

Department of Environmental Conservation

Division of Water

February 6, 2017

Potential Commercial Vessel Incidental Discharge Act (VIDA) Update

What is the Commercial Vessel Incidental Discharge Act (VIDA)

The Commercial Vessel Incidental Discharge Act (VIDA) is proposed legislation that would regulate ballast water and incidental discharges from vessels. All regulatory and enforcement authority would fall to the US Coast Guard (USCG) as opposed to State programs and/or the Environmental Protection Agency (EPA). This effort is an attempt to modify and standardize national ballast water regulation in lieu of state-by-state regulations. The bill also addresses the implementation of international ballast water requirements. Finally, VIDA would expand upon vessel exemptions within the Clean Water Act that would eliminate the need for EPA's Vessel General Permit (VGP).

Per VIDA, "incidental discharges" include all discharges other than ballast water, sewage, garbage, oil and hazardous substances, and air pollution. Incidental discharges include graywater, bilgewater, anti-fouling hull coating leachate, oil water separator effluent, and numerous other wastewater types. The bill has been introduced in various forms since 2012. A new bill (S 168) was introduced in Congress January 17th.

Provisions of VIDA to consider

- VIDA would require the USCG to develop and implement a certification program for treatment of ballast water (*Sec. 4*) as well as establish regulations pertaining to the discharge of ballast water (*Sec. 4 and 5*). VIDA would also establish national standards and criteria for the certification of ballast water treatment equipment (*Sec. 4*).
- VIDA transfers authority of incidental discharges (*Sec. 8*) from States and EPA to the USCG. VIDA defines discharges incidental to the normal operation of a vessel (*Sec. 2 and 8*) to include approximately 35 types of discharges. VIDA would establish the use of Best Management Practices Plans published by the USCG to replace the EPA Vessel General Permit for incidental discharges (*Sec. 8*).
- VIDA would exempt small vessels (under 79 feet), fishing vessels (including fish processors and tenders) (*Sec. 8*), and recreational vessels (*Sec. 2(6) and (14)*) from federal or state ballast water and incidental discharge regulations.
- VIDA would not allow States to develop, implement, or enforce regulations or statutes pertaining to ballast water or incidental discharges (*Sec. 10*). VIDA as written would require a state to work with the Secretary of Homeland Security (USCG's parent organization) to address aquatic nuisance (invasive) species.
- VIDA would establish the USCG as the authority on enforcement unless a state reaches an agreement with the USCG (*Sec. 10*). In the past, the EPA Administrator has been willing to accept input from the states on the Vessel General Permit, and has allowed Alaska to enforce state wastewater requirements.

Broad concerns with VIDA

- VIDA supersedes the EPA Vessel General Permit (VGP) which most states have signed onto and to which many states have added state specific requirements (Section 6 of the VGP). VIDA attempts to "federalize" the management of ballast water and incidental discharges, and does not consider unique state or regional concerns and issues.
- VIDA establishes a process for certification of ballast water treatment equipment similar to the process used for marine sanitation devices (MSD). Devices are tested and certified in the laboratory, however performance of the MSD systems in the field has not been consistent.

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- VIDA attempts to establish a national regulation for aquatic nuisance species (invasive species). This may present challenges as managing invasive species on a national level may fail to address issues on regional, state, and local levels.
- VIDA does not provide for additional resources to be provided to the USCG for implementation and enforcement. Historically, there have been limited resources provided to either the USCG for marine sanitation devices compliance assistance, or to the EPA for Vessel General Permit compliance. The federal agencies have relied on states to assist in enforcement, and this ability is removed in VIDA.

Alaska-specific concerns with VIDA

- VIDA would preempt the wastewater portion of a citizens initiative that lead to AS 46.03.463 and DEC regulation of discharges of graywater (and possibly blackwater mixed with graywater) from commercial passenger vessels (cruise ships). There is no assurance the USCG would require large commercial passenger vessels to treat to the levels achieved by “Advanced Wastewater Treatment Systems (AS 46.03.462(e)) or include the same limits on the timing and location of discharges to avoid concerns with interference with fishing and other marine activities. It is also uncertain the “continuous improvement” policies incorporated into Alaska’s statutes and DEC’s authorizations would be incorporated into the USCG’s regulations and authorizations. There are a number of “grandfather” provisions and exemptions in VIDA that could make this difficult in some instances.
- VIDA would also preempt any future action by the State of Alaska to regulate these discharges to our marine environment. At this time the State does not have regulations in place for addressing exhaust gas scrubber effluent, ballast water, car deck wash down, hull cleaning, boiler water, and other discharges, but there could be a need to in the future. For example, as some vessels are adding exhaust gas scrubbers to improve the quality of their air exhaust emissions, this has created new wastewater streams that need to be monitored and possibly treated before discharge. VIDA could also remove the authority to regulate chemicals or metals added to kill marine fouling organisms, preempting existing state statutes and regulations in this area.
- VIDA as written may limit Best Management Practices coverage to three nautical miles from shore, which has the potential to open “donut holes” that were addressed in federal and state law in Southeast Alaska.
- VIDA would remove the authority for the State of Alaska to regulate incidental discharges, ballast water, and other invasive species sources from fishing vessels, including fish processors, as well as recreation vessels. VIDA would also remove state authority of existing regulations addressing toxic hull coatings and oily water separator effluent.
- VIDA does not contain a “citizens suit” provision, such as was included in the citizens initiative and is now codified at AS 46.03.481.

CONTACT

Ben White
Cruise Ship Program Manager
DEC Division of Water
(907) 465-5320
Ben.white@alaska.gov