US EPA ARCHIVE DOCUMENT

From:	Jim McInnis
To:	ENRD, PUBCOMMENT-EES (ENRD)
Sent:	3/29/2013 9:35:45 AM
Subject:	United States v. Lake Michigan Trans-Lake Shortcut, Inc., D.J. Ref. No. 90-5-1-1-10771.

Good morning,

I support the Lake Michigan Trans-Lake Shortcut, Inc. in their efforts to continue the service the S.S. Badger offers on Lake Michigan. I believe the historical significance has been overlooked, and the negative effects to the environment has been overstated. The economic impact to our community would be grave as well as far reaching. From my standpoint this situation has become more political and emotional than it's true significance in impacting the environment.

I support the continued service of the S.S. Badger.

Jim McInnis, Supervisor
Pere Marquette Charter Twp.
(231) 845-1277; Jim@pmtwp.org

US EPA ARCHIVE DOCUMENT

BILL HUIZENGA
2ND DISTRICT, MICHIGAN

COMMITTEE ON FINANCIAL SERVICES

Congress of the United States
House of Representatives
Washington, DC 20515–2202

April 10, 2013

1217 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2202
PHONE: 202-225-4401
FAX: 202-226-0779

1 SOUTH HARBOR
SUITE 6B
GRAND HAVEN, MI 49417
PHONE: 616-414-5516
FAX: 616-414-5521

4555 WILSON AVE
SUITE 3
GRANDVILLE, MI 49418
PHONE: 616-570-0917
FAX: 616-570-0934

www.huizenga.house.gov

The Honorable Ignacia Moreno
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C.

Re: United States v. Lake Michigan Trans-Lake Shortcut, Inc., D.J. Ref. No. 90-5-1-1-10771

Dear Assistant Attorney General Moreno:

I write today on behalf of Lake Michigan Carferry in Ludington, Michigan, which recently signed a Consent Decree agreement with the Department of Justice and the Environmental Protection Agency (EPA). The Consent Decree agreement in the lawsuit entitled United States v. Lake Michigan Trans-Lake Shortcut, Inc., Civil Action No. 1:13-cv-317, requires that Lake Michigan Carferry cease ash discharges after the S.S. Badger's 2014 operating season, perform other injunctive relief, and pay a $25,000 civil penalty.

The Consent Decree allows the S.S. Badger to continue to operate while it designs, engineers, and installs a sophisticated ash retention system. This agreement, the product of a lengthy process of Lake Michigan Carferry working with the Department of Justice and the EPA, is in the best interest of the public, and all Parties. The agreement saves the jobs of Lake Michigan Careferry's 200 plus employees, as well as numerous other jobs in the states of Michigan and Wisconsin that rely on the operation of the S.S. Badger.

I believe that approving the Consent Decree that is endorsed by the Department of Justice and the EPA offers the best opportunity to end the discharge of coal ash into Lake Michigan while still serving the public and the local communities of Ludington, Michigan and Manitowoc, Wisconsin.

Thank you for your time and consideration.

Sincerely,

Bill Huizenga
Member of Congress

PRINTED ON RECYCLED PAPER

US EPA ARCHIVE DOCUMENT

From:	John Shay
To:	ENRD, PUBCOMMENT-EES (ENRD)
CC:	Dick Rathsack; Gary Castonia; Jackie Steckel; Kaye Ferguson Holman; Kaye Holman; Les Johnson; Mayor; Nick Tykoski; Richard Wilson; Wally Taranko; Wanda Marrison; Henderson Home; Henderson, John; John Henderson
Sent:	4/13/2013 1:08:53 PM
Subject:	D.J. Ref. No. 90-5-1-1-10771; Lake Michigan Car Ferry, Ludington, Michigan

I write this letter on behalf of the City of Ludington in full support of the proposed Consent Decree among the Department of Justice, EPA and the Lake Michigan Car Ferry Service in Ludington, Michigan. The Lake Michigan Car Ferry, better known as the SS Badger, represents the identity of the Ludington community, as well as a vital economic component of our area. It is estimated that the Badger provides about 700 direct and indirect jobs to our small community, which makes it one of the largest employers. It brings in about 140,000 visitors each year to our community, who sleep at our hotels, eat in our restaurants and shop in our stores. The loss of the Badger would have a devastating impact on our community.

The proposed Consent Decree represents an opportunity for the Badger to eliminate the coal ash from Lake Michigan while also preserving the economic and cultural benefits to a community still suffering from the economic downturn. Once again, we urge the court to approve this Consent Decree.

John Shay
City Manager
City of Ludington
400 South Harrison Street
Ludington, Michigan 49431
(231) 845-6237 Voice
(231) 845-7302 Fax
jshay@ci.ludington.mi.us

US EPA ARCHIVE DOCUMENT

2352911

PHYSICAL DOCUMENT

ENV_ENFORCEMENT-n2352911-v1

RE: CONSENT DECREE AGREEMENT

Author:	Maher, Robert
Document Type:	LETTER
LSA(s):	BDOUGLAS
Co-Counsel:	SMAJUMDAR
Counsel LSA(s):	ICOVINGT
Distribution List:	ENRD, EESCaseManagement (ENRD); Lattin, Sue (ENRD); Rose, Robert (ENRD); Berman, Lisa (ENRD);Maher, Robert (ENRD);Douglas Jr., Belton H (ENRD);Majumdar, Sumona (ENRD);Covington, Imogene (ENRD)
Fileroom:	EES - 6th Floor
DJ#:	90-5-1-1-10771
Case Name:	U.S. V. LAKE MICHIGAN TRANS-LAKE SHORTCUT, INC., D/B/A LAKE MICHIGAN CARFERRY SERVICE AND S.S. BADGER
Court:	MI W.D. Mich.; 6th Cir.
Notes:	
Double-Sided:	
Received Date:	4/16/2013
Urgent:	
Oversize:	
Bound Document:	

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Maher, Robert

BILL HUIZENGA
2ND DISTRICT, MICHIGAN

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Congress of the United States
House of Representatives
Washington, DC 20515-2202

April 10, 2013

13 APR 16 A9:01
U.S. DEPT. OF JUSTICE - ENRD
ENVIRONMENTAL DIVISION

The Honorable Ignacia Moreno
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C.

Re: United States v. Lake Michigan Trans-Lake Shortcut, Inc., D.J. Ref. No. 90-5-1-1-10771

Dear Assistant Attorney General Moreno:

I write today on behalf of Lake Michigan Carferry in Ludington, Michigan, which recently signed a Consent Decree agreement with the Department of Justice and the Environmental Protection Agency (EPA). The Consent Decree agreement in the lawsuit entitled United States v. Lake Michigan Trans-Lake Shortcut, Inc., Civil Action No. 1:13-cv-317, requires that Lake Michigan Carferry cease ash discharges after the S.S. Badger's 2014 operating season, perform other injunctive relief, and pay a $25,000 civil penalty.

The Consent Decree allows the S.S. Badger to continue to operate while it designs, engineers, and installs a sophisticated ash retention system. This agreement, the product of a lengthy process of Lake Michigan Carferry working with the Department of Justice and the EPA, is in the best interest of the public, and all Parties. The agreement saves the jobs of Lake Michigan Careferry's 200 plus employees, as well as numerous other jobs in the states of Michigan and Wisconsin that rely on the operation of the S.S. Badger.

I believe that approving the Consent Decree that is endorsed by the Department of Justice and the EPA offers the best opportunity to end the discharge of coal ash into Lake Michigan while still serving the public and the local communities of Ludington, Michigan and Manitowoc, Wisconsin.

Thank you for your time and consideration.

Sincerely,

Bill Huizenga
Member of Congress

Corr.
90-5-1-1-10771

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U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-2202

PUBLIC DOCUMENT

OFFICIAL BUSINESS

Rick Huizenga

M.C.

X-RAYED
APR 12 2013
DOJ MAILROOM

CAPVSP1 20044

From:	Gebhardt, Debbie
To:	ENRD, PUBCOMMENT-EES (ENRD)
Sent:	4/18/2013 1:51:36 PM
Subject:	United States v. Lake Michigan Trans-Lake Shortcut, Inc., D.J. Ref. No. 90-5-1-1-10771
Attachments:	BadgerPublicCommentPetri4-13.pdf; image003.png

Attached and below is a letter from Rep. Thomas E. Petri re: above-reference consent decree.

Thank you ---

Debra Gebhardt
Chief of Staff
U.S. Rep. Thomas E. Petri
2462 Rayburn | Washington, D.C. 20515
202-225-2476

US EPA ARCHIVE DOCUMENT

THOMAS E. PETRI
6TH DISTRICT, WISCONSIN

2462 RAYBURN HOUSE OFF
WASHINGTON, DC 205
(202) 225-247

6TH DISTRICT OFFI
FOND DU LAC, V
(920) 922-118

OSHKOSH, WI
(920) 231-633

Congress of the United States
House of Representatives
Washington, DC 20515–4906

April 17, 2013

The Honorable Ignacia S. Moreno
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P. O. Box 7611
Washington, D.C. 20044-7611

Re: United States v. Lake Michigan Trans-Lake Shortcut, Inc., D.J. Ref. No. 90-5-1-1-10771

Dear Assistant Attorney General Moreno:

I am writing to comment on the Consent Decree entered into between Lake Michigan Carferry in Ludington, Michigan, the Department of Justice, and the Environmental Protection Agency.

In addition to paying a $25,000 civil penalty and performing other injunctive relief, in accordance with the terms of the agreement, coal ash discharges from the S.S. Badger will cease after the 2014 operating season. It is my belief that this agreement is fair and reasonable and that approval of the agreement is in the public interest. The City of Manitowoc, Wisconsin, is in my Congressional district, and the S.S. Badger contributes substantially to the economy of Manitowoc and the surrounding region. It is a valued part of our history, culture, and tradition. The ferry is an important transportation link, serving as a marine extension of Hwy. 10 across Lake Michigan.

Under the agreement, the S.S. Badger will continue to sail and the discharge of coal ash will end in a reasonable timeframe. The consent decree as currently written is a fair resolution.

Thank you for your consideration of this matter, which is of great importance to my Congressional district.

Sincerely,

Thomas E. Petri
Member of Congress

US EPA ARCHIVE DOCUMENT

US EPA ARCHIVE DOCUMENT

From:	Justin Nickels
To:	ENRD, PUBCOMMENT-EES (ENRD)
CC:	Common Council; Don Clingan; Terri Brown (TBrown@ssbadger.com)
Sent:	4/23/2013 11:07:01 AM
Subject:	D.J. Ref. No. 90-5-1-1-10771
Attachments:	Adopted Resolution in Support of Consent Decree 4-23-13.pdf

TO: Assistant Attorney General, Environmental and Natural Resources Division
CASE NAME: United States v. Lake Michigan Trans-Lake Shortcut, Inc., d/b/a Lake Michigan Carferry Services and SS Badger

Please see attached an adopted resolution by the Common Council of the City of Manitowoc in support of the consent agreement between the S.S. Badger and the Environmental Protection Agency. The Common Council unanimously adopted this resolution at their April 22nd meeting.

The S.S. Badger is very important to the economy of the City of Manitowoc and nearby communities such as the cities of Two Rivers, Door County, Kewaunee and Green Bay, Wisconsin. The S.S. Badger carries an estimated 100,000 passengers each sailing season and has an estimated $35 million annual economic impact to communities in the two states while providing a major economic impact to one of our local businesses, Broadwind Energies, by shipping large wind turbines across the lake rather than driving these massive turbines down to Chicago and around Lake Michigan.

The City of Manitowoc joins our counterpart, the City of Ludington, MI in benefitting from tourism dollars that are injected into our communities throughout the sailing season as hundreds of travelers each day use the vessel as a relaxing, efficient alternative for traveling across the Great Lakes region.

The City of Manitowoc feels this consent agreement is in the best interest of all the parties involved and we strongly urge you to support this consent agreement.

Please contact me anytime if you wish to discuss this further.

Thank you.

Mayor Justin M. Nickels
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220
jnickels@manitowoc.org
phone: (920) 686-6980
fax: (920) 686-6989

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C.O.W. 4-22-13

183

RESOLUTION

***City of Manitowoc* Supports the Proposed Consent Agreement between the U.S. Environmental Protection Agency and Lake Michigan Carferry Services/SS Badger**

WHEREAS, Mayor Justin M. Nickels and the Common Council of *the City of Manitowoc* expresses their support for the proposed Consent Agreement between the U.S. Environmental Protection Agency and Lake Michigan Carferry Services/***S.S. Badger*** as being in the best public interest and an appropriate resolution to the longstanding issue of this historic vessel discharging coal ash into Lake Michigan; and

WHEREAS, the ***S.S. Badger*** is very important to the economies of its home ports in Michigan and Wisconsin, and to nearby communities up and down the coastline; and

WHEREAS, the ship carries an estimated 100,000 passengers each sailing season, and has an estimated $35 million annual economic impact to communities in the two states; and

WHEREAS, Manitowoc sees tourism dollars injected into our community throughout the sailing season, as hundreds of travelers each day use the vessel as a relaxing, efficient alternative for traveling across the Great Lakes region; and

WHEREAS, these travelers are able to avoid the congested trips "around the bottom of the lake," through Chicago, while enjoying the lake crossing on a historic vessel that hearkens back to the age of the steam on our Great Lakes; and

WHEREAS, local officials in our community that draw its drinking water from Lake Michigan, and is home to some of the finest beaches on Lake Michigan and best sport fishing on the Great Lakes, we take a back seat to nobody when it comes to defending the water quality of this tremendous natural resource; and

WHEREAS, we believe that the proposed Consent Agreement, which establishes a two-year timetable for ceasing the discharge of ash, strikes a fair balance between environmental protection and the economic needs of a region that very much needs the continued economic benefits provided by the ***S.S. Badger***; and

NOW, THEREFORE BE IT RESOLVED that Mayor Justin M. Nickels and the Common Council of the *City of Manitowoc* support the Consent Agreement between the U.S. Environmental Protection Agency and the Lake Michigan Carferry Service/***S.S. Badger*** which will allow their continued positive economic impact on the City of Manitowoc; and

BE IT FURTHER RESOLVED that a copy of this resolution be forward to the U.S. Environmental Protection Agency urging them to enter into the agreement.

APR 22 2013 — Jill Hennessy
Introduced

APR 22 2013
Adopted

4/23/13
Approved

Justin M. Nickels
Mayor Justin M. Nickels

TRANS-LAKE-LMTLS-COMMENTS002959

Tom Barrett
Mayor, City of Milwaukee

April 26, 2013

Assistant Attorney General
U.S. DOJ-ENRD
P.O. Box 7611
Washington, DC 20044-7611

Re: *United States v. Lake Michigan Trans-Lake Shortcut, Inc.*, D.J. Ref. No. 90-5-1-1-10771

To Whom It May Concern:

I am writing to register my official objection to permitting the S.S. Badger to continue to dump coal ash into Lake Michigan.

The 2008 permit allowing the S.S. Badger to dump coal ash into the lake has lapsed. The assurances Lake Michigan Carferry made in 2008 that it would work to eliminate that pollution never came to fruition. This raises serious questions about whether it is appropriate to enter into yet another agreement to end its coal ash dumping.

The consent decree between the U.S. Environmental Protection Administration (EPA) and Lake Michigan Carferry allows coal ash dumping for two more years. My strong preference would be for the dumping to end now. The EPA has declared the new consent decree, "offers the fastest and most certain path available to EPA to stop the discharge of coal ash from the Badger into Lake Michigan." Unfortunately, it also provides new openings for Lake Michigan Carferry to continue prolonging and challenging federal enforcement of the Clean Water Act.

The consequences to Lake Michigan Carferry for failing to abide by the discharge limits or reporting requirements in the decree are inadequate. If Lake Michigan Carferry fails to meet the terms of the decree, the penalty ought to be an immediate halt to its operation.

In my roles as Mayor of the City of Milwaukee and Chair of the Great Lakes & St. Lawrence Cities Initiative I have worked with the EPA to advance environmental priorities on the Great Lakes. We have stories of success, including work accomplished

Office of the Mayor • City Hall • 200 East Wells Street • Milwaukee, Wisconsin 53202
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US EPA ARCHIVE DOCUMENT

through the Great Lakes Restoration Initiative, which demonstrate our mutual commitment to clean water. Unfortunately, the consent decree with Lake Michigan Carferry does not sufficiently address the clean water goals we have previously espoused.

The Great Lakes deserve greater protection than this consent decree provides.

Sincerely,

Tom Barrett
Mayor

US EPA ARCHIVE DOCUMENT

WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

April 26, 2013

Comment regarding *United States* v. *Lake Michigan Trans-Lake Shortcut, Inc.,* D.J. Ref. No. 90-5-1-1-10771.

