State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE
Governor

MARK MAURIELLO
Commissioner

Land Use Management
PO Box 402
Trenton, NJ 08625-0409
609-292-1623

February 2, 2009

Mr. George Pavlou, Acting Regional Administrator
US Environmental Protection Agency
Division of Environmental Planning and Protection
290 Broadway
New York, New York 10007-1866

Re: USEPA Commercial Vessel General Permit (VGP)

Dear Mr. Pavlou:

I am in receipt of your letter of January 31, 2009 concerning New Jersey's 401 Water Quality Certification for the USEPA's Commercial Vessel Permit. As you know, New Jersey prohibited the discharge of graywater and bilgewater in its September 24, 2008 Water Quality Certification. On January 26, 2009 New Jersey revised its 401 Water Quality Certification. This revision included a stay of conditions for three years to allow vessel operators time to modify their vessels to comply with this new requirement. I am disappointed that EPA determined that its regulations at 40 C.F.R. 124.55(b) only allow it to modify the VGP when the State completely deletes a condition in a state 401 Water Quality Certification, and that EPA cannot modify the VGP when the State stays a condition, or otherwise modifies a condition.

Based upon your January 30, 2009 letter, the Department has decided to delete all conditions relating to graywater and bilgewater in its 401 Water Quality Certification dated September 24, 2008 and revised January 26, 2009. The deletion of these conditions is necessary because vessel operators cannot comply with New Jersey's conditions in the September 24, 2008 Certification by February 6, 2009, as design modifications must be developed, evaluated for safety considerations, and approved by the American Bureau of Shipping or the U.S. Coast Guard before they can be installed. The Department also recognizes that it is not feasible for EPA to issue administrative orders prior to the February 6, 2009 effective date of the VGP, and the Department will not place vessel operators in the position of potentially operating in violation of this state requirement when compliance is not feasible. Therefore, the Department is now requesting that the USEPA delete conditions 1 and 2 included in the September 24, 2008 401 Water Quality Certification to avoid disruption of shipping operations in New Jersey waters. A revised certification deleting the prohibition on the discharge of graywater and bilgewater is provided below.

Section 401 Certification for the
USEPA Commercial Vessel General Permit
Revision Effective - February 2, 2009

The Department issued its original certification on September 24, 2008 based on a formal request from the USEPA Region 2 received on July 9, 2008. This certification was based on the draft permit issued on June 17, 2008 and materials available at the time and included in Docket ID No. EPA-HQ-OW-2008-0055 available at http://www.regulations.gov. On January 26, 2009, the Department submitted a revised 401 Water Quality Certification based on its determination that it was necessary to stay these conditions for three years. At this time, the Department has determined that these conditions should be deleted.

The Department certifies that discharges from vessels covered by the United States Environmental Protection Agency General Permit for discharges incidental to the normal operation of commercial vessels (VGP) will not contravene New Jersey's effluent limitations or standards as provided for under CWA Sections 301, 302, 303, 306, 307 and 401. These certifications shall expire five years after the date of issuance for the EPA's VGP unless the USEPA issues a modification to the VGP permit before the permit expires.

The Department urges USEPA as the permitting authority to expeditiously delete these conditions prior to February 6, 2009 to avoid disrupting vessel operations in New Jersey waters and our nationally important ports. Should you require further information regarding this Certification, please contact Leslie McGeorge or Debra Hammond at (609)292-1259.

Sincerely,

Scott Brubaker

Scott Brubaker, Acting Assistant Commissioner
Land Use Management

Attachments:

September 24, 2008 401 Water Quality Certification
January 26, 2009 Revised Water Quality Certification

c: Mark Mauriello, Acting Commissioner
Barbara Finazzo, EPA Region II, Director, Division of Environmental Planning and Protection
Jeff Gratz, USEPA Region II, Clean Water Regulatory Branch
Leslie McGeorge, Administrator, Water Monitoring and Standards
Jeffrey Reading, Assistant Director, Watershed Permitting Element
James Hamilton, Administrator, Water Compliance and Enforcement
Debra Hammond, Chief, Bureau of Water Quality Standards and Assessment
Jane Engel, DAG, NJ Division of Law