



## ENVIRONMENTAL PROTECTION AGENCY

[FRL-10006-45-Region 3]

### Clean Water Act: Virginia – Sarah Creek and Perrin River Vessel Sewage No-Discharge Zone – Tentative Affirmative Determination

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of tentative affirmative determination.

**SUMMARY:** Notice is hereby given that an application for a no-discharge zone has been received from the Secretary of Natural Resources on behalf of the Commonwealth of Virginia requesting a determination by the Regional Administrator, U. S. Environmental Protection Agency (EPA) Mid-Atlantic Region, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Sarah Creek and Perrin River, Gloucester County, Virginia. The EPA is requesting comments on this application and whether the EPA should finalize its tentative affirmative determination or make a negative determination on the proposed designation for Sarah Creek and Perrin River as provided in the Clean Water Act. The application is available upon request from the EPA (at the email address below) or at <https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/NoDischargeZoneDesignations.aspx>.

**DATES:** Comments must be received in writing to the EPA on or before [**Insert date 30 days after date of publication in the Federal Register**]

**ADDRESSES:** Comments should be sent to Matthew A. Konfirst, U. S. Environmental Protection Agency – Mid-Atlantic Region, 1650 Arch Street, Mail Code 3WD31, Philadelphia, PA 19103-2029, or emailed to [konfirst.matthew@epa.gov](mailto:konfirst.matthew@epa.gov). Only written comments will be considered.

**FOR FURTHER INFORMATION CONTACT:** Matthew A. Konfirst, U. S. Environmental

Protection Agency – Mid-Atlantic Region. Telephone: (215) 814-5801, Fax number: (215) 814-5007; email address: konfirst.matthew@epa.gov.

**SUPPLEMENTARY INFORMATION:**

The delineation of the proposed no-discharge zone of Sarah Creek from York River will begin at 37° 14' 58.34" N, 76° 29' 39.17" W and extend to 37° 15' 00.81" N, 76° 28' 37.84" W. From there it will continue north throughout any navigable waters including all tributaries and bays. The delineation of the proposed no-discharge zone of Perrin River from York River will begin at 37° 15' 47.18" N, 76° 25' 20.73" W and extend to 37° 15' 50.63" N, 76° 25' 11.84" W. From there it will continue north throughout any navigable waters including all tributaries and bays.

Based on the boater population in Sarah Creek and Perrin River, EPA guidance recommends one pumpout facility for each waterbody. The Commonwealth of Virginia has certified that there are three stationary and one mobile pumpout facilities at two locations on Sarah Creek and one stationary pumpout facility on Perrin River. Two of the three locations also have a method to empty portable toilets. Furthermore, the Hampton Roads Sanitation District (HRSD) provides free portable pumpout service in Gloucester County on Fridays, Saturdays and Sundays during summer months and on Saturdays the rest of the year. HRSD prefers to service marinas but will provide the portable pumpout at a private residence when requested. The Virginia Department of Health (VDH) ensures that proper sanitary facilities are present at marinas, and marina facilities are inspected annually by VDH for compliance with regulations. A list of the facilities, phone numbers, locations and hours of operation follows.

<b>LIST OF FACILITIES WITH PUMPOUTS IN THE PROPOSED NO-DISCHARGE ZONE</b>				
<b>Pumpout Facility</b>	<b>Operating Hours</b>	<b>Mean Low Water Depth (ft)</b>	<b>Phone Number</b>	<b>Address</b>
York River Yacht Haven (Sarah Creek)	24/7	8	804-642-2156	8109 Yacht Haven Road Gloucester Point, VA 23062
Dockside Condominiums (Sarah Creek)	24/7 April 1 – November 15	6	757-876-1568	Sunset Drive Gloucester Point, VA 23062
Crown Pointe Marina (Perrin River)	The pump-out is available 24/7 from March 1 – November 30 (so it is available even if the other marina services are closed). Dec 1 – Feb 28 pump-out is winterized.	5	804-642-6177	9737 Cooks Landing Road Hayes, VA 23072

The Commonwealth of Virginia has provided documentation indicating that the maximum total vessel population is estimated to be 3,563 vessels (2,115 in Sarah Creek and 1,448 in Perrin River), the majority of which are recreational. The most conservative vessel population estimates provided by the Commonwealth of Virginia suggest that there are 535 vessels less than 16 feet in length, 1,531 vessels between 16 feet and 25 feet in length, 1,263 vessels between 25 feet and 40 feet in length, and 234 vessels greater than 40 feet in length. Commercial traffic on these waterways is limited to 24-30 dead rise workboats, two large fiberglass fishing boats, three charter fishing boats, and a few small tugs that work at the oil refinery on the other side of the York River. Based on the number and size of vessels and EPA guidance for state and local officials, the

estimated number of vessels requiring pumpout facilities in Sarah Creek and Perrin River during peak occupancy is 221.

