U.S. Clean Water Act
Regulatory Requirements for Vessel Operational Discharges

October 2008
Outline

• Clean Water Act Statutory Requirements

• Court Decision & Implications

• Overview of Proposed Vessel General Permit for Commercial Vessels
Clean Water Act (CWA)

For more info visit --- http://cfpub.epa.gov/npdes/

• “Discharge of a pollutant” generally prohibited without a permit [CWA § 301(a)]
  - Liability is up to $32,000/per day-per violation

• National Pollutant Discharge Elimination System (NPDES) Permits [CWA § 402] – Guiding Principles
  – Permit term not to exceed 5 years
  – State authorization (46 States and authorized territories)
  – For EPA-issued permits - States have the authority to add more stringent permit requirements
For 35 years ....

Regulations excluded “discharges incidental to the normal operation of a vessel” while operating as a means of transportation from NPDES permitting (40 CFR 122.3(a))
Lawsuit

What Has Changed ....

• Lawsuit successfully challenged regulatory exclusion
• Court Decision - As of December 19, 2008 the permit exclusion for discharges incidental to the normal operation of a vessel is gone
Implications

• All vessels with discharges of pollutants incidental to their normal operation into U.S. 3 mile territorial sea or inland waters will need permit coverage by December 19, 2008

  Commercial (non-recreational) vessels: 50,000 plus

• Not just limited to ballast water discharges, but includes other discharges incidental to normal operations

  Approx 28 discharge types
STATUTORY EXCLUSIONS

Unaffected by Lawsuit

CWA Permits Not Required for ....

- Vessels operating as a means of transportation beyond limit of 3 mile territorial sea [CWA § 502(12)(B)]
- Sewage (blackwater) from vessels, within the meaning of § 312 [CWA § 502(6)(A)]
  - For commercial vessels operating on the Great Lakes, this includes graywater
Implementing Activities

• June 21, 2007 Fed Reg notice (72 FR 34241)
  – Explain implications and seek public input
  – Comment period closed August 6, 2007
    • Over 1,600 responses received

• June 17, 2008 Fed Reg notice (73 FR 34296)
  – Proposed for public comment the general permit for discharges incidental to normal operation of vessels
  – Comment period closed August 1
Proposed Permit Overview
www.epa.gov/npdes/vessels

- Initial issuance of general permit will be national in scope
- No EPA fees for permit
- Applies to Non-Recreational Vessels 79 feet and greater in length \textit{(excludes fishing vessels of all sizes)} for discharges that are:
  - Incidental to the normal operation of a vessel \textit{(no industrial discharges)}
  - Within U.S. inland waters or 3 nautical mile (nm) Territorial Sea
  - Applies in addition to other existing requirements
Permit Structure

- Part 1 – Coverage under the Permit
  - (General Information and Standard Requirements)
- Part 2 – Effluent Limits and Related Requirements
- Part 3 – Corrective Actions
- Part 4 – Inspections, Monitoring, Reporting, and Recordkeeping
- Part 5 – Vessel Class Specific Requirements
- Part 6 – Reserved for 401 State Certification Requirements
- Part 7 – Definitions
- Appendices
Obtaining Permit Coverage

- For most Clean Water Act discharge permits, permittees must file Notices of Intent (NOIs) to obtain coverage.
- For this permit, automatically covered at first, but after 6 months, you must submit an NOI to continue coverage if your vessel is:
  - greater or equal to 300 gross tons,
  - has a ballast water capacity of at least 8 cubic meters
- All other vessels are granted coverage without submitting an NOI.
How to File Notice of Intent

• General
  – Electronic filing setup through Vessel eNOI system (under construction)

• Key Features of the System
  – 2 options for input of information
    • Multiple pages with step-by-step instructions
    • one page with reduced explanatory text
  – View status of forms submitted to EPA
  – User does not have to be the certifying official to fill out forms - User can send completed form to the appropriate certifying official for signature
  – Forms can be modified that have already been certified and submitted to EPA

• Registration
  – Register for an account via the EPA's Central Data Exchange at http://cdx.epa.gov/warning.asp.
  – Select the Vessel eNOI system link to proceed into the system.

• System Fields
  – The user will be prompted to enter the same data that is contained on the paper NOI form
Permit Effluent Limits

Technology-Based Effluent Limits (minimum control)

• 5 existing requirements applicable to all vessels
  • Material Storage
  • Toxic and Hazardous Materials
  • Fuel Spills and Overflow
  • Discharges of Oil and Oily Mixtures
  • Compliance with other Regulations and Statutes

• 28 specific discharge types
  • Ballast Water, Bilgewater, AFFF, Hull Leachate, Graywater, Underwater Husbandry …
  • Limits typically appear as narrative best management practices – deemed practical

• 8 Class-Specific Vessel Requirements
  • Large Cruise Ships; Medium Cruise Ships; Large Ferries; Oil or Petroleum Tankers; Barges; Research Vessels; Rescue Boats; Vessels with Experimental Ballast Water Treatment Systems
Permit Effluent Limits

*Water Quality-Based Effluent Limits*

- Under CWA, States set water quality standards for protection of receiving waters
  - May vary from State-to-State or by waterbody
- Must meet limits to protect water quality where technology-based limits are not sufficient
- Each permittee must control its discharge as necessary to meet applicable water quality standards *(State Standards)*
- Anticipate additional State-specific requirements when States Certify the VGP
Permit Corrective Actions

- Exceedance of an effluent limit is a permit violation.
- The permit will require the permittee to take corrective action when they become aware of a violation.
- Failure to take corrective action within specified time period is a permit violation.
- Corrective Actions must be taken:
  - Minor changes: within two weeks
  - Major changes (requiring new parts): within three months
  - Major Renovations: before relaunching from next drydocking
Permit Inspections and Monitoring

• Self inspections
  – Routine visual inspections
    • Ensure areas are clear of garbage, exposed raw materials, oil, and other pollutants and constituents of concern and to ensure that pollution prevention mechanisms are in proper working order
  – Annual vessel inspections are more comprehensive, and must focus on areas likely to generate harmful pollution or violate effluent limits. Examples include:
    • Vessel hull for attached living organisms, flaking antifoulant paint, exposed TBT surfaces, and
    • Chain locker for both sediment and living organisms. . .

• Analytical monitoring for select cruise ships and vessels with experimental ballast water treatment systems
Permit Recordkeeping and Reporting

• Recordkeeping
  – Records will include owner and voyage information, additional maintenance & discharge information, certification, safety exemptions claimed, and any monitoring or inspection results

• Reporting required for ballast water releases (to Coast Guard), spills that endanger health or welfare, or spills of oily materials
  – All based on existing regulation
Questions