Recreational General Permit (RGP) AI 159704

Participation regulations (40 CFR Part 25). EPA will consider public comments and if necessary amend its final action on the additional water body pollutant-combinations identified for inclusion on Arkansas' Final 2006 Section 303(d) List.

DATES: Comments must be submitted in writing to EPA on or before July 17, 2008.

ADDRESSES: Comments on the decisions should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–2145, facsimile (214) 665–7373, or e-mail: *smith.diane@epa.gov*. Oral comments will not be considered. Copies of the documents which explain the rationale for EPA's decisions and a list of the 79 water quality limited segments for which EPA disapproved Arkansas' decision not to list can be obtained at EPA Region 6's Web site at *http://www.epa.gov/earth1r6/6wq/tmdl.htm*, or by writing or calling Ms. Smith at the above address. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the CWA requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, Arkansas submitted to EPA its listing decisions under Section 303(d) on April 28, 2008. On June 6, 2008, EPA approved Arkansas' listing of 321 water body-pollutant combinations and associated priority rankings. EPA took neither an approval or disapproval action on 36 waters listed for beryllium. EPA disapproved Arkansas' decisions not to list 79 water body-pollutant combinations. EPA identified these additional water body pollutant-combinations along with priority rankings for inclusion on the 2006 Section 303(d) List. EPA solicits public comment on its identification of 79 additional water body-pollutant combinations for inclusion on Arkansas' 2006 Section 303(d) List.

Dated: June 6, 2008.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. E8–13616 Filed 6–16–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8580–9; EPA–HQ–OW–2008–0055 and EPA–HQ–OW–2008–0056]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed permit issuance and Notice of Public Hearing.

SUMMARY: EPA Regions 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are proposing an NPDES Vessel General Permit (VGP) to cover discharges incidental to the normal operation of commercial vessels and recreational vessels greater than or equal to 79 feet in length and an NPDES Recreational General Permit (RGP) to cover discharges incidental to the normal operation of recreational vessels less than 79 feet in length. This action is in response to a District Court ruling that vacates, as of September 30, 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. *Nw. Envt'l Advocates et al.* v. *EPA*, 2005 WL 756614 (N.D. Cal.). Although EPA has filed an appeal with the 9th Circuit Court of Appeals, as a practical matter, the Agency cannot simply await the outcome of that appeal. This is because if the District Court's order remains unchanged, as of September 30, 2008, discharges of pollutants 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 these proposed NPDES 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 such resulting information and data along with other available information in developing the two proposed vessel permits.

DATES: Comments must be submitted on or before August 1, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2008–0055 for the VGP or Docket ID No. EPA–HQ–OW–2008–0056 for the RGP, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.*
- *Mail:* Original and three copies to: Water Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA Headquarters West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: A copy of the draft RGP and VGP and their respective accompanying fact sheets are available at *http://www.epa.gov/npdes/vessels*. Direct your comments to Docket ID No. EPA–HQ–OW–2008–0055 for the VGP and Docket ID No. EPA–HQ–OW–2008–0056 for the RGP. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket. Do not submit information that you consider to be CBI or otherwise protected through *http://*

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www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed commercial vessel NPDES general permit, including on how to obtain copies of the draft general permit and fact sheet, 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 e-mail: *CommercialVesselPermit@epa.gov*. For further information on the proposed recreational vessel NPDES general permit, including on how to obtain copies of the draft general permit and fact sheet, contact 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: *RecreationalVesselPermit@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. 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 for the VGP and Docket ID No. EPA–HQ–OW–2008–0056 for the RGP. The official public docket is the collection of materials, including the administrative record for the draft permit required by 40 CFR 124.9, that 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 submit or 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.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or e-mail. Clearly mark all of the information that you claim to be CBI. For CBI information on computer disks mailed to EPA, mark the surface of the disk as CBI. Also identify electronically the specific information contained in the disk or that you claim is CBI. In addition to one complete version of the specific information claimed as CBI, you must submit a copy that does not contain the information claimed as CBI for inclusion in the public document. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the permit by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a section or part of the permit
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible
- Make sure to submit your comments by the comment period deadline identified.

