



Montana Department of  
ENVIRONMENTAL QUALITY

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Brian Schweitzer, Governor

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August 18, 2008

Sadie Hoskie, Director  
Water Program  
Environmental Protection Agency - Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

RE: CWA Section 401 Certification – Waiver

Dear Ms. Hoskie:

The Montana Department of Environmental Quality has received the United States Environmental Protection Agency's (EPA) July 2, 2008 request for Clean Water Act Section 401 certification of two draft National Pollutant Discharge Elimination System (NPDES) permits. The draft permits regulate the discharge of wastewater incidental to the normal operation of recreational and commercial vessels. The permits are necessary in response to a District Court ruling that vacated the exemption in federal rule for these types of discharges. *NW Environmental Advocates et al. v. EPA* 2005 WL 756614. It is also our understanding that legislation recently enacted by Congress has placed a moratorium on the issuance of any permit for recreation boats and commercial vessels less than 79 feet. Consequently, EPA is no longer requesting Section 401 certification of the Recreational Vessel General Permit (RGP).

The Board of Environmental Review has adopted rules establishing procedures and criteria for certification of activities pursuant to Section 401 of the federal CWA. These rules require that that Department shall ensure that any activity that requires a federal license or permit and that may result in a discharge to state water shall fulfill the requirements of ARM Title 17, Chapter 30. ARM 17.30.101(2). Accordingly, the Department may deny certification, issue certification or issue certification with conditions. The Department may also waive certification if it finds that the activity will have minimal impact or no impact to the quality of state waters, or, require a discharge permit under the Montana Water Quality Act.


The Department has reviewed EPA's NPDES *Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Commercial and Large Recreational Vessels* and associated Fact Sheet. According to the Fact Sheet, there are approximately 91,000 United States registered vessels that may require coverage under the VGP. The majority of these vessels operate in the Mississippi River System, Gulf Intracoastal Waterway, U.S. coastal water or in international waters. It is unclear given

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the scope of coverage and definition of commercial vessel in the draft VGP permit and the recently passed federal legislation, if any vessels operating in the state of Montana would be affected by the issuance of the VGP.

Based on the minimal impact to state water, the Department is waiving Section 401 certification of EPA's VGP. The Department welcomes the opportunity to be involved in the development of management practices for recreational vessels as directed by the federal legislation. If you have any questions, please contact Jenny Chambers in the Water Protection Bureau at (406) 444-3080.

Sincerely,



Judy Hanson  
Administrator  
Permitting and Compliance Division

cc: Jeff Hagener, DWFP  
Art Compton, DEQ  
Jenny Chambers, WPB

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Wastewater Unit