The American Waterways Operators

801 North Quincy Street
Suite 500
Arlington, VA 22203

PHONE: 703.841.9300
EMAIL: jcarpenter@americanwaterways.com

Jennifer A. Carpenter
President & CEO

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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

RE: Vessel Incidental Discharge National Standards of Performance (Docket No. EPA-HQ-OW-2019-0482)

Dear Mr. Forsgren:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO's more than 300 member companies include the owners and operators of towing vessels and barges 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 agricultural products, energy cargoes, chemicals, steel, aggregates, and containers. Tugboats also provide essential services including ship docking, tanker escort and bunkering in our nation's ports and harbors.

On behalf of AWO's member companies, thank you for the opportunity to review and comment on the Environmental Protection Agency's proposed rule to establish vessel incidental discharge national standards of performance. As the first formal step in the implementation of the Vessel Incidental Discharge Act (VIDA), this rulemaking is an important milestone in establishing a new, clear and nationally consistent regulatory regime governing vessel discharges. Once fully implemented, this regime will provide much needed and long-awaited relief for AWO's member companies and their vessel crews, who for over 12 years have been subjected to overlapping, confusing and sometimes contradictory vessel discharge requirements imposed by two federal agencies and over two dozen states. Their long experience with these often impracticable requirements informs our comments.

AWO's comments are also guided by our belief that it is a national imperative to ensure that the federal framework regulating vessel discharges provides for a high level of environmental

protection and preserves the safety and economic efficiency of barge transportation. 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. Therefore, regulations that do not adequately ensure the safe and environmentally responsible operation of 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.

In order to achieve Congress' and AWO's mutual goals of protecting the marine environment in which our industry's vessels operate and providing a practical regulatory framework that allows for the continued safe and efficient movement of essential maritime commerce, it is important that EPA's national performance standards for vessel discharges are clear in their intended meaning and application so that industry can comply with them and so that the Coast Guard can effectively implement and consistently enforce them across the agency's many Captain of the Port (COTP) zones. AWO member companies routinely operate in several COTP zones simultaneously, and many towing vessels and barges regularly transit multiple COTP zones in a single voyage. As a result, the consistent interpretation, application and enforcement of EPA's performance standards by the Coast Guard will be paramount to ensuring our industry's ability to operate efficiently, as well as to accomplishing Congress' intent to establish uniformity in vessel discharge regulation.

With these principles in mind, AWO is pleased to offer the following recommendations.

Subpart A: Scope

Clarify the Preemptive Effect of National Performance Standards and Implementing Regulations

In its proposed regulatory text, in accordance with the statutory requirements of VIDA, EPA states that as of the effective date of the proposed performance standards, the requirements of the Vessel General Permit (VGP) and all regulations promulgated by the Coast Guard under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 "shall be deemed repealed and have no force or effect."[1] VIDA also provides that, "effective beginning on the date on which the requirements promulgated by the [Coast Guard] […] with respect to every discharge incidental to the normal operation of a vessel that is subject to regulation under this subsection are final, effective, and enforceable, no State, political subdivision of a State, or interstate agency may adopt or enforce any law, regulation, or other requirement of the State, political subdivision, or interstate agency with respect to any such discharge,"[2] with limited exceptions. AWO recommends that this be clarified in the proposed regulatory text at 40 CFR §139.1(d)(s) as follows:

> (2) As of the effective date identified in paragraph (d)(1) of this section, the requirements of the Vessel General Permit and all regulations promulgated by the

[1] 85 *Federal Register* 67881.
[2] 33 U.S.C. §1322(p)(9)(A)(i).

> Secretary pursuant to Section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711), including the regulations contained in 46 CFR 162.060 and 33 CFR part 151 subparts C and D, as in effect on December 3, 2018, shall be deemed repealed and have no force or effect, and no State, political subdivision of a State, or interstate agency may adopt or enforce any law, regulation, or other requirement of the State, political subdivision, or interstate agency with respect to any such discharge, except as described in 33 U.S.C. §1322(p)(9)(A)(ii) and (iii).[3]

Subpart B: General Standards for Discharges

General Operation and Maintenance

Provide Practicability for Barge Operators

In the proposed rule, EPA has consolidated requirements from many subparts within Part 2 of the VGP into a category of performance standards establishing requirements for general operation and maintenance. AWO is generally supportive of this consolidation but requests the clarification of certain requirements' application to barges.

EPA writes in the preamble that "the proposed rule would require that all vessel operators practice good environmental stewardship by minimizing any exposure of cargo or other onboard materials that may be inadvertently discharged by containerizing or covering materials with a tarp, and generally limiting any exposure of these materials to wind, rain, or spray […] unless the vessel operator determines this would interfere with essential vessel operations or the safety of the vessel" or the vessel's regulatory compliance.[4] The proposed regulatory text at 40 CFR §139.4(b)(6) reads slightly differently: "Any toxic or hazardous materials onboard which might wash overboard or dissolve as a result of contact with precipitation or surface water spray must be stored in appropriately sealed, labeled, and secured containers and be located in areas of the vessel that minimize exposure to ocean spray and precipitation consistent with vessel design, unless the master determines this would interfere with essential vessel operations or safety of the vessel." Hopper barges are designed to carry dry cargo in bulk, and while some have and use covers, many others do not. Covering hopper barges that do not have covers with a tarp is a practice that may endanger the safety of the vessel and the personnel performing the task by putting them at risk of falling into the water. AWO encourages EPA to clarify for the record that hopper barge cargo need not be containerized or covered if the vessel operator determines it is contrary to essential vessel operations or the safety of the vessel.

