



Client Alert 4-2019

February 5, 2019

Vessel Incidental Discharge Act (VIDA) Status Update

As advised in our Client Alert 27-2018 dated December 10, 2018, the Vessel Incidental Discharge Act (VIDA) was signed into law by President Donald J. Trump on Dec. 4, 2018. Since that date, we have received multiple queries regarding the existing legislation applicable to vessels under the Vessel General Permit (VGP), as well as what can be expected in the near and long-term future under VIDA. The details below attempt to clarify the current situation and include recent comments made by the U.S. Coast Guard (USCG) Assistant Commandant for Prevention Policy, Rear Admiral John P. Nadeau.

I. CURRENT IMPLEMENTATION

A. With effect from December 4, 2018, VIDA establishes the following requirements:

- It provides for the establishment of uniform and environmentally sound standards and requirements for the management of discharges incidental to the normal operation of a vessel.
- It charges the Environmental Protection Agency (EPA) with primary responsibility to establish standards relating to the discharge of pollutants from vessels.
- It charges the USCG with primary responsibility for prescribing, administering and enforcing regulations consistent with these standards. **Note** : These discharges were previously regulated by the EPA under the Vessel General Permit (VGP) process.

B. The current status of the Vessel General Permit (VGP) is described below:

- The last (2013) VGP expired on December 18, 2018. Since VIDA supplants the VGP, a new VGP will not be issued.
- However, the requirements under the existing (2013) VGP remain in full force and effect beyond their expiration date, until the EPA and the USCG finalize and implement the new regulations that VIDA requires.
- New regulations will be at least as stringent as the existing VGP in terms of corrective action, inspections, monitoring, reporting, recordkeeping and vessel-specific requirements.
- All vessels trading to the US should continue to maintain compliance with the existing VGP until the new regulations are finalized. For further information on the EPA's Vessel General Permit (VGP) process, please refer to the [EPA's website](#) or contact the EPA via email at vgp@epa.gov.

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II. FUTURE IMPLEMENTATION

A. VIDA – Framework and content:

- When fully implemented, VIDA will remove the VGP program from the National Pollutant Discharge Elimination System (NPDES).
- As a result, individual States will no longer be authorized to establish and enforce their own standards for discharges, including ballast water discharges. This is highly significant, because it removes the burden on vessels to comply with additional State requirements regulating the discharge of ballast, graywater, etc. Under the existing VGP, States are permitted to impose additional requirements, including prohibition of certain discharges, in their waters. The existing VGP describes these requirements in Section 6.
- Instead, States will now be permitted to comment on and object to proposed federal legislation. The EPA is required to consider such comments and explain, as applicable, their rationale for rejecting the State's proposals. The EPA's decision in this regard is final and not judicially reviewable, i.e. it cannot be challenged in court.

B. Regulations under VIDA – Timeline for development and implementation:

- No later than 2 years after enactment (i.e. by December 3, 2020) VIDA requires the EPA to promulgate federal standards to control any discharge incidental to the normal operation of a vessel.
- Thereafter, VIDA requires the USCG to publish implementing regulations no later than 2 years after the EPA publishes the abovementioned standards.
- Accordingly, it can safely be predicted that current requirements under the existing (2013) VGP will remain in place until December 3, 2020 and for an undetermined period of up to 2 years after that date.

In addition to the above, we take this opportunity to highlight the fact that under VIDA, the new testing protocols for Ballast Water Treatment Systems (BWTS) will be more in line with the IMO ballast water testing procedures. This is because VIDA excludes organisms that have been rendered “non-viable” through testing from the “living” category. Previously, organisms rendered “non-viable” were included in the living category by the USCG Marine Safety Center (MSC), thus preventing multiple BWTS manufacturers from receiving type approval. The new legislation is expected to open the door to several more BWTS solutions.

Enquiries and comments should be directed via email to ecm@ecmmaritime.com

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