

**STATE OF HAWAII
DEPARTMENT OF HEALTH
CLEAN WATER BRANCH**

**SECTION 401 WATER QUALITY CERTIFICATION (WQC)
INITIAL STAFF EVALUATION (ISE)**

**WQC No.: WQC 0000742
Originator: Edward Chen
Date: November 18, 2008**

1. Applicant:

United States
Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105
Contact: Mr. Douglas E. Eberhardt
Chief, NPDES Permits Office
Phone: (415) 972-3420

Application: Dated
June 27, 2008

Date Received
July 7, 2008

**Additional
Information: Date Requested**
August 7, 2008

Date Received
September 12, 2008

2. Project Name and Location:

VESSEL GENERAL PERMIT FOR DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF COMMERCIAL VESSELS AND LARGE RECREATIONAL VESSELS (VGP), Statewide

3. Associated Federal Permit or License:

VESSEL GENERAL PERMIT FOR DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF COMMERCIAL VESSELS AND LARGE RECREATIONAL VESSELS (VGP)

Section 402 of the Clean Water Act (CWA).

4.a. Description of Proposed Activity:

On July 7, 2008, the Department of Health (DOH), Clean Water Branch (CWB), received a letter, dated June 27, 2008, which included copies of the draft general permits, draft fact sheets and a *Federal Register* notice from Mr. Douglas E. Eberhardt, Chief of EPA Region 9, NPDES Permits Office, which stated that:

"The U. S. Environmental Protection Agency (EPA) is in the process of issuing two NPDES general permits: a General Permit for Discharges Incidental to the Normal Operation of Commercial and Large Recreational Vessels (VGP) and a General Permit for Discharges Associated with Recreational Vessels (RGP). Enclosed are copies of the draft general permits, draft fact sheets and a *Federal Register* notice for your review and comment; additional information is available at: <http://www.epa.gov/NPDES/vessels>. When issued, these general permits would authorize discharges from these vessels throughout the United States, including waters of the State of Hawaii.

By transmittal of the draft VGP and RGP, we are requesting that the Hawaii Department of Health make a written determination regarding certification under CWA Section 401. EPA may not issue a permit authorizing discharges into the waters of Hawaii until the State has granted certification under CWA Section 401, or has waived its right to certify. 33 U.S.C. [United States Code] 1341(a)(1); 40 C.F.R. 124.53(a). A State will be deemed to have waived its right to certify unless that right is exercised within 45 days from the date the draft permits were mailed to you. 40 C.F.R.[Code of Federal Regulations] 124.53(c)(3).

The State certification shall be in writing and shall include the specific conditions necessary to assure compliance with the applicable provisions of CWA Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. 33 U.S.C. 1341(d); 40 C.F.R. 124.53(e)(1). If you believe that any condition(s) more stringent than those contained in the draft permits is necessary to meet the requirements of either the CWA or State law, you should include such condition(s), and, in each case, cite the CWA or State law reference upon which that condition(s) is based. Failure to provide such a citation waives your right to certify with respect to that condition(s). 40 C.F.R. 124.53(e)(2). In addition, the State certification must include a statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards. Failure to provide this statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process. 40 C.F.R. 124.53(e)(3).

Following review of the public comments received during the public comment period and receipt of your certification or waiver thereof, EPA plans to issue the general permits as final documents. Those final permits will incorporate any conditions specified in the State certification. 33 U.S.C. 1341 (d).

I would appreciate receiving your certification by August 1, 2008 or sooner, but no later than 45 days from the date that the draft permits were mailed to you." (Emphasis added)

The CWB evaluated Region 9's request and noted that: 1) Under CWA, Paragraph 401(a)(1), there is no Federal mandate that a Section 401 WQC issued by the DOH shall include a review or contain a statement that discharges to be authorized by the Federal license or permit will meet applicable CWA Subsection 208(e) requirements; and 2) According to Hawaii Revised Statutes (HRS), Section 342D-53,

"[T]he director may act as a certifying agency, as defined in 40 Code of Federal Regulations 121.1(e)," not 40 CFR §124.

40 CFR §121.16 states that:

"The certification requirement with respect to an application for a license or permit shall be waived upon:

- (a) Written notification from the State or interstate agency concerned that it expressly waives its authority to act on a request for certification; or
- (b) Written notification from the licensing or permitting agency to the Regional Administrator of the failure of the State or interstate agency concerned to act on such request for certification within a reasonable period of time after receipt of such request, as determined by the licensing or permitting agency (which period shall generally be considered to be 6 months, but in any event shall not exceed 1 year). (Emphasis added)

In the event of a waiver hereunder, the Regional Administrator shall consider such waiver as a substitute for a certification, and as appropriate, shall conduct the review, provide the notices, and perform the other functions identified in [40 CFR] §§121.13, 121.14, and 121.15. The notices required by [40 CFR] §121.13 shall be provided not later than 30 days after the date of receipt by the Regional Administrator of either notification referred to herein."

The DOH responded to the EPA, Region 9's June 27, 2008 request on August 7, 2008 (No. 08005CEC.08) that:

"The Hawaii State Department of Health (HDOH), Clean Water Branch (CWB), acknowledges receipt of a letter (dated June 27, 2008) which includes copies of the draft general permits, draft fact sheets and a *Federal Register* notice from Mr. Douglas E. Eberhardt, Chief of your NPDES Permits Office, requesting that the HDOH make a "written determination" regarding certification under Clean Water Act (CWA), Section 401 for the subject National Pollutant Discharge Elimination System (NPDES) GPs to be issued under the authorization of CWA, Section 402. Mr. Eberhardt also indicated in his letter that "[E]PA may not issue a permit authorizing discharges into the waters of Hawaii until the State has granted certification under CWA Section 401, or has waived its right to certify." Mr. Eberhardt's letter was received by the CWB on July 7, 2008.

The HDOH reviews and processes an Application for a Section 401 WQC in accordance with CWA, Section 401; Hawaii Revised Statutes (HRS), Chapters 91, 92 and 342D; Title 40, Code of Federal Regulations (CFR), Part 121; and Hawaii Administrative Rules (HAR), Chapter 11-54.

Please be informed that the HDOH has reviewed information submitted with Mr. Eberhart's letter of July 7, 2008 for a Section 401 WQC and is providing comments and rendering its initial written determination on a request for a Section 401 WQC submitted by the EPA, Region 9.

This letter is served to inform you that HDOH has determined that:

1. HDOH does not waive, nor should HDOH be deemed by EPA to have waived, HDOH's jurisdiction in processing EPA's request for a Section 401 WQC for the subject VGP and RGP in the State of Hawaii in accordance with CWA, Subsection 401(a), 40 CFR §121.16, and HAR, 11-54-9.1.04(b). EPA has also indicated in the *Federal Register* notice (E8-13615, 73 FR 34296) that "EPA expects significant public interest and comments on today's proposed permits, . . ."
2. The Application is insufficient for HDOH to issue a certification now. Therefore, under HAR, 11-54-9.1.02(b), processing of the water quality certification application shall not be completed until EPA or its duly authorized representative has supplied the information or other items needed to complete the Application.

To be sufficient and complete the Application, the HDOH requires EPA to:

- a. Include appropriate conditions to require compliance with:
 - (1) HAR, Paragraph 11-54-3(b)(2) which states "[N]o new treated sewage discharges shall be permitted within estuaries;" and
 - (2) HAR, Paragraph 11-54-3(c)(2) which states "[N]o new sewage discharges will be permitted within embayments."

We acknowledge that CWA, Section 312, may have an effect on the enforcement of these Water Quality Standards (WQS).

- b. Include appropriate conditions to require compliance with HAR, 11-54-5.2(a) which states "[N]atural freshwater lakes, saline lakes, and anchialine pools will be maintained in the natural state through Hawai'i's "no discharge" policy for these waters. Waste discharge into these waters is prohibited."

As defined in HRS, Section 342-1, "Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the waters of this State.

- c. Include appropriate monitoring and reporting requirements which will ensure the compliance of HRS, Section 342D-51 requirements:

"§342D-51 Affirmative duty to report discharges. Any person who has caused an unlawful discharge under section 342D-50(a) has an affirmative duty to report the incident to the director within twenty-four hours of the discharge, unless a valid permit issued under section 342D-6 specifies another reporting period for the specific discharge."

- d. Require vessels to monitor “enterococcus,” instead of “Fecal Coliform,” in order to comply with HAR, 11-54-8 and 40 CFR §131(c)(2) requirements, respectively.
- e. Provide appropriate methods:
- (1) To determine that vessels’ discharges will comply with CWA, Section 101(a)(3) and HAR, 11-54-4(a)(4) and 11-54-4(b) requirements.

CWA, Section 101(a)(3) states that “(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited.”

HAR, 11-54-4(a)(4) requires that all waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including “[H]igh or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;” (Emphasis added)

HAR, 11-54-4(b) requires that “[T]o ensure compliance with paragraph (a)(4), all state waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.” (Emphasis added)
 - (2) To be used to determine that discharge of oil and grease from any vessels will:
 - (a) Meet HAR, Subsection 11-54-4(a)(2) requirements which requires that “[A]ll waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including: (2) Floating debris, oil, grease, scum, or other floating materials;” (Emphasis added) and
 - (b) Meet the draft VGP effluent limits established at 15.0 mg/l.
 - (3) On how EPA will inform all boat owners that their discharges incidental to their normal boat operating activities are now automatically covered under an NPDES VGP or RGP and subject to compliance with the applicable VGP/RGP requirements and that only a vessel that “is greater or equal to 300 gross registered tons or the vessel has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water” will be required to “submit a complete and accurate NOI in accordance with the requirements of Part 10 of this permit.”
3. Pursuant to HAR, 11-54-9.1.03, the director of health (director) may provide “the opportunity for public comment or hearing(s) or both to consider the issuance of a water quality certification.”

We note that there is no assurance that there will be any public meeting or public hearing held in the State of Hawaii for the proposed “draft” VGP and “draft” RGP. Nor did the *Federal Register* notice (E8-13615, 73 FR 34296) discuss in detail how EPA or the State would complete the Clean Water Act section 401 certification process

for the draft VGP and draft RGP. The need for a Section 401 WQC was discussed in the Fact Sheet which was located at EPA's website. As such, "a notice shall be published in accordance with chapters 91 and 92, HRS. The director shall inform the owner or its duly authorized representative in writing that the action has been taken. All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the water quality certification application shall be paid by the owner to the appropriate newspaper agency or agencies determined by the director. Failure to provide and pay for public notification, as considered appropriate by the director, may result in a delay in the certification process." (Emphasis added) Therefore, in accordance with HAR, 11-54-9.1.02(a)(10), we request that you submit a "statement of choice for publication" of EPA's intent to publish a "Public Notice of Proposed Action or a Public Notice of Public Hearing." We recommend that you designate a person to work closely with the CWB in this regard.

4. According to 40 CFR 121.2(a)(4), any issued Section 401 WQC shall contain conditions which the HDOH "deems necessary or desirable with respect to the discharge of the activity."
5. According to 40 CFR 121.2(a)(5), any issued Section 401 WQC shall contain such other information as the HDOH "may determine to be appropriate."
6. EPA shall be the Agency responsible to inform all boat owners of which water bodies have or do not have an EPA approved Total Maximum Daily Load (TMDL) implementation plan prepared under CWA, Subsection 303(d).

As stated in page 36 of the VGP fact sheet, "[E]PA has access to other sources of data available for identifying discharges from vessels covered by the proposed permit, including state registration information, MARAD vessel calls, U.S. Coast Guard registration and customs records, and data from the Ballast Water Clearinghouse. From these sources, EPA can obtain information from which we can deduce the nature of ship and boat discharges from these smaller vessels."

The HDOH has neither access to these information sources nor resources to provide adequate and timely notification to the affected boaters.

7. Any signatures required for the water quality certification application shall be provided as described in 40 CFR §122.22(a)(3)." (Emphasis added)
8. Filing fee as required pursuant to HAR, 11-54-9.1.02(e) was not submitted with Mr. Eberhardt's letter of June 27, 2008. A filing fee of \$1000, made payable to the "State of Hawaii" in the form of a cashier's check or money order, shall be submitted with the water quality certification application. The processing of your Application for a Section 401 WQC cannot be completed until the filing fee is received. The HDOH is expecting to receive the filing fee no later than August 25, 2008.
9. Clarification is needed in different effluent numerical limitation established for total residual chlorine used in VGP Item Nos. 5.1.1.1.2(3) [for Gray waters] and 5.8.1.1 [for Ballast Waters]. Item No. 5.1.1.1.2(3) states that "(3) Concentrations of total residual chlorine may not exceed 10.0 micrograms per liter (µg/l)." Item No. 5.8.1.1 states that "[T]he discharge of Total Residual Chlorine (TRC) as a biocide or derivative may not exceed 100 micrograms per liter (µg/l). Any other biocides or derivatives may not exceed acute water quality criteria listed in EPA's 1986 Quality Criteria for Water [the

Gold Book], and any subsequent revision, at the point of ballast water discharge. Discharges of biocide residuals or derivatives must also meet monitoring requirements under Part 5.8.2.1, and reporting and recordkeeping requirements in Part 5.8.3.” (Emphasis added.) Are there any monitoring requirements established for other potential toxic pollutant that may be contained in the vessels’ effluent discharges other than from ballast waters and gray waters?”

On September 12, 2008, the CWB staff, through the E-mail, received an advanced copy of Region 9's letter dated September 12, 2008 with response attached as an enclosure. In its September 12, 2008 letter, Region 9 stated that:

"This is in reply to your letter of August 7, 2008 concerning Region 9's CWA section 401 water quality certification request for our draft general NPDES permits for: (1) Discharges Incidental to the Normal Operation of Commercial and Large Recreational Vessels (VGP), and (2) Discharges Associated with Recreational Vessels (RGP). Your letter had withheld the section 401 certification pending a response by Region 9 to the issues raised in your letter.

Before addressing the specific issues in your letter, we would first like to modify our certification request to reflect recent legislation passed by Congress (specifically S. 2766 and S. 3298), and signed by the President in late July 2008. In accordance with this legislation, we are modifying our request as follows:

- EPA will not be issuing the RGP, and we hereby withdraw our certification request for the RGP;
- our certification request for the VGP is modified to exclude all discharges from large recreational vessels; and
- for discharges other than ballast water, our modified request only includes discharges from commercial vessels which are 79 feet or greater in length (but not including any commercial fishing vessels regardless of length). For ballast water discharges, our request includes all commercial vessels including all commercial fishing vessels.

Part 6 of the draft VGP was reserved to include special conditions which are determined by States or Tribes to be necessary to ensure consistency with State or tribal requirements. We believe that most of the issues raised in your letter can be addressed by adding such conditions to Part 6 of the final VGP. Enclosed with this letter is a more detailed response to the issues raised in your letter, and some suggestions for additional permit requirements which could be included in Part 6 of the final VGP, and would be applicable to discharges into waters of the State of Hawaii.

If the Hawaii DOH is satisfied with the proposed additional permit requirements, we request that the DOH proceed with public notice (as required by your regulations) of a proposed CWA section 401 certification for the VGP. If necessary, the Hawaii DOH may also specify additional requirements for Part 6 of the final VGP to ensure compliance with applicable State requirements.

Lastly, per your request, this cover letter is being signed in accordance with the signatory requirements at 40 CFR 122.22(a)(3) ..."

ENCLOSURE - EPA Response to the Issues Raised in the Hawaii DOH Letter of August 7, 2008, and Proposed Additional Requirements for Part 6 of the Final VGP for Discharges into Waters of the State of Hawaii

1) Compliance with HAR 11-54-3(b)(2) and 11-54-3(c)(2). These rules require that no new treated sewage discharges be permitted within estuaries and embayments in the State of Hawaii.

For reasons noted below, we believe that the proposed permit should be considered consistent with HAR 11-54-3(b)(2) and 11-54-3(c)(2). As discussed in the fact sheet for the proposed VGP, the proposed permit is in response to a 2005 District Court order which vacated (with a recently revised effective date of December 19, 2008) the NPDES permit exemption at 40 CFR 122.3 for discharges incidental to the normal operation of a vessel. However, the Court order does not require permitting of sewage discharges from vessels since they are already regulated under section 312 of the CWA.

Sewage discharges are addressed in the permit only as a result of the fact that sewage discharges and graywater discharges may be combined into one discharge on some vessels. As noted in the fact sheet, once the two discharges are combined it is not possible to "separate out which constituents within the effluent are from which discharge type." In the permit, graywater discharges which contain sewage are subject to the requirements for graywater. The Court order requires a permitting mechanism for gray waters discharges, and sewage discharges are drawn in the permitting on some vessels given their plumbing. However, it would not otherwise be our intent to regulate sewage discharges in the permit given the requirements of the Court order. The permit also notes that the sewage discharges are subject to the regulations promulgated under CWA section 312 (33 CFR 159), and any additional State requirements such as HAR 11-54-3(b)(2) and 11-54-3(c)(2).

We also believe the intent of HAR 11-54-3(b)(2) and 11-54-3(c)(2) is only to prevent any genuinely "new" sewage discharges within estuaries and embayments. Aside from discharges from any newly-constructed vessels, the proposed permit regulates discharges from existing, but previously unpermitted sources rather than "new" sources; [sic]

Again, in view of the above factors, we believe that the permit should be considered consistent with HAR 11-54-3(b)(2) and 11-54-3(c)(2). Nevertheless, if the Hawaii DOH disagrees, a special condition could be added to Part 6 of the permit which would prohibit any graywater discharges within estuaries and embayments if they include any sewage discharges.

2) Compliance with HAR 11-54-5.2(a). We propose adding the following to Part 6 of the permit which would be applicable to discharges to waters of the State of Hawaii:

There shall be no waste discharges into natural freshwater lakes, saline lakes and anchialine pools. Waste means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the waters of the State.

3) Compliance with HRS section 342D-51. We propose adding the following to Part 6 of the permit which would be applicable to discharges to waters of the State of Hawaii:

Any discharge which would be unlawful under section 301(a) of the Clean Water Act must be reported to the Director, Water Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and to the Director for Environmental Health, Hawaii Department of Health, 919 Ala Moana Blvd, Honolulu, Hawaii 96814-4920 within twenty-four hours of the discharge, unless a valid NPDES permit issued under section 402 of the Clean Water Act specifies another reporting period for the specific discharge.

In the above paragraph, since EPA is the permitting authority for vessel discharges, we have substituted sections 301(a) and 402 of the Clean Water Act for the corresponding provisions of HRS sections 342D-50(a) and 342D-6 which are referred to in HRS Section 342D-51.

4) Compliance with HAR 11-54-8. We should first note that the proposed permit does not require monitoring for fecal coliform. To address your issue, we propose adding the following to Part 6 of the permit which would be applicable to discharges to waters of the State of Hawaii:

Enterococcus shall be added to the list of analytes for which samples shall be taken in accordance with Parts 5.1.2.2.1, 5.1.2.2.2, 5.2.2.2.1 and 5.2.2.2.2 of this permit. Monitoring results shall be reported to the Director for Environmental Health, Hawaii Department of Health, 919 Ala Moana Blvd, Honolulu, Hawaii 96814-4920 in addition to EPA's Washington DC office.

5) Compliance with CWA section 101(a)(3), HAR 11-54-4(a)(4) and 11-54-4(b). For compliance with HAR 11-54-4(a)(4), we propose adding the following to Part 6 of the permit which would be applicable to discharges to waters of the State of Hawaii:

Receiving waters of the State of Hawaii shall be free of substances attributable to the discharges including high or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to humans, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water.

The above condition would enhance the protection provided by the permit for State waters. HAR 11-54-4(b) also provides for monitoring of discharges to ensure compliance with the toxicity restrictions of HAR 11-54-4(a), as well as the narrative requirement in CWA section 101(a)(3) requiring no "toxic pollutants in toxic amounts." We believe the existing BMP, inspection and monitoring requirements of the draft permit are appropriate for the types of discharges involved, and will reasonably assure compliance with HAR 11-54-4(a). However, specific toxicity testing requirements could be added to Part 6 of the permit for particular discharges if the State believes this would be appropriate.

6) Compliance with HAR 11-54-4(a)(2). We propose adding the following to Part 6 of the permit which would be applicable to discharges to waters of the State of Hawaii:

Receiving waters of the State of Hawaii shall be free of substances attributable to the discharges including floating debris, oil, grease, scum, or other floating materials.

Part 4.1 and Part 5 of the permit require a variety of inspection requirements and visual and analytical monitoring requirements to ensure compliance with the permit and to address requirements such as those in HAR 11-54-4(a)(2). With regards to compliance with the oil and grease limit of 15 mg/l, we would point out that the discharges are also subject to U.S. Coast Guard regulations at 33 CFR 151 and 155 which require oily-water separating

equipment and monitoring devices such as a 15 ppm bilge alarm. We believe the U.S. Coast Guard requirements, in combination with the permit requirements, will reasonably assure compliance with the permit. However, additional monitoring requirements for oil and grease could be added to Part 6 of the permit for any discharges of particular concern to the State if the State believes this would be appropriate.

