



U.S. Department
of Transportation
**Maritime
Administration**

1200 New Jersey Avenue, S.E.
Washington, DC 20590

OCT 24 2007

Mr. Bruce H. Wolfe
Executive Officer, San Francisco Region
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Re: Notice of Violation – Inadequate Report - National Defense Suisun Bay Reserve Fleet -
Illicit Hazardous Waste Discharge – Suisun Bay, Solano County

Dear Mr. Wolfe:

This is in response to your letter of October 1, 2007, entitled “Notice of Violation.” As you can imagine, we are very disappointed in your decision to send this “Notice” in light of our considerable efforts to work cooperatively with you to determine the best method of meeting our Congressionally mandated responsibility to remove, recycle and dispose of obsolete government owned cargo vessels in California, Virginia and Texas.

The Maritime Administration has worked hard since August of 2006, to come to agreement with the SFWQCB on how best to comply with both your requirements under the Clean Water Act and the Coast Guard’s requirement for hull cleaning under the National Invasive Species Act. We have had many discussions and written exchanges with your staff regarding best management practices to reduce any potential discharge into the Bay and to that end have spent considerable staff time and resources to develop new technologies that we were led to believe met your requirements.

The last ships to move left Suisun Bay in mid January of 2007. It is unfortunate that we have not been able to remove other ships since that time. Had this not been the case, we would have reduced the potential for risks associated with their continued presence in Suisun Bay. However, we are caught in the middle of two conflicting legal regimes between a federal agency and a state agency.

Of concern to us is the fact that we have received inconsistent direction as to how best to resolve these problems. Our effort with respect to in-water cleaning is a case in point. At the suggestion of a member of your staff, we worked with contractors to develop an in-water hull cleaning methodology that removes biological growth from the hulls of our ships with minimal amounts of paint affected. In this process, the vast majority of the solids (barnacles and other biological matter) are collected in a bagging system for disposal. As part of this process, we went to the expense of having this methodology tested on one of our vessels in Virginia. The results of testing show that this technology is extremely efficient and went beyond the current industry standards for in-water hull cleaning through scamping and the recovery of solids.

However, your comments on the test results now require “a method for containing all of the scamped materials, including both solids and *liquids*.” We believe that this statement has significantly moved the “goal posts” with respect to the standards we were informed to meet in order to remove these vessels for disposal. This new standard would require the collection and disposal of significant amounts of liquid as part of the cleaning process. At present, we know of no feasible technology that would meet your requirements for in-water cleaning. The SFWQCB is requiring something far beyond current industry standards. This new requirement for containment of liquids (water) is in sharp contrast to earlier SFWQCB statements and emails to the Maritime Administration suggesting that “some containment” of solids was what would be required.

As we read your requirements, the SFWQCB as a practical matter objects to the Maritime Administration performing in-water hull cleaning. This is despite the fact that in-water vessel scamping continues to be performed throughout the United States.

As a consequence, we have explored other options as well, such as dry-docking. To date, we have not found a method for dry-docking that insures vessels scamped in dry-dock will be able to preserve the integrity of the vessels’ hulls. Given the age of our vessels, it is distinctly possible that, once put to the stress of going on dry-dock, these vessels may be irreparably damaged or require repairs caused by dry-docking before they can be made seaworthy.

As we have advised, the Maritime Administration is mandated by Congress to operate the ship disposal program as a nationwide initiative to dispose of non-retention vessels of the National Defense Reserve Fleet (NDRF). As such, the Maritime Administrator directed the formulation of a national environmental excellence initiative governing the condition of vessels to be accepted into the NDRF, maintenance of non-retention vessels at anchorage, cleaning of vessel hulls prior to disposal and the generally accepted practices for the disposal of vessels. This initiative will support a long term policy to be exercised in the same manner across the NDRF at all three fleet sites.

As described in our letter of August 7, 2007 signed by Mr. Joseph Byrne, the Maritime Administration has contracted with a professional environmental consulting firm to develop alternative best management practices for the acceptance and maintenance of non-retention vessels at all three NDRF sites. You may view that contract on our public web site. Our website address is enclosed.

Currently the contractor is conducting site examinations at all three NDRF locations and will soon be providing an interim report to the Maritime Administration. The contractor’s report which will form the basis for our planning process is due to be delivered on January 4, 2008. Upon receipt we will expeditiously formulate our national fleet environmental management plan. We expect to consult with various interested parties, including other governmental officials, prior to implementation of the plan.

It is essential that our national program be based on sound technical and scientific principles and concern for the safety and health of the workers involved in any remediation activities. It would be completely irresponsible to take actions without the appropriate scientific study to guide those actions.

We are confident that this process will address those issues of greatest immediate concern to you. It is our intention to carry out a deliberative and consultative process as we move forward with our comprehensive fleet management plan in a manner that will reduce potential risks to the environment. We expect to share our results with affected states.

In addition, we would point out that the Maritime Administration has contracted for an updated, Programmatic Environmental Assessment on NDRF disposal processes in order to inform us of potential impacts on the environment. Furthermore, we have initiated discussions with the National Marine Fisheries Service regarding whether our activities will impact any protected species.

As you may be aware, the responsible agencies of Virginia and Texas have worked collaboratively with the Maritime Administration on the various issues concerning the NDRF sites and programs within their States. We hope that you would agree it is in the long-term best interest of the environment to take a similar approach in order to develop a comprehensive plan for the management and disposal of vessels in the Suisun Bay Reserve Fleet.

In sum, we hope that you share our concerns for the environment and recognize that removal of those vessels that are in the poorest condition is the best and most effective way to protect the marine environment. Giving you a plan of action, without the scientific and technical studies necessary to support that action, could result in further degradation of the condition of the vessels, further risks to workers, and pose potential risks of unintended discharges to the environment.

Accordingly we ask your patience while the ongoing process thoughtfully and carefully addresses both short and long-term considerations. We respectfully ask you to consider the foregoing in the context of your October 1, 2007 Notice of Violation. The Suisun Bay Reserve Fleet has existed for decades. Waiting for the Maritime Administration's plan on how to address the environmental issues posed by the National Defense Reserve Fleet does not seem an unreasonable request.

We look forward to continuing our work with you in a spirit of cooperation and with the mutual goal of removing these vessels from Suisun Bay.

Sincerely,



Elizabeth Megginson
Chief Counsel

Enclosure

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Websites

Acquisition Web Site: https://voa.marad.dot.gov/Solicitation_Awards/award_filter.asp

Contract: https://voa.marad.dot.gov/Solicitation_Awards/docs/mrg-4100/DTMA4F07011%20SBRF%20ENVIRONMENTAL%20RISK%20ASSESSMENT%20PRWR0700044.pdf

Modification 1: https://voa.marad.dot.gov/Solicitation_Awards/docs/mrg-4100/DTMA4F07011%200001%20SBRF%20ENVIRON%20RISK%20ASSESS%20PRWR0700044.pdf

Modification 2: (minor change; not yet posted)

Modification 3: https://voa.marad.dot.gov/Solicitation_Awards/docs/mrg-4100/DTMA4F07011%200003%20TETRA%20TECH%20CONTRACT%20CHANGE%20FUNDING%20INCR%20PRWR0700044%200001.pdf