LAWRENCE PAPERBOARD CORPORATION, 3/3/98, RK272–04120, RK272–04178, RC272–00377

The DOE issued a Decision and Order concerning competing claims to the right to a refund based on the purchases of Lawrence Paperboard Corporation. The DOE had originally granted the refund to Atlantic Coast Paperboard. In the instant case, the DOE learned that Atlantic merely purchased the assets of Lawrence Paperboard and that the assets did not include the right to the refund. Accordingly, the DOE rescinded the refund granted Atlantic. As between the two remaining claimants to the refund, the bankruptcy trustee on one hand, and the sole owner of the corporation at the time of its dissolution on the other, the DOE determined that the refund should be sent to the bankruptcy trustee for distribution to unpaid creditors. Accordingly, the request of the bankruptcy trustee was granted and the claim of the owner at the time of dissolution was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CITY OF RENSSELAER ELEC. DEPT. ET AL	RF272–79197	3/3/98
JOHN RAY TRUCKING CO. ET AL	RF272–76565	3/3/98

Dismissals

The following submissions were dismissed.

Name	Case No.
VERNON J. BRECHIN	VFA–0383

[FR Doc. 98–14973 Filed 6–4–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6108–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notification is hereby given that the Regional Administrator, Environmental Protection Agency (EPA) Region II has affirmatively determined, pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Manasquan River, Counties of Monmouth and Ocean, State of New Jersey.

This petition was made by the New Jersey Department of Environmental Protection (NJDEP) in cooperation with the Monmouth-Ocean Alliance to Enhance the Manasquan River. Upon receipt of this affirmative determination, NJDEP will completely prohibit the discharge of sewage, whether treated or not, from any vessel in the Manasquan River in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a). Notice of the Receipt of Petition and Tentative Determination was published in the **Federal Register** on March 12, 1998. Comments on the tentative determination were accepted during the comment period which closed on April 13, 1998. Written statements were received from the following:

1. James F. Lacey, Freeholder Director, Ocean County Board of Chosen Freeholders, P.O. Box 2191, Toms River, New Jersey 08754–2191
2. Mr. Lester W. Jargowsky, M.P.H., Public Health Coordinator, Monmouth County Board of Health, 3435 Highway 9, Freehold, New Jersey 07728
3. Ms. Cindy Zipf, Executive Director, Clean Ocean Action, P.O. Box 505, Highlands, New Jersey 07732
4. Mr. Arthur J. Bretnall, Jr., President, Raritan Engineering, P.O. Box 1157, Millville, New Jersey 08332
5. Mr. Philip G. Conner, President, Crockett Brothers Boatyard, Inc., P.O. Box 369, Oxford, Maryland 21654

The comments are summarized and responded to below:

Three individuals expressed their support of the Manasquan River determination. One individual stated that the notice failed to mention that the proposed No Discharge Area (NDA) included the southern shore of the Manasquan River which lies within Ocean County. Another individual stated that many organizations and individuals have worked hard to ensure that there are an adequate and convenient supply of sewerage pumpout facilities in the subject coastal watershed. He further commented that his organization will continue to educate and motivate boaters to adhere to the designation.

EPA acknowledges the support. While the document clearly indicates the boundaries of the area including the southern shoreline, EPA has added Monmouth County and Ocean County to the listed communities for clarification. The description now reads, ''The lower 6.5 miles of the river forms the estuary that is bordered by Wall Township, Brielle Borough and Manasquan Borough to the north in Monmouth County and Brick Township, Point Pleasant Borough and Point Pleasant Beach Borough to the south in Ocean County.'' EPA also agrees that education is a key component of the compliance and enforcement effort.

One individual stated that there is evidence that there is a need for better management of marine sewage. He commented that shellfish beds in the river continue to be closed to harvesting due to elevated fecal coliform counts. Through the establishment of an NDA, the local Boards of Health will have a new management tool for vessel sewage which can reduce the fecal coliform loading and which may assist in the reopening of the shellfish beds for harvest. No revision to the determination is warranted based on this comment.

Another individual stated that there is no credible reason to disallow the continued use of the Type I and Type II Marine Sanitation Devices (MSDs). He further stated that according to the National Shellfish Register the five principal sources of pollution are upstream sources, wildlife, individual waste management systems, septic tanks and waste treatment plants.

In response, EPA notes that the National Shellfish Register stated in the

Overview of Results that the top five pollution sources reported as contributing to harvest limitations were urban runoff, upstream sources, wildlife, individual wastewater treatment systems and wastewater treatment systems. The above commenter's listing of the top five pollution sources omitted urban runoff and listed septic tanks in addition to individual wastewater treatment systems.

In addition, the Overview of Results in the National Shellfish Register regarding pollution sources cites an apparent trend. Compared to the 1990 Register, there is a significant decrease in the acreage that is harvest-limited due to contributions from industry, wastewater treatment plants and direct discharges. There is an increase in the acreage limited by boating and marinas (when added together to reflect the way the data were collected in the 1990 Register), urban runoff and agricultural runoff.

