



August 6, 2007

Benjamin H. Grumbles
Assistant Administrator for Water
c/o Water Docket
Environmental Protection Agency
Mailcode 2822T
1200 Pennsylvania, Ave., NW
Washington, D.C. 20460

VIA E-Mail [<mailto:ow-docket@epa.gov> attn: Docket ID No. OW-2007-0483]

RE: Development of Clean Water Act National Pollutant Discharge Elimination System Permits for Discharges Incidental to the Normal Operation of Vessels --Docket ID No. EPA-HQ-OW-2007-0483

Dear Mr. Grumbles:

The National Marine Manufacturers Association appreciates the opportunity to provide the Environment Protection Agency with these additional comments on a National Pollutant Discharge Elimination System (NPDES) permit program for all vessels including recreational boats under the Clean Water Act. As you know, on June 21, 2007 the Environmental Protection Agency (EPA) alerted the public that it is in the process of developing a new permit program to cover certain water discharges from all types of vessels, including cruise ships, container ships and even the smallest consumer-owned boats. In addition, EPA in this notice requested information from the public to allow it to devise this new permit system. 72 Fed. Reg. 24,241 (June 21, 2007). On July 2, 2007, NMMA filed comments with the EPA explaining the negative impact of such a permit program would have on recreational boaters and the many businesses that serve them. The additional comments submitted here are intended to provide more specific information in response to the questions and issues posed by EPA.

As a preliminary matter, it is important to point out that the quantity of bilge, gray water, engine cooling water and other normal incidental discharges generated by recreational boats pales in comparison with the enormous volumes of commercial ship ballast water and gray water discharged into U.S. waters. These small incidental discharges are, however, necessary for the safe and normal functioning of recreational boats. It also is important to remember, as noted by EPA, that regardless of what happens with this permit program there will remain a prohibition on the discharge of raw untreated sewage by boaters. 72 Fed. Reg. at 34,244 (citing Clean Water Act sections 312(a)-(m) which regulates sewage from vessels). In fact, many of the marine sanitation products sold today far exceed the current minimum standards for marine sanitation devices. In addition, a robust system is already in place to protect against and remediate any accidental discharges of oil from boats.

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The NPDES Program Was Designed for Industrial Facilities -- Applying it to Small Recreational Boats will Require a New Approach and Raises Many Novel Questions

As EPA observed in its notice, the focus of the NPDES program has been on the permitting of stationary municipal and industrial dischargers. EPA estimates that the current program covers 549,900 facilities, while NMMA estimates that there are nearly 18 million recreational boats in use nationwide.¹ The NPDES program has been designed to issue facility owners or operators a permit drafted specifically for their facility, or allow them to request coverage under an industry-specific general permit. In either case, EPA has supported these permits with extensive study of the relevant industry and its effluent, and has carefully developed effluent limits based, in part, on appropriate technological controls. Those effluent limits also must be sufficient to protect the receiving waters into which the permittee discharges. In the 46 states in which permitting functions have been delegated to state agencies, the Agency has very limited authority to ensure that, within these broad parameters, states adopt a coordinated and uniform approach to permitting. For example, federal general permits often are transformed into highly idiosyncratic state general permits, converting what might effectively have been an integrated “national” permit into an eclectic (and often much-delayed) collection of state-specific permits. Each of these attributes of the current NPDES program presents a challenge when applied to recreational boating.

For example, this complex program has never been applied to a mobile source that can operate in multiple bodies of water, and never to individual citizens as opposed to industrial, municipal or corporate permit holders. Recreational boats are owned and operated for fun by individuals and families, not large companies with experts on retainer. Commercial vessel owners can hire experts and staff to parse and comply with EPA’s complex rules, permit applications and reporting requirements. Boaters simply are not equipped to do the same, nor can they afford the large permit fees that permitting agencies around the country are increasingly adopting.

One consequence of the lack of expertise on the part of boaters will be the need for EPA and the states (whose programs receive federal support, of course) to engage the larger staffs necessary to inform 18 million individual boaters of a new permitting requirement, and then to provide those millions with the compliance assistance that will be required to ensure an effective program. It is no secret that state permitting agencies have faced serious resource constraints over the last decade. This inadequate staffing has resulted in unacceptable permitting backlogs, reduced inspection frequency, and cutbacks in “discretionary” compliance assistance. Given that the current program serves only about one-thirtieth of the estimated 18 million boaters in this country, it is difficult to predict with any confidence that these significant and necessary increases in staffing will occur.

