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May 5, 2015

Joint Committee on Finance

Paper #477

Ballast Water Discharge Fees (DNR -- Environmental Quality)

[LFB 2015-17 Budget Summary: Page 324, #7]

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.

Under 2009 Act 28, DNR was authorized to issue a general permit authorizing oceangoing and lake vessels of 79 feet or longer to discharge ballast water into Wisconsin waters, under specified permit requirements. A general permit authorizes discharges from specified categories or classes of point sources. Ballast water is the ocean or lake water that ships pump into, or discharge from, onboard tanks to balance the vessels as they load and unload cargo. DNR issued a ballast water discharge general permit, effective February 1, 2010, with a five-year term. As of March, 2015, 324 vessels have active permit coverage under the Wisconsin general permit, including 213 oceangoing ships, and 111 "lakers" that only travel between Great Lakes ports. All of the lakers are from out-of-state.

DNR is statutorily authorized to charge fees for the ballast water discharge permit, and deposit the fees in a program revenue appropriation for program administration. The fees include a: (a) \$1,200 application fee; and (b) \$345 annual permit fee. Currently, the statutory fees end on December 31, 2015. (2013 Act 20 extended the fee sunset from June 30, 2013.)

DNR collected \$758,300 in fee revenues in the first four years of 2010-11 through 2013-14, including \$117,900 in 2013-14. In 2014-15, the Department is authorized \$309,500 PR with 3.0 PR positions for administration of the program.

GOVERNOR

Repeal the December 31, 2015, sunset on ballast water discharge permit fees, making the fees permanent.

DISCUSSION POINTS

1. Ships 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. Major examples of invasive species believed to be introduced to the Great Lakes by ballast water are zebra mussels and quagga mussels. Invasive species can cause damage to power plant pipes, drinking water facilities, marinas, native species, and ecosystems.

2. More ballast water is discharged into the Lake Superior ports of Superior, Wisconsin, and Duluth, Minnesota than into any other Great Lakes port. 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, or in ports around the world. Milwaukee and Green Bay are also major cargo loading ports in Wisconsin.

3. There have been many international and national discussions during the past several years regarding the concerns of ballast water discharge of pollutants and invasive species. 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 the "International Convention for the Control and Management of Ship's Ballast Water and Sediments." The IMO ballast water discharge management procedures and standards set requirements for how many living biological organisms are allowed in a specified volume of discharged ballast water after treatment.

4. As of March 10, 2015, the IMO Convention is not yet in force but has been ratified by 44 countries representing 32.9% of world merchant shipping tonnage. It will have the effect of international law 12 months after it is ratified by 30 countries representing 35% of world merchant shipping tonnage. (Thus, enough countries have ratified it, and when additional ratifications increase the percentage of world shipping tonnage above 35%, it will go into effect 12 months later.) 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. If the IMO Convention goes into effect without U.S. ratification, American vessels will have to comply with the requirements when they travel to other countries and ships entering the Great Lakes from other countries will have systems that comply with IMO standards. DNR officials believe all American vessels and vessels from other countries will be required to comply with IMO standards wherever they are in the world.

5. In response to U.S. District and Circuit Court orders, the U.S. Environmental Protection Agency (EPA) issued a federal permit known as a vessel general permit (VGP) on December 19, 2008, effective February 6, 2009, and a revised general vessel permit on March 28,

2013, effective December 19, 2013. The EPA permit requires oceangoing ships entering U.S. waterways to exchange the water in ballast tanks at least 200 miles from shore (also known as ballast water exchange) or to rinse empty ballast tanks with salt water to kill aquatic organisms. There is no EPA permit fee. The 2013 EPA permit continues to be consistent with IMO standards, requires ballast water exchange in most cases for oceangoing vessels, and does not regulate lakers that only operate in the Great Lakes.

6. The U.S. Coast Guard published a final rule on March 23, 2012, effective June 21, 2012, to establish ballast water treatment standards for vessels operating in U.S. waters and adopted the IMO standards. The U.S. Coast Guard rule requires ships to exchange the ballast water in their ballast tanks at sea, but does not require it if a ship installs a treatment system approved by the Coast Guard. The Coast Guard plans to approve types of treatment system for use by vessels in U.S. waters, but has not done so yet. On April 15, 2013, the Coast Guard issued a list of alternate management treatment systems that have been approved by foreign governments. The Coast Guard is in the process of testing these systems to determine if it will approve the systems for use in U.S. waters, but has not yet approved any such systems. The Coast Guard plans to sunset the ballast water exchange requirement for oceangoing ships that install a treatment system approved by the Coast Guard. The Coast Guard requires testing of treatment systems in salt water before it will approve the system, but does not require testing in fresh water. (The Great Ships Initiative in Superior, Wisconsin, is testing freshwater treatment systems for the Coast Guard.)

