



November 13, 2018

RE: Vessel Incident Discharge Act (VIDA) Concerns

Dear Senate Majority and Minority Leaders, and Chairman and Ranking Members of the Senate Committees on Commerce, Science and Transportation and Environment and Public Works,

The Association of Clean Water Administrators and the Association of State Wetland Managers write to express continued concern with the Vessel Incidental Discharge Act (VIDA), also known as the Commercial Vessel Incidental Discharge Act (CVIDA), in all of its current forms (S. 168; Title VII of S. 1129; H.R. 1154; SA 4054 to S. 140). In this letter, we focus our comments on the most recent version of VIDA, Senate Amendment 4054 to S. 140.

Our members are charged with protecting water quality, flora and fauna, and ensuring ecosystem integrity under federal and state laws. You may have received detailed letters raising a variety of views from our member states, and from other organizations to which our states belong. This letter does not supersede or alter the views or input of any state and should not be viewed as representing the perspective of any individual state. We encourage you to consult with individual states that have raised a variety of views on the legislative approach outlined in the amendment.

Congress built the Clean Water Act (CWA) on the foundation of cooperative federalism—the principle that states are best positioned to implement federal environmental laws because of their expertise on local conditions and concerns. Accordingly, the CWA therefore makes states the primary entities responsible for protecting, restoring, developing, and using their water resources. As written, VIDA directly conflicts with §101 of the CWA and will erode state's ability to protect local water systems by developing appropriate state-specific standards for vessel discharge incidental to operation in favor of an overbroad one-size-fits-all approach. This will have adverse consequences on water quality, public drinking water sources, and sensitive aquatic resources by preempting state authorities to establish their own water quality standards. Further, VIDA preempts state authorities from protecting their state waters from harmful invasive species found in ballast water of which, when established, decimate ecosystems and siphon billions of dollars of funding state, federal, and private coffers each year to prevent, manage and control. As such, VIDA

poses adverse risk to water quality, sources of drinking water, sensitive aquatic resources, fisheries, and fishery dependent industries such as hydropower as well as commercial and recreational fishing.


Our organizations recognize the importance and national economic contributions of the shipping industry, and the need to ensure streamlined, clear, and effective regulations. We appreciate the efforts of Senators who have discussed this legislation with their states and have sought changes to VIDA on their behalf. These changes include, but are not limited to, language such as the addition of specific regional standards for the Great Lakes and Pacific Coast regions which we consider to be an improvement from the original CVIDA language. However, this provision only addresses the concerns of a subset of the States, and we believe the amendment, as currently drafted, continues to undermine the foundation of cooperative federalism upon which our country's water protection framework is based.

Additionally, portions of the current draft amendment lack legal clarity. Specifically, our members request that this act ensures adequate mechanisms for strengthening the ballast discharge numeric standards as technology allows, or if a standard is found not protective of a certain area, within a reasonable time frame. Currently, Section 7, "Petitions by Governors for Review", is overly broad and does not provide a fair and balanced opportunity for states to seek changes to both EPA standards and USCG implementation/ enforcement requirements. The process, as written, provides no avenue for states to appeal the decision of the Administrator or Secretary in the event of a disagreement and, as thus, does not constitute a balanced process. Further, while we appreciate the inclusion of language within the amendment directing the Secretary and Administrator to consult with states, the process by which this consultation will take place remains unclear.

Lastly, our organizations continue to harbor concerns surrounding federalism, states' rights, and the overall intent of the bill – of which is to set a national standard for ballast water and vessel incidental discharges via preemption of state authority. With that being said, our members feel that there is the potential to amend VIDA to provide clear and adequate authority for States to, continue to identify what constitutes a violation of the law, enforce federal regulations, and coenforce state laws identical to federal requirements. In the current draft, the process for state enforcement is unclear. Our organizations suggest referencing statutes such as the CWA and Toxic Substance Control Act for language that is currently in statute and could provide a foundation for sections referencing adoption and enforcement of state rules and regulations.

We look forward to engaging with you on this critical legislation and welcome the opportunity to discuss potential amendments that would allow for continued protection of water quality, ecosystem health, and water and fisheries dependent industries while preserving a longstanding balance of authority between states and the federal government.

Sincerely,

A handwritten signature in black ink, reading "Julia Anastasio". The signature is written in a cursive style with a large, looping initial "J".

Julia Anastasio
Executive Director & General Counsel
ACWA

A handwritten signature in black ink, reading "Marla Stelk". The signature is written in a cursive style with a large, looping initial "M".

Marla Stelk
Executive Director
ASWM