

## **Northwest Environmental Advocates ❖ The Ocean Conservancy Baykeeper**

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## **FEDERAL COURT ORDERS U.S. EPA TO REGULATE SHIPS DUMPING BALLAST WATER**

Finding that EPA's regulation exempting ballast water discharges from the Clean Water Act is "plainly contrary to the congressional intent," a federal court ordered the U.S. Environmental Protection Agency (EPA) Monday to come up with new regulations in two years. The order follows the court's finding last year that EPA had illegally exempted ships' ballast water discharges from Clean Water Act permit requirements. Today's ruling directs EPA to take specific action by September 30, 2008 to ensure that shipping companies comply with the Clean Water Act and restrict the discharge of invasive species in ballast water.

Deborah Sivas, Director of the Stanford Law School Environmental Law Clinic and representing the three plaintiff groups, noted that, "If EPA had spent the last seven years developing a permitting program for ballast water instead of fighting this court battle, not only would our water be safer but our economy would be better protected. Invasive species come at a tremendous cost to both the environment and taxpayers. "

Nina Bell, Executive Director of Northwest Environmental Advocates, one of the plaintiffs, said the court order will shift some of the burden of invasive species from taxpayers to shippers. "This is a very important ruling for the taxpayers, American businesses, and environment that currently pay the huge price of EPA's continuing refusal to implement the Clean Water Act. Now we have a fighting chance to prevent further invasions of species that are clogging the intake pipes of drinking water facilities and power plants, harming the commercial fishing industry, and destroying habitat," said Bell. "To regulate ballast water has never required that we reinvent the wheel; the Clean Water Act could have been effectively controlling these

discharges for over thirty years,” she added.

The absence of effective federal action, combined with the high cost of invasive species to the environment, industries, and drinking water sources, has led numerous states to pass their own laws. Michigan will require shippers to have permits by early next year. In California, a bill is pending that would adopt the most strict limitations on the discharge of ballast-borne invasive species in the world. Six Great Lakes states – New York, Michigan, Pennsylvania, Illinois, Minnesota, and Wisconsin – joined the environmental groups’ lawsuit to persuade the court to require a federal permitting program.

Tim Eichenberg, Pacific Region Director of The Ocean Conservancy, cautioned that shippers have already shifted their effort from fighting the groups’ lawsuit to lobbying Congress. “The shipping industry has had a free ride while the public has paid billions each year. Now they are pushing for Congress to grant a special exemption from the Clean Water Act, to preserve their ability to pollute at the nation’s expense,” said Eichenberg. “Not only do they want an exemption from the Clean Water Act but they also want to prevent the states from taking any action to protect themselves from these prohibitively expensive invasions,” he added.

Live species from other countries are carried to U.S. waters in ballast water which ships use for stabilization. The ballast water is discharged into bays, estuaries, and the Great Lakes as ships approach port and when cargo for export is loaded. Over 21 billion gallons of ballast water from international ports is discharged into U.S. waters each year. The cost of invasive species to the U.S. economy is estimated in the billions of dollars annually.

"This is one of the worst types of pollution because the pollutants multiply and their impacts grow. It deserves every bit as much oversight and regulation as other dangerous contaminants," said Leo P. O'Brien, Executive Director of Baykeeper. "It is time for industry to do its fair share and to stop dumping its problems on the public.

The lawsuit was brought by Northwest Environmental Advocates, The Ocean Conservancy, and Baykeeper, three of the signers of a petition filed with EPA in January 1999. EPA denied the petition in 2003, triggering the lawsuit.

The Environmental Law Clinic at Stanford Law School and Pacific Environmental Advocacy Center (PEAC) at Lewis and Clark Law School in Portland, OR, represent the three organizations.

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