



Minnesota Pollution Control Agency

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July 21, 2008

Docket Management Facility (M-30)
U.S. Department of Transportation
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, S.E.
Washington, DC 20590-0001

RE: Coast Guard Docket Number USCG-2004-19621
Dry Cargo Residue Discharges in the Great Lakes

In response to the U.S. Coast Guard's proposed rule and current policy on dry cargo residue discharges in the Great Lakes, as noticed in the Federal Register, Vol. 73, No. 101, dated May 23, 2008, the Minnesota Pollution Control Agency (MPCA) provides the following comments:

1. Minnesota solid waste rules prohibit the disposal of solid waste into waters of the State of Minnesota, including Lake Superior. In this case, the solid waste is created when an industrial commodity (coal, taconite, limestone, salt, etc.) is spilled onto ship decks during loading operations. Unless recovered for use, this material becomes a solid waste and must be properly managed. In Minnesota, solid waste disposal is allowed only at permitted solid waste facilities that are properly sited, constructed, and operated to prevent the contamination of surface and ground water. Generators of solid waste are responsible for ensuring that the solid waste they generate or collect is properly disposed at an authorized facility. Minn. R. 7035.0800; Minn. Stat. § 116.081. Unless preempted by federal law, a ship that is disposing its dry cargo residue by dumping it into Minnesota waters, including Lake Superior, may be subject to administrative or judicial penalties for violation of Minnesota laws. Minn. Stat. § 115.071; Minn. Stat. § 116.072.
2. Minnesota water quality rules also apply when an industrial waste is discharged into waters of the state creating nuisance conditions. Minnesota has adopted a general water quality standard prohibiting any discharges that result in nuisance conditions. Minn. R. 7050.0210, subp.2. The washing of taconite dust or coal and coal dust and other dry cargo waste into Lake Superior causes excessive suspended solids during and after the discharge. The Coast Guard is incorrect in its assumption that these materials will not remain in suspension and that the dumping of these materials will not cause nuisance conditions in the coastal waters. Coal has been observed and collected by the MPCA on the shoreline beach of Minnesota Point, Duluth. This coal did not dissolve or dissipate in the waters of the lake but instead, floated and accumulated along the beach in Duluth. This is considered by the MPCA to constitute nuisance conditions prohibited by the cited water quality general standard.

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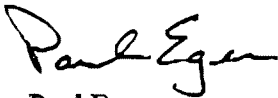
3. The proposed Coast Guard rule on dry cargo residue appears to be in conflict with the U.S. Environmental Protection Agency's proposed NPDES Vessel General Permit for Commercial and Large Recreational Vessels [Docket ID No. EPA-HQ-OW-2008-0055]. Section 2.2.1 of the proposed permit, Deck Washdown and Runoff, requires that the vessel's decks be clear of "debris, garbage, residue and spills prior to conducting deck washdowns and prior to departing from port to prevent these constituents from entering any waste stream." It also states that . . . "discharges from deck washdowns must be free from floating solids . . ." These are permit requirements that will have a direct affect on how dry cargo residue will be allowed to be handled in the near future.

4. In the Federal Register public notice on the proposed dry cargo residue rule, under Part V., Regulatory Evaluation, Subp. E., Federalism, it states that the proposed rule "does not have implications for federalism." However, since the proposed rule appears to preempt Minnesota State law as described above, implications for federalism are present.

5. Although briefly mentioned in the Coast Guard's draft Environmental Impact Statement on the proposed rule, the roles and responsibilities of the onshore loading facilities need to be addressed if this issue is going to be resolved. Efforts need to be made by all parties to assist the loading facilities in determining the cause of the spillages, the means of preventing them and techniques for spillage clean up. Adoption of the proposed rule would create a disincentive for the onshore loading facilities to improve material handling techniques.

Thank you for the opportunity to provide comments on this proposed rule.

Sincerely,



Paul Eger

Assistant Commissioner

Minnesota Pollution Control Agency