



## Congress Passes Clean Boating Act

August 2008

---

The Clean Boating Act of 2008, signed into law on July 29, 2008, amends the Clean Water Act (CWA) to provide a statutory exemption for recreational vessels from the National Pollutant Discharge Elimination System (NPDES) permitting program. The Clean Boating Act is Congress' response to the Northern District Court of California's March 2005 order requiring the Environmental Protection Agency (EPA) to develop an operational discharge permit for vessels by September 30, 2008. The Ninth Circuit upheld this ruling on July 23, 2008.

### **EPA Proposed Vessel Discharge Permits**

On June 16, 2008, the EPA issued two draft NPDES vessel permits. The Vessel General Permit (VGP) covers all commercial vessels and certain recreational vessels (those longer or equal to 79 feet). The Recreational General Permit (RGP) covers most recreational vessels less than 79 feet in length. The comment period for these permits closed on August 1, 2008. More information on EPA's proposed permits is available at [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=350](http://cfpub.epa.gov/npdes/home.cfm?program_id=350).

### **Clean Boating Act**

The Clean Boating Act exempts recreational vessels from the NPDES permit program by adding a new section to the CWA, 33 U.S.C. § 1342(r), which states that a permit is not required "for the discharge of any graywater, bilge water, cooling water, weather deck runoff, oil water separator effluent, or effluent from properly functioning marine engines, or any other discharge that is incidental to the normal operation of a vessel, if the discharge is from a recreational vessel." A recreational vessel is defined as any vessel that is (1) manufactured or used primarily for pleasure; or (2) leased, rented, or chartered to a person for the pleasure of that person. Vessels subject to Coast Guard inspection and engaged in commercial use or carrying paying passengers are excluded from the definition of recreational vessel, however. Passenger vessels (Class H) and small passenger vessels (Classes K and T) are subject to Coast Guard inspection.

Although recreational vessels are now explicitly excluded from the NPDES program, the EPA is required to take action which could lead to regulation in the future. The Clean Boating Act requires the EPA, within one year, "to determine the discharges incidental to the normal operation of a recreational vessel for which it is reasonable and practicable to develop management practices to mitigate adverse impacts on the waters of the United States."

If the EPA determines that it is reasonable and practicable to develop a management practice, it must promulgate federal standards of performance within one year. Upon promulgation of federal performance standards, the Coast Guard shall promulgate “regulations governing the design, construction, installation, and use of management practices for recreational vessels as are necessary to meet the standards of performance.” Such regulations should be issued as soon as possible, but no later than one year.

After the effective date of the Coast Guard regulations, the owner or operated of a recreational vessel may not operate in nor discharge any discharge incidental to the normal operation of the vessel into, the waters of the U.S. or the waters of the contiguous zone (12 – 24 nautical miles from shore), if the vessel is not using any applicable management practice meeting standards established under this subsection.

### **Commercial Fishing Vessels**

A companion bill (S. 3298) to the Clean Boating Act was signed into law on July 31, 2008. S. 3298 exempts covered vessels from NPDES permitting for two years. The vessels covered by S. 3298 are vessels less than 79 feet in length and fishing vessels (as defined in 46 U.S.C. § 2101) regardless of the length. S. 3298 states that a permit is not required for a covered vessel for (1) any discharge of effluent from properly functioning marine engines; (2) any discharge of laundry, shower, and galley sink wastes; or (3) any other discharge incidental to the normal operation of a covered vessel. This exemption does not apply, however, to any discharge of ballast water. In addition, S. 3298 requires the EPA and Coast Guard to produce a report on the impacts of the excluded discharges within fifteen months.

### **What does all this mean?**

With the passage of the Clean Boating Act, NPDES permits are no longer required under the CWA for incidental discharges from recreational vessels. EPA, however, must still develop a permitting program for incidental discharges from commercial vessels by September 30 and, after two years, for commercial fishing vessels and some vessels less than 79 feet in length.

*Provided by:*  
**National Sea Grant Law Center**

University Of Mississippi  
Kinard Hall, Wing E - Room 256  
University, MS 38655

Phone: (662) 915-7775

Email: [sealaw@olemiss.edu](mailto:sealaw@olemiss.edu)

<http://www.olemiss.edu/orgs/SGLC>