



Overview of Clean Water Act Permitting and EPA's Proposed Vessel General Permits



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Outline



- NPDES 101 for Vessels
 - Clean Water Act (CWA) Permit Basics
 - Court Decision & Implications
 - Current EPA Activities to Respond
- Overview of Proposed Vessel Permits
 - General Permit for Commercial Vessels and Large Recreational Vessels (VGP)
 - General Permit for Recreational Vessels (RGP)



NPDES 101 for Vessels





CWA Permitting Basics

For more info visit: www.epa.gov/npdes

- “Discharge of a pollutant” generally prohibited without a permit [CWA § 301(a)]
- National Pollutant Discharge Elimination System (NPDES) Permits [CWA § 402]
 - Individual permits
 - General permits
 - Permit term may not exceed 5 years
 - State authorization (45 states and Puerto Rico are authorized)
 - For EPA-issued permits, state 401 certifications required





CWA Permit Basics

- Effluent limits [CWA § 301(b)]
 - Technology-based [CWA § 304(b)]
 - BAT/BPT (can be Best Management Practices (BMPs))
 - BPJ
 - Water quality-based [CWA § 303]
- Statutory exclusions: Stated in the CWA (and thus unaffected by lawsuit):
 - Vessels operating as a means of transportation beyond 3 mile limit [CWA § 502(12)(B)]
 - Sewage from vessels or discharges incidental to the normal operation of vessels of the Armed Forces, within the meaning of § 312 [CWA § 502(6)(A)]





NWEA Lawsuit

- Regulatory exclusion [40 CFR 122.3(a)]
 - At issue in lawsuit
- Excludes certain discharges incidental to the normal operation of vessels from the obligation to obtain an NPDES permit
 - Issued in May 1973
 - Never previously challenged
- Court to vacate as of Sept 30, 2008





NWEA Lawsuit – Chronology

For more info visit: www.epa.gov/npdes/vessels

- **Rulemaking petition**

- January 1999: Petition from Northwest Environmental Advocates, Center for Marine Conservation, Great Lakes United
 - Petition concerns focused on ballast water
- September 2003: EPA denied petition based on Congressional acquiescence and Coast Guard authority under NISA
- December 2003: Lawsuit filed by Northwest Environmental Advocates and others challenging petition denial





NWEA Lawsuit – Chronology

For more info visit: www.epa.gov/npdes/vessels

- **Litigation & outcome in U.S. District Court**
 - March 2005: Ruling that the regulation (40 CFR 122.3(a)) excluding discharges incidental to the normal operation of a vessel from NPDES permitting exceeded the Agency's authority under the CWA
 - September 2006: Final order vacating (revoking) the regulatory exclusion as of September 30, 2008, and potentially affects all incidental discharges of vessels





NWEA Lawsuit – Chronology

For more info visit: www.epa.gov/npdes/vessels

- **Current status**

- November 2006: Gov't files notice of appeal with 9th Circuit

- Oral argument occurred on August 14, 2007
- Typical timeframe for decision 9+ months after argument





NWEA Implications

- Not just limited to ballast water discharges, but includes other discharges incidental to normal operation of vessels
 - Approx 28 discharge types
- Not just limited to those larger vessels equipped with ballast water tanks
- All vessels with discharges of pollutants will need permit coverage by Sept 30, 2008
 - Rec vessels: 18 million
 - Commercial vessels: 91,000 plus





EPA Activities

- June 21, 2007 Fed Reg notice (72 FR 34241)
 - Explain implications and seek public input
 - Comment period closed August 6, 2007
 - Over 1,600 responses received
- June 17, 2008 Fed Reg notice (73 FR 34296)
 - Proposed for public comment two draft NPDES general permits for discharges incidental to normal operation of vessels
 - Comment period closes August 1, 2008
 - Not prudent to sit back and await outcome of appeal





Proposed Vessel General Permits





Proposed Permits Overview



- Initial issuance of general permits will be national in scope
- No EPA fees for either permit
- Under CWA, NPDES permitting for vessels being used as a means of transportation covers inland waters and 3 nautical mile (nm) Territorial Sea





The Two-Permit Framework



- One general permit to cover all commercial vessels and large recreational vessels (greater or equal to 79 feet)
- One general permit to cover recreational vessels less than 79 feet and uninspected passenger vessels less than 79 feet
- Both permits only cover incidental discharges (those discharges excluded under 122.3(a) regulation, e.g., no industrial discharges)





Commercial Vessel and Large Recreational Vessel General Permit (VGP)





VGP Structure

- Part 1 – Coverage under the Permit
 - (General Information and Standard Requirements)
- Part 2 – Effluent Limits and Related Requirements
- Part 3 – Corrective Actions
- Part 4 – Inspections, Monitoring, Reporting, and Recordkeeping
- Part 5 – Vessel Class Specific Requirements
- Part 6 – Reserved for 401 certification
- Part 7 – Definitions
- Appendices





VGP – Obtaining Coverage

- Most NPDES general permits require the permittee to file a Notices of Intent (NOI) to obtain permit coverage.
- After 6 months, you must submit an NOI to obtain coverage if your vessel is:
 - greater or equal to 300 tons,
or
 - has a ballast water capacity of at least 8 cubic meters
- All other vessels are granted coverage without submitting an NOI.





