



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Environmental  
Conservation**

DIVISION OF WATER  
Wastewater Discharge Authorization Program

555 Cordova Street  
Anchorage, Alaska 99501  
Main: 907.269.6285  
Fax: 907.269.3487

September 28, 2012

DEC File No: 920.48.006

Mr. Michael A. Bussell  
Director, Office of Water and Watersheds, Suite 900  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

**RE: Alaska Department of Environmental Conservation Final Section 401 Certification for the Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Greater Than 79 Feet in Length**

Dear Mr. Bussell:

On November 30, 2011, the Environmental Protection Agency (EPA) public noticed a draft of the Large Vessel General Permit for Discharges Incidental to the Normal Operations of Vessels (2013 VGP). This National Pollutant Discharge Elimination System (NPDES) general permit regulates discharges to the waters of the United States extending to the three-mile demarcation of the territorial seas and inland or coastal waters of the State of Alaska from any non-recreational, non-military vessels greater than 79 feet in length that are operating in the capacity of providing transportation. The 2013 VGP is a reissuance of the 2008 VGP.

The Alaska Department of Environmental Conservation (DEC or the Department) has reviewed EPA's draft 2013 VGP and supporting fact sheet, along with EPA's request for DEC's Section 401 certification of the 2013 VGP. The Department certifies that there is reasonable assurance that the activities and the resulting discharges are in compliance with the requirements of Section 401 of the Clean Water Act, which includes the Alaska Water Quality Standards codified in 18 AAC 70, provided that the terms and conditions of the enclosed certification are adhered to.

The 2008 VGP fact sheet indicated an antidegradation review was not required because the permit "merely authorized point source discharges that previously existed but were unregulated by EPA's NPDES regulations." Furthermore, EPA indicated that issuing the 2008 VGP would not result in lowering water quality given that the unregulated discharges pre-existed, and that through the implementation of regulation, the new pollution control measures provided in the 2008 VGP should improve the quality of the effluent discharged and not result in a lowering of water quality. Hence, an antidegradation review was not triggered.

The 2013 VGP includes modifications to limits and regulates an additional discharge for fish hold effluent. The limit modifications also set more stringent requirements for ballast water discharges and oil-to-sea interfaces. Similar to incidental discharges covered under the 2008 VGP, the fish hold discharges existed prior to inclusion in the 2013 VGP and it is not foreseeable that the established limits for these existing discharges would result in the lowering of water quality. Therefore, based on the history of EPA permitting for these vessels and DEC's assessment of changes proposed in the 2013 VGP, the Department has determined an antidegradation review is not required for this Section 401 certification.

Department regulations provide that any person who disagrees with this decision may request an informal review by the Division of Water Director in accordance with 18 AAC 15.185 or adjudicatory hearing in accordance with 18 AAC 15.195 - 18 AAC 15.340. An informal review request must be delivered to the Division of Water Director, 555 Cordova Street, Anchorage, AK 99501 within 15 days after receiving this permit decision. An adjudicatory hearing request must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Street, Suite 303, Juneau, AK 99811, within 30 days after the date of this permit decision. If a hearing is not requested within 30 days, the right to appeal is waived.

By virtue of this letter, we are advising EPA of our actions and enclosing a copy of the final Section 401 certificate for their use.

If you have any questions regarding this final Section 401 certification, please contact Wade Strickland at [wade.strickland@alaska.gov](mailto:wade.strickland@alaska.gov).

