

# Legislative Analysis



## REVISE ENVIRONMENTAL STANDARDS FOR PORT OPERATIONS PERMIT

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**House Bill 5095 as enrolled**  
**Sponsor: Rep. Dan Lauwers**  
**House Committee: Commerce and Trade**  
**Senate Committee: Natural Resources**  
**Complete to 2-7-19**

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

*(Vetoed by the Governor 6-29-18)*

### SUMMARY:

House Bill 5095 would amend the Natural Resources and Environmental Protection Act (NREPA) to allow compliance with U.S. Coast Guard ballast water standards as a standard for issuing permits to oceangoing vessels engaged in port operations in Michigan. These standards would be an option alongside existing standards promulgated by the Department of Environmental Quality (DEQ). The bill would make other requirements for the permit.

### DETAILED SUMMARY:

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

Under HB 5095, a permit would still be required, but DEQ would issue a permit only if the applicant could demonstrate that the vessel complies with 33 CFR 151.1510 as then in effect or the vessel will use environmentally sound technology and methods approved by DEQ that prevent the discharge of aquatic nuisance species.<sup>2</sup>

Additionally, all of the following would apply:

- The grant by the Coast Guard of an extension to the implementation schedule under 33 CFR 151.1513 or the exchange of ballast water under 33 CFR 151.1510(A)(1) or saltwater flushing under 33 CFR 401.30 alone is not considered compliance with the federal aquatic nuisance rule for the purposes of the permit.<sup>3</sup>

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<sup>1</sup> For more information on the DEQ permitting process, see "Ballast Water Control":

[https://www.michigan.gov/deq/0,4561,7-135-3313\\_71618\\_3682\\_3713-153446--,00.html](https://www.michigan.gov/deq/0,4561,7-135-3313_71618_3682_3713-153446--,00.html)

<sup>2</sup> Code of Federal Regulations 151.1510, Ballast water management requirements: [https://www.ecfr.gov/cgi-bin/text-idx?SID=215593d6798c25f0f0b200603290ef92&mc=true&node=se33.2.151\\_11510&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=215593d6798c25f0f0b200603290ef92&mc=true&node=se33.2.151_11510&rgn=div8)

<sup>3</sup> Code of Federal Regulations 151.1513, Extension of compliance date: [https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=5e609c1e7d94bc5acbc6c132e3ddf810&mc=true&n=sp33.2.151.c&r=SUBPART&ty=HTML#se33.2.151\\_11513](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=5e609c1e7d94bc5acbc6c132e3ddf810&mc=true&n=sp33.2.151.c&r=SUBPART&ty=HTML#se33.2.151_11513); Code of Federal Regulations 401.30, Ballast water and trim: [https://www.ecfr.gov/cgi-bin/text-idx?SID=5e609c1e7d94bc5acbc6c132e3ddf810&mc=true&node=se33.3.401\\_130&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=5e609c1e7d94bc5acbc6c132e3ddf810&mc=true&node=se33.3.401_130&rgn=div8)

- A vessel discharging ballast water must employ a ballast water management system beginning on the enactment date of the bill.
- A vessel must carry out an exchange of ballast water or saltwater flushing and comply with other applicable requirements of 33 CFR Part 151, subpart C [Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River], and 33 CFR 401.30.
- A vessel using water from a public water system under 33 CFR 151.1510(A)(4) must utilize a method to sufficiently clean ballast water tanks prior to using water from a public water supply system as ballast water as approved by DEQ.
- A discharge that may cause or contribute to a violation of a water quality standard is not authorized by the permit.
- If the federal aquatic nuisance rule is amended after the enactment date of the bill, and the director of DEQ determines that the amended version of the federal rule is less protective of the waters of this state from aquatic nuisance species, the applicant must demonstrate that the vessel complies with the federal aquatic nuisance rule as in effect immediately before the effective date of the amendment to the rule.
- If, pursuant to a compact of Great Lakes states of which Michigan is a part, Michigan adopts standards more protective of the waters of this state from aquatic nuisance species than the version of the federal aquatic nuisance rule otherwise applicable, the standards adopted pursuant to the compact apply.

“Federal aquatic nuisance rule” would mean 33 CFR Part 151, subpart C and applicable requirements of 33 CFR 151.2050, 151.2060, and 151.2070.<sup>4</sup>

DEQ could promulgate rules to implement these changes.

The bill states that the intent of the legislature in adopting the federal aquatic nuisance rule by reference is to help harmonize regulatory programs in Great Lakes states for preventing the introduction and spread of aquatic nuisance species in the Great Lakes, including ballast water management programs, and allow regulatory agencies to cooperating in developing stronger programs.

## **FISCAL IMPACT:**

House Bill 5095 would have an indeterminate fiscal impact on the Department of Environmental Quality. The bill would require the DEQ to employ U.S. Coast Guard standards for issuing surface water discharge permits to oceangoing vessels engaged in port operations, rather than the current DEQ-specific standards. It is unclear whether these new standards would affect the costs realized by the department in the enforcement of the NREPA-required water protection. It is also unclear whether these new standards would affect Ballast Water Control General (BWCG) Permit revenue. These permit fees include a \$75 application fee effective for 5 years as well as a \$150 annual renewal fee. A BWCG

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<sup>4</sup> Code of Federal Regulations 151.2050, Additional requirements—nonindigenous species reduction practices; 151.2060, Reporting requirements; 151.2070, Recordkeeping requirements: <https://www.ecfr.gov/cgi-bin/text-idx?SID=a012818456f9d13d2d2402827572fed6&mc=true&node=pt33.2.151&rgn=div5>

Permit is just one type of Surface Water Discharge Permit, which collectively generate approximately \$2.8 million in annual revenue for the DEQ. This revenue is deposited to the National Pollutant Discharge Elimination System (NPDES) Fund, which supports the NPDES Nonstormwater Program to protect Michigan’s surface waters from pollution discharges. This fee is scheduled to sunset October 1, 2019.

**Vetoed 6-29-18:**

In his veto message, Governor Snyder wrote:

The language in the bill is ambiguous—at best—on the question of whether the DEQ would be required to issue discharge permits to certain vessels using “alternate management systems” approved by foreign administrations. I am of the mindset that there can be no ambiguity when it comes to the safety of our Great Lakes. These “alternate management systems” are not fully vetted by the USCG or the DEQ, meaning they may not be as protective as USCG or DEQ methods. Potentially increasing the risk for introduction of new aquatic invasive species into the Great Lakes, ultimately harming our waters and negatively impacting our State’s economy, is not something I can support.

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