C. How and To Whom Do I Submit Comments?

The opportunity to raise issues and provide information on these general permits is during the public comment period (*see* 40 CFR 124.13 for more information). You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or section in the fact sheet or permit to which each comment refers. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

EPA seeks comment on all aspects of the two proposed general permits and the accompanying fact sheets. In

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particular, EPA is soliciting comments on the following specific aspects of the VGP (for more detail on each element see the Permit Fact Sheet):

• Whether uses of Tetrachloroethylene (TCE) other than dry cleaning should be explicitly included or excluded from permit coverage. EPA is 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 are not proposed to be eligible for coverage because they are not considered to be incidental to the normal operation of a vessel.)

• The approach for requiring NOIs for commercial vessels.

• Whether the permit should establish numeric discharge limits for discharges incidental to the normal operation of a vessel for which the proposed permit would solely impose Best Management Practices (BMPs). (The proposed permit establishes numeric discharge limits for graywater from Cruise Ships, oily discharges, including oily mixtures, and residual biocide limits from vessels utilizing experimental ballast water treatment standards; for the remainder of the discharges incidental to the normal operation of vessels, the proposed permit imposes BMPs, based on EPA's conclusion that numeric effluent limitations are not feasible for vessel discharges in this permit iteration.) EPA requests that if commenters provide suggested numeric limits, that they should also provide any supporting data that identifies technologies or BMPs are available to meet these limits, and if these limits are more stringent than requirements of this permit, provide the costs and non-water quality impacts of setting those limits, and any other relevant information that would be helpful in setting these limits.

• Whether EPA should limit discharges of bilgewater in embayments such as the Chesapeake Bay for large vessels that regularly leave waters subject to this permit.

• 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.

• Whether Ballast Water Exchange requirements similar to those proposed for Pacific near shore voyages should be applicable for vessels engaged in coastwise trade on the Atlantic or Gulf Coasts that will discharge to waters subject to this permit. There are several fundamental differences between the Pacific Coasts and the Atlantic and Gulf Coasts. EPA does not have credible data or analyses as to whether the practice for vessels engaged in Pacific coastwise trade would mitigate or increase the risk for the spread of aquatic nuisance species (ANS) on the Atlantic or Gulf Coasts. Note that the proposed permit would require that all vessels that leave the U.S. Exclusive Economic Zone (EEZ), travel more than 200 nm from any shore, and will discharge to waters subject to this permit must complete a Ballast Water Exchange and all such vessels with unpumpable ballast water and residual sediment must conduct Mandatory Saltwater Flushing.

• Whether the questions developed for a one-time report are appropriate and whether alternative or supplemental questions should be considered. (The proposed permit requires owner/operators to submit a one-time report that contains basic information about the vessel after the 30th month of permit coverage).

• 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 prohibit 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 require 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).

• 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 and Puget Sound for large cruise ships, is appropriate and whether EPA's economic analyses are accurate. EPA estimates that most to all large and medium cruise ships have sufficient graywater holding capacity to avoid discharging graywater within 1 nm of shore and so estimates no incremental costs for complying with this requirement. EPA further estimates that some vessels will be able to hold graywater so that they do not have to discharge that graywater into nutrient impaired waters. Those large cruise ships that do not have sufficient holding capacity and do not have the ability to treat graywater to secondary standards may have to install advanced wastewater treatment systems. EPA further estimates that of the total large cruise ship population of 143 vessels, 30 vessels are certified to operate in Alaskan waters and thus are already equipped to treat graywater or hold sufficient quantities that they would be able to avoid discharging in nutrient impaired waters. EPA separately estimates that approximately 57 vessels have advanced wastewater treatment systems (which likely includes most or all of the vessels certified to operate in Alaskan waters), some to many of which are already equipped to treat graywater (or hold sufficient quantities that they would be able to avoid discharging in nutrient impaired waters or within 1 nm of shore). This leaves a range of 86 to 113 large cruise ships that do not currently treat graywater and might have to install treatment to avoid discharging untreated greywater in nutrient impaired waters, EPA estimates that 30 of these vessels would actually need to install graywater treatment systems to allow discharge of graywater in nutrient-impaired waters. EPA believes that cruise ship operators could arrange their schedules and itineraries such that the remaining 56 to 83 vessels could avoid operating in nutrient impaired waters for prolonged periods or avoid itineraries that would require them to stay within 1 nm of shore for prolonged periods. Based on information previously gathered for Alaskan cruise ships, EPA estimates that the annualized cost for installing and operating such treatment is $7.09 per passenger/crew berth per season. EPA further estimates that the average capacity of large cruise ships is 3,211 passengers and crew members. EPA thus estimates an average annualized cost of installing graywater treatment of $22,766 per vessel, or about $683,000 per year for 30 vessels. (See Section 3.6.1 on p 70 of the Economic and Benefits Analysis for further details.) EPA requests comment on all of these estimates. If commenters disagree with any of these estimates, EPA requests any available data that could form the basis of revised estimates.

