



NOVEMBER 21, 2008

CIRCULAR NO. 23/08

TO MEMBERS OF THE ASSOCIATION

Dear Member:

US ENVIRONMENTAL PROTECTION AGENCY (EPA): VESSEL GENERAL PERMIT (VGP) REQUIREMENTS

Members are requested to note that, with effect from December 19, 2008, all commercial vessels of 79 feet (24.08 meters) in length or more which have discharges of pollutants incidental to their normal operation, including but not limited to ballast water discharges, into the three mile territorial sea of the United States, or into its inland waters, will become subject to the Environmental Protection Agency (EPA) final Vessel General Permit (VGP) requirements and will ultimately need individual permit coverage.

Members whose vessels will be calling at US ports after this date are strongly recommended to begin the development of a compliance program based upon the requirements found in the proposed VGP, while keeping in mind that changes to their compliance program may need to be made after the final VGP is issued by the EPA.

General information on the VGP requirements, including the proposed VGP, can be accessed at:

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

Background

Since May 1973, EPA regulations have excluded certain discharges “incidental to the normal operation of vessels”, including ballast water, from the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act (CWA).

On July 23, 2008, the U.S. Court of Appeals for the Ninth Circuit upheld a District Court decision which ruled that the EPA exceeded its authority under the CWA in exempting certain marine discharges from the NPDES program, and that the EPA is now required to regulate discharges incidental to the normal operation of vessels under the CWA NPDES program requirements. A draft general permit has been issued and the final regulation is expected to enter into force on December 19, 2008.

In order to meet its obligations under the CWA, the EPA will issue a Vessel General Permit (VGP) covering all commercial vessels. It is not necessary to obtain a separate permit for each vessel. Instead, vessels will be covered by the VGP when vessel operators file Notices of Intent (NOIs) to receive coverage under the VGP. Vessels will then be required to comply with the requirements of the VGP.

A list of discharge types eligible for coverage under the VGP is annexed to this Circular. The proposed permit incorporates the US Coast Guard’s mandatory ballast water management and exchange standards (33 C.F.R. part 151) and supplemental ballast water requirements for vessels



that carry ballast water. Furthermore, for all covered vessels, this proposed permit would also establish requirements for twenty-seven other discharge types including deck runoff, bilge water discharge, and gray water discharge. For each discharge type, the permit establishes practices to be adopted dependent upon various conditions that may exist and, in some cases, effluent limits pertaining to the constituents found in the effluent.

In addition to these standard or common requirements, the permit outlines further requirements for eight specific classes of vessels, such as cruise ships, research vessels, oil and petroleum tankers, and large ferries. The proposed VGP also includes requirements for corrective actions, inspections, monitoring, recordkeeping and reporting requirements.

Initially, coverage will be national in scope (i.e. one permit will cover all US inland and territorial waters). To obtain authorization to discharge under the VGP, the owner or operator of a vessel that is either 300 or more gross register 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 NOI to receive permit coverage, no earlier than six months after the permit's issuance date, but no later than nine months after the permit's issuance date.

Regarding the NOI submission deadlines/discharge authorization dates, all relevant parties are covered for the first six months. Your Managers have been informed that this six month automatic coverage is due to the number of vessels that will need to file NOIs and the need for the EPA to sufficiently upgrade the eNOI system to allow for this new category of discharges. So, filing NOIs will need to occur between June 19 and September 19, 2009. Thereafter, discharge authorization will be according to the category of the vessel and the deadlines in the table below.

NOI Submission Deadlines/Discharge Authorization Dates

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

* Based on a review of a Member's NOI or other information, the EPA may delay the discharge authorization date for further review, or may deny coverage under a permit and require submission of an application for an individual NPDES permit. In these instances, the EPA will notify in writing of the delay or the request for submission of an individual NPDES permit application.



