



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Re: Notification of Consultation and Coordination Regarding
the proposed Vessel General Permit (VGP) and Small Vessel General Permit (sVGP)

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally-recognized Indian tribes on proposed revisions to the EPA Vessel General Permit (VGP) and the proposed Small Vessel General Permit (sVGP). EPA has published for comment in the Federal Register a draft National Pollutant Discharge Elimination System (NPDES) VGP that would authorize discharges incidental to the normal operation of non-military and non-recreational vessels greater than or equal to 79 feet in length that operate in a capacity as a means of transportation. The draft VGP, if finalized, would replace the current VGP, which was issued in December 2008 and expires on December 19, 2013. EPA also has published for comment in the Federal Register (76 FR 76716, December 8, 2011) a draft NPDES Small Vessel General Permit (sVGP) to authorize discharges incidental to the normal operation of non-military and non-recreational vessels less than 79 feet in length. The draft sVGP, if finalized, will provide coverage for vessels less than 79 feet in length in the event that the P.L. 110-299 moratorium (subsequently extended by P.L. 111-215) expires as scheduled on December 18, 2013.

With this letter, EPA is formally initiating a process to consult with federally-recognized Indian tribes. This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (www.epa.gov/tribal/consultation/consult-policy.htm). EPA invites you and your designated consultation representative(s) to participate in this process. The EPA will host 2 National conference calls in January and end consultation on February 21, 2012.

Attached is a consultation plan for this action that includes a description of the action under consultation, and the process EPA intends to follow, including a timeline for the consultation and coordination period, and information on how you can provide input on this action. *This information is also available on EPA's Tribal Portal <http://www.epa.gov/tribal/consultation>.*

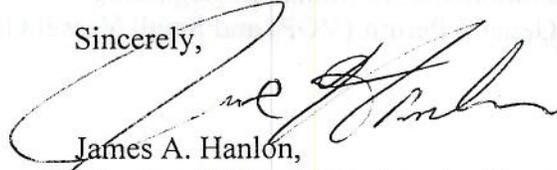
The official EPA contact person for this consultation and coordination process is Robin Danesi, Office of Wastewater Management, at (202) 564-1846, Danesi.robins@epa.gov. Please do not hesitate to contact her should you have any questions or if you would like to request alternate arrangements to the process outlined in the consultation plan.



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Whether or not you participate in this process, you will still have the opportunity to provide input on these permits during the public comment period. The proposed permits have been published in the Federal Register (76 FR 76716, December 8, 2011) and are accessible at regulations.gov.

Sincerely,



James A. Hanlon,
Director, Office of Wastewater Management

Enclosure

Cc: Tribal Environmental Directors
Regional Indian Coordinators

Consultation Plan

Background information on this initiative

EPA's NPDES permits for vessel discharges regulates discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation. Incidental discharges from the normal operation of vessels include, but are not limited to, ballast water, bilgewater, graywater (e.g., water from sinks, showers), and anti-foulant paints (and their leachate). These discharges may result in negative environmental impacts via the addition of traditional pollutants or, in some cases, by contributing to the spread of Aquatic Invasive Species (AIS).

The proposed Clean Water Act permits are the VGP, which covers discharges incidental to the normal operation of commercial vessels greater than 79 feet in length, and the draft sVGP, which covers incidental discharges from commercial vessels less than 79 feet in length. The permits do not regulate discharges from military vessels or recreational vessels. Instead, those discharges are regulated by other EPA programs under section 312 of the CWA.

EPA issued the original VGP in response to a District Court ruling which vacated a longstanding regulatory exemption for discharges incidental to the normal operation of vessels at 40 section CFR 122.3(a). *Northwest Env'tl. Advocates et al. v. United States EPA*, 2006 U.S. Dist. LEXIS 69476 (N.D. Cal. 2006). EPA developed the VGP to regulate incidental discharges from vessels operating in a capacity as a means of transportation. That permit was issued on December 18, 2008 and became effective on February 6, 2009.

The draft VGP, if finalized, replaces the current 2008 VGP when it expires in December 2013. It will also continue to regulate the 26 specific discharge categories that were contained in the 2008 permit and, for the first time, authorize the discharge of fish hold effluent. The draft VGP also contains numeric ballast water discharge limits for most vessels to reduce the risk of invasive species in U.S. waters. EPA, in collaboration with the U.S. Coast Guard, is committed to developing a strong ballast water management program based on the best available science.

