



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
401 CHURCH STREET  
L & C ANNEX 6TH FLOOR  
NASHVILLE TN 37243-1534**

August 5, 2008

Mr. James D. Giattina, Director  
Waste Management Division  
U.S. EPA Region 4  
Atlanta Federal Building  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

Dear Mr. Giattina:

In a letter dated June 24, 2008, you notified us that USEPA is in the process of issuing two NPDES general permits: The General Permit for Discharges Incidental to the Normal Operation of Commercial and Large Recreational Vessels (VGP) and the General Permit for Discharges Associated with Recreational Vessels (RGP). These draft general permits authorize discharges into the waters of the State of Tennessee. In the same letter, you requested that we make a written determination regarding certification under Clean Water Act (CWA) Section 401, or waive the right to certify proposed authorization of discharges.

Furthermore, we have been notified that on July 22, 2008, Congress unanimously passed 2 related bills (not yet signed by the President but expected to be soon). Those were Senate Bill 2766 (The Clean Boating Act) and Senate Bill 3298.

Senate Bill 2766 permanently removes recreational boats from NPDES permitting and establishes a Clean Water Act Section 312 program to study and regulate any discharges of concern. If and when this bill is signed by the President, EPA expects to cease work on the recreational vessel general permit and modify the commercial vessel permit to remove the requirements for recreational vessels longer than 79 feet. The universe covered by the commercial vessel general permit should drop by 30-50%.


Senate Bill 3298 imposes a two year moratorium from NPDES on commercial vessels less than 79 feet and all commercial fishing vessels (except for ballast water discharges, if applicable). EPA will have 15 months to conduct an extensive study for these vessels. If after two years with no additional congressional action, NPDES permitting will be the default for these vessels.

These bills are expected to change the scope of our state 401 certification, likely reducing it to commercial vessels greater than 79 feet, ballast water discharges and other discharges not incidental to the normal operation of a vessel. However, as the fate of these Senate bills is uncertain at this time, our letter represents a waiver of certification under CWA Section 401 for the VGP and RGP general permits as proposed. The waiver of certification confirms our agreement of EPA's findings, stating that issuance of the draft permit would not cause:

1. Significant adverse changes in ecosystem diversity, productivity and stability of the biological community within the area of discharge and surrounding biological communities,
2. Threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms, or
3. Loss of aesthetic, recreational, scientific or economic values which is unreasonable in relation to the benefit derived from the discharge. Accordingly, in accordance with 40 CFR 125.123(a), the Agency has determined that issuance of the draft permit with the controls proposed would not cause unreasonable degradation of the marine environment.

We appreciate the effort put into preparing these permits and an opportunity to provide comments.

Sincerely,



Paul E. Davis, P.E.  
Director, Division of Water Pollution Control