



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

OFFICE OF THE REGIONAL
ADMINISTRATOR

February 23, 2021

Upon application by a State to completely prohibit the discharge of sewage from all vessels in some or all of the waters within such State, Section 312(f)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1322(f)(3), directs the EPA Administrator to determine whether adequate facilities for the safe and sanitary removal and treatment of sewage are reasonably available. The EPA Administrator has delegated authority to make a CWA Section 312(f)(3) determination to the EPA Regional Administrators. *See* EPA Delegation of Authority 2-37 (Jul. 25, 1984).

On July 21, 2016, the Washington Department of Ecology's (Ecology) petitioned the EPA to establish a complete prohibition on the discharge of sewage, a "no discharge zone," in Puget Sound. In response to Ecology's petition and supplemental information provided on October 16, 2016, the Acting Regional Administrator for EPA Region 10 signed a final determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available in the Washington State waters identified in the petition. *See* 81 Fed. Reg. 11,218 (Feb. 21, 2017).

On December 13, 2018, American Waterway Operators filed a lawsuit challenging EPA's final determination. *Am. Waterways Operators v. Env'tl. Prot. Agency*, No. 18-2933 (D.D.C.). In an order issued on November 30, 2020, the Court remanded the administrative record to EPA for further consideration and additional fact-gathering, as necessary, to address three issues:

- (1) the costs to vessels attributable to EPA's determination whether adequate pumpout facilities are reasonably available;
- (2) the bases to determine whether adequate sewage treatment facilities are reasonably available for commercial vessels; and
- (3) an explanation of the ratio of commercial vessels to pumpout facilities and why it was helpful to EPA's determination that adequate treatment and removal facilities are reasonably available.

EPA completed its further consideration of the three remanded issues and documented its analysis and findings, along with additional supporting information, in a document captioned, "EPA Consideration of Issues Upon Remand in *American Waterways Operators v. Wheeler*, No. 18-cv-2933 (D.D.C.)" (February 26, 2021), including Appendices. Based on the supplemental administrative record, I hereby reaffirm the determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available in the waters subject to Washington's no discharge zone designated at WAC 173-228-030.

Michelle L. Pirzadeh
Acting Regional Administrator
EPA Region 10