In addition, AWO also notes that EPA has proposed at 40 CFR §139.4(b)(7) to prohibit the overfilling of containers holding toxic or hazardous materials and the mixing of incompatible materials in containers. The preamble does not expand on this proposed standard, stating only that the proposal is "to avoid discharges and prevent emergency or other dangerous situations."[5] The proposed standard is similar to the requirement in Part 2.1.2 of the 2013 VGP

[3] Text that AWO proposes to eliminate is struck through and text that AWO proposes to add is underlined.
[4] 85 *Federal Register* 67829.
[5] Ibid.

that "[c]ontainers must not be overfilled and incompatible wastes should not be mixed." However, while "toxic or hazardous materials" is defined, "incompatible materials" is not, which has the potential to confuse compliance with or enforcement of this standard. AWO requests further information about what EPA considers to be "incompatible materials."

Biofouling Management

AWO understands that EPA's proposal to require vessels covered by the proposed rule to develop and follow a biofouling management plan is consistent with Coast Guard requirements at 33 CFR §151.2050(g)(3) and various EPA requirements from Parts 2 and 4 of the VGP. However, AWO member companies have questions about the practicability of this requirement for the thousands of towing vessels and tens of thousands of barges operating on the inland waterways system that share operational profiles – transiting the same system, traveling at similar speeds, and sharing similar design. We also note that the inland waterways system is interconnected and towing vessels and barges have been transiting throughout the system for decades, making them extremely unlikely to contribute to the introduction and spread of invasive species. We appreciate EPA's comment in the preamble that the agency "anticipates that fleet owners may develop a biofouling management plan template that can be readily adapted into a vessel-specific biofouling management plan,"[6] and we understand that the Coast Guard will establish details of the plan. However, given the amount of collective resources it will take individual towing vessel and barge operators to develop even template plans for their fleets, we are taking this opportunity to strongly recommend that the Coast Guard permit the development and use of templates for inland industry segments that share operational characteristics.

AWO also recommends that the Coast Guard consider the hull inspection and maintenance practices of the inland towing vessel and barge industry when developing requirements for ballast water management plans. The VGP currently requires vessel operators to conduct thorough hull and other niche area cleaning when a vessel is in drydock; however, inland towing vessels are frequently hauled out for routine maintenance in between so-called "credit" drydockings, while hopper barges are uninspected and infrequently in drydock. Requiring that towing vessels conduct hull cleanings during non-credit drydockings, or that hopper barges that are not required to be drydocked be hauled out at regular intervals, would adversely impact the efficiency of the inland towing industry without enhancing the protection of the marine environment.

Oil Management

EPA has proposed at 40 CFR §139.6(d) to require environmentally acceptable lubricants (EALs) for all oil-to-sea interfaces "unless such use is technically infeasible." AWO member companies support the use of EALs when they provide an equivalent level of performance and safety to mineral-based lubricants. However, in several applications – such as lubricating tow wires for coastal towing vessels, which requires them to stand up to the hydraulic action of seawater – AWO member companies are concerned that using EALs could have an adverse effect on the safety and service life of equipment. AWO recognizes that the Coast Guard will

[6] 85 *Federal Register* 67830.

determine the criteria for technical infeasibility. We are taking this opportunity to state for the record that, consistent with the requirements of the VGP, the Coast Guard should consider the use of EALs technically infeasible and continue to permit the use of mineral-based lubricants for oil-to-sea interfaces if they are recommended by the original equipment manufacturer or if no commercially available EALs can meet the lubricant performance standards recommended by the original equipment manufacturer.

Subpart C: Standards for Specific Discharges

Ballast Tanks

Permit Vessels to Use Water from Other Countries to Qualify for the Exclusion from Ballast Tank Requirements for Vessels that Solely Discharge Ballast Water from Public or Commercial Sources

Consistent with the statutory requirements of VIDA, EPA's proposed rule excludes from the ballast tank requirements vessels that discharge ballast water consisting solely of water taken onboard from a public or commercial source that meets the applicable requirements of the Safe Drinking Water Act (SDWA). EPA has proposed that "this exclusion also applies to water taken on board that meets Health Canada's Guidelines for Canadian Drinking Water Quality because EPA has evaluated these Guidelines and found them to be consistent with the applicable requirements of the SDWA." In effect, this means that only vessels on domestic voyages or on international voyages between U.S. and Canadian ports and places will be able to qualify for this exclusion. Were EPA to include other reputable standards, such as the World Health Organization's Guidelines for Drinking-water Quality[7], a vessel on an international voyage would be more likely to be able to utilize the exclusion, and would be equally as unlikely to load aquatic nuisance species into the vessel's ballast tank as if the water was taken on from a U.S. or Canadian public water system. Accordingly, AWO recommends the following revision to the proposed regulatory text at 40 CFR §139.10(b):

> (b) *Exclusions.* The requirements of §139.10 do not apply to the following vessels:
> […]
> (3) A vessel that discharges ballast water consisting solely of water taken onboard from a public or commercial source that, at the time the water is taken onboard, meets the applicable requirements of the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) or Health Canada's *Guidelines for Canadian Drinking Water Quality* or the World Health Organization's *Guidelines for Drinking-Water Quality*.

