
**IN THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT**

LAKE CARRIERS' ASSOCIATION,

Petitioner,

v.

Case No. 25-1027

U.S. ENVIRONMENTAL
PROTECTION AGENCY and
LEE ZELDIN, Administrator,
U.S. Environmental Protection Agency

Respondents.

NONBINDING STATEMENT OF ISSUES

Pursuant to this Court's January 17, 2025 order, Petitioner Lake Carriers' Association ("LCA") hereby submits this Nonbinding Statement of Issues with respect to its Petition for Review of the U.S. Environmental Protection Agency's ("EPA") Final Rule, *Vessel Incidental Discharge National Standards of Performance*, set forth at 89 Fed. Reg. 82,074 (October 9, 2024) ("Final Rule"). The Final Rule was promulgated under the Vessel Incidental Discharge Act ("VIDA"), and it establishes federal standards of performance for marine pollution control devices for discharges incidental to the normal operation of primarily non-Armed Forces and non-recreational vessels 79 feet in length and above into the waters of

the United States or the waters of the contiguous zone.

The following issues are stated without prejudice to the LCA's right to modify or raise additional issues to explain how EPA acted arbitrarily and capriciously, not in accordance with law, or in excess of its statutory jurisdiction, authority, or limitations in promulgating the Final Rule:

1. Whether the EPA has the statutory authority to require the installation of type-approved ballast water management equipment on New Lakers, *see* 40 C.F.R. § 139.10(c)(2), where the VIDA empowers the EPA to set standards of performance relating to the discharge of pollutants but not to mandate installation of equipment. *See* 33 U.S.C. § 1322(p)(1), (4)(A).

2. Whether the EPA has the statutory authority to require the installation of type-approved ballast water management equipment on New Lakers, *see* 40 C.F.R. § 139.10(c)(2), where EPA has determined that numeric standards of performance are infeasible for Lakers and therefore is directed by the VIDA to instead require the use of best management practices (which are different from and do not include installation of ballast water management equipment). *See* 33 U.S.C. § 1322(p)(4)(B)(ii); 89 Fed. Reg. at 82101.

3. Whether the Final Rule's requirement that New Lakers install type-approved ballast water equipment is arbitrary and capricious or an abuse of discretion, where ballast water management systems cannot operate effectively or

appropriately on Lakers and cannot achieve the Rule's numeric discharge standards.

4. Whether the Final Rule's requirement that New Lakers install type-approved ballast water equipment is arbitrary, capricious, an abuse of discretion, without substantial evidence, or otherwise not in accordance with the law, where there is no best available and economically achievable ballast water management systems for Lakers.

5. Whether the Final Rule's requirement that New Lakers install type-approved ballast water equipment is arbitrary, capricious, an abuse of discretion, without substantial evidence, or otherwise not in accordance with the law, because EPA failed to adequately consider, weigh, and respond to concerns relating to the feasibility and costs associated with mandating equipment installation on New Lakers; because EPA in the final rule ignored operational difficulties that had been identified by the prior administration's proposed rule; because EPA relied on conclusory assertions about the achievability of future designs; because EPA's new economic analysis is insufficiently supported; or because EPA circumvented VIDA's research program by prematurely imposing unsubstantiated equipment requirements.

6. Whether the Final Rule irrationally and unlawfully singles out New Lakers, *see* 40 C.F.R. § 139.10(c)(2), for imposition of impractical and cost-

prohibitive requirements.

7. Whether the Final Rule is otherwise arbitrary, capricious, an abuse of discretion, or not in accordance with law.

Dated: March 10, 2025

Respectfully submitted,

/s/ Varu Chilakamarri

Varu Chilakamarri

Mark H. Ruge

Samuel R. Boden

K&L Gates LLP

1601 K Street, N.W.

Washington, DC 20006

(202) 778-9165

varu.chilakamarri@klgates.com

*Counsel for Lake Carriers'
Association*

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March 2025, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the D.C. Circuit using the appellate CM/ECF system and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

/s/ Varu Chilakamarri

Varu Chilakamarri

K&L Gates LLP

1601 K Street, N.W.

Washington, DC 20006

Phone: (202) 778-9165

Email: varu.chilakamarri@klgates.com