Sincerely,



Wade Strickland  
Program Manager

Enclosure: Final Section 401 Certificate of Reasonable Assurance

cc: via e-mail

Ms. Lynn J. Tomich Kent, DEC/ANC  
Ms. Michelle Bonnet, DEC/ANC  
Mr. Andrew Sayers-Fay, DEC/ANC  
Ms. Sharon Morgan, DEC/JUN  
Mr. Robert Edwardson, DEC/JUN  
Mr. Gerry Brown, DEC/ANC  
Ms. Ruth Hamilton Heese, AK AG Office/JUN  
Mr. Mike Lidgard/EPA Region 10  
Ms. Diane Soderlund, EPA Region 10  
Ms. Hanh Shaw, EPA Region 10  
Ms. Cindi Godsey, EPA Region 10/ANC

**STATE OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
FINAL SECTION 401 CERTIFICATE OF REASONABLE ASSURANCE  
VESSEL GENERAL PERMIT**

A Certificate of Reasonable Assurance (certification), as required by Section 401 of the Clean Water Act (CWA), was requested by the Environmental Protection Agency (EPA) Region 10 for National Pollutant Discharge Elimination System (NPDES) Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (VGP) in a letter dated December 15, 2011. A certification is required for the proposed activities because the activities will be authorized by an EPA NPDES general permit and result in discharges to waters of the United States located in the State of Alaska.

The VGP covers incidental discharges to waters of the United States resulting from non-recreational, non-military vessels greater than 79 feet in length and operating commercially in a capacity as a means of transportation. In developing limitations, EPA evaluated sources based on seven areas of focus: aquatic nuisance species, nutrients, pathogens, oil and grease, metals, toxic and non-conventional pollutants with toxic effects, and most of the conventional pollutants (biochemical oxygen demand, pH, total suspended solids). However, due to the nature of vessel discharges, EPA determined that deriving numeric limits are not practicable for many of the discharge types in this permit, with the exception of discharges of oils and oily mixtures, ballast water, and graywater from cruise ships. The remaining permit limitations are technology-based, best management practices (BMPs) developed through best professional judgment as authorized under CWA 402(a)(1) and 40 CFR 125.3. The BMPs are designed to minimize the discharge of pollutants associated with activities incidental to normal vessel operation. The applicable numeric limits and BMPs are developed according to the following 27 potential discharge categories as described in the VGP:

- Deck Washdown and Runoff and Above Water Line Hull Cleaning
- Bilgewater/Oily Water Separator Effluent
- Ballast Water
- Anti-fouling Hull Coatings and Hull Coating Leachate
- Aqueous Film Forming Foam
- Boiler/Economizer Blowdown
- Cathodic Protection
- Chain Locker Effluent
- Propeller and Hydraulic Maintenance and Other Oil-to-Sea Interfaces
- Distillation and Reverse Osmosis Brine
- Elevator Pit Effluent
- Firemain Systems
- Freshwater Layup
- Gas Turbine Washwater
- Graywater
- Motor Gasoline and Compensating Discharge
- Non-oily Machinery
- Refrigeration and Air Condensate Discharge

- Seawater Cooling Overboard Discharge
- Seawater Piping Biofouling Prevention
- Boat Engine Wet Exhaust
- Sonar Dome Discharge
- Underwater Ship Husbandry Discharges
- Weldeck Discharges
- Graywater Mixed with Sewage from Vessels
- Exhaust Gas Scrubber Washwater Discharge
- Fish Hold Effluent (New).

EPA provides vessel-class-specific limitations that are additional requirements to certain vessel classes. These vessels include: large cruise ships (500 passengers or more for hire), medium cruise ships (100 to 499 passengers for hire), large ferries (100 tons cargo or 250 passengers or more for hire), barges, oil tankers, research vessels, and emergency and rescue vessels. These vessel classifications are grouped differently for permits issued by the Alaska Commercial Passenger Vessel Environmental Compliance Program (CPVEC) as defined by Alaska Statute (AS) 46.03.490<sup>1</sup>. Furthermore, AS 46.03.490(2)(A-C) implicitly classifies ferries as either large or small cruise ships based on their passengers for hire. As a result of different vessel classifications in the VGP and the State's CPVEC, the VGP creates a patchwork of federal and state wastewater discharge permit requirements for cruise ships/commercial passenger vessels and ferries operating in waters of the United States located in the State of Alaska.

