



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Executive Office

Arnold Schwarzenegger
Governor

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February 4, 2009

Mr. Douglas Eberhardt
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

Dear Mr. Eberhardt:

MODIFICATION TO CALIFORNIA'S WATER QUALITY CERTIFICATION FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S VESSEL GENERAL PERMIT

The State Water Resources Control Board (State Water Board) is in receipt of the United States Environmental Protection Agency's (USEPA) response to our request to modify our December 17, 2008 Water Quality Certification (Certification) of USEPA's draft Vessel General Permit (VGP). The State Water Board disagrees with USEPA's conclusions, and notes that the State Water Board's Certification was expressly conditioned on the ability to modify the Certification and that USEPA accepted this provision and attached it to the VGP, unmodified. Even with USEPA's refusal to incorporate revised conditions of certification, the modified Certification is an enforceable order within California waters pursuant to the California Water Code.

However, to provide immediate regulatory certainty, to avoid potentially conflicting state and federal law requirements for the regulated community, and to avoid a protracted debate on the authority to modify conditions of Certification, the State Water Board is providing the attached redline version of the December 17, 2008 Certification. The redlined provisions are those provisions which the State Water Board is requesting that USEPA delete from California's Certification and are deemed invalid. Further, for clarity sake, the February 3, 2008 modified Certification is hereby rescinded.

This action is not to be construed as an agreement with USEPA's actions or the legality of its position in this matter. USEPA lacks the authority to issue a National Pollutant Discharge Elimination System Permit for discharges into California waters and the State Water Board reserves its rights to pursue appropriate challenges.

If you have any questions regarding this letter or its enclosures, please contact Darrin Polhemus, Deputy Director of the Division of Water Quality, at (916) 341-5458 or dpolhemus@waterboards.ca.gov.

Sincerely,

Dorothy Rice
Executive Director

Enclosures

California Environmental Protection Agency



Linda S. Adams
Secretary for
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ENCLOSURE 1

**ORDER FOR CLEAN WATER ACT SECTION 401
WATER QUALITY CERTIFICATION (CERTIFICATION)
FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
VESSEL GENERAL PERMIT**

Project: Vessel General Permit (VGP) (Project)

Applicant: Douglas Eberhardt (Agent)
United States Environmental Protection Agency (USEPA)-Region 9 (applicant)
75 Hawthorne Street
San Francisco, CA 94105-3901

This Order responds to your request, received on June 27, 2008, on behalf of USEPA for a water quality certification for the subject project.

ACTION

	Order for Standard Certification	Order for Denial of Certification
X	Order for Technically Conditioned Certification	Order for Waiver of Waste Discharge Requirements

AUTHORIZATION:

This Certification conditionally certifies the VGP, based on the proposed VGP issued by USEPA on December 18, 2008 in Federal Register Volume 73, Number 249 that regulates the discharge of 26 vessel discharge streams by establishing effluent limitations including Best Management Practices (BMPs).

Table 1: Vessel Waste Discharges Eligible for Coverage Under the VGP

No.	Discharge	No.	Discharge
1	Deck Runoff and Above Water Line Hull Cleaning	15	Graywater
2	Bilgewater/Oily Water Separator Effluent	16	Motor Gasoline and Compensating Discharge
3	Ballast Water	17	Non-Oily Machinery Wastewater
4	Anti-Fouling Leachate From Anti-Fouling Hull Coatings/Hull Coating Leachate	18	Refrigeration and Air Condensate Discharge
5	Aqueous Film Forming Foam (AFFF)		
6	Boiler/Economizer Blowdown	19	Seawater Cooling Overboard Discharge
7	Cathodic Protection	20	Seawater Piping Biofouling Prevention
8	Chain Locker Effluent	21	Boat Engine Wet Exhaust
9	Controllable Pitch Propeller and Thruster Hydraulic Fluid and other Oil Sea Interfaces	22	Sonar Dome Discharge
10	Distillation and Reverse Osmosis Brine		
11	Elevator Pit Effluent	23	Underwater Ship Husbandry
12	Firemain Systems	24	Welldeck Discharges
13	Freshwater Layup	25	Graywater Mixed With Sewage
14	Gas Turbine Wash Water	26	Exhaust Gas Scrubber Washwater Discharge

