

US Title XIV--Certain Alaskan Cruise Ship Operations

33 USCA § 1901 NOTE

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SEC. 1401. PURPOSE.

The purpose of this title is to:

(1) Ensure that cruise vessels operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve comply with all applicable environmental laws, including, but not limited to, the Federal Water Pollution Control Act, as amended(33 U.S.C. 1251 et seq.), the Act to Prevent Pollution from Ships, as amended(33 U.S.C. 1901 et seq.), and the protections contained within this title.

(2) Ensure that cruise vessels do not discharge untreated sewage within the waters of the Alexander Archipelago, the navigable waters of the United States in the State of Alaska, or within the Kachemak Bay National Estuarine Research Reserve.

(3) Prevent the unregulated discharge of treated sewage and graywater while in ports in the State of Alaska or traveling near the shore in the Alexander Archipelago and the navigable waters of the United States in the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve.

(4) Ensure that discharges of sewage and graywater from cruise vessels operating in the Alexander Archipelago and the navigable waters of the United States in the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve can be monitored for compliance with the requirements contained in this title.

SEC. 1402. APPLICABILITY.

This title applies to all cruise vessels authorized to carry 500 or more passengers for hire.

SEC. 1403. PROHIBITION ON DISCHARGE OF UNTREATED SEWAGE.

No person shall discharge any untreated sewage from a cruise vessel into the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve.

SEC. 1404. LIMITATIONS ON DISCHARGE OF TREATED SEWAGE OR GRAYWATER.

(a) No person shall discharge any treated sewage or graywater from a cruise vessel into the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve unless--

(1) the cruise vessel is underway and proceeding at a speed of not less than six knots;

(2) the cruise vessel is not less than one nautical mile from the nearest shore, except in areas designated by the Secretary, in consultation with the State of Alaska;

(3) the discharge complies with all applicable cruise vessel effluent standards established pursuant to this title and any other applicable law; and

(4) the cruise vessel is not in an area where the discharge of treated sewage or graywater is prohibited.

(b) The Administrator, in consultation with the Secretary, may promulgate regulations allowing the discharge of treated sewage or graywater, otherwise prohibited under paragraphs(a)(1) and(a)(2) of this section, where the discharge meets effluent standards determined by the Administrator as appropriate for discharges into the marine environment. In promulgating such regulations, the Administrator shall take into account the best available scientific information on the environmental effects of the regulated discharges. The effluent discharge standards promulgated under this section shall, at a minimum, be consistent with all relevant State of Alaska water quality standards in force at the time of the enactment of this title.

(c) Until such time as the Administrator promulgates regulations under paragraph(b) of this section, treated sewage and graywater may be discharged from vessels subject to this title in circumstances otherwise prohibited under paragraphs(a)(1) and(a)(2) of this section, provided that--

(1) the discharge satisfies the minimum level of effluent quality specified in 40 CFR 133.102, as in effect on the date of enactment of this section;

(2) the geometric mean of the samples from the discharge during any 30-day period does not exceed 20 fecal coliform/100 ml and not more than 10 percent of the samples exceed 40 fecal coliform/100 ml;

(3) concentrations of total residual chlorine may not exceed 10.0 $\mu\text{g/l}$; and

(4) prior to any such discharge occurring, the owner, operator or master, or other person in charge of a cruise vessel, can demonstrate test results from at least five samples taken from the vessel representative of the effluent to be discharged, on different days over a 30-day period, conducted in accordance with the guidelines promulgated by the Administrator in 40 CFR Part 136, which confirm that the water quality of the effluents proposed for discharge is in compliance with paragraphs(1),(2), and(3) of this subsection. To the extent not otherwise being done by the owner, operator, master or other person in charge of a cruise vessel pursuant to section 1406, the owner, operator, master or other person in charge of a cruise vessel shall demonstrate continued compliance through periodic sampling. Such sampling and test results shall be considered environmental compliance records that must be made available for inspection pursuant to section 1406(d) of this title.

SEC. 1405. SAFETY EXCEPTION.

Sections 1403 and 1404 of this title shall not apply to discharges made for the purpose of securing the safety of the cruise vessel or saving life at sea, provided that all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

SEC. 1406. INSPECTION AND SAMPLING REGIME.

