Notices to Members

No. 10 2008/2009 - US Environmental Protection Agency (EPA) Vessel General Permit (VGP) Requirements

November 2008

Dear Sirs

US Environmental Protection Agency (EPA) Vessel General Permit (VGP) Requirements

From 19 December 2008, all commercial vessels 79 feet (24.08 metres) in length or greater with discharges of pollutants incidental to their normal operation, including but not limited to ballast water discharges, into the US three mile territorial sea or inland waters will become subject to the EPA final Vessel General Permit (VGP) requirements and will ultimately need individual permit coverage. Members whose vessels will be calling at US ports after this date are strongly recommended to begin development of a compliance programme based upon the requirements found in the EPA proposed VGP, while keeping in mind that changes to their compliance programme may need to be made after the final VGP is issued by the EPA.

General information on the VGP requirements, including the proposed VGP, can be accessed here.

Background

Since May 1973, EPA's regulations have excluded certain discharges "incidental to the normal operation of vessels", including ballast water, from the National Pollutant Discharge Elimination System (NPDES) programme under the Clean Water Act (CWA).

On July 23, the US Court of Appeals for the Ninth Circuit upheld a District Court decision which ruled that EPA exceeded its authority under the CWA in exempting certain marine discharges from the NPDES programme, and that EPA is now required to regulate discharges incidental to the normal operation of vessels under the CWA NPDES programme requirements. A draft general permit has been issued and the final regulation is expected to enter into force on 19 December 2008.

In order to meet its obligations under the CWA the EPA will issue a Vessel General Permit (VGP) covering all commercial vessels. It is not necessary to obtain a separate permit for each vessel. Instead, vessels will be covered by the VGP when vessel operators file Notices of Intent (NOIs) to receive coverage under the VGP. Vessels will then be required to comply with the requirements of the VGP.

A list of discharge types eligible for coverage under the VGP is contained in the Annex to this circular. The proposed permit incorporates the US Coast Guard's mandatory ballast water management and exchange standards (33 C.F.R. part 151) and supplemental ballast water requirements for vessels that carry ballast water. Furthermore, for all covered vessels, this proposed permit would also establish requirements for twenty-seven other discharge types including deck runoff, bilgewater discharge, and greywater discharge. For each discharge type, the permit establishes practices to be adopted dependant upon various conditions that may exist and, in some cases, effluent limits pertaining to the constituents found in the effluent. In addition to these standard or common requirements, the permit outlines further requirements for eight

specific classes of vessels, such as cruise ships, research vessels, oil and petroleum tankers, and large ferries. The proposed VGP also includes requirements for corrective actions, inspections, monitoring, recordkeeping and reporting requirements.

Initially, coverage will be national in scope i.e. one permit will cover all U.S. inland and territorial waters. To obtain authorisation to discharge under the VGP, the owner or operator of a vessel that is either 300 or more gross registered tons or has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water is required to submit a NOI to receive permit coverage , not before six months after the permit's issuance date, but no later than nine months after the permit's issuance date. Given the substantial number of NOIs expected to be filed, all vessels will initially be covered by the VGP at the time it is issued. Assuming that the implementation date for the VGP will remain 19 December 2008, vessels will be covered until such time as they file their NOI (between six to nine months) with all required vessels having to file an NOI no later than 19 September 2009. Coverage under the VGP will begin on the date the NOI is received by the EPA from each vessel, and will be valid for 5 years.

EPA is currently constructing an electronic NOI (eNOI) system to provide for electronic filing of NOIs. Once this system is available, filers will need to first register and then electronically submit the required information via EPA's Central Data Exchange. There will be no fees for the permit.

Once the VGP is issued, EPA will be the agency charged with determining whether a permit condition has been violated, although it is unclear at this time how EPA and the US Coast Guard will co-ordinate inspection and enforcement activities.

EPA's NPDES permitting process under the CWA authorises civil and criminal penalties for violations of the prohibition against the discharge of a pollutant without a permit, for discharges exceeding an effluent limit, and also allows for citizen suits against violators. Penalties under the CWA for violating the permit or not having a permit to discharge into the waters of the USA may be up to $27,500 per violation per day. There are also administrative classes of penalties and significant criminal penalties for any negligent or knowing violations.

It is not expected that the final VGP will be significantly different from the VGP already proposed, although it is unlikely that EPA will finalise the VGP requirements before early December 2008. Clearly the issues are complex. Members should, therefore, begin the development of a compliance programme now based upon the requirements found in the EPA proposed VGP.

Commercial fishing vessels of all sizes are excluded from the requirements and CWA permits are not required for vessels operating as a means of transportation beyond the three mile territorial sea limit. There is also a two year moratorium on vessels of less than 79 feet, although such vessels should make plans to comply following the end of the two year moratorium in 2010.

A further update will be provided once EPA has finalised the VGP. Additional information can also be found on the Association's website.

All Clubs in the International Group of P&I Clubs have issued similar circulars.

Yours faithfully
For: **West of England Insurance Services**
(Luxembourg) S.A.
(As Managers)

A Paulson
Director

[1] Vessels less than 300 gross registered tons and which do not have the capacity to hold or discharge more than 8 cubic metres of ballast water, do not need to submit a NOI. Such vessels automatically receive coverage under the VGP and are authorized to discharge "in accordance with the conditions set forth within the permit."

[2] A Class 1 penalty may be assessed in an amount of up to $10,000 per violation, not to exceed $25,000; a Class 2 penalty may be assessed in an amount of up to $10,000 per day per violation, but not to exceed $125,000.

Annex
Discharge types eligible for coverage under the VGP

Deck Washdown and Runoff
Bilge Water/Oily Water Separator Effluent
Ballast Water
Anti-Fouling Leachate from Anti-Fouling Hull Coatings/Hull Coating Leachate Aqueous Film Forming Foam (AFFF)
Boiler/Economizer Blowdown
Cathodic Protection
Chain Locker Effluent
Controllable Pitch Propeller Hydraulic Fluid
Distillation and Reverse Osmosis Brine
Elevator Pit Effluent
Firemain Systems
Freshwater Layup
Gas Turbine Wash Water
Greywater

Except that Greywater from commercial vessels operating on the Great Lakes within the meaning of CWA section 312 is excluded from the requirement to obtain an NPDES permit (see CWA section 502(6)(A)), and thus is not within the scope of this permit.

Motor Gasoline and Compensating Discharge
Non-Oily Machinery Wastewater
Refrigeration and Air Condensate Discharge
Rudder Bearing Lubrication Discharge
Seawater Cooling Overboard Discharge (Including Non-Contact Engine Cooling Water, Hydraulic System Cooling Water, Refrigeration Cooling Water)
Seawater Piping Biofouling Prevention
Small Boat Engine Wet Exhaust
Sonar Dome Discharge
Sterntube Oily Discharge
Underwater Ship Husbandry Discharges
Welldeck Discharges
Greywater Mixed with Sewage from Vessels
Exhaust Gas Scrubber Washwater Discharge

List is complete as of November 2008