

## **New Federal Requirements for Coal Barges and Other Vessels**

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Coal barges and other vessels must comply with new federal requirements. These requirements are: (1) coal barges and other vessels that are 79 feet or longer must obtain a Vessel General (NPDES) Permit ("VGP") to operate and (2) workers must present a Transportation Worker Identification Credential ("TWIC") that is a tamper-resistant biometric credentials for unescorted access to secure areas of ports, coal barges and other vessels.

With regard to the VGP, vessels are included in the definition of "point source" under the federal Clean Water Act ("CWA"). The "normal operation" of vessels (coal barges and other vessels) enjoyed a regulatory exclusion from NPDES permitting requirements pursuant to 40 C.F.R. §122.3(a), until December 19, 2008. That is the effective date of a ruling invalidating this regulation, as specified in a recent federal court decision (that has previously been affirmed on the merits by the U.S. Court of Appeals for the 9th Circuit). As a result, a new VGP was issued by EPA is currently on appeal in the D.C. Circuit. It will be directly enforceable by EPA, even in states that have been delegated authority to administer other aspects of the NPDES program.

On the TWIC requirement issue, 33 C.F.R. § 101.514 and other applicable regulations were enacted as a security measure to ensure individuals who pose a threat do not gain unescorted access to secure areas of the nation's maritime transportation system. TWIC was established by Congress through the Maritime Transportation Security Act ("MTSA") and is administered by the Transportation Security Administration ("TSA") and U.S. Coast Guard. Enrollment and issuance began at the Port of Wilmington, Delaware October 16, 2007 and continued through calendar year 2008 and part of 2009. To obtain a TWIC, an individual must provide biographic and biometric information such as fingerprints, sit for a digital photograph and successfully pass a security threat assessment conducted by TSA. Once issued, TWIC cards must be renewed every 5 years.

Coal barge and vessel operators should be aware of the trend these federal requirements represent. Our federal government continues to move in a direction toward greater security measures and environmental regulation. Coal barge and vessel operators are likely to face more federal regulations affecting their industry in the future.