



Client Alert 27-2018
December 10, 2018
EPA Vessel General Permit (VGP)
(a) Continuation under VIDA
(b) 2018 Annual Report Submission

I. ALERT

On December 4, 2018, the President of the United States signed the Commercial [Vessel Incidental Discharge Act \(VIDA\)](#) into law. The law extends the validity of the current Vessel General Permit (VGP) beyond December 18, 2018 and makes a number of substantial changes.

II. BACKGROUND

This Alert follows our Client Alert 21-2018 of October 10, 2018, which contained an announcement by the U.S. Environmental Protection Agency (EPA) about administrative continuation of the current 2013 Vessel General Permit (VGP). At the time, industry stakeholders were notified that no Notices of Intent (NOI) could be submitted after expiration of the VGP on December 18, 2018.

With the enactment of VIDA, this expiration date is no longer applicable and the majority of VGP features remain in effect, with some exceptions and additions as described in Section III below.

III. REGULATORY OVERVIEW

- The VGP will remain in effect until the US Coast Guard (USCG) and EPA create new regulations addressing vessel discharges. The process to create new regulations could take up to four years.
- Any new regulations being promulgated cannot be less stringent than the current VGP, or the USCG Ballast Water Management (BWM) regulations.
- Individual States have the right to seek more stringent standards, but must petition the EPA to do so. VIDA would limit State application and permit fees on vessels complying with the VGP.
- **New Notices of Intent (NOIs) can continue to be submitted after December 18, 2018. There will be no change in the submission process. NOIs must be submitted at least 7 days prior to entry into US waters.**
- The USCG is now the agency with primary VGP enforcement responsibility. The EPA is responsible for establishing vessel discharge standards.
- VIDA makes it unlawful for any person to violate any provision of the current VGP. Violators can be subject to administrative, civil and criminal penalties.
- Each day of a continuing VGP violation is considered a separate offense.
- The requirements do not apply to vessels less than 79 feet in length, or to fishing vessels that do not discharge ballast into US waters.

IV. PENALTIES

Penalties for noncompliance with the VGP remain unchanged. Noncompliance can result in administrative, civil and criminal penalties, as mentioned in Section III.

V. REQUIRED ACTION

If your vessel has a valid NOI, **no additional action is required** to continue VGP coverage beyond December 18, 2018. However, ECM believes that vessels will face increased USCG scrutiny of their compliance with VGP requirements under VIDA. As such, it is imperative that companies ensure that their vessels comply fully with VGP requirements including:

- Having established procedures to minimize discharges (VGP Compliance Manual).
- Conducting crew VGP training.
- Conducting weekly VGP inspections while operating in VGP waters.
- Conducting comprehensive annual vessel inspections by an appropriately trained and qualified person at least once every 12 months.
- Submitting VGP Annual Reports for every calendar year that a vessel has an active NOI.

VI. ECM VGP Annual Report Service

The Vessel General Permit requires vessel owners/operators to submit an Annual Report documenting VGP activities for each calendar year that a vessel is covered by the VGP. Annual Reports for 2018 activities must be submitted to the U.S. Environmental Protection Agency (EPA) by **February 28, 2019**. All vessels with a valid VGP Notice of Intent (NOI) at any time during 2018 must file an Annual Report, regardless of whether or not the vessel called the US in 2018. ECM recommends that you submit your VGP Annual Reports as soon as your vessels complete their last call to the US in 2018. If you would like ECM to submit your VGP Annual Report for 2018, please contact us at ecm@ecmmaritime.com and we will forward our updated Form 14 (Rev 3-2018) for your completion.

Note: Certain vessels that discharge ballast water, bilge water, graywater and exhaust gas scrubber wastewater into VGP waters (up to 3 miles from shore) are required to perform analytical monitoring as described below and file Discharge Monitoring Reports (DMR). Please indicate in your message if DMRs are required. If additional information is sought on DMRs, please contact us via email.

a) Ballast water : All vessels using a ballast water treatment system (BWTS) to discharge ballast into VGP waters must conduct sampling and analysis of treated ballast water (maintenance monitoring) on

two separate occasions during the 12 months following the first such ballast discharge. The two sampling events must be at least 14 days apart. If residual bio-organism and biocide levels are found within specified VGP parameters after both analyses (VGP Sections 2.2.3.5.1.1.4 and 2.2.3.5.1.1.5), only one sampling and analysis per year is required thereafter.

b) Bilge water : New build vessels greater than 400 gross tons and constructed on or after December 19, 2013 are required to sample and analyze their bilge water once per year, for oil and grease content. Sampling and analysis during subsequent years can be reduced to once per year if certain conditions are met, as described in VGP Section 2.2.2.1.

c) Graywater : New build vessels constructed on or after December 19, 2013 with a maximum crew capacity of 15 or more persons (including accommodation) are required to sample and analyze graywater samples twice per year. The two sampling events must be at least 14 days apart.

d) Exhaust Gas Scrubber (EGS) wastewater : All vessels with an NOI and using an EGS are required to sample and analyze wastewater samples twice per year. The two sampling events must be at least 14 days apart. Parameters for analysis are described in VGP Section 2.2.26.2.3. If analysis results are within specified parameters during the first year, only one sampling and analysis is required during each subsequent year.

ECM can assist you with comprehensive VGP compliance to ensure your vessels are not subject to penalty or delays. We can assist with VGP manuals, NOI submission, Notices of Termination (NOT) and VGP Annual Reports. We can also attend your vessels to conduct VGP Annual Inspections or crew training. If you wish to arrange attendance by an ECM inspector or have questions about VGP compliance, please contact us at ecm@ecmmaritime.com.
