

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE AMERICAN WATERWAYS
OPERATORS,
801 North Quincy Street, Suite 200
Arlington, VA 22203,

Plaintiff,

v.

ANDREW WHEELER, Acting Administrator of
the United States Environmental Protection
Agency,

and

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,
1200 Pennsylvania Avenue, NW
Washington, DC 20460,

Defendants.

Case No.: 18-2933

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The American Waterways Operators (“AWO”) states as follows:

INTRODUCTION

1. For over four decades, under the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”) most vessels operating in waters of the United States, including Puget Sound, have been prohibited from discharging sewage without first properly treating it on board using approved marine sanitation devices (“MSDs”) to ensure it met environmentally protective standards. Under the CWA, because of the interstate nature of vessel movement, these activities are regulated exclusively by the federal government, and states are completely preempted from

doing so. Federal law and regulations implemented by the U.S. Environmental Protection Agency (“EPA”) and the U.S. Coast Guard provide uniform requirements that vessels must follow to properly treat any sewage prior to discharge of the sanitized water, and vessels have installed expensive equipment to meet this requirement.

2. In one narrow circumstance, under Section 312(f)(3) of the CWA, a state has the authority to petition EPA to allow it to create a “no discharge zone” (“NDZ”). No sewage, regardless of how well it is treated, may be discharged into an NDZ once the NDZ is created. Instead, all such sewage must be stored on the vessel, then transferred to an onshore facility to be treated elsewhere, and then the treated water would be discharged, in this case back into Puget Sound. If an NDZ is created, depending on its size, vessels may have to render inoperable the expensive MSDs that they installed in compliance with federal regulations, and must instead install larger tanks to store and discharge sewage to an appropriate onshore facility for it to be treated by onshore water treatment facilities.

3. Given the impact of such a determination on the industry that installed treatment systems and the impact on commerce if insufficient onshore facilities exist, before an NDZ is created, the state’s petition must meet specific requirements regarding the need for the NDZ, and EPA must make an independent, substantive, affirmative determination that “adequate facilities” that can provide for the safe and sanitary removal and treatment of sewage from “all vessels” are “reasonably available” in the area of the proposed NDZ.

4. In this action, AWO challenges a determination by the Administrator of the EPA (the “Administrator”) pursuant to Section 312(f)(3) that the entire Puget Sound can be declared a “no discharge zone” (the “Determination”). This Determination was made with respect to a petition filed by the State of Washington Department of Ecology (“Ecology”) to create the

largest-ever all vessel NDZ in the United States pursuant to the CWA—2,300 square miles and 1,000 miles of coast line.

5. Specifically, this case involves a challenge to the Administrator’s final Determination pursuant to Section 312(f)(3) that “adequate facilities” were “reasonably available” in Puget Sound to handle discharges from all vessels using Puget Sound, a copy of which is attached to this Complaint as Exhibit 1. The Administrator acted in an arbitrary, capricious, and illegal manner for several reasons, including but not limited to the following grounds: (a) he had no authority to make the Determination under Section 312(f)(3) because there was not a valid petition to do so submitted by a state; (b) the “numbers” used by the Administrator to conclude that there were adequate facilities reasonably available to safely and sanitarily remove and treat sewage from as many as 3,646 commercial vessels operating in the 2,300 square miles of Puget Sound simply do not add up, and EPA failed to respond adequately or at all to evidence presented to it that demonstrates this; and (c) the extraordinary costs associated with implementing this determination—as much as \$720 million dollars—demonstrates that a determination that onshore facilities are reasonably accessible is arbitrary and capricious.

6. Accordingly, the Determination is arbitrary, capricious, and inconsistent with the law. AWO seeks a declaration invalidating and vacating the Determination.

JURISDICTION AND VENUE

7. AWO seeks judicial review of agency action pursuant to 5 U.S.C. §§ 702-706, a declaratory judgment pursuant to 28 U.S.C. § 2201, and injunctive relief pursuant to 5 U.S.C. § 705.

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

9. Venue is appropriate in this district under 28 U.S.C. § 1391(e)(1).

PARTIES

10. Plaintiff AWO is the national trade association for the tugboat, towboat, and barge industry. AWO has approximately 350 member companies. Many AWO members operate towing vessels in Puget Sound. Plaintiff brings this action on behalf of itself and its members. As explained below, AWO submitted comments to EPA in connection with the Determination. The Determination adversely affects AWO's members because the NDZ would force them to incur substantial and unreasonable burdens and costs to retrofit and modify their vessels – as much as \$161,500 for towing vessels or \$300,000 for articulated tug barges to install storage tanks, rather than use perfectly good treatment equipment – and incur ongoing unreasonable burdens and expenses resulting from the prohibition on discharge in Puget Sound, which could well put some of them out of business. A court order vacating and setting aside the Determination would remedy this harm.

11. Defendant Andrew Wheeler is the Acting Administrator of the U.S. Environmental Protection Agency.

12. Defendant U.S. Environmental Protection Agency is the federal government agency responsible for implementing and enforcing a variety of federal environmental laws, including the CWA.

OTHER RELEVANT ENTITIES

13. The Puget Sound NDZ Marine Alliance (“Marine Alliance”) is a coalition of maritime industry stakeholders, including vessel operators from the passenger, deep-draft, cruise, fishing, recreational, and towing vessel sectors; ports; shipyards; marine equipment manufacturers; and maritime labor. AWO is a member of the Marine Alliance. Many members

of the Marine Alliance are situated in Puget Sound. Members of the Marine Alliance, including AWO, submitted comments to EPA in connection with the Determination challenged in this lawsuit. The Marine Alliance and AWO also submitted a petition for reconsideration and reversal of the Determination.

