

November 7, 2012

The Honorable Jeffrey D. Zients
Director (Acting)
Office of Management and Budget
Eisenhower Executive Office Building
1650 Pennsylvania Ave, NW
Washington, D.C. 20503

Dear Director Zients:

The undersigned maritime industry groups respectfully request that the Office of Management and Budget (OMB) complete its review of the U.S. Environmental Protection Agency's (EPA) final 2013 Vessel General Permit (VGP) at the earliest possible date.

The new VGP is expected to contain substantial new requirements for the management of vessel discharges and it is unclear precisely what those requirements will be. Numerous parties filed comments addressing substantial technical and policy issues in the draft VGP. None of the stakeholders that filed those substantive comments knows how EPA has resolved the issues raised. Until the final VGP is released, affected members of the regulated industry cannot take the steps necessary to comply with the terms of the new permit, because the final terms of the permit remain unknown.

The EPA issued the current VGP in 2008 to regulate discharges incidental to the normal operations of vessels operating in U.S. waters after a U.S. District Court vacated the EPA's longstanding regulatory exemption from applying Clean Water Act permitting requirements to such discharges. EPA is seeking to promulgate the final 2013 VGP to replace the terms of the current 2008 VGP, which expires on December 18, 2013.

Prompt public release of the final 2013 VGP is critical to the regulated community of approximately 60,000 U.S. and 12,000 foreign flagged vessels that are subject to the VGP. The 2013 VGP will contain important new discharge conditions that will require a significant amount of time for operators of regulated vessels to understand and implement. Based on the draft VGP, we expect that new conditions will include, among other things, requirements for the testing and installation of ballast water treatment technologies on new and existing vessels, use of environmentally acceptable lubricants in oil-to-sea interfaces, stricter gray water discharge requirements, and treatment standards for discharge washwater from exhaust gas scrubbers. The final 2013 VGP will also contain a complete list of the state-specific conditions that individual states added to the federal VGP through the Clean Water Act's section 401 certification process.

The Clean Water Act permitting process requires permittees to operate in compliance with the new permit conditions on the first day the new permit becomes effective. It would be impossible for regulated vessels to comply with the new VGP conditions by the effective date of the next permit without being provided a reasonable amount of time, prior to the effective date of the permit, to implement these changes. Recognizing this fact, the EPA appropriately advised the public that the agency would finalize the 2013 VGP by the end of November, 2012 in order to allow the regulated community approximately one year to digest and implement the new permit conditions.

Under the Clean Water Act, covered discharges may be made only pursuant to a permit. The rule has been stated as “no permit, no discharge.” Many of the vessel discharges covered by the draft VGP are unavoidable by vessels in normal operation. Thus, if there is no permit, vessels cannot legally operate in U.S. waters. If the EPA is unable to publish a final VGP with enough lead time to enable regulated vessels to comply with the new permit’s conditions by the time the current permit expires, vessel operators would at some point be forced to seek individual vessel permits from the EPA. Given that EPA will regulate the discharges of more than 70,000 vessels under the 2013 VGP, processing individual vessel permits for such vessels would be a costly administrative and logistical nightmare. It is highly unlikely that the EPA has the resources to undertake such a process, and there is no reason that it should have to attempt to do so.

The U.S. and foreign flagged vessels that carry America’s waterborne commerce require predictability and certainty with respect to the regulation of vessel discharges. The EPA has commendably prepared the final terms of the 2013 VGP early enough to provide the regulated industry with an appropriate amount of time to digest and implement the federal and state permit conditions. Delaying the release of the final 2013 VGP would harm both the regulated industry and the environment by undermining the industry’s ability to take the necessary compliance steps in a timely manner.

We respectfully urge OMB to complete its review of the final 2013 VGP as soon as possible. Thank you for your consideration of this important matter.

Sincerely,

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