• Whether large ferries should be subject to additional graywater treatment standards similar to those proposed for medium and large cruise ships.

EPA is also particularly interested in comments on the following aspects of the RGP (for more detail on each element see the Permit Fact Sheet):

• The approach to not require NOIs for recreational boats and recommendations (and rationale supporting them) where commenters favor NOI submittal for recreational boaters.

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• Whether the permit should establish numeric discharge limits for discharges incidental to the normal operation of a vessel for which the proposed permit would solely require BMPs. (The proposed permit establishes one numeric effluent limit in the form of a zero discharge standard for leaching of tribulyl tin from vessel hulls, a second numeric effluent limit for graywater discharges from Cruise ships when they discharge in certain waters, and a third for residual biocides from experimental ballast water treatment systems. EPA requests that if commenters provide suggested numeric limits, that they should also provide any supporting data that identifies technologies or BMPs available to meet these limits, and if these limits are more stringent than requirements of this permit, provide the costs and non-water quality impacts of setting those limits, and any other relevant information that would be helpful in setting these limits.

• Whether any of the BMPs listed under the 'Encouraged Best Management Practices' Section should be made mandatory under this permit or completely removed as an encouraged practice.

D. Public Hearing

Because EPA anticipates a significant degree of public interest in these draft permits, EPA will hold a public hearing Monday, July 21, 2008, to receive public comment and answer questions concerning the proposed permits. The hearing will be held at EPA East Building, Room 1153, 1201 Constitution Ave., NW., Washington, DC 20004, from 8 a.m. to 4:30 p.m. EST. Any person may provide written or oral statements and data pertaining to the proposed permits at the public hearing. Depending on the number of persons who desire to make an oral statement, EPA may impose limits on the time allowed for oral statements, which may result in the full statement not being heard. Therefore, EPA recommends that all those planning to present an oral statement also submit a written statement. Any person not making an oral statement may also submit a written statement.

E. Public Meetings

EPA and the U.S. Coast Guard are co-hosting three (3) public meetings. The U.S. Coast Guard has vast experience in researching, evaluating and regulating ballast water discharges, as well as expert knowledge of other discharges related to the normal operation of a vessel directly relevant to EPA's proposed vessel permits. The focus of each meeting is to present the proposed requirements of the VGP and RGP and the basis for those requirements, as well as to answer questions concerning the proposed permits. At these meetings, any person may provide written or oral statements and data pertaining to the proposed permits. The date, time and location of the public meetings are as follows:

• *Washington, DC:* Thursday, June 19, 2008, at the EPA East Building, Room 1153, 1301 Constitution Ave., NW., Washington, DC 20004, from 8 a.m. to 4:30 p.m.

• *Portland, Oregon:* Tuesday, June 24, 2008, at the Red Lion Hotel-Portland Convention Center, 1021 NE Grand Ave., Portland, OR 97232, from 8 a.m. to 4:30 p.m. If you require overnight accommodations, contact the hotel directly to make reservations at Tel: 503-235-2100.

• *Chicago, Illinois:* Thursday, June 26, 2008, at the Avenue Hotel, 160 E. Huron Street, Chicago, IL, 60611, from 8 a.m. to 4:30 p.m. If you require overnight accommodations, contact the hotel directly at Tel: 877-AVE-5110.

EPA encourages interested and potentially affected stakeholders to attend one of the scheduled public meetings and provide oral or written comments. These meetings are open to the public. Please note that the public meeting may close early if all business is finished. Oral or written comments received at the public meeting will be entered into the Docket. If you are unable to attend, you may submit comments to the EPA Water Docket at the address listed under **ADDRESSES**.