Via email: *pubcomment-ees.enrd@usdoj.gov*

Assistant Attorney General
U.S. DOJ-ENRD
P.O. Box 7611
Washington, DC 20044-7611

On April 22, 2013, you received comments from Kenneth J. Szallai, President of Lake Express, LLC, on the Lake Michigan Carferry Service (LMC) Consent Decree, under which LMC undertakes to end the S.S. Badger's dumping of coal ash into the waters of Lake Michigan on or before the commencement of its 2015 sailing season. We write to offer our support of Mr. Szallai's comments.

Allowing LMC yet another extension to violate the environmental laws protecting Lake Michigan and other United States waterways is clearly not in the public interest. The proposed Consent Decree provides an example of a corrosive practice of a company greasing the political wheels to exempt itself from obeying the environmental standards of the United States. As a result, tons of mercury-laden coal ash will continue to be dumped into the fresh waters of Lake Michigan even longer.

Given the overwhelming evidence about the harmful effects of coal, and specifically mercury, on the millions of residents who live near Lake Michigan, it is hard to see how further exposure to these toxins can be construed to be in the public interest. Therefore, we ask the Department of Justice and the Environmental Protection Agency to either amend the Consent Decree as outlined by Lake Express, LLC, or, if that is not within their power and discretion, to set the Decree aside and end the Lake Michigan Carferry operation until such time as the company can demonstrate that its operations have been altered to eliminate its discharges and/or deposits of coal ash into United States waters.

Thank you for your consideration.

Sincerely,

JON RICHARDS
State Representative
Assembly District 19

CHRIS LARSON
State Senator
Senate District 7

US EPA ARCHIVE DOCUMENT

RICHARD J. DURBIN
ILLINOIS
ASSISTANT MAJORITY LEADER

United States Senate
Washington, DC 20510–1304

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON FOREIGN RELATIONS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION

April 25, 2013

The Honorable Ignacia S. Moreno
Assistant Attorney General
U.S. DOJ-ENRD
P.O. Box 7611
Washington, DC 20044-7611

RE: United States v. Lake Michigan Trans-Lake Shortcut, Inc., D.J. Ref. No. 90-5-1-1-10771

Dear Assistant Attorney General Moreno :

I urge you to use all of your authority to protect Lake Michigan from harmful pollution by the SS Badger. Lake Michigan is an environmental treasure, and all of us who live on the shores of the lake want to protect it for generations to come. Lake Michigan provides drinking water and recreation for millions of people and should not be used as a dumping ground. It is unfortunate that the SS Badger continues to operate, using decades old technology without making any significant upgrades to either retain coal ash on board for proper disposal on shore or convert to a new cleaner fuel source.

As a result of a waiver that was included in the Vessel General Permit (VGP), the S.S. Badger was given a deadline of December 20, 2012, to upgrade its boiler and stop dumping more than 500 tons of coal ash into Lake Michigan each year – a quantity greater than the total waste dumped annually by the 123 other large ships operating on the Great Lakes. The coal ash contains mercury and other pollutants that can be consumed by fish and distributed throughout the Great Lakes food web. Unfortunately during the four years that the SS Badger was given to convert and upgrade the ferry, it is now clear that the owners did nothing to meet that deadline and clean up the operation. Instead, the owners appear to have spent more time seeking a statutory waiver from Clean Water Act regulations, while simultaneously filing for a clean water permit to continue operations while discharging coal ash into Lake Michigan.

I have carefully reviewed the draft consent decree that the US Department of Justice and Environmental Protection Agency have entered into with the owners of the SS Badger, and while I am pleased that all parties have agreed to a date certain after which the ferry will no longer dump coal ash into Lake Michigan, I request that this consent decree be strengthened in a number of areas:

711 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1304
(202) 224-2152
TTY (202) 224-8180

230 SOUTH DEARBORN, 38TH FLOOR
CHICAGO, IL 60604
(312) 353-4952

525 SOUTH EIGHTH STREET
SPRINGFIELD, IL 62703
(217) 492-4062

1504 THIRD AVENUE
SUITE 227
ROCK ISLAND, IL 61201
(309) 786-5173

PAUL SIMON FEDERAL BUILDING
250 W. CHERRY STREET
SUITE 115-D
CARBONDALE, IL 62901
(618) 351-1122

durbin.senate.gov

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- Include an explicit agreement that no more extensions will be granted to the SS Badger to continue dumping coal ash into Lake Michigan after the end of the 2014 shipping season.

- Include significant penalties for non-compliance to ensure that Badger's owners do not just chose to "pay to pollute" rather than comply with the benchmarks included in the consent decree. Strong penalties are appropriate given the value of the Great Lakes drinking water supply and the serious threat from coal ash containing mercury and other pollutants.

- Specify larger reductions of coal ash discharges to better protect Lake Michigan. Currently, the proposed decree contains no specific percentage reduction in 2013 and only a 15 percentage reduction in 2014. This would still allow the SS Badger to dump more than 400 tons of coal ash into the lake in 2014. Significant reductions are required to provide a clearly defined pollution reduction path toward compliance and ending coal ash dumping into Lake Michigan. I propose a 40% reduction in 2013 and a 60 % reduction in 2014. These limits will literally reduce by half the damage the SS Badger would cause to Lake Michigan over the next two seasons.

- Finally, the final consent decree should require more transparency of reporting. The S.S. Badger should be required to report its monthly progress toward elimination of coal ash dumping. Each report should include both self-reported and externally verified evidence of progress toward elimination of dumping, such as proof of expenditures for ash capture technology, draft contracts for landfilling, etc. The volume and mercury content of ash discharged through 2014 must be publicly reported to ensure transparency and public accountability. These reports should be certified by an independent third party and should be made publicly available on an easily accessible website. Confidentiality claims must not prevent the public from being fully informed of the amount of pollution the S.S. Badger dumps into Lake Michigan.

Thank you for your attention to this important issue.

Sincerely,

CC: EPA Acting Administrator Bob Perciasepe

US EPA ARCHIVE DOCUMENT

Tom Barrett
Mayor, City of Milwaukee

April 26, 2013

Assistant Attorney General
U.S. DOJ-ENRD
P.O. Box 7611
Washington, DC 20044-7611

Re: *United States v. Lake Michigan Trans-Lake Shortcut, Inc.*, D.J. Ref. No. 90-5-1-1-10771

To Whom It May Concern:

I am writing to register my official objection to permitting the S.S. Badger to continue to dump coal ash into Lake Michigan.

The 2008 permit allowing the S.S. Badger to dump coal ash into the lake has lapsed. The assurances Lake Michigan Carferry made in 2008 that it would work to eliminate that pollution never came to fruition. This raises serious questions about whether it is appropriate to enter into yet another agreement to end its coal ash dumping.

The consent decree between the U.S. Environmental Protection Administration (EPA) and Lake Michigan Carferry allows coal ash dumping for two more years. My strong preference would be for the dumping to end now. The EPA has declared the new consent decree, "offers the fastest and most certain path available to EPA to stop the discharge of coal ash from the Badger into Lake Michigan." Unfortunately, it also provides new openings for Lake Michigan Carferry to continue prolonging and challenging federal enforcement of the Clean Water Act.

The consequences to Lake Michigan Carferry for failing to abide by the discharge limits or reporting requirements in the decree are inadequate. If Lake Michigan Carferry fails to meet the terms of the decree, the penalty ought to be an immediate halt to its operation.

In my roles as Mayor of the City of Milwaukee and Chair of the Great Lakes & St. Lawrence Cities Initiative I have worked with the EPA to advance environmental priorities on the Great Lakes. We have stories of success, including work accomplished

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through the Great Lakes Restoration Initiative, which demonstrate our mutual commitment to clean water. Unfortunately, the consent decree with Lake Michigan Carferry does not sufficiently address the clean water goals we have previously espoused.

The Great Lakes deserve greater protection than this consent decree provides.

Sincerely,

Tom Barrett
Mayor

US EPA ARCHIVE DOCUMENT

US EPA ARCHIVE DOCUMENT

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 26, 2013

Via Electronic Mail
Assistant Attorney General
US DOJ - ENRD
P.O. Box 7611
Washington, D.C. 20044-7611
pubcomment-ees.enrd@usdoj.gov

Attention: *United States v. Lake Michigan Trans-Lake Shortcut, Inc.*, D.J. Ref. No. 90-5-1-1-10771

Dear counsel:

The following comments are submitted on behalf of Lisa Madigan, Attorney General of the State of Illinois, regarding the proposed Consent Decree lodged in the United States District Court for the Western District of Michigan between the United States of America, on behalf of the United States Environmental Protection Agency ("US EPA") and Lake Michigan Trans-Lake Shortcut, Inc. d/b/a Lake Michigan Carferry Service ("LMC") ("Consent Decree"). 78 F.R. 18629 (March 27, 2013). We appreciate the US EPA's efforts to protect the environmental health of the Great Lakes. In addition to the important provisions in the proposed Consent Decree, we would strongly recommend that the Consent Decree specifically prohibit LMC from requesting any further extensions to the cessation of coal ash discharge by LMC's steamship, the S.S. *Badger*, following the 2014 summer season.

Similar to the United States, the people of the State of Illinois have a particular interest in ensuring that the environmental health of the Great Lakes is adequately protected. Lake Michigan provides drinking water to over 8 million people in Illinois, and is also an extremely important economic asset and source of recreation for Illinois residents. As the chief legal officer of the State of Illinois, the Attorney General has an obligation to represent the interests of the People so as to ensure a healthful environment for all residents of the State. Ill. Const. 1970, art. V, § 15; *People v. NL Industries*, 152 Ill.2d 82, 103 (1992). In addition, the State of Illinois is a signatory to the Great Lakes–St. Lawrence River Basin Water Resources Compact, wherein all the states within the basin of the Great Lakes watershed have agreed to "act together to protect, conserve, restore, improve and effectively manage" the waters of the Great Lakes water basin. Great Lakes—St. Lawrence River Basin Water Resources Compact, December 13, 2005, § 1.3.2(a), available at http://www.cglg.org/projects/water/docs/12-13-05/Great_Lakes-St_Lawrence_River_Basin_Water_Resources_Compact.pdf.

TRANS-LAKE-LMTLS-COMMENTS004981

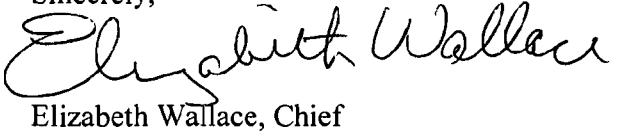
Coal ash contains harmful contaminants such as arsenic, lead, and mercury. For this reason, coal ash discharges were banned after 2012 by the 2008 Vessel General Permit ("VGP") and continue to be prohibited by the recently issued 2013 VGP. Currently, every vessel operating on the Great Lakes already uses alternative fuel sources in order to comply with the VGP requirements – except for the S.S. *Badger*.

While the proposed Consent Decree extends the time that the S.S. Badger may continue to illegally discharge coal ash slurry into Lake Michigan through the 2014 summer season, it also contains a number of critical enforcement provisions, including gradual discharge limitations, the requirement that LMC eventually cease all coal ash discharge from its ferry, and the penalty assessed against LMC for pollution violations. To strengthen its provisions and ensure its effectiveness, we recommend that the Consent Decree include an explicit provision that LMC is prohibited from requesting any further extensions to the cessation of coal ash pollution by the S.S. Badger following the 2014 summer season. If the parties have the ability to extend the time line for coal ash discharge beyond the end of summer of 2014, the Consent Decree will be ineffective in protecting the Great Lakes.

LMC has been contemplating retrofitting its steamship and negotiating with the US EPA over ceasing their coal ash discharges for many years. The US EPA ultimately included an exception in its 2008 VGP for coal ash discharges until the end of the 2012 summer season; this exception was included specifically to provide LMC more time to complete the retrofit of the S.S. *Badger*. That deadline passed on December 19, 2012. Not only has LMC failed to meet this deadline, but it also did not even begin to retrofit its vessel. Given this history and LMC's abuse of the allotment of time thus far provided to LMC to retrofit its ferry, an express prohibition on any future extensions in the proposed Consent Decree will ensure that LMC will never again be allowed to pollute the waters of Lake Michigan with toxic coal ash.

Thank you for your consideration of these comments.

Sincerely,



Elizabeth Wallace, Chief
Environmental Bureau/Chicago
Assistant Attorney General
69 West Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-5396
ewallace@atg.state.il.us

US EPA ARCHIVE DOCUMENT

US EPA ARCHIVE DOCUMENT

scottville
crossroads of mason county

April 15, 2013

Assistant Attorney General
U.S. DOJ – ENRD
P.O. Box 7611
Washington, DC 20044-7611

RE: D.J. Ref. No. 90-5-1-1-10771

Dear Assistant Attorney General, Environmental and Natural Resources Division,

I am writing this letter on behalf of the City of Scottville in full support of the proposed Consent Decree among the Department of Justice, EPA and the Lake Michigan Carferry Service in Ludington, Michigan.

The SS Badger as it is more widely known represents not only Ludington but Mason County as a whole. Our city is just 8 miles east of Ludington and passengers from the Bader come through our city and stop, shop and even stay in our campground. Those passengers whose numbers are 140,000 annually also have a huge economic impact on our entire county and that loss would be devastating to our economy.

The Lake Michigan Carferry provides over 200 direct jobs and supports an additional 500 indirectly. The potential loss of these jobs would also have a severe impact on our community in regards to unemployment.

On behalf of the City of Scottville we urge you to support the Consent Decree that allows Lake Michigan Carferry Services to bring the SS Badger into compliance.

Sincerely,

Amy S. Williams
City Manager

105 N. Main St. • Scottville, MI 49454 • (231) 757-4729 • Fax (231) 757-2077 • www.cityofscottville.org
The City of Scottville is an Equal Opportunity Provider

I HEREBY CERTIFY this to be a true and correct copy of the record on file with the Mason County Clerk.
This Certified Copy Only
VALID When SEAL AND RED SIGNATURE Are Affixed.
4/10/2013
JIM RIFFLE
MASON COUNTY CLERK

Mason County Board of Commissioners

Courthouse
304 E. Ludington Ave., Ludington, Michigan 49431
(P) (231) 843-7999 • (F) (231) 843-1972

Charles Lange
Chairman

Bill Carpenter
Vice Chairman

Jim Riffle
County Clerk

Fabian L. Knizacky
Administrator

Joseph Lenius
District 1

Bill Carpenter
District 2

Charles Lange
District 3

Curtis S. VanderWall
District 4

Mary Nichols
District 5

Janet S. Andersen
District 6

Thomas M. Posma
District 7

APPROVAL OF A RESOLUTION OF SUPPORT FOR THE CONSENT DECREE AGREEMENT BETWEEN THE LAKE MICHIGAN CARFERRY AND THE DEPARTMENT OF JUSTICE AND EPA

WHEREAS, Lake Michigan Carferry has signed a Consent Decree agreement with the Department of Justice and the Environmental Protection Agency (EPA) that will require the SS Badger to end the ash discharge within two years; and

WHEREAS, the Consent Decree has been filed in federal court in Grand Rapids by the Department of Justice; and

WHEREAS, there is a 30 day period for the public to submit comments to the Department of Justice; and

WHEREAS, the Consent Decree is a good compromise that should be approved by the federal court.

THEREFORE BE IT RESOLVED, that the Board of Commissioners of the County of Mason hereby supports the Consent Decree agreement between the Lake Michigan Carferry and the Department of Justice and the Environmental Protection Agency (EPA); and

BE IT FURTHER RESOLVED, that the Board urges the federal court to approve the Consent Decree.

Moved for your approval.

District #1 Commissioner

District #2 Commissioner

District #3 Commissioner

District #4 Commissioner

District #5 Commissioner

District #6 Commissioner

District #7 Commissioner

In accordance with Federal law and US Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, age, disability, religion, sex and familial status. (Not all prohibited bases apply to all programs.) To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an Equal Opportunity Provider and Employer.

US EPA ARCHIVE DOCUMENT

DAN BENISHEK M.D.
FIRST DISTRICT, MICHIGAN

514 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2201
(202) 225-4735
WWW.BENISHEK.HOUSE.GOV

Congress of the United States
House of Representatives

COMMITTEE ON AGRICULTURE
COMMITTEE ON NATURAL RESOURCES
COMMITTEE ON VETERANS' AFFAIRS

April 16, 2013

The Honorable Ignacia S. Moreno
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

Re: United States v. Lake Michigan Trans-Lake Shortcut, Inc., D.J. Ref. No. 90-5-1-1-10771

Dear Assistant Attorney General Moreno:

The Department of Justice and the Environmental Protection Agency recently entered into a Consent Decree agreement with Lake Michigan Carferry in Ludington, Michigan, in the matter of *United States v. Lake Michigan Trans-Lake Shortcut, Inc.*, D.J. Ref. No. 90-5-1-1-10771. I am writing to express my view that the agreement is fair, reasonable, and in the public interest. The agreement allows the S.S. Badger to continue to operate and also requires Lake Michigan Carferry to eliminate the discharge of coal ash from the vessel at the close of the 2014 sailing season. The S.S. Badger is an essential piece of Great Lakes' history and culture and approval of this agreement is important to the economic future of the port communities it frequents.

