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AI 159704

U.S. Environmental Protection Agency
2008 Proposed Issuance of

National Pollutant Discharge Elimination System (NPDES) Recreational Vessel General Permit (RGP) for Discharges Incidental to the Normal Operation of a Vessel

Fact Sheet

Agency: Environmental Protection Agency (EPA)
Action: Notice of Proposed NPDES General Permit

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1. GENERAL INFORMATION

1.1 DOES THIS ACTION APPLY TO ME?

This action applies to owners and operators of recreational vessels less than 79 feet or 24.08 meters operating in the capacity of a means of transportation in waters subject to the proposed permit, i.e., waters of the U.S. as defined in 40 CFR§122.2. That provision defines "waters of the U.S." as certain inland waters and the territorial sea, which extends three miles from the baseline (as used in this document, mile means nautical mile, i.e., 6076 feet).[1] Note that the CWA does not require NPDES permits for vessels or other floating craft operating as a means of transportation beyond the territorial seas, i.e., in the contiguous zone or ocean as defined by the CWA §§ 502(9), (10). See CWA §502(12) and 40 CFR §122.2 (definition of "discharge of a pollutant"). This permit, therefore, does not apply in such waters.

Supporting information and materials for this permit are included in Docket ID No. EPA-HQ-OW-2008-0056 available at: www.regulations.gov.

1.2 PUBLIC COMMENT

EPA is soliciting comment on the proposed Recreational Vessel General Permit (RGP). Comments on any provision of the permit, or comments on the fact sheet discussion, are welcome. The comment period is open for 45 days from publication of the Notice in the Federal Register announcing this proposed permit. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov.

1.2.1 Submitting Comments

Comments may be submitted to EPA in the following ways:

- EPA Dockets. Use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at www.regulations.gov, and follow the online instructions for submitting comments. Once in the system, select "search" and then key in Docket ID No. EPA-HQ-OW-2008-0056. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.
- E-mail. Comments may be sent by electronic mail (e-mail) to ow-docket@epa.gov, Attention: Docket ID No. EPA-HQ-OW-2008-0056. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of

[1] More specifically, CWA section 502(8) defines "territorial seas" as "the belt of the seas measured from the line of the ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles."

the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

- Disk or CD-ROM. You may submit comments on a disk or CD-ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in Microsoft Word or ASCII file format. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Avoid the use of special characters and any form of encryption.
- By Mail. Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention: Docket ID No. EPA-HQ-OW-2008-0056.
- By Hand Delivery or Courier. Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA-HQ-OW-2008-0056. Such deliveries are only accepted during the Docket's normal hours of operation as identified below. Special arrangements should be made for deliveries of boxed information.

1.2.2 What Should I Consider As I Prepare My Comments for EPA?

Submitting Confidential Business Information (CBI). Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part of all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then electronically identify within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. CBI so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

1.2.3 Tips for Preparing Your Comments.

Please follow these guidelines as you prepare your comments so that EPA can better address them in a timely manner.

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
2. Explain why you agree or disagree with any proposed provisions; suggest alternatives and substitute language for your requested changes. You may wish to examine the draft NPDES Vessel General Permit for discharges incidental to the normal operation of commercial and large recreational vessels (VGP), also proposed today, for further information on issues associated with permitting vessel discharges.
3. Describe any assumptions, and provide any technical information and/or data that you used.
4. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

5. Provide specific examples to illustrate your concerns, and suggest alternatives.
6. Explain your views as clearly as possible.
7. Make sure to submit your comments by the comment period deadline. Due to the tight timeframe for final permit issuance as a result of the U.S. District Court's vacatur, EPA does not plan on allowing an extension to the comment period.

1.2.4 How and to Whom Do I Submit Comments?

The opportunity to raise issues and provide information on this general permits is during the public comment period (see 40 CFR 124.13 for more information). You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or section in the fact sheet or permit to which each comment refers. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

For additional information about EPA's public docket, visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Water Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. A reasonable fee may be charged for copying. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Water Docket is (202) 566-1744.

1.3 Public Hearing, Meetings, and Webcast Information

1.3.1 Public Hearing

Because EPA anticipates a significant degree of public interest in this permit, EPA will hold a public hearing Monday, July 21, 2008 to receive public comment and answer questions concerning the proposed permits. This public hearing will be held in conjunction with the public hearing for the NPDES Vessel General Permit (VGP). The hearing will be held at EPA East Building, Room 1153, 1201 Constitution Ave, NW, Washington, DC 20004, from 8:00 am to 4:30 p.m. EST. Any person may provide written or oral statements and data pertaining to the proposed permits at the public hearing. Depending on the number of persons who desire to make an oral statement, it is likely that EPA may impose limits on the time allowed for oral statements, which may result in the full statement not being heard. Therefore, EPA recommends that all those planning to present an oral statement also submit a written statement. Any person not making an oral statement may also submit a written statement.

1.3.2 Public Meetings

EPA and the U.S. Coast Guard are co-hosting three (3) public meetings. These public meetings will be held in conjunction with the public meetings for the NPDES Vessel General

2. BACKGROUND

2.1 SUMMARY

EPA's current regulations exclude discharges incidental to the normal operation of a vessel from NPDES permitting (40 CFR 122.3(a)). This exclusion was challenged in a lawsuit, and in March 2005, the U.S. District Court for the Northern District of California issued a final order that will revoke the exclusion as of September 30, 2008. If this order is not overturned or altered on appeal, discharges incidental to the normal operation of vessels that are currently excluded from NPDES permitting will become subject to the Clean Water Act (CWA) section 301's prohibition against discharge without an NPDES permit. The CWA authorizes civil and criminal enforcement for violations of that prohibition and also allows for citizen suits against violators. In order to provide permit coverage for discharges incidental to the normal operation of recreational vessels, EPA is proposing this general permit.

Because the Government respectfully disagrees with the District Court's decision, an appeal was filed in the Ninth Circuit Court of Appeals. A decision is still pending. If the Ninth Circuit reverses or remands the lower court's decision, this proposed permit may be modified or not finalized.

The following sections give greater detail on the CWA, the exclusion for vessels from NPDES permitting, the legal challenge to this exclusion, and background on general permits for the interested reader.

2.2 THE CLEAN WATER ACT

Section 301(a) of the Clean Water Act (CWA) provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines "discharge of a pollutant" as "(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." 33 U.S.C. 1362(12). A "point source" is a "discernible, confined and discrete conveyance" and includes a "vessel or other floating craft." 33 U.S.C. 1362(14)."

The term "pollutant" includes, among other things, "garbage... chemical wastes ...and industrial, municipal, and agricultural waste discharged into water." The Act's definition of "pollutant" specifically excludes "sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of CWA §312. 33 U.S.C. 1362(6).

One way a person may discharge a pollutant without violating the section 301 prohibition is by obtaining authorization to discharge (referred to herein as "coverage") under a section 402 National Pollutant Discharge Elimination System (NPDES) permit (33 U.S.C. 1342). Under section 402(a), EPA may "issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a)" upon certain conditions required by the Act.

Permit (VGP). The focus of each meeting is to present the proposed requirements of the VGP and RGP and the basis for those requirements, as well as to answer questions concerning the proposed permits. At these meetings, any person may provide written or oral statements and data pertaining to the proposed permits at the public meeting. The date, time and location of the public meetings are as follows:

- Washington, DC: Thursday, June 19, 2008 at the EPA East Building, Room 1153, 1201 Constitution Ave, NW, Washington, DC 20004, from 8:00 a.m. to 4:30 p.m. EST.
- Portland, Oregon: Tuesday, June 24, 2008 at the Red Lion Hotel-Portland Convention Center, 1021 NE Grand Ave, Portland, OR 97232, from 8:00 a.m. to 4:30 p.m. If you require overnight accommodations, contact the hotel directly to make reservations at Tel: 503-235-2100.
- Chicago, Illinois: Thursday, June 26, 2008at the Avenue Hotel, 160 E. Huron Street Chicago, IL, 60611, from 8:00 a.m. to 4:30 p.m.. If you require overnight accommodations, contact the hotel directly at Tel: 877-AVE-5110.

EPA encourages interested and potentially affected stakeholders to attend one of the scheduled public meetings and provide oral or written comments. These meetings are open to the public. Please note that the public meeting may close early if all business is finished. Oral or written comments received at the public meeting will be entered into the Docket. If you are unable to attend, you may submit comments to the EPA Docket for this permit.

1.3.3 Webcast

EPA has scheduled a webcast to provide information on this proposed permit and the VGP and to answer questions for interested parties that are unable to attend the Public meetings or hearing. The webcast will be broadcast on July 2, 2008, from 12:00p.m. to 1:30p.m. eastern time. For information on the how to register and attend the webcast, see EPA's website at http://www.epa.gov/npdes/training approximately 2 weeks prior to the date of the scheduled webcast.

1.4 FURTHER INFORMATION

For further information on the proposed RGP, please send an email to recreationalvesselpermit@epa.gov or contact Juhi Saxena at (202) 564-0719 or Ryan Albert (202) 564-0763.

2.3 History of the Exclusion of Vessels from the NPDES Permitting Program

Less than one year after the CWA was enacted, EPA promulgated a regulation that excluded discharges incidental to the normal operation of vessels from NPDES permitting. 38 FR 13528, May 22, 1973. After Congress re-authorized and amended the CWA in 1977, EPA invited another round of public comment on the regulation. 43 FR 37078, August 21, 1978. In 1979, EPA promulgated the final revision that established the regulation largely in its current form. 44 FR 32854, June 7, 1979. That regulation identifies several types of vessel discharges as being subject to NPDES permitting, but specifically excludes discharges incidental to the normal operation of a vessel. The exclusion reads:

The following discharges do not require NPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development. 40 CFR 122.3(a).

Although other subsections of 40 CFR 122.3 and its predecessor were the subject of legal challenges (See NRDC v. Costle, 568 F.2d 1369 (D.C. Cir. 1977)), following its promulgation, the regulatory text relevant to discharges incidental to the normal operation of vessels went unchallenged, and has been in effect ever since.

2.4 Legal Challenge to the Exclusion of Vessels

In December 2003, the long-standing exclusion of discharges incidental to the normal operation of vessels from the 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 January 13, 1999, rulemaking petition submitted to EPA by a number of parties concerned about the effects of ballast water discharges. The petition asked the Agency to repeal its regulation at 40 CFR 122.3(a) that excludes certain discharges incidental to the normal operation of vessels from the requirement to obtain an NPDES permit. The petition asserted that vessels are "point sources" requiring NPDES permits for discharges to U.S. waters; that EPA lacks authority to exclude point source discharges from vessels from the NPDES program; that ballast water must be regulated under the NPDES program because it contains invasive plant and animal species as well as other materials of concern (e.g., oil, chipped paint, sediment and toxins in ballast water sediment) and; that enactment of CWA section 312(n) (Uniform National Discharge Standards, also known as the UNDS program) demonstrated Congress' rejection of the exclusion.

In response to the 1999 petition, EPA first prepared a detailed report for public comment, *Aquatic Nuisance Species in Ballast Water Discharges: Issues and Options* (September 10, 2001). See 66 FR 49381, September 27, 2001. After considering the comments received, EPA

declined to reopen the exclusion for additional rulemaking, and denied the petition on September 2, 2003. EPA explained that since enactment of the CWA, EPA has consistently interpreted the Act to provide for NPDES regulation of discharges from industrial operations that incidentally occur onboard vessels (e.g., seafood processing facilities or oil exploration operations at sea) and of discharges overboard of materials such as trash, but not of discharges incidental to the normal operation of a vessel (e.g., ballast water) subject to the 40 CFR 122.3(a) exclusion. EPA further explained that Congress had expressly considered and accepted the Agency's regulation in the years since its promulgation, and that Congress chose to regulate discharges incidental to the normal operation of vessels through programs other than CWA section 402 permitting. Thus, it was EPA's understanding that Congress had acquiesced to EPA's long-standing interpretation of how the CWA applies to vessels.

