use Duluth, Chicago, or Michigan ports instead of Wisconsin ports.

**Ballast Water Discharge Permit Fees -- Estimated Revenues and Expenditures
Under AB 75**

	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>
Opening Balance	\$0	\$405,500	\$325,600	\$255,200
Revenue				
Application fees (\$1,200)	\$480,000	\$24,000	\$24,000	\$24,000
Annual fees (\$345)	<u>138,000</u>	<u>145,000</u>	<u>152,000</u>	<u>159,000</u>
Total Revenue	\$618,000	\$169,000	\$176,000	\$183,000
Total Available	\$618,000	\$574,500	\$501,600	\$438,200
Authorized expenditures	\$210,400	\$246,400	\$246,400	\$246,400
Transfer to general fund	<u>2,100</u>	<u>2,500</u>	<u>0</u>	<u>0</u>
Total Expenditures	\$212,500	\$248,900	\$246,400	\$246,400
Closing Balance	\$405,500	\$325,600	\$255,200	\$191,800
Authorized positions	3.00	3.00	3.00	3.00

10. The three wastewater specialist positions provided under the bill would be located in the Madison central office, Superior, and Milwaukee. The Madison position would issue permits to ship owners, revise the general permit to reflect changes in federal and state requirements, and coordinate with other states, EPA, and the Coast Guard. The Superior and Milwaukee positions would perform activities such as inspect Great Lakes ships to determine compliance with discharge permit requirements, provide compliance and technical assistance to ship owners, investigate complaints regarding vessel discharges, identify potential violations and enforcement actions, coordinate actions with other states and federal agencies, and develop and maintain databases. The funding also includes \$38,400 for two limited-term employees (equaling one full-time equivalent of effort) for permit issuance activities and database maintenance during peak periods of the shipping season.

11. While the program is new and does not have a base funding level, the administration calculated the cost of the positions and associated funding, then reduced the recommended funding level by 1%. The administration has indicated its intent to transfer an amount equal to the 1% reduction to the general fund.

12. The statutory fees in the bill would be in effect through 2012-13. As shown in the

table, the fees in the bill would provide approximately \$190,000 more revenue than would be needed for the program during the four years. However, after the first, bigger year of revenue in 2009-10 from the initial applications, the annual expenditures for the three positions would exceed annual revenue. Under the bill, the estimated balance of the appropriation would decline from approximately \$325,000 at the end of 2010-11 to less than \$200,000 at the end of 2012-13. However, under the bill, DOA and DNR would also have the authority to transfer additional amounts to the general fund.

13. A lower application fee of \$900 instead of the \$1,200 included in the bill would provide sufficient revenue for the three positions under the bill for the first four years. Under this lower application fee, the closing appropriation balance would be approximately \$200,000 at the end of 2010-11 and \$50,000 at the end of 2012-13. This alternative would decrease revenue by \$126,000 from the amounts under the bill during the biennium, including \$120,000 in 2009-10 and \$6,000 in 2010-11 (Alternative 2a).

14. Before the end of 2012-13, DNR would promulgate an administrative rule with the application and annual fee levels to apply after June 30, 2013. The revised application fees would apply with the first renewal of the general permit. The revised annual permit fees would first be due in 2013-14. While DNR does not have specific plans for alternate fee amounts, it prefers the flexibility of the administrative rule process for establishing fee amounts after it has actual experience with the numbers of vessels that would be permitted and the workload of administering the program. On the other hand, the authority to promulgate rules with different fees could be deleted, and statutory fees could be reviewed in 2013-15 budget deliberations or in separate legislation, as needed (Alternative 2e).

15. The appropriation specifies all moneys received from ballast water discharge permit fees would be used to administer and enforce the ballast water discharge permit program authorized under the bill. The bill also directs the Department to establish fees in the administrative rule that would be charged beginning July 1, 2013, that are based on the costs to the Department of controlling aquatic invasive species introduced into the waters of the state by the discharge of ballast water. These costs are unknown, but would be many millions of dollars. DNR officials indicate the Department did not intend to seek fees to cover the cost of controlling aquatic invasive species, but rather is seeking sufficient funds to administer the ballast water discharge permit program. The bill could be amended to specify that when DNR promulgates rules with fees to be charged beginning July 1, 2013, the fees would be based on the costs to the Department of administering and enforcing the ballast water discharge permit program. (Alternative 2c).

16. Minnesota issued a ballast water discharge general permit on September 24, 2008. Minnesota charges an application fee of \$350 and an annual permit fee of \$345. The permit and annual fees are currently being reviewed and could change. Minnesota adopted the IMO standards and timeline, which means vessels built prior to 2012 will have to install and begin operating ballast water treatment systems by January 1, 2016.

17. A lower application fee of \$600 instead of the \$1,200 included in the bill would be

closer to the Minnesota \$350 application fee and would provide sufficient revenue for the three positions under the bill for the 2009-11 biennium. However, it likely would not be sufficient to fund the program through 2012-13, based on the current estimate of the number of vessels that would be permitted. Under this lower application fee, the closing appropriation balance would be approximately \$74,000 at the end of 2010-11, but there could be a revenue shortfall of \$84,000 at the end of 2012-13. This alternative would decrease revenue by \$252,000 from the amounts under the bill during the biennium, including \$240,000 in 2009-10 and \$12,000 in 2010-11 (Alternative 2b). DNR would likely need to reduce expenditures or request a higher fee amount in the 2011-13 biennium.