¹ 72 Fed. Reg. at 34,244; and NMMA, *2005 Recreational Boating Statistical Abstract* at 3 (2006) (NMMA estimates that in 2005 there were 12.98 million registered boats and an additional 4.97 million non-registered boats for a total of 17.5 million boats in the United States).

In addition, the NPDES program has never been used to address the unique safety and space constraints inherent in a recreational vessel. EPA correctly notes in its notice that vessels must be able to quickly and efficiently move water from a vessel to ensure its safe operation. Indeed, safety standards and regulations require recreational vessels to provide for the safe and expeditious removal of water from a boat, the reliable operation of a boat's bilge pump system, and the reliable and safe operation of other water cooled equipment. *See e.g.*, American Boat and Yacht Council (ABYC) Standards: H-22-05, Electric Bilge Pumps; H-4-99, Cockpits and Scuppers; P-1-02, Installation of Exhaust Systems for Propulsion and Auxiliary Engines; and A-6-99, Refrigeration and Air Conditioning Equipment.

Moreover, any device added to a boat must be able to endure the harsh marine environment. This means that technology that is acceptable for use on land may not be readily transferable to the marine environment. When land-based technology has been adapted to a marine application, new materials and redesign have been necessary to marinize the equipment. Boat manufacturers and the U.S. Coast Guard have insisted in the past that EPA and state regulators allow for adequate testing whenever a land based technology has been proposed to be included in recreational boats. An excellent example of this dynamic was the proposal by the California Air Resources Board (CARB) and EPA the use of catalyst-based exhaust emission standards for sterndrive and inboard spark-ignited (gas) engines. Finally, any proposed device in a recreational vessel must be easy for a consumer to maintain and not require the expertise of a highly trained technician to ensure its safe or effective operation.

Clearly, a new NPDES permit program for recreational boats raises a number of novel questions and considerations. Below are just a few of the questions that come to mind when considering how a NPDES permit program would be applied to recreational boats:

- Will the new NPDES permit program apply to the boater or to each and every boat?
- Boaters often own more than one vessel -- will such boaters be required to have multiple permits for each boat?
- Boats are often owned by a family or group of friends who share in its operation. Who among that group will be the "owner/operator" required to obtain the NPDES permit?
- Boaters often rent boats by the hour, by the day or even for month long vacations. Who would be responsible for a permit in such a case? The owner? The rental concession operator? The individual renting the boat? All of them?
- How would boaters demonstrate that they had an NPDES permit?
- What kind of compliance assurance program will be established, including outreach to advise the large boating community of the new permitting program and assistance programs to educate boaters in the implementation of best management practices (BMPs) and in any reporting obligations imposed?

- Who would be responsible for enforcing the permits?
- Would the U.S. Coast Guard or state marine patrol be required to verify existence of a valid NPDES permit during vessel inspections? If so, how will EPA train these officers in recognizing a valid NPDES permit?
- How would a boater get clearance to boat in multi-state waters?
- Would EPA (or the states) require a formal request and subsequent lead time to allow for a cruise to cross over a state line?
- Will a NPDES boat permit be able to be extended at the same time a boat registration is issued? Will a boat dealer be able to process or assist a boater with the necessary paperwork at the point of sale?
- What procedures will be followed when a boater moves from one state to another?
- What procedures will be followed when a boat is sold? Is it anticipated that permitting will provide the absolute registry of boat ownership that neither the Coast Guard nor the states has been able to generate?
- Does a permit move with the boat or is the permit for the boater?
- How will EPA categorize boat discharges, by discharge type (requiring a permit for the type of discharge and therefore multiple permits per boat); by the vessel type (requiring a large variety of vessel categories to classify vessels); or by a combination which also involves a consideration of exactly what waters a boater is expected to use?
- Will EPA accept best management practices such as using biodegradable and non-toxic soaps and cleaners in lieu of complex and untested new technologies?
- How will EPA perform the required economic analyses for new technology-based standards, particularly where economic impact will be felt by individuals rather than businesses, and where “barriers to market entry” refer not to entry into an industrial sector, but the purchase and operation of an individual’s recreational boat?
- How will a boater demonstrate that a best practice was followed? Will boaters be required to sign sworn statements or otherwise certify they are compliant with a permit’s conditions?
- Will the new permit program contain any affirmative reporting provisions?
- Will EPA accept education about common best management practices by traditional boating safety educators in lieu of more specific equipment or reporting requirements?
- How will EPA and the states measure the economic impact or the economic feasibility of this new permit program? Will EPA use an analysis similar to the one used to determine the impact of regulations on small businesses for the impacts of this program on individual citizen boaters?

