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New EPA Vessel General Permit Includes Numeric Limitations for Ballast Water Discharges

After years of development, and the review of over 5,000 public comments, the Environmental Protection Agency (EPA) issued a final 2013 Vessel General Permit (VGP) on March 28. The new five-year permit, issued in draft on November 30, 2011, replaces the 2008 VGP, which expires on December 19, 2013. Because of a congressional moratorium, commercial fishing vessels are exempt from new permit regulations until December of 2014.

Most significantly, the new VGP includes specific numeric effluent limitations to control the discharge of living organisms. These measures further curb the spread of nonnative invasive species discharged into U.S. waters during ballast exchanges. Such ballast exchanges are at least partially responsible for introducing a number of foreign species to native waterways, where their proliferation continues to pose significant problems for the agencies that manage marine resources. Conservation groups estimate that it will cost more than \$1 billion over the next 10 years in the Great Lakes region alone to prevent the further spread of invasive zebra mussels, rounded gobies, and similar nonnative species.

For vessels subject to the 2013 permit, there are four compliance options:

1. Adopt treatment systems and techniques that meet the numeric discharge limits.
2. Discharge ballast water to a third party for transport to an approved water treatment facility.
3. Use treated/municipal water as ballast during initial uptake processes.
4. Do not discharge ballast water at all.

The EPA estimates that approximately 60,000 U.S. and 12,000 foreign ships are subject to the 2013 permit, with an overall compliance cost between \$7.2 million and \$23 million or approximately \$51 to \$7,104 per vessel. In considering the economic practicability of these options, the treatment alternative, while costly, is likely the most cost-effective. The new standards will be effective for new vessels (built after December 1, 2013) as of December 19. Older vessels received a staggered schedule for implementing the numeric effluent limits, which will be effective following their first drydocking after January 1, 2014 or 2016, depending on the size of the vessel. Further exemptions are also carved out for vessels operating exclusively in the Great Lakes.

In addition to the new technology-based limitations, vessels operating in U.S. waters are required to continue to implement the following mandatory management practices:

1. Avoid discharge of ballast water within or directly affecting marine sanctuaries, preserves, or parks, as well as shellfish beds and coral reefs.
2. Minimize or avoid the uptake of ballast water in the above-listed areas.
3. Clean ballast tanks regularly, either in mid-ocean, during controlled conditions in port, or while drydocked.
4. When safe, use ballast water pumps to empty the tanks, as opposed to gravity draining.

In addition to the new ballast water requirements, the VGP also mandates best management practices for all oil-to-sea interfaces and requires the use of Environmentally Acceptable Lubricants (EALs) in machinery and wiring following the initial drydock.

With respect to record-keeping requirements, the new permit is meant to streamline and simplify procedures:

1. Electronic record keeping is permissible, eliminating the need to file multiple versions of the same reports.
2. The one-time report and annual report required under the prior permit will be combined into a single yearly report.
3. Permit holders are required to complete and maintain a Permit Authorization and Record of Inspection onboard the vessel at all times. This serves as a standardized basis for future inspections.

The new VGP largely tracks the draft permit that the EPA released in November 2011 and is in line with International Maritime Organization (IMO) standards. Despite significant costs associated with new technology-based requirements, industry groups have welcomed the adoption of international standards, which provide some uniformity for global operations. A number of conservation groups, however, have criticized the EPA for not adopting more stringent requirements, particularly as they apply to the Great Lakes.

Due to successful lobbying efforts, vessels built before January 1, 2009, and operating exclusively in the Great Lakes are excluded from the VGP's ballast water requirements altogether; however, prior to entering the Great Lakes, vessels are still required to perform a ballast water exchange or saltwater flushing more than 200 nautical miles from shore and are subject to the numeric effluent limitations when the new permit takes effect.

Owners and managers should also be aware that, in addition to complying with the new VGP requirements, vessels operating in multiple jurisdictions or calling on multiple U.S. ports still must meet state-specific requirements, which can be more restrictive than the VGP. Under the Clean Water Act's certification process, individual states are allowed to develop and implement their own standards, provided they are at least as rigid as the federal standards applied by the EPA.

The Coast Guard and the EPA have signed an agreement and will jointly implement and enforce regulations under the VGP. All infractions discovered during a Coast Guard inspection will be entered into the Marine Information for Safety and Law Enforcement System and reported to the EPA for further investigation, even if an infraction was corrected at the time of inspection. Once an infraction is reported, the EPA will be the agency to investigate, issue citations and levy fines in accordance with the VGP. The Coast Guard reserves the right to exercise enforcement authority in areas of particular interest to the agency, particularly bilge

water discharges and ballast water discharges.

For more information on the development of the VGP, see: [EPA Issues Draft Vessel General Permit](#).

FOR MORE INFORMATION

For more information, please contact one of the following attorneys:

[Peter R. Knight](#)
(860) 275-8387
pknight@rc.com

[Christopher Foster](#)
(617) 557-5908
cfoster@rc.com

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