18. Several complex legal, environmental and economic issues make ballast water discharge regulation a challenging issue for states and countries to reach agreement on. It is likely that national and international agreements will be needed to resolve the issue. Examples of issues raised during the DNR draft ballast water discharge general permit public comment process include: (a) disagreement over whether the EPA general permit standards or IMO standards will be adequate to protect the Great Lakes from aquatic invasive species; (b) Wisconsin's standards would be stricter than Minnesota's, but Duluth and Superior share the same harbor, making it difficult to keep invasive species from moving from one state's waters to the other's, and increasing the potential for shipping companies to choose to use the Duluth port instead of the Superior port; (c) disagreement about when technology will become available to meet IMO standards or the stricter standards proposed by Wisconsin and some other states; (d) whether DNR has the legal authority to issue the general permit without first promulgating rules with effluent limits; (e) whether the effluent limits in the draft permit are subject to the statutory requirement in s. 283.11 (2) that effluent limitations for point sources cannot exceed the requirements of federal water pollution control regulations (s. 283.01 (6) defines an effluent limitation as any restriction established by DNR, including schedules of compliance, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the state); (f) whether the environmental assessment was adequate and met statutory requirements; (g) concerns about the economic impacts on the ports of Superior, Milwaukee, and Green Bay if ships choose to use ports in other states instead of Wisconsin, or if businesses choose to transport products by truck or rail instead of by ships; and (h) the extent to which existing or future aquatic invasive species introduced by ballast water discharges could harm commercial and recreational fisheries and native aquatic ecosystems.

19. While the IMO standards have not gone into effect, several states, such as Illinois, Indiana, Minnesota, Ohio, and Pennsylvania, are implementing ballast water treatment to the level of the proposed IMO standards. Research and development of ballast water treatment technology is ongoing, and is primarily focusing on systems that would meet the IMO standards. Some argue that Wisconsin should not adopt standards stricter than the IMO standards in the general permit. The bill could be amended to include this restriction (Alternative 2d). Others argue that the IMO standards will not adequately protect state waters and that Wisconsin should take the lead, along with states such as New York and California, in adopting stricter standards. Some believe that if such action is adopted by multiple states, it may lead to more protective national and international standards.

20. DNR did not request additional resources or fee authority in its biennial budget request to the Governor. If the proposed authorization for a ballast water discharge general permit, fees and staff are not approved, DNR could still continue its current process of general permit issuance, but it would not have specific staff resources to administer and enforce the program, and would not have authority to assess fees (Alternative 3). If no state permit is adopted, the EPA general permit and U.S. Coast Guard requirements would still apply.

ALTERNATIVES

1. Approve the Governor’s recommendation to: (a) create a ballast water discharge permit program; (b) provide \$210,400 PR in 2009-10 and \$246,400 PR in 2010-11 with 3.0 wastewater specialist positions; (c) create a program revenue appropriation that would receive all moneys from fees collected to administer and enforce the ballast water discharge permit program; (d) allow DNR to issue a general permit that authorizes a vessel that is 79 feet or longer to discharge ballast water into the waters of the state; (e) provide a five year term for the general permit, and authorize renewal; (f) create fees of \$1,200 for an application and \$345 for initial coverage and annually thereafter, to apply through June 30, 2013; (g) direct DNR to promulgate administrative rules for application fees and annual fees that would go into effect beginning on July 1, 2013, for coverage under a general permit for ballast water discharge; and (h) specify that the fees promulgated in rule must be based on the Department’s costs of controlling aquatic invasive species introduced into the state by the discharge of ballast water. This would be expected to generate program revenue of perhaps \$787,000 in the biennium.

2. Approve Alternative 1, as modified in one or more of the following ways:

a. Specify the application fee would be \$900, instead of \$1,200 under the bill. This would decrease revenue by approximately \$126,000 (\$120,000 in 2009-10 and \$6,000 in 2010-11).

ALT 2a	Change to Bill Revenue
PR	- \$126,000

b. Specify the application fee would be \$600, instead of \$1,200 under the bill. This would decrease revenue by approximately \$252,000 (\$240,000 in 2009-10 and \$12,000 in 2010-11).

ALT 2b	Change to Bill Revenue
PR	- \$252,000

c. Specify that when DNR promulgates fees in rule to apply after June 30, 2013, the

fees must be based on the Department's costs of administering and enforcing the ballast water discharge permit program (instead of costs of controlling aquatic invasive species introduced by the discharge of ballast water).

d. Specify that any general permit issued by DNR for ballast water discharges may not include standards stricter than those recommended by the International Maritime Organization.

e. Delete the authority of DNR to promulgate fees by rule in 2013, and make the statutory fees permanent. (The statutory fees would apply until modified by the Legislature.)

3. Delete provision.

ALT 3	Change to Bill		
	Revenue	Funding	Positions
PR	-\$787,000	-\$456,800	- 3.00

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