



Lake Carriers' Association

The Greatest Ships on the Great Lakes

JAMES H. I. WEAKLEY, PRESIDENT

440-333-9995 • weakley@lcaships.com

October 28, 2013

Via E-Mail: chang.moses@epa.gov

Mr. Moses C. Chang, Ph.D
Aquatic Biologist
U.S. Environmental Protection Agency
290 Broadway, 24th Floor
New York, NY 10007-1866

**Re: Comments on Tentative Affirmative Decision for NYS Lake Erie NDZ
[FRL-9901-45-Region2]**

Dear Dr. Chang:

Lake Carriers' Association ("LCA") represents 17 American companies that operate 57 U.S.-flag vessels ("lakers") on the Great Lakes and carry the raw materials that drive the nation's economy: iron ore and fluxstone for the steel industry, aggregate and cement for the construction industry, coal for power generation, as well as salt, sand and grain. Collectively, our members can transport more than 115 million tons of dry-bulk cargo per year and employ more than 1,600 men and women, all of whom are U.S. citizens or legally admitted aliens, and provide annual wages and benefits of approximately \$125 million. In turn, the cargos our members carry generate and sustain more than 103,000 jobs in the eight Great Lakes and have an economic impact of more than \$20 billion.

LCA's members have long served the Port of Buffalo (which, for statistical purposes, includes Lackawanna and Tonawanda). Prior to the recession, our members annually delivered nearly 900,000 tons of grain, limestone and liquid-bulk products to the Port of Buffalo. Even as the economy struggles to right itself, they are still moving more than 600,000 tons of these and other commodities to that port.

LCA appreciates the opportunity to comment on the republished tentative determination to establish a "Vessel Waste No Discharge Zone" for New York State's portion of Lake Erie. See 78 Fed. Reg. 59,681 (Sept. 27, 2013). We respectfully oppose the proposed designation and believe the petition must be rejected. We comment in depth below, but to summarize:

1. A finding of adequacy is required to establish a No Discharge Zone ("NDZ") under 33 U.S.C. § 1322(f)(3), and that finding must be supported by the record. Neither the original New York State Department of Environmental Conservation ("NYDEC") petition nor the U.S. Environmental Protection Agency's ("EPA's") republished proposed designation provides any information demonstrating that there are adequate facilities reasonably available to service commercial vessels used by LCA members engaged in waterborne commerce. Because such services must be

20325 Center Ridge Rd., Ste. 720 ♦ Rocky River, OH 44116 ♦ www.lcaships.com

The Association Representing Operators of U.S.-Flag Vessels on the Great Lakes Since 1880

AMERICAN STEAMSHIP COMPANY ♦ ANDRIE INC. ♦ ARMSTRONG STEAMSHIP COMPANY ♦ BELL STEAMSHIP COMPANY
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INLAND LAKES MANAGEMENT, INC. ♦ THE INTERLAKE STEAMSHIP COMPANY ♦ LAKES SHIPPING COMPANY
LAKE MICHIGAN CARFERRY SERVICE ♦ PERE MARQUETTE SHIPPING ♦ PORT CITY MARINE SERVICES ♦ PORT CITY STEAMSHIP SERVICES
SOO MARINE SUPPLY, INC. ♦ UPPER LAKES TOWING COMPANY, INC. ♦ VANENKEVORT TUG & BARGE, INC.

available to all vessels operating in the affected waters, the petition must be rejected and the proposed designation denied.

2. Because the Marine Sanitation Devices ("MSDs") on our members' vessels are approved by the U.S. Coast Guard and result in discharges that present no threat to human life or the marine environment, LCA vessels should be allowed to discharge where necessary in New York State's portion of Lake Erie.

In-Depth Comments

I. The petition does not provide information verifying that pump-out services are reasonably available for commercial vessels engaged in waterborne commerce.

A. *The law and regulations require certain findings and information before a petition may be accepted or a tentative determination proposed.*

On December 6, 2012, the EPA completed its review of the NYDEC's original petition to establish a New York NDZ and issued a tentative affirmative determination in the Federal Register. 77 Fed. Reg. 72,856. In response to "significant comments" received during the 30-day public comment period, "the EPA and New York State collected additional information to demonstrate the reasonable availability of pumpout services for commercial vessels that use the New York area of Lake Erie." 78 Fed. Reg. at 59,681. Without any indication that the original petition was sent back to NYDEC or that NYDEC submitted a new or revised petition, EPA "republish[e]d its tentative affirmative determination with the additional information included." *Id.*

In the republished determination, EPA clarifies that the NYDEC's petition was filed pursuant to 33 U.S.C. § 1322(f)(3), which provided a mechanism by which "the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters." 78 Fed. Reg. at 59,682, 59,684.¹ However, because NYDEC's did not submit a revised petition, many of the same issues raised in LCA's comments on the original petition still apply. Furthermore, it is unclear from the Federal Register notice whether the State actually participated in the collection of the additional information EPA provided in the republished determination or even sought republication of the affirmative determination.

Section 312(f)(3) requires that the EPA determine that "adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply." 33 U.S.C. § 1322(f)(3) (emphasis added). Under the applicable regulations, a section 312(f)(3) petition must contain the following information:

- (1) A certification that the protection and enhancement of the waters described in the petition requires greater environmental protection than the applicable Federal standard;
- (2) A map showing the location of commercial and recreational pump-out facilities;
- (3) A description of the location of pump-out facilities within waters designated for no discharge;

¹ The original NYDEC petition claimed that the petition was also brought under section 312(f)(4)(B), which has separate grounds for approval.

- (4) The general schedule of operating hours of the pump-out facilities;
- (5) The draught requirements on vessels that may be excluded because of insufficient water depth adjacent to the facility;
- (6) Information indicating that treatment of wastes from such pump-out facilities is in conformance with Federal law; and
- (7) Information on vessel population and vessel usage of the subject waters.

40 C.F.R. § 140.4(a) (2012) (emphasis added). See also EPA, Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials, Vol. I. Establishing No Discharge Areas under § 312 of the Clean Water Act at § 4 (Aug. 1994). Based on the required information submitted by the State, the EPA will determine whether adequate facilities are reasonably available. *Id.*

NDEC's original petition did not provide the information required under the applicable regulations and does not provide any information to support a determination by EPA that adequate facilities are reasonably available for the safe and sanitary removal and treatment of sewage from all vessels operating in New York State's portion of Lake Erie. As explained more fully below, the republished tentative determination also does not accomplish this task.²

B. The sewage pumpout services listed in the republished tentative determination are not capable of servicing large commercial vessels.

In response to comments on the original tentative determination noting that EPA did not identify any facilities that were adequate or reasonably available to serve large commercial vessels, EPA provided a list of four additional sewage pump-out services it determined to be capable of servicing these vessels. 78 Fed. Reg. at 59,684. These four vendors were apparently identified based on "information submitted in the petition, and by companies that provide mobile pumpout services," and a partial list³ of the criteria submitted by commenters for determining whether such pump-out trucks would be able to service their vessels. 78 Fed. Reg. at 59,683. Based on all of this information, EPA "determined that four mobile pumpout companies, with approximately ten pumpout trucks . . . are able to provide pumpout services to large commercial vessels at the ports of Buffalo and Lackawanna." *Id.* The public record for this action does not include any communications with or information provided by these vendors to support the EPA's determination that they are reasonably available to service large commercial vessels in the NDZ.

² Information regarding the availability of treatment facilities should be presented in the state's petition, not in the tentative affirmative determination. 33 U.S.C. § 1322(f)(3).

³ The tentative affirmative determination notes that "two commenters submitted criteria for determining whether a pumpout truck is able to service their vessels. Those criteria were taken into consideration, and **were partially incorporated** into the list of final criteria the EPA used to determine the reasonable availability of those services." 78 Fed. Reg. at 59,683 (emphasis added). EPA does not explain why all of the criteria necessary to service a vessel would not be taken into consideration in making a final determination. Under the Administrative Procedure Act, a notice of proposed rulemaking must "provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully." *Fla. Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988); 5 U.S.C. § 553(b). See also *Appalachian Power Co. v. EPA*, 249 F.3d 1032 (D.C. Cir. 2001) (rejecting agency action where the agency failed to respond to significant comments and failed to justify its actions or offer sufficient explanation for them); *American Mining Congress v. EPA*, 907 F.2d 1179 (D.C. Cir. 1990) (agency's final rule failed to articulate a rational connection between the data on which it relied and its decision to reject certain of the petitioning companies' challenges).

Because the list was developed based on only a "partial" list of the criteria identified by commenters as being necessary for determining whether such pump-out services were actually capable of servicing large commercial vessels, LCA contacted and sent a survey⁴ to each vendor in order to evaluate their capabilities in this area. As discussed at length in section II.B of LCA's comments on the original tentative affirmative determination,⁵ determining if providers are reasonably available requires an understanding of the vessels to be serviced and their physical and operational constraints. The survey LCA sent to the listed vendors sought to evaluate the vendors' ability to meet the essential servicing criteria set forth in LCA's original comments.