The draft VGP also contains more stringent conditions for mechanical systems that may leak lubricants into the water, and exhaust gas scrubber washwater, which would reduce the amount of oil and other pollutants that enter U.S. waters. EPA is also taking comment on potentially more stringent requirements for bilgewater discharges. Finally, the proposed permit would reduce the administrative burden for vessel owners and operators, eliminating duplicative reporting requirements, clarifying that electronic recordkeeping may be used in lieu of paper records, and streamlining self-inspection requirements for vessels that are out of service for extended periods.

The draft sVGP would be the first under the CWA to address discharges incidental to the normal operation of commercial vessels less than 79 feet in length. Currently, a moratorium (P.L. 110-299 moratorium (subsequently extended by P.L. 111-215)) exempts all incidental discharges from such vessels, with the exception of ballast water, from having to obtain a permit until December 18, 2013. The draft sVGP specifies best management practices for several broad discharge management categories including fuel management, engine and oil control, solid and liquid maintenance, graywater management, fish hold effluent management, and ballast water management. These proposed practices would reduce the amount of pollutants that enter U.S. waters from small commercial vessels. The draft sVGP is shorter and simpler than the VGP, recognizing that small commercial vessels are substantially different in how they operate than their larger counterparts.

EPA expects to issue the VGP and sVGP final permits by November 2012, in order to provide the regulated community with sufficient time to come into compliance with any new requirements prior to the December 2013 effective date. The draft permits, permit fact sheets, and other supporting information are available at www.epa.gov/npdes/vessels.

Potential impacts to tribes

EPA does not have complete information on the typical size and number of boats that may be operated by tribes. However, EPA anticipates that tribes may more likely be impacted by the sVGP rather than the VGP, based on general knowledge that many tribes operate small boats for commercial fishing purposes. EPA believes that ultimately, regulation of these vessel discharges will benefit tribal communities by ensuring better management of vessel discharges and improved water quality protection.

The costs to tribes associated with the sVGP are related to any tribal commercial vessels subject to the sVGP that will be required to implement low-cost best management practices (BMPs) that reflect common-sense activities that most vessel owner/operators are already doing as part of good marine practice. It is important to note that recreational vessels, such as canoes, speedboats, and other pleasure crafts are not covered by these requirements.

Opportunities for tribes to participate

The tribal consultation and coordination process table below lays out the process and timeline for government-to-government consultation and coordination throughout the consultation process from the date of this letter to February 21, 2012.

Tribes may also participate in any public review and comment process. EPA is holding public meetings on this action. To access the public meeting schedule and for more information see EPA's web site: www.epa.gov/npdes/vessels

Tribes may access this letter, and related consultation information on the EPA Tribal Portal under Tribal Consultation Opportunities, located at: <http://yosemite.epa.gov/oia/TConsultation.nsf/TC?OpenView>. In addition, you may request to be added to the email listserv that has been created for this effort.

The combined goal for all of these efforts is to ensure that there is sufficient information for tribal officials to make an informed decision about the desire to continue with consultation and to understand how to provide informed input.

Tribal Consultation and Coordination Process and Timeline

Date	Event	Contact Information
January 12, 2012	<u>Tribal Information and consultation session</u> Detailed presentation of VGP and sVGP requirements	Presentation and Teleconference time: 2:00 pm- 3:00 EST Teleconference number and conference code: (202) 866-3188 Code: 2025640719 EPA Contact: Robin Danesi, 202-564-1846
January 31, 2012	<u>National Tribal Consultation Teleconference</u> Presentation of VGP and sVGP Requirements	Presentation and Teleconference time: 1:00 pm-2:00 pm EST Teleconference number and conference code: (202) 866-3188 Code: 2025640719 EPA Contact: Robin Danesi, 202-564-1846
Date of letter through February 21, 2012	Posting of all relevant information to EPA Tribal Portal (under <i>Tribal Consultation Opportunities</i>), including written responses to questions from tribes.	EPA Tribal Portal (<i>Tribal Consultation Opportunities</i>) at http://yosemite.epa.gov/oita/TConsultation.nsf/TC?OpenView



United States Environmental Protection Agency
Office of Water, Office of Wastewater Management
Water Permits Division



November 2011 • EPA-800-F-11-002
**Draft 2013 Vessel General Permit and Small Vessel
General Permit**

On November 30, 2011, the U.S. Environmental Protection Agency (EPA) signed the Draft 2013 National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP) and Small Vessel General Permit (sVGP).

