



# GREAT LAKES LEGISLATIVE CAUCUS

## Great Lakes News for Legislators

An online newsletter of the Great Lakes Legislative Caucus

Caucus Chair: Michigan Sen. Patricia Birkholz

June 2009

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Newsletter Archive and More on the Caucus

### States taking more aggressive stand against invasive species; court upholds New York ballast water rules

In their battle against invasive species, Great Lakes states are finding at least one place where they can consistently win -- the courtroom.

In May, the [New York Supreme Court upheld ballast water management rules and standards](#) adopted by the state Department of Environmental Conservation. New York's rules, modeled after California's and considered the strictest in the Great Lakes region, would begin to take effect in 2012. They would apply to oceangoing vessels and "lakers" (non-oceangoing vessels) using the Great Lakes.

A coalition of shipping interests challenged the New York rules, saying the state had illegally placed additional restrictions on a U.S. Environmental Protection Agency discharge permit for these vessels. According to this article in the Albany [Times Union](#), New York plans to require ships to treat ballast water on-board with technology that is "under development ... but has not been perfected."

[This recent article](#) we did for the CSG Midwest publication *Stateline Midwest* discusses how previous court decisions have helped lead states to take a more aggressive role in regulating ballast water and combating invasive species.

Key rulings have included a federal court decision upholding Michigan's pioneering 2005 ballast water law, a federal court decision in California requiring the EPA to regulate ballast water as part of its responsibilities under the Clean Water Act, and a state court decision in Minnesota calling on the state's Pollution Control Agency to treat ballast water discharge as a pollutant.



Because of these rulings, along with ongoing concerns about the environmental and economic impact of invasive species, Great Lakes states have established ballast water treatment standards and rules for vessels. They have been implemented through state legislation, state agency-initiated permit programs or "401 certification." (This term refers to Section 401 of the U.S. Clean Water Act. Under it, states have the authority to protect their waters beyond minimum federal standards).

The treatment standards and permit proposals vary from state to state (see [map](#) in the *Stateline Midwest* article). A "patchwork" of different state rules has been one of the concerns raised by the shipping industry.

This helpful [issues brief](#), written by Jennifer Nalbene of Great Lakes United, explains the history and current status of state and federal ballast water policy and rules.

### Plan to pour \$475 million into Great Lakes now has specifics

The Obama administration has released some details on how it wants to spend nearly a half-billion dollars in the first year of a proposed Great Lakes restoration initiative.

[This 18-page document](#) outlines the funding plan for 2010. An interagency task force has been asked to develop a strategy for FY 2011 and beyond. Earlier this month, [Cameron Davis of the Great Lakes Alliance](#) was named special advisor to the EPA. He will oversee the administration's restoration plan.

Here is a breakdown of how, under Obama's proposal, the \$475 million in next year's budget would be spent.

\* 31 percent of the money would go to projects that "protect the Great Lakes from toxic substances, clean up sediments and restore Areas of Concern";



\* 13 percent would go to projects that combat invasive species (part of the money would be used to advance ballast water treatment technology for freshwater ecosystems and to help each state implement its Aquatic Nuisance Species Management Plan);

\* 20 percent would go to efforts designed to curb nonpoint source pollution and better protect the "nearshore" health of the Great Lakes, including the ecosystem's beaches;

\* 22 percent would go to habitat and wildlife protection, including programs designed to restore wetlands; and

\* 14 percent would go to improving how different jurisdictions, including state and local governments, monitor and evaluate the health of the Great Lakes system.

Since release of Obama's plan, several Great Lakes advocacy groups have been urging the U.S. Congress to include the restoration initiative in next year's federal budget. The Healing Our Waters - Great Lakes Coalition is coordinating some of those lobbying efforts. [Click here to view the coalition's home page.](#)

Also, here is a story from [The Cleveland Plain Dealer](#) discussing details of the Great Lakes restoration plan.

### Update on legislative action in the states

Over the last few months, state legislatures in the region have advanced several bills related to the Great Lakes and water policy. We track this type of legislative activity through our [Great Lakes Legislative Tracker, which is available on the Great Lakes Legislative Caucus Web site.](#)

Please contact Tim Anderson ([tanderson@csg.org](mailto:tanderson@csg.org) or 630/925-1922) if you have legislation to add or update.

Here is some of the activity we have seen recently in the states.

\* In Illinois, a bill ([HB 3828](#)) to establish a task force on Great Lakes conservation and water quality has been passed by the Illinois House and Senate. The task force (which would include legislators and stage agency officials) would be required to issue an annual report to the General Assembly recommending "legislative actions to protect the water quality and supply of the Great Lakes."

Illinois [HB 872](#), which also has been passed by both legislative chambers, would establish a one-year pilot program to "reduce Asian carp [an invasive species] by stimulating its bulk harvest in the Illinois River and by increasing the number of native fish." Other bills passed by Illinois legislators seek to address environmental concerns about the presence of prescription drugs and other products in the state's drinking water sources. They are [HB 658](#), [SB 178](#) and [SB 1919](#).

