



MEMORANDUM OF LAW

To: Lake Champlain Sea Grant

From: Bryce Burgwyn, Research Associate, National Sea Grant Law Center (Supervising Attorney: Terra Bowling, Research Counsel II, National Sea Grant Law Center)

Re: Lake Champlain Graywater Discharge (NSGLC-19-04-06)

Date: July 19, 2019

Advisory Summary

Recreational boaters have asked Lake Champlain Sea Grant whether they may legally discharge graywater into Lake Champlain from their recreational boats.¹ In fall 2018, Lake Champlain Sea Grant asked Vermont Fish and Wildlife, and the agency responded that it believed recreational vessels were disallowed from discharging graywater under the CWA. However, Lake Champlain Sea Grant remained uncertain about the issue because the Clean Boating Act of 2008, which amended the Clean Water Act § 402, indicated that recreational vessels are allowed to discharge graywater. Lake Champlain Sea Grant sought research assistance from the National Sea Grant Law Center on whether recreational vessels can or cannot legally discharge graywater into Lake Champlain.

Lake Champlain Sea Grant's question concerns recreational vessels, so this memo will address vessels that meet the statutory definition of "recreational vessel." The question only concerns graywater and no other types of discharges, so this memo will address discharges that meet the statutory definition of graywater. First, it will address the recreational vessel exception from NPDES permit requirements for graywater discharge. Second, this memo will address whether the exception applies to discharges from recreational boats on Lake Champlain. Third, it will address the Lake Champlain Basin Compact, which introduced additional requirements for pollution management in the Lake Champlain Basin but does not affect recreational vessel graywater discharge requirements.

¹ This product was prepared by the National Sea Grant Law Center under award number NA18OAR4170079 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

Background

Lake Champlain is a freshwater lake, 120 miles long and 12 miles wide at its widest point, which borders New York, Vermont, and Canada.² Lake Champlain supports a range of human activities, including commercial and recreational vessel traffic, fishing, and swimming, and provides drinking water for approximately 200,000 people.³ Members of the public have asked Lake Champlain Sea Grant whether recreational boaters may discharge graywater into the lake on several occasions

Interstate waterways that border more than one state are federal waterways and are governed by the Clean Water Act (CWA). The CWA prohibits discharges of pollutants from a point source into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit.⁴ Under the CWA, “point source” means any “discernable, confined, and discrete conveyance...from which pollutants may be discharged.”⁵ In 2008, Congress enacted the Clean Boating Act (CBA), which amended § 402 of the CWA and exempted recreational vessels from the statute’s NPDES permit requirements.⁶

CBA Exception

For a vessel to fall under the CWA’s exemption to NPDES permit requirements, the vessel must meet the definition of a recreational vessel, the discharge must be incidental to the normal operation of a recreational vessel, and the waterway must meet the definition of “waters of the United States.”⁷

- “Recreational vessel” is defined as any vessel that is “manufactured or used primarily for pleasure; or leased, rented, or chartered to a person for the pleasure of that person,” excluding vessels engaged in commercial use or carrying paying passengers.⁸
- “Graywater” means galley, bath, and shower water.⁹ The CBA amendment to the CWA includes “graywater, bilge water, cooling water, weather deck runoff, oil water separator effluent, or effluent from properly functioning marine engines” as types of discharge incidental to the normal operation of a recreational vessel.¹⁰
- The Code of Federal Regulations (CFR) includes “all interstate waters, including interstate wetlands” within its definition of “waters of the United States.”¹¹ Since Lake Champlain borders two states, Lake Champlain meets the definition of “interstate waters,” and therefore falls under the umbrella of “waters of the United States” governed under the CWA.

² Lake Champlain Basin Program, *Lake and Basin Facts*, <http://www.lcbp.org/about-the-basin/facts/> (Last visited July 17, 2019).

³ *Id.*

⁴ 33 U.S.C. §1362(12).

⁵ *Id.* §1362(14).

⁶ See Clean Boating Act of 2008, PL 110–288, 122 Stat. 2650 (codified as amended at 33 U.S.C. §§1342, 1362, 1322 (2008)).

⁷ Clean Boating Act of 2008, PL 110–288, 122 Stat. 2650 (codified as amended at 33 U.S.C. §§1342, 1362, 1322 (2008)).

⁸ 33 U.S.C. § 1362.

⁹ 40 C.F.R. § 122.2.

¹⁰ 33 U.S.C. § 1342.

¹¹ 33 C.F.R. § 328.3.

The CBA requires EPA to identify discharges incidental to the normal operation of recreational vessels for which management practices are reasonable to develop, thereby limiting the amount of pollution discharged into the waters of the United States.¹² To date, EPA has not developed management practices that place any limits on graywater discharge from recreational vessels into the waters of the United States.

Lake Champlain Basin Compact

Under the CWA, states may enter into agreements or compacts, not in conflict with any U.S. law or treaty for pollution prevention, control, and enforcement, and the establishment of agencies to carry out their agreements and compacts.¹³ Agreements or compacts between states are not binding unless approved by Congress.¹⁴ Congress approved the Lake Champlain Basin Program to develop a comprehensive pollution prevention, control, and restoration plan for Lake Champlain.¹⁵ Under the Program, New York, Vermont, Quebec, and EPA entered into the Lake Champlain Basin Compact, forming a regional intergovernmental forum to address the problems and coordination of governmental activities in the Champlain Basin.¹⁶ The Compact affects multiple types of pollution, including surface water runoff, but does not address nor affect graywater discharge from recreational vessels.

Conclusion

Under the CWA, discharges incidental to the normal operation of recreational vessels, including graywater, into federal waterways are exempt from NPDES permitting requirements. Therefore, recreational boaters may discharge graywater into Lake Champlain without a permit. There are currently no EPA management practices placing limits on graywater discharge from recreational vessels into the waters of the United States.

¹² See U.S. EPA, *Recreational Vessels and the Clean Boating Act*, <https://www.epa.gov/vessels-marinas-and-ports/recreational-vessels-and-clean-boating-act> (Last visited July 17, 2019).

¹³ 33 U.S.C. § 1253.

¹⁴ *Id.*

¹⁵ 33 U.S.C. § 1270.

¹⁶ See Lake Champlain Basin Program, *Opportunities for Action: An Evolving Plan for the Future of the Lake Champlain Basin* (2017), http://www.lcbp.org/wp-content/uploads/2016/11/Opportunities-for-Action_2017.pdf.