Ensure Recordkeeping is Feasible for Exclusion from Ballast Tank Requirements for Vessels that Solely Discharge Ballast Water from Public or Commercial Sources

AWO understands that the Coast Guard will take responsibility for developing regulations to implement the exclusion for vessels that discharge ballast water consisting solely of water taken onboard from an acceptable public or commercial source, which is similar to existing

[7] *Guidelines for Drinking-water Quality, Fourth Edition, Incorporating the First Addendum.* Geneva: World Health Organization; 2017.

provisions of both Coast Guard regulations at 33 CFR §151.2025 and 2013 VGP requirements at Part 2.2.3.5.1.3. However, AWO would like to state for the record that the documentation currently required by both agencies to fulfill the criteria of exclusion do not reflect operational realities and cannot practicably be obtained. Both agencies require vessels to "maintain a record of which [public water system (PWS)] they received the water and a receipt, invoice, or other documentation from the PWS indicating that the water came from that system" [emphasis added]. Our member companies that use water from a public source as ballast water most often use hoses to load it directly into the vessel's ballast tanks from connections at docks or terminals that in some cases are owned and operated by third parties. It is exceedingly difficult and time consuming for these companies to secure documentation from the public water supply. Both the Coast Guard and EPA currently require certification in addition to documentation, and AWO believes that certification in a logbook or record book entry, together with procedures in the ballast water management plan or safety management system outlining the exclusive use of water from a public source as the vessel's ballast water management strategy, should be sufficient documentation for vessels utilizing the exclusion.

Preserve the Exemption for Vessels Less than 1,600 GRT that Do Not Operate Outside the EEZ from the Numeric Ballast Water Discharge Standard

EPA has proposed to carry forward the existing VGP and Coast Guard exemptions from the numeric ballast water discharge standard for vessels that are less than or equal to 1,600 GRT and that do not operate outside the Exclusive Economic Zone (VGP Part 2.2.3.5.3.4, 33 CFR §151.2015(d)(1) and (2)). In the preamble, EPA writes that it has based this proposed exemption "on the finding that ballast water technologies are not available or economically achievable for this universe of smaller vessels (*e.g.*, tugboats) as to date, ballast water treatment systems generally have been designed for larger vessels or vessels that only uptake or discharge ballast water on either end of longer voyages."[8] AWO strongly supports this exemption. Tugboats and towboats have unique physical and operational constraints that make the installation and operation of existing ballast water treatment systems impractical – in particular, relatively small volumes of ballast water, very low ballasting rates, and very limited size.[9] Those that are 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 ballast water treatment systems have been designed, and which can render the systems ineffective. Further, the duration of the average 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 would interfere with the holding times that existing ballast water treatment systems require for effective treatment. Alternative ballast water management measures, such as the use of reception facilities or water from a public water system, are also infeasible for many towing vessels.[10] This exemption ensures the continued safety and operational efficiency of towing vessels without increased risk to the marine environment.

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[8] 85 *Federal Register* 67853.

[9] For more information, please see AWO's February 21, 2012, submission to Docket ID No. EPA-HQ-OW-2011-0141, pp. 3-6, which is also in the record for this proposed rulemaking.

[10] Ibid, pp. 6-8.

Exempt All Unmanned and Unpowered Barges from the Numeric Ballast Water Discharge Standard

In the preamble to the proposed rule, EPA correctly notes that its 2013 Vessel General Permit exempted all unmanned, unpowered barges from compliance with the agency's numeric ballast water discharge standard (VGP Part 2.2.3.5.3.2), but that the Coast Guard did not exempt any seagoing vessel that is 1,600 GRT and above or that operated outside of the U.S. Exclusive Economic Zone from its ballast water management requirements, including its ballast water discharge standard (33 CFR §151.2015). EPA also correctly observes that "[u]nmanned, unpowered barges have been recognized as posing unique challenges for managing ballast water," citing the EPA Science Advisory Board in a 2011 report that concluded, "the application of [ballast water treatment systems] on these vessels presents significant logistical challenges because they typically do not have their own source of power or ballast pumps and are unmanned."[11] EPA has therefore proposed to exempt any non-seagoing, unmanned, unpowered barge, that is not part of a dedicated vessel combination such as an articulated tug-barge unit, from the numeric ballast water discharge standard, characterizing this as "a harmonization of the VGP and the USCG existing requirements."[12]

