



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

February 2, 2007

Grant W. Westerson, Chairman
New England Marine Trades Association
20 Plains Road
Essex, CT 06475

OFFICE OF THE
REGIONAL ADMINISTRATOR

Dear Mr. ^{Grant} Westerson:

Thank you for your letter dated December 14, 2006. We are pleased that you and your organization remain committed to helping New England's marinas and boatyards comply with environmental regulations. In particular, it is encouraging that your organization has established a task force in this regard. We also appreciate that you plan to keep the U. S. Environmental Protection Agency (EPA) apprised of the results of this work, and we look forward to these future communications. Your leadership, of which this effort is indicative, will play a key role in timely resolution of the compliance issues marinas face. Please continue to let us know how we can continue to support your efforts.

In response to your questions and concerns, I have consulted with my staff in each of the regulatory program areas you raised, and below is our response.

Resource Conservation and Recovery Act (RCRA)

You requested clarification of federal RCRA regulations in certain areas, and those clarifications are outlined below. Please bear in mind that in New England, each state is authorized to administer the RCRA program, and may have regulations, and interpretations of regulations, that are more stringent than the federal regulations. We are simply advising you regarding our interpretation of the minimum federal requirements. You should check with each state regarding any more stringent requirements or interpretations that may apply.

Household Hazardous Waste Exemption

The federal regulations found at 40 C.F.R. § 261.4(b)(1) exclude household hazardous waste from RCRA Subtitle C regulation. Once a household hazardous waste is excluded from the federal regulations, it remains excluded throughout the entire waste management cycle as long as it is managed in accordance with applicable RCRA Subtitle D regulations governing non-hazardous wastes, and/or state law, and is not mixed with non-excluded hazardous wastes. Forty C.F.R. § 261.4(b)(1) further defines a household to include day-use recreation areas. Thus, household hazardous wastes generated by private boat owners who use a marina as a day-use recreation area are within this exclusion from federal regulation. Wastes from boat maintenance

activities such as paint scraping may fall within this exemption, if this is allowed by the relevant state, provided that the work is conducted on private boats by private boat owners.

In our view, the exemption does not apply to wastes generated by marina staff or contractors, including wastes from work on marina-owned boats, wastes from work on commercial boats such as commercial fishing boats, and wastes from work by marina staff or contractors on private boats. We regard all such wastes as commercial non-household wastes since the wastes are generated by a commercial operation. The generation is not occurring within a household. The EPA interpretation which includes paint scraping wastes from contractor work done within a home as within the household hazardous waste exemption, thus does not apply. Rather, such operations are similar to those in which work is done on a personal automobile at a commercial shop or dry cleaning is done at a hotel. These are both activities to which the household hazardous waste exemption does not apply.

Any household hazardous waste mixed with non-exempt hazardous waste, such as commercial hazardous waste, loses its exemption and is regulated [45 Fed. Reg. 33084, 33099 (May 19, 1980)]. The exemption is also inapplicable to hazardous waste that is abandoned, or for which the generator is unknown. For these reasons, boat owners placing household hazardous waste into marina-owned dumpsters creates a complex issue. It may not be possible to prove that any hazardous waste within a dumpster is exempt household waste. You should consult with each authorized state about the interpretations that apply. A state may require that the private boat owner remove the waste to his residence in order to maintain the exemption. A good practice in such a case would be for the private boat owner to dispose of this waste only during a household hazardous waste collection day. Another possible option would be to have a dumpster dedicated/limited to receiving private boat owners' wastes, with appropriate signs and controls. Whether waste in such a dumpster would remain within the household hazardous waste exemption is a matter of interpretation to be decided by each state.

As you may know, a growing trend is that many marinas are conducting a "closed" operation, whereby no customer do-it-yourself maintenance and repair work is allowed. This not only avoids the problems discussed above, but also avoids potential contamination of the marina property. Under various environmental laws, marina owners and operators are liable for addressing any such contamination, even if it results from activities by private boat owners.

