



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Land Use Management
PO Box 402
Trenton, New Jersey 08625-0402
Tel: (609) 292-2178
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January 26, 2009

JON S. CORZINE
Governor

MARK N. MAURIELLO
Acting Commissioner

Mr. George Pavlou, Acting Regional Administrator
US Environmental Protection Agency
Division of Environmental Planning and Protection
290 Broadway
New York, New York 10007-1866

Re: Stay of Section 401 Certification for the USEPA Commercial Vessel General Permit (VGP)

Revised Section 401 Certification for the USEPA Commercial Vessel General Permit (VGP), Effective January 26, 2009

Dear Mr. Pavlou:

On September 24, 2008, the Department issued a Certification under Section 401(a)(1) of the Federal Clean Water Act (401 Certification) in response to a formal request from USEPA-Region 2 dated July 9, 2008. This certification was based on the draft USEPA Commercial Vessel General Permit (VGP) issued June 17, 2008 and materials included in Docket ID No. EPA-HQ-OW-20008-0055 available at <http://www/regulations.gov>. The Department's 401 Certification prohibited the discharge of graywater and bilge water into New Jersey waters as of the effective date of the VGP. The VGP will become effective February 6, 2009.

On January 14, 2009, representatives of the American Waterways Operators wrote to the Department, and on January 15, 2009, representatives of the Department met with representatives of the American Waterways Operators concerning the Department's Certification Conditions. Based upon a review of the entire matter, including the final VGP and information provided to the Department by the American Waterways Operators, the Department has determined to stay and revise its 401 Certification to provide vessel operators with a three year compliance schedule to install piping and tanks for graywater and bilge water. A three year compliance schedule is necessary and appropriate for the following reasons:

- Installing the necessary piping and tanks to store graywater on each vessel will be a time-consuming process that cannot be accomplished by February 6, 2009.
- Design modifications must be developed, evaluated for safety considerations, and approved by the American Bureau of Shipping or the U.S. Coast Guard.
- Modifications must be accomplished while the vessels are in dry dock which occurs twice in five years.

- Vessels currently under construction will need modification to comply.
- The States of New York and Connecticut provided vessel operators until January 1, 2012 to comply with the prohibition on graywater and bilge water in their 401 Water Quality Certifications.
- New Jersey shares waters with the State of New York, and New York has provided a period of three years to comply with the prohibition on graywater and bilge water.
- Existing pump-out facilities are inadequate at this time.

Based upon the above, the Department hereby stays the certification conditions for the VGP set forth in the 401 Certification dated September 24, 2008.

Pursuant to 40 C.F.R. 124.55(b), the Department hereby revises its 401 Certification conditions for the VGP as follows:

NJDEP certifies that discharges from vessels covered by the United States Environmental Protection Agency General Permit for discharges incidental to the normal operation of commercial vessels (VGP) will not contravene New Jersey's effluent limitations or standards as provided for under CWA Sections 301, 302, 303, 306, 307 and 401, provided the following conditions set forth in the Certification are met.

These certifications shall expire five years after the date of issuance for the EPA's VGP unless the USEPA issues a modification to the VGP permit before the permit expires.

Certification Conditions for the VGP

New Jersey Water Pollution Control Act (NJWPCA) requires the NJDEP to develop water quality standards for the waters of the State of New Jersey. New Jersey Statutory Authority requires the NJDEP to develop effluent limits for discharges from point sources to the waters of New Jersey. Section 58:10A-6a of the NJWPCA requires that no discharge to the waters of New Jersey violate water quality standards. New Jersey may also provide compliance schedules to allow permittees an appropriate period of time to comply with new permit requirements. The discharge limitations, and other conditions set forth in this certification, are required to comply with New Jersey's regulations, set forth at N.J.A.C. 7:9B, which state no toxic or other deleterious substances may be discharged that impair the waters for their best usages. Conditions of this Certification are needed to comply with the more stringent New Jersey statutes and regulations. In accordance with 40 CFR 124.53 (e)(3), these conditions cannot be made less stringent and still comply with State water quality standards.

1. Effective January 1, 2012 any vessel covered under the VGP permit that operates in New Jersey waters may not discharge treated or untreated graywater into waters of New Jersey State within three nautical miles of shoreline unless the discharge is granted an extension under the limited circumstances described below. This limit is in effect regardless of the speed the vessel is traveling.

2. Effective January 1, 2012 bilge water from any vessel covered by the VGP permit shall not be discharged into NY-NJ Harbor (Newark Bay, Raritan Bay, Arthur Kill, Kill Van Kull, saline portions of the Passaic, Hackensack, and Hudson Rivers and saline portions of tributaries to all of these waters) and Delaware Bay. This condition does not apply if the master of the vessel determines that compliance with this condition would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, equipment failure, or any other relevant condition.