However, our industry's experience over the past decade has demonstrated that compliance with the numeric ballast water discharge standard is infeasible for all unmanned, unpowered barges, regardless of size and whether or not they are seagoing. The majority of seagoing unmanned, unpowered barges are towed on wires and, like the non-seagoing unmanned, unpowered barges that EPA has chosen to exempt, "[t]hese vessels have no on-board crew and do not have infrastructure that allows for complex or energy intensive operations."[13] As the EPA SAB noted, "Because these vessels have been designed to transport bulk cargo, or as working platforms, the commonly use ballast tanks or fill cargo spaces with water for trim and stability, or to prevent excessive motions in heavy seas."[14] Deck barges – which transport very large pieces of project cargo – may also ballast while loading and unloading cargo to maintain key height. In all cases, seagoing unmanned, unpowered barges perform ballasting operations in port in coordination with cargo loading and unloading activities. This is because these vessels' ballast tanks are designated compartments in the substructure of the barge that are filled and emptied using hoses and portable pumps. Because most of these barges are towed on wires, there is no safe means of placing personnel onboard once underway. Further, opening hatches or taking other actions that may compromise the watertight integrity of the barge while underway is inadvisable and in many cases prohibited by the vessel's stability letter. There is no practicable way to retrofit these vessels to accommodate power generation capacity or the ballast pumps and piping necessary to install and operate a ballast water treatment system. And due to the transient nature of our industry, many unmanned, unpowered barges do not stick to a single voyage pattern, but instead call frequently at different ports and places, often on very

[11] 85 *Federal Register* 67853, quoting Ecological Processes and Effects Committee Augmented for the Ballast Water Advisory. *Efficacy of Ballast Water Treatment Systems*. Washington: U.S. Environmental Protection Agency Science Advisory Board (SAB); 2011. p. 40.
[12] 85 *Federal Register* 67854.
[13] 85 *Federal Register* 67853.
[14] U.S. EPA SAB, p. 40.

short notice, and neither water from a public water system nor reception facilities are available at all facilities and terminals at which a barge may load or unload cargo.

Exempting seagoing unmanned, unpowered barges from the numeric ballast water discharge standard would not exempt them from requirements to minimize the discharge of untreated ballast water through best management practices. Under current Coast Guard regulations, operators of seagoing unmanned, unpowered barges have developed ballast water management plans that require the use of water from a public water system when feasible and that establish procedures to minimize the transfer of ballast water, residual ballast water and sediments to the greatest extent practicable. AWO urges EPA to exempt all unmanned, unpowered barges from the numeric ballast water discharge standard and allow the Coast Guard to work with barge operators to ensure the implementation of best management practices effectively mitigates the risk of these vessels' ballast water discharges.

We strongly recommend the following revision to the proposed regulatory text at 40 CFR §139.10(d)(3):

> (3) Exemptions: The ballast water discharge standards in paragraphs (d)(1) and (2) of this section do not apply to any vessel that:
> […]
> (ii) Is ~~a non-seagoing,~~ an unmanned, unpowered barge, except any barge that is part of a dedicated vessel combination such as an integrated or articulated tug and barge unit.

Revise the Exemption from the Numeric Ballast Water Discharge Standard from a COTP Zone Basis to a Common Waters Basis

EPA proposes to exempt vessels that take on and discharge ballast water exclusively in the contiguous portions of a single COTP Zone from the numeric ballast water discharge standard. As EPA observes, this proposal is consistent with the provisions of the 2013 VGP, which exempt vessels that operate or take on and discharge ballast water exclusively in one COTP Zone (VGP Part 2.2.3.5.3.1), as well as existing Coast Guard regulations at 33 CFR §151.2015(c) and (d)(3), which exempt vessels that operate exclusively within a single COTP Zone or that take on and discharge ballast water exclusively in a single COTP Zone. EPA writes in the preamble, "This exemption retains the BMPs for these vessels to ensure that ballast water is managed appropriately, however acknowledges that in all other instances, the discharge does not significantly contribute to the introduction and spread of [aquatic nuisance species]."[15] AWO notes that the phrase "contiguous portions" is undefined in the proposed regulatory text and has the potential to create confusion for vessel operators trying to comply with the standard, as well as Coast Guard personnel enforcing it. However, AWO agrees with the concept that vessels operating in contiguous or common waters are highly unlikely to introduce or spread aquatic nuisance species, and as a result, we disagree with using COTP Zones as the basis for this exemption.

COTP Zones are administrative in nature and have no correspondence to the marine environment. The boundary between one COTP Zone and another does not delineate between

[15] 85 *Federal Register* 67854.

unique ecosystems. Waters that are located in different COTP Zones that are contiguous to each other do not necessarily have different ecological characteristics and sensitivities. Prior to the enactment of VIDA, some states, as well as Transport Canada, had adopted the concept of "common waters" to guide the applicability and implementation of their ballast water management requirements.[16] Under this concept, waters were identified and designated as common waters based on their salinity, their populations of organisms, the dispersal of aquatic nuisance species, and other factors that effectively mitigated environmental risk in the transfer of ballast water from one location to another. AWO recommends that EPA use the concept of common waters, as opposed to COTP Zones, as the basis for this exemption because it is less arbitrary and better calibrated to reduce risk. AWO recommends that EPA revise the proposed regulatory text at 40 CFR §139.10(d)(3)(iii) as shown, and that the Coast Guard define and designate common waters as part of the implementation process:

> (3) Exemptions: The ballast water discharge standards in paragraphs (d)(1) and (2) of this section do not apply to any vessel that:
> […]
> (iii) Takes on and discharges ballast water exclusively ~~in the contiguous portions of a single COTP Zone~~ <u>in common waters, as defined and designated by the Secretary</u>.

