ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8588–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements Filed 12/15/2008 Through 12/19/2008 Pursuant to 40 CFR 1506.9

Due to the closing of Executive Departments and Agencies of the Federal Government on 12/26/2008, this Notice of Availability is being published on 12/29/2008. Comment and Wait Periods will be calculated from 12/29/2008.

EIS No. 20080527, Draft EIS, AFS, CA, Modoc National Forest Motorized Travel Management Plan, Implementation, National Forest Transportation System (NFTS), Modoc, Lassen and Siskiyou Counties, CA, Comment Period Ends: 02/11/2009, Contact: Kathleen Borovac 530–233–8754.

EIS No. 20080528, Draft EIS, USN, 00, Northwest Training Range Complex (NWTRC), To Support and Conduct Current, Emerging, and Future Training and Research, Development, Test and Evaluation (RDT&E) Activities, WA, OR and CA, Comment Period Ends: 02/11/2009, Contact: Kimberly Kler 360–396–0927.

EIS No. 20080529, Draft EIS, FHW, CT, North Hillside Road Extension on the University of Connecticut Storrs Campus, Hunting Lodge Road, U.S. Army COE Section 404 Permit, in the town Mansfield, CT, Comment Period Ends: 02/13/2009, Contact: Bradley D. Keaqer 860–659–6703 Ext 3009.

EIS No. 20080530, Draft EIS, MMS, AK, Beaufort Sea and Chukchi Sea Planning Areas, Proposals for Oil and Gas Lease Sales 209, 212, 217, and 221, Offshore Marine Environment, Beaufort Sea Outer Continental Shelf, and North Slope Borough of Alaska, Comment Period Ends: 03/16/2009, Contact: Keith Gordon 907–334–5265.

EIS No. 20080531, Draft EIS, USN, WA, Naval Base Kitsap—Bangor, Construct and Operate a Swimmer Interdiction Security System (SISS), Silverdatle Kitsap County, WA, Comment Period Ends: 03/02/2009, Contact: Shannon Kasa 619–553–3889.

EIS No. 20080532, Draft EIS, AFS, CO, Vail Ski Area's 2007 Improvement Project, Addressing Issues Related to the Lift and Terrain Network, Skier Circulation, Snowmaking Coverage, Guest Services Facilities, Special-Use-Permit, Eagle/Holy Cross Ranger District, White River National Forest, Eagle County, CO, Comment Period Ends: 02/11/2009, Contact: Roger Poirier 970–945–3266.

EIS No. 20080533, Draft EIS, AFS, CA, Plumas National Forest Public Motorized Travel Management, Implementation, Plumas National Forest, Plumas County, CA, Comment Period Ends: 02/11/2009, Contact: Jane Beaulieu 530–283–7742.

EIS No. 20080534, Final EIS, IBR, WA, Yakima River Basin Water Storage Feasibility Study, Create Additional Water Storage, Benton, Yakima, Kittitas Counties, WA, Wait Period Ends: 01/27/2009, Contact: David Kaumheimer 509–575–5848 Ext. 612.

Amended Notices

EIS No. 20070327, Draft EIS, FTA, TX, Withdrawn—Denton to Carrollton Regional Rail Corridor Project, Transportation Improvements between Downtown Denton and the Dallas Area Rapid (DART) System, Right-of-Way Grant, Denton and Dallas Counties, TX, Contact: Robert C. Patrick 817–978–0550. Revision to FR Notice Published 08/03/2007: Officially Withdrawn by the Filing Agency.

EIS No. 20080480, Draft EIS, USN, NJ, Laurelwood Housing Area, Access at Naval Weapons Station Earle, Lease Agreement, Monmouth County, NJ, Comment Period Ends: 01/23/2009, Contact: Kim Joyner-Barty 757–322–8473. Revision to FR Notice Published 11/28/2008: Extending Comment Period from 01/12/2009 to 01/23/2009.

Dated: December 22, 2008.

Clifford Rader,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–30908 Filed 12–24–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–8757–3, EPA–HQ–OW–2008–0055]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA Regions 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are finalizing an NPDES Vessel General Permit (VGP) to cover discharges incidental to the normal operation of vessels. This action is in response to a District Court ruling that vacates, as of December 19, 2008, a long-standing EPA regulation that excludes discharges incidental to the normal operation of a vessel from the need to obtain an NPDES permit. As of December 19, 2008, discharges incidental to the normal operation of a vessel that had formerly been exempted from NPDES permitting by the regulation will be subject to the prohibition in CWA Section 301(a) against the discharge of pollutants without a permit.

EPA solicited information and data on discharges incidental to normal vessel operations to assist in developing two NPDES general permits in a **Federal Register** Notice published June 21, 2007 (72 FR 32421). The majority of information and data in response to that notice came from seven different groups: Individual citizens, commercial fishing representatives, commercial shipping groups, environmental or outdoor recreation groups, the oil and gas industry, recreational boating-related businesses, and state governments. EPA considered all the information and data received along with other publicly available information in developing two proposed vessel permits.

EPA published the two proposed permits and accompanying fact sheets for public comment on June 17, 2008 (73 FR 34296). As proposed, the VGP would have covered all commercial and non-recreational vessels and those recreational vessels longer or equal to 79 feet, and the proposed RGP would have covered recreational vessels less than 79 feet in length. However, after the permits were proposed, Congress enacted two new laws that impact the universe of vessels covered under today's permit. On July 29, 2008, Senate bill S. 2766 (''the Clean Boating Act of 2008'') was signed into law (Pub. L. 110–288). This law provides that recreational vessels shall not be subject to the requirement to obtain an NPDES permit to authorize discharges incidental to their normal operation. As a result of this legislation, EPA is not finalizing the proposed recreational vessel NPDES permit and has also modified the VGP, which included those recreational vessel over 79 feet, to eliminate that coverage. On July 31, 2008, Senate bill S. 3298 was signed into law (Pub. L. 110–299). This law generally imposes a two-year moratorium during which time neither EPA nor states can require NPDES permits for discharges (except ballast

water discharges) incidental to the normal operation of vessels of less than 79 feet and commercial fishing vessels of any length. EPA is not taking final action on the proposed permit as it would apply to these vessels and has revised the final VGP to reflect the new law.