- Will EPA consider (and how will it compute) the NPDES permit program's chilling effect on boating economic activity in its economic analysis?
- How will EPA calculate the amount of time this will require of boaters, and how will this be reported under the Paperwork Reduction Act?
- Does EPA believe that the new permitting program will trigger any review under SBREFA?
- Any new vessel permit program will require significant increases in staff time by the EPA and the states – will EPA and the States have adequate budget resources and staff to meet the need?

These and other issues are challenges that EPA will need to resolve in a manner consistent with the statute. The number and magnitude of these challenges reflects the difficulty of attempting to fit a “round peg” program designed for industrial fixed location operations into the “square peg” of an itinerant family-owned and operated boat. While that is the task that the court has set for the Agency, we are frankly skeptical that each of these material mandates of the Clean Water Act can be implemented in this foreign context.

Equally important, we want to emphasize that the implementation of a permitting program that is *sensitive* to the unique circumstances and needs of the boating community is just as important as a *lawful* implementation to a successful response to the court's mandate. Because EPA has never had to address the boating community before, that community's unique circumstances are likely not well known to the Agency. Below we provide a description of several of the boating community's unique points of vulnerability, around which any permitting program must be crafted.

A New NPDES Boat Permit Program Will Have a Severe Impact on Recreational Boaters and the Boating Industry -- EPA's Response Must be Measured

In addition to the many questions and challenges listed above, the NMMA is concerned about the impact to the recreational boating industry if the NPDES permit program under the Clean Water Act is applied to the discharge of pollutants “incidental to the normal operation of vessels” It is NMMA's strongly held view that any new permitting program that requires individual boaters to obtain a permit and pay a fee to operate their boat in each and every state will have an immediate and profound chilling effect on recreational boating nationwide. NMMA understands that EPA has embarked upon this action only because a federal judge invalidated a long-standing common sense regulation that exempted the normal discharges of vessels, including recreational boats, from the requirement to have a Clean Water Act (CWA) permit and that this case is now under appeal to the U.S. Court of Appeals for the 9th Circuit. *Northwest Environmental Advocates et al. v. EPA* (No. CV 03-05760 SI); 72 Fed. Reg. at 34,243. In fact, NMMA has filed an amicus brief in support of EPA (attached). Because of the potential impact that this program will have on the boating economy and the participation of individual boaters in recreational boating activities, NMMA urges the EPA to take a measured approach in response to this recent litigation and

investigate fully all options to mitigate the impacts of the ruling on recreational boaters and boating.²

Even the Threat of a New Permit Program Has Economic Impacts on the Recreational Boating Industry and the Communities that Support Them

Recreational boating is a major consumer goods and services industry in the United States. Sales and services of recreational boating products including marine engines and accessories amounted to \$39.5 billion in 2005 alone. NMMA estimates that the recreational boating industry is responsible for 855,000 jobs of which 373,000 jobs are directly related to boat, marine engine and accessory manufacturing and 482,000 are indirect and related to boater trip spending. There are currently boat manufacturing facilities in forty-seven states and marinas in every state of the nation.

Moreover, even without a new permitting program, recreational marine engine and boat manufacturers are making large investments in new technology to implement the new emission requirements proposed on May 18, 2007 by EPA for boat engines and marine fuel systems. *Control of Emissions from Nonroad Spark-Ignition Engines and Equipment*, 72 Fed. Reg. 28,098 (proposed May 18, 2007). This EPA proposal will require outboard and personal watercraft engines to be certified to the same stringent exhaust emission standards as will be required by the California Air Resources Board (CARB) in 2008. For sterndrive and inboard engines, the EPA rule proposes catalyst-based exhaust emission standards that will apply beginning in 2009. In addition, boat builders will be required to change fuel systems to comply with new requirements for fuel hoses, plastic fuel tanks and to control emissions from the fuel tank vent. These fuel system changes will eliminate fuel vent spills. These investments come at a time when the economic difficulties in key boating states such as Michigan have combined with rising fuel prices and interest rates to cause a slowdown in the sales of and services for recreational boats.

