

MANAGEMENT OF BALLAST WATER AND OTHER VESSEL DISCHARGES

April 2008

BACKGROUND.—

- In 2004, International Maritime Organization (IMO) ballast water (BW) Convention adopted.
- Since the 108th Congress, the Administration has supported establishment of a national BW management regime, consistent with the Convention framework and containing environmentally-sound BW standards.
- In 2006, a U.S. District Court vacated, as of 30 September 2008, the Environmental Protection Agency (EPA) regulation excluding discharges incidental to the normal operation of vessels from requiring a Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit.

ADMINISTRATION ACTIONS.—In light of the above, the Administration is undertaking action on 4 fronts:

1. **Legislation:** The Administration has offered alternative legislation to implement/enforce national standards for BW and other incidental discharges in lieu of NPDES permitting.
2. **Appeal:** The Government has appealed the District Court order, and a decision is pending.
3. **Permits:** Absent statutory or judicial action, EPA is developing and intends to put in place NPDES permits for all incidental vessel discharges by 30 September 2008.
4. **Regulations:** The Coast Guard is pressing forward with BW discharge standard rulemaking.

LEGISLATION.—The Administration alternative would:

- Strengthen existing law (NANPCA/NISA) to better prevent the introduction of aquatic nuisance species (ANS) through BW and other vessel sources.
- For incidental non-ANS vessel discharges, provide for the development and implementation of national uniform discharge standards in lieu of using NPDES permits.
- Provide a legislative remedy to the court's decision by ensuring an environmentally sound program without the drawbacks of applying the NPDES program to vessels.

ADMINISTRATION ALTERNATIVE FOR ADDRESSING DISCHARGES OF BW AND OTHER VESSEL SOURCES OF ANS

Applicability: To all U.S. vessels; foreign-flagged vessels while in a U.S. port or place; or vessels bound for, or departing from, U.S. ports or internal waters and in waters over which the United States has jurisdiction. Vessels of the armed forces, vessels with sealed ballast tanks, and vessels with BW capacity of 8 cubic meters or less excluded.

Recordkeeping: BW Management Plan and BW Record Book required.

Exchange Areas: Vessels en route to the United States from outside EEZ must conduct BW exchange in water at least 200nm from shore/200m deep.

Coastal Voyages:

- Covers vessels that voyage beyond the baseline of the territorial sea, but not into waters at least 200nm from shore/200m deep.
- If bound for U.S. port, and intending to discharge BW, vessels must conduct BW exchange in waters at least 50nm from shore/ 200m deep or in waters designated by Secretary.
- Individual and class hardship waivers available.

Vessels with unpumpable ballast water: Requires saline flushing of any BW tanks with unpumpable ballast ("NOBOB" vessels).

Prohibited Areas:

- Federal.—Prohibits discharge of unexchanged or untreated BW within federal sanctuaries, monuments, and units.
- State Waters.—States may restrict/prohibit BW and sediment discharge in ecologically-sensitive State waters so long as Secretary determines adequate treatment facilities are available.

BW Treatment Performance Standard:

- Provides for a phased-in approach; Phase I (IMO D-2) standard taking effect 4 years after enactment, and Phase II (“100 x” more stringent) standard 4 years later.
- Includes mechanism to accelerate/delay implementation date based on the availability of technology. If Phase II standard is delayed, provides for mandatory interim standard.
- States may petition for review of regulations and revised performance standards.

Other ANS vectors: Secretary may regulate management practices to reduce possibility of transfer of ANS from ship operations other than BW discharge.

Impact on State and Local Law: Although the proposal would allow the states to establish no-discharge zones, subject to federal approval, it would otherwise provide for a uniform national approach promulgated exclusively by the federal government by restricting states’ abilities to adopt or enforce any statute or regulation which in any way relates to ANS in BW from vessels or other vessel-related sources.

ADMINISTRATION ALTERNATIVE FOR ADDRESSING OTHER DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF VESSELS

- For non-ANS incidental discharges, EPA is to study/develop a non-NPDES regulatory regime, using the CWA’s best available technology standard. Based on study:
 - if regulation of a given discharge is appropriate, then subject to an EPA-promulgated national uniform discharge standard; or
 - if regulation is not appropriate, excluded from regulation.

Application: NPDES permitting for incidental discharges would be suspended for 6 years to enable development of the above alternative regime.

- Once the regime is in effect, there would be permanent NPDES exclusion and State pre-emption, except State no discharge zones are allowed with EPA approval, if States have reception facilities.
- States may petition EPA to revise standards.
- Coast Guard and State Enforcement, using existing CWA § 312 mechanisms.
- Inapplicable to Armed Forces vessels or vessel sewage (regulated by CWA § 312 and excluded by CWA § 502(6)(A) from NPDES permitting).

Exclusion: Certain discharge types, while remaining subject to potential State regulation, would be excluded from both NPDES permitting and the national federal standards, e.g.:

- Incidental discharges from recreational vessels (less than 79’ length);
- Research-related discharges.

Discharges currently regulated under NPDES: Discharges not eligible for the NPDES regulations’ incidental discharge exclusion would remain unaffected by the proposal and continue to be subject to NPDES permitting (e.g., fish-processing waste from factory ships).

- In addition, the Administration alternative would not supersede other applicable federal laws (e.g., CWA § 311; Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); the Act to Prevent Pollution from Ships (APPS).