Denial of the petition did not reflect EPA's dismissal of the significant impacts of aquatic invasive species, but rather the understanding that other programs had been enacted to specifically address the issue and that the CWA does not currently provide an appropriate framework for addressing ballast water and other discharges incidental to the normal operation of non-military vessels.

In the denial of the petition, EPA noted that when Congress specifically focused on the problem of aquatic nuisance species in ballast water, it did not look to or endorse the NPDES program as the means to address the problem. Instead, Congress enacted new statutes which directed and authorized the Coast Guard, rather than EPA, to establish a regulatory program for discharges incidental to the normal operation of vessels, including ballast water (e.g., Nonindigenous Aquatic Nuisance Prevention and Control Act as amended, 16 U.S.C. 4701 *et seq.*; Act to Prevent Pollution from Ships, 33 U.S.C. 1901 *et seq.*) Furthermore, Congress made no effort to legislatively repeal EPA's interpretation of the NPDES program or to expressly mandate that discharges incidental to the normal operation of vessels be addressed through the NPDES permitting program. EPA reasoned that this Congressional action and inaction in light of Congress' awareness of the regulatory exclusion confirmed that Congress accepted EPA's interpretation and chose the Coast Guard as the lead agency under other statutes.

In addition, EPA found significant practical and policy reasons not to re-open the longstanding CWA regulatory exclusion, reasoning that there are a number of ongoing activities within the Federal government related to control of invasive species in ballast water, many of which are likely to be more effective and efficient than use of NPDES permits under the CWA. EPA also noted that nothing in the CWA prevents states from independently regulating ballast water discharges under State law, should they choose to do so, pursuant to CWA section 510.

After EPA's September 2003 denial of the petition, a number of groups filed a complaint in the U.S. District Court for the Northern District of California. *Nw. Envt'l Advocates et al. v. EPA*, 2005 WL 756614 (N.D. Cal.). The complaint was brought pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, and set out two causes of action. First, the complaint challenged EPA's promulgation of 40 CFR 122.3(a), an action the Agency took in 1973. The second cause of action challenged EPA's September 2003 denial of their petition to repeal the Sec. 122.3(a) exclusion.

2.5 DISTRICT COURT DECISION

On March 30, 2005, the Court determined that the exclusion exceeded the Agency's authority under the CWA. Specifically, the District Court granted 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 . . .

After this ruling, the Court granted motions to intervene on behalf of the Plaintiffs by the States of Illinois, New York, Michigan, Minnesota, Pennsylvania, and Wisconsin, and on behalf of the Government-Defendant by the Shipping Industry Ballast Water Coalition.

Following submission of briefs and oral argument by the parties and intervenors on the issue of a proper remedy, 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 September 30, 2008.

Nw. Envt'l Advocates et al. v. EPA, 2006 WL 2669042 (N.D. Cal).

This means that, effective September 30, 2008 (if the order is not overturned or altered on appeal), discharges incidental to the normal operation of vessels currently excluded from NPDES permitting by that regulation, will become subject to CWA section 301's prohibition against discharging, unless covered under an NPDES permit. The CWA authorizes civil and criminal enforcement for violations of that prohibition and also allows for citizen suits against violators.

Because the Government respectfully disagrees with the District Court's decision, on November 16, 2006, EPA filed an appeal in the U.S. Court of Appeals for the Ninth Circuit. Oral argument was held on August 14, 2007, and a decision is pending. Additional material related to the lawsuit is contained in the docket accompanying this proposed permit and fact sheet.

If the Ninth Circuit reverses or otherwise modifies the District Court's decision on appeal, this proposed permit or any final permit may be terminated, reopened, or modified, as appropriate.

2.6 GENERAL PERMITS

An NPDES permit authorizes the discharge of a specified amount of a pollutant or pollutants into a receiving water under certain conditions. The two basic types of NPDES are individual and general permits. Typically dischargers seeking coverage under a general permit are required to submit a notice of intent (NOI) to be covered by the permit. Section III(e) of this fact sheet discusses the NOI requirements of the proposed permit in more detail.

An individual permit is a permit specifically tailored for an individual discharger. Upon receiving the appropriate application(s), the permitting authority generally develops a draft permit for public comment for that particular discharger based on the information contained in

the permit application (e.g., type of activity, nature of discharge, receiving water quality). Following consideration of public comments, a final permit may then be issued to the discharger for a specific time period (not to exceed 5 years), with a provision for reapplying for further permit coverage prior to the expiration date.

A general permit is also subject to public comment and is developed and issued by a permitting authority (in this case, EPA). A general permit covers multiple facilities within a specific category for a specific period of time (not to exceed 5 years), after which the permit expires. Like individual permits, general permits may be re-issued. Under 40 CFR 122.28, general permits may be written to cover categories of point sources having common elements, such as facilities that involve the same or substantially similar types of operations, that discharge the same types of wastes, or that are more appropriately regulated by a general permit. Given the vast number of vessels requiring NPDES permit coverage and the discharges common to these vessels, EPA believes that it makes administrative sense to issue the proposed general permit, rather than issuing individual permits to each vessel. Courts have approved of the use of general permits. See e.g., *Natural Res. Def. Council v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977); *EDC v. US EPA*, 344 F.3d 832, 853 (9th Cir. 2003). The general permit approach allows EPA to allocate resources in a more efficient manner and to provide more timely coverage, particularly in light of the time constraints imposed by the Court's vacatur. As with any permit, the CWA requires the general permit to contain technology-based effluent limits, as well as any more stringent limits when necessary to meet applicable state water quality standards. State water quality standards apply in the territorial seas, defined in section 502(8) of the CWA as extending three miles from the baseline. *Pacific Legal Foundation v. Costle*, 586 F.2d 650, 655-656 (9th Cir. 1978); *Natural Resources Defense Council., Inc. v. U.S. EPA*, 863 F.2d 1420, 1435 (9th Cir. 1988). In addition, discharges to the territorial seas are required to meet requirements to comply with section 403(c) of the CWA Ocean Discharge Criteria (40 CFR Part 125 Subpart M). As discussed in III(a)(v) of this fact sheet, the owner/operator of a vessel, after being covered by the proposed permit, may request to be excluded from such coverage by applying for an individual permit. In addition, EPA may subsequently require a vessel to obtain an individual permit instead of receiving coverage under the general permit.

2.7 EPA'S FEDERAL REGISTER NOTICE SOLICITING INFORMATION ON VESSEL DISCHARGES

On June 21, 2007, EPA issued a Federal Register notice to provide the public with early notice of EPA's intent to begin development of NPDES permits under section 402 of the CWA for discharges incidental to the normal operation of vessels. The notice sought relevant information from the public to further help the Agency in the timely development of an NPDES permitting framework, which the Agency had not gathered to date for discharges incidental to the normal operation of vessels. The notice requested information and technical input from the public on matters associated with the development of such permits, such as existing public and private data sources available for use in identifying, categorizing, and describing the numbers and various types of commercial and recreational vessels currently operating in waters of the U.S. and that may have discharges incidental to their normal operation. Desirable information included either citations to databases or documents where such information is available, or, the submission of actual information on vessel numbers and categories together with supporting citations to the underlying source.

EPA would like to thank all commenters who responded to this FR notice, particularly those commenters who provided data which EPA could use in the development of this permit. The majority of comments received came from seven different groups: individual citizens, commercial fishing representatives, commercial shipping groups, environmental or outdoor recreation groups, oil and gas industry, recreational boating-related businesses, and state governments.

The majority of comments relevant to recreational vessels came from four different groups: individual citizens, environmental or outdoor recreation groups, recreational boating-related businesses, and state governments. Most commenters who discussed recreational vessels and discharges from recreational vessels did not answer EPA's request for data; rather, they expressed their opinions as to whether recreational vessels ought to be permitted. EPA considered all comments in developing the Recreational General Permit, however, those comments that were responsive to EPA's data request were the most helpful in formation of the NPDES permit.

By far the greatest number of comments received came from individual citizens. Individual citizens were almost unanimously against the regulation of discharges through the NPDES program of from recreational and vessels. EPA considered these comments but found that at this time, provided that the District Court's vacatur stands on appeal, EPA does not have the authority to exclude an entire category of vessels, such as recreational vessels, from permitting. However, EPA believes this Recreational Vessel Permit will satisfy the requirements of the Clean Water Act and achieve environmental improvement while not overly burdening recreational vessel operators.

Environmental and outdoor recreation groups commented that recreational vessels should not be subject to a permit and that they would like to see the permit focus on large, transoceanic vessels and known problem discharges, such as ballast water. Additional comments suggested permitting categories of vessels, divided by size, type, and ownership, requiring NOIs only for large, transoceanic vessels, and exempting smaller vessels, such as recreational vessels, from NOI requirements. EPA has implemented many of the suggestions, including permitting by size and class of vessel and requiring NOIs for only a small, but significant sector of vessels permitted. Vessels permitted under the RGP will not need to file an NOI.

Comments received from businesses associated with recreational boating were uniformly against any permitting requirements for recreational vessels. Many commenters were also concerned about multi-state permitting requirements.

State governments commented that there was a need for national uniformity. State government comments also urged EPA to either exempt recreational vessels from permit requirements or find their discharges to be de minimis. Other State government comments expressed the belief that EPA should focus on ballast water from transoceanic vessels.

Data related to recreational boating was received from state governments, industry associations, and environmental groups, including the California Department of Boating and Waterways, Personal Watercraft Industry Association, and BoatUS. These comments provided information and resources relating to the number of recreational boats, the economic importance

of the recreational boating industry, and discharges generated by recreational vessels. In addition, the comments included extensive information on what regulations currently exist, what those regulations specifically require, and what many of the commonly used good management practices are for recreational vessels. EPA considered these comments, and utilized the data provided when determining appropriate best management practices (BMPs) and other permit requirements for recreational vessels.

2.8 Economic Impacts

Pursuant to EPA's commitment to operate in accordance with the Regulatory Flexibility Act (RFA) framework and requirements during the Agency's issuance of Clean Water Act general permits,[2] EPA performed an economic assessment of this general permit, including an examination of the economic impact this permit may have on small businesses. This economic analysis is included in the docket for this permit. Based on this assessment, EPA concludes that despite a minimal economic impact on all entities, including small businesses, this permit is not likely to have a significant economic impact on a substantial number of small entities. The total annual estimated compliance cost per permittee ranges from $8.79 to $25.99 per year for motorboats, $5.39 to $22.59 for sailboats, and $0.29 to $2.39 per year for non-motorized small craft. Nationally, the draft economic impact analysis indicates that the RGP has an expected cost of $88.2 million dollars annually.

3. PERMIT OVERVIEW

EPA notes that today's draft permit is being published in an effort to provide appropriate permit coverage should the U.S. District Court for the Northern District of California's September 30, 2008 vacatur ultimately become effective. Nothing in this fact sheet, or the draft permit it discusses, should be interpreted as EPA's agreement with that decision. In addition, views on matters discussed in today's fact sheet, including views on what discharges are "incidental to the normal operation of a vessel" are tentative in nature and should not be considered Agency precedent.

3.1 Vessels Covered

The CWA implementing regulations allow the EPA to issue general permits to cover categories or subcategories of dischargers (40 CFR 122.28). In order to effectively address the different characteristics of discharges from large commercial vessels as opposed to the discharges of small recreational vessels, EPA has chosen to issue two separate general permits addressing two different categories of vessels.