7) **Communicating the Permit Requirements to Vessel Owners.** EPA has developed an outreach strategy for this permitting action which is already being implemented and will continue to be implemented for the final permit issuance. While we cannot necessarily contact every vessel owner individually given the large number of vessels, we believe we have developed an effective outreach program using appropriate methods including *Federal Register* notice, public hearings, webcasts, information posted on the EPA website, and direct communication with trade associations, and other Federal, State and local agencies and organizations. With regards to information concerning approved TMDLs, EPA provides such information on EPA's website at <http://www.epa.gov/OWOW/tmdlindex.html>.

8) **Requirements of 40 CFR 121.2(a)(4) and 121.2(a)(5).** We presume that the State's final certification will include all the conditions which the State would deem "necessary or desirable" pursuant to 40 CFR 121.2(a)(4), and other information which the State "may determine to be appropriate" pursuant to 40 CFR 121.2(a)(5). As noted previously, such conditions will be included in Part.6 of the final VGP as necessary.

9) **Clarification of Limits for Total Residual Chlorine (TRC).** The proposed permit does include different TRC limits for graywater and experimental ballast water treatment systems (10 ug/l for graywater and 100 ug/l for experimental ballast water treatment systems), which reflect differences in the nature of these discharges. The proposed limit for graywater was derived from U.S. Coast Guard regulations at 33 CFR 159.309 for a reasonably well-known discharge. The higher limit proposed for experimental ballast water treatment systems will provide additional flexibility which may be necessary in designing effective systems to help prevent nuisance species in the discharges. However, to ensure protection of Hawaiian waters, the State may specify an alternate limit for Part 6 of the permit for graywater or discharges from experimental ballast water treatment systems.

EVALUATION:

Discharges Incidental to the Normal Operation of Vessels is currently excluded from obtaining an NPDES permit in accordance with 40 CFR 122.3(a) which states:

"The following discharges do not require NPDES permits:

- (a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development..."

In a Fact Sheet, dated September 2008, titled "**Overview of Litigation and Clean Water Act Permit Scheme Regarding Discharges Incidental to Normal Vessel Operations**" located at EPA's website at <http://www.epa.gov/npdes/vessels>, EPA stated that:

"Why was a lawsuit filed?"

In January 1999, a number of interested parties submitted a rulemaking petition to EPA asking the Agency to repeal its long-standing regulation at 40 C.F.R. 122.3(a) that excludes certain discharges incidental to the normal operation of vessels, including ballast water, from the requirement to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA). The petition seeking repeal expressed concern over discharges of ships' ballast water containing invasive species and other matter. In September 2003, EPA denied the petition. Following EPA's denial decision, several groups filed a lawsuit in December 2003 in the U.S. District Court for the Northern District of California (Northwest Environmental Advocates et al. v. EPA, No. C 0305760 SI).

What was the court's ruling?"

On March 30, 2005, the District Court ruled that the EPA regulation excluding discharges incidental to the normal operation of a vessel from NPDES permitting exceeded the Agency's authority under the CWA. In subsequent proceedings before the Court, EPA argued that any relief granted by the Court should be limited to ballast water matters alone. However, on September 18, 2006, the Court issued an order vacating (revoking) the regulatory exclusion at 40 C.F.R. 122.3(a) in its entirety as of September 30, 2008. EPA appealed the District Court's decision, and on July 23, 2008, the Ninth Circuit upheld the decision, leaving the September 30, 2008 vacatur date in effect. The district court has subsequently extended the date of vacatur to December 19, 2008.

What Action has Congress Taken?"

On July 29, 2008, Senate bill S. 2766 ("the Clean Boating Act of 2008") was signed into law (P.L. No. 110-288). This law provides that recreational vessels shall not be subject to the requirement to obtain an NPDES permit to authorize discharges incidental to their normal operation. It instead directs EPA to evaluate recreational vessel discharges, develop management practices for appropriate discharges, and promulgate performance standards for those management practices. It then directs the Coast Guard to promulgate regulations for the use of the management practices developed by EPA and requires recreational boater compliance with such practices.

On July 31, 2008, Senate bill S. 3298 was signed into law (P.L. No. 110-299). This law generally imposes a two-year moratorium during which time neither EPA nor states can require NPDES permits for discharges incidental to the normal operation of vessels of less than 79 feet and commercial fishing vessels of any length. It also directs EPA to conduct a study of vessel discharges and issue a report to Congress within 15 months. Among other things, the moratorium does not apply to ballast water.

What types of vessels and discharges are potentially affected by the District Court's ruling?"

Because the District Court's decision was not limited to vessels with ballast water tanks, it implicated an extremely large number of vessels and a range of discharges. After excluding the vessels addressed by the two news laws discussed above, there are an estimated 50,000 commercial vessels operating in U.S. waters that could be affected. As described below, the Vessel General Permit authorizes 28 kinds of operational discharges including ballast water, bilgewater, deck runoff, and graywater.

Are there any exemptions relevant to vessel discharges unaffected by the Court's ruling?

The Court's ruling does not affect vessel discharge exemptions from permitting that are specifically provided for in the CWA itself. For example, § 502(6)(A) excludes from the Act's definition of "pollutant" sewage from vessels (including graywater in the case of commercial vessels operating on the Great Lakes) and discharges incidental to the normal operation of a vessel of the Armed Forces within the meaning of the CWA § 312. As another example, the CWA provides in § 502(12)(B) that discharges from vessels (i.e., discharges other than those when the vessel is operating in a capacity other than as a means of transportation) do not constitute the "discharge of a pollutant" when such discharges occur beyond the limit of the three mile territorial sea. Because both "a pollutant" and a "discharge of a pollutant" are prerequisites to the requirement to obtain an NPDES permit, these two statutory provisions have the effect of exempting the vessel discharges they address from the requirement to obtain an NPDES permit. In addition, as discussed above, Congress also took action in July 2008 to preclude, or temporarily suspend, NPDES permitting of certain vessel types.

What are the implications of the Court's ruling and what is EPA doing in response?

Section 301(a) of the CWA generally prohibits the "discharge of a pollutant" without an NPDES permit. This means that, as of September 30, 2008, that regulatory exclusion will no longer exempt such discharges from the prohibition in CWA section 301(a). The CWA authorizes civil and criminal penalties for violations of the prohibition against the discharge of a pollutant without a permit, and also allows for citizen suits against violators.

These types of discharges pose unique challenges, because vessels are highly mobile and the vessel universe is extremely diverse. In light of this, the Agency issued a Federal Register notice on June 21, 2007, seeking information from the public on matters related to vessels and their discharge characteristics as well as potential technologies or practices for discharge control. Approximately 1,600 responses were received by the end of the comment period. On June 17, 2008, EPA published a Federal Register Notice proposing general permits for public comment with the intent of having the final permits issued by September 30, 2008.

What are the Conditions/Terms in the Proposed General Vessel Permits?

EPA proposed two draft NPDES vessel permits and accompanying fact sheets which provide detailed explanation of the permits' contents. As proposed, the Vessel General Permit (VGP) would have covered all commercial and non-recreational vessels and those recreational vessels longer or equal to 79 feet, and the proposed Recreational General Permit (RGP) covered recreational vessels less than 79 feet in length. However, due to the enactment of the Clean Boating Act of 2008, which now excludes Recreational vessels from NPDES permitting, the RGP will not be finalized. In addition, due to P.L. 110-299, which places a two year moratorium on NPDES permitting of commercial fishing vessels and all other commercial vessels that are 79 feet or less in length, the VGP will be revised prior to finalization to reflect that new law.

The VGP would incorporate the Coast Guard mandatory ballast water management and exchange standards and add some additional requirements for ballast water management. It would also provide technology-based effluent limits (most in the form of Best Management Practices) for 28 other discharge types including deck runoff, bilgewater, aqueous film forming foam (AFFF), hull leachate, underwater husbandry, and cathodic protection. The permit would establish additional technology-based requirements for certain discharges from eight (8) specific classes of vessels, such as cruise ships, research vessels, and large ferries and water quality-based effluent limits that include requirements for impaired waterbodies. Under this permit, certain discharge types would be limited or prohibited in waters protected for conservation purposes (i.e. national marine sanctuaries and national parks). The VGP

would also establish specific corrective actions, inspections and monitoring requirements as well as recordkeeping and reporting requirements.

The VGP would require a submission of a Notice of Intent for a subset of permittees if the vessel is greater or equal to 300 tons or has a ballast water capacity of at least 8 cubic meters. All other vessels covered by the VGP would not have to submit an NOI.

For more information:

Send an email to commercialvesselpermit@epa.gov or contact Ryan Albert, Water Permits Division, (202) 564-0763, Juhi Saxena, Water Permits Division, (202) 564-0719 or John Lishman, Oceans and Coastal Protection Division, (202) 566-1364,

Documents **related to the rulemaking petition and the Courts' rulings are available on-line at:** http://www.epa.gov/owow/invasive_species/ballast_water.html; **Documents related to the proposed permits are available on-line at:** <http://www.epa.gov/npdes/vessels>"

EPA specified in the June 17, 2008 Federal Register (73 FR 34303) that:

"... Accordingly, EPA has committed that the Agency will operate in accordance with the RFA's [Regulatory Flexibility Act] framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency commits that it will apply the RFA in its issuance of general permits as if those permits do qualify as "rules" that are subject to the RFA). In satisfaction of this commitment, during the course of this VGP and RGP proceeding, the Agency conducted the analysis and made the appropriate determinations that are called for by the RFA. In addition, and in satisfaction of the Agency's commitment, EPA will apply the RFA's framework and requirements in any future issuance of other NPDES general permits. EPA anticipates that for most general permits the Agency will be able to conclude that there is not a significant economic impact on a substantial number of small entities. In such cases, the requirements of the RFA framework are fulfilled by including a statement to this effect in the permit fact sheet, along with a statement providing the factual basis for the conclusion. A quantitative analysis of impacts would only be required for permits that may affect a substantial number of small entities, consistent with EPA guidance regarding RFA certification.¹"

¹EPA's current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act, was issued in November 2006 and is available on EPA's Web site:

<http://www.epa.gov/sbrefa/documents/rfafinalguidance06.pdf>. After considering the Guidance and the purpose of CWA general permits, EPA concludes that general permits affecting less than 100 small entities do not have a significant economic impact on a substantial number of small entities.

Public meetings and a public hearing were held by EPA for the subject proposed VGP. However, there was no public meeting held in the State of Hawaii. As such, the staff recommends that a "Notice of Proposed Section 401 Water Quality Certification" (hereafter the "PN") shall be published in the appropriate newspaper Statewide to fulfill the applicable Federal and State public participation requirements in the State of Hawaii. The PN shall be placed in *The Garden Island* (Island of Kauai), *Honolulu Star Bulletin* (Island of Oahu), *The Maui News* (Islands of Maui Molokai and Lanai), *West Hawaii Today*

(Island of Hawaii) and *Hawaii Tribune-Herald* (Island of Hawaii) in accordance with the “**STATEWIDE PUBLICATION OF PUBLIC AND PROCUREMENT NOTICES – OAHU ONLY (RFP-06-020-O) *Expires April 29, 2009***” (SPO Price List No. 06-12, Change No. 10. Oahu only, revised October 29, 2008) and “**STATEWIDE PUBLICATION OF PUBLIC AND PROCUREMENT NOTICES Expires April 29, 2009**” - All Islands except Oahu. (IFB-02-064-SW) Change No. 30 SPO Price List No. 02-31 (Statewide) revised October 29, 2008) to fulfill the applicable State’s public participating requirements.

- 4.b.** The discharge activity that the applicant is seeking coverage under this Section 401 WQC application consists of the following 28 types of effluent discharges incidental to the Normal Vessels Operations (as indicated in Paragraph No. 1.2.2 of the proposed VGP - please see Subparagraph number for each of the 28 types of discharges):

1.2.2. Vessel Discharges Eligible for Coverage

Unless otherwise made ineligible under Part 1.2.3, the following discharge types are eligible for coverage under this permit:

- 1.2.2.1 Deck Runoff
- 1.2.2.2 Bilgewater/Oily Water Separator Effluent
- 1.2.2.3 Ballast Water
- 1.2.2.4 Anti-fouling Leachate from Anti-Fouling Hull Coatings/Hull Coating Leachate,
- 1.2.2.5 Aqueous Film Forming Foam (AFFF)
- 1.2.2.6 Boiler/Economizer Blowdown
- 1.2.2.7 Cathodic Protection
- 1.2.2.8 Chain Locker Effluent
- 1.2.2.9 Controllable Pitch Propeller Hydraulic Fluid
- 1.2.2.10 Distillation and Reverse Osmosis Brine
- 1.2.2.11 Elevator Pit Effluent
- 1.2.2.12 Firemain Systems
- 1.2.2.13 Freshwater Layup
- 1.2.2.14 Gas Turbine Wash Water
- 1.2.2.15 Graywater Except that Graywater from commercial vessels operating in the Great Lakes within the meaning of CWA section 312 is excluded from the requirement to obtain an NPDES permit (see CWA section 502(6)), and thus is not within the scope of this permit.
- 1.2.2.16 Motor Gasoline and Compensating Discharge
- 1.2.2.17 Non-Oily Machinery Wastewater
- 1.2.2.18 Refrigeration and Air Condensate Discharge
- 1.2.2.19 Rudder Bearing Lubrication Discharge
- 1.2.2.20 Seawater Cooling Overboard Discharge (Including Non-Contact Engine Cooling Water; Hydraulic System Cooling Water, Refrigeration Cooling Water)
- 1.2.2.21 Seawater Piping Biofouling Prevention
- 1.2.2.22 Small Boat Engine Wet Exhaust
- 1.2.2.23 Sonar Dome Discharge
- 1.2.2.24 Sterntube Oily Discharge
- 1.2.2.25 Underwater Ship Husbandry
- 1.2.2.26 Welldeck Discharges
- 1.2.2.27 Graywater Mixed with Sewage from Vessels
- 1.2.2.28 Exhaust Gas Scrubber Washwater Discharge

EVALUATION:

- (1) A brief description of the 28 types discharges to be covered under the proposed VGP are discussed in Paragraph 3.5.1 (Part 1.2) of the Fact Sheet (FS):

"Vessel Discharges Eligible for Coverage

The discharges eligible for coverage under the proposed permit are those discharges incidental to the normal operation of a vessel covered by the exclusion in 40 CFR 122.3(a) prior to any vacatur of that exclusion (see discussion above in Part 2.2). Discharges incidental to normal operation include deck runoff from routine deck cleaning, bilgewater from properly functioning oily water separators, and ballast water. Some potential discharges are not incidental to the normal operation of a vessel. For example, intentionally adding used motor oil to the bilge tank will result in a discharge that is not incidental to the normal operation of a vessel. Furthermore, any discharge that results from a failure to properly maintain the vessel and equipment, even if the discharge is of a type that is otherwise covered by the proposed permit, is not eligible for permit coverage. Discharges that are neither covered by this permit nor exempt from section 402 of the Clean Water Act must be covered under a separate individual or general permit.

Information on vessel discharges and ship operations was gathered from UNDS, MARAD [U.S. Maritime Administration], and public comments solicited from the June 21, 2007, Federal Register notice available in the docket for the proposed permit. The discharges that were selected for coverage under the proposed permit have been identified by EPA, in consultation with other Federal agencies, as discharges incidental to the normal operation of a vessel. EPA did not have a sufficient amount of time to independently investigate vessel operations and resulting discharges extensively. However, EPA has relied on the most accurate and up-to-date information available.

The following list identifies and describes each effluent stream eligible for coverage under the proposed permit. The summaries are based on the Uniform National Discharge Standards technical development document for Phase I (UNDS), the technical analysis prepared by Battelle for the proposed permit (the "Battelle Report"), and public comment. The Battelle Report is a technical report that examines the nature of vessel discharges, vessel discharges' effect on the environment, and describes some Best Management Practices that are available (Batelle, 2007). Both the UNDS technical development document and the Battelle report are available in the docket for this proposed permit. The public comments are available in docket number EPA-HQ-OW-2008-0055. EPA is specifically requesting public comment on the appropriateness of covering these effluent streams or discharge types in this permit, and is seeking input on any additional streams or discharge types that should be considered for coverage.

3.5.1.1 Deck Washdown and Runoff

Deck runoff occurs from all vessels as a result of precipitation or deck cleaning. The constituents can include detergent, soap, and residues from any on-deck activity. Constituents and volumes of deck runoff vary widely and are highly dependent on a vessel's purpose, service, and practices. Deck runoff discharges eligible for coverage under the proposed permit include those from all deck and bulkhead areas and associated equipment.

3.5.1.2 *Bilgewater*

Bilgewater consists of water and other residue that accumulates in a compartment of the vessel's hull. The source of bilgewater is typically drainage from interior machinery, engine rooms, and from deck drainage. Constituents of bilgewater include seawater, oil, grease, volatile and semi-volatile organic compounds, inorganic salts, and metals.

3.5.1.3 *Ballast Water*

Ballast water is water taken onboard into specially designed ballast water tanks, and assists with vessel draft, buoyancy, and stability. Ballast water tanks are typically found only on commercial vessels. Discharge volumes and rates vary by vessel type, ballast tank capacity, and type of deballasting equipment. Typical cruise ships have a ballast capacity of 1,000 cubic meters (approximately 264,000 gallons) of water and can discharge at 250-300 cubic meters per hour. Cargo ships carry anywhere from 2,900 cubic meters (approximately 766,000 gallons) to 93,000 cubic meters (approximately 24,568,000 gallons) of water. Ballast water may contain rust inhibitors, flocculent compounds, epoxy coating materials, zinc or aluminum (from anodes), iron, nickel, copper, bronze, silver, and other material or sediment from inside the tank, pipes, or other machinery. Ballast water may also contain marine organisms that originate where the water is collected. When transported to non-native waters, these organisms may upset the environment or food web as "invasive species."

3.5.1.4 *Anti-Fouling Leachate from Anti-Fouling Hull Coatings*

Vessel hulls are often coated with antifouling compounds to prohibit the attachment and growth of aquatic life. Coatings are formulated for different conditions and purposes and many contain biocides. Those that contain biocides prevent the attachment of aquatic organisms to the hull by continuously leaching substances that are toxic to aquatic life into the surrounding water. While a variety of different ingredients may be used in these compounds, the most commonly used is copper. Copper can inhibit photosynthesis in plants and interfere with enzyme function in both plants and animals in concentrations as low as 4 µg/l. Additional releases of these substances are caused by hull cleaning activities, particularly if hulls are cleaned within the first 90 days following application.

A second metal-based biocide, tributyltin (TBT), was historically applied to vessel hulls, but due to its acute toxicity, EPA is proposing that there will be a zero discharge standard for TBT under this proposed permit. TBT causes deformities in aquatic life, including deformities that disrupt or prevent reproduction. Numerous studies (Bentivegna & Piatkowski, 1998; Haynes & Loong, 2002; Negri et al., 2004; Negri & Heyward, 2001; Ruiz et al., 1995; V. Axiak et al., 1995) and several peer reviewed publications examine the environmental impacts of anti-foulant paint leachate containing tributyltin (TBT). TBT is also stable and persistent, resisting natural degradation in water bodies.

3.5.1.5 *Aqueous Film Forming Foam (AFFF)*

AFFF is a synthetic firefighting agent consisting of fluorosurfactants and/or fluoroproteins. It serves as an effective firefighting agent by forming an oxygen-excluding barrier over an area. In order to produce AFFF, a concentrated solution of the foam forming agent is injected into the water stream of a fire hose. Vessels equipped with AFFF equipment must periodically (annually or semi-annually) test the equipment for maintenance, certification, or training purposes resulting in discharge overboard or onto the deck.

3.5.1.6 *Boiler/Economizer Blowdown*

Boiler blowdown occurs on vessels with steam propulsion or a steam generator to control anti-corrosion and anti-scaling treatment concentrations and to remove sludge from boiler systems. The blowdown involves releasing a volume of 1% – 10% of water from the boiler system, usually below the waterline.

3.5.1.7 *Cathodic Protection*

Vessels use cathodic protection systems to prevent steel hull or metal structure corrosion. The two types of cathodic protection are sacrificial anodes and impressed current cathodic protection (ICCP). Using the first method, anodes of zinc or aluminum are “sacrificed” to the corrosive forces of the seawater, which creates a flow of electrons to the cathode, thereby preventing the cathode from corroding. These sacrificial metals are then released to the aquatic environment. Using ICCP, a DC electrical current is passed through the hull such that the electrochemical potential of the hull is sufficiently high enough to prevent corrosion.

3.5.1.8 *Chain Locker Effluent*

Chain locker effluent is water that collects in the below-deck storage area during anchor retrieval. A sump collects the liquids and materials that enter the chain locker and discharges it overboard or into the bilge tank. Chain locker effluent can contain marine organisms and residue such as rust, paint chips, grease, and zinc.

