UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

APR 13 2009

The Honorable L. Preston Bryant, Jr.
Virginia Secretary of Natural Resources
P.O. Box 1475
Richmond, Virginia 23218

Dear Secretary Bryant:

This letter is to notify you that the Commonwealth of Virginia's application dated December 8, 2008 for a no discharge zone designation for the Broad and Jackson Creeks and Fishing Bay pursuant to Section 312(f)(3) of the Clean Water Act (CWA) has been tentatively approved. Under the CWA and accompanying federal regulations [40 C.F.R. §140.4(a)], the Environmental Protection Agency (EPA) has the authority to prohibit the discharge of sewage, whether treated or not, from vessels into waters that require greater environmental protection than the applicable Federal standard.

I am pleased to advise you that Virginia's application fulfills EPA requirements to designate the Broad and Jackson Creeks and Fishing Bay a federally recognized no discharge zone. The EPA will publish a notice in the Federal Register (copy enclosed) tentatively approving this designation. A 30-day public comment period will follow. After our review of public comments, a subsequent Federal Register notice will be published which may formally establish a no discharge zone for the Broad and Jackson Creeks and Fishing Bay.

If you have any questions, please feel free to contact me or have your staff contact Mrs. LaRonda Koffi, EPA's Virginia Liaison at 215-814-5374. For questions concerning the no discharge zone designations program, please contact Mr. Robert Runowski at (215) 814-5385.

Sincerely,

James W. Newsom
for William C. Early
Acting Regional Administrator

APR 20 2009

Enclosure

cc: Mr. David K. Paylor, Director, VADEQ
Mr. David Lazarus, VADEQ

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ENVIRONMENTAL PROTECTION AGENCY

Virginia Commonwealth Prohibition on Discharges of Vessel Sewage; Receipt of Application and Tentative Determination

[FRL]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Tentative Determination.

SUMMARY: Notice is hereby given that an application dated December 8, 2008 was received from the Commonwealth of Virginia on December 11, 2008 requesting a determination by the Regional Administrator, EPA Region III, 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 navigable waters of the Broad Creek, Jackson Creek and Fishing Bay Watersheds in Middlesex County, VA.

DATES: Comments and views regarding this application and EPA's tentative determination may be filed on or before [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: Comments or requests for information or copies of the State's application should be addressed to Robert Runowski, EPA Region III, Office of State and Watershed Partnerships, 1650 Arch Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Robert C. Runowski, EPA Region III, Office of State and Watershed Partnerships, 1650 Arch Street, Philadelphia, PA 19103. Telephone: (215) 814-5385. Fax: (215) 814-2301. Email:

runowski.bob@epa.gov.

SUPPLEMENTARY INFORMATION: This application was made by the Virginia Secretary of Natural Resources on behalf of the Commonwealth of Virginia Department of Environmental Quality (VDEQ). Upon receipt of an affirmative determination in response to this application, VDEQ would completely prohibit the discharge of sewage, whether treated or not, from any vessel in Broad Creek, Jackson Creek and Fishing Bay watersheds in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines 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.

The Broad Creek, Jackson Creek and Fishing Bay watersheds are located in the eastern-most part of Middlesex County (i.e., Deltaville), Virginia. The Broad Creek discharges north to the Rappahannock River near its confluence to the Chesapeake Bay. Jackson Creek discharges east into the mouth of the Piankatank River, and Fishing Bay discharges directly south to the Piankatank River, which discharges to the east to the Chesapeake Bay. These watersheds, including Porpoise Cove and Moore Creek, encompass an area

of land and water of approximately 3.4 sq mi with nearly 18 miles of shoreline. All these water bodies are oligohaline and subject to the action of tides. The majority of the waters outside the bays are shallow with maintained channel depths of six to 10 feet, although some of the areas may not exceed four (4) feet in depth.