DATES: This permit is effective December 19, 2008. This effective date is necessary to provide affected vessels the necessary permit coverage under the Clean Water Act in light of the vacatur of the 40 CFR 122.3(a) NPDES permitting exemption. EPA notes that on December 18, 2008, a motion was filed with the U.S. District Court for the Northern District of California seeking a delay of vacatur of the 40 CFR 122.3(a) exclusion from NPDES permitting until February 6, 2009. As of the time today's notice was ready for signature, the Court had not taken action on that motion; thus, EPA could not adjust the effective date of the permit to coincide with a new vacatur date. EPA advises that should the court grant the motion to delay the vacatur date, the effective date of today's permit will not change. In addition, compliance dates for those permit provisions that require compliance at some explicit amount of time after the effective date will not be extended, regardless of whether the Court delays vacatur of the exclusion. However, because permit authorization is not required until vacatur of the 40 CFR 122.3(a) permitting exclusion occurs, the regulated community need not comply with the terms of today's permit until the date of vacatur ordered by the Court.

In accordance with 40 CFR Part 23, this permit shall be considered issued for the purpose of judicial review on the day 2 weeks after **Federal Register** Publication. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part 1.5 of the VGP. This permit also provides additional dates for compliance with the terms of these permits.

FOR FURTHER INFORMATION CONTACT: For further information on this final vessel NPDES general permit, contact Ryan Albert at EPA Headquarters, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; or at tel. 202–564–0763; or Juhi Saxena at EPA Headquarters, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; or at tel. 202–564–0719; or e-mail: *CommercialVesselPermit@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Final Permit Apply To Me?

This action applies to all vessels operating in a capacity as a means of transportation, except recreational vessels as defined in CWA section 502(25), Public Law 110–288, that have discharges incidental to their normal operations into waters subject to this permit. With respect to (1) commercial fishing vessels of any size as defined in 46 U.S.C. 2101 and (2) those non-recreational vessels that are less than 79 feet in length, the coverage under this permit is limited to ballast water discharges only. Unless otherwise excluded from coverage by Part 6 of the permit, waters subject to this permit, means waters of the U.S. as defined in 40 CFR 122.2.

B. How Can I Get Copies of These Documents and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2008–0055 VGP. The official public docket is the collection of materials, including the administrative record, for the final permit, required by 40 CFR 124.18. It is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *http://www.regulations.gov* and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Water Docket is (202) 566–2426. In addition, the comments and information that EPA received in response to its June 21, 2007, **Federal Register** notice can be found in the public docket at *http://www.regulations.gov* by searching Docket ID No. EPA–HQ–OW–2007–0483.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through the Federal Docket Management System (FDMS) found at *http://www.regulations.gov.* You may use the FDMS to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once at the Web site, enter the appropriate Docket ID No. in the ''Search'' box to view the docket.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A.1.

Response to public comments. EPA received 173 comments on the proposed VGP from the shipping industry (108), States (28), Environmental Groups and the public (37). EPA has responded to all comments received and has included these responses in a separate document in the public docket for this permit. See the document titled *Proposed VGP: EPA's Response to Public Comments.*

C. Public Outreach: Public Hearing and Public Meetings, Webcast

Because EPA anticipated a significant degree of public interest in the draft permit, EPA held a public hearing Monday, July 21, 2008, to receive public comment and answer questions concerning the proposed permit. In addition, EPA and the U.S. Coast Guard co-hosted three (3) public meetings on Thursday, June 19, 2008, in Washington, DC; Tuesday, June 24, 2008, in Portland, OR; and Thursday, June 26, 2008, in Chicago, IL; to present the proposed requirements of the VGP and the basis for those requirements, as well as to answer questions concerning the proposed permit. The public meetings and public hearing were attended by a wide variety of

stakeholders including representatives from industry, government agencies, and environmental organizations.

In addition, EPA held a Webcast on July 2, 2008, to provide information on the proposed permits and to answer questions from interested parties that were unable to attend the public meetings or hearing.

D. Who Are the EPA Regional Contacts for This Proposed Permit?

For EPA Region 1, contact Sara Green at USEPA REGION 1, 1 Congress Street, Suite 1100, Mail Code: CIP, Boston, MA 02114–2023; or at tel.: (617) 918–1574; or e-mail at *greene.sara@epa.gov.*

For EPA Region 2, contact James Olander at USEPA REGION 2, 290 Broadway, New York, NY 10007–1866; or at tel.: (212) 637–3833; or e-mail at *olander.james@epa.gov.*

For EPA Region 3, contact Mark Smith at USEPA REGION 3, 1650 Arch Street, Mail Code: 3WP41, Philadelphia, PA 19103–2029; or at tel.: (215) 814–3105; or e-mail at *smith.mark@epa.gov.*

For EPA Region 4, contact Marshall Hyatt at USEPA REGION 4, 61 Forsyth Street, SW., Atlanta, GA 30303–8960; or at tel.: (404) 562–9304; or e-mail at *hyatt.marshall@epa.gov.*

For EPA Region 5, contact Sean Ramach at USEPA REGION 5, 77 West Jackson Boulevard, Mail Code: WN–16J, Chicago, IL 60604–3507; or at tel.: (312) 886–5284; or e-mail at *ramach.sean@epa.gov.*

For EPA Region 6, contact Paul Kaspar at USEPA REGION 6, 1445 Ross Avenue, Suite 1200, Mail Code: 6WQPP, Dallas, TX 75202–2733; or at tel.: (214) 665–7459; or e-mail at *kaspar.paul@epa.gov.*

