



**MEMORANDUM OF UNDERSTANDING
BETWEEN THE**

**U.S. ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
AND THE**

**U.S. COAST GUARD,
OFFICE OF MARINE SAFETY, SECURITY AND STEWARDSHIP**

**For Collaboration on
Compliance Assistance, Compliance Monitoring, and Enforcement of
Vessel General Permit Requirements on Vessels**

I. PURPOSE/OBJECTIVES/ GOALS

The purpose of this Memorandum of Understanding (MOU) is to establish cooperation and coordination between the United States Environmental Protection Agency (EPA) and the United States Coast Guard (USCG) for implementing and enforcing the Vessel General Permit (VGP) requirements on vessels. EPA issued the VGP on December 18, 2008, 73 FR 79473, December 29, 2008 and February 12, 2009, 74 FR 7042 (for Alaska and Hawaii), pursuant to Clean Water Act (CWA) authority under the National Pollutant Discharge Elimination System (NPDES) program. VGP implementation will benefit from collaboration on compliance monitoring and enforcement of the VGP and compliance assistance efforts for the industry.

This MOU authorizes EPA and the USCG (Agencies) to utilize each other's expertise to further the goals and objectives of the VGP. By leveraging the strengths of the Agencies regarding technology, science, regulations and policy, compliance and enforcement, and knowledge of vessels, and by integrating activities, collaborative projects may be initiated which are of mutual interest.

Sharing of information, expertise, and technical assistance for VGP implementation is intended to reduce redundancy in government oversight of vessel activities and increase the effectiveness of each Agency's ability to accomplish its mission. The collaborative efforts initiated pursuant to this MOU are intended to be mutually beneficial and to enhance environmental protection.

II. BACKGROUND

The VGP was issued in response to a District Court ruling that vacated, as of February 6, 2009, a long-standing EPA regulation that excluded discharges incidental to the normal operation of a vessel from the need to obtain an NPDES permit. As a result, all such discharges are prohibited

unless authorized by an NPDES permit. Section 301 of the CWA prohibits the discharge of any pollutant from a point source into waters of the United States, including the contiguous zone or ocean, unless otherwise authorized under the CWA, such as in a permit issued under EPA's NPDES program. Certain discharges are not subject to the NPDES permit requirement because they are authorized under other statutory provisions. Sewage from vessels, for example, is regulated pursuant to a separate program and is not addressed in NPDES permits. However, unlike the discharge of other pollutants, discharges incidental to the normal operation of a vessel do not require an NPDES permit when discharged into the waters of the contiguous zone or ocean.

The VGP applies to specific discharges, which are identified in the VGP, that are incidental to the normal operation of a vessel and are discharged from non-recreational vessels of 79 feet or greater in length. In addition, the ballast water discharge provisions apply to any non-recreational vessel of less than 79 feet or commercial fishing vessel of any size discharging ballast water. If a vessel is greater than or equal to 300 gross tons or has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water, the owner/operator must submit a Notice of Intent (NOI) to be covered under the permit in accordance with the requirements of Part 10 of the VGP.

The VGP incorporates the USCG's mandatory ballast water management and exchange standards, adds additional ballast water management practices and provides effluent limits for other types of discharges including, but not limited to, deck runoff, bilge water, gray water, anti-fouling hull coatings and other discharge types. The VGP also establishes specific corrective actions, inspection and monitoring requirements, as well as recordkeeping and reporting requirements.

III. STATUTORY AUTHORITY

Section 501 of the CWA, 33 U.S.C. § 1361, authorizes the Administrator of EPA, with the consent of the head of any other agency of the United States, to utilize such officers and employees of such an agency as may be found necessary to assist in carrying out the purpose of the CWA.

14 U.S.C. § 141 authorizes the USCG to utilize its personnel and facilities to assist any federal agency, such as EPA, to perform any activity for which such personnel and facilities are especially qualified.

14 U.S.C. § 93(a)(20) authorizes the Commandant of the USCG to enter into cooperative agreements with other Federal agencies.

Section 104 of the CWA, 33 U.S.C. § 1254, instructs the Administrator of EPA to, among other things, cooperate with other Federal, State and local agencies to conduct and promote the coordination and acceleration of investigations, training, demonstrations, surveys and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution.

EPA issued the VGP pursuant to authority in the CWA section 402, 33 U.S.C. 1342.

Sections 308 and 309 of the CWA, 33 U.S.C. §§ 1318 & 1319, authorize EPA to obtain information and investigate noncompliance with permits issued pursuant to this authority, to enforce against violations of such permits and take action to require a violator to return to compliance.

