



## Client Alert 17-2021

October 5, 2021

### Vessel Incidental Discharge Act (VIDA) & VGP Update on Implementation Schedule

#### **A. BACKGROUND**

In our Client Alerts\* 10-2019 dated June 3, 2019 and 17-2020 dated October 8, 2020, we had provided information and updates from the Environmental Protection Agency (EPA) and U.S. Coast Guard (USCG) on the [Vessel Incidental Discharge Act \(VIDA\)](#). The Alerts covered expected timelines for implementation as well as anticipated requirements under VIDA (as per the 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 after the enactment of VIDA, i.e. by **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.

In our Client Alert 17-2020, we had advised clients of the signing of the [Proposed Rule](#) on Vessel Incidental Discharge National Standards of Performance on October 5, 2020, followed by the public release of an unofficial version on October 7, 2020. This marked the first stage of the above-mentioned process. The Proposed Rule provided a comprehensive description of the standards the EPA proposes to promulgate, in accordance with their assigned responsibilities under VIDA.

The official version of the Proposed Rule from the EPA was published in the Federal Register on October 26, 2020, following which a period for public comment was provided until November 25, 2020. On completion of that process, the Standards of Performance were to be finalized by the EPA after taking all comments into account. This would be followed by the second and final stage of implementation under the USCG, to be completed within a 2-year period.

#### **B. RECENT DEVELOPMENTS**

Recent announcements indicate that **the implementation timeline for this process will be significantly delayed**, as summarized below:

- **The EPA has moved the publishing of their final Standards of Performance** (for which the Proposed Rule was released on October 5, 2020) **to an anticipated date of June 2022**.

ECM Corporate Headquarters

43 Danbury Rd, Suite A  
Wilton, CT 06897, USA

24 Hr. Tel: 1.203.857.0444 email: [ecm@ecmmaritime.com](mailto:ecm@ecmmaritime.com)  
Fax: 1.203.857.0428 website: [www.ecmmaritime.com](http://www.ecmmaritime.com)

- The USCG has been given 2 years from that date to publish implementation, monitoring and enforcement regulations, by June 2024. The 2013 Vessel General Permit (VGP) will remain in force until the USCG has concluded this process.

### **C. COMPLIANCE REQUIREMENTS**

Based on these developments, **no changes are required to VGP compliance in the near future, potentially until June 2024. Existing VGP requirements will remain applicable and must be complied with.**

In this context, we would like to remind our clients that **the EPA is actively looking for non-compliance with VGP requirements, especially with regard to conducting comprehensive Annual Inspections and submitting accurate Annual Reports, including Discharge Monitoring Reports (DMRs). DMRs must be included with Annual Reports once designated discharges (listed below) have occurred within VGP waters (3 miles).** The frequency of sampling and analysis for these DMRs is described in our Client Alert\* 20-2020:

- a) Treated ballast water (discharged through a BWTS)
- b) Bilge water
- c) Graywater
- d) Exhaust Gas Cleaning System (Scrubber) wash water

**The EPA has recently served notices of violation to multiple companies for non-compliance with Annual Reporting requirements under the VGP, usually involving the lack of comprehensive DMRs. Severe financial penalties have been proposed.**

ECM has been providing VGP Annual Report submission services for several years on behalf of our clients. If you wish to avail of this facility, please contact us at [ecm@ecmmaritime.com](mailto:ecm@ecmmaritime.com). We take this opportunity to remind clients that **once a vessel has made one or more of the designated discharges listed above, sampling and analysis of discharges must continue on an annual basis for as long as a vessel has an active Notice of Intent (NOI), even if no US calls are made.**

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)*