



December 18, 2023

Jack Faulk  
U.S. Environmental Protection Agency  
EPA Docket Center, Office of Water Docket  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
**Via Online Docket Portal**

**ATTN: VIDA Proposed Rulemaking Supplemental Notice; Docket No. EPA-HQ-OW-2019-0482**

Dear Mr Faulk:

The Pennsylvania Department of Environmental Protection respectfully submits the following comments related to the United States Environmental Agency's (EPA) supplemental notice published October 18, 2023, proposing modifications to the October 26, 2020, Vessel Incidental Discharge Act (VIDA) Proposed National Standards of Performance:

1. The Pennsylvania Coastal Resources Management Program (PA CRMP) objected to EPA's original proposed VIDA rulemaking [85 Fed. Reg. 67,818] under the federal Coastal Zone Management Act (CZMA) and the National Oceanic and Atmospheric Administration's (NOAA's) federal consistency regulations at 15 C.F.R Part 930. PA CRMP's previous letter and attached materials to EPA, dated January 13, 2021, contain conditions required to lift the objection and include a requirement for the development of discharge standards, or an alternate achievable standard or mitigation practice for ballast water from new and existing Lakers. While the supplemental notice includes new ballast water treatment equipment standards for new vessels, EPA failed to propose standards for existing vessels. New Lakers are rarely constructed and put into service, meaning the fleet's ballast water discharges will remain untreated and unmitigated indefinitely. PA CRMP cannot lift its CZMA objection to EPA's VIDA rulemaking if that rulemaking permits the untreated, unmitigated discharge of ballast water pollution into waters of the Commonwealth. If there are no treatment technologies sufficiently effective or economically achievable for existing Lakers, as EPA contends, then EPA should consider proposing other mitigation practices.
2. In addition to (1), above, EPA's National Consistency Determination submitted with the original proposed rule did not meet the content requirements set forth in 15 C.F.R §§ 930.39(a) and 930.36(e), which PA CRMP noted in its CZMA objection materials. Furthermore, EPA has yet to submit a federal consistency determination or supplemental determination related to the supplemental notice. The supplemental notice constitutes a substantive change to the original proposed action. EPA must submit either 1) a new, fully developed federal consistency determination or 2) a supplemental federal consistency determination pursuant to 15 C.F.R. § 930.46. Regardless, the consistency determination submitted must address the changes proposed in the supplemental notice and account for the deficiencies identified in the PA CRMP's January 13, 2021, federal consistency objection. In either case, the new or supplemental federal consistency determination must 1) meet the appropriate content standards identified in 15 C.F.R.

Secretary

Rachel Carson State Office Building | P.O. Box 2063 | Harrisburg, PA 17105-2063 | 717.787.2814 | [www.dep.pa.gov](http://www.dep.pa.gov)

§§ 930.39(a) and 930.36(e), including an analysis on how the proposed rule is consistent with the relevant enforceable policies of PA CRMP and 2) describe those measures EPA has taken to address each element of PA CRMP's federal consistency objection or provide an explanation as to why EPA did not take measures in response to any particular element of the objection.

3. PA CRMP supports the inclusion of a requirement for a ballast water management plan that covers uptake and discharge practices in areas with harmful aquatic organisms and pathogens (§ 139.10(c)(4)). PA CRMP objected to the elimination in the proposed rule of the 2013 Vessel General Permit (VGP) best management practice (BMP) requirements (2.2.3.3 and 2.2.4.4) requiring vessel operators to "minimize and avoid" uptake of ballast water during times or in areas of compromised water quality. The inclusion of the ballast water management plan requirement is sufficient for PA CRMP to resolve this element of the CZMA federal consistency objection; but see (1) and (2) above.
4. The supplemental notice does not provide adequate justification for the VIDA rulemaking being less stringent than the 2013 Vessel General Permit, as required by Congress. The primary argument EPA makes for the less stringent proposed rulemaking is through a discussion of the costs to ship owners. However, EPA did not provide an analysis of the environmental, recreational, public health, and infrastructure costs associated with invasive species introduction and distribution throughout the Great Lakes in the supplemental notice. The economic analysis provided in the supplemental notice compared the cost of retrofitting an existing Laker to the cost of constructing a new Laker with a type-approved ballast water management system (BWMS). EPA ignored the costs associated with the introduction of invasive species. Recreation, tourism, boating, and fishing are large and vital components to the Erie regional economy. Infrastructure within Lake Erie, such as water intakes and wastewater discharges, and piers, is critical to the economy and public health and safety in the region. The *annual* economic impacts of invasive species on Erie's regional environment, economy, and infrastructure, can far exceed the total fleet retrofit cost estimates. In 2018, the economic impact throughout the Great Lakes region of the *Dreissena* spp. invasion – just one of the more than 180 documented non-native taxa in the Great Lakes – was estimated at approximately \$1 billion per year. Meanwhile, EPA claims in the supplemental notice that the cost to retrofit the entire Laker fleet is estimated at approximately \$649 million with another \$9.7 million in annual operating costs. Affected facilities, local communities, and taxpayers would continue to bear the costs from invasive species under the proposed rule. The Laker shipping industry represented by the Lake Carriers Association would continue to provide nothing to mitigate the substantial costs, consequential of their practices, under the proposed rule. EPA's contention that existing Lakers should not be subject to additional controls and standards due to the cost of industry implementation is no different than any other industry with the potential to pollute. Whether it is a factory that discharges a persistent, toxic chemical or a vessel that transports an invasive organism that forever alters a biological and ecosystem balance, the impacts to the resource and Pennsylvania's connection to Lake Erie can be both acute and long-lasting.
5. PA CRMP supports the inclusion of an equipment standard for newly constructed Lakers to install, operate, and maintain a type-approved BWMS. PA CRMP also supports the inclusion of a requirement for vessels that undergo a "major conversion" to install a treatment system(s) that meets the new vessel equipment standard. EPA should also account for phased conversions to prevent ship owners or other responsible parties from circumventing the equipment standard by

splitting larger conversion projects into a series of incremental projects. However, relying solely on this attrition-type approach to retrofit the entire Laker fleet with BWMSs will take decades to fully implement, leaving the Great Lakes system fully exposed to harmful species invasion and distribution in the meantime. Thus, this change between the original proposed rule and the supplemental notice is not sufficient for PA CRMP to resolve the CZMA federal consistency objection as it relates to the lack of ballast water discharge, treatment, equipment or other mitigation standards for existing Lakers.

Thank you for the opportunity to comment on the supplemental notice to the proposed VIDA rulemaking. If you have any questions or would like to discuss our comments in detail, please contact Mr. Matthew Walderon with the Pennsylvania Coastal Resources Management Program at [mwalderon@pa.gov](mailto:mwalderon@pa.gov).

Sincerely,



Jessica Shirley  
Interim Acting Secretary

Cc: Susan Weaver  
Stacey Box  
Timothy Bruno  
James Grazio, PhD  
Matthew Walderon  
Sean Hartzell, PFBC