Recreational vessels of less than 79 feet generally do not have professional crew, are used less often than commercial vessels, are often stored out of the water, and generate smaller volumes of effluent. Hence, EPA determined that the difference between these vessels and larger recreational vessels and commercial vessels was substantial enough to warrant coverage under a separate permit.

[2] For more information, see the RFA section of the Federal Register notice announcing the availability of today's draft permit.

It is EPA's understanding that "uninspected passenger vessels" share similarities with recreational vessels and that it is appropriate to cover them under this permit as well.

This permit applies to all recreational vessels and uninspected passenger vessels that are less than 79 feet (24.08 meters) in length, measured from bow to stern, excluding any attachments or extensions that sail in waters of the United States. Recreational vessels are vessels manufactured or operated primarily for pleasure or leased, rented, or chartered to another for the latter's pleasure (46 (U.S.C.) 2101(25)). Recreational vessels include, but are not limited to, motorboats, sailboats, recreational fishing boats, personal watercraft, rowboats, canoes, and kayaks. Vessel owner/operators must only comply with the provisions of the permit that are applicable to them. For instance, non-motorized vessels do not need to do any BMPs or control measures for fuel control, or the discharge of oil, including oily mixtures.

This permit also applies to uninspected passenger vessels that are less than 79 feet in length, measured from bow to stern, excluding any attachments or extensions, whose operation is substantially similar to that of a recreational vessel of less than 79 feet. For purposes of this permit, these vessels include sailboats for-hire, charter-fishing vessels engaging in hook-and-line fishing, and personal watercraft for hire. For purposes of this permit, the types of vessels that are not considered uninspected passenger vessels and are therefore not covered by this permit include, but are not limited to, commercial fishing vessels, commercial ferries, tug boats, freighters, water taxis, and small cruise ships. EPA is requesting comment on whether the public agrees that it is appropriate to authorize coverage for uninspected passenger vessels under this permit.

Even though less than 79 ft.

Recreational vessels greater than or equal to 79 feet in length are not eligible for coverage under this Permit and must instead seek coverage under the Vessel General Permit (VGP). Larger recreational vessels have characteristics that are more common for commercial vessels than for smaller recreational vessels. At 79 feet, recreational vessels will have space available for pollution control equipment and will often have a professional crew, increasing their capacity to comply with a more complex permit. EPA used the cut-off of 79 feet to be consistent with existing Coast Guard regulations: once a vessel is 79 feet in length, the vessel must be assigned tonnages under the International Convention on Tonnage Measurement of Ships (46 U.S.C. 14101 *et seq.*; 46 CFR Part 69). The International Convention tonnage measurement does not apply to ships of less than 79 feet. For more information about assigning tonnage, please see the U.S. Coast Guard's Marine Safety Manual, volume 4, chapter 7, available at http://www.uscg.mil/hq/g-m/nmc/pubs/msm/v4/c7.htm.

There are approximately 800 U.S. flagged recreational vessels of 79 feet or greater. At this time, EPA is unable to determine how many internationally flagged recreational vessels greater than 79 feet sail in U.S. waters.

3.2 Waters Covered/Geographic Scope

This permit applies to recreational vessels, as described above, that sail, are moored, or otherwise underway in waters subject to this permit. These waters are "waters of the United States" as defined in 40 CFR 122.2 (extending to the reach of the 3-mile territorial seas as defined in section 502(8) of the CWA).

The proposed general permit will cover vessel discharges in the waters of the U.S. in all states and territories, regardless of whether a state is authorized to implement other aspects of the NPDES permit program within its jurisdiction. While, pursuant to CWA section 402(c), EPA typically is required to suspend permit issuance in authorized states, EPA may issue NPDES permits in authorized states for discharges incidental to the normal operation of a vessel, because 402(c)(1) of the Clean Water Act prohibits EPA from issuing permits in authorized states only for "those discharges subject to [the state's authorized] program." Discharges excluded under 40 CFR 122.3 are not "subject to" authorized state programs. The vessel discharges that will be covered by the proposed permit are discharges excluded from NPDES permitting programs under 40 CFR 122.3.Therefore the discharges at issue are not considered a part of any currently authorized state NPDES program. See 40 CFR 123.1(i)(2) (where state programs have a greater scope of coverage than "required" under the federal program, that additional coverage is not part of the authorized program) and 40 CFR 123.1(g)(1) (authorized state programs are not required to prohibit point source discharges exempted under 40 CFR122.3).

EPA will continue to work with State CWA permitting authorities on authorization issues associated with discharges incidental to the normal operation of vessels and plans to provide guidance on such issues in the near future. In particular, EPA plans to outline how states are to obtain approval to implement NPDES permitting for vessel discharges within their jurisdictions. In addition, EPA plans, to the extent permitted by the CWA, to provide states with the opportunity to decline to regulate these discharges by obtaining status as a partial NPDES program under CWA 402(n). See, e.g., 402(n)(3) (allowing the Administrator to approve a partial program if the state authority administering the NPDES program does not have the legal authority to regulate vessel discharges). In those states, NPDES permit coverage for the discharges would continue to be provided by EPA.

3.3 Obtaining Coverage under this Permit

Recreational vessels are covered under this permit without submitting a Notice of Intent (NOI) if they meet all the eligibility requirements and comply with all required effluent limits. Under 40 CFR 122.28(b)(2)(v), a permittee may "be authorized to discharge under a general permit without submitting a notice of intent where the Director finds that a notice of intent requirement would be inappropriate." EPA has determined it would not be appropriate to request NOIs from recreational vessels at this time.

When deciding whether permittees must submit NOIs to be covered under a general permit, the director must consider 6 factors:

1) The type of discharge;
2) The expected nature of the discharge;
3) The potential for toxic and conventional pollutants in the discharges;
4) The expected volume of the discharges;
5) Other means of identifying discharges covered by the permit; and
6) The estimated number of discharges to be covered by the permit.

EPA's consideration of these factors follows:

exhaust). Numerous State clean-marina programs, the BOAT US organization, and Sea Grant organizations have popular literature or outreach materials discussing these pollutants and control measures to minimize their discharge. When the requirements of this permit are followed, the potential for individual vessels to discharge pollutants should be reduced considerably.

3.3.4 The Expected Volume of the Discharges and Estimated Number of Discharges to be Covered by the Permit

The volume of the discharges from each recreational vessel will, in most cases, be extremely small, although there are likely localized areas where cumulative impacts from boaters may be significant. The key discharges for recreational boaters are anti-fouling hull leachate, oily bilgewater, other hydrocarbon bi-products, water used for engine coolant, graywater, and potential aquatic nuisance species discharges. According to the National Marine Manufacturers Association (NMMA) (2006), there are approximately 17.73 million recreational vessels, including outboard motorized boats (8.53 million), inboard motorized boats (1.12 million), sterndrive boats (1.72 million), sailboats (1.56 million), personal watercraft (1.22 million) and others, including small non-motorized boats such as canoes and kayaks (3.58 million). Approximately 96% of these vessels are smaller than 26 feet in length. Furthermore, recreational boaters keep their boats in the water an average of 31 days per year. Fewer days in the water means a lower volume of discharge.

There are approximately 12,200,000 registered recreational vessels. This does not include most small, non-motorized vessels such as small sailboats, canoes, and kayaks, for which permit coverage is also proposed to extend. These small, non-motorized vessels should not have anti-fouling paint, they will not have graywater, nor will they generate hydrocarbon byproducts.

Most of the vessels that are 26 feet in length or less can be expected to be frequently removed from the water. NMMA (2006) estimates that approximately 80% of vessels are active in any given year. Furthermore, approximately 11,400,000 of the registered vessels are motor boats under 26 feet in length. Hence, since many of these vessels will spend considerable time out of the water, the volume of vessel discharges will be considerably less than if they were in the water year round. Additionally, most of these smaller vessels will not have graywater systems and will not be coated in anti-fouling paint (since they rarely remain in the water for a long enough period for fouling to occur). Furthermore, for those motorized vessels, hydrocarbon spills from fueling will be fewer since most of these vessels will be fueled out of water at gas stations when in tow. Therefore, the discharges that may be of concern could be, depending on the particular vessel, oily bilgewater, deck runoff, contact water for engine coolant, visible living organisms that have the potential to be aquatic nuisance species, and for two stroke engines, other hydrocarbon discharges. These discharges can be minimized using the BMPs in this permit. Furthermore, since most of these vessels enter the water at reasonably dispersed locations, the volume of the discharges are small enough to likely not cause significant cumulative impacts in most waterways. There are naturally exceptions to this. For instance: popular boat launching ramps with low flushing, small lakes, or popular jet ski or fishing locations.

3.3.1 The Type of Discharge

Discharges from recreational vessels can primarily be divided into a few categories: deck runoff, bilgewater, non-contact engine coolant and small boat engine wet exhaust, leachate from anti-foulant hull coatings, and fuel tank overflows. Pollutants and constituents of concern associated with these discharges include BOD, oil and grease, warm water, metals (primarily copper), and hydrocarbons.

Recreational vessels larger than 26 feet may generate discharges of graywater or sewage (blackwater). "Sewage from vessels" within the meaning of CWA section 312 is excluded from the definition of pollutant found in section 502(6) of the CWA. Because of this exclusion, sewage from vessels is not regulated by NPDES permitting under section 402 of the CWA. Therefore, the discharge of sewage is not authorized under this proposed general permit. This does not mean that all recreational vessels may discharge sewage without restriction; other regulations, such as those promulgated pursuant to section 312 of the CWA and other Coast Guard regulations, apply. Graywater discharges are likely to be extremely low in volume on all small vessels. Graywater discharge tend to increase in volume with the increase in size of the vessel, which correlates with both the number of sinks and/or showers, and the number of people who use them.

Recreational vessels also contribute to the spread of invasive species. Sources of invasive species include fouled hulls, bait buckets, bait wells, and deck transport. Once again, with appropriate BMPs, the potential for the spread of invasive species can be reduced significantly, such that each individual boat poses minimal risk in terms of invasive species spread. Anti-fouling paint can result in an environmental benefit as use of these paints can impede the spread of invasive species. However, use of anti-fouling paint must be carefully balanced to minimize the harm that can be caused by anti-fouling leachate.

3.3.2 The Expected Nature of the Discharge

Unlike traditional NPDES permittees, vessels are mobile. One of the primary reasons for requiring NOIs or individual permits is so that EPA or the permitting authority can determine specific waterbody impacts. With mobile dischargers, gathering of site specific information is impractical, at least at this time. EPA can predict impacts using general level screening information and other existing data sources.

3.3.3 The Potential for Toxic and Conventional Pollutants in the Discharges

For recreational vessels, the toxic discharges most likely to occur include copper from anti-fouling paints and detergents associated with cleaning. There are considerable studies, including peer reviewed publications, that examine the environmental impact of anti-foulant paint leachate. Older vessels may have residual Tributyltin (TBT) on the hull, or select operators may have stockpiled TBT for use as an anti-foulant on their hull. Discharge of TBT is prohibited under this permit and the discharge or release of TBT for vessels covered by this permit is a permit violation (see Part 4.3.2 of this fact sheet for further explanation).

Recreational vessels could, and likely do, discharge numerous conventional pollutants including sediment and turbidity, BOD, oil and grease, and thermal pollution (from wet engine

According to NMMA (2006), there are approximately 548,000 mechanically propelled recreational vessels greater than 26 feet in length. These vessels will each individually have a greater volume of discharge because they are more likely to spend greater amount of time in the water, and are more likely to have a greater volume of discharges of concern (i.e. graywater and anti-foulant leachate).

3.3.5 Other Means of Identifying Discharges Covered by the Permit

There are numerous data available for identifying recreational boats, including the NMMA recreational boat statistics (2006) previously cited and state registration information. These data sources will likely provide the most credible information for small (less than 79 feet) recreational vessels.