In the context of this ongoing environmental investment, many U.S. marine manufacturers are concerned that any additional burden could tip the balance for potential boat buyers, and dissuade them from making an otherwise planned purchase. The potential for an intrusive, complex or costly boat permitting program is exactly the type of thing that will alarm both existing boaters and potential boat consumers, and cause economic activity to be postponed or

² The need to be sensitive to the vulnerabilities of recreational boating is underlined by the fact that two organizations who were original petitioners to EPA in 1999 have already made public statements that they did not intend to impact recreational vessels with their petition. Both the Pacific Coast Commercial Fishing Group and the Great Lakes Sportfishing Council reportedly have stated that they did not expect the plaintiffs' petition to result in a new permit scheme for recreational boats. *See e.g.*, Elizabeth Bluemink, Anchorage Daily News, *Boat Owners May Need Permits* (July 20, 2007) available at: <http://www.adn.com/news/environment/story/9147938p-9064381c.html>. Both of these organizations have stated that they filed a petition with EPA in order to address their concerns about the introduction of aquatic invasive species via ballast water from large commercial vessels and not to require controls or limits on normal incidental discharges from recreational boats. Given that these petitioners for the original rule change did not foresee or anticipate creation of a permit program reaching recreational boating, it is clear that EPA must proceed with care in determining how to regulate this non-industrial activity for the first time.

abandoned entirely with real world impacts on U.S. workers. In fact, just the potential for such a permitting program to be imposed in the future could have a negative effect on boating economic activity.

This concern is not hypothetical. NMMA members recall clearly the economic impact that they suffered as a result of the infamous and ill-considered luxury excise tax that Congress imposed on boat purchases in the 1990s. This supposed “tax on the wealthy” ended up putting many boat companies out of business, causing the loss of boat-related jobs, and hurting the communities where these boat plants and dealers were located. In light of this history, NMMA understandably has grave concerns that this new permit requirement has the potential of creating a profound chilling effect on recreational boat economic activity in the United States.

EPA, of course, has a statutory mandate to establish technology-based limitations that are sensitive to these market realities. Equally important, however, the Agency must work hard to establish a permitting program whose form and functioning do not unduly burden boaters and prospective boaters in the pursuit of this wholly discretionary recreational activity. Success in the endeavor will consist of finding a solution that makes it possible for current and prospective boaters to continue to go boating without having to bear the burdens implicit in a traditional permitting program -- the paperwork; the fees; the bureaucratic contact -- just to get out on the water and move freely among the states.

A State-Based NPDES Boat Permit Program Will Adversely Affect Interstate Commerce and Freedom of Movement for Boaters

A state-by-state boat permitting program that limits the ability of boaters to move freely will have profound impacts on interstate commerce. Many boaters enjoy cruising on lakes that cross or straddle multiple states such as Lake Mead,³ Lake Powell,⁴ and the Great Lakes in addition to the popularity of boating on waterways such as the Mississippi River and the Atlantic Intracoastal Waterways systems.⁵ One wonders how a boater planning to use a boat on these multi-state waters will be able to determine which state’s permit they must obtain.

In addition, Lake Mead and Lake Powell are examples of popular tourist destinations where visitors rent boats, often for the first time, such as small personal watercrafts, power boats for waterskiing or wake boarding, pontoon boats for family fun and fishing, and houseboats for

³ Lake Mead is the largest man-made lake and reservoir in the United States. It is located on the Colorado River in the states of Nevada and Arizona. Formed by water impounded by Hoover Dam, it extends 110 miles behind the dam. The water held in Lake Mead is released to communities in southern California, via aqueducts, and Nevada.

⁴ Lake Powell extends into both Arizona and Utah, is more than 400 feet deep, 150 miles long and includes nearly 2,000 miles of shoreline.

⁵ The Atlantic Intracoastal Waterway is a navigable shipping route that extends for about 3,000 miles (4,800 km) along the Atlantic Ocean and Gulf of Mexico coasts in the southern and eastern United States. This federally maintained water system utilizes sounds, bays, lagoons, rivers, and canals and is connected to inland waterways in many places.

weeklong cruises on these scenic lakes. Infrequent or first time boaters would be unable and unwilling to rent these boats if they were first required to navigate a complex federal and multi-state permitting program. In addition to renting, many boaters may travel long distances from their home states to use the boat ramps at these popular destinations.

