The American Waterways Operators
www.americanwaterways.com

801 North Quincy Street
Suite 200
Arlington, VA 22203

PHONE: (703) 841-9300, extension 260
FAX: (703) 841-0389
EMAIL: jcarpenter@vesselalliance.com

Jennifer A. Carpenter
Senior Vice President – National Advocacy

February 21, 2012

Water Docket
U.S. Environmental Protection Agency
Mail Code: 4101T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re.: Draft National Pollutant Discharge Elimination System Small Vessel General Permit (Docket ID No. EPA-HQ-OW-2011-0150)

Dear Sir or Madam:

The American Waterways Operators is the national trade association for the tugboat, towboat, and barge industry. AWO's 350 member companies include the owners and operators of barges and towing vessels operating on the U.S. inland and intracoastal waterways; the Atlantic, Pacific, and Gulf coasts; and the Great Lakes. Our industry's 5,000 towing vessels and 27,000 dry and liquid cargo barges comprise the largest segment of the U.S.-flag domestic fleet, both in number of vessels and on-board crew positions. Each year, the barge and towing industry safely and efficiently moves more than 800 million tons of cargo critical to the U.S. economy, including coal, grain, petroleum products, chemicals, steel, aggregates, and containers. Tugboats also provide essential services including shipdocking, tanker escort, and bunkering in our nation's ports and harbors. On behalf of AWO's members, thank you for the opportunity to comment on the draft National Pollutant Discharge Elimination System Small Vessel General Permit that would authorize discharges incidental to the normal operation of commercial vessels less than 79 feet in length, beginning December 19, 2013.

The tugboat, towboat, and barge industry is not only an integral part of the U.S. intermodal transportation system, but also the safest and most fuel-efficient, with the smallest carbon footprint, of any surface transportation mode. Ensuring that the federal regulatory regime governing vessel discharges provides for a high level of environmental protection and preserves the economic efficiency of barge transportation is thus a national imperative. Put differently, regulations that do not adequately ensure the safe and environmentally responsible operation of all towing vessels and barges, that impose unnecessary costs on companies operating towing vessels and barges, or that result in the diversion of cargo to other modes of transportation are bad not only for the industry, but for the U.S. economy and marine environment.

AWO members are committed to building on the natural advantages of marine transportation and leading the development of higher standards of marine safety and environmental protection. In 1994, AWO became the first transportation trade association to adopt a code of safe practice and environmental stewardship for member companies. Today, compliance with the AWO Responsible Carrier Program is a condition of membership in AWO, and members undergo independent third-party audits every three years to demonstrate their continued compliance.

AWO is also a member of the Shipping Industry Vessel Discharges Coalition, a group of maritime trade associations that, together, represent more than 90 percent of all vessels calling at U.S. ports, in both the domestic and international trades. The Coalition is committed to working with legislators, regulators, and non-governmental organizations to develop and implement environmentally sound and economically practicable solutions to prevent the introduction and spread of aquatic invasive species in U.S. waters.

This history and these organizational characteristics inform our view of the proposed sVGP. We seek to protect the marine environment in which our vessels operate, to provide a practical regulatory framework that allows for the continued safe and efficient movement of essential maritime commerce, and to ensure that infeasible or overly burdensome regulations do not result in the diversion of cargo to other transportation modes that pose increased risks to safety and the environment.

AWO appreciates the streamlined approach that EPA has taken to the sVGP by establishing a best management practices approach to discharge limitations and proposing pared-down quarterly visual inspection and reporting requirements, which are appropriate for the limited volumes and types of effluent generated by small vessels as well as the limited resources of small vessel owners and operators. AWO offers the following recommendations to further improve the practicability of the sVGP.