3.5.1.9 *Controllable Pitch Propeller Hydraulic Fluid*

Controllable pitch propellers (CPPs) are variably-pitched propeller blades used to change the speed or direction of a vessel. CPPs are used in addition to the main propulsion system. Hydraulic oil can leak from the CPP if the protective seals are worn or defective and large amounts may be discharged during maintenance and repair.

3.5.1.10 *Distillation and Reverse Osmosis Brine*

Discharges of brine can occur from onboard plants that distill seawater or utilize reverse osmosis (RO) to generate fresh water. Distillation effluent may be at elevated temperatures and may contain anti-scaling treatment, acidic cleaning compounds, or metals. RO effluent is concentrated brine.

3.5.1.11 *Elevator Pit Effluent*

Large vessels with multiple decks are equipped with elevators to facilitate the transportation of maintenance equipment, people, and cargo between decks. A pit at the bottom of the elevator shaft collects liquids and debris from elevator operations, and may include oil and hydraulic fluid. Pits can be emptied by gravity draining, discharge using the firemain, transfer to bilgewater systems, or containerized for onshore disposal.

3.5.1.12 *Firemain Systems*

Firemain systems draw in water through the sea chest to supply water for fire hose stations, sprinkler systems, or AFFF distribution stations. Firemain stations can be pressurized or non-pressurized and are often used for secondary purposes onboard vessels (e.g., deck and equipment washdowns, machinery cooling water, ballast tank filling). However, when used

for secondary purposes that result in other incidental discharges listed in the proposed permit, that discharge is regulated by the relevant effluent limitation associated with that activity (e.g., rinsing off the anchor chain).

3.5.1.13 Freshwater Layup

Seawater cooling systems condense low pressure steam from propulsion plant or generator turbines on some vessels. When a vessel is pierside or in port for more than a few days, the main steam plant is shut down and the condensers do not circulate. This can cause an accumulation of biological growth within the system; consequently, a freshwater layup is carried-out by replacing the seawater in the system with potable water. The freshwater remains stagnant for two hours before being blown overboard using pressurized air. After this, the condensers are considered flushed and are then refilled for the actual layup. After 21 days this fillwater is discharged and replaced and this is done on a 30-day cycle thereafter. Freshwater layup discharges residual saltwater, tap water, and metals leached from the pipes or machinery into the environment.

3.5.1.14 Gas Turbine Water Wash

Gas turbines are used for propulsion and electricity generation. Occasionally, they must be cleaned to remove byproducts that can accumulate and affect their operation. These byproducts include salts, lubricants, and combustion residuals. The wastewater from the cleaning process may include cleaning compounds as well.

3.5.1.15 Graywater

Graywater is water from showers, baths, sinks, and laundry facilities. Graywater can contain high levels of pathogens, nutrients, soaps and detergents, and organics. Untreated graywater is much more likely to cause environmental impact when it is generated in large volumes (i.e., from cruise ships). Some vessels have the capacity to collect and store graywater for later treatment and disposal. Those that do not have graywater holding capacity continuously discharge it. For commercial vessels operating on the Great Lakes, graywater is included in the definition of sewage under CWA §312. Section 502(6)(A) of the CWA excludes sewage within the meaning of CWA section 312 from the definition of “pollutant.” Hence, graywater discharges from commercial vessels on the Great Lakes are not regulated by this proposed permit.

3.5.1.16 Motor Gasoline and Compensating Discharge

Motor gasoline is transported on vessels to operate vehicles and other machinery. As the fuel is used, ambient water is added to the fuel tanks to replace the weight. This ambient water is discharged when the vessel refills the tanks with gasoline or when performing maintenance and can contain residual oils. Most vessels are designed not to have motor gasoline and compensating discharge.

3.5.1.17 Non-Oily Machinery Wastewater

Non-oily machinery wastewater systems are intended to keep wastewater from machinery that contains no oil separate from wastewater that has oil content. Vessels can have numerous sources of non-oily machinery wastewater, including distilling plants start-up discharge, chilled water condensate drains, fresh and saltwater pump drains, potable water tank overflows, and leaks from propulsion shaft seals.

3.5.1.18 *Refrigeration and Air Condensate Discharge*

Condensation from cold refrigeration or evaporator coils of air conditioning systems drips from the coils and collects in drip troughs which typically channel to a drainage system. Condensate discharge may contain detergents, seawater, food residue, and trace metals.

3.5.1.19 *Rudder Bearing Lubrication Discharge*

Rudder bearings allow a vessel's rudder to turn freely and can be either grease-, oil-, or water-lubricated.

3.5.1.20 *Seawater Cooling Overboard Discharge (Including Non-Contact Engine Cooling Water, Hydraulic System Cooling Water, Refrigeration Cooling Water)*

Seawater cooling systems use ambient water to absorb the heat from heat exchangers, propulsion systems, and mechanical auxiliary systems. The water is typically circulated through an enclosed system that does not come in direct contact with machinery, but still may contain sediment from water intake, traces of hydraulic or lubricating oils, and trace metals leached or eroded from the pipes within the system. Additionally, because it is used for cooling, the effluent will have an increased temperature.

3.5.1.21 *Seawater Piping Biofouling Prevention*

Vessels that utilize seawater cooling systems introduce anti-fouling compounds (e.g., sodium hypochlorite) in their interior piping and component surfaces to inhibit the growth of fouling organisms. These anti-fouling compounds are then typically discharged overboard.

3.5.1.22 *Small Boat Engine Wet Exhaust*

Large vessels covered by the proposed permit often have several small boats onboard. Small boat engines use ambient water that is injected into the exhaust for cooling and noise reduction purposes. This wet engine exhaust can contain numerous pollutants when discharged.

3.5.1.23 *Stern Tube Oily Discharge*

The stern tube is the casing or hole through the hull of the vessel through which the propeller shaft connects the engine of the vessel to the propeller. The propeller shaft and its supporting bearings require lubrication oil. Discharges can occur if the protective seals or bearings are not maintained and develop leaks or if they are damaged.

3.5.1.24 *Sonar Dome Discharge*

Water is used to maintain the shape and pressure of domes that house sonar detection, navigation, and ranging equipment. Discharges occur when the water must be drained for maintenance or repair or from the exterior of the sonar dome.

3.5.1.25 *Underwater Ship Husbandry Discharges*

Underwater ship husbandry is grooming, maintenance, and repair activities of hulls or hull appendages completed while the vessel is located in the water, including hull cleaning, hull repair, fiberglass repair, welding, sonar dome repair, non-destructive testing, masker belt repairs, and painting operations. Underwater ship husbandry discharges are considered

incidental to the normal operation of a vessel when ships are maintained in proper operating order and the cleaning is done on a reasonable schedule. For drydock and other large cleaning activities, once every few years may be considered a reasonable schedule.

3.5.1.26 *Welldeck Discharges*

The welldeck is a floodable platform used for launching or loading small satellite vessels, vehicles, and cargo. Welldeck discharges may include water from precipitation, welldeck and storage area washdowns, equipment and engine washdowns, and leaks and spills from stored machinery.

3.5.1.27 *Graywater Mixed with Sewage from Vessels*

Depending on how the vessel is designed, graywater and sewage may be combined into one effluent stream. Discharges of graywater that contain sewage are eligible for coverage under this proposed permit (except for commercial vessels in the Great Lakes) and must meet the discharge limitation requirements under Part 2, as well as any requirements applicable to sewage, although these are not contained in this permit.

3.5.1.28 *Exhaust Gas Scrubber Washwater Discharge*

Exhaust gas scrubber washwater discharge (EGS washwater discharge) occurs as a result of operating or cleaning the exhaust gas cleaning systems (e.g. scrubbers) for marine diesel engines. After the washing solution is returned from the scrubber, the washwater can be either treated and discharged overboard, or alternatively, it can be piped to a clean bilge water tank or other suitable holding tanks. While many of the captured contaminants (sludge) are transferred to the vessel's sludge tank, the constituents of EGS washwater discharge can include residues of nitrogen oxides (NO_x), sulfur oxides (SO_x) and particulate matter (PM) emissions captured by the scrubbers. EGS washwater discharge can also contain traces of oil, polycyclic aromatic hydrocarbons (PAHs), heavy metals and nitrogen. Depending on the geographic location of the EGS washwater discharge, the pH level and turbidity of the receiving water may be altered."

- (2) The proposed VGP includes the standard permit conditions as provided at 40 CFR 122.41 be applied to all NPDES permits. VGP permit is required to comply with all applicable standard conditions. (Subsection 1.13 of the proposed VGP)
- (3) The following is the Section 2 of the proposed VGP regarding the effluent limits and related requirements for the 28 types of discharges:

"2. Effluent Limits and Related Requirements

In the limits below and throughout this permit, the term "minimize" means reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best marine practice.

You may not add any constituents to any discharge that are not incidental to the normal operation of a vessel.

You may not dilute discharges eligible for coverage under this permit prior to their discharge in order to meet limits set forth in this permit.

2.1. Technology-based Effluent Limits and Related Requirements Applicable to all Vessels

You are required to meet the following effluent limits, regardless of the type of vessel you own or operate:

2.1.1. Material Storage

For cargoes or other onboard materials which might wash overboard or dissolve as a result of contact with precipitation or surface water spray, or which may be blown overboard by air currents, minimize the amount of time these items are exposed to such conditions. Locate storage areas on the vessel for such items in covered areas where feasible. If water draining from storage areas comes in contact with oily materials, you must:

- Use dry cleanup methods or absorbents to clean up the wastewater,
- Store the water for onshore disposal, or
- Run the water through an oily water separator or other appropriate technology so that the discharge will not contain oil in quantities that may be harmful.

2.1.2. Toxic and Hazardous Materials –

You must locate toxic and hazardous materials in protected areas of the vessel unless the master determines this would interfere with essential vessel operations or safety of the vessel. Any discharge which is made for safety reasons must be documented as part of the requirements in Part 4.2. This includes ensuring that toxic and hazardous materials are in appropriate sealed containers constructed of a suitable material, labeled, and secured. Containers must not be overfilled and incompatible wastes should not be mixed. Exposure of containers to ocean spray or precipitation must be minimized. Jettisoning of containers holding toxic or hazardous material is not authorized by this permit.

2.1.3. Fuel Spills/Overflows –

You must conduct all fueling operations using control measures and practices designed to minimize spills and overflows and ensure prompt containment and cleanup if they occur. Vessel operators must not overfill fuel tanks. Vessels with air vents from fuel tanks must use containment to prevent any fuel or oil spills from overflowing into surrounding waters.

Owner/operators shall ensure that any crew responsible for conducting fueling operations are trained in methods to minimize spills caused by human error and/or the improper use of equipment.

2.1.4. Discharges of Oil Including Oily Mixtures –

All discharges of oil, including oily mixtures, from ships subject to Annex I of the International Convention for the Prevention of Pollution from Ships as implemented by the Act to Prevent Pollution from Ships and U.S. Coast Guard regulations found in 33 CFR 151.09 (hereinafter referred to as “MARPOL vessels”) must have concentrations of oil less than 15 ppm (as measured by EPA Method 1664) before discharge. All MARPOL vessels

must have a current International Oil Pollution Prevention Certificate (IOPP) provided by a recognized classification society.

All other discharges of oil including oily mixtures must not contain oil in quantities that may be harmful, pursuant to 40 CFR Part 110. EPA recommends that all non-MARPOL vessels have a current IOPP or statement of voluntary compliance issued by a recognized classification society.

2.1.5. Compliance with other statutes and regulations –

As required by 40 C.F.R. 122.44(p), you must comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

Any discharge from your vessel must comply with sections 311 (33 U.S.C. 1321) of the Federal Pollution Water Pollution Control Act (the Clean Water Act), the Act to Prevent Pollution from Ships (APPS 33 USC §§ 190-1915), the National Marine Sanctuaries Act, (16 U.S.C. 1431 *et seq.*) and implementing regulations found at 15 CFR Part 922 and 50 CFR Part 404, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. § 136 *et seq.*), and the Oil Pollution Control Act (OPA '90, 33 U.S.C. § 2701-2720).

2.2. Technology-based Effluent Limits and Related Requirements for Specific Discharge Categories

2.2.1. Deck Washdown and Runoff

Vessel owner/operators must clear their vessels' decks of debris, garbage, residue and spills prior to conducting deck washdowns and prior to departing from port to prevent these constituents from entering any waste stream. When required by their class societies (e.g., oil tankers) or flag Administrations, vessels must be fitted with and use perimeter spill rails and scuppers to collect the runoff for treatment. Machinery on deck must have coamings or drip pans to collect any oily water from machinery and prevent spills. The drip pans must be drained to a waste container for proper disposal and/or periodically wiped and cleaned. The discharges from deck washdowns must be free from floating solids, visible foam, halogenated phenol compounds, and dispersants, or surfactants. Vessel operators must minimize deck washdowns while in port.

Vessel operators must maintain their topside surface to minimize the discharge of rust (and other corrosion by-products), cleaning compounds, paint chips, non-skid material fragments, and other materials associated with exterior topside surface preservation.

If deck washdowns will result in a discharge, they must be conducted with non-toxic and phosphate free cleaners and detergents. Furthermore, cleaners and detergents should not be caustic or only minimally caustic and should be biodegradable.

2.2.2. Bilgewater

All bilgewater discharges must be in compliance with the regulations in 40 CFR Part 110 (Discharge of Oil), 116 (Designation of Hazardous Substances), and 117 (Determination of Reportable Quantities for Hazardous Substances) and 33 CFR §151.10 (Control of Oil Discharges). In addition:

- Vessel operators may not use dispersants, detergents, emulsifiers, chemicals or other substances to remove the appearance of a visible sheen in their bilgewater discharges.
- Vessel operators may not add substances that drain to the bilgewater that are not produced in the normal operation of a vessel.
- All vessels must minimize the discharge of bilgewater into waters subject to this permit. This can be done by minimizing the production of bilgewater, disposing of bilgewater on shore where adequate facilities exist, or discharging into waters not subject to this permit (i.e., more than 3 nm from shore) for vessels that regularly travel into such waters. Though not regulated under this permit, EPA notes that discharges of bilgewater outside waters subject to this permit (i.e. more than 3 nm from shore) are regulated under Annex I of the International Convention for the Prevention of Pollution from Ships as implemented by the Act to Prevent Pollution from Ships and U.S. Coast Guard regulations found in 33 CFR 151.09.
- Vessels greater than 400 gross registered tons shall not discharge untreated bilgewater into waters subject to this permit.
- Vessels greater than 400 gross registered tons that regularly sail outside the territorial sea (at least once per month) shall not discharge treated bilgewater within 1 nautical mile (nm) of shore unless the discharge is necessary to maintain the safety and stability of the ship. Any discharge which is made for safety reasons must be documented as part of the requirements in Part 4.2.
- Vessels greater than 400 gross registered tons shall not discharge treated bilgewater into waters referenced in Part 12.1 unless the discharge is necessary to maintain the safety and stability of the ship. Any discharge of bilgewater into these waters must be documented as part of the recordkeeping requirements in Part 4.2 and vessel operators must document whether this bilgewater discharge was made for safety reasons.
- For vessels greater than 400 gross registered tons that regularly sail outside the territorial sea (at least once per month), if treated bilgewater is discharged into waters subject to this permit, it must be discharged when vessels are underway (sailing at speeds greater than 6 knots), unless doing so would threaten the safety and stability of the ship. EPA notes that vessel operators may also choose to dispose of bilgewater on shore where adequate facilities exist. Any discharge which is made for safety reasons must be documented as part of the requirements in Part 4.2.

2.2.3. Discharges of Ballast Water

All discharges of ballast water must comply with the Coast Guard regulations found in 33 CFR Part 151. Additionally, owner/operators of all vessels subject to coverage under this permit which are equipped with Ballast Tanks must comply with any additional BMPs in this section.

All discharges of ballast water may not contain oil, noxious liquid substances (NLSs), or hazardous substances in a manner prohibited by U.S. laws, including section 311 of the Clean Water Act.

2.2.3.1 *Training*

All owner/operators of vessels equipped with ballast water tanks must train the master, operator, person-in-charge, and crew, on the application of ballast water and sediment management and treatment procedures.

2.2.3.2 *Ballast Water Management Plans*

All owner/operators of vessels equipped with ballast water tanks must maintain a ballast water management plan that has been developed specifically for the vessel that will allow those responsible for the plan's implementation to understand and follow the vessel's ballast water management strategy. Owner/operators must make that plan available upon request to any EPA representative. Vessel owner/operators must assure that the master and crew understand and follow the management strategy laid out in the plan.

2.2.3.3 *Mandatory Ballast Water Management Practices*

Masters, owners, operators, or persons-in-charge of all vessels equipped with ballast water tanks that operate in waters of the U.S. must:

- Avoid the discharge of ballast water into waters subject to this permit that are within or that may directly affect marine sanctuaries, marine preserves, marine parks, shellfish beds, or coral reefs or other waters listed in Part 12.1.
- Minimize or avoid uptake of ballast water in the following areas and situations:
 - Areas known to have infestations or populations of harmful organisms and pathogens (e.g., algal blooms).
 - Areas near sewage outfalls.
 - Areas near dredging operations.
 - Areas where tidal flushing is poor or when a tidal stream is known to be more turbid.
 - In darkness when bottom dwelling organisms may rise up in the water column.
 - In shallow water or where propellers may stir up the sediment.
 - Areas with pods of whales, convergence zones and boundaries of major currents
- Clean ballast tanks regularly to remove sediments in mid-ocean or under controlled arrangements in port, or at dry dock. No discharge of sediments from cleaning of ballast tanks is authorized in waters subject to this permit.
- Discharge only the minimal amount of ballast water essential for vessel operations while in the waters subject to this permit.

Suggested control measures to minimize the discharge of ballast water include transferring ballast water between tanks within the vessel in lieu of ballast water discharge. Another option for minimizing the potential for spread of INS via ballast water discharges is using treated graywater for ballast (only in areas where treated graywater may be discharged).

2.2.3.4 *On-shore Treatment of Ballast Water*

If onshore treatment for ballast water is available and economically practicable and achievable, all vessel owner/operators must use this treatment for any ballast water discharges, unless they use an onboard ballast water treatment system approved by the Commandant of the Coast Guard. If vessels use on-shore treatment at one port, and they will not discharge ballast water into any other waters subject to this permit for their entire duration in waters subject to this permit, then it is not necessary to meet the requirements of 2.2.3.5, 2.2.3.6, 2.2.3.7, and 2.2.3.8.

2.2.3.5 *Requirements for Ocean Going Voyages While Carrying Ballast Water*

Any vessels that carry ballast water that was taken on in areas less than 200 nautical miles from any shore that will subsequently operate beyond the EEZ and more than 200 nm from any shore must carry out an exchange of ballast water for any tanks that will discharge ballast water into waters subject to this permit unless the vessel meets one of the exemptions in Part 2.2.3.11.

This exchange must be conducted in compliance with the following standards prior to discharging ballast water into waters subject to this permit:

- The exchange must occur in waters beyond the U.S. EEZ;
- The exchange must occur in an area more than 200 nautical miles from any shore,
- The exchange must occur in waters at least 200 meters deep, and
- The exchange must be commenced as early in the vessel voyage as possible, as long as the vessel is more than 200 nm from any shore.

2.2.3.6 *Vessels Carrying Ballast Water Engaged in Pacific Nearshore Voyages*

Unless the vessel meets one of the exemptions in Part 2.2.3.11, any vessel engaged in Pacific nearshore voyages that travels through more than one Captain of the Port Zone (COTP) zone as listed in 33 CFR Part 3 must carry out an exchange of ballast water before discharging from any tanks that carry ballast water into waters subject to this permit. Vessels engaged in Pacific nearshore voyages include:

- Vessels engaged in the Pacific coastwise trade that travel between more than one Captain of the Port Zone, and
- All other vessels that sail from foreign, Atlantic, or Gulf of Mexico ports, which do not sail further than 200 nm from any shore, and that discharge or will discharge ballast water into the territorial sea or inland waters of Alaska or of the west coast of the continental United States.

This exchange must occur in waters more than 50 nautical miles from any Pacific (US or otherwise) shore, and in waters more than 200 meters deep, prior to discharging ballast water into waters subject to this permit. Exchange should occur as far from the shore, major estuary and oceanic river plumes, subsurface physical features (e.g. seamounts), and known fishery habitats as practicable.