Our nation's waterways are important tourist attractions and economic drivers. A complex boat permit program has the potential to have a severe economic impact on the states and local communities that support boating and boating tourism activities. EPA must factor this economic activity into its proposed permit program analysis. EPA should be aware of a new economic model that is available online that will help the agency understand the economic impact of boating. Recently, several organizations within the U.S. recreational boating industry unveiled the "Online Boating Economic Impact Tool," the nation's only web-based means for estimating the economic impact of marinas and boating across the country. The Recreational Marine Research Center (RMRC) developed and maintains the Tool on behalf of the Association of Marina Industries (AMI), Great Lakes Commission (GLC), NMMA and the United States Coast Guard (USCG). It can be accessed at no charge at www.MarinaEconomics.com. This system of web-based models allows users to estimate boater spending and the associated economic impacts in terms of jobs, sales, income, and value added associated with the ownership (e.g., craft spending) and use (e.g., trip spending) of different sizes and types of recreational boats. Economic impacts may also be estimated for a marina, groups of marinas (e.g., in a harbor), a boat access/ launch site, or for all registered power boats and sail boats in a designated region. The interactive tool can also be used to estimate the impact of the potential loss of marinas. NMMA offers to assist EPA in understanding and utilizing this important new economic tool.

The Great Lakes Commission also recently published the results of an economic study based on the models discussed above that was conducted by the Recreational Marine Research Center and found that spending on boats and boating activities in the Great Lakes totaled nearly \$16 billion in 2003, directly supporting 107,000 jobs.⁶ In addition, with the secondary effect figured in, the number of jobs in the Great Lakes grew to 244,000. Other federal agencies continue to study to economic impact of the waters under their jurisdiction and EPA should seek out this information to understand the economic impact of its actions. For example, the economic analysis done by the Army Corps of Engineers demonstrates the value of the recreational benefits of the waters it maintains. The Corp estimated that Lake Cumberland in Kentucky generated 4,787,500 visits per year which resulted in \$86.97 million in visitor spending within 30 miles of the Corps Lake. With multiplier effects considered, visitor trip spending resulted in: \$84.36 million in total sales; \$41.59 million in total income; and supported 2,352 jobs in the local community surrounding the lake.⁷ These economic benefits will be lost when boaters are dissuaded from boating due to new

⁶ See, Great Lakes Commission, *Great Lakes Recreational Boating's Economic Punch*, available at: <http://www.glc.org/recboat/pdf/rec-boating-final-small.pdf>.

⁷ See <http://www.vtn.iwr.usace.army.mil/recreation/reports/lake.asp?ID=451> for more information on the economic importance of Lake Cumberland to the surrounding community.

fees and bureaucratic red tape from a NPDES boat permit program modeled after existing, traditional industrial permitting programs.

The design and imposition of a boat NPDES permit program will have direct impacts on recreational boaters, boating tourists, and the industries that support them. EPA must ensure that it is aware of the economic impacts of its decisions so that it can make reasoned decisions on how best to structure this new permit program. EPA should take great pains to ensure that the permitting system it develops is as simple as possible to minimize the impact on boaters, boating and boating related economic activity.

EPA in its June 21, 2007 Notice asked for specific information from the public in seven specific questions and in its discussion under each of these questions. Below are NMMA's responses to the questions posed by EPA.

EPA Question (1): What existing public and private data sources are 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 operations?

There are three basic ways that recreational vessels are categorized in the United States. Certain larger recreational vessels are eligible to be "documented" by the U.S. Coast Guard. Other recreational craft are required by states to be "registered." And third, a number of recreational boats are not required to be either documented or registered. These non-registered craft are generally smaller non-powered craft and NMMA estimates that there are approximately 4.97 million of these boats in use. NMMA, *2005 Recreational Boating Statistical Abstract* at 3 (2006) (NMMA estimates that in 2005 there were 12.98 million registered boats and an additional 4.97 million non-registered boats for a total of 17.5 million boats in the United States).

The data on document vessels is available from the U.S. Coast Guard. For more information about the vessel documentation program go to the Vessel Documentation Center Homepage at: <http://www.uscg.mil/hq/gm/vdoc/nvdc.htm>. NMMA has already provided EPA with the *NMMA 2005 U.S. Recreational Boat Registration Statistics Report*, which provides detailed statistics on recreational boat registrations and breaks the data down by state and vessel type. This report also includes the contact information for every state boat registration office. EPA may want to work directly with the states to obtain information on the registered boats from each state.