For EPA Region 7, contact Alex Owutaka at USEPA REGION 7, 901 North Fifth Street, Mail Code: WWPDWIMB, Kansas City, KS 66101; or at tel: (913) 551–7584; or e-mail at *owutaka.alex@epa.gov.*

For EPA Region 8, contact Sandy Stavnes, at USEPA REGION 8, 1595 Wynkoop St., Mail Code: 8P–W–WW, Denver, CO 80202–1129; or at tel: (303) 312–6117; or e-mail at *stavnes.sandra@epa.gov.*

For EPA Region 9, contact Eugene Bromley at USEPA REGION 9, 75 Hawthorne Street, Mail Code: WTR–5, San Francisco, CA 94105; or at tel.: (415) 972–3510; or e-mail at *bromley.eugene@epa.gov.*

For EPA Region 10, contact Cindi Godsey at USEPA Region 10—Alaska Operations Office, Federal Building Room 537, 222 West 7th Avenue #19, Mail Code: AOO/A, Anchorage, AK 99513–7588; or at tel.: (907) 271–6561; or e-mail at *godsey.cindi@epa.gov.*

II. Statutory and Regulatory History

A. The Clean Water Act

Section 301(a) of the Clean Water Act (CWA) provides that ''the discharge of any pollutant by any person shall be unlawful'' unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines ''discharge of a pollutant'' as ''(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.'' 33 U.S.C. 1362(12). A ''point source'' is a ''discernible, confined and discrete conveyance'' and includes a ''vessel or other floating craft.'' 33 U.S.C. 1362(14).

The term ''pollutant'' includes, among other things, ''garbage * * * chemical wastes * * * and industrial, municipal, and agricultural waste discharged into water.'' The Act's definition of ''pollutant'' specifically excludes ''sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces'' as defined in Clean Water Act section 312. 33 U.S.C. 1362(6). One way a person may discharge a pollutant without violating the section 301 prohibition is by obtaining a section 402 National Pollutant Discharge Elimination System (NPDES) permit (33 U.S.C. 1342). Under section 402(a), EPA may ''issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a)'' upon certain conditions required by the Act.

B. The History of the Exclusion of Vessels From the NPDES Program

Less than one year after the CWA was enacted, EPA promulgated a regulation that excluded discharges incidental to the normal operation of vessels from NPDES permitting. 38 FR 13528, May 22, 1973. After Congress re-authorized and amended the CWA in 1977, EPA invited another round of public comment on the regulation. 43 FR 37078, August 21, 1978. In 1979, EPA promulgated the final revision that established the regulation largely in its current form. 44 FR 32854, June 7, 1979. The regulation identifies several types of vessel discharges as being subject to NPDES permitting, but specifically excludes discharges incidental to the normal operation of a vessel.

> The following discharges do not require NPDES permits:
>
> (a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development. 40 CFR 122.3(a).

Although other subsections of 40 CFR 122.3 and its predecessor were the subject of legal challenges (*See NRDC* v. *Costle,* 568 F.2d 1369 (D.C. Cir. 1977)), following its promulgation, the regulatory text relevant to discharges incidental to the normal operation of vessels went unchallenged at that time, and has been in effect ever since.

C. The Legal Challenge

In December 2003, the long-standing exclusion of discharges incidental to the normal operation of vessels from the NPDES program became the subject of a lawsuit in the U.S. District Court for the Northern District of California. The lawsuit arose from a January 13, 1999, rulemaking petition submitted to EPA by a number of parties concerned about the effects of ballast water discharges. The petition asked the Agency to repeal its regulation at 40 CFR 122.3(a) that excludes certain discharges incidental to the normal operation of vessels from the requirement to obtain an NPDES permit. The petition asserted that vessels are ''point sources'' requiring NPDES permits for discharges to U.S. waters; that EPA lacks authority to exclude point source discharges from vessels from the NPDES program; that ballast water must be regulated under the NPDES program because it contains invasive plant and animal species as well as other materials of concern (*e.g.*, oil, chipped paint, sediment and toxins in ballast water sediment); and that enactment of CWA section 312(n) (Uniform National Discharge Standards, also known as the UNDS program) demonstrated Congress' rejection of the exclusion.

In response to the 1999 petition, EPA first prepared a detailed report for public comment, *Aquatic Nuisance Species in Ballast Water Discharges: Issues and Options* (September 10, 2001). *See,* 66 FR 49381, September 27, 2001. After considering the comments received, EPA declined to reopen the exclusion for additional rulemaking, and denied the petition on September 2, 2003. EPA explained that since enactment of the CWA, EPA has consistently interpreted the Act to provide for NPDES regulation of

discharges from industrial operations that incidentally occur onboard vessels (*e.g.*, seafood processing facilities or oil exploration operations at sea) and of discharges overboard of materials such as trash, but not of discharges incidental to the normal operation of a vessel (*e.g.*, ballast water) subject to the 40 CFR 122.3(a) exclusion. EPA further explained that Congress had expressly considered and accepted the Agency's regulation in the years since its promulgation, and that Congress chose to regulate discharges incidental to the normal operation of vessels through programs other than CWA section 402 permitting. Thus, it was EPA's understanding that Congress had acquiesced to EPA's long-standing interpretation of how the CWA applied to vessels. Denial of the petition did not reflect EPA's dismissal of the significant impacts of aquatic invasive species, but rather the understanding that other programs had been enacted to specifically address the issue and that the CWA does not currently provide an appropriate framework for addressing ballast water and other discharges incidental to the normal operation of non-military vessels.

