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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) VESSEL GENERAL PERMIT REGULATIONS TAKE EFFECT ON FEB. 6, 2008

[Source: This report is based upon a Notice published in the Federal Register on Dec. 29, 2008 at 73 FR 79473-79481 and the EPA National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Vessels Fact Sheet. The information included herein is only a preliminary notice extracted for immediate review by our mariners to notify them of possible inspection and recordkeeping requirements in addition to those currently imposed by the Coast Guard on Ballast Water management.]

On Feb. 6, 2009, the **Vessel General Permit (VGP)** program will come into effect. This Environmental Protection Agency (EPA) regulation addresses 26 separate discharge streams (enumerated below) incidental to the normal operation of vessels in the United States. The Vessel General Permit (VGP) applies to all non-recreational vessels of 300 gross tons or greater and/or vessels that have the ability to hold or discharge more than 2,113 gallons of ballast water. Individual states may include additional regulations which would apply when a vessel enters their territorial waters. Vessels will be required to adopt best management practices for each type of discharge, subject to EPA approval. **Under the VGP program, a vessel's crew will be required to conduct routine monitoring, inspections and recordkeeping to meet the requirements of the permit.**

Does This Final Permit Apply To Me?

This action **applies to all vessels operating in a capacity as a means of transportation, except recreational vessels** as defined in Clean Water Act section 502(25), Public Law 110-288, that have discharges incidental to their normal operations into waters subject to this permit. With respect to (1) commercial fishing vessels of any size as defined in 46 U.S.C. §2101⁽¹⁾ and (2) those non-recreational vessels that are less than 79 feet in length, the coverage under this permit is limited to ballast water discharges only⁽²⁾ Unless otherwise excluded from coverage by Part 6 of the permit (presented below), waters subject to this permit, means waters of the U.S. as defined in 40 CFR 122.2.

The final vessel general permit (VGP) applies to owners and operators of non-recreational vessels that are 79 feet and greater in length, as well as to owners and operators of commercial vessels of less than 79 feet and commercial fishing vessels of any length **which discharge ballast water.** [⁽¹⁾To find citations in the U.S. Code or Code of Federal Regulations, refer to our Report #R-223, Rev.3, Understanding and Using Federal Regulations. The Federal Register/CFR System. ⁽²⁾Refer to U.S and International Ballast Water Record Book, Marine Education Textbooks Stock #BK-110, for all U.S. and foreign vessels equipped with ballast tanks operating in United States waters.]

The final VGP does not apply to recreational vessels of any size, commercial fishing vessels of any size, which do not discharge ballast water, and non-recreational vessels of less than 79 feet, which do not discharge ballast water. For Commercial fishing vessels and non-recreational vessels of less than 79 feet in length that discharge ballast water, the only effluent limit these vessels are subject to are the VGP standards that apply to ballast water discharges.

Definitions From the Clean Water Act

Section 301(a) of the Clean Water Act (CWA) provides that **the discharge of any pollutant by any person shall be unlawful** unless the discharge is in compliance with certain other sections of the Act. [33 U. S. Code §1311(a)].

The CWA defines "discharge of a pollutant" as (A) any addition of **any pollutant to navigable waters** from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point

source other than a vessel or other floating craft. [33 U. S. Code §1362(12)]

A point source is a discernible, confined and discrete conveyance and includes a vessel or other floating craft." [33 U.S. Code §1362(14)]

The term **pollutant** includes, among other things, garbage, chemical wastes, and industrial, municipal, and agricultural waste discharged into water. [33 U. S. Code §1362(6)].

One way a person may discharge a pollutant without violating the section 301 prohibition is by obtaining a section 402 National Pollutant Discharge Elimination System (NPDES) permit (33 U.S. Code §1342).

