



801 North Quincy Street
Suite 500
Arlington, VA 22203

PHONE: 703.841.9300
EMAIL: jcarpenter@americanwaterways.com

Jennifer A. Carpenter
President & CEO

August 26, 2022

Ms. Radhika Fox
Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

RE: Draft Guidance for Vessel
Sewage No-Discharge Zones
(Docket No. EPA-HQ-OW-2020-
0392)

Dear Ms. Fox:

The American Waterways Operators (AWO) is the tugboat, towboat, and barge industry's advocate, resource, and united voice for safe, sustainable, and efficient transportation on America's waterways, oceans, and coasts. Our industry's 5,000 towing vessels and 33,000 barges comprise the largest segment of the U.S.-flag domestic fleet, supporting more than 270,000 jobs nationwide and moving more than 665 million tons of cargo critical to the U.S. economy. On behalf of AWO's member companies, we appreciate the opportunity to comment on the Environmental Protection Agency's (EPA) Draft Guidance for Vessel Sewage No-Discharge Zones (NDZ).

AWO members lead the marine industry in safety, security, and environmental stewardship. The tugboat, towboat, and barge industry is the most sustainable mode of freight transportation, producing 43 percent less greenhouse gas emissions than rail and more than 800 percent less than trucks. Our industry is committed to building on this success and actively goes above and beyond regulatory requirements to preserve and protect the environment.

We thank EPA for undertaking this update of its guidance for state officials submitting applications to EPA to establish NDZs under the Clean Water Act (CWA). AWO has advocated for such an update for many years.¹ The current guidance, published in 1994, is largely tailored to NDZ applications for waters utilized by recreational vessels. As states have increasingly sought to designate NDZs in waters heavily trafficked by commercial vessels, which have distinct physical characteristics and operational profiles, the guidance must be updated to ensure that states are providing EPA with the complete and comprehensive

¹ See comment submitted by Tom Allegretti to Docket No. EPA-HQ-OW-2008-0150.

information it needs to evaluate NDZ applications – and specifically, to assess the adequacy and reasonable availability of pumpout facilities for commercial vessels in CWA Section 312(f)(3) applications. AWO appreciates that EPA’s draft guidance reflects many of our previous recommendations and is pleased to offer the following recommendations.

Introduction

In Section 1.0 of the *Draft Guidance for Vessel Sewage No-Discharge Zone Applications (Clean Water Act Section 312(f))*, EPA highlights the environmental and human health impacts of raw and inadequately treated vessel sewage. However, as EPA states, CWA Sections 312(a) through (m) establish the statutory framework for vessel sewage regulations under which EPA and the [U.S. Coast Guard] ensure that inadequately treated sewage does not enter U.S. waters². These provisions require all vessels equipped with installed toilet facilities to install marine sanitation devices (MSDs) that receive and retain or treat and discharge sewage to a federal standard of performance that EPA has determined is necessary to minimize impacts on the environment and human health.³ Therefore, an NDZ does not prohibit the discharge of raw and inadequately treated vessel sewage – a common misconception among states and the public – because such discharges are already prohibited by federal law. Rather, an NDZ prohibits the discharge of all sewage, including effluent treated to EPA’s performance standard. The processes to designate NDZs under CWA Sections 312(f)(3)-(4) were established for the protection and enhancement of the quality of specific waters that require greater environmental protection than the federal standard. AWO urges EPA to keep this in mind in its communications with states and the public regarding the NDZ designation process.

Section 1.3: Additional Information on No-Discharge Zones

EPA writes, “Throughout this document, the term “marina” is used to represent all waterfront facilities, including marinas, ports, docks, and harbors.” AWO believes that “marina” – which is defined by The Merriam-Webster Dictionary as “a dock or basin providing secure moorings for pleasure boats” – is confusing and potentially misleading as an umbrella term intended to include the types of facilities utilized by commercial vessels. AWO recommends that EPA replace the term “marina” with “waterfront facility.”

Applications under CWA Section 312(f)(3)

Section 2.1: Development and Submission of an Application by the State

Within the seven required components of a state’s CWA Section 312(f)(3) application, AWO believes that several elements that have been identified as Optional Information should in fact be required by EPA in order for an application to be considered complete⁴.

² *Draft Guidance for Vessel Sewage No-Discharge Zone Applications (Clean Water Act Section 312(f))*, pp. 8-9.

³ AWO has previously written in support of a petition for rulemaking to revise performance standards for Type I and Type II MSDs. See comment submitted by Jennifer Carpenter to Docket No. EPA-HQ-OW-2010-0126.

