

## Environmental Alert

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### EPA Finalizes Vessel General Permit

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On March 28, 2013, the United States Environmental Protection Agency (EPA) issued a final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel (Vessel General Permit or VGP). This permit replaces the existing Vessel General Permit issued by EPA in 2008 that expires on December 19, 2013. The Vessel General Permit provides the practices and procedures for vessels to comply with NPDES requirements.

#### Am I Covered by the Vessel General Permit?

This permit applies to non-military and non-recreational vessels. The Vessel General Permit is applicable to vessels operating within the “waters of the United States,” which includes the territorial seas. The territorial seas extend three miles from the seaward limit of open waters. EPA estimates that approximately 60,000 domestic and 12,400 foreign flagged vessels will be covered by the new VGP. Examples of vessels covered by this permit include, but are not limited to, cruise ships, ferries, oil tankers, cargo ships, container ships, and research vessels. The VGP does not apply to commercial fishing vessels or to non-recreational vessels less than 79 feet in length until December 8, 2014 due to a Congressional permitting moratorium.

#### How Is this Vessel General Permit Different from the 2008 Permit?

The most notable difference between this VGP and the 2008 VGP is new technology-based effluent limitations applicable to vessels with ballast water tanks. The effluent limitations limit the number of living organisms per cubic meter of ballast water. The VGP also contains numeric limits for certain biocides and residual compounds in ballast water. Vessel operators can meet the new effluent limitations in four ways.

- . Treat the ballast water to achieve the numeric limits.
- . Transfer the ballast water to a third-party for treatment.
- . Use municipal or potable water for ballast.
- . Do not discharge ballast water.

The Vessel General Permit also prohibits discharging of ballast water into sensitive areas such as marine preserves, shellfish beds, or coral reefs.

The Clean Water Act requires that the Best Available Technology Economically Achievable (“BAT”) be applied to effluent limitations. The VGP sets BAT over time for each vessel depending on its construction, date, size, and class. The Vessel General Permit establishes a schedule by which vessels, depending on their size, are required to meet the BAT standard. During the interim, the permit imposes Best Management Practices (“BMPs”) similar to those contained in the 2008 VGP. The numeric effluent limits established by the VGP do not apply to inland and certain seagoing vessels less than 1600 gross registered tons; certain vessels operating in a limited area on short voyages; unmanned, unpowered barges; and vessels operating only on the Laurentian Great Lakes that were built before January 1, 2009. Vessels operating on the Great Lakes are subjected to additional restrictions under the VGP.

The 2013 VGP imposes more prescriptive BMPs for discharges of oil than did the 2008 permit. The new permit requires the use of “environmentally acceptable lubricants” unless it is not technically feasible. The permit also sets numeric limits for exhaust gas scrubber effluent. Vessel operators will be required to monitor the exhaust effluent along with ballast water, bilgewater, and graywater if they discharge under the VGP. For vessels greater than 400 gross tons, the VGP requires that bilgewater discharge be sampled annually for oil analysis to determine compliance and treatment effectiveness.

Administrative improvements are incorporated into the new VGP as well. The new VGP clarifies that

permittees may use electronic recordkeeping; eliminates certain duplicative reporting requirements; and allows for consolidated reporting for certain vessels.

There is one significant recordkeeping change. As with the 2008 VGP, the owner or operator of a vessel either 300 gross registered tonnage or greater, or that has the capacity to hold or discharge more than eight (8) cubic meters of ballast water, is required to submit a Notice of Intent to receive permit coverage. Owners and operators of vessels that meet the eligibility for permit coverage but are not required to submit an NOI are automatically authorized to discharge according to permit requirements. However, under the 2013 VGP, owners and operators not required to submit an NOI are now required to complete and keep a Permit Authorization and Record of Inspection (PARI) form onboard their vessel at all times, the purpose of which is to certify that the owner or operator has read and agreed to comply with the VGP.

The VGP is effective as of December 19, 2013.

#### **Venable LLP**

Venable has an experienced group of environmental and maritime attorneys that can assist vessel owners and operators in dealing with issues associated with compliance with the VGP. Our attorneys have assisted many vessel operators in developing comprehensive environmental compliance programs and in auditing compliance programs. Venable attorneys have served as counsel in the DOJ, EPA, and the Coast Guard, and they have represented many shipping company owners, operators, and employees in dealing with criminal, civil, and citizen suit enforcement actions of CWA provisions by federal and state enforcement agencies.

If you have any questions about VGP compliance, please contact one of the authors listed.