

Top Ten Flaws of Proposed EPA Boat Permit

New Regulation is a Recipe for Confusion & Penalizes Boaters

On June 17, 2008 the Environment Protection Agency (EPA) proposed a **sweeping, unprecedented new regulation for recreational boaters** for their everyday, overboard water discharges, throwing them into a regulatory regime designed for land-based industrial facilities like sewer treatment plants. Effective September 30, 2008, unless Congress passes the Clean Boating Act of 2008, America's 17 million recreational boat owners will be required to observe a multitude of new rules and practices and face citizen lawsuits and \$32,500 per violation per day penalties.

Below are the top ten problems with EPA's proposed regulation of recreational boats. For more information, go to www.BoatBlue.org or contact Mat Dunn at mdunn@nmma.org.

- 10. This is only the first installment. NPDES Permits are changed every five years. What happens in the next round?** EPA and states will be coming up with new permits every 5 years. What will they look like? Boaters will constantly have to keep up with the latest permit developments. Right now for boats less than 79 feet in length the proposed permit looks simple, but that will change. Over time, permits will get more and more complicated. EPA is even asking for comments now on what new best practices should be mandated on boaters and if they should meet "numerical limits." Huh?
- 9. The Permit isn't final – states must still approve it.** States, through the "certification process" for a general permit, can force EPA to adopt more difficult conditions in these permits. As a result, the process is far from final, meaning there will be no regulatory certainty for boaters for some time to come.
- 8. No education for boaters.** The EPA will not be educating the boating public on what these new permits mean, leaving boaters at risk of inadvertently breaking the law and being forced to pay immense fines without even knowing why. One in four U.S. adults went boating in 2007 on one of the 17 million boats in the U.S. That's a lot of people to educate.
- 7. If a boater gets it wrong, they could face huge fines and lawsuits.** The NPDES program is meant to go after large corporate facilities -- the penalties are \$32,000 per day, per incident and citizen lawsuits are allowed. That means individual citizens can take you to court for violations under this new regulation.
- 6. Lawsuits, Lawsuits, Lawsuits – Boaters are sitting ducks.** We expect EPA to be sued on this controversial permit—who knows what the final court ruling will be. What happens to boaters while EPA, the environmentalists and the commercial ship owners slug it out? Boaters will be confused and could face citizen suits while they wait.
- 5. Don't leave your state without getting that permit!** When the states start creating their own programs, boaters will not automatically be able to boat in another state's waters. What if one state requires a different management practice or equipment than a boater's home state? How will a boater get prepared for these different rules? Will boaters need to carry their permit, specific records? Will the states start charging fees? No one knows yet.

4. EPA is using a new legal theory to have these permits apply in all states. This will likely be challenged in court. Normally, EPA Clean Water Act NPDES general permits are only good in five states: Alaska, Idaho, Massachusetts, New Hampshire, and New Mexico. Collectively, these states represent a mere three percent of all registered boats owned in the nation. The normal rule is that a general permit isn't a national permit, but EPA is now asserting that it has the sole permitting authority until states specifically ask for approval to permit boats (which EPA will readily grant). This new approach by EPA is untested and we have no assurance that this view will win the day. More confusion for boaters!

3. States can establish their own permits and charge fees. Forty-five states could ask for authority to create their own permit programs – will consistency with the EPA permit be required? Don't bet on it. Right now, approved state programs must be at least as stringent as the federal program. But states are free to implement requirements on permit holders that are more stringent than the federal permit, and they can mandate different regulations for different bodies of water in their state. The future permit requirements – both national and state are not known. **This uncertainty allows the possibility of new paperwork, fees, and measures to comply with the yet undefined future permits.** That also means that states will be able to impose new fees on boaters when they ask EPA for permitting authority.

2. There is no way around it—the permit program puts a chill on boating and hurts the economy. We are facing down a recession. We can't afford to put American businesses out of business or to impose more price hikes on consumers. There are 19,000 boating specific businesses that employ more than 154,000 employees in the U.S. That does not include the businesses that rely on the money spent by boaters while on trips. Boat permits and the confusion created by them will cost these businesses jobs and hurt boaters.

1. Bottom line -- This money and time is better spent developing real national best practices and getting the word out to boaters. Let's actually protect the environment, not just create a big administrative mess.

**Tell Congress to Pass
the **Clean Boating Act** now!
S. 2766 & H.R. 5949**

www.BoatBlue.org