

From: Indy Burke <[REDACTED]>
Subject: Re: SAB Ballast Water Report, Erroneous Conclusion in
Date: May 28, 2015 1:46:24 PM PDT
To: Thorne, Peter S <[REDACTED]>, Carpenter.Thomas@epa.gov
Cc: Deborah Nagle <nagle.deborah@epa.gov>, Ernest Benfield [REDACTED],
Allen Burton [REDACTED], William Clements
[REDACTED], Lisa Drake [REDACTED], Charles
Haas [REDACTED], Thomas La Point [REDACTED], Edward
Lemieux [REDACTED], David Lodge [REDACTED], Kevin
Reynolds [REDACTED], Jim Sanders [REDACTED], Mario
Tamburri [REDACTED], Nick Welschmeyer
[REDACTED], Amanda D. Rodewald [REDACTED],
Chapman Peter (North Vancouver) [REDACTED], Robert Diaz
[REDACTED], JoAnn M. Burkholder [REDACTED], L. Conquest
[REDACTED], Indy Burke [REDACTED], Fred Dobbs
[REDACTED], Wayne Landis [REDACTED], Christopher Zarba
<zarba.christopher@epa.gov>, Regina McCarthy <mccarthy.gina@epa.gov>, Ryan
Albert <Albert.Ryan@epamail.epa.gov>, Deborah L. Swackhamer
[REDACTED], James M. Tierney [REDACTED], Richard Everett
[REDACTED], Meyer Judy <[REDACTED]>, Andrew Cohen
[REDACTED]

Peter and Tom:

This Ballast Water panel was one that I served on at the beginning, then begged off because they brought on more experts, and I, as a semiarid ecosystem ecologist, didn't feel I had much to contribute. I've heard recently about this major issue that Andrew brings up below. This is a big deal. The long and short of it is the SAB, through this panel, made a recommendation for a lower standard of discharge quality than is possible, based on a wrong analysis of data, suggesting that a high standard was not possible. That was wrong. The higher standard, "10x IMO D-2", is possible.

I am no longer sure if I'm chair of EPEC; we haven't had any work since I became Chair. Probably I'm not. But we need to revisit this. As Andrew suggests below "The issue is not insignificant. The report's erroneous conclusion was cited as the basis for adopting the IMO D-2 discharge limits in the EPA's Vessel General Permit (*VGP Fact Sheet*, pp. 74-75 (2013)) and for adopting the same limits in USCG's ballast water discharge standards under the National Invasive Species Act (*Federal Register* 77(57): 17256 (March 23, 2012)). Discharge standards based on erroneous conclusions put environmental quality and public health at unnecessary risk. EPA should assess and correct the error in the report; and both EPA and USCG should reconsider the discharge standards that they adopted based on the report's erroneous conclusion.

Should we elevate this to an SAB discussion? I think so...it's wrong and needs to be fixed. What's the process?

Indy

On May 28, 2015, at 3:45 PM, Thorne, Peter S [REDACTED] > wrote:

Hi Indy:

I write to acknowledge receipt of your note. I have been copied on some (but I suspect not all) of these correspondences. There are two procedural concerns I have. The panel submitted their report and it was accepted completing the process. Thus, this panel no longer exists. Any new action I think requires a new process be opened. Second, it is essential that this be an open and transparent managed process consistent with ERDDAA and FACA guidelines. I will confer with SAB Staff about process and get back to you.

Sincerely,
Peter

From: Indy Burke [REDACTED] >
Subject: Re: SAB Ballast Water Report, Erroneous Conclusion in
Date: May 28, 2015 4:49:27 PM PDT
To: Thorne, Peter S [REDACTED] >
Cc: Carpenter, Thomas (Carpenter.Thomas@epa.gov)
<Carpenter.Thomas@epa.gov>

Yup, understood (which is why I copied everyone I know who has had anything to do with it!).

I imagine that a notion that “new analysis of the existing data has been completed and merits consideration” is reason enough. I do not think that the SAB can afford to have something like this be known by us, without attention.

