



US Army Corps of
Engineers

EM CX Information - Fact Sheets

US Army Corps of Engineers

EM CX Center of Expertise Fact Sheet FY 09-01

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel (REVISED)

Purpose	This summary provides basic information about EPA's recent issuance of the Vessel General Permit (VGP) and potential impact on USACE Civil Works vessel operations.
Rule/ Regulation Identification	<p>Title: Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel.</p> <ul style="list-style-type: none"> • Status: Notice of availability • Date: December 29, 2008 • Reference: 73 FR 79473 • Affected regulations: 40 CFR 122.3(a) • Affected parties: Vessel Captains/operators and compliance staff • Link: <p>http://edocket.access.gpo.gov/2008/pdf/E8-30816.pdf</p>
Deadline	Permit Effective Date: December 19, 2008
Executive Summary	<p>EPA's long standing NPDES permit exemption for vessels (40 CFR 122.3(a)) was vacated by a District Court ruling. EPA Regions 1 -10 are finalizing the VGP to grant coverage of discharges (<i>to waters of the US</i>) incidental to the normal operation of vessels. This notice of availability addresses the applicability of the Vessel General Permit (VGP) to the regulated community. The permit specifically excludes "vessels of the Armed Forces." USACE vessels are not covered by that exclusion. USACE vessels that meet certain criteria will be subject to the provisions of the VGP. EPA has dropped the "recreational vessel permit" (RVP) requirements. "The Clean Boating Act" (Pub. L. 110-288) removed recreational vessels from NPDES permitting requirements. Further, Pub. L. 110-299, placed a 2-year moratorium on EPA and States from requiring NPDES permits for discharges from any vessels < 79 ft (ballast water excluded). The intent of the moratorium is to allow EPA to further study the necessity of requiring a NPDES permit for those smaller vessels. The Court has recently extended the vacatur date of 40 CFR 122.3(a) from December 18, 2008 to February 6, 2009. Permit authorization (i.e. coverage) is not required until the vacatur date occurs, however there are specific dates of compliance in the permit that will not be adjusted. The VGP</p>

	<p>currently applies to all USACE vessels over 79 feet or any USACE vessel that discharges any quantity of ballast water. In addition, USACE vessels with ballast water capacity of > 8 m³ or those over 300 gross tons will be required to submit a notice of intent (NOI) to discharge to EPA between June 19 – September 19, 2009. Take note that the permit compliance date of February 19, 2009 precedes the NOI reporting dates. EPA has stated in the permit that general business practices associated with recordkeeping, inspections, training etc. can be used to the extent they meet the permit requirements.</p>
<p>Potential Impact</p>	<p>This notice regulatory in nature. USACE will need to survey their existing fleet to determine applicability to specific vessels. Key focus areas should be dredges, barges and floating plants. Barges are the only vessel class under Part 5 of the permit requiring additional requirements beyond Parts 1 – 4. Part 5 requirements are minimal.</p>
<p>Key Elements of the Final Rule</p>	<p><u>Regulated Vessels</u> EPA has provided all vessels no longer subject to the NPDES permit exclusion found at 40 CFR 122.3(a) with immediate coverage effective on December 19, 2008. Figure 1, below, can be used to determine if a vessel is subject to permitting requirements and any associated notifications. At this stage, no States have authorization to issue general permits for vessels. Therefore, EPA Regions 1 -10 are issuing a national VGP.</p> <p><u>Permit Content and Requirements</u> The EPA VGP and associated fact sheet can be found on EPA’s VGP webpage at http://cfpub.epa.gov/npdes/home.cfm?program_id=350 All NPDES permits follow a standard format and content. General permits address requirements applicable to all permittees and may identify specific requirements for certain types or categories of discharges. The permit contains six (6) Parts and nine (9) appendices (A-C, E – J). Standard permit conditions are covered in Parts 1 – 4 and include the following:</p> <ul style="list-style-type: none"> • 1. Permit coverage • 2. Effluent limits and related requirements • 3. Corrective actions • 4. Inspections, monitoring, reporting and recordkeeping <p>VGP Part 5 covers Vessel Class Specific Requirements, and Part 6 has specific requirements from States and Indian country lands associated with CWA §401 water quality certifications. “Summary Abstracts” for VGP Parts 1-5 are provided below.</p> <p><u>Summary Abstract VGP Part 1: Permit coverage</u> As discussed above, the permit is applicable to non-recreational vessels over 79 feet or those vessels that discharge ballast water. The permit specifically authorizes twenty-six (26) eligible discharges EPA considers “<i>discharges incidental to the normal operation of a vessel.</i>” The eligible discharges are specifically listed in Part 1.2.2 of the permit. The permit is limited to discharges when the vessel is used as a means of <i>transportation</i>. EPA identified ten (10) specific limitations on permit coverage under Part 1.2.3. USACE staff should closely evaluate operations conducted on barges and</p>

working platforms to determine if they fall under the scope of the permit. There may be some construction related operations that may not be considered “incidental.” Section 1.1 of the permit indicates requirements for inspections, training, recordkeeping, and reporting are effective as of February 19, 2009. (See VGP Section 2.2.3.1 and Section 4.)

