



This document includes Section 1: Background of the Uniform National Discharge Standards from the "Phase I Final Rule and Technical Development Document of Uniform National Discharge Standards (UNDS)," published in April 1999. The reference number is EPA-842-R-99-001.

Phase I Final Rule and Technical Development Document of Uniform National Discharge Standards (UNDS)

Section 1: Background of the National Uniform Discharge Standards

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1. BACKGROUND OF THE UNIFORM NATIONAL DISCHARGE STANDARDS

This chapter provides background on and summarizes the requirements of the Uniform National Discharge Standards (UNDS) legislation. Section 1.1 describes the evolution of the UNDS legislation; section 1.2 cites the legal authority for the UNDS regulations and gives an overview of the scope of UNDS, including key definitions; section 1.3 describes the multi-phase UNDS development process; and section 1.4 lists the references cited in chapter 1.

1.1 Background

Armed Forces vessels produce liquid discharges that vary greatly in composition, amount, and potential for causing adverse environmental effects. Many are common to nearly all vessels while others are unique to specific vessel types. The composition and volume of a specific discharge may also vary with vessel type and age, installed hardware, operating mode, external environmental conditions, and other factors. Many discharges are discrete waste streams such as graywater (which includes effluent from sources such as sinks, showers, and galleys) and seawater cooling overboard discharge, while others, such as leachate from hull protective coatings, lubricants from various external bearings and joints, and contaminants from other external surfaces are released by direct contact with the marine environment or runoff from precipitation.

In support of national defense and other missions assigned by the President, Armed Forces vessels are required to operate in and visit coastal waters and ports throughout the United States. The potential for different ship discharge requirements between local and State jurisdictions makes it difficult for Armed Forces vessels to simultaneously ensure environmental regulatory compliance and operational readiness. Clear, achievable, and uniform discharge standards would enable the Armed Forces to design, build, and train their crews to operate environmentally sound vessels and simultaneously maintain their ability to meet national defense and other mission requirements. In addition, uniform national standards would result in enhanced environmental protection because standards would be established for certain discharges that presently are not comprehensively regulated. Establishing national standards for discharges from the vessels of the Armed Forces is the purpose of the UNDS program.

In 1990, the Navy began preliminary discussions with various Federal agencies concerning the need for uniform national standards to maintain operational flexibility while promoting environmentally responsible ships. The U.S. Environmental Protection Agency (EPA), the Coast Guard, the National Oceanic and Atmospheric Administration, and other agencies were contacted. The Navy also actively solicited input from the States, recognizing that coastal States, in particular, have a great interest in the quality of the water in and around their ports. State briefings and discussions held before UNDS legislation was passed began in October 1993 and continued through the winter of 1995.¹ During the same period, the Navy hosted several information sessions on UNDS with Federal and State environmental officials, environmental interest groups, and congressional staff. As a result, legislation was drafted and sent to Congress.

Ultimately, Congress enacted UNDS legislation as part of the 1996 Defense Authorization Bill and the President signed the bill into law as part of the National Defense Authorization Act of 1996.

The National Defense Authorization Act established that the purposes of UNDS are to:

- enhance the operational flexibility of vessels of the Armed Forces domestically and internationally;
- stimulate the development of innovative vessel pollution control technology; and
- advance the development by the United States Navy of environmentally sound ships.

1.2 Legal Authority and Statutory Requirements for the UNDS Regulations

Section 325 of the National Defense Authorization Act of 1996, entitled “Discharges from Vessels of the Armed Forces” (Pub. L. 104-106, 110 Stat. 254), amended § 312 and § 502(6) of the Federal Water Pollution Control Act (also known as the Clean Water Act or the CWA) to require the Administrator of the EPA (“Administrator”) and the Secretary of Defense (“Secretary”) to develop uniform national standards to control certain discharges from vessels of the Armed Forces.

1.2.1 Discharges

The UNDS legislation specifies that standards would apply to discharges (other than sewage) incidental to the normal operation of vessels of the Armed Forces unless the Secretary finds that complying with UNDS would not be in the national security interests of the United States (CWA § 312(n)(1)). The standards would apply anytime the vessel is waterborne in inland U.S. waters or within 12 nautical miles (n.m.) from the United States or its territories, regardless of whether the vessel is underway or pierside (see section 1.2.3). Discharges subject to UNDS include discharges from the operation, maintenance, repair, or testing of vessel propulsion systems, maneuvering systems, habitability systems, or installed major systems such as elevators or catapults, and discharges from protective, preservative, or adsorptive hull coatings. UNDS does not apply to discharges overboard of rubbish, trash, garbage, or other such materials; air emissions resulting from a vessel propulsion system, motor driven equipment or incinerator; or discharges that require permitting under the National Pollutant Discharge Elimination System (NPDES) program, Title 40 Part 122 of the Code of Federal Regulations (CFR) (see CWA § 312(a)(12)). UNDS does not apply to discharges containing source, special nuclear, or byproduct materials. These materials are regulated under the Atomic Energy Act of 1954, as amended (42 United States Code (USC) 2011). See *Train v. CIPR, Inc.*, 426 U.S. 1 (1976).

1.2.2 Vessels

Armed Forces vessels subject to the UNDS regulations include most watercraft or other artificial contrivances used, or capable of being used, as a means of water transportation by the Armed Forces. Examples of such vessels are ships, submarines, barges, tugs, floating drydocks,

and landing craft, as well as boats of all sizes. Armed Forces vessels are any vessel owned or operated by the Department of Defense other than time- or voyage-chartered vessels. This includes vessels of the Navy, Army, Marine Corps, Air Force, and Military Sealift Command (MSC). In addition, a vessel of the Armed Forces is defined as any vessel owned or operated by the Department of Transportation (DOT) that is designated by the Secretary of the Department in which the Coast Guard is operating as a vessel equivalent to a vessel of the DoD. The Secretary of the DOT has determined that Coast Guard vessels are equivalent to DoD vessels and are therefore included as vessels of the Armed Forces for the purposes of UNDS.