In further response to the above comments, EPA notes that NJDEP's application includes a certification that the protection and enhancement of the Manasquan River requires greater environmental protection than the applicable federal standard. NJDEP presented data which indicate that fecal coliforms exceed the bathing beach and shellfish special restricted classification criteria. In 1990, 400 acres of the more than 1,500 acres were downgraded to Prohibited status by NJDEP. Runoff from residential and commercial development, marina and boating activity, and agriculture have been implicated as sources of bacterial loading. EPA has accepted NJDEP's certification and EPA concludes that no revision to the determination is warranted.

One individual criticized the method used to calculate the number of pumpouts for the vessel population. He stated that no allowance was made for vessels of length 26 feet and under with toilets. He commented that the assumption used in NJDEP's application that only 50% of the boats between 26 feet and 40 feet length were equipped with toilets was low based on his experience. He also stated that the assumed peak occupancy rate of 45% was low. During the busiest part of the boating season, the percentage of boats in use would be much higher. Due to these assumptions, he stated the application underestimated the need for pumpouts.

The vessel populations were based on the vessels docked at marinas and yacht clubs, vessels docked at non-marina facilities and transient vessels. The number of pumpouts needed in the Manasquan River NDA were calculated using two different methodologies. Both are based on the probability of a vessel being equipped with a holding tank, not a toilet, and an acceptable boat to pumpout ratio. The first method is based on the New Jersey Clean Vessel Act Steering Committee's recommendation that one pumpout be provided for every 200 to 300 vessels. The second method was developed by the U.S. Department of Interior Fish and Wildlife Service. The percent of vessels with holding tanks is based on surveys conducted by the Fish and Wildlife Service and available data for vessels using the Manasquan River. EPA finds the estimates to be based on accepted methodologies and the best information available. No revision to the determination is needed.

One individual stated that there was no need for the establishment of an NDA in the Manasquan River. He indicated that enforcement of the current regulation, 40 CFR 140.3, which prohibits discharge of untreated sewage is the ''key element to the issue.'' He further stated that the prohibition of the discharge of untreated sewage from vessels has never been adequately enforced. In response, EPA notes that the New Jersey Attorney General's Office and the New Jersey Marine Police have issued numerous citations when the discharge of raw sewage has been observed. One violator was criminally prosecuted and received 5 years probation, a $30,000 fine and 200 hours of community service. New Jersey has enforced current regulations, but as certified in the application, greater environmental protection is needed. No revision to the determination is warranted.

Another individual stated that the only effect the establishment of an NDA will have would be to outlaw the use of Type I and Type II MSDs.

The intent of the Manasquan River NDA is not to outlaw any type of MSDs, but to prohibit the discharge of sewage, whether treated or untreated, from a vessel until the vessel has left the Manasquan River. Once a vessel has exited the Inlet and is in the Atlantic Ocean, the discharge from a Type I or Type II MSD is allowed. Discharge of untreated sewage is prohibited from a vessel at all times while operating in U.S. waters. No revision to the determination is warranted.

Another individual stated that the intent of Congress when it passed the Federal Water Pollution Control Act of 1976 (referred to as the current MSD law) was to assure uniformity as vessels engaged in interstate commerce. He further stated that granting exceptions compromises the existing uniformity.

The federal MSD standards were set to provide a uniform standard for all vessels, regardless of area operation, in regards to protecting waters of the U.S. Congress also recognized that States, when further environmental protection was warranted, should be allowed to completely prohibit the discharge from all vessels of any sewage, whether treated or not, into some or all of the waters within a State by applying to EPA for such a prohibition. The State of New Jersey is exercising that option provided by Congress through section 312(f)(3) of the Clean Water Act. No revision to the determination is warranted based on the comment.

Two people commented that forcing boaters into a position that requires holding tanks with no other option is dangerous to the boating public. These comments addressed the risk of transmitting disease when handling untreated waste. One person further stated that people have been overcome and died due to the generation and the escaping of hydrogen sulfide gas from a holding tank. He stated that the application does not address this. Another person stated that methane gas may build up in the holding tanks and explode.

The establishment of a Manasquan River NDA does not require vessel owners to retrofit their MSDs. The comment regarding the generation of hydrogen sulfide gas and escape from a holding tank, is not relevant to the adequacy of the application submitted by NJDEP. MSDs are certified by the U.S. Coast Guard in regard to safety and performance. Any questions regarding the safety of any certified MSD should be brought to the attention of the U.S. Coast Guard since it is the certifying agency. No revision to the determination is warranted based on the comment.

One individual commented that the establishment of an NDA, in and of itself, does not prevent the discharge of raw sewage.

The discharge of raw sewage is currently prohibited by law. Establishment of an NDA prohibits the discharge of sewage, whether treated or untreated, from vessels. Compliance with the prohibition is dependent on the attitude of the boating population. A major component of a compliance program is the education of the regulated community and the impacts of noncompliance. No revision to the determination is warranted based on the comment.

One person stated that Type I and Type II MSDs treat the pathogens in

sewage as effectively, if not better than, municipal sewer plants. In comparing Type I and Type II systems to sewage treatment plants, he stated that an MSD achieves coliform results that are virtually zero and BOD percent reductions of over 70%.

