ORAL ARGUMENT NOT SCHEDULED

No. 25-1027
(Consolidated with Case Nos. 25-1049 and 25-1052)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LAKE CARRIERS' ASSOCIATION,
Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY AND LEE ZELDIN, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY,
Respondents,

On Petition for Review of Final Agency Action from the United States Environmental Protection Agency 89 Fed. Reg. 82,074 (Oct. 9, 2024)

ENVIRONMENTAL PETITIONERS' INTERVENOR-RESPONDENT BRIEF

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), I certify that the parties, rulings, and related cases to this case are set forth below.

A. Parties:

Petitioners: Petitioner in Case No. 25-1027 is Lake Carriers' Association ("LCA"). Petitioner in Case No. 25-1049 is California State Lands Commission. Petitioners in Case No. 25-1052 are Alliance for the Great Lakes, Environmental Law & Policy Center, Minnesota Environmental Partnership, and National Wildlife Federation ("Environmental Petitioners").

Respondents: In each of the actions, Respondents are the United States Environmental Protection Agency ("EPA") and Lee Zeldin, Administrator of the EPA.

Intervenors: Environmental Petitioners are intervenor-respondents in LCA's Petition for Review in Case No. 25-1027. *See* Order, Doc. No. 2132301 (Aug. 27, 2025). Petitioner LCA is an intervenor-respondent in Environmental Petitioners' Petition for Review in Case No. 25-1052. *Id.* There are no other intervenors in any of the consolidated actions.

Amici Curiae: Michigan Department of Environment, Great Lakes, and Energy and the States of Illinois and Vermont filed an amicus brief seeking reversal of EPA's final agency action, promulgation of the *Vessel Incidental Discharge*

National Standards of Performance, 89 Fed. Reg. 82074 (Oct. 9, 2024), and agreeing with the factual statements and arguments made by, and concurring in the relief sought by, Environmental Petitioners and Petitioner California State Lands Commission. *See* Brief of Amici Curiae Michigan Department of Environment, Great Lakes and Energy and the States of Illinois and Vermont Supporting Reversal of Agency Action, Doc. No. 2151981 (Dec. 26, 2025).

B. Rulings Under Review

Petitioners in each of the consolidated proceedings seek this Court's review of EPA's final agency action, promulgation of the *Vessel Incidental Discharge National Standards of Performance*, 89 Fed. Reg. 82074 (Oct. 9, 2024).

C. Related Cases

The final agency action at issue in this proceeding has not been reviewed previously in this Court nor in any other court. There are no related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

DATED: May 8, 2026

Respectfully Submitted,

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CERTIFICATE OF COUNSEL AS TO SEPARATE INTERVENOR BRIEFS

Pursuant to D.C. Circuit Rule 28(d)(4), I certify that this Court has permitted Environmental Petitioners and Petitioner LCA to file separate Intervenor-Respondent briefs in this consolidated proceeding. *See* Order, Doc. No. 2147493 (Nov. 26, 2025). As explained in the Joint Briefing Proposal submitted by all parties to this consolidated proceeding, Environmental Petitioners' action, Case No. 25-1052, and Petitioner LCA's action, Case No. 25-1027, challenge distinct sections of the EPA's final agency action, *Vessel Incidental Discharge National Standards of Performance*, 89 Fed. Reg. 82074 (Oct. 9, 2024), but those sections each pertain to a class of vessels that operate exclusively on the Great Lakes and St. Lawrence River ("Lakers"). *See* Joint Briefing Proposal, Doc. No. 2128370 (Aug. 1, 2025), at 4–5.

Environmental Petitioners and Petitioner LCA raise directly adverse positions in their actions. Environmental Petitioners challenge EPA's unlawful failure to require *existing* Lakers to install, operate, and maintain Ballast Water Management Systems ("BWMS"), which are effective at killing invasive aquatic nuisance species in ballast water taken in by Lakers before those vessels discharge that ballast water as waste back into the Great Lakes. Petitioner LCA, the industry trade association for Lakers, seeks additional exemption from EPA regulation for *New* Lakers, which are Lakers not yet constructed, such that no Lakers would be required to install, operate, and maintain BWMS. Environmental Petitioners and Petitioner LCA

intervened in the other's action because each believes that disposition of the other's action "may impair or impede the movant's ability to protect their interest." *Id*. at 5–6 (quoting Fed. R. Civ. P. 24(a)(2) and citing Motion of Environmental Organizations for Leave to Intervene, Doc. No. 2101207 (Feb. 18, 2025), and Motion by the Lake Carriers' Association for Leave to Intervene in Support of Respondents, Doc. No. 2104865 (Mar. 10, 2025)). Accordingly, this Court entered an order requiring Environmental Petitioners and Petitioner LCA to submit separate Intervenor-Respondent briefs by May 8, 2026. Order, Doc. No. 2147493 (Nov. 26, 2025).

DATED: May 8, 2026

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Environmental Petitioners state that they are all not-for-profit organizations with missions that include protecting the health of the Great Lakes ecosystem. There are no stock or partnership shares or any ownership interests in any of the Environmental Petitioners' organizations, so there are no parent companies or any publicly held companies with any ownership interest in the Environmental Petitioners' organizations.

DATED: May 8, 2026

Respectfully submitted,

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2013 VGP	*Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel*, 78 Fed. Reg. 21938 (Apr. 12, 2013)
Bailey Study	Bailey *et al.*, Efficacy of Ballast Water Management Systems Operating within the Great Lakes and St. Lawrence River (2017 – 2022) (2023), EPA-HQ-OW-2019-0482-0891
BAT	Best available technology economically achievable
BMP	Best Management Practice
BWMS	Ballast Water Management Systems
Canadian Study	STX Canada Marine, Assessing the Feasibility of Ballast Water Treatment System Installation and Operation by Existing Vessels on the Great Lakes and St. Lawrence Seaway System (2015), EPA-HQ-OW-2019-0482-0452
Environmental Petitioners	Alliance for the Great Lakes, Environmental Law & Policy Center, Minnesota Environmental Partnership, and National Wildlife Federation
EPA	United States Environmental Protection Agency
EPA New Lakers Economic Analysis	EPA, Economic Analysis of New Lakers for the Supplemental Notice of Proposed Rulemaking for the Vessel Incidental National Standards of Performance (2023), EPA-HQ-OW-2019-0482-0889
GLLCISP	Great Lakes and Lake Champlain Invasive Species Program

GSI 2011 Study	Great Ships Initiative, Final Report of the Land-Based Freshwater Testing of the Alfawall AB PureBallast Ballast Water Treatment System (2011), EPA-HQ-OW-2019-0482-0371
GSI 2015 Study	Great Ships Initiative, Land-based Status Test of the JFE BallastAce Ballast Water Management System and Components at the GSI Testing Facility (2015), EPA-HQ-OW-2019-0482-0436
Industry Study	Choice Ballast, Technical Engineering Analysis & Economic Feasibility Study for Ballast Water Management System (BWMS) Installation and Operation on board U.S. Flag Great Lakes Fleet (Lakers) (2017), EPA-HQ-OW-2019-0482-0868
Lakers	Vessels operating exclusively on the Great Lakes and St. Lawrence River
USCG	United States Coast Guard
VIDA	Vessel Incidental Discharge Act

INTRODUCTION

Ever since the public and regulators first became aware of the environmental destruction and billions of dollars in damage caused by invasive species transported through ballast water, Lake Carriers' Association ("LCA") has fought every effort to address the role vessels operating exclusively in the Great Lakes and St. Lawrence River ("Lakers") play in accelerating the spread of invasive species throughout the Great Lakes. At each step, courts have rejected LCA's claims, recognizing Congress's clear intent that the United States Environmental Protection Agency ("EPA") regulate ballast water discharges to reduce the spread of invasive species.[1] Here, LCA implausibly asserts that when Congress passed the Vessel Incidental Discharge Act ("VIDA"), 33 U.S.C. § 1322(p), it actually intended that EPA weaken its existing standards and entirely exclude Lakers, the "most important ballast-mediated pathway of secondary spread [of invasive species] within the Great Lakes"[2] from any regulation. Instead, VIDA commands EPA to adopt standards of

[1] *Nw. Env't Advocs. v. U.S. Env't Prot. Agency*, No. C 03-05760 SI, 2006 WL 2669042, at 12 (N.D. Cal. Sept. 18, 2006), *aff'd sub nom. Nw. Env't Advocs. v. U.S. Env't Prot. Agency*, 537 F.3d 1006 (9th Cir. 2008) (finding the shipping industry's "concerns are dramatically overstated."); *Lake Carriers' Ass'n v. Env't Prot. Agency*, 652 F.3d 1, 10 (D.C. Cir. 2011) (instructing LCA that if it wished an exemption from regulation, it should ask Congress, not the courts); *Nat. Res. Def. Council v. U.S. Env't Prot. Agency* (*NRDC II*), 808 F.3d 556, 576–77 (2d Cir. 2015) (holding EPA arbitrarily and capriciously required only Lakers built after January 1, 2009, rather than all Lakers, to treat their ballast water).

