



August 1, 2008

Attention: Docket ID No. EPA-HQ-OW-2008-0055

Water Docket Environmental Protection Agency
 Mailcode: 2822T
 1200 Pennsylvania Avenue, NW
 Washington, DC 20460

Re: Draft National Pollutant Discharge Elimination System (NPDES) General Permits for Discharges Incidental to the Normal Operation of a Vessel (Federal Register, June 17, 2008, pages 34296-34304)

To Whom It May Concern:

The Shipping Federation of Canada, representing over 90 percent of ocean-going vessels (international cruise and cargo) trading to and from ports in Atlantic Canada, the St. Lawrence and the Great Lakes, would like to offer the following comments regarding the current language of the Environmental Protection Agency’s draft general permit program for discharges incidental to normal vessel operations. Our submission will follow the outline below:

CANADIAN TRADE ROUTE IMPLICATIONS..... 3

COMMENTS ON THE PROPOSED VESSEL GENERAL PERMIT 4

 COVERAGE UNDER THE VESSEL GENERAL PERMIT 4

 EFFLUENT LIMITS AND RELATED REQUIREMENTS 6

 CORRECTIVE ACTIONS 12

 INSPECTIONS, MONITORING, REPORTING AND RECORDKEEPING 12

 VESSEL CLASS SPECIFIC REQUIREMENTS 15

ADDITIONAL CONCERNS 16

We greatly appreciate the opportunity to comment on this program, given that a significant proportion of our members either transit from overseas to the Great Lakes through the Seaway, or have U.S. based operations; and are therefore keenly interested in whether they will have to abide by a new permitting requirement. Indeed, when the original Notice of Intent regarding the potential development of a proposed permitting system under the Clean Water Act was published in June of last year, we submitted a series of observations and comments on behalf of our membership, the most relevant of which we have reiterated below:

- The EPA does not have sufficient time to compile the information that is necessary to develop the permit: Given the number of ships and other conveyances to which the NPDES permit would apply and the amount of information that still needs to be collected and analysed, we submit that it will be impossible for the EPA to compile all of this data before the September 30, 2008 deadline. It is worth noting that it has taken over **seventeen years** for a similar program, the Uniform National Discharge Standards developed for Armed Forces vessels, to proceed to its second phase, with no completion date in sight for its third phase. In view of the foregoing, we believe that the most prudent course of action would be for the **EPA to submit a request to the district court to extend the September 30, 2008 deadline to a more viable date in the future.**
- The current NPDES program is not designed for mobile marine sources of discharges: The existing NPDES program is designed for fixed, non-mobile discharge sources (such as industrial and commercial facilities), while ships are by their very nature non-fixed and highly mobile. Although stationary sources discharge relatively consistent components into the water, there is no such predictability regarding the discharges generated by various ship types, trades and sizes. Given the foregoing, **we recommend that the EPA designate the permit application under the NPDES program as a temporary measure that will eventually be replaced by a program that is specific to mobile marine sources of discharges (i.e. ships).**
- The NPDES program leaves the door open to regulatory fragmentation, which is unacceptable from an international shipping perspective: The fact that the NPDES program can be supplemented by individual state initiatives raises the very real possibility that states could develop their own legislation on specific discharge types. As a result, ships calling ports in multiple states could be subject to different (and potentially conflicting) permit requirements from state to state, in addition to those that they already face at the federal level. This could create situations in which vessels are unable to fulfill the criteria in all of the states that they transit, causing them to either fail to comply with the proposed Vessel General Permit (VGP) requirements or to drop some ports of call altogether.
- Current regulatory requirements should be taken into consideration before developing a new permitting system: Commercial vessels are already regulated under a number of international conventions and treaties to which the U.S. is a party, and under a number of U.S. statutes and regulations. As a result, they must comply with a variety of highly technical and class-specific technical standards in relation to their design, construction and maintenance. Compliance measures include inspections, monitoring, recordkeeping and reporting, all of which should be integrated in the proposed Vessel General Permit.

