



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels Jr.
Governor

Thomas W. Easterly
Commissioner

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VIA CERTIFIED MAIL 7002 0510 0002 7965 3258

December 5, 2008

Timothy Henry, Acting Director
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Dear Acting Director Henry:

Re: Section 401 Water Quality Certification
Project: Vessel General Permit
IDEM No.: 2008-332-00-JTR-A
COE No.: N/A
County: Statewide

The Office of Water Quality has reviewed your application for Section 401 Water Quality Certification dated July 8, 2008, and received July 11, 2008, and amended by telephone to withdraw the recreational general permit August 7, 2008. You propose to issue a National Pollution Discharge Elimination System (NPDES) general permit that may result in discharges to Indiana's waters. This general permit, titled General Permit for Discharges Incidental to the Normal Operation of Commercial and Large Recreational Vessels (VGP), would authorize discharges from or associated with the normal operation of commercial vessels and large recreational vessels greater than or equal to 79 feet in length.

Based on available information, it is the judgment of this office that the proposed general permit will comply with the applicable provisions of 327 IAC 2 and Sections 301, 302, 303, 306, and 307 of the Clean Water Act if the recipient of the certification complies with the conditions set forth below. Therefore, subject to the following conditions, the Indiana Department of Environmental Management (IDEM) hereby grants Section 401 Water Quality Certification for this federal permit.

CONDITIONS OF THE SECTION 401 WATER QUALITY CERTIFICATION:

The following conditions shall apply to any activity that qualifies under this general permit.

- 1) Permittee shall allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials:
 - a) to enter and inspect covered vessels;
 - b) to have access to and copy at reasonable times any records that must be kept under the conditions of this certification;
 - c) to inspect, at reasonable times, any monitoring or operational equipment or method; collection, treatment, pollution management or discharge facility or device; practices required by this certification; and
 - d) to sample or monitor any discharge of pollutants from covered vessels.

- 2) This granting of WQC does not relieve the permittee from the responsibility of obtaining any other permits or authorizations that may be required for this project or related activities from the IDEM or any other agency or person.
- 3) This certification does not:
 - a) Authorize impacts or activities outside the scope of this certification;
 - b) Authorize any injury to permittees or private property or invasion of other private rights, or any infringement of federal, state or local laws or regulations;
 - c) Convey any property rights of any sort, or any exclusive privileges; or
 - d) Preempt any duty to obtain federal, state or local permits or authorizations required by law.
- 4) The IDEM, for any vessel that qualifies under the terms and conditions of this certification, may choose to require an individual WQC if it determines that the vessel would have more than minimal impacts to water quality, either viewed individually or collectively with other activities that may affect the same waterbody.
- 5) Activities authorized by this general permit shall **not** violate or exceed Indiana's Water Quality Standards at 327 IAC 2.
- 6) Discharges of ballast water to the Indiana portion of Lake Michigan must meet the International Maritime Organization certified treatment standard according to the following schedule:
 - a) For ocean-going vessels constructed prior to January 1, 2012, and meeting the applicability criteria in the federal NPDES permit, treatment shall be installed and operational to meet the performance standards for organisms included in Table 1 by January 1, 2016.
 - b) For ocean-going vessels constructed after January 1, 2012, and meeting the applicability criteria in the federal NPDES permit, treatment shall be installed and operational to meet the performance standards for organisms included in Table 1 prior to commencement of vessel operation in Indiana State waters.

Analysis required by Table 1 shall be performed consistent with the protocols currently being validated by the EPA Environmental Technology Verification Program (EPA/U.S. Coast Guard/Naval Research Laboratory) and/or the following Great Ships Initiative protocols: The Procedure for Algae/Small Protozoan Sample Analysis, the Procedure for Zooplankton Sample Analysis, the Procedure for the Detection and Enumeration of Enterococci by Membrane Filtration, the Procedure for Microbial Analysis using the Heterotrophic Plate Count Method, and the Procedure for the Detection and Enumeration of E. coli by Membrane Filtration available online at <http://www.nemw.org/GSI/protocols.htm>

- c) If the federal government adopts treatment standards more stringent than IMO, then those standards shall replace those in Table 1 for new treatment systems installed after the date those federal standards go into effect.

