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May 26, 2017

Mr. Scott Pruitt, Administrator
U.S. EPA Headquarters, William Jefferson Clinton Building
1200 Pennsylvania Ave., NW
Mail Code: 1101A
Washington, DC 20460

Re: EPA's Final Affirmative Determination Notice for the Washington State Department of Ecology Prohibition of Discharges of Vessel Sewage (82 FR 11218)

Dear Administrator Pruitt:

We the undersigned are writing to correct inaccurate and incomplete information provided to your office in a March 1, 2017 letter¹ from Charlie Costanzo of American Waterways Operators and its partners. The letter related to EPA Region 10's affirmative determination that sufficient pumpout capacity exists to support a No Discharge Zone (NDZ) for Puget Sound. Mr. Costanzo's letter urged you to rescind the Final Determination that was published in the Federal Register on February 21, 2017. His letter contains several factual errors or selectively presents information to you, and this letter provides critical corrections.

Together our organizations represent over 100,000 concerned voices in the Puget Sound region and beyond. We are writing to you to ask that you maintain the fair and transparent state-led process so that the State of Washington can establish a No Discharge Zone in Puget Sound. When enacted, this would prohibit the discharge of raw or partially treated sewage from vessels in Puget Sound and the Strait of Juan de Fuca landward of Dungeness Spit. Simple technology already exists to eliminate the discharge of sewage by requiring vessels to store waste in onboard holding tanks for later pump out to land-based treatment facilities. The program has been very successful across the nation, with over 90 NDZs across the U.S.

Mr. Costanzo's letter claims that EPA's Final Determination is a new regulation and cites the White House's *Regulatory Freeze Pending Review* memorandum of January 20, 2017 as evidence that EPA had erred in finalizing the determination. However, the Washington State Department of Ecology (Ecology) has regulatory responsibility for this program and will appropriately begin rulemaking following EPA's February 21, 2017 determination published in the Federal Register. The ongoing regulatory process, which is now in the state-led rulemaking phase, provides Mr. Costanzo continued opportunities to comment. To date, Mr. Costanzo has fully engaged throughout the five-year period that resulted in

¹ 2017. Charles Costanzo. Letter to Mr. Scott Pruitt, Administrator, Re: EPA's Final Affirmative Determination notice for the Washington State Department of Ecology Prohibition of Discharges of Vessel Sewage (82 FR 11218).



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Ecology's July 2016 Final Petition to Designate the Waters of Puget Sound as a No Discharge Zone². EPA does not have a rulemaking or regulatory approval role in this process. Therefore, EPA Region 10 did not err in finalizing its determination that sufficient pumpout capacity exists.

Mr. Costanzo erroneously states that “the determination was made in haste and without consideration of well-articulated stakeholder concerns regarding the availability of adequate pumpout capacity.” This statement fails to mention that his stakeholder concerns were fully addressed by EPA prior to publishing the Final Determination³, and also through Ecology's earlier five-year process⁴. He also fails to mention that this 5-year process has been the most robust of any NDZ approval process to date. He leaves out that 98.6% of the 66,478 comments submitted in the draft petition released for comment by Ecology and the preliminary final determination released for comment by EPA support establishing a Puget Sound NDZ. Again, EPA Region 10 did not err in moving forward with its determination that sufficient pumpout capacity exists.

Moreover, Mr. Costanzo and his partners met with EPA Region 10 staff to air their concerns directly in December, and their supporters submitted letters to EPA during the public comment period. Most of those comment letters simply expressed their desire not to have a No Discharge Zone and remained silent on any facts that would contradict whether sufficient pumpout capacity exists. EPA's determination is solely limited to considering pumpout capacity.

Mr. Costanzo's letter states that the determination “relies on an inaccurate representation of shoreside pumpout capacity” yet fails to identify specific facts that contradict the assessment of shoreside pumpout capacity. Further, Mr. Costanzo fails to mention that mobile pumpout facilities are adequate and available to serve commercial vessels throughout the geographic extent of the proposed No Discharge Zone.

In preparation for our December 2016 comment letters to EPA on 82 FR 11218, we independently verified that numerous mobile pumpout companies exist and already provide sewage service for a variety of commercial vessels including barges, tugs, fishing vessels, smaller cruise ships, ferries, oil tankers, bulk carriers, etc. in the Puget Sound region. Nowhere in the March 1 letter does he mention the existence of these mobile pumpout facilities or that they already serve the sewage needs of vessels in the region through a combination of trucks and barges. In fact, in our December 2016 communications with existing companies, several expressed interest in expanding their sewage pumping services and would welcome more business hauling sewage. Other NDZs around the country successfully rely on mobile pumpouts to provide sufficient capacity. In Puget Sound, mobile pumpouts combined with shoreside pumpouts provide more than adequate capacity as the state and EPA have certified.