In addition to the foregoing, we have a number of serious concerns regarding the implementation of the proposed permit, which we have highlighted below:

Canadian Trade Route Implications

A significant percentage of ocean-going vessels represented by the members of the Shipping Federation of Canada will transit U.S. waters to reach their Canadian ports of destination (i.e. ships headed to ports in the Canadian Great Lakes through the St. Lawrence Seaway). As per section 1.2.1 of the proposed Vessel General Permit, such ships would be subject to the new permit requirement, since the Seaway navigation channel crosses the international boundary approximately 23 times (refer to [Seaway Handbook](#)).

However, subject to the structure and content of the final version of the permit, this requirement could potentially impede free navigation and transit, as granted under the 1909 [Boundary Waters Treaty](#) (Article 1) and the 1947 [General Agreement on Tariffs and Trade](#) (Article V).¹ Both these instruments contain provisions that are designed to protect the freedom of traffic and navigation between Canada and the U.S., while allowing for the development of laws and regulations by the coastal state that are reasonable and compatible with the foregoing objectives. It is therefore very important that the permit be developed in such a way so as to not impose undue regulatory or administrative burdens on ships transiting between the two countries. Towards that end, we recommend that the permit's provisions be as closely aligned as possible with the requirements of relevant international conventions and standards (MARPOL in particular), that they avoid the duplication of record-keeping, and that they keep administrative requirements to a minimum, not only for ships transiting U.S. waters but also for ships that only occasionally call U.S. ports.

The implementation of a permit that impedes free navigation would have a negative impact on the St. Lawrence Seaway trade route as a whole, by disrupting normal trade patterns and discouraging ships calling at Canadian ports from loading backhaul cargoes in the U.S. (or vice-versa). If ship operators find it too burdensome to call U.S. ports due to concerns over meeting the permit's requirements, then the cost of transportation will increase to the detriment of Canadian trade for the whole St. Lawrence / Great Lakes Basin area.

An item of specific interest in the U.S. Court of Appeals (Ninth Circuit) decision is the reference to the fact that: "Obtaining a permit under the CWA need not be an onerous process."² We would now like to turn our attention to the specific provisions contained in the current version of the permit proposal, with a view to providing comments and recommendations on areas that are of particular concern to our members.

¹ These comments focus on trade transiting to Canadian ports; however, trade going to US ports would be covered by the [General Agreement on Trade in Services](#). It might also be covered by Article VIII of the GATT (*Fees and Formalities connected with Importations and Exportations*), since imports and exports will have to be carried by a ship holding the EPA permit.

² See U.S. Court of Appeals for the Ninth District [decision](#).

Comments on the Proposed Vessel General Permit

Coverage under the Vessel General Permit

Part 1.4 Permit Compliance:

As indicated in Part 1.4 of the permit proposal, non-compliance with the permit's provisions constitutes a violation of the Clean Water Act that is punishable by fines or imprisonment. It is also our understanding that the best management practices applied by the permit holder are to become part of the permit conditions and therefore mandatory and criminally enforceable. Given the foregoing, the criminal liability attached to the "duty to comply" (40 CFR 122.41(a)) in applying best management practices can be interpreted as an excessive burden (and a personal threat) for operators who transit U.S. waters to call Canadian ports, as well as for the operators who call U.S. ports only occasionally. We believe this concern to be particularly relevant, given that the U.S. Court of Appeals (Ninth Circuit) decision specifically states that "obtaining a permit under the CWA need not be an onerous process."³

Part 1.5.1.1 Notice of Intent:

We appreciate that the proposed permit provides for an automatic authorization for vessels to discharge pending the submission of a Notice of Intent (NOI) six to nine months after the effective date of the permit. However, we believe that there should be a different requirement for foreign-flagged vessels which transit U.S. waters on an irregular basis (these vessels, which are often referred to as "tramp shipping," are available on the open market for charter). Such situations are not acknowledged in the proposed Vessel General Permit; if the permit is to be effective, it needs to adequately cover the foreign-flagged vessels and various types of international traders transiting in U.S. waters. This procedure underscores the point made earlier with regard to the applicability of the NPDES program to marine mobile sources of discharges, where the submission procedure for a NOI has been designed for stationary sources of discharges with predictable discharge schedules. **As such, we do not think that the procedure of submitting an NOI is useful in its current form.**

