

Vessel Discharge Permits – A New Reality for the Maritime World

**U.S. Environmental Protection Agency
2008 Proposed Issuance of
National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) for
Discharges Incidental to the Normal Operation of Commercial and Large Recreational Vessels**

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K&L Gates Professionals Investigate Vessel Incidental Discharges



Overview of Proposed Rule

- EPA has proposed nationwide permitting program for *incidental discharges* from commercial and recreational vessels
- Public has until August 1, 2008 to comment
- Likely effective date is September 30, 2008 (after considering comments)
- Compliance – coverage is immediate upon final publication
 - Notice of Intent for certain vessels

Overview of Presentation

- Am I subject to the proposed vessel permit?
- If I am subject to the permit, what do I have to do?
- What are some of the “big ticket” issues?
- What did EPA say at yesterday’s public meeting?
- I have a gripe about the permit - what can I do?
- What should I expect will happen next?

How to Read This Proposal

- What kind of vessel do I have?
 - Commercial
 - Recreational
- What size is my vessel?
- What kind of business am I in?
- What kind of possible discharges do I have?

Why Has EPA Proposed The Permits?

- Section 301 of the Federal Clean Water Act (CWA) prohibits the discharge of pollutants without a permit
- 35-year EPA regulation excluded discharges incidental to the normal operation of vessels from Section 301 permit requirement
- EPA's long-standing regulation was vacated by U.S. District Court, effective September 30, 2008
 - 9th Circuit appeal

What Has EPA Proposed?

Two NPDES *general* permits proposed by EPA:

- **Vessel General Permit (VGP)** – all commercial vessels and recreational vessels of 79 feet (24.08 meters) or longer
- **Recreational General Permit (RGP)** – all recreational vessels less than 79 feet long – even kayaks and canoes!
 - *General Permit v. Individual Permit*
 - Focus of this presentation is on VGP

Scope and Applicability of VGP (§ 1.2)

- Commercial and recreational vessels greater than 79 feet (24.08 meters)

- Applies to “discharges incidental to the normal operation of vessels” into “waters of the United States”
 - “Discharges incidental to the normal operation of vessels”

 - “Waters of the United States”

Discharges Incidental to Normal Vessel Operations

■ 28 “incidental” discharge streams addressed:

- Ballast Water
- Deck Washdown and Runoff
- Bilge Water
- Anti-fouling Leachate from Anti-fouling Hull Coatings
- Aqueous Film Forming Foam (AFFF)
- Boiler/Economizer Blowdown
- Cathodic Protection
- Chain Locker Effluent
- Controllable Pitch Propeller Hydraulic Fluid
- Distillation and Reverse Osmosis Brine
- Elevator Pit Effluent
- Firemain Systems
- Freshwater Layup
- Gas Turbine Water Wash
- Graywater
- Motor Gasoline and Compensating Discharge
- Non-Oily Machinery Wastewater
- Refrigeration and Air Condensate Discharge
- Rudder Bearing Lubrication Discharge
- Seawater Cooling Overboard Discharge
- Seawater Piping Biofouling Prevention
- Small Boat Engine Wet Exhaust
- Stern Tube Oily Discharge
- Sonar Dome Discharge
- Underwater Ship Husbandry
- Welldeck Discharges
- Graywater Mixed with Sewage from Vessels
- Exhaust Gas Scrubber Wash Water Discharge

Requirements of VGP (§ 2)

- For each discharge type, must comply with “effluent limits,” including “best management practices” (“BMPs”)
 - Effluent limits
 - BMPs
 - Shall/must v. should – is there really a difference?

- What listed discharges does vessel actually produce?

How Do I Obtain A VGP? (§ 1.5)

- Obtaining authorization under VGP depends on type of vessel:
 - Must submit Notice of Intent (NOI) form if vessel:
 - is 300 or more gross registered tons; or
 - has capacity to hold/discharge more than 8 cubic meters (2113 gallons) of ballast water
 - NOI not required for other vessels – authorization is automatic
- Draft NOI at Appendix E, § 10.2

How Do I Obtain A VGP? (§ 1.5)

NPDES Form -----	EPA	United States Environmental Protection Agency Washington, DC 20460 Form Approved Notice of Intent (NOI) for Discharges Incidental to the Normal Operation Of a Vessel under the NPDES Vessel General Permit	OMB No. -----
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Submission of this completed Notice of Intent (NOI) constitutes notice that the entity in Section A intends to be authorized to discharge pollutants to waters of the United States, from the vessel identified in Section B, under EPA's Vessel General Permit (VGP). Submission of the NOI also constitutes notice that the party identified in Section B of this form has read, understands, and meets the eligibility conditions of Part 1 of the VGP; agrees to comply with all applicable terms and conditions of the VGP; and understands that continued authorization under the VGP is contingent on maintaining eligibility for coverage. In order to be granted coverage, all information required on this form must be completed. Please read and make sure you comply with all permit requirements.

