

State Water Resources Control Board  
Division of Water Quality  
Water Quality Certification Program

**Public Notice  
Of Application for Water Quality Certification**

Pursuant to federal law (Title 33, United States Code, Section 1341; Clean Water Act Section 401), applicants for a federal license or permit for activities which may discharge to waters of the United States must seek Water Quality Certification from the state or Indian tribe with jurisdiction. Such Certification is based on a finding that the discharge will meet water quality standards and other applicable requirements. In California, Regional Water Quality Control Boards (Regional Board) issue or deny Certification for discharges within their geographical jurisdiction. The State Water Resources Control Board has this responsibility for projects affecting waters within multiple RWQCB jurisdictions. The following information is provided in satisfaction of the public notice requirements of Section 3858, Title 23, of the California Code of Regulations, which govern the State's Certification Program.

**Applicant:** United States Environmental Protection Agency (USEPA)

**Applicant Contact:** Douglas E. Eberhardt, Chief  
USEPA, Region 9  
75 Hawthorne Street  
Mail Code: WTR-5  
San Francisco, CA 94105

**Project Name:** Vessel General Permit (VGP)

**Date of Application:** 6/27/2008

**Public Notice for Water Quality Certification and/or Waste  
Discharge Requirements (Dredge/Fill Projects)**  
United States Environmental Protection Agency (USEPA)  
Vessel General Permit

On June 27, 2008, the State Water Resources Control Board (Water Board) received a letter from Douglas Eberhardt, on behalf of USEPA (applicant), requesting Federal Clean Water Act, section 401, Water Quality Certification for a General Permit for discharges incidental to the normal operation of commercial and large recreational vessels (General Permits).

Background and Job Description:

Less than one year after the Clean Water Act (CWA) was enacted, EPA promulgated a regulation that excluded discharges incidental to the normal operation of vessels from National Pollutant Discharge Elimination System (NPDES) permitting. That regulation identifies several types of vessel discharges as being subject to NPDES permitting, but specifically excludes discharges incidental to the normal operation of a vessel.

In January 1999, a number of interested parties submitted a rulemaking petition to EPA asking the Agency to repeal its long-standing regulation cited in 40 C.F.R. 122.3(a) that excludes certain discharges incidental to the normal operation of vessels, including ballast water, from the requirement to obtain an NPDES permit under the CWA. The petition seeking repeal expressed concern over discharges of ships' ballast water containing invasive species and other matter. In September 2003, EPA denied the petition. Among its basis for denial, the Agency determined that actions by the federal government under other statutes specific to ballast water were likely to be more effective and efficient in addressing the concerns raised in the petition than reliance on NPDES permits. The denial also noted that the regulation had existed unchallenged since its initial issuance in May 1973, and that Congressional enactment of subsequent statutory schemes and amendments indicated Congress was aware of and accepted the regulatory exclusion. Following EPA's denial decision, several groups filed a lawsuit in December 2003 in the U.S. District Court for the Northern District of California (Northwest Environmental Advocates et al. v. EPA, No. C 0305760 SI). On March 30, 2005, the U.S. District Court for the Northern District of California ruled that the EPA regulation excluding discharges incidental to the normal operation of a vessel from NPDES permitting exceeded the Agency's authority under the CWA. Therefore, on September 18, 2006, the Court issued an order revoking the regulation (40 C.F.R. 122.3(a)) as of September 30, 2008. In response to this Court order, EPA has developed a proposed Vessel General Permit (VGP) to regulate discharges from all commercial vessels and certain recreational vessels (those longer or equal to 79 feet).

The proposed VGP incorporates the Coast Guard mandatory ballast water management and exchange standards and adds some additional requirements for ballast water management. The proposed VGP addresses 28 potential vessel discharge streams by establishing effluent limits, including Best Management Practices (BMPs) to control the discharge of the waste streams and constituents found in those waste streams. The discharge streams eligible for coverage under this proposed permit are: ballast water, deck washdown and runoff, bilge water, anti-fouling leachate from anti-fouling hull coatings, 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 water wash, graywater, motor gasoline and compensating discharge, non-oily machinery wastewater, refrigeration and air condensate discharge, rudder bearing lubrication discharge, seawater cooling overboard discharge, seawater piping biofouling prevention, small boat engine wet exhaust, stern tube oily discharge, sonar dome discharge, underwater ship husbandry, welldeck discharges, graywater mixed with sewage from vessels, and exhaust gas scrubber wash water discharge.

For each discharge type, the permit establishes effluent limits pertaining to the constituents found in the effluent and BMPs designed to decrease the amount of constituents entering the waste stream. A vessel might not produce all of these discharges, but a vessel owner or operator is responsible for meeting the applicable effluent limits and complying with all the effluent limits for every listed discharge that the vessel produces. The VGP includes effluent limitations to control a variety of materials, which have been classified into 7 major groups: Aquatic Nuisance Species (ANS) also known as invasive species, most conventional pollutants (Biochemical Oxygen Demand, oil and grease, pH, Total Suspended Solids), metals, nutrients (including nitrogen and phosphorus), pathogens (including E. Coli & fecal coliform), and other toxic and non-conventional pollutants with toxic effects (i.e. phthalates, phenol, tetrachloroethylene,

chlorine residual, chlorides, etc). The VGP is proposing these effluent limitations to control these materials, because such materials are constituents in the, depending on the particular vessel, industrial waste, chemical waste and/or garbage “pollutant” discharge resulting from the activities of these vessels.

The VGP also establishes additional technology-based requirements for certain discharges from eight (8) specific classes of vessels, such as cruise ships, research vessels, and large ferries and water quality-based effluent limits that incorporate requirements for impaired waterbodies. Under the proposed VGP, certain discharge types would be limited or prohibited in waters protected for conservation purposes (i.e. national marine sanctuaries and national parks). The VGP also establishes specific corrective actions, inspections and monitoring requirements as well as record keeping and reporting requirements. The VGP also requires submission of a Notice of Intent (NOI) for a subset of permittees if the vessel is greater or equal to 300 tons or has a ballast water capacity of at least 8 cubic meters. EPA estimates that this requirement would affect 44,363 domestic and 7, 834 foreign flagged vessels. All other vessels covered by the VGP would not have to submit an NOI. The proposed general permit will cover vessel discharges in the waters of the U.S. in all states and territories.

EPA currently estimates that there will be approximately 91,000 U.S. flagged vessels that may be eligible for coverage under this permit. Additionally, EPA estimates that there are up to 7,000 additional foreign flagged vessels that may need coverage under this permit.

Water Board staff are proposing to regulate this project pursuant to Section 401 of the Clean Water Act (33 USC 1341) and/or Porter-Cologne Water Quality Control Act authority. In addition, staff will consider all comments submitted in writing and received at this office by mail during a 21-day comment period that begins on the first date of issuance of this letter and ends at 5:00 p.m. on the last day of the comment period. If you have any questions, please contact staff member Darren Bradford at (916) 341-5558, or at [dbradford@waterboards.ca.gov](mailto:dbradford@waterboards.ca.gov), or Bill Orme at (916) 341-5464, or at [borme@waterboards.ca.gov](mailto:borme@waterboards.ca.gov) within 21 days of the posting of this notice.

### **State Water Resources**

#### **Control Board Staff Contact:**

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State Water Resources Control Board  
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**Note: No regulatory decision on the application is implied or intended in this public notice.**