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December 31, 2010

Water Docket  
Attn: Docket ID No. OW-2010-0828  
Environmental Protection Agency  
MailCode: 28221T  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

SENT VIA U.S. MAIL & EMAIL

**Re: Stakeholder Input on Next National Pollutant Discharge  
Elimination System (NPDES) General Permit for Discharges  
Incidental to the Normal Operation of Vessels**

Dear Ladies and Gentlemen:

American Cruise Lines is a privately-held operator of a limited number of very small overnight passenger cruise ships specializing in a unique style of small ship cruising on close coastal and inland waterways and rivers of the United States. American Cruise Lines' itineraries include routes in the Pacific Northwest, Maine, New England Islands, Hudson River, Chesapeake Bay, the Historic South & Golden Isles, Florida, and, coming in 2012, the Mississippi River. Passenger cruising with American Cruise Lines is intentionally contrary to the experience offered by mass-market operators and is perhaps unique within the U.S. flag cruise industry. The hallmark of cruising with American Cruise Lines is the ability of our small vessels to reach smaller and shallower ports which larger cruise ships cannot, allowing our passengers the opportunity to explore the cultural benefits and history of American's unique smaller towns and attractions without the crowds and clamor of the typical mass-market cruise setting.

Our operations thus are focused on a narrow market and are very different than those of cruise ships which regularly carry over several thousand overnight passengers. Our clientele is typically well educated and culturally discriminating and seek cruising experiences not involving such extravagances as casinos and swimming pools on the ship. Our ships have sufficiently shallow draft that they can enter shallow ports and harbors more typically frequented by yachts. The small towns we visit are grateful for our ships' calls and our passengers' business. We plan to grow our operations with ships just slightly larger than those currently operated. Officials from areas along our future proposed routes are eager for us to begin those operations.

American Cruise Lines' ships are among the very smallest overnight passenger cruising vessels currently operating in the U.S., and perhaps the world. Most in the cruise industry would describe a "small" cruise ship as one which carries under 1,500 overnight passengers. Our ships carry less than 10% of that number. Larger U.S. flag overnight passenger cruise ships must be designed, built, and operated so as to comply with Subchapter H of Title 46 of the Coast Guard regulations but for many reasons, none have been built for several decades. By contrast, American Cruise Lines' ships are designed and built to be sufficiently small so as not to be subject to Subchapter H. While we comply with Coast Guard regulations applicable to small vessels, we avoid the increased manning and construction costs associated with vessels built to the large ship requirements. By keeping our ships very small we keep costs down so that we may compete in our narrow market.

American Cruise Lines is, of course, committed to the safety of its passengers and the well-being of the waterways and ports in which it operates. American Cruise Lines strives to comply with all local, state, and federal laws and regulations, including those that seek to protect and preserve the environment. We also note, however, the demise of several smaller ship overnight passenger cruise companies in recent years. As we plan construction of our next generation of small cruise ships, American Cruise Lines hopes that the next version of the Vessel General Permit ("VGP 2.0") will more appropriately balance the economic, engineering, and operational burden of compliance with the important goals of public safety and health and environmental preservation.

Accordingly, American Cruise Lines would like to assist the EPA develop VGP 2.0 and therefore submits this letter in response to the call for comments issued in the Federal Register notice dated October 29, 2010 (75 Fed. Reg. 66757). In particular, we ask attention to the graywater purification requirements of the VGP 2.0 as they will apply to very small overnight passenger cruise ships such as the vessels we plan to build.

First, we submit that VGP 2.0 should not attempt to regulate graywater purification for the entire category of "medium cruise ships" as that category is now defined in the current VGP. The extraordinary economic, engineering, and operational burden of compliance with the stringent graywater purification requirements of the current VGP is so high that, if continued in VGP 2.0 for the entire category now defined as "medium cruise ships," American Cruise Lines will be unable to design, build, and operate our planned next generation of very small cruise ships.

Second, if graywater discharge regulations for ships smaller than the present "large cruise ships" category must be retained for VGP 2.0, we submit that the lower threshold for any such "medium cruise ships" category as defined in VGP 2.0 should be adjusted from the current level of 100 overnight passenger accommodations to a more reasonable threshold of 250. A lower threshold of 250 overnight passenger accommodations would be more consistent with related state regulation and widely accepted industry standards. There is no valid justification for the current lower threshold of the present definition. This change would also address the presently

insurmountable barrier created by the present VGP to the design of very small ships such as those we plan for cruising in close coastal and inland waters.