2.2.3.7 *Vessels with any Ballast Water Tanks that are Empty or have Unpumpable Residual Water*

For vessels that travel between more than one COTP Zone while undertaking voyages described in Part 2.2.3.5 and which either certified No Ballast on Board in accordance with Coast Guard regulations or which have any ballast water tank that is empty or contains unpumpable residual water, you must follow the applicable requirements in Part 2.2.3.5 for those tanks with ballast water. For those tanks which are empty or contain unpumpable residual water, you must either seal the tank so that there is no discharge or uptake and subsequent discharge of ballast water within waters subject to this permit or conduct saltwater flushing of such tanks in an area 200 nautical miles from any shore and in waters at least 200 meters deep prior to the discharge or uptake and subsequent discharge of any ballast water to any U.S. waters subject to this permit, unless you meet one of the exemptions in Part 2.2.3.11. Saltwater flushing means the addition of mid-ocean water to empty ballast water tanks; the mixing of the flush water with residual water and sediment through the motion of the vessel; and the discharge of the mixed water, such that the resultant residual water remaining in the tank must obtain either a minimum salinity of 30 parts per thousand (ppt) or a value equal to the ambient salinity at the location of the flushing, whichever is lower. In order to conduct saltwater flushing, the vessel should take on as much mid-ocean water into each tank as is safe (for the vessel and crew).

For all vessel owner/operators subject to this section that contain some empty ballast water tanks and some full ballast water tanks, if you elect to seal those empty tanks, you must not allow water that will be discharged into waters subject to this permit to commingle with waters from the empty tanks if you have not conducted saltwater flushing as specified above.

2.2.3.8 *Vessels Engaged in Pacific Nearshore Voyages with Unpumpable Ballast Water and Residual Sediment (including NOBOBs)*

For owner/operators of vessels engaged in Pacific Nearshore Voyages which either certified No Ballast on Board in accordance with Coast Guard regulations or which have any ballast water Tank that is empty or contains unpumpable residual water, you must follow the applicable requirements in Part 2.2.3.6 for those tanks with ballast water. For those tanks which are empty or contain unpumpable residual water, you must either seal the tank so that there is no discharge or uptake and subsequent discharge of ballast water within waters subject to this permit or conduct saltwater flushing of such tanks in an area 50 nautical miles from any shore and in waters at least 200 meters deep prior to the discharge or uptake and subsequent discharge or uptake of any ballast water to or from any waters subject to this permit, unless you meet one of the exemptions in Part 2.2.3.11. For these voyages, saltwater flushing means the addition of water from the “coastal exchange zone” to empty ballast water tanks; the mixing of the flush water with residual water and sediment through the motion of the vessel; and the discharge of the mixed water, such that the resultant residual water remaining in the tank must obtain either a minimum salinity of 30 parts per thousand (ppt) or a value equal to the ambient salinity at the location of the flushing. In order to conduct saltwater flushing, the vessel should take on as much coastal exchange zone water into each tank as is safe (for the vessel and crew). These requirements apply to all vessels carrying ballast water that will enter any US Port in the states of Alaska, California, Oregon, or Washington and that travels through more than COTP zone.

For all vessel owner/operators subject to this section that contain some empty ballast water tanks and some full ballast water tanks, if you elect to seal those empty tanks, you must not allow water from the full tanks to commingle with waters from the empty tanks if it will subsequently be discharged into waters subject to this permit.

2.2.3.9 Vessels Entering the Great Lakes

In addition to complying with the requirements of this permit, all vessels that are equipped to carry ballast water and enter the Great Lakes must comply with 33 CFR Part 151, Subpart C titled: “Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River.” Vessels that operate outside the EEZ and more than 200 nm from any shore and then enter the Great Lakes via the Saint Lawrence Seaway System must also comply with 33 CFR Part 401.30, which requires oceangoing vessels to conduct saltwater flushing of ballast water tanks 200 nautical miles from any shore before entering either the U.S. or Canadian waters of the Seaway System.

2.2.3.10 Discharge Prohibitions

Vessels referenced in Parts 2.2.3.5, 2.2.3.6, 2.2.3.7, and 2.2.3.8 may not discharge unexchanged or untreated ballast water or sediment in waters subject to this permit referenced in Part 12.1.

2.2.3.11 Exemptions:

The operator or master of a vessel may elect not to exchange ballast water (or not conduct saltwater flushing if applicable) if the vessel meets one of the following conditions:

- The master of the vessel determines, and justifies in writing, and documents in the log or record book, that it is unsafe to do so, in accordance with the Coast Guard Regulations at 33 CFR 151.2030. If this exemption is claimed, the vessel operator must record the date, location, and reason for the claim in its recordkeeping documentation.
- The master uses an alternative, environmentally sound method of ballast water management that has been submitted to, and approved by, the Commandant of the Coast Guard prior to the vessel's voyage in accordance with 33 C.F.R. Part 151.
- The vessel is accepted by the U.S. Coast Guard into the shipboard Technology Evaluation Program (STEP), the technology is operated in accordance with requirements of that program, and the acceptance has not been withdrawn.
- The master retains all ballast water on board the vessel for the duration of the vessel's voyage in waters subject to this permit.

Additionally, a vessel is not required to deviate from its voyage, or delay the voyage to conduct Ballast Water Exchange or Saltwater Flushing.

2.2.4. Anti-Fouling Hull Coatings

- All anti-fouling hull coatings subject to registration under FIFRA (see 40 CFR 152.15) must be registered, sold or distributed, applied, maintained, and removed in a manner consistent with applicable requirements on the coatings' FIFRA label.
- For anti-fouling hull coatings not subject to FIFRA registration (i.e. not produced for sale and distribution in the United States), hull coatings must not contain any biocides or toxic materials banned for use in the United States. This requirement applies to all vessels, including those registered and painted outside the United States.

At the time of initial application or scheduled reapplication of anti-fouling coatings, you must give consideration, as appropriate for vessel class and vessel operations, to the use of hull coatings with the lowest effective biocide release rates, rapidly biodegradable components, or non-biocidal alternatives, such as silicone coatings.

Some ports and harbors are impaired by copper. These waters include Shelter Island Yacht Basin in San Diego, California and waters in and around the ports of Los Angeles/Long Beach. A complete list of such waters may be found at www.epa.gov/npdes/vessels. When vessels spend considerable time in these waters (defined as spending more than 30 days per year), or use these waters as their home port (i.e. house boats, ferries or rescue vessels), vessel owner/operators shall consider using antifouling coatings that rely on a rapidly biodegradable biocide or another alternative rather than copper based coatings. If after consideration of alternative biocides, vessel operators continue to use copper based antifoulant paints, they must document in their recordkeeping documentation how this decision was reached.

The discharge of Tributyltin (TBT) is prohibited by this permit. Therefore, vessel operators covered by this permit have a zero discharge standard for TBT. You may not use an antifoulant coating containing TBT. If the vessel has previously been covered with a hull coating containing TBT, vessels must be effectively overcoated so that no TBT leaches from the vessel hull or the TBT coating must have been removed from the vessel's hull.

2.2.5. Aqueous Film Forming Foam (AFFF)

Discharges of AFFF are authorized for emergency purposes when needed to ensure the safety and security of the vessel and her crew.

For all vessels that sail outside of the territorial sea more than once per month, maintenance and training discharges of AFFF are not authorized within waters subject to this permit. (Any such discharges should be collected and stored for onshore disposal or scheduled when the vessel is outside such waters.) Discharge volumes associated with regulatory certification and inspection must be minimized and a substitute foaming agent (i.e. non-fluorinated) must be used if possible within waters subject to this permit.

For vessels that do not leave the territorial sea more than once per month, if maintenance and training discharges are required, AFFF must be collected and stored for onshore disposal unless the vessel uses non-fluorinated or alternative foaming agent. Training should be conducted as far from shore as is practicable. Maintenance and training discharges are not allowed in port.

For all vessels, AFFF discharges may not occur in or within 1 nm of a water referenced in Part 12.1 unless they are discharged:

- For emergency purposes
- By rescue vessels such as fireboats for firefighting purposes,
- By vessels owned or under contract to do business exclusively in or within 1 nm of those protected areas by the United States government or state or local governments.

If AFFF discharge occurs in waters in Part 12.1 for emergency purposes, a written explanation must be kept in the ship's log or other vessel recordkeeping documentation consistent with Part 4.2 of this permit.

2.2.6. Boiler/Economizer Blowdown

Minimize the discharge of boiler/economizer blowdown in port if chemicals or other additives are used to reduce impurities or prevent scale formation. For vessels greater than 400 gross registered tons which leave the territorial sea at least once per week, boiler/economizer blowdown may not be discharged in waters subject to this permit except for safety purposes, and should be discharged as far from shore as possible. For all vessels, Boiler/Economizer blowdown may not be discharged in or within 1 nm of waters referenced in part 12.1 except for safety purposes.

2.2.7. Cathodic Protection

Cathodic protection must be maintained to prevent the corrosion of the ship's hull. The discharge of zinc, magnesium, and aluminum are expected from properly functioning cathodic protection sacrificial electrodes. However, vessel operators must minimize the flaking of large, corroded portions of these anodes. Sacrificial anodes must not be used more than necessary. Vessel operators must appropriately clean and/or replace these anodes in periods of maintenance (such as drydocking), so that release of these metals to waters is minimized.

Vessel operators should be cognizant that magnesium is less toxic than aluminum, which is less toxic than zinc. If vessel operators use sacrificial electrodes, they must use the metals that are less toxic to the extent technologically feasible and economically practicable and achievable.

EPA recommends the use of Impressed Current Cathodic Protection (ICCP) in place of sacrificial electrodes. If vessel operators use ICCP, they must maintain dielectric shields to prevent flaking. Newly constructed vessels (those vessels which have been designed and contracted for after [insert date of FR notice for final permit] which use Cathodic Protection must use ICCP if technologically feasible.

2.2.8. Chain Locker Effluent

The anchor chain must be carefully and thoroughly washed down (i.e., more than a cursory rinse) as it is being hauled out of the water to remove sediment and marine organisms. In addition, chain lockers must be cleaned thoroughly during dry docking to eliminate accumulated sediments and any potential accompanying pollutants. For vessels that regularly sail outside waters subject to this permit, if technically feasible, periodically clean, rinse, and/or pump out the space beneath the chain locker prior to entering waters subject to this permit (preferably mid ocean) if the anchor has been lowered into any nearshore waters. Furthermore, for vessels that leave waters subject to this permit at least once per month, chain lockers may not be rinsed or pumped out in waters subject to this permit, unless not emptying them would compromise safety. Such a safety claim must be documented in the vessel's recordkeeping documentation consistent with Part 4.2.

2.2.9. Controllable Pitch Propeller Hydraulic Fluid

The protective seals on controllable pitch propellers must be maintained in good operating order to prevent the leaking of hydraulic oil. If possible, maintenance activities on controllable pitch propellers should be conducted when a vessel is in drydock. If maintenance must occur when the vessel is in water, an oil boom must be used to contain any hydraulic oil leakage. Operators of the vessel must have appropriate equipment such as oil absorbent pads on hand to clean any potential oil spills.

2.2.10. Distillation and Reverse Osmosis Brine

Brine from the distillation system and reverse osmosis reject water shall not contain or come in contact with machinery or industrial equipment, toxic or hazardous materials, or wastes .

2.2.11. Elevator Pit Effluent

Discharge of elevator pit effluent is not authorized within waters subject to this permit except in cases of emergency. If an emergency discharge is required in waters subject to this permit, Elevator Pit Effluent must be treated with an oily-water separator and may be discharged with an oil content below 15 ppm as measured by EPA Method 1664. Emergency discharges must be documented in the ship's log or other vessel recordkeeping documentation consistent with Part 4.2.

2.2.12. Firemain Systems

Discharges from firemain systems are authorized for emergency purposes when needed to ensure the safety and security of the vessel and her crew.

Minimize the discharge from the firemain system while in port. Do not discharge firemain systems in waters listed in Part 12.1 except in emergency situations or when washing down the anchor chain to comply with anchor wash down requirements in part 2.2.8 when pulling the anchor and anchor chain from waters.

2.2.13. Freshwater Layup

Minimize the amount of disinfection agents used in freshwater layup to the minimum required to prevent aquatic growth.

2.2.14. Gas Turbine Wash Water

Gas turbine wash water must not be discharged within waters subject to this permit. Where feasible, such washwater must be prevented from co-mingling with bilge water that will be discharged in waters subject to this permit, for example by collecting it separately and properly disposing of it on-shore...Under no circumstances may oils, including oily mixtures, from Gas Turbine Wash Water be discharged in waters subject to this permit in quantities that may be harmful as determined in accordance with 40 CFR Part 110.

2.2.15. Graywater

All vessels must minimize the discharge of graywater while in Port. For those vessels that cannot store graywater, the owner or operator and their crews should minimize the production of graywater in Port. All vessels that have the capacity to store graywater shall not discharge that graywater in waters listed in Part 12.1. For vessels that cannot store graywater, vessel operators must minimize the production of graywater while in waters listed in Part 12.1.

For vessels greater than 400 gross registered tons that regularly travel more than 1 nm from shore that have the capacity to store graywater for a sufficient period, graywater must be discharged greater than 1 nm from shore while the vessel is underway. Additional specific requirements for Graywater apply to Cruise Vessels (Parts 5.2 and 5.1) and Large Ferries (Part 5.3).

Vessels that do not travel more than 1 nm from shore shall minimize the production of graywater and must dispose of graywater on shore if appropriate facilities are available and such disposal is economically practicable and achievable. Minimize the discharge of graywater when the vessel is not underway.

If graywater will be discharged in waters subject to this permit, the introduction of kitchen oils must be minimized to the graywater system. When cleaning dishes, you must remove as much food and oil residue as practicable before rinsing dishes. Oils used in cooking shall not be added to the graywater system. Oil from the galley and scullery shall not be discharged in quantities that may be harmful.

Vessel owner/operators must use phosphate free and non-toxic soaps and detergents for any purpose if they will be discharged into waters subject to this permit. These detergents must be free from toxic or bioaccumulative compounds and not lead to extreme shifts in receiving water pH.

If you are underway in a nutrient impaired water, or a water that is impaired as a result of nutrient enrichment (such as waters listed as impaired for phosphorus, nitrogen, or for hypoxia or anoxia (low dissolved oxygen concentrations)) you must follow the following additional steps:

When the vessel has adequate graywater storage capacity, the vessel owner/operator shall not discharge graywater into nutrient impaired waters subject to this permit (e.g., the Chesapeake Bay or Puget Sound). A complete list of such waters can be found at www.epa.gov/npdes/vessels. Where the vessel does not have adequate storage capacity to eliminate such discharges, graywater production and discharge must be minimized in such waters. Any such discharge must be conducted while the vessel is underway in areas with significant circulation and depth to the extent feasible. Graywater stored while in such waters can later be disposed of on shore or discharged in accordance with the other requirements of this permit.

2.2.16. Motor Gasoline and Compensating Discharge

The discharge of motor gasoline and compensating effluent must have oil concentrations of less than 15 ppm as measured by EPA Method 1664. Minimize discharge of motor gasoline and compensating discharge in port. Vessels shall not discharge motor gasoline and compensating discharge in waters subject to this permit listed in Part 12.1.

2.2.17. Non-Oily Machinery Wastewater

The discharge must be free from oils and any additives that are toxic or bioaccumulative in nature.

2.2.18. Refrigeration and Air Condensate Discharge

You must not allow refrigeration and air condensate discharge to come into contact with oily or toxic materials.

2.2.19. Rudder Bearing Lubrication Discharge

The protective hull seal on rudder bearings must be maintained in good operating order to prevent the leaking of lubricating oil.

2.2.20. Seawater Cooling Overboard Discharge (including non-contact engine cooling water; hydraulic system cooling water, refrigeration cooling water)

When possible, seawater cooling overboard should be discharged when the vessel is underway so that any thermal impacts are dispersed.

EPA recommends that vessel owner/operators use shore based power when the vessel is in port if:

- Shore power is readily available for vessel owner/operators from utilities or port authorities;
- Shore based power supply systems are capable of providing all needed electricity required for vessel operations; and
- The vessel is equipped to connect to shore-based power and such systems are compatible with the available shore power.

Maintenance of all piping and seawater cooling systems must meet the requirements of Part 2.2.21 (Seawater-Piping Biofouling Prevention).

2.2.21. Seawater Piping Biofouling Prevention

Seawater piping biofouling chemicals subject to FIFRA registration (see 40 CFR 152.15) must be used in accordance with their FIFRA label. No pesticides or chemicals banned for use in the United States may be discharged into waters subject to this permit.

Vessel owner/operators must use the minimum amount of biofouling chemicals needed to keep fouling under control. Discharges containing active agents must contain as little chlorine as possible.

Vessel owner/operators must remove fouling organisms from seawater piping on a regular basis and dispose of removed substances in accordance with local, State, and federal regulations. Removed fouling organisms shall not be discharged into waters subject to this permit and EPA recommends that if discharged into waters, should be discharged more than 50 nm from shore. Vessel owner/operators should remove any organisms while at sea to reduce the risk of invasive species introduction in ports.

2.2.22. Small Boat Engine Wet Exhaust

Vessels generating wet exhaust must be maintained in good operating order, well tuned, and functioning according to manufacturer specifications to decrease pollutant contributions to wet exhaust. Vessel owner/operators should use low sulfur or alternative fuels for their vessels to reduce the concentration of pollutants in their discharge.

EPA encourages vessel operators to consider four stroke versus two stroke engines for vessels covered under this permit. Use of a four stroke engine may minimize the discharge of pollutants to US waters.

2.2.23. Sonar Dome Discharge

The water inside the sonar dome shall not be discharged within waters subject to this permit for maintenance purposes. Vessel operators should not use biofouling chemicals that are bioaccumulative for the exterior of sonar domes when other viable alternatives are available.

2.2.24. Stern Tube Oily Discharge

You must maintain your sterntube seals so that there is no leakage of lubricating oil into the surrounding waters. Minimize maintenance activities on sterntube seals when a vessel is outside of drydock. If emergency repair must occur when the vessel is in water, an oil boom must be used to contain any lubricating oil leakage. Operators of the vessel must have appropriate equipment such as oil absorbent pads on hand to clean any potential oil spills.

2.2.25. Underwater Ship Husbandry Discharges

Vessel owner/operators must minimize the transport of attached living organisms when they travel into U.S. waters from outside the U.S. economic zone or when traveling between COTP zones.

Whenever possible, hull-cleaning activities should take place in drydock, or another land-based facility where the removal of fouling organisms or spent antifouling coatings paint can be contained. If water-pressure based systems are used to clean the hull and remove old paint, use facilities which treat the washwater prior to discharge to remove the antifouling compound(s) and fouling growth from the washwater.

Vessel owner/operators who remove fouling organisms from hulls while the vessel is waterborne must employ methods that minimize the discharge of fouling organisms and antifouling hull coatings. These shall include:

- Selection of appropriate cleaning brush or sponge rigidity to minimize removal of antifouling coatings and biocide releases into the water column.
- Limiting use of hard brushes and surfaces to the removal of hard growth.
- When available and feasible, use of vacuum control technologies to minimize the release or dispersion of antifouling hull coatings and fouling organisms into the water column.

Cleaning of copper based antifoulant paints must not result in any visible cloud or plume of paint in the water: if a visible cloud or plume of paint develops, shift to a softer brush or less abrasive cleaning technique. Production of a visible cloud or plume of paint containing copper antifoulant paint is a permit violation.

Vessels that use copper based anti-fouling paint must not clean the hull in copper impaired waters within the first 365 days after paint application unless there is a significant visible indication of hull fouling.

2.2.26. Welldeck Discharges

Welldeck discharges that contain graywater from smaller vessels should not be discharged within waters subject to this permit except in cases of emergency. Welldeck discharges from washdown of gas turbine engines may not be discharged within waters subject to this permit. Welldeck discharges from equipment and vehicle washdowns must be free from garbage and must not contain oil in quantities that may be harmful.

2.2.27. Graywater Mixed with Sewage from Vessels

The commingled discharge of graywater mixed with sewage from vessels must comply with the effluent limits for graywater discharge in Part 2 or Part 5 of this permit if applicable. Though not a requirement of this permit, vessel owner/operators are advised that all discharges commingled with sewage must meet the requirements set forth in section 312 of the Clean Water Act and its implementing regulations.

2.2.28. Exhaust Gas Scrubber Washwater Discharge

Exhaust gas scrubber washwater discharge must not contain oil, including oily mixtures, in quantities that may be harmful. Sludge generated from exhaust gas scrubber washwater discharge must not be discharged in waters subject to this permit.

2.3. Water Quality Based Effluent Limits

The requirements in Part 2.3 constitute the water quality-based effluent limitations in this permit. These water quality-based effluent limitations supplement this permit's technology-based limitations in Parts 2.1, 2.2, and 5 of this permit.

2.3.1. Water Quality-Based Effluent Limitations

Your discharge must be controlled as necessary to meet applicable water quality standards in the receiving waterbody or another waterbody impacted by your discharges.

EPA expects that compliance with the other conditions in this permit, including Parts 2.1, 2.2, and 5, will control discharges as necessary to meet applicable water quality standards. If at any time you become aware, or EPA determines, that your discharge causes or contributes to an exceedance of applicable water quality standards, you must take corrective actions as required in Part 3; you must also report the exceedance(s) to EPA as required in Parts 1.13 and 4.4.1.