7. The Wisconsin general permit for ballast water discharge includes the IMO standards, requires ballast water exchange for oceangoing ships, and specifies use of best management practices for lakers. The Wisconsin permit reissued in 2015 also includes ballast water treatment requirements for lakers following the first dry dock after March 30, 2018. (This would be the time when a ship is taken out of the water for periodic maintenance below the water line.) It is stricter than the EPA permit because it applies to lakers as well as oceangoing ships, and requires ballast water exchange sooner than the EPA permit does. (The EPA permit states that if a vessel has not been in a freshwater port for more than 30 days before entering the Great Lakes, it does not need to perform ballast water exchange before entering. The Wisconsin permit requires it before entering Wisconsin ports, regardless of the number of days since the vessel was last in a fresh water port.) The Wisconsin permit is stricter than Coast Guard standards because the state permit requires ballast water exchange in addition to use of Coast Guard-approved treatment systems, and requires that if treatment system technologies are approved by the Coast Guard, they must have been tested and shown to work in fresh water. (Treatment systems that might eventually be approved by the Coast Guard for use in salt water would not necessarily work in fresh water.)

8. DNR officials indicate the Wisconsin requirements supersede the EPA permit in the state because EPA has delegated authority to administer federal Clean Water Act provisions to Wisconsin. The EPA permit applies in states that do not have their own state permit.

9. Minnesota issued a ballast water discharge general permit on September 24, 2008, and reissued it on October 11, 2013. Minnesota charges an application fee of \$1,240 and an annual permit fee of \$345. Minnesota adopted the IMO standards and timeline, and requires ballast water treatment for lakers following the first dry dock after March 30, 2018 (the same as the Wisconsin

reissued permit). DNR officials indicate the Minnesota and Wisconsin ballast discharge requirements are basically the same, including in the reissued Wisconsin permit.

10. It is probable that national and international discussions related to ballast water discharge during the next few years will include issues affecting Wisconsin ports such as: (a) what types of technology will be approved by the Coast Guard for use as treatment systems on oceangoing vessels and lakers; (b) whether any treatment systems approved by the Coast Guard will be shown to work in fresh water; (c) whether EPA will require the use of ballast water exchange for ships that install Coast Guard-approved treatment systems; and (d) when enough countries will adopt the IMO standards to put the international convention into effect as international law and how that will impact the ballast water management practices of ships that enter the Great Lakes.

11. The Wisconsin general permit was issued effective February 1, 2010, and expired on January 31, 2015. All vessels will continue to be covered under the existing permit until a new permit is issued. DNR issued the revised general permit effective April 1, 2015. All currently-permitted vessels are required to comply with the terms and conditions of the new permit. Currently-permitted vessels also have to pay one \$1,200 application fee when the five-year term of their current permit is up in order to renew the permit, and the \$345 annual fee every year that they use a Wisconsin port.

12. The three DNR wastewater specialists currently authorized under the program are located in the Madison central office, Superior, and Milwaukee. The Madison staff person issues permits to ship owners, worked on the general permit revisions that just went into effect, and coordinates ballast water discharge activities with other states, EPA, and the Coast Guard. The Superior and Milwaukee staff persons 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.

13. The two Wisconsin DNR inspectors are the only inspectors on the Great Lakes who only inspect ballast water discharge practices. The Coast Guard conducts ballast water inspections of ships entering the St. Lawrence Seaway system, but generally does not inspect ballast water management practices of ships after they enter the Great Lakes, or that only operate within the Great Lakes. Coast Guard inspections of ships within the Great Lakes focus on homeland security, immigration, and safety. DNR officials indicate that Minnesota has a field inspector who spends a small amount of time on ballast water. EPA does not inspect ships that discharge ballast water in the Great Lakes.

