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>>> "Mark Coscarelli" <mcoscarelli@pscinc.com> 7/29/2008 3:19 PM >>>
 FYI - <http://www.jsonline.com/story/index.aspx?id=776605>

Conservation groups warn of hole in ballast water bill

Letters to Feingold, Kohl encourage vote against the measure

By DAN EGAN
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Posted: July 25, 2008

A coalition of conservation groups has found what it considers a yawning hole in a bill that would require overseas freighters to install ballast treatment systems to protect the Great Lakes and other waterways from invasive species.

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The 14 conservation organizations, including the Sierra Club and Natural Resources Defense Council, sent a letter Friday to Wisconsin Senators Russ Feingold and Herb Kohl urging the Democrats to oppose the measure that has so far enjoyed widespread support.

Their worry is the legislation may supersede provisions of the Clean Water Act and insulate the shipping industry from future suits under that law.

It might also pre-empt states such as Wisconsin from taking their own actions to protect

Great Lakes

Documents

 [PDF](#): Letter sent to Herb Kohl expressing concern over the bill

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 [PDF](#): Letter from other regional organizations in support of the bill

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state waters from biological pollution that is costing billions of dollars in beach-trashing algae outbreaks, fish and wildlife declines and troubles for water-dependent industries in the Great Lakes region.

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Pressure on the industry - and Congress - is mounting in a region frustrated that the Great Lakes are now home to more than 185 exotic species and in recent decades, a new one has been discovered, on average, about every six months. A new federally funded study shows that the costs of the species that ships alone have brought into the region are mounting at a rate of at least \$2 billion per decade.

The letter's timing is no surprise.

Just this week, a federal appeals court ruled in favor of West Coast conservationists who sued the federal government to acknowledge that ship-steadying ballast water, which can be teeming with organisms, is a pollutant that must be regulated like all the other noxious substances covered by the Clean Water Act.

The Environmental Protection Agency refused for more than three decades to regulate ballast water under the Clean Water Act. Now the court has given the agency until Sept. 30 to start doing its job, but language in the pending ballast water bill may render that ruling moot.

Exposing a rift

The ruling has exposed a severe rift in the conservation community at a critical time. The U.S. House this spring approved a ballast law that is supported by the shipping industry and many Great Lakes environmental groups, including the National Wildlife Federation and the Alliance for the Great Lakes. That measure requires shipowners to begin installing ballast treatment systems in the coming years. The Senate must still pass the bill, but now senators are being urged not to do so.

"A lot of us have been puzzling for some time as to why Great Lakes groups have embraced what started as an industry bill, and still has serious defects," said Nina Bell, executive director of the Portland, Ore.-based Northwest Environmental Advocates, one of the groups that sued the EPA over the ballast issue.

Bell argues that the shipping industry supports the ballast bill because it fears having to comply with the Clean Water Act, and the language in the new bill can be interpreted to exempt ballast water from that law. That could prevent citizens and states from taking future legal action against the industry.

She noted the bill also designates the Coast Guard, not the EPA, as the lead agency for enforcing ballast regulations, and the Coast Guard has a history of ignoring congressional directives when it comes to regulating ballast discharges. Further, the bill prohibits states from passing future tougher ballast laws if they determine the federal law isn't getting the job done. Wisconsin and Minnesota are at the moment considering such measures.

Bell also has a problem with what she said is an overly generous grace period for the shipping industry to install adequate ballast treatment technology. Under the House bill, ships that install treatment systems that accomplish what she sees as unacceptably loose protections would be exempt from having to install better systems in the following decade. In some cases, she said, that means ships could be exempt from paying for more meaningful treatment systems until 2021.

Bell called the rift in the environmental community "very unpleasant," but she doesn't soften her criticism of the bill supporters.

"I honestly don't know how people who support the legislation can rationalize it, because it doesn't move very swiftly and it doesn't move very stringently, and those are the two things we need," she said.

The Great Lakes conservationists who support the House bill, however, contend that it is good enough to protect the lakes, yet they say they are still working with the Senate to toughen it.

Industry's fears

They acknowledge the shipping industry has been involved in developing the House bill language, but they bristle at the idea that it is an industry-driven law. It is, they say, the product of years of negotiations.

"Our position has always been to strengthen (the House) bill and pass it," said Jeff Skelding of the Healing Our Waters-Great Lakes Coalition, which represents about 100 regional environment groups. "We're supporting the bill, but at the same time we're working hard to improve it."

Representatives of the Great Lakes shipping industry, meanwhile, say they agree ballast treatment on ships is needed to protect the lakes. But they want the new law to be administered independent of the Clean Water Act.

"Because the Clean Water Act is largely administered by state governments, we fear a patchwork of regulatory requirements throughout the Great Lakes," said Steve Fisher, executive director of the American Great Lakes Ports Association. "That would create a confused regulatory scenario that would be hard to comply with."

At this point it appears the industry has yet to win that concession in the Senate.

Sen. Barbara Boxer (D-Calif.), chair of the Senate Environment and Public Works Committee, has so far refused to let a ballast bill move forward unless a Clean Water Act "savings clause" is included to make it clear nothing in the new law removes the EPA's responsibility to treat ballast like any other industrial pollution.

Absent a new ballast bill, the court ruling this week means the shipping industry will now have to receive EPA permits to discharge ballast. The EPA has so far only proposed requiring ships to flush or exchange their ballast tanks with saltwater before arriving at a port, something that is already required of overseas ships arriving in the Great Lakes.

Conservationists who support the new ballast bill point to the EPA's plan to essentially do nothing new for the Great Lakes as evidence that the ballast problem is far from fixed, and that a new bill is needed.

"The fact that we have clarification that the EPA has the authority (to regulate the shipping industry) doesn't mean the problem is solved," says Jennifer Nalbone of the conservation group Great Lakes United. "It's still a crisis."

Lawsuits and laws

Public comment on the EPA proposal ends Aug. 1, and the conservationists who sued to enforce the Clean Water Act are hopeful they will be able to persuade the agency to adopt more stringent ballast regulations. If the agency does not, they are willing to force the issue - into court again, if necessary.

It's a strategy others say has proved effective in pushing the ballast issue forward.

"There would be no way, shape or form that the shipping community would be anywhere near this table if they were not afraid of being regulated by the Clean Water Act. No way," says Henry Henderson, director of the Midwest office of the Natural Resources Defense Council.

Almost all conservation groups have said they support a moratorium on the overseas freighters in the Great

Lakes if the ballast problem cannot be solved with a new law. It's a complicated prospect, given the fact that Canada jointly owns the locks between the Great Lakes and the Atlantic Ocean, but Feingold has said he would consider such a move if Congress fails to act.

A relatively small number of ships would be affected; last year, an average of fewer than two overseas ships per day sailed up the St. Lawrence Seaway and into the Great Lakes.

"Hopefully it won't come to that, but I would not completely take it off the table on the grounds that it's politically unacceptable," Feingold said last week. "What's unacceptable is the destruction of the Great Lakes."