FACTUAL BACKGROUND

Statutory and Regulatory Structure

14. Section 312 of the CWA establishes a comprehensive federal program for the regulation of marine sewage discharges and MSDs, administered and enforced by the U.S. Coast Guard and EPA. 33 U.S.C. § 1322(b)-(e). Section 312(f) of the CWA expressly preempts states from adopting or enforcing any statute or regulation “with respect to the design, manufacture, or installation or use of any [MSD] on any vessel subject to the provisions of this section.” 33 U.S.C. § 1322(f)(1)(A). This is a reflection of the inherently mobile nature of the commercial maritime industry, which necessarily crosses state and often international boundaries. Vessel transportation and commerce that rely on it would come to a standstill if every state could impose separate standards.

15. For four decades, MSDs have been used on many vessels to safely and efficiently treat or store water generated from sinks, bathrooms, and other locations on the vessels before the water was discharged (referred to generally as “sewage”). Millions of dollars have been spent developing, installing, and operating these devices. These devices treat or store the water so that when it is discharged, it meets appropriate standards for being free of sewage, as well as harmful bacteria and other substances. The requirement to use these devices is imposed by the CWA.

16. A type II MSD is a flow-through sewage treatment device certified by the U.S. Coast Guard to meet performance standards established by EPA. Those performance standards ensure that the treated water does not harm the receiving waters into which it is discharged. It is used on many commercial towing vessels that operate in Puget Sound. Because the type II MSDs treat the sewage, the vessels do not need to have sewage holding tanks on board (that would otherwise be needed to store sewage water until it can be treated and discharged at appropriate onshore facilities). Many of AWO's members have type II MSDs operating on their vessels. Other vessels, such as recreational offshore vessels, use type I MSDs that treat the water differently, or type III MSDs (used on most smaller recreational boats, as well as most large oceangoing ships) that are just holding tanks, such that the sewage is not treated at all but is instead held for discharge and treatment on shore.

17. Notwithstanding the preemption of state authority to regulate sewage treatment and discharge from vessels, Section 312(f)(3) authorizes EPA to allow states to establish NDZs in state waters, which means that even discharges for treated water from type I and type II MSDs, no matter how harmless, would be prohibited. 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 State 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.*** (emphasis added).

18. EPA has issued regulations and guidance to implement the process described in Section 312(f)(3). Specifically, a state seeking to establish an NDZ must “[make] a written application to the Administrator,” which “shall include” the following, very specific information:

- (1) A certification that the protection and enhancement of the waters described in the petition requires greater environmental protection than the applicable Federal standard;
- (2) A map showing the location of commercial and recreational pump-out facilities;
- (3) A description of the location of pump-out facilities within waters designated for no discharge;
- (4) The general schedule of operating hours of the pump-out facilities;
- (5) The draught requirements on vessels that may be excluded because of insufficient water depth adjacent to the facility;
- (6) Information indicating that treatment of wastes from such pump-out facilities is in conformance with Federal law; and
- (7) Information on vessel population and vessel usage of the subject waters.

40 C.F.R. § 140.4(a). Absent such information, EPA may not grant the petition.

19. The EPA has also issued a 300-page guidance document that provides instructions and details on what states are expected to submit to meet the petition requirements. U.S. Environmental Protection Agency, *Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials, Volume I. Establishing No Discharge Areas Under §312 of the Clean Water Act* (August 1994).

20. EPA has granted approximately 68 state petitions filed under Section 312(f)(3), but none remotely approached the size of Puget Sound.

Ecology's Petition to EPA

21. Ecology's petition to EPA (the "Petition") was submitted in July 2016 and included no information that addressed the concerns and deficiencies raised by the vessel operating community.

22. By way of example, the state assumed there were 2.017 billion persons discharging raw sewage into Puget Sound every hour with no MSD being used. AWO and the Marine Alliance demonstrated the flaws in this and other assumptions, but all remained in the Petition as submitted to EPA.

23. The Petition also ignored extensive evidence regarding the costs associated with the proposed NDZ. It was pointed out to Ecology (and later to EPA) that with the institution of an NDZ and a prohibition on all discharges, towing vessel operators would not be able to use federally-approved type II MSDs in Puget Sound and would instead need to install type III MSD holding tanks where raw sewage could be stored until shore-side disposal or at-sea discharge. It was noted that (a) the cost to install a type III MSD is approximately \$161,500 for each towing vessel and \$300,000 for articulated tug barges; (b) these tanks require significant space, which is unavailable on many vessels; and (c) retrofitting is thus either impossible or economically infeasible for these vessels. As reported to EPA, Ecology cited estimates that the 20-year present value costs due to retrofits would be potentially \$511 million and the 20-year present value costs associated with pumpouts are estimated to be up to \$211 million.

24. The Petition was also defective because it failed to meet the requirements that EPA regulations impose, including sufficient information regarding the availability of pumpout facilities that might allow the agency to meaningfully fulfill its obligation to independently determine that facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available.

25. Rather than reject the Petition, EPA requested that Ecology submit additional information to EPA regarding commercial vessel pumpout availability. Ecology did so on October 14, 2016.

26. On November 7, 2016, EPA quickly published its preliminary affirmative determination approving the NDZ, allowing a 30-day comment period. 81 Fed. Reg. 78,141 (Nov. 7, 2016). This decision was made by the Regional Administrator of EPA Region 10 to whom the Administrator has claimed he delegated the authority to make NDZ determinations.

27. On November 16, 2016, AWO wrote to the then-EPA Region 10 Administrator seeking at least an additional 45 days to review the supplemental information Ecology provided on October 14, 2016. On November 18, 2016, EPA Region 10 denied the request to extend the comment period, but on December 7, 2016, reversed course and announced it would extend the comment period by 15 days, to December 23, 2016.

