

This Document can be made available
in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **2963**

February 14, 2008

Authored by Hansen, Jaros, Tingelstad, Kahn and Murphy, M.

The bill was read for the first time and referred to the Committee on Environment and Natural Resources

1.1 A bill for an act
1.2 relating to natural resources; establishing regulation of ballast water discharge
1.3 into Lake Superior; setting ballast water exchange, discharge, and treatment
1.4 standards; requiring adoption of rules; requiring regional cooperation; providing
1.5 civil penalties; proposing coding for new law in Minnesota Statutes, chapter 84D.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[84D.16] DEFINITIONS.**

1.8 Subdivision 1. **Application.** For purposes of sections 84D.16 to 84D.26, the
1.9 following terms have the meanings given them.

1.10 Subd. 2. **Agency.** "Agency" means the Pollution Control Agency.

1.11 Subd. 3. **Ballast water.** "Ballast water" means water taken on board a vessel to
1.12 control trim, list, draft, stability, or stresses of the vessel, including matter suspended
1.13 in such water, or any water placed into a ballast tank during cleaning, maintenance, or
1.14 other operations.

1.15 Subd. 4. **Ballast water capacity.** "Ballast water capacity" means the total
1.16 volumetric capacity of any tanks, spaces, or compartments on a vessel that is used for
1.17 carrying, loading, or discharging ballast water, including any multiple use tank, space, or
1.18 compartment designed to allow carriage of ballast water.

1.19 Subd. 5. **Ballast water management.** "Ballast water management" means
1.20 mechanical, physical, chemical, and biological processes used, either singularly or in
1.21 combination, to remove, render harmless, or avoid the uptake or discharge of harmful
1.22 aquatic organisms and pathogens within ballast water and sediment.

1.23 Subd. 6. **Commissioner.** "Commissioner" means the commissioner of the Pollution
1.24 Control Agency.

2.1 Subd. 7. **Constructed.** "Constructed" means a state of construction of a vessel at
2.2 which the keel is laid, construction identifiable with the specific vessel begins, assembly
2.3 of the vessel has begun comprising at least 50 tons or one percent of the estimated mass
2.4 of all structural material of the vessel, whichever is less, or the vessel undergoes a major
2.5 conversion.

2.6 Subd. 8. **Environmentally sound.** "Environmentally sound" methods, efforts,
2.7 actions, or programs means methods, efforts, actions, or programs to prevent introductions
2.8 or control infestations of invasive species that minimize adverse impacts to the structure
2.9 and function of an ecosystem and adverse effects on nontarget organisms and ecosystems
2.10 and emphasize integrated pest management techniques and nonchemical measures.

2.11 Subd. 9. **Exclusive economic zone.** "Exclusive economic zone" means the
2.12 exclusive economic zone of the United States established by Proclamation Number 5030,
2.13 dated March 10, 1983, and the equivalent zone of Canada.

2.14 Subd. 10. **Foreign vessel.** "Foreign vessel" means a vessel of foreign registry or
2.15 operated under the authority of a foreign country.

2.16 Subd. 11. **Great Lakes.** "Great Lakes" means:

2.17 (1) Lake Ontario;

2.18 (2) Lake Erie;

2.19 (3) Lake Huron, including Lake St. Clair;

2.20 (4) Lake Michigan;

2.21 (5) Lake Superior;

2.22 (6) connecting channels to any of the lakes in clauses (1) to (5), including the St.

2.23 Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to
2.24 the Canadian border; and

2.25 (7) all other bodies of water within the drainage basin of the lakes and connecting
2.26 channels in clauses (1) to (6).

2.27 Subd. 12. **Great Lakes region.** "Great lakes region" means the eight states that
2.28 border on the Great Lakes: Minnesota, Wisconsin, Illinois, Michigan, Indiana, Ohio,
2.29 Pennsylvania, and New York.

2.30 Subd. 13. **Sediment.** "Sediment" means matter that has settled out of ballast water
2.31 within a vessel.

2.32 Subd. 14. **State waters of Lake Superior.** "State waters of Lake Superior" means
2.33 the surface waters of Lake Superior and waters that discharge, flow, or otherwise are
2.34 transferred into Lake Superior that are under the jurisdiction of the state.

2.35 Subd. 15. **Vessel of the armed forces.** "Vessel of the armed forces" means any
2.36 vessel:

3.1 (1) owned or operated by the United States Department of Defense, other than a
3.2 time or voyage chartered vessel; or

3.3 (2) owned or operated by the United States Department of Homeland Security that is
3.4 designated by the commissioner as a vessel equivalent to a vessel described in clause (1).

3.5 **Sec. 2. [84D.17] BALLAST WATER MANAGEMENT; PERMITS.**

3.6 Subdivision 1. **No ballast on board.** The operator of an oceangoing vessel that is
3.7 designed, constructed, or adapted to carry ballast water in the state waters of Lake Superior
3.8 and that has no ballast water on board must conduct ballast water management according
3.9 to the same standards and requirements applicable to a vessel with ballast water on board.

3.10 Subd. 2. **International Maritime Organization standards.** By January 1, 2009,
3.11 the operator of a vessel that is designed, constructed, or adapted to carry ballast water in
3.12 the state waters of Lake Superior must conduct ballast water management according to
3.13 the standards for ballast water management established by the International Maritime
3.14 Organization.