\* Minnesota legislators put the finishing touches on a plan ([HF 1231](#)) to invest in various conservation programs that will be funded by an increase in the state sales tax. The increase (three-eighths of 1 percent) was approved by voters last year. Under the [Clean Water, Land and Legacy Amendment](#), one-third of the revenue from this tax increase must go to a new state fund that invests in water quality protection, enhancement and restoration. At least 5 percent of the money in that fund must be spent on the protection of drinking water sources. According to the state Department of Natural Resources, the Clean Water Fund will receive about \$80 million in fiscal year 2010.

\* According to a June 4 article in [The Cleveland Plain Dealer](#), a budget bill passed by the Ohio Senate would authorize the state Department of Natural Resources to open up state parkland for oil and natural gas drilling. The measure also "leaves the door open for drilling underneath Lake Erie if a federal ban is ever lifted," the newspaper reports.

### Update on Great Lakes legislation in Congress

[The Great Lakes Legislative Caucus also tracks bills](#) in the U.S. Congress. In early June, a House committee passed the Clean Coastal Environment and Public Health Act.

[H.R. 2093](#) would reauthorize funding for states under the current federal BEACH Act. Sen. Frank Lautenberg, one of the bill's co-sponsors, says the measure also would make significant improvements in federal policy related to beach monitoring and testing. First, the annual grants awarded to states would increase from \$30 million to \$40 million. Second, the bill calls for the use of "rapid testing methods" to ensure beaches are closed in a more timely manner when they have high levels of bacteria. Third, H.R. 2093 would change public notification standards.

[The Alliance for the Great Lakes](#) is voicing support for the Senate version of the Clean Coastal Environment and Public Health Act. According to the Alliance, recent congressional amendments weakened the House bill, though it does still have much of the same language as [S. 878](#). The advocacy group says the Senate bill would improve federal beach policy in four important ways: allow states to spend a portion of their BEACH Act funds to remove pollution sources (rather than simply monitor the beaches for pollution problems); require the U.S. EPA to study and implement new standards to protect beaches from nuisance algae; require the EPA to approve new rapid testing methods; and double the level of funding for the program.

### Wisconsin town meets compact rules, will tap into Great Lakes

A plan by the Wisconsin city of New Berlin to divert Lake Michigan water has been [approved by state regulators](#), who say the town's plan meets the terms of the [Great Lakes-St. Lawrence River Basin Water Resources Compact](#).

"New Berlin will return every drop of water that it uses back to Lake Michigan," says Todd Amb's, water division administrator for the Wisconsin Department of Natural Resources.

He adds that the city has agreed to reduce its overall water use. According to the [Milwaukee Journal Sentinel](#), new conservation efforts may include new lawn-sprinkling regulations and higher water rates for high-volume users. The city's goal is to reduce per-capita water use by 10 percent.

Part of New Berlin already uses Lake Michigan as its drinking water source. However, a portion of the city lies outside the Great Lakes basin and has been using groundwater wells. Those wells produce drinking water with high levels of radium, the DNR says.

The state has given New Berlin the authority to withdraw an average of 2.1 million gallons per day to areas outside the basin.

### Congressional letter voices concern about BP pollution

[In a letter signed by 18 members of Congress](#) representing four different Great Lakes states, the U.S. Environmental Protection Agency has been asked to conduct a "comprehensive review of all ground, water and air pollution discharges at all British Petroleum refining facilities in the Great Lakes basin."

The request was made after lawmakers learned that, for six years, BP had exceeded Clean Air Act limits on the release of benzene, a toxin linked to leukemia and other serious medical conditions. According to the [Gary Post-Tribune](#), BP self-reported the violations (which occurred between 2003 and 2008) to the EPA.



About the Newsletter and the Great Lakes Legislative Caucus  
Great Lakes News for Legislators is an online publication of the Great Lakes Legislative Caucus (GLLC). The GLLC is a nonpartisan group of state and provincial lawmakers from eight states (Illinois, Indiana, Michigan, Minnesota, New York, Pennsylvania, Ohio and Wisconsin) and two provinces (Ontario and Québec). The goal of the caucus is to facilitate the regional exchange of ideas and information on key Great Lakes issues, strengthen the role of state and provincial legislators in the policymaking process, and promote the restoration and protection of the Great Lakes. All legislators are welcome to participate. Funding for the caucus is provided by the Joyce Foundation. The Council of State Governments provides staffing services for the caucus. More information is available at [www.greatlakeslegislators.org](http://www.greatlakeslegislators.org).

### Contact Info

Tim Anderson ~ 630/925-1922 or [tanderson@csg.org](mailto:tanderson@csg.org)  
Mike McCabe ~ 630/925-1922 or [mmccabe@csg.org](mailto:mmccabe@csg.org)

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