Meeting with OMB – EPA Final Rule for Vessel Incidental Discharge National Standards of Performance (RIN 2040-AF92)

Lake Carriers' Association

Office of Management and Budget
July 24, 2024

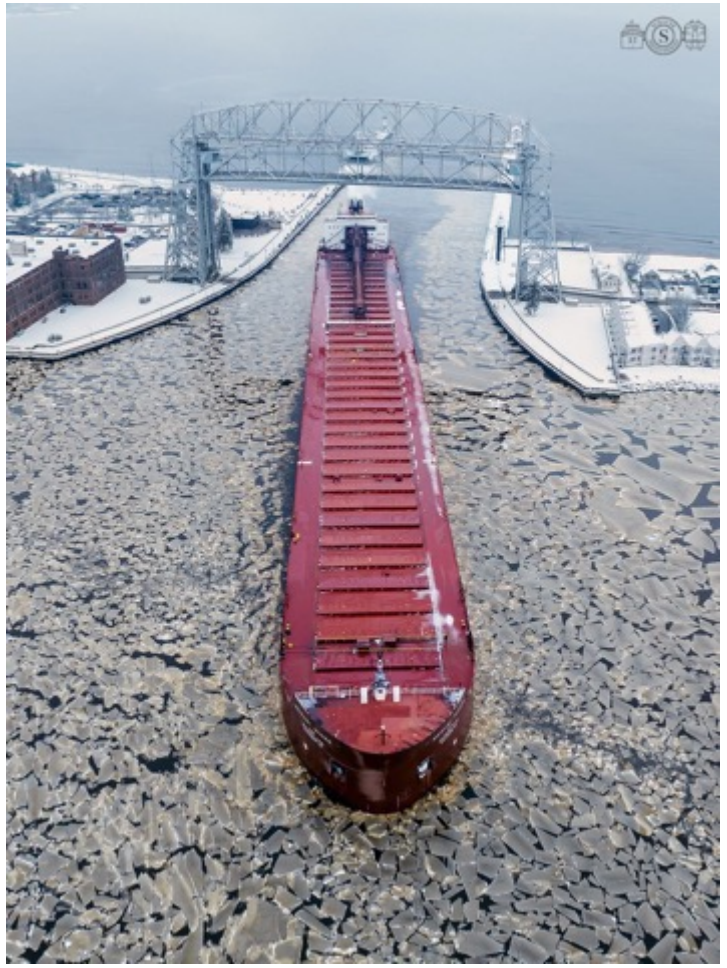
Focus of Today's Meeting

- LCA agrees with two key EPA positions in the Proposal and Supplementary Notice:
  - Exempting existing Lakers from BWMS installation requirements
  - Creating New Laker subcategory of vessels
- LCA disagrees with three key EPA positions in the Proposal and Supplementary Notice:
  - New Laker timeline for compliance
  - Equipment Standard
  - Binational Consistency

LAKE CARRIERS' ASSOCIATION

What is a U.S. Flagged Laker?

- Vessel primarily confined to four Great Lakes – Lake Superior, Lake Michigan, Lake Huron, and Lake Erie.
- Built:
  - Original: 1906 to 2020; Median Year = 1976
  - Most Recent Modification: 1946 to 2019; Median Year = 1980.5
- Vessel designed to operate in the Great Lakes.
  - Low depth profile
  - Uncoated ballast tanks
- Quick offloading (self-unloading vessels) of goods requires high ballast water pumping rates
- Truncated operating year due to ice and Soo Locks winter closure



LAKE CARRIERS' ASSOCIATION

Vessel Size

1013 ft

- Two largest LCA vessel classes

767 ft

- Largest Canadian-flagged vessel (typically trades inside and outside the Great Lakes)

730.5 ft

LAKE CARRIERS' ASSOCIATION

LCA Agreements with EPA's Proposal

- Exempting all existing Lakers from having to install and operate a ballast water management system (BWMS).
- New Laker subcategory is needed.
  - Reserving a subcategory for New Lakers is the best means to deal with new vessels and the need for technology to develop (i.e., requiring future new-build Lakers to install newly developed BWMS that are compatible with Laker operations).

LCA Disagreements with EPA's Proposal

- Definition of New Laker and Timeline for New Laker compliance
- Defining Best Available Technology Economically Achievable (BAT) as an equipment standard
- Need for binational consistency

LAKE CARRIERS' ASSOCIATION

New Laker Definition & Compliance Timeline

- Due to ongoing BWMS issues, the definition of a New Laker and its compliance timeline should not be determined until BWMS that are compatible with U.S. Laker operations have been type approved by the USCG.
- New Laker subcategory can be reserved to allow for technology improvements and can be further subcategorized to represent the various types of Lakers.