Under section 402(a), **EPA may "issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) upon certain conditions required by the Act.**

Summary of VGP Terms and Requirements

The final VGP addresses 26 vessel discharge streams by establishing effluent limits, including Best Management Practices (BMPs), to control the discharge of the waste streams and constituents found in those waste streams. The discharge streams eligible for coverage under this final permit are:

1. Deck washdown and runoff and above water line hull cleaning;
2. Bilge water;
3. Ballast water;
4. Anti-fouling leachate from anti-fouling hull coatings;
5. Aqueous film forming foam (AFFF);
6. Boiler/ economizer blowdown;
7. Cathodic protection;
8. Chain locker effluent;
9. Controllable pitch propeller hydraulic fluid and thruster hydraulic fluid and other oil sea interfaces including lubrication discharges from paddle wheel propulsion, stern tubes, thruster bearings, stabilizers, rudder bearings, azimuth thrusters, and propulsion pod lubrication;
10. Distillation and reverse osmosis brine;
11. Elevator pit effluent;
12. Firemain systems;
13. Freshwater layup;
14. Gas turbine wash water;
15. Graywater;
16. Motor gasoline and compensating discharge;
17. Non-oily machinery wastewater;
18. Refrigeration and air condensate discharge;
19. Seawater cooling overboard discharge;
20. Seawater piping biofouling prevention;
21. Small boat engine wet exhaust;
22. Sonar dome discharge,
23. Underwater ship husbandry;
24. Welldeck discharges;
25. Graywater mixed with sewage from vessels;
26. Exhaust gas scrubber wash water discharge.

For each discharge type, among other things, the final permit establishes effluent limits pertaining to the constituents found in the effluent, including BMPs designed to decrease the amount of constituents entering the waste stream. **A vessel might not produce all of these discharges, but a vessel owner or operator is responsible for meeting the applicable effluent limits and complying with all the effluent limits for every listed discharge that the vessel produces.**

Discharge Authorization Timeframe

To obtain authorization, the owner or operator of a vessel that is either 300 or more gross tons or has the capacity to hold or discharge more than 8 cubic meters (**2,113 gallons**) of ballast water is required to submit a **Notice of Intent (NOI)** to receive permit coverage, beginning June 19, 2009, but no later than September 19, 2009. Until September 19, 2009 these vessels will be automatically authorized upon permit issuance to discharge according to the permit requirements. For vessels that were delivered to the owner or operator on or before

September 19, 2009, the vessel will receive final permit coverage on the date that EPA receives the complete NOI. New vessels that are delivered after September 19, 2009 will receive permit coverage 30 days after EPA receives the complete NOI. When ownership of a vessel previously authorized to discharge under this permit is transferred to a new owner, the discharge authorization date is the later of the date EPA receives an NOI from the new owner or the date of transfer. In the case of an existing vessel which was not previously authorized to discharge under this permit, delivered to the owner after September 19, 2009, the discharge authorization date is 30 days after EPA receives the complete NOI.

Vessels that are less than 300 gross tons or are able to carry or discharge no more than 8 cubic meters of ballast water capacity will be automatically authorized upon permit issuance to discharge according to the permit requirements.

Monitoring and Reporting

The VGP requires routine self-inspection and monitoring of all areas of the vessel that the permit addresses. **The routine self-inspection must be documented in the ship's logbook.** Analytical monitoring is required for certain types of vessels. The **VGP also requires comprehensive annual vessel inspections, to ensure even the hard-to-reach areas of the vessel are inspected for permit compliance.** If the vessel is placed in dry dock while covered under this permit, a **dry dock inspection and report must be completed.** Additional monitoring requirements are imposed on certain classes of vessels, based on unique characteristics not shared by other vessels covered under the VGP.

Vessel Type-Specific Requirements

The permit imposes additional requirements for 8 specific types of vessels, which have unique characteristics resulting in discharges not shared by other types of vessels. These vessel types are medium cruise ships, large cruise ships, large ferries, barges, oil or petroleum tankers, research vessels, rescue boats, and vessels employing experimental ballast water treatment systems. The permit requirements are designed to address the discharges from features unique to those vessels, such as parking decks on ferries and overnight accommodations for passengers on cruise ships.

6. INSPECTIONS, MONITORING, REPORTING, RECORDKEEPING (PART 4)

*[Excerpt from EPA Vessel General Permit Fact Sheet, Dec. 18, 2008. **Emphasis is Ours!**]*

Pursuant to CWA section 308 and 402(a)(2), 40 CFR 122.43(a), and other applicable implementing regulations, the following requirements have been included in the permit, as discussed below.