The information provided by these contacts demonstrates that none of the vendors listed in the tentative affirmative determination are actually able to service LCA member vessels. Three of the companies declined to service the vessels outright (two in writing, one orally), and another, although indicating that they would be willing to service vessels, does not meet the minimum criteria. In response to follow-up questions asking that the vendor fill in information that was missing from their first response to the survey, that vendor indicated that it has no response plan in place to respond to a spill during the pumping process and that they do not need a spill response plan because they "haven't had one in 46 years." This vendor also confirmed that it does not have any sewage pumping training programs in place.⁶

Furthermore, this vendor has only three pump-out trucks. In the republished tentative determination, EPA states that this vendor has three pump-out trucks - two 4,000 gallon trucks and one 2,500 gallon truck - available 7:00 am to 5:00 pm, Monday through Friday, or by appointment. 78 Fed. Reg. at 59,684. In response to LCA's survey, this vendor indicated that it would need three hours advance notice to service a vessel. However, this vendor could not provide any guarantee that a truck would be available when a vessel calls, adding to the already astronomical costs incurred by LCA member vessels while in port. As noted in section II.B of LCA's comments on the original tentative determination, members' vessels have hourly operating costs that can approach \$5,000 and operate round-the-clock. The capacity of the holding tank(s) on LCA members' vessels trading to the Port of Buffalo (and other similar vessels, such as those from Canada) ranges from 4,000 to 111,000 gallons. Waiting for an available pump-out truck - which will likely not have the tank capacity to empty the vessel's MSD effluent in one trip - does not establish that adequate pump-out services are reasonably available to the large commercial vessels that called on the Port of Buffalo 80 times in 2010, for example.

This information demonstrates that none of the four vendors identified in the tentative affirmative determination have reasonably available adequate facilities for the safe and sanitary removal and treatment of MSD effluent from large commercial vessels in the proposed NDZ. In fact, presenting a list of services it believes are adequate without actually confirming that the companies are actually, in reality, able to serve such vessels violates the Administrative Procedure Act. Respectfully, it is EPA's responsibility under the law to make a specific finding, supported by the record, that sewage pump-out services are available to serve all vessels in the proposed NDZ, including LCA-type vessels. It must, under 5 U.S.C. § 706(2)(A), make "a reasoned decision based on 'reasonable extrapolations from some reliable evidence,'" *Natural Resources Defense Council v. EPA*, 902 F.2d 962, 968 (D.C. Cir. 1990). The agency must also examine "the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection' between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United*

⁴ The returned surveys are included here at Attachment A.

⁵ LCA's comments on the original tentative affirmative determination are included here at Attachment B and are incorporated by reference.

⁶ See Attachment A.

States, 371 U.S. 156, 168 (1962)) (emphasis added). The APA obligates EPA to make a decision that is consistent with and not counter to the evidence before it. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Bowman Transp. Inc. v. Arkansas-Best Freight System*, 419 U.S. 281, 285 (1974)).

Neither NYDEC nor EPA has provided the required data demonstrating that “adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.” 77 Fed. Reg. at 72,856 (emphasis added).

C. EPA has historically declined to approve petitions that lack the information requested by LCA.

When the State of Ohio made application to EPA Region 5 to declare its Lake Erie waters a “No Discharge Zone for Vessel Sewage” in 2004, the state provided a list of 133 licensed septic haulers in the counties that front on Lake Erie. See 68 Fed. Reg. 53,607 (Aug. 31, 2004). LCA then surveyed those companies. It turned out that this list was defective for a number of reasons. See results attached to original comments included here at Attachments B). In summary, the list of 133 haulers was inflated to begin with as it included 28 companies that were listed twice or even three times because they are either licensed in more than one county or have identical but repeated listings in one county. Forty-four companies either declined to pump out vessels or are not available 24/7. Six more of the companies on Ohio’s list either never returned multiple phone calls or were otherwise unreachable. It is not unreasonable to consider these companies unqualified. Only 55 companies were technically available to service commercial vessels engaged in waterborne commerce but deeper analysis clearly illustrated employing many of these companies would have been problematic at best. The vessels then calling on Ohio had holding tanks with capacities that ranged from 10,000 to 40,000 gallons. The pump-out trucks had capacities that generally ranged from 1,600 to 4,000 gallons. The largest truck we could identify had a capacity of 7,000 gallons.

Most of those 55 companies had just one or two trucks. Assuming that only one truck was available while the vessel was in port, it would take anywhere from 2.6 to 6.25 loads to empty a vessel with 10,000 gallons of treated effluent in its holding tank(s). For a vessel with 30,000 gallons on board, the number of loads ranged from 7.5 to nearly 19. Each time the truck becomes full, it must drive to the location certified to accept the effluent, pump out, and then return for another load, a time-consuming process that is unacceptable both from a cost and efficiency viewpoint. As noted, vessel operating costs can approach \$5,000 per hour. But equally important is the impact those additional idle hours would have on the vessel’s seasonal carrying capacity. Great Lakes shipping has to be a 24/7 industry because our members have only about 10 months to deliver their customers’ annual requirements. The locks at Sault Ste. Marie, Michigan, open on March 25 and close on January 15. An early opening or extension of the closing date is granted only if the need for cargo is critical. Below the locks, a few vessels get underway in early March and some will sail until the end of January, but the vessels have to be taken out of service for maintenance and modernization, and the most efficient way to do that is go to the shipyards while ice has closed the Lakes.

Given that EPA determined this sort of capacity was insufficient with respect to the State of Ohio’s portion of Lake Erie, it is unclear why it would conclude that even lesser availability was sufficient for the New York portion. Furthermore, pumping out would be an additional expense that would be on top of the \$10,000 to \$40,000 the vessel operator has already invested in an MSD so the vessel can discharge treated effluent into the Great Lakes.

There is no evidence in the record to support the conclusion that there are reasonably available adequate sewer pump-out trucks to serve LCA vessels in the New York portion of Lake Erie, as specifically required by 33 U.S.C. § 1322(f)(3). See rational basis cases cited in section I.B, *supra*. See also *Appalachian Power Co. v. EPA*, 135 F.3d 791 (D.C. Cir. 1998) (court ruled that the EPA acted arbitrarily and capriciously in reclassifying certain retrofitted cell burners as wall-fired boilers because it had not justified its actions and, therefore, the court remanded and directed the EPA to reconsider its ruling or offer a more adequate explanation); *Natural Res. Def. Council v. EPA*, 858 F.2d 156 (D.C. Cir. 1988) (requiring some independent analysis by the agency prior to adoption of a rule). Here, there are no facts to support EPA's tentative affirmative determination.

II. The EPA should not impose an NDZ on commercial vessels equipped with a U.S. Coast Guard-approved Marine Sanitation Devices (MSD) because the effluent discharged after treatment poses no threat to human life or the environment.

As stated in section III of our comments on the original tentative affirmative determination,⁷ LCA reiterates that the NDZ on commercial vessels operating in the New York portion of Lake Erie is unnecessary and would have no beneficial impact on the environment.

NYDEC's original petition states on page 9:

Microbial pathogens, one of the harmful elements of raw sewage, degrade water quality and pose direct threats to human health. Wastes treated by marine sanitation devices and discharged to surface water do not pose the same level of pathogen risk as raw sewage, but they contain chemical additives, such as formaldehyde, phenols, and chlorine, all of which threaten public health and the marine environment.

On page 10, the petition states:

While the discharge of untreated sewage wastes from vessels is prohibited within all the State's waters, in the absence of an NDZ designation, federal law allows the discharge of wastes treated by federally approved marine sanitation devices.

It does not appear that these comments are focused at all on LCA type vessels which do not discharge either untreated or raw sewage, nor do they contribute to the concerns that are the basis for the original NYDEC petition. Federal standards for MSDs are very stringent and the units on our members' vessels meet and are often even more stringent than those thresholds. Discharging effluent treated by a U.S. Coast Guard approved MSD poses no threat to public health and the marine environment. Therefore, our members should be permitted to discharge effluent in New York's Lake Erie waters, particularly in light of the fact that EPA and NYDEC have been unable to identify any sewage pump-out services capable of servicing large commercial vessels in the proposed Lake Erie NDZ.

III. Conclusion.

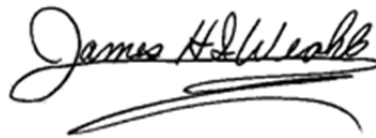
Because this Section 312 designation is for a specific portion of a water body within a specific state's jurisdiction, and does not require consideration of the availability of pump-out services in other locations in the same water body but outside the requesting state's jurisdiction, it is imperative that the Section 312 statutory requirement for reasonably available, adequate pump-out services for all vessels

⁷ See Attachment B.

operating in the specified NDZ be strictly adhered to. It would be inconsistent with the statute for EPA to approve an NDZ for the New York State portion of Lake Erie based on an assumption that other areas within Lake Erie outside New York State's jurisdiction may have pump-out facilities available (and for which no evidence exists, in any event). Stated differently, the statute does not authorize EPA to say "there may not actually be any pump-out services here, but that's okay, there might be some elsewhere to take up the slack." Were it to do so, EPA could effectively and improperly create NDZs for every lake, with no pump-out services available anywhere. As such, it is imperative that EPA follow the statute and ensure the availability of adequate pump-out services in the proposed Lake Erie NDZ for LCA member vessels.

For all of these reasons, the petition must be denied and, at least as respect to LCA member vessels, a No Discharge Zone for the New York State portion of Lake Erie may not be designated under Section 312.

Very respectfully,

A handwritten signature in black ink, appearing to read "James H. I. Weakley". The signature is written in a cursive style with a prominent flourish at the end.