NMMA is aware of no method other than through the U.S. Customs and Border Protection Agency to identify and count the number of recreational vessels that are allowed passage into the United States. In some areas of the country, such as the Great Lakes and the Florida Keys, it is

quite common for there to be frequent recreational boat traffic between the U.S. and foreign nations.

EPA Question (2): What is the best way to inform vessel owners of the need to obtain NPDES permit coverage and what existing public and private data sources are available that will assist in identifying vessel owners and operators.

EPA would need to work directly with the states and the U.S. Coast Guard to determine how best to contact individual boat owners. There is no easy way for EPA to identify boaters who may be interested in renting a boat, but who do not currently own a boat.

Once established, information about a new NPDES program for boats could also be added to already existing boating education programs conducted by the states or other organizations such as the U.S. Coast Guard Auxiliary or Power Squadrons. Many states already require boaters to complete some form of boating education. NMMA recommends that the EPA work closely with the National Association of Boating Law Administrators (NASBLA) as it considers the design of a boat permitting program. NASBLA represents the state officials who have the most direct contact with recreational boaters in their respective states. NASBLA certifies boating education programs and compiles a list of boating education requirements of the states that can be found at: <http://www.nasbla.org/committees.php?committee=EDU>.

EPA Question (3): What existing public and private data sources are available that identifies the types of normal operations onboard commercial and recreational vessels that give rise to discharges and the characteristics of such discharges?

NMMA offers to continue to work with EPA staff to educate EPA about how recreational boats operate. Recreational vessels vary greatly in their size and design, but do generally have some similar types of incidental discharges due to their normal operation such as deck run-off, engine cooling water, and bilge water. However, NMMA is aware of no studies on the incidental discharges of recreational vessels covered by this effort that would provide the information requested by EPA on the volumes, discharge rates, and constituents of such discharges.

EPA Question (4): What existing information is available as to potential environmental impacts of discharges incidental to the normal operation of vessels?

In this section, EPA also asked for information that would be helpful in helping it identify vessel types that might be of little or no environmental concern (*e.g.*, *de minimis* discharges). NMMA is aware that significant resources have been committed to characterize the large volume discharges of ballast water from large commercial ships and gray water from other large vessels. However, recreational vessels incidental discharges are by their very nature very small or *de minimis* in comparison. Recreational vessels, as opposed to commercial vessels, are actually operated infrequently and smaller trailerable recreational vessels (generally those under 26 feet)

are usually stored by their owners on land unless in use. Even boats that are kept in a slip at a marina do not operate on a frequent basis. NMMA estimates that boaters on average spent only 31 days on the water in 2006. NMMA, *2006 Recreational Boating Statistical Abstract* at v. The Great Lakes Commission in its recent study on the economic impact of recreational boating in the Great Lakes found that Great Lakes boat owners spend only an average of 23 days boating per season. Therefore, it is clear that recreational vessels are by their very nature *de minimis* dischargers.

EPA Question (5): What international, federal, and state limitations or controls already exist on discharges incidental to the normal operations of vessels?

EPA has already acknowledged that a new permitting program would not have any impact on the current program that prohibits the discharge of untreated sewage (black water) in all navigable U.S. waters from boats. All boats with installed marine toilets must have an operable Coast Guard-approved marine sanitation device which treats the sewage or a holding tank to hold it. States are also able to petition the EPA to allow it to designate No Discharge Zones to protect waters when there are sufficient pump-out facilities available to boaters. The Clean Vessel Act (CVA) makes grants available to states for the construction, renovation, operation and maintenance of pump-out stations and onshore toilet facilities. In addition, CVA grants are used to educate boaters on the black water rules.

Oil discharges from boats also are already regulated by the Oil Pollution Act of 1990 (OPA). Under the OPA, the responsible party for any recreational boat or marina that discharges oil is liable for the removal costs of the oil and any damages to natural resources including fines. Placards are also required under the Clean Water Act to be affixed in a conspicuous place in the machinery spaces or at the bilge pump control station in all vessels 26 feet or longer, stating "Discharge of Oil Prohibited." All propulsion machinery vessels are must have the capacity to retain oily mixtures on board including a fixed or portable means to discharge oily waste to a reception facility. No person may intentionally drain oil or oily waste from any source into the bilge of any vessel. Currently, boaters are required to remove any oil contamination from bilge prior to discharging it. If, due to an emergency, a boater had to discharge contaminated bilge water they are required to report it immediately to the Coast Guard National Response Center and local environmental authorities.

