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Mr. D. Lee Forsgren, Jr.
Deputy Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

CAPT Sean Brady
Chief
Office of Operating and Environmental Standards
U.S. Coast Guard
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20020

Re.: AWO Recommendations for Draft Regulations to Implement the Vessel Incidental Discharge Act (VIDA)

Dear Mr. Forsgren and CAPT Brady:

The American Waterways Operators is the national trade association for the tugboat, towboat, and barge industry. AWO's 300 member companies include the owners and operators of barges and towing vessels operating on the U.S. inland and intracoastal waterways; the Atlantic, Pacific, and Gulf coasts; and the Great Lakes. Our industry's 5,500 towing vessels and 31,000 dry and liquid cargo barges comprise the largest segment of the U.S.-flag domestic fleet, both in number of vessels and on-board crew positions. Each year, the barge and towing industry safely and efficiently moves more than 760 million tons of cargo critical to the U.S. economy, including coal, grain, petroleum products, chemicals, steel, aggregates, and containers. Tugboats also provide essential services including ship docking, tanker escort, and bunkering in our nation's ports and harbors.

The tugboat, towboat, and barge industry is not only an integral part of the U.S. intermodal transportation system, but also the safest and most fuel-efficient, with the smallest carbon footprint, of any surface transportation mode. Ensuring that the federal regulatory regime governing vessel discharges provides for a high level of environmental protection and preserves the economic efficiency of barge transportation is thus a national imperative. Put differently, regulations that do not adequately ensure the safe and environmentally responsible operation of all towing vessels and barges, that impose unnecessary costs on companies operating towing vessels and barges, or that result in the diversion of cargo to other modes of transportation are bad not only for the industry, but also for the U.S. economy and marine environment.

AWO thanks EPA and the Coast Guard for sponsoring the listening session on VIDA implementation at the U.S. Merchant Marine Academy in May and seeking early feedback from stakeholders. We are submitting these comments to memorialize and amplify the feedback we provided at that session.

Ballast Water Discharge Standard and Ballast Water Treatment Systems

Ballast Water Discharge Standard Should Remain Unchanged

AWO strongly recommends that the ballast water discharge standard imposed by the new regulations reflect the standard adopted in both the Coast Guard's 2012 ballast water management regulations and EPA's 2013 Vessel General Permit. The current standard, which is also consistent with that of the International Maritime Organization, was determined by the EPA Science Advisory Board in its 2011 report on the efficacy of ballast water treatment systems to be the most stringent standard that existing ballast water treatment systems can meet. The SAB concluded that "none of the systems evaluated by the [Ballast Water Advisory] Panel performed at 100 times or 1000 times the IMO standard."[1] Further, the SAB found that the achievement of any more stringent standard was not verifiable, writing that "current methods (and associated detection limits) prevent testing of [ballast water treatment systems] to any standard more stringent than" IMO's standard, and that "[n]ew or improved methods will be required to increase detection limits sufficiently to statistically evaluate a standard 10x more stringent than" IMO's standard.[2] AWO does not believe that EPA and the Coast Guard can reasonably adopt a more stringent ballast water discharge standard, as some states have proposed in the past, when the SAB has concluded that such standards are unverifiable, and therefore, unenforceable.

In addition, changing the ballast water discharge standard would disrupt the still-maturing market for developers and manufacturers of BWTS for use in the U.S., as well as require significant changes to the Coast Guard's BWTS type-approval protocols. As of this writing, there are only 20 Coast Guard type-approved BWTS available, compared to over 75 BWTS that have received type-approval certification internationally. The disparity reflects not only the greater rigor of the Coast Guard's type-approval process as compared to other countries', but also the relatively short amount of time that the Coast Guard has been issuing type-approval certificates. While other countries have been type-approving BWTS for over 10 years, the Coast Guard's type-approval protocols were finalized in 2012, and the first type-approval certificates were issued in 2016. Were EPA and the Coast Guard to adopt a different ballast water discharge standard, a lengthy period of uncertainty would follow as BWTS manufacturers scramble to develop new systems and the Coast Guard revamps its type-approval process. AWO urges EPA and the Coast Guard to keep the current ballast water discharge standard in place to allow the BWTS market and treatment technology to continue to mature.

Preserve the Current Ballast Water Discharge Standard Exemptions for Non-Seagoing Vessels, Vessels Under 1,600 Gross Tons, and Unmanned and Unpowered Barges

The Coast Guard currently exempts non-seagoing vessels and seagoing vessels less than 1,600 gross tons that do not operate outside of the Exclusive Economic Zone from the ballast water discharge standard. The 2013 VGP also exempts vessels under 1,600 gross tons and unmanned, unpowered barges from the requirement to meet ballast water treatment standards. AWO believes these exemptions should be preserved under the new VIDA implementation regulations.