[2] Rup *et al.*, Domestic ballast operations on the Great Lakes (2010), EPA-HQ-OW-2019-0482-0878 at 263, JA_.

performance for Lakers' ballast water discharges based on the "best available technology economically achievable" ("BAT"), the most-stringent and technology-forcing standard, and specifically excludes other vessels from regulation, but not Lakers. 33 U.S.C. §§ 1322(p)(2)(B), 1322(p)(4)(B)(i)(III). At minimum, Congress required EPA to set standards at least as stringent as the 2013 VGP,[3] which requires post-2009 Lakers to meet the ballast water discharge standard. *Id.* §§ 1322(p)(4)(B)(iii), 1322(p)(4)(D)(ii).

As explained in Environmental Petitioners' Opening Brief, EPA violated VIDA by exempting existing Lakers from regulation. EPA did, however, set a standard of performance requiring New Lakers[4] to install, operate, and maintain Ballast Water Management Systems ("BWMS"), which will reduce the concentration of living organisms in their ballast water discharges by up to 99%. 40 C.F.R. § 139.10(c)(2); GSI 2015 Study at 107–08, JA_. LCA claims even this incomplete regulation goes too far and their members should avoid any regulation while other vessels must comply and install BWMS, despite VIDA's clear language

[3] *Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel*, 78 Fed. Reg. 21938 (Apr. 12, 2013) ("2013 VGP").

[4] A New Laker is a Laker "constructed after the effective date of USCG regulations promulgated pursuant to [33 U.S.C. § 1322(p)(5)(A)(i)]," including Lakers that undergo a major conversion. 40 C.F.R. § 139.2.

and Congress's clear intent. This Court must follow VIDA and deny LCA's Petition for Review.

STATEMENT OF ISSUES

1. Whether Congress authorized EPA to issue the New Laker Equipment Standard, 40 C.F.R. § 139.10(c)(2), when it required EPA to issue best management practices ("BMPs") when "numeric standards of performance are infeasible" or when the BMP is "reasonably necessary … to carry out the purpose and intent of" VIDA. 33 U.S.C. § 1322(p)(4)(B)(ii).

2. Whether EPA reasonably determined that the New Laker Equipment Standard is BAT for New Lakers when multiple studies demonstrate that BWMS can operate on Great Lakes vessels and when the cost to install and operate a BWMS should only be a small fraction of the cost to construct or convert a New Laker.

STATUTES AND REGULATIONS

Applicable regulations not in Petitioners' or Respondent's Statutory and Regulatory Addenda are in the Supplemental Statutory and Regulatory Addendum filed with Environmental Petitioners' Intervenor-Respondent Brief.

STATEMENT OF THE CASE

Environmental Petitioners adopt herein the Statement of the Case contained in their Opening Brief and add the following:

After initially proposing to exclude Lakers from regulation entirely, EPA received a substantial number of comments opposing its decision, and, accordingly, published a Supplemental Notice of Proposed Rulemaking which analyzed the New Laker Equipment Standard as a supplemental regulatory option. 88 Fed. Reg. 71788, 71796 (Oct. 18, 2023). In the Final Standards, EPA adopted it as BAT for New Lakers because BWMS operating in the Great Lakes have "demonstrated a substantial reduction in organisms." 89 Fed. Reg. 82094. EPA also published a 42-page New Lakers Economic Analysis and determined BWMS are economically achievable for New Lakers because their annualized cost is a "small fraction of the annual cost of a New Laker." EPA New Lakers Economic Analysis at 18, JA_.

SUMMARY OF ARGUMENT

First, Congress authorized EPA to set the New Laker Equipment Standard. Under VIDA, EPA must set "standards of performance for marine pollution control devices." 33 U.S.C. § 1322(p)(4)(A)(i). EPA's New Laker Equipment Standard fits within the unambiguous, plain-meaning of that phrase. Further, if a numeric standard of performance is infeasible, EPA must set a BMP. *Id.* § 1322(p)(4)(B)(ii). EPA's Standard fits squarely within VIDA's BMP definition and within EPA's historic use of the term, making it within EPA's statutory authority. *Id.* § 1322(p)(1)(H); *Hikvision USA, Inc. v. Fed. Commc'ns Comm'n*, 97 F.4th 938, 946 (D.C. Cir. 2024) (quoting *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998)) ("Congress'

repetition of a well-established term carries the implication that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations.").

Second, for New Lakers only, EPA properly applied the technology-forcing BAT standard because BWMS are demonstrated available technology. EPA properly found the Standard economically achievable because the annualized cost will be only a small fraction of the cost to construct or convert a New Laker. This satisfies EPA's duty to conduct a BAT analysis and is a rational conclusion this Court should uphold.

STANDARD OF REVIEW

The Court reviews EPA's interpretation of VIDA *de novo*. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391–92, 412–13 (2024). The Court reviews EPA's action to determine if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). EPA acts arbitrarily and capriciously if it

> [1] has relied on factors which Congress has not intended it to consider, [2] entirely failed to consider an important aspect of the problem, [3] offered an explanation for its decision that runs counter to the evidence before the agency, or [4] is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

ARGUMENT

I. VIDA Requires EPA's New Laker Equipment Standard.

As Environmental Petitioners' Opening Brief explains, VIDA requires all Lakers not just New Lakers, to install, operate, and maintain BWMS. Env't Pet'rs' Opening Br. at 14–29. Here, however, Environmental Petitioners respond to LCA's statutory authority claim specific to New Lakers, which does not withstand scrutiny. If EPA determines a "numeric standard of performance" is "infeasible" or that a BMP is "reasonably necessary" to "carry out" VIDA's "purpose and intent," VIDA's text demands that EPA "shall require" the use of a BMP. *Id.* § 1322(p)(4)(B)(ii). EPA did just that for New Lakers by promulgating the New Laker Equipment Standard, which, as a BMP, is a non-numeric standard of performance and well within EPA's express authority under VIDA.

A. EPA's Standard Will Greatly Reduce Invasive Species Discharge and Is Therefore Required by VIDA.

VIDA's goal is expressed throughout the statute and legislative history—reduce pollution from vessel incidental discharges—with specific direction for EPA to tackle aquatic nuisance species, "nonconventional pollutants." *Id.* § 1322(p)(4)(B)(i)(III). Congress directs EPA to set the most stringent type of "standard of performance" for vessel discharges of invasive species, "application of [BAT] … which *shall result in reasonable progress toward the national goal of eliminating discharges of all pollutants.*" *Id.* (emphasis added). Congress

recognized the Great Lakes' unique importance and the need to protect them from invasive species by establishing multiple Great Lakes-specific provisions in VIDA. *See*, *e.g.*, 33 U.S.C. §§ 1322(p)(10)(A), 1322(p)(10)(B). VIDA's Senate Report begins with the zebra mussels' impact on the Great Lakes, demonstrating invasives and the Great Lakes were front of mind for Congress. Errata to S. Rep. 115-89 at 1, JA_.

Without BWMS, Lakers impose a "relatively high risk of spreading [aquatic nuisance species]" because of large ballast tanks, "high frequency of ballast water discharge events and short voyages." EPA New Lakers Economic Analysis at 20, JA_. Requiring BWMS carries out VIDA's purpose and intent of eliminating discharge of aquatic nuisance species because BWMS reduce the concentration of living organisms in ballast water discharge by over 99% when operating in the Great Lakes. Bailey Study at 6, JA_; GSI 2015 Study at 107–08, JA_. VIDA compels EPA's New Laker Equipment Standard as a BMP because it is "reasonably necessary" to "carry out the purpose and intent" of VIDA. 33 U.S.C. § 1322(p)(4)(B)(ii)(II).

B. EPA's Standard Is a "Standard of Performance" as VIDA Requires.

The plain meaning of "standards of performance" and its use within VIDA's regulatory scheme unambiguously demonstrate that Congress granted EPA authority

to set non-numeric standards of performance, including the New Laker Equipment Standard. LCA's arguments to the contrary lack merit.

First, EPA's Standard fits LCA's proffered dictionary definitions for "standard" and "performance." LCA Br. at 24 n.4 ("standard" is "a rule … by which something can be judged or evaluated"; "performance" is "the quality of execution of such an action, operation, or process … the capabilities, productivity, or success of a machine, product, or person when measured against a standard."). It establishes as a "rule" that New Lakers must "install, operate, and maintain" BWMS, 40 C.F.R. § 139.10(c)(2), meaning EPA and United States Coast Guard ("USCG") will "judge[] or evaluate[]" whether New Lakers execute "the action, operation, or process" of successfully installing, operating, and maintaining BWMS.

Second, EPA's Standard does not read "for" in "standards of performance *for* marine pollution control devices" out of VIDA as LCA asserts. VIDA defines BWMS as a "marine pollution control device." 33 U.S.C. § 1322(p)(1)(E). EPA's Standard is therefore a standard "for marine pollution control devices," *id.* § 1322(p)(4)(A)(i), because it requires New Lakers to meet the standard of "install[ing], operat[ing], and maintain[ing]" BWMS. 40 C.F.R. § 139.10(c)(2).