3.15 Subd. 3. **Permit required.** By January 1, 2011, no person may operate a vessel
3.16 that is designed, constructed, or adapted to carry ballast water in the state waters of Lake
3.17 Superior without obtaining a permit from the agency. The commissioner shall issue a
3.18 permit to the owner or operator of a vessel if:

3.19 (1) the vessel meets the ballast water uptake, discharge, treatment, and sediment
3.20 management requirements under sections 84D.16 to 84D.21;

3.21 (2) there is a ballast water management plan for the vessel that is approved by the
3.22 commissioner under section 84D.22; and

3.23 (3) there is a ballast record book on the vessel that meets the requirements of
3.24 section 84D.23.

3.25 Subd. 4. **Initial permit; examination.** If, on the basis of an initial examination
3.26 under section 84D.24, the commissioner finds that a vessel complies with the permit
3.27 requirements in subdivision 3, the commissioner shall issue a permit under this section as
3.28 evidence of compliance. The permit is valid for a period of not more than five years, as
3.29 specified by the commissioner. The permit or a true copy shall be maintained on board
3.30 the vessel.

3.31 Subd. 5. **Fees.** The commissioner shall collect permit fees in amounts not greater
3.32 than those necessary to cover the reasonable costs of developing, reviewing, and acting
3.33 upon applications for ballast water management permits and implementing and enforcing
3.34 the conditions of the permits according to rules adopted by the commissioner. Permit
3.35 fees shall not include the costs of litigation. The fee schedule must reflect reasonable

4.1 and routine direct and indirect costs associated with permitting, implementation, and
4.2 enforcement. Any money collected under this subdivision shall be deposited in the
4.3 environmental fund.

4.4 Subd. 6. Exemptions. (a) The following vessels are not required to obtain a permit
4.5 or meet the requirements of sections 84D.16 to 84D.26:

4.6 (1) a vessel that carries all of its ballast water in sealed tanks that are not subject to
4.7 discharge; or

4.8 (2) vessels of the United States armed forces.

4.9 (b) The commissioner may adopt alternative rules that are consistent with sections
4.10 84D.16 to 84D.26 for application to recreational vessels less than 50 meters in length that
4.11 have a maximum ballast water capacity of eight cubic meters.

4.12 Subd. 7. Rules. The commissioner shall adopt rules to implement sections 84D.16
4.13 to 84D.26.

4.14 Sec. 3. [84D.18] BALLAST WATER UPTAKE AND DISCHARGE
4.15 REQUIREMENTS.

4.16 (a) By January 1, 2011, the operator of a vessel required to have a permit under
4.17 section 84D.17 must not conduct the uptake or discharge of ballast water or sediment in
4.18 state waters of Lake Superior except under the following circumstances:

4.19 (1) the uptake or discharge is solely for the purpose of ensuring the safety of the
4.20 vessel in an emergency situation or saving a life at sea;

4.21 (2) the uptake or discharge:

4.22 (i) is accidental and the result of damage to the vessel or its equipment;

4.23 (ii) all reasonable precautions to prevent or minimize ballast water and sediment
4.24 discharge have been taken before and after the damage occurs, the discovery of the
4.25 damage, and the discharge; and

4.26 (iii) the owner or officer in charge of the vessel did not willfully or recklessly
4.27 cause the damage;

4.28 (3) the uptake or discharge is solely the purpose of avoiding or minimizing the
4.29 discharge of pollution from the vessel that would otherwise violate applicable federal
4.30 or state law; or

4.31 (4) the uptake or discharge of ballast water and sediment occurs at the same location
4.32 where the whole of that ballast water and sediment originated and there is no mixing with
4.33 ballast water and sediment from another area that has not been managed according to
4.34 sections 84D.16 to 84D.26.

5.1 (b) The commissioner shall notify vessel owners and operators of any area in state
5.2 waters of Lake Superior in which vessels may not take on ballast water due to known
5.3 conditions. The notice shall include the coordinates of the area and, if possible, the
5.4 location of alternative areas for uptake of ballast water.

5.5 **Sec. 4. [84D.19] BALLAST WATER EXCHANGE REQUIREMENTS.**

5.6 Subdivision 1. **Requirement.** (a) By January 1, 2011, the operator of a vessel
5.7 that is required to have a permit under section 84D.17 that is not required to conduct
5.8 ballast water treatment according to section 84D.20 may not discharge ballast water in
5.9 state waters of Lake Superior, except after:

5.10 (1) conducting ballast water exchange as required by this section, according to
5.11 rules adopted by the commissioner;

5.12 (2) using ballast water treatment technology that meets the performance standards of
5.13 section 84D.20; or

5.14 (3) using environmentally sound alternative ballast water treatment technology if
5.15 the commissioner determines that the treatment technology is at least as effective as
5.16 the ballast water exchange required under clause (1) in preventing and controlling the
5.17 introduction of invasive species.

5.18 (b) For purposes of this section, a ballast water treatment technology is at least as
5.19 effective as the ballast water exchange required by paragraph (a), clause (1), in preventing
5.20 and controlling the introduction of invasive species if preliminary experiments prior to
5.21 installation of the technology aboard the vessel demonstrate that the technology removed
5.22 or killed at least 98 percent of organisms larger than 50 microns.