Thank you for your time and consideration.

Sincerely,

Dan Benishek

Dan Benishek
Member of Congress

PRINTED IN MICHIGAN ON MICHIGAN MADE PAPER.

Township of Pentwater

Phone: (231) 869-6231
Fax: (231) 869-4340
www.pentwatertwp.org

327 Hancock Street
P.O. Box 512
Pentwater, Michigan 49449

Assistant Attorney General
Environment & Natural Resources Division
US DOJ-ENRD
PO Box 7611
Washington DC 20044-7611

Re: DJ Reference Case Number: 90-5-1-1-10771

Case Name: United States v. Lake Michigan Trans-Lake Shortcut, Inc. d/b/a Lake Michigan Carferry Services and SS Badger

Ladies and Gentlemen:

Please accept this communication from the Township of Pentwater, Michigan in support of the proposed consent decree between the United States Environmental Protection Agency and the Lake Michigan Carferry to allow the discharge of coal ash through the 2014 sailing season. The subject consent decree will allow sufficient time for Lake Michigan Carferry to develop alternatives to depositing coal ash in Lake Michigan.

The Carferry provides a unique and alternative traveling experience for visitors and residents of our community which is situated some fifteen (15) miles south of the City of Ludington where the SS Badger docks. Our economy is dependent upon summer recreation opportunities and such transportation services.

It is our hope that you will make the right decision in the above referenced case and allow Lake Michigan Carferry and the SS Badger to continue its services to the States of Michigan and Wisconsin.

Thank you for the opportunity to comment on this important matter and your consideration of our concerns.

Sincerely,

Charles Smith, Supervisor

US EPA ARCHIVE DOCUMENT

VILLAGE OF PENTWATER

ON PENTWATER LAKE AND LAKE MICHIGAN
327 South Hancock Street-P.O. Box 622-Pentwater, Michigan 49449
(231) 869-8301 - FAX (231) 869-5120

April 22, 2013

Assistant Attorney General,
Environment and Natural Resources Division
U. S. DOJ – ENRD
P. O. Box 7611
Washington, DC 20044-7611

Reference Case number: D.J. Ref. No. 90-5-1-1-10771

Case Name: United States v. Lake Michigan Tran-lake Shortcut, Inc. d/b/a Lake Michigan Carferry Services and SS Badger

To Whom It May Concern:

On behalf of the Village of Pentwater, we are writing to ask you to support the continued operation of the S.S. Badger by allowing it to discharge coal ash, as it has been doing during the summer months throughout its 59-year history.

The Village of Pentwater is 14 miles south of Ludington on Lake Michigan. We have numerous summer residents, vacationers and visitors who travel across Lake Michigan on the S.S. Badger to Pentwater. Pentwater's economy would feel a significant negative impact if the S.S. Badger is forced to stop operating.

Pentwater is a summer vacation area and a fishing port. The Village relies on vacationers, campers, fishermen, and tourists to boost our economy going during the summer. Many summer jobs will be lost if the S.S. Badger stops running.

Ludington has been the home of S.S. Badger, as well as many other coal-fired lake ferries and freighters, since 1874. There is NO evidence that Lake Michigan has been harmed by these ships. Fishing is still great!

Pentwater is an equal opportunity provider and employer.

US EPA ARCHIVE DOCUMENT

The pollution problems in Chicago deserve your attention much more the one carferry operating in Lake Michigan from May to October!

We ask you to allow the S.S. Badger to continue operating. It is a huge part of the history and economy of this area. Many of us who have families and friends in Wisconsin and Northern Illinois count on the S.S. Badger for a pleasant ride across the Lake Michigan instead of fighting the heavy traffic and congestion on I-96 and I-80 through Indiana.

Thank you for your consideration of our concerns.

Respectfully,

Juanita Pierman,
Village President

James Miller,
Village Manager

US EPA ARCHIVE DOCUMENT

CITY OF
MANITOWOC

Jennifer Hudon, MPA
City Clerk/Deputy Treasurer

April 23, 2013

Assistant Attorney General
U.S. DOJ – ENRD
P. O. Box 7611
Washington, DC 20044-7611

Dear Sir:

Enclosed is a certified copy of resolution (13-183) supporting the Consent Agreement between the U. S. Environmental Protection Agency and the Lake Michigan Carferry Service/S.S. Badger which will allow their continued positive economic impact on the City of Manitowoc, which was adopted by the Mayor and Common Council of the City of Manitowoc, Wisconsin, at a meeting held on Monday, April 22, 2013.

OFFICE OF CITY CLERK

Your support to ensure the S.S. Badger continues operating while they convert to a clean fuel source would be greatly appreciated.

Very truly yours,

Jennifer Hudon
City Clerk/Deputy Treasurer

JH:dan

Enclosure

cc: Mayor Justin M. Nickels

CITY HALL • 900 Quay Street • Manitowoc, WI 54220-4543 • Phone (920) 686-6950 • Fax (920) 686-6959
www.manitowoc.org • jhudon@manitowoc.org

CERTIFICATE

STATE OF WISCONSIN:

: ss

CITY OF MANITOWOC :

I, Jennifer Hudon, City Clerk of and for the City of Manitowoc of the State of Wisconsin, do hereby certify that I have compared the attached resolution with the original of said resolution on file in my office, and that the said copy is a true and correct copy of such original resolution duly and regularly adopted, by the Common Council of the City of Manitowoc, Wisconsin, at a meeting held on Monday, April 22, 2013.

WITNESS MY HAND, and seal this 23rd day of April, 2013.

Jennifer Hudon, City Clerk

US EPA ARCHIVE DOCUMENT

C.O.W. 4-22-13

183

RESOLUTION

City of Manitowoc Supports the Proposed Consent Agreement between the U.S. Environmental Protection Agency and Lake Michigan Carferry Services/SS Badger

WHEREAS, Mayor Justin M. Nickels and the Common Council of *the City of Manitowoc* expresses their support for the proposed Consent Agreement between the U.S. Environmental Protection Agency and Lake Michigan Carferry Services/***S.S. Badger*** as being in the best public interest and an appropriate resolution to the longstanding issue of this historic vessel discharging coal ash into Lake Michigan; and

WHEREAS, the ***S.S. Badger*** is very important to the economies of its home ports in Michigan and Wisconsin, and to nearby communities up and down the coastline; and

WHEREAS, the ship carries an estimated 100,000 passengers each sailing season, and has an estimated $35 million annual economic impact to communities in the two states; and

WHEREAS, Manitowoc sees tourism dollars injected into our community throughout the sailing season, as hundreds of travelers each day use the vessel as a relaxing, efficient alternative for traveling across the Great Lakes region; and

WHEREAS, these travelers are able to avoid the congested trips "around the bottom of the lake," through Chicago, while enjoying the lake crossing on a historic vessel that hearkens back to the age of the steam on our Great Lakes; and

WHEREAS, local officials in our community that draw its drinking water from Lake Michigan, and is home to some of the finest beaches on Lake Michigan and best sport fishing on the Great Lakes, we take a back seat to nobody when it comes to defending the water quality of this tremendous natural resource; and

WHEREAS, we believe that the proposed Consent Agreement, which establishes a two-year timetable for ceasing the discharge of ash, strikes a fair balance between environmental protection and the economic needs of a region that very much needs the continued economic benefits provided by the ***S.S. Badger***; and

NOW, THEREFORE BE IT RESOLVED that Mayor Justin M. Nickels and the Common Council of the *City of Manitowoc* support the Consent Agreement between the U.S. Environmental Protection Agency and the Lake Michigan Carferry Service/***S.S. Badger*** which will allow their continued positive economic impact on the City of Manitowoc; and

BE IT FURTHER RESOLVED that a copy of this resolution be forward to the U.S. Environmental Protection Agency urging them to enter into the agreement.

APR 22 2013 — Introduced — Till Hennessy

APR 22 2013 — Adopted

4/23/13 — Approved

Justin M. Nickels

Mayor Justin M. Nickels

TRANS-LAKE-LMTLS-COMMENTS005220

4.22.13 Committee recommends acceptance of the resolution.

4/23/13

TRANS-LAKE-LMTLS-COMMENTS005221

US EPA ARCHIVE DOCUMENT

Vince Alber
City of Two Rivers
1717 East Park Street
P.O. Box 87
Two Rivers, WI 54241

April 16, 2013

Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

SUBJECT: **D.J. Ref. No. 90-5-1-1-10771**, Proposed Consent Agreement Regarding United States v. Lake Michigan Trans-Lake Shortcut, Inc., d/b/a Lake Michigan Carferry Services and *SS Badger*

To Whom It May Concern:

I am writing as both a private citizen and as a member of the Two Rivers, Wisconsin City Council, which has gone on record in support of the above-referenced Consent Agreement.

The ***SS Badger*** is very important to the economies of its home ports in Michigan and Wisconsin, and to nearby communities up and down the coastline. The ship carries an estimated 100,000 passengers each sailing season, and has an estimated $35 million annual economic impact to communities in the two states.

Here in Two Rivers, located just north of the ***SS Badger's*** Wisconsin port of Manitowoc, we see tourism dollars injected into our community throughout the ferry's sailing season, as hundreds of travelers each day use the vessel as a relaxing, efficient alternative for traveling across the Great Lakes region. The ship is also used by many semi trucks and oversized vehicles, transporting items like large machinery and wind tower components across Lake Michigan, rather than adding to the highway congestion in Chicago.

As an elected official of a community that draws its drinking water from Lake Michigan, and is home to some of the finest beaches and best sport fishing on the Great Lakes, I strongly support laws and regulations that protect this tremendous natural resource.

At the same time, I believe that the proposed Consent Agreement strikes a fair balance between environmental protection and the economic interests of a region that very much needs the continued economic benefits provided by the ***S.S. Badger.***

US EPA ARCHIVE DOCUMENT

I urge the Department of Justice to allow the consent agreement, negotiated in good faith between the Lake Michigan Carferry Service and U.S. EPA to take effect. The Consent Agreement provides a clear path forward for the business, for environmental protection, and for preserving the benefits of this great ship, which is an integral part of our heritage and our economy.

Sincerely,

Vince Alber
City of Two Rivers

US EPA ARCHIVE DOCUMENT

Lee Brocher
City of Two Rivers
1717 East Park Street
P.O. Box 87
Two Rivers, WI 54241

April 16, 2013

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U.S. Department of Justice
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Sincerely,

Lee Brocher
Council President
City of Two Rivers

US EPA ARCHIVE DOCUMENT

Ruben Reveles
City of Two Rivers
1717 East Park Street
P.O. Box 87
Two Rivers, WI 54241

April 16, 2013

Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

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City of Two Rivers

US EPA ARCHIVE DOCUMENT

David VanGinkel
City of Two Rivers
1717 East Park Street
P.O. Box 87
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April 16, 2013

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U.S. Department of Justice
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Sincerely,

David VanGinkel
City of Two Rivers

US EPA ARCHIVE DOCUMENT

Barbara Schweitzer
City of Two Rivers
1717 East Park Street
P.O. Box 87
Two Rivers, WI 54241

April 16, 2013

Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

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Barbara Schweitzer
City of Two Rivers

US EPA ARCHIVE DOCUMENT

Brad Yaggie
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U.S. Department of Justice
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Brad Yaggie
City of Two Rivers

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City of Two Rivers
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U.S. Department of Justice
Environment and Natural Resources Division
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Sincerely,

James M Taddy

James Taddy
City of Two Rivers

US EPA ARCHIVE DOCUMENT

Kay Koach
City of Two Rivers
1717 East Park Street
P.O. Box 87
Two Rivers, WI 54241

April 16, 2013

Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
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Here in Two Rivers, located just north of the ***SS Badger's*** Wisconsin port of Manitowoc, we see tourism dollars injected into our community throughout the ferry's sailing season, as hundreds of travelers each day use the vessel as a relaxing, efficient alternative for traveling across the Great Lakes region. The ship is also used by many semi trucks and oversized vehicles, transporting items like large machinery and wind tower components across Lake Michigan, rather than adding to the highway congestion in Chicago.

As an elected official of a community that draws its drinking water from Lake Michigan, and is home to some of the finest beaches and best sport fishing on the Great Lakes, I strongly support laws and regulations that protect this tremendous natural resource.

At the same time, I believe that the proposed Consent Agreement strikes a fair balance between environmental protection and the economic interests of a region that very much needs the continued economic benefits provided by the ***S.S. Badger.***

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I urge the Department of Justice to allow the consent agreement, negotiated in good faith between the Lake Michigan Carferry Service and U.S. EPA to take effect. The Consent Agreement provides a clear path forward for the business, for environmental protection, and for preserving the benefits of this great ship, which is an integral part of our heritage and our economy.

Sincerely,

Kay Koach

Kay Koach
City of Two Rivers

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Office of the City Manager
1717 East Park Street
Post Office Box 87
Two Rivers WI 54241-0087
Telephone 920/793-5532
FAX. 920/793-5563

April 15, 2013

Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

SUBJECT: **D.J. Ref. No. 90-5-1-1-10771**, Proposed Consent Agreement Regarding United States v. Lake Michigan Trans-Lake Shortcut, Inc., d/b/a Lake Michigan Carferry Services and *SS Badger*

To Whom It May Concern:

The City of Two Rivers supports the proposed Consent Agreement between the U.S. Environmental Protection Agency and Lake Michigan Carferry Services/***SS Badger*** as being in the public interest and an appropriate resolution to the longstanding issue of this historic vessel discharging coal ash to Lake Michigan.

The ***SS Badger*** is very important to the economies of its home ports in Michigan and Wisconsin, and to nearby communities up and down the coastline. The ship carries an estimated 100,000 passengers each sailing season, and has an estimated $35 million annual economic impact to communities in the two states.

Here in Two Rivers, located just north of the ***SS Badger's*** Wisconsin port of Manitowoc, we see tourism dollars injected into our community throughout the ferry's sailing season, as hundreds of travelers each day use the vessel as a relaxing, efficient alternative for traveling across the Great Lakes region. These travelers are able to avoid the harried, congested trip "around the bottom of the lake," through Chicago, while enjoying the lake crossing on an historic vessel that hearkens back to the age of steam on our Great Lakes.

As local officials in a community that draws its drinking water from Lake Michigan, and is home to some of the finest beaches on Lake Michigan and best sport fishing on the Great Lakes, we take a back seat to nobody when it comes to defending the water quality of this tremendous natural resource.

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We believe that the proposed Consent Agreement, which establishes a two-year timetable for ceasing the discharge of ash, strikes a fair balance between environmental protection and the economic needs of a region that very much needs the continued economic benefits provided by the ***S.S. Badger.***

This letter was adopted as the official position statement of the City of Two Rivers at a regular City Council meeting held April 15, 2013.

Gregory E. Buckley, City Manager

Barbara Schweitzer, Councilmember

Lee W. Brocher, Council President

Bonnie Shimulunas, Councilmember

Vince Alber, Councilmember

James Taddy, Councilmember

Herb Bunke, Councilmember

David VanGinkel, Councilmember

Kay Koach, Councilmember

Brad Yaggie, Councilmember

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Bonnie Shimulunas
City of Two Rivers
1717 East Park Street
P.O. Box 87
Two Rivers, WI 54241

April 16, 2013

Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

SUBJECT: **D.J. Ref. No. 90-5-1-1-10771**, Proposed Consent Agreement Regarding United States v. Lake Michigan Trans-Lake Shortcut, Inc., d/b/a Lake Michigan Carferry Services and *SS Badger*

To Whom It May Concern:

I am writing as both a private citizen and as a member of the Two Rivers, Wisconsin City Council, which has gone on record in support of the above-referenced Consent Agreement.

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As an elected official of a community that draws its drinking water from Lake Michigan, and is home to some of the finest beaches and best sport fishing on the Great Lakes, I strongly support laws and regulations that protect this tremendous natural resource.

At the same time, I believe that the proposed Consent Agreement strikes a fair balance between environmental protection and the economic interests of a region that very much needs the continued economic benefits provided by the ***S.S. Badger.***

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I urge the Department of Justice to allow the consent agreement, negotiated in good faith between the Lake Michigan Carferry Service and U.S. EPA to take effect. The Consent Agreement provides a clear path forward for the business, for environmental protection, and for preserving the benefits of this great ship, which is an integral part of our heritage and our economy.

Sincerely,

Bonnie Shimulunas
City of Two Rivers

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GWEN MOORE
4TH DISTRICT, WISCONSIN

COMMITTEE ON
FINANCIAL SERVICES

CAPITAL MARKETS, INSURANCE, AND GSEs
INTERNATIONAL MONETARY POLICY AND TRADE
OVERSIGHT AND INVESTIGATION

COMMITTEE ON BUDGET

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House of Representatives

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April 26, 2013

The Honorable Ignacia S. Moreno
Assistant Attorney General,
U.S. Department of Justice – Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611

Dear Assistant Attorney General Moreno,

In response to your solicitation for public comments on the proposed consent decree in the matter of *United States* v. *Lake Michigan Trans-Lake Shortcut, Inc.,* D.J. Ref. No. 90-5-1-1-10771, I write to express my deep and continuing concerns about allowing the continuing dumping of coal ash into Lake Michigan as this consent decree proposes to do.