A. Vessel Owner/Operator Information

1. Name: _____
2. IRS Employer Information Number: ___ - _____
3. Name of Certifying Official _____
4. Mailing Address: a. Street: _____

NOI Submission Deadlines

<u>Category</u>	<u>NOI Deadline</u>	<u>Discharge Authorization Date</u>
Existing Vessels delivered to owner or operator on or before 6/30/2009	No later than 9 months after permit effective date	Date EPA receives NOI
New owner/Operator of Vessel – transfer of ownership and/or operation of a vessel whose discharge previously authorized under VGP	By date of transfer or ownership and/or operation	Date of transfer or date EPA receives NOI, whichever is later
New vessels - Vessels delivered to owner or operator after June 30, 2009	30 days prior to discharge	30 days after complete NOI received by EPA

Inspections, Monitoring, Reporting and Recordkeeping (§ 4)

- Self Inspections and Monitoring
 - Routine visual inspections – requires sampling
 - Analytical monitoring
 - Comprehensive annual vessel inspections
 - Dry-dock inspections
- Recordkeeping
- Reporting
- Training

Corrective Actions (§ 3)

- VGP requires “corrective action”
- Triggers for corrective action
- Corrective action assessment
- Deadlines for corrective action
- Effect of corrective action

Vessel Class Specific Requirements (§ 5)

- Additional *vessel-specific* requirements for following vessel classes:
 - Large Cruise Ships (500 people or more)
 - Medium Cruise Ships (100 to 499 people)
 - Large Ferries
 - Barges
 - Oil Tankers or Petroleum Tankers
 - Research Vessels
 - Rescue Vessels
 - Vessels with experimental ballast water treatment

Vessel Discharges Covered by the Permit

- Some are based on and require compliance with current law, such as oily discharges
- Some are new, such as the application of ballast water requirements to crude oil tankers in the coastwise trade

Vessel Discharges Covered by the Permit

- Some continue to authorize discharges incidental to vessel operations such as the discharge of brine from reverse osmosis equipment
- Some set strict limits, such as zero discharge from TBT paint

Vessel Discharges Covered by the Permit

- Some create new categories of vessels to be subject to stricter regulation, such as vessels that regularly travel outside the 3-mile limit
- Some may conflict with charter or terminal requirements, such as minimizing discharges from firemain systems in port if a terminal requires the system to be activated

Vessel Discharges Covered by the Permit

- Many raise questions, such as how a vessel in the spot market that only comes into the U.S. once in many years will be expected to comply
- All create a system that will be unique to the United States and where there will be no deference to a document of compliance issued by a flag state

Ballast Water

- One of the primary political drivers in this debate
- Generally retains ballast water management requirements

Ballast Water

- Expands coverage to crude oil tankers operating in the coastwise trade as well as harbor tugs
- Asks for comments on applying Pacific near shore exchange requirements to the Atlantic Gulf coasts

Graywater

- All vessels must:
 1. Minimize graywater discharges in port
 2. Minimize kitchen oils in discharges
 3. Use phosphate-free or non-toxic soaps
- Can be additional requirements for nutrient-deprived waters (such as Chesapeake Bay and Puget Sound)
- Large and medium cruise ships subject to expanded requirements including discharge limitations

Graywater

- Greater than 400 GRT with storage capacity that regularly travel more than 1 NM from shore
- Vessels that do not travel 1 NM from shore
- No discharge with 1 NM; only underway otherwise
- Minimize and use shore disposal if possible

Bilgewater

- Greater than 400 GRT
- Greater than 400 GRT that regularly sail outside 3 miles (at least once a month)
- Greater than 400 GRT that regularly sail outside 3 miles (at least once a month)
- No Discharge of untreated bilgewater into U.S. waters
- No discharge of treated bilgewater within 1 NM
- If treated bilgewater is discharged into U.S. waters, it must be discharged underway

What Should You Pay Attention to as You Review The Proposed Permit?