(a) The Secretary shall incorporate into the commercial vessel examination program an inspection regime sufficient to verify that cruise vessels visiting ports in the State of Alaska or operating in the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve are in full compliance with this title, the Federal Water Pollution Control Act, as amended, and any regulations issued thereunder, other applicable Federal laws and regulations, and all applicable international treaty requirements.

(b) The inspection regime shall, at a minimum, include--

(1) examination of environmental compliance records and procedures; and

(2) inspection of the functionality and proper operation of installed equipment for abatement and control of any discharge.

(c) The inspection regime may--

(1) include unannounced inspections of any aspect of cruise vessel operations, equipment or discharges pertinent to the verification under subsection(a) of this section; and

(2) require the owner, operator or master, or other person in charge of a cruise vessel subject to this title to maintain and produce a logbook detailing the times, types, volumes or flow rates and locations of any discharges of sewage or graywater under this title.

(d) The inspection regime shall incorporate a plan for sampling and testing cruise vessel discharges to ensure that any discharges of sewage or graywater are in compliance with this title, the Federal Water Pollution Control Act, as amended, and any other applicable laws and regulations, and may require the owner, operator or master, or other person in charge of a cruise vessel subject to this title to conduct such samples or tests, and to produce any records of such sampling or testing at the request of the Secretary or Administrator.

SEC. 1407. CRUISE VESSEL EFFLUENT STANDARDS.

Pursuant to this title and the authority of the Federal Water Pollution Control Act, as amended, the Administrator may promulgate effluent standards for treated sewage and graywater from cruise vessels operating in the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve. Regulations implementing such standards shall take into account the best available scientific information on the environmental effects of the regulated discharges and the availability of new technologies for wastewater treatment. Until such time as the Administrator promulgates such effluent standards, treated sewage effluent discharges shall not have a fecal coliform bacterial count of greater than 200 per 100 milliliters nor suspended solids greater than 150 milligrams per liter.

SEC. 1408. REPORTS.

(a) Any owner, operator or master, or other person in charge of a cruise vessel who has knowledge of a discharge from the cruise vessel in violation of section 1403 or 1404 or pursuant to section 1405 of this title, or any regulations promulgated thereunder, shall immediately report that discharge to the Secretary, who shall provide a copy to the Administrator upon request.

(b) The Secretary may prescribe the form of reports required under this section.

SEC. 1409. ENFORCEMENT.

(a) ADMINISTRATIVE PENALTIES.--

(1) VIOLATIONS.--Any person who violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title may be assessed a class I or class II civil penalty by the Secretary or Administrator.

(2) CLASSES OF PENALTIES.--

(A) CLASS I.--The amount of a class I civil penalty under this section may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this section shall not exceed \$25,000. Before assessing a civil penalty under this clause, the Secretary or Administrator, as the case may be, shall give to the person to be assessed such penalty written notice of the Secretary's or Administrator's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) CLASS II.--The amount of a class II civil penalty under this section may not exceed \$10,000 per day for each day during which the violation continues, except that the maximum amount of any class II civil penalty under this section shall not exceed \$125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions as in the case of civil penalties assessed and collected after notice and an opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. The Secretary and Administrator may issue rules for discovery procedures for hearings under this paragraph.

(3) RIGHTS OF INTERESTED PERSONS.--

(A) PUBLIC NOTICE.--Before issuing an order assessing a class II civil penalty under this section, the Secretary or Administrator, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of each order.

(B) PRESENTATION OF EVIDENCE.--Any person who comments on a proposed assessment of a class II civil penalty under this section shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph, such person shall have a reasonable opportunity to be heard and present evidence.

(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.--If no hearing is held under subsection (2) before issuance of an order assessing a class II civil penalty under this section, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with subsection(2)(B). If the Administrator or Secretary denies a hearing under this clause, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

(4) FINALITY OF ORDER.--An order assessing a class II civil penalty under this paragraph shall become final 30 days after its issuance unless a petition for judicial review is filed under subparagraph(6) or a hearing is requested under subsection(3)(C). If such a hearing is denied, such order shall become final 30 days after such denial.