For each discharge type, the permit establishes effluent limitations pertaining to the constituents found in the effluent. The permit also establishes BMPs designed to decrease the volume of constituents entering the waste stream. Even though a vessel may not produce all of these discharges, a vessel owner or operator is responsible for meeting the applicable effluent limitations and conditions for every listed waste type that the vessel discharges. The VGP includes effluent limitations to control a variety of pollutants, which have been classified into seven types:

Table 2: Types of Pollutants Regulated by the VGP

Pollutant Groups	Examples
Aquatic Nuisance Species (a.k.a., aquatic invasive species, or nonindigenous aquatic species)	Non-native Jellyfish, Zebra Mussels, Asian Clams, etc.
Most Conventional Pollutants	Biochemical Oxygen Demand, Oil and Grease, pH, Total Suspended Solids, etc.
Metals	Iron, Nickel, Zinc, Copper, Bronze, Silver, etc.
Nutrients	Phosphorous and Nitrogen
Pathogens	E. Coli and Fecal Coliform
Other Toxic Pollutants	Anti-foulants, rust inhibitors, epoxy coating materials, etc.
Non-Conventional Pollutants with Toxic Effects	Phthalates, Phenol, Tetrachloroethylene, Chlorine Residual, Chlorides, etc.

The VGP contains effluent limitations to control these pollutants which are potentially constituents of industrial waste, chemical waste, or garbage discharged from vessels.

The VGP also establishes technology-based requirements for certain discharges from eight specific classes of vessels, such as cruise ships, research vessels, and large ferries. Further, it provides water quality-based effluent limitations that incorporate requirements for impaired water bodies. Under the VGP, certain discharge types would be limited or prohibited in waters protected for conservation purposes (for example, national marine sanctuaries and national parks). The VGP also establishes specific corrective actions as well as inspections, monitoring record keeping, and reporting requirements. The VGP will cover vessel discharges into waters of the U.S. in all states and territories.

The VGP also requires submission of a Notice of Intent (NOI) for vessels that are 300 tons or greater or have a ballast water capacity of at least eight cubic meters. All other vessels covered by the VGP would not have to submit an NOI.

Based on a review of the project information submitted to date, State Water Resources Control Board (State Water Board) staff determined that this project is categorically exempt from California Environmental Quality Act review (California Code of Regulations, Title 14, section 15308 - Actions Taken by Regulatory Agencies for Protection of the Environment) and anticipated filing a Notice of Exemption for this project.

To comply with the public notice requirements of section 3858, Title 23, of the California Code of Regulations (CCR Title 23), which governs the State's Certification Program, a Public Notice of Application for Water Quality Certification for the subject project was posted on the State Water Board's Web site on August 27, 2008.

STANDARD CONDITIONS:

1. This Certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and Article 6 (commencing with section 3867) of Chapter 28, CCR Title 23.
2. This Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to subsection 3855(b) of Chapter 28, CCR Title 23, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This Certification is conditioned upon total payment of any fee required under Chapter 28, CCR Title 23 and owed by the applicant.

ADDITIONAL CONDITIONS:

1. ~~The VGP is only applicable to discharges incidental to the normal operation of non-military vessels engaged in transportation. Vessels in the U.S. Department of Transportation's Maritime Administration fleet, including but not limited to those located in Suisun Bay, do not qualify and must not be covered by the VGP. All vessels authorized under this permit that are less than 300 gross tons or have a capacity of less than eight cubic meters of ballast water that enter California waters must also submit an NOI to USEPA. USEPA must provide the State Water Board access to its database to get information on vessels that have submitted NOIs. DELETED~~
2. ~~All discharges are prohibited in State Water Quality Protection Areas as defined in the Public Resources Code (PRC) and the California Ocean Plan (Ocean Plan). DELETED~~
3. Vessel discharges must be in accordance with the requirements of PRC section 72400 et seq. None of the 268 discharges covered by the VGP may contain hazardous waste as defined under California law, as well as hazardous substances listed in Attachment 2 of this document. The following other wastes are prohibited from discharge: sewage sludge, used or spent oil, garbage or trash (including plastic), photo-developing wastes, dry cleaning wastes, noxious liquid substance residues, and medical wastes. The vessel owner or operator must submit a certification stating that hazardous wastes as defined under California law, and prohibited wastes, will not be discharged.
4. Vessel discharges must comply with California State Lands Commission (SLC) requirements for ballast water discharges and hull fouling to control and prevent the introduction of nonindigenous species, found in PRC section 71200 et seq. and in the CCR sections 2270 through 2291, inclusive (See Attachment 3 of this document).
5. ~~If the ballast water receives chlorination treatment, the discharge must not exceed a maximum level of 8 micrograms per liter of total residual chlorine. DELETED~~
6. Propeller cleaning is allowed until January 1, 2012, after which, propeller cleaning is allowed as specified in regulations adopted by SLC. All other in-water hull cleaning is prohibited unless conducted using the best available technologies economically feasible, as determined by both SLC and the State Water Board. This prohibition includes underwater ship husbandry discharges (Discharge #25).
7. ~~Vessel discharges must comply with all statewide and regional water quality control plans (Basin Plans). Attachment 4 lists the narrative water quality objectives that must be met in the receiving water. Attachment 5 lists the numeric effluent limitations that must be met in the effluent discharged into the receiving water depending on the type of water body into which the discharge occurs. DELETED~~

- ~~8. Cruise ship graywater discharges are prohibited in State waters.⁴ Graywater discharges from oceangoing vessels that weigh 300 gross tons or more are also prohibited if such vessels have sufficient holding capacity. All other oceangoing vessels (those that weigh 300 gross tons or more and do not have sufficient holding capacity and those that weigh less than 300 gross tons) must not exceed the effluent limitations in Attachment 5 when discharging graywater. DELETED~~
- ~~9. Any co-mingling of black water (sewage) and graywater waste streams will be considered graywater for purposes of these conditions, and must comply with Additional Condition 8 above. DELETED~~
- ~~10. Dye tabs shall be placed in graywater systems when ships are in port. DELETED~~
11. There must be no oily sheen from any discharge, and oil and grease must not exceed 15 milligrams per liter (mg/L) from any discharge.
12. Detergents must not be used to disperse hydrocarbon sheens in any waste streams. To ensure this practice is implemented for all state waters, and additionally to protect drinking water sources in the Sacramento and San Joaquin Delta, methylene blue active substances (MBAS) should not exceed 0.5 mg/L in all waterbodies.
- ~~13. Effluent monitoring must be performed on all waste streams discharged into State waters to determine waste stream quantity and quality. In the case of discharges that do not lend themselves to effluent sampling, such as antifouling hull coating leachate (Discharge #4), cathodic protection (Discharge #7), and sonar dome (Discharge #23), reporting according to Attachment 6, Additional Monitoring and Reporting Requirements, will suffice. For effluent that results from in-water maintenance near or below the water line, such as propeller hydraulic fluid (Discharge #9), rudder bearing lubrication (Discharge #19), and stern tube discharge (Discharge #24), receiving water sampling and analysis must be performed according to Attachment 6. DELETED~~
- ~~14. In addition to the other monitoring requirements, the volume of each discharge into State waters must be measured or estimated, and the constituents in Attachment 5 must be monitored according to the table in Attachment 6 when any discharge into State waters occurs. For discharges to enclosed bays, estuaries, and freshwater streams (defined in Attachment 5), except for polynuclear aromatic hydrocarbons (PAHs) and solvents (benzene, toluene, ethylbenzene, and xylene), the vessel owner or operator may submit to USEPA and the State Water Board a certification stating that the discharge does not contain specific volatile and semi-volatile organic constituents in lieu of monitoring for those constituents. For samples collected when a discharge occurs while a vessel is underway in State waters, the sample may be held until the vessel arrives at its next port at which time the sample shall be analyzed and the appropriate reports submitted to USEPA and the State Water Board or SLC as shown in Additional Condition 16 below. When in a California~~

⁴ "State waters" extend three nautical miles into the Pacific Ocean. State water quality authority applies to any discharges or threats of discharges into such waters or outside the boundaries of the state that could affect the quality of state waters. (Cal. Const., art. III, § 2; Gov. Code, § 160 et seq.; Wat. Code, § 13260, subd. (a)(2).)