IV. ARTICLES OF AGREEMENT

A. Interagency Coordination

The USCG and EPA, respectively, agree to cooperate on requests by the other Agency for available information, documents or testimony that may be useful in carrying out its responsibilities regarding vessel discharges under the VGP.

EPA and the USCG agree to communicate regularly to ensure the joint activities are conducted as expeditiously and as efficiently as possible and to resolve questions or issues in a timely manner. The Agencies agree that representatives from their respective headquarters offices should meet at least annually in order to, among other things, confirm effective progress in implementation of this MOU, resolve any concerns that have arisen since the previous meeting, and maintain continuity in communications between the Agencies. EPA Regions and USCG Districts and/or Sectors are also encouraged to meet regularly with their counterparts to coordinate efforts and share information.

Each Agency will make available to the other current lists of points of contact on the VGP. The list will include the title, office name, current address and phone number for points of contact at headquarters offices and in each EPA Region and USCG District. The current list is attached as Appendix I to this MOU. The Agencies agree to promptly inform each other when changes are made to the titles, offices, addresses and phone numbers. The Agencies agree to inform each other of the name of the designated point of contact, to the extent practicable.

EPA is responsible for interpretations of the VGP and the terms of the VGP. EPA intends to provide guidance and technical information to assist with VGP implementation.

B. Information Sharing and Data Tracking

The USCG and EPA agree to work jointly and cooperatively to develop reporting forms, USCG job aids, instructions for filling out job aids or other training materials, annual reports on compliance monitoring and resulting enforcement, and materials for industry including fact sheets and compliance assistance materials.

EPA and the USCG agree to assist each other with reports on vessel exams, deficiencies found and yearly numbers of exams, ideas to improve the compliance policy and guidance documents for vessels, and methods to notify the vessel owners of deficiencies and violations.

The USCG and EPA agree to provide technical expertise and support the exchange of information that each Agency maintains in data bases, information systems, clearing houses and other means that are not available to the other Agency, as necessary and appropriate and in accordance with the Freedom of Information Act (5 U.S.C. § 552), the Privacy Act (5 U.S.C. § 552a) and each Agency's Public Affairs Office.

EPA and the USCG agree to share information, including any information regarding vessel owners or operators, any samples and testing results, photographs, and inspection or screening logs, that may be useful in carrying out their respective responsibilities regarding vessel discharges under the VGP.

C. Training

EPA and the USCG intend to develop and make available training materials (web based, CD-rom, etc.) on the VGP compliance for Agency staff who will be involved in VGP implementation. The Agencies will also work together to identify available training materials that may help to ensure the personal safety of EPA inspectors and enforcement officers who may board vessels to verify compliance with the VGP.

D. Compliance Monitoring

EPA and the USCG agree to work together to develop job aids, Navigation and Vessel Inspection Circulars, and other documents to assist inspectors with identification of deficiencies of the VGP requirements.

The USCG agrees to incorporate a component into its existing inspection and Port State Control exam protocols and procedures that verify vessel compliance with safety, security, and pollution prevention regulations to assist with the verification of compliance of the VGP for domestic and foreign vessels. The scope of USCG inspections may be identified in USCG policy and guidance and associated checklists/job aids. The inspections may include review of inspection records, visual inspections, evaluation of compliance with effluent limits and taking samples. The USCG agrees to notify EPA when it identifies deficiencies.

The USCG and EPA agree to explore electronic methods to track deficiencies and share this information.

EPA and USCG retain the right to conduct compliance and enforcement inspections as each is authorized by law. EPA and the USCG agree to facilitate joint inspection efforts as appropriate.

E. Addressing Deficiencies and Enforcement

EPA intends to develop, with assistance from the USCG as appropriate, informal enforcement documents for the VGP, including letters or notices of deficiency or notices of violation. EPA or the USCG may use these documents to inform a vessel owner/operator of deficiencies of the VGP and encourage the owner/operator to address the identified problems. The USCG should

also inform the vessel owner/operator that it informs EPA of deficiencies and any actions taken or planned by the vessel operator to correct those deficiencies and that further enforcement action may be taken. EPA's enforcement authority under the CWA to address VGP violations and unauthorized discharges includes administrative orders, administrative penalties, and judicial action.

F. Compliance Assistance/Outreach

EPA and the USCG will work together to develop and disseminate outreach materials to inform the public of the existence of the VGP and its requirements, and to assist in compliance outreach.

The USCG and EPA intend to develop schedules and protocols for distribution of these materials on board vessels, at ports, and through other means of outreach to the regulated community and other members of the public.

EPA will make information on VGP compliance available to EPA and USCG inspectors and enforcement officers and will also post information on the VGP on EPA's website (currently at www.epa.gov/npdes/vessels). The USCG may post publicly available information on its website and may develop links from its website to information on EPA's website.

