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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9933-54-Region 2]

New York State Prohibition of Discharges of Vessel Sewage; Notice of Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice of Determination.

SUMMARY: Notice is hereby given that, pursuant to 33 CFR § 1322(f)(3) and 40 CFR 140.4(a), the State of New York has determined that the protection and enhancement of the waters of Seneca Lake, Cayuga Lake, the Seneca River and tributaries thereto require greater environmental protection than the applicable Federal standards provide and petitioned the United States Environmental Protection Agency (EPA), Region 2 for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Seneca Lake, Cayuga Lake and the Seneca River, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters. New York State proposes to establish a vessel waste No Discharge Zone (NDZ) covering the approximately 150 square miles of connected waters and tributaries of Seneca Lake, Cayuga Lake and the Seneca River.

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SUPPLEMENTARY INFORMATION: Notice is hereby given that the State of New York (NYS or State) has petitioned the United States Environmental Protection Agency, Region 2, pursuant to section 312(f)(3) of Public Law 92-500 as amended by Public Law 95-217 and Public Law 100-4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Seneca Lake, Cayuga Lake and the Seneca River.

Adequate facilities are defined as one sewage pumpout station for every 300 to 600 boats pursuant to the Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines (Federal Register, Vol. 59, No. 47, March 10, 1994).

On April 17, 2015, EPA published notice of its tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Seneca Lake, Cayuga Lake and the Seneca River, and its approval of New York's proposal to ban the discharge of treated and untreated sewage from vessels into those waters under Clean Water Act ("CWA") § 312(f)(3). (78 FR 59681, September 27, 2013) EPA solicited public comments for 30 days, and the comment period ended on May 17, 2015. EPA received a total of twenty two comments via letter and email. All of the twenty two commenters support EPA's proposed determination. All of the relevant comments received have been considered, as discussed below, and EPA hereby issues a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels

are reasonably available within Seneca Lake, Cayuga Lake and the Seneca River.

EPA Response to Public Comments on the April 17, 2015 Tentative Affirmative Determination

Comment 1: Several commenters, including boaters, residents, Non-Governmental Organizations (NGOs) and community advocates expressed strong support for the establishment of a vessel waste no discharge zone (“NDZ”) for Seneca Lake, Cayuga Lake, the Seneca River and tributaries thereto. Some commenters pointed out that this action will reduce pathogens and chemicals, improve water quality and further protect drinking water, wildlife habitats and restore the lakes.

EPA Response: The petition was submitted under CWA § 312(f)(3), which allows New York to establish a vessel sewage no discharge zone if the state determines that the protection and enhancement of the quality of some or all of the waters within the state require greater environmental protection and if EPA determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available within those waters. These comments are consistent with New York’s determination of need.

Comment 2: One commenter suggested that stricter enforcement regulations for sewage discharge in Seneca Lake, Cayuga Lake and the Seneca River are needed.

EPA Response: We appreciate this comment. EPA’s determination in the present action is limited to whether adequate facilities for the safe and sanitary removal and treatment of sewage

from all vessels are reasonably available within Seneca Lake, Cayuga Lake and the Seneca River and does not address the adequacy of enforcement of the proposed ban. This comment is noted but is beyond the scope of EPA's determination on this matter.

Comment 3: One commenter supports the proposed NDZ and suggests that EPA and DEC do more to protect water quality from land use changes, pollution discharges and energy development.

EPA Response: We appreciate this comment. As noted above, EPA's determination in the present action is limited to whether adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available within Seneca Lake, Cayuga Lake and the Seneca River and does not address the need for additional efforts to protect water quality. This comment is noted but is beyond the scope of EPA's determination on this matter.

CERTIFICATION OF NEED: New York's petition contains a certification by the Commissioner of the New York State Department of Environmental Conservation (NYSDEC) that the protection and enhancement of Seneca Lake, Cayuga Lake, the Seneca River and the navigable tributaries thereto, requires greater environmental protection than the applicable Federal standards provide. The certification states that Seneca Lake and Cayuga Lake are water bodies of unique ecological, economic and public health significance, as well as drinking water sources. Pathogens and chemicals contained in the currently-lawful effluent from discharging marine sanitation devices (MSDs) threaten public health and the environment and contravene the State's ongoing efforts to control point and non-point source pollution from municipal discharges, combined sewer overflows and storm water runoff. The proposed NDZ represents

one component of a comprehensive approach to water quality management. Protecting Seneca Lake, Cayuga Lake and the Seneca River warrants this greater level of environmental protection in order to maintain excellent water quality, prevent future degradation and speed the recovery of impaired segments.

