

## Calendar No. 433

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A BILL TO MODIFY THE DATE ON WHICH THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND APPLICABLE STATES MAY REQUIRE PERMITS FOR DISCHARGES FROM CERTAIN VESSELS

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JUNE 18, 2010.—Ordered to be printed  
—————

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

### R E P O R T

[To accompany S. 3372]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 3372) to modify the date on which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### GENERAL STATEMENT AND BACKGROUND

P.L. 110-299 established a 2-year moratorium on Clean Water Act National Pollutant Discharge Elimination System (NPDES) permitting of non-ballast water discharges from 1) fishing vessels and 2) non-recreational vessels less than 79 feet. The current moratorium ends on July 31, 2010. At that time, these vessels would be required to hold a permit for any discharge. S. 3372 would extend the existing moratorium on NPDES permits for these vessel types until December 18, 2013.

A 2006 federal court ruling vacated a long-standing Environmental Protection Agency (EPA) rule that exempted discharges incidental to the normal operation of vessels from permitting requirements of the Clean Water Act. This exemption had been challenged over concerns about the effects of invasive species transported by vessels and the lack of requirements in place to address this problem.

In response to the Court decision, multiple actions were taken to address vessel discharges. In July 2008, Public Law 110-288 reduced the scope of vessels subject to Clean Water Act permitting

by establishing a permanent exclusion of recreational vessels from permit requirements and directing EPA to instead develop mandatory Best Management Practices applicable to these vessels. In July 2008, Congress also passed Public Law 110–299 which established the 2-year moratorium on NPDES permitting on non-ballast water discharges from fishing vessels and non-recreational vessels less than 79 feet. EPA addressed new permitting requirements for the remaining vessel types, which include most large, non-recreational vessels, when it issued its Final Vessel General Permit (VGP) on December 18, 2008. The VGP addresses:

- All discharges incidental to normal operation of non-recreational vessels 79 feet or longer, except commercial fishing vessels, and
- Ballast water discharges for all non-recreational vessels (including commercial fishing vessels and vessels less than 79 feet).

When Congress passed P.L. 110–299 establishing a 2-year moratorium on Clean Water Act permitting of certain vessels, it required EPA to conduct a study to evaluate the impacts of discharges incidental to the normal operation of vessels affected by the moratorium. The results of that study should have provided a basis for determining whether and how such discharges should be regulated by EPA through Clean Water Act NPDES permits. However, the results of the study have not been fully analyzed, and EPA has indicated it would be difficult to issue permits for these vessels by July 31 using just the data collected in the initial study.

S. 3372 would extend the existing moratorium on NPDES permits for vessel types subject to the existing two-year moratorium until December 18, 2013, which is also the date on which EPA will need to re-issue its general permit for vessels larger than 79 feet. This allows coordination of EPA’s permitting efforts for all vessel sizes.

#### OBJECTIVES OF THE LEGISLATION

This bill will amend Public Law 110–299 to extend the date on which the Administrator of the EPA and applicable States may require permits for discharges from certain vessels until December 18, 2013.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Discharges incidental to normal operation of vessels*

Section 1 amends Section 2(a) of Public Law 110–299 (33 U.S.C. 1342) by extending the moratorium on NPDES permitting requirements from July 31, 2010, to December 18, 2012, for non-ballast water discharges from (1) fishing vessels and (2) non-recreational vessels less than 79 feet.

#### LEGISLATIVE HISTORY

S. 3372 was introduced by Senators Barbara Boxer (D–CA) and Murkowski (R–AK) on May 13, 2010. It has 15 co-sponsors including 9 Democrats and 6 Republicans. The bill was received, read twice, and referred to the Senate Committee on Environment and Public Works.

On May 20, 2010, the full Environment and Public Works Committee met to consider the bill. The bill was ordered reported favorably without amendment by voice vote.

#### ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 3372 on May 20, 2010. The bill was ordered to be reported favorably by voice vote.

#### REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 3372 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

#### MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee noted that the Congressional Budget Office (CBO) has found, "S. 3372 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments."

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MAY 24, 2010.

Hon. BARBARA BOXER,  
*Chairman, Committee on Environment and Public Works,*  
*U.S. Senate, Washington, DC.*

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3372, a bill to modify the date on which the Administrator of the Environmental Protection Agency and applicable states may require permits for discharges from certain vessels.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*S. 3372—A bill to modify the date on which the Administrator of the Environmental Protection Agency and applicable states may require permits for discharges on certain vessels*

Under current law, permit requirements related to certain discharges from fishing vessels and nonrecreational vessels less than 79 feet in length will become effective on July 31, 2010. S. 3372 would extend that date until December 18, 2013. CBO estimates that enacting this legislation would have no significant budgetary effect.

Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

S. 3372 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

\* \* \* \* \*

**Public Law 110-299**

\* \* \* \* \*

**SEC. 2. DISCHARGES INCIDENTAL TO NORMAL OPERATION OF VESSELS.**

(a) NO PERMIT REQUIREMENT.—Except as provided in subsection (b), [during the 2-year period beginning on the date of enactment of this Act] *during the period beginning on the date of the enactment of this Act and ending on December 18, 2013*, the Administrator, or a State in the case of a permit program approved under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342), shall not require a permit under that section for a covered vessel for—

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