

Permit Modification Fact Sheet

General Information

Permit Number:	WI-0063835-01-1 General Permit
Activity:	Ballast Water Discharge
Permittee:	U.S. and international commercial vessels ≥ 50 meters in length and ≥ 8 m ³ ballast capacity
Discharge Location:	Ports of call or in transit on commercial shipping routes
Receiving Waters:	Lake Michigan, Lake Superior, and other locations with commercial shipping traffic

General Description of History and Activities Covered Under This GP

Growing concerns and damage to the environment caused by aquatic invasive species (AIS) has raised awareness on the need to regulate ballast water discharge from vessels, which are the major vector for AIS introduction into the Great Lakes. However, the discharges incidental to the normal operation of a vessel, including ballast water, have been exempt through Environmental Protection Agency (EPA) regulations under the Clean Water Act (CWA) 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 National Pollutant Discharge Elimination System (NPDES) general permit to regulate ballast water and 25 other discharges from commercial vessels, which became effective December 19, 2008. The vacatur of the exemption became effective February 6, 2009. For more information on the history of 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 website:

http://cfpub.epa.gov/npdes/home.cfm?program_id=350

The discharge of ballast water is a new category of dischargers that EPA will now regulate under a NPDES general permit. EPA determined that effluent limit guidelines, a document with an in-depth evaluation of how to regulate a category of dischargers, could not be prepared for vessels in the time allowed by the court. Consequently, the EPA VGP primarily relies on established best management practices, and doesn't include treatment requirements or numerical water quality based effluent limits. EPA's VGP requires oceangoing vessels to perform seawater exchange or flushing of the ballast water tanks as is currently required under U.S. Coast Guard (USCG) regulations. This practice has helped reduce but not prevent the introduction of AIS from oceangoing vessels, and the Wisconsin Department of Natural Resources (Department) believes a stringent treatment discharge standard is necessary. The Department is proposing this general permit for this purpose because the requirements in the EPA VGP aren't stringent enough to protect Wisconsin's water quality.

States, including Wisconsin, have been told by EPA they lack the legal authority to issue a NPDES permit to regulate ballast water discharges. The proposed state general permit is being issued under the independent state authority to regulate discharges of pollutants of the waters of the state pursuant to Wis. Stat. §283.31. EPA has stated verbally that they will not object to a state permit issued under state authority. Both Michigan and Minnesota have issued state permits regulating ballast water discharges under independent state authority.

Pending federal legislation and regulations could supersede regulation under the CWA's NPDES permit program, making any work done by EPA or States to regulate ballast water moot. Congressional legislation could shift the legal burden of regulating ballast water from the EPA to the USCG. If this happened, the permitting functions would lie with the USCG. Depending on how the legislation is drafted, state permit options may no longer be viable because of federal preemption issues. The USCG also has proposed federal treatment standards for ballast water discharges which include numerical standards. Although Wisconsin strongly supports a federal numerical standard, the Department believes it could wait no longer for federal action, and must fulfill its duty to protect the quality of Wisconsin's waters.

Reason for Modification

This general permit contains requirements to minimize to the maximum extent practicable AIS commonly found in ballast water. The Wisconsin general permit is intended to supplement the EPA VGP with the addition of ballast water treatment requirements and prohibitions that the Department believes are necessary to protect water quality. Because the EPA VGP did not include ballast water discharge standards, Wisconsin issued a permit with discharge standards. However, because of uncertainty about the availability of ballast water treatment systems to achieve the discharge standard, a treatment feasibility determination step was built into the permit in Subsection 4.1.1. The Department was required to make a determination by December 31, 2010 on the performance capability of ballast water treatment systems and whether there would be commercially available treatment systems compliant with the Wisconsin standard.

Changes to the permit are necessary because the Department has concluded there currently are no commercially available treatment systems capable of complying with Wisconsin's discharge standard. The permit issued November 18, 2009 included the Wisconsin discharge standard that is 100 times more stringent than the International Maritime Organization (IMO) standard. The discharge standard in the modified permit now defaults to the IMO standard. However, in an effort to achieve improved treatment performance, the permit modification includes a new requirement that oceangoing vessels must continue to conduct ballast water exchange or flushing, instead of discontinuing these practices when an onboard treatment system is operational. The ballast water exchange or flushing will now serve as the first step in a dual treatment process in conjunction with the onboard treatment system. A dual treatment process may be effective in achieving the goal of the more stringent Wisconsin standard.

Permit Modification Changes

4.1 – Revised the table listing the applicable discharge standards by removing reference to the Wisconsin standard, formerly in Table A, because it no longer applies.

4.1.1 – The Department's feasibility determination is stated, the IMO standard in Table A (formerly Table B) applies to oceangoing vessels. The language in the original permit about how the feasibility determination would be made was deleted.

4.1.2 - Deleted the reference to Table B for oceangoing vessels. Added specific language that treatment systems must be type approved and work in freshwater. Added a new requirement for oceangoing vessels, which states they must continue to conduct ballast water exchange when carrying ballast water, or conduct saltwater flushing when no ballast is onboard (NOBOB). The USCG and Transport Canada requirements for ballast water exchange or flushing do not apply to vessels once they have onboard ballast water treatment systems. Wisconsin is requiring continuation of ballast water exchange or flushing so there is a dual process to help assure non-indigenous species in ballast water are eliminated to the maximum extent practicable. In addition, such a dual treatment process has shown to improve the treatment performance beyond the IMO standard from 10 to 100 times, or close to the Wisconsin standard.

4.1.3 – Deleted the reference to Table B.

4.2.1 – Deleted the Wisconsin Standard Table (formerly Table A), and re-named the IMO Standard Table (formerly Table B) the new Table A.

4.2.2.1 – Changed the reference to Table C to the new Table B (formerly Table C). Re-named the Biocide Effluent Limits table (formerly Table C) to the new Table B.

4.2.2.2 – Changed the reference to Table C to the new Table B.

4.4 – Deleted the references to Table B.

5.1 – Correction made to the required action for new vessels and vessels not previously permitted, so it states “entering waters of the state” instead of “discharging into waters of the state”. Initially the public noticed version of the permit had an exclusion for vessels that did not discharge, but this was removed from the issued permit. The intent was all vessels with the potential to discharge ballast water are required to obtain a permit. Deleted “Vessels in Operation” category, which only applied through July 31, 2010.

5.2 – Revised the discharge standard for new and existing vessels to the IMO standard in Table A (formerly Table B). The note in the original permit about the feasibility determination was deleted.

7 – Deleted Permit Coverage – Vessels in Operation category, which had a due date of July 31, 2010.

Prepared by:

Wisconsin Department of Natural Resources
Bureau of Watershed Management

Date: December 14, 2010

Attachment: Wisconsin Ballast Water Treatment Feasibility Determination