This is a matter of direct public interest for me and my constituents who are among the millions who live, work, and recreate near Lake Michigan and its watershed. Lake Michigan—which directly abuts my congressional district— is the primary source of drinking water for more than 10 million people—not just in my State of Wisconsin, but in Illinois, Indiana, and Michigan.

As you know, Lake Michigan Carferry, Inc. operates the S.S. Badger (Badger), a coal-fired steamship ferry that transports cars and passengers across Lake Michigan. Each time this ferry makes a trip across Lake Michigan, it discharges tons of ash mixed with water into Lake Michigan. A discharge the EPA described in 2008 as likely to contain "a variety of pollutants, some of which in significant quantities (e.g. Suspended solids), and the Agency believes that it is appropriate to eliminate this discharge type." (***Proposed VGP: EPA's Response to Public Comments,*** *U.S. Environmental Protection Agency: Water Permits Division, Office of Wastewater Management; December 19*, 2008)

It is also relevant to those of us who believe that the enactment and strong enforcement of the Clean Water Act has been key to protecting Lake Michigan, the Great Lakes, and other threatened water bodies nationwide and will be crucial to maintaining hard fought gains in improving water quality. As someone who has opposed repeated attempts in Congress in the past few years to undermine the Clean Water and Clean Air Acts and its enforcement by the Environmental Protection Agency (EPA), I would be remiss to stand by now and allow the government to enter a consent agreement that—in this particular case— would appear to accomplish that same objective.

I believe the EPA and Department of Justice (DOJ) had considerable tools at your disposal to bring the harmful dumping of coal ash in Lake Michigan to an end—including federal law—

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but are failing to adequately and effectively exercise them. The Badger did not become the last remaining coal operating ferry on Lake Michigan by accident. It has been the deliberate policy judgment and objective by the Congress and the EPA to end this activity. Which with the exception of the Badger, has been achieved through the deliberate and appropriate use of our laws which have convinced or incentivized other coal operated vessels to find more environmentally friendly alternatives.

As noted by one of my constituents, Lake Express LLC, in their comments on this consent decree, "The pollution issues with the S.S. Badger are neither new, novel, nor the result of evolved or newly introduced rules or regulations." Yet, when it comes to the Badger, the government seems reluctant to use its considerable authorities to bring this harmful practice to an end. In this consent decree, the government has chosen instead to pursue an avenue that continues to depend on the goodwill of Lake Michigan Car Ferry to end this harmful practice. If past experience is any guide, this is opening another unneeded chapter in a saga that seems to know no end. I have submitted a copy of Lake Express LLC's comments with my testimony.

This decree essentially allows the S.S. Badger to continue to dump coal ash in Lake Michigan in violation of federal law. The decree itself makes clear that it is not a permit otherwise required by law. **The EPA has noted that it will not act further on the pending permit application from Lake Michigan Carferry, Inc. which leads to the question of how can the DOJ endorse a decree that sanctions unpermitted dumping to continue?**

At a time when the EPA is tightening standards to protect our nation's waterways and improve water quality, allowing unlimited dumping of dangerous coal ash to continue seems counter to your agency's priorities.

Under the decree, by June of this year, LMC is required to submit a plan for designing, constructing, and implementing an alternative to end the dumping. There are however no penalties associated with failure to submit that plan or to provide the EPA with appropriate authority to approve or disapprove that plan or timeline other than requiring regularly reviews and updates from LMC. This is a grievous oversight. Without an incentive to provide a real, achievable plan backed by sound financial commitments, LMC will not take serious steps to even meet the rather generous timelines allowed them under the consent decree.

The EPA and DOJ should not allow the S.S. Badger to again receive an unwarranted extension to comply with generally applicable environmental law and regulations that have been in effect for decades. Moreover, the S.S. Badger has, and appears set to continue to receive under the Consent Decree, special treatment even following years of failed promises to come into compliance with existing laws and stop using Lake Michigan as a receptacle for the pollution generated by its operations. Again, anytime the EPA fails to uphold the law and its own policies, it fails in its obligation to protect the public interest.

I am also concerned that the proposed consent decree may also create perverse incentives encouraging the S.S. Badger to accept the limited penalties set by the consent decree as a "cost of doing business" rather than incur costs required to install any of the widely available technologies that would bring it into compliance with federal and state laws.

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In terms of this consent decree, I ask you to ensure that it has strong and enforceable provisions for noncompliance. I remind you of the broken promises by the Badger in what has become a sad spectacle. In 2008, the EPA noted that Lake Michigan Carferry indicated that it would pursue efforts to eliminate its coal ash discharge and hoped to achieve this goal prior to its 2008 VGP permit expiring in December 2012. Yet, today, Lake Michigan Car Ferry is no closer to stopping this polluting activity.

I also note that the draft 2013 VGP made available for public comments by the EPA in 2011 eliminatde any further exemption for the dumping of coal ash into Lake Michigan, a move which I applaud. Yet, the very terms of this consent decree seem in direct conflict with the EPA policy pronounced in the VGP.

Again, in 2008, your agency noted that "most, if not all, other coal powered vessels have converted to other fuel uses or they have eliminated their Coal Ash slurry discharge." The failure to stop the coal dumping has not been about lack of options, but the lack of will to commit time and resources by the Badger to implement solutions that are widely available as noted by the EPA.

My fear is that this consent decree will do nothing to resolve what appears to be a lack of will by the owners of the Badger to comply with federal law and ensure protection of the public health and environment from the continued dispersal of these contaminants into a critical body of water. Just last year, Lake Michigan Car Ferry submitted an application to the EPA for a National Pollutant Discharge Elimination System (NPDES) permit to allow it to continue to dump coal ash in Lake Michigan until 2017.

It is also unclear if this decree would do anything to limit the ability of LMC to pursue—at any time— a National Pollution Discharge Elimination Permit to continue to dump coal ash even beyond the timeframe envisioned by the decree. How would any such permit interact with the conditions imposed by the decree? Will seeking a permit remain an avenue available for LMC to pursue to continue its coal dumping during the course of this consent decree?

Lastly, the EPA argues that the consent decree will bring an end to the dumping while avoiding expensive and time consuming litigation. I disagree. Given the potential for disagreement over some of the key but vaguely defined provisions of this consent decree, it could result in more litigation especially where it creates processes by which Lake Michigan Car Ferry can petition the EPA to keep dumping beyond the deadlines set in the decree and to challenge EPA determinations.

It is my belief, and that of some of my constituents, that the Badger has had significant opportunity and more than fair warning that it needed to find a solution for dealing with the coal ash its operations generates. At this time, I support the strongest enforcement of federal protections for our waters that were put in place to end pollutant-filled practices like those being carried out by the Badger ferry. If you are to enter a consent decree, it should be appropriately strengthened to make clear that there will be stiff penalties, including immediately suspension of Badger operations, for failure to comply. Your agency has an obligation to enforce the law and protect the public's health and environment.

Some steps that I would urge the DOJ and EPA to take to strengthen this decree:

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- Specify what criteria the U.S. will use to decide whether a "Force Majeure event" has occurred. I am concerned that this language provides a vague loophole that would allow continued dumping in a broad range of unspecified circumstances. Without greater clarity, we will not know until the litigation about those terms begins.

- Require that all reports, notifications, and other communications between LMC and the EPA and DOJ as a result of this consent decree be made available on a publicly accessible website within 24 hours of receipt by the federal government, including any decision by the federal government to agree that a "Force majeure event" has occurred and the specific justification for reaching such a conclusion.

    - If a "Force Majeure event" has been agree to have occurred by both parties, the Consent decree must require the EPA to only grant specifically identified extensions of time to LMC to comply with the decree in those limited circumstances and to make that information—including the specific length of time which noncompliance has been extended— publicly available.

- To ensure the utmost transparency, **any** modification to the consent decree agreed to by either party should be subject to public comment and then Court approval.

Stakeholders along Lake Michigan, including elected officials like myself, businesses, private citizens, and others all have a great interest in this matter and should have the opportunity to comment on and challenge violations of this decree. They will not be able to do so if they are not aware of the various communications going on between the parties.

Again, thank you for your consideration of my comments on this matter. If you have further questions or concerns, please contact Chris Goldson in my Washington office at (202) 225-4572 or chris.goldson@mail.house.gov

Sincerely,

Gwen Moore
MEMBER OF CONGRESS

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LAKE EXPRESS

April 22, 2013

Comment regarding *United States* v. *Lake Michigan Trans-Lake Shortcut, Inc.*, D.J. Ref. No. 90-5-1-1-10771.

Via email: *pubcomment-ees.enrd@usdoj.gov*

Kenneth J. Szallai
President
Lake Express, LLC
2330 S Lincoln Memorial Drive
Milwaukee, WI 53207

Assistant Attorney General,
U.S. DOJ-ENRD,
P.O. Box 7611,
Washington, DC
20044-7611.

Argument to Amend Proposed LMC Consent Decree

As an affected party, we are writing to provide comment on the Lake Michigan Trans-Lake Shortcut, Inc. (doing business as Lake Michigan Carferry Service (hereinafter "LMC" and ""S.S. Badger")) Consent Decree, under which Lake Michigan Carferry undertakes to end its dumping of coal ash into the waters of the United States (specifically Lake Michigan) on or before the commencement of its 2015 sailing season.

It is our opinion, for the reasons set out herein, that the proposed Consent Decree is neither fair, reasonable nor in the public interest.

We ask the Department of Justice and the EPA on behalf of the United States to either amend the Consent Decree as outlined; or, if that is not within their power and discretion, to set the Decree aside and end the Lake Michigan Carferry operation until such time as the company can demonstrate that its operations have been altered to eliminate its discharges and/or deposits of coal ash into United States waters.

Lake Express LLC operates a modern, environmentally and regulatory compliant high-speed auto/passenger ferry on a 68.5 nautical mile route across Lake Michigan between the ports of Milwaukee, WI and Muskegon, MI. Lake Express was the first high-speed

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auto/passenger ferry designed, built and placed into operation in the United States. As such, the vessel itself represented the standard of "best available technology" when it entered service in 2004. It still is in the forefront of that technology.

Built in 2004, the vessel Lake Express meets or exceeds all applicable regulations for operations in US waters for a vessel of its kind and type. The vessel was built to minimize its environmental footprint and therefore was equipped with the latest diesel engines; handles no ballast; is of shallow draft to reduce dredging needs; and collects and retains its black and gray water for pumping ashore to approved sewage disposal facilities. Lake Express operates under the 2008 VGP (Vessel General Permit) administered by the EPA. The VGP does not contain any specifically tailored provisions for Lake Express, unlike the S.S. Badger. Section 5.3 of the 2008 VGP only applies to the S.S. Badger and allowed it to dump coal ash through December 19, 2012, thus prompting the S.S. Badger's NPDES permit application which in turn led to the filing of this lawsuit and proposed consent decree[1].

Lake Express has a major economic impact on both the Michigan and Wisconsin economies and transports in excess of 100,000 people and automobiles per season across the lake. LMC characterizes Lake Express as a "competitor" and acts accordingly in their marketing campaigns. Passengers are drawn to the Lake Express ferry service from Wisconsin, Michigan, and Illinois, as well as from points throughout the United States.

Lake Express LLC has at least five interests in and/or concerns with the proposed LMC Consent Decree:

(1) **Fairness**: It is unfair to other businesses, both existing and under consideration, that a competitor or potential competitor receives dispensations from environmental laws thereby giving that competitor an economic and/or operational advantage in the market place. In the LMC Consent Decree, the EPA has extended to the S.S. Badger just such advantages, in violation of its own stated policy.[2]

(2) **Market Altering Impacts**: LMC has a proven history of using the economic advantage gained by either not complying with the modern standards envisioned by environmental laws and regulations or acquiring exemptions from or leniency in the application of environmental laws and regulations, to both directly market against perceived competitors and to attempt to perpetuate a monopoly advantage in northern Lake Michigan waters. LMC has used that economic advantage, indeed has highlighted that advantage, in sales campaigns aimed at diminishing Lake Express.[3] Moreover, that advantage has been used to lobby against, and frustrate others, whom have an interest in

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[1] United States Environmental Protection Agency (EPA) National Pollution Discharge Elimination System, Vessel General Permit for Discharges Incidental to the Operation of Vessels (VGP), Version 2/5/2009, Section 5.3 (Large Ferries).

[2] EPA Science Advisory Board, An Advisory of the Illegal Competitive Advantage (ICA) Economic Benefit (EB) Advisory Panel of the EPA Science Advisory Board, September 7, 2005, EPA-SAB-ADV-05-003. http://www.epa.gov/sab/pdf/ica_eb_sab-adv-05-003.pdf

[3] See attachment titled "competitive overview best price" – attached filed:competitive-overview-bestprice.pdf

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developing a competing service.[4] This Consent Decree enables LMC to continue these past practices unimpeded in any significant way.

(3) **Unequal Application of Law and Regulations**: The EPA is allowing the S.S. Badger to yet again accumulate an unwarranted extension in complying with generally applicable environmental law and regulations that have been in effect for decades. Moreover, the special treatment that the S.S. Badger has, and will continue to receive if the Consent Decree is upheld, follows the S.S. Badger's inability to act in good faith to fulfill past promises to address and end pollution generated by the vessel's operation. Again, the EPA fails to uphold the law and its own policies and therefore fails in its obligation to protect the public interest.

(4) **Violation of Stated Agency Policy**: Despite long stated agency policies of imposing fines that seek to recover economic benefit from noncompliance (or delayed and avoided compliance), to both disincentivize polluters and protect lawful operators the proposed Consent Decree instead presents a "sweetheart deal" that not only rewards continued S.S. Badger pollution, but protects and extends associated financial benefits for another two years. The civil forfeiture and forfeiture schedule in the proposed Consent Decree pales in comparison to the environmental damage that the S.S. Badger willfully perpetuates every time it crosses Lake Michigan and thus, the proposed monetary penalties amounts to mere pennies per LMC transaction and serves only to encourage noncompliance due to the miniscule impact of the financial outlay. The simple fact of the matter is that the minimal penalties under this Consent Decree perversely encourage the S.S. Badger to not comply with the law because the penalties represent only a mere percentage of the cost it would take for the S.S. Badger to fully comply with the law. Specifically, we reference the following statement of EPA policy in making this objection:

"The EPA has made the recovery of a violator's economic benefit from violating the law the basis of its calculation of civil penalties."[5] "Enforcement protects companies and individuals who comply with the law… To assure that complying companies are not put at an economic disadvantage by companies violating the law…" Further, and again by their own stated policy, the EPA has an obligation of recouping any economic benefit that the non-complying party gained from violating the law."[6]

This proposed Consent Decree fails miserably in upholding the EPA's responsibility to compliant businesses and the general public.

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[4] Mark Ruge (counsel for Lake Michigan Carferry, Letter to Michael Gordon (Department of Transportation, opposing Maritime Administration(MARAD) cross-lake corridor designations, February 6, 2009, Docket No. MARAD-2008-0096 http://www.regulations.gov/#!documentDetail;D=MARAD-2008-0096-0045

[5] EPA Science Advisory Board, An Advisory of the Illegal Competitive Advantage (ICA) Economic Benefit (EB) Advisory Panel of the EPA Science Advisory Board, September 7, 2005, EPA-SAB-ADV-05-003. http://www.epa.gov/sab/pdf/ica_eb_sab-adv-05-003.pdf

[6] John C Cruden, James W Rubin, US Department of Justice, Environmental Compliance and Enforcement at the United States Department of Justice and the Role of Enforcement in Good Domestic Governance, Sixth International Conference on Environmental Compliance and Enforcement, International Network for Environmental Compliance and Enforcement, April 15-19, 2002. http://www.inece.org/conf/proceedings2/18-Env.%20Compliance.pdf

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(5) **Environmental Stewardship**: As a company who operates on Lake Michigan and whose employees likewise make their livings on or about this waterway, Lake Express has a distinct interest that all who use the waterway do so in an environmentally sound and responsible way, so as to preserve the health of both the waterway and those who use it. This proposed Consent Decree falls well short in the EPA's obligation to protect public health.

1) Fairness:

For more than twenty years, Lake Michigan Carferry has operated the S.S. Badger on a route across Lake Michigan, between the ports of Manitowoc, WI and Ludington, MI. The S.S. Badger, built in 1953, is a coal burning steamship, the last of its kind in the U.S. (indeed, one of the last operating in the world) and is allowed to operate only by the accumulation of exemptions from a number of antipollution laws and/or regulations including:

(1) Two exemptions from air pollution regulations, one each by the states of Wisconsin[7] and Michigan.[8] Note the S.S. Badger operates an aged coal powered boiler with absolutely no stack emission controls; and produces significantly more particulate matter than the vehicles it carries would produce driving around Lake Michigan.[9]

(2) Since 2008, the S.S. Badger has operated outside of the generally accepted limits imposed by the Clean Water Act, due to a special provision included by the EPA after the public comment period and without review or certification by the State of Michigan, in the 2008 VGP. This special provision, referenced above, allowed a grace period to the S.S. Badger for the dumping of coal ash/coal ash slurry into US waters while it (the S.S. Badger) developed and implemented an alternative to end the dumping. The provision effectively covers only the S.S. Badger operation and it expired this past December 19, 2012 (this sunset is what the S.S. Badger now seeks to avoid) without the S.S. Badger having come into compliance. It is now not legal to dump coal ash in US waters under the VGP.

