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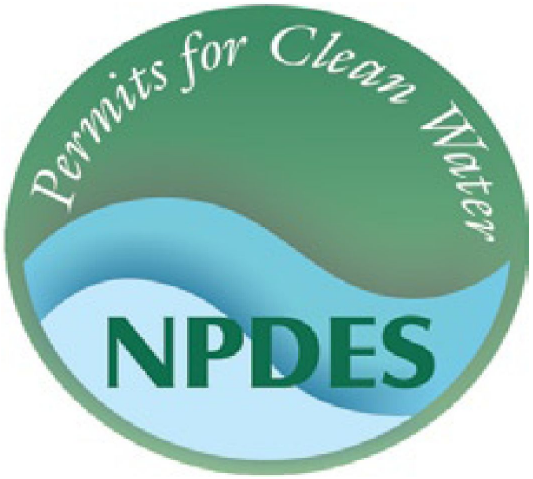

US EPA's

National Pollution Discharge

ELIMINATION System

Vessel General Permit

Vessel General Permit

- Since 1972 incidental discharges from vessels have been exempt by regulation
- 2006: an environmental group obtained federal court ruling that EPA lacks power to issue this exemption
- 2008 EPA proposed a nationwide permit governing incidental discharges from vessels
- Exemption expired on February 6, 2009

Vessel General Permit

Vessels may not discharge any pollutant into waters of the United States except as provided for in the VGP or individual permit

Six parts to the Permit

- General Conditions
- Effluent Limits
- Corrective Action Requirements
- Monitoring, Inspection, Recordkeeping, Reporting
- Vessel-Specific Vessel Requirements
- State and Other Supplemental Requirements

The Final Vessel General Permit
Where must you comply?

- “Waters of the United States”- up to 3 miles seaward from low tide mark.
- Applies no matter the flag of the vessel, and no matter how many time times or for what length of time, the vessel is in waters of the United States.
- Applies to vessels in port and idle for seasonal periods.

The Final Vessel General Permit
Why it matters

- Not just about ballast water but also other pollutants
- EPA enforcement and maybe Coast Guard
- Public access to compliance records
- Onerous civil and criminal penalties
- Citizens may sue for violations

Enforcement

Civil Enforcement

- Civil penalties of up to $37,500 per day of violation
- Prohibit vessel from operating until violation corrected
- Action be taken to correct harm from violation
- Compensatory action be taken to address environmental impacts related to the violations.

Criteria for assessment of Civil Penalties

- Seriousness of violations
- Economic benefit of noncompliance to violator
- History of previous violations
- Good faith efforts to comply to requirements
- Other factors as justice may require

Penalty Policy

- Gravity = $1000 x (A + B + C + D)

A - Significance: the degree of exceedance of effluent limits (scale of 0 to 20)

B - Environmental and Health: real or potential harm to humans or environment (scale of 0 to 50)

C - Number of violations: how many limits in the permit were violated (scale of 0 to 5, based on percentage)

D - Significance of non-limit violations

Criminal Penalties

- *Criminal penalties* for certain types of violations or for making false statements on documents required to be kept by the permit or CWA
  - **Fines**
  - **Jail Time**

Why Worry about Environmental Enforcement?

- Profits
- Publicity
- Prison/Penalties
- Criminal Liability may be based on Negligence
- Lack of ordinary care
- Focus on failure of management / training

"Knowing" violation required for felony under CWA

Conscious disregard of violations = Knowledge

- "deliberately ignore what would otherwise have been obvious"
- "failing to investigate if there are facts which require investigation"
- "Specific intent" not required to prove

Individual Criminal Liability Vicarious Liability of Ship Owner/Captain/Supervisors for Conduct of Crew

- Responsible Corporate Officer Doctrine
  - Corporate officers may be liable for the acts of their employees where they “stand in responsible relation to a public danger”

Other Relevant Statutes

- False Statements – 18 U.S.C. § 1001
- Conspiracy – 18 U.S.C.§ 371
- Obstruction of Justice – 18 U.S.C. §§ 1505-1510
- Aiding and Abetting18 U S C § 2
- Accessory after the Fact – 18 U.S.C. § 3

Citizen Lawsuits

- Section 505 of CWA
  - Gives private citizens and groups the power to enforce the law when government chooses not to do so, using all of the same powers given to the government except criminal enforcement.
- Citizen Suit Enforcement
  - Recovery of attorneys' fees and costs if the plaintiff "prevails"
  - Need not have harm to violate the CWA

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"Environmental law is written in such a way that a cartel of environmental advocacy groups is formed and maintained through citizen suits "

Vessel General Permit – Basics
What is required?

- Sets requirements for the management of 26 kinds of discharges
- Modifies and adds to requirements based on kind of vessels
- Imposes some notification requirements on some vessels
- Contains inspection and self reporting obligations

Vessel General Permit - 26 Discharges

1. Deck washdown and runoff and above water line hull cleaning
2. Bilge water
3. Ballast water
4. Anti fouling leachate from antifaouling hull coatings
5. Aqueous film forming foam (AFFF)
6. boiler/econimizer blowdown
7. Cathodic protection
8. Chain locker effluent
9. Controllable pitch propeller hydraulic fluid and thruster hydraulic fluid/other oil sea interfaces including discharges from paddle wheel propulsion pod lubrication
10. Distillation and reserve osmosis brine
11. Elevator pit effluent
12. Firemain systems
13. Freshwater layup

