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Brian W. Vahey
Senior Manager – Atlantic Region

October 23, 2020

Mr. Matthew A. Konfirst
Administrator
U.S. Environmental Protection Agency Mid-Atlantic Region
1650 Arch Street
Philadelphia, PA 19103-2029

RE: Maryland—City of Annapolis
and Anne Arundel County Vessel
Sewage No-Discharge Zone—
Tentative Affirmative
Determination (FRL-10013-52-
Region 3)

Dear Mr. Konfirst,

The American Waterways Operators is the national trade association for the U.S. tugboat, towboat and barge industry. Our industry is the largest segment of the nation's 40,000-vessel domestic fleet and moves more than 760 million tons of cargo each year safely and efficiently. This includes more than 80 percent of New England's home heating oil, 60 percent of U.S. export grain and significant bulk and containerized cargoes transported along the Atlantic Coast. On behalf of our more than 300 member companies, thank you for the opportunity to comment on the notice of tentative affirmative determination establishing a no discharge zone (NDZ) for thirteen water bodies located in the City of Annapolis and Anne Arundel County, Maryland.

AWO members are proud to be part of an industry that is the safest, most fuel efficient, and has the smallest carbon footprint of any surface transportation mode. We are deeply committed to building on the natural advantages of marine transportation and leading the development of higher standards of marine safety and environmental protection. In 1994, AWO became the first transportation trade association to adopt a code of safe practice and environmental stewardship for member companies. Today, compliance with a third party-audited safety management system is a condition of AWO membership. This history and these organizational characteristics inform our view of EPA's notice of tentative affirmative determination. We seek to protect the marine environment in which our vessels operate and to ensure a practicable regulatory framework that allows for the continued safe and efficient movement of essential maritime commerce.

As we noted in our comment letter to the petitioners last August, this proposed NDZ for the enumerated Anne Arundel County water bodies does not include waterways that are customarily used by commercial vessels and would not interfere in the operation of barges or towing vessels. We appreciate the efforts that Maryland Department of Natural Resources, the City of Annapolis, and the Severn River Association have made to communicate their planned proposal to maritime stakeholders early in the petition development process and to answer our questions regarding the scope of the proposal.

As EPA states in its tentative affirmative determination, the criteria that the agency must use to make its determination are based on Clean Water Act (CWA) section 312(f) and EPA's implementing regulations found at 40 CFR 140.4. The two primary criteria are: (1) A certifying statement of need by the state that the waters described in the application require greater environmental protection; and (2) demonstration by the state that there are adequate sewage pumpout facilities reasonably available to all vessels operating in the waters described in the application.

In previous communications with EPA, AWO has emphasized the need for the agency to adhere to legal precedent that ensures that environmental benefits of regulations justify the costs of compliance.¹ AWO appreciates and acknowledges the inclusion of a pumpout fee listing in the tentative determination but reiterates that these costs are only a fraction of a complete listing of NDZ compliance costs that may affect commercial vessels. Future NDZ applications may include waterways with a more significant commercial vessel population, and we stress that there are operational costs beyond pumpout fees that should be considered in determining whether pumpout facilities are reasonably available for commercial vessels, including the facility's proximity to commercial navigation channels and routes; capacities and flow rates; and draft and maneuverability issues at the facility.

In order to ensure that EPA has the information needed to completely and comprehensively consider all NDZ implementation and compliance costs, and that the agency's information needs are clearly articulated for states and the regulated community, AWO encourages the EPA to update its controlling 1994 guidance document, "Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials, Volume 1." Specifically, AWO recommends that EPA require information on the methodology used to determine vessel population and usage, a description of listed pumpout facilities' location relative to existing commercial navigation channels and routes, and a detailed account of listed pumpout facilities' design, infrastructure and capacity to ensure they can accommodate the functional requirements of commercial vessels, including: water depth at the facility and any limitations on vessel draft, length or maneuverability in the navigation route to reach the facility; dock size and characteristics including length of berths, height above the waterline, available fendering and any limitations on dock access, including width or height restrictions; structural soundness of docks for large-scale mobile pumpout, if included; and working daily capacity (volume) of the facility and the minimum vessel pump-out flow rate of the facility.

¹ See *Michigan v. EPA*, 576 U.S. 743 (2015)

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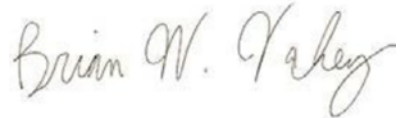
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AWO also urges the agency to take an expansive view of compliance costs in its consideration of future state petitions.

Thank you again for the opportunity to comment on this tentative affirmative determination. We would be pleased to answer any questions or provide further information to assist EPA as the agency continues to refine its criteria for and evaluation of state NDZ applications.

Sincerely,

A handwritten signature in cursive script that reads "Brian W. Vahey". The ink is a light grey or blue color.

Brian Vahey