In its final rule issuing the 2013 VGP, EPA concluded that an exemption from numeric ballast water treatment limits for inland and seagoing vessels less than 1,600 gross tons was justified

[1] *Efficacy of Ballast Water Treatment Systems*. 2011. Ecological Processes and Effects Committee Augmented for the Ballast Water Advisory, U.S. Environmental Protection Agency Science Advisory Board (SAB). p. 4.
[2] Ibid, p. 3.

because "most ballast water treatment systems have been designed for larger vessels and/or vessels which only uptake and discharge ballast water on either end of longer voyages."[3] This remains the case. Tugboats and towboats have unique physical and operational constraints that make the installation and operation of these existing systems impractical – in particular, relatively small volumes of ballast water, very low ballasting rates, and very limited size.[4] Those that stay inside the Boundary Line, and are therefore non-seagoing, operate primarily in the freshwater or brackish environments of the inland and intracoastal waterways system, which have less salinity and more turbidity than the saltwater environments for which existing BWTS have been designed, and which can render the systems ineffective. The duration of the average inland towing vessel voyage is relatively short, and many routinely take up ballast water throughout a voyage to maintain stability and trim as fuel is consumed, which interfere with the holding times that existing BWTS require for effective treatment. Alternative ballast water management measures, such as the use of onshore treatment or a public water supply, are also infeasible for many towing vessels.[5] Maintaining the existing Coast Guard and EPA exemptions for non-seagoing vessels and vessels under 1,600 gross tons would ensure the continued safety and operational efficiency of towing vessels without increased risk to the marine environment.

Unmanned, unpowered barges should also remain exempt from ballast water treatment standards under future VIDA implementation regulations. The SAB identified unmanned, unpowered barges as an "important [example] of specific constraints [that] can greatly limit treatment options."[6] As the SAB noted, "the application of BWTS on these vessels presents significant logistical challenges because they typically do not have their own source of power or ballast pumps and are unmanned."[7] EPA recognized these challenges when making its 2013 determination that, "[d]ue to the complexities of operating existing type approved ballast water treatment systems, […] treatment technologies are not currently available for unmanned, unpowered barges […]."[8] Moreover, ballast water discharges from unmanned, unpowered barges pose minimal environmental risk; as EPA stated in 2013, "[m]inimal water is used for ballasting and EPA does not believe that barges are a significant discharger of ballast water."[9] Unmanned, unpowered barges include deck barges, which transport very large pieces of project cargo and require ballasting operations during loading and unloading to maintain the stability of the barge. AWO strongly encourages EPA and the Coast Guard to preserve existing exemptions from the ballast water discharge standard for unmanned, unpowered barges, including deck barges, in recognition that no available BWTS are operable for this vessel class.

[3] 78 Federal Register 21942.
[4] For more information, please see AWO's February 21, 2012, submission to Docket ID No. EPA-HQ-OW-2011-0141, pp. 3-6.
[5] Ibid, pp. 6-8.
[6] U.S. EPA SAB, Part 4.8.
[7] Ibid, p. 40.
[8] *2013 Final Issuance of National Pollutant Discharge Elimination System Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels: Fact Sheet.* 2013. U.S. Environmental Protection Agency. p. 100.
[9] Ibid.

Regulating Incidental Discharges from Unmanned, Unpowered Barges

The 31,000 unmanned and unpowered barges our industry operates make up the largest segment of the domestic vessel fleet, and therefore, the largest class of vessels regulated under the VGP. However, the VGP has proved to be an ill-fitting framework for the regulation of incidental discharges from barges.

The first reason is that unmanned, unpowered barges produce fewer effluent streams, and smaller volumes of effluent, than the self-propelled vessels for which the VGP was written. For example, of the 27 discharge categories that are covered by the VGP, hopper barges – which are essentially floating steel boxes for carrying dry bulk cargoes – typically discharge only deck runoff, occasional water pumped from void spaces below deck, and, very occasionally, ballast water; tank barges typically produce deck runoff and, in some cases, ballast water.

The second reason is operational: particularly in the inland barge industry, a single company may own hundreds or even thousands of barges, which may be handled by multiple operators (such as towers or fleeters) over relatively short spans of time. The VGP requirements for weekly visual inspections and extensive recordkeeping and reporting impose significant administrative and financial burdens on barge owners and custodians with little or no corresponding environmental benefit. Under the VGP, barge owners are responsible for compliance, even if the vessel is not currently in their custody, and so must communicate permit requirements and coordinate inspections, recordkeeping, and reporting with custodians. Over the past 10 years, this has been time-consuming and costly, and has caused significant confusion and concern for the accuracy and completeness of information, without meaningfully enhancing environmental protection.