LAKE CARRIERS' ASSOCIATION

Equipment Standard as BAT

- BAT is well defined in VIDA and existing regulations.
- No precedent exists for BAT or Best Management Practices (BMPs) to include an equipment standard (i.e., requiring equipment installation without need to meet a discharge standard).
- The Clean Water Act includes an equipment standard for marine sanitation devices – but this requirement is not subject to a BAT requirement and is not a BMP.
- EPA's decision to define BAT or BMPs as an equipment standard is contrary to law, is inconsistent with the plain language of VIDA itself, and runs afoul of the Supreme Court's recent decision in Loper Bright.

VIDA - BAT

- 33 U.S.C 1322 (p)(1)(F) – Best available technology economically achievable means:
  - i. best available technology economically achievable (within the meaning of section 1311(b)(2)(A) of this title);
  - ii. best available technology economically achievable (within the meaning of section 1314(b)(2)(B) of this title); and
  - iii. best available technology, as determined in accordance with section 125.3(d)(3) of title 40, Code of Federal Regulations (or successor regulations)
- BAT has never included an equipment standard.

Page 515 TITLE 33—NAVIGATION AND NAVIGABLE WATERS § 1322

§ 1322. Marine sanitation devices; discharges incidental to the normal operation of vessels

(a) Definitions

In this section, the term—

(1) "new vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation, on the navigable waters, the construction of which is initiated after promulgation of standards and regulations under this section;

(2) "existing vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

(3) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(4) "United States" includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands;

(5) "marine sanitation device" includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage;

(6) "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater;

(7) "manufacturer" means any person engaged in the manufacturing, assembling, or importation of marine sanitation devices, marine pollution control device equipment, or vessels subject to standards and regulations promulgated under this section;

(8) "person" means an individual, partnership, firm, corporation, association, or agency of the United States, but does not include an individual on board a public vessel;

(9) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(10) "commercial vessels" means those vessels used in the business of transporting property for compensation or hire, or in transporting property in the business of the owner, lessee, or operator of the vessel;

(11) "graywater" means galley, bath, and shower water;

(12) "discharge incidental to the normal operation of a vessel"—

(A) means a discharge, including—

(i) graywater, bilge water, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or a catapult, or from a protective, preservative, or absorptive application to the hull of the vessel; and

(ii) a discharge in connection with the testing, maintenance, and repair of a system described in clause (i) whenever the vessel is waterborne; and

(B) does not include—

(i) a discharge of rubbish, trash, garbage, or other such material discharged overboard;

(ii) an air emission resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator; or

(iii) a discharge that is not covered by part 122.3 of title 40, Code of Federal Regulations (as in effect on February 16, 1996);

(13) "marine pollution control device" means, except as provided in subsection (p), any equipment or management practice, for installation or use on board a vessel of the Armed Forces, that is—

(A) designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel; and

(B) determined by the Administrator and the Secretary of Defense to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations set forth in subsection (n)(2)(B); and

(14) "vessel of the Armed Forces" means—

(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and

(B) any vessel owned or operated by the Department of Transportation that is designated by the Secretary of the department in which the Coast Guard is operating as a vessel equivalent to a vessel described in subparagraph (A).

(b) Federal standards of performance

(1) As soon as possible, after October 18, 1972, and subject to the provisions of section 1254(j) of this title, the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as "standards") which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities. Such standards and standards established under subsection (c)(1)(B) of this section shall be consistent with maritime safety and the marine and navigation laws and regulations and shall be coordinated with the regulations issued under this subsection by the Secretary of the department in which the Coast Guard is operating. The Secretary of the department in which the Coast Guard is operating shall promulgate regulations, which are consistent with standards promulgated under this subsection and subsection (c) of this section and with maritime safety and

LAKE CARRIERS' ASSOCIATION

VIDA – Best Management Practice

- 33 U.S.C 1322 (p)(1)(H) – BMP definition:
  - i. In general - means a schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of –
    - I. The waters of the United States
    - II. The waters of the contiguous zone.
  - ii. Inclusions – the term includes any treatment requirement, operating procedure, or practices to control -
    - I. Vessel runoff;
    - II. Spillage leaks;
    - III. Sludge or waste disposal; or
    - IV. Drainage from raw material storage.
- BMPs have never included an equipment standard.