Seneca Lake is the largest and deepest of all the Finger Lakes at 4.2 trillion gallons in volume and 291 feet in average depth. The maximum depth of the lake is 618 feet. The Seneca Lake Watershed comprises 14% of the greater Oswego River Watershed. While the water quality of the lake is generally good, the lake is on the NYSDEC Priority Waterbody List as a *Water with Minor Impacts*. This means that the current uses of the lake are fully supported but some negative water quality impacts have been observed and action must be taken to ensure that the water will continue to support its uses in the future. Pollutants that negatively impact the lake include pathogens and oxygen demand from the Watkins Glen wastewater treatment plant and general lakeside activities as well as sediment from eroding stream banks and steep slopes surrounding the lake. As part of its broader efforts to protect and enhance the water quality of Seneca Lake, New York seeks to eliminate the discharge of pathogens and chemicals from all vessels using the lake.

Cayuga Lake has a maximum depth of 435 feet and a volume of about 2.5 trillion gallons. The Cayuga Lake Watershed comprises 15% of the greater Oswego River Watershed. While the water quality of Cayuga Lake is generally good, the northern to mid-south portions of the lake are on the NYSDEC Priority Waterbody List as *Threatened Segments* because of the lake's significant value as a drinking water resource. As part of its broader effort to preserve and

enhance water quality to maintain the lake's use as drinking waters with minimal required treatment, New York seeks to eliminate the discharge of pathogens and chemicals from all vessels using the lake.

ADEQUACY OF SEWAGE REMOVAL AND TREATMENT FACILITIES:

In determining whether adequate facilities exist for the safe and sanitary removal and treatment of sewage from all vessels using a water body, EPA relies on the "Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines," (59 FR 11290) published by the U.S. Department of the Interior (DOI), which provides that at least one pumpout station should be provided for every 300 to 600 boats over 16 feet in length. The guidance also provides that approximately 20% of boats between 16 and 26 feet, 50% of boats between 26 and 40 feet and all vessels over 40 feet in length can be assumed to have an installed toilet with some type of MSD. Vessels below 16 feet in length are generally presumed not to have an MSD onboard.

Estimated Vessel Population

In support of its petition, New York provided information on the vessel population in the proposed NDZ. The population of recreational vessels using Seneca Lake, Cayuga Lake and the Seneca River was estimated based on the New York State Office of Parks, Recreation and Historic Preservation's 2012 Boating Report (OPRHP Report) for the counties of Cayuga, Ontario, Schuyler, Seneca, Steuben, Tompkins and Yates, which surround the lakes. While it is very unlikely that every single vessel registered in these counties will operate in the proposed NDZ simultaneously, the state took a conservative approach and considered all boats registered

in these counties as part of the overall recreational vessel population of the proposed NDZ.

According to the OPRHP Report, in the seven counties surrounding the proposed NDZ, there are 16,740 registered boats between 16 and 25 feet long, 1,161 boats between 26 and 40 feet long and 71 boats over 40 feet long. Applying the percentages in the DOI guidance yields an estimate of 3,967 recreational vessels with MSDs that operate in the proposed NDZ.

The population of commercial vessels using Seneca Lake, Cayuga Lake and the Seneca River was estimated based on information provided by the Genesee Finger Lakes Regional Planning Board and the Finger Lakes Institute as well as information obtained from the internet.

According to these sources, the majority of commercial vessels operating in the proposed NDZ are chartered fishing boats. There are at least 18 charter services that operate primarily in Seneca Lake and Cayuga Lake, as well as 11 cruise companies. These companies own anywhere from one to three vessels. A conservative assumption of 40 companies (18 charter companies + 11 cruise companies + 11 unlisted businesses) with three vessels each yields a total of 120 commercial vessels that operate in the proposed NDZ. As an additional conservative assumption, all 120 commercial vessels are assumed to have MSDs. Therefore, there are approximately 4,090 vessels with MSDs operating in the proposed NDZ.

Available Pumpout Facilities

In further support of its petition, New York provided information on the number of pumpout facilities available to the recreational and commercial vessels in the proposed NDZ. The federal Clean Vessel Act of 1992 made grants available to states for construction, replacement and

renovation of recreational vessel pumpouts. New York applied for the first federal grant in 1994 and initiated a statewide program known as the Clean Vessel Assistance Program (CVAP), managed and administered by New York State Environmental Facilities Corporation that has helped establish and support 17 pumpout facilities serving Seneca Lake, Cayuga Lake and the Seneca River, of which two are pumpout boats and 15 are dockside pumpouts. EPA independently updated and verified these pumpout information and concluded that two pumpout boats are out of operation and only 14 dockside pumpouts are operational. An additional three pumpout facilities are available to the public but are not funded through CVAP. All these current 17 pumpout (14 CVAP + 3 non-CVAP pumpouts = 17 pumpouts) facilities either discharge to a holding tank, to a municipal wastewater treatment plant or to an on-site septic system.