It is clear that the VGP was not designed with these vessels in mind. The implementation of VIDA gives EPA and the Coast Guard the opportunity to develop a purpose-built, streamlined framework for the regulation of incidental discharges from unmanned, unpowered barges. For example, this new framework could address the limited number of barge discharges through the implementation of best management practices that simplify the more complex requirements of the VGP and are easier for barge owners to communicate to custodians. It could also require an inspection only when a barge is picked up, dropped off, or otherwise changes custody; this happens regularly and is more practicable for multiple barge operators to facilitate than weekly inspections. Rather than stick with a system that compels barge owners and custodians to modify their operations, with significant impacts on efficiency, AWO encourages EPA and the Coast Guard to develop VIDA implementation regulations that treat unmanned, unpowered barges as a distinct and operationally unique vessel class, with corresponding barge-specific discharge, monitoring, and recordkeeping requirements.

Reduce Reporting and Recordkeeping Requirements

For many AWO members, EPA's and the Coast Guard's current recordkeeping and reporting requirements for ballast water and other incidental vessel discharges are the most costly and burdensome aspects of regulatory compliance. In addition, they perceive that there has been very little practical use of the information they report and believe the value of the information collected does not justify the burdens associated with its continued collection. AWO believes that the agencies can do more to reduce paperwork burdens on vessel operators as VIDA is implemented, without undermining environmental protection in any way.

As an example, under the 2013 VGP, annual reporting is required even if vessels have had no instances of noncompliance and are not required to perform analytical monitoring. These reports can be costly and time-consuming to compile, are largely redundant from year to year, and provide little to no environmental or enforcement benefit to EPA. The 2009 VGP's one-time permit report requirement was much more feasible. The Coast Guard's ballast water reporting regulations are another example of reporting requirements that impose administrative and financial burden on vessel operators without enhancing environmental protection or facilitating enforcement. These regulations require vessels equipped with ballast tanks that operate between multiple Captain of the Port Zones to submit a report every voyage, whether or not the vessel took up or discharged ballast water on that voyage, and even if the vessel used water from a public water supply as ballast water. Further, the definition of a voyage that triggers reporting is ill-suited for inland line-haul towing vessels that make frequent stops over the course of a voyage to drop off or pick up barges, and estimating ballast water volumes can be challenging for towing vessels that take on and discharge ballast water frequently to compensate for cargo loading or unloading or changes in fuel levels.

Although the completion and submission of these reports have become routine, vessel operators continue to incur real costs as the result of EPA and the Coast Guard's regulations. In addition to the administrative costs of preparing and filing report forms, companies must expend resources for the ongoing training of new vessel crewmembers and shoreside personnel, all of whom have other significant operational safety responsibilities. As EPA and the Coast Guard undertake the development of VIDA implementation regulations, AWO urges the agencies to take a close look at existing reporting and recordkeeping requirements with the goals of eliminating low-value reporting, reducing reporting frequency, and ensuring that triggers and criteria for reporting are clear, practicable, and explicitly linked to environmental outcomes.

Other Recommendations

Environmentally Acceptable Lubricants

AWO supports the use of environmentally acceptable lubricants when they provide an equivalent level of performance and safety to mineral-based lubricants. However, AWO members in the coastal sector have explored the use of biodegradable or nontoxic lubricants and report they do not stand up to the hydraulic action of seawater and have poor adherent qualities. Our coastal members are concerned that using currently available EALs could significantly diminish the strength retention, and consequently the safety and service life, of their tow wires. As a result, we recommend that EPA and the Coast Guard continue to permit the use of mineral-based lubricants while EAL technology matures and is phased into use. In particular, if mineral-based lubricants are recommended by the equipment manufacturer, or if no commercially available EALs can meet the lubricant performance standards recommended by the manufacturer, EPA and the Coast Guard should allow vessel operators to continue to use mineral-based lubricants so as to not degrade the safety and lifespan of the equipment.

Biofouling

The 2013 VGP requires vessel operators to conduct thorough hull and other niche area cleaning when a vessel is in drydock. AWO agrees that the most effective way to clean a vessel's hull is when the vessel is in drydock. However, particularly in the inland industry, towing vessels are frequently hauled out for routine maintenance in between so-called "credit" drydocking periods,

while hopper barges are infrequently in drydock. Moreover, these vessels operate on the inland waterways system, which is interconnected and through which vessels have been transiting for decades, making their risk of contributing to the introduction of invasive species minimal. Requiring hull cleaning be done during non-credit drydockings, or requiring hopper barges that are not required to be drydocked to be hauled out at regular intervals, would adversely impact the efficiency of the inland towing industry without enhancing the protection of the marine environment. AWO believes that EPA and the Coast Guard should exempt vessels that operate exclusively on the inland waterway system, especially unmanned, unpowered barges, from the requirement to conduct hull cleaning due to the low risk these vessels pose of introducing or spreading invasive species.

Conclusion

Thank you again for the opportunity to submit recommendations on future VIDA implementation regulations. We would be pleased to answer any questions or provide further information as EPA and the Coast Guard see fit. We look forward to continued engagement as the rulemaking process moves forward.

Sincerely,

Jennifer Carpenter