Third, if VIDA requires all standards of performance to be numeric as LCA asserts, then "numeric" in Section 1322(p)(4)(B)(ii)(I) would be superfluous. *See Noble v. Nat'l Ass'n of Letter Carriers, AFL-CIO*, 103 F.4th 45, 51 (D.C. Cir. 2024)

("[W]e presume that Congress would not include empty words in the statutory provision."). If all standards are numeric, then Section 1322(p)(4)(B)(ii)(I) would proscribe that when *any* standard of performance is infeasible, EPA must require use of BMPs. But, VIDA clearly states that BMPs are a type of standard of performance. *See* 33 U.S.C. § 1322(p)(4)(B)(i) ("the standards of performance promulgated under [paragraph 4]….") *and* 33 U.S.C. § 1322(p)(4)(B)(ii) (directing EPA to adopt BMPs in paragraph 4). LCA's incoherent interpretation of VIDA must be rejected. *Eagle Pharms., Inc. v. Azar*, 952 F.3d 323, 332 (D.C. Cir. 2020) ("Courts must … interpret the statute as a symmetrical and coherent regulatory scheme….").

Last, because VIDA's "text, structure and context" unambiguously show that EPA's Standard is a "standard of performance," the Court's evaluation stops there. *Noble*, 103 F.4th at 50. LCA's references to a non-VIDA section of the Clean Water Act and a Fifth Circuit case interpreting the Clean Air Act are irrelevant. VIDA does not define "standard of performance" by reference to non-VIDA Clean Water Act provisions, as it does for BAT, 33 U.S.C. § 1322(p)(1)(F), or by adopting an existing definition from non-VIDA Clean Water Act provisions, as it does for BMP, *compare* 40 C.F.R. § 122.2 and 33 U.S.C. § 1322(p)(1)(H).

C. EPA's Standard Is a BMP.

VIDA defines BMP as a "schedule of *activities*, prohibition of practices, *maintenance procedures, and other management practices* to *prevent or reduce*…

pollution." 33 U.S.C. § 1322(p)(1)(H)(i) (emphasis added). EPA's New Laker Equipment Standard falls squarely within this definition. It requires New Lakers to engage in the "activity" of installing BWMS, "device[s] … that process[] ballast water" to "kill, render nonviable, or remove" organisms, 33 U.S.C. § 1322(p)(1)(E), then continue with the "procedure" and "practice" of operating and "maintaining" them, which will reduce discharges of aquatic nuisance species, a "nonconventional pollutant," *id.* § 1322(p)(4)(B)(i)(III).

LCA's claims otherwise are meritless.

First, EPA's Standard satisfies LCA's proffered definition for "practice" by requiring New Lakers to engage in the "habitual doing or carrying on of something," namely, installing and then operating and maintaining BWMS. LCA Br. at 31 n.6 (quoting Oxford English Dictionary).

Second, EPA's Standard fits within VIDA's third BMP example; it is a "treatment requirement" New Lakers will undertake for "waste disposal" of their ballast water to kill aquatic nuisance species. 33 U.S.C. § 1322(p)(1)(H)(ii). EPA's rulemaking explains BWMS "treat" ballast water. *See*, *e.g.*, 89 Fed. Reg. 82098 ("The goal of the USCG type-approval process is to demonstrate that a BWMS can treat ballast water…."). VIDA defines BWMS as a "marine pollution control device," which is defined as "any equipment or management practice (or combination of equipment and a management practice) … designed to receive,

retain, *treat*, control or discharge a discharge." 33 U.S.C. § 1322(p)(1)(P) (emphasis added).

Discharging ballast water after BWMS treatment is a form of "waste disposal." VIDA defines "ballast water" as "any water, suspended matter, and other materials *taken onboard a vessel*." 33 U.S.C. § 1322(p)(1)(B)(i) (emphasis added). Ballast water is useful to vessels when onboard; once discharged, it is no longer a useful material, but rather waste that is being disposed. *See Waste*, Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/waste (last visited May 8, 2026) ("unwanted matter or material of any type, especially what is left after the useful substances or parts have been removed"); *Discharge*, Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/discharge (last visited May 8, 2026) ("to send out a substance, especially waste liquid or gas"); *Disposal*, Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/disposal (last visited May 8, 2026) ("the act of getting rid of something, especially by throwing it away").

Moreover, the four examples in VIDA's BMP definition are non-exhaustive, so EPA's Standard need not fall within them to be a BMP. A BMP "*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." 33 U.S.C. § 1322(p)(1)(H)(ii) (emphasis added);

see also Include, Merriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/include (last visited May 8, 2026) ("comprise as a part of a whole or group"); *United States v. New York Tel. Co.*, 434 U.S. 159, 169 (1977) ("Although Rule 41(h) defines property 'to include documents, books, papers and any other tangible objects,' it does not restrict or purport to exhaustively enumerate all the items which may be seized pursuant to Rule 41.").

Third, Environmental Petitioners concur with LCA that "the context from which Congress pulled the [BMP] terminology" is "telling." LCA Br. at 33. But, that context shows Congress clearly authorized EPA to issue a BMP that requires installing BWMS.

Congress adopted VIDA's BMP definition verbatim from the Clean Water Act's NPDES regulation, *compare* 33 U.S.C. § 1322(p)(1)(H) *with* 40 C.F.R. § 122.2, and intentionally adopted VIDA's BMP requirements in Section 1322(p)(4)(B)(ii) from NPDES regulations. Errata to S. Rep. at 11–12, JA_. EPA routinely issues BMPs in NPDES regulations and general permits requiring regulated parties to install, operate, and maintain equipment. *See*, *e.g.*, 40 C.F.R. § 430.03(c) (mills must implement BMPs requiring them to "operate continuous, automatic monitoring systems" and "install and maintain secondary containment"); 60 Fed. Reg. 50804, 50896 (Sept. 29, 1995) (BMPs can include installing an

"American Petroleum Institute (API) oil/water separator or similar type of treatment device"[5] and can "require manpower to operate and maintain the BMP.").

The fact that EPA's Standard will require New Lakers to install BWMS before operating and maintaining them does not put it outside traditional use of the term BMP. For example, one EPA general permit repeatedly requires regulated parties to install equipment first as part of a BMP. *See*, *e.g.*, *id.* ("EPA has identified a wide variety of [BMPs] …. [that] are the most effective if they are installed at the inception of operations and maintained throughout…."); *Id.* at 50961 ("install oil/water separator in storage areas").

EPA's BMP Guidance Manual, which LCA cites, demonstrates EPA's longstanding recognition that BMPs can require installing, operating, and maintaining equipment. EPA, Guidance Manual for Developing Best Management Practices, https://19january2021snapshot.epa.gov/sites/static/files/2020-02/documents/owm0274.pdf (last visited May 8, 2026) at 3-26–3-61 (listing example BMPs, 43 of which involve installing equipment, *e.g.*, "installation of reverse osmosis system to treat rinsewater" at 3-39). It also describes one effective BMP as involving "[t]echnology innovations includ[ing] modifications to the

5 For the Court's convenience, more information about API oil/water separators is available at the following website, https://www.energyspecialties.com/api-421/.

bleaching sequence … and installation of spill tanks" estimated to cost "$4.5 million (in 1975 dollars)" for one facility. *Id*. at 3-14.

Courts, including the Second Circuit ruling on the 2013 VGP, have accepted EPA's interpretation of BMP. *See*, *e.g*., *NRDC II*, 808 F.3d at 579 (noting BMPs can include "structural requirements" to install "tarpaulins, retention ponds, or devices"); *Nat. Res. Def. Council v. Southwest Marine, Inc*., 236 F.3d 985, 1000 (9th Cir. 2000) ("requirement that Defendant *install* concrete berms is consistent with the requirement for structural BMPs….") (emphasis added). Congress is presumed to have been aware of these prior interpretations of BMP when it adopted the same definition in VIDA. *Hikvision USA, Inc.*, 97 F.4th at 946 ("Congress' repetition of a well-established term carries the implication that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations.").

Indeed, VIDA requires EPA to issue BMPs at least as stringent as those in EPA's 2013 VGP, effectively adopting those BMPs into VIDA. 33 U.S.C. §§ 1322(p)(4)(B)(iii)(I), 1322(p)(4)(D)(ii). Many of the 2013 VGP BMPs require vessels to install, use, and/or maintain equipment, further confirming Congress's intent. *See*, *e.g.*, 40 C.F.R. § 139.15(b) ("Coamings or drip pans must be used for machinery that is expected to leak or otherwise release oil on the deck….") and 2013 VGP § 2.2.1 at 24, JA_ (same). A 2013 VGP BMP requires Lakers to "perform annual inspections of their sea chest screens …. [i]f the screen has deteriorated …

the vessel owner operator must repair or replace the screen," 2013 VGP § 2.2.3.4 at 29, JA_, and EPA adopted the BMP in its Final Standards as required. 40 C.F.R. § 139.10(c)(1)(vi); 33 U.S.C. §§ 1322(p)(4)(B)(iii)(I), 1322(p)(4)(D)(ii). This BMP requires Lakers to install (when necessary to replace) equipment (a sea chest screen). Congress knew of that BMP and incorporated it into VIDA, demonstrating its intent that EPA can require vessels to install a specific type of equipment as a BMP.