**I. The Entire Category Currently Defined As “Medium Cruise Ships” Should Not Be Subject To Stringent Graywater Discharge Standards In VGP 2.0**

In order to cruise in coastwise trade in America’s close coastal and inland waters American Cruise Line’s cruise ships must be flagged U.S. and, even though only very small, must comply with the “Small Passenger Vessel” requirements of Subchapters K and T of the Coast Guard regulations. Design of ships to meet these criteria for very small cruise ships while offering the specific cruising service to which American Cruise Lines is devoted requires balancing a number of disparate elements. Designing, building, and operating any small vessel for overnight passenger cruising is only feasible if the economics involved in the cost of construction (and financing construction) and the cost of operation (involving crew requirements) are supported by the passenger revenues (involving the number of passengers carried, limited by the size of the vessel). The requirements of the VGP drastically affect this balance.

***a. The Current VGP Ignores The Vast Differences Between Large, Traditional Cruise Ships and Very Small Cruise Ships Such as Those We Plan to Build***

A major factor in the design problem presented by the current VGP is the fact that the degree of graywater purification currently applicable to the category currently defined as “medium cruise ships” is essentially the same level of purification as is required of the category of ships qualifying as “large cruise ships” under the current VGP.

There are vast differences between traditional “large cruise ships” – i.e., those carrying over 500 and typically thousands of overnight passengers - and very small cruise ships (smaller than as qualify for Subchapter H) (included within the current definition of “medium cruise ships” in the present VGP only because they would carry a few more than 100 overnight passengers). In addition to the obvious difference in size, very small cruise ships do not, for instance, attempt to provide the more extravagant features commonly found on large cruise ships such as swimming pools and photo labs that produce the most significant graywater toxins.

Yet despite the significant differences, by requiring the same level of graywater purification for both categories of ships, the present VGP effectively requires that the entire “medium cruise ships” category of ships, as currently defined, including the very small cruise ships we plan to build, must carry the very same graywater purification equipment as is required of ships in the “large cruise ships” category – namely an advanced wastewater treatment system (“AWTS”) facility.

AWTS equipment was designed for large cruise ships and is simply not manufactured anywhere in the world in sizes suitable for very small overnight passenger cruise ships of the sort

planned by American Cruise Lines. AWTS equipment is large and it is heavy, much larger and much heavier than standard marine sanitation devices (“MSD”) used to control blackwater discharges. We make this statement only after searching for such equipment in both the U.S. and abroad. By ignoring the critical impact of the large size and heavy weight of that equipment in a very small cruise ship, the EPA has created a serious barrier to commerce.

Size is obviously important in a smaller ship not just because space is at a premium. It is recognized by design professionals that the degree of difficulty of the nautical design problem increases exponentially, not simply in a linear fashion, as the size of the ship decreases. Even if some means were found to overcome the size problem, a further design difficulty is presented by the substantial weight of AWTS equipment. Because it is so heavy, AWTS equipment would have significant impact on a very small cruise ship’s draft and, potentially, on its stability.

The result is, for very a small cruise ship such as we plan, an insurmountable conundrum. If our planned ship were bigger, it might be able to accommodate AWTS equipment with sufficient capacity for the number of passengers to be carried, but the ship would not then qualify within Subchapters K or T and would not be able to access the small harbors and ports our passengers seek. As a difficult working alternative we considered pumping graywater through the smaller, lighter, onboard MSD’s for purification, but then learned this would not be sufficient according to the current VGP.<sup>1</sup> We even discussed the absurd possibility of installing AWTS equipment aboard a small barge to follow behind the cruise ship. Simply put, we see no viable solution available in today’s market for the AWTS equipment design problem for a very small cruise ship.

Nor can we plan to discharge more than one mile from shore, as larger, foreign flag vessels can. The close coastal and inland waterway and rivers routes in which American Cruise Lines plans to voyage makes offshore discharge virtually impossible.

We suggest that this design problem is the reason why our research discloses very few ships in the entire “medium cruise ships” category which report use of AWTS equipment. We can positively identify only five such ships in the EPA’s eNOI database, all of which are foreign flagged and all of which are significantly larger than even the largest U.S.-flagged ship in the database which has submitted a Notice of Intent (“NOI”) for coverage under the VGP. None of these are very small cruise ships of the type we plan.

