

Overview of EPA's Vessel General Permit

Marcus Zobrist

*US EPA Office of Wastewater
Management*



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Topics to be Discussed

- *Clean Water Act*
- *Vessel Exclusion & Lawsuit*
- *Congressional Action*
- *Vessel General Permit*
- *VGP's Ballast Water Provisions*
- *VGP Status Update*

Clean Water Act

For more info visit http://cfpub.epa.gov/npdes/about.cfm?program_id=0

- Generally prohibits “discharge of a pollutant” without a permit
 - Civil and criminal penalties
 - Citizen suits

- National Pollutant Discharge Elimination System (NPDES) Permits
 - Individual permits
 - General permits

Clean Water Act [cont]

- Basis for effluent limits
 - Technology based
 - Water quality based
- Role of States
 - Water quality standards
 - NPDES (if authorized)
 - Preservation of more stringent State laws
 - 401 certification of federal NPDES permits

Vessel Exclusion and Lawsuit

- Since 1973, EPA regulations had excluded discharges incidental to normal operation of a vessel from NPDES permitting
- That exclusion was successfully challenged in court by environmental groups
 - 1999 – Rulemaking petition asking EPA to revoke the exclusion
 - 2003 – EPA denies rulemaking petition
 - 2005 – District Ct rules exclusion not authorized by CWA
 - 2008 – Appeal court affirms

Vessel Exclusion and Lawsuit [cont]

- February 6, 2009 – EPA's NPDES vessel exclusion regulation vacated (struck down) by District Court order
- Implication: As of that date, discharges incidental to normal vessel operations unlawful unless authorized by an NPDES permit or excluded from NPDES permitting by the statute itself

Subsequent Congressional Action

- Clean Boating Act of 2008 – excludes recreational vessel incidental discharges from NPDES permitting and instead requires EPA to develop management practices to control
- P.L. 110-299 – temporary moratorium, except for ballast water, on NPDES permitting for incidental discharges from commercial fishing vessels and also for those non-recreational vessels less than 79 feet
 - That moratorium expires July 31, 2010
 - EPA to study discharges and report to Congress

Vessel General Permit (VGP)

- Following opportunity for public comment, VGP was finalized December 18, 2008
- Covers approx. 61,000 US flagged commercial vessels and 8,000 foreign flagged
 - Initially, coverage is automatic
 - To maintain coverage, those vessels that are greater than or equal to 300 gross tons or with more than 8 cubic meters ballast water capacity must submit a Notice of Intent to EPA by September 19, 2009 or 30 days prior to discharging into waters covered by the VGP (whichever is later)

Vessel General Permit [cont]

- Covers 26 types of discharges, e.g.:
 - Ballast Water
 - Bilge Water
 - Does not cover vessel sewage as already regulated by another part of CWA & excluded from NPDES by CWA
- When discharges already subject to existing Coast Guard requirements, insofar as possible, EPA drafted VGP to be consistent with them

Vessel General Permit [cont]

- Covers US inland navigable waters and three mile territorial sea
- VGP preambular text provides (§ 1.1):
 - “EPA intends to implement the VGP in accordance with the Clean Water Act as well as U.S. international legal obligations, including those obligations associated with a vessel's right to innocent passage as provided for under customary international law.”

Vessel General Permit [cont]

- While national in scope, does not guarantee uniformity because CWA requires compliance with State water quality standards and other more stringent State requirements
- As a federally issued NPDES permit, VGP subject to certification by States
 - § 6 of VGP thus contains additional requirements imposed by States under their State law authorities, especially with regard to ballast water
 - Challenges to these State 401 certification conditions are in State, not federal, court

Discharge Specific Limits: Ballast Water



- The permit:
 - Incorporates Coast Guard mandatory management and exchange requirements
 - Vessels engaged in Pacific Nearshore Voyages must conduct exchange greater than 50 nm from the coast
 - Mandatory saltwater flushing for all vessels with residual ballast water and sediment (NOBOBs) coming from outside the US EEZ

Discharge Specific Limits: Ballast Water (cont.)



- Must use shore based treatment if available and economically practicable and achievable
- Must conduct exchange as early as practicable
- Exchange/flushing requirements have a safety exemption and do not mandate diversion.
- Reopener clause in the permit to allow for inclusion of a more stringent standard if appropriate before permit reissuance.

Additional Ballast Water State 401



Certification Requirements

- Ballast Water treatment standards with compliance schedules are incorporated by 8 states (California, Illinois, Indiana, Ohio, Michigan, Minnesota, New York, Pennsylvania).
 - There are four different treatment standards incorporated: IMO equivalent (Ill, Ind, Minn), S. 1578 equivalent (New York), California and Pennsylvania (zero discharge above 50 microns), and “Michigan Approach” (must use select treatment approaches (e.g., hypochlorite).
 - Some states require exchange without deviation allowances (e.g. New York).
 - Some states are requiring Atlantic Nearshore Exchange and Flushing (e.g., Massachusetts and New York).
 - Connecticut requires use of a treatment system if installed for any reason (e.g., STEP, to meet IMO conditions, or to meet 401 certification conditions for any other state).

Vessel General Permit [status]

- Following VGP issuance, 7 challenges brought to the permit in federal court
 - 3 by environmental groups
 - NRDC, National Wildlife Federation, Northwest Environmental Advocates
 - 3 by shipping industry interests
 - Canadian Shipowners Association, Lake Carriers' Association, American Waterways Operators
 - State of Michigan
- Claims are pending and have been consolidated in US Court of Appeals for DC Circuit

Agency Decision to Explore Settlement

- Administrator Jackson public expressed the view that the VGP does not provide sufficient protection against the introduction of aquatic nuisance species
 - Promised that the Agency would take a “hard look” at the issue
- Proceedings in the litigation are largely stayed until February, 2010 in order to explore possibility of settlement of some or all of the issues in the litigation