(5) EFFECT OF ACTION ON COMPLIANCE.--No action by the Administrator or Secretary under this paragraph shall affect any person's obligation to comply with any section of this title.

(6) JUDICIAL REVIEW.--Any person against whom a civil penalty is assessed under this paragraph or who commented on the proposed assessment of such penalty in accordance with subsection(3) may obtain review of such assessment--

(A) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the District of Alaska; or

(B) in the case of assessment of a class II civil penalty, in the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business, by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or Secretary, as the case may be, and the Attorney General. The Administrator or Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of

discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

(7) COLLECTION.--If any person fails to pay an assessment of a civil penalty--

(A) after the assessment has become final, or

(B) after a court in an action brought under subsection (6) has entered a final judgment in favor of the Administrator or Secretary, as the case may be, the Administrator or Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this subparagraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(8) SUBPOENAS.--The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this subsection and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator or Secretary or to appear and produce documents before the Administrator or Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) CIVIL PENALTIES.--

(1) IN GENERAL.--Any person who violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. Each day a violation continues constitutes a separate violation.

(2) JURISDICTION.--An action to impose a civil penalty under this section may be brought in the district court of the United States for the district in which the defendant is located, resides, or transacts business, and such court shall have jurisdiction to assess such penalty.

(3) LIMITATION.--A person is not liable for a civil judicial penalty under this paragraph for a violation if the person has been assessed a civil administrative penalty under paragraph (a) for the violation.

(c) DETERMINATION OF AMOUNT.--In determining the amount of a civil penalty under paragraphs (a) or (b) of this section, the court, the Secretary or the Administrator, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and other such matters as justice may require.

(d) CRIMINAL PENALTIES.--

(1) NEGLIGENT VIOLATIONS.--Any person who negligently violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title commits a Class A misdemeanor.

(2) KNOWING VIOLATIONS.--Any person who knowingly violates section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title commits a Class D felony.

(3) FALSE STATEMENTS.--Any person who knowingly makes any false statement, representation, or certification in any record, report or other document filed or required to be maintained under this title or the regulations issued thereunder, or who falsifies, tampers with, or knowingly renders inaccurate any testing or monitoring device or method required to be maintained under this title, or the regulations issued thereunder, commits a Class D felony.

(e) AWARDS.--

(1) The Secretary, the Administrator, or the court, when assessing any fines or civil penalties, as the case may be, may pay from any fines or civil penalties collected under this section an amount not to exceed one-half of the penalty or fine collected, to any individual who furnishes information which leads to the payment of the penalty or fine. If several individuals provide such information, the amount shall be divided equitably among such individuals. No officer or employee of the United States, the State of Alaska or any federally recognized Tribe who furnishes information or renders service in the performance of his or her official duties shall be eligible for payment under this subsection.

(2) The Secretary, Administrator or the court, when assessing any fines or civil penalties, as the case may be, may pay, from any fines or civil penalties collected under this section, to the State of Alaska or to any federally recognized Tribe providing information or investigative assistance which leads to payment of the penalty or fine, an amount which reflects the level of information or investigative assistance provided. Should the State of Alaska or a federally recognized Tribe and an individual under paragraph (1) of this section be eligible for an award, the Secretary, the Administrator, or the court, as the case may be, shall divide the amount equitably.

(f) LIABILITY IN REM.--A cruise vessel operated in violation of this title or the regulations issued thereunder is liable in rem for any fine imposed under subsection (d) of this section or for any civil penalty imposed under subsections (a) or (b) of this section, and may be proceeded against in the United States district court of any district in which the cruise vessel may be found.

(g) COMPLIANCE ORDERS.--

(1) IN GENERAL.--Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1403, 1404, 1408, or 1413 of this title, or any regulations promulgated pursuant to this title, the Administrator shall issue an order requiring such person to comply with such section or requirement, or shall bring a civil action in accordance with subsection (b).

(2) COPIES OF ORDERS, SERVICE.--A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State of Alaska. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officer. Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed 30 days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(h) CIVIL ACTIONS.--The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under this subsection. Any action under subsection (h) may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such

court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the State of Alaska.

SEC. 1410. DESIGNATION OF CRUISE VESSEL NO-DISCHARGE ZONES.