28. On January 19, 2017, EPA Region 10 released a document responding to the various comments received, titled “Puget Sound No-Discharge Zone Response to Comments.” EPA also notified stakeholders that the then-EPA Region 10 Administrator planned to grant Ecology’s petition.

29. The final “Regional Administrator’s Determination” was issued by Acting Regional Administrator Michelle Pirzadeh on February 13, 2017. It was later published in the Federal Register. 82 Fed. Reg. 11,218 (Feb. 21, 2017). (Exhibit 1 hereto).

30. On November 15, 2017, AWO on behalf of the Marine Alliance sought reconsideration of the Regional Administrator’s Determination from the Administrator. The Administrator never responded to that request and, due to subsequent events noted below, the request for reconsideration was withdrawn on April 20, 2018. It is the final decision of the Administrator, made on his behalf by the Acting Regional Administrator, that is the subject of the instant appeal.

31. On April 9, 2018, Ecology completed its rulemaking to implement the proposed NDZ. Ecology's rule establishing the NDZ became effective on May 10, 2018, though Ecology asserted that it would "phase in" enforcement of the rule.

Comments to EPA

32. EPA received 40,462 comments in response to the preliminary determination. The commenters included associations representing vessel owners, industry representatives, cruise boat operators, and other commercial vessel operators.

33. Plaintiff AWO provided comments to EPA on December 23, 2016. The comments identified specific and critical ways in which Ecology's Petition failed to comply with the requirements of 40 C.F.R. § 140.4 governing such petitions, why the record precluded EPA from making the requisite finding that adequate facilities for the safe and sanitary removal of sewage were reasonably available as to all vessels, and, therefore why the Petition had to be denied.

Deficiencies in Ecology's Petition

34. In its comments, AWO explained that the certification that Ecology included in its Petition needed to trigger the NDZ process at the federal level, attesting "that the protection and enhancement of the waters described in the petition require greater environmental protection than the applicable Federal standard," was not supported by facts. Specifically, Ecology had not demonstrated that (a) the use of type II MSDs caused or contributed in any way to water quality impairment in Puget Sound, (b) EPA standards for type II MSDs were not sufficiently protective of water quality in Puget Sound, or (c) the proposed NDZ would improve water quality in Puget Sound. AWO also provided EPA with the same analysis it provided to the state demonstrating that the potential discharges (over 2 billion people discharging sewage every hour) upon which

Ecology based its concerns were “absurd by any stretch of the imagination.” EPA did not address these comments, stating that EPA had no authority to determine if the Petition met the requirements of Section 312(f) that “the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection” than what the current federal standards provide.

35. While Section 312 provides that the determination of reasonably available and adequate facilities is made exclusively by the Administrator, EPA’s regulations do require the petitioning state to provide data relating to that decision. Ecology’s Petition failed to include several pieces of information required by the applicable regulation, 40 C.F.R. § 140.4(a), when a petition to establish an NDZ is submitted. The Petition did not include “a general schedule of operating hours” for the mobile pump-out facilities, did not include an accurate map showing the location of such pump-out facilities, showed a facility in Seattle that does not exist, and failed to consider which of the supposedly available facilities were in water too shallow to accommodate the majority of commercial vessels operating in Puget Sound. The Petition also did not provide an attestation or information indicating that the identified pump-out facilities would actually treat the sewage in conformance with federal law.

36. In fact, the undisputed evidence was that many of the removal facilities cited in the Petition relied on treatment facilities that were under federal consent decrees based on their inability to serve then-existing customers, but such evidence was ignored.

37. AWO challenged the sufficiency of Ecology’s certification of need for the NDZ to the Washington State Pollution Control Hearings Board (“PCHB”). That challenge is ongoing, thus rendering Ecology’s certification non-final. The PCHB dismissed the appeal for lack of subject matter jurisdiction; the Thurston County Superior Court reversed the PCHB

dismissal and remanded the appeal to the PCHB; Ecology then appealed the Superior Court ruling, and the appeal is pending with briefing completed and oral argument occurred December 7, 2018. The remand proceeding in the PCHB has been stayed pending resolution of the appeal in the Court of Appeals. Without a final certification, Ecology's Petition was legally insufficient, and EPA could not have acted on it under the CWA or its own regulations.

EPA's Defective Determination Regarding the Existence of Adequate Facilities for the Safe and Sanitary Removal and Treatment of Sewage from All Vessels Being Reasonably Available

38. The Determination identified only two stationary commercial facilities as being reasonably available for as many as 3,646 commercial vessels operating 24/7 over 2,300 square miles and 1,000 miles of coastline within Puget Sound, or alternatively for handling the discharge of sewage from vessels by over 2 billion people every hour.

39. It was explained to EPA that these two facilities are not reasonably available to towing vessels operated by AWO members and similar commercial vessels because: (a) they were too far away from where the vessels operated, requiring vessels to spend a full day or more and tens of thousands of dollars in fuel and time out of service just to get to them; (b) their berthing areas are too small and too shallow to handle most of the commercial vessels; and (c) there were serious questions about whether they could properly treat the sewage once offloaded.

40. By way of example, it was explained to EPA that Bellingham—the only fixed pumpout facility in Puget Sound available for use by commercial towing vessels—is 70 miles from Seattle and 100 miles from Tacoma, the two busiest areas of commercial vessel traffic in Puget Sound; diverting AWO members' towing vessels to Bellingham for trips to these pumpout facilities would require *four to eight hours of travel time* each way, thousands of gallons of fuel, and thousands of dollars in out-of-service time. EPA did not dispute or meaningfully respond to these comments.

