



February 21, 2012

Water Docket  
U.S. Environmental Protection Agency  
Mailcode: 28221T  
1200 Pennsylvania Avenue  
Washington, DC 20460

**RE: Docket ID No. EPA-HQ-OW-2011-0141  
Draft National Pollutant Discharge Elimination System (NPDES) General Permit for  
Discharges Incidental to the Normal Operation of a Vessel**

Ladies and Gentlemen:

The Passenger Vessel Association (PVA) appreciates this opportunity to comment on the proposed (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel ("proposed draft 2013 Vessel General Permit" or "2013 VGP").

- **VGP compliance should be as simple as possible, an objective that EPA achieved with the current VGP.**
- **The VGP as proposed meets this aforementioned goal in many places, but PVA is pointing out several areas for improvement, especially with regard to state add-ons.**
- **PVA is concerned about the economic analysis EPA has done on the VGP.**

The Passenger Vessel Association (PVA) is the national trade association representing owners and operators of commercial U.S.-flagged, U.S. Coast Guard-inspected, and Canadian Coast Guard-inspected and state-inspected passenger vessels of all types. PVA currently has more than 550 vessel and associate member companies.

All of PVA's vessel members will be affected by the proposed 2013 VGP and the creation of the sVGP to cover vessels of less than 79 feet in length, should the statutory exemption for this latter category of vessels not be renewed by Congress.

Numerous vessels operated by PVA members are 79 feet or more in length. While only a small portion of them discharge ballast water, most have incidental discharges of other types. These PVA members are covered by and operate in compliance with the current EPA Vessel General Permit (VGP). To assist its members, PVA produced and distributed a document

explaining the Vessel General Permit and providing guidance as to how to operate in adherence to its terms. PVA has also published articles on the VGP in its monthly magazine (*Foghorn*) and arranged seminars and presentations on the VGP at its regional meetings and national conventions.

**U.S.-flagged passenger vessels are diverse and numerous.**

U.S.-flagged commercial passenger vessels operate on all of the nation's waterways, including rivers, inland lakes, urban harbors, coastal bays and sounds, the Great Lakes, and offshore ocean waters. While a few engage in voyages extending over a period of days, most offer trips with a duration of no more than a few hours, while some trips are only a few minutes in length.

The vessels differ greatly in size, construction, and types of operations. They include dinner cruise vessels, sightseeing and excursion vessels, passenger and vehicular ferries, whalewatching and eco-tour operators, windjammers, gaming vessels, amphibious vehicles, water taxis, and overnight cruise ships.

Vessel operators range from small family businesses with a single boat to companies with several large vessels in different cities to governmental agencies operating ferries. With the exception of the publicly-owned ferries, nearly all passenger vessels are operated by small businesses, as defined using U.S. Small Business Administration criteria.

**A general permit continues to be the way to go.**

PVA appreciated EPA's decision several years ago to issue an industry-wide permit rather than imposing a permitting requirement on each individual covered vessel. Furthermore, it was an appropriate decision by EPA to choose not to impose any permitting fee. The proposed revised VGP and the draft sVGP continue this policy choice, and PVA agrees with this approach. PVA would like to recognize the efforts of the Environmental Protection Agency (EPA) to find a workable solution for U.S.-flag vessels in its development of the current VGP.

**The failure to ensure a single national standard for discharges is a serious flaw in the VGP; there must be a process of public review of and comment on conditions proposed by states as "add-ons" during the 401 certification process.**

Many vessels commonly move from state to state. Even passenger vessels that limit their operational area to a single waterbody may routinely cross state lines (for example, ferries that connect Connecticut and New York across Long Island Sound, ferries that run between Connecticut and Block Island, Rhode Island; sightseeing vessels in New York Harbor that sail in

the waters of New Jersey and New York, ferries that traverse Delaware Bay between Delaware and New Jersey; ferries that go from one state to another at several locations on the Ohio and Mississippi Rivers). In this respect, they are like commercial airliners. Our nation has a policy that the regulation of the interstate airline industry (including environmental regulation) should be done at the federal level, not by the states. Imagine the chaos that would ensue if states could impose their own policy choices, including with regard to environmental measures, on interstate air conveyances.