EPA and the USCG agree that handling complex inquiries from the public through a single repository will ensure national consistency on VGP interpretation and implementation. EPA has established a general email box at commercialvesselpermit@epa.gov to provide a central address for complex questions on the VGP. The Agencies agree to work together to develop a process to streamline handling of public inquiries to provide responses as promptly and accurately as possible. Initially, inquiries should be forwarded to this email box for development of a response, unless the inquiry has been previously raised and a response already developed. The USCG and EPA agree to work together to develop additional procedures, as needed, to handle inquiries on the VGP or other NPDES requirements.

G. Support Agreements

EPA and the USCG may develop Support Agreements, as needed, to assist with implementation of this MOU and accomplish tasks in accordance with this MOU. Support Agreements are detailed agreements that are negotiated by the USCG and EPA to work on specific issues under this MOU (Support Agreements). Support Agreements may contain specific roles, responsibilities and time lines that further define the activities or aspects described in this MOU, including sharing of information, compliance monitoring, compliance assistance, notification procedures, data collection and handling, identifying and addressing deficiencies, facilitating enforcement, and training. Support Agreements may provide additional guidance or protocols on any aspect of this MOU. Support Agreements may also include interagency agreements, contracts, and assistance agreements between USCG and EPA.

In addition to Headquarters Support Agreements, EPA Regions and USCG Districts may also develop Support Agreements to establish coordination and assistance efforts.

Regional/District/Local Support Agreements must be approved at EPA at a level no lower than the Branch Chief responsible for VGP compliance and enforcement in the appropriate region or

at Headquarters. For the USCG, Regional/District/Local Support Agreements must be approved at a level no lower than the USCG Sector Commander.

The USCG and EPA will, where appropriate, reference this MOU in any Support Agreement, amendments or letters of agreement that implement this MOU.

V. DEFINITIONS

For purposes of this MOU, the following definitions apply. Terms not defined here shall have the meaning provided in the VGP, 40 CFR Part 122, and the CWA.

Job Aid: A listing of items that may be examined as part of a VGP inspection.

Deficiency: A potential violation of the VGP.

Vessel General Permit (VGP): A permit issued by EPA pursuant to the CWA and 40 CFR Section 122.28 that became effective on February 6, 2009 and any subsequent EPA permits that modify, replace, or reissue that one.

VI. LIMITATIONS

A. EPA and the USCG agree that this MOU does not affect their existing authorities under any laws.

B. As required by the Anti Deficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the USCG and EPA in this MOU are subject to the availability of appropriated funds and each Agency's budget priorities. Nothing in this MOU, in and of itself, obligates EPA or the USCG to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, Support Agreement, or other financial obligation. Furthermore, nothing in the MOU exempts the Agencies from following their respective, as well as the other Agency's, policies governing competition of assistance agreements or contracts. Except as otherwise agreed to in advance in an interagency agreement (IA), the USCG and EPA agree not to submit a claim for compensation for services rendered to each other or any other Federal agency for activities either Agency undertakes in carrying out this MOU.

C. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving transfers, reimbursement or contribution of funds between the Agencies related to this MOU will be handled in accordance with applicable laws, regulations, and procedures and will be subject to separate subsidiary agreements that will be effected in writing by representative of both Agencies.

D. The cooperative measures set forth in this MOU are intended exclusively for the guidance of Federal government personnel. These policies and procedures may be superseded, modified, or terminated at any time without public notice. EPA and the USCG reserve the right to change the terms of this MOU without prior public notice.

E. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the USCG or EPA, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of EPA and the USCG.

F. Except as provided in Section VIII, “Intellectual property,” this MOU is not legally binding.

VII. PROPRIETARY AND CONFIDENTIAL INFORMATION

To carry out the joint work resulting from this MOU, the Agencies may need to disclose proprietary or confidential information to one another. For the purpose of this MOU, “proprietary or confidential information” is defined as information that an affected business claims to be business confidential or that is otherwise requested to be protected under applicable law and regulation. Effluent data is not “proprietary or confidential information.” Each of the Agencies agrees to clearly identify in writing any proprietary or confidential information that was initially disclosed verbally. The Agencies agree not to disclose or otherwise make available in any form whatsoever to any other person, firm, corporation, partnership, association or other entity information designated as proprietary or confidential information except as such information that may be subject to disclosure under the Freedom of Information Act (5 USC § 552) and EPA regulations at 40 CFR Part 2, or as otherwise authorized by law and regulation. Decisions on disclosure of proprietary or confidential information to the public under the Freedom of Information Act shall be made by the Agency to whom the information was originally submitted, consistent with applicable regulations.