James H. I. Weakley
President

Enclosures: Attachments A-B

Attachment A

Lake Carriers' Association/Canadian Shipowners Association

Survey of Companies' Adequacy to Pump-Out Marine Sanitation Devices On U.S.- and Canadian-Flag Vessels Trading to/from Ports in New York's Lake Erie Waters

1. Do you want to service commercial vessels? Yes No
2. Are you available 24/7 from late March until mid-January? Yes No
3. How much advance notice do you need to service a vessel? 3 hours
4. How many trucks do you have and what are their individual capacities?
2-4000 gallon trucks
1-2500 gallon trucks
5. How many hoses do you have and what are their lengths?
900 ft of hose
6. Are hoses tested once per year to 1 1/2 times working pressure. Yes No. If Yes, date and pressure to which hoses were tested must be stenciled on the hoses.
7. How long does it take for a truck to fill its tank, take the effluent to the disposal facility, and return to the dock? 1 hours
8. Do your trucks have sufficient headpump pressure to lift the effluent as much as 45 feet (for vessels that are not equipped to pump off effluent) Yes No
9. Are the trucks' couplings compatible with shipboard couplings? Yes No
10. Is your insurance sufficient to cover damages to the vessel and/or dock? Yes No
11. Do your employees have Harbor and Longshoremen's Insurance? Yes No
12. Do your employees have valid TWIC cards? Yes No
13. Do you have access agreements with terminals in Buffalo and Lackawanna? Yes No
14. In the event of a spill, what's your plan of action and who is responsible for what? Please attach a detailed response plan.
15. Please attach proof of employees' training and certifications.

Please e-mail or fax completed survey and attachments to:

Katie Gumeny
Lake Carriers' Association
gumeny@lca ships.com
Fax: (440) 333-9993

Lake Carriers' Association/Canadian Shipowners Association

Survey of Companies' Adequacy to Pump-Out Marine Sanitation Devices
On U.S.- and Canadian-Flag Vessels Trading to/from Ports in New York's Lake Erie Waters

Macken Services

1. Do you want to service commercial vessels? Yes No
 2. Are you available 24/7 from late March until mid-January? Yes No
 3. How much advance notice do you need to service a vessel? **3** hours
 4. How many trucks do you have and what are their individual capacities? **2 4,000 gallon trucks, one 2,500 gallon truck.**
 5. How many hoses do you have and what are their lengths? **900 feet of hose.**
 6. Are hoses tested once per year to 1 ½ times working pressure. Yes No. If Yes, date and pressure to which hoses were tested must be stenciled on the hoses.
 7. How long does it take for a truck to fill its tank, take the effluent to the disposal facility, and return to the dock? **1** hours
 8. Do your trucks have sufficient headpump pressure to lift the effluent as much as 45 feet (for vessels that are not equipped to pump off effluent) Yes No
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 14. In the event of a spill, what's your plan of action and who is responsible for what? Please attach a detailed response plan. **Never had one in 46 years.**
 15. Please attach proof of employees' training and certifications. **There is no training for pumping for pumping sewage.**
-

Please e-mail completed survey and attachments to:

Glen Nekvasil Vice President Lake Carriers' Association nekvasil@lcahips.com	Etienne Seguin-Bertrand Technical Advisor, Marine Operations Canadian Shipowners Association seguin-bertrand@shipowners.ca
---	---

Katie Gumeny

From: bsell@balltoiletandseptic.com
Sent: Monday, September 30, 2013 1:19 PM
To: Katie Gumeny
Subject: RE: Survey of Companies' Adequacy to Pump-Out Marine Sanitation Devices

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Karen- after speaking with my manager she has informed us this survey would not pertain to our services. This is out of our capabilities.

Thank You
Bianca

----- Original Message -----

Subject: Survey of Companies' Adequacy to Pump-Out Marine Sanitation Devices

From: Katie Gumeny <gumeny@lccaships.com>

Date: Fri, September 27, 2013 11:51 am

To: "BSell@BallToiletandSeptic.com" <BSell@BallToiletandSeptic.com>

Dear Bianca,

Per our conversation earlier today, I have attached the survey that will help our member companies determine whether your company is able to service their vessels. If you should have any questions, please do not hesitate to contact me at (440) 333-9997 or gumeny@lccaships.com.

Thank you in advance for your help in this matter.

Sincerely,

Katie Gumeny
Lake Carriers' Association
20325 Center Ridge Road
Suite 720
Rocky River, OH 44116

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**WESTERN NEW YORK SEPTIC TANK CLEANING COMPANY
3045 DANIELS ROAD
WILSON, NEW YORK 14172
716-751-9611
FAX NUMBER 751-0520
FAX COVER SHEET**

DATE: October 9, 2013

TO: Katie

COMPANY: Lake Carriers Assoc.

FAX NUMBER: 440-333-9993

NUMBER OF SHEETS:

Katie:

After reviewing the document you sent us, George has decided we cannot do the job that you inquired about. There are some areas that do not apply to us. We are sorry we cannot accommodate you at this time.

Thank you for considering us.

Mary Ann Manfre

WESTERN NEW YORK SEPTIC

Attachment B



Lake Carriers' Association

The Greatest Ships on the Great Lakes

JAMES H. I. WEAKLEY, PRESIDENT

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January 7, 2013

Via E-Mail: chang.moses@epa.gov

Mr. Moses C. Chang, Ph.D
Aquatic Biologist
U.S. Environmental Protection Agency
290 Broadway, 24th Floor
New York, NY 10007-1866

**Re: Comments on Tentative Affirmative Decision for NYS Lake Erie NDZ
[FRL-9758-3]**

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LCA appreciates the opportunity to comment on the tentative determination to establish a "Vessel Waste No Discharge Zone" for New York State's portion of Lake Erie. See 77 Fed. Reg. 72,856 (Dec. 6, 2012). We respectfully oppose the proposed designation and believe the petition must be rejected. We comment in depth below, but to summarize:

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2. Neither the NYDEC petition nor the EPA proposed designation contains information demonstrating that the agency has sufficient knowledge of vessel characteristics and shipboard and shoreside conditions to make a determination that adequate facilities/service providers are reasonably available to serve the vessels operated by LCA members.
3. Because the Marine Sanitation Devices ("MSDs") on our members' vessels are approved by the U.S. Coast Guard and result in discharges that present no threat to human life or the marine environment, LCA vessels should be allowed to discharge where necessary in New York State's portion of Lake Erie.

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- (1) A certification that the protection and enhancement of the waters described in the petition requires greater environmental protection than the applicable Federal standard;
- (2) A map showing the location of commercial and recreational pump-out facilities;

¹ LCA notes that the NYDEC petition also claims that the petition is brought under section 312(f)(4)(B). The EPA notice, however, expressly states that the State is seeking a determination by EPA only under Section 312(f)(3). See 77 Fed. Reg. at 72,856. Each section has separate grounds for approval. Section 312(f)(3) requires a showing of available facilities, while section 312(f)(4)(B) does not. LCA is, given the limited time given for comments and EPA's public notice, limiting its comments on this proposal as a 312(f)(3) petition. Under the Administrative Procedure Act, a notice of proposed rulemaking must "provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully." *Fla. Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988); see also 5 U.S.C. § 553(b); *Shell Oil Co. v. EPA*, 950 F.2d 741, 760-761 (D.C. Cir. 1991) (EPA cannot bootstrap notice from a comment). If the agency believes that the petition should be treated as a 312(f)(4)(B) petition, then it must provide both an appropriate notice and a record for comment and, further, provide sufficient time for considering the facts that might underlie an alternative petition.

- (3) A description of the location of pump-out facilities within waters designated for no discharge;
- (4) The general schedule of operating hours of the pump-out facilities;
- (5) The draught requirements on vessels that may be excluded because of insufficient water depth adjacent to the facility;
- (6) Information indicating that treatment of wastes from such pump-out facilities is in conformance with Federal law; and
- (7) Information on vessel population and vessel usage of the subject waters.

40 C.F.R. § 140.4(a) (2012) (emphasis added). See also EPA, Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials, Vol. I. Establishing No Discharge Areas under § 312 of the Clean Water Act at § 4 (Aug. 1994). Based on the required information submitted by the State, the EPA will determine whether adequate facilities are reasonably available. *Id.*

NYDEC's petition does not provide the information required under the applicable regulations and does not provide any information to support a determination by EPA that adequate facilities are reasonably available for the safe and sanitary removal and treatment of sewage from all vessels operating in New York State's portion of Lake Erie. EPA is required to provide a list of adequate facilities reasonably available when it proposes to identify a NDZ, otherwise affected entities are unable to comment meaningfully on EPA's proposed tentative finding that such facilities are adequate and reasonably available. As noted above, EPA's notice of its tentative decision did not identify any facilities that are adequate or reasonably available for LCA vessels.