VGP Effluent Limits

- Technology-based effluent limits applicable to all vessels
- Technology-based effluent limits for specific discharge types
 - 28 discharge types listed
 - We will discuss 4 discharge types today
- Water quality-based effluent limits (WQBELs)





VGP: Effluent Limits Applicable to All Vessels

Currently 5 effluent limits that apply to all vessels:

- Material storage
- Toxic and hazardous materials
- Fuel spills and overflow
- Discharges of oil and oily mixtures
- Compliance with other regulations and statutes





Discharge-Specific Effluent Limits



- 28 discharges identified, each with at least one BMP associated with the discharge
 - Ballast Water, bilgewater, AFFF, hull leachate, gray water, underwater husbandry. . .
- Discharges identified in UNDS, from MARAD, and from public comment





Discharge Specific Limits: Ballast Water



- All vessels with ballast water tanks that will discharge ballast water must follow permit requirements
- 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 coming from outside the USEEZ and
 - For above practices, there is a safety exemption, and
 - Vessels are not required to divert to exchange
 - Must use shore based treatment if available and economically practicable and achievable
- Reopener clause in the permit to allow for inclusion of a more stringent standard if appropriate before permit reissuance.





Select Discharge Specific Limits: Bilgewater

- All vessels must minimize production of bilgewater
- Large Vessels (greater than 400 tons):
 - May not discharge untreated bilgewater (reinforces existing requirement),
 - May not discharge treated bilgewater within 1 nm of shore or into waters protected for conservation purposes, and
 - If discharging within 1 and 3 nm, must discharge while underway at a minimum of 6 knots.





Select Discharge Specific Limits: Graywater

- Specific requirements for Cruise Ships and Ferries
- Minimize introduction of kitchen oils
- For large ocean going vessels (greater than 400 tons), may not discharge within 1 nm if vessel has holding capacity
- All vessels that have storage capacity may not discharge in waters federally protected for conservation purposes





Select Discharge Specific Limits: Underwater Husbandry

- Vessel owner/operators must minimize the transport of attached living organisms when entering U.S. waters or traveling between Captain of the Port Zones (COTP)
- When possible, clean out of water or in drydock.
- Limit use of hard brushes
- Cleaning may not result in a visible plume of paint in the water





Select Discharge Specific Limits: Other Limits

- Must use phosphate-free and non-toxic soaps for any activities where effluent will be discharged (i.e., deck washdown)
- Must use coamings on deck (deck washdown)
- Certain discharges (those EPA identified as being able to turn on or off) may not be discharged in waters federally protected for conservation purposes (i.e., National Marine Sanctuaries, National Wildlife Refuges)
- The anchor chain must be carefully and thoroughly washed down (i.e., more than a cursory rinse) as it is being hauled out of the water to remove sediment and marine organisms





WQBELs

- Each permittee must control its discharge as necessary to meet applicable water quality standards
- Anticipate additional state-specific requirements as part of receiving 401 certifications





VGP Corrective Actions

(Required Permit Conditions)



- Exceedance of an effluent limit is a permit violation
- The permit will require the permittee to take corrective action when they become aware of a violation
- Failure to take corrective action within specified time period is a permit violation
- Corrective actions must be taken:
 - Minor changes: within two weeks
 - Major changes (requiring new parts): within three months
 - Major renovations: before relaunching from the next drydocking (approximately 5 year cycle)



Inspections and Monitoring

- Self inspections
 - Routine visual inspections
 - Ensure areas are clear of garbage, exposed raw materials, oil, and other pollutants and constituents of concern and to ensure that pollution prevention mechanisms are in proper working order
 - Annual vessel inspections are more comprehensive, and must focus on areas likely to generate harmful pollution or violate effluent limits. Examples include:
 - Vessel hull for attached living organisms, flaking antifoulant paint, exposed TBT surfaces, and
 - Chain locker for both sediment and living organisms. . .
- Analytical monitoring for select cruise ships and vessels with experimental ballast water treatment systems





Recordkeeping and Reporting

- Recordkeeping
 - Records will include owner and voyage information, additional maintenance & discharge information, certification, safety exemptions claimed, and any monitoring or inspection results
- Reporting required for ballast water release (to Coast Guard), spills that endanger health or welfare, or spills of oily materials
 - All based on existing regulation

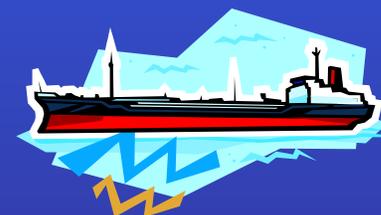


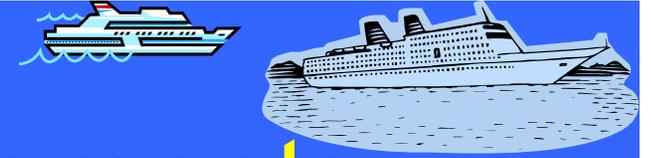


Vessel Class-Specific Requirements

Currently 8 classes or types:

- *Medium Cruise Ships*
- *Large Cruise Ships*
- Large Ferries
- Oil or Petroleum Tankers
- Barges
- Research Vessels
- Rescue Boats
- *Vessels with Experimental Ballast Water Treatment Systems*





Cruise Ship Requirements

- Nationalize requirements for gray water discharges currently incorporated in Title XIV-statute for “Certain Alaskan Cruise Ship Operations” (for large Cruise Ships)
 - May require limited monitoring (5 times to show system effective; 2 times per year subsequently)
 - As of 2006, industry group estimated that 40 percent of its member ships had systems able to meet these standards, with 8 to 12 percent added every year.
- Discharge location limitations
- Education and training requirements





Cruise Ship Requirements



* Based on conditions in Title XIV for Alaska

* Applies Nationwide (not just Alaska)

≥ 6 knots

- **Gray water without limits (unless in nutrient impaired estuary).**

OR

< 6 knots

Same as < 1 nm from shore.

AND

- **Nutrient Impaired Estuaries**
 - Must hold if vessel has capacity:
 - if discharging must meet secondary standards (*large cruise ships only*)

Treated gray water if:

- meets 2^o treatment standards (BOD, TSS, pH)
- < 20 fecal coliform/100 mL
- ≤ 10 μg/L total residual chlorine

Discharge prohibitions in nutrient impaired estuary (if vessel has holding capacity)

Land

1 nm

3 nm





Experimental Ballast Water Treatment Systems

- Permittees may discharge residual biocides if:
 - Lower than acute water quality criteria
 - Lower than 100 ug/L of residual chlorine
- EPA specifically requesting comment on appropriate limits, and whether to include other limits for biocides (i.e. total residual oxidant)
- Permittees may apply for individual permits if they do not meet these terms





Questions





Recreational Vessel General Permit (RGP)



Recreational Vessels (RGP)



- Covers recreational vessels less than 79 feet in length
- No Notice of Intent (NOI) requirement
- Effluent limits comprised of required Best Management Practices (BMPs) and vessels may not cause or contribute to water quality standards violations
- Encouraged Best Management Practices



RGP Structure



Total Length – 13 pages

- Part 1 – Overview
- Part 2 – Effluent Limits
- Part 3 – Encouraged Best Management Requirements
- Part 4 – Additional Requirements
- Part 5 - Reserved for 401 certification
- Part 6 – Definitions
- Regional Contacts



RGP



- **General**
 - only authorizes discharges from normal operations; no visible sheen of oil allowed; no visible garbage in effluents; no discharges of visible living organisms (except bait)
- **Fuel Management**
 - clean up any visible sheen originating from vessel; have oil absorbent rags available if drip/spill; do not overfill tanks; regularly look for fuel leaks
- **Trash Management**
 - have secure trash receptacles onboard; prevent trash/garbage from entering wastestreams; secure loose items; do not dispose of fish wastes in harbors/marinas
- **Deck/Hull**
 - minimize transport of visible living aquatic organisms between waterbodies; inspect hulls and remove living organisms; clean organisms from hull/trailer if trailering to another waterbody; use non-toxic phosphate free soaps and cleaners; minimize paint chip discharger while cleaning/maintaining



RGP



- ***Anti-Foulant Paint***
 - avoid use if unnecessary; no TBT; do not clean hulls within 90 days of application; use soft sponges to clean hulls
- ***Engines/Oil Control***
 - when pumping bilge watch for visible sheen and clean up if occurs; minimize entry of oil into bilge; inspect engine for loose seals, gaskets, etc.
- ***Gray Water***
 - minimize gray water discharges in areas with heavy vessel traffic and/or sensitive areas such as marine sanctuaries; use non-toxic phosphate-free soaps/detergents; do not allow used cooking oil to enter gray water systems/do not discharge such oil overboard



RGP



- Encourage Best Management Practices
 - Examples: large cleaning, maintenance, and repair jobs should be done while the boat is out of the water
 - It is preferable that cleaning of hulls with anti-fouling hull paint take place out of, and away from, the water
 - When possible, use restrooms, showers, and laundry facilities on shore



Submitting Comments

- Public comment period ends on August 1, 2008. Submit your comments to:
 - Docket ID No. **EPA-HQ-OW-2008-0055** for the VGP or
 - Docket ID No. **EPA-HQ-OW-2008-0056** for the RGP
 - You may submit comment by one of the following methods:
 - www.regulations.gov: Follow the on-line instructions for submitting comments.
 - Email: ow-docket@epa.gov.
 - Mail: Original and three copies to: Water Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
 - Hand Delivery: EPA Docket Center, Public Reading Room, EPA Headquarters West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.



Additional Information

Permits and select supporting documents are available on our webpage:

www.epa.gov/npdes/vessels



Questions