⁴ Additions to the proposed language are underlined and deletions are ~~crossed out~~.

Section 2.1.1: Application Requirement #1: Certification of Need

AWO recommends the below bullets be moved from Optional Information to Required Information:

- A description of resources detrimentally affected by treated sewage discharges (e.g., shellfish harvest areas and commercial shellfish farm operations, fish spawning areas, recreational beaches), including how these resources are detrimentally affected and how the prohibition of sewage discharges would remedy this harm.
- Water quality data, such as fecal coliform counts, demonstrating localized fecal contamination.
- An estimation of fecal bacteria or pathogen loads from vessels in the proposed area that justifies a complete prohibition of treated discharges. The state may wish to include estimations of other contributors, as well.

Section 2.1.2: Application Requirement #2: Map of Pumpout Facilities

AWO asks EPA to add “identification of existing federal navigation channels and commercial vessel traffic routes” to the information required in the map of pumpout facilities. Information on federal navigation channels can be obtained from the U.S. Army Corps of Engineers, while commercial vessel traffic routes can be established from a review of Automatic Identification System (AIS) data. We also recommend adding the following to the Required Information for mobile facilities:

- Separate maps indicating the geographic service area for each truck, sewage truck company, boat/barge, or sewage boat/barge company and the distance, in time or miles, each pumpout operator is prepared to travel to service a vessel. [...]

Section 2.1.3: Application Requirement #3: Location of Pumpout Facilities

AWO recommends the below bullets be moved from Optional Information to Required Information and amended to read as follows:

- The number of pumpout facilities at each waterfront facility.
- The type of pumpout system(s) (i.e., portable, mobile, stationary, remote operated multi-station) at each waterfront facility. [...]
- The specific location of each pumpout facility within the waterfront facility.
- Location and contact information (e.g., waterfront facility name, address, phone number).
- Fees (e.g., cost per gallon) to pump out at each pumpout facility.
- Type(s) of vessels that can be serviced (e.g., recreational vessels; large commercial vessels) at each pumpout facility and any service restrictions (e.g., whether access is limited to certain vessels or customers).
- Draft and berth limitations and width or height restrictions at each pumpout facility.
- Operating hours of each pumpout facility.
- Pumpout facility operating capacity (i.e. gallons per minute of flow) including working daily capacity and average available capacity.

Section 2.1.5: Application Requirement #5: Vessel Draft Requirements at Facilities

AWO believes that all information relating to physical limitations associated with facility access should be considered Required Information. We therefore recommend that all bullets identified as Optional Information be moved to Required Information and the following bullets amended to read as follows:

- *Maximum height (both total height and height above the waterline) of vessels able to access each pumpout facility.* If bridges or other overpasses exclude vessels over a certain height from accessing a facility in the proposed no-discharge zone, then these height restrictions should be included in the application.
- *Percentage of vessels and associated vessel types excluded from using pumpout facilities in the area.* The state should estimate how many, or what percentage of, all vessels operating in the proposed no-discharge zone would be unable to use or access each facility in the area, due to physical, legal, or other restrictions, and of which type. The application should specify if there would be no known or anticipated vessel exclusions.

Section 2.1.7: Application Requirements #7: Vessel Population and Usage

AWO is concerned about EPA's list of Recommended Information Sources. We agree that for smaller proposed areas trafficked exclusively by recreational vessels, localized data collection and information from state boating offices or the U.S. Coast Guard's National Recreational Boating Surveys may be good resources to measure vessel population and use. However, we disagree with EPA's recommendation that the Coast Guard Vessel Documentation Branch's "Merchant Vessels of the United States" is a good resource to estimate commercial vessel population and use. As EPA acknowledges, the usefulness of this information is limited "because the USCG's data entry identifies the location of the vessel when the data was entered, rather than the state where the vessel would currently be located." Certificates of Documentation capture a vessel's home port, which for commercial vessels is frequently different from its area of operation. In order to adequately estimate the population of commercial vessels that use the proposed area, a state should evaluate and average commercial vessel traffic in the proposed area over time. AWO recommends removing "Merchant Vessels of the United States" from the list of Recommended Information Sources and recommending that states consult Automatic Information System (AIS) data, which is aggregated by a number of publicly available sources⁵. AIS is an onboard navigation safety device that commercial vessels are required by the Coast Guard to carry that transmits their location and can be used to monitor their movement, and therefore, it is a much more accurate resource for vessel population and use. Because commercial vessel traffic may fluctuate year-to-year, states should average AIS data over five years.

