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Caitlyn E. Stewart
Vice President – Regulatory Affairs

October 6, 2023

Mr. Steven M. Neugeboren
Associate General Counsel
Water Law Office, Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

RE: Proposed Consent
Decree, Clean Water Act
Claim (Docket ID No.
EPA-HQ-OGC-2023-
0453)

Dear Mr. Neugeboren:

The American Waterways Operators (AWO) is the tugboat, towboat and barge industry's advocate, resource and united voice for safe, sustainable and efficient transportation on America's waterways, oceans and coasts. Our industry is the largest segment of the nation's 40,000-vessel domestic maritime fleet and moves 665 million tons of cargo each year safely, sustainably and efficiently. On behalf of AWO's more than 300 member companies, we appreciate the opportunity to comment on the proposed consent decree that will require the U.S. Environmental Protection Agency (EPA) to set a date for final action on the Vessel Incidental Discharge National Standards of Performance.

The Vessel Incidental Discharge Act (VIDA) was enacted by Congress in 2018 to eliminate the existing patchwork quilt of federal and state regulations by creating uniform national standards for ballast water and other vessel discharges. Congress directed EPA to develop national performance standards by December 2020 and the U.S. Coast Guard to promulgate implementing regulations by December 2022. Both of these deadlines are long passed, and the only regulatory action to date has been EPA's 2020 publication of a proposed rule. A Supplemental Notice of Proposed Rulemaking, which EPA announced at the beginning of this year would be published by September 2023, has not yet appeared in the Federal Register. In the meantime – and contrary to the intent of Congress and the purpose of VIDA – the maritime industry continues to be subjected to overlapping, confusing, and sometimes contradictory vessel discharge requirements imposed by two federal agencies and over two dozen states.

The proposed consent decree obligates EPA to sign a decision taking final action by September 23, 2024, which is based on EPA's projected timeline for completing the rulemaking as outlined in the Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions. AWO strongly supports the consent decree as a mechanism to hold EPA accountable to this timeline and urges EPA and the other parties to the litigation not to extend this deadline any further. If it is met, EPA's promulgation of the Vessel Incidental Discharge National Standards of Performance will have taken six years – tripling the amount of time prescribed by law. Any further delay is unacceptable. It is unfortunate that legal action has been necessary to implement an environmental regulation mandated by Congress on a bipartisan basis that has broad support from the maritime industry and environmental groups.

Thank you again for the opportunity to submit comments on the proposed consent decree. AWO is eager to continue to work with our government partners at EPA and the Coast Guard in order to expedite the VIDA rulemaking process.

Sincerely,

A handwritten signature in cursive script that reads "Caitlyn E. Stewart". The signature is written in dark ink and is positioned above the typed name.

Caitlyn E. Stewart
Vice President – Regulatory Affairs