(3) The US Coast Guard has declined to apply the Marpol Treaty Annex on air pollution regulations to the S.S. Badger, such terms of which are certainly applied by them to all (cleaner than the S.S. Badger) heavy oil and diesel fuel burning vessels. The Coast Guard cites the S.S. Badger's outmoded (for ships) fuel source, i.e. coal, as not specifically mentioned in the Annex for their reason not to pursue the S.S. Badger's air pollution. This ignores the Annex's clear intent, which is to lessen air pollution generated by ship traffic.

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[7] Wisconsin Statute 285.30(4) https://docs.legis.wisconsin.gov/statutes/statutes/285/IV/30/4
[8] MCL 324.5513 http://legislature.mi.gov/doc.aspx?mcl-324-5513
[9] James J. Corbett, PhD., University of Delaware James J. Winebrake, PhD, Rochester Institute of Technology, Heather Thomson, University of Delaware Arindam Ghosh, Rochester Institute of Technology, A Comparative Analysis of Ships v. Trucks to Transport Cargo along the Great Lakes September 2102, **http://www.glmri.org/downloads/2012Reports/affiliatesMtg/WinebrakeandCorbett.pdf**

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(4) Apparently unbeknownst to the Michigan regulating agency (DEQ) until the 2008 registration of certain ship discharges by the EPA under the VGP, the S.S. Badger has, since at least 1992, operated in contravention of MI environmental statutes against dumping from watercraft into state waters.[10]

Clearly, LMC is able to operate this vessel only because of these exemptions, special deals and regulatory ignorance. Far from the "level playing field" stressed by EPA policy, the playing field on which the S.S. Badger plays is heavily, and intentionally, tilted in its favor. This proposed Consent Decree should act to level the field in a substantive way. As written, it does not and therefore is not a reasonable settlement under the law. The proposed Consent Decree is not in the public interest in that it does not protect the public health, nor does it, in the words of the EPA, "assure that complying companies are not put at an economic disadvantage by companies violating the law." Additionally the proposed Consent Decree does not (again in the words of the EPA) provide "Uniform, fair and comprehensive environmental enforcement (to) protect companies and individuals who comply with the law." The proposed Consent Decree presents a lopsided cost-of-compliance/benefit-from-noncompliance dichotomy that encourages LMC to delay available and feasible technological upgrades and incentivizes them to pollute. The proposed Consent Decree unfairly obviates the force of the market in compelling technical innovation by making old and obsolete technology key to marketplace advantages via special favors that protect and prolong its use despite its inability to operated within prevailing regulatory and legal requirements.

LMC and the S.S. Badger's previous owners have a long history of avoiding upgrading the vessel to modern environmental standards.

Prior to the enactment of the S.S. Badger's air pollution exemptions, previous owners, the C&O Railroad admitted air pollution violations by the ship,[11] which were well-documented by the State of Michigan.[12] The S.S. Badger was also charged with violations of air pollution standards in Wisconsin[13] and a C&O employee testified that the Ludington based ferries (with no distinction between S.S. Badger and other C&O coal burners), were in daily violation of Federal Air Act.[14] *Engineering studies were*

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[10] State of Michigan Natural Resources and Environmental Protection Act, Part 95, Watercraft Pollution Control Act, http://legislature.mi.gov/doc.aspx?mcl-451-1994-II-2-WATERCRAFT-POLLUTION-95

[11] Wm. Bamert, memo to C.R. Zarfoss, Chesapeake and Ohio Railway Company, May 12, 1970. ICC carferry abandonment dockets, National Archives, College Park, MD.

[12] L.J. Holmes, Regional Supervisor Air Quality Division, Michigan DNR, letter to Lee Rosenberg, Environmental Affairs Staff Interstate Commerce Commission, August 24, 1976. ICC carferry abandonment dockets, National Archives, College Park, MD.

[13] Paul Peterson, Abandonment, Ludington Daily News, June 29, 2006, http://www.scribd.com/doc/45466891/2006-Recap-of-1970s-pollution-issues-with-Lake-Michigan-ferries-Abandonment-hearings-for-C-O

[14] Daniel M. O'Donoghue; Interstate Commerce Commission, Memorandum in support of motions to strike testimony and exhibit 6 of applicant C&O witness W.F. Liebenow, Chesapeake and Ohio Railway Company abandonment of car ferry service across Lake Michigan between Ludington, Michigan and Kewaunee, Milwaukee and Manitowoc,

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completed in 1970, outlining the steps to install diesel engines into the S.S. Badger and bring it into compliance with then applicable Michigan air pollution control standards.[15] Several more similar studies and evaluations to modernize the S.S. Badger's propulsion systems have been done since then. But more than 40 years after the initial study, no work has been started, nor have other air pollution controls been added. Smoke and particulate emissions from the S.S. Badger, under the protection of exemptions, continue to draw complaints in port communities and from passengers, including incidents of "more than usual complaints of customers with fly ash in their eyes."[16] Additionally, air and particulate pollution have drawn complaints from marinas both Manitowoc and Ludington.[17] Fallout from carferry air emissions has been noted as a persistent problem throughout the tenure of the current ownership of the S.S. Badger.[18]

Simply put, there has been a long term pattern of demonstrated disdain, on the part of the S.S. Badger, for air quality regulations that is now only too apparent in meeting water quality requirements as well.

LMC has also benefitted from, and was incentivized to continue burning coal by long-term coal-supply deals with the City of Manitowoc's publically owned utility, Manitowoc Public Utility (MPU). The terms of the deal were described as "below market cost" in 1994.[19] That "below market cost" coal supply agreement was renewed in 2006[20] and ran concurrent with the period of time during which the owners of the S.S. Badger had purportedly committed to end coal ash discharges. For the S.S. Badger, the burning of coal was and is a simple economic evaluation, the efficacy of which is supported by the terms of the proposed Consent Decree.

The preponderance of evidence demonstrates that the conduct of the owners and operators of the S.S. Badger have been motivated by their desires to extend financial benefits provided by environmental noncompliance. Owners of the S.S. Badger have long stated that they have no desire to make necessary investments to reduce pollution

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Wisconsin, February 10, 1978, Interstate Commerce Commission Washington, D.C., Docket AB-18 (sub. no. 21), February 10, 1978. http://www.scribd.com/doc/45012067/1978-Lake-Michigan-Ferry-air-pollution-motion-to-strike-testimony-regarding-C-O-ships

[15] R.A. Stearn, Inc., Propulsion Plant Analysis of C & O Carferries for Chesapeake & Ohio Railway Company, Ludington, Michigan., Job #1379-2, December 31, 1970: http://www.scribd.com/doc/44940327/1970-refire-and-dieselization-report-SS-Badger-Lake-Michigan-Carferry

[16] James Anderson, EVP, Lake Michigan Carferry, memo to Dale Koch, Manitowoc Public Utilities, August 7, 2002. http://www.scribd.com/doc/32922631/MPU-SS-Badger-coal-ash-complaints-2002-correspondence

[17] Dale Koch (MPU) email to Nilaksh Kothari (MPU), August 23, 2002. http://www.scribd.com/doc/32922631/MPU-SS-Badger-coal-ash-complaints-2002-correspondence

[18] (City of) Manitowoc (WI) Harbor Commission Meeting Minutes, September 13, 2007. http://www.scribd.com/doc/33045149/Manitowoc-Harbor-Commission-09-13-07-Minutes-SS-Badger-Coal-Dust-Complaints

[19] Patrick Wills, Manitowoc City Attorney, Letter to Robert Manglitz, Lake Michigan Carferry, February 1, 1994, http://www.scribd.com/doc/32936453/City-of-Manitowoc-re-SS-Badger-Coal-Costs-1994

[20] Coal Acquisition and Storage Agreement, Manitowoc Public Utility and Lake Michigan Trans-Lake Shortcut, May 2006, http://www.scribd.com/doc/32936215/SS-Badger-coal-buying-agreement-with-City-of-Manitowoc-and-Manitowoc-Public-Utility

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from the ship and will run it "as-is," that is until it can no longer operate. To support this proposition, we direct your attention to statements made to the Ludington newspaper:

Ludington Daily News (MI), August 22, 2003, Carferry refuses federal grant...

> He (S.S. Badger owner Robert Manglitz) does not foresee the Badger changing its engines, a $12 million investment, to do away with the coal-burning emissions. "I also don't expect to see the million or so (older diesel) trucks changing over either. They go until eventually those trucks will get old and get retired.
>
> "At one time there were a lot of coal-burning vessels on the Great Lakes," Manglitz said. "We're the last one running."

We believe that continued efforts at prolonging delays in compliance and concurrent efforts to remove compliance requirements all reflect competitive efforts that warrant close re-examination and analysis of the market impact of the proposed Consent Decree, stronger civil penalties for past infractions to recoup the benefits gained, and more stringent checks and reporting requirements as well as more decisive penalties for failures to comply with the terms of the proposed Consent Decree.

LMC made promises in 2008 to end coal ash discharges by May 2012[21] and supplied a timeline to be followed to that end. Instead of seeking progress, the company instead sought permanent exemptions under the premise of "historical significance" and the notion of "grandfathering." This suggests that nothing has changed in the vessel operator's working philosophy toward pollution since the 2003 quote above.

Further extensions are unwarranted following failure of S.S. Badger owners to act in good faith to fulfill past promises to address pollution despite the availability of feasible, available and viable solutions.

The S.S. Badger has a lengthy history of pollution issues that pre-date the current action by decades, and the LMC was founded as a result of a below market cost purchase of vessels and assets (including the S.S. Badger) from the predecessor company due to the associated environmental liability. The owners of the vessel have acknowledged pollution issues with the vessel along with associated local impacts since the founding of LMC, yet have done nothing to permanently eliminate them or come into full regulatory and legal compliance.

Evidence of bad-faith in fulfilling promises made in exchange for 2008-2012 VGP includes:

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[21] Proposed VGP: EPA response to public comments US EPA – December 19, 2008 – 6-556, 6-558, http://www.epa.gov/region5/water/npdestek/badger/pdfs/application/badger-appl.pdf

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From 2008-2012, instead of compliance, Lake Michigan sought actively to nullify EPA and State jurisdiction over water pollution generated by the S.S. Badger.

Instead of pursuing the remedies outlined, the owners of the S.S. Badger sought instead to engineer a permanent legislative fix through an effort centered on "historic preservation." The historical preservation title was critical because a few congressional representatives in 2011 sponsored an amendment to the Coast Guard Reauthorization Bill of 2012 that would have allowed those ships with such a title, namely the S.S. Badger, to never comply with environmental laws and/or regulations. The amendment was not part of the bill that passed Congress and the President signed but this attempted legislative fix started when the owners of the S.S. Badger hired a "historical consultant," who was familiar with the S.S. Badger from his working a decade earlier helping noted carferry historian George Hilton create a historical overview of the S.S. Badger. That article branded the S.S. Badger the "dirtiest" of the carferries. Shortly thereafter, the S.S. Badger was nominated to be a vessel of "historic preservation." S.S. Badger owner Robert Manglitz stated quite clearly while participating in the nomination process that the intent of the "historical preservation" designation effort was based in a desire to negate existing environmental protections that applied to the S.S. Badger.[22]

LMC representatives actively spearheaded the effort to designate the S.S. Badger coal handling equipment as "historical" at the same time that S.S. Badger lobbyists laid the groundwork for a legislative earmark described above that would protect coal burning vessels (a class of one) from EPA water pollution enforcement actions. This effort began in 2008 and continued with apparent knowledge of state and federal legislators in 2010[23] until ultimately being introduced in 2011[24] and finally defeated in 2012. The ultimate failure of LMC to engineer permanent exemptions from Clean Water Act protections and EPA authority through legislative earmarks left LMC only the pursuit of additional time through the NPDES individual permit process. In recognition of the S.S. Badger's 2008/2009 timeline promise that coal ash discharges would be halted by May 2012, the NPDES permit application was accompanied with a request for more time to "explore" use of natural gas[25] **despite the clear lack of regulatory, technical or fuel supply infrastructure to allow it to be feasible or possible.** LMC's expressed hope was that this talk and promise of the "fuel of the future" would provide cover to ensure an additional 5 years of delayed Clean Water Act compliance, and presumably with it other associated economic and operational benefits from noncompliance.

LMC lobbyists K&L Gates admitted in a May 2012 press release, timed to coincide with LMC's NPDES permit application, that the company hoped the natural gas talk would

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[22] See attached document – SS Badger efforts 2008-2012.
[23] Stephanie Klett Secretary Wisconsin Department of Tourism, letter reply to Congressman Tom Petri, June 16, 2011.
[24] Michael Hawthorne, Landmark Status for Polluting Ship?, Chicago Tribune, November 7, 2011, Page A1. http://www.scribd.com/doc/75254622/Landmark-Status-for-Polluting-Ship-SS-Badger-seeks-coal-ash-dumping-exemption-Chicago-Tribune-November-2011
[25] Chuck Leonard, VP Lake Michigan Carferry, Letter to EPA Regional Administrator Susan Hedman, August 16, 2012, http://www.epa.gov/region5/water/npdestek/badger/pdfs/2012_08_16_SSBadger_LMC_Coal_Ash_Retention.pdf

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convince the regulators to grant more time, but admitted that "those systems are not technologically feasible or economically realistic for the S.S. Badger."[26]

The past 4 years have shown that the S.S. Badger has only sought loopholes to negate the agency's authority under the 2008 VGP. Thus, the S.S. Badger did not live up to its end of the bargain under the 2008 VGP. Further disproportionate lenience only works to create and compound unfairness for all other lawful operators and participants in the competitive marketplace, and to the public who utilize and depend on the impacted environment and ecology.

2) Allowing continued violations of the law provides market-altering competitive advantages that reward pollution at the expense of compliant businesses.

LMC has a proven and continuing history of exploiting the economic advantage gained by noncompliance with the law. LMC has used that economic advantage, indeed has highlighted that advantage, in sales campaigns aimed at diminishing Lake Express on the basis of price.[27]

EPA has been clear in numerous policy statements that noncompliance provides economic benefits to violators in several different ways:

1) Avoided costs
2) Delayed costs
3) Economic benefits from illegal competitive advantage generated by noncompliance[28]

Extraordinary lenience in past and current S.S. Badger proceedings clearly fits all three criteria of unfair competitive advantage.

Lake Michigan Carferry has used resources freed by avoided and delayed costs, as well as other economic benefits to engage in efforts to block other operators from introducing modern and conforming vessels to traditionally competitive shipping routes elsewhere on Lake Michigan.[29]

Operating cost advantages gained from noncompliance with environmental laws and regulations no doubt have bolstered both efforts to gain market share against existing competitors and to create barriers to entry for competitors who are not able to realize

[26] K&L Gates, Press Release regarding LMC application for SS Badger NPDES permit, May 24, 2012. http://gcaptain.com/american-coal-powered-ferry-asks/
[27] See attachment titled "competitive overview best price" – attached filed:competitive-overview-bestprice.pdf
[28] EPA Science Advisory Board, An Advisory of the Illegal Competitive Advantage (ICA) Economic Benefit (EB) Advisory Panel of the EPA Science Advisory Board, September 7, 2005, http://www.epa.gov/sab/pdf/ica_eb_sab-adv-05-003.pdf
[29] Mark Ruge (counsel for Lake Michigan Carferry, Letter to Michael Gordon (Department of Transportation, opposing Maritime Administration(MARAD) cross-lake corridor designations, February 6, 2009, Docket No. MARAD-2008-0096-0045 http://www.regulations.gov/#!documentDetail;D=MARAD-2008-0096-0045

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operating cost savings from nonconforming equipment, and who must bear the full cost of modern requirements.

The irony of the current regulatory environment is that newer generations of Lake Michigan carferries, including one vessel (Viking) on Lake Michigan that was modernized from coal-burning to diesel engine propulsion in part due to environmental concerns, are blocked from re-entering the competitive marketplace by modern regulations. LMC decided against purchasing this vessel as a replacement for the S.S. Badger after realizing the regulatory and legal requirements and compliance costs that apply to the dieselized former coal burner.[30] Yet, the S.S. Badger has been allowed to persist in its current original configuration in part to preserve competitive advantages through regulatory subsidy and in part to avoid costs of compliance.

Modern technology (ships, tug/barge, etc.) exists to serve all of the Lake Michigan Carferry/S.S. Badger roles, but must conform to all existing laws and regulations, and are subject to the full cost of compliance borne by all other members of the marketplace.

