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## US Clean Water Act

Notice to all Agents, Owners, Operators, Masters and Officers of Ships

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### PLEASE NOTE:-

Where this document provides guidance on the law it should not be regarded as definitive. The way the law applies to any particular case can vary according to circumstances - for example, from vessel to vessel and you should consider seeking independent legal advice if you are unsure of your own legal position.

### Summary

- This MGN draws attention to the ruling made on 23 July 2008 by the US Court of Appeals for the Ninth Circuit, upholding the District Court decision which ruled that under the Clean Water Act the U.S. Environmental Protection Agency (EPA) is required to regulate discharges incidental to the normal operation of vessels under the National Pollutant Discharge Elimination System (NPDES) programme requirements.
- After 19 December 2008, all commercial vessels 79 feet in length or greater with discharges of pollutants incidental to their normal operation into 3 mile territorial sea or inland waters must comply with the EPA final VGP (Vessel General Permit) requirements. This is not just limited to ballast water discharges incidental to normal operation.
- The UK strongly recommends that companies that intend to have any of their vessels call at U.S. ports after 19 December 2008 begin development of a compliance programme based upon the requirements found in the EPA proposed VGP, keeping in mind that changes to their compliance programme may need to be made after the final VGP is issued by the EPA. Ships are required to have permits.

## 1. Introduction/ Background

1.1 On July 23, the U.S. Court of Appeals for the Ninth Circuit upheld the District Court decision which ruled that under the Clean Water Act the U.S. Environmental Protection Agency (EPA) is required to regulate discharges incidental to the normal operation of vessels under the National Pollutant Discharge Elimination System (NPDES) programme requirements by 30 September 2008.

1.2 On 25 July 2008 the Appellate Court left open the possibility for the EPA to petition the lower District Court for an extension of the 30 September 2008 deadline. On 31 August 2008, the U.S. District judge extended the date for the application of the NPDES programme to commercial vessels calling at U.S. ports from 30 September 2008 to 19 December 2008, giving the shipping industry more time to comply.

1.3 This District Court order means that the exemption for discharges incidental to the normal operation of a vessel contained in Title 40 of the U.S. Code of Federal Regulation, Part 122.3(a) will now be vacated on 19 December 2008, instead of 30 September 2008.

1.4 After 19 December 2008, all commercial vessels 79 feet in length or greater with discharges of pollutants incidental to their normal operation into 3 mile territorial sea or inland waters must comply with the EPA final VGP (Vessel General Permit) requirements. This is not just limited to ballast water discharges incidental to normal operation.

1.5 The law generally imposes a two-year moratorium during which time neither EPA nor states can require NPDES permits for discharges incidental to the normal operation of vessels of less than 79 feet and commercial fishing vessels of any length. It also directs EPA to conduct a study of vessel discharges and issue a report to Congress within 15 months. Among other things, the moratorium does not apply to ballast water.

1.6 The EPA has not yet finalised the VGP requirements and does not expect to do so until early December, which means that the shipping industry will have limited time for implementation and compliance.

## **2. Implications for UK vessels**

2.1 For most Clean Water Act discharge permits those seeking a permit must file a Notice of Intent (NOI). Once submitted, ships will be automatically covered at first for the VGP, but after 6 months, you must submit another NOI to continue coverage. The VGP will be valid for 5 years.

2.2 It is strongly recommended that companies that intend to have any of their vessels call at U.S. ports after 19 December 2008 begin development of a compliance programme based upon the requirements found in the EPA proposed VGP, keeping in mind that changes to their compliance programme may need to be made after the final VGP is issued by the EPA. Ships are required to have permits.

2.3 The proposed VGP can be seen at <http://www.epa.gov/npdes/vessels> under "Proposed Permit (PDF)" about half-way down the page.

2.4 Vessels of less than 79 feet and commercial fishing vessels to which this law applies should make plans to comply following the end of the two year moratorium in 2010.

## **3. Summary of proposed Vessel General Permit requirements**

3.1 The proposed VGP contains six sections and a number of Annexes.

- Section 1 contains the general requirements and identifies 28 different vessel discharges that are "eligible for coverage." It is very unlikely that these 28 vessel discharges will change when the final VGP is issued.
- Section 2 contains the effluent limits and related requirements for each of the 28 vessel discharges. On a positive note, many of the requirements are based upon "Best Management Practices". The exceptions to this pertain to bilge water discharges, ballast water discharges, anti-fouling hull coatings, grey water discharges and underwater husbandry.
- Section 3 contains the corrective action that must be taken if problems are identified.
- Section 4 contains the inspections, monitoring, reporting and record-keeping requirements.

- Section 5 contains vessel class-specific requirements with section 5.5 focusing on oil tankers and petroleum tankers. It is unlikely that this section will change when the final VGP is issued.
- Section 6 has been left blank in the proposed VGP.

3.2 The Appendices contain definitions, procedures for filing a Notice of Intent or a Notice of Termination and requirements for waters federally protected. All of these appendices may change slightly when the final VGP is issued.

### More Information

Environmental Policy  
Maritime and Coastguard Agency  
Bay 2/08  
Spring Place  
105 Commercial Road  
Southampton  
SO15 1EG

Tel : Fax : +44 (0) 23 8032 9367  
e-mail: [environment@mcga.gov.uk](mailto:environment@mcga.gov.uk)

General

Inquiries: [infoline@mcga.gov.uk](mailto:infoline@mcga.gov.uk)

MCA Website Address: [www.mcga.gov.uk](http://www.mcga.gov.uk)

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