Waste Analysis

If non-exempt (commercial) wastes are generated at a marina, the marina must determine whether the wastes are hazardous, so as then to manage any hazardous wastes in accordance with the hazardous waste requirements (40 C.F.R. § 262.11). The determination may be made based on sampling or knowledge of the waste. See id. There are no regulations specifically requiring the use of a Waste Analysis Plan to document generator knowledge as the method of waste determination. However, documenting the basis for the use of generator knowledge is a prudent practice. A database of analyses for various manufacturers' products may be of use to your

members, as are Material Safety Data Sheets, and would be a good starting point to document knowledge of the waste. But keep in mind that waste determinations are dependent on how the specific generator, in this case the individual marina, uses the material. For example, wastes may be mixed with other materials or wastes, or may be cross-contaminated during use. Accordingly, marinas need to exercise caution in using a database, including being precise in making comparisons with database information. Additional documentation at the marina level, possibly including sampling, may be necessary to make a valid waste determination. In general, a hazardous waste generator should rely on knowledge of the waste only if he/she has a solid basis for being confident that a waste is not hazardous in his/her particular circumstances. We would be pleased to answer any further questions on what additional types of documentation may be appropriate.

Clean Water Act

You cited the need for clear and consistent guidance from EPA and states to ensure that certain pressure wash systems meet all applicable regulations now and in the foreseeable future. We can help accomplish this result by working with you in identifying best management practices and common issues that marina owners typically must address when making investment decisions in this area. This information should help marina owners make good decisions regarding pressure wash water control technology investments. For legal reasons, however, we are not able to endorse any specific technology for achieving compliance. Currently, there is a great deal of work going on among the various marine trades associations, state environmental agencies and EPA to identify these best practices and common issues. Through our joint efforts, we anticipate that a list of these practices and issues will be available for the marina community later this year.

Regarding your concerns about the level of treatment required in a wash water recycling system, at this time there are no federal limitations on the amount of pollutants that can be discharged into a municipal sewer system from bottom boat washing. If the municipality does have an approved pretreatment program, however, there may be local limitations that the discharge must meet prior to discharge. Since local limitations are site-specific to each municipality, they will differ from one Publicly Owned Treatment Works (POTW) to another. Although local limitations are usually in place for five to ten years, they may change based on revisions to water quality, NPDES permit limits and/or sludge disposal practices. In general, the likelihood of a high frequency of such changes is minimal, however, for each situation it is unknown. It would thus be best for each marina owner who is interested in this information to consult with their local POTW for a useful perspective.

Other Areas of Concern

As you consider various areas of focus with respect to your training activities, you may also wish to include air quality and other regulatory programs in your outreach, as well as pollution prevention. Certain activities may require marinas and boatyards to comply with state or federal air quality regulations, or obtain a permit. These activities include: cleaning or degreasing parts

using solvents; fiberglass and aluminum boat manufacturing and repair; painting; sanding, scraping, or similar operations that generate dust; operation of refrigeration units that use Chlorofluorocarbons; installation and/or operation of fuel-burning equipment such as boilers and generators; and any of the above activities that generate objectionable odors and smoke. To determine whether they are subject to these regulations, facilities need to be able to accurately estimate their actual and potential emissions of air pollutants, including air toxics. Facilities which dispense fuel are also likely to be subject to state air quality requirements to install vapor recovery systems, maintain the systems and keep records. There are also many opportunities for your members to save money and achieve compliance by pollution prevention, such as improved handling of toxic materials and use of less-toxic substitutes.

As you know, a variety of environmental assistance tools have been developed in New England through partnerships established among the various marine trades associations, state environmental agencies and EPA. These include many marina owner workshops, guidance materials such as the clean marina guides, and the Regional Marina Website at (<http://www.epa.gov/region1/topics/water/marinas.html>). We encourage you to ask your members to use these tools as we continue our joint efforts to improve compliance among New England's marinas.

In closing, we commend you on your plans to help New England's marinas and boatyards address the critical issues they face in complying with environmental regulations. As questions arise, we are eager to provide answers as part of our strategic efforts to help marinas comply with environmental regulations. We value our partnership, and we hope you will continue to count on our support. Our efforts will significantly improve both New England's industry and the environment.

Sincerely,



Robert W. Varney
Regional Administrator

*Grant -
Thank you for
your leadership!
- Bob*

cc: New England State Environmental Agency Contacts
New England State Marine Trades Association Presidents