VESSEL GENERAL PERMITS

by Andrew J. Garger

Introduction

For over 30 years, vessels were excluded from United States Environmental Protection Agency (EPA) permit regulations that required permits for any "discharge of a pollutant" from a point source (a vessel is considered a point source). Lawsuits by environmental groups challenged this exclusion and since February 2009 the exemption was eliminated for most sea-going vessels operating in the United States territorial sea. These vessels are now subject to the Vessel General Permit (VGP), which is part of the National Pollution Discharge Elimination System (NPDES). The NPDES requires vessel owners and operators to meet certain effluent discharge limits and conduct various activities in connection with the effluent discharges, including inspections, monitoring, recordkeeping, reporting, and taking corrective actions for remedying permit violations.

The VGP is required for all vessels operating in U.S. waters with the exception of recreational vessels. Fishing vessels and commercial vessels less than 79 feet in length were not subject to the original requirements but will have to comply with the new VGP requirements in effect in 2013.

The VGP applies to almost all discharges incidental to the normal operation of a vessel including deck washdown and runoff, bilge water, antifouling hull coating leachate, aqueous film-forming foam, boiler blowdown, cathodic protection, chain locker effluent, fire main systems, and various other graywater and effluent discharges. In total, 26 types of effluent are regulated.

Complicating matters, the NPDES allows individual states and Native American Tribes to establish additional water quality standards that are included in the VGP. These standards, which vary from state to state and are often more stringent, create additional headaches for vessel operators. For instance, several states include various ballast water treatment standards and requirements. Some of these requirements have been deemed unachievable and have been successfully challenged in Court.

Obtaining the VGP

To be covered under the VGP, vessel owners must file a Notice of Intent (NOI) with the EPA for each vessel that will be operating in U.S. territorial waters. The NOI, which is essentially the application for cover under the VGP, is required for vessels greater than 300 gross tons or having a ballast water capacity of at least

8 cubic meters (2113 gallons). The NOI must include vessel owner and operator information, general voyage information, and discharge information. The NOI form can be found at the Environmental Protection Agency website (http://cfpub.epa.gov/npdes/vessels/enoi.cfm). The completed NOI needs to be filed (electronically or otherwise) with the EPA. An additional wrinkle: If your vessel is less than 300 gross tons and has the capacity to carry less than 8 cubic meters of ballast water, but is larger than 79 feet, you need not submit an NOI application, but your vessel must still comply with all applicable provisions of the VGP regulations.

The VGP itself is a general permit issued under the NPDES program. Vessels do not receive an individualized copy of the permit and it is not mandatory to keep a copy on board. However, the EPA recommends that a copy of the VGP be kept on board the vessel for reference and to ensure that all requirements are being met.

The EPA needs at least 30 days to process a NOI for coverage under the VGP for vessels which have not previously been scheduled. This requires some advance planning by vessel owners and operators.

Regulated Discharge Streams

The VGP covers the full array of potential discharge streams that can occur on a daily basis from a vessel. A good rule of thumb if you can't remember what's covered: if it can somehow get into the water from somewhere on the vessel it is covered.

Each of the 26 specific discharge streams covered under the VGP is addressed in detail in the VGP. What were formerly standard operating procedures subject to minimal regulation and common sense are now regulated down to small details with accompanying record keeping requirements. Here are some examples:

Deck Washdown and Runoff

For deck washdown, vessels must use cleaners and detergents that are phosphate free and non-toxic, and it is also recommended that they are biodegradable and minimally caustic. Vessels must also maintain tidy decks and minimize garbage and other debris from entering the water. Also, vessel owners must minimize deck washdowns while in port.

Bilge water

Unless it's not technologically feasible or is required for safety or stability, vessels greater than 400 gross tons that regularly sail outside the territorial seas (at least

once a month) are not permitted to discharge bilge water into waters within 1 nautical mile of shore, between 1 and 3 nautical miles unless sailing at least 6 knot or faster, or into other regulated waters. These discharges must not cause a visible sheen or otherwise be a harmful quantity. Vessel operators must also not use dispersants, detergents, emulsifiers, chemicals or other substances to remove the appearance of a visible sheen in their bilge water discharges.

Ballast Water

The VGP incorporates other Coast Guard regulations for mandatory ballast water management and exchange standards. The VGP also does not allow discharge of sediment from ballast water tanks into U.S. waters, requires saltwater flushing for all vessels with residual ballast water and sediment coming from outside the U. S. Exclusive Economic Zone waters, and also has additional requirements for vessels on U.S. Pacific Coast voyages.

If a vessel is capable, it must use shore based treatment if available and economically practical and achievable. All of the requirements are subject to a safety exemption and also do not mandate diversion of a vessel.

Anti-foulant Hull Coatings

Coatings cannot contain any material banned for use in the U.S. In choosing a coating, consideration must be given to the biocide with the lowest release rate. If a vessel spends more than 30 days in copper impaired water, owners and operators must consider a non-copper based alternative. Organotin coatings cannot be used and if they are already applied must be removed or overcoated.

Graywater

For graywater, discharges, specific treatment requirements are required for cruise ships; the vessel must eliminate the discharge of kitchen oils and phosphate-free soaps must be used.