Additionally, LMC has a proven knowledge of industry-accepted modernization practices and has demonstrated its financial and technical ability to perform major repowerings through the recent installation (2012-2013) of diesel engines in the vessel operated by LMC-subsidiary Pere Marquette Shipping.[31]

A level regulatory playing field protects all participants in competitive markets. Allowing select companies to exploit regulatory loopholes or to ignore environmental protections not only damages the environment but also puts offending companies and individuals at competitive advantage over companies that abide by the law and invest in continued compliance.

A summary of cost benefits from delayed compliance, and per-ticket impacts on S.S. Badger pricing is included with this comment as an attachment.

3) Unequal application of laws and regulations governing waterborne commerce between Wisconsin and Michigan.

It is unfair to other businesses, both existing and under consideration, that a single company, LMC, be rewarded with continued and unprecedented lenience (as compared to requirements placed on other vessels and operators) in response to historical disregard for environmental laws. This continued lenience has rewarded a decades-long pattern of

[30] Case Study: Lake Michigan Carferry, Presentation by Robert Manglitz, President and CEO, Lake Michigan Carferry, Zeus International LNG-Fueled Marine Conference, Houston, TX, June 6, 2012. Page 2 http://www.zeusintel.com/Portals/0/Content_PDFs/LFMAC2012/01_Manglitz,Robert_LakeMichiganCarferry.pdf

[31] Steve Begnoche, Season Opener for Pere Marquette Shipping, Ludington Daily News, April 9, 2013, page 1, 2.

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delay and unfulfilled promises, and created an entitlement expectation by LMC that it should not have to comply with existing or newly developed standards. The historical record shows that the initial choice to power the S.S. Badger with coal was out-of-step with industry standards already in the 1950s,[32] that the ship quickly drew scrutiny as the dirtiest on Lake Michigan, and that efforts seeking to clean it up have been rebuffed numerous times through the decades despite the continued availability of upgrades to reduce or eliminate pollution from the ship.[33] The S.S. Badger remains in its original 1952 configuration today, [34] despite decades of complaints about air[35] and water pollution[36] generated by the vessel. As has been the case for the past decade with the current owners, past owners also cited the rationale for failing to address federal pollution requirements in 1972 as being "too costly,"[37] for meeting asbestos requirements in 1984 as "too costly,"[38] for meeting air pollution standards in 1986 as "ridiculous,"[39] In 1990, owners sought exemptions from state air pollution regulations by presenting noncompliance as a matter of preserving economic impact.[40]

Lake Michigan Carferry owner Robert Manglitz acknowledge the "importance of repowering the Badger" in a public letter published in 2001, but ultimately decided to maintain the ship as a coal burner despite concerns of the ship's pollution and despite an offer of $2 million by Michigan to aid in the conversion.[41]

Despite the S.S. Badger's long history of contradicting statements, the Great Lakes shipping industry is filled with examples of vessels that were modernized from coal burning to cleaner propulsions systems, significantly extending the service life of the

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[32] James Cabot, Daily News Historian, A Brief History of the SS Badger, Ludington Daily News, May 10, 2003, C3, http://www.scribd.com/doc/68665203/1950-C-O-Railroad-to-coal-fire-the-SS-Badger

[33] George Hilton, "Badger," Steamboat Bill, Winter 1987, Page 280. http://www.scribd.com/doc/128723935/hilton-george-ssbadger-steamboat-1997

[34] SS Badger National historic landmark nomination, William Worden, presented to the National Park System Advisory Board Landmarks Committee, November 9, 2011, http://www.nps.gov/nhl/Fall2011Nominations.htm

[35] Ferry Operators Vow to Curb Air Pollution, The Milwaukee Journal, October 19, 1972, http://www.scribd.com/doc/45050695/1972-newspaper-coverage-of-Milwaukee-air-pollution-charges-against-C-O-ferries

[36] Car Ferry Agrees to Halt Dumping Refuse Into Lake," Sheboygan Press, Monday, December 5, 1966, 22. http://www.scribd.com/doc/45323654/1966-C-O-told-to-stop-dumping-car-ferry-trash-into-Lake-Michigan-SS-Badger-complaints

[37] Michael Donovan, End of Ferry Service has Economic Impact, Manitowoc Herald-Times, October 21, 1972, A1 http://www.scribd.com/doc/45344936/1972-C-O-meeting-federal-pollution-standards-with-SS-Badger-too-costly

[38] Richard Dancz, Replacing Asbestos on carferries too costly, Ludington Daily News, August 13, 1984, http://www.scribd.com/doc/45469121/1984-Asbestos-on-SS-Badger-Lake-Michigan-Carferry-replacement-and-removal-deemed-too-costly

[39] Richard Dancz, Carferries get relief on Michigan Side, Ludington Daily News, Feb 26, 1986.

[40] AP, Lake Michigan ferry service will more, The Ironwood Daily Globe, Sept 21, 1990, http://www.scribd.com/doc/105434309/1990-SS-Badger-gets-air-pollution-exemption-under-threat-of-job-loss-then-moves

[41] Robert Manglitz, Readers Forum, Published Letter to Ludington Daily News, May 1, 2001. http://www.scribd.com/doc/45544214/2001-SS-Badger-offered-2-million-from-Michigan-to-convert-from-coal-to-diesel

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affected equipment. The notion of "modernization" is well-established within the Great Lakes shipping industry and often centers on the upgrade or replacement of propulsion systems or installation of pollution controls. The historical Lake Michigan carferry roster reflects this as well, with numerous examples of modernizations.

Among the historical roster of railroad carferries to serve on Lake Michigan, the following examples reflect ships that modernized to extend their economic working lifespans or were forced to either convert or cease operations in part due to pollution concerns:

- 1947 - SS City of Milwaukee refired from coal to oil boilers. (currently in Manistee, MI)
- 1959 - Ann Arbor No. 6 (Arthur K. Atkinson) lengthened and repowered from coal-fired steam engines with diesel engines.
- 1962 - Wabash (City of Green Bay) converted from coal to oil boilers.
- 1965 - Ann Arbor No. 7 (Viking) repowered from coal fired steam engines to diesel engines. (currently in Menominee, MI)
- 1967 - Coal powered City of Flint removed from service.
- 1971 - Coal powered PM 22 removed from service.
- 1971 - Coal powered City of Saginaw removed from service

Not listed but also relevant, are many other bulk freighters that have undergone similar conversions, most notably the famed Edmund Fitzgerald. Many prominent Great Lakes freighters continue to undergo propulsion replacements and upgrades including many in a fleet of 14 steamships that were previously subject to EPA actions due to evolving regulations. The Great Lakes freighter Kaye E. Barker (built 1951) was successfully re-launched in August 2012 after being converted from a steamship to a state-of-the-art and fully compliant motor vessel. The entire steam plant was removed and replaced with modern diesel engines, one of 5 such major repowerings to have taken place in the industry at Bay Shipbuilding over the past 6 years.[42]

Bay Shipbuilding regulary performs shipyard work on the S.S. Badger and has indicated that a similar conversion is fully feasible and available for the ship.

Both a leading Great Lakes shipyard and engine manufacturer stated in 2010 that the S.S. Badger could undergo an industry-accepted diesel modernization during a 6 month work period.[43] Such a modernization would represent the most intensive and lengthy of possible pollution control options for the S.S. Badger. The letters also match 1970, 1977, 1999, and 2001 findings by S.S. Badger owners that diesel modernization

[42] MMC, News from MMAC affiliates: Bay Shipbuilding, The Beacon, Summer 2012, Published for the Employees of Marinette Marine Corporation, http://www.marinettemarine.com/MMC-12-065-BEACONsummer-web.pdf

[43] Bay Shipbuilding letter of support dated July 12, 2010, National Maintenance and Repair letter of support dated August 19, 2010. City of Ludington (MI) application, Surface Transportation Infrastructure Discretionary Grants for Capital Investments II, US Department of Transportation, 4/26/2010 http://www.scribd.com/doc/83506872/SS-Badger-Shipyard-Engine-Letters-2010-diesel-modernization

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represents the best available solution to air pollution and water pollution concerns with the S.S. Badger.

The requirement that vessel owners should invest in maintaining compliance with modern standards is neither novel nor new, and it certainly does not reflect a "singling out" of a single operator or vessel, as has been alleged by defenders of the S.S. Badger' status quo. Rather than being "historic," sometimes old is just old. The current Great Lakes working fleet boasts many vessels of greater age and longevity that have managed to modernize or conform to prevailing laws and regulations.

3) Unequal Application of Law and Regulations:

It is apparent by its operations, its actions and its own public statements that the dumping of coal ash is a cynical and deliberately intentional business practice propagated by Lake Michigan Carferry. Considering its long standing business practice to refuse to comply with the law, as well as the unenforceability of some proposed Consent Decree terms and provisions, and the minor nature of the penalties that would be lodged against the company if found in violation of the Decree, it is more than reasonable to conclude that the Decree in its present form will not attain the desired goal of the elimination of the deposit of coal ash into Lake Michigan and the elimination of mercury and other pollutants into that waterway. The loose terms and ill-defined limits embodied in the proposed Consent Decree will simply allow Lake Michigan Carferry more opportunity to obfuscate, negotiate and seek to avoid its responsibilities, as it has in the past, while maintaining its gains from not complying with environmental law. Indeed, it can be stated that the penalties as presented, give LMC a less expensive way to operate than complying with the law. And rather than presenting LMC with an enforceable reason to make the necessary changes in its operation, the proposed Consent Decree perversely caps the company's liabilities, at a rate less than the cost of compliance and drives it toward the rational economic conclusion that it is more beneficial in an economical sense to dump and pay the fine than convert and pay the cost of conversion. These are not reasonable outcomes for any consent decree in the environmental realm.

S.S. Badger violations were allowed to occur because EPA improperly ignored state law in granting VGP permit coverage for coal ash discharges

In short, the S.S. Badger's coal ash dumping violates part 95 of the Michigan Natural Resources and Environmental Protection Act (Watercraft Pollution Control Act).[44] In fact, the Michigan DEQ (DNR) has for decades held the position that coal ash discharges

[44] Richard Powers (Michigan DEQ Water Bureau Chief), comment to U.S. Coast Guard regarding the development of regulations governing the discharge of dry bulk cargo residue into the Great Lakes, July 10, 2006, USCG docket 2004-19621-0030 http://www.regulations.gov/#!documentDetail;D=USCG-2004-19621-0030

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from ferries into Michigan waters violates state law. [45] Wisconsin state statutes also prohibit certain discharges from ferries into waterways.

This information raises questions about past extensions and permits provided to LMC by EPA – actions which appear to have provided improper regulatory cover for LMC to violate state law by superceding and negating state agency authority.

The historical record and current industry practices provide zero support for any argument that a lone operator (Lake Michigan Carferry), or ship (S.S. Badger), should be allowed to continue ignoring generally applicable federal, state, or executive regulations. The clear fact and body of available evidence shows that other operators are willingly making investments to modernize and keep vessels older than the S.S. Badger in full legal and regulatory compliance, with no public complaint nor mention or suggestion of obtaining special treatment on the basis of "historical significance" or any other attempts at prolonged delay or preferential treatment as has been the case during the past 5 years with the owners of the S.S. Badger.

The record shows that the "grace period" afforded to the S.S. Badger in 2008, based on LMC commitments to end ash discharges, and expired in December 2012, which included a built in one year "contingency buffer,"[46] provided more than ample opportunity for the owners to complete a "major repower" and certainly any of a series of lesser mitigation projects. The specific and undeniable proof of this is contained in two letters submitted as part of an application seeking market-altering federal subsidy through the TIGER II program in 2010. One letter included in the application came from the same Bay Shipbuilding that not only recently completed the conversion of the 1951 vintage Kaye E. Barker, but also stated in 2010 that an equivalent conversion of the S.S. Badger can be completed in a 6-month work period.[47]

EPA has offered and provided unprecedented and otherwise unavailable lenience in this matter, providing ample time and opportunity to LMC from 2008-2013 to stop its coal ash dumping practice with the S.S. Badger. This is in clear contradiction of stated policies and has been done absent of any true analysis of economic benefits provided, or adverse market impacts caused by the action, or evidence that demonstrates that the agency has undertaken a full and true review of state law implications or potential violations.

The proposed Consent Decree follows a similar path of process failings. That is, there has been no market analysis on the impact of the Consent Decree or any analysis or legal implications of the S.S. Badger yet again ignoring Michigan law.

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[45] Michigan Department of Natural Resources Remedial Action Plan for Muskegon Lake Area of Concern, October 27, 1987, page 131, http://www.scribd.com/doc/45284596/1987-Michigan-DNR-statement-regarding-illegality-of-coal-ash-dumping-in-Lake-Michigan

[46] Proposed VGP: EPA response to public comments US EPA – December 19, 2008 – 6-556, 6-558, http://www.epa.gov/region5/water/npdestek/badger/pdfs/application/badger-appl.pdf

[47] Patrick J. O'Hern, VP & GM, Bay Shipbuilding, Letter to Chuck Leonard, Vice-President, Lake Michigan Carferry Service, July 12, 2010. http://www.scribd.com/doc/83506872/SS-Badger-Shipyard-Engine-Letters-2010-diesel-modernization

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4) Violation of Stated Agency Policy: Consent Decree provides Concrete Economic Benefits for the S.S. Badger

The civil forfeiture component of the proposed Consent Decree ignores significant components of standard civil penalty calculations – failing to recoup past economic benefits and failing also to capture future financial and competitive gains from future noncompliance, delayed and avoided costs.

No other vessel in the United States has been allowed such an ongoing ability to operate while avoiding compliance with US, state and international air and water pollution regulations. These dispensations provide the Badger with unique economic advantage while at the same time introducing pollutants into US waterways. In effect, LMC is being rewarded to operate in an environmentally unfriendly manner. The proposed Consent Decree does nothing to stop the Badger from doing so and in fact, incents the Badger to continue poor environmental practices.

Annual financial benefits gained by the owners of the S.S. Badger from noncompliance were outline in the 2012 Lake Michigan Car Ferry, Inc. S.S. Badger application for Individual NPDES Permit.

Depending on the method avoided, each year of delay provides the owner of the S.S. Badger significant financial benefit as follows:

- Delay/avoidance of Ash capture: $705,225.60 annually.[48] or $ 2,820,902 over the 4 years since the advent of the VGP.
- Delay/avoidance of Diesel engine "repower": $1,915,260.00 annually[49] or $7,661,040 since the advent of the VGP.

The per-ticket benefit of avoided compliance, and additional market effects can in part be calculated through ridership statements provided by Lake Michigan Carferry and forwarded as part of their 2010 Tiger II grant application (164,000+ tickets sold annually)[50] and in a signed 2012 agreement through which LMC accessed federal Department of Energy funds (165,000+ passengers and vehicles annually).[51] Using these statements, LMC has established that each year of delay creates roughly between $4.24 and $11.68 in direct per-ticket financial benefit. The added and undisclosed competitive benefit from market-altering noncompliance are not reflected in the LMC statements

[48] http://www.epa.gov/region5/water/npdestek/badger/pdfs/application/badger-appy.pdf
[49] http://www.epa.gov/region5/water/npdestek/badger/pdfs/application/badger-app-bb.pdf
[50] US Senator Carl Levin, letter to Robert Manglitz, dated September 10, 2010, .City of Ludington (MI) application, Surface Transportation Infrastructure Discretionary Grants for Capital Investments II, US Department of Transportation, 2010.
[51] Project narrative, Agreement between the State of Wisconsin Department of Administration State Energy Office and Lake Michigan Carferry Service, Inc., US DOE Award, Contract No. AD12-9610, March 2012. http://www.scribd.com/doc/93939011/SS-Badger-LMC-grant-application-State-of-Wisconsin-75-000-natural-gas-study

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outlined above and do not appear to have been included in the analysis or negotiations that created the proposed Consent Decree.

In seeking an additional two year dispensation on dumping coal ash and its related pollutants, the S.S. Badger is requesting an additional $1,410,451 to $3,830,520 in "subsidy". The EPA has failed in its obligation to fairness in the name of the public interest in agreeing to this extension.

The civil fine for 2012 violations by the S.S. Badger equates to 15 cents per ticket. ($25,000 divided by 164,000-165,000 tickets per year)

The $25,000 civil penalty that is included in the proposed Consent Decree equates to 15 cents per passenger or vehicle ticket sold.

This assessed penalty on noncompliance (15 cents per ticket) represents a recovery of between 1.2% and 3.5% of the direct per-ticket financial benefits realized by LMC when compared with with the $4.24 to $11.68 per-ticket cost of compliance. It is clear that EPA and DOJ have failed to accurately assess and capture the financial benefits gained by noncompliance and by delayed and avoided remediation. The evidence compellingly suggests that the weak civil penalty (which recovers between 1/29 to 1/83 of the benefit received for 2012 alone and ignores the benefits realized by failures and refusal by LMC to come into compliance during the 2008-2012 timeline submitted during the VGP negotiation) is yet another reward for failures to abide by the law.