***b. The Class Of “Medium Cruise Ships” As Defined By The Current VGP Is Miniscule And Regulation Of That Segment Of The Cruising Industry Is Not Reasonable Or Necessary***

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<sup>1</sup> It makes no sense that current VGP standards for graywater purification are more rigorous than the current standards for blackwater. See 40 C.F.R. 140.

The EPA's own records in the eNOI database show that the total number of "medium cruise ships" carrying 100 – 499 overnight passengers is only thirty-one (31) vessels, far fewer than the nearly 200 "large cruise ships." The amount of wastewater discharged by that entire category of "medium cruise ships" is so small as to be insignificant when compared to the vast amounts of wastewater and other effluent discharged by the larger vessels which account for the substantial majority of cruise lines currently operating in the U.S. The entire graywater discharge from all the ships in the "medium cruise ship" category, as now defined, would not equal discharge from just one of the large cruise ships carrying thousands of passengers. It makes little sense to subject the miniscule number of "very small cruise ships" within the current "medium cruise ships" category to requirements equivalent to that applicable to the largest ships when the effect is to impose an insurmountable design and operational burden.

Effectively, as to "very small cruise ships" such as we are now planning, which would be within the present "medium cruise ships" category (as currently defined) only because they would carry over 100 overnight passengers, the current VGP is an example of "regulatory overkill." For years the EPA did not impose a regulatory requirement for vessel discharges, believing that the law did not require permits and that the environmental impacts of most vessel discharges did not warrant them. The EPA's current VGP was devised in response to a court mandate. While we believe that the EPA worked hard to devise a permitting structure which takes into account the many "real life" needs of the maritime industry, we submit that the current permitting structure as to graywater discharge imposed on "medium cruise ships" as currently categorized is unduly rigorous.

It is just not necessary or warranted to impose the same graywater purification standards on the entire category of "medium cruise ships" as are in effect for "large cruise ships." A lesser standard of graywater treatment for very small cruise ships in which best practices are undertaken to minimize harmful discharge, consistent with the smaller size of these ships and their inability to carry the required AWTs equipment, is permitted under existing law and is well justified. This is particularly true for our planned ships which will not have swimming pools, photo labs, or other sources of the most toxic forms of graywater.

***c. The Current VGP Constitutes Overregulation And Threatens Industry***

The comments of the Passenger Vessel Association ("PVA") at the "Listening Session" before the EPA on December 15, 2010, highlighted the December 13, 2010, comments of Senator Mark Warner, noting that excess regulation creates uncertainty for the private sector, leading to reluctance to invest and thereby contributing to a sluggish economy. Senator Warner referred to the study of the U.S. Small Business Administration that found that "the estimated annual cost of federal regulations in 2008 exceeded \$1.75 trillion." The PVA statement also noted that even worse, small businesses, those that hire fewer than 20 employees, suffered a burden in the cost of annual compliance of \$10,585.00 per employee.

The stringent VGP graywater purification standards for “very small cruise ships” (under 250 overnight passengers such as those we currently plan) is just such an unduly burdensome regulation. It places enormous adverse pressure on the viability of the U.S. small ship cruising business in favor of foreign flag operators. The extension of the stringent VGP graywater purification standards to very small cruising vessels creates a barrier to entry in an area where U.S.-owned cruise operators could otherwise compete. Instead, the VGP gives an advantage to large, foreign-owned cruise lines. This is a discrimination not justified by the actual environmental impacts of very small cruise ship graywater discharge and which imposes an undue burden on the U.S. maritime industry.

The EPA must adjust VGP 2.0 to be more practical and realistic if it is to permit the U.S. maritime industry to serve the market for very small ship cruising in America. I

**II. If Regulation Of Ships Smaller than the “Large Cruise Ships” Category Is Maintained In VGP 2.0, The Lower Threshold For “Medium Cruise Ships” Should Be Raised To Ships Carrying 250 Or More Overnight Passengers**

***a. The Definition Of The “Medium Cruise Ship” Category in the Current VGP Lacks A Reasonable Basis***

The definition of the category of “medium cruise ships” in the current VGP - a passenger ship providing overnight accommodations to passengers and authorized by the Coast Guard to carry 100 to 499 overnight passengers - is not justified and is wholly inconsistent with what is understood to be a medium-sized cruise ship in the cruise industry. Our research has not disclosed, either from the VGP itself or from related EPA documentation, any basis for the VGP definition. We understand, from information obtained informally, that the EPA may have relied upon the framework for the regulation of vessel discharge, including graywater, developed by Alaska and Maine, two of the first states to enact such regulation. The laws and regulations of those two states do not now, and we believe did not ever, justify the specific thresholds used by the EPA in defining the “medium cruise ship” category in the present VGP.