Why is there a different approach to regulating the commercial maritime industry than to other forms of interstate traffic? PVA acknowledges that EPA has no legal authority to prevent individual states from “adding on” conditions to the proposed 2013 VGP. The Clean Water Act in its current form allows such “add-ons.” Congress needs to act to ensure that there is a single national standard for various discharges incidental to the normal operation of a vessel. In fact, the House of Representatives has voted in favor of such a bill. EPA and the Administration need to speak out to Congress to advocate enactment of a single national standard for wastewater discharges from vessels in interstate commerce.

When EPA devised the original VGP, it consulted extensively with affected maritime entities and other parties interested in the issue. Methods of consultation included public hearings, notice and comment on a proposed permit by means of a *Federal Register* document, and other contacts. This process resulted in a substantially improved and refined VGP compared to the original proposal. However, the process by which states conducted their 401 certifications was seriously flawed. There was no “give and take,” and no opportunity to comment on a state’s “add-on” conditions to the VGP. As EPA certainly realizes now, the most controversial and unworkable portions of the original VGP are those provisions included as a result of the state certification process.

As EPA develops the revised VGP and creates the sVGP, it must modify its administrative procedures so that proposed state “add-on” conditions are subject to the same public notice, comment, and scrutiny as apply to all other portions of the permits.

## **Definitions**

### **Retain the proposed definition of “minimize.”**

In many parts of the draft 2013 VGP, the vessel operator is told to “minimize” various discharges. In Appendix A – the definitions section of the proposed VGP the term “minimize” means “reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best marine practice.” By the phrase “to the extent achievable,” it

acknowledges that many discharges are likely to continue to some extent. By qualifying the term “control measures” with the phrase “technologically available and economically practicable and achievable,” it takes into account the fact that effective technological “fixes” are not always available at a reasonable cost. By acknowledging the use of “best management practices,” it demonstrates awareness that an operational measure may be the best or most effective method of minimizing a discharge. This definition of “minimize” is appropriate, and it is important to retain it in the 2013 VGP.

#### **Amend definition of “voyage.”**

PVA urges EPA to revise the definition of a “voyage” in Appendix A. The 2013 VGP states that a “Voyage” means, for the purposes of VGP Part 4.1.1 (including its routine visual inspection provisions), that a voyage begins when the vessel departs a dock or other location at which it has loaded or unloaded (in whole or in part) cargo or passengers, and ends after it has tied-up at another dock or location in order to again conduct such activities.” This definition does not address a vessel leaving one dock and returning to the same dock, a common practice in the passenger vessel sector.

#### **Clarify the definition of “sewage.”**

In the definitions section, the term “sewage” should be modified to accurately reflect the term’s meaning in the Clean Water Act. The need for this modification will be explained more fully by means of a separate submission to the regulatory docket. The definition should be revised to read as follows: “Sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels, except that with respect to commercial vessels (*as that term is defined in section 312(a)(10) of the Federal Water Pollution Control Act, as amended*) on the Great Lakes, the term ‘sewage’ also includes galley, bath, and shower water.” The clarifying language is highlighted in bold italics.

#### **The exemption from ballast water management measures for vessels engaged in short-term voyages should be preserved but clarified.**

The whole purpose of having ballast water management measures is to prevent the transfer of nuisance aquatic invasive species to waters which are currently free from them. If a vessel does not present a possibility of such a transfer, there is no need for ballast water management measures. The “Short-Term Voyage” exemption in the proposed revised VGP recognizes this fact. This provision should be retained.