In the denial of the petition, EPA noted that when Congress specifically focused on the problem of aquatic nuisance species in ballast water, it did not look to or endorse the NPDES program as the means to address the problem. Instead, Congress enacted new statutes which directed and authorized the Coast Guard, rather than EPA, to establish a regulatory program for discharges incidental to the normal operation of vessels, including ballast water (*i.e.*, Nonindigenous Aquatic Nuisance Prevention and Control Act as amended, 16 U.S.C. 4701 *et seq.*; Act to Prevent Pollution from Ships, 33 U.S.C. 1901 *et seq.*). Furthermore, Congress made no effort to legislatively repeal EPA's interpretation of the NPDES program or to expressly mandate that discharges incidental to the normal operation of vessels be addressed through the NPDES permitting program. EPA reasoned that this Congressional action and inaction in light of Congress' awareness of the regulatory exclusion confirmed that Congress accepted EPA's interpretation and chose the Coast Guard as the lead agency under other statutes.

In addition, EPA found significant practical and policy reasons not to re-open the longstanding CWA regulatory exclusion, reasoning that there are a number of ongoing activities within the Federal government related to control of invasive species in ballast water, many of which are likely to be more effective and efficient than use of NPDES permits under the CWA. EPA also noted that nothing in the CWA prevents states from independently regulating ballast water discharges under State law, should they choose to do so, pursuant to CWA section 510.

After EPA's September 2003 denial of the petition, a number of groups filed a complaint in the U.S. District Court for the Northern District of California. The complaint was brought pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, and set out two causes of action. First, the complaint challenged EPA's promulgation of 40 CFR 122.3(a), an action the Agency took in 1973. The second cause of action challenged EPA's September 2003 denial of their petition to repeal the Sec. 122.3(a) exclusion.

D. District Court Decision

In March 2005, the Court determined that the exclusion exceeded the Agency's authority under the CWA. Specifically, in March 2005 the Court granted summary judgment to the plaintiffs:

> The Court DECLARES that EPA's exclusion from NPDES permit requirements for discharges incidental to the normal operation of a vessel at 40 CFR 122.3(a) is in excess of the Agency's authority under the Clean Water Act * * *.

Northwest Envtl. Advocates v. *United States EPA,* 2005 U.S. Dist. LEXIS 5373 (N.D. Cal. 2005). After this ruling, the Court granted motions to intervene on behalf of the Plaintiffs by the States of Illinois, New York, Michigan, Minnesota, Pennsylvania, and Wisconsin, and on behalf of the Government-Defendant by the Shipping Industry Ballast Water Coalition.

Following submission of briefs and oral argument by the parties and interveners on the issue of a proper remedy, the Court issued a final order in September 2006 providing that:

> The blanket exemption for discharges incidental to the normal operation of a vessel, contained in 40 CFR 122.3(a), shall be vacated as of September 30, 2008.

Northwest Envtl. Advocates v. *United States EPA,* 2006 U.S. Dist. LEXIS 69476 (N.D. Cal. Sept. 18, 2006).

EPA filed an appeal in the U.S. Court of Appeals for the Ninth Circuit, and on July 23, 2008, the Court upheld the District Court's decision, leaving the September 30, 2008 vacatur date intact. *Northwest Envtl. Advocates* v. *EPA* 537 F.3d 1006 (9th Cir. 2008). EPA subsequently petitioned the District Court to extend the date for vacatur of the 40 CFR 122.3(a) exclusion to December 19, 2008, and the District Court granted this request. *Northwest NW. Envt'l Advocates et al.* v. *United States EPA,* 2008 U.S. Dist. LEXIS 66738 (N.D. Cal. August 31, 2008)

This means that, effective December 19, discharges incidental to the normal operation of vessels currently excluded from NPDES permitting by that regulation will become subject to CWA section 301's discharge prohibition, unless covered under an NPDES permit. The CWA authorizes civil and criminal enforcement for violations of that prohibition and also allows for citizen suits against violators.

Additional material related to the lawsuit is contained in the docket accompanying these proposed permits and fact sheets.

III. Scope and Applicability of the 2008 VGP

A. CWA Section 401 Certification and Coastal Zone Management Act Concurrence

EPA may not issue a permit authorizing discharges into the waters of a State until that State has granted certification under CWA section 401 or has waived its right to certify (or been deemed to have waived). 33 U.S.C. 1341(a)(1); 40 CFR 124.53(a). For this permit, a State was deemed to have waived its right to certify if it did not exercise that right within 60 days from the date the State was notified of the draft permit, unless EPA granted that State more time to certify based on ''unusual circumstances.'' 40 CFR 124.53(c)(3). If a State believed that any permit condition(s) more stringent than those contained in the draft permit were necessary to meet the applicable requirements of either the CWA or State law, the State had an opportunity to include those condition(s) in its certification. 40 CFR 124.53(e)(1). A number of States provided such conditions in their certifications, and EPA has added them to the VGP pursuant to CWA section 401(d). 33 U.S.C. 1341(d).

Similarly, the EPA may not issue a general permit authorizing discharges into waters of a State if the State objects, in the case of this general permit, with EPA's National Consistency Determination, pursuant to the regulations implementing of the Coastal Zone Management Act (''CZMA''), specifically the regulations at 15 CFR 930.31(d) and 930.36(e). Several States provided conditions to the VGP, based on specific enforceable coastal policies of the State, which allowed the State to concur with EPA's consistency determination. According to the regulations, EPA incorporated these

conditions to the maximum extent practicable. If a State coastal zone management agency's conditions are not incorporated into the general permit or if the State coastal zone management agency objects to the general permit, then the general permit is not available for use by potential general permit users in that State unless the applicant who wants to use the general permit provides the State agency with the applicant's consistency determination and the State agency concurs. 15 CFR 930.31(d), NOAA has explained that ''a State objection to a consistency determination for the issuance of a general permit would alter the form of CZMA compliance required, transforming the general permit into a series of case by case CZMA decisions and requiring an individual who wants to use the general permit to submit an individual consistency certification to the State agency in compliance with 15 CFR part 930.'' 71 FR 788, 793. In States that have not provided conditions for incorporation into the permit to allow the State to concur, as well as States that have not objected to the permit, EPA's CZMA compliance requirements derive from CZMA section 307(c)(1). Id.