F. Web Casts

EPA has scheduled a Web cast to provide information on the proposed permits and to answer questions for interested parties that are unable to attend the public meetings or hearing. The Web cast will be broadcast on July 2, 2008, from 12 p.m. to 1:30 p.m. ET. For information on how to register and attend the Web cast, see EPA's Web site at *http://www.epa.gov/npdes/training* approximately 2 weeks prior to the date of the scheduled Web cast.

G. Finalizing the Permits

After the close of the public comment period, EPA will issue final permit decisions. These decisions will not be made until after all public comments have been considered and appropriate changes made to the permits. EPA's response to comments received will be included in the docket as part of the final permit decisions. For a discussion of the timing of permit finalization, see section III.E of this notice below.

H. 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 J. Scott Wilson at USEPA REGION 6, 1445 Ross Avenue, Suite 1200, Mail Code: 6WQPP, Dallas, TX 75202-2733; or at tel.: (214) 665-7511; or e-mail at *wilson.scott@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

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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 current 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, 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.

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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. *Nw. Envt'l Advocates et al.* v. *EPA*, 2005 WL 756614 (N.D. Cal.). 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 * * *".

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."

This means that, effective September 30, 2008 (and assuming the order is not overturned or altered on appeal), discharges incidental to the normal operation of vessels currently excluded from NPDES permitting by that regulation, will become subject to CWA section 301's prohibition against discharging, 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.

Because the Government respectfully disagrees with the District Court's decision, on November 16, 2006, EPA filed an appeal in the U.S. Court of Appeals for the Ninth Circuit. Oral argument was held on August 14, 2007, and a decision is pending. Additional material related to the lawsuit is contained in the docket accompanying these proposed permits and fact sheets.

If the 9th Circuit reverses or otherwise modifies the District Court's decision on appeal, this proposed permit or any final permit may be terminated, reopened, or modified, as appropriate.

III. Scope and Applicability of the 2008 VGP and RGP

A. Geographic Coverage of VGP and RGP

The proposed VGP and RGP apply to discharges incidental to the normal operation of a vessel identified as being eligible for coverage in the proposed permits, into waters subject to the permits. These waters are "waters of the United States" as defined in 40 CFR 122.2 (extending to the reach of the 3-mile territorial seas as defined in section 502(8) of the CWA). The draft general permits would cover vessel discharges in the waters of the U.S. in all states and territories, 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 sheets accompanying the draft permits.

B. Categories of Vessels Covered Under VGP and RGP

The draft vessel general permit (VGP) applies to owners and operators of commercial vessels and recreational vessels that are greater than 79 feet (24.08 meters) in length. The recreational vessel permit (RGP) applies to all recreational vessels and un-inspected passenger vessels that are less than 79 feet in length, measured from bow to stern, excluding any attachments or extensions. Recreational vessels are vessels manufactured or operated primarily for pleasure or leased, rented, or chartered to another for the latter's pleasure (46 United State Code (U.S.C.) 2101(25)). Recreational vessels include, but are not limited to, motorboats, sailboats, recreational fishing boats, personal watercraft, rowboats, canoes, and kayaks. Vessel owner/operators must only comply with the provisions of the permit that are applicable to them. For instance, non-motorized vessels do not need to do any BMPs for fuel control, or the discharge of oil, including oily mixtures. This permit (RGP) also applies to un-inspected passenger vessels that are less than 79 feet in length, measured from bow to stern, excluding any attachments or extensions, whose operation is substantially similar to that of a recreational vessel of less than 79 feet in length. For purposes of this permit, these vessels include sailboats for-hire, charter-fishing vessels engaging in hook-and-line fishing, and personal watercraft for hire. For purposes of the RGP, vessels that are not considered "un-inspected passenger vessels" and are not covered by this permit include, but are not limited to, commercial fishing vessels, commercial ferries, tug boats, freighters, water taxis, and small cruise ships. These vessels are covered by the VGP.