In order to comment meaningfully on the petition, it is essential that LCA be provided with a list of facilities EPA believes are reasonably available to remove and treat sewage from LCA vessels that load and unload at terminals in the proposed area. "Integral" to the notice requirement "is the agency's duty 'to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules. . . . An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.'" *Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 199 (D.C. Cir. 2007) (quoting *Solite Corp. v. EPA*, 952 F.2d 473, 484 (D.C. Cir. 1991) (*per curiam*) (quoting *Conn. Light & Power Co. v. NRC*, 673 F.2d 525, 530-31 (D.C. Cir. 1982))); see also *Kennecott Corp. v. EPA*, 684 F.2d 1007, 1017-20 (D.C. Cir. 1982); *Sierra Club v. Costle*, 657 F.2d 298, 334, 397-98 & n.484 (D.C. Cir. 1981)). "[T]he most critical factual material that is used to support the agency's position on review must have been made public in the proceeding and exposed to refutation." *Air Transp. Ass'n of Am. v. FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999) (quoting *Ass'n of Data Processing Serv. Orgs. v. Bd. of Governors of the Fed. Reserve Sys.*, 745 F.2d 677, 684 (D.C. Cir. 1984)) (emphasis in original). Failure to provide this information renders the petition itself invalid and, further, would render any final determination invalid as well both because it denies LCA the opportunity to comment on the core basis for the proposed action, and because it fails to meet the substantive requirements of the applicable laws and regulations. See 40 C.F.R. § 140.4 and 33 U.S.C. § 1322(f)(3). The lack of this information also precludes EPA from concluding that adequate facilities are reasonably available to all vessels operating in the proposed NDZ.

The failure to identify facilities EPA believes are reasonably available to remove and treat sewage from LCA vessels operating in New York State's portion of Lake Erie violates applicable law and regulations and prevents affected entities like LCA members from commenting on the proposal in any meaningful way. The failure of an agency to follow its own rules where it directly affects third parties is unlawful. See *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures."); *Chiron Corp. v. Nat'l Transp. Safety Bd.*, 198 F.3d 935, 944 (D.C. Cir. 1999) ("Manuals or procedures may be binding on an agency when they affect

individuals' rights."); *Mass. Fair Share v. Law Enforcement Assistance Admin.*, 758 F.2d 708, 711 (D.C. Cir. 1985) ("It has long been settled that a federal agency must adhere firmly to self-adopted rules by which the interests of others are to be regulated."); *Nat'l Small Shipments Traffic Conference, Inc. v. ICC*, 725 F.2d 1442, 1449 (D.C. Cir. 1984) (refusing to enforce a procedural rule against an agency where it "was not designed to protect either individual rights or wards of the federal government."). The Court of Appeals "has been careful to distinguish between procedural rules benefitting the agency . . . and procedural rules benefitting the party otherwise left unprotected by agency rules . . ." *Lopez v. Fed. Aviation Admin.*, 318 F.3d 242, 247 (D.C. Cir. 2003). Only the latter can be enforced against the agency. Procedural rules regarding an agency's treatment of its employees commonly fall within this category. See *Doe v. Hampton*, 566 F.2d 265, 280-81 (D.C. Cir. 1977) ("It is, of course, well-established that an agency must abide by its own regulations in effecting the removal of one of its employees.") (citing *Vitarelli v. Seaton*, 359 U.S. 535 (1959); *Service v. Dulles*, 354 U.S. 363 (1957); *Mazaleski v. Treusdell*, 562 F.2d 701 (D.C. Cir. 1977)). The Court of Appeals understands this line of cases regarding the enforceability of procedural rules to be entirely reconcilable with the cases concerning the enforceability of improperly promulgated legislative rules. See *Vietnam Veterans of America v. Secretary of the Navy*, 843 F.2d 528, 538 (D.C. Cir. 1988) ("[O]ur rule/policy exegesis is not inconsistent with the rule that agencies must follow their own procedures.") (citing *Morton*, 415 U.S. at 235); *id.* ("Internal procedures, like policy statements, are exempt from the coverage of § 553. The exemption is quite independent of whether the procedures will be binding.").

B. Neither the NYDEC petition nor the EPA proposal provided the information legally required to designate a NDZ.

Neither NYDEC nor EPA has provided a list of companies that can service commercial vessels engaged in waterborne commerce – this despite the fact EPA's own regulations require that they be identified. 40 C.F.R. § 140.4(a). By EPA's own admission, the List of Pump-outs in the Lake Erie NDZ Proposed Area constitutes facilities that are "available for use by recreational and small commercial vessels." 77 Fed. Reg. at 72,857. The Federal Register notice further states that "there are no fixed commercial vessel pump-out facilities at the Ports of Buffalo or Lackawanna." *Id.*

The Federal Register notice then states that "information gathered from the petition indicated that mobile pump-out services are available for hire, including septic waste haulers or pump-out trucks, which can service the [commercial] vessels while they are docked in either port." *Id.* (emphasis added). This conclusion is reportedly based on statements from "representatives of the Port of Buffalo." NYDEC, Vessel Waste No Discharge Zone Designation Petition for Lake Erie, New York State Portion at 21 (July 26, 2012). But no one who allegedly provided that information was identified, nor were the specific entities that are claimed to exist identified as required by regulation. In the short time that LCA has been given to comment on this proposal, it contacted Gateway Trade Center in Buffalo, New York, and asked if the port had a list of companies that could pump out commercial vessels engaged in waterborne commerce, but as of this writing, we have not received a response. This issue is discussed in greater detail in section E below.

C. LCA has repeatedly requested a list of companies that can service commercial vessels engaged in waterborne commerce to no avail.

EPA has considered the NYDEC petition since July 26, 2012. The notice appeared in the Federal Register on December 6, 2012, and just 30 calendar days, during a holiday season, was given for public comment. When LCA noted the lack of any vendors that appeared capable of servicing LCA members, we immediately and repeatedly contacted EPA and requested the required information. A list of our contacts and the agencies' responses are below. No information has been provided other than a *pro forma* acknowledgement that we requested the information.

From: Glen Nekvasil
Sent: Thursday, December 06, 2012 1:26 PM
To: 'Chang.Moses@epamail.epa.gov'
Cc: James H. I. Weakley; Katie Gumeny
Subject: NY Ban on Discharge of Sewage, Treated or Untreated, from all vessels in its Lake Erie waters
Importance: High

Moses:

Per our conversation of a few minutes ago, can you please provide me the list of companies New York State says are available to pump-out sewage from large commercial vessels? We need to verify their capabilities before commenting. When Ohio proposed such a ban, quite a few of the companies the state thought could handle freighters were in fact quite inadequately equipped and staffed. As I said, one company just provided portapotties. Others were not available 24-7. This is critical; our vessels have operating costs that can approach \$5,000 per hour. Others did not have enough capacity or hoses long enough to stretch down a dock (it's not always possible for a truck to drive right up to the vessel).

Thank in advance,

Glen

Glen G. Nekvasil
Vice President
Lake Carriers' Association
20325 Center Ridge Rd.
Suite 720
Rocky River, OH 44116
Phone: 440-333-9996
Cell: 216-702-6360

LCA waited several days, but when the list was not forthcoming, Mr. Nekvasil e-mailed Mr. Chang again on December 10 and left a voice mail on December 11.

From: Glen Nekvasil <Nekvasil@lcaships.com>
To: Moses Chang/R2/USEPA/US@EPA
Date: 2012/12/10 上午 07:31
Subject: RE: Lake Erie No Discharge Zone FR Notice Link

Hi Moses, when will we have the list of mobile pump-out providers? The holidays fast approach and we have a lot of questions to ask these folks.

Thanks,

Glen

In response, LCA received this e-mail:

From: Chang.Moses@epamail.epa.gov [mailto:Chang.Moses@epamail.epa.gov]
Sent: Wednesday, December 12, 2012 7:16 AM
To: Glen Nekvasil
Cc: Saporita.Chris@epamail.epa.gov; Josilo.Michelle@epamail.epa.gov; Jeff Myers
Subject: RE: Comments on Lake Erie No Discharge Zone FR Notice

Hi Glen,

Thank you for your phone message regarding EPA's tentative affirmative determination on the Lake Erie No Discharge Zone petition (77 FR 72856). Please note that the determination will not be final until the public has had a chance to comment, and EPA will respond to those comments in its final determination. You are welcome to submit any relevant comments, per the instructions in the Federal Register notice, prior to the end of comment period, which is January 7, 2013.

Regards,

Moses C. Chang, Ph.D.
Aquatic Biologist
U.S. EPA
290 Broadway, 24th Floor
New York, N.Y. 10007-1866
Phone: 212 637 3867
Fax: 212 637 3889

Since the response did not even acknowledge our request, we emailed Mr. Chang again.

From: Glen Nekvasil
Sent: Wednesday, December 12, 2012 7:24 AM
To: 'Chang.Moses@epamail.epa.gov'; James H. I. Weakley
Cc: Saporita.Chris@epamail.epa.gov; Josilo.Michelle@epamail.epa.gov; Jeff Myers
Subject: RE: Comments on Lake Erie No Discharge Zone FR Notice
Importance: High

Moses, thank you, but what I need to know is on what basis NY has determined there are sufficient mobile providers. They must have a list. We want to verify that these companies can service our vessels. When we went thru this exercise with Ohio, many of the companies they considered capable were in fact not. Trucks didn't have enough capacity, hoses not long enough to get down to a ship....

When we spoke the first time, you said you'd get the list. If the EPA does not have it, please tell me who I should contact at NYDEC. Is it Mr. Myers, who you've copied? With the holidays fast approaching, LCA may have no choice but to seek an extension on the comment period unless we can review the list in the near future.

