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U.S. Environmental Protection Agency Region IX
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Via email to ota.allan@epa.gov

RE: Marine Sanitation Devices (MSDs): Proposed Regulation to Establish a No Discharge Zone (NDZ) for California State Marine Waters – Docket #EPA–R09–OW–2010–0438

Dear Mr. Ota:

On behalf of Surfrider Foundation ("Surfrider") and our over 55,000 activists and 70 local Chapters, we are writing to first thank the Environmental Protection Agency ("EPA") for determining that a statewide NDZ is required to protect and enhance the quality of California’s marine waters. The benefit to human health and the environment will be significant, as it will result in cleaner water, healthier beaches and a better ocean environment for all Californians. In addition, we are also writing to urge the EPA to extend the NDZ to 12 nautical miles (13.809 miles) for the continued and deeper protection of our treasured coastlines. And finally, we write to urge the EPA to improve inspection procedures onboard ships, improve the monitoring of ship discharges (e.g., expand Coast Guard’s authority), and specify penalties for violators.

Extension of the No Discharge Zone

Sewage is extremely harmful to human health and the aquatic environment. Therefore, it is very important to take all reasonable actions to reduce sewage discharge immediately—time is of the essence. Establishing the statewide NDZ is a step in the right direction, because it will reduce sewage discharge near the coast. Thousands of Surfrider members use California’s waters year round. And currently, California’s coast is under
sieve from land-based pollution.\footnote{See EPA, Marine Sanitation Devices (MSDs): Proposed Regulation to Establish a No Discharge Zone (NDZ) for California State Marine Waters (RIN 2009-AA04), at 16, available at http://www.epa.gov/region9/mediacenter/nodischarge/CA_NDZ-Proposed-Rule.pdf (last visited Oct. 20, 2010) [hereinafter Proposed Regulation].} Allowing vessels to discharge sewage 3 miles from the coast is too much for the coast to handle. It subjects the coastal waters to a two-pronged attack: land and sea. For example, there are 43 wastewater treatment plants in California that discharge approximately 1.35 billion gallons into the Pacific Ocean everyday. California’s beaches and oceans are impacted more and more each day. The economy is already under water—and polluting the water that makes up California’s beautiful coastline will only make matters worse.

While we thank the EPA for the new NDZ policy, Surfrider maintains that dumping even 3 miles out is still too close to our coast. The EPA should take this opportunity, which has been 4 long years in the making, to launch an effective attack on coastal sewage discharge. To do so, the EPA should exercise its federal authority to establish a statewide 12-n.m. NDZ. The EPA is charged with protecting human health and safeguarding the natural environment, including the water, upon which life depends. An extension of the NDZ is in line with EPA’s mission and principles. Several of California’s National Marine Sanctuaries (NMS) already extend beyond 12 n.m. from shore.\footnote{See U.S. EPA Region 9 GIS Center, California No Discharge Zones and Other Protected Coastal Waters, http://www.epa.gov/region9/water/nodischarge/pdf/CA_NDZ_Map_2010.pdf (last visited Oct. 22, 2010); see also The Monterey Bay National Marine Sanctuary (MBNMS), MBNMS Site Characterization, http://montereybay.noaa.gov/sitechart/geol1.html (last visited Oct. 22, 2010) [hereinafter MBNMS].} For example, the Monterey Bay National Marine Sanctuary (MBNMS) extends offshore an average distance of approximately 27 n.m., and sewage discharged is prohibited in this area.\footnote{See MBNMS, supra note 1.} Furthermore, since many NMSs extend beyond 3 miles from shore, they would receive greater protection if the waters around them received greater protection.

The following are just two more examples of the EPA’s authority to establish a 12-n.m. NDZ. Under the Marine Plastic Pollution Research and Control Act of 1987, the federal government prohibits the discharge of food waste, rags, glass, metal, and bottles within 12 n.m. of land.\footnote{33 U.S.C. § 1902(d)(2)(B)(ii) (2006). In addition, Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL) also prohibits the discharge of garbage and plastics within 25 n.m. of land.} Marine life mistakes some of these items for food and can perish from ingestion or entanglement in the marine debris. The items also negatively alter the ocean’s chemistry. Under the Ocean Dumping Act (ODA), the federal government prohibits any person, without a permit, from dumping “any material transported from a location outside the United States” into a zone contiguous to the territorial sea of the
U.S., extending to a line 12 n.m. seaward from the base line from which the breadth of the territorial sea is measured.\footnote{33 U.S.C. § 1411(b)(2) (2006) (emphasis added).}

An extension of the NDZ to 12 n.m. is necessary because the ocean is always moving through currents, winds, and waves. These incessant forces pay no heed to NDZs. Therefore, the more distance between California’s coast and sewage the better. Twelve nautical miles will better mitigate the coastal destruction caused by sewage. There’s no denying that the sewage will end up on the coast to some extent, because the ocean is essentially a giant community pool—we all swim in it and eat out of it.