A vessel becomes a vessel of the Armed Forces when the government assumes overall operational control of the vessel. Vessel discharges that occur before the government assumes control of the vessel (e.g., vessels under construction) and those that occur during maintenance and repair while the vessel is in drydock are addressed by the NPDES permits issued to the shore facility or the drydock. Discharges related to a floating drydock's function as a vessel are covered by UNDS and do not require authorization by NPDES permits.

While the majority of Armed Forces vessels are subject to UNDS, there are several classes of vessels that are not subject to UNDS. The Armed Forces vessels that are subject to UNDS and those vessels not subject to UNDS are discussed in detail in chapter 2.

1.2.3 Waters

UNDS is applicable to discharges from Armed Forces vessels when they operate in the navigable waters of the United States and the contiguous zone. As defined in § 502 of the CWA, the term "navigable waters" means all inland waters of the United States, including the Great Lakes, and all waters seaward from the coastline to a distance of three n.m. from the shore of the States, District of Columbia, Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territories of the Pacific Islands. The contiguous zone extends from three n.m. to 12 n.m. from the coastline. Therefore, UNDS applies to Armed Forces vessel discharges into inland waters and into waters from the shoreline out to 12 n.m. of shore. UNDS is not enforceable beyond the contiguous zone.

1.3 UNDS Development Requirements

Section 312(n) of the CWA requires that UNDS be developed in three phases:

Phase I. The first phase of UNDS requires the Administrator and the Secretary to determine for which Armed Forces vessel discharges it is reasonable and practicable to require control with a marine pollution control device (MPCD) on at least one vessel class, type, age, or size to mitigate potential adverse impacts on the marine environment (CWA § 312(n)(2)). The UNDS legislation states that a MPCD may be a piece of equipment or a management practice designed to control a particular discharge (CWA § 312(a)(13)). The Administrator and the Secretary are required to consider the following seven factors when determining if a discharge requires a MPCD:

- the nature of the discharge;
- the environmental effects of the discharge;
- the practicability of using the MPCD;
- the effect that installing or using the MPCD has on the operation or the operational capability of the vessel;
- applicable United States laws;
- applicable international standards; and
- the economic costs of installing and using the MPCD.

The Administrator and the Secretary are required to consult with the Secretary of the department in which the Coast Guard is operating (i.e., DOT), the Secretary of Commerce, and interested States during Phase I rule development. The statute provides that after promulgation of the Phase I rule, neither States nor political subdivisions of States may adopt or enforce any State or local statutes or regulations with respect to discharges identified as not requiring control with a MPCD, except to establish no-discharge zones (CWA § 312(n)(6)). A no-discharge zone is an area of water determined by a State or the Administrator to need greater environmental protection than that provided by UNDS. It can encompass one or more discharges that will be prohibited from being released, either treated or untreated, into the waters of the no-discharge zone. In addition, States and their political subdivisions will be similarly prohibited from adopting or enforcing any statutes or regulations affecting discharges that require control with MPCDs once “Phase III” regulations (see below) that govern the design, construction, installation, and use of the MPCDs for those discharges are promulgated.

When there is new, significant information not considered during the Phase I rulemaking that could result in a change to the Phase I discharge determination, § 312(n)(5)(D) of the CWA authorizes the Governor of any State to submit a petition to the Administrator and the Secretary requesting them to re-evaluate whether a discharge requires control. In addition, § 312(n)(5) of the CWA requires the Administrator and the Secretary to review the Phase I determinations every five years and, if necessary, revise the determinations based on significant new information.

Phase II. The second phase of UNDS requires the Secretary and the Administrator to promulgate Federal performance standards for each MPCD determined to be required in Phase I (CWA § 312(n)(3)). Phase II requires that the Secretary of the department in which the Coast Guard is operating, the Secretary of State, the Secretary of Commerce, other interested Federal agencies, and interested States be consulted. When developing performance standards for the MPCDs during Phase II, the Secretary and Administrator must consider the same seven factors that were considered during Phase I (see above), and may establish standards that:

- distinguish between vessel class, type and size;
- distinguish between new and existing vessels; and
- provide a waiver from UNDS requirements as necessary or appropriate for particular classes, types, sizes, or ages of vessels.

The performance standards developed during Phase II are to be issued two years after the Phase I regulation is issued, and reviewed every five years in accordance with § 312(n)(5) of the CWA.

Phase III. The third phase of UNDS requires the Secretary, after consulting with the Administrator and the Secretary of the department in which the Coast Guard is operating, to establish requirements for designing, constructing, installing, and using the MPCDs identified in Phase II (CWA § 312(n)(4)). These requirements will be codified under the authority of the Secretary. Phase III is to be completed within one year after Phase II is promulgated. Following completion of Phase III, neither States nor political subdivisions of States may adopt or enforce any State or local statutes or regulations with respect to discharges identified as requiring control with a MPCD, except to establish no-discharge zones (CWA §312(n)(6)).

1.4 References

1. Quinn, John P., Captain U.S. Navy. “Uniform National Discharge Standards for Armed Forces Vessels: Enhancing Operational Flexibility and Environmental Protection.” Presented at the 22nd Environmental Symposium and Exhibition of the American Defense Preparedness Association. Orlando, Florida. 21 March 1996.