Section 2.2: Evaluation of an Application by EPA

AWO recognizes that EPA's review of Section 312(f)(3) applications is based on: (1) whether facilities are adequate to service the vessel population; and (2) whether facilities for removal and treatment of vessel sewage are reasonably available. We strongly support the U.S. District

⁵ For instance: www.marinetraffic.com, www.vesselfinder.com.

Court for the District of Columbia’s affirmation that the determination of whether facilities are “reasonably available” must include an evaluation of costs, and we appreciate EPA both developing cost analysis tools and making those tools available for public comment. This is a material improvement in consistency and transparency that will allow stakeholders to better understand the basis for EPA’s determinations and provide more specific and relevant feedback. We also appreciate EPA’s recognition that the analysis for commercial vessels should be distinct from and more comprehensive than the analysis for recreational vessels.

Section 2.2.2: Commercial Vessels

We recommend that EPA add the following clarifications:

- Clarify that “Facility use costs” are a per-visit cost input and based on the highest facility use cost within the proposed NDZ.
- Clarify that lost revenue for “Pumpout time” and “Travel costs” are calculated based on the average times and costs for the commercial vessel population within the proposed NDZ.
- Add a definition of “minimal cost implications” for which EPA may decide not to use the Tool and a description of the metrics used to determine it.

Appendix C: No-Discharge Zone Cost Analysis Tool for CWA Section 312(f)(3) Application

AWO has concerns about some of the inputs and assumptions that EPA has proposed for the Cost Analysis Tool (Tool) developed for Section 312(f)(3) application evaluations.

To the Maximum Extent Possible, Inputs Should be Based on the Commercial Vessel Population Operating in the Proposed NDZ.

AWO was glad to see EPA outline what the Tool inputs mean and state when inputs are required and when default values can be substituted in the “Data Dictionary.” However, the hyperlocal nature and impact of an NDZ means that national averages cannot reasonably take the place of timely information unique and specific to the proposed NDZ. AWO urges EPA to clarify that *all* vessel and cost inputs should be based on the vessel population operating within the proposed NDZ unless extenuating circumstances prevent the information from being acquired.

Certain inputs, such as “Fuel Price (No. 2 diesel fuel)”, are frequently updated, readily available, and can vary significantly depending on location. For example, the Port of Long Beach, Port of Los Angeles, Port of New York/New Jersey, and the Port of Seattle are frequently rated as some of the busiest U.S. ports and consistently experience some of the highest No. 2 diesel fuel prices in the country according to the U.S. Energy Information Administration (EIA). In such locations, it would be unsuitable to estimate an NDZ’s financial impact using national averages⁶.

Additionally, many of the proposed default values do not reflect the current state of the industry. For example, the “Annual Baseline Operating Costs” sources for tugboats are a 2004

⁶ EPA’s default value for Fuel Price (No. 2 diesel fuel) is \$2.256 based on 2018 national average cost. That same year, according to the EIA, the cost of No. 2 diesel fuel was the following: California - \$2.396; New York - \$2.495; New Jersey - \$2.328; Washington - \$2.325.

memorandum and 2015 study of Alaska. The inputs that comprise this overall value include crew wage, maintenance and repair, and insurance. However, minimum wage in some states is six dollars more than in 2015 and average wages have also risen; the average cost of steel has increased since 2015, pushing maintenance and repair costs higher⁷; and insurance rates can vary significantly depending on the age of a vessel and its operational profile. AWO therefore recommends that the following inputs from Table C-2 and all inputs from Table C-4 to the maximum extent possible, be based on averages for the proposed NDZ and its commercial vessel population:

- Average distance traveled
- Pumpout interval
- Average demand per pumpout

EPA Should Correct Inaccurate Baseline and Compliance Cost Assumptions.

AWO also disputes the following assumptions within the Tool:

- *Pumpout facilities are co-located with fueling stations.* While this may be a safe assumption for certain vessel types, it is not for tugboats and towboats. EPA assumes that mobile pumpout and refueling systems will always be able to move where they are needed. However, if a shore-based tank truck operator is not adequately certified to access the refueling or cargo loading/unloading dock, or the physical characteristics of the dock cannot accommodate the tank truck, the vessel must relocate for pumpouts. Defaulting this metric to zero eliminates consideration of what can be a high cost to operators. The necessary information can be easily ascertained by speaking with local vessel and pumpout facility operators and included as part of the pumpout facility inventory required in the 312(f)(3) application.
- *Pumpout facilities operate year-round.* Many pumpout facilities that have been identified in previous state NDZ applications as suitable for commercial vessel use have been found to operate seasonally. An input should be required for this criterion.
- *Vessels can schedule a pumpout ahead of time at a facility.* The tugboat, towboat, and barge industry is uniquely transient, with some vessels working regular routes while others are deployed whenever and wherever there is a job available, with only days' advance notice. Because of this, advance scheduling of a pumpout, even from a mobile tank truck, can be impractical.

