

ORAL ARGUMENT NOT SCHEDULED**IN THE DISTRICT COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

LAKE CARRIERS' ASSOCIATION,	)	
	)	
<i>Petitioner,</i>	)	
	)	
v.	)	Case No. 25-1027
	)	
U.S. ENVIRONMENTAL	)	(Consolidated with
PROTECTION AGENCY and	)	Nos. 25-1049 and
LEE ZELDIN, Administrator,	)	25-1052)
U.S. Environmental Protection Agency	)	
	)	
<i>Respondents.</i>	)	

**NON-BINDING STATEMENT OF ISSUES**

Pursuant to this Court's order on February 10, 2025, Environmental Petitioners Alliance for the Great Lakes, Environmental Law & Policy Center, Minnesota Environmental Partnership, and National Wildlife Federation respectfully submit this preliminary and non-binding statement of issues with respect to their challenge to the final agency rule, *Vessel Incidental Discharge National Standards of Performance*, 89 Fed. Reg. 82,074 (Oct. 9, 2024) ("Final Rule"), promulgated by Respondent United States Environmental Protection Agency:

1. Whether the Final Rule’s failure to require vessels operating exclusively on the Great Lakes and St. Lawrence River (“Lakers”) built after January 1, 2009 to meet the numeric discharge standard for living organisms in ballast water discharge violates the Vessel Incidental Discharge Act (“VIDA”), which requires the Final Rule to be as stringent as the 2013 Vessel General Permit, *Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel*, 78 Fed. Reg. 21,938 (Apr. 12, 2013) (“2013 VGP”), unless certain exceptions apply. *See* 33 U.S.C. § 1322(p)(4)(D)(ii).

2. Whether the Final Rule’s failure to include the Best Management Practice requiring vessels to avoid uptake of ballast water in areas with known infestations or populations of harmful organisms or pathogens, *see* 2013 VGP § 2.2.3.3 at 27–28, violates the VIDA by being less stringent than the 2013 VGP. *See* 33 U.S.C. § 1322(p)(4)(D)(ii).

3. Whether the Final Rule’s failure to require existing Lakers to install and operate United States Coast Guard type-approved Ballast Water Management Systems (“BWMS”) as the “best available technology economically achievable,” as required by the VIDA, 33 U.S.C. § 1322(p)(4)(B)(i)(III), was arbitrary and capricious, an abuse of discretion, unsupported by the rulemaking record, and contrary to the intent of Congress.

4. Whether the Final Rule’s failure to consider whether filtration-only BWMS were the “best available technology economically achievable” for existing Lakers, as required by the VIDA, 33 U.S.C. § 1322(p)(4)(B)(i)(III), was arbitrary and capricious, an abuse of discretion, unsupported by the rulemaking record, and contrary to the intent of Congress.

Environmental Petitioners reserve their rights to modify this preliminary and non-binding statement of issues, as well as to raise these and other issues.

DATED: March 12, 2025

Respectfully submitted,

/s/ Wendy Bloom

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2025, the foregoing Non-Binding Statement of Issues was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system, which will provide electronic notice to counsel of record for all parties in the consolidated action.

DATED: March 12, 2025

Respectfully submitted,

/s/ Wendy Bloom  
Wendy Bloom