Summary Abstract VGP Part 2: *Effluent limits and related requirements*

EPA has outlined two sections of effluent limits and related requirements and can generally be considered best management practices (BMPs). The first set of limits are applicable to all vessels and address items such as material storage practices, toxic and hazardous materials location and handling, fuel spills/overflows and discharges of oil and oily mixtures. The second set of technology-based effluent limits apply to specific discharge categories. The more common discharges would include bilge water, ballast water, and anti-fouling hull coatings. The permit requires the development of a ballast water management plan. There are several other specific requirements related to the operational location of the vessel (Pacific near shore, entering the Great Lakes etc.) that are beyond the scope of the summary. Readers are encouraged to review the permit in detail to evaluate the scope of operations covered.

Summary Abstract VGP Part 3: *Corrective actions*

The permit identifies three (3) triggers that require initiation of corrective action to “ensure that the problem is eliminated and will not be repeated in the future.” The triggers include:

- Violating an effluent limit identified in Part 2 or Part 5 or any other requirement of the permit or if EPA or their agent determines modifications to control measures are required
- You become aware, or EPA determines your discharge control measures are not stringent enough to meet applicable water quality standards or
- You find or EPA determines your pollution control measures or BMPs are not being operated or maintained or are not having the intended minimizing effect on pollutant discharges

If one of the triggering conditions exists, the permittee must conduct a corrective action assessment as outlined in Part 3.2 of the permit. Specific recordkeeping requirements are identified in the permit. EPA has established deadlines depending on the scope of the problem discovered. Deadlines for BMP type issues are as soon as possible, but no later than 2 weeks. Corrective action for parts or equipment where dry docking is not required is generally set at 3 months. For large or comprehensive repairs where dry docking is required noncompliance issues must be addressed prior to re-launching the vessel.

Summary Abstract VGP Part 4: *Inspections, monitoring, reporting and recordkeeping*

Routine visual inspections of accessible areas and discharge locations should be conducted weekly or once per voyage which ever is more frequent. Vessels making multiple voyages per day would need to do a daily inspection.

Analytical monitoring must be in compliance with Part 5 of the permit (vessel

	<p>class specific requirements). Comprehensive vessel inspections must be conducted by qualified personnel at least once every 12 months. Specific requirements and areas of inspection are outlined in Part 4.1.3 of the permit. Recordkeeping requirements are identified in Part 4.2. EPA specifically states in the permit <i>“It is not the intention of this permit to require separate records for the Coast Guard and EPA. 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 recordkeeping, or other additional recordkeeping documentation as appropriate but must be provided to EPA or its authorized representative if requested. Operators may choose how these records will be maintained, but must retain these records on the vessel for a period of 3 years.”</i></p> <p>Certification and signatory requirements are identified in Part 1.7 of the permit.</p> <p><u>Summary Abstract VGP Part 5: Vessel Class Specific Requirements</u></p> <p>EPA has identified specific requirements for eight (8) vessel classes. USACE barges are the only vessels that appear to meet any of these classes and would be subject to Part 5.4. Specific vessel classes listed in Part 5 of the permit include Large Cruise Ships, Medium Cruise Ships, Large Ferries, <i>Barges</i> (such as hopper barges, chemical barges, tank barges, fuel barges, crane barges and dry bulk cargo barges), Oil Tankers or Petroleum Tankers, Research Vessels, Emergency Vessels, and Vessels Employing Experimental Ballast Water Treatment Systems.</p> <p>The additional requirements outlined in Part 5.4 for barges are not burdensome. Additional effluent limits and supplemental inspection requirements are discussed in 5.4.1 -5.4.2 of the permit respectively.</p> <p><u>Summary Abstract VGP Appendices</u></p> <p>The nine (9) appendices (A – C, E - J) include definitions, EPA POC’s, Areas Covered, the NOI, the notice of termination (NOT), Federally protected waters, one time reporting, discharge monitoring report, and Whole effluent toxicity testing of Ballast Water. Appendices C, G, I and J will need to be evaluated on a case by case/vessel by vessel basis.</p>
<p>Contact for more information</p>	<p>Ed Bave USACE Environmental & Munitions Center (402) 697-2634 E-mail: Edwin.B.Bave@usace.army.mil</p>

Figure 1
VGP Coverage Determination