6.1 SELF-INSPECTIONS AND MONITORING (PART 4.1)

Vessel self-inspections are required as a means of identifying, for example, sources of spills, broken pollution prevention equipment, or other situations that are or might lead to permit violations and allow the owner/operator to correct the situation as soon as possible. **The permit requires self-inspections so that the owner or operator can diagnose and fix problems to remain compliant with the permit.** These self-inspections can and must be conducted while the vessel is underway as well as while in port, and are designed to fit easily into other, already established vessel routines. For instance, the permit allows the routine visual inspections to be conducted as part of an existing (or updated) international safety management (ISM) code safety management system (SMS) plan, as long as all the permit requirements are met.

The **routine visual inspections** required by the permit are reasonable measures of good marine practice that the prudent mariner is already employing to ensure vessel, crew, and environmental health and safety. **Inspections must be conducted at least once per week or once per voyage, whichever is more frequent,** except that vessels that engage in multiple voyages per day are required to inspect daily, rather than on every voyage. If the vessel hull is not readily visible, it should be inspected when feasible, particularly the portions of the hull above the water line at any given time. **Effluent streams that are not readily visible, such as those discharged below the waterline, require, at a minimum, quarterly visual sampling or viewing, and visual inspection of the sample.** Examination of these discharges ensures that all effluent streams are examined on a regular basis for indicator substances prohibited from entering any effluent stream without imposing complicated sampling and testing requirements on vessel owner/operators. For sample streams that can be easily collected, the owner/operator should use a clear bottle or other appropriate device to remove a portion of the discharge. Samples can be collected from sampling ports or the inspector can also remove sample streams from small drain cocks. This sample should be visually examined.

The examiner must look for signs of any obvious constituents of concern such as sheens or unexpected discoloration. If these visual indicators of constituents of concern are noted, **the owner/operator must initiate the corrective action process**. If the sample stream is not easily obtainable, then the inspector must examine the discharge at the last point before the effluent stream is discharged overboard if feasible. If this is not feasible, the owner/operator must document in their recordkeeping documentation that such visual sampling is not feasible.

Vessels with an oily water separator are not exempt from visual inspection of the bilgewater because visual inspection is a simple, quick, and easy inspection to make which also indicates the effectiveness and operational status of the oily water separator. The appearance of oil in the bilgewater discharge signals to the owner or operator that oily water separator repairs or maintenance may be necessary. **Each routine visual inspection must be noted in the official logbook or other recordkeeping documentation, signed by the person conducting the inspection, and include basic information relating to the inspection. This establishes a record of inspections conducted for both the owner/operator and EPA to track compliance with the permit.** The record can help the owner/operator track which areas of the vessel cause more permit violations or hold the most potential pollution problems. By being aware of and focusing on these areas, the owner or operator can change or establish onboard procedures to make permit compliance easier.

The comprehensive annual inspection requirements include a more detailed, thorough inspection of areas of the vessel that are difficult to inspect on a more regular basis, such as the vessel hull. However, the annual inspection does not require the vessel be placed into drydock. Areas of the vessel that can not be inspected without placing the vessel in drydock should be inspected and documented during the next scheduled drydocking period. The owner/operator should note in the annual inspection report which areas are able to be inspected during drydock only. Annual inspection of these areas ensures they are inspected frequently enough to identify and correct problems. In addition, the annual review of all inspection and monitoring data highlights problem areas of the vessel that may need additional attention. This allows the Master, owner, or operator to establish and implement additional procedures applicable to problem areas to reduce future problems. Additionally, the annual inspection requires that all pollution control equipment be inspected to ensure it is functioning properly. This requirement provides a reminder and opportunity to complete maintenance activities on onboard equipment.

Owner/operators may use applicable portions of the results from the annual inspections conducted by the Coast Guard or the classification society to meet some requirements of the annual inspection. For example, if the Coast Guard examines the oily water separator, then the owner may note in their inspection report that the Coast Guard had completed the inspection and they would not be required to inspect it again. **However, for portions of the vessel that are not inspected by the Coast Guard or classification society for environmental performance, the owner/operator must conduct an inspection to be sure that the vessel is meeting requirements of this permit.** Regardless of who conducts the inspections, the owner/operator is responsible for a thorough inspection being conducted and taking corrective actions based on that inspection. If the owner/operator is unsure of the quality of inspections that they will use as part of their annual inspection, EPA strongly recommends they use their own personnel to conduct the full inspection. **The owner/operator is ultimately responsible for completion of this requirement.**

Each annual inspection must be recorded in the official logbook or other recordkeeping documentation, signed by the person conducting the inspection, and must include basic information relating to the inspection and any corrective actions taken as a result of inspection findings.

