

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30212  
LANSING, MICHIGAN 48909

BILL SCHUETTE  
ATTORNEY GENERAL

April 16, 2018

Mark C. Smith  
Resident Agent  
Vanenkevort Tug and Barge, Inc.  
909 N. Lincoln Road  
Escanaba, MI 49829

Re: Potential liability for discharge of injurious substances to waters of the State

Dear Mr. Smith:

On behalf of the State of Michigan, I am notifying Vanenkevort Tug and Barge, Inc. (Vanenkevort) of its potential civil liability arising from a discharge of an injurious substance in the Straits of Mackinac.

Upon information and belief, on or about April 1, 2018, a vessel owned and operated by Vanenkevort passed through the Straits of Mackinac with an anchor deployed. This constitutes a violation of law in and of itself, as the Straits of Mackinac are a "no anchor" zone. Evidence indicates that this vessel's anchor struck and damaged a pair of power cables owned and operated by American Transmission Company (ATC), which caused a release of mineral oil into the Straits. Evidence further indicates the release of mineral oil continued for days.

As a result, Vanenkevort faces potential liability under a number of statutory and common law theories. Part 31, Water Resources Protection, of the Michigan Natural Resources and Environmental Protection Act, forbids the direct or indirect discharge of substances into waters of the state that are injurious to, among other things, fish and aquatic life. MCL 324.3109(1). Each such discharge is punishable by a civil fine of up to \$25,000 per day of violation, as well as damages for harm to natural resources, attorney fees, court costs, and the costs of investigation and surveillance incurred by the State. MCL 324.3115(1) & (2). The mineral oil discharged from ATC's power cables is injurious to the waters of the state.

Such a discharge also constitutes prima facie evidence of a public nuisance. MCL 324.3109(6). In addition, Vanenkevort is potentially liable for monetary and injunctive relief for trespass to State-owned Great Lakes bottomlands and violations of the Michigan Environmental Protection Act, MCL 324.1701, *et seq.*

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It should be noted that this letter refers only to civil liability faced by Vanenkevort itself, and does not address potential criminal culpability, nor does it address the potential liability of individuals responsible for the operation of the vessel at issue on April 1, 2018.

The contact for our office is Assistant Attorney General Dan Bock. Mr. Bock may be reached by mail, by email at [bockd@michigan.gov](mailto:bockd@michigan.gov), or by telephone at (517) 373-7540. Thank you for your prompt attention to this matter.

Sincerely,



Bill Schuette  
Attorney General

WDS/pm

c: Capt. Marko R. Broz, U.S. Coast Guard  
Governor Rick Snyder  
Heider Grether, Director, DEQ