Vessel General Permit – 26 Discharges

14. Gas turbine wash water
15. Gray water
16. Motor gasoline and compensating discharge
17. Non-oily machinery wastewater
18. Refrigeration and air condensate discharge
19. Seawater cooling overboard discharge
20. Seawater piping biofouling prevention
21. Small boat engine wet exhaust
22. Sonar dome discharge
23. Underwater ship husbandry
24. Welldeck discharge
25. Graywater mixed with sewage from vessels
26. Exhaust gas scrubber wash water discharge

Examples of Pollutants covered

- Aquatic nuisance species
- Nutrients
- Pathogens (e.coli/fecal coliform
- Oil and grease
- Metals
- Biochemical Oxygen Demand
- pH
- Total suspended solids
- Other toxics
- Non toxics with toxic effects

Chain Locker Effluent

- Thoroughly wash down anchor chain while pulling in anchor.
- Thoroughly clean chain locker during drydocking (remove sediment, accumulated debris).
- If feasible, periodically clean, rinse, and/or pump out chain locker in mid-ocean.
- Must not rinse/clean chain lockers into waters subject to this permit unless needed for safety.

Vessel General Permit
What is not covered?

Discharges NOT covered by this permit are prohibited unless another permit allows them

Vessel General Permit
What is not covered?

- Discharges that are NOT “incidental to the normal operation of a vessel”
- Discharges regulated under individual permits (MSDs)
- Discharges from a lack of “good marine practice”
- Discharges from equipment not properly maintained
- Discharge caused by casualties, improper maintenance or negligence

Vessel General Permit Requirements A closer look

- Notice of intent to comply
- Inspection and identification of discharge streams
- Best Management Practices to manage 26 streams
- Reports of non-compliance
- Corrective action

Vessel General Permit Notice Of Intent (NOI)

- Must submit an eNOI if:
  - Vessel is greater than or equal to 300 gross tons
  - Vessel can hold or discharge 8 cubic meters of ballast water
- Publicly available information
- Agency can use this information to impose additional vessel specific requirements.

How do I comply?

- No fixed formula for compliance
- EPA has set standards for how each of the 26 incidental discharge streams must be managed:
  - Some require removal of the pollutant prior to discharge
  - Some require prevention of the discharge itself
- Two types of limits
  - Technology limits (what is possible to reduce pollutants in a discharge)
  - Water quality limits (what is needed to avoid degrading receiving waters)

How do I comply?

- The VGP does not have quantitative effluent standards that require monitoring and testing of streams and laboratory analysis
- There is no precise answer on how to make sure your discharge streams do not violate the VGP

How do I comply?

Key

- Planning
- Training
- Management
- Documentation

Best Management Practices (BMPs)

- best practicable control technology currently available
- best available technology economically achievable
- non-mandatory requirements may still be mandatory

NPDES - VGP - BMPs

Under the VGP the term "**minimize**" means reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are **technologically available** and **economically practicable** and achievable in light of the **best marine practice**.

Best Management Practices (BMPs)

- “Consistent with all other relevant laws”
- “Consistent with good marine practices that prevents excessive discharge….”
- “Minimize by practicing proper maintenance”
- Exchange ballast water “as early as practicable”
- “Using visual observations ...”

Best Management Practices (BMPs)

- "Most effective BMP is to conduct maintenance and training activities as far from shore as possible."
- "Vessels that generate wet exhaust must be maintained in good operating condition"
- BMP encourages all waste to be collected and disposed of properly
- Require that the oil-sea seals or fittings to be maintained in good working order to prevent leakage

How do I develop BMPs?

- Develop a BMP working group and institute a BMP policy statement for each BMP
- Identify and assess discharge streams
- Ensure good housekeeping
- Preventive maintenance is key
- Incorporate an inspection and training program and ensure it is implemented and followed
- Keep detailed and precise records
- Regular updates to vessels of BMP based on data

BMPs and Recordkeeping

- The EPA will expect the permit holder to prove it was using Best Management Practices
- Often this means keeping records to document compliance
- Regulations require that records be maintained and presented if requested
- False statements on record books is punishable by an imprisonment term

How do I comply?

- In addition to BMPs, the permit also requires that discharges must be controlled as necessary to meet applicable water quality standards

- Even if your vessel complies with BMPs, more stringent limitation might be necessary

NPDES VGP – Tanker Requirements

- IGS Scrubber discharge
- Deck Seal discharge
- Visual Sheen Test after every operation

Visible Sheen means a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color, iridescence, or oil slick on the surface

NPDES VGP – Tanker Requirements

Reprimand Procedure must be developed **for crew actions** that lead to **violations** of any effluent limit **set forth in this permit** or procedure set forth in the SMS to minimize the discharge of pollutants.

How do I comply?

As confirmed by EPA Water Quality Division the **Tanker Familiarization Course** and **Tanker Safety Course** required by STCW as endorsement for ship staff on Tankers, **is considered to meet the Operator and Advanced training requirements.**

Special requirements in certain States

- The VGP contains special conditions for 28 states
- Applies to discharges in those States' waters

Examples

Florida: stricter effluent limits on oil, fuel, and oily mixture discharge

Guam: avoidance of discharge in coral spawning areas during spawning

Inspection and Reporting obligations

- Inspection
  - Routine visual inspections
  - Quarterly inspections – requires sampling
  - Analytical monitoring
  - Comprehensive annual vessel inspections
  - Dry-dock inspections
- Reporting
  - Records of violation
- Recordkeeping
  - Annual non-compliance report

Corrective Action obligations

- VGP requires “corrective action”
- Triggers for corrective action – noncompliance
- Corrective action assessment
- Deadlines for corrective action
- Effect of corrective action

Certifications required for submissions to EPA

Why it matters!

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. *I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

REMEMBER

You CANNOT challenge

the validity of a permit provision

in an enforcement action!

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Thank you