MarineLink
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The Vessel Incidental Discharge Act (VIDA) - Immediate Implications of the New Law

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This week, on December 4, 2018, President Trump signed into law the Vessel Incidental Discharge Act (VIDA): Title IX of the Frank LoBiondo Coast Guard Reauthorization Act of 2018.

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VIDA establishes a new framework for the regulation of vessel incidental discharges, adding a new Clean Water Act (CWA) Section 312(p): Uniform National Standards for Discharges Incidental to Normal Operation of Vessels. The U.S. Environmental Protection Agency (EPA) and the U.S. Coast Guard (USCG) are still assessing the implications of this new law but several important points are provided below.

Vessel General Permit (VGP)

The VGP will not be reissued but the existing 2013 VGP requirements remain in force and effect beyond the current expiration date of that permit until such time that new regulations are finalized and enforceable. Specifically, the provisions of the 2013 VGP, as currently written, apply until EPA publishes National Standards of Performance (NSPs) and the USCG develops implementing regulations for those NSPs (~ 4 years).

Note: An email sent from EPA's Office of Wastewater Management to stakeholders on October 10, 2018 indicated that EPA would be late in reissuing the 2013 VGP and specified that new vessels would be unable to obtain coverage under that permit after December 18, 2018. The email strongly encouraged operators to submit any Notices of Intent (NOIs) for coverage under that permit prior to that date. However, as a result of VIDA, NOIs can be submitted after December 18, 2018, consistent with the 2013 VGP requirements (i.e., operators must submit NOIs at least one week prior to discharging in waters subject to the permit).

Small Vessel General Permit (sVGP)

The sVGP is repealed effective immediately. Specifically, discharges incidental to the normal operation, except for ballast water, from small vessels (i.e., less than 79 feet in length) and commercial fishing vessels of all sizes no longer require National Pollutant Discharge Elimination System (NPDES) permit coverage. Thus, permit coverage for any vessel covered under the sVGP is automatically terminated. No further action on the part of vessel operators is required to complete this termination.

Any small vessel or commercial fishing vessel covered under the sVGP that will discharge ballast water into waters of the U.S. must obtain permit coverage under the VGP for those ballast water discharges.

Look for further updates in the coming months on the implications of this new CWA Section 312(p): Uniform National Standards for Discharges Incidental to Normal Operation of Vessels.

Implications for Ballast Water Discharge & Treatment

Separately, and according to BWTS OEM Trojan Marinex, the signing of the bill officially amends the USCG regulations to allow for the use of reproductive methods by explicitly expanding the definition of "living" to ensure that organisms that can't reproduce (nonviable) are not considered to be living.

The USCG now has up to 180 days to a draft policy letter detailing reproductive methods based on best available science. In accordance with the Act, USCG must consider Type Approval testing methodologies that utilize organism grow-out and Most Probable Number (MPN) analysis to determine the number of viable organisms in ballast water that are capable of reproduction.

Reproductive methods have been used by the IMO for many years. In 2017, the IMO officially approved the MPN reproductive method to determine viability (IMO BWM.2-Circ.61) establishing a basis for the best available science.

Following the release of the draft policy letter, a period for public comment shall be provided for no more than 60 days and the final policy shall be published no later than 360 days after the date of enactment of the Act.

Allison Miller of Trojan Marinex, a BWTS OEM, had this to say about the development:

"We are very encouraged by the policy change enacted with the signing of VIDA. VIDA officially amends the USCG regulations to allow for the use of reproductive methods by explicitly expanding the definition of "living" to ensure that organisms that can't reproduce (nonviable) are not considered to be living. The rest of the world through the IMO adopted the MPN method as the best available science for a reproductive method in July, 2017. We believe this harmonization is a major step forward for ship owners around the world, allowing for the appropriate and cost-effective use of UV treatment for ballast water management systems."

For additional updates, please visit ***https://www.epa.gov/npdes/vessels*** or contact us about vessel discharges via email at vgp@epa.gov.

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