5.23 (c) By January 1, 2009, the commissioner shall develop and issue guidelines on
5.24 technology that may be used under paragraph (a), clause (3). The commissioner shall
5.25 allow a vessel using environmentally sound alternative ballast treatment technology under
5.26 paragraph (a), clause (3), to continue to use that technology for five years after the date on
5.27 which the environmentally sound alternative ballast water technology was first placed in
5.28 service on the vessel or the date on which treatment requirements under section 84D.20
5.29 become applicable, whichever is later.

5.30 Subd. 2. **Exchange areas.** (a) The operator of a vessel that is required to have a
5.31 permit under section 84D.17 and that originates from a port or place outside the waters
5.32 subject to the jurisdiction of the state shall conduct ballast water exchange at least 200
5.33 nautical miles from the nearest point of land and in water at least 200 meters in depth.

5.34 (b) The operator of a vessel that is required to have a permit under section 84D.17
5.35 and that originates from a port or place within the United States exclusive economic zone,

6.1 or from a port within 200 nautical miles of the United States in Canada, Mexico, or other
6.2 ports designated by the commissioner for purposes of this section, shall conduct ballast
6.3 water exchange at least 50 nautical miles from the nearest point of land and in waters at
6.4 least 200 meters in depth.

6.5 Subd. 3. **Safety or stability exception.** (a) Subdivision 2 does not apply to the
6.6 discharge of ballast water:

6.7 (1) if the commissioner determines that compliance with subdivision 2 would
6.8 threaten the safety or stability of the vessel, its crew, or its passengers; or

6.9 (2) if the owner or operator of the vessel determines that compliance with
6.10 subdivision 2 would threaten the safety or stability of the vessel, its crew, or its passengers
6.11 because of adverse weather, equipment failure, or any other relevant condition.

6.12 (b) Whenever the owner or operator of a vessel is unable to comply with the
6.13 requirements of subdivision 2 because of a determination made under paragraph (a),
6.14 clause (2), the owner or operator of the vessel shall:

6.15 (1) notify the commissioner as soon as practicable thereafter but no later than 24
6.16 hours after making the determination and ensure that the determination, the reasons for
6.17 the determination, and the notice are recorded in the vessel's ballast water record book
6.18 required under section 84D.18; and

6.19 (2) undertake ballast water exchange according to subdivision 5 if safety or stability
6.20 concerns prevent undertaking ballast water exchange in the alternative area.

6.21 (c) If the owner or operator of a vessel conducts a ballast water discharge under this
6.22 subdivision, the commissioner shall review the circumstances to determine whether the
6.23 discharge met the requirements of this subdivision. The review under this paragraph is in
6.24 addition to any other enforcement authority of the commissioner.

6.25 Subd. 4. **Discharge under waiver.** (a) If, because of the short length of a voyage,
6.26 the operator of a vessel is unable to discharge ballast water according to subdivision 2,
6.27 paragraph (b), without substantial business hardship, as determined under rules adopted
6.28 by the commissioner, the operator may request a waiver from the commissioner and
6.29 discharge the ballast water according to subdivision 5. A request for a waiver under this
6.30 subdivision shall be submitted to the commissioner at such time and in such form and
6.31 manner as the commissioner may require.

6.32 (b) For purposes of this subdivision, the factors taken into account in determining
6.33 substantial business hardship include whether:

6.34 (1) compliance with subdivision 2, paragraph (b), would require a significant change
6.35 in routing or scheduling of service so as to compromise the economic or commercial
6.36 viability of the trade or business in which the vessel is operated; or

7.1 (2) it is reasonable to expect that the trade, business, or service provided will be
7.2 continued only if a waiver is granted under this subdivision.

7.3 Subd. 5. **Permissible discharge.** (a) If allowed under subdivision 3, ballast water
7.4 may be discharged if it is:

7.5 (1) in an area designated for that purpose by the commissioner, after consultation
7.6 with the commissioners of other state agencies, representatives from other states in the
7.7 Great Lakes region, and representatives of any local government that may be affected by
7.8 discharge of ballast water in that area; or

7.9 (2) into a reception facility described in section 84D.20.

7.10 (b) The volume of any ballast water discharged under this subdivision may not
7.11 exceed the volume necessary to ensure the safe operation of the vessel.

7.12 Subd. 6. **Certain geographically limited routes.** The owner or operator of a
7.13 vessel required to have a permit under section 84D.17 is exempt from this section if the
7.14 vessel operates exclusively in an area for which the commissioner has determined, after
7.15 consultation with the commissioners of other state agencies, representatives from other
7.16 states in the Great Lakes region, and representatives of any local government that may
7.17 be affected by discharge of ballast water, that the risk of introducing invasive species
7.18 through ballast water discharge is insignificant.

7.19 Subd. 7. **Prohibited areas.** A vessel may not conduct ballast water exchange or
7.20 discharge ballast water under this section:

7.21 (1) within a national marine sanctuary designated under the National Marine
7.22 Sanctuary Act, United States Code, title 16, chapter 32, section 1431;

7.23 (2) in waters that are designated as a nondischarge zone under section 312(n)(7) of
7.24 the Federal Water Pollution Control Act, United States Code, title 33, chapter 26, section
7.25 1322(n)(7); or

7.26 (3) in any other waters designated by the commissioner in consultation with the
7.27 commissioners of other state agencies, representatives from other states in the Great Lakes
7.28 region, and representatives of any local government that may be affected by discharge of
7.29 ballast water.