Additionally, EPA may impose additional water quality-based limitations on a site-specific basis, or require you to obtain coverage under an individual permit, if information in your NOI (if applicable), required reports, or from other sources indicates that, after meeting the water quality-based limitations in this section, your discharges are not controlled as necessary to meet applicable water quality standards, either in the receiving waterbody or another waterbody impacted by your discharges. EPA or an authorized representative of EPA may inform vessel owner/operators of specific requirements via dock side postings at Marinas and Ports or by specifically contacting the owner/operator of a vessel.

2.3.2. Dischargers to Water Quality Impaired Waters

Impaired waters or "water quality limited segment[s]" are those which have been identified by a State or EPA pursuant to Section 303(d) of the CWA as not meeting applicable State water quality standards. Impaired waters may include both waters with EPA-approved or EPA-established Total Maximum Daily Loads (TMDLs), and those for which EPA has not yet approved or established a TMDL.

2.3.2.1 Discharges to Impaired Waters without an EPA-Approved or Established TMDL

If you discharge to an impaired water without an EPA-approved or established TMDL, you are required to comply with the requirements in 2.3.1, including any additional requirements that EPA may impose pursuant to that section. Note that this provision also applies to situations where EPA determines that your discharge is not controlled as necessary to meet water quality standards in another waterbody, even if your discharge is to a receiving water that is not specifically identified on a Section 303(d) list.

2.3.2.2 Discharges to Impaired Waters with an EPA-Approved or Established TMDL

If you discharge to an impaired water with an EPA-approved or established TMDL and EPA or state TMDL authorities have informed you that a Waste Load Allocation (WLA) has been established that applies specifically to your vessel's discharges, to discharges from vessels in your vessel class or type, or to discharges from vessels in general if applicable, your discharge must be consistent with the assumptions and requirements of that WLA. If such a WLA exists, EPA will inform you if any additional limits or controls are necessary for your discharge to be consistent with the assumptions of any available WLA in the TMDL, or whether an individual permit application is necessary in accordance with Part 1.8.1. Note that this provision also applies to situations where EPA determines that your discharges are covered by the WLA in an EPA approved or established TMDL for another waterbody, even if your discharge is to a receiving water that is not specifically identified on a Section 303(d) list.

If an applicable TMDL exists either individually or categorically for your vessel or vessel class (including disallowing discharges from your vessel), EPA and/or state TMDL agencies will inform vessel owner/operators of specific requirements via dock side postings, or by specifically contacting you're the owner/operator of a vessel."

- (A) CWA, Subsection 502(6) defines the term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of section 312 of this Act; or..."

Proposed VGP Item No.2.2.27. "Graywater Mixed with Sewage from Vessels" stated that "[T]he commingled discharge of graywater mixed with sewage from vessels must comply with the effluent limits for graywater discharge in Part 2 or Part 5 of this permit if applicable. Though not a requirement of this permit, vessel owner/operators are advised that all discharges commingled with sewage must meet the requirements set forth in section 312 of the Clean Water Act and its implementing regulations."

However, HRS, §342D-1 defines the term "Water pollutant" means dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat,

wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.

Furthermore, Chapter 37-A (Titled Water Quality Standards) of the Public Health Regulations (Effective date: December 7, 1979) stated that "No new industrial or sewage discharges will be permitted within estuaries."

[Section 3.2(B)] No new industrial or sewage discharges will be permitted within embayments." [Section 3.3(B)]

HAR, Chapter 11-54 (effective August 31, 2004) states that "[N]o new treated sewage discharges shall be permitted within estuaries" [HAR, Paragraph 11-54-3(b)(2)] and "[N]o new sewage discharges will be permitted within embayments" [HAR, Paragraph 11-54-3(c)(2)].

Sewage is defined in the HRS, §342D-1 as "water pollutant." Sewage discharges, regardless from what point source or commingled with the graywater or not, is subject to compliance with all applicable water pollution control requirements. There is no exemption for sewage discharges.

Therefore, it is appropriate to require that sewage be discharged outside the estuaries and embayments whether it is commingled with graywater or not.

The following condition is recommended and deemed necessary to comply with HRS, §342D-50(a) and HAR, §§11-54-3(b)(2) and 11-54-3(b)(2) requirements:

*** Sewage, whether commingled with graywater or not, shall be disposed at pier side collection or treatment system or outside of estuaries or embayments. No new treated sewage discharges shall be permitted within estuaries [HAR, Paragraph 11-54-3(b)(2)] No new sewage discharges will be permitted within embayments [HAR, Paragraph 11-54-3(c)(2)]**

- (B) HAR, §11-54-3(b)(2)(C) states that "No new industrial discharges shall be permitted within estuaries, with the exception of: . . . (C) Discharges covered by a National Pollutant Discharge Elimination System general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. Section 122.28 and all applicable requirements specified in chapter 11-55, titled 'Water Pollution Control.'"

HAR, §11-54-3(c)(2)(C) states that "No new industrial discharges shall be permitted within embayments, with the exception of: . . . (C) Discharges covered by a National Pollutant Discharge Elimination System general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. Section 122.28 and all applicable requirements specified in chapter 11-55, titled 'Water Pollution Control.'"

The VGP is an NPDES general permit subject to the same requirements as specified in the 40 CFR 122.28. The permit is proposed, promulgated, to be approved and issued by the EPA.

Fact Sheet Part 3.1 GEOGRAPHIC SCOPE OF THE PROPOSED PERMIT stated that:

"The proposed permit is applicable to discharges incidental to the normal operation of a vessel identified in Part 1.2 of the proposed permit and Part 3.5 of this fact sheet into waters subject to the proposed permit, which means "waters of the U.S." as defined in 40 CFR 122.2. This includes the territorial seas, defined in section 502(8) of the CWA, extending to three miles from the baseline. *Pacific Legal Foundation v. Costle*, 586 F.2d 650, 655-656 (9th Cir. 1978); *Natural Resources Defense Council, Inc. v. U.S. EPA*, 863 F.2d 1420, 1435 (9th Cir. 1988).

The proposed general permit will cover vessel discharges in the waters of the U.S. in all states and territories, regardless of whether a state is authorized to implement other aspects of the NPDES permit program within its jurisdiction. While, pursuant to CWA section 402(c), EPA typically is required to suspend permit issuance in authorized states, EPA may issue NPDES permits in authorized states for discharges incidental to the normal operation of a vessel because 402(c)(1) of the Clean Water Act prohibits EPA from issuing permits in authorized states only for "those discharges subject to [the state's authorized] program." Discharges excluded under 40 CFR 122.3 are not "subject to" authorized state programs. The vessel discharges that will be covered by the proposed permit are discharges excluded from NPDES permitting programs under 40 CFR 122.3. Therefore the discharges at issue are not considered a part of any currently authorized state NPDES program. See 40 CFR 123.1(i)(2) (where state programs have a greater scope of coverage than "required" under the federal program, that additional coverage is not part of the authorized program) and 40 CFR 123.1(g)(1) (authorized state programs are not required to prohibit point source discharges exempted under 40 CFR 122.3).

EPA will continue to work with state CWA permitting authorities on authorization issues associated with discharges incidental to the normal operation of vessels and plans to provide guidance on such issues in the near future. In particular, EPA plans to outline how states are to obtain approval to implement NPDES permitting for vessel discharges within their jurisdictions. In addition, EPA plans, to the extent permitted by the CWA, to provide states with the opportunity to decline to regulate these discharges by obtaining status as a partial NPDES program under CWA 402(n). See, e.g. section 402(n)(3) (allowing the Administrator to approve a partial program if the state authority administering the NPDES program does not have the legal authority to regulate vessel discharges). In those states, NPDES permit coverage for the discharges would continue to be provided by EPA."

The DOH, has an EPA approved NPDES permitting program under HRS, Chapter 342D and HAR, Chapters 11-54 and 11-55. The EPA approved

State program includes (1) Approved State NPDES permit program (approved on November 24, 1974), (2) Approved to regulate Federal Facilities (approved on June 1, 1979), (3) approved State pretreatment program (approved March 12, 1981), and approved NPDES General Permit (GP) program (approved on September 30, 1991).

It is the intent of HAR, §§11-54- 3(b)(2)(C) and 11-54-(c)(2)(C) to regulate the "new industrial discharges" through the issuance of "general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. Section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control. As stated in EPA's Fact Sheet " [D]ischarges excluded under 40 CFR 122.3 are not "subject to" authorized state programs." Therefore, the permit issuance jurisdiction is with EPA.

See the June 17, 2008 Federal Register (73 FR 34303) on page 13.

The processing process of the proposed VGP is deemed satisfy with provisions contained in HAR, Chapter 11-55. The issuance of EPA VGP to allow certain "new industrial discharges" as specified in the 28 types of activities should be deemed acceptable in compliance with HAR, §§11-54- 3(b)(2) and 11-54-(c)(2) requirements as long as other applicable requirements as established in HAR, Chapters 11-54 and 11-55 are fully complied with.

- (C) EPA shall be the Agency responsible to inform all commercial vessels (including the commercial fishing vessels) owners of which water bodies have or do not have an EPA approved Total Maximum Daily Load (TMDL) implementation plan prepared under CWA, Subsection 303(d).
- (4) Additional requirements are proposed for eight (8) classes of vessels: Large Cruise Ships [Part 5.1], Medium Cruise Ships [Part 5.2], Large Ferries [Part 5.3], Barges including hopper barges, chemical barges, fuel barges, crane barges, dry bulk cargo barges) [Part 5.4], Oil and Petroleum Tankers [Part 5.5], Research Vessels [Part 5.6], Rescue Vessels [Part 5.7], and Vessels employing experimental Ballast Water Treatment Systems [Part 5.8]. Those requirements are specified in Part 5 of the proposed VGP as follows:

“5. Vessel Class Specific Requirements

You must comply with Part 5 vessel-specific requirements associated with your vessel class in addition to any requirements specified elsewhere in this permit.

5.1. Large Cruise Ships (authorized to carry 500 people or more for hire).

The requirements in Part 5.1 apply to vessel discharges from cruise ships authorized to carry 500 people or more for hire.

5.1.1. Additional Effluent Limits

5.1.1.1 Graywater Management

5.1.1.1.1 Graywater Discharge Location and Rate

Pierside Limits – While pierside, appropriate reception facilities for graywater must be used, if reasonably available. If such facilities are not reasonably available, you must treat graywater with a device to meet the standards in Part 5.1.1.1.2 or hold the graywater for discharge while the vessel is underway and discharge according to the operational limits below. Appropriate reception facilities are those authorized for use by the port authority or municipality and that treat the discharge in accordance with its NPDES permit.

Operational Limits – You must meet the following restrictions:

- While operating within 1 nm from shore, discharges of graywater are prohibited unless they meet the effluent standards in Part 5.1.1.1.2.
- If you operate between 1 nm and 3 nm from shore, discharges of graywater must either: (1) meet the effluent standards in Part 5.1.1.1.2, or (2) be released while the Cruise Ship is sailing at a speed of at least 6 knots in a water that is not listed in Part 12.1.

Limits Applicable to Operation in Nutrient Impaired Waters – If you operate in nutrient impaired waters including the Chesapeake Bay, Puget Sound or the territorial Sea surrounding the mouth of the Mississippi River in the Gulf of Mexico, you must:

- Not discharge any graywater in nutrient impaired waters subject to this permit unless the length of voyage in that water exceeds the vessel's holding capacity for graywater; and
- Minimize the discharge of any graywater into nutrient impaired waters subject to this permit, which may require minimizing the production of graywater; and
- If your vessel's holding capacity for graywater is exceeded, treat such excess graywater (above the vessel holding capacity) by a device meeting the standards in Part 5.1.1.1.2 prior to discharge into nutrient impaired waters subject to this permit or
- Dispose of the graywater properly on shore.

A list of nutrient impaired waters is available at [insert web address here].

5.1.1.1.2 Graywater Treatment Standards

The discharge of treated graywater must meet the following standards:

- (1) The discharge must satisfy the minimum level of effluent quality specified in 40 CFR 133.102;
- (2) The geometric mean of the samples from the discharge during any 30-day period may not exceed 20 fecal coliform/100 milliliters (ml) and not more than 10 percent of the samples exceed 40 fecal coliform/100 ml; and
- (3) Concentrations of total residual chlorine may not exceed 10.0 micrograms per liter ($\mu\text{g/l}$).

5.1.1.1.3 Sculleries and Galleys

Cruise ship operators must use detergents that are phosphate free. Degreasers must be non-toxic if they will be discharged as part of any waste stream.

5.1.1.1.4 Other Materials

Waste from mercury containing products, dry cleaners or dry cleaner condensate, photo processing labs, medical sinks or floor drains, salon and day spa sinks and floor drains, chemical storage areas, and print shops using traditional or non-soy based inks and chlorinated solvents must be prevented from entering the ship's graywater, blackwater, or bilgewater systems if water from these systems will ever be discharged into waters subject to this permit. Preventing these wastes from entering these systems can be accomplished by plugging all drains that flow to the graywater, blackwater, or bilge systems in areas where these wastes are produced and creating alternate waste receptacles or replumbing drains to appropriate holding tanks.

5.1.2. Monitoring Requirements

5.1.2.1 *Untreated Graywater*

The owner/operator must maintain records estimating all discharges of untreated graywater into waters subject to this permit, including date, location and volume discharged in their recordkeeping documentation. These records can be maintained as part of the vessel's sewage and graywater discharge record book required under 33 CFR §159.315.

5.1.2.2 Treated Graywater

Prior to entering waters of the U.S., vessel operators must demonstrate that they have an effective treatment system that complies with the standards in Part 5.1.1.1.2 if they will discharge graywater:

- 1) within 1 nm of shore, or
- 2) within 3 nm of shore and sailing less than 6 knots

5.1.2.2.1 Initial Monitoring

In order to demonstrate the effectiveness of the treatment system, the vessel operator must take at least five (5) samples taken from the vessel on different days over a 30-day period that are representative of the treated effluent to be discharged. Samples must be taken for BOD, suspended solids, pH, and total residual chlorine. Sampling and testing shall be conducted

according to 40 CFR Part 136. If the measured samples meet the standards specified in Part 5.1.1.1.2., then the owner/operator has demonstrated the effectiveness of their treatment system for controlling their graywater discharge. Records of the sampling and testing results must be retained onboard for a period of 3 years in the vessel's recordkeeping documentation.

Records of monitoring information shall include:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

5.1.2.2.2 Maintenance Monitoring

After demonstrating the effectiveness of their system, vessel owner/operators must conduct the same sampling and analysis twice each year to demonstrate treatment equipment maintenance and compliance. Records of the sampling and testing results must be retained onboard for a period of 3 years in the vessels recordkeeping documentation.

5.1.2.2.3 Monitoring Reporting

Unless the vessel meets the conditions in the following paragraph, the operator must submit data showing that the graywater standards are achieved by their treatment system to EPA's e-reporting system or to EPA, 1200 Pennsylvania Ave., MC 4203M, Washington, DC 20460. Initial sampling data must be submitted at least 7 days before entering waters subject to this permit. Maintenance monitoring data must be submitted at least once per year within 30 days of the second sample collection. Data must be submitted on Discharge Monitoring Reports available in Appendix I of this permit or submitted to EPA's e-reporting system available at [website will be listed upon permit finalization], which will be available within two years of finalization of this permit.

If the vessel operates in Alaskan waters and submits or has already submitted the above information to the COTP to meet the requirements of Section 1411(b) of Title XIV, Pub. L. 106-554 (Dec. 31, 2000, 114 Stat. 2763) [Certain Alaska Cruise Ship Operations] (codified at 33 U.S.C. 1901 note), that submission will serve to satisfy these requirements. EPA will obtain the data from the COTP in order to minimize duplicative requirements.

5.1.2.2.4 Reserved Authority

Even if operators have demonstrated their system meets the standards in Part 5.1.1.1.2, if EPA, its authorized representative, or the Coast Guard sample their graywater effluent and find that they are not meeting these standards, the cruise ship owner/operators are liable for violating their effluent limits.

5.1.2.2.5 Treated Graywater Records

The owner/operator must maintain records estimating all discharges of treated graywater into waters subject to this permit, including date, location and volume discharged in their recordkeeping documentation. These records can be maintained as part of the vessel's sewage and graywater discharge record book required under 33 CFR 159.315.

5.1.3. Educational and Training Requirements

The crews of cruise ships play a key role in minimizing the discharge of pollutants from cruise ship operations and passengers. Therefore cruise ship operators are subject to the following requirements:

- The ship's crew must receive training regarding shipboard environmental procedures and must be able to demonstrate proficiency in implementing these procedures.
- Advanced training in shipboard environmental management procedures must be provided for those directly involved in managing specific discharge types or areas of the ship and these crew members must be able to demonstrate proficiency in implementing these procedures.
- Appropriate reprimand procedures must be developed for crew whose actions lead to violations of any effluent limit set forth in this permit or procedures established by the cruise ship operator to minimize the discharge of pollutants.

Cruise ships must also educate passengers on their potential environmental impacts. The goals of these education efforts should include preventing trash from entering any waste stream, eliminating the addition of unused soaps, detergents, and pharmaceuticals to the graywater or blackwater systems and minimizing production of graywater. This can be accomplished in a variety of ways including, but not limited to posting signage and informational material in guestrooms and common areas, incorporating environmental information passenger orientation presentations or packages at the start of cruises, incorporating this information into additional lectures and seminars, or broadcasting information via loudspeakers.

5.2. Medium Cruise Ships (authorized to carry 100 to 499 people for hire)

The requirements in Part 5.2 apply to vessel discharges from cruise ships authorized to carry between 100 and 499 people for hire.

5.2.1. Additional Effluent Limits

5.2.1.1 Graywater Management

5.2.1.1.1 Graywater Discharge Location and Rate

Pierside Limits – While pierside, appropriate reception facilities for graywater must be used, if reasonably available. If such facilities are not reasonably available, you must treat graywater with a device to meet the standards in Part 5.1.1.1.2 or hold the graywater for discharge while the vessel is underway and discharge according to the Operational Limits below. Appropriate reception facilities are those authorized for use by the port authority or municipality and that treat the discharge in accordance with its NPDES permit.

Operational Limits – You must meet the following restrictions:

- While operating within 1 nm from shore, discharges of graywater are prohibited unless they meet the effluent standards in Part 5.1.1.1.2.
- If you operate between 1 nm and 3 nm from shore, discharges of graywater must either: (1) meet the effluent standards in Part

5.1.1.1.2, or (2) be released while the cruise ship is sailing at a speed of at least 6 knots in a water that is not listed in Part 12.1.

Limits Applicable to Operation in Nutrient Impaired Waters – If you operate in nutrient impaired waters including the Chesapeake Bay, Puget Sound or the territorial sea surrounding the mouth of the Mississippi River in the Gulf of Mexico, you must:

- Not discharge any graywater in nutrient impaired waters subject to this permit unless the length of voyage in that water exceeds the vessel's holding capacity for graywater; and
- Minimize the discharge of any graywater into nutrient impaired waters subject to this permit, which may require minimizing the production of graywater; and
- If your vessel's holding capacity for graywater is exceeded, treat such excess graywater (above the vessel holding capacity) by a device meeting the standards in Part 5.1.1.1.2 prior to discharge into nutrient impaired waters subject to this permit; or
- Dispose of the graywater properly on shore; or
- Discharge the graywater while the cruise ship is sailing at a speed of at least 6 knots.

A list of nutrient impaired waters is available at www.epa.gov/npdes/vessels.

5.2.1.1.2 Graywater Treatment Standards

The discharge of treated graywater must meet the following standards:

- (1) The discharge must satisfy the minimum level of effluent quality specified in 40 CFR 133.102;
- (2) The geometric mean of the samples from the discharge during any 30-day period may not exceed 20 fecal coliform/100 milliliters (ml) and not more than 10 percent of the samples exceed 40 fecal coliform/100 ml; and
- (3) Concentrations of total residual chlorine may not exceed 10.0 micrograms per liter ($\mu\text{g/l}$).

5.2.1.1.3 Sculleries and Galleys

Cruise ship operators must use detergents that are phosphate free. Degreasers must be non-toxic if they will be discharged as part of any waste stream.

5.2.1.1.4 Other Materials

Waste from mercury containing products, dry cleaners or dry cleaner condensate, photo processing labs, medical sinks or floor drains, salon and day spa sinks and floor drains, chemical storage areas, and print shops using traditional or non-soy based inks and chlorinated solvents must be prevented from entering the ship's graywater, blackwater, or bilgewater systems, if waters from these systems will ever be discharged into waters subject to this permit. Preventing these wastes from entering these systems can be accomplished by plugging all drains that flow to the graywater, blackwater, or bilge systems in

areas where these wastes are produced and creating alternate waste receptacles or replumbing drains to appropriate holding tanks.

5.2.2. *Monitoring Requirements*

5.2.2.1 Untreated Graywater

The owner/operator must maintain records estimating all discharges of untreated graywater into waters subject to this permit, including date, location and volume discharged in their recordkeeping documentation. These records can be maintained as part of the vessel's sewage and graywater discharge record book required under 33 CFR 159.315.