Exempt Vessels that Uptake and Discharge Ballast Water at the Same Location Using Tank-by-Tank Management from the Numeric Ballast Water Discharge Standard

Many vessel operators have found that current EPA and Coast Guard regulations limit their ability to manage ballasting operations on a tank-by-tank basis according to their ballast water management plan. A vessel that conducts ballasting operations in more than one port or place, but has outlined in its ballast water management plan that each ballast tank may be filled or emptied exclusively in one of those ports or places, is effectively uptaking and discharging ballast water from each ballast tank exclusively in the same location, and does not pose a greater risk of contributing to the introduction and spread of ANS than a vessel that uptakes and discharges ballast water for all of its ballast tanks exclusively in the same location. Therefore, permitting vessel operators to manage ballasting operations on a tank-by-tank basis in this way does not adversely affect the marine environment, and would provide them with greater operational flexibility – particularly operators of vessels, such as unmanned, unpowered barges, on which it is infeasible to install a ballast water treatment system. AWO understands that the risk is increased if a vessel changes its area of operation, allowing mixing of ballast water and sediments from other areas. We believe that vessel operators choosing a tank-by-tank ballast water management strategy should be required to clean the ballast tank, including removing all residual sediments, or conduct saltwater flushing prior to ballast water uptake and discharge in a different location. This approach is consistent with Regulation A-3-5 of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004.[17]

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[16] See: Revised Washington Code 77.120.030(8); Washington Administrative Code 220-150-040(4); Transport Canada Ballast Water Control and Management Regulations 2(3)(b).

[17] "The requirements of regulation B-3, or any measures adopted by a Party pursuant to Article 2.3 and Section C, shall not apply to: […] 5 – the discharge of Ballast Water and Sediments from a ship at the same location where the whole of that Ballast Water and those Sediments originated and provided that no mixing with unmanaged

AWO strongly recommends the following addition to the proposed regulatory text at 40 CFR §139.10(d)(3) to affect this change:

> (3) Exemptions: The ballast water discharge standards in paragraphs (d)(1) and (2) of this section do not apply to any vessel that:
> […]
> (viii) Discharges ballast water at the same location where that ballast water originated, provided that there has been no mixing with ballast water from other locations and that prior to taking on and discharging ballast water in another location, the ballast tank(s) either: undergo(es) cleaning, including removing all residual sediments; or, undergo(es) saltwater flushing.

Exempt Vessels that Discharge Ballast Water to Another Vessel for Treatment from the Numeric Ballast Water Discharge Standard

As EPA notes in the preamble, integrated or articulated tug barge units, or ATBs, "[consist] of two separate vessels that operate in tandem, always together."[18] Certain AWO member companies that operate ATBs that are subject to the Coast Guard's current ballast water management regulations have investigated the possibility of installing a ballast water treatment system on only one of the vessels in the combination and transferring the ballast water from the other for treatment. Because both vessels are subject to the numeric ballast water discharge standard and are technically required to install ballast water treatment systems, it has been difficult to secure approval for novel arrangements such as this. AWO recommends EPA facilitate this innovation with the addition of the following exemption to the proposed regulatory text at 40 CFR §139.10(d)(3):

> (3) Exemptions: The ballast water discharge standards in paragraphs (d)(1) and (2) of this section do not apply to any vessel that:
> […]
> (ix) Transfers ballast water to a dedicated or attending vessel for ballast water management activity.

Cathodic Protection

Clarify Requirement to Fill Space Between Anode and Backing

EPA has proposed to require spaces between any flush-fit anode and backing to be filled to remove potential hotspots for biofouling organisms. In the preamble, EPA writes that this "continue[s] the requirement from the VGP that any spaces between flush-fit anodes and the backing must be filled."[19] Part 2.2.7 reads, "when feasible, sacrificial anodes should be flush-fitted to the hull, or vessel operators must fill the space between the anode and hull backing to

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Ballast Water and Sediments from other areas has occurred. If mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with this Annex."

[18] 85 *Federal Register* 67854.

[19] 85 *Federal Register* 67860.

remove the potential for hotspots for fouling organisms." Some AWO member companies have reported that this may be infeasible for existing anodes, and have requested that the proposed regulatory text at 40 CFR §139.13(b) be clarified as shown:

> (b) Spaces between any new or replacement flush-fit anode and backing must be filled to remove potential hotspots for biofouling organisms during periods of maintenance such as drydocking.

