

**Responses to Timely Comments on the draft Water Quality Certifications for the
United States Environmental Protection Agency's
Vessel General Permit and the small Vessel General Permit**

Letter No.	Association	Representative
1	LATHAM & WATKINS LLP	Jennifer P. Casler-Goncalves
2	LATHAM & WATKINS LLP on behalf of the National Steel and Shipbuilding Company (NASSCO)	Jennifer P. Casler-Goncalves
3	Canal Barge	William S. Murphy
4	Canal Barge	William S. Murphy
5	Port of San Diego Repair Association	Joe Pritchard
6	The American Waterways Operators	Charles P. Costanzo
7	U.S Department of Transportation Maritime Administration	Michaela E. Noble

Comments and Responses

**Letter 1: From Jennifer P. Casler-Goncalves of LATHAM & WATKINS LLP, April 26, 2012
Comment 1.1:**

We request that the deadline for public comment be extended until at least 45 days after such documents are made public in order to allow sufficient time for interested persons, including our clients, to comment meaningfully on the proposed certification.

Response 1.1:

The federal Clean Water Act (33 U.S.C. § 1251 et seq.) and our water quality certification regulations (Cal. Code Regs., tit. 23, § 3830 et seq.) only require that the State Water Board post a notice of an application 45 days prior to taking an action on general certification. There is no requirement to hold a comment period on a draft water quality certification. This is due to the aggressive time schedule set by the federal agencies, in this case U.S. EPA. However in this case, we were able to obtain an extension from U.S. EPA and hold a two week public comment extension period so that stakeholders and other interested persons could submit comments.

Letter 2: From Jennifer P. Casler-Goncalves of LATHAM & WATKINS LLP on behalf of NASSCO, May 11, 2012

Comment 2.1:

NASSCO is concerned that the State Board has not provided a meaningful opportunity to public comments regarding the issuance of a Clean Water Act Section 401 Certification for EPA's 2013 NPDES Vessel General Permit and small Vessel General Permit.

Response 2.1:

As stated in the prior response, the State Water Board's obligation is to post notice of an application 45 days prior to taking an action on a general certification. However, we were able to post an early draft of the Certifications and notified both the public at large and by a personal email sent to the LATHAM & WATKINS LLP Legal Secretary, Amy C. Cave, on May 24, 2012, that granted a two week comment period extension. The State Water Board did not receive any comments from LATHAM & WATKINS LLP or NASSCO during the comment period or at any time thereafter.

Comment 2.2:

NASSCO reiterates that it would have significant concern if the State Board pursues any conditions in connection with its 401 Certification, including but not limited to those addressed in NASSCO'S comments regarding the previous certification for the 2009 Vessel General Permit.

Response 2.2:

In response to NASSCO'S comments regarding the 2009 Vessel General Permit (2009 VGP) certification, the conditions set in the 2009 VGP certification as well as the 2013 Certifications are based on water quality standards and other appropriate requirements of state law. Most of the requirements are set forth in the California Toxics Rule (40 C.F.R. § 131.38) and applicable water quality control plans (e.g., the California Ocean Plan). Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires that water quality certifications be issued such that the discharge/activity be conducted in such a manner as to comport with state water quality standards and other appropriate requirements of state law. The State Water Board must issue the Certifications to comply with the mandates of the Clean Water Act. The Certifications must set forth such conditions so that all vessels discharging to waters of the state do so in compliance with state water quality standards and other appropriate requirements of state law.

Letter 3: From William S. Murphy of Canal Barge Company, Inc., May 11, 2012**Comment 3.1:**

The 401 certification process allows states to impose multiple, and potentially conflicting, requirements in additions to the VGP's provisions. It is extremely difficult for vessel crews to change the operations of a towing vessel moving across invisible state lines while they are also focused on the safe operation of the vessel. Therefore, we urge the State Water Resources Control Board to certify the VGP without any additional conditions.

Response 3.1:

The conditions set in the Certifications are required by federal law. Pursuant to section 401 of the Clean Water Act (33 U.S.C. § 1341), water quality certifications are required to set forth all conditions such that any activity that may result in a discharge to navigable waters will comport with water quality standards and other appropriate requirements of state law. For California these requirements include, but are not limited to, the California Toxics Rule, applicable water quality control plans, the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), the Clean Coast Act (Pub. Resources Code, § 72400 et seq.), the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), the Marine Managed Areas

Improvement Act (Pub. Resources Code, § 36600 et seq.), and the Marine Invasive Species Act (Pub. Resources Code, § 712000 et seq.)

