



**The American Waterways Operators**

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Water Docket  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Re.: Draft Report to Congress: Study of Discharges  
Incidental to Normal Operation of Commercial  
Fishing Vessels and Other Non-Recreational  
Vessels Less than 79 Feet (Docket ID No. EPA-  
HQ-OW-2009-0208)

Dear Sir or Madam:

On behalf of the American Waterways Operators (AWO), the national trade association for the inland and coastal tugboat, towboat and barge industry, thank you for the opportunity to comment on the Environmental Protection Agency's (EPA) draft report to Congress on discharges from fishing vessels and other commercial vessels less than 79 feet.

AWO's 300 member companies include the owners and operators of towing vessels and barges operating on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and, the Great Lakes. Our industry's 4,000 towing vessels and 27,000 barges comprise the largest segment of the U.S.-flag domestic fleet, and each year, the towing industry safely and efficiently moves more than 800 million tons of cargo critical to the U.S. economy. Tugboats also provide essential services including shipdocking, tanker escort and bunkering in our nation's ports and harbors.

AWO members are proud to be part of an industry that is the safest and most fuel-efficient, and has the smallest carbon footprint, of any surface transportation mode. We are deeply committed to building on the natural advantages of marine transportation and leading the development of higher standards of marine safety and environmental protection. In 1994, AWO became the first transportation trade association to adopt a code of safe practice and environmental stewardship for member companies. Today, compliance with the Responsible Carrier Program (RCP) is a condition of AWO membership, and members undergo independent third-party audits every three years to demonstrate their continued compliance.

This commitment to safety and environmental stewardship informs our perspective on the regulation of vessel discharges. We seek to protect the marine environment in which our vessels operate through practical and effective regulatory frameworks that allow for the continued safe and efficient movement of essential maritime commerce.

We offer three comments about the draft study:

- First, we believe the study greatly overestimates the number of barges under 79 feet in length and thus subject to the current moratorium on regulation under section 402 of the Clean Water Act;
- Second, since the study did not examine discharges from barges, it should not be used to draw conclusions about such discharges; and,
- Third, EPA should use the opportunity provided by Congressional interest in this study to stimulate a broader conversation about the need for a more effective statutory framework for the regulation of vessel discharges than the National Pollutant Discharge Elimination System (NPDES) permit program, which is not well suited to the regulation of mobile sources engaged in interstate commerce.

We elaborate on these comments below.

#### Ensure Barge Data is Accurate

Based on AWO's knowledge of the inland and coastal barge industry (we estimate that AWO members own or operate approximately 80 percent of the nation's barge tonnage), we believe the study's estimates of the population of tank (or liquid cargo) barges and freight (or dry cargo) barges are significantly overstated. On page 1-15, EPA states that it found 622 tank barges less than 79 feet; in numerous places elsewhere, the report states that 923 tank barges in this size range were found.<sup>1</sup> In either case, we believe the number dramatically overstates the number of tank barges that are less than 79 feet and thus not already subject to regulation under the Vessel General Permit (VGP). We have similar doubts about the accuracy of the study's estimate of 8,016 freight barges less than 79 feet. The U.S. Army Corps of Engineers' Navigation Data Center tracks characteristics of U.S. commercial vessels, and in 2008, reported only 18 tank barges of less than 79 feet and 239 dry cargo and deck barges under 79 feet.<sup>2</sup> The Corps data is consistent with our understanding of the equipment sizes most common in the industry: a typical small deck barge is 90 to 110 feet in length and a typical small (10,000 barrel) tank barge is 195 to 200 feet in length. AWO is unaware of any dry cargo hopper barges less than 79 feet still in existence.

Casting further doubt on the barge numbers are two tables in Appendix B. First, *Table B.4: Number of Study Vessels by Vessel Service and Census Division, based on Hailing Port Information Provided in MISLE*, shows that EPA could not identify the census division for 694

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<sup>1</sup> Figure ES.1. Estimated Number of Study Vessels by Vessel Service (Type); Figure 1.2. Number of Study Vessels Recorded in MISLE, by Vessel Service (Type); Table B.4: Number of Study Vessels by Vessel Service and Census Division, based on Hailing Port Information Provided in MISLE; and, Table B.5: Number of Study Vessels Documented, Inspected, and State Registered, by Vessel Service.

<sup>2</sup> <http://www.ndc.iwr.usace.army.mil/data/datavess.htm#Vessel%20Company%20Summary>

tank barges, presumably because there is no hailing port information for those vessels. A tank barge cannot operate in U.S. waters without being certificated by the U.S. Coast Guard and, in most cases, documented, which requires a hailing port to be marked on the stern of the barge. Second, *Table B.1: Top Five Vessel Subcategories by Vessel Service*, shows that EPA found four tank barges under 79 feet that are part of integrated tug-barge (ITB) units. This is virtually impossible as ITBs are designed for oceangoing service, and are typically hundreds of feet in length.