7.30 Subd. 8. **Vessels without ballast.** (a) The commissioner shall adopt rules that are
7.31 intended to minimize the introduction of invasive species from vessels required to have a
7.32 permit under section 84D.17 that have not undertaken ballast water exchange according to
7.33 this section and enter a port in the Great Lakes without pumpable ballast water.

7.34 (b) The ballast water treatment regulations applicable under section 84D.20 apply to
7.35 vessels without pumpable ballast water until the earlier of:

- 8.1 (1) the date on which such vessels are required to conduct ballast water treatment
8.2 according to the requirements of section 84D.20; or
8.3 (2) the effective date of the rules adopted by the commissioner under this section.

8.4 **Sec. 5. [84D.20] BALLAST WATER TREATMENT REQUIREMENTS.**

8.5 Subdivision 1. **Requirements.** (a) A vessel required to have a permit under section
8.6 84D.17 shall conduct ballast water treatment according to this section before discharging
8.7 ballast water in state waters of Lake Superior, so that the ballast water discharged contains:

8.8 (1) less than one living organism per ten cubic meters that is 50 or more micrometers
8.9 in minimum dimension;

8.10 (2) less than one living organism per ten milliliters that is less than 50 micrometers
8.11 in minimum dimension and more than ten micrometers in minimum dimension;

8.12 (3) concentrations of indicator microbes that are less than:

8.13 (i) one colony forming unit of toxicogenic *Vibrio cholera* (serotypes O1 and O139)
8.14 per 100 milliliters or less than one colony forming unit of that microbe per gram of wet
8.15 weight of zoological samples;

8.16 (ii) 126 colony forming units of *Escherichia coli* per 100 milliliters; and

8.17 (iii) 33 colony forming units of intestinal enterococci per 100 milliliters; and

8.18 (4) concentrations of such additional indicator microbes as may be specified in rules
8.19 adopted by the commissioner, after consultation with other appropriate agencies, that are
8.20 less than the amount specified in those rules.

8.21 (b) Paragraph (a) does not apply to a vessel that discharges ballast water into a
8.22 land-based or water-based facility for the reception of ballast water that meets standards
8.23 adopted by the commissioner.

8.24 (c) Paragraph (a) applies to a vessel required to have a permit under section 84D.17
8.25 beginning on the date of the first drydocking of the vessel after January 1, 2011, but
8.26 not later than January 1, 2012.

8.27 Subd. 2. **Ballast water treatment system approval.** (a) The operator of a vessel
8.28 may not use a ballast water treatment system to comply with this section unless the system
8.29 is approved by the commissioner.

8.30 (b) The commissioner shall adopt rules establishing a process for approving ballast
8.31 water treatment systems. In approving ballast water treatment systems under this section,
8.32 the commissioner may rely on reports, documents, and records of persons that meet such
8.33 requirements as the commissioner may prescribe.

8.34 Subd. 3. **Feasibility review; revisions of standards.** (a) Not later than January
8.35 1, 2009, the commissioner shall complete a review to determine whether appropriate

9.1 technologies are available to achieve the requirements under subdivision 1. In reviewing
9.2 the technologies the commissioner shall consider:

9.3 (1) the effectiveness of a technology in achieving the requirements;

9.4 (2) feasibility in terms of compatibility with ship design and operations;

9.5 (3) safety considerations;

9.6 (4) whether a technology has an adverse impact on the environment; and

9.7 (5) cost effectiveness.

9.8 (b) If the commissioner determines, on the basis of the review conducted in
9.9 paragraph (a), that compliance with the requirements under subdivision 1 is not feasible
9.10 for any class of vessels, the commissioner:

9.11 (1) may extend the date on which the requirements apply for a period not to exceed
9.12 12 months, but not later than January 1, 2012; and

9.13 (2) shall recommend action to ensure that compliance with the extended date is
9.14 achieved.

9.15 (c) If the commissioner determines that ballast water treatment technology exists
9.16 that exceeds the requirements under subdivision 1, the commissioner shall revise, for any
9.17 class of vessels, the requirements to incorporate the higher standards.

9.18 **Subd. 4. Delay for vessels participating in technology evaluation programs. (a)**
9.19 If a vessel participates in a program using a technology approved by the commissioner to
9.20 test and evaluate promising ballast water treatment technologies that are likely to result
9.21 in treatment technologies that are the same as or more stringent than the requirements to
9.22 which the vessel would be subject to, the commissioner shall allow the vessel to use the
9.23 technology for a 10-year period and the vessel shall be deemed to be in compliance with
9.24 subdivision 1 during that 10-year period.

9.25 (b) The commissioner shall seek to ensure that a wide variety of vessel types and
9.26 voyages are included in the evaluation program, but may not grant a delay under this
9.27 subdivision to more than five percent of the vessels to which this section applies.

9.28 (c) The commissioner may terminate the 10-year grace period of a vessel under
9.29 this subdivision if:

9.30 (1) the participation of the vessel in the program is terminated without the consent of
9.31 the commissioner;

9.32 (2) the vessel does not comply with the manufacturer's standards for operating the
9.33 ballast water treatment technology used on the vessel; or

9.34 (3) the commissioner determines that the approved technology is insufficiently
9.35 effective or is causing harm to the environment.