With respect to the draft Notice of Intent for (pages 63-64 of the permit proposal), we have the following comments to make:

- **Section A:** There is a need to clearly identify the party who is responsible for completing the Notice of Intent application. Given that the vessel owner and the vessel operator may be two different entities, we recommend that this responsibility be given to the company which has operational responsibility of the vessel as per Article 1.1.2 of the ISM (International Safety Management) Code. In addition, the form should be designed to allow entries from owners and operators located in countries outside of the U.S.
- **Section B:** In the section entitled "Vessel Information", Item 2 ("Vessel ID / Registered Number") should be replaced by "Vessel IMO Number" in conformity with international reference methods.

³ See U.S. Court of Appeals for the Ninth District decision.

- Section C: The “Vessel Voyage” information required in this section is difficult for international traders to complete, as voyages are not planned on a five year basis. Thus, questions 1 and 2 are impossible to answer, especially for traders which do not regularly call U.S. ports
- Section E: The declaration required under the “Certifier Name” and “Title” headings could potentially make the signatory criminally responsible for any non-compliance with the permit. In our opinion, this is an **extremely onerous** criterion that should be reviewed accordingly.

Publication of the Notice of Intent⁴:

The Notice of Intent will be published on the EPA website for a 30-day period, during which time the EPA will review the application and determine whether an individual application is necessary, while also making the NOIs available for public review. We recommend that the EPA should keep the same level of confidentiality as that currently granted by the Seaway corporations and the U.S Coast Guard.

Part 1.8 Application for an alternative permit:

- Part 1.8 of the permit proposal states that the EPA may require an application for an individual NPDES permit or an alternative NPDES general permit. Additional clarifications as to the **specific** criteria the EPA would use to require an individual permit should be included in the permit proposal.
- The proposal also states that any “interested party” can petition to the EPA to require a discharger to apply for an obtain an individual permit – which could have extremely far-reaching consequences for international trade in U.S. waters.

Part 1.13 State programs:

As indicated in this section, the existence of federal regulations does not preclude the development of state NPDES programs, nor is there any requirement for consistency amongst different state programs. Thus, vessels could potentially face a myriad of equipment requirements and discharge limits which vary from state to state and are impossible to comply with. As mentioned earlier in this submission, shipping is international in nature and a patchwork of regulatory requirements will only serve to add an un-navigable layer of complexity for foreign-flagged vessels.

⁴ Proposed Vessel General Permit Fact Sheet, section 3.8.2.1: “EPA considered delaying the discharge authorization date for an additional 30 days after posting of the NOI on EPA’s website for these existing vessels.” We derive from this sentence that all Notices of Intent will be available on the EPA’s website for review. This is further confirmed with provision under section 3.11.1 which states that interested parties may petition EPA to require coverage under an alternative permit.



SFC Recommendations:

1. Develop a permit program for marine mobile sources of discharges;
2. This permit program should adequately address the intricacies of the operations for foreign-flagged vessels, potentially leading to the development of separate programs for domestic and international vessels;
3. Criminal liability provisions should be removed from a program that includes permit limitations in the form of non-numeric control measures based on best professional judgment.

Effluent Limits and Related Requirements

We have a number of concerns with respect to the provisions included in Part 2 of the permit proposal, which refer to reducing and / or eliminating discharges incidental to the normal operation of a vessel by using available non-numeric control measures based on best professional judgment, **including best management practices**. However, given that this would effectively render such practices enforceable by the EPA, we would suggest that any reference to “best management practices” be removed from the permit language and replaced by “control measures”.

Our concerns in this respect are amplified by the short timeframe for implementing the permit program, which basically means that the control measures would become enforceable on October 1st. Needless to say, this provides very little time to disseminate information about the new requirements to ships transiting to the U.S., and to ensure that ship operators are able to integrate the permit requirements into their onboard operations.

With respect to the effluent limits and requirements for specific discharge categories contained in the permit proposal, it is important to note that a number of operational discharges are already regulated under other legislation. Key examples of such regulation include:

Part 2.1.1 Material Storage:

- Discharge of plastics in any form is strictly prohibited by U.S. Coast Guard regulation and MARPOL 73/78 Annex V;
- Any discharge of oil or oily water is prohibited by U.S. Coast Guard regulation and MARPOL 73/78 Annex I;
- Exceptions to the above are restricted to extreme measures required for the safety of life.