Many people enjoy the Broad Creek, Jackson Creek and Fishing Bay watersheds for a variety of activities, including boating, fishing, crabbing, water skiing, and swimming. The shoreline surrounding these three watersheds includes 1,583 housing units (824 year round), public access areas, thirty two (32) marinas, boat launch facilities, and waterside restaurants. Both recreational and commercial large and small boats, personal watercraft, canoes, kayaks, water skiers, and swimmers enjoy these rivers for their recreational benefits. The full time resident population of 1,716 people (increasing to several thousand during the summer months) use these adjacent areas for boating, fishing, and commercial shellfish cultivation and harvesting.

The two Creeks and Fishing Bay host threatened, endangered and rare species of plants and animals, including more than forty (40) water dependent species. The waters of both the Rappahannock and Piankatank Rivers and their tributaries are historically known to accommodate migrating populations of more than ten (10) anadromous fish species. Marine mammals, sea turtles, and waterfowl are also dependent on the environmental quality of these three watersheds and surrounding areas.

The waters of the Broad and Jackson Creeks have been under varying levels of shellfish condemnation for more than twenty (20) years. The 2006 Virginia Water Quality

Assessment listed Broad, Jackson and Moore Creeks, Fishing Bay and Porpoise Cove as requiring total maximum daily loads' determinations (TMDLs) for dissolved oxygen, aquatic plants and bacteriological impairments from fecal coliform and enterococci bacteria. In 2005, EPA Region III and the Virginia State Water Control Board (SWCB) approved a TMDL for the shellfish harvest use impairments on Broad and Jackson Creeks and the lower Piankatank River. Establishing a No Discharge Zone is one of the Commonwealth strategies in improving overall water quality in the lower Chesapeake Bay, and these identified reaches of the Rappahannock and Piankatank Rivers. The small tributaries to the Rappahannock and Piankatank Rivers noted within the areas to be designated are exceptional state resources in need of greater water quality protection than the current applicable Federal standards afford due to their high utilization by recreational vessels, significant shell- and finfish resources, and direct public contact with the affected waters.

For the purposes of this application

A. the proposed **Broad Creek Watershed No Discharge Zone** is defined as all contiguous waters south of the line formed between the points formed by Latitude 37°33'46.3"N and Longitude 76°18'45.9"W and north to Latitude 37°33'47.4"N and Longitude 76°19'24.7"W.

B. the proposed **Jackson Creek watershed No Discharge Zone** is defined as all contiguous waters west of the line formed between the points formed by Latitude 37°32'40"N and Longitude 76°19'40.6"W at Stove Point Neck and Latitude

37°32'46.8"N and Longitude 76°19'15.6"W at the western point of the entrance to the eastern prong of Jackson Creek.

C. the proposed **Fishing Bay No Discharge Zone** is defined as all contiguous waters north of the line formed between the points formed by the Latitude 37°32'01.9"N and Longitude 76°21'43.5"W at the southernmost tip of Bland Point and Latitude 37°31'29.4"N and Longitude 76°19'53.6"W at the southernmost tip of Stove point. This area includes all of Fishing Bay, and encompasses Moore Creek and Porpoise Cove.

The Commonwealth of Virginia Department of Health (VDH) ensures that proper sanitary facilities are present. There are eighteen (18) marinas in Broad Creek, of which nine (9) waterfront marinas operating ten (10) sanitary pumpouts. The remaining nine Broad Creek marinas have no pumpouts but seven (7) offer sanitary restroom facilities. In Jackson Creek, five (5) marinas operate six (6) sanitary sewage pumpouts and dump station facilities. The remaining four (4) Jackson Creek marinas have no pumpouts but three (3) have sanitary restroom facilities. Within Fishing Bay, there are two (2) sewage pumpouts stations and one (1) under construction in Porpoise Cove. All of these facilities also provide dump stations, restrooms, and informational signage. Costs for pumpouts can vary from no charge to less than $15.00 Further details:

Broad Creek:

Walden Brothers Marina (Deltaville, VA) on the west side of Broad Creek operates a dump station, sewage holding tank and restrooms. The clearly-identified pumpout is

accessible to all boaters. The marina has 63 seasonal slips, 6 transient slips and 15 dry storage areas with dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. The facility operates daily 8:00 AM to 5:00 PM, 12 months/year.