10.1 Subd. 5. **Review.** (a) By January 1, 2011, and every third year thereafter, the
10.2 commissioner shall complete a review of ballast water treatment requirements under
10.3 this section to determine if the requirements should be revised to reduce the amount of
10.4 organisms or microbes allowed to be discharged, taking into account improvements in the
10.5 scientific understanding of biological processes leading to the spread of invasive species
10.6 and improvements in ballast water treatment technology. The commissioner shall revise
10.7 the requirements of this section as necessary.

10.8 (b) In adjusting the requirements of this section, the commissioner shall provide for
10.9 the prospective application of the adjusted requirements to vessels constructed after the
10.10 date on which the adjusted requirements apply and for an orderly phase-in of the adjusted
10.11 requirements to existing vessels.

10.12 Subd. 6. **High-risk vessels.** (a) By January 16, 2012, the commissioner shall
10.13 publish and regularly update a list of vessels identified by the commissioner that, due to
10.14 factors such as the origin of their voyages, the frequency of their voyages, the volume of
10.15 ballast water they carry, the biological makeup of the ballast water, and the fact that they
10.16 frequently discharge ballast water under an exception to section 84D.19, pose a high risk
10.17 of introducing invasive species into the state waters of Lake Superior.

10.18 (b) The commissioner shall give priority to vessels on the list for participation in
10.19 a technology evaluation program under subdivision 4. Any other agency may develop
10.20 and implement technology development programs or other incentives, whether positive or
10.21 negative, to encourage the adoption of ballast water treatment technology by those vessels
10.22 consistent with the requirements of this section on an expedited basis.

10.23 Subd. 7. **Exemptions.** (a) This section does not apply to a vessel that operates
10.24 exclusively within an area where the commissioner has determined, by rule, that the
10.25 risk of introducing invasive species through ballast water discharge from the vessel
10.26 is insignificant.

10.27 (b) The commissioner shall develop and require a vessel exempted from complying
10.28 with this section to follow best practices to minimize the spread of invasive species
10.29 in its operation area. The best practices shall be developed in consultation with the
10.30 commissioners of other state agencies, representatives from other states in the Great Lakes
10.31 region, and representatives of any local governments affected by ballast water discharge.

10.32 (c) The commissioner, at the request of the commissioner of agriculture, shall
10.33 require a vessel exempted from this section to have a ballast water treatment system
10.34 approved by the commissioner to stop the spread of infectious diseases to plants and
10.35 animals as otherwise authorized by law.

11.1 Subd. 8. **Laboratories.** The commissioner may use any state, nonstate, or foreign
11.2 laboratory that meets standards established by the commissioner for the purposes of
11.3 evaluating and certifying ballast water treatment technologies that meet the requirements
11.4 of this section.

11.5 Sec. 6. **[84D.21] SEDIMENT MANAGEMENT.**

11.6 Subdivision 1. **Sediment removal and disposal.** The operator of a vessel required
11.7 to have a permit under section 84D.17 may not remove or dispose of sediment from
11.8 spaces designed to carry ballast water, except:

11.9 (1) according to this section and the vessel's ballast water management plan
11.10 approved under section 84D.22; and

11.11 (2) when removal or disposal occurs more than 200 nautical miles from the nearest
11.12 point of land or into a reception facility that meets the requirements of subdivision 3.

11.13 Subd. 2. **Design requirements.** (a) By January 1, 2011, a vessel to which this
11.14 section applies may not be operated on state waters of Lake Superior unless that vessel
11.15 is designed and constructed according to rules adopted under this subdivision and in
11.16 a manner that:

11.17 (1) minimizes the uptake and entrapment of sediment;

11.18 (2) facilitates removal of sediment; and

11.19 (3) provides for safe access for sediment removal and sampling.

11.20 (b) A vessel to which this section applies that was constructed before January 1,
11.21 2011, shall be modified, to the extent practicable, at the first drydocking of the vessel after
11.22 January 15, 2011, but no later than January 1, 2016, to achieve the objectives described in
11.23 paragraph (a).

11.24 (c) The commissioner shall adopt rules establishing design and construction
11.25 standards to achieve the objectives of paragraph (a) and providing guidance for the
11.26 modifications and practices under paragraph (b). The commissioner shall incorporate
11.27 the standards and guidance in the rules governing the ballast water management plan
11.28 approved under section 84D.22.

11.29 Subd. 3. **Sediment reception facilities.** (a) The commissioner shall adopt rules
11.30 governing facilities for the reception of vessel sediment from spaces designed to carry
11.31 ballast water. The rules must provide for the disposal of sediment in a way that does
11.32 not impair or damage the environment, human health, or property or resources of the
11.33 disposal area.

12.1 (b) The commissioner shall designate facilities for the reception of vessel sediment
12.2 that comply with the rules adopted under paragraph (a) at ports and terminals where
12.3 ballast tanks are cleaned or repaired.

12.4 **Sec. 7. [84D.22] BALLAST WATER MANAGEMENT PLAN.**

12.5 Subdivision 1. **Ballast water management plan required.** (a) The operator of a
12.6 vessel required to have a permit under section 84D.17 shall conduct all ballast water
12.7 management operations of the vessel according to a ballast water management plan that is
12.8 designed to minimize the discharge of invasive species, meets the requirements prescribed
12.9 by the commissioner under subdivision 2, and is approved by the commissioner.