II. BWMS Are the Best Available Technology Economically Achievable for New Lakers.

Following Congress's directive to set technology-forcing standards for invasive species, EPA set the New Laker Equipment Standard. EPA rationally determined that BWMS are available technology for New Lakers, that the Standard is economically achievable, and issued a technology-based standard for New Lakers. *See State Farm*, 463 U.S. at 42 ("[A] reviewing court may not set aside an agency rule that is rational, based on consideration of the relevant factors and within the scope of the authority delegated to the agency by the statute.").

A. BWMS Are Available Technology.

As explained in Environmental Petitioners' Opening Brief, the Record clearly demonstrates that BWMS are the best available technology for all Lakers because the technology has been adequately demonstrated by multiple studies. Env't Pet'rs' Opening Br. at 17–21. As EPA admits, these studies show that BWMS operating in the Great Lakes "demonstrated a substantial reduction in organisms." 89 Fed. Reg.

82094–95 (citing GSI 2011 Study, JA_, GSI 2015 Study, JA_, Bailey Study, JA_). Multiple engineering studies confirm that all Lakers can be retrofit to install BWMS. Industry Study, JA_; Canadian Study, JA_; USCG Study, JA_. Further, New Lakers can be designed specifically to integrate any of the 54 USCG-approved BWMS. LCA does not dispute that these studies show BWMS are available technology for Lakers. Instead, LCA raises three unavailing arguments.

First, the purported operational concerns LCA raises do not make BWMS an unavailable technology because VIDA contemplates that USCG would establish "[i]mplementation, compliance, and enforcement requirements" for the standards of performance set by EPA that account for any such concerns. 33 U.S.C. § 1322(p)(5). Congress directed USCG to issue regulations at least as stringent as "any comparable, existing requirements promulgated under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. § 4701 et seq.)," 33 U.S.C. § 1322(p)(5)(A)(ii)(IV), which included regulations governing how vessels should proceed if they encounter operational issues with their BWMS. *See* 33 C.F.R. §§ 151.1515, 151.2040. If Great Lakes water conditions would impact Lakers' ability to operate BWMS, then USCG can address that concern in its regulations. 88 Fed. Reg. 71798.

Second, LCA inaccurately asserts that EPA only provided a "one-sentence vagary" explaining its decision to issue the New Laker Equipment Standard. LCA

Br. at 37. EPA's initial decision to exclude all Lakers from regulation in the proposed rule was "one of the most heavily commented-upon subjects;" accordingly, "[a]fter further deliberation," EPA analyzed the New Laker Equipment Standard as a supplemental regulatory option over 10 pages of the Supplemental Notice and published the 42-page New Lakers Economic Analysis further analyzing the option. 88 Fed. Reg. 71796. Thus, EPA clearly "suppl[ied] a reasoned analysis," as to New Lakers, "indicating that prior policies and standards [were] being deliberately changed, not casually ignored." *NLRB v. CNN Am., Inc.*, 865 F.3d 740, 751 (D.C. Cir. 2017) .

Third, Congress did not create the Great Lakes and Lake Champlain Invasive Species Program ("GLLCISP") to give Lakers a free pass from regulation as LCA claims. Congress expressly excluded certain vessels and discharges from regulation in VIDA. 33 U.S.C. § 1322(p)(2)(B). If Congress intended Lakers to be similarly excluded, it would have done so expressly, not impliedly by funding a research program. *See Lackey v. Stinnie*, 604 U.S. 192, 205 (2025) (quoting *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019)) ("Atextual judicial supplementation is particularly inappropriate when ... Congress has shown that it knows how to adopt the omitted language or provision."). Further, Congress required EPA to set standards as stringent as the 2013 VGP, 33 U.S.C. §§ 1322(p)(4)(B)(iii), 1322(p)(4)(D)(ii), which requires post-2009 Lakers to treat their ballast water, 2013 VGP § 2.2.3.5.3.3 at 39,

JA_, showing that Congress intended EPA to regulate Lakers immediately, not exempt them entirely. Establishing GLLCISP aligns with Congress's clear intent that EPA take aggressive action to combat invasive species spread and its particular concern for the Great Lakes. *See* Section I.A, *supra* p. 6–7. New Lakers can use current research by GLLCISP to determine which BWMS to install and to operate them more efficiently, complying with Congress's express intent and requirement in VIDA to adopt the most stringent technology-based standards to make further progress towards the national goal of eliminating discharges of invasive species.

B. EPA's New Laker Equipment Standard Is Economically Achievable.

When adopting the BAT standard, Congress only required that it be "economically achievable," not economically painless. BAT requires a "commitment of the maximum resources economically possible to the ultimate goal of eliminating all polluting discharges." *Env't Prot. Agency v. Nat'l Crushed Stone Ass'n*, 449 U.S. 64, 74 (1980). Congress understood achieving this goal could cause "'some disruption in our economy' …. [and] that the economic impact of environmental regulations would be most severe for small plants." *Chem. Mfrs. Ass'n v. Env't Prot. Agency*, 870 F.2d 177, 252 (5th Cir. 1989) (citations omitted). EPA routinely issues, and courts routinely uphold, BAT standards with significant economic impact to the regulated industry. *See*, *e.g.*, *id.* at 250–51 (upholding BAT regulation that would result in 14% of all plants and 26% of small plants to close);

Ass'n of Pac. Fisheries v. Env't Prot. Agency, 615 F.2d 794, 818 (9th Cir. 1980) ("Congress contemplated the closure of some marginal plants….").

New Lakers will have to bear the cost of installing and operating BWMS because it is necessary to reduce their pollution of invasive species. EPA analyzed the costs of the New Laker Equipment Standard, compared it to relevant industry data, and determined that it is economically achievable because the annual compliance cost is only a small percentage of the total annual cost to build or convert a New Laker, satisfying its duty under VIDA. LCA's cherry-picked examples of operational costs EPA failed to consider are unsupported by the Record.

1. EPA Used an Appropriate Method to Determine Economic Achievability.

EPA's method of comparing the annualized costs of the New Laker Equipment Standard to the annualized cost of building or converting a Laker satisfied its obligation to determine whether the technology is economically achievable. If LCA wanted EPA to consider Laker revenue or profit information, it could have provided that information to EPA and raised the issue during rulemaking.

EPA's determination whether a technology is economically achievable is not arbitrary and capricious when "EPA articulated its methodology, applied it to industry data, and presented the results." *Nat'l Wildlife Fed'n v. Env't Prot. Agency*, 286 F.3d 554, 563 (D.C. Cir. 2002), *supplemented sub nom. In re Kagan*, 351 F.3d 1157 (D.C. Cir. 2003). Here, EPA articulated its methodology for estimating costs,

applied those costs to industry data using the cost to construct or convert a Laker as a proxy for economic achievability, and presented the results. EPA New Lakers Economic Analysis, JA_. Congress did not prescribe the method EPA must use, it only required EPA to determine whether it was in fact "economically achievable" and could be "reasonably borne" by industry. *Chem. Mfrs. Ass'n*, 870 F.2d at 250, 262.

This Court upheld EPA's use of a similar economic achievability method where EPA determined a regulation costing the "equivalent to 3.8 to 4.9 percent of the present retail price" would not have "significant economic impact." *Am. Frozen Food Inst. v. Train*, 539 F.2d 107, 139–40 (D.C. Cir. 1976) ("Large as the investment costs contemplated above may be, they certainly are not inconsistent with the expectations of Congress."). Here, EPA likewise found the cost for New Lakers to comply with the Standard would only be a "small fraction of the annual cost of a New Laker," making it economically achievable and fully explained its methodology in its 42-page New Lakers Economic Analysis document. EPA New Lakers Economic Analysis at 18, JA_. Thus, EPA satisfied its duty under VIDA. *Nat'l Wildlife Fed'n*, 286 F.3d at 563.

2. LCA's Claimed Operational Costs Are Unsupported by the Record.

EPA properly excluded the operational costs LCA identifies based on the Record before it.

First, EPA reasonably determined that it did not need to quantify the cost of "lost" cargo space. The Record, including LCA's own study, found only small amounts of cargo space may be lost if existing Lakers are required to install BWMS. Industry Study at 80, JA_ (1000' Lakers would lose between 1.3–2.5% cargo capacity; every other category of Laker would not lose any cargo capacity); USCG Study at 25, 34, 44, 52, JA_, _, _, _ (less than 0.2% lost cargo capacity for all categories of Lakers); Canadian Study at 75, JA_ (less than 0.5% lost cargo capacity for all categories of Lakers). Thus, the information before EPA showed minimal cargo space will be lost for existing Lakers to comply with the BMP. EPA fairly assumed New Lakers would be constructed or modified to maximize available cargo space, further reducing any "lost" cargo space. Moreover, LCA did not provide any estimates for, nor monetize the impact of, its "lost" cargo claim.

Second, there are at least 54 different BWMS available for Lakers, which can reasonably accommodate Lakers' hold time requirements without resulting in lost revenue. Several UV BWMS have hold times under 2.5 hours; other BWMS have hold times of 24 hours, 88 Fed. Reg. 71797, which would accommodate the vast majority of Laker voyages. *See* EPA-HQ-OW-2019-0482-0509, JA_ (showing majority of transit routes take over 24 hours, only a small number of routes take under 2.5 hours). So, there would be little to no economic impact from potential delays as LCA claims.

