



Client Alert 23 – 2008

September 23, 2008

Proposed New EPA Discharge Permits Required After 19 December 2008

On June 17, 2008, the U.S. Environmental Protection Agency (EPA) published a draft notice of their intent to regulate incidental discharges from ships (discharges which are part of normal operations) under their authority in the Clean Water Act. Such discharges were previously excluded from EPA's regulatory authority. This exclusion was recently challenged in court which prompted a change in policy.

BACKGROUND:

A federal district court in California ruled that the EPA violated the law by exempting ballast water discharges and "any other discharge incident to the normal operation of a vessel" from the National Pollution Discharge Elimination System (NPDES) permitting process established under the Clean Water Act (CWA). The NPDES has traditionally applied to fixed shore facilities which have routine discharges into US waterways. These discharges are permitted and controlled, and efforts are made to reduce the discharges through the use of Best Management Practices (BMP). The court's order gave the EPA until September 30, 2008 to develop a new regulatory regime to include ships. The federal government (EPA and Department of Justice) appealed this decision and lost. The EPA recently appealed to the Ninth Circuit Court of Appeals and was granted an extension to 19 December 2008 for compliance with the court's ruling.

PROPOSED PERMIT REQUIREMENTS:

Below are the basic requirements for ship operators:

- a. The EPA will issue a Vessel General Permit (VGP). The VGP is for recreational and commercial vessels over 79 feet in length (note the requirement for a RGP has been deleted for recreational vessels and suspended for 2 years for commercial fishing vessels). The permits will apply to discharges out to three nautical miles. At the present time the permit issuance date has been extended to 19 December 2008. As with any new regulation there may be some changes to the proposed system between now and then.
- b. Vessel operators are required to submit a Notice of Intent (NOI) to operate under the provisions of the General Permit, beginning six months after the permit's issuance date, but no later than nine months after the permit's issuance date. An NOI states that the operator will comply with the requirements found in the VGP or RGP. The NOI is simple to complete and submit. On the NOI the vessel operator identifies which discharges are pertinent for his ship. Once submitted the ship is considered acting under the general permit and is subject to verification by the USCG and local state officials.



c. Regulated discharges which must be monitored include: deck wash down and runoff (including rainwater), bilge water and oily waste, ballast water, anti-fouling hull coatings, Aqueous Film Forming Foam (AFFF), boiler blow down, cathodic protection, chain locker effluent, fire main systems, gray water, underwater ship husbandry, exhaust gas scrubber effluent, main diesel engine cooling water, and 13 other discharges. Many of these discharges are currently regulated through MARPOL and other international regulatory requirements. In some cases compliance with existing statutes will meet the new EPA requirements.

d. Monitoring – After 19 December 2008, each ship must conduct weekly inspections of each waste stream to ensure it is in compliance (no visible sheen, discoloration, emulsion, etc.) and make log entries to document the inspection. Each ship must conduct quarterly sampling of those wastes which are not readily visible (below the waterline discharge, etc.). Each ship must have an annual audit of all discharges covered under the permit. The annual audit must address all inspection records, maintenance records of all pollution prevention equipment.

e. Enforcement is not specified in the draft permit but it is envisioned that the U.S. Coast Guard will enforce the new requirements as part of their existing Port State Control program. Violation of the General Permit is a violation of the Clean Water Act which carries heavy fines.

There are 28 regulated discharges under the VGP. A vessel might not produce all of these discharges, but a vessel owner or operator is responsible for meeting the applicable effluent limits and complying with all the effluent limits for every listed discharge that the vessel produces. The 28 discharges are:

Ballast water	Motor gasoline & compensating discharge
Gray water	Anti-fouling leachate from anti-fouling hull coatings
Non-oily machinery wastewater	Refrigeration and air condensate discharge
Aqueous Film Forming Foam (AFFF)	Rudder bearing lubricant discharge
Boiler/economizer blowdown	Seawater cooling overboard discharge
Cathodic protection	Controllable pitch propeller hydraulic fluid
Chain locker effluent	Distillation and reverse osmosis brine
Elevator pit effluent	Freshwater layup
Firemain systems	Gas turbine water wash
Small boat engine wet exhaust	Seawater piping biofouling prevention
Stern tube oily discharge	Sonar dome discharge
Underwater ship husbandry	Welldeck discharges
Graywater mixed with sewage	Exhaust gas scrubber wash water discharge

RECOMMENDATIONS:

Between now and the proposed implementation date, there are several actions which vessel operators may take to prepare for compliance:

1. Download a copy of the Notice of Intent and determine which discharges are applicable to their vessels.
2. Review existing monitoring, sampling, and record keeping requirements used for these wastes (Oil Record Book, ISM requirements, Planned Maintenance System, etc.).
3. In the case of hull husbandry, determine the types of hull coatings used on board.
4. Advise all ships of the pending requirements and solicit input on any potential problems in monitoring these specific waste streams.



SUMMARY:

ECM Maritime Services will be closely monitoring this new regulation as it develops and providing guidance to assist our clients in complying with these new requirements. Keep in mind that these are “proposed” regulations and may be subject to amendments, revisions and exemptions between now and December 19th. Since the initial draft announcement, two new laws were enacted in July which exempt recreational vessels from compliance and temporarily exempt commercial fishing vessels from compliance for a period of two years.

ADDITIONAL INFORMATION:

On the EPA website, www.epa.gov/npdes/vessels/, there are links to the actual draft permits (VGP) and accompanying fact sheets. There are also links to the Notice of Intent (NOI) which is a simple two page form. The EPA held public meetings in June and is now reviewing comments received to further refine the requirements.

If you have any additional questions or concerns, please contact our office at ecm@ecmmaritime.com.