

Client Alert

February 2013

New Vessel General Permit

On January 16, 2013, the Environmental Protection Agency (EPA) submitted the final 2013 Vessel General Permit (VGP) to the White House Office of Management and Budget (OMB) for review. The 2013 VGP, which will be issued under the Clean Water Act (CWA), will replace the 2008 VGP and will regulate discharges incidental to the normal operation of commercial vessels greater than or equal to 79 feet in length. See 76 Fed. Reg. 76,716 (Dec. 8, 2011). EPA expects to issue the 2013 VGP by March 15, 2013, and for it to take effect on December 19, 2013.¹ In the meantime, vessels must meet interim requirements that are fundamentally the same as the 2008 VGP.

EPA issued the 2008 VGP as a CWA National Pollutant Discharge Elimination System (NPDES) permit in response to a court decision overturning EPA's prior exemption for discharges incidental to normal vessel operations. *Northwest Env'tl. Advocates v. EPA*, 537 F.3d 1006 (9th Cir. 2008). Shipping and other industry groups have expressed concern over difficulties involved in regulating mobile sources, such as vessels that regularly cross the waters of many states, under the NPDES permit program. These industries have expressed frustration that conditions imposed by the CWA section 401 state certification process, and the overlap of VGP conditions with U.S. Coast Guard requirements, can result in a confusing, impractical and costly patchwork of vessel regulation. According to the House Transportation and Infrastructure Committee's oversight plan for the 113th Congress, the committee is planning to continue to review and address concerns with the regulation of vessel discharges under the VGP.

Implications for Industry Sectors Involved in Marine Shipping

As proposed in 2011, the 2013 VGP would continue to regulate 26 specific discharge categories addressed by the 2008 VGP. Notably, the 2013 VGP is expected to complement ballast water management regulations issued by the U.S. Coast Guard in 2012. The proposed VGP would establish numeric ballast water discharge limits for living organisms in the ballast water of large commercial vessels, replacing the nonnumeric 2008 VGP limits with more stringent standards. EPA has proposed a staggered schedule for implementation of the numeric limits, requiring existing vessels with a ballast capacity of 1,500 to 5,000 cubic meters to comply by their first dry-docking after January 1, 2014, and vessels that were constructed before January 1, 2012, with a ballast capacity either less than 1,500 cubic meters or greater than 5,000 cubic meters, to comply by January 1, 2016. Vessels constructed after January 1, 2012, that are subject to the numeric limits would be required to meet those limits in U.S. waters beginning on the effective date of the 2013 VGP. Under the proposed 2013 VGP, these ballast water limits may be met through use of a treatment device, onshore treatment or potable water from the U.S. and Canada, or through a decision not to discharge the ballast water at all.

In addition, the proposed 2013 VGP includes numeric limits for exhaust gas scrubber effluent that are consistent with International Maritime Organization guidelines. The proposed 2013 VGP imposes more

¹ EPA has also issued a Draft Small Vessel General Permit (sVGP) for commercial vessels less than 79 feet and all commercial fishing vessels. 76 Fed. Reg. at 76,721. The sVGP would require specific best management practices to minimize discharges of pollutants, such as measures to manage fuels, oils, graywater, ballast water and fish hold effluent. The sVGP also includes provisions for recordkeeping and inspections.

stringent technology-based effluent limits in the form of best management practices for discharges of oil to sea interfaces (e.g., stern tubs, thrusters, hydraulic pitch propellers, wire rope lubrication) and increases the mandate for use of “environmentally acceptable lubricants” (EALs) in U.S. waters (e.g., vegetable oils, synthetic esters and polyalkylene glycols). The proposed 2013 VGP also contains monitoring requirements for certain larger vessels for ballast water, graywater and exhaust gas scrubber effluent that discharge into waters subject to the permit. For the first time, the VGP would authorize the discharge of fish hold effluent, and thereby would impose requirements on commercial fishing vessels that were previously exempt under Public Law 111-215. Finally, EPA has sought to improve the efficiency of VGP administrative requirements through provision of electronic recordkeeping, elimination of duplicative reporting and consolidated reporting for certain vessels.

How Hunton & Williams LLP Can Help

Hunton & Williams LLP has an extensive water and marine resources practice and regularly counsels and represents clients in all facets of CWA regulation. Hunton & Williams was named “Law Firm of the Year: Water Law Practice” in the 2013 edition of *U.S. News – Best Lawyers®* and received a Tier 1 national ranking as a “Best Law Firm: Environmental Law.” These designations follow the practice’s recent designation as a *Law360* Environmental Group of the Year for the third year in a row (2010-2012).

Hunton & Williams has a comprehensive, nationwide practice involving the Clean Water Act, with significant experience in NPDES permitting under Section 402, water quality under Section 303, Section 404 permits for discharges of dredged or fill material, and water supply concerns and water rights negotiations as well as Oil Pollution Act of 1990, National Environmental Policy Act and Endangered Species Act issues that often arise in connection with Clean Water Act permits and litigation. We regularly represent individual businesses and trade associations across numerous industries subject to CWA regulation in permitting, rulemaking, litigation and enforcement actions. We have long represented, counseled and defended members of the shipping industry in vessel pollution cases.

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