Third, existing Lakers already accommodate many of BWMS's electrical needs. LCA's own study found that most categories of existing Lakers have sufficient available power for either UV or Chemical Addition BWMS. Industry Study at 21, 42, 52, 63, JA_, _, _, _ (1000' Laker had sufficient power for Chemical Addition BWMS; three other categories of Lakers had sufficient power for either UV or Chemical Addition BWMS). Further, EPA relied on the Industry Study's analysis of the Arthur M. Anderson to estimate the compliance cost for Converted Lakers, which found that it had sufficient power for BWMS. Industry Study at 42, JA_; EPA New Lakers Economic Analysis at 15, JA_. So, LCA's claims about insufficient electrical power are unsupported by the Record, making EPA's approach rational.

C. EPA's Standard Is a Technology-Based Standard, Not a Water Quality-Based Standard.

EPA must adopt standards for invasive species based on BAT "which shall result in reasonable progress toward the national goal of eliminating discharges of all pollutants." 33 U.S.C. § 1322(p)(4)(B)(i)(III). EPA stating that the New Laker Equipment Standard will "'result in reasonable further progress' towards the ultimate goal of eliminating the discharge of untreated ballast water in the Great Lakes," 88 Fed. Reg. 71803, does not mean EPA improperly issued a water quality-based standard, as LCA claims, it means EPA complied with VIDA. EPA properly determined that BWMS are BAT for New Lakers and that the Standard is

economically achievable, demonstrating EPA applied the proper technology-based standard.

CONCLUSION

Environmental Petitioners respectfully request the Court deny LCA's Petition for Review.

DATED: May 8, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I hereby certify that the foregoing Environmental Petitioners' Intervenor-Respondent Brief contains 5,000 words excluding the parts of the Brief exempted by Federal Rule of Appellate Procedure 32(f) and D.C. Circuit Rule 32(e)(1), in compliance with the word limit for this Brief established by this Court's order Doc. No. 2147493. As permitted by Federal Rule of Appellate Procedure 32(g)(1), I have relied upon the word count feature of Microsoft Word in preparing this certificate. The foregoing Brief was composed in Times New Roman font, 14-point. This Brief complies with the applicable typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6).

DATED: May 8, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2026, the foregoing Environmental Petitioners' Intervenor-Respondent Brief was electronically filed with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit using the CM/ECF system, which will provide electronic notice to counsel of record for all parties in the consolidated action.

DATED: May 8, 2026

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ORAL ARGUMENT NOT SCHEDULED

No. 25-1027
(Consolidated with Case Nos. 25-1049 and 25-1052)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LAKE CARRIERS' ASSOCIATION,
Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY AND LEE ZELDIN, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY,
Respondents,

On Petition for Review of Final Agency Action from the United States Environmental Protection Agency 89 Fed. Reg. 82,074 (Oct. 9, 2024)

ENVIRONMENTAL PETITIONERS' INTERVENOR-RESPONDENT SUPPLEMENTAL STATUTORY AND REGULATORY ADDENDUM

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This Supplemental Statutory and Regulatory Addendum contains the following four regulations not previously submitted in Petitioners' or Respondent's Statutory and Regulatory Addenda. All statutes and all other regulations cited in Environmental Petitioners' Intervenor-Respondent Brief have been previously submitted.

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Code of Federal Regulations
Title 33. Navigation and Navigable Waters
Chapter I. Coast Guard, Department of Homeland Security (Refs & Annos)
Subchapter O. Pollution
Part 151. Vessels Carrying Oil, Noxious Liquid Substances, Garbage, Municipal or Commercial Waste, and Ballast Water (Refs & Annos)
Subpart C. Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River (Refs & Annos)

33 C.F.R. § 151.1515

§ 151.1515 Ballast water management alternatives under extraordinary conditions.

Effective: October 2, 2025
Currentness

(a) As long as ballast water exchange (BWE) remains an option under the schedule in § 151.1512(b) of this subpart, the master of any vessel subject to this subpart who uses BWE to meet the requirements of this subpart and, due to weather, equipment failure, or other extraordinary conditions, is unable to effect a BWE before entering the Exclusive Economic Zone, and intends to discharge ballast water into the waters of the United States, must request permission from the Captain of the Port (COTP) to exchange the vessel's ballast water within an area agreed to by the COTP at the time of the request and then discharge the vessel's ballast water within that designated area.

(b) Once BWE is no longer an option under the schedule in § 151.1512(b) of this subpart, if the ballast water management system required by this subpart stops operating properly during a voyage or the vessel's BWM method is unexpectedly unavailable, the master, owner, operator, agent, or person in charge of the vessel must ensure that the problem is reported to the COTP as soon as practicable. The vessel may continue to the next port of call, subject to the directions of the COTP or the USCG Great Lakes District Commander, as provided by 33 CFR part 160.

Credits
[USCG–2001–10486, 77 FR 17305, 17306, March 23, 2012; 77 FR 33970, June 8, 2012]

SOURCE: CGFR 67–67, 32 FR 14390, Oct. 18, 1967; CGD 75–124a, 48 FR 45709, Oct. 6, 1983; 52 FR 7558, March 12, 1987; 54 FR 18403, April 28, 1989; CGD 89–014, 54 FR 22548, May 24, 1989; 54 FR 40000, Sept. 29, 1989; 58 FR 18334, April 8, 1993; 59 FR 51338, Oct. 7, 1994; CGD 97–015, 62 FR 18045, April 14, 1997; CGD 97–015, 62 FR 46446, Sept. 3, 1997; USCG–2000–7442, 67 FR 6172, Feb. 11, 2002; USCG–2003–14505, 68 FR 16953, April 8, 2003; USCG–2002–13147, 69 FR 32869, June 14, 2004; 69 FR 40767, July 7, 2004; USCG–2005–21531, 70 FR 36349, June 23, 2005; USCG–2007–28201, 72 FR 27739, May 17, 2007; USCG–2007–27887, 72 FR 45904, Aug. 16, 2007; USCG–2004–19621, 73 FR 56498, Sept. 29, 2008; USCG–2021–0348, 87 FR 3223, Jan. 21, 2022; USCG–2023–0759, 89 FR 22947, April 3, 2024; USCG–2025–0186, 90 FR 12238, March 17, 2025; USCG–2025–0716, 90 FR 47586, Oct. 2, 2025; USCG–2024–1103, 90 FR 52878, Nov. 24, 2025, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1902, 1903, 1908; 46 U.S.C. 6101; 46 U.S.C. 70034; Pub.L. 104–227, 110 Stat. 3034; sec. 623, Pub.L. 108–293, 118 Stat. 1063; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; DHS Delegation No. 00170.1, Revision No. 01.4.; 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

Current through May 5, 2026, 91 FR 24137. Some sections may be more current. See credits for details.

End of Document

Code of Federal Regulations
Title 33. Navigation and Navigable Waters
Chapter I. Coast Guard, Department of Homeland Security (Refs & Annos)
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Part 151. Vessels Carrying Oil, Noxious Liquid Substances, Garbage, Municipal or Commercial Waste, and Ballast Water (Refs & Annos)
Subpart D. Ballast Water Management for Control of Nonindigenous Species in Waters of the United States (Refs & Annos)

33 C.F.R. § 151.2040

§ 151.2040 Discharge of ballast water in extraordinary circumstances.

Effective: June 21, 2012
Currentness

(a) The Coast Guard will allow the master, owner, operator, agent, or person in charge of a vessel that cannot practicably meet the requirements of § 151.2025(a) of this subpart, either because its voyage does not take it into waters 200 nautical miles or greater from any shore for a sufficient length of time and the vessel retains ballast water onboard or because the master of the vessel has identified safety or stability concerns, to discharge ballast water in areas other than the Great Lakes and the Hudson River north of the George Washington Bridge.

(1) The Coast Guard will not allow such a discharge if the vessel is required to have a Coast Guard-approved ballast water management system (BWMS) per the implementation schedule found in § 151.2035(b) of this subpart.

(2) If the Coast Guard allows the discharge of ballast water as described in paragraph (a) of this section, the master, owner, operator, agent, or person in charge of the vessel must discharge only that amount of ballast water operationally necessary to ensure the safety of the vessel for cargo operations.

(3) Ballast water records must be made available to the local Captain of the Port (COTP) upon request.

(4) Vessels on a voyage to the Great Lakes or the Hudson River north of the George Washington Bridge must comply with the requirements of 33 CFR 151.1515.

(b) If the installed BWMS required by this subpart stops operating properly during a voyage, or the vessel's BWM method is unexpectedly unavailable, the person directing the movement of the vessel must ensure that the problem is reported to the nearest COTP or District Commander as soon as practicable. The vessel may continue to the next port of call, subject to the directions of the COTP or District Commander, as provided by part 160 of this chapter.