Decks

Provide Continuity for Barge Operators Pumping Water from Below Deck

AWO cannot find a discussion, in this section or any other, about requirements for barge operators when pumping water resulting from condensation or precipitation from below deck. Discharging this water ensures the stability of the barge is not compromised by the collection of this water in void spaces and open hopper barge cargo holds. Part 5.4.1 of the VGP includes additional effluent limits for these discharges that explain the expectations for barge operators with greater clarity and which AWO member companies have found to be both environmentally protective and practicable. Namely, it states, consistent with 40 CFR §139.6(b)(2), that "[w]henever barges are pumping water from below deck, the discharge shall not contain oil in quantities that may be harmful as defined in 40 CFR Part 110." In addition, consistent with 40 CFR §139.4(b)(7) of the proposed regulatory text, VGP Part 5.4.1 requires barge operators to "clean out cargo residues (i.e., broom clean or equivalent) such that any remaining residue is minimized before washing the cargo compartment or tank and discharging washwater overboard." Although both of these general standards for incidental vessel discharges are included in the proposed rule, it is not clear that pumping water from below the deck of a barge is an authorized incidental discharge. In order to ensure that barge operators can continue to conduct this activity, provided that the discharge does not contain oil in quantities that may be harmful and that the discharge of cargo residues is minimized, AWO asks EPA to include standards for these discharges consistent with the VGP here or in another appropriate section of the proposed rule. AWO suggests the following revisions to the proposed regulatory text at 40 CFR §139.15(a):

> (a) The requirements in paragraphs (b) through ~~(i)~~ (j) of this section apply to the overboard discharge of washdown and runoff, including but not limited to precipitation, condensation, and sea water, from decks, well decks, and bulkhead areas, and from below deck on a barge.
> […]
> (j) Whenever a barge is pumping water from below deck, the discharge must comply with the applicable standards contained in §139.4(b) and §139.6(b).

Fire Protection Equipment

Permit Discharges from Fire Protection Equipment to Assure Equipment Operability and Crewmember Emergency Readiness

EPA has proposed to prohibit any discharge from fire protection equipment during testing, training, maintenance, inspection, or certification in port with the exclusion of any Coast Guard-required inspection or certification. Contrary to the discussion in the preamble, this is not consistent with the 2013 VGP. Part 2.2.12 of the VGP authorized discharges from firemain systems for "testing and inspections of the firemain systems in order to assure its operability in an emergency," and further provided that firemain systems "may be discharged in port for certification, maintenance, and training requirements if the intake comes directly from the surrounding waters or potable water supplies and there are no additions […] to the discharge," as well as for deck washdown or other secondary uses if the intake meets the same criteria and the discharge "meets all relevant effluent limitations associated with that activity."

This change is a significant and concerning one. The limited exclusion seems to be disallowing discharges from fire protection equipment for many legitimate safety and operability purposes, including those deriving from Coast Guard and recognized classification society or third party organization requirements. These include, but are not limited to, compliance with Coast Guard regulations governing the testing and maintenance of and drills and instruction on fire fighting equipment, as well as the conduct of vessel surveys and audits by third party organizations that involve the verification of compliance with inspection, testing, and maintenance requirements and the observation of drills. Further, fire protection equipment must be able to be tested to ensure operability, such as after maintenance or repair, or to maintain functionality, such as to prevent freezing in cold temperatures. AWO does not believe it is in the best interests of crewmember and vessel safety, crewmember emergency preparedness, and equipment operability to leave these important activities out of the exclusion. AWO urges EPA not to compromise the readiness of crewmembers and equipment to respond to a fire emergency, and to revise the proposed rule to permit discharges from fire protection equipment in port for testing, training, maintenance and repair purposes, provided that the discharges do not include additives.

AWO also encourages EPA to ensure the regulatory text reflects the discussion in the preamble regarding using the firemain system for secondary purposes. EPA writes, "firemain systems have numerous secondary purposes onboard vessels, such as for deck and equipment washdowns, machinery cooling water, and ballasting. However, whenever the firemain system is used for a secondary purpose, any resulting incidental discharge would be required to meet the proposed national standard of performance for secondary use (*e.g.*, deck runoff)."[20] Despite this clear statement in support of permitting using the firemain system for secondary purposes, AWO can find no corresponding language in the proposed regulatory text.

To implement these recommendations, AWO suggests the following changes to the proposed rule at 40 CFR §139.19:

[20] 85 *Federal Register* 67863.

(b) The discharge from fire protection equipment during testing, training, maintenance, repair, inspection, or certification~~, excluding USCG-required inspection and certification,~~ is ~~prohibited~~ permitted in port provided that the intake comes directly from the surrounding waters or potable water supplies and the discharge ~~must~~ does not contain any fluorinated firefighting foam.

[…]

(e) The discharge from fire protection equipment is permitted for secondary purposes, including deck washdown, anchor chain rinsing, and machinery cooling water, provided that the discharge meets the national standard of performance for the secondary use.

Graywater Systems

Modify the Proposed Requirement for Graywater Treatment or Retention on New Vessels over 400 GT

EPA is proposing to require the discharge of graywater from any new vessel of 400 GT ITC or GRT and above to meet the numeric graywater discharge standard, which would necessitate operators to equip qualifying new vessels "either with a treatment system or a sufficient storage capacity to retain all graywater onboard while operating in waters subject to the proposed rule."[21] This proposal will have a disproportionate impact on large towing vessels and is not commensurate with the minimal risk that graywater discharges from these vessels pose to the marine environment.