The treatment plants that handle the sewage from the pumpouts are reporting Fecal Coliform counts of less than 10 colonies per 100 ml. and achieve BOD percent removal of greater than 90%. Samples of the effluent are taken at least twice per week to monitor the discharge. Based on these removals, EPA believes the performance of the treatment works is better than MSDs. The municipal authorities are required by New Jersey Pollutant Discharge Elimination System (NJPDES) permits to properly operate and maintain the treatment plant and to report any noncompliance with the permit conditions. Also, the treated wastewater from the treatment plant is discharged to the Atlantic Ocean, not the Manasquan River. MSDs are certified on a one time basis and after installation are rarely, if ever, checked to see if they are operating properly. They are never recertified. No revision to the determination is warranted based on the comment.

One individual commented that the federal MSD laws are obsolete and that the standards should be modified immediately. While this comment is not relevant to the determination or the factual content of the application, modification of the regulation cannot be initiated by the State or EPA Region II. 40 CFR 140 was recently modified to clarify the application requirements to establish NDAs for drinking water intakes zones. It is unlikely that this regulation will be evaluated for modification in the near future. No revision to the determination is warranted.

The remainder of this document summarizes the location of the NDA, the available pumpout facilities and related information. The Manasquan River is located in central New Jersey and runs southeasterly through Monmouth County for more than 23 miles before emptying into the Atlantic Ocean at the Manasquan Inlet. The Manasquan River is classified as a medium river with a drainage area of 81 square miles. The lower 6.5 miles of the river forms the estuary that is bordered by Wall Township, Brielle Borough and Manasquan Borough to the north in Monmouth County and Brick Township, Point Pleasant Borough and Point Pleasant Beach Borough to the south in Ocean County. The NDA will include all navigable waters in the Manasquan Estuary beginning at Manasquan Inlet and including Stockton Lake, Glimmer Glass, Lake Louise and Point Pleasant Canal up to the Route 88 bridge.

Information submitted by the State of New Jersey and the Monmouth-Ocean Alliance to Enhance the Manasquan River stated that there are five existing pumpout facilities available and two portable toilet dump stations to service vessels which use the Manasquan River. A detailed description of the available facilities was published in the Tentative Affirmative Determination in the **Federal Register** on March 12, 1998. The location of the facilities are as follows:

1. Brielle Marine Basin (stationary pumpout and portable pumpout), 608 Green Avenue, Brielle, New Jersey
2. Brielle Yacht Club (stationary pumpout), located 201 Union Lane, Brielle, New Jersey
3. Manasquan River Club (portable toilet dump station), 217 Riverside Drive, Brick, New Jersey
4. Suburban Boatworks and Marina (stationary pumpout and a portable toilet dump station), 1500 Riverside Drive, Brick, New Jersey
5. Crystal Point Yacht Club (stationary pumpout), 4000 River Road, Point Pleasant, New Jersey

Within six nautical miles of the Manasquan River are eight additional pumpout facilities and two portable toilet dump stations. Three facilities are located on the Shark River, three facilities are located on the Metedeconk River and two facilities are on Barnegat Bay.

Vessel waste generated from the pumpout facilities in Monmouth County is conveyed to the South Monmouth Regional Sewage Authority (NJPDES Permit No. NJ0024520). Vessel waste generated from the pumpout facilities in Ocean County is conveyed to the Ocean County Utilities Authority—Northern Plant (NJPDES Permit No. NJ0028142). These plants operate under permits issued by the New Jersey Department of Environmental Protection.

According to the State's petition, the maximum daily vessel population for the waters of Manasquan River is approximately 2624 vessels. This estimate is based on (1) vessels docked at marinas and yacht clubs (1940 vessels), (2) vessels docked at non-marina facilities (559 vessels) and (3) transient vessels (125 vessels). The vessel population based on length is 1505 vessels less than 26 feet in length, 885 vessels between 26 feet and 40 feet in length and 234 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that 3 to 5 pumpouts are needed for the Manasquan River.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Manasquan River in the counties of Monmouth and Ocean, New Jersey. This final determination on this matter will result in a New Jersey State prohibition of any sewage discharges from vessels in Manasquan River.

Dated: May 26, 1998.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 98–15015 Filed 6–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6108–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notification is hereby given that the Regional Administrator, Environmental Protection Agency (EPA) Region II has affirmatively determined, pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Shark River, County of Monmouth, State of New Jersey.

This petition was made by the New Jersey Department of Environmental Protection (NJDEP) in cooperation with Monmouth County and the Shark River Roundtable. Upon receipt of this affirmative determination, NJDEP will completely prohibit the discharge of sewage, whether treated or not, from any vessel in the Shark River in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a). Notice of the Receipt of Petition and Tentative Determination was published in the **Federal Register** on March 12, 1998. Comments on the tentative determination were accepted during the comment period which closed on April 13, 1998. Written statements were received from the following:

1. Mr. Lester W. Jargowsky, M.P.H., Public Health Coordinator,