



Clean Water Act Permitting and Operational Discharges from Vessels

An Overview

June 19, 24, 26 & July 21 2008





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CWA PERMIT BASICS

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

- “Discharge of a pollutant” generally prohibited without a permit [CWA § 301(a)]
- National Pollutant Discharge Elimination System (NPDES) Permits [CWA § 402]
 - Individual permits
 - General permits
 - Permit Term not to exceed 5 years
 - State authorization (46 States and authorized territories)
 - For EPA-issued permits, State 401 cert required





CWA PERMIT BASICS

- **Effluent limits [CWA § 301(b)]**
 - Technology based [CWA § 304(b)]
 - BAT/BPT (can be Best Management Practices – BMP)
 - BPJ
 - Water quality based [CWA § 303]
- **STATUTORY** exclusions: Stated in the CWA itself (and thus unaffected by lawsuit):
 - Vessels operating as a means of transportation beyond 3 mile limit [CWA § 502(12)(B)]
 - Sewage from vessels or discharges incidental to the normal operation of vessels of the Armed Forces, within the meaning of § 312 [CWA § 502(6)(A)]





NWEA Lawsuit

- **REGULATORY** exclusion [40 CFR 122.3(a)]
 - At issue in lawsuit
- Excludes certain discharges incidental to the normal operation of vessels from the obligation to obtain an NPDES permit
 - Issued in May 1973
 - Never previously challenged
- Court to vacate as of Sept 30, 2008





NWEA Lawsuit - Chronology

For more info visit <http://epa.gov/npdes/vessels>

- **Rulemaking petition**

- Jan 1999: Petition from Northwest Environmental Advocates, Center for Marine Conservation, Great Lakes United
 - Petition concerns focused on ballast water
- Sept 2003: EPA denied petition based on Congressional acquiescence and Coast Guard authority under NISA
- Dec. 2003: Lawsuit filed by Northwest Environmental Advocates and others challenging petition denial

- **Litigation & outcome in U.S. District Court**

- March 2005: Ruling that the regulation (40 CFR 122.3(a)) excluding discharges incidental to the normal operation of a vessel from NPDES permitting exceeded the Agency's authority under the CWA
- Sept 2006: Final order vacating (revoking) the regulatory exclusion as of September 30, 2008, and potentially affects all incidental discharges of vessels

- **Current status**

- Nov 2006: Gov't files notice of appeal with 9th Circuit
 - Oral argument occurred on August 14, 2007
 - Typical timeframe for decision 9+ months after argument





NWEA IMPLICATIONS

- Not just limited to ballast water discharges, but includes other discharges incidental to normal operation of vessels
 - Approx 28 discharge types
- Not just limited to those larger vessels equipped with BW tanks
- All vessels with discharges of pollutants will need permit coverage by Sept 30, 2008
 - Rec vessels: 18 million
 - Commercial vessels: 91,000 plus





EPA ACTIVITIES

- **June 21, 2007 Fed Reg notice (72 FR 34241)**
 - Explain implications and seek public input
 - Comment period closed August 6
 - Over 1,600 responses received
- **June 17, 2008 Fed Reg notice (73 FR 34296)**
 - Proposed for public comment two draft NPDES general permits for discharges incidental to normal operation of vessels
 - Comment Period closes August 1
 - Not prudent to sit back and await outcome of appeal

