

## EPA ANNOUNCES TIMELINE FOR VGP 3.0

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### Maritime Alert

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The Environmental Protection Agency's (EPA) primary method of regulating ballast water and other discharges is the Vessel General Permit (VGP). Under its Clean Water Act authority, the EPA established the VGP to impose requirements on vessel operators to minimize the introduction of invasive species, considered a pollutant, from ballast water. The EPA issued the first five-year VGP in 2009 and the second, known as VGP 2.0, in 2013. The EPA is already working on the next iteration of VGP, which will become effective when VGP 2.0 expires on December 19, 2018.

Importantly, VGP 3.0 must respond to concerns arising from environmental organizations' successful challenge of VGP 2.0. In that case, the Second Circuit Court of Appeals ruled that the agency's decision-making process under the Clean Water Act was "arbitrary and capricious" and had to be better justified, or potentially made more stringent than International Maritime Organization and Coast Guard standards governing ballast water, with regards to the following issues: (1) best available technology, (2) onshore treatment, and (3) justifiable exemptions under VGP. In addition, the EPA is considering state certification issues and Endangered Species Act consultations in relation to VGP 3.0.

During a recent EPA webinar, the agency outlined its planned timeline for VGP 3.0. The agency is already gathering information and planning for preliminary drafting. The EPA said its goal is to publish the draft VGP by late summer of next year, although the agency acknowledged that the timing could slip to late 2017. Once published, the public will have between 60 and 75 days to submit comments on the draft VGP. The EPA plans to have the final VGP published by early Fall 2018 ahead of the December 19, 2018 effective date for VGP 3.0. For more information, see our article, "Raising the Stakes' — A Look at the Environmental Protection Agency's New Vessel General Permit," in *The Maritime Executive* (July/August 2016).

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