However, there are discreet bodies of water (certain rivers or lakes) in which there are more than one Captain-of-the-Port zones. For example, each Great Lake (other than Lake

Ontario) is divided between two Captain-of-the-Port zones. The aquatic invasive species can move throughout such a waterbody on its own; it has no need of transfer by vessel ballast water. The “Short-Term Voyage” exemption should be altered to include a vessel operating in a physically discrete body of water, even if there is more than one Captain-of-the-Port zone.

Also, with regard to a vessel that operates between two Captain-of-the-Port zones, the “10-mile limitation in the proposed VGP is too restrictive. This distance should be increased to at least 50 miles.

**Any numeric standard for the level of ballast water treatment should be a single national standard. The one proposed by EPA is appropriate.**

Only a minority of PVA vessels has ballast water discharges, and some of them will likely be able to take advantage of the “Short-Term Voyage” provision in the proposed revised VGP. Nonetheless, some PVA vessels will have to adhere to a ballast water numeric standard in the permit. Therefore, it is essential that there be a single national standard for a vessel that operates across state lines and that the standard be measurable and achievable. The standard proposed by EPA is appropriate, as it conforms to an international standard developed by the International Maritime Organization. Furthermore, two expert panels have recently concluded that this standard can be attained in the real world, whereas more aggressive standards (for instance, the ones imposed by the states of New York and California) cannot be attained given the state of technology that exists now or that can be realistically expected to be developed anytime soon.

**The draft VGP appropriately states that compliance with its provisions should put a vessel operator in compliance with water-quality based effluent limitations.**

Section 4.11 of the proposed VGP says the water-quality-based effluent limitation supplements the technology-based limitations found elsewhere in the permit. A water-quality-based effluent limitation is related to the applicable water quality standards that pertain to the waterbody that receives the vessel’s discharge.

The VGP contains this important declaration: “EPA expects that compliance with the other conditions in this permit will control discharges as necessary to meet applicable water quality standards.” Thus, the VGP makes a presumption that one who complies with the technology-based limitations of the permit will as a result also comply with the water-quality-based standards. This presumptive statement is appropriate, and it should be retained in the final version of the VGP.

**EPA should reduce administrative burdens on operators as much as possible and should not impose any additional administrative burdens.**

Adherence to the proposed 2013 VGP will continue yet one more regulatory mandate on thousands of small businesses that operate commercial passenger vessels. Consequently, EPA should make compliance as simple as possible and impose no more administrative requirements than absolutely necessary.

PVA acknowledges that the Permit Authorization and Notice of Inspection (PARI) need not be submitted to the EPA under normal circumstances. Nevertheless, EPA should alter the conditions for the PARI. There is no justification for requiring that this document be retained on board the small vessel; the permit should allow for it to be kept on shore at the company's office

The requirement that a Notice of Intent for vessels that meet the criteria be submitted again in 2013 for vessels that already submitted a Notice of Intent to comply with the 2008 VGP is a needless redundancy. Submitting the same form again for the same fleet of vessels is another burden on vessel owners.

PVA appreciates EPA's effort to enable operators of covered vessels to file required reports electronically and PVA will encourage this mode of communication. However, EPA should preserve the ability for an operator to file by paper, and there should be no need for the operator to request a waiver from the government before choosing this option. The draft VGP should "come down on the side" of making the process most convenient for the citizen-operator, not what is most convenient for the government.

PVA believes that the impact on small business has been underestimated, and urges EPA to reassess its Small Business Impact estimates. At the same time, we urge EPA to take into consideration the multitude of rulemakings that the Federal Government is currently drafting that affects these same small businesses. The cost of the cumulative impact of regulation on small businesses is staggering. The Small Business Administration estimates that for small businesses – those that hire fewer than 20 employees – the annual cost of compliance with regulations is \$10,585 per employee. Even within the EPA there are multiple rules moving forward that all impact these businesses such as those dealing with clean air and diesel emissions. Crews on passenger vessels are small in number, and the crew members already have many responsibilities in operating the vessels safely. EPA must adjust its management expectations for the 2013 VGP to be more realistic and much less prescriptive.