41. In addition, it was explained to EPA that both facilities at the Port of Bellingham location have significant length and draught restrictions that make them unavailable to many commercial vessels. It was explained that Bellingham's dock can only accommodate vessels up to 65 feet in length and has draught restrictions of 11-16 feet whereas ocean-going towing vessels operating in Puget Sound typically require a minimum of 110 feet for berth space and 20 feet of draught, and that articulated tug barges require a berthing space of 600 feet and 30 feet of draught. Numerous commercial vessel owners commented to EPA that most or all of their fleets would be unable to access the Bellingham facilities due to size and draught limitations. Indeed, the entire regulated community of vessels over 70 feet in length—many of which are operated by AWO members—would be unable to access either commercial shore-based pumpout facility. EPA did not adequately respond to these comments.

42. EPA also did not consider, as required by statute, whether the two facilities at Bellingham were “adequate facilities for the safe and sanitary removal and treatment of sewage” in terms of whether any expected increased capacity at these facilities would impact the ability to treat the sewage in a safe and sanitary manner. EPA noted that these facilities directly discharged into the Bellingham sewer line. There is nothing in the record to indicate whether Bellingham has the capacity to provide for safe and sanitary treatment of the additional sewage. EPA did not address these comments.

43. Rather than finding that these were “adequate facilities for the safe and sanitary removal and treatment of sewage” that “are reasonably available” as the law required, EPA brushed aside all of these comments, dismissively saying that these facilities might be “less useful.”

44. EPA then claimed that there were five companies that had 52 “pumper” trucks and two mobile barges that offered pumpout services that were adequate and reasonably available to serve the commercial vessels operating in the 2,300 square miles of Puget Sound, with over 1,000 miles of coastline.

45. Comments explained that many of the mobile pump-out vessels and pumper truck companies are inaccessible to commercial vessels, noting that (a) many of the mobile pumpout companies identified by Ecology only work within marinas that cannot be accessed by typical commercial towing vessels; (b) others have tank capacity limitations (*e.g.* 300 gallons) far under that required for an ocean-going tugboat (as large as 3,000 gallons); and (c) there was no evidence that any of these vendors had the specialized clearance and credentials to allow them to serve vessels that often operate between secure facilities and terminals. EPA never substantively addressed these significant logistical issues or even examined these mobile pumpout facilities, relying instead on brief phone calls with sales personnel from some of these companies. There is nothing in the record of this Determination indicating that these significant issues and questions were addressed or that there was any independent verification of the conclusory answers that were provided. Nor is there any indication in the record that EPA addressed where and how these mobile pumpout operators treat pumped wastewater.

46. This information is fundamental to the determination that EPA is required to make in order to approve the NDZ—that there are “adequate facilities for the *safe and sanitary* removal and *treatment* of sewage.” 33 U.S.C. § 1322(f)(3) (emphasis added). EPA never discussed or evaluated whether any of these mobile operators could actually and effectively treat the wastewater they collect, either directly or via delivery to a wastewater treatment facility that could handle the expected significant rise in demand that would result from institution of this

large new NDZ. Instead, EPA focused only on whether mobile units could collect the wastewater. Comments explaining this were submitted, but were ignored.

47. Mobile pumpout trucks also involve substantial costs. AWO commented that the estimated cost per vessel per year was \$25,260 for a typical towing vessel, which would be in addition to the significant costs noted above to retrofit and install a type III MSD tank. EPA was also told that the annual cost for some passenger vessels could exceed over \$350,000, a fact which it ignored when determining if onshore facilities were **reasonably** accessible.

48. EPA asserted that, apparently based on brief telephone calls to four mobile pumpout service providers and secondhand and unverified information provided by proponents of the NDZ, the mobile pumpout facilities would be available at any time, could cover all of Puget Sound, and could service any vessel. However, this assertion is directly contradicted by record evidence demonstrating commercial vessel operators' actual direct experiences. EPA made no effort to independently confirm the information it received beyond vague references to four telephone calls to companies offering mobile pumpout services. The record does not reveal any data or facts to support EPA's conclusions from this "outreach" or indicate with whom EPA spoke with at these companies (*i.e.*, salespersons versus technicians who actually perform the work and understand the logistical difficulties raised by the commenters, or existing customers of the same type that would be serviced as a result of the NDZ). With no explanation, EPA also discounted the direct experience from a cruise line operator that a pumper barge refused to provide it service due to the amount of time needed to fully pump out its tank.

49. Nothing in the record indicates that EPA visited even one of these mobile pumpout facilities or considered any of the logistics associated with which facilities could actually and reasonably service on a 24/7 basis vessels in an area with 1,000 miles of coastline.

50. To the extent that the Determination is based on what the agency believes may occur in the future as to the accessibility of mobile pumpout providers and installation of dockside sewage holding tanks, its conclusion is inappropriate. The plain language of the statute requires that EPA determine that adequate facilities “are” reasonably available, not that they “will be” or “might be” available in the future. The record evidence demonstrates that given the actual vessel activity, there are not presently sufficient pumper trucks and barges that, in fact, can access, accommodate, and be available to meet the real-world needs of these vessels when the demand actually exists.

51. The foregoing represents some but by no means all of the ways in which the Determination by EPA was arbitrary, capricious, and inconsistent with law.

COUNT I
(Violation of Section 706 of the Administrative Procedures Act)

52. Paragraphs 1 through 51 are incorporated by reference as if fully set forth herein.

53. The Determination is an order under 5 U.S.C. § 551 that constitutes final agency action under 5 U.S.C. § 704.

54. Under section 706 of the Administrative Procedures Act, a reviewing court may set aside final agency action found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” The Determination is arbitrary, capricious, and not in accordance with law.

55. By way of example, the Determination is arbitrary and capricious because EPA approved Ecology’s Petition despite the fact that it clearly was insufficient under EPA’s own regulations. Among other things, Ecology’s Petition is nonfinal; omits critical required elements, such as “a general schedule of operating hours” for the mobile pump-out facilities; lacks an accurate map showing the location of pump-out facilities; lacks information on draught

requirements; and lacks an attestation or information indicating that treatment of wastes from the identified pump-out facilities is in conformance with federal law.