14. The Governor's Executive Budget Book states the permanent extension of the fees "will allow the department to continue inspections of ballast water while monitoring whether new federal standards are adequate to protect Wisconsin waters." The 2013 Governor's Executive Budget Book included the same statement as the rationale for continuing the fees for two years, from 2013 to 2015, instead of permanently. Administration officials indicate the reason the current budget would continue the fees permanently, rather than for two years, is they have not seen any indications from EPA or the Coast Guard that those agencies will make changes in ballast water

discharge requirements within the next two years, so it makes sense to eliminate the fee sunset, and respond to any future federal changes if and when they occur.

15. Some may argue that it is appropriate to extend the statutory ballast water fees permanently because: (a) enough is currently known about the status of federal and international actions related to ballast water to justify making the program permanent; (b) the IMO standards will probably go into effect during the biennium, and will apply to U.S. ships traveling to foreign waters; (c) the inspections and regulatory activities of the current program are a way of slowing the spread of invasive species, especially given the costs of fighting invasive species that are already present in the Great Lakes, and should be continued; and (d) the fees paid by vessels from out-of-state, or from other countries provide a way of supporting state efforts to protect Wisconsin infrastructure (such as municipal and industrial water intake pipes), recreational boating, and ecosystems from invasive species brought from other parts of the world.

16. Alternatively, some may argue that the fees do not need to be continued because: (a) federal regulations are expected to be sufficient to control ballast water discharges from oceangoing vessels; (b) regulation of vessels that operate only in fresh water may not be necessary; (c) inspections are not needed for ships entering Wisconsin ports; (d) voluntary compliance of vessels from other states and countries may occur without a state inspection program; and (e) the state fees could deter some vessels from using Wisconsin ports.

17. DNR performed 54 inspections of vessels in 2013, and 50 in 2014. The numbers were smaller than the 72 inspections in 2012 because of a position vacancy in Superior. During 2013 through 2014, approximately 41% of inspections were performed in Superior on Lake Superior, 45% in Milwaukee on Lake Michigan, 13% in Green Bay, and 1% in Sturgeon Bay. The shipping season generally extends from approximately March until December or January. A total of 324 vessels currently have permits under the program, some of which are one-time visitors to Wisconsin ports, and some of which return multiple times. Since the beginning of the program, 56 other vessels have obtained permits and then terminated coverage. All of the permitted ships come from other states or other countries. DNR officials indicate the Department's goal is to inspect approximately 25% of the vessels that visit Wisconsin ports. They also indicate if the Superior vacancy is not filled, the Department can probably inspect approximately 15 to 20% of vessels that arrive in the state.

18. The following table shows revenues and expenditures in 2013-14 through 2016-17. DNR collected \$758,300 in the first four years of fee collection, from 2010-11 through 2013-14. DNR anticipates it will collect \$101,000 in 2014-15, for average annual revenues of \$171,900 during the first five-year term of the general permit. During 2010-11 through 2014-15, DNR voluntarily reduced expenditures below authorized levels, to approximately \$137,000 annually, to help revenues last over the five-year term of the permit until application fees for the revised permit are received in 2015-16. DNR is also transferring a total of \$61,200 from the program revenue account balance to the general fund between 2011-12 and 2014-15, as part of DNR's plan for meeting legislatively-required lapse requirements for state agencies.

**Ballast Water Discharge Permit Fees -- Estimated Revenues and Expenditures
Under AB 21 / SB 21**

	2013-14 <u>Actual</u>	2014-15 <u>Estimated</u>	2015-16 <u>Bill</u>	2016-17 <u>Bill</u>
Opening Balance	\$218,000	\$177,300	\$111,500	\$274,500
Revenue				
Application fees (\$1,200)	\$34,100	\$18,000	\$241,100	\$90,300
Annual fees (\$345)	<u>83,800</u>	<u>83,000</u>	<u>83,000</u>	<u>83,000</u>
Total Revenue	\$117,900	\$101,000	\$324,100	\$173,300
Total Available	\$335,900	\$278,300	\$435,600	\$447,800
Expenditures – actual or authorized	\$140,400	\$309,500	\$312,900	\$312,900
Planned expenditure reductions	0	-160,900	-170,000	-161,800
Transfer to general fund	<u>18,200</u>	<u>18,200</u>	<u>18,200</u>	<u>18,200</u>
Total Expenditures	\$158,600	\$166,800	\$161,100	\$169,300
Closing Balance	\$177,300	\$111,500	\$274,500	\$278,500
Authorized positions	3.0	3.0	3.0	3.0