**Training should be allowed to take place in-house.**

PVA urges EPA to preserve that part of the draft VGP (2.1.6) that states any expected training in permit compliance can be done “in-house” within a company and that attending an outside course or a certified institution is neither required nor expected.

**EPA should highlight several of the “Additional Notes.”**

There are several points listed in section 1.15 Additional Notes that should be moved and prominently displayed earlier in the 2013 VGP. Regarding how owners and operators should interpret the language of the Permit, EPA should highlight point #3: “Provisions stating that ‘EPA recommends’ certain actions, or that you ‘should’ take certain actions, constitute recommendations by the Agency and thus are not mandatory requirements of this permit.” Additionally point #5 listed in Additional Notes is critical to safe compliance and should be highlighted at the foremost part of the 2013 VGP. Point #5 states: “EPA notes that vessel masters have the responsibility to ensure the safety and stability of the vessel and the safety of the crew and passengers, and nothing in this permit is intended to interfere with their fulfillment of that responsibility...”

**The provision entitled “Seawater Cooling Overboard Discharge” should be clarified.**

Section 2.2.19 deals with the discharge of coolant water and uses the term “seawater.” This term may be misleading, as thousands of passenger vessels draw coolant water from the waterbody on which they are operating and in many cases this involves freshwater, not seawater. Perhaps EPA should use another term instead of “seawater.” EPA should understand that with respect to the passenger vessel sector it is standard practice to draw and discharge coolant water. Furthermore, this frequently occurs when the vessel is docked, and frequently there is no shore-based power available.

**U.S.-flagged “small ship” cruise vessels should have a best management practices requirement for graywater discharges, as does the current VGP.**

Several PVA companies operate “small ship” overnight cruise vessels flagged in the United States. These vessels predominantly serve routes along U.S. coasts, rivers, and the Great Lakes. Most carry 250 passengers or fewer. The small size of the vessels is essential to offering the types of cruises that they perform. The proposed VGP categorizes them as “medium cruise ships” (100-499 passengers), although this term is somewhat misleading as applied to them.

The proposed permit would impose essentially the same level of graywater purification on “medium cruise ships” as it proposes for vessels in the “large cruise ship” category. Large cruise ships typically carry thousands of passengers and crew, and nearly all are foreign-flagged.

To comply with the proposed graywater purification requirements, a U.S.-flagged “small ship” cruise vessel would have to install the same treatment equipment designed for a large oceangoing cruise vessel that carries thousands of passengers and crew members. This equipment is so large and heavy that it is physically impossible to retrofit a smaller “medium cruise ship” to accommodate it. Furthermore, attempting to place such equipment on a smaller existing vessel would likely threaten the vessel’s stability. Has the EPA consulted with the U.S. Coast Guard on how this treatment equipment would affect stability of “small ship” cruise vessels?

Furthermore, requiring best management practices for graywater (as the current VGP does) is an effective way to ensure that a “medium cruise ship” ameliorates any slight environmental impact of this kind of discharge.

EPA has not performed the required Regulatory Flexibility Act economic analysis as to how its proposed graywater treatment provisions would affect U.S.-flagged “small ship” cruise vessels, all of whom are operated by small businesses under federal government criteria. This discriminates against companies that have subjected themselves fully to all U.S. laws and standards, including tax and labor laws. PVA urges EPA to consult with the Office of Advocacy of the U.S. Small Business Administration to ensure that it is compliance with its obligations under the Regulatory Flexibility Act.

## **Conclusion**

VGP compliance should be as simple as possible, an objective that EPA achieved with the current VGP. The VGP as proposed meets this aforementioned goal in many places but we have pointed out many areas of improvement in especially with regard to state add-ons. PVA is concerned about the economic analysis EPA has done on the VGP.



PVA appreciates this opportunity to make comments on the proposed 2013 VGP. Please let us know if we can answer any questions or provide you with any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Belforti". The signature is written in a cursive style with a horizontal line at the end.

Paul Belforti

President