



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 27 2013

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Enforcement Response Policy for EPA's 2013 Vessel General Permit: Ballast Water Discharges and U.S. Coast Guard Extensions under 33 C.F.R. Part 151

FROM: Cynthia Giles
Assistant Administrator *Cynthia Giles*

TO: Regional Vessel General Permit Enforcement and Program Directors

Section 2.2.3.5 of EPA's 2013 Vessel General Permit ("2013 VGP")¹ specifies certain numeric ballast water discharge limits for vessels covered by the 2013 VGP. The discharge of ballast water is also subject to U.S. Coast Guard regulations² under the National Aquatic Nuisance Prevention and Control Act / National Invasive Species Act. Unlike the 2013 VGP, Coast Guard regulations specify certain technologies be applied on vessels for treatment of ballast water prior to discharge. As part of the regular coordination between EPA and the Coast Guard as co-regulators of ballast water discharges, the provisions of the 2013 VGP and Coast Guard requirements for ballast water were intended to work in tandem.

However, Coast Guard type approved ballast water management systems pursuant to 33 C.F.R § 151 subparts C and D are not yet available and consequently, pursuant to 33 C.F.R. § 151.2036, the Coast Guard has indicated that, on a case-by-case basis, it may determine "that despite all efforts to meet the ballast water discharge standard requirements," it is necessary to issue a temporary extension of the schedule to implement the required technology on a particular vessel. In addition, Section 1.9.1 of EPA's 2013 VGP contemplated the possibility that such extensions might be granted: "[W]here the U.S. Coast Guard has granted . . . an extension request pursuant to 33 CFR 151.2036, that information will be considered by EPA."

Accordingly, this memorandum articulates how EPA will consider the grant of an extension by the Coast Guard when a vessel has not complied with the numeric ballast water

¹ *Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels* (effective date December 19, 2013), available at http://www.epa.gov/npdes/pubs/vgp_permit2013.pdf.

² See 33 C.F.R. Part 151.

discharge limits in the 2013 VGP. Specifically, this enforcement response policy applies *only* to those situations when:

- a vessel has applied for and received an extension from the Coast Guard pursuant to 33 C.F.R. §151.2036 related to ballast water discharges and the vessel is in compliance with all requirements of the extension;
- the vessel is not in compliance with its ballast water numeric discharge limit under the 2013 VGP; and
- the vessel is otherwise in compliance with all other provisions of the 2013 VGP, including submission of a valid Notice of Intent.

In these circumstances, EPA enforcement personnel should take into account conditions expressed in the Coast Guard's extension letter such as whether the vessel conducts complete ballast water exchange in an area 200 nautical miles from any shore prior to discharging ballast water into the waters of the United States, adheres to the Coast Guard's ballast water management plan as well as to recordkeeping and reporting provisions, and complies with all other applicable ballast water requirements under relevant Coast Guard regulations and the VGP. When a vessel has adequately undertaken these measures (as well as any other reasonably available or appropriate measures under the circumstances to minimize the extent or the effects of the VGP ballast water numeric discharge exceedance), EPA will consider such violations of the 2013 VGP ballast water numeric discharge limit a low enforcement priority.

This enforcement response policy does not apply to grossly excessive ballast water discharges or those that may present an imminent and substantial endangerment, criminal violations of the Clean Water Act, or (if applicable) violations of judicial orders or administrative orders. Nevertheless, prior to initiating an enforcement action for an exceedance of a VGP ballast water numeric discharge limit where the Coast Guard has issued an extension, EPA regional enforcement personnel should first consult with the Water Enforcement Division in the Office of Civil Enforcement, for a joint determination of whether, in light of all the relevant facts and circumstances, to proceed with the action.

Finally, it should be understood that this enforcement response policy is intended solely for the guidance of EPA enforcement personnel, and is not intended to and cannot be relied on to create any rights, substantive or procedural, enforceable by any party against EPA or the United States. EPA also reserves the right to act at variance from this policy in particular instances, and to change it at any time.

If you have any questions about this policy, please contact Mark Pollins, Director of the Water Enforcement Division at (202) 564-4001.

cc: Enforcement Directors
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