§ 1322 TITLE 33—NAVIGATION AND NAVIGABLE WATERS Page 522

of the United States or the waters of the contiguous zone, if the owner or operator of the vessel is not using any applicable management practice meeting standards established under this subsection.

(p) Uniform national standards for discharges incidental to normal operation of vessels

(1) Definitions

In this subsection:

(A) Aquatic nuisance species

The term "aquatic nuisance species" means a nonindigenous species that threatens—

(i) the diversity or abundance of a native species;

(ii) the ecological stability of—

(I) waters of the United States; or

(II) waters of the contiguous zone; or

(iii) a commercial, agricultural, aquacultural, or recreational activity that is dependent on—

(I) waters of the United States; or

(II) waters of the contiguous zone.

(B) Ballast water

(i) In general

The term "ballast water" means any water, suspended matter, and other materials taken onboard a vessel—

(I) to control or maintain trim, draught, stability, or stresses of the vessel, regardless of the means by which any such water or suspended matter is carried; or

(II) during the cleaning, maintenance, or other operation of a ballast tank or ballast water management system of the vessel.

(ii) Exclusion

The term "ballast water" does not include any substance that is added to the water described in clause (i) that is directly related to the operation of a properly functioning ballast water management system.

(C) Ballast water discharge standard

The term "ballast water discharge standard" means—

(i) the numerical ballast water discharge standard established by section 151.1511 or 151.2030 of title 33, Code of Federal Regulations (or successor regulations); or

(ii) if a standard referred to in clause (i) is superseded by a numerical standard of performance under this subsection, that superseding standard.

(D) Ballast water exchange

The term "ballast water exchange" means the replacement of water in a ballast water tank using 1 of the following methods:

(i) Flow-through exchange, in which ballast water is flushed out by pumping in midocean water at the bottom of the tank if practicable, and continuously overflowing the tank from the top, until 3 full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(ii) Empty and refill exchange, in which ballast water taken on in ports, estuarine waters, or territorial waters is pumped out until the pump loses suction, after which the ballast tank is refilled with midocean water.

(E) Ballast water management system

The term "ballast water management system" means any marine pollution control device (including all ballast water treatment equipment, ballast tanks, pipes, pumps, and all associated control and monitoring equipment) that processes ballast water—

(i) to kill, render nonviable, or remove organisms; or

(ii) to avoid the uptake or discharge of organisms.

(F) Best available technology economically achievable

The term "best available technology economically achievable" means—

(i) best available technology economically achievable (within the meaning of section 1311(b)(2)(A) of this title);

(ii) best available technology (within the meaning of section 1314(b)(2)(B)) of this title; and

(iii) best available technology, as determined in accordance with section 125.3(d)(3) of title 40, Code of Federal Regulations (or successor regulations).

(G) Best conventional pollutant control technology

The term "best conventional pollutant control technology" means—

(i) best conventional pollutant control technology (within the meaning of section 1311(b)(2)(E) of this title);

(ii) best conventional pollutant control technology (within the meaning of section 1314(b)(4) of this title); and

(iii) best conventional pollutant control technology, as determined in accordance with section 125.3(d)(2) of title 40, Code of Federal Regulations (or successor regulations).

(H) Best management practice

(i) In general

The term "best management practice" means a schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of—

(I) the waters of the United States; or

(II) the waters of the contiguous zone.

(ii) Inclusions

The term "best management practice" includes any treatment requirement, operating procedure, or practice to control—

(I) vessel runoff;

(II) spillage or leaks;

(III) sludge or waste disposal; or

(IV) drainage from raw material storage.

(I) Best practicable control technology currently available

The term "best practicable control technology currently available" means—

LAKE CARRIERS' ASSOCIATION

Binational Consistency

- VIDA did not include binational consistency as criteria to be considered.
- The EPA's decision to include binational consistency, which is a standard that does not appear in the statute, also runs afoul of the Supreme Court's recent decision in Loper Bright.
- EPA reference to comments requesting binational consistency is misleading. Commenters did not request an equipment standard such as in Transport Canada's ballast water requirements.
- Role of the U.S. – Canada Regulatory Cooperation Council

LAKE CARRIERS' ASSOCIATION

Binational Consistency

- U.S.-Canada Regulatory Cooperation Council (https://www.trade.gov/rcc) is the forum to discuss regulatory barriers and identify opportunities for regulatory cooperation.
- EPA should complete its regulatory process according to U.S. laws and precedents, then differences can be negotiated with Canada.
- Canada was aware of the U.S. ballast water regulations and VIDA and chose not to draft regulations consistent with U.S. requirements.
- U.S. regulations should not be adopted to benefit Canadian vessels in the name of binational consistency, particularly for U.S. vessels primarily engaged in domestic commerce.

