

Wisconsin 401 Conditional Certification to the EPA Vessel General Permit

BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Application of the United States Environmental
Protection Agency for a Clean Water Act Water
Quality Certification for Issuance of a National)
Pollutant Discharge Elimination System Vessel)
General Permit for Regulating Discharges)
Incidental to the Normal Operation of a Vessel)

On December 8, 2011, the US Environmental Protection Agency (EPA), Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3590, requested a water quality certification under Section 401 of the Federal Clean Water Act (33 U.S.C. § 1341) for the proposed permit reissuance of the National Pollutant Discharge Elimination System (NPDES) Vessel General Permit (VGP). The proposed general permit and the notice of public hearing were published in the Federal Register December 8, 2011 (76 FR 76,716). If the State grants the water quality certification, EPA will be able to issue the VGP and authorize discharges into waters of Wisconsin. EPA has requested Wisconsin's final certification by November 30, 2012.

The proposed VGP is applicable to discharges incidental to the normal operation of non-military and non-recreational vessels greater than or equal to 79 feet in length that meet the applicability criteria. EPA has proposed a separate Small Vessel General Permit (sVGP), which will not be addressed in this 401 Certification.

The Wisconsin Department of Natural Resources (WDNR) has reviewed EPA's proposed VGP pursuant to Section 401 of the Clean Water Act and ch. NR 299, Wis. Adm. Code. WDNR has made the determination that inclusion of the following conditions in the EPA VGP are required to ensure compliance with state water quality standards enumerated in s. NR 299.04, Wis. Adm. Code. Each of the conditions in the proposed permit has been reviewed, and based upon the review, WDNR has determined that none of the conditions may be made less stringent without violating the requirements of Wisconsin law, including water quality standards, found in chs. NR 102-106 and 207, Wis. Adm. Code.

STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

The WDNR conditionally grants water quality certification for the EPA VGP subject to compliance with the General Conditions and Specific Conditions identified below, with a citation to state law, administrative code or Wisconsin's Ballast Water Discharge General Permit as the basis for a more stringent condition than those contained in the EPA VGP:

GENERAL CONDITIONS:

1. The permittee shall allow WDNR reasonable entry onto the vessel for inspection, access to records, and collection of a discharge sample for determining compliance with the water quality certification and applicable laws [s. NR 205.07(1)(d), Wis. Adm. Code].
2. Activities not eligible for authorization under this state water quality certification include:
 - (a) Fills or deposition of material in navigable waters (s. 30.12, Wis. Stats.).
 - (b) Activities likely to jeopardize the continued existence of a state designated threatened or endangered species or a species proposed for such designation, or which is likely to destroy or adversely modify the habitat of such species [s. 29.604, Wis. Stats.; s. NR 1.015(1)(a), Wis. Adm. Code].
 - (c) Activities that would result, overall, in adverse impacts to fishery spawning habitat or adversely affect avifauna breeding areas or substantially disrupt the movement of those species which normally migrate from open water to upland or vice versa (i.e., amphibians, reptiles and mammals) [s. NR 102.01(2), Wis. Adm. Code].
 - (d) Activities detrimental to the public interest in waters of the state [s. NR 102.01(2), Wis. Adm. Code].
3. If WDNR determines vessel discharges covered by this certification can no longer comply with the conditions set in accordance with Section 401 of the Clean Water Act or the applicable state statutes and administrative codes, then this certification may be revoked or modified after appropriate public notice [s. NR 299.01(2)(a), Wis. Adm. Code].

SPECIFIC CONDITIONS:

4. Oceangoing vessels eligible for coverage under the EPA VGP that enter the Great Lakes – St. Lawrence Seaway system and are transiting from beyond the 200-nautical-mile Exclusive Economic Zone (EEZ) shall perform open ocean ballast water exchange or saltwater flushing before entering the Great Lakes – St. Lawrence Seaway system in order to ensure water quality standards are met that protect the general public interest (s. NR 102.01(2), Wis. Adm. Code; s. 4.1.2, WPDES Permit No. WI-0063835-01-1).
5. Vessels covered by the EPA VGP shall comply with the ballast water discharge requirements in pars. (a) through (g) to meet water quality standards for protecting the general public interest (s. NR 102.01(2), Wis. Adm. Code).

- (a) Vessels must obtain any permits required by the State of Wisconsin for vessel discharges (s. 283.35(1m), Wis. Stats.). WDNR's ballast water discharge general permit WI-0063835-01-1 requires vessels meeting the permit's applicability criteria to comply with the biological treatment performance standards shown in Table A and implementation schedule in pars. (b) through (d). Any treatment system installed to comply with these performance standards shall be operated to maximize destruction or removal of organisms in ballast water, with the objective of discharging no viable organisms (s. 5.2, WPDES Permit No. WI-00063835-01-1).