If EPA requires NOI submittal for recreational vessels, EPA will be confronted with having to construct an NOI management system to handle a greatly increased volume of NOIs; storage and server capacity alone will present logistical challenges. Requiring NOIs for these vessels will generate little useful information for EPA. Furthermore, since other clear measures exist for EPA to identify vessel owner/operators, including using state registration databases, as well as visiting local marinas and launch ramps, little additional value would be provided to EPA in requiring NOIs at this time. EPA may revisit these decisions in the next issuance of this permit.

Based on this analysis, EPA is not currently proposing requiring NOIs for recreational boats. EPA is specifically requesting comment on this approach, and recommendations if commenters favor NOI submittal for recreational boaters.

3.4 Vessel Discharges Eligible for Coverage

This general permit applies to discharges incidental to the normal operation of a vessel. These discharges include, but are not limited to, graywater, engine cooling water, bilge water, and deck runoff. Discharges incidental to the normal operation of a vessel are discharges that occur when a vessel is operated according to good marine practice or that result from the operation of properly and routinely maintained vessel equipment. Discharges incidental to normal operation include deck runoff from routine deck cleaning and graywater from an onboard galley or head. Any practice that is not in line with good marine practice is not considered incidental to the normal operation of the vessel. This includes the addition of pollutants or constituents of concern to discharge streams, disposing of prohibited materials, such as oil, overboard, and discharges resulting from improper maintenance of the vessel, motor, or onboard machinery. For example, intentionally adding used motor oil to the bilge or graywater will result in a discharge that is not incidental to the normal operation of a vessel. Discharges that are not incidental to normal operation are not covered by this permit. If two covered discharge streams are combined into one, the resulting commingled discharge stream must meet the requirements applicable to both streams.

3.5 Vessel Discharges not Eligible for Coverage

Discharges that are not incidental to the normal operation of a recreational vessel are not covered under this general permit. These discharges include rubbish, trash, garbage, or other

such materials discharged overboard, and discharges currently or previously covered by another permit.

3.6 CONSTITUENTS CONTROLLED BY THIS DRAFT PERMIT

In today's draft permit, EPA is proposing effluent limitations to control a variety of materials, which, for the purposes of this fact sheet, have been classified into 5 major groups: Aquatic Nuisance Species (ANS), oil, including oily mixtures and fuel, nutrients, toxics and other pollutants with toxic effects, other pollutants including most conventional (e.g., Biochemical Oxygen Demand, pH, Total Suspended Solids) and non-conventional pollutants. EPA is proposing effluent limitations to control these materials, because such materials are constituents in the, depending on the particular vessel, chemical waste and/or garbage "pollutant" discharge resulting from the activities of these vessels. "Chemical waste" and "garbage" are expressly included in the CWA's definition of "pollutant," which governs, among other things, which discharges are properly subject to CWA permitting. See CWA § 402(a) (allowing EPA to issue permits for a "discharge of any pollutant"); CWA § 502(12) (defining "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source"); and CWA § 502(6) (defining "pollutant" as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water"). The discharge from vessels addressed in today's draft permit – a worthless or useless flow discharged during a vessel's normal operations – falls within those broad pollutant categories. See, e.g., Webster's II New Riverside University Dictionary (1988) (defining "waste" as "a worthless or useless by-product" or "something, such as steam, that escapes without being used"; "chemical" as "of or relating to the action of chemicals"; and "garbage" as "worthless matter, trash.").[3]

EPA understands that a lot of attention has been paid to whether, under various circumstances, ANS are properly considered "pollutants" under CWA § 502(6). Today's draft permit would control ANS because such ANS are one constituent of concern in the waste stream that constitutes the "pollutant" subject to today's draft permit. See CWA § 402(a)(1)(A) and 301(b)(1) (requiring permits to include "effluent limitations") and CWA §502(11) (defining "effluent limitations" to include "restrictions established by . . . the Administrator on . . . chemical, physical, biological, and other constituents which are discharged from point sources . . . ."). Under these circumstances, there is no need to address the question of whether ANS in and of themselves may be considered "pollutants" under CWA section 502(6). In addition, EPA's conclusion that ANS are properly controlled in today's draft vessel permit does not speak to how ANS are regulated by the CWA under any other circumstances.

[3] The Agency's view on what is considered "chemical waste" or "garbage" is limited to use of those terms in the definition of "pollutant" in the Clean Water Act and should not be considered in interpreting those or similar terms in any other statute or regulation.

4. TECHNOLOGY-BASED EFFLUENT LIMITS AND RELATED REQUIREMENTS

The Clean Water Act (CWA) requires that all point source discharges must meet technology-based effluent limitations representing the applicable levels of technology-based control. Water quality-based effluent limitations (WQBELs) are required as necessary where the technology-based limitations are not sufficient to meet applicable water quality standards (WQS). See *P.U.D. No. 1 of Jefferson County et al v. Washington Dept of Ecology*, 511 U.S. 700, 704 (1994). Water quality-based requirements will be discussed in greater depth in Section 6.5. Both technology-based and water quality-based effluent limitations are implemented through NPDES permits containing such limitations issued to point sources. CWA sections 301(a) and (b). See Part 6.5 of this fact sheet for discussion about water quality-based effluent limits.

4.1 TYPES OF TECHNOLOGY-BASED EFFLUENT LIMITS

The CWA establishes two levels of technology-based controls. The first level of control, "best practicable control technology currently available," or "BPT" applies to all pollutants. CWA section 304(b)(1)(B); 33 U.S.C. § 1314(b)(1)(B). BPT represents the initial stage of pollutant discharge reduction, designed to bring all sources in an industrial category up to the level of the average of the best source in that category. See *EPA v. National Crushed Stone Ass'n*, 449 U.S. 64, 75-76 (1980). In the second level of control, all point sources are required to meet effluent limitations based on "best conventional pollutant control technology," or "BCT" CWA section 304(b)(4)(B); 33 U.S.C. § 1314(b)(4)(B) or "best available technology economically achievable," or "BAT" CWA section 301(b)(2)(A); 33 U.S.C. § 1311(b)(2)(A), depending on the types of pollutants discharged. BCT applies to conventional pollutants, listed at 40 C.F.R. § 401.16 (biological oxygen demand (BOD), pH, fecal coliform, and oil and grease). BAT applies to toxic and non-conventional pollutants. Technology-based limits are to be applied throughout industry without regard to receiving water quality. *Appalachian Power Co. v. EPA*, 671 F.2d 801 (4th Cir. 1982). The following sections describe these limits in greater detail.

4.1.1 Best Practicable Control Technology Currently Available (BPT)

The CWA requires BPT effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD5), total suspended solids, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979. 40 CFR 401.16. EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. 40 CFR 401.15 and 40 CFR Part 423 Appendix A. All other pollutants are considered to be non-conventional.

In specifying BPT, under CWA section 301(b)(1)(A); 304(b)(1)(B); 40 CFR 125.3(d)(1), EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed, and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate. Traditionally, EPA establishes BPT effluent limitations based on the average of the best performance of facilities within the industry of various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

4.1.2 Best Conventional Pollutant Control Technology (BCT)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT for discharges from existing industrial point sources. CWA section 301(b)(2)(E); 304(b)(4)(B); 40 CFR 125.3(d)(2). In addition to considering the other factors specified in section 304(b)(4)(B) to establish BCT limitations, EPA also considers a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in 1986. 51 FR 24974 (July 9, 1986).

4.1.3 Best Available Technology Economically Achievable (BAT)

For toxic pollutants and non-conventional pollutants, EPA promulgates effluent limitations based on BAT. CWA section 301(b)(2)(A); 304(b)(2)(B); 40 CFR 125.3(d)(3). In establishing BAT, the technology must be technologically "available" and "economically achievable." The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and other such factors as the EPA Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight accorded to these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

This proposed permit contains effluent limits that correspond to required levels of technology-based control (BPT, BCT, BAT) for various discharges under the CWA. Some effluent limits have been established by examining other existing laws and requirements. Where these laws already exist, it was deemed feasible for the operators to implement these practices as effluent limits in this proposed permit. Because these are demonstrated practices, EPA has found that they are technologically available and economically practicable (BPT) or achievable (BAT). In some cases, such as with the no discharge of TBT standard, numerical effluent limits have been established.

4.2 Inclusion of Non-Numeric Technology-Based Limits in NPDES Permits

NPDES permits are required to contain technology-based limitations. CWA sections 301(b)(1)(A)(BPT); 301(b)(2)(A)(BAT), 301(b)(2)(E) (BCT); 40 CFR 122.44(a)(1). Technology-based limits in the proposed permit represent the BPT (for conventional, toxic, and non-conventional pollutants), BCT (for conventional pollutants), and BAT (for toxic and non-conventional pollutants) level of control for the applicable pollutants. Where EPA has not promulgated ELGs for an industry, or if an operator is discharging a pollutant not covered by the effluent guideline, permit limitations may be based on the best professional judgment (BPJ, sometimes also referred to as best engineering judgment) of the permit writer. 33 U.S.C. 1342(a)(1); 40 CFR 125.3. See *Student Public Interest Group v. Fritzsche, Dodge & Olcott*, 759 F.2d 1131, 1134 (3d Cir. 1985); *American Petroleum Inst. v. EPA*, 787 F.2d 965, 971 (5th Cir. 1986). For the proposed general permit, all of the technology-based limits are based on BPJ decision-making because no ELGs apply.

Most of the BPJ limits in the proposed permit are in the form of non-numeric control measures, commonly referred to as best management practices (BMPs). Non-numeric limits are employed under limited circumstances, as described in 40 CFR 122.44(k). As far back as 1977, courts have recognized that there are circumstances when numerical effluent limitations are infeasible and have held that EPA may issue permits with conditions (e.g., BMPs) designed to reduce the level of effluent discharges to acceptable levels. *Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369 (D.C. Cir.1977).

Through the Agency's NPDES permit regulations, EPA interpreted the CWA to allow BMPs to take the place of numeric effluent limitations under certain circumstances. 40 CFR §122.44(k), entitled "Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs ...)," provides that permits may include BMPs to control or abate the discharge of pollutants when: (1) "[a]uthorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities"; (2) "[a]uthorized under section 402(p) of the CWA for the control of stormwater discharges"; (3) "[n]umeric effluent limitations are infeasible"; or (4) "[t]he practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA." 40 CFR 122.44(k).

And, as recently as 2006, courts have held that the CWA does not require the EPA to set numeric limits where such limits are infeasible. *Citizens Coal Council v. EPA*, 447 F.3d 879, 895-96 (6th Cir. 2006). The Sixth Circuit cited to *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 502 (2d Cir. 2005), stating "site-specific BMPs are effluent limitations under the CWA."

Additionally, the Sixth Circuit cited to *Natural Res. Def. Council, Inc. v. EPA*, 673 F.2d 400, 403 (D.C. Cir.1982), noting that "section 502(11) defines 'effluent limitation' as '*any* restriction' on the amounts of pollutants discharged, not just a numerical restriction."

4.3 Technology-Based Effluent Limits in this Permit

EPA has found that the requirements of this permit represent the appropriate (BPT, BCT, and BAT) level of control representing performance of recreational vessels taking into account

the various ages of equipment and types of vessels involved, the process employed, the engineering aspects of various types of control techniques, process changes and non-water quality environmental impacts, including energy impacts, of the controls required under this permit. With respect to the non-water quality environmental impacts, including energy impacts, EPA finds that they are negligible. Additionally, EPA finds that the limits in this permit meet the BPT and BAT economic tests. Because of the type of controls under consideration here minimize toxic, nonconventional, and conventional pollutants, conventional pollutants are controlled by the same practices that control toxic and nonconventional pollutants. Hence, EPA is evaluating effluent limits using a BPT and a BAT standard, but since conventional pollutants will also be adequately controlled by these same effluent limits for which EPA applied the BPT and BAT tests, EPA has determined that it is not necessary to conduct BCT economic tests.