~~port or ocean terminal, samples must be analyzed by, or sent for analysis to, a certified laboratory as soon as possible. DELETED~~

~~15. When the manifest for vessel cargo indicates the presence of any hazardous substances as set forth in Title 22, Chapter 11, Appendix X of the California Code of Regulations, the discharges must also be monitored for those specific substances (see Attachment 2). DELETED~~

16. All monitoring and reporting information shall be submitted to USEPA. Vessels entering the State of California shall also submit reports using the following forms:

~~• 7.1 – State Water Board Discharge Type Reporting Form DELETED~~

~~• 7.2 – State Water Board Constituent Type Reporting Form DELETED
Submit annually or whenever a report is submitted to USEPA.~~

Attention: NPDES Unit
Division of Water Quality
State Water Resources Control Board
1001 "I" Street, 15th Floor
Sacramento, CA 95814

• 7.3 – SLC Marine Invasive Species Program Hull Husbandry Reporting Form
Submit annually within 60 days of receiving a written or electronic request from the California State Lands Commission.

• 7.4 – SLC Ballast Water Reporting Form
Upon departure from each port or place in California waters.

California State Lands Commission
Marine Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802

17. This Certification includes Attachments 1-7. Following is a description of these attachments:

- Attachment 1 – Signatory Requirements;
- Attachment 2 – List of Chemical Names and Common Names for Hazardous Wastes and Hazardous Materials, Title 22, Chapter 11, Appendix X, California Code of Regulations
- Attachment 3 – California State Lands Commission's Ballast Water Performance Standards; and
- ~~• Attachment 4 – Narrative Discharge Objectives in the California Ocean Plan and Basin Plans; DELETED~~
- ~~• Attachment 5 – Numeric Effluent Limitations; DELETED~~
- ~~• Attachment 6 – Sampling and Monitoring Requirements; and DELETED~~
- Attachment 7 – Vessel Discharge Reporting Forms.

ADMINISTRATIVE CONDITIONS:

1. This Certification shall expire five (5) years from the date of issuance.
2. The State Water Board reserves the right to suspend, cancel, or modify and reissue this Certification, after providing notice to USEPA, if the State Water Board determines that the project fails to comply with any of the terms or conditions of this Certification.
3. This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification.
4. USEPA shall notify the State Water Board within 24 hours of any noncompliance that may impact the beneficial uses of waters of the State. The notification shall include the volume and type of materials discharged and recovered, measures used to stop and contain the discharge, and measures implemented to prevent future discharges.
5. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation must be subject to any remedies, penalties, processes, or sanctions as provided for under State law.

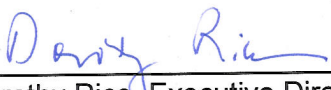
STATE WATER BOARD CONTACT PERSON:

If you have any questions or comments, please contact Darrin Polhemus, Deputy Director of our Division of Water Quality, at (916) 341-5458 (dpolhemus@waterboards.ca.gov) or Dominic Gregorio, Chief of our Ocean Unit, at (916) 341-5488 (dgregorio@waterboards.ca.gov).


WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that discharges as described in the VGP comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) if all of the conditions listed in this Certification are met. These discharges are also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ, which authorizes this Certification to serve as Waste Discharge Requirements pursuant to the California Water Code section 13000 et seq.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the VGP, and (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and the Regional Water Quality Control Board Water Quality Control Plans.



Dorothy Rice, Executive Director
State Water Resources Control Board



Date