

In exchange, the United States grants a covenant not to sue, intended to release the City from liability which otherwise would stem from ownership of the Property. The City agrees to pay the purchase price to EPA (\$81,000) and to DOI (\$5,000). The purchase price is in accordance with fair market value of the property as determined by an appraiser and appraisal approved by the Department of Justice. Under the terms of the Agreement and Covenant Not to Sue, the City will also place a restrictive covenant on the land that restricts residential development. In exchange, the City will receive a covenant not to sue for response actions and costs relating to the Site pursuant to Section 107(a) of CERCLA. The City will also receive a covenant not to sue for natural resource damages under CERCLA.

Dated: April 24, 2000.

Nathaniel Scurry,

Acting Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 00-11564 Filed 5-19-00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-6704-3]

New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Notice of Final Affirmative Determination

Notice is hereby given that a final determination has been made by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) 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 Shrewsbury River, County of Monmouth, State of New Jersey. A Notice of Receipt of Petition and Tentative Determination was published in the **Federal Register** on April 3, 2000 and public comments regarding the tentative determination were accepted through May 3, 2000.

Comments were received from four individuals, one supporting and three objecting to the establishment of the Shrewsbury River No Discharge Area. These individuals are as follows:

Philip G. Conner, Crockett Brothers Boatyard, P.O. Box 369, Oxford, Maryland 21654

Shoreway Marine, Inc. Highway 73, West Berlin, New Jersey 08091

Kim Shinn, Raritan Engineering, P.O. Box 1157, Millville, New Jersey 08332
Monmouth County Board of Health, P.O. Box 1255, Freehold, New Jersey 07728-1255

One individual stated that his boating experience on the Manasquan River and the Shark River has been that the pumpouts located in the No Discharge Area are accessible but are not readily available. This individual attempted on five different occasions to have his holding tank pumped out and was not successful. He wonders how EPA and the New Jersey Department of Environmental Protection (NJDEP) intend to enforce an additional No Discharge Area if the agencies have not addressed the current problems on the Manasquan River and the Shark River. In response to these comments, EPA acknowledges that pumpout facilities will occasionally be out of service, but this fact does not require a fundamental change to the No Discharge Area program. The commenter did not provide the specifics regarding these attempted pumpouts, such as whether all five attempts were at the same pumpout, the dates that these attempts occurred or the circumstances which prevented him from using the pumpouts. Another commenter stated that the Shark River pumpouts were not available beginning late August 1999. The commenter stated that this forced boaters to discharge their holding tanks into the Shark River. In response, EPA and NJDEP have attempted to get problems corrected when they are brought to our attention. Also, for the Shrewsbury River, the application documents that all of the existing pumpouts are expected to be available for the entire boating season.

Several commenters objected to the vessel population numbers and the calculations used to estimate the number of pumpouts needed based on the vessel population. They feel that the vessel population at private docks is too low and that peak occupancy rates are too low. The commenters also stated that the equations are old, outdated and need to be reevaluated. In response, the vessel population numbers are based on survey done by the local environmental commissions. These surveys were conducted on the water using visual observations to count the boats at private docks. The methods used to estimate the vessel populations are standard procedures established in the 1994 Clean Vessel Act Grant Program and the 1994 EPA guidance document entitled "Protecting Coastal Waters from Vessel and Marina Discharges" and have been accepted by EPA as valid

numbers. Regarding the equations used to estimate the numbers of pumpouts to service the vessel population in the Shrewsbury, two different methods were used to calculate the number of pumpouts needed, which is between two and four pumpouts. There are five pumpouts currently available and another three facilities have been proposed. Based on the information provided by the commenters, no revision was made to the calculations.

Another comment concerned the lack of dump stations for disposal of waste from portable toilets. In response, EPA notes that the pumpouts which received Clean Vessel Act grant monies came equipped with wand systems. The wands permit the portable toilets to be pumped out in a safe and sanitary manner.

Another commenter asked what a boater returning after 6 p.m., when all the facilities have closed, should do to pump out a holding tank. In response, the boater has three options: they can pump the holding tank prior to the next trip out during business hours; they can pump out at a facility on the Navesink River such as Marine Park which is open 24 hours a day; or they can discharge the holding tank if they are beyond the three mile limit. The same commenter stated that there are many commercial fishing vessels "in the area" that operate year round and questioned how such an operator would pump out in the off season. In response, EPA acknowledges that there are some vessels which operate off season "in the area", but we note that the commenter has not documented that such vessels are active on the Shrewsbury River. The application provided did not identify any off season commercial vessels which are based in or active on the Shrewsbury River.

Another comment recommended that current laws should be enforced by the State of New Jersey and the New Jersey Marine Police instead of proceeding with this No Discharge Area proposal. In response, EPA is obligated to act on the application submitted, and we are without authority to require the state and local applicants to implement alternate approaches.

Another comment relates to the scheduling of a press event for May 11, 2000 while the comment period was still open. In response, the tentative scheduling of the event in advance of a final determination is required due to the busy schedules of EPA and NJDEP senior managers. In the event that a final determination had not been made or that the final determination was to deny the request, the press event would be

canceled, rescheduled or held to explain the grounds for denial.

Another comment concerned a survey of the boats registered in the State of Maryland indicating that 5.2% of the vessels were equipped with either a Type I or Type II Marine Sanitation Device (MSD). This commenter stated that little if any environmental benefit would be gained by elimination of these flow through discharges. In response, EPA contends that elimination of any source of pollutants results in an environmental benefit. This individual also stated that it is a well known fact that the existing, national prohibition on the discharge of untreated vessel sewage waste is not enforced. In response, EPA notes that New Jersey has prosecuted two boat captains criminally for discharging vessel waste. New Jersey conducted an investigation of the fishing fleet operating out of the Belmar Marina and found one boat that was discharging into the Shark River, a designated No Discharge Area. Further, it must be noted that EPA's decision in this matter is limited to the adequacy and availability of pumpout facilities, and these comments are not relevant to this specific decision.