4.3.1 Non-Numeric Technology-Based Effluent Limits in this Permit

Because of the nature of vessel discharges, it is infeasible to rely on numeric effluent limits to achieve these levels of control for all discharge types until greater information is available. Constituents in properly controlled discharges may vary based upon vessel type, age, size, and activities occurring on board the vessel. In such situations, the CWA authorizes EPA to include non-numeric effluent limits in NPDES permits. 40 CFR 122.44(k)(3). The RGP includes such non-numeric effluent limits developed for discharges for which developing numeric effluent limits are infeasible at this time. Many of these non-numeric effluent limits require permittees to engage in specific behaviors or best management practices (BMPs).

State and regional boating programs were examined in determining non-numeric effluent limits for minimizing discharges. These programs include those in the states of Minnesota, Florida, Washington, Missouri, and Arizona. Those practices that were generally low cost, readily commercially available, and not likely to result in additional environmental impact were incorporated as requirements under this permit. An EPA produced report (EPA, 2001) was examined for the purposes of including approaches that EPA has previously encouraged to improve water quality. Finally, reports, documents, and suggestions from non-governmental organizations such as Seagrant and the BoatUS foundation were referenced and appropriate BMPs that met EPA's standards for inclusion as non-numeric limits were included under the required effluent limits section or the encouraged Best Management Practices section.

When making use of these data in formulating the proposed permit, EPA considered these data and how to design a permit that would be environmentally protective and include the best practicable technology and best available technology economically achievable.

The BAT/BCT/BPT non-numeric effluent limits in this permit are expressed as:

- Specific pollution prevention practices for minimizing or eliminating the pollutants or constituents of concern in the discharge.
- Specific behavioral practices for minimizing or eliminating the pollutants or constituents of concern in the discharge.

- Narrative requirements to minimize pollutants or constituents of concern in discharges or the discharges themselves.[4]
- Limiting or eliminating discharges at certain times for discharge types that can be limited or eliminated for short periods due to technology available on board the vessel and the vessel design (i.e. if the vessel can hold the discharge type for limited periods or reduce production of the effluent).

The non-numeric effluent limits are all intended to minimize or reduce pollutants or constituents of concern in recreational vessel discharges. These effluent limits include, but are not limited to, requirements to use phosphate free and non-toxic soaps (reduce the discharge of nutrients and toxic constituents in vessel cleaning discharges), wash the vessel when trailering it between watersheds (to reduce the transfer or introduction of aquatic nuisance species), and use extra precautions when fueling the vessel (to reduce the discharges of fuel or oil, including oily mixtures, into waters subject to this permit). The limits are expected to be effective in reducing harmful constituents in effluent streams reaching receiving waters. The non-numeric effluent limits are discussed in greater detail in Parts 4.4 through 4.9.

For purposes of this permit and consistent with the technology-based requirements of the CWA, EPA is clarifying that the term "minimize" means to reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best marine practice.

This permit defines the term "minimize" in order to provide a reasonable approach by which EPA, permittees, and the public can determine/evaluate appropriate control measures for recreational vessels to control discharges. EPA believes that for most recreational vessel discharges, minimization of pollutants in those discharges can be achieved without using highly engineered, complex treatment systems. The specific limits included in Part 2 emphasize effective pollution prevention controls, such as requiring phosphorus free soap and minimizing production of graywater in port.

In the context of this general permit, EPA has determined these non-numeric effluent limits represent the best practicable technology (BPT) for all pollutants, the best conventional pollutant control technology for conventional pollutants (BCT) and the best available technology economically achievable (BAT) for toxic and non-conventional pollutants.

With the exception of the TBT no discharge standard, numeric effluent limitations are not feasible for vessel discharges in this permit iteration. EPA may develop numeric effluent limits for certain discharge types for the next permit iteration, if appropriate.

4.3.2 Numeric Effluent Limits in this Permit

One numeric effluent limit is established in the form of zero discharge standards for this permit. To avoid such discharges, vessel hulls must be painted with non-TBT-containing paints.

[4] These types of effluent limits allow owner/operators to use any control measures appropriate for their vessels to meet those limits.

Any vessel that still has such paint exposed on its hull must be repainted to ensure that any remaining TBT-containing paint is thoroughly covered and prevented from leaching. This standard, a zero-discharge standard for tributyltin (TBT), was deemed available, economically practicable and achievable, and unlikely to cause non-water quality impacts. The record indicates that this standard is available, economically practicable and achievable, and unlikely to cause non-water quality impacts (and therefore those impacts if any are acceptable).

The zero discharge standard for TBT is consistent with the requirements of the 1988 Organotin Anti-Foulant Paint Control Act, 33 U.S.C. 2403(a), which generally prohibits application of anti-fouling coating containing TBT on vessels less than 25 meters in length. A zero discharge standard is also consistent with the Convention on the Control of Harmful Anti-fouling Systems on Ships. The treaty, adopted at the International Maritime Organization (IMO) in October 2001, prohibits the use of organotins, like TBT, in anti-fouling paints. The treaty will enter into force on September 18, 2008. The treaty has been forwarded to the United States Senate for ratification . In addition, the last TBT antifouling paint registration in the United States was voluntarily cancelled in 2005. Furthermore, the use of TBT antifouling paints or entry to port of vessels with TBT coatings is already prohibited by a large number of other countries, including Europe (see Regulation (EC) No 782/2003 of the European Parliament and the Council of 14 April on the prohibition of organotin compounds on ships).

Tributyltin (TBT), a metal based biocide, was historically applied to vessel hulls as an antifouling hull coating. TBT causes deformities in aquatic life, including deformities that disrupt or prevent reproduction. Numerous studies (Bentivegna & Piatkowski, 1998; Haynes & Loong, 2002; Negri et al., 2004; Negri & Heyward, 2001; Ruiz et al., 1995; V. Axiak et al., 1995) and several peer reviewed publications examine the environmental impacts of anti-foulant paint leachate containing TBT. TBT is also stable and persistent, resisting natural degradation in water bodies. Thus, due to its acute toxicity, EPA is proposing that there will be a zero discharge standard for TBT under this proposed permit. Furthermore, if there are any vessels with existing exposed TBT coatings, EPA is proposing that these vessels must either seek individual NPDES permit coverage consistent with Part 1.8 of the proposed permit or overcoat the existing TBT coating. EPA expects that few, if any, vessels have exposed TBT coatings on their hulls. EPA believes that a zero discharge standard for TBT is technologically available based on the availability of other anti-foulant coating options (e.g. copper and silicon) and feasible and economically achievable because few, if any, vessels still utilize TBT as an anti-foulant.

EPA is specifically requesting comment on whether this permit should contain numeric discharge limits that currently are not included in the proposed permit authorized by this permit. EPA requests that commenters provide suggested numeric limits, along with supporting data that identifies technologies or BMPs are available to meet these limits, if these limits are more protective than requirements of this permit, the costs and non-water quality impacts of setting those limits, and any other relevant information commenters believe would be helpful in setting these limits.

4.3.3 Requirements Meet the BPT and BAT Economic Tests Set Forth In the CWA

There are different economic considerations under BPT, BCT and BAT. EPA finds that the limits in this permit meet the BPT and BAT economic tests. Because the types of controls under consideration minimize toxic, nonconventional, and conventional pollutants, conventional pollutants are controlled by the same practices that control toxic and nonconventional pollutants. Hence, EPA is evaluating effluent limits using a BPT and a BAT standard, but since conventional pollutants will also be adequately controlled by these same effluent limits for which EPA applied the BPT and BAT tests, EPA has determined that it is not necessary to conduct BCT economic tests.

Under BPT, EPA has determined that the requirements of this permit are economically practicable. To make this determination, EPA has considered the reasonableness of the relationship between the costs of application of technology in relation to the effluent reduction benefit derived. CWA section 301(b)(1)(B); 40 CFR 125.3(d)(1). EPA has examined the cost of these requirements and estimated the incremental per vessel annual costs of these permit requirements ranges from $ 0.29 to $25.99. This assumes that many of the BMPs required in this permit are already being practiced by recreational vessel owners as good marine practice and hence will have no or negligible incremental cost. At the same time, EPA expects the permit requirements to reduce the risk of invasive species spread, to reduce nutrient loading, and to minimize discharges of other pollutants associated with recreational vessels such as copper and oil, including oily mixtures.

EPA has determined that the requirements of this permit are economically achievable. In determining "economic achievability" under BAT, EPA has considered whether the costs of the controls can reasonably be borne by the industry. EPA typically evaluates "closures," whereby the costs of requirements are evaluated to see whether they would cause a facility to go out of business. A closure analysis would not be particularly applicable to recreational vessels, as recreational boating is different than industrial activity to earn a profit. Another way EPA views economic achievability is whether the costs can reasonably be borne by the industry (in this case, recreational boaters). Therefore, EPA has analyzed whether the costs can be reasonably be borne by the dischargers affected and found the costs, $0.29 to $25.99/year are reasonable and economically achievable. Furthermore, costs from this permit represent a small fraction of total ownership costs of recreational vessels. Including requirements for the recreational vessel and uninspected passenger vessel universe, the draft economic impact analysis indicates that the effluent limits in the permit should cost approximately $88.2 million nationally, the costs of which are divided among an estimated 13 million active recreational boaters. Based on this analysis, EPA concludes that the BAT limits proposed in this permit are unlikely to result in a substantial economic impact on all businesses and in particular, small businesses. Hence, this analysis indicates that the BAT limits are economically achievable. The economic analysis is available on EPA's webpage at www.epa.gov/npdes/ and in the record for these permits.

4.4 Other Relevant Statutes and Regulations

These effluent limits contain the requirement that incidental to the normal operation of a vessel comply with other applicable statutes and regulations addressing such discharges.

Reliance on other statutes and regulations to develop the permit requirements is a reasonable exercise of BPJ. The statutes and regulations have gone through an extensive process of evaluation and analysis by Federal agencies and international organizations that have considerable expertise in vessel management. Furthermore, many of the BMPs considered by EPA were covered by these other authorities. These statutes and regulations are currently being implemented and therefore are technologically and economically practicable (BPT) and achievable (BAT) in light of best marine practice. Rather than reiterate the provisions of these statutes and regulations in their entirety for the proposed permit's general effluent limits, EPA has determined, based on BPJ, that incorporation of these statutes and regulations by reference is reasonable. EPA is specifically requesting comment on whether EPA should consider adding additional authorities applicable to discharges incidental to the normal operation of a vessel into waters of the U.S.

Some of the statutes and regulations that were examined to inform the Agency's BPJ decision and which are incorporated by reference into the provisions of the proposed permit follow. These summaries are not meant to be legally binding or comprehensive reiterations; rather, they are short summaries designed to inform owners/operators of the existence of these authorities. The actual statutes and regulations implementing these authorities are the legally binding conditions for the permit.

Clean Water Act §311 and 40 CFR Part 110

Clean Water Act section 311, Oil and Hazardous Substances Liability Act, states that it is the United States' policy that there should be no discharges of oil or hazardous substances into waters of the U.S., adjoining shorelines, and certain specified areas, except where permitted under Federal regulations (e.g., the NPDES program). As such, the Act prohibits the discharge of oil or hazardous substances into these areas in such quantities as may be harmful. Further, the Act states that the President shall, by regulation, determine those quantities of oil and any hazardous substances that may be harmful if discharged.

EPA has defined oil quantities that "may be harmful" as those that violate applicable water quality standards or "cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoin shorelines." 40 CFR 110.3. At 40 CFR 110.1, sheen is defined as an iridescent appearance on the surface of the water.