6.2 DRYDOCKING INSPECTION REPORTS (PART 4.1.4)

Many class societies and the United States Coast Guard require that the vessel operator conduct drydock inspections before re-launching the vessel. Based on discussion with technical experts, EPA assumes most, if not all vessels currently must undergo drydock inspections. When a vessel is in drydock, it is much easier to access a wide range of areas on the vessel that are not easily accessible while the vessel is in water. The thorough examination of the vessel that occurs while it is in drydock provides owner/operators with an additional opportunity to implement the permit's requirements. For example, **cleaning the vessel hull of attached organisms is much easier in drydock, and is safer for the environment because any attached organisms can be properly disposed of away from water, minimizing the risk of an introduction of ANS.** For any drydock report, the permit requires that it include confirmation that the chain locker, hull, and cathodic protection have been inspected and cleaned, that **anti-fouling hull coatings are maintained and applied in accordance with the permit's requirements,** and that all pollution control equipment is maintained and properly functioning. In instances where vessel owner/operators have drydock reports conducted by the applicable class society or the Coast Guard, or where the vessel operators prepare another drydock inspection report, the permit requires the owner/operator to make such reports available to EPA or an authorized

representative of EPA upon request.

6.3 RECORDKEEPING REQUIREMENTS (PARTS 4.2 AND 4.3)

Written records are useful tools for both the vessel owner or operator and EPA. They allow an owner or operator to assess their own permit compliance by providing an easy way to reference permit requirements that have been met, as well as a way to identify troublesome areas of the vessel that cause more pollution-related issues. They also allow EPA to assess permit compliance. By identifying which areas consistently require more cleaning or repair work, the owner or operator can establish and implement procedures specifically designed to minimize pollution and streamline cleaning and maintenance efforts in those areas.

Much of the information that must be recorded under the permit is the same as the information that is required of vessels equipped with ballast tanks bound for a port or place in the United States by the Coast Guard Regulations at 33 CFR §151.2045. This basic information allows the identification of the vessel, the vessel's travels and itineraries, and responsible parties. While the Coast Guard regulation applies only to vessels with ballast tanks, the requirements of the permit apply to all vessels covered by the permit, whether they have ballast water tanks or not. By using the existing vessel recordkeeping requirements as a framework into which the recordkeeping requirements of the permit fit, EPA has attempted to streamline the requirements, make compliance with the permit simple, and do so without imposing significant additional paperwork on vessel owners and operators. Streamlining the paperwork and recordkeeping requirements (for vessels also covered under Coast Guard regulations) increases compliance and allows EPA to achieve both permit enforcement and environmental protection goals.

The information to be recorded is intended to be simple, basic, and straightforward. **There are no specific forms to fill out or file; a permittee need only keep one brief record of each inspection, noting when and how it was completed and any relevant information discovered during the inspection.** Inspection records must be kept on the vessel or accompanying tug and may be kept in any form provided they can be made available to the EPA. **Examples include the ship's official logbook or other official vessel recordkeeping documentation. There do not need to be multiple copies of the records.** Additional requirements include a record of maintenance of specific pieces of equipment that cause discharges covered under the permit and a record of each incidence where a discharge occurs pursuant to a safety or emergency exception (e.g., bilge water 2.2.2, ballast water exemptions 2.2.3.10, AFFF 2.2.5, boiler blowdown 2.2.6, elevator pit 2.2.11, firemain 2.2.12). This can assist in troubleshooting any future pollution problems by showing how often maintenance was performed, what maintenance or repairs were completed, and how often and under what circumstances emergency exceptions were invoked.

This permit contains provisions reinforcing reportable release requirements. **The permit specifically does not allow the discharge of hazardous substances or oil in excess of reportable quantities, even if they are associated with the normal operation of a vessel.** This provision has been included to clarify that the permit is not authorizing any reportable quantity releases of any material that were not authorized before issuance of this permit. These spills must be reported as required under 40 CFR Part 110 and 40 CFR Part 117.