A comment was received that contends the establishment of a No Discharge Area makes the use of Type I and Type II MSDs illegal. In response, this is not the case. The discharge of sewage from any vessels while inside the Area is prohibited. The use of a Type I or Type II MSD is not illegal once outside the No Discharge Area.

One individual advocated enforcing the existing laws, revising the standards for Type I and Type II MSDs to reflect the current state of the art technology and establishment of No Discharge Areas only where scientific evidence shows that boats discharging sewage are the cause of the water quality problems. In response, EPA agrees that existing laws should be enforced. EPA also agrees that technology-based standards should be determined by the best technology available. EPA Headquarters is currently considering a review of the technology for this purpose. We disagree that No Discharge Areas should only be established in areas where boaters have been determined to be the source of water quality problems. EPA supports the reduction of all known sources of pollution to address water quality impairment problems. These sources should include point and non-point sources alike.

One comment received supports the establishment of the No Discharge Area.

This petition was made by the NJDEP in cooperation with the North Coast Regional Environmental Planning

Council (NCREPC), New Jersey Marine Sciences, Marine Trades Association of New Jersey, Monmouth County Planning Board, Monmouth County Environmental Council and Monmouth County Board of Health. Members of the NCREPC include the Borough of Eatontown, the Borough of Fair Haven, the Borough of Little Silver, the City of Long Branch, the Borough of Monmouth Beach, the Borough of Oceanport, the Borough of Red Bank, the Borough of Rumson, the Borough of Sea Bright, the Borough of Shrewsbury, the Township of Shrewsbury, the Borough of Tinton Falls, and the Borough of West Long Branch. Upon receipt of this affirmative determination in response to this petition, NJDEP will completely prohibit the discharge of sewage, whether treated or not, from any vessel in Shrewsbury River in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

The Shrewsbury River is located in Monmouth County, New Jersey, and is part of the Atlantic Coastal Drainage Basin. The Shrewsbury River drains approximately 27 square miles of urban/suburban residential development and agricultural lands. The Shrewsbury River runs easterly from Eatontown, Tinton Falls, and West Long Branch, New Jersey and then joins the Navesink River and empties into Sandy Hook Bay. The No Discharge Area will include the navigable waters of the Shrewsbury River and all its tributaries downstream to the point where the Route 36 Bridge crosses the river. The eastern boundary of the Area is a line from Lat./Long. 73°58'45", 40°22'40" to Lat./Long. 73°58'58", 40°23'04". The western boundary of the Area is at Lat./Long. 74°06'48", 40°19'12".

Information submitted by the State of New Jersey and the Shrewsbury Regional Environmental Planning Council states that there are six existing pumpout facilities at five different locations available to service vessels which use the Shrewsbury River. Atlantis Yacht Club, located at 66 River Avenue, Monmouth Beach, operates a stationary pumpout. The pumpout is available from 8:00 a.m. to 5:00 p.m. beginning April until October and is operated by the marina staff. A \$5.00 fee is charged for the use of the pumpout. Carriage House Marina, located at 1200 Ocean Avenue, Sea Bright, operates a stationary pumpout and a portable pumpout. The pumpouts are available from 9:00 a.m. to 6:00 p.m. beginning May until October and is operated by the marina staff. A fee of \$5.00 is charged for the use of the pumpout. Channel Club Marina, located at Channel Drive, Monmouth Beach,

operates a stationary pumpout. The pumpout is available from 8:00 a.m. to 6:00 p.m. beginning May until October and is operated by the marina staff. No fee is charged for use of the pumpout. Navesink Marina, located at 1410 Ocean Avenue, Sea Bright, operates a stationary pumpout. The pumpout is available from 8:00 a.m. to 5:00 p.m. beginning April until October and is operated by the marina staff. A \$5.00 fee is charged for the use of the pumpout. Oceanport Landing, located at 417 River Street, Oceanport, operates a portable pumpout. The pumpout is available from 8:00 a.m. to 4:30 p.m. beginning April until September and is operated by the marina staff. A \$5.00 fee is charged for use of the pumpout. In the case of slip holders and residents of Oceanport, the \$5.00 fee is waived. None of the facilities have draft restrictions which would exclude boats access to the pumpouts.

Vessel waste generated from the pumpout facilities within the No Discharge Area is discharged into municipal sewer lines and is conveyed to the Northeast Monmouth Regional Sewage Authority (NJDES Permit No. NJ0024520) at 1 Highland Avenue in Monmouth Beach for treatment.

According to the State's petition, the maximum daily vessel population for the waters of Shrewsbury River is approximately 2115 vessels. This estimate is based on (1) vessels docked at marinas and yacht clubs (1303 vessels), (2) vessels docked at non-marina facilities (584 vessels) and (3) transient vessels (228 vessels). The vessel population based on length is 2240 vessels less than 26 feet in length, 700 vessels between 26 feet and 40 feet in length and 175 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that between two and four pumpouts are needed for the Shrewsbury River. As previously stated, five pumpout facilities are currently available to service the boating population. Additionally, three additional pumpouts have applied for pumpout grant funding.

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 Shrewsbury River in the County of Monmouth, New Jersey.

Dated: May 8, 2000.

Jeanne M. Fox,

Regional Administrator, Region 2.

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