In the proposed permit, oil, including oily mixtures, may not be discharged in quantities that may be harmful. This goal has proven to be achievable using available treatment technologies such as oil-water separators or oil absorbent materials. For other discharges that can potentially be contaminated by oils but may not easily be collected and treated, the Agency requires the operator to observe the surface of the receiving water to determine whether a sheen is visible. This would indicate that oils are present at concentrations that may be harmful and discharge must cease.

USDA Federal Noxious Weed Act, 7 CFR Part 361

The Federal Noxious Weed Act makes it unlawful to import or move any listed noxious weed. This may impact boaters who may unknowingly transfer listed noxious weeds on their boat trailer, propeller, and other related areas. Additional information, as well as the list of

noxious weeds may be found on the USDA website at http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/index.shtml.

National Marine Sanctuaries Act, 16 U.S.C. §1431 *et seq.* and implementing regulations found at 15 CFR Part 922 and 50 CFR Part 404 (NMSA)

NMSA authorizes the designation and management of National Marine Sanctuaries to protect marine resources with conservation, education, historical, scientific, and other special qualities. Additional restrictions and requirements may be imposed on recreational boaters who boat in and around National Marine Sanctuaries. For more information, please see the NOAA National Marine Sanctuaries Program website at http://sanctuaries.noaa.gov/welcome.html.

Coast Guard Voluntary Guidelines on Recreational Activities to Control the Spread of Zebra Mussels and Other Aquatic Nuisance Species, 65 FR 82447

The permit encourages, but does not require, you to follow the Coast Guard Voluntary Guidelines on Recreational Activities to Control the Spread of Zebra mussels and Other Aquatic Nuisance Species published on April 13, 2000. These Guidelines provide additional information, including activity-specific recommendations to prevent the spread of aquatic nuisance species. While most of these recommendations have been incorporated into this permit, this is a good source of additional information and description for recreational boaters. These Guidelines can be found on the EPA website at http://www.epa.gov/fedrgstr/EPA-GENERAL/2000/April/Day-13/g9248.htm or through the Federal Register at http://www.gpoaccess.gov/fr/index.html.

4.5 BMPs for Controlling Aquatic Nuisance Species

The transportation of organisms between waterbodies is a serious threat to ecosystem health and integrity. These species are commonly called invasive, introduced, non-native, nuisance, exotic, harmful, or nonindigenous. Aquatic nuisance species (ANS) are non-native species introduced to a new waterbody that establish reproductive populations in the new water and by doing so, harm the ecosystem. There is no clear way to predict which introduced, non-native species will become ANS by establishing harmful populations. For this reason, the proposed requirements are written in terms of "visible living organisms," without requiring species identification or a determination of whether it may establish itself as harmful. ANS are transported between waterbodies by vessel hulls, bilges, live wells, bait buckets, and fishing gear. Any equipment or area of the vessel that holds or touches water is capable of carrying ANS, or the larvae, seeds, or other life stages capable of reproduction. ANS can be transferred through sediment as well. ANS harm the environment by introducing disease, causing overpopulation and crowding, and can outcompete local, native species for food sources. This can disrupt the balance of the local ecosystem harming fish and shellfish stocks, causing plant overgrowth that affects boating and swimming, and affecting water quality which impacts all recreational uses of the water. Threatened or Endangered Species may be especially vulnerable to the impacts of introduced species because these populations are already under stress. Invasive species are estimated to cost the United States' economy hundreds of millions to billions of dollars every year (see the economic analysis prepared for the proposed permit for greater detail).

One of the most well-known examples of ANS is the Zebra mussel. Zebra mussels are native to Eurasia, near the Black and Caspian Seas, and were first discovered in U.S. waters in

1988. Populations of Zebra mussels were established in the Great Lakes and are now found throughout most of the Eastern United States. A related species, called the Quagga Mussel, has been found in the same areas as the Zebra mussel, plus has established populations in the Boulder Basin of Lake Mead in Nevada, Arizona, and California. In addition, Zebra and Quagga Mussels have been found on trailered boats transported to many other, uninfected states, highlighting the ease with which they can be transplanted from an infected waterbody to a clean one. These boats are periodically intercepted by local law enforcement officers conducting inspections and education sessions at local boat launches. Zebra and Quagga Mussels are easily spread from waterbody to waterbody because the adults can live for weeks out of water. They can attach to any hard surface, such as industrial pipes and the shells of other, native mussels, crustaceans, and even turtles. They are filter feeders, removing algae from the water column that other, native species depend on as a food source. (100th Meridian Initiative, www.100thmeridian.org, USGS Nonindigenous Aquatic Species Program, http://nas.er.usgs.gov/taxgroup/mollusks/zebramussel/).

Many states, such as Florida, Minnesota, and Arizona have established Invasive Species Councils or Task Forces to examine in detail the risks posed by invasive species and to assess the suitability and effectiveness of current programs in addressing those risks. Where relevant, these recommendations were referenced to inform the decision making for this permit. Much of the information used by the individual states comes from the 100th Meridian Project and the Stop Aquatic Hitchhikers Program. For more information on these programs, please see the 100th Meridian Project's website at http://100thmeridian.org/ and Protect Your Waters' website at http://www.protectyourwaters.net/.

Several effluent limits in this permit are specifically designed to minimize the spread of invasive species between watersheds. This proposed permit requires minimization of the discharge and transfer of visible organisms, with the exception that baitfish may be discarded overboard after use if the bait fish came from that waterbody. Bait that was purchased onshore or taken from a different waterbody may be used for fishing purposes, but unused or extra bait taken from a different waterbody may not be discarded overboard. Bait, whether dead or alive, may carry diseases that can infect other organisms in the waterbody when the organisms are discarded. The proposed permit contains numerous BMPs to ensure that boat owners or operators meet this standard. Most of these BMPs relate to adequately cleaning and inspecting the vessel to minimize the transport of living organisms between waters. For example, simply inspecting the vessel and removing any visible living organisms can prevent these organisms from being released into other waters. Additional BMPs focus on preventing the introduction of potentially invasive species as leftover bait. For example, draining livewells and bait buckets prevents carrying bait (which may itself be potentially invasive) to other waters, and helps to mitigate the spread of environmentally and economically devastating pathogens such as viral hemorrhagic septicemia (VHS). This permit also requires safe handling and disposal of extra or unused bait to prevent its release to waters subject to this permit, which helps prevent the introduction of non-native species and diseases. These relatively simple measures can contribute significantly to preventing rapid spread of ANS, particularly when implemented by all recreational boaters.

As previously mentioned, this permit requires regular inspection and cleaning of all areas of the vessel and trailer that may harbor water, sediment, vegetation, or organisms, when the

vessel is removed from the water. Regular cleaning and inspection will prevent both the attachment of organisms to vessels and the transportation of vegetation and organisms, including eggs, larva, and other life stages capable of reproduction, from waterbody to waterbody. Additional information on ANS and vessel cleaning, including specific pictures, diagrams, and step-by-step cleaning information, can be found on www.protectyourwaters.net, the website for the "Stop Aquatic Hitchhikers" campaign, sponsored by the National Aquatic Nuisance Species Task Force, the U.S. Fish and Wildlife Service, and the U.S. Coast Guard and the 100th Meridian Project at http://100thmeridian.org/.

The following cleaning instructions are EPA-recommended guidelines to help ensure that you have met the ANS requirements of the permit. To thoroughly clean your vessel, start by visually inspecting every surface that comes in contact with the water, including the vessel hull, trailer, bilge, anchor, lines, and all other recreational equipment including SCUBA gear, water skis, rafts, personal flotation devices. Remove all sediment, attached organisms, and other residues with tap water, if it is available, and a soft cloth. Drain all water from everywhere in and on the vessel, including bilges, live wells, bait buckets. If tap water is not available, use water from the waterbody from which you just removed your boat.

When leaving waters that are highly affected by an outbreak of invasive species, wring out or wipe down all wet surfaces. Some items, such as rope coils, may need to be air dried for several days. A five-day drying time is preferable when moving a boat from one waterbody to another. For increased effectiveness, clean and dry anything that came into contact with the waterbody you are leaving using one of the following methods, when feasible:

- Use hot water (at least 104°F) or salt water.
- If hot water is not available, spray equipment with high pressure water.
- For hard to wash equipment, such as equipment that cannot be exposed to hot water, clean it by placing it in a 100% vinegar solution.
- If a vinegar solution cannot be used, prepare a 1% table salt solution according to the chart below and place equipment in it for 24 hours.

Gallons of Water	Cups of Salt
5	2/3
10	1 ¼
25	3
50	6 ¼
100	12 2/3

If you use these methods, take all reasonable precautions that the runoff from cleaning does not immediately reenter the water you are leaving or immediately enter storm drains.

4.6 Oil, Including Oily Mixtures and Fuel

Oil and other engine discharges have the potential to cause significant environmental harm. These discharges pollute waterways, poison fish and wildlife, and are difficult and costly to clean

up. Oil floats on water, blanketing the water surface and blocking light from reaching plants below. Plants cannot live without light because it is necessary to conduct photosynthesis. Oil coats shorelines, making them uninhabitable to animals and birds. Animals and birds that become covered in oil may ingest it through normal grooming behavior, causing them to become ill and die. Additionally, oil reduces the insulating properties of feathers and fur by matting it down and eliminating the air pockets that cause the insulating effect. Without this insulation, the animals can not maintain a normal body temperature and often die. This type of pollution is extremely difficult to clean up and remediate, which makes prevention very important. While oil spills from individual recreational vessels are very small, the cumulative effects of these very small spills can have negative impacts on the marine environment if numerous vessels are concentrated in a given area. (NOAA, 2008) One quart of oil can cause an oil slick two acres in size, and one gallon of oil can contaminate one million gallons of water (Great Lakes Commission, 1995). In order to prevent pollution from the discharge of oil including oily mixtures in discharges incidental to the normal operation of a vessel, the proposed permit requires simple preventative measures to prevent, capture, and clean up spills and leaks from fueling operations, engine and other maintenance, and additional normal vessel operations.

Discharges made in compliance with an NPDES permit are not included in the definition of "discharge" found in 33. U.S.C. 1321(b)(3) and are therefore not subject to section 311 of the CWA, which regulates the discharge of oil and hazardous substances (33 U.S.C. 1321). However, the proposed general permit adopts the requirements found in section 311, and in some cases, is more specific than section 311. Hence, when incorporated into the proposed permit, the requirements of CWA section 311 are required by this permit.

The proposed permit requirements apply to discharges of oil, fuel, other petrochemicals, and oily mixtures, and attempt to further minimize oil discharges in U.S. waters. The effluent limits under fuel management, engine and oil control, and the general requirements should all minimize the discharge of oil and oily materials by specifying techniques and behaviors that, when followed, will reduce the discharge of these materials. For example, knowing the capacity of fuel tanks will reduce the chance of vessel owners or operators accidentally overfilling their vessel fuel tank, contaminated discharges from the vessel and potentially harming the aquatic environment. When fueling in the water, using oil absorbent materials or other appropriate devices to catch drops from vent overflows and fuel tanks will perform the same function. For boats that are trailered, filling fuel tanks on shore will reduce the likelihood that fuel is discharged into waterbodies. The discharge of used or spent oil no longer being used for its intended purpose is not eligible for coverage under this permit.

4.7 Nutrients

Nutrients, such as nitrogen and phosphorus, naturally occur in the environment and are essential for plant and animal growth and development. However, the addition of large amounts of nutrients can degrade the water quality by causing or contributing to eutrophication. Eutrophication is the excess growth of algae, commonly known as an algae bloom. It can block light from reaching plants below the water's surface and depletes the level of oxygen found in the water, both of which lead to the die-off of plants, fish, and other aquatic organisms.

