

Clean Water Act and Vessel Discharges

ISSUE: The Maritime Administration and the U.S. maritime industry are facing a potentially significant Clean Water Act (CWA) issue related to vessels. The issue revolves around “discharges incidental to the normal operation of a vessel” which historically have been exempt from the permitting requirements of the CWA. After recent court decisions, these vessels are no longer exempt. Both domestic and international vessels operating in U.S. waters will be required to secure EPA permits for these discharges or prevent the discharges within U.S. waters.

ACTION NEEDED: None – For information only.

BACKGROUND:

- Historically discharges incidental to the normal operation of a ship, such as ballast water, cooling water, bilge water, and stormwater, have been exempt from the permitting requirements of the Federal Clean Water Act.
- In 2006, a U.S. District Court in California overturned the exemption. That decision was upheld recently by the 9th Circuit Court.
- As a result, all ships operating in U.S. waters (except for vessels of the Armed Services and Coast Guard vessels) must, after December 19, 2008 have a permit for such discharges.
- The Environmental Protection Agency (EPA) is preparing a “general permit” that will apply to operating vessels and cover these discharges. Importantly, States may impose additional restrictions or permit requirements.
- The Maritime Administration is providing assistance to the EPA in understanding vessel operations and practical management practices that can be employed on ships to address the discharges and that can be included in the permit. The Agency is also assisting in reviewing and understanding industry comments on EPA’s proposed permit.
- The Maritime Administration is also working closely with the EPA to ensure that the Agency’s own vessels can be covered by this new permit.
- It appears that EPA and the Maritime Administration will be able to reach an appropriate accommodation for those vessels that the Maritime Administration actually operates as part of its Ready Reserve Force and National Defense Reserve Fleet programs (these are DOT sealift support programs that assist DOD in times of emergency).
- **However**, it is not clear whether the Maritime Administration’s inventory of non-operating, non-retention vessels (i.e. obsolete vessels slated for disposal) will be covered by EPA’s general permit. This is important because although the vessels do not have operational discharges, they will have stormwater discharges. Thus, if the vessels are not covered by a permit, the Maritime Administration could be in violation of the CWA.
- At this time, the issue of how to best handle the Maritime Administration’s non-operating, non-retention vessels is under discussion at the political level within EPA.

Submitted by: Maritime Administration, Office of Environment

Prepared by: Michael Carter, michael.carter@dot.gov, 202-366-9431

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