

EPA'S NEW FEDERAL DISCHARGE STANDARDS OF PERFORMANCE UNDER VIDA

Final rule establishes federal performance standards applicable to marine pollution control devices, writes Marcelo DeMattos.



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The Vessel Incidental Discharge Act (VIDA), passed by Congress in 2018, amended Section 312 of the Clean Water Act (CWA) by introducing a new subsection titled "Uniform National Standards for Discharges Incidental to Normal Operation of Vessels". VIDA aims to streamline the regulatory framework by consolidating federal, state, and local requirements for discharges from commercial vessels.

On October 9, 2024, the United States (U.S.) Environmental Protection Agency (EPA) published its final rule under the VIDA, establishing federal standards of performance for marine pollution control devices applicable to discharges into U.S. waters and the contiguous zone.

The U.S. Coast Guard (USCG) is required to develop corresponding implementation, compliance, and enforcement regulations within two years. These may include requirements related to the design, construction, testing, approval, installation, and use of devices necessary to meet the EPA standards.

The EPA's rule took effect on November 8, 2024; however, the federal standards will only be enforceable once the USCG finalizes its regulations. Until then, existing requirements from the 2013 Vessel General Permit (VGP) will remain in effect. Once the USCG's new regulations are finalized, the requirements of the VGP and related regulations will be repealed.

The VIDA does not apply to incidental discharges from:

- vessels of the Army Forces
- recreational vessels
- floating crafts permanently moored to a pier
- small vessels (less than 79 feet in length)
- fishing vessels (except for discharges of ballast water)

Discharge Standards of Performance

Two different types of discharges incidental to the normal operation of a vessel have been established under VIDA: general standards and specific standards:

A. General Standards for Discharges (40 CFR 139 Subpart B)

The general discharge standards of performance are organized into three categories:

- 1. General Operation and Maintenance:** establishes requirements associated with general operation and maintenance practices designed to eliminate or reduce the discharge of pollutants from vessels.
- 2. Biofouling Management:** establishes requirements to reduce the discharge of biofouling organisms from vessel equipment and systems. Vessel operators are required to develop and follow a biofouling management plan and follow specific in-water equipment and system cleaning protocols.
- 3. Oil Management:** establishes requirements to minimize discharges of oil and oily mixtures. Vessel operators are required to control and use measures to prevent, minimize, and contain spills and overflows during regular operations of the vessel, such as fueling and maintenance.

B. Standards for Specific Discharges (40 CFR 139 Subpart C)

The specific discharge standards of performance establish requirements for discharges of 20 different pieces of equipment and systems. The requirements are at least as stringent as the VGP. EPA is promulgating changes to the VGP requirements to transition the permit requirements into regulations that reflect national technology-based standards of performance, to improve clarity, enhance enforceability and implementation, and to incorporate new information and technology.

The similarities and differences between the final discharge standards of performance and the VGP can be separated into three groups:

- The first group consists of 13 discharge standards that are substantially the same as the requirements of the VGP. These discharge standards encompass the intent and stringency of the VGP but include other changes to conform the requirements to the VIDA. This includes boilers, cathodic protection, chain lockers, decks, elevator pits, fire protection equipment, gas turbines, inert gas systems, motor gasoline and compensating systems, non-oily machinery, pools and spas, refrigeration and air conditioning, sonar domes.
- The second group consists of two discharge standards that are consistent but slightly modified from the VGP to moderately increase stringency or provide language clarifications. This includes bilges and desalination and purification systems.
- The third group consists of five discharge standards that contain the most significant modifications from the VGP. These modifications address specific VIDA requirements as well as reflect new information that has become available since the issuance of the VGP. This includes ballast tanks, exhaust gas emission control systems, graywater systems, hulls and associated niche areas, seawater piping.

In addition to the above discharge standards, VIDA has also established specific requirements applicable to vessels operating in the federally protected waters identified in Appendix A of 40 CFR 139.



A Regulatory Update Column
in association with