Pursue a Two-Track Approach While Affirmatively Managing the Section 401 State Certification Process

Before commenting on the content of the proposed sVGP, we emphasize that AWO continues to believe that as a matter of public policy, the NPDES permit program, which was designed for stationary, land-based facilities, is an ill-fitting framework for the regulation of discharges from mobile sources like vessels, which regularly travel between the waters of multiple states. As we have seen, under the section 401 certification process states may add contradictory or unachievable conditions to vessel general permits, creating a confusing patchwork of impracticable rules for vessels in interstate commerce. Legislation passed by the House of Representatives in November 2011 would address this untenable situation by establishing nationally consistent, clear, and science-based standards for vessel discharges.[1] We respectfully urge EPA to work to generate Administration support for this and other congressional efforts to reform the regulation of vessel discharges that would effectively safeguard the marine

[1] United States Congress. 2011. Coast Guard and Maritime Transportation Act of 2011, Title VII, Commercial Vessel Discharges Reform. U.S. Congress, H.R. 2838, passed in House on November 11, 2011.

environment while eliminating the operational and administrative difficulties that have been caused by the grafting of a permit program designed for fixed facilities onto vessels.

In the meantime, AWO recognizes that EPA must administer the NPDES permit process as effectively as possible within the confines of current law. We therefore urge EPA to affirmatively manage the section 401 state certification process to ensure that vessel operators are not faced with inconsistent and unnecessarily burdensome state requirements as they transit through the waters of multiple states. AWO believes that EPA can help to prevent another unacceptable patchwork of infeasible state conditions by working with the states to make the section 401 certification process as transparent and accessible to the regulated community as possible. During the certification process accompanying the first VGP in 2008, it was extremely difficult, and in many cases impossible, for the regulated community to obtain timely information on proposed state requirements and provide needed expertise and perspective before the certifications and associated conditions were finalized. We urge EPA to facilitate stakeholders' engagement with the states by providing information about state notice and comment periods and any other opportunities for public participation in their certification processes, and publishing these announcements on the EPA Website. EPA should also play a leadership role in helping states that share a waterway or coastline to resolve any conflicts or inconsistencies among their proposed conditions before they certify the sVGP.

Allow Unmanned, Unpowered Barges to Obtain Coverage under the sVGP

AWO recommends that EPA allow unmanned, non-self-propelled barges to obtain permit coverage under the sVGP, rather than the VGP, if the barge operator so chooses. While the vast majority of inland and coastal barges are longer than 79 feet, their discharge characteristics have far more in common with the small vessels that will be covered by the sVGP than with the other classes of vessels subject to the VGP. Indeed, most unmanned barges produce fewer effluent streams, and smaller volumes of effluent, than the small self-propelled vessels for which the sVGP was designed. For example, of the 27 discharge categories that would be covered by the proposed VGP, hopper barges – which are essentially floating steel boxes for carrying dry bulk cargoes – typically discharge only deck runoff, occasional water pumped from void spaces below deck, and, very occasionally, ballast water. Tank barges typically produce deck runoff and, in some cases, ballast water.

Volumes of deck runoff from barges are dependent on precipitation and surface water spray "landing on the deck in sufficient quantities to mobilize pollutants on the deck surface."[2] The size and design of a barge are also determinants; for instance, covered barges, including tank barges, will generate greater volumes of deck runoff than will open barges, such as dry cargo hopper barges. During light rainfall events of 0.25 inches, as much as 2,500 gallons of deck runoff may be generated from the surface of a tank barge, depending its size and speed. "Operators of the vessel do not have control over the volume of discharge related to precipitation

[2] United States Environmental Protection Agency (U.S. EPA). 2010. *Report to Congress: Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less than 79 Feet.* Office of Water, U.S. EPA, Washington, DC. p. 145.

events or sea sprays,"[3] distinguishing deck runoff from deck washdown, which involves the intentional removal of dirt, grit, or other material from a deck surface, most often with the use of detergents or cleaners. In its report, EPA claims that "deck runoff incorporates pollutants that would have been included in an eventual washdown so the samples are comparable."[4] However, because barge operators do not wash down barge decks, and so do not use detergents and disinfectants, it is unlikely that deck runoff from barges will contain pollutants associated with these cleaning agents, such as nonylphenols, phosphorous, and chlorine.[5]