B. Geographic Coverage of VGP

The VGP applies to discharges incidental to the normal operation of a vessel identified as being eligible for coverage in the final permit, into waters subject to the permit. These waters are ''waters of the United States'' as defined in 40 CFR 122.2 (extending to the reach of the 3-mile territorial sea as defined in section 502(8) of the CWA). The final permit covers vessel discharges in the waters of the U.S. in all States, Territories and Indian Country Land, regardless of whether a ''state'' is otherwise authorized to implement the NPDES permit program within its jurisdiction. For more information on this approach, see the fact sheet accompanying the final permit.

As of the issuance date of this permit, the following jurisdictions have not yet granted, denied, waived (or been deemed to have waived) certifications pursuant to Section 401 of the Clean Water Act and/or final responses on the national consistency determination required by section 307(c)(1) of the Coastal Zone Management Act. Therefore, this permit does not yet provide coverage in the following jurisdictions:

- The State of Alaska
- The State of Hawaii

EPA will announce the availability of coverage under the VGP discharges in these jurisdictions in a separate **Federal Register** notice as soon as possible should it receive the appropriate 401 certifications or waivers, and/or final responses on the national consistency determination. In addition, the VGP is not effective in the Taos Pueblo Indian Country Land (New Mexico) because they have denied certification under CWA section 401.

C. Categories of Vessels Covered Under VGP

The final vessel general permit (VGP) applies to owners and operators of non-recreational vessels that are 79 feet (24.08 meters) and greater in length, as well as to owners and operators of commercial vessels of less than 79 feet and commercial fishing vessels of any length which discharge ballast water.

The final VGP does not apply to recreational vessels of any size, commercial fishing vessels of any size which do not discharge ballast water, and non-recreational vessels of less than 79 feet which do not discharge ballast water. For Commercial fishing vessels and non-recreational vessels of less than 79 feet in length that discharge ballast water, the only effluent limit these vessels are subject to are the VGP standards that apply to ballast water discharges.

D. Summary of VGP Terms and Requirements

The final VGP addresses 26 vessel discharge streams by establishing effluent limits, including Best Management Practices (BMPs), to control the discharge of the waste streams and constituents found in those waste streams. The discharge streams eligible for coverage under this final permit are: Deck washdown and runoff and above water line hull cleaning; bilge water; ballast water; anti-fouling leachate from anti-fouling hull coatings; aqueous film forming foam (AFFF); boiler/economizer blowdown; cathodic protection; chain locker effluent; controllable pitch propeller hydraulic fluid and thruster hydraulic fluid and other oil sea interfaces including lubrication discharges from paddle wheel propulsion, stern tubes, thruster bearings, stabilizers, rudder bearings, azimuth thrusters, and propulsion pod lubrication; distillation and reverse osmosis brine; elevator pit effluent; firemain systems; freshwater layup; gas turbine wash water; graywater; motor gasoline and compensating discharge; non-oily machinery wastewater; refrigeration and air condensate discharge; seawater cooling overboard discharge; seawater piping biofouling prevention; small boat engine wet exhaust; sonar dome discharge, underwater ship husbandry; welldeck discharges; graywater mixed with sewage from vessels; and exhaust gas scrubber wash water discharge.

For each discharge type, among other things, the final permit establishes effluent limits pertaining to the constituents found in the effluent, including BMPs designed to decrease the amount of constituents entering the waste stream. A vessel might not produce all of these discharges, but a vessel owner or operator is responsible for meeting the applicable effluent limits and complying with all the effluent limits for every listed discharge that the vessel produces.

Discharge Authorization Timeframe

To obtain authorization, the owner or operator of a vessel that is either 300 or more gross tons or has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water is required to submit a Notice of Intent (NOI) to receive permit coverage, beginning June 19, 2009, but no later than September 19, 2009. Until September 19, 2009 these vessels will be automatically authorized upon permit issuance to discharge according to the permit requirements. For vessels that were delivered to the owner or operator on or before September 19, 2009, the vessel will receive final permit coverage on the date that EPA receives the complete NOI. New vessels that are delivered after September 19, 2009 will receive permit coverage 30 days after EPA receives the complete NOI. When ownership of a vessel previously authorized to discharge under this permit is transferred to a new owner, the discharge authorization date is the later of the date EPA receives an NOI from the new owner or the date of transfer. In the case of an existing vessel which was not previously authorized to discharge under this permit, delivered to the owner after September 19, 2009, the discharge authorization date is 30 days after EPA receives the complete NOI.

Vessels that are less than 300 gross tons or are able to carry or discharge no more than 8 cubic meters of ballast water capacity will be automatically authorized upon permit issuance to discharge according to the permit requirements.

Monitoring and Reporting

The VGP requires routine self-inspection and monitoring of all areas of the vessel that the permit addresses. The routine self-inspection must be documented in the ship's logbook. Analytical monitoring is required for certain types of vessels. The VGP also requires comprehensive annual vessel

inspections, to ensure even the hard-to-reach areas of the vessel are inspected for permit compliance. If the vessel is placed in dry dock while covered under this permit, a dry dock inspection and report must be completed. Additional monitoring requirements are imposed on certain classes of vessels, based on unique characteristics not shared by other vessels covered under the VGP.

Vessel Type-Specific Requirements

The permit imposes additional requirements for 8 specific types of vessels which have unique characteristics resulting in discharges not shared by other types of vessels. These vessel types are medium cruise ships, large cruise ships, large ferries, barges, oil or petroleum tankers, research vessels, rescue boats, and vessels employing experimental ballast water treatment systems. The permit requirements are designed to address the discharges from features unique to those vessels, such as parking decks on ferries and overnight accommodations for passengers on cruise ships.