Notably, Alaska and Maine do not regulate cruise ships carrying less than 250 overnight passengers. See Alaska Large Commercial Passenger Vessel Wastewater Discharge General Permit; Maine General Permit for the Discharge of Graywater or a Mixture of Graywater and Blackwater from Large Commercial Passenger Vessels. Alaska, in particular, spent several years developing its Cruise Ship Program, and the Maine permit program was modeled in part on the Alaskan model. Both states presumably set the lower threshold for regulation of vessel discharge because of the facts, outlined above, that to regulate such smaller ships imposed an impossible burden on operators but provided little or no environmental benefit. EPA’s inclusion of ships carrying between 100 – 249 passengers in the category of ships subject to more restrictive regulation is manifestly at odds with the framework carefully developed by Alaska and Maine.

It is also significant that EPA found it appropriate to regulate only the category of “large ferries” on a stringent basis equivalent to regulation of the categories of “large cruise ships” and “medium cruise ships.” See Notice of Availability of Final NPDES General Permit, 73 Fed. Reg. 79473, 79480. Yet the VGP uses a higher threshold in defining the category of “large ferries” – those authorized to carry 250 or more passengers or 100 tons of cargo – to distinguish ferries subject to specific wastewater restrictions from smaller ferries not subject to the regulation. Presumably the EPA felt that the discharge of graywater generated by ferries carrying fewer than 250 passengers was sufficiently small such that additional regulation (other than the “minimization” generally required by the VGP) was not necessary. By the EPA’s logic, the same should be true for very small cruise ships carrying fewer than 250 overnight passengers. Just as ferries carrying fewer than 250 passengers are not subject to the more restrictive regulation, so too should very small cruise ships not be subject to the more stringent requirements.

*b. A Simple Adjustment To The Definition Of A “Medium Cruise Ship” In VGP 2.0 Is Necessary and Appropriate*

Raising the lower threshold for the regulated category of “medium cruise ships” would also be reasonable given the extremely small number of cruise ships that fall into the 100 – 249 overnight passenger category. According to the eNOI records, only approximately half of the “medium cruise ships” covered by the current VGP have a maximum passenger capacity of between 100 – 249, and a substantial number of those ships have a maximum passenger capacity of well under 250. It does not make sense to subject a tiny number of cruise ships to potentially prohibitive regulation, especially when the total amount of graywater discharged by this category of ships is *de minimus* in comparison to that of the far larger ships which constitute the large majority of cruise ships currently operating in U.S. waters.

American Cruise Lines submits that, if regulation of ships smaller than the “large cruise ships” category of is to be maintained in VGP 2.0, it would be reasonable and appropriate to adjust the definition of a the “medium cruise ships” category to include only those ships authorized to carry 250 or more overnight passengers. This adjustment would bring VGP 2.0 in line with leading state regulations and the realities of the cruise industry, would more appropriately allocate the regulation of vessel discharge to the larger ships that are responsible for the lion’s share of it, and would remove the presently insurmountable barrier presented by the present VGP to very small ship overnight cruising in America’s close coastal and inland waters.

**III. Future Efforts in Cooperation.**

Absent action by Congress the EPA will have to issue a VGP 2.0 once the current VGP expires on December 19, 2013. We encourage the EPA to advocate to Congress that the law should be amended to remove the burden of this regulation which stems from a single court’s decision. Given that the primary environmental concern in that lawsuit was discharge of ballast water, it makes little sense that very small cruise ships, such as we plan to build and which do

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not carry ballast water, would be subject to such burdensome and potentially ruinous regulatory overkill.

Nevertheless, we are eager to work with the EPA under the currently mandated regulatory framework to make it viable for our sector of the U.S. flag cruise industry. American Cruise Lines hopes that the EPA will take our concerns stated here under serious consideration. Planning is already underway at American Cruise Lines for future "very small" overnight cruise vessels. If these vessels are to be subject to the restrictions that exist under the current VGP, there will be significant consequences to our viability as a small ship cruise operator. We would be happy to work with the EPA in developing VGP 2.0 in a manner that adequately balances the business concerns of very small cruise ship operators with the important public goals of environmental protection.

Yours truly,



Timothy J. Beebe  
Vice President