Table A

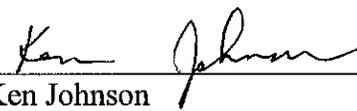
Parameter	Limit and Units	Limit Type	Sample Type
Organisms > 50 μm in minimum dimension	< 10 viable organisms per m^3	Daily Average	Composite
Organisms 10 - 50 μm in minimum dimension	< 10 viable organisms per ml	Daily Average	Composite
Escherichia coli	< 250 cfu per 100 ml	Daily Average	Composite
Intestinal enterococci	< 100 cfu per 100 ml	Daily Average	Composite

- (b) For oceangoing vessels constructed prior to December 1, 2013, treatment systems shall be installed and operational to meet the performance standards for organisms in Table A by the date provided in the EPA VGP.
- (c) For oceangoing vessels constructed on or after December 1, 2013, treatment systems shall be installed and operational to meet the performance standards for organisms in Table A prior to commencement of vessel operation in Wisconsin waters by the date provided in the EPA VGP.
- (d) In addition to the requirements in pars. (b) and (c), if ballast water treatment systems are approved and commercially available and compatible for a specific vessel, the vessel owner will make reasonable efforts to install a treatment system at the earliest practicable date.
- (e) Vessels that operate exclusively within the Great Lakes, and which meet the EPA VGP applicability requirements, will be addressed in Wisconsin's next ballast water discharge general permit. The requirements of that permit, to be issued in 2015, must be met [s. 283.35(1m)(e), Wis. Stats.].

- (f) Discharges of ballast water from vessels employing ballast water treatment systems (BWTS) using chlorine must meet a daily maximum total residual oxidants limit, measured as total residual chlorine, of 38 µg/L (chs. NR 105 and 106, Wis. Adm. Code).
 - (g) Discharges of ballast water from vessels containing seawater in other than insignificant residual amounts that remain in tanks and that can not be pumped out or drained (no ballast on board) is prohibited unless it can be demonstrated that the discharge will comply with Wisconsin chloride limits (Subchapter VII of ch. NR 106, Wis. Adm. Code).
 - (h) Discharges of graywater or sewage by a cruise ship into Lake Michigan, a No Discharge Zone, are subject to penalties [s. 29.601(3), Wis. Stats.].
6. WDNR may require emergency treatment as part of a temporary compliance plan or temporary alternative strategy for vessels with unexchanged or untreated ballast water discharge of high-risk ballast water [s. NR 102.01(2), Wis. Adm. Code].
- (a) High-risk ballast water may not be discharged into waters of the state without WDNR review and authorization. WDNR will determine whether ballast water proposed for discharge represents a high-risk for introduction of nonindigenous species and whether feasible management alternatives are available to minimize that risk and protect waters of the state.
 - (b) Vessel owners or operators with unexchanged or untreated ballast must submit a request, providing sufficient additional information for WDNR to evaluate the request and determine whether an emergency ballast water management alternative is warranted.
 - (c) A vessel owner or operator shall not discharge untreated or unexchanged ballast water without WDNR authorization after the compliance dates have gone into effect, except in the following cases:
 - i. Where discharging is necessary to prevent jeopardy to the vessel, crew or passengers, or
 - ii. For discharges from tugs or unmanned barges.
 - (d) WDNR may identify high-risk ballast water cases using factors including but not limited to the following:
 - i. A nonindigenous species profile of source waters;
 - ii. The volume and frequency of exchanged ballast water discharged;
 - iii. Design limitations in vessels that prevent effective ballast exchanges;
 - iv. Vessel owner or vessel operator compliance history; or
 - v. Frequency of vessel claims for safety exemption.

- (e) WDNR, coordinating with the U.S. Coast Guard (USCG) and the States of Illinois, Iowa, Michigan and Minnesota as needed may identify alternative locations for the discharge of unexchanged or untreated ballast water.
 - (f) Nothing in this section relieves the vessel owner or operator of the responsibility for ensuring the vessel's safety and stability or the safety of the crew and passengers.
 - (g) As an alternative to discharging high-risk ballast water, WDNR may authorize the use of BWTS identified as promising technology by EPA, USCG, neighboring states or a US ballast water testing research facility. US ballast water testing research facilities include, but may not be limited to the Golden Bear, Great Ships Initiative and Maritime Environmental Resource Center.
7. BWTS used in Wisconsin waters must be specifically tested for use in freshwater (s. 4.1.2, WPDES Permit No. WI-0063835-01-1).
 8. All instances of non-compliance with this certification must be reported to WDNR immediately [s. NR 205.07(1)(s), Wis. Adm. Code].
 9. Proper operation and maintenance of treatment facilities, as required by s. NR 205.07(j), Wis. Adm. Code, shall include routine visual inspections of the BWTS, to be conducted at least on a monthly basis.

State of Wisconsin Department of Natural Resources
For the Secretary

By 
Ken Johnson
Administrator, Water Division

11/30/2012
Date Signed

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

This determination becomes final in accordance with the provisions of section NR 299.05(7), Wis. Adm. Code, and is judicially reviewable when final. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities, upon request.