

**Northwest Environmental Advocates ❖ San Francisco Baykeeper
Stanford Law School Environmental Law Clinic
Pacific Environmental Advocacy Center**

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**NINTH CIRCUIT UPHOLDS CASE REQUIRING U.S. EPA TO
REGULATE INVASIVE SPECIES POLLUTION**

Dealing a setback to the shipping industry, the Ninth Circuit Court of Appeals ruled in favor of environmental organizations seeking to force the U.S. Environmental Protection Agency (EPA) to regulate ship discharges under the Clean Water Act. The decision follows a 2005 lower court ruling that EPA had illegally exempted ship discharges from Clean Water Act requirements. That decision gave the agency until September 2008 to end the regulatory exemption and issue permits to ships, an order that EPA appealed to the Ninth Circuit.

“EPA spent nearly ten years fighting against using the nation’s only comprehensive law to combat an environmental plague that is costing the U.S. economy billions of dollars,” said Debbie Sivas, Director of the Stanford Law School Environmental Law Clinic, which represented the three plaintiff groups. “We are gratified that the Appeals Court has held the EPA accountable so that this country can begin to control the dangerous tide of invasive species.”

The court’s ruling today upholds the lower court’s order directing EPA to take specific action to ensure that shipping companies comply with the Clean Water Act and restrict the discharge of invasive species in ballast water. In mid-June, EPA issued a draft permit to regulate all vessel discharges. The draft permit requires treatment of a wide range of pollutants contained in ballast water and many other types of ship discharges.

Nina Bell, Executive Director of the Portland, OR-based Northwest Environmental Advocates, said the court’s decision will properly shift some of the burden of invasive species from taxpayers to shippers. “The Ninth Circuit’s decision is very important for the taxpayers who have been paying the huge price of EPA’s continuing refusal to implement the Clean Water Act,”

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said Bell. “If EPA had used its Congressional mandate thirty years ago, this country would have been using the Clean Water Act to effectively control ship discharges for all that time,” she added.

The plaintiff groups cautioned that the shipping industry has already shifted its fight from the courts to lobbying Congress. “As soon as we won the district court case in 2005, the shipping industry immediately turned to Congress for a special exemption from the Clean Water Act, to preserve their ability to pollute at the nation’s expense,” Bell said.

Live species from other countries are carried to U.S. waters in ballast water that ships use for stabilization. The ballast water is discharged into bays, estuaries, and the Great Lakes as ships approach port and when cargo for export is loaded. Over 21 billion gallons of ballast water from international ports is discharged into U.S. waters each year. The cost of damage caused by invasive species to the U.S. economy is estimated in the billions of dollars annually.

“The San Francisco Bay and Delta have been completely invaded by non-native species introduced by commercial ships coming to our ports. Species such as the Asian clam and Chinese mitten crab are clogging the intake pipes of drinking water facilities and power plants, harming the commercial fishing industry, and destroying native species habitat,” said Sejal Choksi, San Francisco Baykeeper.

The absence of effective federal action, combined with the high cost of invasive species to the environment, industries, and drinking water sources, has led numerous states to pass their own pollution control laws. Michigan and Minnesota require shippers to have discharge permits. California has the strictest controls on the discharge of ballast-borne invasive species in the world. Six Great Lakes states – New York, Michigan, Pennsylvania, Illinois, Minnesota, and Wisconsin – joined the environmental groups’ lawsuit to persuade the court to require a federal regulatory program.

The challenge was brought by Northwest Environmental Advocates, San Francisco Baykeeper and The Ocean Conservancy, three of the signers of a petition filed with EPA in January 1999. EPA denied the petition in 2003, triggering the lawsuit. The Environmental Law Clinic at Stanford Law School and Pacific Environmental Advocacy Center (PEAC) at Lewis and Clark Law School in Portland, OR, represent the three organizations.

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