Large towing vessels generate very small volumes of graywater effluent relative to large cargo and passenger vessels. AWO is unaware of any towing vessel with the capacity to accommodate more than 14 crewmembers overnight and only rarely, if ever, are they operated at that manning level. However, assuming that such a towing vessel were to carry 14 crewmembers, and using EPA's estimate that 30 to 85 gallons of graywater is generated per person per day, the largest towing vessel has the potential to generate a maximum of 1,190 gallons of graywater per day – 1.2% of the smallest cruise ship graywater generation estimate cited in the preamble to the proposed rule, 96,000 gallons per day.[22] A 2000 report analyzing graywater discharges prepared for the International Council of Cruise Lines found that a typical cruise ship traveling at a conservative four knots (4.6 miles per hour) and discharging 600 cubic meters (the equivalent of 158,500 gallons) of graywater over a four-hour period would experience a dilution factor of 2.25×10^{-5}, reducing the concentration of constituent pollutants by many orders of magnitude.[23] While the dilution zone for towing vessels may not be as large as that used in the calculations for an oceangoing cruise ship, towing vessels average speeds of four to 10 knots (4.6 to 11.5 miles per hour) and, with a maximum graywater discharge volume of 4.5 cubic meters (the equivalent of 1,190 gallons) – 133 times less than the volume used the report's calculation – it is logical to assume that the amount of constituent pollutants discharged in graywater by large towing vessels is far less, and that their concentrations are also significantly diluted.

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[21] 85 *Federal Register* 67865.
[22] 85 *Federal Register* 67865.
[23] Kim, Don K., P.E. *Report on the Analysis of Graywater Discharge.* Arlington, VA: M. Rosenblatt & Son; 2000.

EPA asserts that "[b]ased on VGP reporting data, between one-third and one-half of manned vessels of 400 GT ITC or above that are not cruise ships or ferries are equipped with a treatment system for graywater, graywater mixed with sewage, or a combined treatment system that may treat graywater."[24] However, existing towing vessels in this size class are rarely equipped with any type of graywater treatment system, and our member companies report that only a few newly constructed vessels have been built with Type II marine sanitation devices (MSDs) that comingle graywater and sewage effluent for treatment and discharge. It is unclear whether these Type II MSDs meet the numeric graywater discharge standard proposed at 40 CFR §139.21(f), or whether the advanced Type II MSDs discussed in the regulatory impact analysis for "cargo/container ships, bulk carriers, or tankers"[25] can be scaled for installation on towing vessels at or above 400 GT which, despite their large size relative to other towing vessels, still have space-limited engine rooms. Equipping towing vessels with storage tanks to retain untreated graywater presents even greater operational and logistical challenges. Operators of towing vessels with graywater storage tanks would be obliged to monitor and compensate for impacts on vessel stability by increasing ballasting operations. In addition, because most towing vessels operate exclusively in waters subject to the proposed rule and would be unable to dispose of untreated graywater offshore, these operators would need to arrange for graywater storage tanks to be pumped out. In the preamble, EPA writes that it "expects that vessels built with storage capacity may be serviced by stationary and mobile (*e.g.*, trucks and barges) pumpout facilities that currently receive sewage and graywater from vessels and welcomes public comment on the availability to such facilities for vessels unable to install treatment systems."[26] AWO's experience with sewage No-Discharge Zones has demonstrated that stationary and mobile pumpout facilities are not always adequate or available for towing vessels. Stationary pumpout facilities are often designed to service the recreational vessel community and are located at marinas with restrictions on operating hours, vessel draft and dock size, among other limitations, that do not allow them to accommodate towing vessels. Towing vessels' ability to use mobile pumpout facilities has also been limited by the lack of availability of these services, their inefficiency due to low pumpout flow rates, and the inability of pumpout trucks to access docks due to security or structural integrity considerations. The challenge of ensuring the availability of adequate pumpout facilities at or near all ports or places a towing vessel would call is compounded by the transience of towing vessels, which go where the work is and often change their areas of operation.

Due to the infeasibility of installing graywater treatment systems or storage tanks on large towing vessels, and given the negligible environmental impact of graywater discharges from these vessels, AWO urges EPA to modify the proposed requirement for new vessels at or above 400 GT ITC to meet the numeric graywater discharge standard by establishing an exemption for vessels with a maximum crew capacity of and overnight accommodations for less than 15 persons, consistent with the applicability of graywater monitoring requirements in

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[24] 85 *Federal Register* 67865.
[25] Office of Wetlands, Oceans & Watersheds. *Regulatory Impact Analysis of the EPA Proposed Rulemaking for "Vessel Incidental Discharge National Standards of Performance."* Washington: U.S. Environmental Protection Agency; September 24, 2020. p.15.
[26] Ibid.

the 2013 VGP (VGP Part 2.2.15.2). AWO recommends the following revisions to the proposed regulatory text at 40 CFR §139.21(e):

> (e) The discharge of graywater from the following vessels must meet the numeric discharge standard established in paragraph (f) of this section:
> (1) Any new vessel of 400 GT ITC (400 GRT if GT ITC is not assigned) and above that has a maximum crew capacity greater or equal to 15, and provides overnight accommodations to those crew; […]

Subpart D: Special Area Requirements

Facilitate Compliance with and Enforcement of Federally-Protected Waters Requirements