- Think of these as laws - there are serious penalties if there are violated, from fines to jail time
- These rules can be enforced by the federal government or by private citizens

What Should You Pay Attention to as You Review These Rules?

- General Permit Program Rules -40 C.F.R. § 122.4
- Best Management Practices
- Record keeping and self reporting requirements/certifications
- Private citizen enforcement

Other General Permit Programs

- Nationwide Permits for Wetland and Water Development Projects (49 types)
 - 33 C.F.R. § 330
- Offshore Oil and Gas Facilities
 - 40 C.F.R. § 435(a)
- Storm Water Discharge from Construction Activities
 - 40 C.F.R. § 122.26
- Concentrated Animal Feeding Operations
 - 40 C.F.R. § 122.23

Best Management Practices

- “Consistent with all other relevant laws”
- “Consistent with good marine practices that prevents excessive discharge....”
- “Minimize by practicing proper maintenance”
- Exchange ballast water “as early as practicable”

Best Management Practices

- “Owner/operators must use these non-fluorinated substitutes for training **when practicable and achievable.**”
- “Most effective BMP is to conduct maintenance and training activities **as far from shore as possible.**”
- “Not all biodegradable soaps are appropriate.”

Best Management Practices

- “Using visual observations ...”
- “Vessels that generate wet exhaust must be maintained in **good operating condition**”
- BMP encourages all waste to be collected and disposed of **properly**
- Require that the seals or fittings be maintained in good working order to prevent leakage

Recordkeeping

- The EPA will expect the permit holder to prove it was using Best Management Practices.
- In many instances this means keeping records to document compliance.
- Regulations require that records be maintained and presented if requested.
- EPA has five years to bring enforcement actions.
- False statements on record books is punishable by up to five years in prison.

Certifications Required

“I have no personal knowledge that the information submitted is other than true, accurate, and complete.”

Permit Requires that Discharges Comply with Other Laws

- Federal Water Pollution Control Act
- Act to Prevent Pollution from Ships
- National Marine Sanctuaries Act
- Federal Insecticide, Fungicide, and Rodenticide Act
- Oil Pollution Act

Examples of Issues for Public Comment

- Is the NOI approach appropriate?
- Are the BMPs that are identified appropriate and sufficiently clear?
- Is the timeframe for compliance realistic?
- Who is responsible for filing the NOI?
- Who is responsible for complying with the permit?
- How will the EPA enforce a requirement to take actions more than 3 miles outside US waters?

Examples of Issues for Public Comment

- How does the vessel that enters US waters once a year, comply?
- How does a vessel needing to enter US waters on short notice comply?
- Has the agency correctly considered the economic cost of compliance?
- Has the agency correctly considered the impact on small business?

Examples of Issues for Public Comment

- Will EPA be enforcing APPS violations as violations of the this permit? How will it coordinate with CG?
- Has the agency properly justified the substantive obligations it has proposed?

A Comment about Commenting on Proposed Rules

- The agency has an obligation to respond to comments and explain why it accepts or rejects them or its proposal may be invalid.
- This obligation is only meaningful if the comments are substantive and supported.
- Providing data, facts and other substantive information triggers its obligation.
- Comments can be in the form of questions seeking clearer permit language.

What Happens Next?

- Pending appeal of decision vacating EPA's long-standing regulation
- Comments due by August 1, 2008
- Public meetings, public hearing and webcast
- Issuance of final permit
- Court challenges

EPA Meeting – June 19,2008

- EPA acknowledged this program is addressing uncharted areas and input from the regulated community to make it realistic and practical is essential.
- EPA seems to want to make the program reflect current practices.
- There are no clear answers to many questions.
- The role of states in enforcement was of great concern.
- The presentation will be available at www.epa.gov/npdes/vessels after the last public meeting.
- The lack of clarity will not prevent citizen suits from being brought.

For More Information

- K&L Gates Vessel Discharge Permits/Ballast Water Website
 - Proposed regulation
 - Fact Sheet
 - Economic Analysis
 - General Permit Regulations
 - Background information
- EPA Website

Questions & Answers (?)

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K&L Gates Website: www.klgates.com/practices/ballast_water_resources/

EPA Website: http://cfpub.epa.gov/npdes/home.cfm?program_id=350