Table 1. Biological performance standards for ballast water treatment technology.

Parameter	Limit	Limit Type	Sample Type
Organisms >50µm in	<10 viable ¹ /m ³	Daily average	Composite ²

¹ "Viable organism" means organisms that are living and able to reproduce.

² "Composite" sample type is a combination of individual grab samples taken at periodic intervals over the specified time period. Either samples taken at equal time intervals shall be combined using a volume of each sample that is

minimum dimension			
Organisms 10-40µm in minimum dimension	<10 viable /ml	Daily average	Composite
Escherichia coliform	<250 cfu/100ml	Daily average	Composite
Intestinal enterococci	<100 cfu/100ml	Daily average	Composite

- 7) Any ocean-going vessel discharging ballast water employing ballast water treatment systems using chlorine, shall not exceed a maximum total residual chlorine limit of 0.02 mg/l. The usage of other biocides shall not be discharged in concentrations considered to be toxic or harmful to aquatic life or in concentrations that would violate applicable water quality standards.

The IDEM retains the right to review, modify, terminate, replace or amend this certification as needed to ensure that the VGP certified does not result in violations of Indiana's Water Quality Standards or other applicable state laws. In the absence of another action by the IDEM that would alter the termination date of this certification, this certification shall expire with the expiration of the VGP it certifies.

Failure to comply with the terms and conditions of this Section 401 Water Quality Certification or the permit certified may result in enforcement action against you. If an enforcement action is pursued, you could be assessed up to \$25,000 per day in civil penalties. You may also be subject to criminal liability if it is determined that the Section 401 Water Quality Certification was violated willfully or negligently.

This certification is effective eighteen (18) days from the mailing of this notice unless a petition for review and a petition for stay of effectiveness are filed within this 18-day period. If a petition for review and a petition for stay of effectiveness are filed within this period, any part of the certification within the scope of the petition for stay is stayed for fifteen (15) days, unless or until an Environmental Law Judge further stays the certification in whole or in part.

This decision may be appealed in accordance with IC 4-21.5, the Administrative Orders and Procedures Act. The steps that must be followed to qualify for review are:

- 1) You must petition for review in writing that states facts demonstrating that you are either the person to whom this decision is directed, a person who is aggrieved or adversely affected by the decision, or a person entitled to review under any law.
- 2) You must file the petition for review with the Office of Environmental Adjudication (OEA) at the following address:

Office of Environmental Adjudication
100 North Senate Avenue
IGCN Room N1049
Indianapolis, IN 46204

- 3) You must file the petition within eighteen (18) days of the mailing date of this decision. If the eighteenth day falls on a Saturday, Sunday, legal holiday, or other day that the OEA offices are closed during regular business hours, you may file the petition the next day that the OEA offices are open during regular business hours. The petition is deemed filed on the earliest of the following dates: the date it is personally delivered to OEA; the date that the envelope containing

proportional to the flow that sample represents, or equal volume samples shall be combined that are taken at intervals of equal flow volumes.

the petition is postmarked if it is mailed by United States mail; or, the date it is shown to have been deposited with a private carrier on the private carrier's receipt, if sent by private carrier.

Identifying the certification, decision, or other order for which you seek review by number, name of the applicant, location, or date of this notice will expedite review of the petition.

Note that if a petition for review is granted pursuant to IC 4-21.5-3-7, the petitioner will, and any other person may, obtain notice of any prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings by requesting copies of such notices from OEA.

If you have procedural questions regarding filing a petition for review you may contact the Office of Environmental Adjudication at 317-232-8591.

If you have any questions about this certification, please contact Mr. James Robb, Wetlands and Storm Water Section Chief, at 317-233-8802, or you may contact the Office of Water Quality through the IDEM Environmental Helpline (1-800-451-6027).

Sincerely,



Marylou Poppa Renshaw, Chief
Watershed Planning Branch
Office of Water Quality

cc: Sam Ramach, USEPA
Mike Molnar, IDNR
Scott Pruitt, USFWS