Very Respectfully,

Glen Nekvasil
Vice President
Lake Carriers' Association

Again, LCA did not receive a response, let alone the requested information. Another attempt to obtain a list was made on December 19:

From: Glen Nekvasil
Sent: Wednesday, December 19, 2012 9:14 AM
To: 'Chang.Moses@epamail.epa.gov'
Subject: List of facilities/service providers reasonably available to pump-out sewage from commercial vessels engaged in waterborne commerce
Importance: High

Moses:

On December 6, we requested a list of the companies that can pump-out sewage from our vessels when loading and discharging at terminals situated in New York State's Lake Erie waters. We have still not received it. All of the vendors listed in the notice and in NY's petition serve only recreational or very small vessels and none that are listed serve our sector. As you know having facilities/service providers reasonably available is a pre-condition for establishing the NDZ, and EPA's own regulations require they be identified. We have a very small staff and the holidays are virtually upon us, leaving us with very little time to meaningfully comment on whatever list you might provide.

Very Respectfully,

Glen G. Nekvasil
Vice President
Lake Carriers' Association
20325 Center Ridge Rd.
Suite 720
Rocky River, OH 44116
Phone: 440-333-9996
Cell: 216-702-6360

In response, we received this:

From: Chang.Moses@epamail.epa.gov [mailto:Chang.Moses@epamail.epa.gov]
Sent: Wednesday, December 19, 2012 10:32 AM
To: Glen Nekvasil
Cc: Saporita.Chris@epamail.epa.gov; Josilo.Michelle@epamail.epa.gov
Subject: Re: List of facilities/service providers reasonably available to pump-out sewage from commercial vessels engaged in waterborne commerce

Dear Mr. Nekvasil:

Thank you for your comment regarding EPA's tentative affirmative determination on New York State's petition to designate the New York state waters of Lake Erie as a "No Discharge Zone" for vessel sewage. As with all comments received during this comment period, we will respond in our final determination, which will be published in the Federal Register.

Regards,

Moses C. Chang, Ph.D.
Aquatic Biologist
U.S. EPA
290 Broadway, 24th Floor
New York, N.Y. 10007-1866
Phone: 212 637 3867
Fax: 212 637 3889

LCA then directed our outside legal counsel to send an inquiry on our behalf to EPA Regional Counsel, copying Mr. Chang.

From: Hartman, Barry M.
Sent: Friday, December 21, 2012 5:00 PM
To: schAAF.eric@epa.gov
Cc: Chang.Moses@epamail.epa.gov
Subject: Tentative New York State Prohibition of Discharges of Vessel Sewage FRL 9857-3 77
Fed Reg. 72856 (Dec. 6, 2012)

Dear Mr. Schaaf:

We are writing you because the point of contact regarding the referenced matter is not responding to client's requests.

Our client, Lake Carriers' Association (LCA), is in the process of attempting to prepare comments on the New York State Prohibition of Discharges of Vessel Sewage; Receipt of Petition and Tentative Affirmative Determination, 77 Fed. Reg. 72,856 (Dec. 6, 2012) (the "petition"), before the 30-day comment period ends January 7, 2013. As I am sure you are aware, a CWA section 312(f)(3) No Discharge Zone requires, in part, that the EPA determine that "adequate facilities for the safe and sanitary removal and treatment of sewage from vessels are *reasonably available*." 33 U.S.C. § 1322(f)(3) (emphasis added); 40 C.F.R. § 140.4. The state is required to include the list of these facilities in its application. New York's application does not identify **any** such facilities. EPA is required to provide that list when it proposes to identify a no discharge zone, otherwise affected entities are unable to comment on EPA's proposed tentative finding that such facilities are adequate and reasonably available. EPA's notice of its tentative decision did not identify any facilities that would be available for LCA vessels. LCA has requested this information from the petition point of contact, Moses Chang, on multiple occasions. These requests have been ignored and instead only a form response that the agency will respond in its final determination was provided. Voicemails have been ignored as well. Please understand that LCA is not saying that its concern at this point is whether a listed entity is properly listed; LCA's concern is that it has not been provided with a list of vendors for its vessels at all. The lists included in the notice were for recreational and small commercial vessels, not large vessels such as those operated by LCA members.

In order to effectively comment on the petition, it is essential that LA be provided with a list of facilities EPA and the state believe are reasonably available to remove and treat sewage from LCA vessels that load and unload at terminals in the proposed area. "Integral" to the notice requirement "is the agency's duty 'to identify and make available technical studies and data that it has employed in reaching the decisions to propose particular rules. . . . An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.'" *Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 199 (D.C. Cir. 2007) (quoting *Solite Corp. v. EPA*, 952 F.2d

473, 484 (D.C. Cir. 1991) (per curiam) (quoting *Conn. Light & Power Co. v. NRC*, 673 F.2d 525, 530-31 (D.C. Cir. 1982)); see *Kennecott Corp. v. EPA*, 684 F.2d 1007, 1017-20 (D.C. Cir. 1982); *Sierra Club v. Costle*, 657 F.2d 298, 334, 397-98 & n.484 (D.C. Cir. 1981)). "[T]he most critical factual material that is used to support the agency's position on review must have been made public in the proceeding and exposed to refutation." *Air Transp. Ass'n of Am. v. FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999) (quoting *Ass'n of Data Processing Serv. Orgs. v. Bd. of Governors of the Fed. Reserve Sys.*, 745 F.2d 677, 684 (D.C. Cir. 1984)) (emphasis in original). Failure to provide this information renders the petition itself invalid, and would render any final determination invalid as well both because it denies LCA the opportunity to comment on the core basis for the proposed action, and because it would fail to meet the substantive requirements of applicable law.

The delay in responding to LCA's repeated requests, especially in light of the holidays, severely undermines, LCA's ability to comment.

Can you please instruct the point of contact to provide the list of facilities that New York or EPA claims are reasonably available to serve LCA vessels immediately.

Thank you,

We received no response to this inquiry. It is clear that LCA has done everything reasonably within its power to obtain the information that the applicable regulations require the petition to include and the EPA to provide as a precondition to designating an area as a NDZ. The failure of the agency to provide information required by the regulation, despite repeated requests, renders the proposed rulemaking procedurally defective. See cases cited *supra*.

D. EPA has historically declined to approve petitions that lack the information requested by LCA.

When the State of Ohio made application to EPA Region 5 to declare its Lake Erie waters a "No Discharge Zone for Vessel Sewage" in 2004, the state provided a list of 133 licensed septic haulers in the counties that front on Lake Erie. See 68 Fed. Reg. 53,607 (Aug. 31, 2004). LCA then surveyed those companies. It turned out that this list was defective for a number of reasons. (The results are included as Attachments A-C). In summary, the list of 133 haulers was inflated to begin with as it included 28 companies that were listed twice or even three times because they are either licensed in more than one county or have identical but repeated listings in one county. Forty-four companies either declined to pump out vessels or are not available 24/7. Six more of the companies on Ohio's list either never returned multiple phone calls or were otherwise unreachable. It is not unreasonable to consider these companies unqualified. Only 55 companies were technically available to service commercial vessels engaged in waterborne commerce but deeper analysis clearly illustrated employing many of these companies would have been problematic at best. The vessels then calling on Ohio had holding tanks with capacities that ranged from 10,000 to 40,000 gallons. The pump-out trucks had capacities that generally ranged from 1,600 to 4,000 gallons. The largest truck we could identify had a capacity of 7,000 gallons.

Most of those 55 companies had just one or two trucks. Assuming that only one truck was available while the vessel was in port, it would take anywhere from 2.6 to 6.25 loads to empty a vessel with 10,000 gallons of treated effluent in its holding tank(s). For a vessel with 30,000 gallons on board, the number of loads ranged from 7.5 to nearly 19. Each time the truck becomes full, it must drive to the location certified to accept the effluent, pump out, and then return for another load, a time-consuming process that is unacceptable both from a cost and efficiency viewpoint. As noted, vessel operating costs can approach \$5,000 per hour. But equally important is the impact those additional idle hours would have on the vessel's seasonal carrying capacity. Great Lakes shipping has to be a 24/7 industry because our

members have only about 10 months to deliver their customers' annual requirements. The locks at Sault Ste. Marie, Michigan, open on March 25 and close on January 15. An early opening or extension of the closing date is granted only if the need for cargo is critical. Below the locks, a few vessels get underway in early March and some will sail until the end of January, but the vessels have to be taken out of service for maintenance and modernization, and the most efficient way to do that is go to the shipyards while ice has closed the Lakes.

There is no point in reviewing what pump out would have cost our members. The rates have surely risen since 2004. Suffice it to say, pumping out would be an additional expense that would be on top of the \$10,000 to \$40,000 the vessel operator has already invested in an MSD so the vessel can discharge treated effluent into the Great Lakes.

The reason we have recounted the results of our Ohio survey to this degree is to demonstrate why it is essential that EPA provide the regulated entities with the information required by the regulation to demonstrate that pump out services are available. At least in the Ohio circumstance EPA tried to provide what it believed were available services so we could meaningfully investigate and comment. As it turned out there were no reasonably available facilities for LCA vessels, and the petition was never approved. In this instance not even a list of vendors available to LCA vessels is provided.

EPA's determination not to provide LCA with a list of vendors it believes are available and would justify the NDZ as to LCA vessels leads us to conclude what we already know from experience – there are no adequate facilities reasonably available to service commercial vessels used by LCA members and similar vessels engaged in waterborne commerce.

E. The vendor list that EPA included does not service vessels of the type operated by LCA members.

EPA provided information for 15 facilities deemed capable of serving recreational and small commercial vessels, but such information is not provided for large commercial vessels. See 77 Fed. Reg. at 72,858. In the case of the commercial vessel population, NYDEC used data from the National Ballast Water Information Clearing House and determined 62 vessels arrived in Buffalo and Lackawanna in 2010. *Id.* at 72,857. That total is inconsistent with the U.S. Army Corps of Engineers publication Waterborne Commerce of the United States, Part 3 – Waterways and Harbors Great Lakes. Commercial vessels drafting more than 18 feet arrived in the Port of Buffalo 80 times in 2010.

