

18 November 2008

**TO ALL MEMBERS OF CLASS 3  
PROTECTION AND INDEMNITY**

**TO ALL MEMBERS OF CLASS 6  
FREIGHT, DEMURRAGE AND DEFENCE**

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Dear Sirs

**US Environmental Protection Agency (EPA) Vessel General Permit (VGP) requirements**

From 19 December 2008, all commercial vessels 79 feet (24.08 metres) in length or greater with discharges of pollutants incidental to their normal operation, including but not limited to ballast water discharges, within the US three mile territorial sea or inland waters will become subject to the US Environmental Protection Agency (EPA) final Vessel General Permit (VGP) requirements. This means that, in due course, those vessels will require permit coverage.

This circular seeks to explain the background to VGPs. In the meantime, Members whose vessels will be calling at US ports after 19 December 2008 are strongly recommended to begin development of a compliance programme based upon the requirements found in the EPA's proposed VGP, while keeping in mind that changes to their compliance programme may need to be made after the final VGP is issued by the EPA.

General information on the VGP requirements, including the proposed VGP, can be accessed at: [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=350](http://cfpub.epa.gov/npdes/home.cfm?program_id=350)

**Background**

Since May 1973, the EPA's regulations have excluded certain discharges "incidental to the normal operation of vessels," including ballast water, from the National Pollutant Discharge Elimination System (NPDES) programme under the Clean Water Act (CWA).

On July 23 2008, the U.S. Court of Appeals for the Ninth Circuit upheld a District Court decision which ruled that the EPA had exceeded its authority under the CWA in exempting certain marine discharges from the NPDES programme. The Court ruled that the EPA was now required to regulate discharges incidental to the normal operation of vessels under the CWA NPDES programme's requirements.

**Draft VGP**

For the moment, the EPA has issued a proposed VGP, while the final regulation is expected to enter into force on 19 December 2008.

It is not expected that the final VGP will be significantly different from the proposed VGP; although it is unlikely that the EPA will finalise the VGP requirements before early December 2008. Clearly the issues are complex. In the meantime, Members should, therefore, begin the development of a compliance programme based upon the requirements found in the EPA proposed VGP.

A list of discharge types subject to coverage under the VGP is contained in the Annex to this circular.

The proposed VGP incorporates the US Coast Guard's mandatory ballast water management and exchange standards (33 C.F.R. part 151) and supplemental ballast water requirements for vessels that carry ballast water. Furthermore, for all affected vessels, the proposed VGP would also establish requirements for 27 other discharge types; including deck water run-off, bilge water discharge, and gray water discharge. For each discharge type, the VGP establishes practices to be adopted dependent upon various conditions that may exist and, in some cases, effluent limits pertaining to the constituents found in the effluent. In addition to these standard or common requirements, the VGP outlines further requirements for 8 specific classes of vessels, such as cruise ships, research vessels, oil and petroleum tankers, and large ferries. The proposed VGP also includes requirements for corrective actions, inspections, monitoring, recordkeeping and reporting.

### **Current Proposed Procedure**

The current proposed procedure (although this is not expected to change) is set out below in more detail.

In order to meet its obligations under the CWA, the EPA will issue a "blanket" Vessel General Permit (VGP) covering all commercial vessels.

Given the substantial number involved, vessels will initially be covered by the "blanket" VGP at the time it is issued. Assuming that the implementation date for the VGP remains 19 December 2008, vessels will then be covered until such time as they apply for their own specific VGP.

Members, therefore, do not need to apply for a VGP at this stage but they will be subject to the blanket VGP's requirements (as/when their vessels call within the US) and must comply with its terms (see [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=350](http://cfpub.epa.gov/npdes/home.cfm?program_id=350) for general information on the VGP requirements).

Going forward, Members will need to obtain VGP coverage for their specific vessels (which are subject to the CWA) calling within the US.

To obtain its VGP coverage (which will give authorisation to discharge under the VGP), the owner or operator of a vessel that is either 300 or more gross registered tons or has the capacity to hold or discharge more than 8 cubic metres (2,113 gallons) of ballast water is required to submit a Notice of Intent (NOI) to receive permit coverage.<sup>1</sup> In turn, Members will need to file a NOI no earlier than 6 months but no later than 9 months from the "blanket" VGP coverage (with an absolute deadline of applying by no later than 19 September 2009). Coverage under this vessel specific VGP will begin on the date the NOI is received by the EPA for each vessel and will be valid for 5 years. The EPA is currently constructing an electronic NOI (eNOI) system to provide for electronic filing of

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<sup>1</sup> Vessels less than 300 gross registered tons and which do not have the capacity to hold or discharge more than 8 cubic metres of ballast water do not need to submit a NOI. Such vessels automatically receive coverage under the blanket VGP and are authorised to discharge "in accordance with the conditions set forth within the permit".

NOIs. Once this system is available, filers will need first to register and then to submit electronically the required information via the EPA's Central Data Exchange at <http://cdx.epa.gov/warning.asp>. There will be no fee charged for the permit.

Members will not need to obtain a separate permit for each vessel. Instead, vessels will be covered by the VGP when vessel operators file NOIs for all of their vessels which require a VGP. Again, vessels will then be required to comply with the requirements of the VGP.

Initially, coverage will be national in scope i.e. one permit will cover all U.S. inland and territorial waters.

Commercial fishing vessels of all sizes are excluded from the requirements and CWA permits are not required for vessels operating as a means of transportation beyond the three mile territorial sea limit. There is also a two year moratorium on vessels of less than 79 feet, although such vessels should make plans to comply following the end of the two year moratorium in 2010.

Once the VGP is issued, the EPA will be the agency charged with determining whether a permit condition has been violated, although it is unclear at this time how the EPA and the US Coast Guard will co-ordinate inspection and enforcement activities.

### **Penalties**

The CWA provides for the EPA's NPDES to impose civil and criminal penalties for violations of the prohibition on the discharge of a pollutant without a VGP, for discharges exceeding an effluent limit, and also allows for citizen suits against violators. Penalties under the CWA for violating the permit or not having a permit to discharge into the waters of the U.S. may be up to \$27,500 per violation per day. There are also administrative classes of penalties<sup>2</sup> and significant criminal penalties for any negligent or knowing violations.

A further update will be provided once the EPA has finalised the VGP.

Yours faithfully  
Tindall Riley (Britannia) Limited  
Managers

A similar circular will be issued by other members of the International Group of P&I Associations.

**This circular should be placed in the Binder in Section 4. Pollution.**

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<sup>2</sup> A Class I penalty may be assessed in an amount of up to \$10,000 per violation, not to exceed \$25,000; a Class II penalty may be assessed in an amount of up to \$10,000 per day per violation, but not to exceed \$125,000

**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*

*Welldeck Discharges*

*Graywater Mixed with Sewage from Vessels*

*Exhaust Gas Scrubber Washwater Discharge*

List is complete as of November 2008