5.2.2.2 Treated Graywater

Prior to entering waters of the U.S., vessel operators must demonstrate that they have an effective treatment system that complies with the standards in Part 5.1.1.1.2 if they will discharge graywater:

- 3) within 1 nm of shore, or
- 4) within 3 nm of shore and sailing less than 6 knots

5.2.2.2.1 Initial Monitoring

In order to demonstrate the effectiveness of the treatment system, the vessel operator must take at least five (5) samples taken from the vessel on different days over a 30-day period that are representative of the treated effluent to be discharged. Samples must be taken for BOD, suspended solids, pH, and total residual chlorine. Sampling and testing shall be conducted according to 40 CFR Part 136. If the measured samples meet the standards specified in Part 5.1.1.1.2., then the owner/operator has demonstrated the effectiveness of their treatment system for controlling their graywater discharge. Records of the sampling and testing results must be retained onboard for a period of 3 years in the vessel's recordkeeping documentation.

Records of monitoring information shall include:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

5.2.2.2.2 Maintenance Monitoring

After demonstrating the effectiveness of their system, vessel owner/operators must conduct the same sampling and analysis twice each year to demonstrate treatment equipment maintenance and compliance. Records of the sampling and testing results must be retained onboard for a period of 3 years in the vessels recordkeeping documentation.

5.2.2.2.3 Monitoring Reporting

Unless the vessel meets the conditions in the following paragraph, the operator must submit data showing that the graywater standards are achieved by their treatment system to EPA, 1200 Pennsylvania Ave., MC 4203M, Washington, DC 20460. Initial sampling data must be

submitted at least 7 days before entering waters subject to this permit. Maintenance monitoring data must be submitted at least once per year within 30 days of the second sample collection. Data must be submitted on Discharge Monitoring Reports available in Appendix I of this permit or submitted to EPA's e-reporting system available at website will be listed upon permit finalization] which will be available within two years of finalization of this permit.

5.2.2.2.4 Reserved Authority

Even if operators have demonstrated their system meets the standards in Part 5.1.1.1.2, if EPA, its authorized representative, or the Coast Guard sample their graywater effluent and find that they are not meeting these standards, the Cruise Ship owner/operators are liable for violating their effluent limits.

5.2.2.2.5 Treated Graywater Records

The owner/operator must maintain records estimating all discharges of treated graywater into waters subject to this permit, including date, location and volume discharged in their recordkeeping documentation. These records can be maintained as part of the vessel's sewage and graywater discharge record book required under 33 CFR 159.315.

5.2.3. Educational and Training Requirements

The crews of cruise ships play a key role in minimizing the discharge of pollutants from cruise ship operations and passengers. Therefore cruise ship operators are subject to the following requirements:

- The ship's crew must receive training regarding shipboard environmental procedures and must be able to demonstrate proficiency in implementing these procedures.
- Advanced training in shipboard environmental management procedures must be provided for those directly involved in managing specific discharge types or areas of the ship and these crew members must be able to demonstrate proficiency in implementing these procedures.
- Appropriate reprimand procedures must be developed for crew whose actions lead to violations of any effluent limit set forth in this permit or procedures established by the cruise ship operator to minimize the discharge of pollutants.

Cruise ships must also educate passengers on their potential environmental impacts. The goals of these education efforts should include preventing trash from entering any waste stream, eliminating the addition of unused soaps, detergents, and pharmaceuticals to the graywater or blackwater systems, and minimizing production of graywater. This can be accomplished in a variety of ways including, but not limited to posting signage and informational material in guestrooms and common areas, incorporating environmental information passenger orientation presentations or packages at the start of cruises, incorporating this information into additional lectures and seminars, or broadcasting information via loudspeakers.

5.3. Large Ferries

Ferries are vessels for hire that are designed to carry passengers and vehicles between two ports, usually in inland, coastal, or near-shore waters. This Part 5.3 applies to those ferries that are authorized by the Coast Guard to carry more than 100 tons of cars, trucks, trains, or other land-based transportation ("large ferries"). All large ferries must meet the requirements in

section 5.3.1.1 (deck water) and section 5.3.2 (education and training). In addition, if your large ferry is authorized by the Coast Guard to carry 250 or more people, it must meet the requirements of section 5.3.1.2.

5.3.1. Additional Effluent Limits

5.3.1.1 Deck Water

Large ferries may not discharge untreated below deck water from parking areas or other storage areas for motor vehicles or other motorized equipment into waters subject to this permit without first treating the effluent with an oily water separator or other appropriate device. Large ferry operators must use oil absorbent cloths to clean oily spills or substances from deck surfaces. Any effluent created by washing the decks may not be discharged into the waters subject to this permit listed in Part 12.1.

5.3.1.2 Graywater management

5.3.1.2.1 Graywater Discharge Location and Rate

Pierside Limits – While pierside, appropriate reception facilities for Graywater must be used, if reasonably available. If such facilities are not reasonably available, you must hold the graywater if the vessel has the holding capacity and discharge the effluent while the vessel is underway. Appropriate reception facilities are those authorized for use by the port authority or municipality and that treat the discharge in accordance with its NPDES permit.

Operational Limits – You must also meet the following restrictions:

- If you operate within 3 nm from shore, discharges of graywater must be released while the ferry is sailing at a speed of at least 6 knots if feasible.

5.3.2. Educational and Training Requirements

The crews of ferries play a key role in minimizing the discharge of pollutants from ferry operations and its passengers. Therefore ferry operators are subject to the following requirements:

- The ship's crew must receive training regarding shipboard environmental procedures and must be able to demonstrate proficiency in implementing these procedures.
- Advanced training in shipboard environmental management procedures must be provided for those directly involved in managing specific discharge types or areas of the ship and these crew must be able to demonstrate proficiency in implementing these procedures.
- Appropriate reprimand procedures must be developed for crew whose actions lead to violations of any effluent limit set forth in this permit or procedures established by the Cruise Ship operator to minimize the discharge of pollutants.

Ferry operators must also educate passengers on their potential environmental impacts. The goals of these education efforts should include eliminating the discharge of trash overboard, minimizing the production of trash from parking areas or other storage areas, eliminating the addition of unused soaps, detergents, and pharmaceuticals to the graywater or blackwater

systems, minimizing production of graywater. This can be accomplished in a variety of ways including, but not limited to posting signage and informational material in common areas, incorporating environmental information into orientation presentations, or broadcasting information via loudspeakers.

5.4. Barges (such as hopper barges, chemical barges, tank barges, fuel barges, crane barges, dry bulk cargo barges)

You must comply with Part 5 vessel-specific requirements associated with your vessel class in addition to any requirements specified elsewhere in this permit.

The requirements in Part 5.4 apply to vessel discharges from barges.

5.4.1. Additional Effluent Limits

Barges must minimize the contact of below deck condensation with oily or toxic materials, and any materials containing hydrocarbon. Whenever barges are pumping water from below deck, the discharge shall not contain oil in quantities that may be harmful. If a visible sheen is noted, vessel operators must initiate corrective action in accordance with Part 3 and meet recordkeeping requirements in Part 4.2 of this permit.

All tank barges must have spill rails and must plug their scuppers before any cargo operations. If any spills result during loading or unloading of cargo, vessel owner/operators must completely clean up spills or residue before scuppers are unplugged. Once all spills and residue have been cleaned, scuppers may be unplugged.

Vessel owner/operators must clean out cargo residues such that any remaining residue is minimized before washing the cargo compartment or tank and discharging wash water overboard.

5.4.2. Supplemental Inspection Requirements

After every instance of pumping water from areas below decks, or immediately following washing down the decks, you must conduct a visual sheen test. The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of an oily sheen. The operator should focus the inspection on the area surrounding the vessel where discharges from below deck or deck washings are discharged into the receiving water. A visible sheen is defined in Part 7 of this permit. If a visible sheen is observed, you must initiate corrective actions required in Part 3 of this permit and meet recordkeeping requirements in Part 4.2 of this permit.

5.5. Oil Tankers or Petroleum Tankers

The requirements in Part 5.5 apply to vessel discharges from Oil Tankers or Petroleum tankers.

5.5.1. Additional Authorized Discharges

For vessels which have an inert gas system, the effluent produced from inert gas scrubbers may be discharged into waters subject to this permit.

The discharges of water from deck seals are authorized when such seals are installed as an integral part of an IGS system.

5.5.2. Supplemental Authorized Discharges

Operators of oil tankers must plug scuppers during cargo loading and unloading operations to prevent the discharge of oil into waters subject to this permit. Any oil spilled must be cleaned with oil absorbent cloths or another appropriate approach.

Vessel operators must minimize the discharge of effluent produced from inert gas scrubbers if feasible for their vessel design.

5.5.3. Supplemental Inspection Requirements

After every instance of loading or unloading operations or immediately following washing down the decks, you must conduct a visual sheen test. The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of an oily sheen. The owner/operator should focus the inspection on the area surrounding the vessel where effluent from loading operations or deck washings discharge into the receiving water. A sheen is defined in Part 7 of this permit. If a visible sheen is observed, you must comply with all requirements contained in Part 4.4 of this permit and initiate corrective actions required in Part 3 of this permit.

5.5.4. Educational and Training Requirements

The crews of oil tankers play a key role in minimizing the discharge of pollutants from vessel operations. Therefore oil tanker operators are subject to the following requirements:

- The ship's crew must receive training regarding shipboard environmental procedures and must be able to demonstrate proficiency in implementing these procedures.
- Advanced training in shipboard environmental management procedures must be provided for those directly involved in managing specific discharge types or areas of the ship and these crew must be able to demonstrate proficiency in implementing these procedures.
- Appropriate reprimand procedures must be developed for crew actions that lead to violations of any effluent limit set forth in this permit or procedures established by the vessel operator to minimize the discharge of pollutants.

5.6. Research Vessels

The requirements in Part 5.6 apply to vessel discharges from research vessels. Research vessels are those that are engaged in investigation or experimentation aimed at discovery and interpretation of facts, revision of accepted theories or laws in the light of new facts, or practical application of such new or revised theories or laws.

5.6.1. Supplemental Authorized Discharges

In addition to the discharges incidental to the normal operation of a vessel authorized elsewhere in this permit, owner/operators of research vessels are authorized to discharge tracers (dyes, fluorescent beads, SF6), drift cards, tracking devices and the like, and expendable bathythermograph (XBT) probes, into waters subject to this permit, provided such

discharges are for the sole purpose of conducting research on the aquatic environment or its natural resources in accordance with generally recognized scientific methods, principles, or techniques.

5.6.2. Additional Effluent Limits

Owner/operators of research vessels must discharge only the minimal amount of materials referenced in Part 5.6.1 necessary to conduct research.

5.7. Rescue Boats (Fire Boats, Police Boats)

The requirements in Part 5.7 apply to vessel discharges from emergency and rescue boats.

5.7.1. Supplemental Authorized Discharges

In addition to the discharges incidental to the normal operation of a vessel authorized elsewhere in this permit, vessel owner/operators of rescue boats are authorized to discharge waste streams in conjunction with training, testing, and maintenance operations, provided that they comply with all additional requirements of the Clean Water Act (e.g. section 311) and the National Contingency Plan (40 CFR 300). This section does not relieve vessel operators of any additional responsibilities under the CWA and the National Contingency Plan which prohibits the discharge of oil for research or demonstration purposes without Administrator approval. The use of foaming agents for oil or chemical fire response must be implemented in accordance with the National Contingency Plan (40 CFR 300).

5.7.2. Additional Effluent Limits

Owner/Operators are strongly encouraged to seek alternative formulations of AFFF that are less harmful to the aquatic environment, such as non-fluorinated foam, while maintaining their effectiveness in emergency operations. Furthermore, operators are encouraged to not use AFFF or discharge toxic substances in areas near active commercial or recreational fisheries, near swimmable waters, or in high traffic areas for maintenance or training purposes. Rescue vessel owner/operators are also encouraged to perform training, testing, and maintenance operations outside of port and as far from shore as possible. The use of foaming agents for oil or chemical fire response, and the control of their discharge from a vessel, must be implemented in accordance with the National Contingency Plan (40 CFR 300).

5.8. Vessels employing experimental Ballast Water Treatment Systems

The requirements in Part 5.8 apply to ballast water discharges from vessels employing experimental ballast water treatment systems that make use of biocides.

5.8.1. Authorization of Residual Biocides Associated with Experimental Ballast Water Treatment Systems

Some experimental ballast water treatment systems produce or use biocides as an agent to reduce living organisms present in the ballast water tank. In order to be eligible for coverage under this permit, any ballast water technology must not use any biocide that is a “pesticide” within the meaning of the Federal Insecticide, Fungicide, Rodenticide Act (7 U.S.C § 136 *et seq.*) unless that biocide has been registered for use in ballast water treatment under such Act. The requirement in the preceding sentence does not apply if such biocide is generated solely by the use of a “device,” as that term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act, on board the same vessel as the ballast water to be treated by the

biocide. In addition, if the ballast water treatment system will discharge biocide residuals or derivatives into waters subject to this permit, you must meet the following condition:

- 5.8.1.1 The discharge of Total Residual Chlorine (TRC) as a biocide or derivative may not exceed 100 micrograms per liter ($\mu\text{g/l}$). Any other biocides or derivatives may not exceed acute water quality criteria listed in EPA's 1986 Quality Criteria for Water [the Gold Book], and any subsequent revision, at the point of ballast water discharge. Discharges of biocide residuals or derivatives must also meet monitoring requirements under Part 5.8.2.1, and reporting and recordkeeping requirements in Part 5.8.3.

In lieu of complying with the conditions in Parts 5.8.1.1, a vessel owner/operator may apply for an individual NPDES permit for ballast water discharges that contain residual biocides or derivatives used as part of an experimental treatment system pursuant to Part 1.8 of this permit.

5.8.2. Monitoring Requirements

5.8.2.1 Residual Biocide or Derivative Monitoring

You must conduct monitoring of the vessel ballast water discharge for any residual biocides or derivatives used in the treatment process to demonstrate compliance with the conditions in Part 5.8.1.1. For instance, if chlorine is the biocide used in the ballast water treatment, you must test for chlorine in the vessel ballast water discharge to see if it complies with the standards in Part 5.8.1.1. If there are no Part 136 test methods for the residual biocide or derivatives of the residual biocide, you must seek coverage under an individual NPDES permit pursuant to Part 1.8 of this permit. In order to demonstrate that residual biocides or derivatives are in compliance with this permit, the vessel operator initially must take at least five (5) samples on different days over a 90-day period that are representative of the treated ballast water discharge. Each sample must be tested independently and the individual results must be reported and not averaged. Samples must be tested as soon as possible after sampling, and may not be held longer than recommended for each tested constituent as given in 40 CFR Part 136. Sampling and testing shall be conducted according to 40 CFR Part 136.

Records of monitoring information shall include:

- The date, exact place, and time of sampling or measurements;
- The individual(s) who performed the sampling or measurements;
- The date(s) analyses were performed;
- The individual(s) who performed the analyses;
- The analytical techniques or methods used; and
- The results of such analyses.

Thereafter, you must conduct maintenance sampling and analysis at least quarterly (4 times per year) of the vessel ballast water discharge in order to demonstrate continued compliance with the standards in Part 5.8.1.1. If any of the initial or maintenance samples exceed the standards specified in Part 5.8.1.1, then the owner/operator must immediately undertake steps necessary to achieve compliance and take and submit samples demonstrating such compliance or cease discharging and seek coverage under an individual permit under Part 1.8 of this permit.

5.8.3. Recordkeeping and Reporting Requirements

Records of the sampling and testing results must be retained onboard for a period of 3 years in the vessel's recordkeeping documentation.

You must submit your monitoring data to EPA HQ, Attn: Experimental Ballast Water Treatment System Test Results -Mail Code 4203M, 1200 Pennsylvania Ave., Washington DC 20460 at least once per year. For systems already in use as of the effective date of this permit, initial sampling data must be submitted within 6 months of this permit's effective date. For systems which are not already in use as of the effective date of this permit, initial sampling data must be submitted within 6 months of the system's first use. Maintenance monitoring data must be submitted at least once per year within 30 days of the final sample collection. Data must be submitted on Discharge Monitoring Reports available in Appendix I of this permit or submitted to EPA's e-reporting system available at [website will be listed upon permit finalization], which will be available within two years of finalization of this permit."

- (A) HAR, 11-54-4(b) requires that acute concentrations of total residual chlorine (TRC) in salt water shall not exceed 13 ug/l and shall not exceed 19 ug/l in fresh water. TRC limits of 100.0 ug/l as specified in proposed VGP 5.8.1.1 is unacceptable.

The following condition is recommended to comply with HAR, §11-54-4(b) requirements:

*** Concentration of Total Residual Chlorine (TRC) in effluent discharges shall not exceed an acute concentration of 13.0 ug/l in salt water or an acute concentration of 19.0 ug/l in fresh water.**

- (5) The evaluation of EPA's proposed VGP for a conditional Section 401 WQC is mainly based on information contained in EPA's June 17, 2008 Federal Register Notification (73 FR 34296-34304); Fact Sheet for the proposed and proposed VGP transmitted with Region 9's Section 401 WQC request of June 27, 2008 (also published in EPA's website); additional conditions proposed in Region9's letter of September 12, 2008; and in a Fact Sheet, dated September 2008, titled "**Overview of Litigation and Clean Water Act Permit Scheme Regarding Discharges Incidental to Normal Vessel Operations.**"

However, in the Fact Sheet, dated September 2008, titled "Overview of Litigation and Clean Water Act Permit Scheme Regarding Discharges Incidental to Normal Vessel Operations" Region 9 stated that "... due to P.L. 110-299, which places a two year moratorium on NPDES permitting of commercial fishing vessels and all other commercial vessels that are 79 feet or less in length, the VGP will be revised prior to finalization to reflect that new law."

Therefore the following conditions are deemed necessary and shall be imposed as part of the conditions of the proposed conditional Section 401 WQC and be incorporated into Section 6 of VGP:

- (A) **In issuing this conditional Section 401 WQC, the DOH has relied on the information contained in the Fact Sheet and proposed VGP transmitted with EPA, Region 9's written request of June 27, 2008 and the additional conditions proposed in the letter of September 12, 2008. Conditions specified in the proposed VGP and in the letter of September 12, 2008 shall constitute the minimal requirements acceptable to the DOH with some exceptions as described in this conditional Section 401 WQC, below.**

This conditional Section 401 WQC is subject to modification should any future modifications/changes to the proposed VGP contain any requirement, condition, effluent limitation, restriction that is less stringent than those specified in the proposed VGP. EPA, Region 9, shall submit the modification(s)/change(s) to the DOH for review and concurrence. The Director will determine whether the modification(s)/change(s) to the conditions of this Section 401 WQC is warranted.

- (B) **The following conditions as proposed in the letter of September 12, 2008 are hereby incorporated into this conditional Section 401 WQC and shall also be incorporated into Part 6 of the Final Region 9 VGP for discharges into Waters of the State of Hawaii "incidental to the normal operation of commercial vessels":**

*** Any discharge which would be unlawful under HRS, Section 342D-51 (or Section 301(a) of the Clean Water Act) must be reported to the Director, Water Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and to the Director of Health, Hawaii Department of Health, 919 Ala Moana Blvd, Rm. 301, Honolulu, Hawaii 96814-4920 within 24 hours of the discharge, unless a valid NPDES permit issued under HRS, Section 342D-6 (or Section 402 of the Clean Water Act) specifies another reporting period for the specific discharge.**

*** Enterococcus shall be added to the list of analytes for which samples shall be taken in accordance with Parts 5.1.2.2.1, 5.1.2.2.2, 5.2.2.2.1 and 5.2.2.2.2 of the VGP. Monitoring results shall be reported to the Director of Health, Hawaii Department of Health, 919 Ala Moana Blvd, Rm. 301, Honolulu, Hawaii 96814-4920 in addition to EPA's Washington DC office.**

*** Receiving waters of the State of Hawaii shall be free of substances attributable to the discharges including high or low temperatures; biocides; pathogenic organisms; toxic, radioactive, corrosive, or other deleterious**

substances at levels or in combinations sufficient to be toxic or harmful to humans, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water.

*** Receiving waters of the State of Hawaii shall be free of substances attributable to the discharges including floating debris, oil, grease, scum, or other floating materials.**

- (6) Ballast water discharges incidental to normal operation of commercial vessels and commercial fishing vessels are also subject to the compliance with HAR, Title 13, Department of Land and Natural Resources (DLNR), Subtitle 4, Fisheries, Part IV, Fisheries Resource Management, Chapter 76, Non-Indigenous Aquatic Species, adopted August 10, 2007.

