



**MARCH 09, 2011**

**CIRCULAR NO. 11/11**

**TO MEMBERS OF THE ASSOCIATION**

**Dear Member:**

**US ENVIRONMENTAL PROTECTION AGENCY (EPA) AND COAST GUARD: AGREEMENT TO COORDINATE EFFORTS TO ENSURE COMPLIANCE WITH EPA VESSEL GENERAL PERMIT (VGP) FOR DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF VESSELS**

Members whose vessels trade in US waters should be aware that, effective March 13, 2011, the US Coast Guard will begin to enforce broad new EPA regulations which forbid the discharge of 26 different substances and liquids into US waters, most of which had not been previously banned.

On February 11, 2011, the US Environmental Protection Agency (EPA) and the US Coast Guard (USCG) signed a memorandum of undertaking (MOU) outlining steps the agencies will take to better coordinate efforts to prevent illegal discharges of pollutants from more than the 61,000 commercial ships based in the US and more than 8,000 foreign ships operating from time-to-time in US waters.

Under the MOU, the Coast Guard has agreed to incorporate components of EPA's Vessel General Permit (VGP) Program into its existing inspection protocols and procedures to help the United States address vessel pollution in US waters. The agencies have also agreed to improve existing data requirements so that information on potential violations observed during inspections can be sent to EPA for evaluation and follow up.

**Background**

As more fully set forth in Club Circular No. 23/08 of November 21, 2008, the EPA issued the VGP on December 18, 2008 to regulate discharges incidental to the normal operation of a vessel under the Clean Water Act (CWA), which prohibits the discharge of any pollutant to waters of the United States from any point source without a National Pollutant Discharge Elimination System (NPDES) permit. The permit became effective on December 19, 2008.

The EPA established and implemented the VGP in response to a District Court ruling that vacated, as of February 6, 2009, a long-standing EPA regulation that excluded discharges incidental to the normal operation of a vessel from the need to obtain an NPDES permit. As a result, most vessels operating in US waters must have some form of NPDES permit coverage or else they will be discharging, and consequently operating, illegally in the waters of the United States.

The VGP applies to discharges incidental to the normal operation of all non-recreational vessels of 79 feet or greater in length. In addition, the ballast water discharge provisions also apply to any non-recreational vessel of less than 79 feet or commercial fishing vessel of any size discharging ballast water.



The VGP covers 26 different types of discharges, many of which have not previously been covered by US regulations. (See Annex from Club Circular dated, November 21, 2008, attached hereto). For ballast water discharges, the VGP incorporates the Coast Guard's mandatory ballast water management standards and has several additional mandatory management requirements. The VGP also has additional requirements for eight vessel types such as large and medium-sized cruise vessels and oil tankers.

Under the CWA, discharges of pollutants from vessels that are not covered by the VGP are unlawful unless they are separately covered under another CWA permit or are exempt from permitting requirements (for example, sewage from vessels, incidental discharges from a vessel of the armed forces, or discharges in compliance with the instructions of a federal on-scene coordinator).

The VGP requires vessel owners/operators to perform training, inspections, monitoring, and reporting, and take assessments and corrective actions as necessary. It also requires vessel owners or operators to submit a Notice of Intent (NOI) to receive permit coverage and submit a one-time permit report between 30 and 36 months after obtaining permit coverage.

The EPA has posted electronic copies of the VGP and other related information, including VGP Fact Sheets, on the EPA's NPDES – Vessel Discharges webpage at:

[www.epa.gov/npdes/vessels](http://www.epa.gov/npdes/vessels).

## **The EPA-USCG MOU**

Under the MOU, the EPA and USCG:

- (1) Agree generally to share information and data tracking, including any information regarding vessel owners or operators, any samples or testing results, photographers, and inspection or screening logs that may be useful in carrying out their responsibilities managing vessel discharges under the VGP.

To this end, they agree to work together to develop uniform reporting forms, training materials and annual reports on compliance monitoring and resulting enforcement steps. They further agree to assist each other with reports on vessel exams and deficiencies found, number of exams and ideas to improve compliance policy and methods of notifying owners of deficiencies and violations;

- (2) They agree to coordinate EPA and USCG training materials for personnel;
- (3) They agree to develop coordinated job aids such as circulars to assist inspectors in identifying deficiencies of the VGP requirements. Specifically, the USCG agrees to incorporate a component into its existing inspection and port state control exam protocols and procedures that verify vessel compliance with safety, security, and pollution prevention regulations to assist with verification of compliance with the VGP for domestic and foreign vessels. This may include review of inspection records, visual inspections, evaluation of compliance with effluent limits and taking samples;
- (4) The EPA agrees to develop informal notices of violation to alert vessel operators of deficiencies and encourage them to address identified problems. The USCG agrees to inform the vessel owners that it is cooperating under the EPA in reporting violations.



