

GMS

Gallagher Marine Systems, LLC.

September 13, 2008

Client Advisory - #06-08

EPA - NPDES-General Permit Regulations

Background:

In December 2003, the exclusion of discharges incidental to the normal operation of vessels from the National Pollutant Discharge Elimination System (NPDES) program became the subject of a lawsuit in the U.S. District Court for the Northern District of California. The lawsuit arose from a petition that asked EPA to repeal its regulation (40 CFR 122.3(a)) and require vessels to obtain an NPDES permit for discharges incidental to normal operations. The petition claimed that vessels are "point sources" requiring NPDES permits for discharges in U.S. waters; and, that EPA lacked authority to exclude vessel point source discharges from the NPDES program. The EPA denied the petition and the petitioners brought the case to court.

On 30 March 2005, the Court determined that the exclusion exceeded the EPA's authority under the Clean Water Act (CWA). Specifically, the District Court granted the following summary judgment to the plaintiffs:

"The Court DECLARES that EPA's exclusion from NPDES permit requirements for discharges incidental to the normal operation of a vessel at 40 CFR 122.3(a) is in excess of the Agency's authority under the Clean Water Act . . . "

The Court issued a final order in September 2006 providing that: The blanket exemption for discharges incidental to the normal operation of a vessel, contained in 40 CFR 122.3(a), shall be vacated as of December 19, 2008. In summary, vessels would have to be covered by a permit for discharges incidental to normal operations.

Result:

The EPA will issue one general permit. Vessel operators will then need to apply to be covered by the EPA's general permit by submitting a Notice of Intent to Discharge (NOI). The NOI is submitted to the EPA. The general permit has NOT yet been issued.

When the General Permit is issued, the date it is issued will become the benchmark for submitting NOI's. NOI's may not be submitted prior to 6 months from the date the permit is issued. However, NOI's must be submitted by 9 months from the date the final permit is issued. There will be an electronic system of filing. An electronic notice of intent (e-NOI) system is in place; however, at present it applies only to storm water. We assume that same system will ultimately be used for vessels.

Shipowner/Operator/Manager Action:

At present, GMS advises you to wait until the rule is published. Once published, GMS will have 9 months to assemble all of the details you will need to comply. Once we have those details, we will be providing them to you via an update to this client advisory.

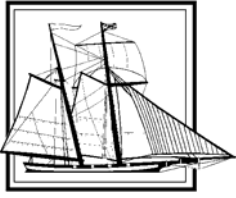
You do not have to take any action at this time.

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Following is a summary of what we believe will be the process/system regarding the NPDES program. GMS will supply you with an update as more information becomes available.

- New regulations will take effect in 2009
 - The regulations are presently available in draft form at the following website:
 - <http://www.epa.gov/npdes/vessels>
 - These regulations are very complex and are now only in draft form
- One general permit will be issued by the EPA
 - Presently, it appears this will occur on/about 19 December 2008
 - Vessels can be covered by the EPA's general permit
 - The permit covers 28 different types of discharges (list is attached to this advisory)
 - Some, such as ballast, refer to existing regulations
 - Other types of discharges were not covered before
- Vessels will apply for coverage under the EPA's general permit
 - By submitting a Notice of Intent to Discharge (NOI) to the EPA
 - The soonest that applications can be submitted will be June 2009*
 - Applications must be submitted by September of 2009 *
 - *If the general permit is issued in December 2008
 - Electronic filing (e-NOI) will be similar to e-NOA (advance notice of arrival)
 - When a vessel is sold or removed from US trade
 - A Notice of Termination (NOT) should be submitted
 - It can be done electronically in the same manner as the NOI
- Filing an NOI will commit the vessel operator to
 - Limiting discharges to amounts listed
 - Monitoring and keeping records of discharges
 - Taking and documenting corrective actions
 - Submitting annual reports that include reports of violations
- The recordkeeping requirements are complex and will require effort
 - Presently, EPA does not intend to board vessels
 - USCG inspectors may look for evidence of compliance
 - No requirement will exist until July of 2009 at the earliest
- All of the provisions are now in draft form, not final. GMS will publish information when the final permit is issued detailing the final requirements. We will also advise clients when applications can be filed. **You do not have to take action at this time.**

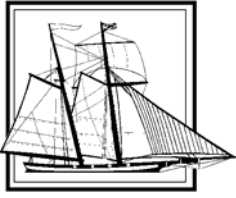
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Types Of Discharges Covered By EPA General Permit

1. Deck Washdown and Runoff
2. Bilgewater
3. Discharges of Ballast Water
4. Anti-Fouling Hull Coatings
5. Aqueous Film Forming Foam (AFFF)
6. Boiler/Economizer Blowdown
7. Cathodic Protection
8. Chain Locker Effluent
9. Controllable Pitch Propeller Hydraulic Fluid
10. Distillation and Reverse Osmosis Brine
11. Elevator Pit Effluent
12. Firemain Systems
13. Freshwater Layup
14. Gas Turbine Wash Water
15. Graywater
16. Motor Gasoline and Compensating Discharge
17. Non-Oily Machinery Wastewater
18. Refrigeration and Air Condensate Discharge
19. Rudder Bearing Lubrication Discharge
20. Seawater Cooling Overboard Discharge (including non-contact engine cooling water; hydraulic system cooling water, refrigeration cooling water)
21. Seawater Piping Biofouling Prevention
22. Small Boat Engine Wet Exhaust
23. Sonar Dome Discharge
24. Stern Tube Oily Discharge
25. Underwater Ship Husbandry Discharges
26. Weldeck Discharges
27. Graywater Mixed with Sewage from Vessels
28. Exhaust Gas Scrubber Washwater Discharge

Questions regarding this matter should be directed to: info@chgms.com

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END OF ADVISORY

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