

PERMIT MODIFICATION FACT SHEET

General Information

Permit Number:	WI-0063835-02-2 General Permit
Activity:	Ballast Water Discharge
Permittee:	Commercial vessels \geq 24.1 meters in length and \geq 8 m ³ ballast capacity
Discharge Location:	Ports of call or in transit on commercial shipping routes
Receiving Water:	Lake Michigan, Lake Superior, and other locations with commercial shipping traffic

General Description of Activities Covered Under This GP

General permits (GP) are designed to cover discharges from a category of activities that are similar in character. When a GP is issued, many dischargers meeting its requirements may be covered under the same GP. The Department of Natural Resources (Department) has several categories of GPs covering hundreds of facilities. For activities eligible for coverage under a general permit, the Department sends a cover letter and a copy of the permit to the facility. The cover letter includes the Department's determination that a discharge is covered under the GP. A facility may need to be covered under more than one GP, depending on the different types of waste streams that a facility discharges. However, a facility that requires an individual permit for any part of its discharge may have all of its discharges covered under one individual permit.

Growing concerns and damage to the environment caused by aquatic invasive species (AIS) have raised the awareness on the need to regulate ballast water from vessels, which are the major vector for AIS introductions and redistribution throughout the Great Lakes. However, the discharges incidental to the normal operation of a vessel, including ballast water, have been exempt by Environmental Protection Agency (EPA) regulations under the Clean Water Act since 1973. In 2005, the U.S. District Court for the Northern District of California determined the exemption by EPA exceeded its authority. In accordance with the court ordered time frame, EPA prepared a NPDES general permit to regulate ballast water and 25 other discharges from commercial vessels, which became effective December 19, 2008 and was reissued on December 19, 2013. For more information on the history regulating ballast water and other discharges incidental to the normal operation of a vessel, refer to the EPA Vessel General Permit (VGP) and accompanying fact sheet available at the EPA web site:

<http://water.epa.gov/polwaste/npdes/vessels/index.cfm>

The discharge of ballast water is a fairly new category of dischargers that EPA regulates under a National Pollutant Discharge Elimination System (NPDES) general permit. The 2013 EPA VGP requires effluent discharge limits and ballast water exchange for oceangoing vessels, however the effluent discharge limit is currently not applicable to Great Lake vessels and the EPA does not have inspectors to conduct ballast water compliance inspections onboard vessels. Although the 2013 VGP does not include numeric effluent limits for Great Lakes Vessels, the U.S. Court of Appeals, 2nd Circuit, decision in *Natural Resources Defense Council, et al v. United States Environmental Protection Agency, et al*, 808 F. 3d 556 (2015), found among other things, that “the EPA acted arbitrarily and capriciously by exempting pre-2009 Lakers” and EPA will need to address the items listed in this court ruling (<http://law.justia.com/cases/federal/appellate-courts/ca2/13-1745/13-1745-2015-12-18.html>) when EPA issues a new VGP. The 2013 VGP expires on December 18, 2018, so a new VGP must be issued by that date.

The US Coast Guard (USCG) Ballast Water Discharge Standard Final Rule was adopted on March 23, 2012 and includes effluent discharge limits for oceangoing vessels, however once treatment systems are installed, they will no longer be required to conduct midocean ballast water exchange under the USCG rule. The USCG does not regulate ballast water discharges from Great Lakes Vessels. The Wisconsin General Permit for Ballast Water Discharges (GP) issued in 2015 requires both midocean exchange and effluent discharge limits for oceangoing vessels, but only requires that a ballast water management plan be followed for Great Lakes Vessels under the permit modification.

The Department strongly supports federal numerical standards for ballast water discharges, but also believes both oceangoing and Great Lakes vessels need to be regulated with numeric discharge standards and midocean ballast water exchange should be continued even after treatment systems are installed for oceangoing vessels. The Department also believes that onboard inspections need to be conducted to ensure compliance with discharge limits and best management practices and to provide valuable education and outreach regarding AIS to the crew members. The Wisconsin GP, which was reissued on April 1, 2015, and modified on July 26, 2017 (WI-0063835-02-1), was reissued under the independent state authority to regulate discharges of pollutants to waters of the state pursuant to Wis. Stat. § 283.35 (1m). EPA has not objected to a state permit issued under state authority. Both Michigan and Minnesota have also issued state permits regulating ballast water discharges under independent state authority. The GP permit modification does not include effluent discharge limits for Great Lakes vessels and instead defers to the 2013 EPA VGP discharge requirements for Lakers.

Reason for Modification

The Department reissued the GP, Permit No. WI-0063835-02-0 on April 1, 2015. On April 28, 2015, the Department received a request for contested case hearing from the Lake Carriers Association regarding Section 4.2.1 of the GP, specifically relating to numeric technology based discharge standards for Great Lakes Vessels. The Department granted this request on May 14, 2015.

The Lake Carriers Association and the Department reached a stipulated agreement and appeared at a pre-hearing conference on July 26, 2017. The pre-hearing conference was public noticed and one additional person attended the pre-hearing in support of the original reissued permit, but did not object to the Stipulation. Therefore, Administrative Law Judge (ALJ) Eric D. Defort, issued an Order accepting the Stipulation and ordering that the GP be modified according to the Stipulation. The GP was subsequently modified on August 30, 2017 to reflect the Stipulation and Order. It was later discovered that the modified GP did not exactly match the language in the Stipulation and Order, so the GP was modified again to comply with the Order.

Permit Modification Changes

Per the Stipulation and Order, the table in Subsection 4.1 was modified to require Great Lakes Vessels to meet the discharge requirements for Great Lakes Vessels in the VGP. Subsection 4.1.2 was modified to take out the language requiring Great Lakes Vessels to be subject to ballast water treatment and substitutes the requirements for Great Lakes Vessels in the VGP.

The Table in subsection 5.2 was revised to also require Great Lakes Vessels to meet the discharge requirements for Great Lakes Vessels in the VGP.

Prepared by:

Wisconsin Department of Natural Resources
Bureau of Water Quality

Date: March 9, 2018

Attached: [Stipulation and Order](#)