In short, neither NYDEC nor EPA has provided the required data demonstrating that “adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.” 77 Fed. Reg. at 72,856 (emphasis added). LCA was prepared to survey companies and assess their adequacy had we been provided contact information, but it has not been provided.

II. The record provided in support of the NYDEC petition contains no information demonstrating that the agency has knowledge of vessel characteristics and Great Lakes shipping to make a determination of adequacy.

A. There is nothing in the record that shows EPA considered the circumstances of LCA vessels.

NYDEC's petition states that a “call for additional information regarding current practices and the impact of establishing an NDZ in Lake Erie was posted on the DEC website, Environmental Notice

Bulletin and sent out to some targeted commercial boating organizations.” NYDEC, Vessel Waste No Discharge Zone Designation Petition for Lake Erie, New York State Portion at 21 (July 26, 2012). LCA was not notified of this request for information, nor do we believe we were even on NYDEC’s list of organizations to contact.

EPA’s proposal concludes that there are adequate facilities for LCA vessels based on the following:

To supplement the State’s submissions regarding commercial vessel traffic in the NYS section of Lake Erie, DEC published a data call on its Web site seeking any additional relevant information, and also sent an informal request for information to commercial boating organizations that had commented on previous New York State NDZ petitions. Through that data call or request for information exercise DEC did not obtain any additional information. Therefore, based on the low level of commercial vessel traffic at Lake Erie ports in New York, and the availability of septic hauler pumpout trucks, EPA proposes to determine that adequate pump out facilities for the safe and sanitary removal and treatment of sewage for commercial vessels are reasonably available for the New York State portion of Lake Erie shoreline.

77 Fed. Reg. at 72,857. This conclusion is based on three statements that are not logically connected: (a) NYDEC did not collect information; (2) there is very low traffic; and (3) there are adequate facilities. There is no rational connection between EPA’s factual premise that the State did not receive information and that vessel traffic is “low” and its conclusion that there are adequate facilities.² Nor is there any factual basis in the record for concluding that there are adequate septic hauler pumpout trucks to serve LCA vessels – whether there is 1, 5, 10 or 15, 50, or 80 of them that arrive in port each year. A court, under 5 U.S.C. § 706(2)(A), will carefully “review the record to ascertain that the agency has made a reasoned decision based on ‘reasonable extrapolations from some reliable evidence,’” *Natural Resources Defense Council v. EPA*, 902 F.2d 962, 968 (D.C. Cir. 1990), to ensure that the agency has examined “the relevant data and articulate[d] a satisfactory explanation for its action including a ‘rational connection’ between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)) (emphasis added).

For purposes of this petition, the agency is required to specifically identify vendors. Here it claims, without a single example, that septic hauler pumpout trucks are available. In this regard we also reviewed those listed in the NYDEC petition (and listed in the Federal Register notice). Of the fifteen listed, only three were portable. None operated during months when LCA type vessels might be present. None operated in areas with depths that would accommodate LCA type vessels.

Finally, the regulations require that facilities be available to all vendors. It would be inappropriate for EPA to conclude that there are adequate facilities available simply because the level of traffic is supposedly ‘low’ when the agency has failed to identify any facilities that are available. LCA is not aware of any vendor that is capable of providing these services.

² EPA cannot comply with its legal obligation to have an adequate rulemaking record by delegating the collection of information to a state and then concluding that, because the state did not collect the information, EPA need not do so but can instead reach a substantive conclusion that the failure to collect information means that there is no information to collect – in this case no vessels that might need the requested service and cannot get it. Moreover, the data indicating that in 2010 there were 80 vessels (see above) that arrived may not be consistent with the notion of low traffic, depending on how EPA defined that term, though no definition was provided.

B. The lack of information in the record about the nature of LCA and similar commercial vessels makes the essential premise of the rule – that appropriate facilities are available - unsupported.

The only source that is cited for information on commercial vessels is the National Ballast Water Information Clearing House. It collects data on the amount of ballast water on the vessel, where the ballast water was taken on, any ballast water management practices employed, and where the ballast water was discharged. The Ballast Water Reporting Form (OMB Control Number 1625-0069, Attachment D) contains no information pertinent to sewage storage and disposal capabilities that is the subject of this rulemaking.

Among the questions that need to be addressed to determine if providers are reasonably available are:

1. What are the capacities of holding tanks on vessels trading to the Port of Buffalo?
2. Is the vessel equipped to pump off effluent or must the shoreside facility or truck vacuum out the holding tank(s)?
3. Can a truck come alongside the vessel at the dock(s) it serves? If not, how close to the vessel can the truck come?

The capacity of the holding tank(s) on LCA members' vessels trading to the Port of Buffalo (and other similar vessels such as those from Canada) ranges from 4,000 to 111,000 gallons. The low end – 4,000 gallons – may or may not be within the capabilities of mobile providers near the port of Buffalo, but there is no evidence of any providers that are capable of handling any greater amounts.

If the vessel is not able to pump off, and the truck cannot vacuum out the effluent, the vessel operator would have to install piping and discharge fittings on deck, which requires approval from the U.S. Coast Guard and American Bureau of Shipping. Nothing in the record of this proceeding demonstrates that this was even considered by EPA, nor was it addressed in the petition filed by NYDEC.

In addition, even if a portable servicer was available, in Buffalo at least, it is not always possible for a truck to come alongside a vessel. The vessel below is discharging at the Sand Products Corp. dock in the Buffalo Ship Canal. This is what is called a "workboat dock" on the Great Lakes. There is no dock face, and given the lack of water depth at the channel's edge, the ship remains basically in the middle of the slip. Deckhands have to row the mooring cables to shore. Therefore a truck would be anywhere from 60 to 100 feet away from the vessel. Either the vessel or the waste hauler would have to have sufficient hose and the power to pump or vacuum a significant distance. There is nothing in the record that shows the availability of any vendor to undertake this.



Trucks cannot come alongside vessels discharging grain at the ADM elevator. Trucks can come alongside at the former Bethlehem Steel dock, but there is still the issue of vertical lift. If the vessel is unable to pump out, the truck will have to have enough vacuum power to lift the effluent as much as 45 feet.

In addition, to be “reasonably available” for the commercial industry means the facilities must be available round-the-clock. Being available round-the-clock is critical in the Great Lakes shipping industry. Our members’ vessels have hourly operating costs that can approach \$5,000. Therefore, if a vessel arrives in port at 2 a.m., cargo operations begin within minutes of mooring the vessel. If cargo operations are completed at 11 p.m., the vessel departs within minutes of securing the cargo hatch covers. To expect a vessel that is ready to leave at 3 a.m. to wait until the septic hauler begins the workday at 8 a.m. could cost the company \$25,000. It would be even worse in the case of a vessel that finished cargo operations at 11 p.m. A 9-hour delay could cost more than \$45,000. Add to that then the hours required to pump out. None of the vendors on the list that EPA provided are available round the clock, and most are not available for many months at a time.

III. The EPA should not impose an NDZ on commercial vessels equipped with a U.S. Coast Guard-approved MSD because the effluent discharged after treatment poses no threat to human life or the environment.

NYDEC’s petition states on page 9:

Microbial pathogens, one of the harmful elements of raw sewage, degrade water quality and pose direct threats to human health. Wastes treated by marine sanitation devices and discharged to surface water do not pose the same level of pathogen risk as raw sewage, but they contain chemical additives, such as formaldehyde, phenols, and chlorine, all of which threaten public health and the marine environment.

On page 10, the petition states:

While the discharge of untreated sewage wastes from vessels is prohibited within all the State's waters, in the absence of an NDZ designation, federal law allows the discharge of wastes treated by federally approved marine sanitation devices.

It does not appear that these comments are focused at all on LCA type vessels which do not discharge either untreated or raw sewage, nor necessarily do they contribute to the concerns that are the basis for the NYDEC petition. Federal standards for MSDs are very stringent and the units on our members' vessels meet and are often even more stringent than those thresholds. Discharging effluent treated by a U.S. Coast Guard approved MSD poses no threat to public health and the marine environment. Therefore, our members should be permitted to discharge effluent in New York's Lake Erie waters, even if subsequent analysis were to indicate pump-out facilities are reasonably available.³

The MSD units on our members' vessels are gravity fed and treat both sewage and greywater. In this regard the units are unique, as the requirement to treat both sewage and greywater is specific to the Great Lakes. Vessels operating outside the Great Lakes are not required to process their greywater through their MSD.

