

US EPA ARCHIVE DOCUMENT

List of Subjects

Environmental protection, Chemicals, Premanufacture notices
Dated: October 2, 2003.

Sandra Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

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**BILLING CODE 6560-50-S
ENVIRONMENTAL PROTECTION****AGENCY**

[FRL-7572-1]

New York State Prohibition on Marine Discharges of Vessel Sewage; Final**Affirmative Determination**

Notice is hereby given that EPA has made a final affirmative determination regarding the petition received from the State of New York on April 29, 1999 requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to Section 312(f)(3) of Public Law 92-500, as amended by Public Law 95-217 and Public Law 100-4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Hudson River and its tributaries including, but not limited to, Rondout Creek, Esopus Creek and Catskill Creek. This petition was made by the New York State Department of State, in conjunction with the New York State Department of Environmental Conservation. New York State certified in the petition a need for greater protection and enhancement. The certification states that the discharge of vessel waste often contain chemical additives such as formaldehyde, phenols and chlorine. These wastes increase loadings of nutrients, pathogens and chemical loading particularly in shallow, poorly flushed waterbodies, and may adversely affect water quality, sensitive and important resources, and uses of these waters. The Hudson River provides habitat for fish and wildlife species. Congress has designated the Hudson River as a National Heritage Area under the purview of the National Park Service, and in 1998, the Hudson River was designated an American Heritage River. Upon receipt of this final affirmative determination, the State of New York will completely prohibit the discharge of sewage, whether treated or not, from any vessel, with the exception of commercial vessels that are greater

than 225 feet in overall length or are greater than 20 feet in draft, on the Hudson River in the area north of the Battery in Manhattan, New York and south of Federal Dam in Troy, New York in accordance with Section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a). For vessels that are greater than 225 feet in overall length or are greater than 20 feet in draft, the prohibition will be applicable one year from the date of publication in the **Federal Register**.

Previously, EPA established on December 13, 1995 two No Discharge Areas (NDAs) to protect drinking water intake zones. Zone 1 is bounded by the northern confluence of the Mohawk River on the south and Lock 2 on the north. It is approximately 8 miles long. Zone 2 is bounded on the south by the Village of Roseton on the western shore and bounded on the north by the southern end of Houghtaling Island. Zone 2 is approximately 60 miles long. The southern boundary of the proposed NDA in this application would begin at the Battery in Manhattan, New York and the northern boundary would be the Federal Dam in Troy, New York. This area includes waters up to the New Jersey-New York boundary and does not include waters in New Jersey. The area proposed by the State of New York is 153 miles long and encompasses approximately 81,000 acres of tidal waters and wetlands. On October 24, 2000, EPA published a Receipt of Petition and Tentative Determination and accepted comments from the public for a thirty (30) day period. The comment period was extended until December 22, 2000 at the request of one of the commenters. EPA received letters from the following individuals:

1. Harold Gorman, 2332 Fort Lyon Drive, Stanton, VA
2. Edward V. Weber, 60 Round Hill Road, Poughkeepsie, NY 12603-5125
3. Ned Sullivan, Executive Director, Scenic Hudson, Inc., 9 Vassar Street, Poughkeepsie, NY 12601
4. Andrew J. Spano, County Executive, Westchester County, Michaelian Office Building, White Plains, NY 10601
5. Manna Jo Greene, Environmental Director, Clearwater, Inc., 112 Little Market Street, Poughkeepsie, NY 12601
6. Joseph P. Gehegan, Jr., Vice President, Spentonbush/Red Star Companies, P.O. Box 392, Brooklyn, NY 11231
7. Joseph Tesoriero, Safety Director,

McAllister Towing and Transportation Company, Inc., 17 Battery Place, New York, NY 10004-1260

8. Kenneth L. Peterson, Jr., Port Captain, Reinauer Transportation Companies, 1983 Richmond Terrace, Staten Island, NY 10302

9. Robert J. Hughes, Jr., Hughes Marine Firms, Raritan Plaza I, Raritan Center, Edison, NJ 08837

10. John C. Tobin, New York State Waterways Association, Inc., 174 Washington Avenue, Albany, NY 12210

11. Kevin A. Nugent, Vice President, Bouchard Transportation Co., Inc., 77 Newbridge Road, Hicksville, NY 11801

12. Richard M. Larrabee, Director, Port Commerce Dept., The Port Authority of New York & New Jersey, One World Trade Center, 34S, New York, NY 10048-0682

13. Linda O'Leary, Vice President—Atlantic Coast Region, American Waterways Operators, 241 Water Street, New York, NY 10038

