



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



October 2008



Outline

Who
what
when
Where
Why

- 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



CWA Implementing Regulations

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 (*excludes fishing vessels of all sizes*) for discharges that are:
 - Incidental to the normal operation of a vessel (*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,
or
 - 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

