



EPA's Final National Standards of Performance under the VDA

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2018 Vessel Incidental Discharge Act (VIDA)

Purpose: (1) Harmonize the patchwork of U.S. Coast Guard (USCG), EPA, and state vessel incidental discharge permits/regulations, and (2) Prevent or reduce the discharge of pollutants (e.g., aquatic nuisance species; metals; pathogens) from large commercial vessels.

Applicability: Applies to discharges incidental to the normal operation of ~85,000 non-military, non-recreational (i.e., primarily commercial) vessels 79 feet in length and above, and ballast water only from smaller commercial vessels and fishing vessels of all sizes, into waters of the United States or the contiguous zone.

Effect: Preempts states from adopting or enforcing more stringent requirements except through one of several petition/application options identified in the VIDA. Once final, the regulations will replace EPA's National Pollutant Discharge Elimination (NPDES) Vessel General Permit (VGP) and USCG regulations.

EPA

Directs EPA to promulgate **technology-based national standards of performance** that are at least as stringent as the VGP, with limited exceptions

USCG

Directs USCG to develop regulations necessary to **ensure, monitor, and enforce compliance** with EPA's standards and USCG requirements

EPA's VIDA Rulemaking

2020 Proposed Rule (NPRM)

- Three categories of “general standards” applicable to all discharges, and “specific standards” for 20 different equipment/systems
- Procedures for states to petition for more stringent standards, as provided for under VIDA

2023 Supplemental Notice (SNPRM)

Feedback received during comment period and post-proposal stakeholder engagement drove decision to issue a Supplemental Notice

- 1 **New Data:** EPA reviewed USCG ballast water management system type-approval data to evaluate the numeric ballast water discharge standard
- 2 **Additional Regulatory Options:** EPA presented additional options under consideration for the final rule for the following select discharges:
 - Ballast tanks
 - Graywater systems
 - Hulls and associated niche areas

2024 Final Rule

Published in the *Federal Register* on October 9, 2024 (89 FR 82074)

EPA's Final Rule

General Standards	Specific Standards		
<ul style="list-style-type: none">• General operation & maintenance• Oil management• Biofouling management	<ul style="list-style-type: none">• Ballast tanks• Bilges• Boilers• Cathodic protection• Chain lockers• Decks• Desalination & purification systems	<ul style="list-style-type: none">• Elevator pits• Exhaust gas emission control systems• Fire protection equipment• Gas turbines• Graywater systems• Hulls & associated niche areas• Inert gas systems	<ul style="list-style-type: none">• Motor gasoline & compensating systems• Non-oily machinery• Pools & spas• Refrigeration & air conditioning• Seawater piping• Sonar domes

Procedures for State Petitions:

- **Review of standards:** Revise the national standards of performance based on new information.
- **Emergency order:** Temporarily require the use of an emergency best management practice (up to four years) in a specific location to address aquatic nuisance species or water quality concerns.
- **No-Discharge Zone:** Completely prohibit one or more discharges in some or all state waters.
- **Enhanced Great Lakes System Requirements:** Establish additional requirements with respect to discharges in the Great Lakes.

Extent of Changes from Proposals to Final

Minor or No Change

- **Ballast tanks (numeric standard)***
- Bilges
- Boilers
- Cathodic protection
- Chain lockers
- Decks
- Desalination and purification systems
- Elevator pits
- Gas turbines
- Hulls and associated niche areas (coatings)
- Inert gas systems
- Motor gasoline and compensating systems
- Non-oily machinery
- Pools and spas
- Refrigeration and air conditioning
- Sonar domes
- Appendix A

Moderate Change

- Exhaust gas emission control systems
- Fire protection equipment
- **Graywater systems***
- Seawater piping
- Definitions
- State petitions

Significant Change

- **Ballast tanks (BMPs)***
- **Ballast tanks (Lakers)***
- **Hulls and associated niche areas (cleaning)***

**Addressed in 2023 SNPRM*

Ballast Tanks – Numeric Discharge Standard

Final Rule Outcome

Certain vessels must meet a numeric discharge standard carried forward from the 2013 VGP and USCG regulations.

Justification/Rationale

- Review of additional USCG type-approval data fails to demonstrate a more stringent standard represents BAT
- Ballast water test methods do not allow for establishing a more stringent standard
- Monitoring challenges associated with measuring live organisms
- Need for multiple compliance options to suit different vessels and circumstances

Proposals

- Final rule is consistent with NPRM and SNPRM.

Comments/Reactions

- Industry supports consistency with IMO
- Some commenters:
 - Indicated EPA failed to evaluate *all* data
 - Disagreed with EPA's statistical analysis, particularly how EPA addressed "below detect" values
 - Disagreed with EPA's decision to include all USCG type-approved BWMSs and not identify/assess just the "best" systems
 - Questioned how EPA's statistical analysis resulted in no change to the current numeric standard
- The 2nd Circuit Court ruled against EPA for ballast water standards being arbitrary and capricious in the 2013 VGP

Ballast Tanks – Uptake Best Management Practices (BMPs)

Final Rule Outcome

The final rule does not include the VGP BMP to *minimize or avoid uptake in certain areas/situations* (e.g., near sewage outfalls). Instead, vessel-specific uptake practices will be part of ballast water management plans (BWMPs).

