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August 1, 2008

Via Email: ow-docket@epa.gov

Water Docket
U.S. Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

**RE: Draft National Pollutant Discharge Elimination System (NPDES) General Permits
for Discharges Incidental to the Normal Operation of a Vessel (73 FR 34296) – Docket ID
No. EPA-HQ-OW-2008-0055**

Dear Sir or Madam:

The Transportation Institute (TI) appreciates the opportunity to comment on the proposed National Pollutant Discharge Elimination System General Permit for Discharges Incidental to the Normal Operation of a Vessel.

TI is a Washington, DC-based, non-profit organization dedicated to maritime research and promotion. Our members are U.S.-flag vessel operators engaged in all aspects of marine transportation – the international trades, domestic trades including the Great Lakes, coastwise shipping and the inland waterways. Many of TI members' vessels are contracted to the U.S. military services. Our member companies operate container vessels, tankers, dry bulk ships, tugs and barges, and passenger vessels and, as such, are greatly interested in this matter.

TI appreciates the complexity of the issues the Environmental Protection Agency (EPA) must address in regulating discharges incidental to the normal operation of a vessel under a Vessel General Permit. These discharges have been exempted by regulation from the Clean Water Act for 35 years, based largely on the understanding that they generally have not contained pollutants that would be harmful to human health and the environment, especially when compared to discharges from land based industrial and manufacturing facilities. However, TI is concerned that in the rush to put a program in place before the court imposed expiration of the exemption takes effect, EPA will impose new, and potentially impractical and ineffective requirements that will unnecessarily increase operational costs to vessel owners/operators and without adequate justification as is required by applicable law. TI, therefore, urges EPA to extend the timeline for developing this program and for industry to comply with the requirements ultimately developed to properly regulate discharges incidental to the normal operation of a vessel.

TI also fully endorses the comments submitted by the Chamber of Shipping of America (Chamber) and the International Association of Independent Tanker Owners (INTERTANKO) in response to the EPA's request for comments addressing the proposed general permit. Specifically, given their importance to EPA's consideration of this matter, TI would like to reiterate the following points made by the Chamber and INTERTANKO:

- EPA's determination that the pollutants addressed by the permit are present in the discharge streams of vessels that will be regulated under the permit *and* that the presence of these pollutants represents a threat to the environment when discharged in connection with normal vessel operation must be supported by an adequate factual basis and substantial evidence in the record, as required by federal law. EPA cannot simply rely on limited information concerning discharge characteristics and best management practices (BMPs) gathered from the limited universe of Armed Forces vessels studied under the Uniform National Discharge Standards (UNDS) project. As is explained in the comments submitted by the Chamber and INTERTANKO, there is no basis for concluding that the discharge streams, vessels and practices that are still being considered in the UNDS project are applicable to commercial vessels, and without it, using such information is inappropriate.
- EPA must recognize the vast diversity among the kinds of vessels that will be covered by the proposed permit, when identifying BMPs. EPA must take into account the various vessel classes, types, sizes, industry sectors, operations, transportation routes, and discharge characteristics and their environmental impact that exist in the universe of 75,000-odd vessels that this program would cover. EPA cannot and should not adopt a "one-size-fits-all" approach to identifying BMPs.
- EPA must provide BMPs that are sufficiently clear, appropriate, and effective in eliminating or minimizing pollutants when they are complied with, without imposing unnecessarily burdensome costs on permittees. EPA must conduct a cost-benefit analysis of each of the BMPs that reflects the range of ways in which the wide variety of vessel owners and operators will comply with them. The record that has been published contains an economic analysis, but as noted in the comments submitted by the Chamber and INTERTANKO, there are serious gaps and mistakes in the factual premise upon which that analysis is based. The agency needs more time to do this right.
- Recognizing that a number of discharges proposed to be regulated under the permit are already regulated by a significant number of substantive provisions contained in existing international instruments, federal legislation, and regulation, EPA should incorporate, by reference, these existing provisions into the permit as alternative compliance mechanisms and deem complying with those other laws to be in compliance with the permit. Doing so would avoid unnecessary duplication, inconsistency between varying requirements, and confusion among the regulated community.

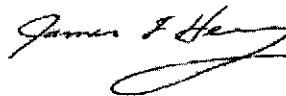
- If the EPA chooses to go forward with this program as proposed, it must give the regulated community reasonable time to implement it before taking enforcement action, or exposing that community to liability. BMPs are just that – practices – they cannot be announced on September 30 and implemented October 1. The EPA should use the discretion it exercised in the Consolidated Animal Feeding Operations (CAFO) rulemaking and give the regulated community reasonable time to demonstrate compliance with the BMPs.

Ultimately, EPA must conduct a comprehensive and thorough assessment of the appropriateness of coverage of each of the discharges regulated under the permit and the appropriateness of the identified BMPs, taking into account the tremendous diversity among the regulated vessels and the myriad of ways in which permittees may comply with the permit's requirements. This research and analysis takes time. We urge EPA to accept the Ninth Circuit's invitation to request an extension of the September 30, 2008 deadline to allow EPA the time that is needed to develop a legally justifiable and defensible permitting system that is properly tailored to the regulated community. The regulated community also requires notice of the standards it is expected to meet and a reasonable period of time to implement the BMPs and achieve compliance with the permit once it is finalized.

In sum, EPA's regulation of vessels in this way is unprecedented. In fact, this community may be the largest and most diverse industrial sector for which the EPA has ever sought to create effluent limits. Addressing the diversity of maritime operators affected will be challenging. Nevertheless, any proposed permitting scheme must provide an effective means of protecting U.S. waters while appropriately reflecting the operational realities of the U.S. maritime industry and preserving the industry's economic and competitive strength. It is for this reason, that we strongly urge EPA to extend the time for development of the regulatory framework and for the industry to comply with the requirements ultimately established.

TI anticipates that the EPA will give our comments due consideration. Thank you for the opportunity to comment.

Sincerely,



James L. Henry
President