State Participation in Cost Analysis Tool Information Gathering

AWO understands that EPA has proposed not to require the use of the Tool by the applicant state. However, information specific to the proposed NDZ is an important part of EPA's 312(f)(3) application analysis. AWO believes that states should be required to provide all Tool inputs to EPA as part of a completed application. This will compel states to collaborate with local stakeholders and allow those stakeholders to provide feedback. AWO recommends applicant states contact local vessel operators, pumpout facility operators, ports and terminals, and other local maritime industry organizations such as Harbor Safety Committees. These stakeholders, representing the regulated community, are a valuable source of information as they are intimately familiar with the vessels transiting through the proposed NDZ and the costs

⁷ St. Louis Fed Economic Data. <https://fred.stlouisfed.org/series/WPU10170674> (Accessed 8/9/2022)

and other impacts of NDZ designation. All of the Tool inputs can be collected using these stakeholder engagement methods.

Applications under CWA Section 312(f)(4)(A)

An NDZ under 312(f)(4)(A) may be authorized when “the state’s goal is environmental protection, but either adequate pumpout infrastructure is not available to support an (f)(3) designation or the state prefers that EPA establish the designation through a federal regulation”⁸. AWO appreciates the scope of environmental and economic review that EPA requires as part of this application. However, we are concerned that this explanation of the purpose of Section 312(f)(4)(A) designations encourages states to apply for NDZs under this provision as a way to avoid the infrastructure requirements required by Section 312(f)(3) applications. The statute clearly establishes that the protection and enhancement of the quality of the waters specified in the NDZ application must require a complete prohibition of sewage discharges, and accordingly, Section 312(f)(4)(A) designations have been reserved for waters with significant environmental significance or sensitivity. The 312(f)(4)(A) process should not be a fallback option for states whose subject waters do not meet this criteria, who do not want to engage stakeholders in the consideration of the adequacy and reasonable availability of pumpout facilities, or whose Section 312(f)(3) applications are rejected or returned by EPA to the state for further engagement if there do not seem to be adequate, reasonably available pumpout facilities. EPA should make it clear that applications for an NDZ under Section 312(f)(4)(A) where adequate pumpout facilities are not available should be based on an urgent need for greater environmental protection of the subject waters.

Other Comments

AWO appreciates the breadth of cost considerations that EPA is using to evaluate 312(f)(4) applications, including: upfront costs to retrofit vessels, ongoing costs associated with the use of pumpout facilities and operations and maintenance, financial and economic impacts of the proposed NDZ on small entities, and economic evaluation studies associated with aquatic protected areas. All of this should help ensure that an NDZ approved under this section is based on the urgent need for the environmental protection of the subject waters and balanced with economic impacts on the regulated community. However, we are concerned about the failure to apply the full scope of these cost metrics to Section 312(f)(3) applications.

In its review of cost considerations for Section 312(f)(3) applications, EPA states that it “does not consider costs that cannot be attributed to the no-discharge zone designation or to costs that do not vary based on the adequacy and availability of pumpout facilities,” and therefore, the Cost Analysis Tool does not incorporate estimates of costs to retrofit a vessel to comply with an NDZ. However, in the Considerations of Costs and Benefits for applications under CWA Sections 312(f)(4)(A) and (B), “upfront costs to retrofit vessels, as well as ongoing costs associated with the use of pumpout facilities and operations and maintenance” are included. EPA justifies this difference by asserting its statutory responsibility in considering these applications is different: 312(f)(3) is an infrastructure-based determination and 312(f)(4)(A) and (B) are environment-based determinations. AWO disagrees. The goal of any NDZ is

⁸ *Draft Guidance for Vessel Sewage No-Discharge Zone Applications (Clean Water Act Section 312(f))*, pp. 32.

greater environmental protection for the subject waters. For the regulated community, the compliance costs incurred due to, and therefore attributable to, an NDZ designation are the same regardless of the provision under which the state chooses to apply and include retrofits to install sewage holding tanks. Therefore, we believe that all applications should be evaluated with full consideration of the same costs and economic impact metrics.

Conclusion

Thank you again for the opportunity to submit recommendations on EPA's draft guidance for vessel sewage NDZs. We would be pleased to answer any questions or provide further information as EPA sees fit.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Carpenter". The signature is written in a cursive, flowing style.

Jennifer A. Carpenter
President & CEO