The Department reviewed the EPA draft NPDES permit and certifies that, upon compliance with specified permit conditions, there is reasonable assurance that the limitations are in compliance with the requirements of Section 401 of the CWA, which includes the Alaska Water Quality Standards (WQS), codified in 18 AAC 70. Through this certification, in accordance with 18 AAC 15.120 Adoption of NPDES Permits, the final NPDES permit will constitute the permit required under AS 46.03.100 Waste Disposal Permit, provided that the terms and conditions of the final certification are made part of the final NPDES permit. The Department specifies the following permit terms and conditions under the authority of AS 46.03.110(d).

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<sup>1</sup> Per Alaska Statutes, "Commercial passenger vessel" means a vessel that carries passengers for hire except that "commercial passenger vessel" does not include a vessel (A) authorized to carry fewer than 50 passengers; (B) that does not provide overnight accommodations for at least 50 passengers for hire, determined with reference to the number of lower berths; or (C) operated by the United States or a foreign government. "Large commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for 250 or more passengers for hire, determined with reference to the number of lower berths. "Small commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for 249 or fewer passengers for hire, determined with reference to the number of lower berths. "Passengers for hire" means vessel passengers for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.



## **Terms**

- 1) This Section 401 certification shall become effective on the date when EPA's final VGP becomes effective.
- 2) If the Department determines that vessel discharges covered under the VGP cannot comply with the terms and conditions of this certification or WQS, then this certification may be modified to include different terms, conditions, or requirements consistent with applicable laws, regulations, or judicial orders. The Department will public notice substantial proposed modifications to this certification. Insignificant technical corrections or clarifications to this certification (e.g., typos) will not be public noticed.
- 3) All terms, requirements, limitations, and restrictions specified in this Section 401 certification shall be included in Part 6 of the EPA VGP conditions and shall be primarily enforced by EPA through the VGP.
- 4) EPA shall direct and ensure VGP permittees undertake immediate corrective actions to mitigate noncompliance with any terms, stipulations, limitations, or restrictions specified in this Section 401 certification. These actions shall not preclude DEC from taking enforcement action authorized by Alaska law.
- 5) For violations that occur within State waters, permittees shall notify and provide DEC electronic copies of any noncompliance reports required under 40 CFR 122.44(i)(5).
- 6) Owners or operators of large and small commercial passenger vessels are responsible for complying with all Alaska statutes, regulations, and wastewater discharge requirements.

## **Conditions**

- 1) All discharges authorized by the VGP to waters of the United States extending to the three-mile demarcation of the territorial seas and inland or coastal waters of the State of Alaska shall not result in a violation of Alaska water quality criteria, found in 18 AAC 70, in the water body.

*Rationale: Vessel operators must treat wastewater and/or implement the BMPs in the VGP and ensure discharges comply with the applicable water quality criteria for the subject water body.*

- 2) Permittees covered under the VGP shall undertake immediate corrective actions to mitigate noncompliance or violations with any terms or conditions specified in this Section 401 certification. EPA's regulation of vessels under the VGP shall not preclude DEC from regulating vessels or taking enforcement action authorized by Alaska law.

*Rationale: EPA is the primary authority responsible for ensuring compliance with the EPA-issued VGP. However, the Department does not waive its rights to regulate vessels and or take enforcement action in accordance with Alaska law.*

- 3) Permittees must be aware of the status of the water bodies they are traveling through, specifically whether the water bodies are impaired and have, or do not have, an EPA-approved Total Maximum Daily Load implementation plan prepared under CWA 303(d).

*Rationale: The location of impaired waters of the United States must be known prior to the discharge activity. The permittees are responsible for identifying areas where discharges are prohibited, including accessing CWA 303(d) list of impaired waters or the State's most current Integrated Water Quality Monitoring and Assessment Report.*

September 28, 2012

Date

Wade Strickland

Wade Strickland, Program Manager