EPA and DOJ by their assessments of miniscule civil penalties are sending a powerful message that in the case of Lake Michigan ship operators, they will side with polluters over modern and environmentally compliant operators. This clear failure to accurately analyze polluter benefits and to accurately assess civil penalties does an extreme disservice to the public as it represents a failure to enforce long-stated policies aimed to protect the environment, public health and the competitive marketplace.

Given this, is there any reason to believe that future delays and failures to seek compliance will be met with continued and reckless disregard for stated enforcement policies?

5) Environmental stewardship and pollution concerns.

As a company who operates on Lake Michigan and whose employees likewise make their livings on or about this waterway, Lake Express has a distinct interest that all who use the waterway do so in an environmentally sound and responsible way, so as to preserve the health of both the waterway and those who use it.

While defenders of the S.S. Badger have for years advocated for lenient treatment due to the age and purported historical nature of the "filthiest" boat on the Great Lakes, ," the true story of the S.S. Badger reflects the true irony of its currenet predicament. Perhaps the vessels once lasting legacy, aside from more than 1,000,000 pounds of coal ash

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discharged into Lake Michigan annually, is its role in inspiring the environmental protections that its owners have spent decades trying to avoid.

The pollution issues with the S.S. Badger are neither new, novel, nor the result of evolved or newly introduced rules or regulations. The S.S. Badger has been subject to criticism for water pollution since at least 1966[52] and the early efforts to end water pollution from the S.S. Badger no doubt in part inspired Senator Gaylord Nelson to advocate for the same water protections[53] that the S.S. Badger seeks to avoid complying with today.

While the proposed consent decree makes reference to acknowledged exceedances of Michigan and Wisconsin mercury discharge criteria, the process appears to have largely omitted any requirement for accounting of or scientific analysis of cumulative environmental impacts from the discharges during the period of time that LMC has controlled and operated the S.S. Badger. Analysis of incremental impact from continued discharge and further delayed compliance is also notably absent.

S.S. Badger coal usage and ash generation/discharge has increased significantly under EPA oversight since 2008.

The agreement and timeline provided to EPA by LMC in 2008/2009 did not lead to reductions in coal usage or ash discharges. Instead, both increased significantly in the following years to the present point where even 15% decreases over the next years as stipulated in the proposed Consent Decree can lead to higher levels of pollution than were generated by the ship in 2008, before the practice of ash discharges came under increased scrutiny.

2009 records from the Manitowoc Public Utility (MPU) show that in the first year of the S.S. Badger's VGP timeline to eliminate coal ash discharges, LMC and the S.S. Badger used only 7,200 tons of coal. Coal specs for C. Reiss Stoker used by the S.S. Badger that year also showed use of a fuel with relatively lower ash content by spec, testing as low as 6.14%.

In contrast, 2012 Manitowoc Public Utility (MPU) records show that the S.S. Badger burned 9,163 tons of coal (56.5 tons of coal per scheduled day of operation) last season and discharged not less than 4.79 tons of coal ash per day (based on 8.46% ash content of coal and a 162 day published operating schedule) into Lake Michigan.[54]

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[52] Car Ferry Agrees to Halt Dumping Refuse Into Lake," Sheboygan Press, Monday, December 5, 1966, 22 http://www.scribd.com/doc/45323654/1966-C-O-told-to-stop-dumping-car-ferry-trash-into-Lake-Michigan-SS-Badger-complaints

[53] "(Gaylord) Nelson pushing pollution bills," Janesville Daily Gazette, February 7, 1967, 16. http://www.scribd.com/doc/68665182/1967-Senator-Gaylord-Nelson-Proposed-Ship-Pollution-Bill

[54] City of Manitowoc, Manitowoc Public Utility, 2012 coal supply invoicing to Lake Michigan Carferry, http://www.scribd.com/doc/117169549/Coal-Usage-Lake-Michigan-Carferry-SS-Badger-coal-supplied-by-Manitowoc-Public-Utility-City-of-Manitowoc

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Coal usage increased 27% during the previous agreement and under the previous timeline and the corresponding ash generation rate increased by 38% as reflected by the spec of coal purchased by the company.

Moving forward, the proposed 9.5% coal ash Consent Decree stipulation, as it relates to allowable fuel usage by spec, makes it possible for ash discharges by the S.S. Badger to increase more, to nearly 50% more than first-year-of-VGP. This allowance alone allows a loophole by which coal ash dumping can increase vs. 2009 first year of phaseout baselines, even if 15% coal usage reductions are realized.

Again, this is a case where the inherent weakness of the proposed Consent Decree provides zero meaningful requirements with regard to reducing the waste stream and pollution, as it supposedly addresses to do so. Either the agency has been mislead or it is presenting a "phase out" requirement that does not meaningfully encourage nor compel LMC to reduce its waste steams. Worst of all, it continues a trend of allowing pollution from the S.S. Badger to continue largely unabated.

Without access to LMC discharge records, review of MPU invoicing and coal supply analysis from 2008-2012 provides the best means of estimating annual discharges by the S.S. Badger. These records suggest annual coal ash discharges by the S.S. Badger have ranged during the past 5 years from annual minimums of 462 tons to 770 tons generated, with a steadily increasing trend.[55].

This amount is significantly higher than the reported 89 tons of cargo sweepings (limestone, coal, stone, etc.) placed into Lake Michigan each year by the entire combined U.S and Canadian Great Lakes fleet of 125 ships. [56]. The S.S. Badger creates enough pollution that it would still create more pollution than all others combined even if hundreds more ships were to join the Great Lakes Fleet and current rates were to hold. That one ship is allowed to continue discharging at this level and is rewarded while doing so is a clear failing of the EPA to honor and uphold its mandate.

While the LMC owner has frequently and publicly stated that "science is on our side," and have provided assurances of low impact from both past discharge activity and future continuation of coal ash discharges, these promises appear to rely simply on verbal assurances with little true scientific analysis to back up them up. [57] Like past timelines for compliance, and other promises, these assurances appear to reflect nothing other than clever wordplay. The actual filings by LMC have not examined the true cumulative and continuing environmental impact of the activity and admitted discharge of mercury among other specifically named toxic pollutants in scientific terms, nor do they examine

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[55] See attachment–2008-2012-SS Badger coal-usage.pdf. Via MPU invoicing and coal analysis documents: http://www.scribd.com/collections/4231083/SS-Badger-Coal-Invoices-via-MPU-Manitowoc-Public-Utility

[56] Draft Environmental Impact Statement: U.S. Coast Guard Rulemaking for Dry Cargo Residue Discharges in the Great Lakes, U.S. Coast Guard in cooperation with U.S. Environmental Protection Agency, May 2008, http://www.regulations.gov/#!documentDetail;D=USCG-2004-19621-0032, Table 1-1 (page 1-4), Table 1-4 (1-10)

[57] Lake Michigan Carferry opening day press conference, Ludington Michigan, May 24, 2012. https://www.youtube.com/watch?v=PwT70H33QTA

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the requirement, possibility or public burden of clean up and restoration should the activity prove to have negative ecological impacts.

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Requests for modifications to proposed Consent Decree Agreement

In light of the concerns outlined above, we ask the Department of Justice and the EPA on behalf of the United States to either amend the proposed Consent Decree as outlined; or, if that is not within their power and discretion, to set the Decree aside and end the Lake Michigan Carferry operation until such time as the company can demonstrate that its operations have been altered to eliminate its discharges and/or deposits of coal ash into United States waters.

We also ask for a formal response explaining the rationale for action or lack of action on all items outlined below:

Concerns with the express statements in the Consent Decree:

Civil penalty does not accurately capture the economic benefits derived from noncompliance ($705,225.60 to $1,915,260.00 annually), violations, and continued regulatory non-enforcement. Not just in terms of costs avoided, but also in market share and profitability gained.

A. Proposed Consent Decree: Page 4, para 3, discussion of annual S.S. Badger crossings at 500 in 2012/2013. It should be noted that the S.S. Badger operated for 162 days in 2012 versus 128 days in 2009, 129 days in 2010 and 135 days in 2011 or an average of 131.7 days over the three years. The 2012 operating schedule represents an approximate 20% increase in operating days and a 20% increase in the pollution load caused by the S.S. Badger in Lake Michigan. The operating day increase is coincident with the S.S. Badger's pursuit of an individual permit Clean Water Act permit. We do not believe this to be unintentional.

   In our opinion, the S.S. Badger should be restricted to the maximum pollution load calculated over a 131 day season, the season in place at the time the permit application process began, and not be rewarded with an expanded pollution envelope.

B. Proposed Consent Decree: Page 6, II Applicability, para 5 "...each captain, master, and any other person...etc" should be amended to read "*...each captain, master, chief engineer and any other person placed in a command or management position or who is in charge of the S.S. Badger at any time, whether the S.S. Badger is in port or not, shall be given a copy of the Consent Decree and shall assume responsibility, in writing, by signing a document in form and substance approved by this Court, for operating the S.S. Badger under the terms of this Consent Decree and shall be personally liable for doing so while onboard in their official capacity and/or while in charge....*"

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This provision places responsibility for complying with the operating provisions of the Decree on those who make the operating decisions, where it should be. This spurs direct accountability and clearly identifies, by reason of signing the proposed document, of who is in charge at any given time and responsible for Decree compliance.

C. Proposed Consent Decree: Page 9, IV Permanent Cessation of Coal Ash or Coal Ash Slurry Discharge, para 29 amend to read "...Badger must permanently cease discharging, *directly or indirectly*, coal ash or coal ash slurry..."

D. Proposed Consent Decree: Page 9, IV Permanent Cessation of Coal Ash or Coal Ash Slurry Discharge, para 29 amend to read "...after the first day of the calendar year *2014* Operating Season..."

LMC has had a four year grace period under the VGP to evaluate and engineer options for ending the coal ash dumping, which LMC has claimed to have accomplished. LMC has presented such options, together with technical data, to the EPA in their individual permit application. According to Bay Shipbuilding, it would take one season to install a new diesel power system in the S.S. Badger, the most challenging and time consuming of viable options (cite...). Given the above and the extensive amount of time and engineering claimed already performed by LMC, there is no technical reason it should take LMC another two years to make required changes. There is no other reason other than technical, which should impel the timeline to convert. **One year is sufficient** and places the burden of compliance on LMC. If LMC has indeed done the homework as repeatedly claimed, they should be able to meet the deadline. If not, the S.S. Badger should not be rewarded for frittering away their grace period. The burden of compliance should be on LMC. All of the viable technologies have been done and proven by other vessel owners. LMC should be able to perform. It should be noted that LMC's net savings, in not coming into compliance under the 4 year VGP grace period, was $2,820,902 to $7,661,040 based upon the S.S. Badger's own estimates of compliance costs depending upon the technology used. EPA, by the Consent Decree with an additional 2 year grace period, grants LMC another $1,410, 451 to $3,830,520 in savings. This works to the advantage of LMC but not the public.

E. Proposed Consent Decree: Page 9, IV Permanent Cessation of Coal Ash or Coal Ash Slurry Discharge, para 29 amend to read "...after the first day of the calendar year 2014 Operating Season *or cease* operation *unless and until LMC can demonstrate that such discharges have been permanently ended."*

As currently worded there is no provision in the Consent Decree sufficient to insure the S.S. Badger meets its obligation to stop dumping (there is a

minor fine provided but it is insignificant when weighed against the cost of compliance). Therefore, this provision simply is not reasonable and contrary to the law of consent decrees as the Decree cannot claim to solve the problem it establishes. As revised, the provision will incentivize the Badger to stop dumping either by meeting the terms of the Consent Decree or by stopping operation. The decision will be LMC's.

F. Proposed Consent Decree: Page 9, IV Permanent Cessation of Coal Ash or Coal Ash Slurry Discharge, para 32 "... LMC must operate the Badger in a manner that reduces the average amount of coal combusted per operating day. LMC must demonstrate compliance with this Paragraph according to the method set forth in Appendix B, Section 1A." This section says "LMC must demonstrate a reduction in the average amount of coal used to operate the S.S. Badger per Operating Day during 2013 compared to 2012".

This requirement is utterly weak, and unenforceable in practice, and fails in its "reasonableness" mandate. In the Consent Decree, there are no numeric standards established for a baseline coal burn nor an explanation of how that baseline would be established; there is no standard established regarding how the coal burn will be measured; there is no certification requirement by those measuring the burn that such burn calculation is accurate; there is no standard or definition of what "reduces the amount" actually means. Does it mean 1 ton per day? 5 tons? 1 pound? What LMC states? This is an at best poorly drafted language/provision and the EPA has failed in its obligation of developing an open and transparent process that can be tracked and verified. This is particularly egregious in that EPA has all the information required to put enforceable language in the Decree. For example:
"During the 2013 Operating Season, LMC will reduce its daily amount of coal combustion, on a daily average for the season basis, by 10% below the base combustion amount of 50.5 tons per day. LMC will substantiate such reduction by the presentation to the Court and the EPA, good and sufficient records signed by the Master or Chief Engineer as to the amount of coal combusted on a per day basis. Such coal combusted figures will be supported by coal truck delivery slips showing the time and date of delivery and the weight of material delivered, signed by both the truck driver and the mate or engineer on watch at the time of delivery. The Chief Engineer or Master shall also take an inventory of the coal onboard, in the presents of a certified cargo surveyor, who shall attest to same, on the first and last day of the season (i.e. a beginning and ending inventory). LMC will also provide the ship's logs or other good and sufficient evidence of the number of days operated during the season and such other information as the Court and EPA may deem appropriate to definitely establish the daily average coal burn."

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Proposed Consent Decree: Page 9, IV Permanent Cessation of Coal Ash or Coal Ash Slurry Discharge, para 33 "... LMC must reduce the amount of coal ash discharged from the S.S. Badger into Lake Michigan as compared to the Calendar Year 2013 operation by 15%. LMC must demonstrate compliance with this Paragraph according to the method set forth in Appendix B, Section 1B." This section says "LMC must demonstrate a reduction in the average amount of *coal* used to operate the Badger per Operating Day during 2014 compared to 2013."

Similar to the comments under F. above, this requirement is utterly weak, unenforceable and fails in its "reasonableness" mandate. There are no numeric standards established for a baseline coal ash discharge nor an explanation of how that baseline would be established; there is no standard established regarding how the ash discharge will be measured; there is no certification requirement by those measuring the ash discharge that such discharge calculation is accurate; there is no numeric standard or definition of what "reduction in the average amount..." actually means. Again, does it mean 1 ton per day? 5 tons? 1 pound? This poorly drafted language/provision demonstrates the EPA has failed in its obligation to develop a reasonable cure and to insure the public interest by developing an open and transparent process that can be tracked and verified. As with coal combustion data, EPA has all the information required to put enforceable language in the Decree. Finally, while the para 33 calls for a 15% reduction in "coal ash discharged," Appendix B simply calls for a "reduction in the average amount of *coal used*" without stipulating by how much the reduction is. This is, at best sloppy drafting and opens the door to obfuscation and debate, which is not the hallmark of a solid agreement. Alternative language might read: "*During the 2014 Operating Season, LMC will reduce its daily amount of coal ash discharged on a daily average for the season basis, by 15% below the base ash discharge amount of 3.78 tons per day based upon an ash content of 7.5%. LMC will substantiate such reduction by the presentation to the Court and the EPA, good and sufficient records signed by the Master or Chief Engineer as to the amount of coal ash discharged on a per day basis. Such coal ash figures will be supported by coal truck delivery slips showing the time and date of delivery and the weight of material delivered, and the specification of the coal delivered including as a minimum total ash content and sulfur content of the product delivered. Such delivery slips will be signed by both the truck driver and the mate or engineer on watch at the time of delivery. The Chief Engineer or Master, , shall also take an inventory of the coal onboard, in the presents of a certified cargo surveyor who shall attest to same, on the first and last day of the season (i.e. a beginning and ending inventory). LMC will also provide the ship's logs, coal delivery slips and other good and sufficient evidence of the number of days operated during the season and such other*

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information as the Court and EPA may deem appropriate to definitely establish the daily average coal ash discharge."

G. Proposed Consent Decree, Page 12, VI Resolution of Claims and Reservation of Rights, para 42. Add to end of para *"LMC warrants that since January 1, 2009 it has been in compliance with all federal, state and local laws and regulations regarding the discharge of coal ash or coal ash slurry into the waters of Lake Michigan and that it has held and will continue to hold during the currency of this agreement, any and all necessary and required permits and/or certificates issued by the federal government and the States of Wisconsin and Michigan and any local authority of jurisdiction to allow them to make such discharges. Copies of such permits and/or certificates are attached hereto and made part and parcel of this Consent Decree. The EPA and Department of Justice warrant that they have provided a copy of this proposed Consent Decree to the States of Wisconsin and Michigan and have requested those States to review the proposed Consent Decree and have received agreement from those States that the deposit of coal ash into state waters is consistent with state law and regulation and that those States agree with the terms and conditions of the proposed Consent Decree. The States' written responses, a copy of which is attached hereto, is made part and parcel of this Consent Decree."*

The proposed Consent Decree mandates that "LMC is responsible for compliance with all applicable federal, state and local laws". The EPA and DOJ is creating uncertainty, as the EPA did in the 2008 VGP process, by providing federal cover for LMC to dump coal ash in state waters where it is illegal to do so. This places the burden of "sorting out the legalities" to the states in an area made "gray" by EPA/DOJ actions. This in unfair and unacceptable and violates the principal that a consent decree should be clear in its intent and execution. This is particularly egregious given EPA/DOJ simply have to ask the relevant state agencies to "sign off", which EPA does on a regular basis over a variety of actions. This process is not new to EPA nor should it be frightening. It just needs to be done. Does or doesn't the dumping of coal ash into state waters violate state law or regulations? A simple question that, for the sake of fairness and clarity, needs be asked by the EPA/DOJ.