Vessels less than 300 gross register tons and which do not have the capacity to hold or discharge more than 8 cubic meters of ballast water, do not need to submit a NOI. Such vessels automatically receive coverage under the VGP and are authorized to discharge *"in accordance with the conditions set forth within the permit."*

Given the substantial number of NOIs expected to be filed, all vessels will initially be covered by the VGP at the time it is issued. Assuming that the implementation date for the VGP will remain as December 19, 2008, vessels will be covered until such time as they file their NOI (between six to nine months); with all required vessels having to file an NOI no later than September 19, 2009. Coverage under the VGP will begin on the date the NOI is received by the EPA from each vessel, and will be valid for five years.

The EPA is currently constructing an electronic NOI (eNOI) system to provide for electronic filling of NOIs. Once this system is available, filers will need to first register and then electronically submit the required information via the EPA's Central Data Exchange at <http://cdx.epa.gov/warning.asp>. There will be no fees for the permit.

Once the VGP is issued, the EPA will be the agency charged with determining whether a permit condition has been violated, although it is unclear at this time how the EPA and the US Coast Guard will co-ordinate inspection and enforcement activities.

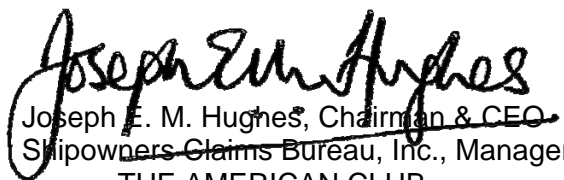
The EPA's NPDES permitting process under the CWA authorizes civil and criminal penalties for violations of the prohibition against the discharge of a pollutant without a permit, for discharges exceeding an effluent limit, and also allows for citizen suits against violators. Penalties under the CWA for violating the permit, or not having a permit to discharge into the waters of the US, may be up to \$27,500 per violation per day. There are also administrative classes of penalties and significant criminal penalties for any negligent or knowing violations. A Class I penalty may be assessed in an amount of up to \$10,000 per violation, not to exceed \$25,000; a Class II penalty may be assessed in an amount of up to \$10,000 per day per violation, but not to exceed \$125,000.

It is not expected that the final VGP will be significantly different from the VGP already proposed, although it is unlikely that the EPA will finalize the VGP requirements before early December 2008. This will leave Members with very little time for implementation and compliance. Clearly the issues are complex. Members should, therefore, begin the development of a compliance program now based upon the requirements found in the EPA proposed VGP.

Commercial fishing vessels of all sizes are excluded from the requirements and CWA permits are not required for vessels operating as a means of transportation beyond the three mile territorial sea limit. There is also a two year moratorium on vessels of less than 79 feet, although such vessels should make plans to comply following the end of the two year moratorium in 2010.

A further update will be provided once the EPA has finalized the VGP.

Yours faithfully,


Joseph E. M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB



ANNEX

Discharge types eligible for coverage under the VGP

- Deck Washdown and Runoff
- Bilge water/Oily Water Separator Effluent
- Ballast Water
- Anti-fouling Leachate from Anti-Fouling Hull Coatings/Hull Coating Leachate,
- 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 Wash Water
- Graywater

Except that Graywater from commercial vessels operating on the Great Lakes within the meaning of CWA section 312 is excluded from the requirement to obtain an NPDES permit (see CWA section 502(6)(A)), and thus is not within the scope of this permit.

- Motor Gasoline and Compensating Discharge
- Non-Oily Machinery Wastewater
- Refrigeration and Air Condensate Discharge
- Rudder Bearing Lubrication Discharge
- Seawater Cooling Overboard Discharge (Including Non-Contact Engine Cooling Water; Hydraulic System Cooling Water, Refrigeration Cooling Water)
- Seawater Piping Biofouling Prevention
- Small Boat Engine Wet Exhaust
- Sonar Dome Discharge
- Sterntube Oily Discharge
- Underwater Ship Husbandry Discharges
- Welldeck Discharges
- Graywater Mixed with Sewage from Vessels
- Exhaust Gas Scrubber Washwater Discharge

The above list is complete as of November 2008.