Part 2.1.2 Toxic and Hazardous Materials:

- Transportation and handling of toxic and hazardous materials in bulk or packaged form is explicitly covered in U.S. Coast Guard regulations in accordance with the SOLAS convention and MARPOL 73/78 Annexes II and III; Annex V may apply in the event the hazardous materials are considered garbage;

- In the event of accidental discharge, an emergency response team of experts should be contacted as per the Emergency Procedures Guide, Volume 3, International Maritime Dangerous Goods code;
- Discharge is prohibited except for extreme measures required for the safety of life.

Part 2.1.3 Fuel Spills / Overflows:

- The overboard discharge of oil is strictly prohibited by U.S. Coast Guard regulation and MARPOL 73/78 Annex I;
- In the event of accidental discharge, the vessel must, by regulation, activate its Shipboard Oil Pollution Emergency Plan (SOPEP), inform the U.S. Coast Guard as per the Pollution Reporting Regulations and call its pollution response contractor;
- Fueling and oil transfer operations are, by regulation, performed by trained crew in compliance with the vessel's International Safety Management Code.

Part 2.1.4 Discharges of Oil including Oily Mixtures:

- An IOPP certificate is issued by the vessel's maritime administration or a classification society acting on the authority of a maritime administration.

Part 2.1.5 Compliance with other Statutes and Regulations:

- It is mentioned in the proposed Vessel General Permit that the permittee must also comply with:
 - o Any applicable U.S. Coast Guard regulations;
 - o Section 311 (33 U.S.C 1321) of the Federal Pollution Water Pollution Control Act (Clean Water Act);
 - o Act to Prevent Pollution from Ships (APPS 22 U.S.C §§190-1915);
 - o National Marine Sanctuaries Act (16 U.S.C 1431 *et seq.*) and implementing regulations found at 15 CFR Part 922 and 50 CFR Part 404;
 - o Federal Insecticide, Fungicide and Rodenticide Act (FIFRA, 7 U.S.C. § 136 *et seq.*)
 - o Oil Pollution Act (OPA '90, 33 U.S.C. § 2701-2720).

Given the foregoing, we believe that these discharge categories should be removed from the scope of the proposed Vessel General Permit, in line with what has already been done for sewage, used or spent oil, garbage or trash, photo processing effluent, effluent from dry cleaning operations, and medical waste and related materials.

It is also important to note that commercial vessels are already regulated under a number of international conventions and treaties, which are implemented in U.S. waters through domestic legislation. The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) is the main international convention designed to prevent pollution of the marine environment by ships due to operational or accidental causes. The Convention currently includes six technical annexes, covering the areas identified in the table below along with U.S. regulations implementing these annexes:

Table 1. MARPOL 73/78

MARPOL 73/78	Subject Matter	U.S. Implementing Regulations
Annex 1	Oil	33 CFR parts 151, 155, 156, 157
Annex II	Noxious Liquid Substances in Bulk	33 CFR part 151
Annex III	Harmful Substances in Packaged Form	46 CFR part 148, 49 CFR part 176
Annex IV	Sewage	CWA section 312
Annex V	Garbage	33 CFR part 151
Annex VI	Air Emissions	U.S. signatory of MARPOL Annex VI

The U.S. is a party to Annexes I, II and III, which address oil, noxious liquid substances and harmful substances in packaged form. The U.S. has not ratified Annex IV, which addresses sewage, primarily because this is already regulated under the Clean Water Act (section 312). Annexes I, II and V are implemented through the Act to Prevent Pollution from Ships, and are enforced by the U.S. Coast Guard. Annex III is implemented under the Hazardous Materials Transportation Authorization Act of 1994. The U.S. is a signatory to Annex VI, and the recently signed Maritime Pollution Prevention Act of 2008 paves the way for its ratification.