VIII. INTELLECTUAL PROPERTY

The USCG and EPA patent and intellectual property policies shall apply to any work performed hereunder and appropriate patent and intellectual property provisions shall be included in any agreement entered into in order to implement a Support Agreement accepted under this MOU. Rights to inventions made by Federal employees shall be determined by the employee’s Agency. Rights in inventions and other intellectual property of technology vendors and contractors, subcontractors and cooperators shall be governed by provisions of their respective agreements with the USCG or EPA.

IX. DISPUTE RESOLUTION

It is the intent of the Agencies to resolve disagreements arising under this MOU or amendments and/or revisions to it, at the lowest appropriate level. However, if the Agencies are unable to resolve disagreements at the level of each party’s point of contact, it is the Agencies’ intent to state each Agency’s position in writing and present it to the other Agency’s Director or equivalent level for consideration and/or resolution.

X. EFFECTIVE DATE

This MOU is effective on the date of the last signature by the Agencies and shall remain effective from the signature date unless terminated in accordance with the terms set forth herein.

XI. MODIFICATION

This MOU may be modified at any time upon mutual written consent of the Agencies. Upon request by either Agency, Support Agreements will be reviewed by the appropriate headquarters office responsible for enforcement, compliance assistance or compliance monitoring policy to assure that they continue to reflect the appropriate understandings and procedures to provide for current needs and capabilities to carry out the responsibilities and roles set forth in this MOU.

XII. TERMINATION

Either Agency may terminate its participation in this MOU at any time by providing written notice to the other Agency at least 90 days in advance of the desired termination date.

If termination occurs, work under any active Support Agreement will be completed in accordance with the terms of the Support Agreement up to the end of the fiscal year in which the termination occurs.

APPROVED BY:

For U.S. Coast Guard

For U.S. Environmental Protection Agency

By: _____
Kevin S. Cook
RADM, U. S. Coast Guard
Director of Prevention Policy

By: _____
Cynthia Giles
Assistant Administrator
Enforcement and Compliance Assurance

Date: _____

Date: _____

ATTACHMENT I

Contacts

The USCG and EPA contact offices are:

USCG:

For the USCG VGP Program Manager:

Commandant
United States Coast Guard
2100 Second Street, S.W. STOP 7581
Washington, DC 20593-7581
Office of Vessel Activities (CG-543)
Phone # (202) 372-1220 (direct)
Phone # (202) 372-1251 (main)
CG543@uscg.mil

EPA

For Compliance Monitoring, Compliance Assistance, and Data Issues:

United States Environmental Protection Agency
Water Branch
Monitoring, Assistance, and Media Programs Division
Office of Compliance (2223A)
1200 Pennsylvania Ave NW
Washington DC 20460
Phone # (202) 564-2300

For Enforcement Issues:

United States Environmental Protection Agency
Water Enforcement Division (2243A)
Office of Civil Enforcement
1200 Pennsylvania Ave NW
Washington DC 20460
Phone # (202) 564-2240

EPA Regional Offices - VGP Enforcement/ Compliance Contact List

[Region 1](#) – Boston (serving Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)

Office of Environmental Stewardship
EPA New England Headquarters
5 Post Office Square
Boston, MA 02109-3912
617-918-1850

[Region 2](#) – New York (serving New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands)

Division of Enforcement and Compliance Assistance
EPA Regional Office
290 Broadway
New York, NY 10007-1866
212-637-4268

[Region 3](#) – Philadelphia (serving Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia)

Water Protection Division
EPA Region 3 Regional Office
1650 Arch Street
Philadelphia, PA 19103-2029
215- 814-2097

[Region 4](#) – Atlanta (serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee)

Water Protection Division
US EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303
404-562-9756

[Region 5](#) – Chicago (serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin)

Water Division
US EPA Region 5
Ralph Metcalfe Federal Building
77 West Jackson Blvd.
Chicago, IL 60604

312-886-0148

[Region 6](#) – Dallas (serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)

Compliance Assistance and Enforcement Division
EPA Region 6 Main Office:
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202
214-665-6579

[Region 7](#) - Kansas City (serving Iowa, Kansas, Missouri, and Nebraska)

Water Enforcement
US EPA, Region 7
901 N 5th Street
Kansas City, KS 66101
913- 551-7354

[Region 8](#) – Denver (serving Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming)

Office of Enforcement, Compliance and Environmental Justice
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
303-312-6393

[Region 9](#) - San Francisco (serving Arizona, California, Hawaii, Nevada, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Marshall Islands, and Republic of Palau)

Water Division
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA, 94105
415-972-357

[Region 10](#) – Seattle (serving Alaska, Idaho, Oregon, and Washington)

Office of Compliance and Enforcement
U.S. EPA, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
206-553-1146