56. By way of further example, the Determination is arbitrary and capricious because EPA did not adequately respond to or address the comments provided, failed to consider critical information, and chose not to evaluate factors required under the law. Specifically, EPA excluded thousands of commercial vessels from its considerations, chose not to consider any costs in evaluating whether adequate facilities were reasonably available, and did not adequately address information presented to the agency that contradicted the agency's conclusions.

57. By way of further example, the Determination is inconsistent with law because it is not supported by substantial evidence in the record and is inconsistent with the CWA.

COUNT II
(Declaratory Judgment – Violation of the CWA)

58. Paragraphs 1 through 57 are incorporated by reference as if fully set forth herein.

59. This complaint presents an actual controversy regarding the interpretation of the CWA as it relates to the scope of EPA's authority to make an affirmative determination that adequate facilities are reasonably available as to all vessels, sufficient to approve a state's petition for an NDZ under 33 U.S.C. § 1322(f)(3).

60. Pursuant to 28 U.S.C. § 2201(a), to resolve the actual controversies regarding the interpretation and application of this provision of the CWA and EPA's authority with respect thereto, AWO seeks a declaratory judgment, as set forth below, with respect to the duties and obligations of EPA under the CWA.

61. The CWA does not authorize EPA to issue an affirmative determination under 33 U.S.C. § 1322(f)(3) unless the state's petition for an NDZ meets the necessary requirements and EPA "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.”

62. The Determination is inadequate under the statute because the evidence before EPA does not support 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.

WHEREFORE, AWO respectfully requests that this Court:

- a. Hold unlawful and set aside the Administrator’s Determination;
- b. Declare that the Determination violated Section 312(f)(3) of the CWA, 33 U.S.C. § 1322(f)(3), and the regulations implemented at 40 C.F.R. § 140.4(a);
- c. Grant preliminary and permanent injunctive relief against implementation of the Determination;
- d. Award attorney’s fees and costs; and
- e. Award such other relief as is just.

Dated: December 13, 2018

Respectfully submitted,

K&L GATES LLP

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Attorneys for Plaintiff

Exhibit 1

approximately 1,760 feet above mean sea level (msl) created through construction of new roller-compacted concrete or rock-filled dams and/or dikes; (2) excavating a new lower reservoir with a surface area of 131 acres and a total storage capacity of 5,040 acre-feet at a surface elevation of 1,099 feet msl; (3) a new 900-foot-long, 48-inch-diameter penstock connecting the upper reservoirs; (4) a new 3,387-foot-long, 48-inch-diameter penstock connecting the upper and lower reservoirs; (5) a new 150-foot-long, 50-foot-wide powerhouse containing two turbine-generator units with a total rated capacity of 300 megawatts; (6) a new transmission line connecting the powerhouse to a nearby electric grid interconnection point with options to evaluate multiple grid interconnection locations; and (7) appurtenant facilities. Possible initial fill water and make-up water would come from Catawissa Creek. The proposed project would have an annual generation of 867,187 megawatt-hours.

Applicant Contact: Adam Rousselle, Merchant Hydro Developers, LLC, 5710 Oak Crest Drive, Doylestown, PA 18902; phone: (267) 254-6107.

FERC Contact: Tim Looney; phone: (202) 502-6096.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-14807-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at <http://www.ferc.gov/docs-filing/eliblibrary.asp>. Enter the docket number

(P-14807) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 14, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017-03323 Filed 2-17-17; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2017-0026; FRL-9959-39]

Statutory Requirements for Substantiation of Confidential Business Information (CBI) Claims Under the Toxic Substances Control Act (TSCA); Delay of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delay of effective date.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review", this action delays until March 21, 2017, the effective date of the **Federal Register** Notice entitled "Statutory Requirements for Substantiation of Confidential Business Information (CBI) Claims Under the Toxic Substances Control Act (TSCA)", published in the **Federal Register** on January 19, 2017 (82 FR 6522, FRL-9958-34).

DATES: This action is effective February 21, 2017. The effective date of the **Federal Register** Notice entitled "Statutory Requirements for Substantiation of Confidential Business Information (CBI) Claims Under the Toxic Substances Control Act (TSCA)", published in the **Federal Register** on January 19, 2017 (82 FR 6522, FRL-9958-34), is delayed from March 20, 2017 to a new effective date of March 21, 2017.

FOR FURTHER INFORMATION CONTACT: Scott M. Sherlock, Attorney Advisor, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-8257; email address: sherlock.scott@epa.gov.

SUPPLEMENTARY INFORMATION: EPA bases this action on the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review". That memorandum directed the heads

of Executive Departments and Agencies to temporarily postpone for sixty days from the date of the memorandum the effective dates of all regulations (defined in the January 20, 2017 memorandum to include "an interpretation of a statutory or regulatory issue") that had been published in the **Federal Register** but had not yet taken effect. The **Federal Register** Notice entitled "Statutory Requirements for Substantiation of Confidential Business Information (CBI) Claims Under the Toxic Substances Control Act (TSCA)" is subject to the effective date delay. The new effective date for this action is March 21, 2017.

If deemed appropriate, EPA may consider delaying the effective date of this action beyond March 21, 2017.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: February 13, 2017.

Wendy Cleland-Hamnett,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2017-03352 Filed 2-17-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9959-09-Region 10]

Washington State Department of Ecology Prohibition of Discharges of Vessel Sewage; Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination.

SUMMARY: The Regional Administrator of the Environmental Protection Agency, Region 10, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all marine waters of Washington State inward from the line between New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound. This notice constitutes EPA's final determination on the petition submitted by the Washington State Department of Ecology on July 21, 2016, pursuant to Section 312(f)(3) of the Clean Water Act, 33 U.S.C. 1322, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Puget Sound. This determination does not itself constitute the designation of a no-discharge zone, rather, the State of Washington may now in its discretion

finalize its proposed designation in accordance with state law and take the steps it deems appropriate to implement and enforce the discharge prohibition.