E. Summary of Significant Changes From Proposal to Final Permit

The final VGP differs from the proposed permit in several ways, the most significant of which are discussed below. These changes include modifying the graywater discharge requirements for existing medium cruise ships unable to voyage more than 1 nautical mile (nm) from shore, adding requirements for the discharge of pool and spa water from cruise ships, prohibiting the discharge of tetrachloroethylene degreasers, expanding the prohibition against discharge of Tributyltin to a prohibition against discharge of any organotin compounds, and the addition of whole effluent toxicity (WET) testing to the requirements for vessels employing a ballast water treatment system which discharge certain biocides. Other changes made include revising the universe of vessels eligible for coverage of the permit in response to two new laws (see Summary section above), combining three discharge categories into a new category that includes all oil to sea interfaces, modifying discharges and limits for large ferries, and additional clarifications added to several cruise ship discharges.

In addition to seeking public comment on all requirements of the proposed VGP, EPA specifically sought comment on several specific aspects of the VGP (for more detail on each element see the Permit Fact Sheet). The following sections summarize each topic for which EPA requested comment and what, if anything, EPA changed in the final VGP. For specific and full responses to public comment, please see the response to comments document included in the docket for this permit.

Tetrachloroethylene (TCE)

EPA sought information on whether uses of Tetrachloroethylene (TCE) other than dry cleaning should be explicitly included or excluded from permit coverage. EPA was also interested in comments on the frequency and nature of the use of TCE-containing products on vessels. (TCE discharges associated with dry-cleaning activities on vessels were not proposed to be eligible for coverage because they are not considered to be incidental to the normal operation of a vessel).

Based on public comments received, discharges of TCE degreasers and other TCE containing products were made ineligible for coverage under the permit.

Notice of Intent (NOI) Requirements

EPA specifically requested comment on the approach for requiring NOIs from vessels. Comments received on this topic were split, with some in favor of the proposed requirements, and some recommending changes. The most concern was raised over unmanned barges and the difficulty of submitting NOIs for an entire fleet of vessels. EPA acknowledges these comments and is attempting to make its e-NOI system as user friendly as possible. The Agency intends to consider the needs of users who must fill in multiple forms when designing the electronic system. The e-NOI is expected to be operational six months from the date of permit issuance (June 19, 2009).

Additionally, based on public comment noting that most regulations were changing to use ''gross ton'' instead of ''gross registered ton'' as a unit for regulation, EPA has changed the NOI requirements to require an NOI from those vessels of more than 300 gross tons, rather than 300 gross registered tons. Vessels that have the ability to hold or discharge more than 8 cubic meters of ballast are also required to submit an NOI. The majority of commenters supported EPA's decision to require NOIs of only a subset of vessels covered by the permit.

Numeric Discharge Limits in Place of Best Management Practices (BMPs)

EPA specifically requested comment on whether the permit should establish numeric discharge limits for any of those discharges for which the proposed permit would have solely imposed best management practices (BMPs). The proposed permit included numeric discharge limits for graywater from cruise ships; oily discharges, including oily mixtures; and residual biocide limits from vessels utilizing experimental ballast water treatment systems. For the remainder of the discharges incidental to the normal operation of vessels, the proposed permit would have imposed BMPs, based on EPA's conclusion that numeric effluent limitations are not feasible for vessel discharges in this permit iteration. EPA requested that if commenters provide suggested numeric limits, that they should also provide any supporting data that identifies technologies or BMPs available to meet those limits, and if those limits are more stringent than requirements of the proposed permit, provide the costs and non-water quality impacts of setting those limits, and any other relevant information that would be helpful in setting those limits.

While several commenters recommended establishing numeric limits for more discharges than were included in the proposed permit, EPA has not added additional numeric limits except for experimental ballast water treatment discharges and for Pool and Spa discharges (see section titled ''Operational Limits for Large Cruise Ships'' below for discussion about Pool and Spa discharges). In the proposal for this general permit, EPA specifically requested comment on whether whole effluent toxicity (''WET'') tests should be used in addition to, or in lieu of, analytical monitoring of residual biocides and derivatives and if so, what appropriate toxicity-based endpoints might be used for this purpose. Based on public comment, the final VGP establishes WET testing, as a requirement for VGP coverage for ballast water treatment systems using biocides, or which have derivatives from such biocides, for which there are not acute water quality criteria. This approach is based on existing EPA WET methods and WET testing for ballast water discharges adopted by the State of Washington, and relies primarily on the methods specified in 40 CFR Part 136. The principal public comment on WET referenced the Washington State WET testing provisions for ballast water, which can be found at *http://www.ecy.wa.gov/pubs/9580.pdf,* appendix H. EPA used this manual as a reference in addition to WET tests consistent with past Agency practice (including Denton *et al.* 2007).

Several commenters noted that EPA should include numeric treatment standards for Ballast Water. EPA notes that although ballast water treatment technologies are not currently available

within the meaning of BAT under the CWA, such technologies are rapidly developing and might become ''available'' using a BAT standard within this permit term. EPA commits to continuing to review the evolution of ballast water treatment technologies and may, if appropriate, use the permit reopener in light of that evolution. See Part 4 of the VGP Fact Sheet for additional discussion. Additional discussion about ballast water discharge standards can be found in the fact sheet for this permit and in the response to comments document.

Bilgewater Discharges in Embayments

EPA requested comment on whether the permit should limit discharges of bilgewater in embayments, such as the Chesapeake Bay, for large vessels that regularly leave waters subject to the permit.

A few commenters recommended limiting discharges of bilgewater in embayments, but provided no additional information on which EPA could base such a decision. EPA notes that defining embayments is difficult and the information before the Agency does not demonstrate that there are available and economically achievable approaches for limiting such discharges in embayments. Hence, EPA has not specifically limited discharges of bilgewater in embayments. Nonetheless, other proposed requirements restricting discharge location and concentration for certain vessels remain in the permit. For instance, vessels greater than 400 gross tons, which regularly leave waters subject to the VGP, are subject to additional restrictions on the discharge of bilgewater, including a prohibition on the discharge of untreated bilgewater and restrictions when operating in the specially protected waters referenced in Part 12.1 of the permit, many of which may include bays and other similarly enclosed areas.