The additional requirements introduced by the EPA's proposed permit program cannot be seamlessly integrated into the current domestic and international regulatory framework. Indeed, as per the table below, we believe that there is ample room for increased coordination between the current requirements and those stipulated in the proposed permit program:

Table 2. Technology-Based Effluent Limits and Related Requirements for Specific Discharges Categories

Discharge Category	Shipping Federation of Canada Comments
2.2.1 Deck Washdown and Runoff	<ul style="list-style-type: none"> - <i>Washdown of decks after loading or discharging cargo (dry cargo residue) should be minimized and/or contained as per regulations applicable to the vessel location and the material to be discharged. Vessels must comply with U.S Coast Guard Regulations and MARPOL 73/78 Annex V with regard to dry cargo residue discharges..</i>
2.2.2 Bilgewater	<ul style="list-style-type: none"> - <i>Ships should comply with the provisions under 40 CFR Part 110, 116 and 117 and 33 CFR §151.10.</i> - <i>We do not support the additional requirements mentioned in the remainder of the section.</i>
2.2.3 Discharges of Ballast Water	
2.2.3.1 Training	<ul style="list-style-type: none"> - <i>This is already part of the U.S. Coast Guard regulations found in 33 CFR Part 151, and enforced by the U.S. Coast Guard. It should be removed from the list of best management practices.</i>
2.2.3.2 Ballast Water Management Plans	<ul style="list-style-type: none"> - <i>This is already part of the U.S. Coast Guard regulations found in 33 CFR Part 151, and enforced by the U.S. Coast Guard. It should be removed from the list of best management practices.</i>
2.2.3.3 Mandatory Ballast Water Management Practices	<ul style="list-style-type: none"> - <i>This is already part of the U.S. Coast Guard regulations found in 33 CFR Part 151, and enforced by the U.S. Coast Guard. It should be removed from the list of best management practices.</i> - <i>We recommend an assessment to be undertaken by the Centre for Disease Control before the use of graywater as ballast water is included in the list of best management practices.</i>
2.2.3.4 On-Shore Treatment of Ballast Water	<ul style="list-style-type: none"> - <i>This is already part of the U.S. Coast Guard regulations found in 33 CFR Part 151, and enforced by the U.S. Coast Guard. It should be removed from the list of best management practices.</i>
2.2.3.5 Requirements for Ocean Going Voyages While Carrying Ballast Water	<ul style="list-style-type: none"> - <i>This is already part of the U.S. Coast Guard regulations found in 33 CFR Part 151, and enforced by the U.S. Coast Guard. It should be removed from the list of best management practices.</i>
2.2.3.6 Vessels Carrying Ballast Water Engaged in Pacific	<p><i>No comments.</i></p>

Nearshore Voyages	
2.2.3.7 Vessels with any Ballast Water Tanks that are Empty or have Unpumpable Residual Water	- <i>Already required for access to the Great Lakes region through St. Lawrence Seaway Development Corporation and Canadian Ballast Water Management and Control Regulations.</i>
2.2.3.8 Vessels Engaged in Pacific Nearshore Voyages with Unpumpable Ballast Water and Residual Sediment (including NOBOBs)	<i>No comments.</i>
2.2.3.9 Vessels Entering the Great Lakes	- <i>This is already part of the U.S. Coast Guard regulations found in 33 CFR Part 151, and enforced by the U.S. Coast Guard. It should be removed from the list of best management practices.</i>
2.2.3.10 Discharge Prohibitions	- <i>We do not support the development of discharge prohibitions in a permit document promoting the use of best management practices. National Parks have their own regulation powers to prohibit discharge.</i>
2.2.3.11 Exemptions	- <i>This is already part of the U.S. Coast Guard regulations found in 33 CFR Part 151, and enforced by the U.S. Coast Guard. It should be removed from the list of best management practices.</i>
2.2.4 Anti-Fouling Hull Coatings	<i>No comments.</i>
2.2.5 Aqueous Film Forming Foam (AFFF)	<i>No comments.</i>
2.2.6 Boiler / Economizer Blowdown	<i>No comments.</i>
2.2.7 Cathodic Protection	<i>No comments.</i>
2.2.8 Chain Locker Effluent	<i>No comments.</i>
2.2.9 Controllable Pitch Propeller Hydraulic Fluid	<i>No comments.</i>
2.2.10 Distillation and Reverse Osmosis Brine	<i>No comments.</i>
2.2.11 Elevator Pitch Effluent	<i>No comments.</i>
2.2.12 Firemain Systems	<i>No comments.</i>