Extending the NDZ to 12 n.m. is not overly burdensome on the regulated parties. The Proposed Regulation only applies to sewage, and it could very easily apply to graywater and oily bilge water. However, we do recognize that extending the NDZ to 12 n.m. may require many regulated vessels to retrofit their holding tanks to avoid discharging in a NDZ. In fact, about 40% of large passenger vessels would have to decide between retrofitting and traveling outside of the NDZ to discharge. Unfortunately, according to the EPA’s research, it’s currently less expensive for the regulated vessels to comply with the Proposed Regulation by traveling outside of State marine waters.\footnote{See id. at 34-35.} Such a trip would cost a vessel about $2,000 in diesel. On the other hand, it would probably cost the same vessel about $200,000 to retrofit its sewage holding capacity so that it wouldn’t have to discharge in State waters. Extending the NDZ to 12 n.m. will deter vessels from traveling outside the 3-mile limit to discharge sewage, and instead it will encourage regulated vessels to retrofit their ships. Therefore the sewage will be discharged at pump-out stations and not in the ocean. In short, extending the NDZ to 12 n.m. will render trips that are made outside of the NDZ to solely discharge sewage prohibitively expensive and thereby encourage retrofitting. Cruise lines will also be able to market their environmentally sensitive practices after a retrofit. Furthermore, the cost of retrofitting is a reasonable cost of doing business when one considers the companies are using the world’s oceans for private gain. A venerable principle of environmental law is that the polluter should pay. This matter poses no exception.

And finally, 3 miles might seem like an effective measure in the fight against sewage pollution today, but will it be enough for tomorrow? It will more than likely prove to be less effective than anticipated, because the cruise industry continues to thrive and expand.\footnote{See U.S. EPA, CRUISE SHIP DISCHARGE ASSESSMENT REPORT (EPA 842-R-07-005): INTRODUCTION, at 1-1 (Dec. 29, 2008), available at http://water.epa.gov/powaste/vwd/disch_assess.cfm.} The Supplementary Information to the Proposed Regulation states that the Regulation will “address anticipated increases in large passenger vessel sewage
discharges as the industry grows in future years.” But the Regulation will not adequately address increases, because it has already taken the EPA 4 years to propose this Regulation. The number of cruise ship passengers is expected to triple by 2020, and the number of ships is expected to double by 2020. Both treated and untreated vessel sewage is more hazardous than domestic land-based sewage. To make matters worse, more than 90% of the treated sewage that is dumped comes from cruise ships. Therefore, the EPA should account for the growth of the cruise industry tomorrow by making the NDZ 12 n.m. today.

Improve Vessel Inspection and Monitoring, and Specify Penalties for Violators

The EPA should issue a Final Regulation that improves inspection and monitoring of discharges. Over the years, there have been several confirmed sewage discharge violations from cruise ships. While it is true that the Cruise Lines International Association (CLIA) has adopted voluntary industry standards to address waste management practices, to the EPA’s knowledge these voluntary measures are not monitored or reported and the degree of compliance is absolutely unknown. Therefore, at this time, the EPA has no way of verifying how much treated sewage is actually discharged in State waters. Also, in 2000 the EPA, in the absence of any State action, began monitoring cruise ship air emissions and found air quality discharges in violation of law during every single monitoring effort. In conclusion, it is unfortunate yet plainly evident that we can’t rely on cruise ships and large oceangoing vessels to police themselves.

As a result, the United States Coast Guard (USCG) should have authority to conduct unannounced inspections of the regulated vessels and expand its current vessel

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8 See Proposed Regulation, supra note 5, at 21.
9 See id. at 22.
10 See U.S. EPA, SAMPLING EPISODE REPORT – HOLLAND AMERICA OOSTERDAM – SAMPLING EPISODE 6506: EXECUTIVE SUMMARY, at vi (2006), available at http://www.epa.gov/owow/oceans/cruise_ships/oosterdam.html; see also Proposed Regulation, supra note 5, at 14-15. In particular, vessel sewage contains higher concentrations of key analytes such as pathogen indicators, BOD5, COD, and TSS than those found in typical domestic land-based sewage. These analytes may lead to eutrophication (over-nutrition leading to smothering of coral) and oxygen-depleted “dead zones.” Id.
13 See id. at 28.
14 See id at 18, 23.
inspection regime. The USCG should also conduct its own sampling and testing. A per-
passenger fee system to pay for a state monitoring program should also be explored.\textsuperscript{16}

In July 2010, President Obama signed legislation called the Cruise Vessel Security and Safety Act (CVSSA).\textsuperscript{17} It is intended to provide greater protection for cruise passengers from sexual assault and other crimes. Cruise lines already have security personnel, but compliance with the statute might require additional personnel. It would kill two birds with one stone to have cruise ship security personnel monitor ship discharges and protect passengers. Another alternative is to have a USCG member onboard every cruise to ensure compliance with the CVSSA and today’s pertinent dumping restrictions. This would be a win-win situation.

Once again, we thank the EPA for determining that a statewide NDZ is required to protect and enhance the quality of California’s marine waters, and we appreciate your consideration of our comments.

Sincerely,

\[\text{[Signature]}\]

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