In the application, Virginia has certified that Sarah Creek and Perrin River require greater environmental protection than provided by currently applicable Federal regulations. Sarah Creek and Perrin River are tributaries to the York River, which drains into the Chesapeake Bay. All or portions of the proposed waters have been listed on current or previous Clean Water Act 303(d) lists of impaired waters by the state as impaired for shellfish harvesting due to fecal coliform. As such, many shellfish beds are restricted or closed. Both are also impaired for dissolved oxygen and aquatic plants (macrophytes). Establishing a no-discharge zone would contribute to: 1) protecting tidal ecosystem services provided by these waterbodies, 2) restoring the restricted and closed shellfish beds in these areas, and 3) preventing further water quality degradation and loss of beneficial uses in these tributaries as well as in the York River.

Sarah Creek and Perrin River are used for a variety of activities, including boating, fishing, shellfish harvesting, oyster gardening, crabbing, water skiing, swimming and more. There are marinas, private piers, numerous vessel anchorages, public and private boat launch facilities, commercial seafood docks and a waterside restaurant. Local watermen are interwoven with the unique identity of the Chesapeake Bay, influencing its history, culture and economy. Furthermore, these waterbodies provide food, spawning grounds and/or habitat to approximately 33 threatened, endangered and rare species of plants and animals, including the Atlantic sturgeon, loggerhead sea turtle and the northern diamond-backed terrapin.

The criteria for the EPA to make its decision are based on Section 312 of the Clean Water Act, 33 U.S.C. 1322, and EPA's implementing regulations found at 40 CFR 140.4. A detailed EPA guidance document entitled "Protecting Coastal Waters from Vessel and Marina Discharges: A

Guide for State and Local Officials, Volume 1. Establishing No-Discharge Areas under §312 of the Clean Water Act (EPA 842-B-94-004, August 1994)” provides additional detail and informs EPA’s analysis. The two primary criteria upon which an affirmative decision is based are: 1) a certifying statement of need that the waters described in the application require greater environmental protection; and 2) demonstrating that there is a sufficient number of accessible boat sewage pumpout and dump station facilities available to the boating public, in lieu of direct discharge of treated sewage into the waters described in the application.

The EPA has made a tentative determination that sufficient pumpout stations exist in both Sarah Creek and Perrin River to service the vessel population and that the use of these facilities imposes minimal costs. In Sarah Creek, there is no charge to use the available pumpout facilities, while in Perrin River there is a \$5.00 fee per pumpout for non-slip holders, though the fee is waived with a small purchase at the marina store. The commercial vessels operating in Sarah Creek and Perrin River include 24-30 dead rise boats, two large fiberglass fishing boats, three charter fishing boats and a few small tugs. Depth at low tide at the pumpout facilities is between five and eight feet, which is comparable to the depths at the entrances to Sarah Creek and Perrin River. Vessels requiring greater depths than provided at the pumpout station would have difficulty entering the creek. Most commercial boats, such as local watermen’s boats, generally do not have Marine Sanitation Devices (MSDs) installed and do not require a pumpout. As described in the state’s application, two large fiberglass fishing boats in the Perrin River have MSDs. Additionally, a few small tug boats use the Perrin River as a staging area. These vessels likely have MSDs onboard, but also use porta-johns located on the barges. Of three charter fishing boats that are kept in Sarah Creek and operate primarily on the York River and Chesapeake Bay, two have porta-potties, while the third has an existing holding tank.

Based on the information above, the EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Sarah Creek and Perrin River and its tributaries such that the Commonwealth of Virginia may establish a vessel sewage no-discharge zone.

Dated: February 13, 2020.

Cosmo Servidio,

Regional Administrator, Mid-Atlantic Region.

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