Mr. Costanzo continues to express his opinion that there is no scientific basis or measurable environmental benefit to a No Discharge Zone. This opinion has been effectively refuted on numerous

² Washington State Department of Ecology Publication No. 16-10-020.

<https://fortress.wa.gov/ecy/publications/SummaryPages/1610020.html>

³ <https://www.federalregister.gov/documents/2017/02/21/2017-03353/washington-state-department-of-ecology-prohibition-of-discharges-of-vessel-sewage-final-affirmative>

⁴ <http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/nodischargezone.html>



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occasions within the state regulatory process. Moreover, EPA's determination is solely based on pumpout capacity.

The Clean Water Act Section 312(f)(3) gives EPA 90 days to 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 [of discharging sewage] would apply." Mr. Costanzo incorrectly states that the review was "designed primarily to avoid scrutiny by the Trump Administration." The process has been underway well in advance of the November election.

Ecology's petition was transmitted to Regional Administrator Dennis McLerran on July 21, 2016. American Waterways Operators, Mr. Costanzo's employer, then caused a delay by appealing⁵ Ecology's petition to the Washington State Pollutions Control Hearings Board in August 2016. Ecology filed a motion to dismiss, which was granted by the Pollution Control Hearings Board on October 10, 2016. American Waterways subsequently filed a Petition for Judicial Review of the Board's Order Granting Ecology's Motion to Dismiss, which was denied on November 22, 2016. During that time, EPA Region 10 staff requested further clarification from the state on the pumpout capacity, which was transmitted to EPA by Ecology on September 22, 2016 with a follow-up letter on October 14, 2016, immediately following the motion to dismiss by the Pollution Control Hearings Board on October 10.

We remain concerned that Mr. Costanzo caused the delay and yet erroneously cites the delay as evidence that EPA was hiding a regulation from the Administration. In fact, at his request, EPA extended the comment period from December 6 to December 23, 2016.

In summary, Mr. Costanzo has demonstrated a well-established pattern of incorrectly identifying facts, selectively leaving other relevant information out of his communications, and actively working to delay this five-year process. He has successfully negotiated with the Department of Ecology for a 5-year phase in compliance period for certain classes of vessels, which we oppose as far longer than necessary.

We agree with the part of Mr. Costanzo's September 9, 2016 letter to former Regional Administrator Dennis McLerran that states that the U.S. tugboat, towboat and barge industry is a vital segment of America's transportation system. These are sophisticated mariners and maritime companies that perform vital tasks in keeping our waters safe. Modern vessels are marvels of technology and engineering, and the small crew generates manageable amounts of waste onboard. Many companies clearly value the health of Puget Sound. We expect these industries to comply with best practices, particularly when sufficient pumpout capacity exists in the Puget Sound region to serve their sewage hauling needs.

We urge you to continue a fair and transparent process as the proposed rule moves forward at the state level in the spirit of cooperative federalism. Significant regional support exists for this action, and federal, state, and local entities have invested deeply in the process. To disrupt this existing federal determination would be arbitrary and clearly favoring a specific stakeholder over many others and stands in contradiction of the facts. We are prepared to legally intervene to support the state-led process, as well as the process and content of EPA's February 21, 2017, Final Determination.

⁵ Case No. 16-093 in http://www.eluho.wa.gov/Decision/Search_Cases



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Thank you for your consideration of this important issue and for this opportunity to comment. We look forward to working with your staff and state staff as the process moves forward.

Please contact Mindy Roberts (mindy@wecprotects.org) for further information.

Sincerely,

Marcie Keever
Friends of the Earth

Heather Trim
Futurewise

Chris Wilke
Puget Soundkeeper Alliance

Stephanie Hillman
Sierra Club

Mindy Roberts
Washington Environmental Council

Cc:

Senator Patty Murray
Senator Maria Cantwell
Representative Denny Heck
Representative Derek Kilmer
Representative Suzan DelBene
Representative Pramila Jayapal
Representative Rick Larsen
Representative Dave Reichert
Representative Adam Smith
Governor Jay Inslee
Director Maia Bellon, Washington State Department of Ecology
Director Sheida Sahandy, Puget Sound Partnership