
September 9, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

The Honorable Karl L. Schultz
Commandant
U.S. Coast Guard
2703 Martin Luther King Jr. Avenue, S.E.
Washington, DC 20593

Dear Administrator Wheeler and Commandant Shultz:

The Vessel Incidental Discharge Act (VIDA), as enacted in the Frank LoBiondo Coast Guard Authorization Act of 2018 (Pub. L. 115-282), establishes a framework for the federal regulation of discharges incidental to the normal operation of vessels under Section 312(p) of the Clean Water Act. VIDA requires the Environmental Protection Agency (EPA) to promulgate new regulations – no later than December 4, 2020 – to establish federal standards of performance for marine pollution control devices for each type of discharge incidental to the normal operation of a vessel that is subject to regulation under VIDA. The U.S. Coast Guard (USCG) is required to promulgate its own regulations to ensure, monitor and enforce compliance with the EPA regulations. EPA and USCG regulations shall not be less stringent than current vessel general permit requirements. States are preempted from adopting more strict standards once USCG regulations are final, effective and enforceable – no later than December 4, 2022.

Through VIDA, Congress gave clear direction to EPA and USCG regarding the role that Governors should play in the development of these preemptive federal vessel discharge standards. The statute requires EPA to, “develop a process for soliciting input from interested Governors, including information sharing relevant to such process, to allow interested Governors to inform the development of standards.”

In the Western Governors’ Association Policy Resolution [2017-01](#), *Building a Stronger State-Federal Relationship*, Western Governors define state consultation as an early, meaningful, substantive, and ongoing exchange between the Governors or their designees and federal agencies. Such consultation requires state and federal cooperation in the development, prioritization, and implementation of federal environmental statutes, policies, rules, programs, reviews, budgets and strategic plans. It also calls for agency consultation with states during development of rules or decisions and a review of the proposal by states before launch of a formal rulemaking.

Western Governors believe that it is incumbent upon EPA and USCG to engage in substantive consultation with Governors during the development of regulations for, and implementation of, VIDA. In WGA Policy Resolution [2019-06](#), *Biosecurity and Invasive Species Management*, Western Governors state that:

[A]s directed by the Vessel Incidental Discharge Act, the U.S. Coast Guard and the Environmental Protection Agency should consult with Western Governors and work closely and collaboratively with states on the implementation of that act to ensure that state and regional aquatic resource protection needs are met across the West and the Pacific. Federal and state partners should collaborate on the development of evidence-based risk assessments and should work together to assess the efficacy of policies and tools that may be used in mitigating the impact of various types of

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discharges, including hull biofouling. Western Governors believe that protecting the diversity of marine habitats in western states and Pacific territories is best accomplished by working with states that have the greatest knowledge of their ecosystems and invasive risks.


EPA announced to the states that it was commencing work to implement VIDA and provided a 60-day window for submission of state comments, closing September 9, 2019. Asking for state input at the beginning of the rulemaking process is a good start, but insufficient to satisfy the VIDA requirement to afford state Governors the opportunity to inform the development of the standards. During the conference calls with participating states, EPA staff stated their intent was to develop draft rules and publish its Notice of Proposed Rulemaking, at which point states could provide further input. Waiting that far into the process to further engage states fails to comply with the VIDA mandate for state consultation. We realize VIDA imposes short deadlines for EPA's work, but those short deadlines cannot justify a violation of VIDA's consultation mandate.

While we appreciate the agencies' outreach efforts to date, we believe that the consultation process articulated by EPA and USCG will not satisfy the requirements of the law, Congress's intent in passing it, the principles of federalism described in Executive Order 13132, Federalism, or Western Governors' policies. We urge you to fulfill EPA's and USCG's statutory obligation to consult with Governors or their designees while developing, updating, and enforcing national discharge standards and any other rules or regulations under VIDA. This process should include engaging multiple gubernatorial designees from each state, each representing an impacted state agency (e.g., invasive species, clean water, etc.). The states are ready and willing to partner with EPA and USCG to find solutions to accomplish this rulemaking under the short deadlines imposed by VIDA while still fulfilling the mandate to give states a meaningful place in the development of the preemptive federal standards.

Western Governors look forward to working with you to develop a clear collaborative process for the implementation of this important law.

Sincerely,


Doug Burgum
Governor of North Dakota
Chair, WGA


Kate Brown
Governor of Oregon
Vice Chair, WGA