



## Client Alert 17-2020

October 8, 2020

**Vessel Incidental Discharge Act (VIDA)**

**Environmental Protection Agency - Proposed Rule**

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### **A. BACKGROUND**

In our Client Alert\* 10-2019 dated June 3, 2019, we had provided our clients with an update from the Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) on the [Vessel Incidental Discharge Act \(VIDA\)](#). This Alert covered the expected timelines for implementation as well as anticipated requirements under VIDA (as per information available at the time), highlighting the fact that development and implementation of standards would occur in two stages, namely:

- 1) The EPA would establish and promulgate standards relating to the discharge of pollutants from vessels. The deadline to do so was 2 years from the enactment of VIDA, i.e. **December 4, 2020**.
- 2) The USCG would then prescribe, administer and enforce regulations consistent with these standards. The deadline to do so is **2 years from the date that the EPA establishes the standards** mentioned above.

### **B. RECENT DEVELOPMENTS**

With the signing of the [Proposed Rule](#) on Vessel Incidental Discharge National Standards of Performance on October 5, 2020, the first stage of the above-mentioned process is now nearing completion. The EPA made the unofficial version of their Proposed Rule available to stakeholders on October 7, 2020 and it provides a comprehensive description of the standards they propose to promulgate in accordance with their assigned responsibilities under VIDA. The official version of the Proposed Rule from the EPA is expected to be published in the Federal Register within the next few days, after which a 30-day period is permitted for public comment. Once this process is completed, the second and final stage of implementation under the USCG will commence, to be concluded within a 2-year period.

### **C. PROPOSED FUTURE COMPLIANCE REQUIREMENTS**

In an effort to provide clients with important regulatory compliance requirements found in the recently-released Proposed Rule, we offer the following information. Please note this is only intended to provide an overview of select issues that are of particular interest to vessel operators, based on our communication over the past few years:

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1) The EPA has proposed standards for 20 types of vessel discharges incidental to normal vessel operations under VIDA. These consolidate 25 of the 27 discharges currently under the VGP (small boat engine wet exhaust and fish hold effluent have been eliminated) and expand the scope of discharges under the 20 revised categories.

2) **The “scope of waters” for VIDA implementation is the U.S. contiguous zone, which the EPA has confirmed extends to 12 miles from the coastline.** This is consistent with the EPA’s announcements made during 2019 that coverage would expand from 3 miles (as it is under the VGP) to 12 miles under VIDA.

3) Oil-to-sea interfaces fall under “Oil Management” in General Standards and have been covered in great detail. The VGP description of these interfaces listing typical equipment with oil-to-sea interfaces will be removed. Interfaces can now be from any equipment seals or surfaces “*where the design is such that small quantities of oil can escape into the surrounding sea during normal vessel operations.*” In addition to stern tubes, thrusters and mooring wires, this will include on-deck equipment with potential for on-water oil discharges, e.g. cranes and other lifting equipment, stern ramps, etc. The guidance regarding equivalent overseas programs that certify biodegradable lubricants will be removed, as the EPA has no control over those programs. Instead, it is expected that manufacturers will continue to provide EALs that they certify to be biodegradable, minimally-toxic and non-bioaccumulative. **Technical infeasibility criteria and the proof required to indicate such infeasibility has been left to the USCG to develop over the next 2 years.**

4) Ballast water management regulations are covered exhaustively including Best Achievable Technology (BAT), improved methods to combat invasive species, etc. **Encouragingly, the Proposed Rule does not recommend any technological changes**, despite the finding of the Second Circuit Court of Appeals in 2015.

Also, as reported previously in our Client Alert 10-2019, individual States will no longer be able to impose additional requirements with respect to ballast water management. This means the ballast water permit requirements from certain States in the Great Lakes will no longer be necessary.

**Saltwater flushing of empty ballast tanks will become mandatory for all US calls, as will exchanging ballast to raise salinity over 18 ppt (when required) when calling at ports in the Pacific region.**

5) EGCS (scrubbers) : Fortunately, **the EPA has chosen to accept IMO standards and not impose additional requirements on vessel operators for discharges related to EGCS operation.** We are aware that has been a major concern over the past year, with multiple scrubber

installations taking place that conform to IMO but not VGP standards. **Under the new Proposed Rule, the minimum pH requirement in wash water discharged will be raised to 6.5 for vessels using open-loop EGCS, which is consistent with IMO requirements.** The EPA has also stated that there are insufficient grounds to consider the prohibition of open-loop scrubbers in US waters at this time, despite the operation being prohibited by some other nations.

6) Cathodic protection : **The EPA** recognizes the need for different types of anodes depending upon a vessel's service profile and **will not prohibit the use of any common material, including Zinc.** That had been a concern for operators, due to the higher cost and lower effectiveness of Magnesium and Aluminum anodes.

7) Graywater : The proposed rules encourage oceangoing vessel operators towards providing graywater storage on board, while still permitting discharge (within limits) for existing vessels. Newbuildings will be required to have graywater storage or a treatment system.

8) Biofouling : This has been addressed in great detail, especially proposed restrictions on in-water hull cleaning. Details are provided under General Standards, in the category entitled Biofouling Management.

#### **D. RECOMMENDED ACTIONS**

Until this process is completed and the USCG publishes regulations for implementation and compliance under VIDA (which are not expected until 2022), **the current Interim Requirements will remain in force, which require compliance with the 2013 Vessel General Permit (VGP) requirements.** All details regarding (proposed) future compliance requirements under VIDA are provided for reference only and do not require any action on your part at this stage.

We will continue to monitor developments with respect to VIDA implementation and keep our clients updated. Queries regarding the Proposed Rule can be sent to us at [ecm@ecmmaritime.com](mailto:ecm@ecmmaritime.com), or directly to the EPA's VGP desk at [VGP@epa.gov](mailto:VGP@epa.gov).

\* *All previously-issued Client Alerts can be viewed in the password-protected Member Section of our website, [www.ecmmaritime.com](http://www.ecmmaritime.com)*

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