Bay Marine (Deltaville, VA) is adjacent to Walden Brothers. It operates sewage pumpout, dump station and public restrooms. This facility operates a Class II package wastewater treatment unit with a 5,000 gallon holding tank. This facility has sixty (60) seasonal slips, many of which are occupied with houseboats. Dump station, restrooms, fuel, potable water, electricity, and solid waste containers are on site. Operations are 8:00 AM to 4:30 PM daily, 12 months/year.

Norton's Marina (Deltaville, VA) is upstream of Bay Marine. It operates an accessible, clearly posted holding tank pumpout facility, with 42 seasonal slips. Restrooms, fuel, potable water, electricity, solid waste containers and repair facilities are available. Operations are on request, 7 days/week and 12 months/year.

Timberneck Marina (Deltaville, VA) is adjacent to Norton's Marina. There are 35 seasonal slips accessible to fuel, potable water, electricity, solid waste containers and repair facilities. The posted pumpout station is at the terminus of its dock at Broad Creek. Operations are 8:00 AM to 4:30 PM, six (6) days/week all year.

Broad Creek Marina (Deltaville, VA) has 20 seasonal slips with a posted holding tank pumpout unit, dump station, restrooms, fuel, potable water, electricity, solid waste containers. Operations are 8:00 AM to 5:00 PM, seven days/week from May through

November.

Walter's Marina (Deltaville, VA) is adjacent to Broad Creek Marina is managed as a bed/breakfast serving 12 (max) vessels. It offers dump station, restrooms, potable water, electricity, and solid waste containers. Operations are on demand.

Chesapeake Cove Marina (Deltaville, VA), further upstream on Broad Creek with 37 seasonal slips and dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. There is a posted holding tank pumpout facility. Operations are 8:00 AM to 5:00 PM, 7 days/week, April though December.

J&M Marine (Deltaville, VA), on the south shore of Broad Creek western branch adjacent to Chesapeake Cove and Coastal Marinas. There are 50 seasonal and 17 dry storage slips, with boat ramp, restrooms, potable water, electricity, solid waste containers and repair facilities. Hours of operation were not listed.

Coastal Marine (Deltaville, VA) on the south shore of the western branch of Broad Creek, adjacent to J&M and Deltaville Yachting Center. It offers 12 seasonal slips and potable water, electricity, solid waste containers and repair facilities. Hours of operation were not listed.

Deltaville Yachting Center (Deltaville, VA) is adjacent to Coastal Marine and upstream of Norview Marina with 80 seasonal slips, 4 transient slips, 190 dry storage spaces, and two (2) sewage holding tank pumpout stations, in addition to dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. Operations are 8:00 AM to 4:30 PM for 6 days/week, March through November.

Norview Marina (Deltaville, VA) is on the east shore at the mouth of Broad Creek, adjacent to the Regatta Point Yacht Club, and across Broad Creek from Bay Marine and Walden Brothers Marina. It has 110 seasonal slips, 188 dry storage spaces, boat ramp, dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. Operations are 8:00 AM to 6:00 PM, 7 days/week, 12 months/year.

Regatta Point Marina (Deltaville, VA) is on the eastern shore near the mouth of Broad Creek. There are 80 seasonal slips and dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. Operations are May 15 through September 15, 7 days/week.

Stingray Point Marina (Deltaville, VA) is on the eastern branch near the mouth of Broad Creek and adjacent to Regatta Point Yacht Club, and across from Bay Marine and Walden Brothers Marina. There are 178 seasonal slips with dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. Operations are 8:00 AM-4:30 PM, 7 days/week, March through November.

In addition, there are at least four (4) additional facilities on the Broad Creek in the Deltaville VA area with nominal amenities for boaters and water recreation craft.

Jackson Creek

Harbour House (Deltaville, VA) is a private marina at the mouth of Mill Creek meeting Jackson Creek offering 22 seasonal slips, with ramp, electricity, solid waste containers, restrooms and sewage holding tank pumpout facilities. Operations are 24 hours/day, 7 days/week, 12 months/year.