HAR, § 13-76-1 states that:

"[T]his chapter governs rules aimed at preventing, to the extent practical, the introduction and spread of non-indigenous aquatic species into State waters. Such non-indigenous aquatic species are potentially harmful to the environment and economy of Hawaii because they may replace or destroy native species and alter their habitats. "

HAR, §13-76-11 of Subchapter 2, Titled Ballast Water Management, states that:

"§13-76-11 Purpose. (a) This subchapter addresses the management and disposition of vessel ballast water as a medium or means for the introduction of aquatic invasive species into state marine waters, such as but not limited to any ocean, estuary, bay, harbor, beach, or coastal area. These rules are intended to act in coordination with federal regulations on ballast water management by 1) establishing state laws that will correspond to and complement federal regulations on ballast water to ensure consistency, 2) providing best practices guidelines to improve vessel ballast water management prior to entering state marine waters, 3) adopting a ballast water management program, including a ballast water exchange reporting system, and 4) monitoring compliance with program requirements.

(b) This subchapter identifies: 1) prohibited activities; 2) vessels exempted from ballast water management plan requirements, ballast water reporting requirements, ballast water exchange requirements, and ballast water discharge requirements; 3) which permits are available to qualifying vessels; 4) requirements that incoming vessels are subject to regarding ballast water; and 5) State verification of compliance with this subchapter."

Terms used in the Subchapter 2, such as the "Qualifying Vessels," "Ballast operations," "ballast water management," etc, are defined in HAR, §13-76-12.

As specified in Region 9's letter of September 12, 2008, "[F]or ballast water discharges, our request includes all commercial vessels including all commercial fishing vessels." As such, it is determined that HAR, Chapter 13-76 requirements

are also applicable to all commercial vessels including commercial fishing vessels to be authorized under EPA's proposed VGP.

Pursuant to CWA, Subsection 401(d) requirements and in addition to effluent limitation specified in Item No. 2.2.3 (including Item Nos. 2.2.3.1 through 2.2.3.11), discharges of ballast waters shall also comply with HAR, Chapter 13-76 requirements.

Therefore, the following condition is deemed appropriated and is recommended to be incorporated into the proposed conditional Section 401 WQC as part of the conditions:

* **“Ballast water discharges from "Qualifying Vessels" shall also comply with the provisions of HAR, Chapter 13-76.**

* **The term "Qualifying Vessels", as defined in HAR, Section 13-76-12, means all vessels, United States or foreign flagged, carrying ballast water into state marine waters after operating outside the EEZ.**

* **The term "EEZ", as defined in HAR, Section 13-76-12, means the United States exclusive economic zone established by Presidential Proclamation No. 5030, dated March 10, 1983, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles, substantially as defined in federal law 33 CFR 151.2025, dated July 1, 2005.”**

- (7) Commercial vessel meets HRS, Chapter 342D-101 definition as "Commercial Passenger Vessel" shall also comply with requirements specified in PART VI. of HRS, Chapter 342D titled "DISCHARGES FROM COMMERCIAL PASSENGER VESSELS"

As defined in HRS, §342D-101:

"Commercial passenger vessel" means a vessel that carries passengers for hire. The term does not include a vessel:

- (1) Authorized to carry fewer than fifty passengers;
- (2) That does not provide overnight accommodations for at least fifty passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin; or
- (3) Operated by the United States or a foreign government."

The following HRS, Chapter 342D sections are applicable to discharges from commercial passenger vessels:

[§342D-102] Prohibited discharges; limitations on discharges. (a) Except as provided in subsection (g), a person may not discharge untreated sewage from a commercial passenger vessel into the marine waters of the State.

- (b) Except as provided in subsection (g) or section 342D-111, a person shall not discharge wastewater from a commercial passenger vessel into the marine waters of the State that has suspended solids greater than one hundred milligrams per liter or a fecal coliform count greater than forty colonies per one hundred milliliters except that the department, by rule, may adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under which a discharger will be considered to be in compliance with the fecal coliform limit if the geometric mean of fecal coliform count in the samples considered under the protocol does not exceed forty colonies per one hundred milliliters. Upon submission by the owner or operator of a large commercial passenger vessel of a plan for interim protective measures, the department shall extend the time for compliance of that vessel with this subsection for a period of time that ends not later than December 31, 2006. Upon submission by the owner or operator of a small commercial passenger vessel of a plan for interim protective measures, the department shall extend the time for compliance of that vessel with this subsection.
- (c) The department, by rule, may establish numeric or narrative standards for other parameters for wastewater discharged from commercial passenger vessels that are more stringent than the effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended, and regulations adopted under the same. In adopting rules under this subsection, the department shall consider the best available scientific information on the environmental effects of the regulated discharges, the materials and substances handled on the vessels, vessel movement effects, and the availability of new technologies for wastewater.
- (d) Except as provided in subsections (f) and (g) or section 342D-111, a person shall not discharge wastewater from a large commercial passenger vessel into the marine waters of the State unless:
 - (1) The vessel is underway and proceeding at a speed of not less than six knots;
 - (2) The vessel is at least one nautical mile from the nearest shore, except in areas designated by the department;
 - (3) The discharge complies with all applicable vessel effluent standards established under federal and state law; provided that the standards established under federal law may be adopted by rule by the department; and
 - (4) The vessel is not in an area where the discharge of wastewater is prohibited.
- (e) Except as provided in subsection (g) or section 342D-111, a person may not discharge sewage from a small commercial passenger vessel unless the sewage has been processed through a properly operated and properly maintained marine sanitation device.
- (f) Subsection (d)(1) and (2) do not apply to a discharge permitted under federal law.
- (g) Subsections (a) to (e) do not apply to discharges made for the purpose of securing the safety of the commercial passenger vessel or saving life at sea if all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge. [L 2005, c 217, pt of §1]

[§342D-103] Prohibited air emissions. (a) No person shall operate an incinerator of a large commercial passenger vessel in any Hawaiian port for the combustion of any waste materials.

- (b) Except as provided under section 342D-106, large commercial passenger vessels shall limit visible emissions, excluding condensed water vapor, to no more than

twenty per cent opacity for periods of time exceeding six minutes in any sixty-minute period except for the following:

- (1) When the ship is maneuvering to or from the dock or anchor;
- (2) In the event of a navigational or safety concern on the ship; or
- (3) In the event of an equipment failure; provided that the cruise line shall upon request, provide information to the department that describes the subject equipment, malfunction, corrective actions taken, and the start and end times of the malfunctioning period. [L 2005, c 217, pt of §1]

[§342D-104] Information-gathering requirements. (a) Except as provided under section 342D-111, the owner or operator of a commercial passenger vessel shall maintain records and, upon request of the department, provide to the department a report, with copies of the records related to the period of operation in the marine waters of the State, detailing the dates, times, and locations, and the volumes or flow-rates of any discharge of sewage or other wastewater into the marine waters of the State, or the opacity of air emissions.

- (b) Except as provided under section 342D-111, while a commercial passenger vessel is present in the marine waters of the State, the owner or operator of the vessel shall collect routine samples of the vessel's treated sewage and other wastewater that are being discharged into the marine waters of the State with a sampling technique approved by the department before the sample is collected. The number of routine samples for each vessel to be collected under this subsection shall be the greater of two per calendar year or the number of samples required to be collected under federal laws and regulations for sewage or other wastewater discharges.
- (c) Except as provided under section 342D-111, while a commercial passenger vessel is present in the marine waters of the State, the department through an independent contractor may collect additional samples of the vessel's treated sewage that are being discharged into the marine waters of the State, or monitor the opacity of air emissions.
- (d) Except as provided under section 342D-111, the owner or operator of a vessel required to collect samples under subsection (b) shall, as required by the department, have the samples tested. Tests required may include tests for fecal coliform, ammonia, residual chlorine, pH (degree of acidity or alkalinity), chemical oxygen demand, biochemical oxygen demand, total suspended solids, and any other parameters as required by the department. An analytical testing method approved by the department before the testing is conducted shall be used. A laboratory used for testing under this subsection shall agree not to disclose the testing results to any person other than to the department, the United States Coast Guard, or the owner or operator of the vessel.
- (e) The owner or operator of a commercial passenger vessel shall pay for all routine sampling under subsection (b), additional sampling under subsection (c), and for the testing of routine samples.
- (f) If the owner or operator of a commercial passenger vessel, when complying with another state or federal law that requires substantially equivalent information gathering, has gathered the type of information required under subsection (a), (b), or (d), the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department. The department shall establish, by rule, requirements for determining substantially equivalent information gathering. [L 2005, c 217, pt of §1]

[§342D-105] Recordkeeping requirements. An owner or operator subject to section 342D-104 shall record the information required to be gathered under that section and shall maintain the records for three years after the date the information was gathered. [L 2005, c 217, pt of §1]

[§342D-106] Reporting requirements. (a) An owner or operator of a commercial passenger vessel who becomes aware of a discharge in violation of section 342D-102 shall immediately report that discharge to the department. The report shall not be deemed to be privileged information.

- (b) Before operating a commercial passenger vessel in the marine waters of the State, the owner or operator of the vessel shall provide to the department a plan that describes the vessel's policies and procedures for:
 - (1) Offloading in the State or disposing into the marine waters of the State of nonhazardous solid waste other than sewage; and
 - (2) Offloading of hazardous waste or a hazardous substance from the vessel while the vessel is operating in the marine waters of the State to the extent that the offloading is not covered by subsection (d).
- (c) Within twenty-one days after the testing required under section 342D-104(d), the owner or operator of a commercial passenger vessel shall submit a written report to the department that contains the measurements required under section 342D-104(d) and describes the sampling technique and analytical testing methods used. The information in the report required under this subsection may be provided by referring to, and including copies of, other reports that are required by substantially equivalent state or federal reporting requirements. The department shall establish, by rule, requirements for determining substantially equivalent information gathering.
- (d) If the owner or operator of a commercial passenger vessel operating in the marine waters of the State is required by the laws of the United States to file a report or provide notice of a discharge or offloading of a hazardous waste or hazardous substance that was generated, discharged, or offloaded while the vessel was operating in the marine waters of the State, the owner or operator shall submit to the department a copy of the report or notice within twenty-one days after having provided the report or notice to an agency of the United States.
- (e) If the owner or operator of a commercial passenger vessel operating in the marine waters of the State is required by the administrator of the Environmental Protection Agency or the secretary of the federal department in which the United States Coast Guard is operating to collect samples and test sewage or opacity of air emissions and keep records of the sampling and testing, then the owner or operator, within twenty-one days after the sewage or opacity of air emissions is tested, shall submit to the department a copy of the records.
- (f) Upon request of the department, the information required under this section shall be submitted electronically.
- (g) This section does not relieve the owner or operator of a commercial assenger vessel from other applicable reporting requirements of state or federal law.
- (h) The requirements of this section are subject to alternative terms and conditions established under section 342D-111. [L 2005, c 217, pt of §1]

[§342D-111] Alternative terms and conditions of vessel discharges. (a) The department may establish alternative terms and conditions of vessel discharges applicable to an owner or operator of a vessel who cannot practicably comply with the standard terms and conditions of vessel discharges under sections 342D-102, 342D-103, 342D-104, and 342D-106 or who wishes to use or test alternative environmental protection equipment or procedures. Except as specified in alternative

terms and conditions set by the department under this subsection, the alternative terms and conditions of vessel discharges must require compliance with the standard terms and conditions of vessel discharges under sections 342D-102, 342D-103, 342D-104, and 342D-106. The department, on a case-by-case basis, may set alternative terms and conditions of vessel discharges if:

- (1) The vessel owner or operator demonstrates to the department's reasonable satisfaction that equivalent environmental protection can be attained through other terms or conditions appropriate for the specific configuration or operation of the vessel;
 - (2) The vessel owner or operator agrees to make necessary changes to the vessel to allow it to comply with the standard terms and conditions of vessel discharges under sections 342D-102, 342D-103, 342D-104, and 342D-106 but demonstrates to the department's reasonable satisfaction that additional time is needed to make the necessary changes; or
 - (3) An experimental technology or method for pollution control of a discharge is being used or is proposed as one of the alternative terms and conditions of vessel discharges, and the department determines that the experimental technology or method has a reasonable likelihood of success in providing increased protection for the environment.
- (b) Alternative terms and conditions of vessel discharges approved by the department under subsection (a), if determined appropriate by the department, may include a waiver by the department of portions of the requirements of sections 342D-102, 342D-103, and 342D-104 for the time period that the department determines to be appropriate. [L 2005, c 217, pt of §1]

Therefore, to comply with HRS, Chapter 342D, Part VI requirements, the following condition is deemed necessary and should be incorporated as part of the proposed conditional Section 401 WQC requirements:

*** Discharges from "Commercial Passenger Vessels" shall comply with requirements specified in HRS, Sections 342D-102, 342D-103, 342D-104, 342D-105 and 342-106 of PART VI. of HRS, Chapter 342D titled "DISCHARGES FROM COMMERCIAL PASSENGER VESSELS."**

"Commercial passenger vessel," as defined in HRS, Section 342D-101, means a vessel that carries passengers for hire. The term does not include a vessel:

- (1) Authorized to carry fewer than fifty passengers;**
- (2) That does not provide overnight accommodations for at least fifty passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin; or**
- (3) Operated by the United States or a foreign government."**

4.c. Potential Pollutants/Constituents in the Effluent Discharges to be regulated in the Proposed VGP

As discussed in Section "3.4 Regulation of Constituents in the Discharges Under the Proposed Permit" (see Page No. 15 of the Fact Sheet)

". . . In today's draft permit, EPA is proposing effluent limitations to control a variety of materials, which, for the purposes of this fact sheet, have been classified into 7 major groups: Aquatic Nuisance Species (ANS), most conventional pollutants (Biochemical Oxygen Demand, oil and grease, pH, Total Suspended Solids), metals, nutrients, pathogens (including E. Coli & fecal coliform), and other toxic and non-conventional pollutants with toxic effects. EPA is proposing effluent limitations to control these materials, because such materials are constituents in the, depending on the particular vessel, industrial waste, chemical waste and/or garbage "pollutant" discharge resulting from the activities of these vessels. "Industrial waste," "chemical waste" and "garbage" are expressly included in the CWA's definition of "pollutant," which governs, among other things, which discharges are properly subject to CWA permitting. See CWA § 402(a) (allowing EPA to issue permits for a "discharge of any pollutant"); CWA § 502(12) (defining "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source"); and CWA § 502(6) (defining "pollutant" as "dredged spoil, solid waste, incinerator residue, sewage, *garbage*, sewage sludge, munitions, *chemical wastes*, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and *industrial*, municipal and agricultural *waste* discharged into water" [emphasis added]). The discharge from vessels addressed in today's draft permit – a worthless or useless flow discharged during a vessel's normal operations – falls within those broad pollutant categories. See, e.g., Webster's II New Riverside University Dictionary (1988) (defining "waste" as "a worthless or useless by-product" or "something, such as steam, that escapes without being used"; "industrial" as "of, relating to, or derived from industry" and "industry as "the commercial production and sale of goods and services"; "chemical" as "of or relating to the action of chemicals"; and "garbage" as "worthless matter, trash").⁴

EPA understands that a lot of attention has been paid to whether, under various circumstances, ANS are properly considered "pollutants" under CWA §502(6). Today's draft permit would control ANS because such ANS are one constituent of concern in the waste stream that constitutes the "pollutant" subject to today's draft permit. See CWA §402(a)(1)(A) and 301(b)(1) (requiring permits to include "effluent limitations") and CWA §502(11) (defining "effluent limitations" to include "restrictions established by . . . the Administrator on . . . chemical, physical, biological, and other *constituents* which are discharged from point sources . . ." [emphasis added]). Under these circumstances, there is no need to address the question of whether ANS in and of themselves may be considered "pollutants" under CWA section 502(6). In addition, EPA's conclusion that ANS are properly controlled in today's draft vessel permit does not speak as to how ANS are regulated by the CWA under any other circumstances. . . ."

Short summaries of each of the constituent types regulated in today's draft VGP are described in the Fact Sheet as listed below:

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EVALUATION:

Acceptable. Detailed rationale and effluent limitations are discussed in Item No. 4 of the FS:

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40 CFR §131.12(a) requires that:

The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

- (1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
- (2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.
- (3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected..."
- (4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the CWA.

Existing State requirements as specified in **HAR, §11-54-1.1** General policy of water quality antidegradation:

- (a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
- (b) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the director finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to

accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the director shall assure water quality adequate to protect existing uses fully. Further, the director shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

- (c) Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

Recommendation:

This conditional Section 401 WQC does not apply to discharge activity(ies), to be authorized under the EPA proposed VGP, which is inconsistent with criteria established in HAR, Subsection 11-54-1.1.

5. CLASS OF RECEIVING WATER AND RECREATIONAL USES AT THE DISCHARGE SITE:

As specified in Section No. 3.1 of the VGP FS:

“3.1 GEOGRAPHIC SCOPE OF THE PROPOSED PERMIT

The proposed permit is applicable to discharges incidental to the normal operation of a vessel identified in Part 1.2 of the proposed permit and Part 3.5 of this fact sheet into waters subject to the proposed permit, which means “waters of the U.S.” as defined in 40 CFR 122.2. This includes the territorial seas, defined in section 502(8) of the CWA, extending to three miles from the baseline. *Pacific Legal Foundation v. Costle*, 586 F.2d 650, 655-656 (9th Cir. 1978); *Natural Resources Defense Council, Inc. v. U.S. EPA*, 863 F.2d 1420, 1435 (9th Cir. 1988).

The proposed general permit will cover vessel discharges in the waters of the U.S. in all states and territories, regardless of whether a state is authorized to implement other aspects of the NPDES permit program within its jurisdiction. While, pursuant to CWA section 402(c), EPA typically is required to suspend permit issuance in authorized states, EPA may issue NPDES permits in authorized states for discharges incidental to the normal operation of a vessel because 402(c)(1) of the Clean Water Act prohibits EPA from issuing permits in authorized states only for “those discharges subject to [the state’s authorized] program.” Discharges excluded under 40 CFR 122.3 are not “subject to” authorized state programs. The vessel discharges that will be covered by the proposed permit are discharges excluded from NPDES permitting programs under 40 CFR 122.3. Therefore the discharges at issue are not considered a part of any currently authorized state NPDES program. See 40 CFR 123.1(i)(2) (where state programs have a greater scope of coverage than “required” under the federal program, that additional coverage is not part of the authorized program) and 40 CFR 123.1(g)(1) (authorized state programs are not required to prohibit point source discharges exempted under 40 CFR 122.3).

EPA will continue to work with state CWA permitting authorities on authorization issues associated with discharges incidental to the normal operation of vessels and plans to provide guidance on such issues in the near future. In particular, EPA plans to outline how states are to obtain approval to implement NPDES permitting for vessel discharges within their jurisdictions. In addition, EPA plans, to the extent permitted by the CWA, to provide states with the opportunity to decline to regulate these discharges by obtaining status as a partial NPDES program under CWA 402(n). See, e.g. section 402(n)(3) (allowing the Administrator to approve a partial program if the state authority administering the NPDES program does not have the legal authority to regulate vessel discharges). In those states, NPDES permit coverage for the discharges would continue to be provided by EPA.”

EVALUATION:

- a. As stated in Item No. 2.a of the DOH's August 7, letter (No. 08005CEC.08) to EPA, Region 9, the DOH required the Region 9 to include appropriate conditions to require compliance with:
- (1) HAR, Paragraph 11-54-3(b)(2) which states “[N]o new treated sewage discharges shall be permitted within estuaries;” and
 - (2) HAR, Paragraph 11-54-3(c)(2) which states “[N]o new sewage discharges will be permitted within embayments.”

We acknowledge that CWA, Section 312, may have an effect on the enforcement of these Water Quality Standards (WQS).

EPA, Region 9 responded in its September 12, 2008 letter (see No. 1 on page 9 of this ISE)

Recommendation:

As discussed in Item No. 4.b(3)(A), above, the condition on page 36 of this ISE is recommended and deemed necessary to comply with HRS, §342D-50(a) and HAR, §§11-54-3(b)(2) and 11-54-3(b)(2) requirements.

- b. As stated in Item No. 2.b of the DOH's August 7, letter (No. 08005CEC.08) to EPA, Region 9, the DOH required the Region 9 to include appropriate conditions to require compliance with HAR, Paragraph 11-54-5.2(a) which states “[N]atural freshwater lakes, saline lakes, and anchialine pools will be maintained in the natural state through Hawai‘i's "no discharge" policy for these waters. Waste discharge into these waters is prohibited.”

As defined in HRS, Section 342-1, "Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive

substance, whether treated or not, which may pollute or tend to pollute the waters of this State.

EPA, Region 9 responded in its September 12, 2008 letter (see No. 2 on page 9 of this ISE).

EPA's proposal should be deemed acceptable in addressing the HAR, §11-54-5.2(a) requirements if Region 9 adds such condition into Section 6 of the VGP.

It is recommended that the proposed Section 401 WQC shall also include such a condition to reflect that the addition of this condition is to comply with Hawaii WQS requirements:

*** There shall be no waste discharges into natural freshwater lakes, saline lakes and anchialine pools. Waste means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the waters of the State.**

6. METHODS AND MEANS OF MONITORING WATER QUALITY AND CHARACTERISTICS OF DISCHARGE (INCLUDING TREATMENT OPERATIONS AND CONTROL):

EVALUATION:

Acceptable:

Corrective actions are required in Part 3 of the proposed VGP. Inspection, Monitoring, Reporting and Recordkeeping requirements are specified in Part 4 of the proposed VGP.