Additionally, it is already illegal for a boater to put any garbage into the water from a vessel that is on a lake, river, stream, or any coastal waters up to 3 miles offshore. In the Great Lakes this no garbage law applies everywhere. All boats 26 feet and over in length must display, in a prominent place where the crew and passengers can read it, an informational, Save Our Seas placard on the subject of these garbage dumping prohibitions. The placards can be purchased at marine supply dealers, or may be requested free of charge from many state environmental departments. Vessels 40 feet and over which operate beyond 3 nautical miles from shore must

have a written waste management plan and designate a person responsible for carrying out the plan.

Finally, as NMMA has already described, significant emissions requirements and new rules will control boat fuel systems. These requirements will dramatically restrict any fuel related discharges into the water, further reducing the range of discharges with which any NPDES permitting program must deal independently.

EPA Question (6): What existing information is available on the types of pollution control equipment or best management practices currently used (or in active development), and what, if any, are the practical limitations on their use?

Pollution controls that could be installed by a consumer for bilge water, deck runoff, engine cooling and other discharges incidental to the normal operation of recreational vessels are very limited. There is little a recreational boater can (or should) do to change the operation of marine engine, air conditioning unit, or dewatering system on a recreational boat. By and large, these systems are designed and approved at the manufacturers' level because of the sophistication of the engineering and the complexity of the manufacturing processes involved in producing marine devices. Substantive alterations of these systems by individually permitted boat owners would be inadvisable and, in some cases, unsafe.

Experience has shown that the most effective method of addressing these types of discharges from recreational boats is through the many educational programs conducted by Clean Marina Programs nationwide. One representative example of these types programs is the Virginia Clean Marina Program. This program produces recommendations and educational materials that encourage boaters to do the following:

- Read a "Clean Boating Tips" card and agree to follow the included tips
- Use a fuel collar while fueling
- Put a bilge pad in your bilge
- Never drain engine oil into the bilge
- Repair engine and tank leaks immediately
- Disable automatic bilge pumps while completing repairs
- Ensure all oil is removed from bilge before discharging
- Always dispose of used oil at an approved waste reception facility
- Dispose of bilge pads in sealed plastic bags.

These clean boating tips are reproduced in posters that can be placed at a marina and include the National Response Center hotline number.

EPA Question (7): What existing information is available as to commercial and recreational vessel traffic patterns?

There is no unified method that NMMA is aware of that tracks the recreational vessel traffic patterns nationwide or that would be helpful to the EPA in identifying priority bodies of water. Clearly, some bodies of water are used heavily by recreational boaters while others are not so heavily used. In addition, the day of the week and whether it is a holiday all impact recreational boat traffic. There is no nationwide method that inventories this information in any consistent manner that would be of any analytical benefit to EPA. Some regional economic study information may provide some of the data EPA seeks such as the study recently completed by the Great Lakes Commission, the U.S. Army Corps of Engineers and Michigan State University's Recreational Marine Research Center on the economic impact of recreational boating on the Great Lakes. However, the purpose of economic study data is clearly different than the vessel traffic pattern data that EPA is looking for.

* * *

Clearly, the creation of an NPDES permit program for recreational boats is an enormous undertaking of unprecedented scale. EPA's decisions and actions as it crafts this program will have profound impacts on the recreational boater, the recreational boating industry, and the communities that support them. NMMA continues to urge EPA to ensure it understands fully the impact this proposed program will have on the recreational boating industry before it acts. NMMA stands ready to assist EPA and offers to set up frequent consultations for EPA with marine manufacturers and boaters. Please contact me at 202-737-9766; csquires@nmma.org) for any additional information or if you have any questions on this material.

Respectfully submitted,



Cindy L. Squires, Esq.
Regulatory Counsel
Government Relations

CC: Mr. Thomas J. Dammrich
President, National Marine Manufacturers Association

Enclosure: NMMA Brief of Amicus Curiae in support of Appellant-Respondents U.S. EPA and the Shipping Industry Ballast Water Coalition in *Northwest Environmental Advocates et al. v. EPA* (No. CV 03-05760 SI) seeking a reversal of the district court (March 21, 2007).