



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

November 13, 2006

Rear Admiral J.E. Crowley, Jr.
Commander, Ninth Coast Guard District
1240 E. 9th Street, Room 2069
Cleveland, Ohio 44199

Re: Proposed Rule for Permanent Safety Zones on the Great Lakes
(Docket # CGD09-06-123)

Dear Commander Crowley:

As the Attorney General of Illinois, I respectfully submit these comments concerning the United States Coast Guard's proposed rule to establish "permanent safety zones" on the Great Lakes for the purpose of conducting "live gunnery training exercises."¹ In light of the intense public interest in this issue, I appreciate the Coast Guard's willingness to extend the public comment period for the proposed rule.

I fully recognize the Coast Guard's need to train properly for the national security threats we face in the 21st century. I support the Coast Guard in its efforts to protect the nation, and the citizens of our Great Lakes States in particular, from those threats. I am grateful for the Coast Guard's vigilance against possible terrorist action in and around the Great Lakes, and recognize the importance of providing high-quality training to Guard personnel who may be called on to protect the Great Lakes citizenry.

Military preparedness, however, can and should be achieved in a manner that protects public safety and the environment, based on careful study and informed public input. The Coast Guard's recent decision to conduct hearings in potentially affected communities throughout the Great Lakes was an excellent first step in this direction. But more can, and should, be done.

¹ As that proposed rule has been briefly outlined in 71 Fed. Reg. 43402 (Aug. 1, 2006) and further expanded upon in 71 Fed. Reg. 62075 (Oct. 23, 2006).

Two federal environmental statutes applicable here – the National Environmental Policy Act (“NEPA”) and the Clean Water Act (“CWA”) – can provide the framework and procedural tools for the necessary study and input. I strongly encourage the Coast Guard to adhere to the requirements of these statutes as a means of ensuring that its decisions regarding military training on the Great Lakes are sound and fully informed. Members of the public have raised many legitimate questions both as to the safety of conducting the live fire exercises on waters that are heavily used for recreation, and the environmental consequences of depositing large amounts of lead ordnance into the Lakes on an ongoing basis. Both NEPA and the CWA, which call for responses to these questions, should serve as vehicles for safeguarding the democratic values the Coast Guard has sworn to uphold and protect.

I. NEPA

NEPA is designed to ensure that government decisionmaking – including decisionmaking concerning important matters of national defense such as the Coast Guard’s proposal – fully considers the environmental consequences of any proposed action. To that end, it requires that an environmental impact statement (“EIS”) evaluating environmental consequences and available alternatives be prepared in connection with any major federal action that may significantly impact the quality of the human environment. 42 U.S.C. § 4332(C). In deciding whether to prepare an EIS, the agency proposing the action prepares an environmental assessment (“EA”) briefly reviewing potential impacts and alternatives. 40 C.F.R. 1502.13-1502.15.

I believe the Coast Guard’s decision not to comply with NEPA is not only incorrect as a legal matter, but more importantly deprives the Guard of a valuable opportunity to take advantage of the rigorous analysis afforded by the NEPA process to fill in the many informational gaps that remain in the public record concerning the proposed live fire training. The “safety zones” considered alone may arguably qualify for a categorical exclusion (“CE”) from NEPA under the Coast Guard’s rules, but the live fire training exercises themselves clearly do not. See Commandant Instruction 16475.ID Figure 2-1, ¶ 34(g) (CE allowed for safety zone establishment), ¶¶ 18-21 (CE allowed only for simulated and classroom training exercises). And the “Preliminary Health Risk Assessment for Proposed U.S. Coast Guard Weapons Training Exercises,” while helpful in many respects, would not qualify as an EA, as it does not contain the analysis of alternatives required under NEPA, and leaves many important questions concerning public safety and environmental impacts unanswered. Were the Coast Guard to change course from its preliminary CE determination and complete an EA – and an EIS, which I believe would also be required under NEPA – it would be able to address these questions in a manner allowing for appropriate expert and public input.

Some of the essential questions that have been raised, and that could be effectively addressed through NEPA compliance, include the following:

- *Need for the exercises:* Why is it necessary to conduct these training exercises on the Great Lakes? Could the Coast Guard effectively train its personnel at some other location? If not, do there need to be 34 safety zones at which training takes place, or would fewer locations still satisfy the Guard's purposes? Many members of the public who use the lakes for boating, fishing, and other recreational purposes are understandably concerned with their safety, and would like to know if there are ways to mitigate the risk while still ensuring Coast Guard readiness. Additionally, is it necessary to use lead ordnance? Is there a non-lead alternative available?
- *Scope of the exercises:* The Coast Guard has indicated that the exercises will be limited to target practice a few times a year. Is it possible that this proposed scope could expand, in duration, frequency, or type? If so, what would be the environmental consequences of that expansion?
- *Impacts beyond 5 years:* The Coast Guard's Risk Analysis document looks only at impacts from 5 years of training activity. However, the Guard's proposal gives no indication that the training is likely to terminate after 5 years; and there is certainly no reason to believe that the threats to national security necessitating the training will be gone in 5 years. Environmental organizations and members of the public have observed that the training exercises will result in the discharge of nearly 7,000 pounds of lead into the Great Lakes every year – which according to EPA's Toxics Release Inventory is more than eight times the total amount of lead discharged annually into surface waters by all sources in Illinois combined. What will be the long-term impact to the Great Lakes of continued live fire training with lead ordnance beyond the 5-year time frame that the Guard has analyzed?

Under NEPA, the public would have the opportunity to comment on the appropriate scope of analysis of Coast Guard's proposal, and after that analysis was thoroughly presented in a draft EIS, would have the additional opportunity to comment on the draft. NEPA is tailor-made for situations such as this one, where the need for close technical scrutiny converges with the need for public transparency. I urge the Coast Guard to comply with it.

II. The Clean Water Act

Under the CWA, any discharge of a pollutant to navigable waters such as the Great Lakes requires a permit. 33 U.S.C. § 1311. Discharge of lead during the proposed live fire training clearly qualifies as a discharge requiring a CWA permit.

The legally-required CWA permitting process would both provide USEPA and the affected states with the opportunity to address and control to the extent possible the

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environmental impacts of discharging large amounts of lead into the Great Lakes. The permitting process allows USEPA to discuss possible permit conditions and emission limits with the Coast Guard and the public, and to incorporate those conditions and limits into a permit so as to greatly reduce the likelihood of public and legal controversy in the future.

In the end, we are all pursuing the same goals on this important issue: a safe citizenry and a healthy Great Lakes ecosystem. If the Coast Guard follows the legal processes mandated by law – processes that will be transparent and demand careful consideration and analytical rigor – then I believe the public, the Great Lakes, and the Coast Guard will all be well served.

Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is fluid and cursive, written in a professional style.

Lisa Madigan
Attorney General of Illinois

cc: Docket Management Facility, USDOT
(via web docket (<http://dms.dot.gov/> docket number 25767),
fax (202-493-2251), and United States mail)