Jackson Creek Harbor Condominium (Deltaville, VA) is a private marina with 36 seasonal slips and electricity, potable water, and restroom facilities. No times were listed.

Deltaville Marina (Deltaville, VA) has 79 seasonal slips, 10 transient slips, two sewage holding tank pumpout facilities in addition to dump station, restrooms, fuel, potable water, electricity, solid waste containers and repair facilities. Operations are 8:00 AM-6:00 PM, March through December (2 pumpouts available).

Powell's Marina (Deltaville, VA) has 43 seasonal slips with dump station, restrooms, fuel, potable water, electricity, solid waste containers and sewage holding tank pumpout facilities. Operations are 8:00 AM-5:00 PM, 7 days/week, 12 months/year.

Fitzgerald Boat Basin (Deltaville, VA) has 22 seasonal slips, with dump station, restrooms, potable water, electricity, solid waste containers and sewage holding tank pumpout facilities. Operations are 7:00 AM-7:00 PM, 7 days/week, April through November.

Little Snug Harbor (Deltaville, VA) has 27 seasonal slips with electricity, potable water and restroom facilities. Operation times were not listed.

Fishing Bay Yacht Club (Deltaville, VA) with 80 seasonal slips, and boat ramp, dump station, restrooms, potable water, electricity, solid waste containers and sewage holding tank facilities. Operations are at no charge, 24 hour/day,7 days/week, 12 months/year.

There are at least two other mooring areas with limited amenities on Jackson Creek accessible to boaters.

Fishing Bay

Ruark's Marina (Deltaville, VA) is adjacent to Fishing Bay Trace and Fishing Bay Harbor which lie just to the south. The marina operates a dump station, and is contracted to provide a publicly accessible and posted pumpout unit at the terminus of their "A" dock. On site at Ruark's are 72 seasonal slips with potable water, electricity, solid waste containers and restroom facilities. The site is under construction; no hours are yet listed.

Fishing Bay Trace (Deltaville, VA) is a private facility which has 12 slips but no dump station, solid waste or pumpout facilities. No times listed.

Fishing Bay Harbor Marina (Deltaville, VA) is on the western shore of Fishing Bay and adjacent to Fishing Bay Trace and the Chesapeake Marine Railway. There are 106 slips with fuel, potable water, electricity, solid waste containers, dump station, sanitary pumpout and restroom facilities. Operations are 8:00 AM to 5:00 PM, 7 days/week from April through December.

Porpoise Cove

Porpoise Cove Marina (Deltaville, VA) is located at the southern end of Porpoise Cove on the north shore of the Piankatank River. There are 21 slips with potable water, electricity, solid waste containers, dump station, and restroom facilities. The marina is under contract with the VDH Marina program to build a new pumpout station in 2009. No times listed; the facility is under construction.

The Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings specifies requirements for facility design and operation. Routine health department inspections and performance tests are performed to ensure that facilities are available and functioning properly. The Virginia State Water Control Law Section 62.1-44.33 addresses vessel discharges and authorizes the State Water Control Board to adopt regulations controlling discharges from boats, which are listed and defined in 9 VAC 25-71-70, which also addresses, defines and designates No Discharge Zones (9VAC 25-71-60).

Broken pumpout stations can be reported to the Virginia Department of Health by calling 1-800-ASK-FISH. These regulations also address treatment of collected vessel sewage from pumpouts and dump stations. In compliance with these regulations, all wastes from marinas within the Broad and Jackson Creeks and Fishing Bay are collected in and transported by haulers who deliver them to municipal waste treatment facilities or private facilities permitted under the Commonwealth of Virginia Pollutant Elimination Discharge System for final treatment and disposal.

According to the Commonwealth of Virginia's application there are approximately 631 vessels operating in the Deltaville VA area (551 registered and 80 documented) on any given day based on boater registrations and observations. Transient boat population was not included in the VDH or VDEQ field reconnaissance. Based on this information, it is assumed that most transient boats are brought in by trailer. Most of these boats would not be of a size expected to have a holding tank. Transient boat counts have been estimated

based on boat information given by the operators of the marinas in the Broad and Jackson Creeks and Fishing Bay areas.