The barge population numbers in the draft report may be inaccurate because they come from the U.S. Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database. This database is designed to track safety and law enforcement incidents that involve vessels, not to serve as a record of all vessels that travel through U.S. waters. Some undocumented and/or uninspected vessels (such as barges) may continue to have records in MISLE after they become inactive, thus making MISLE an inaccurate source for the numbers of vessels currently operating in U.S. waters.

We urge EPA to review the Corps of Engineers' databases and to discuss these apparent anomalies with the Corps and the Coast Guard. AWO would be pleased to participate in those discussions or to direct the agency to other authoritative industry sources with whom to discuss its estimates of the barge population. We believe that this further review will show that the vast majority of the nation's approximately 27,000 barges are over 79 feet and thus already subject to regulation under the VGP.

#### Do Not Draw Conclusions about Barge Discharges from the Study

Just as important as the accuracy of the barge population estimates is the statement on page 2-24 of the draft report that EPA has "little or no information or data" on discharges from freight or tank barges of any size. EPA did not sample discharges from barges and thus the study findings should not be extrapolated to barges, which, as AWO noted in its August 2008 comments on the draft VGP, have fewer and generally smaller discharge streams than manned, self-propelled vessels. AWO urges EPA not to draw conclusions about discharges from barges since barges were not studied and present a different operational profile than self-propelled vessels.

#### Urge Congress to Establish a New Statutory Framework for Vessel Discharges

AWO understands that EPA will use the findings in this report to determine how best to regulate discharges from fishing vessels and commercial vessels under 79 feet once the statutory moratorium on regulation of such discharges under section 402 of the Clean Water Act expires on July 31, 2010. While EPA makes that regulatory determination, AWO urges EPA to request an extension of the current statutory moratorium for a reasonable period of time (at least three years) in order to avoid a situation wherein vessels under 79 feet are unable to discharge after that date because they are not covered by a permit. We also urge EPA to use the current Congressional interest in issues surrounding the moratorium to initiate a broader discussion of the need for a better framework for the regulation of vessel discharges than the NPDES program. That conversation should not be limited to fishing vessels and vessels under 79 feet.

As EPA well knows, the NPDES program was designed to regulate discharges from fixed facilities, not mobile sources in interstate commerce. The structure of the program, under which states can add their own, potentially conflicting conditions to a federally issued general permit, or, in the future, even establish their own state-specific permits, is extremely ill suited to vessels that operate in the waters of dozens of different states. Moreover, the NPDES program is only one of a multiplicity of federal and state authorities governing the regulation of vessel discharges: the U.S. Coast Guard regulates ballast water under the National Invasive Species Act (NISA), EPA regulates ballast water and other vessel discharges under the NPDES program, and, because neither NISA nor section 402 of the Clean Water Act preempts state regulation of vessel discharges, dozens of states have established their own requirements governing the same discharges. This patchwork of federal and state authorities poses enormous difficulties for vessels operating in interstate commerce (and results in a significant duplication of governmental efforts at the federal and state levels). For example, a barge tow traveling from Pittsburgh to New Orleans down the Ohio and Mississippi River systems travels through 11 states, each of which is free to establish its own unique requirements for vessel discharges in its waters.

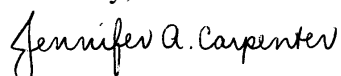
We urge EPA to use the opportunity that will be presented by Congressional interest in this report, the potential extension of the moratorium, and the regulation of vessel discharges to ask Congress to legislate a better approach to the regulation of vessel discharges. We believe the goals of marine safety, environmental protection, robust maritime commerce and governmental efficiency would be well served if the Administration were to request that Congress pass new legislation that:

- Establishes a new statutory framework for the regulation of vessel discharges. This could be done under a new section of the Clean Water Act or some other vehicle;
- Gives the EPA Administrator, in consultation with the Coast Guard, the authority to establish standards for the control of vessel discharges;
- Preempts current and future state regulation of vessel discharges, in order to allow for a uniform national approach that facilitates safety, commerce, and regulatory compliance; and,
- Once new regulations are in place pursuant to the new statutory framework, removes vessel discharges from regulation under section 402 of the Clean Water Act.

We believe Administration leadership and support for an improved framework for the regulation of vessel discharges would significantly increase the potential for workable, bipartisan legislation that can garner the support of key stakeholders including vessel owners, states and environmental interest groups.

Thank you for the opportunity to comment. We would be pleased to answer any questions or provide further information as EPA sees fit.

Sincerely,



Jennifer A. Carpenter