Background

On March 30, 2005, the U.S. District Court for the Northern District of California (in *Northwest Environmental Advocates et al. v. EPA*) ruled that the EPA regulation excluding discharges incidental to the normal operation of a vessel from NPDES permitting exceeded the Agency's authority under the Clean Water Act (CWA). EPA appealed the District Court's decision, and on July 23, 2008, the Ninth Circuit upheld the decision. In response, EPA developed the Vessel General Permit to regulate discharges from vessels. EPA signed the VGP on December 18, 2008, with an effective date of February 6, 2009. The draft VGP currently being proposed would replace the current 2008 VGP when it expires on December 19, 2013.

The draft Small Vessel General Permit (sVGP), if finalized, would authorize discharges incidental to the normal operation of non-military and non-recreational vessels less than 79 feet in length. Currently, a Congressional moratorium (initiated by Public Law 110-299 and subsequently extended by Public Law 111-215) exempts all incidental discharges, with the exception of ballast water, from commercial fishing

vessels and non-recreational, non-military vessels less than 79 feet in length from having to obtain a Clean Water Act permit until December 18, 2013. The Small Vessel General Permit would provide permit coverage for these entities after that date.

Summary of the Proposed 2013 Draft VGP

The 2013 draft VGP would continue to regulate 26 specific discharge categories that were contained in the 2008 VGP, and for the first time, would authorize the discharge of fish hold effluent (which was previously exempt by Public Law 111-215).

For the first time, the draft VGP contains numeric ballast water discharge limits for most vessels. The draft VGP also contains more stringent effluent limits for oil to sea interfaces and exhaust gas scrubber washwater, which would improve environmental protection of U.S. waters. EPA has also improved the efficiency of several of the VGP's administrative requirements, including allowing electronic recordkeeping, requiring an annual report in lieu of the one-time report and annual noncompliance report, and requiring small vessel owners and/or operators to obtain coverage under

the VGP by completing and agreeing to the terms of a Permit Authorization and Record of Inspection form.

Summary of the Proposed 2013 Draft sVGP

The sVGP is organized by discharge management categories. All covered discharges are located in these categories. The discharge management categories in the draft sVGP include fuel management, engine and oil control, solid and liquid maintenance, graywater management, fish hold effluent management, and ballast water management.

All vessels eligible for coverage under the sVGP will receive coverage at the time and date of the expiration of the moratorium, December 18, 2013. As a requirement of this permit, vessel owner/operators must complete the sVGP Permit Authorization and Record of Inspection (PARI) form. The PARI form must be signed and maintained onboard the vessel for the entire permit term. Additionally, the permittee must conduct an annual self-inspection and certify that he or she has done so by signing the form each year.

How to Comment

EPA will accept comment on the proposed permits for 75 days after publication in the *Federal Register*. Comments for the draft VGP should go to Docket ID No. EPA-HQ-OW-2011-0141 and comments for the draft sVGP should go to EPA-HQ-OW-2011-150.

Comments may be submitted by one of the following methods:

1. Online at <http://www.regulations.gov>; Follow the online instructions for submitting comments.
2. Email ow-docket@epa.gov.

3. Mail to: Water Docket, U.S. Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue NW Washington DC 20460 Attention Docket ID No: EPA-HQ-OW-2011-{place appropriate number here}.

Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Public Meetings and Webcast

EPA will hold two public meetings and one webcast to give an overview of the proposed permits and to take comment. The meetings are scheduled as follows:

- *January 11, 2012*, 9:00 am – 5:00 pm (EST) or until all comments have been heard at EPA East 1153, 1201 Constitution Ave NW, Washington DC 20460.
- *January 23, 2012*, 10:00 am – 5:00 pm (CST) or until all comments have been heard at Ralph H. Metcalfe Federal Building, Room 331, 77 West Jackson Blvd, Chicago IL 60604.
- *Webcast TBD*. For more information on the upcoming webcast, visit <http://www.epa.gov/npdes/vessels>.

For More Information

Visit <http://www.epa.gov/npdes/vessels>.

For questions about the VGP, email VGP@epa.gov.

For questions about the sVGP, email sVGP@epa.gov.

UPDATED TIMELINE 12/20/11

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