19. DNR anticipates approximately 15 new vessels will apply for the permit in each of 2015-16 and 2016-17, and approximately 240 vessels will pay the annual fee during each year of the 2015-17 biennium. (Some permitted vessels do not visit a Wisconsin port every year, and only pay the annual fee in the years they visit Wisconsin ports.) DNR plans to continue holding expenditures to less than authorized levels, in order to make revenues last for the five-year term of the general permit. If the current fees are continued beyond December 31, 2015, additional application fees will be received in 2015-16 (or possibly beginning in 2014-15) for coverage under a revised general permit, which could help pay for staff costs at an average rate of approximately \$140,000 to \$150,000 annually.

20. The table shows that the estimated annual revenue in 2014-15 through 2016-17 is insufficient to pay for the three positions authorized under the program. Currently, the three positions, along with supervisory and other Department staff, are time-coding approximately 2.0 to 2.5 FTE (full-time equivalent) of time on ballast water activities. The other portion of the time of the three positions, which occurs mainly during the non-shipping season, is allocated to other wastewater permitting activities. DNR officials indicate that the Department pays for the non-ballast water activities with wastewater program GPR, available from vacant GPR-funded positions.

21. The Committee could approve the Governor's recommendation to continue to maintain the three designated positions for the program, and to allow DNR to continue to fund their non-ballast water activities in the non-shipping season with GPR. Alternatively, the Committee could delete \$34,600 PR annually and 0.5 PR position [Alternative 4], or \$69,200 PR annually and 1.0 PR position [Alternative 5] of the 3.0 ballast water positions to more closely align authorized expenditures with available revenues and the amount of time being spent on ballast water activities.

22. Under the bill, DNR would be able to continue inspections and compliance work, and to collect fees, on an ongoing basis in the 2015 and subsequent shipping seasons. If the Committee wishes to provide the greatest certainty for continuance of the ballast water regulation program, it could make the fees permanent [Alternative 1].

23. Another option would be to extend the statutory fees for two or four years instead of making the fees permanent, and provide a sunset of December 31, 2017 [Alternative 2], or December 31, 2019 [Alternative 3]. This would be anticipated to provide continuity to the program, particularly with inspections of vessels in shipping seasons 2015 through either 2017 or 2019, and would allow the state additional time to coordinate state requirements with evolving national and international requirements.

24. If the Committee chooses to maintain current law [Alternative 6], no revenue would be received after December 31, 2015. DNR officials indicate that if the fees are not continued, the Department would discontinue the program because it would no longer be funded. They further indicate they would terminate the state general permit for ballast water discharge, notify all permit holders that the permit is no longer in effect, discontinue inspections, and not enforce any ballast water discharge permits. EPA would continue to have a vessel discharge permit in effect.

25. If the fees are not continued, there will not be sufficient revenue to fund the positions for the entire biennium. However, DNR could choose to continue the current level of expenditures of up to approximately \$150,000 annually, and the revenues could last through the 2015 and 2016 shipping season. Under this option, the Committee could choose to delete \$69,200 and 1.0 position in 2015-16, to reflect current levels of expenditure, and \$156,500 and 3.0 positions in 2016-17, to provide six months of expenditure authority to use potential remaining revenues after the termination of fees [Alternative 6].

ALTERNATIVES

1. Approve the Governor's recommendation to repeal the December 31, 2015, sunset on ballast water fees, making the fees permanent.
2. Delete the provision and instead extend the statutory ballast water fees until December 31, 2017.
3. Delete the provision and instead extend the statutory ballast water fees until December 31, 2019.
4. In addition to Alternative 1, 2, or 3, delete \$34,600 PR and 0.5 PR position annually from the ballast water fees appropriation.

ALT 4	Change to Bill	
	Funding	Positions
PR	- \$69,200	- 0.50

5. In addition to Alternative 1, 2, or 3, delete \$69,200 PR and 1.0 PR position annually from the ballast water fees appropriation.

ALT 5	Change to Bill	
	Funding	Positions
PR	- \$138,400	- 1.00

6. Delete provision. (The fees would sunset on December 31, 2015.) In addition, delete \$69,200 PR and 1.0 PR position in 2015-16 and \$156,500 PR and 3.0 PR positions in 2016-17.

ALT 6	Change to Bill	
	Funding	Positions
PR	- \$225,700	- 3.00

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