C. Summary of VGP Terms and Requirements

The proposed VGP addresses 28 potential 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 proposed permit are: ballast water, deck washdown and runoff, bilge 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, distillation and reverse osmosis brine, elevator pit effluent, firemain systems, freshwater layup, gas turbine water wash, graywater, motor gasoline and compensating discharge, non-oily machinery wastewater, refrigeration and air condensate discharge, rudder bearing lubrication discharge, seawater cooling overboard discharge, seawater piping biofouling prevention, small boat engine wet exhaust, stern tube oily discharge, 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, the permit establishes effluent limits pertaining to the constituents found in the effluent and 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 registered 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 six months after the permit's issuance date, but no later than nine

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months after the permit's issuance date. For vessels that were delivered to the owner or operator no later than 9 months after the permit's issuance date, the vessel will receive permit coverage on the date that EPA receives the complete NOI. Vessels that are delivered after that date will receive permit coverage 30 days after EPA receives the complete NOI.

Vessels that meet the applicable eligibility requirements for permit coverage but are not required to submit an NOI, including vessels less than 300 gross registered tons with no more than 8 cubic meters of ballast water capacity and recreational vessels subject to the RGP, will be automatically authorized by the proposed permits 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.

D. Summary of RGP Permit Terms and Requirements

The RGP addresses a smaller range of discharges than the VGP, because recreational vessels produce different types of discharges that are fewer in number and variety than the discharges from commercial and large recreational vessels covered under the VGP. Discharges most likely to occur from recreational vessels include anti-fouling hull leachate, deck washdown and runoff, graywater, engine cooling water, and bilge water. Constituents found in these discharge streams include aquatic nuisance species (ANS), oil and oily mixtures, nutrients, metals and toxins, and pathogens. The RGP is a much simpler permit than the VGP and primarily includes BMPs designed to minimize the amount of any discharge produced as well as reduce the likelihood the discharge will enter a waterbody. In addition to required BMPs, the permit includes a section of encouraged BMPs. These are recommended practices which can further reduce pollution from vessel discharges.

The RGP does not require the vessel owner or operator to submit an NOI to receive permit coverage. As long as the vessel owner or operator has met the eligibility requirements found in the permit and discharges in accordance with the applicable terms of the permit, the eligible discharges are authorized.

E. Timing of Permit Finalization

As discussed above, if the Northern District of California's order remains unchanged, the exclusion from NPDES permitting for discharges incidental to the normal operation of a vessel will be vacated as of September 30, 2008, which is approximately three and a half months from today's notice seeking public comment on the draft permits. Even for non-controversial and straightforward permits, it normally takes the Agency significantly more time than that to complete all of the tasks required to finalize a draft general permit, such as considering and responding to public comment, completing Coastal Zone Management Act consistency determinations, and completing the Clean Water Act section 401 certification process. Although EPA expects significant public interest and comment on today's proposed permits, EPA will make every effort to finalize today's permits by the date of vacatur.

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

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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 and RGP 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 and RGP may have the potential to affect a substantial number of small entities. Therefore, in order to determine what, if any, economic impact these permits 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, these permits are not likely to have a significant economic impact on a substantial number of small entities. For the RGP, the total annual estimated compliance cost per permittee ranges from $8.79 to $25.99 per year for motorboats, $5.39 to $22.59 for sailboats, and $0.29 to $2.39 per year for non-motorized small craft. Nationally, the draft economic impact analysis indicates that the RGP has an expected cost of $88.2 million annually.

Including the ballast water and other discharge requirements, the draft economic impact analysis indicates that the best management practices in the VGP would cost between $5.6 million and $19.1 million annually. Including paperwork requirements, the permit is estimated to cost between $7.1 and $25.0 million annually. Dependent upon sector, median costs per firm range from $4 to $795 in the low end assumptions and from $53 to $1,598 in the high end assumptions. 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 285 under low cost assumptions to 389 under high cost assumptions. Of this universe, the total number of entities expected to exceed a 3% cost ratio ranges from 71 under low cost assumptions to 76 under high cost assumptions. The total domestic flagged vessel universe that would be affected by this permit includes approximately 91,000 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.

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

Dated: June 9, 2008.

Ira Leighton,

Acting Regional Administrator, EPA, Region 1.

Dated: June 10, 2008.