Almost all the MSDs on our members' vessels are Type II.⁴ These units, known as biological aerobic sewage treatment systems, treat sewage using a combination of bacteria and air to remove liquid and solid waste and turn the sewage into an effluent that meets federal requirements for permissible discharge in areas so designated. Great care is taken to insure the proper operation of these units. The key is of course that the bacteria remain alive. Therefore, use of non-biodegradable cleaners and products containing bleach, chlorine, and other bacteria-killing substances is banned. Soaps used for bathing and washing clothes must be non-toxic and biodegradable. All effort is made to reduce solids introduced into the system. Biodegradable, quick-dissolving toilet paper is employed. Following meals, plates are scraped and wiped clean before being placed in the dishwasher. Some vessels have installed macerators to grind up any solids that might enter the system. Steps to reduce greywater include use of low-flow shower heads and high-efficiency washing machines. The end result is an effluent that is far cleaner than that required by Federal standards. Federal regulations require that the fecal coliform bacterial count be no greater than 200 per 100mL, and total suspended solids no more than 150 mg per liter. In reviewing test results on MSD effluent, we find fecal coliform generally < 2 and total suspended solids ranging from 9 to 36.⁵

Since 1999, our members' vessels have participated in the Marine Sanitation Device Great Lakes Industry Voluntary Testing Program developed by LCA. Under this policy, the U.S. Coast Guard is requested to examine maintenance records and testing records and interview crew members to determine if the MSDs are functioning properly. If there is reason to believe a unit is malfunctioning, efforts are made to correct the problem on the spot. If that is not feasible (a part or a tool are needed for example), the Coast Guard will either issue form CG-835 or a Captain of the Port Order requiring the owner or operator to arrange for an independent laboratory to perform fecal coliform and suspended solid tests and send the results directly to the Coast Guard. If the Coast Guard believed a MSD was completely non-functional, a No Sail Order could be issued.

³ The benign nature of the discharges from LCA vessels' MSDs also precludes any finding under 312(f)(4)(B) that the NDZ is necessary to protect public health or the environment.

⁴ One vessel uses maceration and treatment with chlorine.

⁵ Actually, in terms of suspended solids, the requirement for MSDs discharging into the Great Lakes is even stricter than the federal standard: 50 mg/l. Again, the units on our members' vessels exceed that standard.

Under the Voluntary Testing Program, vessels with aerobic process and chlorine disinfection will perform the following tests and examinations and make the results available to boarding Coast Guard officers:

1. Vessels with USCG-certified Type I and Type II systems will perform and record the results of four tests on a weekly basis. These include chemical tests for dissolved oxygen and residual chlorine, a visual examination for clarity, and an odor test.
2. In addition to the weekly tests, vessels will send a sample of effluent for each treatment plant to an on-shore testing laboratory twice each year for testing (some companies test as many as four times per year). The laboratory will perform tests for fecal coliform and total suspended solids. Copies of the test reports are retained on the vessel for 12 months.
3. Coast Guard personnel may examine sewage treatment systems for proper operation whenever they are aboard a vessel. They may examine weekly test logs and test lab reports.

Engineering Department personnel are responsible for maintenance and operation of the MSD. For Scienco/Fast systems, scheduled maintenance can include the following:

As Required

1. Check chlorinator and dechlor feed tubes. Replenish tablets as required. Care must be taken that the tablets do not break. Therefore, rather than drop tablets into the feed tubes, the feed tubes are removed and tablets added from the end.

Weekly

1. Lubricate Roots blower bearings.
2. Check wet well sight glass for clear water.
3. Check regenerative blower inlet filter and clean as required.

Monthly

1. Check Roots blower vee drive belt tension and alignment.
2. Check dissolved oxygen (DO) in effluent or in wet well as applicable.
3. Check chlorine residual (total available chlorine) in effluent or in wet well as applicable and adjust as required. Residual should be between 1.0 mg/l and 2.0 mg/l.

Every Three Months

1. Air scour, pump out, and refill media tank.

Dissolved Oxygen

DO should be not less than 2.0 mg/l at any time including period of peak flow at change of watch. If it is low:

1. Open media tank and inspect airlift operation. All should be pumping at a high rate and causing turbulent flow at the surface of the water.
2. Shut off power to the Roots blower motor, remove the belt guard, grab the blower sheave and check for end play. If any significant end play is detected, the blower head plates are worn and the blower must be repaired or replaced.

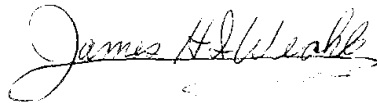
Maintenance on a Hamworthy MSD and other manufacturers' units is similar. For example, there are daily checks of air pressure and removal of sludge from the aeration tank. The chlorine content of the effluent is checked on a weekly basis and adjustments made when necessary. The quantity of suspended solids in the aeration compartment is checked on a monthly basis.

The use of these unique MSDs' by LCA members raises the serious question of whether there is a need to impose a NDZ requirement on these vessels at all. Most importantly, given these facts, there is no factual basis for concluding that protection and enhancement of the waters described in the petition require greater environmental protection than the applicable Federal standard, a requirement that must be demonstrated for any designation to apply.

IV. Conclusion.

For all of these reasons, the petition must be denied and, at least as regards LCA member vessels, a No Discharge Zone for Lake Erie may not be designated under section 312.

Very respectfully,

A handwritten signature in black ink that reads "James H. I. Weakley". The signature is written in a cursive style with a prominent flourish at the end.

James H. I. Weakley
President

Enclosures: Attachments A-D

Attachment A

**SEPTIC HAULERS
 LICENSED IN MORE THAN ONE OHIO COUNTY OR LISTED MORE THAN ONCE FOR THE SAME
 COUNTY**

	COMPANY	ADDRESS	TELEPHONE NUMBER	OHIO COUNTIES SERVED
1)	AAA Pipe Cleaning	7277 Bessemer Ave., Cleveland, OH 44127	(216) 231-1000	Listed three times for Cuyahoga County
2)	Ace Septic Tank Company, LLC	8837 Old Airport Hwy, Holland, OH 43528	(419) 865-4830	Erie, Ottawa, Lucas
3)	Adkin's Sanitation, Inc.	2226 W. Garrison St., Freemont, OH 43420	(419) 332-2873	Erie, Ottawa, Sandusky, Lucas
4)	Allen Drain Service	1008 Magador, Kent, OH 44240	(330) 253-4206	Listed three times for Cuyahoga County
5)	AKE Laboratory	503 Broadway Ave., Bedford, OH 44146	(440) 232-0042	Listed twice for Cuyahoga County
6)	A.R.S. Plumbing & Rescue Rooter	4547 Hinckley Indust. Pkwy B, Cleveland, OH 44109	(216) 382-0250	Lake, Cuyahoga
7)	Blake's Sanitation, LTD	220 State Rte. 60 N, New London, OH 44851	(419) 929-0208	Erie, Lorain
8)	Burnett's Septic Service, Inc.	233-A Commerce Dr., LaGrange, OH 44050	(440) 355-5526	Cuyahoga, Erie, Lorain
9)	C & L Sanitation, Inc.	27545 Glenwood Rd., Perrysburg, OH 43552	(419) 874-4653	Ottawa, Sandusky, Lucas
10)	Ciro's Sewer Cleaning, Inc.	37100 Research Dr., Eastlake, OH 44095	(440) 942-6867	Lake, Cuyahoga
11)	Cole's Septic Service, Inc.	114 Maple Ave., Chardon, OH 44024	(440) 942-3464	Lake, Cuyahoga
12)	County Waste Company	2260 County Line Rd., Unionville, OH 44088	(440) 428-5868	Ashtabula, Lake
13)	Darr's Cleaning Inc.	5089 CR 175, Clyde, OH 43410	(419) 547-0410	Erie, Ottawa, Sandusky
14)	Carl Difranco & Sons	4176 Greenvale Dr., South Euclid, OH 44121	(216) 382-0250	Lake, Cuyahoga
15)	Environmental Pumping Service	8000 Plaza Blvd., #170, Mentor, OH 44060	(800) 433-8763	Listed twice for Cuyahoga County
16)	Tim Frank Septic Tanking Cleaning Co.	12761 Madison Rd., Huntsburg, OH 44046	(440) 636-5111	Ashtabula, Lake
17)	Giffin Septic Tank Cleaning	482 Vine St., Geneva, OH 44041	(440) 466-8875	Ashtabula, Lake
18)	Ice's Septic Tank Service	3124 Padanarum Rd., Geneva, OH 44041	(440) 466-7224	Ashtabula, Lake

	COMPANY	ADDRESS	TELEPHONE NUMBER	OHIO COUNTIES SERVED
19)	Klooz Septic Service	381 S. Prospect St., Medina, OH 44256	(330) 723-7612	Cuyahoga, Lorain
20)	Walt Kucharsky	545 Solon Rd., Bedford, OH 44146	(440) 232-0767	Listed twice for Cuyahoga County
21)	Fred Lewis Septic Tank Service	16250 Gifford Rd., Oberlin, OH 44074	(440) 774-1972	Erie, Lorain
22)	Northeast Septic Tank Service	P.O. Box 747, Geneva, OH 44041	(440) 466-4406	Ashtabula, Lake
23)	Dewey Pelton	6803 State Route 60, Wakeman, OH 44889	(440) 965-8918	Erie, Lorain
24)	Steigerwald Plumbing	11481 Rust Dr., Chesterland, OH 44026	(440) 729-2182	Lake, Cuyahoga
25)	Stony Acres Sanitation, Inc.	2055 N.W. Catabawa Rd., Port Clinton, OH 43452	(419) 797-4533	Erie, Ottawa
26)	Supeck Septic Tank Service #1, #3	7760 Branch Rd., Medina, OH 44256	(440) 342-5591	Listed twice for Cuyahoga County
27)	Universal Disposal Inc.	9954 Old State Rd. Chardon, OH 44024	(440) 286-3173	Ashtabula, Lake, Cuyahoga
28)	Waid Corp./Waid Rainbow Rentals, Inc.	10200 Sweet Valley Dr., Valley View, OH 44125	(216) 524-3736	Lake, Cuyahoga