"3. Corrective Actions

This corrective action section in no way impairs EPA's or an authorized representative acting on EPA's behalf ability to require remedies to bring vessel owner/operators into compliance. EPA may take enforcement action to require any remedy necessary to achieve compliance as quickly as possible, including more stringent time tables than those listed in this section.

3.1. Problems Triggering the Need for Corrective Action

If any of the following problems are identified, you must take action to ensure that the problem is eliminated and will not be repeated in the future:

- you violate one or more effluent limits in Part 2 or Part 5 or any other requirement of this permit, or an inspection or evaluation of your vessel by an EPA official or an

official agent acting on EPA's behalf determines that modifications to the control measures are necessary to meet the effluent limit;

- you become aware, or EPA determines, that your control measures are not stringent enough for the discharge to meet applicable water quality standards; or
- you find that your pollution control measures or best management practices are not being properly operated and maintained, or are not having the intended effect in minimizing pollutant discharges.

3.2. Corrective Action Assessment

As soon as you, including a member of your vessel's crew, identify a violation of this permit which you have not previously identified, you must conduct a corrective action assessment. Violations might be identified through: the routine visual inspections or comprehensive annual inspections required by this permit under Part 4; any other inspection or evaluation of your operations by you, a government official, or anyone else; or through any other means. Following the identification of any of the problems listed in Part 3.1, you must conduct a corrective action assessment into the nature, cause, and potential options for eliminating these problems. The assessment must include the following:

- A description of the problem(s) discovered (e.g., the release of untreated ballast water not meeting the effluent limit, spilling oil in quantities that may be harmful), including the date, time and locations on the vessel where it occurred, the types of impacts observed, and the name, title and signature of the person who identified the problem and of the person who recorded the problem;
- An explanation of the cause of the problem(s), if known. If unknown at the time of the assessment, provide an indication of what steps will be taken to determine the cause; and
- A description of the corrective actions to be taken necessary to eliminate the problem(s), and a schedule of activities for completing such actions within the timeframes established in Part 3.3.
- An indication whether the corrective action requires the vessel to be in dry dock and, if so, the next planned date the vessel will be drydocked.
- Once the corrective action is implemented, record the date(s) and time(s) of the action, a description of the corrective action implemented, and the name, title and signature of the person recording this information

You must retain the findings of your corrective assessment in your recordkeeping documentation or in your ship's log (pursuant to Part 4.2.3), signed and certified in accordance with Part 1.12 of this permit.

3.3. Deadlines for Eliminating Problem

Compliance with many permit requirements can be accomplished immediately. These requirements include, but are not limited to: housekeeping, reporting, recordkeeping, inspections, and certain operation and maintenance requirements. In these situations, you must return to compliance immediately.

Compliance with some permit requirements may require additional time for the vessel owner/operator to reasonably correct the problem. The following deadlines apply for eliminating the problem identified in Part 3.1 depending on the type of corrective action that must be taken:

- Corrective actions that can be accomplished with relatively simple adjustments to your control measures, using existing personnel and resources, and not requiring the vessel to be in dry dock: as soon as possible but no later than 2 weeks after the discovery of the problem;
- Corrective actions that require new parts or the installation of new equipment, not requiring the vessel to be in dry dock: you must address the underlying cause of the noncompliance and return to compliance and/or complete necessary repairs no later than 3 months after the discovery of the problem. However, if completing repairs within 3 months is impracticable, you must complete repairs as soon as possible after 3 months and document the reason why more time is needed as part of your corrective action assessment;
- For corrective actions that require large or comprehensive renovations, alterations, or repairs to the vessel that can only be achieved while the vessel is in dry dock: you must address the underlying cause of the noncompliance and return to compliance and/or complete necessary renovations or repairs prior to re-launching the vessel from dry dock.

3.4. Effect of Corrective Action

The initial occurrence of the problem in Part 3.1 constitutes a violation of the permit. Conducting the Part 3.2 assessment and correcting the problem according to Part 3.3 does not absolve you of liability for this original violation. However, failure to comply with Parts 3.2 and/or 3.3 constitutes an additional permit violation. EPA will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

EPA may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements and schedules will supersede those of Part 3.3 if such requirements conflict. EPA may also notify you that an individual permit application is necessary in accordance with Part 1.8.1.

4. Inspections, Monitoring, Reporting, and Recordkeeping.

4.1. Self Inspections and Monitoring

You must conduct the following inspections of your vessel.

4.1.1. Routine Visual Inspections

Conduct routine visual inspections of all areas addressed in this permit, including, but not limited to cargo holds, boiler areas, machinery storage areas, welldecks, and other deck areas. Ensure these areas are clear of garbage, exposed raw materials, oil, any visible pollutant or

constituent of concern that could be discharged in any waste stream, and that pollution prevention mechanisms are in proper working order. At a minimum, the routine inspection must verify that requirements of section 2.1 are being met and document any instances of non-compliance. Routine inspections should be conducted on a schedule that coincides with other routine vessel inspections if feasible. At least once per week or per voyage, whichever is more frequent, you must conduct a visual inspection of deck and cargo areas and all accessible areas where chemicals, oils, dry cargo or other materials are stored, mixed, and used, whether or not the areas have been used since the last inspection. Furthermore, the inspection should verify whether all monitoring, training, and inspections are logged according to permit requirements. A ship's watch must include visual monitoring of the water around and behind the vessel for visible sheens, dust, chemicals, abnormal discoloration or foaming, and other indicators of pollutants or constituents of concern originating from the vessel. Particular attention should be paid to deck runoff, ballast water, and bilgewater. If you identify or are made aware that pollutants or constituents of concern are originating from your vessel, you must initiate corrective actions in Part 3.

At least once per quarter, you must sample any discharge stream such as bilgewater or graywater if accessible that is not readily visually inspected, such as effluent streams discharged below the water line. Inspect the sample for any signs of visible pollutants or constituents of concern, including discoloration, visible sheens, suspended solids, floating solids, foam, or changes to clarity. If you discover signs of oil, other pollutants, or other constituents of concern exceeding the applicable effluent limit, you must record the steps you have taken to prevent the continued discharge of these pollutants or constituents of concern and what corrective actions were taken to remediate the problem(s). Sampling of readily visible discharges is not required, but is recommended if the inspector cannot easily view their discharge characteristics (such as clarity or discoloration, presence of oily sheens, presence of foams, etc.). The vessel owner/operator and master are responsible for assuring that all discharges comply with the effluent limits in Part 2 of this permit and these visible inspections are one such tool a Master may use.

4.1.1.1 Documentation of the Routine Vessel Inspection

You must document the findings of each routine vessel inspection in the official ship logbook or as a component of other recordkeeping documentation referenced in Part 4.2. You must document the date and time of inspection, ship locations inspected, personnel conducting the inspection, location of any visual sampling and observations, note any potential problems and sources of contamination found, and it must be signed by the person conducting the inspection, if not the Master. The records of routine visual inspections must be made available to EPA upon request. Vessel operators must initiate corrective actions, as required under Part 3 of this permit, for problems noted in their inspections.

4.1.2. Analytical Monitoring

Analytical monitoring requirements are identified in Part 5 of this permit.

4.1.3. Comprehensive Annual Vessel Inspections

Comprehensive annual vessel inspections must be conducted by qualified personnel. Qualified personnel include the master or operator of the vessel or appropriately trained marine or environmental engineers or technicians or an appropriately trained representative of a vessel's class society.

Comprehensive annual inspections must cover all areas of the vessel affected by the requirements in this permit. Special attention should be paid to those areas most likely to result in a discharge likely to cause or contribute to exceedances of water quality standards or violate effluent limits established in this permit. Areas that inspectors must examine include, but are not limited to:

- Vessel hull for attached living organisms, flaking antifoulant paint, exposed TBT surfaces,
- Ballast water tanks, as applicable
- Bilges, pumps, and OWS sensors, as applicable,
- Protective seals for lubrication and hydraulic oil leaks, and
- All visible pollution control measures to ensure that they are functioning properly.

The inspections must also include a review of monitoring data collected in accordance with Part 5 if applicable, and routine maintenance records to ensure that required maintenance is being performed (e.g., annual tune-ups for small boats that have wet exhaust). Inspectors must also consider the results of the past year's visual and analytical monitoring when planning and conducting inspections.

When comprehensive vessel inspection schedules overlap with routine facility inspections required under Part 4.1.1, your annual comprehensive site inspection may also be used as one of the routine inspections, as long as components of both types of inspections are included.

If inspections revealed flaws that would result in a violation of the effluent limits in Parts 2 and 5, or that indicated that control measures are not functioning as anticipated or are in need of repair or upgrade, you must take corrective action to resolve such flaws in accordance with Part 3. You must record all results from your annual inspection in your vessel's recordkeeping documentation or logbook.

4.1.4. Drydock Inspection Reports

Vessel owner/operators must make any drydock reports prepared by the class society or Coast Guard available to EPA or an authorized representative of EPA upon request. If you do not have a drydock report from either of these entities, you must prepare your own drydock report and it must be made available to EPA or an authorized representative of EPA upon request.

The drydock report must note that:

- the chain locker has been cleaned for both sediment and living organisms,
- the vessel hull has been inspected for attached living organisms and those organisms have been removed or neutralized,
- any antifoulant hull coatings have been applied, maintained and removed consistent with FIFRA label if applicable; any exposed existing or any new coating does not contain biocides or toxics that are banned for use in the United States,
- for all cathodic protection, anodes or dialectic coatings have been cleaned and/or replaced to reduce flaking, and
- all pollution control equipment is properly functioning.

4.2. Recordkeeping

For all vessels covered by this permit, you must keep written records on the vessel that include the following information:

- 1) Owner/Vessel information

- i) Name;
 - ii) International Maritime Organization (IMO) Number (official number if IMO number not issued);
 - iii) Vessel type;
 - iv) Owner or operator company name;
 - v) Owner or operator certifying official's name;
 - vi) Address of owner/operator;
 - vii) Gross tonnage;
 - viii) Call sign; and
 - ix) Port of Registry (Flag).
- 2) Voyage Log. Include the dates and ports of arrival, vessel agent(s), last port and country of call, and next port and country of call.
 - 3) If you have any violation of any effluent limit, you must document the violation. You must also record:
 - A description of the violation,
 - Date of the violation,
 - Name, title and signature of the person who identified the violation
 - Name, title and signature of the person who is recording the violation (if different from person who identified the violation),
 - If a Corrective Action Assessment pursuant to Part 3.2 is needed, attach a copy or indicate where the corrective action assessment is stored, and
 - If a Corrective Action Assessment was previously conducted pursuant to Part 3.2 (and revisions are not needed for this violation of the effluent limit), a reference to that previous corrective action assessment.
 - 4) Log of findings from routine inspections conducted under Part 4.1.1, including a discussion of any corrective actions required by Part 3 if applicable. Include date, inspectors name, findings, and corrective actions taken.
 - 5) Analytical results of all monitoring conducted under Part 4.1.2, including sample documentation, results, and laboratory QA documentation.
 - 6) Log of findings from annual inspections conducted under Part 4.1.3, including a discussion of any corrective actions required by Part 3. Include date, inspectors name, findings, and corrective actions taken.
 - 7) Record of any specific requirements in Part 4.3 given to your vessel by EPA, or clearly posted by state agencies and how you have met those requirements.
 - 8) Additional maintenance and discharge information to be recorded and kept in a log on the vessel.
 - i) Deck maintenance. Record dates, materials used, application process, etc. for any maintenance of the deck surface(s).
 - ii) Bilgewater. Record dates, location, oil concentration (for MARPOL vessels) or visible sheen observation (non-MARPOL vessels), and estimated volume of bilgewater discharges. Record the same information for bilgewater disposed at onshore locations.
 - iii) Paint application. Record dates, materials used, application process, etc. for any antifouling paint applied to the vessel.
 - iv) AFFF. Record dates, estimated volumes, and constituents of any discharges of AFFF.

- v) Chain locker inspections. Dates of inspections and any rinsing conducted within waters subject to this permit.
 - vi) Controllable pitch propeller and stern tube maintenance. Record dates and locations of any maintenance of controllable pitch propellers that occurs while the vessel is in waters subject to this permit.
 - vii) Any emergencies requiring discharges otherwise prohibited to waters listed in Part 12.1.
 - viii) Gas Turbine Water Wash. Record dates and estimated volume of any discharge of gas turbine wash water within waters subject to this permit. If hauled or disposed onshore, record log hauler and volume.
 - ix) Estimated volume and location of graywater discharged while in waters subject to this permit.
- 9) All other documentation requirements stated in the permit.

All information can be logged with maintenance records, the ship's log, or other additional recordkeeping documentation but must be provided to EPA if requested. Operators may choose how these records will be maintained, but must retain these records on the vessel for a period of 3 years.

Certification of accurate information, pursuant to the certification and signatory requirements referenced in Parts 1.7 of this permit and 40 CFR 122.22. You must retain copies of all reports and certifications required by this permit, monitoring data, and records of all data used to complete the NOI to be covered by this permit, for a period of at least 3 years from the date that your coverage under this permit expires or is terminated.

The vessel master, owner/operator, or person in charge shall make available to EPA or an authorized representative from EPA all records kept under this section upon request.

4.3. Additional Recordkeeping for Vessels equipped with ballast tanks

For vessels equipped with ballast tanks that are bound for a port or place in the United States, you must meet the following recordkeeping requirements of 33 CFR 151.2045:

The master, owner, operator, or person in charge of a vessel bound for a port or place in the United States must keep written records that include the following information:

- 1) Total ballast water information. Include the total ballast water capacity, total volume of ballast water on board, total number of ballast water tanks, and total number of ballast water tanks in ballast. Use units of measurements such as metric tons (MT), cubic meters (m³), long tons (LT), and short tons (ST).
- 2) Ballast water management. Include the total number of ballast tanks/holds that are to be discharged into the waters of the United States or to a reception facility. If an alternative ballast water management method is used, please note the number of tanks that were managed using an alternative method, as well as the type of method used. Indicate whether the vessel has a ballast water management plan and IMO guidelines on board, and whether the ballast water management plan is used.
- 3) Information on ballast water tanks that are to be discharged into waters of the United States or to a reception facility. Include the following:

- A. The origin of ballast water. This includes date(s), locations(s), volume(s), and temperatures(s). If a tank has been exchanged, list the loading port of the ballast water that was discharged during the exchange.
 - B. The date(s), location(s), volume(s), method, thoroughness (percentage exchanged if exchange conducted), sea height at time of exchange if exchange conducted, of any ballast water exchanged or otherwise managed.
 - C. The expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the United States or a reception facility.
- 4) Discharge of sediment. If sediment is to be discharged into a facility within the jurisdiction of the United States include the location of the facility where the disposal will take place.

Additionally, all vessels that conduct saltwater flushing as required by Part 2.2.3.7 and Part 2.2.3.8 should indicate that they have done so in the ballast water reporting form in Section 4, "Ballast Water Management" by checking off the "Underwent Alternative Management" box and indicating that the vessel underwent saltwater flushing in the "specify alternative method" line. All vessels that conduct saltwater flushing as required by Part 2.2.3.7 and Part 2.2.3.8 should also fill out Section 5, "Ballast Water history".

4.4. Reporting

4.4.1. Reporting noncompliance

You must report all instances of noncompliance with this permit at least once per year to the regional offices listed in Part 13. Vessel operators must report the noncompliance to the regional office responsible for the waters in which the noncompliance occurred. If vessels have multiple occurrences of non compliance, they must report the noncompliance to the regional office where either 1) the greatest number of noncompliance events occurred, or 2) if the same number of noncompliance events occurred, to the regional office responsible for waters where the vessel spent the most time.

4.4.2. Reportable Quantities of Hazardous Substances or Oil

Although not a requirement of this permit, if a discharge contains a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under 40 CFR 110, 40 CFR 117, or 40 CFR 302, during a 24-hour period, the National Response Center (NRC) must be notified (dial 800-424-8802 or 202-426-2675 in the Washington, DC area). Also, within 14 calendar days of knowledge of the release, the date and description of the release, the circumstances leading to the release, responses to be employed for such releases, and measure to prevent reoccurrence of such releases must be recorded in your recordkeeping documentation consistent with Part 4.2 of this permit.

Where a discharge of hazardous substances or oil in excess of reportable quantities occurs, such discharge is not authorized by this permit. Note that these spills must be reported as described above. Also applicable are Section 311 of the CWA and certain provisions of Sections 301 and 402 of the CWA.

4.4.3. Additional Reporting

In addition to the reporting requirements stipulated in Part 4, you are also subject to the standard permit reporting provisions referenced in Part 1.13.

Where applicable, you must submit the following reports to the appropriate EPA Regional Office listed in Part 13 as applicable.

- 24-hour reporting – You must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time you become aware of the circumstances;
- 5-day follow-up reporting to the 24-hour reporting – A written submission must also be provided within five days of the time you become aware of the circumstances;

4.4.4. One-Time Permit Report

For each vessel, owner/operators are required to submit a one-time report between 30 months and 36 months after obtaining permit coverage. This report should take less than 30 minutes to complete and will assist EPA in developing the next round of general permits covering vessel discharges. The report form below will be available for printing as a file on EPA's website (www.epa.gov/npdes [sic] within two years of finalization of this permit, or through EPA's eNOI system (www.epa.gov/npdes/enoi). Please respond to the questions and submit any necessary data that support your responses. EPA encourages all owner/operators to submit their reports electronically. If you print out a hard copy of the report, you may send your completed report either to EPA HQ (Attn: vessel one time report, Mail Code 4203M, 1200 Pennsylvania Ave. NW, Washington, DC 20460) or to the appropriate EPA Regional Office listed in Part 13, Appendix H. You should send your report to the regional office responsible for the waters in which your vessels spends the greatest portion of its time when in US waters."

It is recommended that the following conditions be included under Notification Requirements:

*** EPA, Region 9, shall submit a report to and notify the CWB in a timely manner when HRS, §342D-51 requirements are violated.**

*** The DOH reserves the authority of taking appropriate enforcement action against a violator of the applicable requirements specified in HRS, Chapter 342D and HAR, Chapter 11-54 and any condition of this conditional Section 401 WQC.**

- 7. IN ACCORDANCE WITH THE HAWAII ADMINISTRATIVE RULES, DOH, CHAPTER 11-54, WATER QUALITY STANDARDS, THE APPLICANT HAS PROVIDED A STATEMENT OF ASSURANCE THAT THE PROPOSED ACTIVITY WILL BE CONDUCTED IN SUCH A MANNER WHICH WILL NOT VIOLATE THE BASIC WATER QUALITY CRITERIA APPLICABLE TO ALL WATERS AND THE SPECIFIC WATER QUALITY CRITERIA APPLICABLE TO THE CLASS OF RECEIVING WATERS WHERE THE PROPOSED DISCHARGE(S) WOULD TAKE PLACE.**

YES NO

OVERALL EVALUATION:

Acceptable. EPA, Region 9 has provided and properly signed the Certification Statement in its letter of September 12, 2008.

8. INITIAL RECOMMENDATION OF SECTION 401 WATER QUALITY CERTIFICATION:

In accordance with CWA, Section 401(a), HRS, Chapters 91, 92 and 342D, it is recommended that a conditional Section 401 WQC be issued to the EPA, Region 9, for the proposed VGP after the public participation procedure through the publication of Public Notice (PN) of Proposed Water Quality Certification in the *The Garden Island*, *Honolulu Star Bulletin*, *The Maui News*, *West Hawaii Today*, and *Hawaii Tribune-Herald*. Public involvement and participation shall play an important role and shall be the main procedure in this individual Section 401 WQC application processing and decision making. Additional information and comments collected during the public comment period will provide the CWB with additional and useful information to determine whether granting a conditional Section 401 WQC for this EPA VGP, as proposed, is appropriate or additional conditions are needed to address public concerns. A PN of Proposed Section 401 WQC is included.

If the outcome of the PN indicates that the determination of conditionally granting a Section 401 WQC is appropriate, it is recommended that the final Section 401 WQC shall, at least, include the conditions as proposed in the conditional Section 401 WQC. The proposed Section 401 WQC is enclosed as part of this ISE to expedite the Section 401 WQC application processing. These conditions are deemed necessary initially based on an evaluation of the Fact Sheet and proposed VGP, and supporting information which are relevant to water quality concerns. Additional conditions can and shall be added to properly address all comments or concerns raised during the public comment period.

With the compliance of proposed EPA VGP conditions and with incorporation of these recommended conditions in the proposed conditional Section 401 WQC, there is reasonable assurance that the subject activity will not violate the applicable water quality standards and with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the “Act”, 33 U.S.C., Sections 1311, 1312, 1313, 1316 and 1317.