Saltwater Flushing for Vessels with Unpumpable Ballast Water and Residual Sediment

EPA requested comment on whether the requirement of mandatory saltwater flushing for all vessels with unpumpable ballast water and residual sediment which sail more than 200 nm (nautical mile) from any shore is appropriate.

Comments were received which both supported and opposed the mandatory saltwater flushing requirement. The final VGP retains the requirement for mandatory saltwater flushing for two classes of vessels: those defined as ocean-going vessels and those engaged in Pacific near shore voyages.

Ballast Water Exchange Requirements for Coastwise Trade Vessels on Atlantic and Gulf Coasts

EPA requested comment on whether ballast water exchange requirements similar to those proposed for Pacific near shore voyages should be applied to vessels engaged in coastwise trade on the Atlantic or Gulf Coasts that will discharge to waters subject to this permit. After considering the range of public comment on the issue, which both supported and opposed inclusion of Atlantic and Gulf ballast water exchange, EPA has not included Atlantic and Gulf nearshore ballast water exchange and saltwater flushing requirements. None of the commenters provided directly applicable data to support their views. EPA will, however, continue to investigate whether Atlantic and Gulf coast ballast water exchange is an appropriate best management practice for vessel owner/operators engaged in nearshore voyages. This exploration may include several elements such as examining vessel traffic and operation patterns along the Eastern and Gulf seaboards, the volume of ballast water transported and released, and the number of miles traveled by the average Atlantic and Gulf nearshore voyage.

Adequacy of the One-Time Report

EPA requested comment on whether the questions developed for the one-time report are appropriate and whether alternative or supplemental questions should be considered. The proposed permit would have required owner/operators to submit a one-time report that contains basic information about the vessel after the 30th month of permit coverage.

Many commenters suggested that the one-time report was an added burden on permittees and would not provide useful information to EPA while other commenters recommended requesting more information in the report and increasing the frequency of reporting. EPA has decided to retain the one-time report as it was proposed in the final VGP. EPA believes it will provide additional, useful information for future permit decisions without creating a substantial administrative burden on permittees.

Operational Limits for Large Cruise Ships

EPA requested comment on whether the proposed operational limits for large cruise ships are appropriate and whether the discharge standards proposed for within 1 nm of any shore should be extended to 3 nm from any shore, regardless of the speed of the vessel. For large cruise ships, the proposed permit would have prohibited the discharge of graywater within 1 nautical mile of shore unless the graywater has been treated to treatment standards in part 5.2.1.1.2 of the proposed permit. The proposed permit would also have required the discharge to either meet the effluent limits outlined in this proposed permit under Part 5.2.1.1.2 or be discharged while the vessel is moving at least 6 knots for discharges between 1 nm and 3 nm of shore.

Several commenters, primarily environmental groups, recommended extending the discharge standards to 3nm from any shore, regardless of the speed of the vessel, or to impose even more stringent limits on cruise ship discharges. Other commenters, including those from the cruise ship industry, commented that the permit should include the graywater treatment standards, but should not prohibit the discharge of treated graywater provided the discharge met those standards. EPA has clarified in the final permit that discharges of graywater are allowed within 1 nm of shore, provided that those discharges meet the standards in Parts 5.1 or 5.2 of the permit.

As part of comments received, several cruise ship representatives noted that they must discharge pool and spa water into waters subject to this permit. The commenters noted that they completely dechlorinate or debrominate this discharge as applicable. As a result of these comments, EPA has authorized the direct discharge of pool and spa water, provided it is dechlorinated and debrominated (as applicable), the vessel is underway at least 6 knots, and the permittee monitors the effluent before every discharge event. See Part 7.1 and 7.2 of the VGP fact sheet for additional discussion of these requirements.

Discharge of Untreated Graywater within 1nm of Shore or Nutrient Impaired Waters

EPA requested comment on whether the proposed prohibition on discharges of untreated graywater within 1 nm of shore for large and medium cruise ships, and into nutrient-impaired waters such as the Chesapeake Bay for large cruise ships, is appropriate and whether EPA's economic analyses are accurate.

Comments received on this issue were split, with commenters both supporting the prohibition on discharges of untreated graywater within 1nm of shore and nutrient impaired estuaries as well as opposing the requirements as too stringent or burdensome. Primarily, several comments raised concern about

certain medium cruise ships which are unable to travel more than 1nm from shore, whether due to geographic constraints, such as traveling on inland waters, or restrictions on the vessel based on the license issued by the U.S. Coast Guard. In response to these comments, the final permit changes the permit conditions for medium cruise ships that are unable to travel outside 1nm. Medium cruise ships constructed after the issuance of this permit must meet the same permit conditions as those that are able to travel outside 1nm from shore. Additionally, medium cruise ships which undergo a major renovation must also meet the same permit conditions as those able to travel more than 1 nm from shore.

Graywater Treatment Standards for Large Ferries

EPA requested comment on whether large ferries should be subject to additional graywater treatment standards similar to those proposed for medium and large cruise ships.

EPA received comments that both supported and opposed adding graywater treatment standards similar to the requirements for large cruise ships to the requirements for large ferries. No additional supporting data for either approach was submitted during the comment period. In the final permit, EPA has not altered the proposed permit requirements for large ferries.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a ''rule'' or as an ''adjudication'' under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the CWA Section 404 Nationwide general permit before the court did qualify as a ''rule'' and therefore that the issuance of the general permit needed to comply with the applicable legal requirements for the issuance of a ''rule.'' *National Ass'n of Home Builders* v. *U.S. Army Corps of Engineers,* 417 F.3d 1272, 1284–85 (DC Cir.2005) (Army Corps general permits under Section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; ''Each NWP [nationwide permit] easily fits within the APA's definition 'rule' * * * As such, each NWP constitutes a rule * * * '').