12.10 (b) The owner or operator of a vessel required to have a permit under section 84D.17
12.11 shall maintain a copy of the vessel's ballast water management plan on board at all times
12.12 and keep the plan readily available for examination by the commissioner.

12.13 Subd. 2. **Ballast water management plan approval.** (a) The commissioner may
12.14 not approve a ballast water management plan unless the commissioner determines that
12.15 the plan:

12.16 (1) describes in detail the actions to be taken to implement the ballast water
12.17 management requirements established under sections 84D.16 to 84D.26;

12.18 (2) describes in detail the procedures to be used for disposal of sediment at sea and
12.19 on shore according to sections 84D.16 to 84D.26;

12.20 (3) describes in detail safety procedures for the vessel and crew associated with
12.21 ballast water management;

12.22 (4) designates the officer on board the vessel in charge of ensuring that the plan
12.23 is properly implemented;

12.24 (5) contains the reporting requirements for vessels established under sections 84D.16
12.25 to 84D.26 and a copy of each form necessary to meet those requirements; and

12.26 (6) meets all other requirements prescribed by the commissioner.

12.27 (b) The commissioner may approve a ballast water management plan for a foreign
12.28 vessel on the basis of a certificate of compliance with the criteria described in paragraph

12.29 (a) issued by the vessels's country of registration according to rules adopted by the
12.30 commissioner.

12.31 **Sec. 8. [84D.23] BALLAST WATER RECORD BOOK.**

12.32 Subdivision 1. **Ballast water record book required.** The owner or operator of
12.33 a vessel required to have a permit under section 84D.17 shall maintain, in English on
12.34 board the vessel, a ballast water record book in which each operation of the vessel

13.1 involving ballast water or sediment discharge is recorded according to rules adopted
13.2 by the commissioner. The ballast water record book shall be kept readily available for
13.3 examination by the commissioner. In cases where a vessel is unmanned and being towed,
13.4 the ballast water record book may be kept on the towing vessel.

13.5 Subd. 2. **Retention period.** A ballast water record book required in subdivision 1
13.6 shall be retained on board the vessel for three years after the date on which the last entry
13.7 in the book is made and shall be retained under the control of the vessel's owner for
13.8 an additional three years.

13.9 Subd. 3. **Regulations.** (a) The commissioner shall require, at a minimum, that:

13.10 (1) each entry in the ballast water record book be signed and dated by the officer in
13.11 charge of the ballast water operation recorded;

13.12 (2) each completed page in the ballast water record book be signed and dated by
13.13 the owner or operator of the vessel; and

13.14 (3) the owner or operator of the vessel transmit any information to the commissioner
13.15 regarding the ballast operations of the vessel as the commissioner may require by rule.

13.16 (b) The commissioner may adopt rules for alternative methods of record keeping,
13.17 including electronic record keeping, to comply with the requirements of this section.

13.18 Any electronic record keeping method authorized by the commissioner shall support the
13.19 inspection and enforcement provisions of section 84D.24 and shall comply with applicable
13.20 standards of the state and the National Institute of Standards and Technology governing
13.21 reliability, integrity, identity authentication, and nonrepudiation of stored electronic data.

13.22 **Sec. 9. [84D.24] EXAMINATIONS.**

13.23 Subdivision 1. **Initial examination.** (a) The commissioner shall examine vessels
13.24 before issuing a ballast water management permit to determine whether:

13.25 (1) there is a ballast water management plan for the vessel that is approved by
13.26 the commissioner;

13.27 (2) there is a ballast record book on the vessel that meets the requirements of
13.28 section 84D.23; and

13.29 (3) the equipment used for ballast water and sediment management under sections
13.30 84D.16 to 84D.26 is installed and functioning properly.

13.31 (b) For vessels constructed on or after January 1, 2011, the commissioner shall
13.32 conduct the examination required by paragraph (a) when the vessel first engages in port
13.33 operations in the state.

13.34 (c) For vessels constructed before January 1, 2011, the commissioner shall:

14.1 (1) conduct the examination required by paragraph (a) before the date on which
14.2 section 84D.20, subdivision 1, applies to the vessel; and

14.3 (2) inspect the vessel's ballast water record book required by section 84D.23.

14.4 (d) For foreign vessels or vessels originating outside of the state or its waters, the
14.5 commissioner shall perform the examination required by paragraph (a) the first time the
14.6 vessel engages in port operations in the state.

14.7 Subd. 2. **Subsequent inspections.** In addition to the examination required by
14.8 subdivision 1, the commissioner shall annually examine vessels required to have a permit
14.9 under section 84D.17 to ensure compliance with sections 84D.16 to 84D.26.

14.10 Subd. 3. **Inspection authority.** (a) The commissioner may inspect a vessel required
14.11 to have a permit under section 84D.17 at any time, including taking ballast water samples,
14.12 to ensure compliance with sections 84D.16 to 84D.26. The commissioner shall use all
14.13 appropriate and practical measures of detection and environmental monitoring and shall
14.14 establish adequate procedures for reporting violations of sections 84D.16 to 84D.26 and
14.15 accumulating evidence regarding such violations.