AWO member companies are concerned that it will be difficult, if not impossible, for vessel operators to comply with and for the Coast Guard to enforce the requirements that apply in federally-protected waters as the list of federally-protected waters is currently composed. The list includes hundreds of areas that have no non-recreationally navigable waterways whatsoever, and are therefore entirely irrelevant to the commercial, public and research vessels that are covered under the proposed rule. AWO opposes EPA shifting the burden to determine the suitability of the listed waters for non-recreational vessel operation from the agency to the industry, and strongly recommends that EPA refine the list to eliminate those waters that are not navigable by non-recreational vessels. Even with those waters removed, it will still be extremely challenging for an individual vessel operator to determine the precise location of each of the listed waters and clearly communicate to crewmembers where more stringent standards apply without a significant expenditure of effort and resources. Therefore, AWO also urges EPA to work with the National Oceanographic and Atmospheric Administration to develop charts marking the listed waters so that vessel operators and crewmembers can more readily determine the impacts to their areas of operation.

Further, the list of federally-protected waters comprises waters that are designated for ecological reasons as well as those that are designated for historical or cultural reasons, which may not have the same sensitivity to anthropogenic impacts. AWO believes that including the latter in the list is effectively more stringent than EPA's current requirements in Appendix G of the VGP, which specified waters "federally protected wholly or in part for conservation purposes" [emphasis added]. Although Appendix G includes waters designated for historical or cultural purposes as well, EPA notes its deficiencies, writing, "[T]his list is gathered from sources maintained by the administrative agency and the EPA only removed areas that are clearly terrestrial and do not contain waters suitable for permitted vessels or are unlikely to be impacted by permitted vessel discharges," and continuing, "Inclusion in this list does not mean the area is suitable for operation for vessels greater than 79 feet." This seems to imply that EPA's effort to remove areas that it had no intention to regulate was incomplete, which could be considered a material technical mistake. AWO strongly recommends that EPA align the stringency of the proposed rule with the intended stringency of the 2013 VGP and only include in its list waters that have been federally protected for conservation purposes, or in other words, due to their sensitivity to environmental impacts.

Subpart E: Procedures for States to Request Changes to Standards, Regulations, or Policy Promulgated by the Administrator

As per the statutory requirements of VIDA, EPA has proposed to establish a process by which a state may submit a petition to establish a No-Discharge Zone (NDZ) for one or more incidental vessel discharges, whether treated or not, into state waters that it has determined require greater environmental protection. AWO notes that although state waters are defined, many commercially navigable waterways form or follow state boundaries, and therefore, the waters of one state may make up only part of a larger waterway over which other states may share jurisdiction. Due to the disruptive effect of NDZs on vessel operations, the imposition of an NDZ by one state in waters comprising part of a larger waterway could impact, and have adverse consequences for, commercial vessel traffic in the larger waterway. In addition, the establishment of an NDZ for portions of a larger waterway could create a confusing patchwork of requirements for vessel operators of the kind that VIDA was enacted to alleviate. As a result, if a state petitions for the establishment of an NDZ in waters contiguous to another state's waters, AWO recommends that EPA consult with the other state. For example, if the state of New York were to petition EPA for an NDZ for its waters within New York Bay, EPA would consult with the state of New Jersey. AWO recommends the following addition to the proposed regulatory text at 40 CFR §139.52(d) to effect this recommendation:

> (5) In the case of an application for the prohibition of one or more discharges into waters contiguous to those of another State, the Administrator shall consult with the Governor of the State.

Other Recommendations

Many of the current vessel discharge regulations with which AWO member companies have been challenged to comply relate to compliance verification activities, including inspection, recordkeeping and reporting requirements, that Congress has delegated to the Coast Guard under VIDA. Because the Coast Guard will be initiating its rulemaking after EPA finalizes this proposed rule, AWO thinks this is a good opportunity to reiterate recommendations we have made previously to apply lessons learned over the past decade and reduce regulatory burdens on vessel operators without adverse impacts to environmental protection.

- *Reduce Reporting and Recordkeeping Requirements.* AWO believes that the Coast Guard can reduce paperwork burdens on vessel operators in its regulations to implement VIDA, without either undermining environmental protection or compromising compliance verification. As an example, the Coast Guard's ballast water reporting 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. As another example, under the 2013 VGP, annual reporting is required even if vessels have had no instances of non-compliance and are not required to perform analytical monitoring. Such low-value reporting, which does not enhance the marine environment or facilitate enforcement of the discharge standards, should be eliminated. 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 and safety responsibilities. AWO urges the Coast Guard 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.

- *Streamline Compliance for Unmanned, Unpowered Barges*. Unmanned, unpowered barges produce fewer effluent streams, and smaller volumes of effluent, that self-propelled vessels. 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 when the vessel is not 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. AWO encourages the Coast Guard to develop implementation regulations that treat unmanned, unpowered barges as a distinct and operationally unique vessel class, with corresponding barge-specific discharge best management practices, monitoring and recordkeeping requirements.

Conclusion

Thank you again for the opportunity to submit recommendations on EPA's proposed national performance standards for incidental vessel discharges. AWO looks forward to continuing to work with EPA and the Coast Guard to implement VIDA while preserving the safety, efficiency and environmental benefits of marine transportation. We would be pleased to answer any questions or provide further information as EPA sees fit.

Sincerely,

Jennifer Carpenter