EPA Response to Public Comments on the November 7, 2016 Preliminary Affirmative Determination

On November 7, 2016, EPA published notice of its preliminary affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters subject to Washington's proposed no-discharge zone [FR Number 2016–26877; 81 FR 78141, November 7, 2016] with a 30-day public comment period. At the request of stakeholders, EPA extended the 30-day public comment period from December 7, 2016 to December 23, 2016.

EPA received a total of 40,462 comments via letter, email, online using the Federal eRulemaking Portal, and in person. All forms of input were considered equally. Of the comments received, 328 were individual letters and 40,134 were form letters, mass mailers and/or petitions, a few with minor additions. Of the individual letters, approximately two-thirds supported and one-third opposed EPA's preliminary affirmative determination. Two mass mailers totaling 72 signatures opposed EPA's tentative affirmative determination and 40,062 supported it. Comments were submitted by individuals, environmental organizations, vessel associations, boating and yacht clubs, industry representatives, port authorities, county, federal, local and tribal governmental entities, and other interested groups.

In addition to comments expressing support or opposition to a Puget Sound no-discharge zone, many commenters specifically addressed the adequacy and availability of pumpout facilities, while others focused on broader issues beyond the scope of EPA's review and determination. All of the relevant comments received have been considered. EPA has prepared a response to comments that supports this determination. The response to comments document can be found at this Web site: <https://www.epa.gov/puget-sound/epas-final-determination-no-discharge-zone-puget-sound>.

FOR FURTHER INFORMATION, CONTACT: Catherine Gockel, U.S. EPA Region 10, Office of Water and Watersheds, 1200 Sixth Ave., Seattle, Washington 98101; telephone number (206) 553–0325; fax number (206) 553–1280; email address gockel.catherine@epa.gov.

SUPPLEMENTARY INFORMATION: The Department of Ecology has petitioned the United States Environmental Protection Agency (EPA), Region 10, pursuant to section 312(f)(3) of the Clean Water Act, 33 U.S.C. 1322, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Puget Sound. As described in the State's petition, submitted to EPA on July 21, 2016, the Washington State Department of Ecology has determined that the protection and enhancement of the quality of the waters of Puget Sound requires greater environmental protection, and petitioned the United States Environmental Protection Agency, Region 10, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

According to the Ecology's petition, the western boundary of the NDZ would be the exit of the Strait of Juan de Fuca near the entrance of Admiralty Inlet. This boundary is known and visible to vessel operators as it is the line between New Dungeness Lighthouse and Discovery Island Lighthouse. The northern boundary would be the border with Canada and heading south including all marine waters down to the south end of the south Sound and Hood Canal. The fresh waters of Lake Washington, Union Bay, Montlake Cut, Portage Bay, Lake Union, Fremont Cut, the Lake Washington Ship Canal, and Salmon Bay (the connecting waters from Lake Washington to Puget Sound) would be included. For more information regarding the State's planned no-discharge zone, please go to: <http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/nodischargezone.html>.

Washington State Department of Ecology's Certificate of Need

The Washington State Department of Ecology developed its petition in order to establish a vessel sewage no-discharge zone for all marine waters of Washington State inward from the line between New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound, and has submitted a certificate that the protection and enhancement of the waters described in the petition

require greater environmental protection than the applicable Federal standard.

Adequacy and Availability of Sewage Pumpout Facilities

EPA's determination is based on the information provided in Ecology's July 21, 2016 petition as well as supplemental information that Ecology submitted to EPA on October 14, 2016, regarding commercial vessel pumpout availability in Puget Sound. In reaching this final determination, EPA has conducted additional outreach to verify and confirm the information provided in Ecology's submittals and follow up on comments received. The information obtained further supports EPA's determination that adequate pumpout out facilities for the safe and sanitary removal of sewage are reasonably available for both commercial and recreational vessels. Additional detail is provided below and in EPA's response to comments document.

Guidelines issued pursuant to the Clean Vessel Act for recreational vessels recommend one pumpout station for every 300–600 boats [Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines, **Federal Register**, Vol. 59, No. 47, March 10, 1994]. In its petition, the State described the recreational vessel population in Puget Sound as well as the stationary pumpout facilities and mobile pumpout services that are available for use.

The State used two methods to develop a reasonable estimate of the recreational vessel population in Puget Sound. The first method was based on boater registration records obtained from the Washington State Department of Licensing (DOL). Using data from the DOL, the maximum estimated number of recreational vessels in each of the Washington State counties bordering Puget Sound that might require access to pumpout facilities or services under NDZ regulations (*i.e.*, boats larger than 21 feet) is 43,677. Vessels under 21 feet were not included in the estimate because they typically do not have an installed toilet. Because boater registration data may include a number of small, locally registered, commercial vessels such as fishing boats or tug boats, the total may be an overestimate.

The second method was based on the number of moorages and slips available to boaters, using Google Earth imagery captured during the summers of 2011 and 2012 to count vacant and occupied marina slips and moored vessels. Using this method, the State estimates a recreational vessel population of 23,555. The State believes that this also may be an overestimate, albeit less of an overestimate than the number

calculated using the DOL boater registration data.

The State's petition also provided information about 173 pumpout units at 102 locations, and 21 mobile pumpout boats available for recreational vessels in Puget Sound. EPA's review of Ecology's petition and the comments received has confirmed that the total number, location and availability of these pumpout facilities and services track the overall distribution of the recreational vessel population. The ongoing costs for recreational vessels to pumpout is minimal, with most pumpouts being free or \$5 per pumpout. The majority of pumped sewage is sent to wastewater treatment plants; however, some is sent to onsite septic tanks that meet federal requirements.