- (5) The EPA and USCG agree to work together in developing “outreach” materials to inform the public of the existence of the VGP, and to disseminate these materials on board vessels and ports and elsewhere to alert the regulated community.
- (6) The EPA and USCG agree to enter into such other and further support agreements as may be needed to implement the MOU and enforce the VGP Program.

### **USCG enforcement date**

As a practical matter, the USCG will commence enforcement activities on March 13, 2011.

### **Boarding procedures**

USCG boarding officers will first establish the applicability of the VGP to the vessel. If the VGP is applicable the boarding officer will ask a series of questions, request documentation and inspect the ship. The details are included in a “Job Aid” provided to boarding officers. In general the inspector will seek to answer the following questions:

- (1) *Are the officers and crew familiar with the requirements of the VGP?*
- (2) *Does the vessel have an NOI?*
- (3) *Are there records of the required routine inspections?*
- (4) *Are corrective actions documented?*
- (5) *Does the vessel have a proper ballast water management plan?*
- (6) *Are bilge water discharges properly carried out and recorded?*
- (7) *Do the deck and work areas demonstrate good housekeeping practices?*

For large and medium cruise ships there is one additional question:

*Is gray water managed and documented?*

### **Enforcement policy**

If VGP deficiencies are noted the boarding officer must take the following actions:

- (1) Encourage vessel operators to correct VGP deficiencies by the conclusion of the vessel inspection / PSC exam, if feasible, i.e. “corrected on the spot.”
- (2) Inform the vessel’s master/person-in-charge of all detected deficiencies, including those “corrected on the spot”, and record the findings using routine deficiency reporting documents, such as the CG-835 or PSC Form B, as appropriate.
- (3) Inform the vessel’s master/person-in-charge that the Coast Guard will report the VGP related deficiencies to the EPA, as well as any actions by the vessel taken or planned to address them, and that EPA’s enforcement authority under the CWA to address



VGP violations and unauthorized discharges includes administrative orders, administrative penalties, and judicial action.

### **Recommendations**

Members whose vessels will be calling at US ports should take all reasonable steps to ensure that they comply with these VGP requirements. Enforcement of marine pollution regulation has increased dramatically in recent years with oily water separation prosecution and the climate is far different in the aftermath of the DEEPWATER HORIZON incident, and there is serious risk of willful and/or criminal liabilities for any non-compliance with VGP requirements.

If Members have any questions, they are encouraged to contact the Managers.

Yours faithfully,

Joseph E.M. Hughes, Chairman & CEO  
Shipowners Claims Bureau, Inc., Managers for  
THE AMERICAN CLUB



**ANNEX**  
**(to Circular No 11/11 of March 09, 2011)**

Discharge types eligible for coverage under the VGP

- Deck Washdown and Runoff
- Bilge water/Oily Water Separator Effluent
- Ballast Water
- Anti-fouling Leachate from Anti-Fouling Hull Coatings/Hull Coating Leachate,
- Aqueous Film Forming Foam (AFFF)
- Boiler/Economizer Blowdown
- Cathodic Protection
- Chain Locker Effluent
- Controllable Pitch Propeller Hydraulic Fluid
- Distillation and Reverse Osmosis Brine
- Elevator Pit Effluent
- Firemain Systems
- Freshwater Layup
- Gas Turbine Wash Water
- Graywater

Except that Graywater from commercial vessels operating on the Great Lakes within the meaning of CWA section 312 is excluded from the requirement to obtain an NPDES permit (see CWA section 502(6)(A)), and thus is not within the scope of this permit.

- Motor Gasoline and Compensating Discharge
- Non-Oily Machinery Wastewater
- Refrigeration and Air Condensate Discharge
- Rudder Bearing Lubrication Discharge
- Seawater Cooling Overboard Discharge (Including Non-Contact Engine Cooling Water; Hydraulic System Cooling Water, Refrigeration Cooling Water)
- Seawater Piping Biofouling Prevention
- Small Boat Engine Wet Exhaust
- Sonar Dome Discharge
- Sterntube Oily Discharge
- Underwater Ship Husbandry Discharges
- Weldeck Discharges
- Graywater Mixed with Sewage from Vessels
- Exhaust Gas Scrubber Washwater Discharge

*The above list is complete as of November 2008.*