



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 12, 2008

Elin D. Miller
Regional Administrator
U.S. EPA Region 10
Regional Administrator's Office, RA-140
1200 Sixth Avenue Suite 900
Seattle, WA 98101

Ryan Albert, Ph.D.
EPA Vessel General Permit Coordinator
U.S. EPA Water Permits Division
1200 Pennsylvania Ave NW (4203M)
Washington, DC 20460

RE: EPA Vessel General Permit - Certification

Dear Ms. Miller and Mr. Albert:

This letter is in response to your request for certification of the EPA Vessel General Permit (VGP) under Section 401(a)(1) of the Clean Water Act. At this time, it is not possible for us to either certify or deny certification of the VGP. The EPA request for certification ignores the time Congress gave states to issue certifications and has placed Washington State in an impossible position.

Later this month, EPA is scheduled to issue the (VGP). We understand that EPA intends to incorporate state-specific conditions into the VGP via the certification process. EPA requested that states, including Washington, certify the VGP under Section 401(a)(1) of the Federal Clean Water Act. However, states must follow state-specific procedures for developing these conditions. Once these conditions are developed, states will be responsible for defending any legal challenges to those state-specific conditions. We are faced with the awkward, unreasonable, and illegal demand from EPA that we base our certification on the draft VGP, and to do so in an extremely short time frame.

Contrary to the requirements outlined in the Federal Clean Water Act, we were asked to certify the *draft* VGP rather than the proposed final VGP. By requiring certification of the draft permit, states are not provided the opportunity to review and evaluate any changes to the draft VGP that EPA made as a result of public comment. This places us in the impossible position of not knowing exactly what we are certifying. The suggestion that states include all relevant conditions in their certification isn't helpful since it means effectively writing a VGP in our state certification.

Under Section 401(a)(1) of the Clean Water Act, states are provided one year for acting on a request for Section 401 certification. States were provided very little time to certify the VGP. This is an unexpected, substantial new activity for which we are not funded, and comes at a time when we are facing budget



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short falls and a hiring freeze. The VGP is a particularly challenging permit to certify. As you know, the permit covers both a large number of affected permittees and a broad geographic range with moving discharge points. To develop appropriate, but realistic, conditions for inclusion in a certification of the VGP will take time and would require public review and comment. We simply do not have the staff to devote to this unplanned activity, particularly given the short time EPA has provided to certify this complex, new permit.

I am also concerned that EPA's current approach will result in inconsistent and possibly conflicting state certifications of the VGP. Given that many vessel operators will be subject to multiple state certifications, it is important there be an opportunity to coordinate the state certifications of this permit among the West Coast states. This will take time, funding, and leadership. I am requesting that EPA take on the responsibility for bringing the West Coast states together to ensure that individual state certifications are consistent and resolve any conflicts.

In the absence of certification, I encourage EPA to look closely and incorporate the comments submitted by my agency on the draft VGP on July 31, 2008, into the final VGP. I also strongly encourage EPA to convene an initiative to bring consistency to the regulation of vessel discharges along the West Coast. This West Coast initiative, at a minimum, should include Alaska, California, Oregon, and Washington. If EPA issues the VGP in December as planned, the VGP should include provisions allowing the permit to be re-opened and modified to incorporate the results of a West Coast initiative.

We understand that the courts have been tough with EPA over regulation of vessel discharges, but being tough in turn with states will only make matters worse.

If you have any questions, please contact Randall Marshall at (360/407-7445, or at rmar461@ecy.wa.gov).

Thank you very much for your time and attention.

Sincerely,



Jay J. Manning,
Director

cc: Thomas G. Eaton, Director, EPA Region 10 Washington Operations Office

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