The most conservative estimate of the ratio of pumpout facilities to recreational vessels is 1:171 boats for each pumpout facility, not including the mobile services. Based on DOL vessel registration data, there is a maximum of 43,677 recreation vessels in Puget Sound that could require access to pumpout facilities. As noted above, this is the State's most conservative (high) estimate. Using a 40 percent peak occupancy rate recommended by the Clean Vessel Act Technical Guidelines cited above, EPA has calculated that 17,471 of the 43,677 boats recreational vessels would require access to a pumpout facility during peak boating season. The State identified 102 recreational pumpout locations, which results in a ratio of 171 recreational vessels for each pumpout location, not including the mobile services. Applying the same 40% occupancy rate to the lower recreational vessel estimate of 23,555 obtained from the moorage count results in a ratio of 92 recreational vessels for each pumpout location, not including the mobile services.

Accordingly, even using the more conservative vessel count, the resulting ratio well exceeds the recommended minimum ratio of 1:600. In addition, EPA has confirmed that numerous mobile pumpout trucks and vessels are available to provide service for recreational vessels throughout Puget Sound. As set forth in Table 8 of Ecology's supplemental information, there are 194 mobile pumpout companies; of these, at least 52 vacuum trucks and two mobile pumpout vessels are available for pumping out larger recreational vessels. Mobile pumpout services are available seven days a week, with extended hours during the busy summer months. These mobile services provide additional pumpout options to address concerns raised regarding location or access issues. Additional information is

provided in EPA's response to comments document.

Based on this information, EPA determines that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for recreational vessels are reasonably available for the waters of Puget Sound.

Puget Sound is also used by many different sizes and types of commercial vessels. The State used a study conducted by the Puget Sound Maritime Air Forum (Starcrest, 2007) to develop a reasonable estimate of commercial vessel use of Puget Sound. The study concluded that there were 2,937 entries of large oceangoing vessels into Puget Sound in 2005, and an estimated 678 other commercial vessels that operate mostly within Puget Sound (*e.g.*, escort tugs) or have Puget Sound as their home port (*e.g.*, the fleet of fishing vessels that travels to Alaska each year). According to the State, current commercial vessel statistics are estimated to be similar to the data from 2005. Based on information provided by a commenter, updated information in 2013 may raise this number to 709. As discussed below, this difference of 31 vessels does not make a measurable difference in terms of EPA's conclusions regarding the ratio of commercial vessels to available pumpout facilities.

The large, oceangoing transient commercial vessels that are only in Puget Sound for a short period of time (*e.g.*, large cruise ships, freighters and tankers) have large enough holding tanks to hold their waste during the time they are in Puget Sound, with some exceptions. Although included in the initial overall vessel estimate, these vessels do not have a need to pumpout and were not included when assessing the adequacy of pumpout facilities. Washington State Ferries (WSDOT ferries) and U.S. military vessels have holding tanks and use large-scale, dedicated pumpout facilities where they are moored. Smaller commercial vessels, such as ferries, tugboats, excursion vessels, and fishing vessels with installed toilets can use the stationary pumpouts, mobile pumpout service vessels, some of the recreational pumpouts, or shore-based pumper trucks, described in more detail below.

The State identified eight stationary pumpouts dedicated to WSDOT ferries, three dedicated to U.S. Navy vessels, one dedicated to the Victoria Clipper vessels and one for the McNeil Island Department of Corrections vessels. The Port of Bellingham cruise terminal area also has three stationary pumpouts, one of which is used for Alaska Marine Highway vessels and two other pumpouts that can serve other

commercial vessels. Although not included in this analysis, EPA notes that two more commercial pumpouts are being installed, one in Seattle for all commercial vessels and another at the Port of Bellingham mostly for fishing vessels. Estimated dates for completion are March and September 2017, respectively.

The State's supplemental information identified five companies that specialize in commercial marine work and that are capable of removing sewage from commercial vessel holding tanks. These five companies have a combined total of approximately 52 trucks (capacity ranging from 2,200–7,000 gallons each) and two mobile barges (capacity of 3,000 gallons each). These companies serve all of Puget Sound and can provide pumpout services at a variety of docks and ports for all types of commercial vessels, including tugs, fishing vessels, USCG vessels, smaller cruise ships, tankers, and other vessels. EPA contacted four of the commercial marine work companies identified in Ecology's supplemental information document and confirmed that the information provided was accurate.

The State's petition and supplemental information also identified 21–23 mobile pumpout vessels. These mobile pumpouts primarily service recreational boats, but several have serviced commercial vessels such as charter boats, fishing vessels, U.S. Coast Guard vessels, and passenger vessels. The mobile pumpout boats have a capacity between 40 and 450 gallons and cover vast areas geographically as they are able to move to vessels, although some stay within their own marina or harbor area. In addition to the pumpouts described above, there are approximately 140 licensed or certified pumper truck companies in Puget Sound that primarily pump out septic tanks, but that can also pump out vessel sewage. The number of trucks in each company ranges from 1–13, and approximately half of these companies contacted by the State are currently, or are willing to, pump out commercial vessel sewage.

The State indicates that the number of commercial vessels that are likely to be in regular need of pumpout facilities within a no-discharge zone would include the non-ocean going vessels that include tugboats, commercial fishing vessels, small passenger vessels, NOAA research and survey vessels, WSDOT Ferries, military and other government vessels, excursion and other commercial vessels. Given that the WSDOT Ferries, military vessels, and Victoria Clipper vessels all have dedicated stationary pumpouts, they have been removed

from the count and EPA has not included their 14 dedicated pumpout facilities in the analysis below. Using the starting number of 678 from the 2005 Starcrest survey, this leaves an approximate 600 vessels that would be in need of other pumpout facilities. Using the starting number of 709 from the 2013 Starcrest survey would leave 631 vessels in need of pumpout facilities.