If the State of Alaska determines that the protection and enhancement of the quality of some or all of the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve require greater environmental protection, the State of Alaska may petition the Administrator to prohibit the discharge of graywater and sewage from cruise vessels operating in such waters. The establishment of such a prohibition shall be achieved in the same manner as the petitioning process and prohibition of the discharge of sewage pursuant to section 312(f) of the Federal Water Pollution Control Act, as amended, and the regulations promulgated thereunder.

SEC. 1411. SAVINGS CLAUSE.

(a) Nothing in this title shall be construed as restricting, affecting, or amending any other law or the authority of any department, instrumentality, or agency of the United States.

(b) Nothing in this title shall in any way affect or restrict, or be construed to affect or restrict, the authority of the State of Alaska or any political subdivision thereof--

(1) to impose additional liability or additional requirements; or

(2) to impose, or determine the amount of a fine or penalty (whether criminal or civil in nature) for any violation of law; relating to the discharge of sewage(whether treated or untreated) or graywater in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve.

SEC. 1412. REGULATIONS.

The Secretary and the Administrator each may prescribe any regulations necessary to carry out the provisions of this title.

SEC. 1413. INFORMATION GATHERING AUTHORITY.

The authority of sections 308(a) and (b) of the Federal Water Pollution Control Act, as amended, shall be available to the Administrator to carry out the provisions of this title. The Administrator and the Secretary shall minimize, to the extent practicable, duplication of or inconsistency with the inspection, sampling, testing, recordkeeping, and reporting requirements established by the Secretary under section 1406 of this title.

SEC. 1414. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.--The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(2) CRUISE VESSEL.--The term "cruise vessel" means a passenger vessel as defined in section 2101(22) of title 46, United States Code. The term "cruise vessel" does not include a vessel of the United States operated by the Federal Government or a vessel owned and operated by the government of a State.

(3) DISCHARGE.--The term "discharge" means any release however caused from a cruise vessel, and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying.

(4) GRAYWATER.--The term "graywater" means only galley, dishwasher, bath, and laundry waste water. The term does not include other wastes or waste streams.

(5) NAVIGABLE WATERS.--The term "navigable waters" has the same meaning as in section 502 of the Federal Water Pollution Control Act, as amended.

(6) PERSON.--The term "person" means an individual, corporation, partnership, limited liability company, association, State, municipality, commission, or political subdivision of a State, or any federally recognized tribe.

(7) SECRETARY.--The term "Secretary" means the Secretary of the department in which the United States Coast Guard is operating.

(8) SEWAGE.--The term "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.

(9) TREATED SEWAGE.--The term "treated sewage" means sewage meeting all applicable effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended and of this title, and regulations promulgated under either.

(10) UNTREATED SEWAGE.--The term "untreated sewage" means sewage that is not treated sewage.

(11) WATERS OF THE ALEXANDER ARCHIPELAGO.--The term "waters of the Alexander Archipelago" means all waters under the sovereignty of the United States within or near Southeast Alaska, beginning at a point 58° 11'41"N, 136° 39'25" W [near Cape Spencer Light], thence southeasterly along a line three nautical miles seaward of the baseline from which the breadth of the territorial sea is measured in the Pacific Ocean and the Dixon Entrance, except where this line intersects geodesics connecting the following five pairs of points:

(1) 58° 05'17"N, 136° 33'49"W and 58° 11' 41"N, 136° 39'25"W [Cross Sound].

(2) 56° 09'40"N, 134° 40'00"W and 55° 49' 15"N, 134° 17'40"W [Chatham Strait].

(3) 55° 49'15"N, 134° 17'40"W and 55° 50' 30"N, 133° 54'15"W [Sumner Strait].

(4) 54° 41'30"N, 132° 01'00"W and 54° 51' 30"N, 131° 20'45"W [Clarence Strait].

(5) 54° 51'30"N, 131° 20'45"W and 54° 46' 15"N, 130° 52'00"W [Revillagigedo Channel].

The portion of each such geodesic situated beyond three nautical miles from the baseline from which the breadth of the territorial sea is measured forms the outer limit of the waters of the Alexander Archipelago in those five locations.