2.2.13 Freshwater Layup	<i>No comments.</i>
2.2.14 Gas Turbine Wash Water	<i>No comments.</i>
2.2.15 Graywater	<i>No comments.</i>
2.2.16 Motor Gasoline and Compensating Discharge	<i>No comments.</i>
2.2.17 Non-Oily Machinery Wastewater	<i>No comments.</i>
2.2.18 Refrigeration and Air Condensate Discharge	<i>No comments.</i>
2.2.19 Rudder Bearing Lubrication Discharge	<i>No comments.</i>
2.2.20 Seawater Cooling Overboard Discharge (including non-contact engine cooling water; hydraulic system cooling water, refrigeration cooling water)	<i>No comments.</i>
2.2.21 Seawater Piping Biofouling Prevention	<i>No comments.</i>
2.2.22 Small Boat Engine Wet Exhaust	<i>No comments.</i>
2.2.23 Sonar Dome Discharge	<i>No comments.</i>
2.2.24 Stern Tube Oily Discharge	<i>No comments.</i>
2.2.25 Underwater Ship Husbandry Discharges	<i>No comments.</i>
2.2.26 Weldeck Discharges	<i>No comments.</i>
2.2.27 Graywater Mixed with Sewage from Vessels	<i>No comments.</i>
2.2.28 Exhaust Gas Scrubber Washwater Discharge	<i>No comments.</i>

 SFC Recommendations:

1. Remove any reference to best management practices from the permit; as the permit is enforceable, the expression “control measures” should be used instead.
2. Allow for a phase-in period, where the permit provisions will need to be in place by the time that the permittee will need to apply for the Notice of Intent.
3. Harmonize requirements for all operational discharges already regulated under other legislation / regulation with the relevant legislation / regulation.

Corrective Actions

We are surprised that the section of the proposed permit program dealing with corrective actions does not include any reference to the International Safety Management Code (ISM Code), which contains specific directives and procedures to be followed in cases of non-conformity, accidents and hazardous occurrences.⁵ As per our previous comments regarding the need to ensure that adherence to the permit program is not onerous for ship operators (as well as the section of the U.S. Court of Appeals (Ninth District) decision reiterating this same point), incorporation of the ISM Code’s existing procedures for assessing, documenting and reporting on incidents of non-compliance into the permit program would be the ideal and most logical means of achieving this objective.

 SFC Recommendation:

1. Use the existing procedures part of the International Safety Management Code to report on non-conformities, accidents and hazardous occurrences.

Inspections, Monitoring, Reporting and Recordkeeping

As mentioned above, the ISM Code contains all of the necessary inspection, monitoring, reporting and recordkeeping mechanisms to ensure compliance with the proposed permit. The fact that these procedures are duplicated in the permit program makes operations in U.S. waters extremely burdensome for the ship’s crew, and we can only recommend that this be addressed through the adoption of the ISM Code provisions in order to streamline and harmonize the process with existing international requirements.

⁵ Section 9.1. of the ISM Code: The safety management system should include procedures ensuring that non-conformities, accidents and hazardous situations are reported to the Company, investigated and analysed with the objective of improving safety and pollution prevention; and Section 9.2: The Company should establish procedures for the implementation of corrective action

We would also point out that the concerns we have previously raised with regard to tramp shipping are not clarified under this section. There remains a considerable amount of uncertainty for ships that are irregular traders in U.S waters regarding the applicable requirements in terms of inspections, monitoring, reporting and recordkeeping. Some (but not all) of the most important questions we have with respect to Part 4 include (but are not limited to):

- When will foreign-flagged vessels be required to inspect their ships if planning to call a U.S. port?
- What inspections (weekly, annual, dry dock) will foreign-flagged vessels be required to perform in order to ensure compliance with the permit provisions if not regularly calling U.S. ports?
- Who would be in charge of enforcing these provisions?

We believe that clarification of these requirements is essential for the successful implementation of the proposed Vessel General Permit from a ship operations' perspective.

