

intake zones. The prohibition will take effect one hundred and twenty (120) days after this notice. A major focus of the implementation plan for this prohibition will be public education, specifically boater education. For the purposes of boater understanding and compliance, it is worthwhile to note landmarks which approximate the boundaries of the drinking water intake zones, which are in view of the Hudson River boater. For Zone 1, the Troy-Waterford Bridge (126th Street Bridge) and Lock #2 are visible landmarks. For Zone 2, the northern border is at the southern end of Houghtaling Island. The Newburgh-Beacon Bridge, which is south of the southern zone border, is an obvious landmark for the southern end of Zone 2. All of Zone 2 lies between Houghtaling Island and the Newburgh-Beacon Bridge, and these landmarks are therefore useful markers for boaters.

II. Public Comments and Response to Most Significant Comments

On July 5, 1995, EPA noticed the proposed regulation in the Federal Register, which regulation would establish drinking water intakes zones in two sections of the Hudson River. Upon publication of the proposed regulation, a sixty day public comment period commenced and was closed on September 5, 1995. During the comment period, two public hearings were held at the following locations:

1. August 9, 1995 at the offices of the NYSDEC, 21 South Putt Corners Road, New Paltz, New York from 6:30 p.m. to 8:30 p.m.
2. August 10, 1995 at the Town of Waterford Civic Center, 35 Third Street, Waterford, New York from 6:30 p.m. to 8:30 p.m.

Written and/or oral statements were received by six individuals. One individual represented the association of towboat operators. Another individual represented the shipping operations for a major petroleum company. Two individuals represented two citizens group interested in the Hudson River. The comments of each individual are summarized and responded to below:

Comment 1: One individual asserted that the proposed rule goes beyond the proscriptions [sic] of the U.S. Coast Guard by effectively mandating that commercial vessels which operate on the Hudson River install a Type III marine sanitation device (MSD). She contended further that while Section 312(f)(4)(B) of the Clean Water Act (CWA) permits the establishment of a "no discharge zone" once a state submits an application to EPA, the statute does not limit the options which

may be considered nor empower EPA to contravene federal regulations promulgated by the U.S. Coast Guard which address MSDs aboard vessels. The individual argued that the proposed rule "oversteps the bounds of established international and domestic statutes related to the discharge of sewage."

Response 1: Section 312 of the CWA requires the Administrator, in conjunction with the U.S. Coast Guard, to promulgate performance standards for MSDs and requires the U.S. Coast Guard to promulgate regulations governing the design, construction, installation and operation of MSDs. Section 312(f)(4)(B) of the CWA, however, addresses an issue other than performance standards, design, construction, installation or operation of MSDs. This subsection of the CWA provides that "[u]pon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone." The rule, which designates two drinking water intake zones, is, therefore, not inconsistent with Coast Guard regulation and is consistent with the CWA. The comment concerning international agreements and statutes is non-specific and as such cannot be addressed; moreover, the Hudson River is considered domestic waters.

Comment 2: The individual maintained that by proposing to "prohibit the discharge of treated sewage, vessels with Type II MSDs will be rendered non-operational in the winter months and only operational at other times of the year."

Response 2: EPA maintains that vessel operators may operate in compliance with the no discharge requirements by utilizing permanently-installed Type III systems; using portable Type III systems; or by discharging treated waste outside the zone. However, EPA acknowledges that certain circumstances (e.g. winter operation in Zone 2) could preclude the "discharge outside the zone" option for certain vessels. In these circumstances, vessel owners may find it necessary to use either permanent or portable Type III systems. In response to the concern about complying with no discharge requirements during winter months without retrofitting with a permanent Type III system, EPA is delaying the effective date of the rule to 120 days after final notice. This change will allow additional time to retrofit and will allow operators additional time to plan for the more challenging winter operational period.

Comment 3: The two alternatives offered to vessel owners with Type II MSDs is to either install a Type III MSD or discharge treated sewage outside the no discharge zones. An individual argued that the off-loading of sewage at a pump-out station located in the no discharge zone is not a viable option for some vessel operators given the physical dimensions, geographic location and depth of water at many of the pump-out facilities on the Hudson River.

Response 3: Many vessel owners currently operating on the Hudson River use Type III MSDs and are off-loading sewage. The fact that these vessels commonly off-load sewage demonstrates that this is a viable alternative for many other vessel operators, as well. While applications made pursuant to section 312(f)(3) of the CWA must show that adequate facilities for the safe and sanitary removal and treatment of sewage are reasonably available, this is not a criterion for applications or determinations made pursuant to section 312(f)(4)(B) of the CWA.

Comment 4: One individual declared that the proposed regulation will have a detrimental operational and economic impact on commercial vessels which have a Type II marine sanitation device on-board. She criticized that the proposed rule characterizes the costs associated with the purchase of Type III marine sanitation devices as "nominal" and explained that the actual cost associated with the purchase and installation of a holding tank aboard a tugboat can be tens of thousands of dollars depending upon the configuration of the vessel. She concluded that the installation and utilization of a Type III MSD is not a viable alternative for many tug/barge units transporting petroleum products on the Hudson River.

Response 4: Retrofitting is not the only option available and some vessel owners will choose not to retrofit, but will use portable toilets or discharge outside the zones instead. EPA, however, recognizes that some vessels will retrofit with a Type III MSD to comply with the regulation and that there will be a cost associated with retrofitting. EPA's original cost estimates were based on equipment costs and did not include installation costs. The individual points out that cost estimates should include installation of the equipment as well as the purchase price of the equipment. During the public hearing on August 9, 1995, an individual stated that the cost to retrofit would be between \$10,000 and \$75,000 and impact 100 tugboats and 40 to 75 barges (a total of 140 to 175 vessels). Employing the numbers