Letter 4: From William S. Murphy of Canal Barge Company, Inc., June 7, 2012

Comment 4.1:

Compared to ocean-going freight ships or large cruise vessels, towing vessels and unmanned barges have fewer (or no) crews and much smaller amounts of discharges, which means they pose a much lower risk of polluting surrounding waters or transferring invasive species. Requiring them to comply with the same requirements as vessels that pose much higher risks for these activities harms the state economy while doing little or nothing to improve environmental quality. Therefore, we urge Water Resources Control Board to certify the VGP without any additional conditions.

Response 4.2:

The State Water Board staff cannot determine the amount of risk towing vessels and unmanned barges will have on the effects of water quality without the necessary data to verify compliance with the conditions set forth in the Certifications. As stated in the Response 3.1 above, the conditions set in the Certifications are based on existing water quality standards and other appropriate requirements of state law. The State Water Board cannot legally issue a water quality certification that does not meet the requirements of the Clean Water Act and the Porter-Cologne Water Quality Control Act, and other appropriate state laws.

Letter 5: From Derry Pence of the Port of San Diego Ship Repair Association, June 7, 2012

Comment 5.1:

If the only discharge is ballast water, and the vessel never leaves a single Caption of the Port Zone (COTP), is a SWRCB monitoring study required as defined in attachment A to the Draft Order for Clean Water Act Section 401 Water Quality Certification?

Response 5.1:

Yes, ballast water discharges must meet the monitoring and water quality requirements of the Certification. However, if a vessel does not discharge any of the waste streams into waters of the state during the 2013 VGP cycle, they are not subject to the study. A copy of the USEPA NOI (or when applicable, PARI form) Acknowledgement Letter and applicable fee shall be submitted. Any vessels that do not make their first port of call in California until the last calendar year of the 2013 VGP cycle shall be exempt from participating in this monitoring study.

More information found on the 2013 California VGP certification at:

http://www.waterboards.ca.gov/water_issues/programs/beaches/vssl_prmt.shtml

Letter 6: From Charles P. Costanzo of The American Waterways Operators, June 8, 2012

Comment 6.1:

AWO strongly recommends that the State Water Board strike draft certification condition 13 and work with vessel operators and other stakeholders to develop a monitoring study that provides the Board with the representative characterization of vessel discharges it requires without imposing unnecessarily burdensome, unacceptably ambiguous, and potentially unsafe requirements on vessel operators.

Response 6.1:

A monitoring study is required in order to provide the State Water Board an adequate representative characterization of the vessel discharges to determine compliance with the Certifications and the conditions contained therein. Further, monitoring requirements necessary to assure that compliance with certification conditions is a requirement of the Clean Water Act. (See 33 U.S.C. § 1341(d).)

The monitoring requirements in the draft Certification were changed in the Certification issued September 27, 2012. The monitoring requirements now require a Representative Monitoring Study to be developed in consultation with State Water Board staff. State Water Board staff has, and will continue to work in concert with vessel operators and other stakeholders in developing a practical monitoring study.

Comment 6.2:

AWO would again urge the SLC to work with the California legislature to amend its ballast water performance standards so that they are consistent with the standards proposed in U.S. EPA's draft 2013 VGP.

Response 6.2:

The State Water Board cannot respond to this comment, as it is directed towards State Lands Commission (SLC) ballast water performance standards. Therefore, the comment was forwarded to SLC staff.

Letter 7: From Michaela E. Noble of U.S Department of Transportation Maritime Administration, June 11, 2012

Comment 7.1:

The Maritime Administration requests that the second sentence in paragraph 1 under Additional Conditions, which states, "Vessels in the U.S Department of Transportation's Maritime Administration fleet, including but not limited to those located in Suisun Bay, do not quality and must not be covered by the VGP," be deleted from the certification of the 2013 VGP.

Response 7.2:

State Water Board staff has considered your comment and has agreed to delete the requested sentence.