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## Coast Guard Formally Agrees to Assist EPA in the Detection and Reporting of Deficiencies under EPA's Vessel General Permit Program

### New Development

On February 11, 2011, the Coast Guard and Environmental Protection Agency ("EPA") entered into a Memorandum of Understanding ("MOU") outlining the steps the agencies will take to better coordinate efforts to implement and enforce the requirements of EPA's Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels ("VGP"), which became effective on February 6, 2009. The MOU provides a framework for improving Coast Guard and EPA cooperation on data tracking, training, monitoring, verifying compliance, and industry outreach. Simultaneous with the publication of the MOU, the Coast Guard issued CG-543 Policy Letter 11-01 ("Policy Letter 11-01") providing guidelines to Coast Guard personnel to evaluate compliance with the VGP requirements by U.S. and foreign-flag vessels operating in U.S. waters.

The MOU can be accessed at: <http://epa.gov/compliance/monitoring/programs/cwa/npdes.html>

The Policy Letter 11-01 can be accessed on the Coast Guard's website by clicking [here](#).

### Background

In 2006, after years of litigation, a court ordered EPA to cease exempting vessels from the Clean Water Act's National Pollutant Discharge Elimination System ("NPDES") permitting program, which governs discharges of pollutants into U.S. navigable waters (generally within 3 miles from

shore), for discharges incidental to the normal operations of a vessel. As a result, EPA developed the VGP program, in effect since February 2009, which covers 26 types of discharges incidental to normal vessel operations. The VGP applies to commercial vessels, U.S. or foreign-flag, at least 79 feet in length and commercial fishing vessels of any size discharging ballast water. In addition, the VGP incorporates the Coast Guard's mandatory ballast water management and exchange standards, adds additional ballast water management practices, and provides effluent limits for other types of discharges. Vessel owners/operators are required to maintain various training, inspection, monitoring, record keeping, and reporting protocols and to implement corrective actions upon identification of each deficiency.

For more information regarding the VGP, please see our previous advisories on the subject: <http://www.blankrome.com/index.cfm?contentID=37&itemID=2188> and <http://www.blankrome.com/index.cfm?contentID=37&itemID=1842>

### The MOU

Under the MOU, the Coast Guard and EPA agree that the Coast Guard will incorporate components of EPA's VGP program into its existing inspection protocols and procedures to help address vessel pollution in U.S. waters. VGP compliance inspections will occur on U.S. flag vessels during regularly scheduled inspections and on foreign-flag vessels during port-state control examinations. The Coast Guard will

identify and report detected VGP deficiencies to EPA, however, EPA retains full responsibility and enforcement authority to address VGP violations and unauthorized discharges. The agencies have also agreed to improve existing data requirements so that information on potential violations observed during Coast Guard inspections can be sent to EPA for evaluation and follow-up. In addition, the Coast Guard and EPA agree to work together to develop job aids and other documents to assist inspectors with the identification of deficiencies, as well as outreach materials for industry.

### **Inspection, Reporting, Enforcement, and Coast Guard Policy Letter 11-01**

According to Policy Letter 11-01, beginning on March 13, 2011, the Coast Guard will incorporate compliance monitoring into its existing vessel inspection program by a "Job Aid," which is a set of guidelines representing the minimum items that Marine Inspectors and Port State Control Officers should examine during a VGP compliance examination. The Job Aid is divided into three sections covering recordkeeping, deckside and topside walk (general housekeeping), and large/medium cruise vessels. The Coast Guard and EPA may adjust the guidelines in the Job Aid as necessary based on program execution and shipboard performance. The Job Aid is attached to Policy Letter 11-01 and explains what the Coast Guard will be examining and the applicable VGP requirements.

When VGP deficiencies are discovered, inspectors will: (1) encourage vessel owners/operators to take immediate action to correct the deficiency, (2) inform the master/person-in-charge of all the identified deficiencies, including those that can be "corrected on the spot," and (3) inform the master/person-in-charge that the Coast Guard will make the deficiencies available to EPA for enforcement action. Within 24 hours of identifying a deficiency, the inspector will

enter the details of the deficiency into the Coast Guard's Marine Information for Safety and Law Enforcement ("MISLE") database, which will be made available to EPA for review.

EPA's NPDES permitting program authorizes significant civil and criminal penalties for violations of the regulations prohibiting discharges of a pollutant without a permit and criminal penalties may be doubled for subsequent violations.

### **Conclusion**

To date, there has been little to no VGP enforcement, primarily because EPA has had limited resources to enforce the VGP. Now, the Coast Guard has committed to incorporate compliance monitoring into its vessel inspection regime by March 13, 2011. Until that date, Coast Guard personnel and Port State Control Officers will continue to educate and reach out to the marine industry to communicate the upcoming VGP monitoring and enforcement regime. After March 13, 2011, vessel owners/operators should expect the additional VGP inspection items to be addressed when their vessels are boarded by the Coast Guard for routine inspections. Coast Guard inspectors may also want to see documentation going back to February 6, 2009, the date the VGP became effective. EPA will then review the information obtained by the Coast Guard during boardings and take enforcement action as deemed appropriate.

With less than 30 days to the incorporation of the VGP requirements into the Coast Guard's inspection regime, now is a good time for the commercial vessel industry to review compliance with the VGP, including company policies, and procedures, to ensure compliance programs have been effectively implemented, crews are trained, inspections are being conducted, and the necessary documentation and reports are being maintained.

### **For Additional Information**

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