Part 4.1 Self Inspections and Monitoring:

- **Section 10 of the ISM Code spells out the requirements for regular inspections, which includes the reporting of non-conformities, implementation of corrective actions and recordkeeping. Section 11 addresses documentation requirements.**
- The requirements contained in Part 4 duplicate the information to be logged by the ship's crew, again underscoring the administrative burden that implementation of the proposed permit will pose.
- The quarterly sampling requirements should be dropped altogether, as there is no indication of how these would apply for foreign-flagged vessels trading irregularly in U.S. waters. Moreover, the crew on board ships do not have the necessary scientific background to perform such sampling, nor do they have the necessary resources or information to find laboratories that could perform such sampling.
- Oily water separator discharges are already regulated under 40 CFR Part 110, 116 and 117 and 33 CFR §151.10. We therefore do not support any additional requirements in this respect.
- Annual inspections and dry dock inspection requirements should be harmonized with the ISM Code's Certification and Periodical Verification requirements (Part B, Section 13), and the EPA inspection procedure and requirements should be revised accordingly.

Overall, we are strongly opposed to the inspection requirements set out in Part 4.1. which we view as adding an undue burden for the ship's crew, particularly since regular inspections are already mandated by the ISM Code and a number of inspections are already performed by the U.S. Coast Guard and classification societies. The results of all such inspections should be made available to the EPA, which should work with the U.S. Coast Guard, the various classification societies and other relevant organizations to develop viable inspection requirements under the proposed Vessel General Permit.

Part 4.2 Recordkeeping:

- All recordkeeping provisions should be harmonized with current U.S. Coast Guard regulations and ship operators should not incur additional recordkeeping requirements.

Part 4.3 Additional Recordkeeping for Vessels Equipped with Ballast Tanks:

- We recommend that recordkeeping requirements for vessels equipped with ballast tanks (Part 4.3) use the current U.S. Coast Guard recordkeeping ballast water reporting forms, as implied by the proposed Vessel General Permit text.

Part 4.4 Reporting:

- With regard to Part 4.4.1, we reiterate our previous point that reporting instances of non-compliance should be made according to the provisions contained in section 10 of the ISM Code, and that the question of irregular traders should be addressed.
- In its current form, the one-time permit report will be of limited use to the EPA unless additional details are required in the form. Although we appreciate the effort that the EPA has made to develop a form that is not burdensome, the information collected will be of limited value unless the form is expanded – and we cannot support another level of detailed reporting.

We believe it is important to re-emphasize that all of the provisions contained in the inspections, monitoring, recordkeeping and reporting requirements are already part of the International Safety Management Code and of current reporting requirements. While we are ready to make these records readily available to the EPA, we cannot support the imposition of additional reporting requirements, nor the designation of duplicate authorities to whom we must report.

We also find especially worrisome section 6.4 of the Vessel General Permit fact sheet, which states:

EPA has added emphasis and explanation about what constitutes a permit violation in several places of the proposed permit in order to avoid any ambiguity. However, provisions where this emphasis has not been included are also enforceable requirements.

This essentially means that the very ambiguity that the EPA has set out to avoid could be misinterpreted, particularly by ships which only trade in U.S. waters on an irregular basis. Given the very short timeframe that remains for the implementation of the proposed permit provision, there is likely to be some degree of uncertainty regarding the permit requirements among such traders, which could be interpreted by the authorities as non-compliance. **Given the foregoing, we cannot overstate the important of clearly identifying all enforcement requirements.**



SFC Recommendations:

1. Remove all duplication of existing inspection, monitoring, reporting and recordkeeping requirements.
2. Harmonize inspection and monitoring requirements with current operational practices and regulations for foreign-flagged vessels.
3. Include the specific reference to existing requirements in the proposed Vessel General Permit.

Vessel Class Specific Requirements

Because of the diversified nature of our membership, we can offer comments on some, but not all, identified additional requirements for specific vessel classes.