One commenter expressed confusion over the boundaries of the Hudson River NDA. His confusion was caused by the statement that some vessel operators while docked at the Brooklyn Naval Yard have their holding tanks pumped out by waste haulers. Since the Brooklyn Naval Yard is on the East River, he asked whether the prohibition included the East River. It does not include the East River, but boaters may choose to use pumpout facilities located outside of the NDA because the facilities are more convenient for them. For example, a boater who keeps his boat in a Staten Island marina may choose to use the pumpout at his home marina because it is convenient. The southern boundary of the proposed No Discharge Area (NDA) in this application would begin at the Battery in Manhattan, New York and the northern boundary would be the Federal Dam in Troy, New York. This area includes waters up to the New Jersey-New York boundary and does not include waters in New Jersey. It does not include the East River, the Harlem River, the Long Island Sound nor the Raritan Bay. No change to the determination is necessary based on this comment.

Three commenters expressed their support for the complete prohibition of the discharge of sewage from vessels. They believe that this determination is an important step in maintaining the vitality of the Hudson River. No change

to the determination is necessary based on these comments.

One commenter compared the prohibition to a "chamber pot" approach and questioned whether making waste disposal more difficult for boaters effectively eliminates sewage. The commenter stated that marine sanitation devices (MSDs) must be

58346 Federal Register / Vol. 68, No. 196 / Thursday, October 9, 2003 / Notices allowed to operate and discharge. In response, EPA notes that the pumpout and subsequent treatment of wastes at a sewage treatment plant generally results in a higher level of treatment than an MSD can provide. A holding tank is a total retention/no discharge alternative. A flow through device (Type I or Type II) treats the waste to some degree and then discharges into the water. This discharge contains pathogens, nutrients and various chemicals. This commenter also expressed concern about the capacity of a holding tank capacity (2 days of waste), the distance between pumpouts (15.5 miles) and the speed at which most vessels travel (5 knots per hour). The capacity of a holding tank is determined by several factors, volume, size of the crew, and the use of shore bathroom facilities when available. The greatest distance between pumpout facilities, based on the charts submitted in the application, is 12 miles. The speed at which vessels travel is determined by whether the vessel is a sailing or power vessel. These are all factors, including fuel, weather, supplies and charts, which the operator of the vessel needs to consider when planning his trip. No changes to the determination are necessary based on these comments.

Several commenters expressed concerns regarding the ability of large commercial vessels to dispose of sewage due to the lack of facilities and the draft restriction at pumpout facilities. These vessels may exceed 200 feet in length and have drafts in excess of 20 feet. The commenters also stated that many, if not all, of these commercial vessels have been equipped with Type II marine sanitation devices, which are a flowthrough type treatment devices as opposed to a Type III MSD which are a holding tank. They stated that to retrofit tugs and barges with holding tanks would cost several thousand dollars and the time in dry dock would cost several thousand dollars in lost revenue. Some commenters requested that commercial

vessels be exempted from the prohibition since no pumpout facilities were available for their vessels due to size and draft requirements. The same commenters requested that the NDA apply only to recreational boaters. While many of the commercial vessels are equipped with Type II MSDs, there are several commercial operators that utilize Type III MSDs and have their holding tanks pumped out at facilities that are available in their home ports or that make arrangements with waste haulers to pumpout their holding tanks when they dock to load, unload or take on supplies and fuels. EPA concludes that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available. One commenter stated that 50% of the petroleum transported by tug/barge units was delivered to Albany, 29% of the petroleum was delivered to Newburgh and 21% of the petroleum was delivered to various terminals along the Hudson River. This commenter contended that the imposition of the NDA on all vessels will cause a disruption in the petroleum delivery system, unduly harm the tug and barge industry, result in hardship to the residents of New York State and serve no useful purpose in terms of improving water quality or protecting environmental resources. Based on this information, EPA has decided that the complete prohibition of discharge of vessel sewage will not apply for one year from the date of **Federal Register** publication of this notice to commercial vessels which are greater than 225 feet in length or are greater than 20 feet in draft. The prohibition of discharge of vessel sewage will apply to all other vessels upon publication of this determination in the **Federal Register**. The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Hudson River, New York. A final determination on this matter will result in a New York State prohibition of any sewage discharges from vessels, with the exception of commercial vessels that are greater than 225 feet in length or are greater than 20 feet in draft, on the Hudson River from the Battery in Manhattan, New York to the Federal Dam at Troy, New York. For vessels that are greater than 225 feet in overall length or are greater than 20 feet in draft, the prohibition will be applicable on October 8, 2004.

Any questions regarding this notice should be addressed to Walter E.

Andrews, U.S. Environmental Protection Agency, Region 2, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York, 10007-1866. Telephone: (212) 637-3880.

Dated: September 3, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

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