Kevin Bricke,

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

Dated: June 10, 2008.

Carl-Axel P. Soderberg,

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

Dated: June 9, 2008.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: June 9, 2008.

Jim Giattina,

Director, Water Management Division, EPA, Region 4.

Dated: June 10, 2008.

Tinka G. Hyde,

Acting Director, Water Division, EPA, Region 5.

Dated: June 10, 2008.

William Honker,

Acting Director, Water Quality Protection Division, EPA, Region 6.

Dated: June 9, 2008.

William A. Spratlin,

Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

[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.

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Dated: June 10, 2008.

Stephen S. Tuber,

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

Dated: June 10, 2008.

Alexis Strauss,

Director, Water Divsion, EPA, Region 9.

Dated: June 11, 2008.

Michael Lidgard,

Acting Director, Office of Water and Watersheds, EPA, Region 10.

[FR Doc. E8–13615 Filed 6–16–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8580–7]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revisions for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Tentative Approval and Solicitation of Requests for a Public Hearing.

SUMMARY: Notice is hereby given that the State of West Virginia is revising their Public Water Supply Supervision (PWSS) program to meet the requirements of Section 1413 of the Safe Drinking Water Act. West Virginia has adopted regulations for the Long Term 2 Enhanced Surface Water Treatment Rule (LT2) to improve public health protection through the control of microbiological contaminants by targeting additional *Cryptosporidium* treatment requirements to higher risk systems, and for the Stage 2 Disinfection By-Products Rule (Stage 2) to reduce exposure to Disinfection By-Products (DBP) by requiring systems to meet maximum contaminant levels as an average at each compliance monitoring location, rather than as a system-wide average, for two groups of DBPs, trihalomethanes (TTHM) and five haloacetic acids (HAA5).

EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by July 17, 2008. This determination shall become effective on July 17, 2008 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- West Virginia Department of Health and Human Resources, Environmental Engineering Division, Capitol and Washington Streets, 1 Davis Square, Suite 200, Charleston, WV 25301–1798.

FOR FURTHER INFORMATION CONTACT: Michelle Moustakas, Drinking Water Branch (3WP21) at the Philadelphia address given above; telephone (215) 814–5741 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 17, 2008, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: June 5, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8–13614 Filed 6–16–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. 08–03]

Maher Terminal, LLC, v. The Port Authority of New York and New Jersey; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Maher Terminal, LLC. Complainant asserts that it is a limited liability company registered in the State of Delaware with corporate offices and facilities located in Elizabeth, New Jersey. Complainant asserts that Respondent, The Port Authority of New York and New Jersey ("PANYNJ"), is a body corporate and politic created by Compact between the States of New York and New Jersey and with the consent of the Congress; has offices located in New York, New York; owns marine terminal facilities in the New York-New Jersey area, including in Elizabeth, New Jersey; and is a marine terminal operator within the meaning of the Shipping Act of 1984, as amended ("The Shipping Act"). *See* 46 U.S.C. 40102(14). Complainant contends that Respondent violated sections 41102(c) and 41106(2) and (3) of The Shipping Act, respectively, by: (1) Failing to establish, observe and enforce just and reasonable practices with respect to Complainant; (2) giving undue or unreasonable preference or advantage to APMT and imposing undue or unreasonable prejudice or disadvantage with respect to Complainant; and (3) unreasonably refusing to deal or negotiate with Complainant. 46 U.S.C. 41102(c), 41106(2)–(3).

Specifically, Complainant alleges that Respondent's lease agreement EP–248 with APM Terminals North America, Inc., formerly known as Maersk Container Service Company, Inc. ("APMT"), grants to APMT unduly and unreasonably more favorable lease terms than Respondent provides to Complainant in lease agreement EP–249. These agreements, Complainant avers, are filed with the Commission as FMC Agreement Nos. 201106 and 201131, respectively. Complainant contends that the lease terms which disadvantage Complainant include, but are not limited to, the annual rental rate per acre, investment requirements, throughput requirements, a first point of rest requirement for automobiles, and the security deposit requirement.

Complainant asserts that it has sustained injuries and damages, as a result of Respondent's actions, including but not limited to higher rents, costs, and other undue and unreasonable payments and obligations