

Don't Equate Family Boating With Commercial Ballast Water

TODAY'S BOATS ARE CLEAN AND ADEQUATELY REGULATED

The Clean Water Act is the principal law governing pollution of the nation's surface waters. Originally enacted in 1948, it was revised by amendments in 1972 that gave the act its current shape. The 1972 legislation spelled out ambitious programs for water quality improvement that have since been expanded and are still being implemented by industries, municipalities and others. Today's recreational boats are modern and clean to meet regulations under Section 312 of the Clean Water Act, which established federal standards of performance for marine sanitation devices. Oil pollution (including fuel, oil, sludge, oil refuse, and oil mixed with wastes) is regulated by the Oil Pollution Act (OPA) and discharge is already prohibited. The OPA prohibits the discharge of oil, holding a boater responsible for the results of any oil spills and liable for removal costs and damages.

THE PROBLEM

In 1973, the Environmental Protection Agency (EPA) recognized that it would be costly and unnecessary for recreational boaters to be subjected to the complex Clean Water Act permitting requirements designed for large point source polluters (such as cruise ships, cargo ships, and supertankers). As a result, the EPA issued recreational boaters a common sense exemption. Recently, a federal judge ruled that the EPA did not technically have the authority to issue this exemption. In Sept. 2006, a U.S. District Court ruling nullified EPA regulation 40 CFR 122.3(a) under the Clean Water Act exempting effluent discharges incidental to the normal operation of vessels, including recreational boats. The ruling resulted from a lawsuit brought by environmentalists and states to halt the introduction in U.S. waters of invasive species through commercial ballast water. Included under the exemption for recreational boats are: Engine cooling water; Gray water; Bilge water; and Deck runoff. The court has directed the EPA to rewrite the regulation by September 8, 2008. The judge's decision was largely impacted by the issue of pollution from ballast water, the water carried by a vessel in its tank or cargo hold to ensure its stability. This is primarily a concern for large commercial boats with huge ballast tanks. We recognize that these ship discharges do present important environmental concerns that genuinely need to be addressed in some regulatory manner, and NMMA has supported previous measures to halt the introduction and spread of invasive species. However, we strongly believe that Congress never intended for a quirk in the law to force owners of recreational boats to obtain the same sorts of permits or inspections as cargo container ships, cruise ships or supertankers.

THE IMPACT

Unless Congressional action is taken soon, every recreational boat owner in the country – 13 million strong and growing - could be subjected to sweeping new regulations and an unprecedented permitting requirement system for normal discharges such as bilge water, deck runoff and engine cooling water. The EPA exemption for recreational boats recognizes that these discharges - incidental to the operation of these types of boats - are not "pollutants" under the Clean Water Act. This discharge is not sewage, it does not contain invasive species, and it does not include crude oil or raw fuel. If left unfixed, however, the section of the Clean Water Act that regulates ballast water on big ships would now apply to all recreational boats with or without ballast - from a small bass boat to a cabin cruiser.

The EPA and 50 states will have to figure out how to regulate more than 13 million recreational boats, likely through burdensome permitting, which may lead to:

- New yearly fees for family boaters
- Bureaucratic red tape—different in each state--associated with getting a permit
- An increased burden for the taxpayer because federal and state governments will be required to develop new government programs and entities to implement these regulations
- New enforcement regimes

The EPA recognized 34 years ago that there is no current bureaucratic infrastructure in place that can handle the permitting process (testing, enforcement, etc.) for recreational boats, nor any need for such requirements or structure.

THE SOLUTION

It just does not make sense to impose a complex permitting scheme on family boats. That is why EPA was right to provide a recreational boat exemption 34 years ago and why that exemption must be retained today. Congress can act quickly by simply making the exemption for recreational boats that had been in regulation part of the statutory language of the Clean Water Act. This involves a necessary, uncomplicated legislative fix that will keep boating simple, safe and fun for American families. For more information and to take action, please contact Dylan Jones (djones@nmma.org; or 202-737-9776).