14.16 (b) Upon receipt of evidence that a violation has occurred, the commissioner shall
14.17 cause the matter to be investigated. In an investigation under this subdivision, the
14.18 commissioner may issue subpoenas to require the attendance of any witness and the
14.19 production of documents and other evidence. In case of refusal to obey a subpoena issued
14.20 under this subdivision, the commissioner may request assistance of the attorney general.

14.21 Subd. 4. **Notification of violations.** If the commissioner finds, on the basis of an
14.22 examination under subdivision 1 or 2, investigation under subdivision 3, or any other
14.23 information, that a vessel is being operated in violation of sections 84D.16 to 84D.26,
14.24 the commissioner shall:

14.25 (1) notify, in writing, the owner or operator of the vessel and the captain of the port
14.26 at the vessel's next port of call;

14.27 (2) remove from the vessel the permit issued under section 84D.17; and

14.28 (3) take other actions as may be appropriate.

14.29 Subd. 5. **Compliance monitoring.** (a) The commissioner shall adopt rules for
14.30 sampling and other procedures to monitor compliance with sections 84D.16 to 84D.26.

14.31 (b) The commissioner may verify compliance with the treatment and discharge
14.32 requirements of section 84D.20 through identification markers associated with a treatment
14.33 technology's effectiveness, such as the presence of indicators associated with a certified
14.34 treatment technology.

15.1 Subd. 6. **Education and technical assistance programs.** The commissioner may
15.2 carry out education and technical assistance programs and other measures to promote
15.3 compliance with the requirements of sections 84D.16 to 84D.26.

15.4 Subd. 7. **Detention of vessels.** The commissioner, by notice to the owner, charterer,
15.5 operator, agent, master, or other individual in charge of a vessel, may detain the vessel
15.6 if the commissioner has reasonable cause to believe that:

15.7 (1) the vessel is a vessel required to have a permit under section 84D.17; and

15.8 (2) the vessel does not comply with a requirement of sections 84D.16 to 84D.26 or is
15.9 being operated in violation of sections 84D.16 to 84D.26.

15.10 Subd. 8. **Civil penalty.** (a) A person who violates sections 84D.16 to 84D.26 or
15.11 rules adopted thereunder is liable for a civil penalty in an amount not to exceed \$32,500
15.12 per violation. Each day of a continuing violation constitutes a separate violation. A vessel
15.13 operated in violation of sections 84D.16 to 84D.26 or rules adopted thereunder is liable in
15.14 rem for any civil penalty assessed under this subdivision for that violation.

15.15 (b) If the commissioner finds, after notice and an opportunity for a hearing, that
15.16 a person has violated sections 84D.16 to 84D.26 or rules adopted thereunder, the
15.17 commissioner may assess a civil penalty for that violation. In determining the amount
15.18 of the civil penalty, the commissioner shall take into account the nature, circumstances,
15.19 extent, and gravity of the prohibited acts committed and, with respect to the violator, the
15.20 degree of culpability, any history of prior violations, and such other matters as justice
15.21 may require.

15.22 (c) At the request of the commissioner, the attorney general may bring a civil action
15.23 in court to enforce sections 84D.16 to 84D.26 or rules adopted thereunder. Any court
15.24 before which an action is brought may award appropriate relief, including temporary or
15.25 permanent injunctions and civil penalties.

15.26 Sec. 10. **[84D.25] CONSULTATION AND COOPERATION.**

15.27 Subdivision 1. **Great Lakes Panel on Aquatic Nuisance Species.** The
15.28 commissioner shall cooperate to the fullest extent practical with the Great Lakes Panel on
15.29 Aquatic Nuisance Species to ensure development of standards for the control of invasive
15.30 species that are broadly protective of the state waters of Lake Superior and other natural
15.31 resources.

15.32 Subd. 2. **Cooperation with other state agencies.** In developing the rules adopted
15.33 under sections 84D.16 to 84D.26, the commissioner shall consult with the commissioners
15.34 of commerce, agriculture, natural resources, and any other agency that the commissioner

16.1 determines to be necessary to develop and implement an effective program for preventing
16.2 the introduction and spread of invasive species through ballast water.

16.3 Subd. 3. **Canada and other foreign governments.** (a) In developing the rules
16.4 adopted under sections 84D.16 to 84D.26, the commissioner is encouraged to consult
16.5 with the government of Canada and any other government of a foreign country that the
16.6 commissioner determines to be necessary to develop and implement an effective program
16.7 for preventing the introduction and spread of invasive species through ballast water.

16.8 (b) The commissioner shall ensure that foreign vessels do not receive more favorable
16.9 treatment than vessels of the United States when the commissioner performs studies,
16.10 reviews compliance, determines effectiveness, establishes rules, or performs any other
16.11 responsibilities under sections 84D.16 to 84D.26.