(1) The Coast Guard will normally allow a vessel that cannot practicably meet the requirements of § 151.2025(a)(1) of this subpart because its installed BWMS is inoperable, or the vessel's BWM method is unexpectedly unavailable, to employ one of the other ballast water management (BWM) methods listed in § 151.2025(a) of this subpart.

(2) If the master of the vessel determines that the vessel cannot employ other BWM methods due to the voyage or safety concerns listed in paragraph (a) of this section, the Coast Guard will normally allow the vessel to discharge ballast water in areas other than the Great Lakes and the Hudson River north of the George Washington Bridge.

(3) If the Coast Guard approves such an allowance, the vessel must discharge only that amount of ballast water operationally necessary to ensure the safety and stability of the vessel for cargo operations. Ballast water records must be made available to the local COTP upon request.

(c) Nothing in this subpart relieves the master, owner, operator, agent, or person in charge of a vessel of any responsibility, including ensuring the safety and stability of the vessel and the safety of the crew and passengers.

SOURCE: CGFR 67–67, 32 FR 14390, Oct. 18, 1967; CGD 75–124a, 48 FR 45709, Oct. 6, 1983; 52 FR 7558, March 12, 1987; 54 FR 18403, April 28, 1989; CGD 89–014, 54 FR 22548, May 24, 1989; 54 FR 40000, Sept. 29, 1989; 59 FR 51338, Oct. 7, 1994; CGD 97–015, 62 FR 18045, April 14, 1997; CGD 97–015, 62 FR 46446, Sept. 3, 1997; USCG–2000–7442, 67 FR 6172, Feb. 11, 2002; USCG–2003–14505, 68 FR 16953, April 8, 2003; USCG–2005–21531, 70 FR 36349, June 23, 2005; USCG–2007–28201, 72 FR 27739, May 17, 2007; USCG–2007–27887, 72 FR 45904, Aug. 16, 2007; USCG–2004–19621, 73 FR 56498, Sept. 29, 2008; USCG–2001–10486, 77 FR 17306, March 23, 2012; USCG–2018–0245, 83 FR 47292, Sept. 19, 2018; USCG–2021–0348, 87 FR 3223, Jan. 21, 2022; USCG–2023–0759, 89 FR 22947, April 3, 2024; USCG–2025–0186, 90 FR 12238, March 17, 2025; USCG–2025–0716, 90 FR 47586, Oct. 2, 2025; USCG–2024–1103, 90 FR 52878, Nov. 24, 2025, unless otherwise noted.

AUTHORITY: 33 U.S.C. 1902, 1903, 1908; 46 U.S.C. 6101; 46 U.S.C. 70034; Pub.L. 104–227, 110 Stat. 3034; sec. 623, Pub.L. 108–293, 118 Stat. 1063; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; DHS Delegation No. 00170.1, Revision No. 01.4.; 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1(II)(57).

Current through May 5, 2026, 91 FR 24137. Some sections may be more current. See credits for details.

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Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 122. EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (Refs & Annos)
Subpart A. Definitions and General Program Requirements

40 C.F.R. § 122.2

§ 122.2 Definitions.

Effective: June 22, 2020
Currentness

The following definitions apply to parts 122, 123, and 124. Terms not defined in this section have the meaning given by CWA. When a defined term appears in a definition, the defined term is sometimes placed in quotation marks as an aid to readers.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Animal feeding operation is defined at § 122.23.

Applicable standards and limitations means all State, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Approved program or approved State means a State or interstate program which has been approved or authorized by EPA under part 123.

Aquaculture project is defined at § 122.25.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.

Best management practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

BMPs means "best management practices."

Bypass is defined at § 122.41(m).

Class I sludge management facility means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs located in a State that has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

Combined sewer overflow (CSO) means a discharge from a combined sewer system (CSS) at a point prior to the Publicly Owned Treatment Works (POTW) Treatment Plant (defined at § 403.3(r) of this chapter).

Combined sewer system (CSS) means a wastewater collection system owned by a State or municipality (as defined by section 502(4) of the CWA) which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a Publicly Owned Treatment Works (POTW) Treatment Plant (as defined at § 403.3(r) of this chapter).

Concentrated animal feeding operation is defined at § 122.23.

Concentrated aquatic animal feeding operation is defined at § 122.24.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92–500, as amended by Pub.L. 95–217, Pub.L. 95–576, Pub.L. 96–483 and Pub.L. 97–117, 33 U.S.C. 1251 et seq.

CWA and regulations means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

Daily discharge means the "discharge of a pollutant" measured during a calendar day or any 24–hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Direct discharge means the "discharge of a pollutant."

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no "approved State program," and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see § 123.1.) In such cases, the term "Director" means the Regional Administrator and not the State Director.

Discharge when used without qualification means the "discharge of a pollutant."

Discharge of a pollutant means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

DMR means "Discharge Monitoring Report."

Draft permit means a document prepared under § 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5, is not a "draft permit." A "proposed permit" is not a "draft permit."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

EPA means the United States "Environmental Protection Agency."

Facility or activity means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

Federal Indian reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

General permit means an NPDES "permit" issued under § 122.28 authorizing a category of discharges under the CWA within a geographical area.

Great Lakes Basin means the waters defined as "Great Lakes" and "Great Lakes System" as those terms are defined in § 132.2 of this chapter.

Hazardous substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) All dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

Indirect discharger means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works."

Individual control strategy is defined at 40 CFR 123.46(c).

Interstate agency means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA and regulations.

Major facility means any NPDES "facility or activity" classified as such by the Regional Administrator, or, in the case of "approved State programs," the Regional Administrator in conjunction with the State Director.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of CWA.

Municipal separate storm sewer system is defined at § 122.26 (b)(4) and (b)(7).

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective NPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area or biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part and parts 123 and 124. "Permit" includes an NPDES "general permit" (§ 122.28). Permit does not include any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Pesticide discharges to waters of the United States from pesticide application means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to waters of the United States. In the context of this definition of pesticide discharges to waters of the United States from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); 33 U.S.C. 1362(14)).

Pesticide residue for the purpose of determining whether an NPDES permit is needed for discharges to waters of the United States from pesticide application, means that portion of a pesticide application that is discharged from a point source to waters of the United States and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See § 122.3).

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1 (1976).

POTW is defined at § 403.3 of this chapter.

Primary industry category means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of part 122.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a "POTW."

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Proposed permit means a State NPDES "permit" prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance by the State. A "proposed permit" is not a "draft permit."

Publicly owned treatment works is defined at 40 CFR 403.3.

Recommencing discharger means a source which recommences discharge after terminating operations.

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a "permit", including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA and regulations.

Secondary industry category means any industry category which is not a "primary industry category."

Secretary means the Secretary of the Army, acting through the Chief of Engineers.

Septage means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

Sewage from vessels means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

Sewage Sludge means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Silvicultural point source is defined at § 122.27.

Site means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

Sludge-only facility means any "treatment works treating domestic sewage" whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA and is required to obtain a permit under § 122.1(b)(2).

Standards for sewage sludge use or disposal means the regulations promulgated pursuant to section 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in these regulations which meets the requirements of § 123.31 of this chapter.

State Director means the chief administrative officer of any State or interstate agency operating an "approved program," or the delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

State/EPA Agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs including those under the CWA programs.

Storm water is defined at § 122.26(b)(13).

Storm water discharge associated with industrial activity is defined at § 122.26(b)(14).

Total dissolved solids means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

Toxic pollutant means any pollutant listed as toxic under section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the CWA.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR part 503 as a "treatment works treating domestic sewage," where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR part 503.

TWTDS means "treatment works treating domestic sewage."

Upset is defined at § 122.41(n).

Variance means any mechanism or provision under section 301 or 316 of CWA or under 40 CFR part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

Waters of the United States or waters of the U.S. means the term as it is defined in § 120.2 of this chapter.

Whole effluent toxicity means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Note: Section 2(a) of Exec. Order No. 13778 provides: "The Administrator of the Environmental Protection Agency (Administrator) and the Assistant Secretary of the Army for Civil Works (Assistant Secretary) shall review the final rule entitled "Clean Water Rule: Definition of 'Waters of the United States,' " 80 Fed. Reg. 37054 (June 29, 2015), for consistency with the policy set forth in section 1 of this order and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law."

(Authority: Clean Water Act (33 U.S.C. 1251 et seq.), Safe Drinking Water Act (42 U.S.C. 300f et seq.), Clean Air Act (42 U.S.C. 7401 et seq.), Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.))

Editorial Note: The sentence beginning with the "This exclusion applies . . ." appearing in § 122.2 within the definition of "Waters of the United States" was stayed indefinitely by the Environmental Protection Agency at 45 FR 48620, July 21, 1980 and continued at 48 FR 14153, April 1, 1983; 80 FR 37114, June 29, 2015; and 84 FR 56669 October 22, 2019.