By requiring the use of phosphate-free soaps, keeping food waste out of discharges, and potentially reducing the discharge of graywater, the proposed permit is designed to reduce external nutrient loading to aquatic ecosystems. Phosphate-free soaps are commonly available at retailers nationwide. The discharge of food waste into waters covered by this permit is currently prohibited by existing U.S. law: this permit requires that food waste be prevented from entering any waste stream. Minimizing graywater can easily be accomplished by reducing shower or sink use when traversing select waters. Though easily accomplished, these requirements could result in significant environmental improvement for waters that have too much phosphorus or in waters where there are large numbers of boaters.

4.8 Toxics and Other Pollutants with Toxic Effects

In small amounts, metals are essential elements required by both plants and animals for the proper function of enzymes. However, in greater amounts, metals are toxic to organisms. Of concern in the proposed permit are metals used to inhibit the attachment and growth of organisms on vessel hulls. The most commonly used biocide in anti-foulant coatings is copper. In high concentrations, copper can inhibit photosynthesis in plants and interfere with enzyme function in both plants and animals. The proposed permit requires preventative measures to reduce the possibility of copper release during vessel cleaning and maintenance.

A second metal, tributyltin (TBT), was historically applied to vessel hulls, but due to its acute toxicity, there is a zero discharge standard. TBT causes deformities in marine life, including deformities that disrupt or prevent reproduction. It is also stable and persistent, resisting natural degradation in water. EPA determined that it is cost effective and appropriately environmentally protective to prohibit the discharge of TBT for vessels covered by this permit since TBT discharges are currently banned in most countries in the world. Hence, a TBT zero-discharge standard is feasible.

The proposed permit discourages the use of an anti-fouling hull coating unless necessary for the vessel. With regular cleaning, most vessels do not require these materials to keep the hull from fouling. If a vessel does have TBT applied to the hull, it would be required to be coated with a second material to prevent the leaching of TBT into the surrounding water.

Metals and other toxins can also be introduced to the water from improper disposal of used batteries, antifreeze, paint, out-of-date flares, and other similar materials. The proposed permit prohibits the discharge of these materials to waters subject to this permit.

4.9 Other Pollutants Including Conventional and Non-Conventional Pollutants

Additional pollutants discharged from vessels cause or contribute to other types of pollution, among them total suspended solids (TSS), biochemical oxygen demand (BOD), and pathogens.

TSS is a measure of the amount of suspended particles in water. TSS causes water to appear opaque or cloudy. It may kill or injure fish, shellfish, and other aquatic organisms by causing abrasions and clogging gills. TSS can screen out light and contribute to the development of noxious conditions through oxygen depletion. It impacts organisms that must see their prey in

order to hunt and eat. Of the vessel discharges addressed by the proposed permit, TSS is primarily affected by graywater, deck cleaning, and hull cleaning.

BOD is a qualitative test that measures the rate at which organisms in a body of water use oxygen. Higher nutrient levels can result in higher BOD. This is a result of higher productivity in waters that are nutrient enriched. When these organisms die, the decomposition of phytoplankton and other organisms results in increased oxygen depletion. By limiting nutrient discharges, the nutrient loading reductions realized by this permit may result in lower BOD for some waters. Furthermore, the decomposition of fish waste can also deplete oxygen levels in harbors and other sheltered areas. The proposed permit requires that fish waste, such as the viscera left after cleaning and filleting a whole fish, not be discarded in harbor or marina waters, which may decrease BOD levels in these waters.

Pathogens are small biological agents, such as bacteria and viruses that cause disease in plant and animal populations. Recreational vessels influence the spread of pathogens by contributing to the spread of ANS and through direct discharges such as from graywater and sewage. Preventing the spread of ANS and reducing graywater discharges will reduce the likelihood of harmful pathogens being released into waters.

One of the most visible forms of water pollution is trash or garbage. Some types of trash can be seen littering the shoreline and floating in open water. Inorganic trash can entangle birds and other wildlife and can sicken or kill if accidentally ingested by fish or birds mistaking it for food. It can also potentially leach harmful substances into the water. Furthermore, certain kinds of trash can become tangled in boat propellers, which poses a hazard for fishing, swimming, skiing, and other recreational activities. Lastly organic trash, namely from food waste, can add nutrients to the water and its decomposition can increase a water's BOD, which in many cases, decreases the water quality of the waterbody. These impacts significantly reduce the quality of waters for recreational activities and create both environmental and economic harm.

Under this proposed permit, garbage or trash must be prevented from entering the waste stream. The trash management measures required by this permit will assist vessel operators in assuring that no trash or garbage enters any waste stream before being discharged from the vessel. These BMPs include using a sturdy, closed trash can, or other waste receptacle onboard and securing loose objects on the vessel deck.

4.10 Requesting Additional Comment

EPA expressly solicits comment on whether the controls in this permit represent the BPT, BCT and BAT levels of control. If commenters believe that the proposed controls do not, or that other controls would better represent the BPT, BCT or BAT levels of control, EPA requests that comments explicitly provide data and information about the applicability of such controls to all types of commercial vessels in all weather/operating situations, and the costs and non-water quality environmental impacts, including energy impacts, of such options.

5. ENCOURAGED BEST MANAGEMENT PRACTICES

There are several encouraged BMPs listed in Part 3 of the permit. Vessel owners/operators should review these BMPs and implement those that they deem reasonable and appropriate for their vessels. These BMPs concern graywater discharges, management of waste and recycling, and vessel cleaning, maintenance, and repair. Though these BMPs are not mandatory for this permit, many are appropriate for vessel owner/operators to implement. EPA is specifically requesting comment on whether any of these BMPs should be made mandatory under this permit or completely removed from this 'Encouraged Best Management Practices' section.

6. ADDITIONAL PERMIT REQUIREMENTS

6.1 CONTINUATION OF THIS PERMIT

If the permit is not reissued or replaced prior to its expiration date, existing dischargers will continue to be covered under an administrative continuance, in accordance with section 558(c) of the APA and 40 CFR 122.6. The current permit will remain in effect for discharges that were covered prior to expiration until EPA acts on a permit renewal. If coverage is provided to a permittee prior to the expiration date of the permit, the permittee is automatically covered by the permit until the earliest of: (1) the authorization for coverage under a reissuance or replacement of this permit which does not require a submittal of an NOI; (2) issuance or denial of an individual permit for the permittee's discharges; or (3) formal permit decision by EPA not to reissue the general permit, at which time EPA will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or an individual permit.

EPA has followed this approach for permittees covered under other EPA-issued general permits in order to extend coverage for these permittees under a permit vehicle until re-issuance of the permit. For more information, see 40 CFR 122.6.

6.2 ALTERNATIVE PERMITS

Pursuant to 40 CFR 122.28(b)(3), EPA may require a discharger to apply for and obtain an individual permit instead of obtaining coverage under the proposed general permit. These regulations also provide that any interested party may petition EPA to take such an action. The issuance of an individual permit will be in accordance with 40 CFR Part 124 and provide for public comment and appeal of any final permit decision. The circumstances in which such an action would be taken are set forth at 40 CFR 122.28(b)(3).

After issuance of the proposed permit, the permittee may request to be excluded from such coverage by applying for an individual permit. In such a case, the permittee must submit an individual permit application, no later than 90 days after the date of publication of final permit in the FR, in accordance with 40 CFR 122.28(b)(3)(iii), along with a statement of reasons supporting the request, to the applicable EPA Regional Office listed in Part 7 of this proposed

permit. The request may be granted by issuance of an individual permit or authorization of coverage under an alternative general permit if the reasons are adequate to support the request. Under this scenario, if an individual permit is issued, or authorization to discharge under an alternative NPDES permit is granted, your authorization to discharge under this permit is automatically terminated under 40 CFR 122.28(b)(3)(iv) on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit.

6.3 Duty To Provide Information

Pursuant to CWA sections 308 and 402(a)(2), and 40 CFR 122.43(a), all permittees would be required under the proposed permit to provide any information requested by the Director within a reasonable timeframe following the request. The Director would be authorized to request any information of the permittee that is required to determine whether cause exists for modifying, revoking and reissuing, or terminating the permittee's coverage under this proposed permit. In addition, the Director would be authorized to request any information required to determine permittee's compliance with the permit. This requirement will reduce paperwork for both the permittee and EPA by requiring the submission of information only upon request by the Director.

6.4 Inspection and Entry

Pursuant to CWA sections 308 and 402(a)(2), and 40 CFR 122.43(a), for purposes of enforcing the proposed permit, among other things, the permit would require the permittee to allow EPA or an authorized representative to inspect any vessel, equipment, practices, or operations covered by any requirement of this permit, as well as to sample or monitor any substances or parameters at any location. Authorized representatives of the EPA include the U.S. Coast Guard, an authorized contractor representing the Administrator or Director, or appropriate state agencies. Any Authorized Representative should present appropriate credentials to the vessel owner or operator before inspecting or entering a vessel. The ability to authorize representatives of other appropriate agencies to enforce the permit will increase enforcement by increasing the number of enforcement officers. The ability to authorize other agencies to enforce this permit conditions is a key component of the enforcement plan. The authority granted under this section does not limit or replace any EPA authority granted under Section 308 of the CWA, including authority to enter, access, inspect, sample, monitor, and obtain information to verify compliance with the CWA.

6.5 Water Quality Based Effluent Limitations

This proposed permit includes water quality-based effluent limits (WQBELs) to ensure that discharges are controlled as necessary to meet applicable water quality standards. The provisions of Part 4.10 of the proposed permit constitute the WQBELs for this permit, and supplement the permit's technology-based effluent limits in Part 2. Where the implementation of the technology-based requirements in this proposed permit are not sufficient to protect the

applicable receiving water's water quality standards, the permittee may be subject to further WQBELs. Prior to or after permit issuance and authorization to discharge, EPA may require additional WQBELs on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if in information in the NOI, required reports, or from other sources indicates that, after meeting the technology-based limits in Part 2, the facility is causing or contributing to an excursion above water quality standards[5].

Part 4.10 includes the permit limits that ensure that discharges are controlled as necessary to achieve water quality standards, consistent with 40 CFR 122.44(d)(1). EPA expects that vessels that achieve the permit's technology-based limits through the careful implementation of effective pollution control measures and BMPs are likely to already be controlling their vessel discharges to a degree that would make additional water quality-based controls unnecessary. However, to ensure that this is the case, the proposed permit contains additional conditions, which, in combination with the BAT/BPT/BCT limits in this permit, EPA expects to be as stringent as necessary to achieve water quality standards. EPA specifically requests comment on any supplemental or alternative approaches that will ensure that the unique universe of vessels will be controlled as necessary to achieve water quality standards.

EPA notes that the WQBELs included in this permit are non-numeric. EPA relies on a narrative expression of the need to control discharges as necessary to meet applicable water quality standards, and to employ additional controls where necessary to be consistent with applicable WLAs in an approved or established TMDL or to comply with a State or Tribe's antidegradation policies. This is a reasonable approach for this permit because EPA has determined that it is infeasible to calculate numeric water quality based effluent limits for vessels at this time. EPA reached this determination primarily based on the mobile nature of recreational vessels. With thousands of water bodies across the country, and the potential for any vessel to discharge into almost any water, it is infeasible for EPA to calculate numeric limits for each vessel for each water body at this time. Furthermore, as explained in Part 4.1.4 of this fact sheet, establishing numeric water quality based limits poses many of the same challenges that EPA faced in setting technology-based discharge limits.