DEPARTMENT OF COMMERCE · UNITED STATES OF AMERICA

INTERNATIONAL TRADE ADMINISTRATION

LAKE CARRIERS' ASSOCIATION

Summary

- The LCA and its members request OMB ensure that the EPA final VIDA rule:
  - Continues to exempt existing Lakers,
  - NOT establish a fixed definition or compliance timeline for New Lakers,
  - NOT create a new BAT precedent by including an equipment standard, and
  - NOT base any VIDA requirements on binational consistency.

THE FLEET – VESSELS (and tonnage)

American Steamship Company (ASC) Williamsville, NY	AMERICAN CENTURY (35,923) AMERICAN INTEGRITY (35,652) AMERICAN SPIRIT (34,569) BURNS HARBOR (35,652) INDIANA HARBOR (35,923)
Andrie LLC Muskegon, MI	G. L. OSTRANDER (tug)/INTEGRITY (barge) (7,755) SAMUEL DE CHAMPLAIN (tug)/INNOVATION (barge) (7,609)
Armstrong Steamship Company Williamsville, NY	WALTER J. MCCARTHY, JR. (35,923)
Central Marine Logistics, Inc. Griffith, IN	EDWARD L. RYERSON (12,170) JOSEPH L. BLOCK (14,955) WILFRED SYKES (11,701)
Great Lakes Fleet Duluth, MN	ARTHUR M. ANDERSON (12,341) CASON J. CALLAWAY (12,309) EDGAR B. SPEER (34,620) EDWIN H. GOTT (35,592) GREAT REPUBLIC (12,158) JOHN G. MUNSON (15,179) PHILIP R. CLARKE (12,341) PRESQUE ISLE (tug/barge) (24,199)
Inland Lakes Management, Inc. Muskegon, MI	ALPENA (8,018)
Interlake Logistics Solutions Ludington, MI	UNDAUNTED (tug)/PERE MARQUETTE 41 (barge) (3,982)
Lake Michigan Carferry Service, Inc. Ludington, MI	BADGER (4,244)
Port City Marine Services, Inc. Muskegon, MI	BRADSHAW McKEE (tug)/ST. MARYS CONQUEST (barge) (5,827) CAROLINE McKEE (tug)/COMMANDER (barge) (6,719) PRENTISS BROWN (tug)/ST. MARYS CHALLENGER (barge) (5,333)
Soo Marine Supply, Inc. Sault Sainte Marie, MI	OJIBWAY (53)
Soo Maritime Services Sault Sainte Marie, MI	BIDE-A-WEE (90) HIAWATHA (90) HOLIDAY (90)
The Interlake Steamship Company Middleburg Heights, OH	DOROTHY ANN (tug)/PATHFINDER (barge) (11,810) HERBERT C. JACKSON (12,292) HON. JAMES L. OBERSTAR (16,284) JAMES R. BARKER (34,728) JOHN SHERWIN (15,995) KAYE E. BARKER (11,949) LEE A. TREGURTHA (14,671) MARK W. BARKER (15,507) MESABI MINER (34,728) PAUL R. TREGURTHA (36,360) STEWART J. CORT (32,930)
VanEnkevort Tug & Barge, Inc. Escanaba, MI	CLYDE S. VANENKEVORT (tug)/ERIE TRADER (barge) (17,772) DIRK S. VANENKEOVRT (tug)/MICHIGAN TRADER (barge) (16,664) JOYCE VANENKEVORT (tug)/GREAT LAKES TRADER (barge) (17,002)

LAKE CARRIERS' ASSOCIATION

Thank you

- Jim Weakley, President
  (440) 333-9995 / weakley@lcaships.com
- Eric Peace, Vice President
  (440) 333-9996 / peace@lcaships.com
- Debra DiCianna, Director of Environmental & Regulatory Affairs
  (440) 333-9994 / dicianna@lcaships.com
- Katie Gumeny, Office Manager/Treasurer
  (440) 333-9997 / gumeny@lcaships.com

LAKE CARRIERS' ASSOCIATION