Vessels equipped with ballast water tanks are required by the permit to meet the requirements of 33 CFR §151.2045. This requirement applies both to vessels that are already subject to these Coast Guard regulations and to vessels that are not. **The USCG regulations establish a recordkeeping system to collect information related to ballast water capacity, uptakes, exchanges, and discharges.** In addition, the permit expands the ballast water exchange and saltwater flushing requirements for vessels with ballast water tanks. These vessels that conduct saltwater flushing must note that fact on the Ballast Water Reporting Form, which is found in the Appendix to 33 CFR Part 151, Subpart D.

6.4 REPORTING (PART 4.4)

EPA emphasizes that failure to meet any requirement of the permit would constitute an enforceable permit violation. EPA has added emphasis and explanation about what constitutes a permit violation in several places in the permit in order to avoid any ambiguity. However, provisions where this emphasis has not been included are also enforceable requirements.

EPA has included reporting requirements in the VGP that ensure that EPA, and other parties as necessary, are made aware of potential permit violations. **For all vessels equipped with ballast tanks that operate in waters of the United States and are bound for ports or places in the United States, you must meet the reporting requirements of 33 CFR §151.2041 and recordkeeping requirements of 33 CFR §151.2045.**

All NOBOB vessels that conduct saltwater flushing 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. NOBOB vessels that conducted saltwater flushing should also fill out Section 5, Ballast Water History.

EPA also requires reports of spills and other unauthorized discharges. In addition, VGP 2008 clarifies that spills and other unauthorized discharges must be reported to EPA. In the case where discharges may affect drinking water supplies, recreational waters, elicit fish kills, or may otherwise endanger human health or the environment, the discharge must be reported orally to the appropriate EPA regional office within 24 hours from the time of discovery, followed by an electronic or written report (per the requirements of Appendix B, section 12(F)) within 5 days. **The release of a reportable quantity of any hazardous substance or oil must be reported to the National Response Center dial 800-424-8802 or 202-426-2675 in the Washington, DC area.** The NRC is staffed 24 hours a day by U.S. Coast Guard personnel, who will ask you to provide as much information about the incident as possible, including: your name, location, organization, and telephone number; name and address of the party responsible for the incident; date and time of the incident; location of the incident; source and cause of the release or spill; types of material(s) released or spilled; medium (e.g. land, water) affected by release or spill; danger or threat posed by the release or spill; number and types of injuries or fatalities (if any); weather conditions at the incident location; name of the carrier vessel, or other identifying information; whether an evacuation has occurred; other agencies notified or about to be notified; any other information that may help emergency personnel respond to the incident. **EPA also encourages operators to report the releases that may have human health ramifications to the appropriate local authorities, e.g., public water supply operator, health department.** Follow-up monitoring results should be reported via the electronic system (when available) or in writing to the appropriate EPA Regional Office (Part 3.7) within 30 days of receiving the results. The report should include the permit identification number; vessel name, address and location; receiving water; monitoring data from this and the preceding monitoring event(s); an explanation of the situation; what has been done and shall be done to further reduce pollutants in the discharge; and an appropriate contact name and phone number.

Vessel owner/operators must report any instances of noncompliance with the permit at least once per year to the regional offices listed in Part 13. This is a requirement under the standard permit conditions at 40 CFR §122.41. 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 noncompliance, 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.

Vessel owner/operators under Parts 5.1, 5.2, and 5.8 of this permit have additional reporting requirements. They must report their monitoring data for their graywater treatment systems (5.1 and 5.2) or monitoring data on biocides or derivatives of those biocides from ballast water treatment systems (5.8).

The permit requires owner/operators to submit a one-time report that contains basic information about the vessel after the 30th month of permit coverage. EPA is requiring this report in lieu of an annual report. Specifically, the report must include the owner and operator name(s) and addresses, the name of the vessel, the flag of the vessel, the size of the vessel, whether or not the monitoring conditions of the permit have been met, and the date of submission of the report. It is estimated that this report will take no more than 30 minutes to generate. EPA is requiring this information to assure that permittees are complying with the provisions of this permit, to learn how vessels are implementing the permit, and to gain a better understanding about the universe of permittees covered by this general permit. In addition to studying the effects of this permit issuance, EPA may also use this information to assist in developing the next iteration of this general permit. **Owner/operators are required to submit this one-time report between 30 months and 36 months after obtaining permit coverage (i.e., between 2½ and 3 years after receiving authorization to discharge under this general permit).**