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## Coast Guard and EPA Tackle Enforcement Issues for Vessel General Permit Requirements

The Vessel General Permit (VGP) program applies to more than 61,000 commercial vessels in the United States and to more than 8,000 foreign vessels operating in the navigable waters of the United States. Upon implementation in February 2009, the VGP established operational, reporting, and record keeping requirements for 26 types of discharges incidental to the normal operation of these vessels, such as deck run-off, ballast water, and gray water. The VGP also established inspection and monitoring requirements, and requires corrective actions be taken to address compliance deficiencies.

On February 11, 2011, the Coast Guard and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) to outline parameters on compliance assistance, compliance monitoring, and enforcement of the permit requirements on vessels. While the VGP has been in effect for two years, enforcement has been sporadic. An MOU of this nature, however, signals that the agencies responsible for enforcement have worked out any differences in terms of enforcement approaches and priorities, and that enforcement will now become more focused and aggressive.

Under the MOU, the Coast Guard and the EPA agree to cooperate with requests by the other agency for available information, documents, or testimony useful in carrying out responsibilities under the VGP. However, the MOU clarifies that the EPA is responsible for interpreting the VGP and its terms. In addition, the agencies agree to work together to develop joint reporting forms, Coast Guard job aids, training materials, annual reports on compliance monitoring and enforcement, and materials for industry. Both organizations will also develop outreach programs to industry.

To monitor compliance with the VGP, the agencies will work together to develop procedures to assist Coast Guard inspectors with identification of deficiencies on vessels. The Coast Guard will incorporate a component into its existing vessel inspection and Port State Control protocol and procedures to verify compliance with VGP requirements on domestic and foreign vessels covered under the program. Inspections include a review of inspection records required under the VGP, visual inspections of vessels, and evaluation of compliance with effluent limit and sampling requirements under the VGP. Joint inspection efforts will be undertaken as appropriate.

Finally, both agencies have agreed to develop informal enforcement documents for the VGP, such as letters, notices of deficiency, or notices of violation. Under the MOU, if there are deficiencies noted from an inspection, the Coast Guard will inform the EPA of the deficiencies and any actions planned or taken by the vessel operator to correct the deficiencies. The Coast Guard will also inform the vessel operator that further enforcement action may be taken, which may include administrative orders, administrative penalties and civil or criminal judicial action.

Whatever differences there may have been between the EPA and the Coast Guard regarding enforcement authorities and priorities appear to have been resolved in favor of the EPA. Under the MOU, the EPA will be the agency determining appropriate enforcement actions to be taken for violations of the VGP. The MOU cites the Coast Guard's authority to assist other agencies and enter into cooperative agreements, but it does not refer to the Coast Guard's general enforcement authority, which is typically relied on by the Coast Guard to enforce all laws and treaties on the waters of the U.S. and the high seas. Instead, the MOU refers to the EPA's authority under the Clean Water Act to take enforcement actions for violations of permits issued under the National Pollution Discharge Elimination System (NPDES), of which the VGP is a component.

While the MOU does provide some information regarding federal efforts to enforce the VGP, it does not address enforcement actions that may be undertaken by the various states independent of federal efforts. In addition, because the VGP is implemented under the Clean Water Act and specifically the NPDES provisions of that Act, citizens may bring suits to enforce the provisions of the VGP against vessel operators.

### **Avoiding Violations of the VGP**

As stated above, the MOU is a signal that federal enforcement of the VGP program will be much more active and aggressive than in the past. In particular, compliance with record keeping requirements of the VGP is critical to ensure vessel schedules and operations will not be adversely impacted. (For more detailed information on the record keeping requirements of the VGP and their potential impact, see our

January 2009 alert, [New Vessel General Permit Means New Record-Keeping Headaches for Industry](#). Therefore, it is very important that vessel owners and operators, and particularly those who are required to certify compliance with inspection and monitoring requirements under the VGP, ensure that the VGP program they have is effective, efficient, and comprehensive, and that it fits their operations.

If you have any questions about VGP compliance, please contact a member of our [Environmental Law](#) or [Maritime](#) practice groups or one of the authors listed.

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