I.

From: Indy Burke [REDACTED] >
Subject: Ballast Water report and outcomes
Date: August 17, 2015 7:00:08 AM PDT
To: Thorne, Peter S [REDACTED] >

Peter:

I've become aware that there are major problems with the Ballast Water report of

several years ago, as I believe I emailed you about several months ago. The report has some mistakes, we now know, that have led to policy that is likely already having negative effects. I'm very concerned about the effects of the policy based on an incorrect report, and more so, about the reputation of the SAB as it may be impacted by this.

Here's what I suggest: Let's share the letter and documents Andrew sent you to the SAB, and ask the SAB in general if we think we should re-convene or newly convene a committee to address this. Even a small subcommittee could likely handle this, as long as the individuals have the expertise (notably, I do not).

I think it's critical that the SAB addresses this. The nation needs to know that the EPA gets excellent scientific advice, and it looks like we didn't do it on this one.

Indy

From: Indy Burke [REDACTED] >
Subject: progress and response?
Date: September 24, 2015 3:34:00 PM PDT
To: Thorne, Peter S [REDACTED] >

Peter:

I've been waiting to hear what you think about the ballast water situation. I wrote in May and again in August, and have been waiting for your promised response.

I believe this is important. It goes to the integrity of the situation and the credibility of the SAB - it's the right thing to do to reconsider this as the Board. Are you in a position to do something about this, or is there something else I should do to elevate the issue? I will want to know if you're going to do something, or whether I should contact the SAB at large, or the Administrator, or something else. It's really time. I shared all the documents with Bill Schlesinger and he is in agreement.

Thanks in advance for giving me a prompt reply. Do you think you could respond by next Friday?

I attached all the relevant information again.

Indy

On Sep 24, 2015, at 5:30 PM, Thorne, Peter S <[REDACTED]> wrote:

Hi inde: I am on the way to Europe and will return in a week. There is activity going on in the background. I need to get an update before I can respond.

Thanks,
Peter

From: Indy Burke [REDACTED]
Date: September 24, 2015 at 9:08:46 PM MDT
To: "Thorne, Peter S" [REDACTED] >
Subject: Re: progress and response?

Thanks Peter- good about background. When?

This is a Foreground Issue. What's up?

Indy

From: "Thorne, Peter S" [REDACTED]
Subject: Ballast Water Treatment Systems
Date: October 8, 2015 at 10:12:32 PM MDT
To: Indy Burke [REDACTED] >
Cc: "Carpenter, Thomas" <Carpenter.Thomas@epa.gov>

Hello Indy:

I have some information I would like to share with you in follow-up to your email regarding ballast water rules. I am copying Tom Carpenter, DFO for the SAB.

As you are aware, the SAB report on ballast water treatment systems was completed and sent to the Administrator over four years ago on July 12, 2011. That completed the activity and the panel was disbanded. The process that was followed was transparent and of high integrity consistent with ERDDAA and FACA. The minutes are posted on-line at

http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/BW%20discharge!OpenDocument&TableRow=2.2#2. and demonstrate that all viewpoints were given due consideration during the process.

I understand that Dr. Andrew Cohen, who served on that panel, sent a letter last March that was provided to the Office of Water for their consideration. You are welcome to express any concerns you have regarding ballast water treatment or release regulation under the Clean Water Act directly to the Office of Water.

On Tuesday, October 6, 2015 the U.S. Court of Appeals 2nd Circuit ruled on a suit filed

Public Comment Submitted by Dr. Andrew Cohen
8/10/2016

by NRDC, NWF and Northwest Environmental Advocate that the Ballast Water Permit Rule does not adequately protect biodiversity and remanded the rule. I anticipate this will require additional action by the Office of Water. The current SAB would certainly be willing to perform a review of any aspect of ballast water treatment and release if such a review was requested by the program office.

Thank you for your Email regarding this topic.

Sincerely,
Peter