Attachment B

**LICENSED SEPTIC HAULERS
 UNAVAILABLE 24/7 OR DECLINED FOR VARIOUS REASONS**

	COMPANY	ADDRESS	TELEPHONE NUMBER	STATUS
1)	A-All Ashtabula Sewer & Septic	7445 Whitewood Dr., Ashtabula, OH 44004	(440) 969-1397	Residential
2)	ABC Services, Inc.	10101 Garden Rd., Monclova, OH 43542	(419) 867-8516	Only provide portable toilets
3)	Action Septic Service	29674 TWP RD #30, Warsaw, OH 43844	(740) 824-4748	Declined
4)	All Town & Country Septic	3500 Hametown, Norton, OH 44203	(330) 745-2277	Need 3-day notice
5)	Allen Drain Service	1008 Magador, Kent, OH 44240	(330) 253-4206	Declined
6)	A.R.S. Plumbing & Rescue Rooter	4547 Hinckley Indust. Pkwy B, Cleveland, OH 44109	(216) 749-4600	Declined
7)	Ashtabula Plumbing LLC	3556 Brown Rd., Ashtabula, OH 44004	(440) 969-1013	Declined
8)	Ashtabula Septic Service	3899 Austinburg Rd, Ashtabula, OH 44004	(440) 998-7448	Declined
9)	Bailey & Sons	8585 SR 101 W, Clyde, OH	(419) 639-2409	Declined
10)	Bedford Septic Tank & Sewer Cleaning	10366 Lewis Ave., Temperance, MI 48182	(734) 847-1000	Not available 24/7
11)	Blake's Sanitation, LTD	220 State Rte. 60 N, New London, OH 44851	(419) 929-0208	Not available 24/7
12)	Bob's Septic Tank Service	7515 Jefferson Rd., Ashtabula, OH 44004	(440) 997-8279	Not available 24/7
13)	Bugner Sewer	468 SR 587, Fostoria, OH	(419) 435-3977	Declined
14)	Burnett's Septic Service, Inc.	233-A Commerce Dr., LaGrange, OH 44050	(440) 355-5527	24/7 emergency only
15)	C & L Sanitation, Inc.	27545 Glenwood Rd., Perrysburg, OH 43552	(419) 874-4653	Not available 24/7
16)	Cole's Septic Service, Inc.	114 Maple Ave., Chardon, OH 44024	(440) 942-3464	Not available 24/7
17)	Darr's Cleaning Inc.	5089 CR 175, Clyde, OH 43410	(419) 547-0410	Not available 24/7
18)	Dennis Construction & Sanitation	1201 Siler St., Fremont, OH 43420	(419) 332-8026	Outside their service area
19)	Carl Difrancio & Sons	4176 Greenvale Dr., South Euclid, OH 44121	(216) 382-0250	Not available 24/7

	COMPANY	ADDRESS	TELEPHONE NUMBER	STATUS
20)	Easton Brother's, Inc.	1427 Route 322, Orwell, OH 44076	(440) 422-3200	Declined
21)	Environmental	8000 Plaza Blvd., #170, Mentor, OH	(800) 433-8763	Cooking oil only
22)	Father & Son Septic Service	48285 Telegraph Rd., Amherst, OH 44001	(440) 986-6006	Not available 24/7
23)	Ferris Excavating	P.O. Box 112, Chardon, OH 44024	(440) 285-1714	Not available 24/7
24)	Fox Stone Products, Inc.	P.O. Box 299, Put-In-Bay, OH	(419) 285-3025	Only service Put-In-Bay
25)	Tim Frank Septic Tank Cleaning Co.	12761 Madison Rd. Huntsburg, OH 44046	(440) 636 5111	Does not go as far as Lake Erie
26)	Giffin Septic Tank Cleaning	482 Vine St., Geneva, OH 44041	(440) 466-8875	Not available 24/7
27)	Jarvis Septic & Drain	P.O. Box 146, Wadsworth, OH 44282	(330) 336-1893	Declined
28)	Walt Kucharsky	545 Solon Rd., Bedford, OH 44146	(440) 232-0767	Not available 24/7
29)	Fred Lewis Septic Tank Service	16250 Gifford Rd., Oberlin, OH 44074	(440) 774-1972	Declined
30)	Lyons Septic Tank Cleaning	9697 County Rd. 16, Wauseon, OH 43567	(419) 335-3311	Only services Fulton County
31)	Miller And Company Portable Toilet	2400 Shepler Church Ave., Canton, OH 44705	(330) 453-9472	Not available 24/7
32)	N .A.T. Transportation	11101 Pemberville, Bradner, OH	(419) 288-2082	Only service septic tanks
33)	Northeast Septic Tank Service	P.O. Box 747, Geneva, OH 44041	(440) 466 4406	Not available 24/7
34)	O. G. Nicholas & Son	8877 Jackson St., Mentor, OH 44060	(440) 255-4610	Declined
35)	Roto Rooter	274 Bowhall Rd., Painesville, OH 44077	(440) 357-5610	Not available 24/7
36)	RMB Environmental & Construction, Inc.	4526 Bayshore Rd., Oregon, OH 43616	(419) 693-5840	Declined
37)	Sanitary Septic Tank Cleaning	10915 Station Rd., Columbia Station, OH 44028	(440) 236-9200	Outside their service area
38)	Schultheiss Septic Service	106 E. Young St., Liberty Center, OH 43532	(419) 533-6351	Declined
39)	Steigerwald Plumbing	11481 Rust Dr., Chesterland, OH 44026	(440) 729-2182	Not available 24/7
40)	Suburban Septic Service	4229 Beck Rd., Medina, OH 44256	(330) 722-4262	Not available 24/7
41)	T & J Septic	4150 Route 45 S., Rock Creek, OH 44084	(440) 563-3631	Declined
42)	Universal Disposal Inc.	9954 Old State Rd. Chardon, OH 44024	(440) 286-3173	Declined

	COMPANY	ADDRESS	TELEPHONE NUMBER	STATUS
43)	Wilson Septic Tank	100 Orton Rd., Painesville, OH 44077	(440) 354-3607	Not available 24/7
44)	Wolcott Septic Tank Cleaning, Inc.	13781 Gar Hwy., Chardon, OH 44024	(440) 285-7604	Not available 24/7

Attachment C

**LICENSED SEPTIC HAULERS
WHO DID NOT RETURN MULTIPLE TELEPHONE CALLS OR WERE
UNREACHABLE**

	COMPANY	ADDRESS	TELEPHONE NUMBER
1)	Aveta Corp.	4315 W. 30 th St., Cleveland, OH 44109	(216) 739-0196
2)	Cliff Hahn & Son	401 Bryan Rd., Milan, OH 44846	(419) 490-2075
3)	Midwest Grease Trap & Drain Co.	4361 Spruce Ave., Brunswick, OH 44212	(216) 533-7384
4)	Dewey Pelton	6803 State Route 60, Wakeman, OH 44889	(440) 965-8918
5)	Rick's Car Wash & Septic Tank Cleaning	1410 Kieswetter Rd., Holland, OH 43528	(419) 868-1462
6)	Stark's Sanitary Service	2 Edgewood Dr., Norwalk, OH 44857	(419) 686-1422

Attachment D

Ballast Water Reporting Form

BALLAST WATER REPORTING FORM

IS THIS AN AMENDED BALLAST REPORTING FORM? YES NO

1. VESSEL INFORMATION

2. VOYAGE INFORMATION

3. BALLAST WATER USAGE AND CAPACITY

Vessel Name:	Arrival Port:	<i>Specify Units Below (m³, MT, LT, ST)</i>		
IMO Number:	Arrival Date:	Total Ballast Water on Board:		
Owner:	Agent:	Volume	Units	No. of Tanks in Ballast
Type:	Last Port:	Country of Last Port:		
GT:	Next Port:	Total Ballast Water Capacity:		
Call Sign:		Volume	Units	Total No. of Tanks on Ship
Flag:	Country of Next Port:			

4. BALLAST WATER MANAGEMENT Total No. Ballast Water Tanks to be discharged:

Of tanks to be discharged, how many: Underwent Exchange: Underwent Alternative Management:

Please specify alternative method(s) used, if any: _____

If no ballast treatment conducted, state reason why not: _____

Ballast management plan on board? YES NO Management plan implemented? YES NO

IMO ballast water guidelines on board [res. A.888(20)]? YES NO

5. BALLAST WATER HISTORY: Record all tanks to be deballasted in port state of arrival; IF NONE, GO TO #6 (Use additional sheets as needed)

Tanks/ Holds List multiple sources/tanks separately	BW SOURCE				BW MANAGEMENT PRACTICES						BW DISCHARGE			
	DATE DM/YYYY	PORT or LAT. LONG.	VOLUME (units)	TEMP (units)	DATE DM/YYYY	ENDPOINT LAT. LONG.	VOLUME (units)	% Exch	METHOD (ER/FT/ ALT)	SEA HT. (m)	DATE DM/YYYY	PORT or LAT. LONG.	VOLUME (units)	SALINITY (units)
				C										sg
				C										sg
				C										sg
				C										sg
				C										sg
				C										sg
				C										sg
				C										sg

Ballast Water Tank Codes: Forepeak = FP, Aftpeak = AP, Double Bottom = DB, Wing = WT, Topside = TS, Cargo Hold = CH, Other = O

6. RESPONSIBLE OFFICER'S NAME AND TITLE, PRINTED AND SIGNATURE: _____