Other VGP Requirements

Complying with the VGP includes additional record keeping, reporting, training, corrective actions, and inspections.

Record Keeping and Reporting

Numerous records must be kept to comply with the VGP. These include owner and voyage information, a voyage log, records of any violation of any effluent limit and corrective action taken, a record of routine inspections and any

deficiencies or problems found, analytical monitoring results, a log of findings from annual inspections, a record of any specific requirements given to the vessel by the EPA or state agencies, and additional maintenance, certification, and safety exemption claims.

Certain discharges must always be reported, including ballast water release, spills that endanger health or welfare, spills of oily materials, and a report of annual noncompliance. A "one time" report is also required for all vessels approximately three years after obtaining VGP coverage.

While the amount of record keeping is potentially onerous, the EPA does state that it does not intend to require separate records from that which is already required by the Coast Guard. Rather, vessels can harmonize their recordkeeping practices, where appropriate, so that records are not unnecessarily duplicative. For example, information can be logged with maintenance records, the ship's log, in existing ISM/SMS plans or other additional recordkeeping documentation already maintained by the vessel.

Corrective Actions

If you violate any of the effluent discharge limits in the VGP, you must take corrective action. This includes an assessment investigating the nature, cause, and potential options for eliminating the problems. Depending upon the extent of the problem, the VGP provides deadlines for resolving the issues and failure to take corrective action within the specified time period is another permit violation. The VGP contains a full description of the corrective action process. The allowed time for minor changes is two weeks, for major changes requiring new parts three months, and for major renovations before relaunching from the next drydocking. A record must be kept of all corrective actions.

Inspections

Various types of inspections are required under the VGP, including routine visual inspections of all accessible areas of the vessel in order to verify that effluent limits are being met. A more comprehensive annual inspection must be conducted once every 12 months that must focus on areas likely to generate harmful pollution or violate effluent limits. Drydock inspections are also required. Special monitoring is also required for select cruise ships and vessels with experimental ballast water treatment systems. The findings of each routine visual inspection and annual inspection must be documented in the official ship logbook or as a component of other recordkeeping documentation.

Enforcement of the VGP

Under a Memorandum of Understanding between the U.S. Coast Guard and the EPA, the Coast Guard is responsible for enforcing the VGP as part of its normal Port State Control inspections. It remains uncertain as to when the Coast Guard will incorporate VGP verification into its inspections, but vessel owners and operators must now be prepared for such inspections.

Failure to comply with VGP requirements can result in civil and criminal penalties.

Summary of the Proposed 2013 Draft VGP

The current version of the VGP expires in December 2013. The EPA is currently considering comments on two proposed VGP's. The draft VGP and draft Small Vessel General Permit (sVGP) were proposed in November 2011 and comments were due by February 21, 2012. EPA intends to finalize the draft VGP's by November 30, 2012, more than a year in advance of the effective date of December 19, 2013 (when the current VGP expires) to allow time for an orderly phase in of the new requirements.

The draft VGP would continue to regulate 26 specific discharge categories that were contained in the current VGP, and would also regulate the discharge of fish hold effluent (which was previously exempt). Some other potential changes include the application of the International Maritime Organization (IMO) ballast water standards that contain numeric ballast water discharge limits for most vessels. Ballast water standards could be met by treating the ballast water with an approved treatment device, utilizing onshore ballast water treatment, utilizing potable water from the US or Canada as ballast water, or no discharge of ballast water at all. The draft VGP also contains more stringent effluent limits for oil to sea interfaces and exhaust gas scrubber washwater.

The EPA is also suggesting improvements of several of the VGP's administrative requirements, including allowing electronic recordkeeping, requiring an annual report in lieu of the one-time report and only one annual noncompliance report. Under certain circumstances multiple unmanned unpowered barges could be included in one annual report.

For small vessels, the draft sVGP would regulate discharges incidental to the normal operation of certain vessels less than 79 feet in length if the current Congressional moratorium for these vessels is not extended beyond December 18, 2013. This moratorium exempts all incidental discharges, with the exception of ballast water, from commercial fishing vessels and non-recreational, non-military vessels less than 79 feet in length from having to obtain a Clean Water

Act permit. Unless the moratorium is extended the sVGP would provide permit coverage for these entities after that date.

Similar to the VGP, the sVGP is organized by discharge management categories. All covered discharges are located in these categories. The discharge management categories in the draft sVGP include fuel management, engine and oil control, solid and liquid maintenance, graywater management, fish hold effluent management, and ballast water management. As a requirement of this permit, vessel owner/operators must complete the sVGP Permit Authorization and Record of Inspection (PARI) form. Additionally, the permittee must conduct an annual self-inspection and certify that he or she has done so by signing the form each year.

Possible Changes to the VGP Requirements

While it is likely that the VGP will continued to be required, there are Congressional efforts to reform the regulation of vessel discharges, which could reign in the individual state requirements to ensure that states or Indian Tribes do not add contradictory or unachievable conditions to the VGP and sVGP.

Additional Information

Further information regarding the VGP is available on EPA's webpage at http://cfpub.epa.gov/npdes/vessels/vgpermit.cfm#2008. Any additional questions can be submitted to Commercialvesselpermit@epa.gov.