H. Proposed Consent Decree, Page 14, VIII Stipulated Penalties, para 47:

This paragraph, which enumerates the penalties that can be imposed by the EPA for non compliance with the proposed Consent Decree, is wholly inadequate. For instance, the penalty for a "failure to cease discharging coal ash or coal ash slurry…" is a meager $3,000 per Operating Day on which a discharge occurs. Considering that the S.S. Badger has operated an average of 131.7 days per season in the period of 2009-2001, dumping every single day of the season would expose LMC to a maximum fine of $3,000 X 132 days or $396,000 per season. This represents an amount of money far less than the $705,000 per season LMC has publicly stated is

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their least cost technological solution of ash retention and landfill.[58] This minimal level of monetary penalty gives the S.S. Badger a strong economic incentive to do nothing but to pollute, which history shows they are more than willing to do. This level of fine does not offset, even if a 162 day season was considered ($486,000 fine). This level of fine fails to meet the goals of the Consent Decree and therefore fails as a reasonable element of the Decree. In our opinion, these fines on a daily basis (Consent Decree Violation Table a. & d., page 14) should be based on no less than twice the annual cost of LMC's publicized least cost alternative of $705,000 per season. This would equate to a fine of about $10,682 per day. This level of fine would meet the test of reasonableness, would encourage LMC to make necessary changes and would act to prevent dumping beyond the 2015 deadline. Reference sections b. & c. of the same table, these violations should be treated similarly as sections a. & d., a daily violation of $10,682. It should be noted that a $32,500 penalty for a violation for a season is an inexplicable $246.21 per day (based upon 132 days) and a $65,000 penalty for a violation is $492.42 per day. This level of fine encourages, rather than discourages compliance.

I. Proposed Consent Decree, Page 17, IX Force Majeure, para 55: this para defines a "Force Majeure" event, those circumstances under which LMC is allowed leeway to either seek more time for compliance or, to plead that compliance is "prevented" under the circumstances, as worded. The proposed Consent Decree should not allow LMC to use the force majeure clause to negotiate underperformance of standards or, in some circumstances, the failure to stop dumping at all (they being "prevented" from doing so by circumstances beyond their control). The purpose and intent of the proposed Consent Decree is for the S.S. Badger stop dumping or stop operating. The force majeure para again provides an artful way for LMC to not comply and not take responsibility. This is neither fair to the industry nor in the public's interest.

Para 55 of the force majeure clause should be amended to read as follows: " For purposes of this Consent Decree, a "Force Majeure Event" shall mean an event that has been or will be caused by circumstances beyond the control of LMC, its contractors, vendors officers, or any person or entity controlled by LMC that delays ~~or prevents~~ compliance with any provision of this Consent Decree or otherwise causes noncompliance with any provision of this Consent Decree despite LMC's best efforts to fulfill the obligation. ..... to the greatest extent possible. LMC's financial inability to perform any obligation under this Consent Decree does not constitute a Force Majeure event, *nor does a Force Majeure event include, inter alia,*

[58] Chuck Leonard, VP Lake Michigan Carferry, Letter to EPA Regional Administrator Susan Hedman, August 16, 2012, http://www.epa.gov/region5/water/npdestek/badger/pdfs/2012_08_16_SSBadger_LMC_Coal_Ash_Retention.pdf

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increased costs of performance, changed economic circumstances, changed labor relations, precipitation or climate events, changed circumstances arising out of the sale, lease, or transfer or conveyance of title or ownership of any LMC asset or failure to obtain federal, state or local permits and/or authorizations"
Para 58 of the force majeure clause should be amended to read:
"If EPA agrees that a Force Majeure Event has delayed ~~or prevented~~ or will delay ~~or prevent~~ compliance...."

Comments on Appendix A:

Essentially, Appendix A was lifted "whole cloth" from the VGP and was written by LMC themselves for inclusion in the VGP. This language was not derived from any thoughtful analysis by the EPA – it was written completely by the regulated party.[59]

Under II A. of the Appendix, the maximum coal ash content of burned fuel is set at 9.5% (by weight as received). A review of the record confirms that this percentage is much too high and allows LMC to manipulate ash generation figures so as to indicate a reduction in ash generation against this standard that is not actually achieved in practice. This is unreasonable for a Consent Decree. Reviewing the available S.S. Badger coal purchase records for the years 2008-2010, the ash contents of purchase coal were as follow: 2008-7.41%; 2009-6.42%; and 2010-6.65%. This averages 6.82% over the three year time period. The amount of ash content is something, within reason, wholly controllable by LMC in accordance to what they order from the supplier. They can order a low ash coal and get it, within reason (i.e. they could not get a "no ash" content coal). The purpose of the Consent Decree is to limit and then eliminate coal ash discharge into Lake Michigan (together with resultant pollutants). Therefore, it would be reasonable, responsible and in the public interest to restrict the S.S. Badger to burning a low ash coal, not a 9.5% ash content coal. As the S.S. Badger purchase records show, it is capable of obtaining and burning coal with an ash content of 6.42%. **Therefore, it is reasonable that a 6.5% limit, rather than a 9.5% limit be set in Appendix A.** Appendix A should be amended accordingly.

Comments on Appendix B:

Appendix B is utterly unenforceable as written and totally lacks verifiable standards. It should be amended to incorporate our comments in comments F & G above.

[59] Proposed VGP: EPA response to public comments US EPA – December 19, 2008, 6-558 http://www.epa.gov/region5/water/npdestek/badger/pdfs/Attachment-I.pdf

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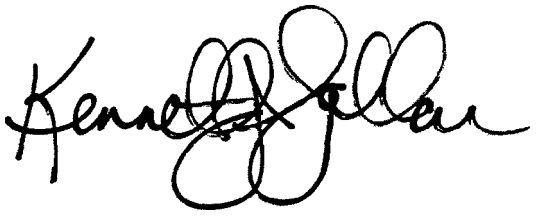
We ask the Department of Justice and the EPA on behalf of the United States to either amend the Consent Decree as outlined; or, if that is not within their power and discretion, to set the Decree aside and end the Lake Michigan Carferry operation until such time as the company can demonstrate that its operations have been altered to eliminate its discharges and/or deposits of coal ash into United States waters.

These comments to the proposed LMC Consent Decree are respectfully submitted by Lake Express, LLC.



Kenneth J. Szallai
President
Lake Express, LLC.

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[redacted]

Maher, Robert (ENRD)

From:	Jessica Averill [JAverill@senate.michigan.gov]
Sent:	Thursday, April 25, 2013 10:06 AM
To:	ENRD, PUBCOMMENT-EES (ENRD)
Subject:	Lake Express, LLC comment re: United States v. Lake Michigan Trans-Lake Shortcut, Inc., D.J. Ref. No. 90-5-1-1-10771
Attachments:	ATTACHMENT A - DEQ Letter to US Coast Guard 2006.pdf; ATTACHMENT B - MI LSB Memo 2011.pdf; United States v. Lake Michigan Trans-Lake Shortcut, Inc.docx

Case Number: D.J. Ref. No. 90-5-1-1-10771
Case Name: United States v. Lake Michigan Trans-Lake Shortcut, Inc., d/b/a Lake Michigan Carferry Services and SS Badger

By e-mail *pubcomment-ees.enrd@usdoj.gov*.

To: Assistant Attorney General, U.S. DOJ-ENRD, P.O. Box 7611, Washington, DC 20044-7611.

The attached documents serve as the public comment by Michigan State Senator Rick Jones regarding the proposed consent decree with the United States District Court for the Western District of Michigan in United States v. Lake Michigan Trans-Lake Shortcut, Inc., Civil Action No. 1:13-cv-317.

Attached files:

- Comment Letter
- Attachment A: MDEQ Letter to US Coast Guard 2006.
- Attachment B: Michigan Legislative Service Bureau Memo 2011.

Thank you for your time,

State Senator Rick Jones
24th District – Michigan

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THE SENATE
STATE OF MICHIGAN

COMMITTEES
JUDICIARY, CHAIR
REDISTRICTING, VICE CHAIR
REGULATORY REFORM, VICE CHAIR
ENERGY AND TECHNOLOGY
HEALTH POLICY

April 22, 2013

Via email: *pubcomment-ees.enrd@usdoj.gov*
Assistant Attorney General,
U.S. DOJ-ENRD,
P.O. Box 7611,
Washington, DC
20044-7611.

Re: Comment regarding United States v. Lake Michigan Trans-Lake Shortcut, Inc., D.J. Ref. No. 90-5-1-1-10771.

Dear Assistant Attorney General:

I am a member of the Michigan State Senate from the 24th District and a former county sheriff in Eaton County, Michigan. My district includes the Lake Michigan shoreline county of Allegan. Accordingly, the proposed consent decree referenced above has a significant impact on the environment and tourist economy in my district.

EXCUTIVE SUMMARY OF REQUEST

1. I hereby request that the proposed consent decree in United States v. Lake Michigan Trans-Lake Shortcut, Inc.,D.J. Ref. No. 90-5-1-1-10771 be submitted to the Michigan Department of Environmental Quality (MDEQ) for a certification of whether it complies with Michigan state law prior to its approval and implementation.

2. I further request that the proposed consent decree be held in abeyance and that the SS Badger not be allowed to sail unless and until the proposed consent decree is deemed to be in compliance with Michigan state law as certified by the MDEQ.

3. This request based on the following:

   - Michigan has a criminal ban on Great Lakes dumping by a watercraft which dates back to 1971 and which has been upheld by the Michigan Supreme Court.

   - The SS Badger has blatantly violated this criminal statute for over 40 years by dumping almost 8,000 pounds of coal ash into Lake Michigan every day it operates.

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- The U.S. Environmental Protection Agency (EPA) has a history of unlawfully bypassing the federal Clean Water Act requirement for seeking state law certification by Michigan in this case first in the Vessel General Permit (VGP) process in 2008 and now in the NPDES permit application applied for by Lake Michigan Trans-Lake Shortcut/SS Badger in 2013.

MICHIGAN'S CRIMINAL GREAT LAKES DUMPING BAN

In 1971 Michigan passed the Water Pollution Control Act, MCL 324.9501 et seq. (WPCA) to govern the discharge of material by watercraft on the Great Lakes within Michigan waters.

> A person shall not discharge, dump, throw, or deposit garbage, litter, sewage, or oil from a recreational, domestic, or foreign watercraft used for pleasure or for the purpose of carrying passengers, cargo, or otherwise engaged in commerce on the waters of this state.
>
> MCL 324.9502(2)

"Litter" is broadly defined as:

> [R]ubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, oil, or other foreign substances of every kind and description.
>
> MCL 324.9501(d)

Violation of the WCPA's Great Lakes dumping ban is a criminal violation punishable by up to 92 days in jail and a $500 fine for each occurrence. *See* MCL 324.9510.

By its statutory terms, the criminal statute prohibits the coal ash discharge by the SS Badger. This conclusion is confirmed by the following letter from the MDEQ to the U.S. Coast Guard 2006 regarding proposed cargo wash regulations:

> The discharge of litter from water craft or commercial vessels is prohibited under Part 95, Watercraft Pollution Control, of the NREPA. The Act defines litter in part, as waste material, debris, or other foreign substance of every kind and description.
>
> *See* DEQ Letter to U.S. Coast Guard dated July 2006 attached to these comments (hereinafter Coast Guard Letter) (emphasis added). *See also* Michigan Legislative Service Bureau (LSB) research memorandum dated November 2011 attached to these comments (hereinafter LSB Memo). The LSB is a non-partisan bill drafting and research agency of the Michigan Legislature.

A number of cargo vessels challenged the Michigan statute, both in federal and state court. The Michigan Supreme Court in *Lake Carriers Assn v MDNR*, 407 Mich 424 (1979) confirmed that the WPCA prohibits any and all discharges by watercrafts into the territorial waters of the State of Michigan and stated that "[e]ven the ash from an incinerator must be deposited onshore." Lake Carriers vs DNR, Mich (1979)(emphasis added).

EPA'S HISTORY OF BYPASSING
MICHIGAN CERTIFICATION OF COAL DUMPING BY SS BADGER

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The federal Clean Water Act (CWA) does not prohibit stricter state regulation or discharge requirements. *See* 33 USC § 1370. *See also* LSB Memo. In 2008, the EPA issued a Vessel General Permit (VGP) dealing almost exclusively with ballast water discharge standards. As required by Section 1401 of the federal CWA, the EPA submitted the draft VGP to the MDEQ for a determination of whether it complied with state law.

The MDEQ did certify that the draft VGP dealing with ballast water standards complied with Michigan law. **However, the EPA inserted language purporting to authorize the SS Badger to dump over 500 tons of coal ash per year into Lake Michigan from 2008 through December of 2012 *after* the public comment period and *after* the MDEQ's state law certification**. This fact is confirmed by the attached LSB memo.

In short, the State of Michigan was never given an opportunity to determine whether the VGP language purporting to authorize coal ash dumping by the SS Badger complied with state law as required by Section 1401 CWA because that language was inserted *after* the MDEQ's certification. This is EPA bypass number one.

After expiration of the VGP, the SS Badger was directed by the EPA to apply for an individual or NPDES discharge permit. The SS Badger's permit application was deemed completed by the EPA in early 2013.

In the normal course of business, the EPA would have issued a draft permit decision sometime thereafter that would, like the draft VGP, also require a certification by the affected states that it complies with state law. *See* 40 CFR 124.53.

Proving that nothing is normal when it comes to the federal government's treatment of state-banned coal ash dumping by the SS Badger, the EPA instead concurrently issued a complaint and proposed consent decree purporting to authorize two another two (2) seasons of illegal coal ash dumping by the SS Badger. The proposed consent decree expressly states that nothing in it shall "relieve" the SS Badger from its "obligation to comply" with applicable state law. *See* Proposed Consent Decree dated March 2013, paragraph 3.

The EPA's decision to enter into a consent decree that by its terms is not required by to certified by affected states such as Michigan rather than using the NPDES permit process which does require such certification is bypass number two.

CONCLUSION & REQUEST FOR AMENDENT TO THE PROPOSED CONSENT DECREE

By its own constitution and by federal law, the State of Michigan is co-equal to the federal government in regulating the waters of the Great Lakes within its territory.

Unfortunately, the federal government has not lived up to its obligation under the federal CWA to give affected states the opportunity to certify whether a proposed discharge into the Great Lakes complies with state law.

In the case of the SS Badger, the EPA has twice bypassed its obligation to let the State of Michigan certify whether the proposed discharge of over 500 tons of coal ash per year into Lake Michigan by the SS Badger complies with Michigan's law. The first bypass was the insertion of the SS Badger language after Michigan's certification of the VGP in 2008. The second occurred in 2013 when the EPA opted for the consent decree route which did not include a stipulation for state certification rather than the NPDES permit decision process which requires such certification.

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Michigan law has expressly banned the discharge of any substance into the Great Lakes since 1971, let alone the massive dumping of over 1,000,000 pounds of toxic coal ash annually by the SS Badger.

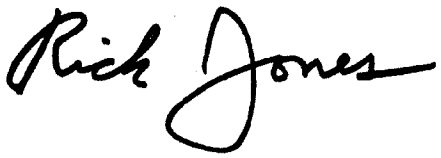
The letter and spirit of the federal CWA requires that the sovereign State of Michigan be given the opportunity to certify whether the proposed dumping of an additional 2,000,000 pounds of toxic coal ash into Lake Michigan by the SS Badger during 2013 and 2014 complies with long-standing state law.

Michigan has twice been denied its rights under the CWA. I call on U.S. Department of Justice and the U.S. District Court for the Western District of Michigan to right this wrong by:

1. Requiring that the proposed consent decree in United States v. Lake Michigan Trans-Lake Shortcut, Inc.,D.J. Ref. No. 90-5-1-1-10771 be submitted to the Michigan Department of Environmental Quality (MDEQ) for a certification of whether it complies with Michigan state law, including but not limited to Part 95 of the WCPA, prior to its approval and implementation.

2. Holding the proposed consent decree in abeyance and not allowing the SS Badger to sail unless and until the proposed consent decree is deemed to be in compliance with Michigan state law as certified by the MDEQ.

Sincerely,



State Senator Rick Jones

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