While some commercial shipping vessels are so large as to require special docking accommodations or mobile pumpouts to access pumpout services, the commercial vessels that operate in the proposed NDZ are all small enough to use the same pumpouts that the recreational vessels use. Therefore, the total number of pumpout facilities available for use by the vessels that operate in the proposed NDZ is 17. A list of pumpout facilities, phone numbers, locations, hours of operation, water depth and fees is provided below:

#	Name	Location Lat./Long.	Contact Information	*Days and Hours of Operation	Water Depth (feet)	Fee

1	Cayuga-Seneca – Lock CS1-4	Seneca Lake State Park 42.870575/-76.939667	315-789-2331	April 1 – September 30 24 hours	6'	\$2.00
2	Cayuga Lake	Allan H Treman. State Marine Park 42.458467/-76.513033	607-273-3440	May 1 – October 15 24 hours	7'	\$2.00
3	Cayuga Lake	Frontenac Harbor 42.839778/-76.695769	315-889-5532	April 1 – October 15 9:00 a.m. – 4:30 p.m.	4'	\$5.00
4	Seneca Lake	Barret Marine, Inc. – Stationary 42.874176/-76.935906	315-789-9513	Year round 8:00 a.m. – 7:00 p.m.	5'	\$0.00
5	Seneca Lake	Village Marina 42.384630/-76.87871697	607-535-7910	June – October 11:00 a.m. – 6:00 p.m.	5'	\$5.00
6	Seneca Lake	Stivers (GPJ) Seneca Marine, Inc. 42.868925/-	315-789-5520	May 1 – Labor Day 8:00 a.m. - 8:00 p.m.	6'	\$5.00

		76.939064		8:00 p.m.		
7	Cayuga Lake	Johnson Boat Yard (dba) – Pierce Cleveland, Inc. 42.452369/- 76.510231	607-272-5191	April 1 – November 1 9:00 a.m. – 5:00 p.m.	6'	\$0.00
8	Seneca Lake	Montour Falls- V Municipal Marina 42.354167/- 76.853333	607-210-4124	May 2 – October 15 7:00 a.m. – 7:00 p.m.	4.5'	\$5.00
9	Cayuga Seneca – Lock CS1- 4	Oak Island Marine Facility 42.900983/- 76.866894	315-539-9131	April 1 – October 1 24 hours	8'	\$0.00
10	Cayuga Lake	Hibiscus Harbor 42.856781/- 76.706081	315-889-5086	April 1 – November 1 24 hours	12'	\$5.00
11	Seneca Lake	Frog Hollow Marina 42.370636/- 76.859106	607-535-2671	April 15 – November 15 9:00 a.m. – 5:00 p.m.	5'	\$5.00

12	Seneca Lake	Seneca Falls-V 42.909675/- 76.795868	315-568-2316	May 1 – November 1 24 hours	20'	\$2.00
13	Cayuga- Seneca – Lock CS1- 4	Waterloo Harbor 42.540172/- 76.524237	315-539-8848	May 1 – September 30 24 hours	10'	\$5.00
14	Seneca Lake	Glen Harbor Marina 42.383099/- 76.861575	607-535-2751	April 15 - October 15 10:00 a.m. - 5:00 p.m.	6'	\$0.00
15	Cayuga Lake	Eagles Landing Marina 42.072211/- 76.548915	315-834-6829	April 15 – October 15	Unknown	\$0.00
16	Cayuga Lake	Taughannock Falls State Park 42.547636/- 76.595714	607-387-6739	March 1 - October 15	6'	\$0.00
17	Seneca Lake	Sampson State Park Marina 42.4247/-76.9119	315-585-6392	April 15 - October 20	Unknown	\$0.00

***Please note that the actual days of operation depend on the weather.**

Ratio of Pumpouts Facilities to Vessels Operating in the Proposed NDZ

Total Boat Registrations	Total Pumpout Facilities	Boat : Pumpout Ratio
4,090	17	241:1

Based on a total vessel population of 4,090 and 17 currently available pumpout facilities, the ratio of boats to pumpouts is 241:1, which means there are significantly more pumpouts than the recommended range of 300-600:1. In addition, the pumpouts are well distributed between the lakes (7 are in Cayuga Lake and 10 are in Seneca Lake).

Based on the information above, and after considering the relevant public comments, EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage are reasonably available for all vessels that use the waters of Seneca Lake, Cayuga Lake and the Seneca River. Accordingly, pursuant to 33 CFR 1322(f)(3) and 40 CFR 140.4(a), New York may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

Dated: August 11, 2015.

Judith A. Enck,

Regional Administrator, Region 2

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