Part 5.1 Large Cruise Ships (authorized to carry 500 people or more for hire):

- We suggest that any additional requirement be removed until the next version of the permit is developed. This will allow for an assessment of reception facilities for grey water, and of storage capabilities for cruise ships.
- There are currently no international requirements regarding grey water discharges. However, we understand that this issue is to fall within the scope of the upcoming revision of MARPOL, Annex V, and we therefore recommend that the regulation of grey water be postponed until the results of that review are available.

Part 5.5 Oil and Petroleum Tankers:

- Training of mariners is covered by the IMO's International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 and the ISM Code. The proposed Vessel General Permit should not introduce any new requirements other than compliance with the provisions of both instruments.

Part 5.8 Vessels Employing Experimental Ballast Water Treatment Systems:

- We recommend that all provisions related to vessels employing experimental ballast water treatment systems be based on standards and procedures developed by the IMO.
- We also take this opportunity to reiterate our concerns regarding monitoring and sampling requirements (as per our comments on Part 4.4 of the proposal): i.e. the requirements imply that the ship's crew has access to information and resources on independent testing facilities, and they contain no information on requirements for ships trading irregularly in U.S. waters.



SFC Recommendation:

1. Remove the vessel class specific requirements from the scope of the permit program until the next version of the permit has been published. This will simplify implementation of the permit by avoiding confusion with respect to different permit requirements.

Additional Concerns

We are concerned that the inspection and reporting requirements proposed by the EPA render such practices enforceable, thereby transforming them into new regulatory requirements. Another aspect of the permit program that is worrisome is the short timeframe in which the program must be developed and implemented. Indeed, given the ongoing uncertainties regarding the permit's requirements and application, we believe that the September 30th deadline for the program's implementation is unrealistic. Let us not forget that ships transiting to U.S. waters must not only be aware of all the program's requirements by October 1st, they must also ensure that their management and documentation systems have been programmed and amended accordingly. This is an enormous task, and one which we simply do not believe can be effectively carried out within the timeframe that remains. **We therefore support the Chamber of Shipping of America that the EPA submit a request to the district court to extend the September 30th deadline by three years to develop and establish the program, and for industry to then implement it before enforcement begins.**

We also take this opportunity to express our general support for the comments submitted jointly by the Chamber of Shipping of America and Intertanko. We agree with several of the points raised in their analysis, particularly with regard to their concerns about the factual basis underlying the proposed Vessel General Permit and the 28 waste streams that would be regulated, the necessity of giving the regulated community proper notice of the standards it is expected to meet, the need to recognize differences in industry sectors, the uncertainties associated with the proposed best management practices (both in terms of the wording and compliance) and comments on the economic analysis provided by the EPA. It is our hope that the EPA will take these comments into account and petition the district court for an extension.

Before closing, we would like to reiterate our commitment to collaborating with the Environmental Protection Agency in developing a permit for operational discharges, while ensuring that such actions do not unnecessarily complicate operations for ocean-going vessels calling at U.S. ports. Because of the short timeframe for comments, we may send additional information at a later date. We also remain available to provide the EPA with any information it may require regarding oceangoing vessels transiting into U.S. waters.

We thank you for the opportunity to provide our views on the development of the proposed Vessel General Permit, and would be pleased to provide any additional clarification or information that may be required.

Respectfully submitted,

Caroline Gravel
Director, Environmental Affairs
Shipping Federation of Canada

The Shipping Federation of Canada (The Federation), incorporated by an Act of Parliament in 1903, acts as the pre-eminent voice of shipowners, operators and agents involved in Canada's world trade. Its overall objective is to work towards a safe, competitive and environmentally sustainable marine transportation system. As an industry leader on marine environmental issues, the Federation serves as a frontline information resource on environmental regulations, policies and practices applicable to ships trading in Canadian waters; promotes the importance of international conventions and standards as the optimal means of responding to environmental challenges; and provides operational know-how and expertise in the development of best practices and management systems.

The Federation's membership consists of the Canadian companies that own, operate or act as agents for 95 percent of ocean vessels trading to and from ports in Atlantic Canada, Newfoundland & Labrador, the St. Lawrence River and the Great Lakes – vessels which are responsible for transporting virtually all of the trade moving between eastern Canada and ports overseas. The Federation's members also represent virtually all the international cruise vessels calling at eastern Canadian ports.