Under Parts 5.4 of both the current and proposed VGP, the vessel class-specific requirements for barges include a provision that "[a]fter every instance of pumping water from areas below decks," vessel owners and operators "must conduct a visual sheen test […] to detect free oil by observing the surface of the receiving water for the presence of an oily sheen." According to AWO members, unwanted water in barge voids is costly, due to the fuel demands of towing added weight. Barge operators practice preventative maintenance designed to minimize leaks and, when they do occur, address them as quickly as possible, so the volumes of these discharges are small. AWO members also report that in their experience few, if any, corrective actions or notification requirements have been initiated as the result of a visual sheen from such discharges. Finally, as previously discussed, in its VGP Fact Sheet EPA acknowledges that the agency "does not believe that barges are a significant discharger of ballast water."[6]

Given the small number of discharge streams and the small volume of effluent produced by barges, AWO sees no environmentally protective purpose served by subjecting barge operators to the more complex, administratively burdensome, and costly permit requirements contained in the VGP rather than the more streamlined approach proposed in the sVGP. The sVGP addresses each of the discharges described above with best management practices to reduce their impacts on the marine environment. In many cases, these practices simplify but largely restate the requirements of the VGP. If these best practices are considered adequate for the management of greater volumes of discharges, with greater potential for environmental harm, from other small vessels, then there is no reason why barge operators should not be allowed to implement them to manage their discharges, too, by obtaining coverage under the sVGP.

There are other significant operational reasons why the sVGP is a better fit for unmanned, non-self-propelled barges. Particularly in the inland barge industry, a single company may own hundreds or even thousands of barges, which may be chartered to multiple operators (such as towers and fleeters) over relatively short spans of time. The VGP requirements for weekly visual inspections and extensive recordkeeping and reporting impose significant administrative and financial burdens on barge owners and custodians with little or no corresponding environmental benefit. AWO appreciates EPA's efforts to ameliorate these burdens in its proposed VGP by

[3] Ibid, p. 25-26.

[4] Ibid, p. 145.

[5] Ibid, p. xix.

[6] U.S. EPA 2011b, Part 4.4.3.5.6.2.

introducing limited visual inspections, extended unmanned period inspections, and combined annual reports for barges. However, the best management practices required under the sVGP are much simpler for barge owners to communicate to custodians, and the sVGP's quarterly visual inspection and documentation requirements are far easier for a barge's multiple operators to facilitate. EPA could further reduce the economic impact and paperwork burdens associated with the proposed permits, without undermining their environmental objectives, by allowing unmanned barges to obtain coverage under the sVGP rather than the VGP.

If Congress extends the moratorium on NPDES permits for incidental discharges from vessels less than 79 feet, or if EPA decides not to proceed with the sVGP for any other reason, AWO urges EPA to incorporate Parts 2 and 3 of the proposed sVGP – the best management practice, monitoring, and recordkeeping requirements – into the VGP as vessel class-specific requirements for barges and exempt barges from the general requirements for authorized discharges of VGP Parts 1 through 4.

Other Comments and Concerns

AWO recommends that EPA allow the operators of small vessels to maintain the Permit Authorization and Record of Inspection Form electronically if they choose, as long as it is kept in compliance with Part 4.2.1 of the proposed VGP – that is, in a format that can be read in a similar manner as a paper record, legally dependable with no less evidentiary value than its paper equivalent, and accessible to the inspector during an inspection to the same extent as a paper copy stored on the vessel would be.

AWO also recommends that EPA add to Part 6 of the proposed permit the definition of "ballast water capacity" found in Appendix A of the proposed VGP, to ensure consistency and eliminate confusion.

Conclusion

Thank you again for the opportunity to comment on the draft sVGP. We would be pleased to answer any questions or provide further information as EPA sees fit. We would also welcome the opportunity to identify AWO member companies willing to host EPA personnel aboard their vessels to gain a better understanding of tugboat, towboat, and barge operations and facilitate the development of an environmentally sound and operationally practicable sVGP.

Sincerely,

Jennifer A. Carpenter