3. No extensions will be made to the above implementation date, unless an entity covered under the VGP makes a request for an extension to the Commissioner and can provide sufficient justification for such a request. Any such extension request shall state and demonstrate that: (1) there is a shortage in supply of the technology necessary to meet the limits set forth in this certification, or a vessel-specific engineering constraint or other factor related to the availability and installation of technology beyond the vessel owner/operator's control, that delays the technology being available and installed in time to comply with this standard; (2) the unavailability of supply or installation constraint is the only reason the January 1, 2012 date cannot be met; and (3) the vessel has exhausted all other options to comply with this standard. Any extension request must be made no later than June 30, 2010, and the extension request shall indicate when the vessel will come into compliance with this deadline.

The contact person for consultation, submittals and approvals as referred to in this Certification is :

Debra Hammond, Chief
NJDEP
Water Monitoring and Standards
Bureau of Water Quality Standards and Assessment
401 East State Street, P.O. Box 409
Trenton, NJ 08625-0409

The Department reserves the right to challenge the VGP.

The Department urges USEPA to modify the VGP permit to incorporate this revised 401 Certification to avoid disrupting vessel operations in New Jersey waters and our nationally important ports. Should you require further information regarding this Certification, please contact Leslie McGeorge or Debra Hammond at (609)292-1259.

Sincerely,



Scott Brubaker, Acting Assistant Commissioner
Land Use Management

Attachments:

Letter from the American Waterways Operators to NJDEP dated January 14, 2009

- c: **Mark Mauriello, Acting Commissioner**
- Barbara Finazzo, EPA Region II, Director, Division of Environmental Planning and Protection**
- Jeff Gratz, USEPA Region II, Clean Water Regulatory Branch**
- Leslie McGeorge, Administrator, Water Monitoring and Standards**
- Jeffrey Reading, Assistant Director, Watershed Permitting Element**
- James Hamilton, Administrator, Water Compliance and Enforcement**
- Debra Hammond, Chief, Bureau of Water Quality Standards and Assessment**
- Jane Engel, DAG, NJ Division of Law**


The American Waterways Operators

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 Nicole deSibour
 Vice President - Atlantic Region

January 14, 2009

 Mr. Mark Mauriello
 Acting Commissioner
 New Jersey Department of Environmental Protection
 401 E. State Street, P.O. Box 409
 Trenton, NJ 08625-0409

Dear Mr. Mauriello,

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. On behalf of the permittees affected by New Jersey's certification of the Environmental Protection Agency's Vessel General Permit (VGP), we hereby request that the certification's condition prohibiting the discharge of graywater be removed. The permittees are as follows:

- Allied Transportation Company
- Boston Marine Transport, Inc.
- Bouchard Transportation Co., Inc.
- C & P Tug and Barge Company
- Crowley Maritime Corporation
- Dann Marine Towing LC
- Donjon Marine Co., Inc.
- Express Marine, Inc.
- Gellatly & Criscione Services
- Hughes Bros., Inc.
- K-Sea Transportation Corp.
- McAllister Towing
- Moran Towing Corporation
- OSG America
- Penn Maritime, Inc.
- Poling & Cutler Marine Transportation
- Reinauer Transportation Company
- Scabulk International, Inc.
- The Vane Brothers Company
- Vinik Marine, Inc.
- Weeks Marine, Inc.

It is impossible for these permittees to comply with New Jersey's certification because most tugboats are not equipped to store graywater, and it is not possible to make the needed engineering changes to the hundreds of tugboats that would be affected by this regulation between now and February 6, the date the VGP comes into effect.

New Jersey's graywater discharge prohibition is problematic because, given the small size of towing vessel crews, most of the 4,000 tugboats and towboats across the country are not equipped with graywater storage capability, regardless of size. Graywater, the water from sinks, showers, and washing machines, travels along its own piping system, which terminates directly into the surrounding water. Installing piping and tanks to store graywater is a time-consuming

The Tugboat, Towboat and Barge Industry Association

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and expensive process that companies simply cannot complete for their entire fleet of vessels by February 6. A design specific to each individual vessel or each class of vessels would need to be developed, studied to ensure it was safe, and then approved by the American Bureau of Shipping (ABS) or the U.S. Coast Guard, at a cost of approximately \$10,000. Then, each vessel would have to be drydocked, which means hauling it out of the water and removing parts of the hull and deck in order to install piping and machinery. This would take at least a month (assuming shipyard capacity was available) and cost \$50,000 or more.

The towing industry is vital to the New Jersey economy, providing shoreside and vessel jobs, shipdocking services to safely guide larger vessels into the harbor, and transportation of critical goods such as petroleum. Prohibiting the discharge of graywater beginning on February 6 could, in effect, halt much of the tug and barge traffic in New Jersey state waters by putting vessels without graywater storage capacity out of compliance with federal law.

Thank you very much for considering our request.

Sincerely,



Nicole deSibour

Cc: Leslie McGeorge, Administrator - Water Monitoring and Standards
Debra Hammond, Chief - Water Monitoring and Standards

The Tugboat, Towboat and Barge Industry Association