The estimated vessel population in all of the affected areas is based on length: 297 vessels less than 16 feet in length, 537 vessels between 16 feet and 26 feet in length, 1,239 vessels between 27 feet and 40 feet in length, and 42 vessels greater than 40 feet in length. Based on the number and size of vessels and EPA guidance for State and local officials to estimate the number of vessels with holding tanks, three (3) pumpouts and one dump station are needed for the Broad Creek. Currently, there are eleven (11) pumpout facilities and nine (9) dump stations in the Broad Creek. In Jackson Creek, four (4) pumpouts and one (1) dump station are required while six (6) pumpouts and three (3) dump stations exist. For Fishing Bay and the adjacent waters of Porpoise Cove and Moore Creek, two (2) pumpouts and one (1) dump station were required, while there are now two (2) pumpouts and two (2) dump stations currently available.

Using the VDH submitted calculations and information, there are sufficient number of pumpout facilities and dump stations at the marinas in the waters in and around the affected areas to adequately service marine sanitary needs. These facilities are easily accessible to all vessels and provide safe and sanitary wastewater removal and treatment. 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 the Broad and Jackson Creeks, the Fishing Bay and Porpoise Cove and Moore Creek areas, in and around Deltaville Virginia. The Commonwealth of Virginia

has demonstrated that there is adequate and sufficient law enforcement capability of these regulations. The Common-wealth has also submitted data to document that local citizens, advocacy groups, and marina personnel are concerned about the adverse impacts from vessel sanitary discharges into the Broad and Jackson Creeks and Fishing Bay, and adjacent areas. In response to public meetings in May and June 2008, professional and public comments were all supportive of the decision to designate the affected areas as a no discharge zone. There were sufficient agency and environmental groups' comments to also support these measures.

A final determination on this matter will be made following the 30 day period for public comment and may result in a Virginia State prohibition of any sewage discharges from vessels in the Broad and Jackson Creeks and Fishing Bay areas. Comments and views regarding this application and EPA's tentative determination may be filed on or before [Insert date 30 days from date of publication in the Federal Register]. Comments or requests for information or copies of the application should be addressed to Robert C. Runowski, EPA Region III, Office of State and Watershed Partnerships, 1650 Arch Street, Philadelphia, PA 19103. Email: runowski.bob @epa.gov. Telephone: (215) 814-5385. Fax: (215) 814-2301.

Dated: APR 13 2009

William C. Early
Acting Regional Administrator

Billing Code 6560-50-P

C. Bigelow

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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Honorable L. Preston Bryant, Jr.
Virginia Secretary of Natural Resources
P.O. Box 1475
Richmond, VA 23218

Dear Secretary Bryant:

This letter is to notify you that Virginia's application dated July 18, 2006 for a no discharge zone designation for the Lynnhaven River Watershed pursuant to Section 312(f)(3) of the Clean Water Act has been tentatively approved. Under the Clean Water Act and accompanying Federal regulations [40 C.F.R. §140.4(a)], the Environmental Protection Agency (EPA) has the authority to prohibit the discharge of sewage, whether treated or not, from vessels into waters that require greater environmental protection than the applicable Federal standard.

I am pleased to advise you that Virginia's application fulfills EPA requirements to designate the Lynnhaven River Watershed a Federally recognized no discharge zone. On November 21, 2006 EPA published a notice in the Federal Register (copy enclosed) tentatively approving this designation. The 30-day public comment period closes on December 21, 2006. Following our review of public comments, a subsequent Federal Register notice will be published which may formally establish a no discharge zone for the Lynnhaven River Watershed. If approved, the discharge of sewage, whether treated or not, from vessels into this waterbody will be prohibited.

If you have any questions, please contact me or your staff may contact Mr. Edward Ambrogio at (215) 814-2758.

Sincerely,

Donald S. Welsh

Donald S. Welsh
Regional Administrator

cc: David K. Paylor, Director, VADEQ
Michael Gregory, VADEQ

Enclosure

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