As mentioned, this proposed permit requires that each permittee must control its discharge as necessary to meet applicable water quality standards. EPA expects that compliance with the other conditions in this permit (e.g., the technology-based limits) will result in discharges that are controlled as necessary to meet applicable water quality standards. If the permittee becomes aware, or EPA determines, that the discharge causes or contributes to a standards exceedance, corrective actions and EPA notification are required. In addition, at any time EPA may impose additional, more stringent WQBELs on a site-specific basis, or require an individual permit, if information suggests that the discharge is not controlled as necessary to meet applicable water quality standards. The language in Part 4.10 affirms the permittee's requirement to control its discharges as stringently as necessary to meet applicable water quality standards. EPA reserves the authority to require more stringent requirements where necessary to meet applicable standards, or, alternatively, to require the permittee to apply for an individual permit.

[5] In using the phrase "excursion above," the permit tracks the language in 40 CFR 122.44(d)(1). There are some instances, however, where pollutants would cause nonattainment of the applicable criterion by lowering the water quality *below* the criterion, as with dissolved oxygen. In such situations, such lowering would be considered an "excursion above" within the meaning of the proposed permit condition.

Part 4.10.1 of the permit includes a definition for "impaired waters" so that the scope of the requirements in that section can be more readily understood by permittees. Part 4.10.1 defines "impaired waters" as those which have been identified by a State or EPA pursuant to Section 303(d) of the Clean Water Act as not meeting applicable State water quality standards. This may include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established. The proposed permit outlines additional steps and precautions that must be taken when discharging pollutants that have the reasonable potential to cause or contribute to an impairment of those specified waters.

Part 4.10.1 also reiterates that if a vessel discharges to an impaired water without an EPA-approved or established TMDL, EPA can provide the permittee with additional requirements with which to comply. EPA can also impose additional requirements on discharges that are not directly to an impaired water if they cause or contribute to an exceedance in another water body affected by the discharge.

Part 4.10.1 further outlines the process for imposing additional requirements on permittees when they discharge into waters that have a waste load allocation (WLA) assigned to vessels. During the term of the permit, EPA may inform the owner/operator if such a WLA has been established that applies to their vessel discharges. In addition to complying with the conditions of the WLA, EPA will also assess whether any more stringent requirements are necessary to comply with the WLA, whether compliance with the permit's existing requirements is sufficient to comply with the WLA, or whether the owner/operator must apply for individual permit coverage (see part 4.2).

EPA believes that the proposed permit's provisions are consistent with EPA's antidegradation policy. For Tier 2 and/or Tier 2.5 waters, EPA does not expect, based on this permit's generally applicable technology-based effluent limits, that individual discharges authorized under this permit will significantly lower water quality in those waters, and thus trigger Tier 2 review. Furthermore, EPA does not believe that a vessel covered under this permit should be considered a new or increased point source discharge, the typical trigger for antidegradation review (See EPA Water Quality Standards Handbook, p. 4-10, available at: http://www.epa.gov/waterscience/standards/handbook/). Unlike stationary point sources, vessels are continuously entering and exiting specific water bodies. Any time a vessel enters a water body it may temporarily increase the discharges to that water body, but this temporary increase will cease when the vessel leaves the water body. On any given day, there may be more vessels entering a water body than leaving it or vice versa, so even though there may be a temporary increase in discharges from an individual vessels, it would not be administratively feasible to determine whether the net change in temporary discharges on that day is positive or negative. Therefore, vessels covered by this permit are not considered new or increased point source discharges to a water body such that they would trigger antidegradation review.

6.6 OCEAN DISCHARGE CRITERIA

The Ocean Discharge Criteria (40 CFR Part 125, Subpart M) establish regulations for issuance of NPDES permits for discharges into the territorial seas, the contiguous zone and the ocean as these terms are defined in the CWA. The proposed permit would cover recreational

vessels operating as a means of transportation when within the territorial seas. It thus is subject to the Ocean Discharge Criteria regulation with respect to discharges incidental to the normal operation of such vessels into the territorial seas. For purposes of this evaluation, the territorial seas means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles (33 U.S.C. 1362(8)).

Under 40 CFR 125.123(a), if EPA, on the basis of available information determines prior to permit issuance that the discharges authorized will not cause unreasonable degradation of the marine environment, EPA may issue an NPDES permit, which may be conditioned as necessary to assure that the discharge will not cause unreasonable degradation. The regulations (40 CFR 125.121(e)) define unreasonable degradation of the marine environment as meaning:

1. Significant adverse changes in ecosystem diversity, productivity and stability of the biological community within the area of discharge and surrounding biological communities,
2. Threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms, or
3. Loss of aesthetic, recreational, scientific or economic values which is unreasonable in relation to the benefit derived from the discharge.

The Ocean Discharge Criteria require that a number of factors be considered in the determination of unreasonable degradation. These factors include the amount and nature of the pollutants, the potential transport of the pollutants, the character and uses of the receiving water and its biological communities, the existence of special aquatic sites (including parks, refuges, etc.), any applicable requirements of an approved Coastal Zone Management plan, and potential impacts on water quality, ecological health and human health and any other factors the Administrator deems appropriate. 40 CFR 125.122(a). In addition, the Ocean Discharge Criteria establish a presumption that discharges in compliance with State Water Quality Standards will not cause unreasonable degradation with respect to the pollutants subject to those standards. 40 CFR 125.122(b). After consideration of the Ocean Discharge Criteria, EPA has determined that the controlled discharges that would be authorized by the draft NPDES permit into the territorial seas in accordance with permit requirements will not cause unreasonable degradation of the receiving waters.

The discharges that would be authorized by the proposed permit are limited to those discharges incidental to the normal operation a recreational vessel and are typically of limited volumes. In addition, because recreational vessels in the territorial seas are likely to be underway as part of their voyage, any discharges incidental to their normal operation would typically be well-mixed upon discharge before they are subject to further dispersal and transport beyond the area of the vessel's operation.

The proposed recreational vessel permit contains a number of best management practices to further mitigate the potential impacts on all freshwater and marine environments under Part 2 of the permit. The permit also contains numerous recommended practices under Part 3 that, when followed, will further mitigate any impacts from recreational boaters to the territorial sea.

EPA believes that these controls would prevent unreasonable degradation of the marine environment.

The Agency also has taken into account the biological communities and receiving waters that would be exposed to the discharges incidental to the normal operation of vessels to be covered by the proposed permit. This consideration has necessarily been complicated by the fact that vessels have the potential to traverse vast distances in the territorial sea while discharging. At the time of notice of this draft permit, the Agency also is undertaking consultation with respect to Essential Fish Habitat in accordance with 50 CFR Part 600 and endangered species and their critical habitat in accordance with Section 7 of the Endangered Species Act, and also will request consistency review for the proposed permit in accordance with section 307(c) of the Coastal Zone Management Act. Any final permit may include additional terms and conditions as are considered necessary following completion of such consultations and review.

Finally, this permit applies to discharges to the outer limit of the three mile territorial sea. State water quality standards also apply within these waters and the draft permit thus would contain effluent limitations as necessary to meet those applicable water quality standards (Part 4.10). In addition, because the proposed permit would be issued by EPA, it is subject to State certification as to compliance with such standards under section 401 of the Clean Water Act and we will be initiating such certification process with the States. Under 40 CFR 125.122(b), discharges in compliance with State Water Quality Standards shall be presumed not to cause unreasonable degradation of the marine environment with respect to specific pollutants or conditions specified in such standards.

In light of the foregoing, EPA has determined that issuance of the draft permit would not cause:

1. Significant adverse changes in ecosystem diversity, productivity and stability of the biological community within the area of discharge and surrounding biological communities,
2. Threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms, or
3. Loss of esthetic, recreational, scientific or economic values which is unreasonable in relation to the benefit derived from the discharge.

Accordingly, in accordance with 40 CFR 125.123(a), the Agency has determined that issuance of the draft permit with the controls proposed would not cause unreasonable degradation of the marine environment.

7. STATE OR TRIBAL REQUIREMENTS RESULTING FROM 401 CERTIFICATION

The final RGP will contain conditions provided by States and Tribes as part of CWA §401 certification. Those provisions are not included in the proposed RGP, but will be included in the final RGP. Any requirement stipulated by a State or Tribe in the final permit must be incorporated and implemented.

8. OTHER LEGAL REQUIREMENTS

8.1 COASTAL ZONE MANAGEMENT ACT (CZMA)

The Coastal Zone Management Act (CZMA) and its implementing regulations (15 CFR Part 930) require that any Federal licensed activity directly affecting the coastal zone of a state with an approved Coastal Zone Management Program (CZMP) be consistent with the enforceable policies of that approved program to the maximum extent practicable. Agency general permits that do not involve case-by-case or individualized determinations by the Agency are federal activities for the purposes of CZMA section 307(c)(1). For the final RGP, EPA will make a consistency determination regarding the enforceable policies in each approved state CZM program for the coastal zones including state waters where the RGP would authorize discharges. 15 CFR 930.31(d).

8.2 ENDANGERED SPECIES CONSULTATIONS

The Endangered Species Act (ESA) requires each Federal agency to ensure that the actions they authorize, fund, or carry out do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their designated critical habitats. EPA has been engaged in ongoing discussions with the Services regarding this proposed permit, starting in October, 2007. In accordance with the Services' regulations at 50 CFR Section 402.14(c), EPA submitted a formal consultation package on May 7, 2008. This package includes a biological evaluation, approximately 140 supporting documents in hard and electronic copies, and earlier draft versions of this proposed permit and fact sheet to support the evaluation.

8.3 ESSENTIAL FISH HABITAT CONSULTATIONS

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), established procedures to identify, conserve, and enhance essential fish habitat (EFH); that is, essential habitat for species regulated under a federal fisheries management plan (FMP). The act requires federal agencies to consult with National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA NMFS) on all actions, or proposed actions, authorized, funded, or undertaken by the agency that might adversely affect EFH. An EFH assessment must include (1) a description of the proposed action, (2) an analysis of the effects, (3) the federal agency's (in this case, EPA's) view of the effects of the action, and (4) mitigation, if necessary.

To satisfy these requirements EPA will prepare documentation to address the following:

- A description of the proposed actions including facilities, authorized activities, and monitoring requirements of the NPDES permit
- List of EFH of species and life history stages that may be affected by the project
- EPA's assessment of the effects of the action
- Mitigative actions being proposed
- Concluding EPA's EFH effects determination
- EPA will consult with NOAA Fisheries before issuance of this final permit.

8.4 OIL SPILL REQUIREMENTS

Section 311 of the CWA prohibits the discharge of hazardous substances in harmful quantities. Discharges incidental to the normal operation of a vessel specifically controlled by the permit are excluded from the provisions of Section 311. However, the proposed permit does not preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties for other unauthorized discharges of hazardous substances which are covered by Section 311 of the CWA.

8.5 Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the proposed RGP under the Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 *et seq*. The information collection requirements of the NPDES program have already been approved in previous submissions made for the NPDES permit program under the provisions of the CWA. EPA is currently evaluating whether the existing PRA approval adequately covers the paperwork requirements in RGP. EPA requests comments on these requirements. EPA will seek approval of the Office of Management and Budget for any paperwork requirements it determines are not adequately covered in an existing Information Collection Request (ICR) approval.

9. DEFINITIONS

Part 6 of the proposed permit provides permit-specific definitions of statutory, regulatory, and other terms important for understanding this proposed permit and its requirements. Any terms that are not listed in this definitions section have the meaning given to the terms by 40 CFR Part 122.2 (the definitions section of the NPDES regulations). To develop these definitions, EPA has, where possible, relied on existing definitions in other laws and regulations applicable to this universe of permittees in order to provide consistency with those laws and provide permittees with a familiar framework. For those definitions that were developed based on another source, the citation to that law or regulation is included in brackets after the definition. EPA seeks comment on the definitions section as a whole, and the specific definitions contained therein.

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