Justification/Rationale

- Extensive conversations with the USCG and comments received that such requirements are not practical to implement or enforce
- Conditions are not well-defined and are typically beyond the control of the vessel operator during uptake and discharge
- Despite exclusion of individual BMPs/requirements, ballast water uptake will still be addressed in BWMPs

Proposals

The final rule is consistent with approaches outlined in NPRM and SNPRM:

- NPRM - remove the VGP BMP to minimize or avoid uptake in certain areas/situations (e.g., near sewage outfalls)
- SNPRM - require vessel operators to address and identify uptake practices as part of BWMPs

Comments/Reactions

- Multiple commenters opposed the exclusion of the uptake BMPs from regulatory text because it is less stringent than the VGP and argued that the BMPs not being “practical to implement/enforce” is insufficient justification for backsliding
- Multiple commenters supported including these BMPs in the BWMP as it would allow for case-by-case consideration

Ballast Tanks – Lakers

Final Rule Outcome

“Equipment standard” best management practice that requires any “new Laker” to install, operate, and maintain a USCG type-approved BWMS

Justification/Rationale

- Testing of BWMS in Great Lakes demonstrates substantial reduction in organisms even when the numeric discharge standard cannot be achieved
- Existing Lakers do not have the engineering flexibility available during the initial design and construction process to incorporate treatment capabilities
- Congress’ demonstrated intent for EPA to undertake research to develop effective solutions for existing Lakers (e.g., Great Lakes and Lake Champlain Invasive Species Program)

Proposals

- NPRM did not propose an equipment standard.
- The final rule is consistent with the SNPRM, which proposed this BMP as a supplemental regulatory option.

Comments/Reactions

- Mixed response to equipment standard
 - Several commenters offered general support
 - One commenter questioned EPA’s BAT authority to establish an equipment standard
 - A few commenters argued that USCG type-approval timeline means BWMSs compatible with Laker operations may be available by the time the regulations enter into force
- Some commenters strongly disagreed with exemption of existing Lakers from the equipment standard

Hulls and Niche Areas – Cleaning

Final Rule Outcome

- **Prohibits discharges from in-water cleaning of macrofouling without capture and establishes requirements for in-water cleaning of microfouling**
- **Clarifies that EPA regulates both passive and active discharges of biofouling; however, discharges from in-water cleaning with capture (IWCC) systems are not incidental and therefore not regulated under VIDA.**

Justification/Rationale

- The VGP drew no distinction between active and passive discharges of biofouling
- No permanent onboard IWCC systems are commercially available for use; IWCC services are provided by third-party service providers; discharges are akin to shore-side disposal of treated ballast water that is exempted from the VIDA

Proposals

- NPRM proposed to regulate discharges associated with both IWCC **and** in-water cleaning without capture
- The final rule is consistent with the SNPRM, which proposed to exclude discharges associated with IWCC and provided rationale for interpreting biofouling as an incidental discharge.

Comments/Reactions

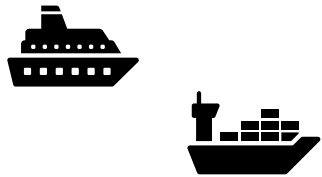
- Western states (primarily) asserted that EPA is violating the VIDA by attempting to regulate biofouling as an incidental discharge.
- Industry is concerned that leaving the regulation of IWCC discharges to states will result in different requirements from state-to-state and increased administrative burden.

Interim Requirements

Until the USCG implementing regulations are final, effective, and enforceable, **interim requirements** apply.

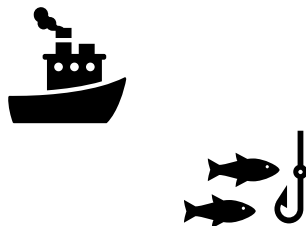
Vessel Type

Applicable Requirements



Non-fishing vessels
≥ 79 feet in length

- **2013 VGP**
- **USCG ballast water regulations**
- **Applicable state and local government requirements**



Vessels < 79 feet in
length and fishing
vessels of any size

- **Ballast water requirements only**
 - 2013 VGP
 - USCG ballast water regulations
- **Applicable state and local government requirements**

- **Enforcement:** The USCG has primary enforcement authority; however, the VIDA also provides the EPA and the states with the authority to inspect and enforce compliance.

Next Steps & Implementation

1 USCG Rulemaking Support

- Provide support to the USCG as they work to develop and finalize the corresponding implementing regulations under the VIDA.
- Ensure implementing regulations align with the intents of the EPA's standards, as finalized.

2 State Petitions Procedures Preparation

- Determine how to implement the state petition processes established under the VIDA.
 - Host scoping meetings for feedback on petition procedures.
 - Develop informational materials for state officials.

Next Steps & Implementation (cont.)

3 Intergovernmental Risk Assessment & Response Framework for Aquatic Nuisance Species

- Coordinate with the USCG on development of intergovernmental risk assessment and response framework for aquatic nuisance species (ANS) risks from incidental discharges subject to VIDA regulations.
- The EPA's responsibilities under this framework include developing procedures and tools to
 1. assess vulnerabilities of the maritime ecosystem to ANS threats,
 2. identify and track ANS likely to affect maritime ecosystems,
 3. evaluate ANS risk from vessels, and
 - developing emergency BMPs for responding to ANS threats.

Next Steps & Implementation (cont.)

4 Great Lakes Research

- Continue collaboration with GLNPO, the University of Wisconsin-Superior, and MARAD on 7-year R&D plan (2020-2027) to test and pilot ballast water management systems for Lakers.

5 Five-Year Review

- Continue to review new research and data on regulated discharges in preparation for the VIDA-required 5-year review of all standards of performance.



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QUESTIONS