



State of Utah

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Department of
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DIVISION OF WATER QUALITY
Walter L. Baker, P.E.
Director

November 11, 2008

Ms. Sadie Hoskie
Director Water Program
USEPA Region 8
1595 Wynkoop Street
Denver, Co 80202-1129

Dear Ms. Hoskie:

Subject: Clean Water Act Section 401 Certification for the proposed USEPA Vessels' General Permits' Programs

This letter is submitted in response to the USEPA request for a Clean Water Act Section 401 Certification for the proposed Vessels' General Permits Program. The EPA has proposed two vessel general permit programs: General Permits for Discharges Incidental to the Normal Operation of Commercial and Large Recreational Vessels, and a General Permit for Discharges Associated with Recreational Vessels. This certification applies to both general permits, but it is our understanding that the Recreational Vessel General Permit has been stayed and won't be issued at this time.

The proposed programs would appear to be in conformance with State of Utah vessel rules, if amended as follows. We, therefore, request that the following *italicized* State of Utah specific comments and requirements be added to Section Six - "Specific Requirements for individual States or Indian Country Lands" of the proposed permits:

The 2008 Utah Legislature passed the Aquatic Invasive Species Interdiction Act (S.B. 238) and subsequently the Utah Wildlife Board passed associated rule (R657-60, Aquatic Invasive Species Interdiction), both with a purpose to define procedures and regulations designed to prevent and control the spread of aquatic invasive species, particularly Dreissena mussels, within the State of Utah. The aforementioned act and rule establish a situation in Utah that is more restrictive than the Vessel General Permits. It is unlawful to possess or transport Dreissena mussels within the State of Utah. Additionally, all boats having been used anywhere within the last 30 days on a

Dreissena mussel infested water, either marine or fresh, and subsequently launching on any waters in Utah must certify prior to launch that they have been properly decontaminated. Launch is denied until certification can be met. The only two accepted decontamination protocols in Utah as per Rule R657-60 are as follows:

Do-it-yourself Decontamination

- *Clean all plants, fish, mussels and mud from boat or equipment before leaving water body area (discard unused bait in the trash where you fished);*
- *Drain all water from boat (equipment storage areas, ballast tanks, bilge, livewells and motor) before leaving water body area;*
- *Dry boat and equipment at home or at suitable storage area (7 days summer, 18 days spring and fall, and 30 days winter or expose boat and equipment to freezing conditions for a continuous 72 hour period) prior to another launch.*

Professional Decontamination

- *Use a professional to apply scalding water (140⁰ Fahrenheit) to wash equipment, boat and trailer and to flush equipment storage areas, ballast tanks, bilge, livewells and motor or other raw water circulation systems.*

Either of the aforementioned decontamination protocols will kill aquatic invasive species either already inhabiting Utah or threatening to arrive, including adult, juvenile and microscopic life forms.

In the State of Utah it is unlawful to discharge any volume of water, which is laden with viable aquatic invasive species, into any waters within the State of Utah. Thus, any discharge for any volume of ballast, bilge or other raw water suspected of harboring aquatic invasive species must not occur unless it has been heated to at least 140⁰ Fahrenheit. Since ballast and bilge waters frequently contain other undesirable materials (e.g. oil and grease, solvents and soaps, etc.), it is preferable that such water discharges be made onshore into an appropriate, approved wastewater treatment system. If there are any questions regarding these procedures related to the control of invasive aquatic species please contact the Utah Division of Wildlife Resources.

Lake Powell has been designated as a "no discharge" waterbody by the National Park Service. As such, there will be no discharge of wastewater, treated or untreated, within the legal boundary of Lake Powell.

As the proposed Commercial Vessel General Permit is in draft form and subject to change during the federal rule making process, the State of Utah is concerned about any changes which may occur before final adoption. We request, therefore, that the USEPA inform the State of Utah of changes from this proposed permit that are proposed for the final permit, prior to the final public comment period before adoption.

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The State of Utah would specifically request that the proposed oil concentration limit for all vessel discharges not be relaxed beyond the proposed limit of 15 parts per million. A further relaxation would place this limit in further conflict with similar oil and grease limits in other State of Utah general permit programs.

In addition, on a national basis, the State of Utah would advocate that the Vessel General Permits prohibit the movement of any vessels containing any raw water in equipment storage areas, ballast tanks, bilge, livewells and motors or within other equipment from moving between any waters, regardless of whether or not they are defined as waters of the United States. This action would help minimize risk for unlawful movement of aquatic invasive species.

The State of Utah appreciates the opportunity to certify the proposed Vessel General Permits' Programs and to make comments regarding permit requirements for application in the State of Utah. If you wish to discuss this program further in regard to the State of Utah please contact John Kennington of my staff at 801-538-6713 or via email at jkennington@utah.gov.

Sincerely,



Walter L. Baker, P.E.
Director

WLB:jrk

cc: Sandra Stavnes, EPA Region 8
Larry Dalton, Utah Division of Wildlife Resources
Fred Nelson, Utah Attorney General's Office