Credits

[48 FR 39619, Sept. 1, 1983; 50 FR 6940, 6941, Feb. 19, 1985; 54 FR 254, Jan. 4, 1989; 54 FR 18781, May 2, 1989; 54 FR 23895, June 2, 1989; 58 FR 45037, Aug. 25, 1993; 58 FR 67980, Dec. 22, 1993; 64 FR 42462, Aug. 4, 1999; 64 FR 43426, Aug. 10, 1999; 65 FR 30905, May 15, 2000; 80 FR 37114, June 29, 2015; 83 FR 730, Jan. 8, 2018; 83 FR 5208, Feb. 6, 2018; 84 FR 3336, Feb. 12, 2019; 84 FR 56669, Oct. 22, 2019; 85 FR 22341, April 21, 2020]

SOURCE: 45 FR 33418, May 19, 1980, as amended at 48 FR 14153, Apr. 1, 1983, unless otherwise noted.

AUTHORITY: The Clean Water Act, 33 U.S.C. 1251 et seq.

Notes of Decisions (104)

Current through May 5, 2026, 91 FR 24137. Some sections may be more current. See credits for details.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter N. Effluent Guidelines and Standards
Part 430. The Pulp, Paper, and Paperboard Point Source Category (Refs & Annos)
General Provisions

40 C.F.R. § 430.03

§ 430.03 Best management practices (BMPs) for spent pulping liquor, soap, and turpentine management, spill prevention, and control.

Currentness

(a) Applicability. This section applies to direct and indirect discharging pulp, paper, and paperboard mills with pulp production in subparts B (Bleached Papergrade Kraft and Soda) and E (Papergrade Sulfite).

(b) Specialized definitions—

(1) Action Level: A daily pollutant loading that when exceeded triggers investigative or corrective action. Mills determine action levels by a statistical analysis of six months of daily measurements collected at the mill. For example, the lower action level may be the 75th percentile of the running seven-day averages (that value exceeded by 25 percent of the running seven-day averages) and the upper action level may be the 90th percentile of the running seven-day averages (that value exceeded by 10 percent of the running seven-day averages).

(2) Equipment Items in Spent Pulping Liquor, Soap, and Turpentine Service: Any process vessel, storage tank, pumping system, evaporator, heat exchanger, recovery furnace or boiler, pipeline, valve, fitting, or other device that contains, processes, transports, or comes into contact with spent pulping liquor, soap, or turpentine. Sometimes referred to as "equipment items."

(3) Immediate Process Area: The location at the mill where pulping, screening, knotting, pulp washing, pulping liquor concentration, pulping liquor processing, and chemical recovery facilities are located, generally the battery limits of the aforementioned processes. "Immediate process area" includes spent pulping liquor storage and spill control tanks located at the mill, whether or not they are located in the immediate process area.

(4) Intentional Diversion: The planned removal of spent pulping liquor, soap, or turpentine from equipment items in spent pulping liquor, soap, or turpentine service by the mill for any purpose including, but not limited to, maintenance, grade changes, or process shutdowns.

(5) Mill: The owner or operator of a direct or indirect discharging pulp, paper, or paperboard manufacturing facility subject to this section.

(6) Senior Technical Manager: The person designated by the mill manager to review the BMP Plan. The senior technical manager shall be the chief engineer at the mill, the manager of pulping and chemical recovery operations, or other such responsible person designated by the mill manager who has knowledge of and responsibility for pulping and chemical recovery operations.

(7) Soap: The product of reaction between the alkali in kraft pulping liquor and fatty acid portions of the wood, which precipitate out when water is evaporated from the spent pulping liquor.

(8) Spent Pulping Liquor: For kraft and soda mills "spent pulping liquor" means black liquor that is used, generated, stored, or processed at any point in the pulping and chemical recovery processes. For sulfite mills "spent pulping liquor" means any intermediate, final, or used chemical solution that is used, generated, stored, or processed at any point in the sulfite pulping and chemical recovery processes (e.g., ammonium-, calcium-, magnesium-, or sodium-based sulfite liquors).

(9) Turpentine: A mixture of terpenes, principally pinene, obtained by the steam distillation of pine gum recovered from the condensation of digester relief gases from the cooking of softwoods by the kraft pulping process. Sometimes referred to as sulfate turpentine.

(c) Requirement to implement Best Management Practices. Each mill subject to this section must implement the Best Management Practices (BMPs) specified in paragraphs (c)(1) through (10) of this section. The primary objective of the BMPs is to prevent leaks and spills of spent pulping liquors, soap, and turpentine. The secondary objective is to contain, collect, and recover at the immediate process area, or otherwise control, those leaks, spills, and intentional diversions of spent pulping liquor, soap, and turpentine that do occur. BMPs must be developed according to best engineering practices and must be implemented in a manner that takes into account the specific circumstances at each mill. The BMPs are as follows:

(1) The mill must return spilled or diverted spent pulping liquors, soap, and turpentine to the process to the maximum extent practicable as determined by the mill, recover such materials outside the process, or discharge spilled or diverted material at a rate that does not disrupt the receiving wastewater treatment system.

(2) The mill must establish a program to identify and repair leaking equipment items. This program must include:

(i) Regular visual inspections (e.g., once per day) of process areas with equipment items in spent pulping liquor, soap, and turpentine service;

(ii) Immediate repairs of leaking equipment items, when possible. Leaking equipment items that cannot be repaired during normal operations must be identified, temporary means for mitigating the leaks must be provided, and the leaking equipment items repaired during the next maintenance outage;

(iii) Identification of conditions under which production will be curtailed or halted to repair leaking equipment items or to prevent pulping liquor, soap, and turpentine leaks and spills; and

(iv) A means for tracking repairs over time to identify those equipment items where upgrade or replacement may be warranted based on frequency and severity of leaks, spills, or failures.

(3) The mill must operate continuous, automatic monitoring systems that the mill determines are necessary to detect and control leaks, spills, and intentional diversions of spent pulping liquor, soap, and turpentine. These monitoring systems should be integrated with the mill process control system and may include, e.g., high level monitors and alarms on storage tanks; process area conductivity (or pH) monitors and alarms; and process area sewer, process wastewater, and wastewater treatment plant conductivity (or pH) monitors and alarms.

(4) The mill must establish a program of initial and refresher training of operators, maintenance personnel, and other technical and supervisory personnel who have responsibility for operating, maintaining, or supervising the operation and maintenance of equipment items in spent pulping liquor, soap, and turpentine service. The refresher training must be conducted at least annually and the training program must be documented.

(5) The mill must prepare a brief report that evaluates each spill of spent pulping liquor, soap, or turpentine that is not contained at the immediate process area and any intentional diversion of spent pulping liquor, soap, or turpentine that is not contained at the immediate process area. The report must describe the equipment items involved, the circumstances leading to the incident, the effectiveness of the corrective actions taken to contain and recover the spill or intentional diversion, and plans to develop changes to equipment and operating and maintenance practices as necessary to prevent recurrence. Discussion of the reports must be included as part of the annual refresher training.

(6) The mill must establish a program to review any planned modifications to the pulping and chemical recovery facilities and any construction activities in the pulping and chemical recovery areas before these activities commence. The purpose of such review is to prevent leaks and spills of spent pulping liquor, soap, and turpentine during the planned modifications, and to ensure that construction and supervisory personnel are aware of possible liquor diversions and of the requirement to prevent leaks and spills of spent pulping liquors, soap, and turpentine during construction.

(7) The mill must install and maintain secondary containment (i.e., containment constructed of materials impervious to pulping liquors) for spent pulping liquor bulk storage tanks equivalent to the volume of the largest tank plus sufficient freeboard for precipitation. An annual tank integrity testing program, if coupled with other containment or diversion structures, may be substituted for secondary containment for spent pulping liquor bulk storage tanks.

(8) The mill must install and maintain secondary containment for turpentine bulk storage tanks.

(9) The mill must install and maintain curbing, diking or other means of isolating soap and turpentine processing and loading areas from the wastewater treatment facilities.

(10) The mill must conduct wastewater monitoring to detect leaks and spills, to track the effectiveness of the BMPs, and to detect trends in spent pulping liquor losses. Such monitoring must be performed in accordance with paragraph (i) of this section.

(d) Requirement to develop a BMP Plan.

(1) Each mill subject to this section must prepare and implement a BMP Plan. The BMP Plan must be based on a detailed engineering review as described in paragraphs (d)(2) and (3) of this section. The BMP Plan must specify the procedures and the practices required for each mill to meet the requirements of paragraph (c) of this section, the construction the mill determines is necessary to meet those requirements including a schedule for such construction, and the monitoring program (including the statistically derived action levels) that will be used to meet the requirements of paragraph (i) of this section. The BMP Plan also must specify the period of time that the mill determines the action levels established under paragraph (h) of this section may be exceeded without triggering the responses specified in paragraph (i) of this section.

(2) Each mill subject to this section must conduct a detailed engineering review of the pulping and chemical recovery operations—including but not limited to process equipment, storage tanks, pipelines and pumping systems, loading and unloading facilities, and other appurtenant pulping and chemical recovery equipment items in spent pulping liquor, soap, and turpentine service—for the purpose of determining the magnitude and routing of potential leaks, spills, and intentional diversions of spent pulping liquors, soap, and turpentine during the following periods of operation:

(i) Process start-ups and shut downs;

(ii) Maintenance;

(iii) Production grade changes;

(iv) Storm or other weather events;

(v) Power failures; and

(vi) Normal operations.

