

REVISE BALLAST WATER STANDARDS FOR PORT OPERATIONS PERMIT

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House Bill 6465 as reported from committee
Sponsor: Rep. Dan Lauwers
Committee: Commerce and Trade
Complete to 12-4-18

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 667 of 2018)

SUMMARY:

House Bill 6465 would amend the Natural Resources and Environmental Protection Act (NREPA) to allow compliance with U.S. Coast Guard ballast water standards as a standard for issuing permits to oceangoing vessels engaged in port operations in Michigan. These standards would be an option alongside existing standards promulgated by the Department of Environmental Quality (DEQ).

Currently under Part 31 (Water Resource Protection) of NREPA, oceangoing vessels engaged in port operations in Michigan are required to obtain a permit from the DEQ. The DEQ issues a permit only if the applicant can demonstrate that the vessel will not discharge aquatic nuisance species or, if the vessel discharges ballast water or waste or waste effluent, that that vessel will use environmentally sound technology and methods, as determined by the DEQ, to prevent the discharge of aquatic nuisance species.¹

Under House Bill 6465, a permit would still be required, but DEQ would issue a permit only if the applicant could demonstrate that the vessel complies with 33 CFR 151.1510 as then in effect or that the vessel will use environmentally sound technology and methods approved by the DEQ that prevent the discharge of aquatic nuisance species.²

Additionally, all of the following would apply:

- The grant by the Coast Guard of an extension to the implementation schedule under 33 CFR 151.1513 or the exchange of ballast water under 33 CFR 151.1510(a)(1) or saltwater flushing under 33 CFR 401.30 alone is not considered compliance with the *federal aquatic nuisance rule* for the purposes of the permit.³
- A vessel discharging ballast water must employ a ballast water management system approved under 33 CFR 151.1510(a)(3) or a ballast water treatment method approved by the DEQ.
- A vessel must carry out an exchange of ballast water or saltwater flushing and comply with other applicable requirements of 33 CFR Part 151, subpart C [Ballast

¹ For more information on the DEQ permitting process, see “Ballast Water Control”:

https://www.michigan.gov/deq/0,4561,7-135-3313_71618_3682_3713-153446--,00.html

² 33 CFR 151.1510, Ballast water management requirements: https://www.ecfr.gov/cgi-bin/text-idx?node=se33.2.151_11510

³ 33 CFR 151.1513, Extension of compliance date: https://www.ecfr.gov/cgi-bin/text-idx?node=se33.2.151_11513;
33 CFR 401.30, Ballast water and trim: https://www.ecfr.gov/cgi-bin/text-idx?node=se33.3.401_130

Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River], and 33 CFR 401.30.

- A vessel using water from a public water system under 33 CFR 151.1510(a)(4) must utilize a method to sufficiently clean ballast water tanks prior to using water from a public water supply system as ballast water as approved by the DEQ.
- A discharge that may cause or contribute to a violation of a water quality standard is not authorized by the permit.
- If the *federal aquatic nuisance rule* is amended after the date the bill is enacted and the director of the DEQ determines that the amended version of the federal rule provides less protection for the waters of this state from aquatic nuisance species, the applicant must demonstrate that the vessel complies with the *federal aquatic nuisance rule* as in effect immediately before the effective date of the amendment to the rule.
- If, pursuant to a compact of Great Lakes states of which Michigan is a part, Michigan adopts standards that provide more protection for the waters of this state from aquatic nuisance species than the version of the *federal aquatic nuisance rule* otherwise applicable, the standards adopted under the compact apply.

Federal aquatic nuisance rule would mean 33 CFR Part 151, subpart C, and applicable requirements of 33 CFR 151.2050, 151.2060, and 151.2070.⁴

The DEQ could promulgate rules to implement these changes.

MCL 324.3112

BACKGROUND INFORMATION:

Except for two changes described below, House Bill 6465 as introduced is identical to House Bill 5095, which was enrolled on June 12, 2018 and vetoed by the governor on June 29. In his veto message, the governor said that “the bill is ambiguous—at best—on the question of whether the DEQ would be required to issue discharge permits to certain vessels using ‘alternate management systems’ approved by foreign administrations,” and characterized that ambiguity as “[p]otentially increasing the risk for introduction of new aquatic invasive species into the Great Lakes.”

The language of section 3112(6)(b) is one of two differences between the two bills. House Bill 5095 provided that “a vessel discharging ballast water must employ a ballast water management system” beginning on the bill’s date of enactment. House Bill 6465 requires that “a vessel discharging ballast water must employ a ballast water management system approved under 33 CFR 151.1510(a)(3) or a ballast water treatment method approved by the DEQ.”

⁴ 33 CFR 151.2050, Additional requirements—nonindigenous species reduction practices; 33 CFR 151.2060, Reporting requirements; 33 CFR 151.2070, Recordkeeping requirements: <https://www.ecfr.gov/cgi-bin/text-idx?node=pt33.2.151>

The second difference between the two bills is in legislative intent language contained in section 3112(7). House Bill 5095 referred to the intent of the legislature “in adopting the federal aquatic nuisance rule by reference,” while House Bill 6465 refers to legislative intent “in adopting in part the federal aquatic rule by reference.”

FISCAL IMPACT:

House Bill 6465 would have an indeterminate fiscal impact on the Department of Environmental Quality. The bill would require the DEQ to employ U.S. Coast Guard standards for issuing surface water discharge permits to oceangoing vessels engaged in port operations, rather than the current DEQ-specific standards. It is unclear whether these new standards would affect the costs realized by the DEQ in the enforcement of the NREPA-required water protection. It is also unclear whether these new standards would affect Ballast Water Control General (BWCG) Permit revenue. These permit fees include a \$75 application fee effective for five years as well as a \$150 annual renewal fee. A BWCG Permit is just one type of Surface Water Discharge Permit, which collectively generate approximately \$2.8 million in annual revenue for the DEQ. This revenue is deposited to the National Pollutant Discharge Elimination System (NPDES) Fund, which supports the NPDES Nonstormwater Program to protect Michigan’s surface waters from pollution discharges. This fee is scheduled to sunset October 1, 2019.

POSITIONS:

The following organizations indicated support for the bill (11-27-18):

- Michigan Farm Bureau
- Detroit Regional Chamber of Commerce
- Michigan Manufacturers Association

The following organizations indicated a neutral position regarding the bill (11-27-18):

- Michigan United Conservation Clubs
- Michigan Environmental Council
- Michigan League of Conservation Voters

The Michigan Steelhead and Salmon Fishermen’s Association indicated opposition to the bill. (11-27-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.