

**NORTHWEST ENVIRONMENTAL ADVOCATES ❖ EARTHRISE LAW
CENTER ❖ NATURAL RESOURCES DEFENSE COUNCIL**

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FEDERAL COURT RULES EPA'S SHIP DISCHARGE PERMIT ILLEGAL

Today, the U.S. Second Circuit Court of Appeals overturned the U.S. Environmental Protection Agency's (EPA) Vessel General Permit (VGP) that governs the discharge of 21 billion gallons annually of ballast water— laden with invasive species— to the nation's waters. In a sweeping decision, the Court held that EPA's permit failed to establish permit limits that meet the requirements of the Clean Water Act.

“The court understood the real world implications of EPA's failure, the incredible economic and environmental expense of invasive species that this EPA permit allows the shipping industry to release into the waters of the United States,” said Nina Bell, Executive Director of the Oregon-based Northwest Environmental Advocates (NWEA). “The court ruled against EPA on nearly all grounds, establishing that the Clean Water Act cannot be addressed through a series of bureaucratic checklists that fail to provide real protection to the nation's waters,” she added.

Lead attorney Allison LaPlante explained that the court was obviously moved by the fact that invasive species are unlike any other pollutant. “Invasive species are like a wildfire, growing instead of washing away; once released there is almost nothing that can be done,” she said. According to LaPlante, “the court said that EPA could not just simply throw its hands up and refuse to do the hard work of establishing permit limits that will protect water quality.”

The court opinion found that EPA's ship discharge permit did not meet the two major prongs of the Clean Water Act. First, EPA failed to require strict enough treatment technology

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to remove invasive species from ballast water. And, second, EPA failed to require that ships meet permit limits that will prevent invasive species from colonizing the nation's waters.

EPA's permit establishes treatment levels at the level set by an as-yet unsigned international treaty under the International Maritime Organization (IMO). The court held that studies demonstrated that EPA was wrong to assume that the IMO level represents the highest available technology for removing invasive species in ballast water prior to its discharge.

"Today's decision is a big victory for the Great Lakes and our nation's waters. Aquatic invasive species like zebra mussels and quagga mussels impose billions of dollars of costs on our economy every year, damaging infrastructure like public water supplies and energy generation systems, and devastating commercial and recreational fisheries," said Rebecca Riley, Senior Attorney with the Natural Resources Defense Council. "The court made it clear that EPA cannot give up in the fight against invasive species; more can and must be done to protect the Great Lakes and other critically important waters," she added.

In its permit, EPA also restricted pollution controls to those that can be installed on ships, where space severely limits the systems' efficacy. The court held that EPA's failure to evaluate onshore facilities for ballast water treatment was a "problem of EPA's own making" because it intentionally limited its own science panel's analysis of the treatment approach.

This lawsuit was the fourth in a series of lawsuits spearheaded by NWEA after EPA failed to respond to the organization's 1999 petition seeking to have ship discharges covered by the Clean Water Act.

Representing NWEA and the Center for Biological Diversity were Allison LaPlante, Clinical Professor and Senior Staff Attorney, Earthrise Environmental Law Center at Lewis and Clark Law School, and Deborah Sivas and Matthew Sanders from the Stanford Environmental Law Clinic. Rebecca Riley represented NRDC.

The court's decision is available at <http://www.ca2.uscourts.gov/decisions>.

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