(3) As part of the engineering review, the mill must determine whether existing spent pulping liquor containment facilities are of adequate capacity for collection and storage of anticipated intentional liquor diversions with sufficient contingency for collection and containment of spills. The engineering review must also consider:

(i) The need for continuous, automatic monitoring systems to detect and control leaks and spills of spent pulping liquor, soap, and turpentine;

(ii) The need for process wastewater diversion facilities to protect end-of-pipe wastewater treatment facilities from adverse effects of spills and diversions of spent pulping liquors, soap, and turpentine;

(iii) The potential for contamination of storm water from the immediate process areas; and

(iv) The extent to which segregation and/or collection and treatment of contaminated storm water from the immediate process areas is appropriate.

(e) Amendment of BMP Plan.

(1) Each mill subject to this section must amend its BMP Plan whenever there is a change in mill design, construction, operation, or maintenance that materially affects the potential for leaks or spills of spent pulping liquor, turpentine, or soap from the immediate process areas.

(2) Each mill subject to this section must complete a review and evaluation of the BMP Plan five years after the first BMP Plan is prepared and, except as provided in paragraph (e)(1) of this section, once every five years thereafter. As a result of this review and evaluation, the mill must amend the BMP Plan within three months of the review if the mill determines that any new or modified management practices and engineered controls are necessary to reduce significantly the likelihood of spent pulping liquor, soap, and turpentine leaks, spills, or intentional diversions from the immediate process areas, including a schedule for implementation of such practices and controls.

(f) Review and certification of BMP Plan. The BMP Plan, and any amendments thereto, must be reviewed by the senior technical manager at the mill and approved and signed by the mill manager. Any person signing the BMP Plan or its amendments must certify to the permitting or pretreatment control authority under penalty of law that the BMP Plan (or its amendments) has been prepared in accordance with good engineering practices and in accordance with this regulation. The mill is not required to obtain approval from the permitting or pretreatment control authority of the BMP Plan or any amendments thereto.

(g) Record keeping requirements.

(1) Each mill subject to this section must maintain on its premises a complete copy of the current BMP Plan and the records specified in paragraph (g)(2) of this section and must make such BMP Plan and records available to the permitting or pretreatment control authority and the Regional Administrator or his or her designee for review upon request.

(2) The mill must maintain the following records for 3 years from the date they are created:

(i) Records tracking the repairs performed in accordance with the repair program described in paragraph (c)(2) of this section;

(ii) Records of initial and refresher training conducted in accordance with paragraph (c)(4) of this section;

(iii) Reports prepared in accordance with paragraph (c)(5) of this section; and

(iv) Records of monitoring required by paragraphs (c)(10) and (i) of this section.

(h) Establishment of wastewater treatment system influent action levels.

(1) Each mill subject to this section must conduct a monitoring program, described in paragraph (h)(2) of this section, for the purpose of defining wastewater treatment system influent characteristics (or action levels), described in paragraph (h)(3) of this section, that will trigger requirements to initiate investigations on BMP effectiveness and to take corrective action.

(2) Each mill subject to this section must employ the following procedures in order to develop the action levels required by paragraph (h) of this section:

(i) Monitoring parameters. The mill must collect 24–hour composite samples and analyze the samples for a measure of organic content (e.g., Chemical Oxygen Demand (COD) or Total Organic Carbon (TOC)). Alternatively, the mill may use a measure related to spent pulping liquor losses measured continuously and averaged over 24 hours (e.g., specific conductivity or color).

(ii) Monitoring locations. For direct dischargers, monitoring must be conducted at the point influent enters the wastewater treatment system. For indirect dischargers monitoring must be conducted at the point of discharge to the POTW. For the purposes of this requirement, the mill may select alternate monitoring point(s) in order to isolate possible sources of spent pulping liquor, soap, or turpentine from other possible sources of organic wastewaters that are tributary to the wastewater treatment facilities (e.g., bleach plants, paper machines and secondary fiber operations).

(3) By the date prescribed in paragraph (j)(1)(iii) of this section, each existing discharger subject to this section must complete an initial six-month monitoring program using the procedures specified in paragraph (h)(2) of this section and must establish initial action levels based on the results of that program. A wastewater treatment influent action level is a statistically determined pollutant loading determined by a statistical analysis of six months of daily measurements. The action levels must consist of a lower action level, which if exceeded will trigger the investigation requirements described in paragraph (i) of this section, and an upper action level, which if exceeded will trigger the corrective action requirements described in paragraph (i) of this section.

(4) By the date prescribed in paragraph (j)(1)(vi) of this section, each existing discharger must complete a second six-month monitoring program using the procedures specified in paragraph (h)(2) of this section and must establish revised action levels based on the results of that program. The initial action levels shall remain in effect until replaced by revised action levels.

(5) By the date prescribed in paragraph (j)(2) of this section, each new source subject to this section must complete a six-month monitoring program using the procedures specified in paragraph (h)(2) of this section and must develop a lower action level and an upper action level based on the results of that program.

(6) Action levels developed under this paragraph must be revised using six months of monitoring data after any change in mill design, construction, operation, or maintenance that materially affects the potential for leaks or spills of spent pulping liquor, soap, or turpentine from the immediate process areas.

(i) Monitoring, corrective action, and reporting requirements.

(1) Each mill subject to this section must conduct daily monitoring of the influent to the wastewater treatment system in accordance with the procedures described in paragraph (h)(2) of this section for the purpose of detecting leaks and spills, tracking the effectiveness of the BMPs, and detecting trends in spent pulping liquor losses.

(2) Whenever monitoring results exceed the lower action level for the period of time specified in the BMP Plan, the mill must conduct an investigation to determine the cause of such exceedance. Whenever monitoring results exceed the upper action level for the period of time specified in the BMP Plan, the mill must complete corrective action to bring the wastewater treatment system influent mass loading below the lower action level as soon as practicable.

(3) Although exceedances of the action levels will not constitute violations of an NPDES permit or pretreatment standard, failure to take the actions required by paragraph (i)(2) of this section as soon as practicable will be a permit or pretreatment standard violation.

(4) Each mill subject to this section must report to the NPDES permitting or pretreatment control authority the results of the daily monitoring conducted pursuant to paragraph (i)(1) of this section. Such reports must include a summary of the monitoring results, the number and dates of exceedances of the applicable action levels, and brief descriptions of any corrective actions taken to respond to such exceedances. Submission of such reports shall be at the frequency established by the NPDES permitting or pretreatment control authority, but in no case less than once per year.

(j) Compliance deadlines.

(1) Existing direct and indirect dischargers. Except as provided in paragraph (j)(2) of this section for new sources, indirect discharging mills subject to this section must meet the deadlines set forth below. Except as provided in paragraph (j)(2) of this section for new sources, NPDES permits must require direct discharging mills subject to this section to meet the deadlines set forth below. If a deadline set forth below has passed at the time the NPDES permit containing the BMP requirement is issued, the NPDES permit must require immediate compliance with such BMP requirement(s).

(i) Prepare BMP Plans and certify to the permitting or pretreatment authority that the BMP Plan has been prepared in accordance with this regulation not later than April 15, 1999;

(ii) Implement all BMPs specified in paragraph (c) of this section that do not require the construction of containment or diversion structures or the installation of monitoring and alarm systems not later than April 15, 1999.

(iii) Establish initial action levels required by paragraph (h)(3) of this section not later than April 15, 1999.

(iv) Commence operation of any new or upgraded continuous, automatic monitoring systems that the mill determines to be necessary under paragraph (c)(3) of this section (other than those associated with construction of containment or diversion structures) not later than April 17, 2000.

(v) Complete construction and commence operation of any spent pulping liquor, collection, containment, diversion, or other facilities, including any associated continuous monitoring systems, necessary to fully implement BMPs specified in paragraph (c) of this section not later than April 16, 2001.

(vi) Establish revised action levels required by paragraph (h)(4) of this section as soon as possible after fully implementing the BMPs specified in paragraph (c) of this section, but not later than January 15, 2002.

(2) New sources. Upon commencing discharge, new sources subject to this section must implement all of the BMPs specified in paragraph (c) of this section, prepare the BMP Plan required by paragraph (d) of this section, and certify to the permitting or pretreatment authority that the BMP Plan has been prepared in accordance with this regulation as required by paragraph (f) of this section, except that the action levels required by paragraph (h)(5) of this section must be established not later than 12 months after commencement of discharge, based on six months of monitoring data obtained prior to that date in accordance with the procedures specified in paragraph (h)(2) of this section.

(k) The provisions of paragraphs (c) through (j) of this section do not apply to the bleached papergrade kraft mill, commonly known as the Androscoggin Mill, that is owned by International Paper and located in Jay, Maine. In lieu of imposing the requirements specified in those paragraphs, the permitting authority shall establish conditions for the discharge of COD and color for this mill on the basis of best professional judgment.

Credits
[65 FR 46108, July 27, 2000]

SOURCE: 63 FR 18635, April 15, 1998, unless otherwise noted.

AUTHORITY: Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, as amended, (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361), and Section 112 of the Clean Air Act, as amended (42 U.S.C. 7412).

Current through May 5, 2026, 91 FR 24137. Some sections may be more current. See credits for details.

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