16.12 **Sec. 11. [84D.26] RAPID RESPONSE PLAN.**

16.13 Subdivision 1. **Rapid response plan.** The commissioner shall prepare and publish
16.14 a state rapid response plan for killing, removing, or minimizing the spread of invasive
16.15 species in the state waters of Lake Superior in accordance with sections 84D.16 to 84D.26.
16.16 The state rapid response plan shall provide for efficient, coordinated, and effective action
16.17 to minimize damage from invasive species in the state waters of Lake Superior, including
16.18 killing, containing, and removing invasive species, and shall include the following:

16.19 (1) assignment of duties and responsibilities among state agencies in coordination
16.20 with local agencies, port authorities, and private entities;

16.21 (2) identification, procurement, maintenance, and storage of equipment and supplies
16.22 needed to facilitate the killing, containment, and removal of invasive species under
16.23 sections 84D.16 to 84D.26;

16.24 (3) establishment or designation of:

16.25 (i) personnel who shall be trained and prepared by the commissioner and shall be
16.26 available to provide necessary services to carry out the state rapid response plan;

16.27 (ii) adequate equipment and material needed to facilitate the killing, containment,
16.28 and removal of invasive species under sections 84D.16 to 84D.26; and

16.29 (iii) detailed plans to kill, contain, and remove invasive species, including measures
16.30 to protect fisheries and wildlife;

16.31 (4) a system of surveillance and notice designed to safeguard against, as well
16.32 as ensure earliest possible notice of, the introduction of invasive species and imminent
16.33 threats of introduction to the appropriate state and local agencies;

16.34 (5) establishment of a state center to provide coordination and direction for
16.35 operations in carrying out the plan;

17.1 (6) procedures and techniques to be employed in identifying, containing, killing, and
17.2 removing invasive species in the state waters of Lake Superior;

17.3 (7) a schedule identifying:

17.4 (i) mitigating devices and substances, if any, that may be used in carrying out the
17.5 plan;

17.6 (ii) the waters in which mitigating devices and substances may be used; and

17.7 (iii) the quantities of mitigating devices or substances that can be used safely in
17.8 such waters;

17.9 (8) a system whereby the state and local entities affected may act where necessary to
17.10 remove invasive species;

17.11 (9) establishment of criteria and procedures to ensure immediate and effective state
17.12 identification of, and response to, an introduction of invasive species;

17.13 (10) designation of the state official who shall be the state on-scene coordinator for
17.14 measures taken to kill, contain, and remove invasive species; and

17.15 (11) a fish and wildlife response plan for the immediate and effective protection,
17.16 rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife
17.17 resources and their habitat that are harmed or that may be jeopardized by an introduction
17.18 of an invasive species.

17.19 Subd. 2. **State removal.** The commissioner shall ensure, in accordance with the
17.20 state rapid response plan, effective and immediate killing, containing, and removal of
17.21 invasive species in the state waters of Lake Superior. In carrying out this subdivision, the
17.22 commissioner may kill, contain, and remove an invasive species at any time and direct or
17.23 monitor all state and private actions to kill, contain, and remove invasive species.

17.24 Subd. 3. **Actions in accordance with state rapid response plan.** A state agency,
17.25 local agency, owner or operator of a vessel, or other person participating in efforts under
17.26 this section shall act in accordance with the state rapid response plan or as directed by
17.27 the commissioner.

17.28 Sec. 12. **EMERGENCY PLAN TO PREVENT INTRODUCTION OF VIRAL**
17.29 **HEMORRHAGIC SEPTICEMIA.**

17.30 By April 15, 2008, the commissioner of the Pollution Control Agency shall adopt
17.31 an emergency plan to prevent the introduction of viral hemorrhagic septicemia into the
17.32 waters of the state. As part of the plan, the commissioner shall amend Minnesota Rules,
17.33 part 7001.1030, subpart 2, to strike item A and shall adopt measures to prevent the
17.34 introduction of viral hemorrhagic septicemia into waters of the state through the discharge
17.35 of ballast water.

18.1 Adoption of the plan under this section is exempt from the rulemaking procedures of
18.2 Minnesota Statutes, chapter 14, according to Minnesota Statutes, section 14.386.

18.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

18.4 Sec. 13. **BALLAST WATER MANAGEMENT REPORTS.**

18.5 **Subdivision 1. Other vessel sources.** By January 1, 2009, the commissioner shall
18.6 submit a report to the legislature on vessel-related pathways of harmful aquatic organisms
18.7 and pathogens other than ballast water and sediment, including vessel hulls and equipment
18.8 and vessels equipped with ballast tanks that carry no ballast water on board.

18.9 **Subd. 2. Best practices.** As soon as practicable, but no later than January 1,
18.10 2009, the commissioner shall adopt best practices standards and procedures designed to
18.11 reduce the introduction and spread of invasive species within the state waters of Lake
18.12 Superior from vessels and establish a time frame for implementation of those standards
18.13 and procedures by vessels. Such standards and procedures shall include designation of
18.14 geographical locations for uptake and discharge of untreated ballast water, as well as
18.15 standards and procedures for other vessel pathways of aquatic invasive species. The
18.16 commissioner may enforce standards and procedures developed under this subdivision. By
18.17 January 1, 2009, the commissioner shall submit a report to the legislature describing the
18.18 standards and procedures developed under this subdivision and the implementation time
18.19 frame, together with such recommendations as the commissioner determines appropriate.

18.20 **Subd. 3. Transiting vessels.** By January 1, 2009, the commissioner shall submit
18.21 a report to the legislature containing: an assessment of the magnitude and potential
18.22 adverse impacts of ballast water operations from foreign vessels designed, adapted, or
18.23 constructed to carry ballast water that are transiting state waters of Lake Superior; and
18.24 recommendations, including legislative recommendations if appropriate, of options for
18.25 addressing ballast water operations of those vessels.