

April 2, 2013

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## EPA Issues 2013 Vessel General Permit

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On March 28, 2013, the United States Environmental Protection Agency (EPA) published a new Clean Water Act Vessel General Permit (2013 VGP) that regulates discharges from commercial vessels greater than or equal to 79 feet in length, excluding military and recreational vessels.<sup>1</sup> The current VGP was issued in December 2008 and expires on December 19, 2013. The new VGP will become effective on December 19, 2013. This alert describes the key features of the 2013 VGP, the main differences from the draft proposed in 2011, and some of the issues that it raises.

### Background of the VGP

The current, and first, VGP was issued by EPA on December 18, 2008.<sup>2</sup> A brief description of the Clean Water Act regulatory background and history of events that led to the creation of the VGP can be found in our prior alert, [EPA Issues Final Clean Water Act Permit for Incidental Discharges From Vessels \(Jan. 2009\)](#). In December 2011, the EPA released a draft of the 2013 VGP and submitted it to public comment. An analysis of the draft can be found in our alert, [EPA Issues Draft of the Next Vessel General Permit for Public Review – Comments Due By February 21, 2012 \(Dec. 2011\)](#). After receiving and responding to over 5,500 comments, the EPA released the 2013 VGP.

### The 2013 VGP

#### *Changes to definition of “new vessel.”*

One of the most significant changes from EPA’s draft VGP was the definition of “new vessel.” This change is significant because new build vessels are subject to the technology-based ballast water numeric limitations upon delivery. Although the EPA believed the technology was available at the time of the draft, the definition was changed based on comments received. The final rule delayed the date for which a vessel would be considered a new build vessel by 23 months -- from January 1, 2012, to December 1, 2013. EPA’s decision was based on concerns that there was not an adequate supply of approved ballast water management systems available.

#### *Changes to definition and regulatory regime for Lakers.*

The draft VGP defined “Lakers” as bulk carriers confined to the Great Lakes upstream of the Welland Canal constructed prior to January 1, 2009. After receiving comments that demonstrated that vessels that operate beyond the Welland Canal share many salient characteristics with the vessels that do not, the EPA modified its definition. The EPA abandoned the confined/unconfined distinction and the boundary of the Welland Canal, and the final rule defines a “Laker” as “existing bulk carriers that operate exclusively on the Laurentian Great Lakes” built prior to January 1, 2009. While these vessels are not required to meet the numeric ballast water discharge limits in the final rule, there are specific requirements that do apply to Lakers. In particular, Lakers must develop sediment management measures, minimize the amount of ballast taken in nearshore environments, and inspect sea chest screens and repair them as necessary.

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### *Small inland and seagoing vessels not subject to numeric ballast water discharge limits.*

The draft VGP would have required any vessel (not otherwise exempt) that carried more than 8 cubic meters of ballast water to meet the numeric ballast effluent limitations. However, in the final VGP, vessels less than 1600 Gross Registered Tons (3000 Gross Tons) do not have to meet the numeric ballast water discharge limits. The EPA reasoned that although systems exist to provide the possibility that small inland and seagoing vessels may comply with the numeric ballast water discharge limits, they do not represent the best available technology at this time. Unlike the Lakers, the inland and seagoing vessels are not subject to a separate limitation regime, but remain subject to the restrictions on all ballast discharges in section 2.2.3.3 of the VGP. The EPA encourages small inland and seagoing vessels to reduce the discharge of untreated ballast water.

### *Exhaust gas scrubber washwater discharge.*

In the draft VGP, the EPA proposed that exhaust gas scrubber washwater discharge must have a pH of no less than 6.5. The revised standard requires that discharge washwater must have a pH of no less than 6.0 measured at the ship's overboard discharge. This change was a result of the EPA's desire to better align with the IMO guidelines.<sup>3</sup>

### *More stringent bilgewater management requirements not applied.*

In response to several comments it received, the EPA removed the proposed bilgewater limit of 5 ppm for oil and grease. The EPA noted that it remains interested in further limiting bilgewater discharges in the future, but it will look to work in concert with the IMO to determine whether commercial systems that limit oil and grease to 5 ppm are available in the marketplace.

### *Annual bilgewater monitoring.*

New build vessels over 400 Gross Tons that discharge bilgewater into waters subject to the VGP must conduct annual bilgewater monitoring for oil concentration. Based on comments, the EPA reduced the burden on monitoring. To comply, the vessel owner/operator must collect samples to demonstrate treatment equipment maintenance and compliance with the VGP.

### *Municipal/potable water acceptable for ballast purposes.*

In response to several that it is common practice to obtain water from a municipal supply for ballast water, the EPA exempted drinking water obtained in the U.S. or Canada from further ballast water treatment. The EPA reasoned that drinking water subject to the Safe Drinking Water Act (and the Canadian equivalent) already goes through a strict treatment process that limits aquatic nuisance species and further treatment is unnecessary.

### *Some vessels not required to submit NOIs.*

An operator of a vessel is not required to submit a notice of intent (NOI) if the vessel is less than 300 tons and does not have the capacity to hold or discharge more than 8 cubic meters of ballast water. However, vessel owners/operators that are not required to submit NOIs must complete the VGP Permit Authorization and Record of Inspection.

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### Conclusion

This is the second iteration of the VGP. While most NPDES permits are individual permits and are issued by states under approved programs, so far no state has sought approval to issue individual NPDES permits to vessels, nor has EPA developed a program for individual NPDES applications for vessels. This suggests that the maritime industry is likely to continue to be regulated by way of a nationwide general permit, rather than individual permits.

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<sup>1</sup> Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel, prepublication notice (March 28, 2013). Available at: [http://www.epa.gov/npdes/pubs/vgp\\_frnotice2013.pdf](http://www.epa.gov/npdes/pubs/vgp_frnotice2013.pdf).

<sup>2</sup> 73 Fed. Reg. 79473 (Dec. 29, 2008).

<sup>3</sup> See 2009 Guidelines for Exhaust Gas Cleaning Systems (IMO Annex 9, Resolution MEPC. 184(59)), adopted July 17, 2009.