As EPA stated in 1998, ''the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit.'' 63 FR 36489, 36497 (July 6, 1998). At that time, EPA ''reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere,'' and stated that ''[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits.'' *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency ''concluded, as set forth in the proposal, that NPDES general permits are permits [*i.e.* , adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA.'' *Id.* Accordingly, the Agency stated that ''the APA's rulemaking requirements are inapplicable to issuance of such permits,'' and thus ''NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law * * * [and] it is not subject to the RFA.'' *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: ''[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities.'' *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that ''the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied.'' *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications, rather than rules, as noted above, the DC Circuit recently held that nationwide general permits under section 404 are ''rules'' rather than ''adjudications.'' Thus, this legal question remains ''a difficult one'' (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (e.g., small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act.

Accordingly, EPA has committed that the Agency will operate in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency commits that it will apply the RFA in its issuance of general permits as if those permits do qualify as ''rules'' that are subject to the RFA). In satisfaction of this commitment, during the course of this VGP proceeding, the Agency conducted the analysis and made the appropriate determinations that are called for by the RFA. In addition, and in satisfaction of the Agency's commitment, EPA will apply the RFA's framework and requirements in any future issuance of other NPDES general permits. EPA anticipates that for most general permits the Agency will be able to conclude that there is not a significant economic impact on a substantial number of small entities. In such cases, the requirements of the RFA framework are fulfilled by including a statement to this effect in the permit fact sheet, along with a statement providing the factual basis for the conclusion. A quantitative analysis of impacts would only be required for permits that may affect a substantial number of small entities, consistent

with EPA guidance regarding RFA certification.[1]

V. Analysis of Economic Impacts of VGP and RGP

EPA determined that, in consideration of the discussion in Section IV above, the issuance of the VGP may have the potential to affect a substantial number of small entities. Therefore, in order to determine what, if any, economic impact this permit may have on small businesses, EPA conducted an economic assessment of these general permits. This economic analysis is included in the records for these permits. Based on this assessment, EPA concludes that despite a minimal economic impact on all entities, including small businesses, this permit is not likely to have a significant economic impact on a substantial number of small entities.

Including the ballast water and other discharge requirements, the draft economic impact analysis indicates that the best management practices in this permit would cost between $ 6.7 million and $16.7 million annually. Including paperwork requirements, the permit is estimated to cost between $7.7 and $21.9 million dollars annually for domestic vessels. Including estimates of ballast water costs for foreign vessels, the permit is expected to cost between $8.9 and $23.0 million dollars annually. Depending upon sector (vessel type), median costs per firm range from $1 to $795 in the low-end assumptions and from $5 to $1,967 in the high-end assumptions (excluding median values from commercial fishing vessels which are expected to be $0). Costs for the 95th percentile range from $7 for the Deep Sea Coastal and Great Lakes Passenger Vessels to $20,355 for marine cargo handling under low-end cost estimates and from $88 to $35,190 for the same vessel classes for high-end cost estimates (see table 7.1 of the economic assessment cost estimates across vessel classes). EPA applied a cost-to-revenue test which calculates annualized pre-tax compliance cost as a percentage of total revenues and used a threshold of 1 and 3 percent to identify entities that would be significantly impacted as a result of this Permit. The total number of entities expected to exceed a 1% cost ratio ranges from 213 under low cost assumptions to 308 under high cost assumptions. Of this universe, the total number of entities expected to exceed a 3% cost ratio ranges from 55 under low cost assumptions to 73 under high cost assumptions. The total universe that would be affected by this permit includes approximately 61,000 domestic flagged vessels and 8,000 foreign flagged vessels. Accordingly, EPA concludes that this permit is unlikely to result in a significant economic impact on any businesses and in particular, small businesses. The economic analyses are available in the record for these permits.

[1] EPA's current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act, was issued in November 2006 and is available on EPA's Web site: *http://www.epa.gov/sbrefa/documents/rfafinalguidance06.pdf.* After considering the Guidance and the purpose of CWA general permits, EPA concludes that general permits affecting less than 100 small entities do not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The information collection requirements in this permit have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* as part of the NPDES Consolidated ICR. On September 28, 2008 EPA published the first public notice of this ICR under the OMB number 2040–0004 and on December 17, 2008, EPA published the final public notice for a 30 day comment period. The information collection requirements for this permit are not enforceable until OMB approves the ICR.

This information must be collected in order to appropriately administer and enforce the terms and conditions of the Vessel General Permit. This information collection is mandatory as authorized by Clean Water Act Section 308 and all information collected will be treated as Confidential Business Information (CBI).

The information collection burden for the paperwork collection requirements of this permit is estimated to be 135,693 hours per year, which represents a burden of 0.64 hours per response per year, multiplied by a total of 210,759 responses per year from 65,625 respondents (**Note:** to ensure that an adequate number of burden hours are requested, the number of respondents is slightly higher than the estimated 61,000 domestically flagged vessels identified in the economic analysis that would be affected by this permit). The frequency of responses varies, but includes every five years, annual, quarterly, and occasionally/as needed, depending on the specific reporting requirements. No reporting and record keeping costs beyond labor costs are estimated for this permit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR Part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final permit.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 18, 2008.

Robert W. Varney,

Regional Administrator, EPA Region 1.

Dated: December 18, 2008.

Barbara A. Finazzo,

Director, Division of Environmental Planning and Protection, EPA Region 2.

Dated: December 18, 2008.

Carl-Axel P. Soderberg,

Division Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: December 18, 2008.

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Dated: December 18, 2008.

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Director, Water Protection Division, EPA Region 4.

Dated: December 18, 2008.

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Dated: December 18, 2008.

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William A. Spratlin,

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Dated: December 18, 2008.

Eddie A. Sierra,

Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.

Dated: December 18, 2008.

Nancy Woo,

Associate Director, Water Division, EPA Region 9.

Dated: December 18, 2008.

Michael Gearheard,

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