With the two stationary commercial pumpouts, at least 52 Sound-wide commercial pumper trucks, and the two Sound-wide mobile commercial pumpout barges described above, this amounts to at least 56 pumpouts available for commercial vessels which results in an approximate ratio of 11:1, using either the 600 or 631 vessel estimates cited above. In addition to this ratio, EPA has considered the fact that these mobile pumpouts provide service throughout Puget Sound, provide sufficient capacity for commercial vessels, and generally do not experience dock access issues. Moreover, these pumpout services can be scheduled by appointment to accommodate vessel needs and itineraries, and are sufficiently diversified such that they do not experience seasonal fluctuations. Given the widespread availability and flexibility of these services and the overall ratio of 11:1, EPA determines that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for commercial vessels are reasonably available for the waters of Puget Sound.

EPA further notes that the estimated ratio may be conservative, given that a number of the mobile pumpout boats and pumper trucks described above may also provide commercial pumpout services.

Table of Facilities

A list of pumpout facilities, phone numbers, locations, hours of operation, water depth, and fees is provided at this link to the Washington Department of Ecology Web site: <http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/VesselPumpoutTables.pdf>.

Based on the information above, the EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Puget Sound.

Dated: February 13, 2017.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2017-03353 Filed 2-17-17; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, February 23, 2017 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Draft Advisory Opinion 2016-23:

Socialist Workers Party
Management and Administrative
Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dayna C. Brown, Acting Secretary and Clerk, at (202) 694-1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION:

Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Signed:

Dayna C. Brown,

*Acting Secretary and Clerk of the
Commission.*

[FR Doc. 2017-03456 Filed 2-16-17; 4:15 pm]

BILLING CODE 6715-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 17, 2017.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Stearns Financial Services, Inc. Employee Stock Ownership Plan*, Saint Cloud, Minnesota; to retain and acquire additional stock and increase its ownership interest up to 23.594 percent of Stearns Financial Services, Inc., Saint Cloud, Minnesota, and thereby indirectly increase its control of Stearns Bank National Association, Saint Cloud, Minnesota; Stearns Bank of Upsala, National Association, Upsala, Minnesota; and Stearns Bank of Holdingford, National Association, Holdingford, Minnesota.

Board of Governors of the Federal Reserve System, February 14, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017-03257 Filed 2-17-17; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

<p>I. (a) PLAINTIFFS</p> <p>THE AMERICAN WATERWAYS OPERATORS</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>DEFENDANTS</p> <p>ANDREW WHEELER, Acting Administrator of the United States Environmental Protection Agency et al.</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>11001</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p>
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<p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)</p> <p>Barry M. Hartman and Theodore L. Kornobis K&L Gates LLP 1601 K Street, N.W., Washington, D.C. 20006 T: 202.778.9000</p>	<p>ATTORNEYS (IF KNOWN)</p>
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<p>II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant</p> <p><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<p><input type="radio"/> A. Antitrust</p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> B. Personal Injury/Malpractice</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> C. Administrative Agency Review</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction</p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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<p><input checked="" type="radio"/> E. General Civil (Other)</p>	<p>OR</p>	<p><input type="radio"/> F. Pro Se General Civil</p>
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<p><u>Real Property</u></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><u>Bankruptcy</u></p> <p><input type="checkbox"/> 422 Appeal 27 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Conditions</p> <p><input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement</p> <p><u>Property Rights</u></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent – Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p>	<p><u>Federal Tax Suits</u></p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p> <p><u>Forfeiture/Penalty</u></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks & Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p>	<p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p> <p><input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>
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<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. §§ 702-706, 28 U.S.C. § 2201. Challenge to final EPA action determination regarding no-discharge-zone petition

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: December 13, 2018	SIGNATURE OF ATTORNEY OF RECORD: /s/ Barry M. Hartman
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

THE AMERICAN WATERWAYS OPERATORS

Plaintiff(s)

v.

ANDREW WHEELER, Acting Administrator of the United States Environmental Protection Agency et al.

Defendant(s)

Civil Action No. 1:18-cv-2933

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ANDREW WHEELER
Acting Administrator of the United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Barry M. Hartman
Theodore L. Kornobis
1601 K Street, N.W.
Washington, D.C. 20006-1600

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:18-cv-2933

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

THE AMERICAN WATERWAYS OPERATORS

Plaintiff(s)

v.

ANDREW WHEELER, Acting Administrator of the United States Environmental Protection Agency et al.

Defendant(s)

Civil Action No. 1:18-cv-2933

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Barry M. Hartman
Theodore L. Kornobis
1601 K Street, N.W.
Washington, D.C. 20006-1600

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:18-cv-2933

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

THE AMERICAN WATERWAYS OPERATORS

Plaintiff(s)

v.

ANDREW WHEELER, Acting Administrator of the United States Environmental Protection Agency et al.

Defendant(s)

Civil Action No. 1:18-cv-2933

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JESSIE K. LIU
U.S. Attorney for the District of Columbia
United States Attorney's Office
555 4th Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Barry M. Hartman
Theodore L. Kornobis
1601 K Street, N.W.
Washington, D.C. 20006-1600

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:18-cv-2933

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

THE AMERICAN WATERWAYS OPERATORS

Plaintiff(s)

v.

ANDREW WHEELER, Acting Administrator of the United States Environmental Protection Agency et al.

Defendant(s)

Civil Action No. 1:18-cv-2933

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MATTHEW WHITAKER
Acting Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Barry M. Hartman
Theodore L. Kornobis
1601 K Street, N.W.
Washington, D.C. 20006-1600

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:18-cv-2933

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: