HB

371

Representative Beth Kerttula

Alaska State Legislature, District 3
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Memorandum

Date: March 7, 2000

To: Representative Andrew Halcro, Chairman
House Transportation Committee

From: Beth Kerttula, Representative, District 3

Re: **House Bill 371: Registering and Reporting by Large Marine Passenger Vessels**

I respectfully request that you considering waiving HB 371 from House Transportation Committee or, alternatively, schedule it for a hearing.

I would like to briefly discuss this bill with you at your earliest convenience.

NWCA comments on Alaska House Bill 371

The member cruise lines of the North West CruiseShip Association are engaged in an environmental initiative under the leadership of Alaska Department of Environmental Conservation, and involving the Coast Guard and SE Alaska Communities. The purpose is to gain understanding of the waste management practices on board cruise ships visiting Alaska, to determine additional data requirements and address any environmental problem that are identified.

We support this process as a sound base for problem solving and policy-making founded on facts and analysis. We see the process as the correct means to address public questions and concerns about environmental stewardship by the cruise lines.

The process underway is designed to be cooperative between the industry and government agencies, with common objectives of continuing to implement technological and operational improvements to reduce environmental impact.

The cruise lines are committed to high quality environmental practices, with application of operating practices and technology to minimize the environmental impact of the ships and the visitors that we bring to Alaska. In most cases this means that current environmental management practices exceed the US regulatory requirements. The cruise lines, through the International Council of Cruise Lines (ICCL) have agreed to a set of environmental practices, which were published in December 1999. In addition the Lines have agreed to additional practices which are specific to operations while in Alaska waters.

The cruise lines understand the need to reassure the public that they are exercising responsible environmental management, that regulations already exist and that the enforcement agencies have the powers to ensure enforcement under present law.

Conclusions

The Bill is out of step with the process underway in that it does not pause to determine whether there are substantive problems, and what they are. It simply goes directly to regulations as the solution.

The Bill does not recognize the degree of regulation already in existence and the enforcement procedures in place.

Bill 371 with its emphasis on regulations, reporting and enforcement is inconsistent with the cooperative process underway, in seeking workable solutions.

The Bill, with its sole focus on cruise ships, misses the context of other – and possibly far more serious – sources of waste discharge in Alaska's Inside Passage.

CSHB 371
Registration and Reporting by Large Marine Passenger Vessels

Sectional Analysis

Section 1 adds new sections to AS 46.03, the Environmental Conservation statutes.

Sec. 46.03.460 requires owner/operator who conducts business in Alaska to register annually each vessel with DEC. The in-state contact information becomes paramount when working with foreign flag vessels with international crews and officers as on many of the cruise ships. The CS clarifies that an owner/operator can undertake its annual registration just prior to actually bringing a vessel into state waters, rather than at the beginning of each year.

Sec. 46.03.465 requires owner/operators to monitor cruise ship pollutants in order to fulfill the reporting requirements under AS 46.03.475. Monthly sampling of visible emissions from vessels while in an Alaskan port is required. DEC may adopt regulations, as necessary, and is directed to maximize reporting efficiencies through coordination with other vessel reporting.

The CS clarifies 46.03.465(a) so that the monitoring is only required for that portion of a month when a vessel is actually operating in Alaska waters. Further, the CS amends 46.03.465(c) to narrow the focus of the rulemaking to the quantity and quality of waterborne pollutants and not include reference to monitoring devices and methods. CSHB 371's focus on record keeping and reporting side steps potential preemption issues considered in the recent case *United State v. Locke et. al.* where the U.S. Supreme Court declared several Washington State regulations on oil tankers preempted by federal laws.

Sec. 46.03.470 requires that records be maintained for three years.

Sec. 46.03.475 establishes the monthly reporting that must occur for several categories of pollutants. The CS clarifies that the focus is primarily on pollutants that each vessel either releases into the air or waters within the state, or offloads in an Alaskan port. The specific location and amount of each disposal are required. Significantly, HB 371 does not require that the cruise line companies get a new permit from the state of Alaska nor set any new performance standards on waste discharges. Reporting data in a vessel-specific format is essential to perform site-specific assessments of potential and cumulative environmental impacts. In keeping with DEC's other environmental oversight practices, each report must be certified by a responsible vessel official.

Sec. 46.03.480 establishes civil penalties for failing to register or report, or for falsifying a registration or report. The penalties are based on those imposed on

other businesses operating in Alaska or imposed on violations under other DEC statutes.

Sec. 46.03.485 gives DEC rule-making authority to implement this legislation.

Sec. 46.03.490 defines several terms drawing on existing state and federal environmental pollution definitions.

"large passenger vessel" is revised in the CS to include the 300 gross registered tonnage factor that is a regulatory threshold commonly used by the U.S. Coast Guard and other maritime organizations. The definition focuses on large cruise ships because these are the vessels that generate substantial amounts of wastes on a daily or weekly basis while carrying as many as 2,000 – 4,000 passengers and crew members through Alaskan waters.

"pollutant" is defined to cover the full array of wastes generated during the duration of a typical cruise through Alaskan waters, including air contaminants, gray water, sewage, solid waste, incinerator ash, and hazardous chemicals.

"sewage" is revised in the CS to simplify the definition to that provided under the federal Clean Water Act.

Section 2 amends AS 46.03.760(e) to reflect the penalties incorporated into 46.03.480(c)

1-LS1327\H
Lauterbach
3/17/00

CS FOR HOUSE BILL NO. 371( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KERTTULA

A BILL

FOR AN ACT ENTITLED

"An Act relating to certain passenger vessels transacting business in the state or operating in the marine waters of the state."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 46.03 is amended by adding new sections to read:

Article 6A. Large Passenger Vessels.

Sec. 46.03.460. Registration requirements. (a) Each calendar year in which the owner or operator of a large passenger vessel intends to operate, or cause or suffer to be operated, the vessel in the marine waters of the state, the owner or operator of the vessel shall register with the department. The registration shall be completed before any large passenger vessel of the owner or operator enters the marine waters of the state. The registration must include the following information:

(1) the vessel owner's business name and, if different, the vessel operator's business name for each large passenger vessel of the owner that is scheduled to be in the marine waters of the state during the calendar year;

(2) the postal address, electronic mail address, telephone number, and facsimile number for the principal place of each business identified under (1) of this subsection;

(3) the name and address of an agent for service of process for each business identified under (1) of this subsection; the owner and operator shall continuously maintain a designated agent for service of process whenever a large passenger vessel of the owner or operator is in the marine waters of the state, and the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in and authorized to do business in this state;

(4) the name or call sign of and Port of Registry for each of the owner's or operator's vessels that is scheduled either to call upon a port in this state or otherwise to be in the marine waters of the state during the calendar year occurring after the date of registration; and

(5) other information required by the department by regulation.

(b) Registration under (a) of this section must be signed under oath by the owner or operator.

Sec. 46.03.465. Information-gathering requirements. (a) Owners and operators of large passenger vessels shall, for the time during any calendar month in which they operate, or cause or suffer to be operated, a large passenger vessel in the marine waters of the state, record or cause to be recorded all information necessary to completely report as required by AS 46.03.475.

(b) At least once during each calendar month in which a large passenger vessel is present in the marine waters of the state, and more often if required by the department under regulations, the owner and operator of the vessel shall measure visible emissions, excluding condensed water vapor, of the vessel while the vessel is at berth or at anchor in a port of this state. If regulations have been adopted to implement this subsection, the measuring technique used to satisfy the requirement of this subsection must have been approved by the department before the measurement was taken.

(c) The department may adopt regulations directing owners and operators of large passenger vessels to quantify and qualify the releases of waterborne pollutants

from their vessels into the marine waters of the state.

(d) In order to reduce inefficiency and minimize unnecessary duplication, the department shall implement the reporting requirements of this section in a manner designed to coordinate the reporting requirements with other reporting requirements that may be applicable to the same vessels.

Sec. 46.03.470. Record keeping requirements. An owner or operator subject to AS 46.03.465 shall record the information gathered under that section and shall maintain the records for three years after the date the information was gathered.

Sec. 46.03.475. Reporting requirements. (a) An owner or operator of a large passenger vessel shall, within 10 days after the end of a calendar month in which the owner or operator has operated, or caused or suffered to be operated, a large passenger vessel in the marine waters of the state, submit to the department a report itemizing, among other matters, the offloading or release of pollutants from that vessel that occurred during the time in the previous calendar month that the vessel was located in the marine waters of the state. The report must

(1) include the information required by this section; and

(2) contain or include copies of the reports concerning pollutants that are required by the department in the department's enforcement of other provisions of this title.

(b) For each release of a pollutant for which reporting is required by regulations adopted under AS 46.03.465(c), except for a release by an emission to ambient air from a stack, the report must describe the

(1) location of the release, including latitude and longitude;

(2) volume and source of the pollutant released;

(3) circumstances surrounding and cause of the release, including a statement as to whether the release was intentional or accidental;

(4) environmental damage caused by the release, to the extent the damage can be reasonably identified; and

(5) remedial efforts taken to prevent accidental recurrence of the release.

(c) For hazardous waste,

(1) the report must include a copy of each manifest prepared in accordance with 42 U.S.C. 6921 - 6939a (Subtitle C of the Solid Waste Disposal Act); and

(2) if hazardous waste was offloaded from the vessel without a manifest while the vessel was in the marine waters of the state, the report must describe the

(A) volume and source of the waste;

(B) location of offloading;

(C) destination of offloaded waste; and

(D) reasons why the waste was offloaded without a manifest.

(d) For solid waste and industrial waste, the report must describe

(1) for waste offloaded in the marine waters of the state, the weight and composition of the offloaded waste, the location of the offloading, and the destination of the offloaded waste; and

(2) the solid waste processing facility or treatment works located on the vessel, the quantity of waste processed by the facility or works during the time in that calendar month that the vessel was in the marine waters of the state, and an explanation of whether any processed waste was released or offloaded while the vessel was in the marine waters of the state.

(e) For emissions to ambient air from a stack, the report must include the measurements of visible emissions collected under AS 46.03.465(b) and, if a stack on the vessel is equipped with continuous emission monitors, the recordings printed by the monitors for the time during that month that the vessel was in the marine waters of the state.

(f) For sewage, the report must describe treatment works located on the vessel, the quantity of waste processed by the works during the time in that calendar month that the vessel was in the marine waters of the state, and an explanation of whether any treated waste was released or offloaded while the vessel was in the marine waters of the state.

(g) For graywater and other wastewater other than sewage, the report must describe the location of offloading if the offloading occurred in the marine waters of the state.

(h) For medical waste, the report must generally describe any onboard treatment and the manner or method of ultimate disposal if the treatment or disposal occurred while the vessel was in the marine waters of the state.

(i) The department may by regulation require an owner or operator to submit supplemental or additional reports concerning the releases or offloading of pollutants by large passenger vessels while they are in the marine waters of the state.

(j) A record or report submitted under this section shall be signed under penalty of unsworn falsification by the owner, operator, or a responsible official of the reporting vessel and must include the following statement: "Based on information and belief formed after reasonable inquiry, I certify that the statements and information in and attached to this document are true, accurate, and complete."

Sec. 46.03.480. Penalties. (a) An owner or operator who fails to comply with AS 46.03.460 may not bring a claim or counterclaim in a court of this state for a cause of action that arose during the time that the owner or operator was out of compliance with AS 46.03.460.

(b) An owner or operator who fails to comply with AS 46.03.460 or a reporting requirement of AS 46.03.475 is subject to an administrative penalty of not more than $50 a day for each day of noncompliance with each requirement as determined by the commissioner subject to right of appeal to the superior court.

(c) In addition to other applicable penalties, a person who fails to comply with AS 46.03.460 or 46.03.475 or who falsifies a registration or report required by AS 46.03.460 or 46.03.475 is liable for damages under AS 46.03.760(e).

Sec. 46.03.485. Regulations. The department may adopt regulations that are necessary for the implementation of AS 46.03.460 - 46.03.490.

Sec. 46.03.490. Definitions. In AS 46.03.460 - 46.03.490,

(1) "agent for service of process" means an agent upon whom process, notice, or demand required or permitted by law to be served upon the owner or operator may be served,

(2) "air contaminant" means a substance within the meaning given to "air contaminant" in either AS 46.03.900 or AS 46.14.990;

(3) "ambient air" has the meaning given in AS 46.14.990;

(4) "ballast water" means water and suspended matter taken on board a vessel to control or maintain trim, draught, stability, or stresses of the vessel, regardless of how the water and suspended matter are carried;

(5) "emission" means a release of one or more pollutants into the atmosphere;

(6) "graywater" means galley, bath, and shower water;

(7) "hazardous waste" has the meaning given in AS 46.03.900 and includes wastes that meet that definition and have been collected from staterooms, crew quarters, and other passenger or crew accommodations;

(8) "large passenger vessel" means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding

(A) vessels without berths or overnight accommodations for passengers; and

(B) noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the United States Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government;

(9) "marine waters of the state" has the meaning given to "waters" in AS 46.03.900 except that it includes only marine waters;

(10) "medical waste" includes each of the types of solid waste listed in 42 U.S.C. 6992a (Demonstration Medical Waste Tracking Program, sec. 11002 of the Solid Waste Disposal Act);

(11) "offloading" means the removal of pollutants from a large passenger vessel onto or into a controlled storage, processing, or disposal facility or treatment works;

(12) "oil" has the meaning given in AS 46.04.900;

(13) "pollutant" means air contaminant, ballast water, biological materials, chemical wastes, graywater, hazardous waste, industrial waste, incinerator residue, medical waste, munitions, oil, radioactive materials, sewage, sewage sludge, solid waste, wrecked or discarded equipment, or any other substance that may alter or tend to alter the chemical, physical, biological, or radiological integrity of the marine waters of the state or the air above or submerged land below the marine waters of the

state;

(14) "release" means spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, placing, or disposing of pollutants into the environment, including the abandonment or discarding of bags, containers, and other receptacles containing a pollutant, and without regard to whether the pollutants left the vessel through a discrete conveyance or a nonpoint source;

(15) "responsible official" means

(A) for a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the delegation of authority to the representative is approved in advance by the department;

(B) for a partnership, sole proprietorship, or limited liability company, a general partner, the proprietor, or the manager or managing member, respectively;

(16) "sewage" has the meaning given in 33 U.S.C. 1322 (sec. 312, Water Pollution Control Act);

(17) "stack" means a chimney or conduit through which air or air contaminants are emitted into the atmosphere;

(18) "vessel" means any form or manner of watercraft, other than a seaplane on the water, whether or not capable of self-propulsion.

* **Sec. 2.** AS 46.03.760(e) is amended to read:

(e) A person who **falsifies a registration or report required by AS 46.03.460 or 46.03.475 or who** violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, **46.03.460 - 46.03.490,** AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, **46.03.460 - 46.03.490,** or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500 nor more than $100,000 for the initial violation, nor more than $10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

TABLE 1
HB 371: MONITORING AND REPORTING POLLUTANT RELEASE AND OFFLOADING IN ALASKA

	[---------- Reporting the Release of a Pollutant ----------]						
Pollutant Category	Date/Time	Location Lat/Long	Volume	Source	Intentional or Accidential	Identifiable EnvDamage	Efforts to Prevent Accidents
Hazardous Waste	x	x	x	x	x	x	x
Solid & Industrial Waste	x	x	x	x	x	x	x
Stack Emissions	Monthly	In Port					
Sewage	x	x	x	x	x	x	x
Graywater & other Wastewater	x	x	x	x	x	x	x
Medical Waste	x	x	x	x	x	x	x

	[---------- **Additional Reporting Requirements** ----------]
Hazardous Waste	Copy of manifest prepared under 42 USC 6921-6939 If offloaded w/out manifest: volume, source, location, destination of waste,reasons
Solid & Industrial Waste	If offloaded: weight, composition, location & destination Quantity processed onboard & explanation if processed waste released or offloaded
Stack Emissions	At least monthly measurements of visible emissions in port, or if equipped with continuous emission monitor the recordings while in AK waters
Sewage	Description of onboard treatment works, quantity processed onboard & explanation if treated waste released or offloaded
Graywater & other Wastewater	Location of offloading
Medical Waste	Description of any onboard treatment & manner/method of disposal if treatment or disposal in Alaska

NOTE: HB 371 requires monitoring of the various wastes in order to meet the above reporting obligations.
(Rep.Kerttula's Office; 3/21/00)

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TABLE 2
FEDERAL/INTERNATIONAL REQUIREMENTS FOR MONITORING, RECORDING AND REPORTING OF POLLUTANTS BY LARGE MARINE PASSENGER VESSELS

Pollutant Category	Monitoring	Record Keeping	Reporting
Hazardous Waste	Neither USCG nor EPA monitor.	Most haz waste exempt from EPA manifest requirement.	If offloading, MARPOL requirement to call Port & estimate volume. If manifested haz waste, copy sent to EPA & DEC.
Solid & Industrial Waste (including garbage/plastics)	MARPOL Annex V; USCG inspection of incinerator ash.	At sea dumping: 2-yr records & make available to USCG: Lat/Long, distance from shore, type of waste. Port offloading: record location & volume.	At sea dumping: no report required. Port offloading: report to USCG.
Sewage "Blackwater"	Neither USCG nor EPA monitor discharge; USCG operational inspectn of Mar.Sanitatn Devices; EPA discharge reqs. do not exempt addl state requirements	No record keeping required.	No reporting required.
Stack Emissions	Not required; occ. monitoring by NPS (GlacierBay), EPA, or DEC; self-monitoring by companies.	Keep records of any company self-monitoring; no systematic record keeping.	Cos. required to report any smoke level in excess of state standards. No systematic reporting required.
Graywater & other Wastewater	No federal monitoring authority or discharge restrictn. on graywater.	CWA requires record of any accidental oil/haz substance spill.	CWA requires accidential spill report. No systematic reporting required.

NOTE: HB 371 does not cover oil waste or bilge water because these are more highly regulated by USCG.

MARPOL = International Convention for the Prevention of Pollution from Ships, administered by the International Maritime Organization.
CWA = Federal Water Pollution Control Act, or "Clean Water Act".

(Rep.Kerttula's Office; 3-21-00)

HB371 Testimony

My name is Gershon Cohen, and I have lived in S.E. Alaska for nearly 20 years. I have a Masters Degree in Molecular Biology, and a Ph.D. in Environmental Policy. I'm a National Project Director on water quality issues for the Earth Island Institute.

Cruise ships are floating cities transporting more than 5,000 passengers and crew. A typical ship generates, on every *one-week* voyage, approximately:

- 210,000 gallons of raw and treated sewage;
- 1,000,000 gallons of graywater containing solvents, detergents, and pesticides;
- 25,000 gallons of oily bilge water;
- 110 gallons of photo chemicals;
- 5 gallons of dry-cleaning waste (containing PERC);
- 10 gallons of used paints; and
- 5 gallons of expired chemicals.

Despite the industry's abysmal environmental record, which at this point is common knowledge, no one will be monitoring discharges from the ships this summer. HB371 is an effort to close the information gap. The bill will accomplish three desperately needed objectives:

1) Establish a "responsible party" for each ship at the beginning of every calendar year;
2) Require that once a month ships voluntarily determine and report the quantity, composition, and discharge location for their wastestreams and record visible air emissions while in port, and
3) Require an accounting of all hazardous and solid wastes offloaded for transport to a licensed treatment facility.

Two fundamental issues must be recognized. First:

1) The public has a right and a need to know what is being released from the ships. We have no idea if the legal wastes being released are a problem or not - or whether some ships perform better than others; and
2) The bill would simply level the playing field with every other discharging industry. The oil, timber, mining, and seafood processing industries all submit monthly monitoring reports.

This bill will not chase the cruise ships away. It simply recognizes that both the industry and the public have needs. The industry needs Alaska as a destination, and Alaskans need clean air and clean water as well as an active economy. Fortunately, these needs are not incompatible. However, the people of this state need, and have a right, to know what is in the multi-million gallon wastestreams being released within short distances of our towns and fishing grounds.

Many Alaskans hope you will vote in favor of this legislation.

Thank you for this opportunity to comment.

Anchorage Daily News

Thursday, March 2, 2000

Cruise ships

Clean up or face the consequences

The Environmental Protection Agency's report that all six of the major cruise lines operating in Alaska violated state and federal air pollution laws last summer doesn't do much for the industry's credibility.

Since December the state Department of Environmental Conservation, EPA and industry representatives have met to figure out how the industry can leave the least pollution in Alaska's air and water.

The industry has pledged to go beyond what the laws require. It has described pollution-reducing technologies either at hand or in the works.

That's good. DEC Commissioner Michele Brown has said the state's goal is to work out a voluntary compliance agreement with the industry, and if the industry has the means and the will to cruise at an environmental standard higher than the legal minimum, so much the better.

But good faith takes a hit with smokestack results like last summer's. That's because the cruise industry stressed last fall that Alaska's problem was not pollution but lack of information. John Hansen, president of the NorthWest CruiseShip Association, said then that he believed DEC would feel more confidence in the industry with more information.

The EPA citations suggest that it's not just the lack of information that worries Alaskans. It's pollution. Paper won't cover that problem.

Alaska's position is simple. There's no question cruise lines bring business and livelihoods to the state. Trade-offs include crowds and a higher demand on services in ports of call. But air and water pollution? No deal.

The cruise industry still has the chance to run clean on a voluntary basis, to keep its word and exceed the demands of law. That would be the best solution for everyone, avoiding the burden of more regulation for industry and the cost of more regulation for Alaska.

Clean air and water, not regulation, are the state's goals. But Alaska should make clear that if clean air and water require tougher regulation and enforcement, then the industry can count on it.

Any more citations like the EPA's of this week may cost the cruise lines more than the $27,000 in fines they face. Already the industry has had a small taste of Alaska backlash with the $5 head tax in Juneau and the increasing coolness of that city's welcome. Other ports have been more forthcoming but won't be for long if cruise ships foul the scenery they sell.

And if doubts about environmental safeguards go beyond Alaska's borders,

cruise lines could pay in lost bookings.

The industry can do well by doing good if it protects Alaska's environment. Whether by mutual agreement or the force of law, Alaska should make sure of that protection.

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Problems? Suggestions? Let us hear from you.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 371

Revision Date/Time (Note if correction) _____
Dept. Affected Environmental Conservation
Title Reports from Marine Passenger Vessels
BRU Air & Water Quality
Component Air Quality
Sponsor Representative Kerttula
Requester House Transportation
Component No. 2061

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	60.4	35.2	35.2	35.2	35.2	35.2
Travel	5.0	2.5	2.5	2.5	2.5	2.5
Contractual	28.7	5.9	5.9	5.9	5.9	5.9
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment	4.5	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	100.6	45.6	45.6	45.6	45.6	45.6
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	100.6	45.6	45.6	45.6	45.6	45.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	100.6	45.6	45.6	45.6	45.6	45.6

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	1.0	0.0	0.0	0.0	0.0	0.0
Part-time	0	1.0	1.0	1.0	1.0	1.0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

See attached.

Prepared by: Tom Chapple
Phone 269-7686
Division Air & Water Quality
Date/Time 3/20/00 8:42 AM
Approved by Commissioner Kim Ferdinandsen
Date 3-20-00
Agency Department of Environmental Conservation

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ATTACHMENT TO HB 371 FISCAL NOTE:

Fiscal Impact: In year one, one (1) full time position will be required to draft and administer regulations for the management of pollutant emissions into the Alaskan environment. One Environmental Specialist III will be located in Juneau to initially develop regulations and subsequently conduct emissions oversight, quality assurance reviews, and data analysis. These work tasks will require opacity training and certification as well as travel throughout Southeast Alaska. The "inspector" role will include oversight of air, water, and hazardous and solid waste emissions throughout the coastal waters of the state. Once regulations have been developed, this position will be reduced to half time and will be focusing on the evaluation of summertime pollutant emissions.

During the first year, $10.0 for professional services contracts is included to develop a database to manage and store emissions data received from the cruise ship industry. In addition, $10.0 is included in the first year to cover advertising, printing, meeting, and mailing costs for two public notice periods on the regulations. Other contractual funds cover position support costs and technical assistance in the management of the database.

Personal Services New Position Detail

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Department of Environmental Conservation
HB 371 Fiscal Note - FY2001 Projected

Scenario: FY2001 Legislative Fiscal Note Info - 2
Component: Air Quality (2061)
BRU Name: Air and Water Quality

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#031	Environmental Spec III	FT	A	GG	Juneau	1A	18 B	12.0		45,456	0	0	14,931	60,387

Justification:
Implementation of HB 371

Funding Detail:

1004	General Fund Receipts		100.00%	60,387
		Total Fundin	100.00%	60,387

Component Summary:

Total New Positions: 1

Fund	Description	Fund Percent	Fund Amount
1004	General Fund Receipts	100.00%	60,387
	Total Funding:	100.00%	60,387

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Personal Services New Position Detail

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Department of Environmental Conservation

HB 371 Fiscal Note - FY2002 and subsequent years projected

Scenario: FY2001 Legislative Fiscal Note Info - 2
Component: Air Quality (2061)
BRU Name: Air and Water Quality

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#031	Environmental Spec III	FT	A	GG	Juneau	1A	18 B	7.0		26,516	0	0	8,710	35,226

Justification:
Implementation of HB 371

Funding Detail:

1004	General Fund Receipts	100.00%	35,226
	Total Funding:	100.00%	35,226

Component Summary:

Total New Positions: 1

Fund	Description	Fund Percent	Fund Amount
1004	General Fund Receipts	100.00%	35,226
	Total Funding:	100.00%	35,226

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

TABLE 1
HB 371: MONITORING AND REPORTING POLLUTANT RELEASE AND OFFLOADING IN ALASKA

	[---------- Reporting the Release of a Pollutant ----------]						
Pollutant Category	Date/Time	Location Lat/Long	Volume	Source	Intentional or Accidential	Identifiable EnvDamage	Efforts to Prevent Accidents
Hazardous Waste	x	x	x	x	x	x	x
Solid & Industrial Waste	x	x	x	x	x	x	x
Stack Emissions	Monthly	In Port					
Sewage	x	x	x	x	x	x	x
Graywater & other Wastewater	x	x	x	x	x	x	x
Medical Waste	x	x	x	x	x	x	x

	[---------- Additional Reporting Requirements ----------]
Hazardous Waste	Copy of manifest prepared under 42 USC 6921-6939 If offloaded w/out manifest: volume, source, location, destination of waste,reasons
Solid & Industrial Waste	If offloaded: weight, composition, location & destination Quantity processed onboard & explanation if processed waste released or offloaded
Stack Emissions	At least monthly measurements of visible emissions in port, or if equipped with continuous emission monitor the recordings while in AK waters
Sewage	Description of onboard treatment works, quantity processed onboard & explanation if treated waste released or offloaded
Graywater & other Wastewater	Location of offloading
Medical Waste	Description of any onboard treatment & manner/method of disposal if treatment or disposal in Alaska

NOTE: HB 371 requires monitoring of the various wastes in order to meet the above reporting obligations.
(Rep.Kerttula's Office; 3/21/00)

DRAFT

TABLE 2
FEDERAL/INTERNATIONAL REQUIREMENTS FOR MONITORING, RECORDING AND REPORTING OF POLLUTANTS BY LARGE MARINE PASSENGER VESSELS

Pollutant Category	Monitoring	Record Keeping	Reporting
Hazardous Waste	Neither USCG nor EPA monitor.	Most haz waste exempt from EPA manifest requirement.	If offloading, MARPOL requirement to call Port & estimate volume. If manifested haz waste, copy sent to EPA & DEC.
Solid & Industrial Waste (including garbage/plastics)	MARPOL Annex V; USCG inspection of incinerator ash.	At sea dumping: 2-yr records & make available to USCG: Lat/Long, distance from shore, type of waste. Port offloading: record location & volume.	At sea dumping: no report required. Port offloading: report to USCG.
Sewage "Blackwater"	Neither USCG nor EPA monitor discharge; USCG operational inspectn of Mar.Sanitatn Devices; EPA discharge reqs. do not exempt addl state requirements	No record keeping required.	No reporting required.
Stack Emissions	Not required; occ. monitoring by NPS (GlacierBay), EPA, or DEC; self-monitoring by companies.	Keep records of any company self-monitoring; no systematic record keeping.	Cos. required to report any smoke level in excess of state standards. No systematic reporting required.
Graywater & other Wastewater	No federal monitoring authority or discharge restrictn. on graywater.	CWA requires record of any accidental oil/haz substance spill.	CWA requires accidential spill report. No systematic reporting required.

NOTE: HB 371 does not cover oil waste or bilge water because these are more highly regulated by USCG.

MARPOL = International Convention for the Prevention of Pollution from Ships, administered by the International Maritime Organization.
CWA = Federal Water Pollution Control Act, or "Clean Water Act".

(Rep Kerttula's Office; 3-21-00)

HB 371 – People to Testify
@ 3/21/00 Hearing in House Transportation Comm.

(1) Ron Kreizenbeck
Director, Office of Enforcement + Compliance
EPA / Region 10
(206) 553 – 1265 Q & A

(2) Gershon Cohen
415 – 788 - 3666
(@ Earth Island Institute; have Mr. Cohen paged)
Haines resident + project director at
Earth Island Institute

– DAVID ROGERS – D.E.C. TESTIMONY ? PROBABLY NOT

723-7447
– HANS ANTONSEN – AK BOARD OF PILOTS

– CAPT. TED KELLOGG – KETCHIKAN
#907-225-9696

Representative Beth Kerttula

Sponsor Statement

House Bill 371
Registration and Reporting by Large Marine Passenger Vessels

House Bill 371 is a "right to know" bill. The bill will give Alaskans information about what wastes cruise ships generate and release while operating in Alaska. This information will let the state assess and maintain the long-term health of the human and natural environment of coastal Alaska at a time when the cruise ship sector of the tourism industry is growing rapidly.

In the aftermath of the Holland America and Royal Caribbean pollution violations in Southeast Alaska, it is clear that state and federal agencies are not getting the information they need to know what, how much, and where these large passenger vessels are releasing wastes off Alaska's coast. The 1999 cruise ship air emission violations recently cited by the Environmental Protection Agency against six cruise line companies operating in Juneau, Glacier Bay, and Seward further underscore public and agency concerns about the need for routine and comprehensive reporting of all wastes generated by cruise ships operating in Alaska.

The current lack of comprehensive data creates an environment of speculative science, misinformation, uncertainty, and public distrust of government and the cruise line industry in Alaska's coastal communities. Notwithstanding cruise line industry assurances of careful shipboard practices and its current efforts to work cooperatively with regulatory agencies, it is imperative that Alaska independently assess the waste volumes and discharge location in order to perpetuate our most valuable tourist asset - our exceptional natural environment.

HB 371 provides a mechanism to let Alaskans find out what the cruise line companies are doing with the substantial volumes of wastes generated onboard while in our state waters. Thank you for your consideration of House Bill 371.

CSHB 371
Registration and Reporting by Large Marine Passenger Vessels

Sectional Analysis

Section 1 adds new sections to AS 46.03, the Environmental Conservation statutes.

Sec. 46.03.460 requires owner/operator who conducts business in Alaska to register annually each vessel with DEC. The in-state contact information becomes paramount when working with foreign flag vessels with international crews and officers as on many of the cruise ships. The CS clarifies that an owner/operator can undertake its annual registration just prior to actually bringing a vessel into state waters, rather than at the beginning of each year.

Sec. 46.03.465 requires owner/operators to monitor cruise ship pollutants in order to fulfill the reporting requirements under AS 46.03.475. Monthly sampling of visible emissions from vessels while in an Alaskan port is required. DEC may adopt regulations, as necessary, and is directed to maximize reporting efficiencies through coordination with other vessel reporting.

The CS clarifies 46.03.465(a) so that the monitoring is only required for that portion of a month when a vessel is actually operating in Alaska waters. Further, the CS amends 46.03.465(c) to narrow the focus of the rulemaking to the quantity and quality of waterborne pollutants and not include reference to monitoring devices and methods. CSHB 371's focus on record keeping and reporting side steps potential preemption issues considered in the recent case *United State v. Locke et. al.* where the U.S. Supreme Court declared several Washington State regulations on oil tankers preempted by federal laws.

Sec. 46.03.470 requires that records be maintained for three years.

Sec. 46.03.475 establishes the monthly reporting that must occur for several categories of pollutants. The CS clarifies that the focus is primarily on pollutants that each vessel either releases into the air or waters within the state, or offloads in an Alaskan port. The specific location and amount of each disposal are required. Significantly, HB 371 does not require that the cruise line companies get a new permit from the state of Alaska nor set any new performance standards on waste discharges. Reporting data in a vessel-specific format is essential to perform site-specific assessments of potential and cumulative environmental impacts. In keeping with DEC's other environmental oversight practices, each report must be certified by a responsible vessel official.

Sec. 46.03.480 establishes civil penalties for failing to register or report, or for falsifying a registration or report. The penalties are based on those imposed on

other businesses operating in Alaska or imposed on violations under other DEC statutes.

Sec. 46.03.485 gives DEC rule-making authority to implement this legislation.

Sec. 46.03.490 defines several terms drawing on existing state and federal environmental pollution definitions.

"large passenger vessel" is revised in the CS to include the 300 gross registered tonnage factor that is a regulatory threshold commonly used by the U.S. Coast Guard and other maritime organizations. The definition focuses on large cruise ships because these are the vessels that generate substantial amounts of wastes on a daily or weekly basis while carrying as many as 2,000 – 4,000 passengers and crew members through Alaskan waters.

"pollutant" is defined to cover the full array of wastes generated during the duration of a typical cruise through Alaskan waters, including air contaminants, gray water, sewage, solid waste, incinerator ash, and hazardous chemicals.

"sewage" is revised in the CS to simplify the definition to that provided under the federal Clean Water Act.

Section 2 amends AS 46.03.760(e) to reflect the penalties incorporated into 46.03.480(c)

Marine Discharge Glossary*

Alaska Department of Environmental Conservation
410 Willoughby Ave. Juneau, Alaska 99801-1795
Phone: (907) 465-5060 Fax: 465-5097
www.state.ak.us/dec/

Bilge Water — Water that collects in the lowest inner part of a ship's hull. Bilge water is frequently contaminated with oil and other lubricants from the engine room. Under various national and international standards, discharged bilge water must not exceed a certain maximum oil concentration (for example, 15 parts per million).

Black Water — Water contaminated with human waste, collected from shipboard toilets. Under various national and international standards, black water must be treated before being discharged from a vessel.

Discharge — In this context, any solid or liquid material that emanates from a vessel to a body of water, including anything spilled, leaked, poured, pumped, emitted or dumped from the vessel.

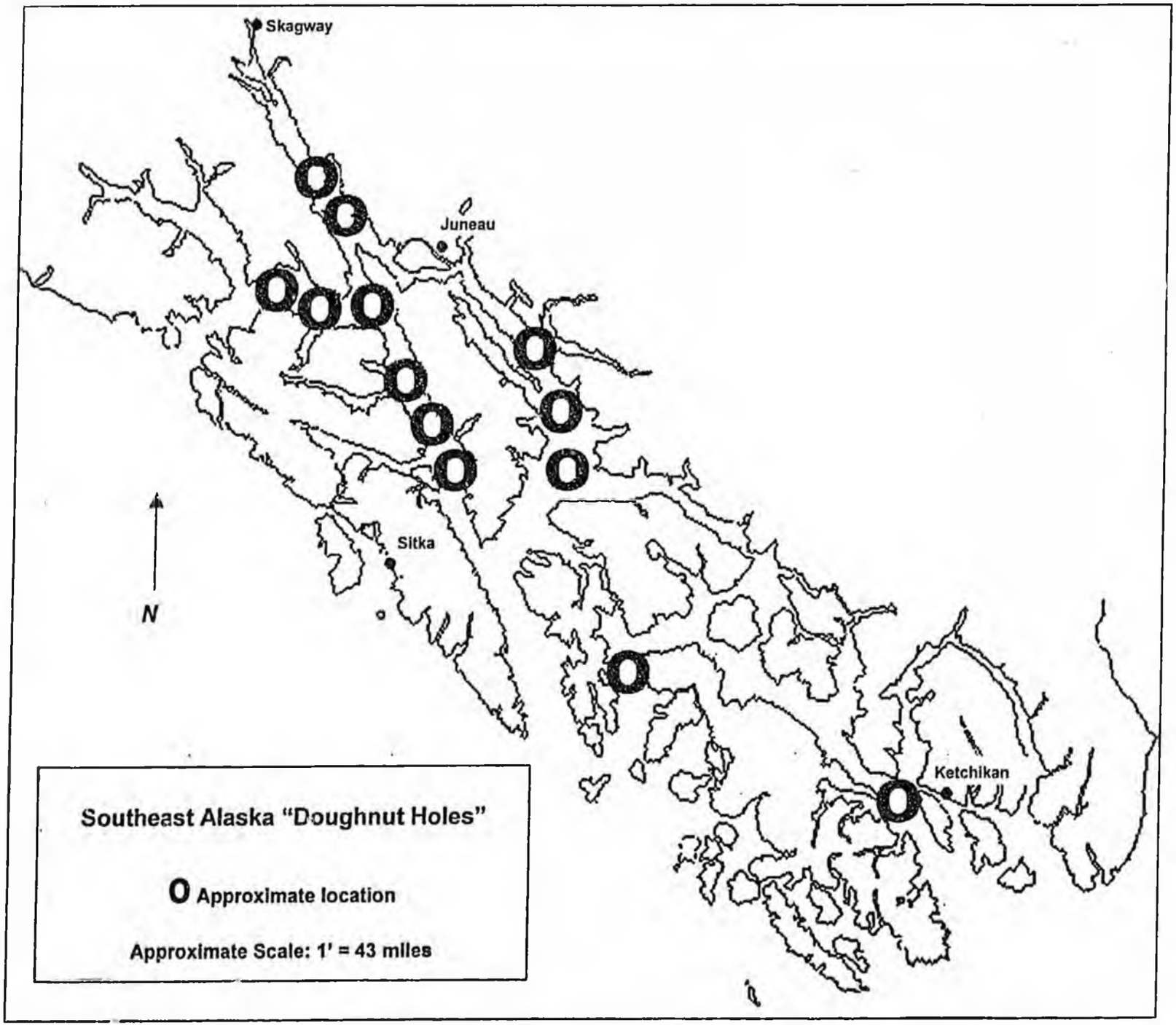
"Doughnut Holes" — A name given to several small areas of ocean within the Inside Passage that are more than three miles from the mainland and any islands. Current National Oceanic and Atmospheric Administration charts show these areas as outside of State waters. The State, however, asserts that all marine waters within the Alexander Archipelago are waters of the State of Alaska and subject to State law.

Gray Water — Used water from showers, sinks or basins, including used kitchen water. Treatment of gray water is not required prior to discharge from a vessel.

MARPOL — Name given to the standards and requirements adopted by the International Convention for the Prevention of Pollution from Ships governing the discharge of oil and other hazardous substances, sewage and garbage.

Sewage — General term used to describe all liquid and solid waste material that is carried off in sewers or drains, including waste from toilets, sinks, showers, etc. Sewage may include both *black water* and *gray water* (see definitions).

* These are general definitions and are not intended to conform to any specific State, federal, or international requirement. They are provided as a general background to the issues being discussed by the work group.


Skagway
Juneau
Sitka
Ketchikan
N
Southeast Alaska "Doughnut Holes"
O Approximate location
Approximate Scale: 1' = 43 miles

United States v. Locke
Nos. 98-1701, 98-1706
Full text:
http://supct.law.cornell.edu/supct/html/98-1701.ZS.html

The United States Supreme Court held 9-0 (opinion by Kennedy) that Washington's regulations of navigation watch procedures, crew English skills, and maritime casualty reporting are pre-empted by the federal regulatory scheme that regulates oil tankers. As for the other State regulations, the Court remanded the case so their validity can be discussed in light of the considerable federal interest at stake and in conformity with the principles set forth in this decision.

After the Exxon Valdez ran aground in Alaska, both Congress and Washington enacted laws to protect from any future oil spills. The Court found that Washington's laws could not interfere with the federal interest in an area which has been manifest since the beginning of the Republic. Congress has enacted a series of statutes pertaining to maritime tanker transports and ratified international treaties on the subject. Due to the size of the industry and the number of states and nations involved, the Court found uniformity a very important factor, which can best be achieved through national legislation.

SUPREME COURT OF THE UNITED STATES

Nos. 98–1701 and 98–1706

UNITED STATES, PETITIONER
98–1701 *v.*
GARY LOCKE, GOVERNOR OF WASHINGTON, ET AL.

INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS (INTERTANKO), PETITIONER
98–1706 *v.*
GARY LOCKE, GOVERNOR OF WASHINGTON, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March 6, 2000]

JUSTICE KENNEDY delivered the opinion of the Court.

The maritime oil transport industry presents ever-present, all too real dangers of oil spills from tanker ships, spills which could be catastrophes for the marine environment. After the supertanker *Torrey Canyon* spilled its cargo of 120,000 tons of crude oil off the coast of Cornwall, England, in 1967, both Congress and the State of Washington enacted more stringent regulations for these tankers and provided for more comprehensive remedies in the event of an oil spill. The ensuing question of federal preemption of the States laws was addressed by the Court in *Ray* v. *Atlantic Richfield Co.*, 435 U. S. 151 (1978).

In 1989, the supertanker *Exxon Valdez* ran aground in

Prince William Sound, Alaska, and its cargo of more than 53 million gallons of crude oil caused the largest oil spill in United States history. Again, both Congress and the State of Washington responded. Congress enacted new statutory provisions, and Washington adopted regulations governing tanker operations and design. Today we must determine whether these more recent state laws can stand despite the comprehensive federal regulatory scheme governing oil tankers. Relying on the same federal statute that controlled the analysis in *Ray*, we hold that some of the State's regulations are pre-empted; as to the balance of the regulations, we remand the case so their validity may be assessed in light of the considerable federal interest at stake and in conformity with the principles we now discuss.

I

The State of Washington embraces some of the Nation's most significant waters and coastal regions. Its Pacific Ocean seacoast consists, in large part, of wave-exposed rocky headlands separated by stretches of beach. Washington borders as well on the Columbia River estuary, dividing Washington from Oregon. Two other large estuaries, Grays Harbor and Willapa Bay, are also within Washington's waters. Of special significance in this case is the inland sea of Puget Sound, a 2,500 square mile body of water consisting of inlets, bays, and channels. More than 200 islands are located within the sound, and it sustains fisheries and plant and animal life of immense value to the Nation and to the world.

Passage from the Pacific Ocean to the quieter Puget Sound is through the Strait of Juan de Fuca, a channel 12 miles wide and 65 miles long which divides Washington from the Canadian Province of British Columbia. The international boundary is located midchannel. Access to Vancouver, Canada's largest port, is through the strait.

Traffic inbound from the Pacific Ocean, whether destined to ports in the United States or Canada, is routed through Washington's waters; outbound traffic, whether from a port in Washington or Vancouver, is directed through Canadian waters. The pattern had its formal adoption in a 1979 agreement entered by the United States and Canada. Agreement for a Cooperative Vessel Traffic Management System for the Juan de Fuca Region, 32 U. S. T. 377, T. I. A. S. No. 9706.

In addition to holding some of our vital waters, Washington is the site of major installations for the Nation's oil industry and the destination or shipping point for huge volumes of oil and its end products. Refineries and product terminals are located adjacent to Puget Sound in ports including Cherry Point, Ferndale, Tacoma, and Anacortes. Canadian refineries are found near Vancouver on Burrard Inlet and the lower Fraser River. Crude oil is transported by sea to Puget Sound. Most is extracted from Alaska's North Slope reserve and is shipped to Washington on United States flag vessels. Foreign-flag vessels arriving from nations such as Venezuela and Indonesia also call at Washington's oil installations.

The bulk of oil transported on water is found in tankers, vessels which consist of a group of tanks contained in a ship-shaped hull, propelled by an isolated machinery plant at the stern. The Court described the increase in size and numbers of these ships close to three decades ago in *Askew* v. *American Waterways Operators, Inc.*, 411 U. S. 325, 335 (1973), noting that the average vessel size increased from 16,000 tons during World War II to 76,000 tons in 1966. (The term "tons" refers to "deadweight tons," a way of measuring the cargo-carrying capacity of the vessels.) Between 1955 and 1968, the world tanker fleet grew from 2,500 vessels to 4,300. *Ibid.* By December 1973, 366 tankers in the world tanker fleet were in excess of 175,000 tons, see 1 M. Tusiani, The Petroleum Shipping Industry

79 (1996), and by 1998 the number of vessels considered 'tankers" in the merchant fleets of the world numbered 6,739, see U. S. Dept. of Transp., Maritime Administration, Merchant Fleets of the World 1 (Oct. 1998).

The size of these vessels, the frequency of tanker operations, and the vast amount of oil transported by vessels with but one or two layers of metal between the cargo and the water present serious risks. Washington's waters have been subjected to oil spills and further threatened by near misses. In December 1984, for example, the tanker ARCO Anchorage grounded in Port Angeles Harbor and spilled 239,000 gallons of Alaskan crude oil. The most notorious oil spill in recent times was in Prince William Sound, Alaska, where the grounding of the *Exxon Valdez* released more than 11 million gallons of crude oil and, like the *Torrey Canyon* spill before it, caused public officials intense concern over the threat of a spill.

Washington responded by enacting the state regulations now in issue. The legislature created the Office of Marine Safety, which it directed to establish standards for spill prevention plans to provide 'the best achievable protection [BAP] from damages caused by the discharge of oil." Wash. Rev. Code §88.46.040(3) (1994). The Office of Marine Safety then promulgated the tanker design, equipment, reporting, and operating requirements now subject to attack by petitioners. Wash. Admin. Code (WAC) §317–21–130 *et seq.* (1999). A summary of the relevant regulations, as described by the Court of Appeals, is set out in the Appendix, *infra*.

If a vessel fails to comply with the Washington rules, possible sanctions include statutory penalties, restrictions of the vessel's operations in state waters, and a denial of entry into state waters. Wash. Rev. Code. §§88.46.070, 88.46.080, 88.46.090 (1994).

Petitioner International Association of Independent Tanker Owners ('Intertanko") is a trade association whose

305 members own or operate more than 2,000 tankers of both United States and foreign registry. The organization represents approximately 80% of the world's independently owned tanker fleet; and an estimated 60% of the oil imported into the United States is carried on Intertanko vessels. The association brought this suit seeking declaratory and injunctive relief against state and local officials responsible for enforcing the BAP regulations. Groups interested in environmental preservation intervened in defense of the laws. Intertanko argued that Washington's BAP standards invaded areas long occupied by the Federal Government and imposed unique requirements in an area where national uniformity was mandated. Intertanko further contended that if local political subdivisions of every maritime nation were to impose differing regulatory regimes on tanker operations, the goal of national governments to develop effective international environmental and safety standards would be defeated.

Although the United States declined to intervene when the case was in the District Court, the governments of 13 ocean-going nations expressed concerns through a diplomatic note directed to the United States. Intertanko lodged a copy of the note with the District Court. The concerned governments represented that "legislation by the State of Washington on tanker personnel, equipment and operations would cause inconsistency between the regulatory regime of the US Government and that of an individual State of the US. Differing regimes in different parts of the US would create uncertainty and confusion. This would also set an unwelcome precedent for other Federally administered countries." Note Verbale from the Royal Danish Embassy to the U. S. Dept. of State 1 (June 14, 1996).

The District Court rejected all of Intertanko's arguments and upheld the state regulations. *International Assn. of Independent Tanker Owners (Intertanko)* v.

Lowry, 947 F. Supp. 1484 (WD Wash. 1996). The appeal followed, and at that stage the United States intervened on Intertanko's behalf, contending that the District Court's ruling failed to give sufficient weight to the substantial foreign affairs interests of the Federal Government. The United States Court of Appeals for the Ninth Circuit held that the State could enforce its laws, save the one requiring the vessels to install certain navigation and towing equipment. 148 F. 3d 1220 (1998) (The Court of Appeals reasoned that this requirement, found in WAC §317–21–265, was "virtually identical to" requirements declared pre-empted in *Ray* v. *Atlantic Richfield Co.*, 435 U. S. 151 (1978). 148 F. 3d, at 1066. Over Judge Graber's dissent, the Court of Appeals denied petitions for rehearing en banc. 159 F. 3d 1220 (1998). Judge Graber, although unwilling, without further analysis, to conclude that the panel reached the wrong result, argued that the opinion was "incorrect in two exceptionally important respects: (1) The opinion places too much weight on two clauses in Title I of OPA 90 [The Oil Pollution Act of 1990] that limit OPA 90's preemptive effect. (2) Portions of the opinion that discuss the Coast Guard regulations are inconsistent with Ninth Circuit and Supreme Court precedent." *Id.*, at 1221. We granted certiorari and now reverse. 527 U. S. 1063 (1999).

II

The State of Washington has enacted legislation in an area where the federal interest has been manifest since the beginning of our Republic and is now well established. The authority of Congress to regulate interstate navigation, without embarrassment from intervention of the separate States and resulting difficulties with foreign nations, was cited in the Federalist Papers as one of the reasons for adopting the Constitution. *E.g.*, The Federalist Nos. 44, 12, 64. In 1789, the First Congress enacted a

law by which vessels with a federal certificate were entitled to 'the benefits granted by any law of the United States." Act of Sept. 1, 1789, ch. 11, §1, 1 Stat. 55. The importance of maritime trade and the emergence of maritime transport by steamship resulted in further federal licensing requirements enacted to promote trade and to enhance the safety of crew members and passengers. See Act of July 7, 1838, ch. 191, 5 Stat. 304; Act of Mar. 3, 1843, ch. 94, 5 Stat. 626. In 1871, Congress enacted a comprehensive scheme of regulation for steam powered vessels, including provisions for licensing captains, chief mates, engineers, and pilots. Act of Feb. 28, 1871, ch. 100, 16 Stat. 440.

The Court in *Cooley* v. *Board of Wardens of Port of Philadelphia ex rel. Soc. for Relief of Distressed Pilots,* 12 How. 299 (1852), stated that there would be instances in which state regulation of maritime commerce is inappropriate even absent the exercise of federal authority, although in the case before it the Court found the challenged state regulations were permitted in light of local needs and conditions. Where Congress had acted, however, the Court had little difficulty in finding state vessel requirements were pre-empted by federal laws which governed the certification of vessels and standards of operation. *Gibbons* v. *Ogden,* 9 Wheat. 1 (1824), invalidated a New York law that attempted to grant a monopoly to operate steamboats on the ground it was inconsistent with the coasting license held by the vessel owner challenging the exclusive franchise. And in *Sinnot* v. *Davenport,* 22 How. 227 (1859), the Court decided that the federal license held by the vessel contained 'the only guards and restraints, which Congress has seen fit to annex to the privileges of ships and vessels engaged in the coasting trade." *Id.*, at 241. The Court went on to explain that in such a circumstance, state laws on the subject must yield: 'In every such case, the act of Congress or treaty is supreme; and

the law of the State, though enacted in the exercise of powers not controverted, must yield to it." *Id.*, at 243.

Against this background, Congress has enacted a series of statutes pertaining to maritime tanker transports and has ratified international agreements on the subject. We begin by referring to the principal statutes and international instruments discussed by the parties.

1. The Tank Vessel Act.

The Tank Vessel Act of 1936, 49 Stat. 1889, enacted specific requirements for operation of covered vessels. The Act provided that '[i]n order to secure effective provisions against the hazards of life and property," additional federal rules could be adopted with respect to the "design and construction, alteration, or repair of such vessels," "the operation of such vessels," and "the requirements of the manning of such vessels and the duties and qualifications of the officers and crews thereof." The purpose of the Act was to establish "a reasonable and uniform set of rules and regulations concerning . . vessels carrying the type of cargo deemed dangerous." H. R. Rep. No. 2962, 74th Cong., 2d Sess., 2 (1936). The Tank Vessel Act was the primary source for regulating tank vessels for the next 30 years, until the *Torrey Canyon* grounding led Congress to take new action.

2. The Ports and Waterways Safety Act of 1972.

Responding to the *Torrey Canyon* spill, Congress enacted the Ports and Waterways Safety Act of 1972 (PWSA). The Act, as amended by the Port and Tanker Safety Act of 1978, 92 Stat. 1471, contains two somewhat overlapping titles, both of which may, as the *Ray* Court explained, preclude enforcement of state laws, though not by the same pre-emption analysis. Title I concerns vessel traffic "in any port or place under the jurisdiction of the United States." 110 Stat. 3934, 33 U. S. C. §1223(a)(1)

(1997 ed. Supp. III). Under Title I, the Coast Guard may enact measures for controlling vessel traffic or for protecting navigation and the marine environment, but it is not required to do so. *Ibid.*

Title II does require the Coast Guard to issue regulations, regulations addressing the "design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels . . . that may be necessary for increased protection against hazards to life and property, for navigation and vessel safety, and for enhanced protection of the marine environment." 46 U. S. C. §3703(a).

The critical provisions of the PWSA described above remain operative, but the Act has been amended, most significantly by the Oil Pollution Act of 1990 (OPA), 104 Stat. 484. OPA, enacted in response to the *Exxon Valdez* spill, requires separate discussion.

3. The Oil Pollution Act of 1990.

The OPA contains nine titles, two having the most significance for these cases. Title I is captioned "Oil Poll u tion Liability, and Compensation" and adds extensive new provisions to the United States Code. See 104 Stat. 2375, 33 U. S. C. §2701 *et seq.* (1994 ed. and Supp. III). Title I imposes liability (for both removal costs and damages) on parties responsible for an oil spill. §2702. Other provisions provide defenses to, and limitations on, this liability. 33 U. S. C. §§2703, 2704. Of considerable importance to these cases are OPA's saving clauses, found in Title I of the Act, §2718, and to be discussed below.

Title IV of OPA is entitled "Prevention and Removal." For the most part, it amends existing statutory provisions or instructs the Secretary of Transportation (whose departments include the Coast Guard) to take action under previous grants of rulemaking authority. For example, Title IV instructs the Coast Guard to require reporting of

marine casualties resulting in a 'significant harm to the environment." 46 U. S. C. §6101(a)(5) (1994 ed. and Supp. V). Title IV further requires the Secretary to issue regulations to define those areas, including Puget Sound, on which single hulled tankers shall be escorted by other vessels. 104 Stat. 523. By incremental dates specified in the Act, all covered tanker vessels must have a double hull. 46 U. S. C. §3703a.

4. Treaties and International Agreements.

The scheme of regulation includes a significant and intricate complex of international treaties and maritime agreements bearing upon the licensing and operation of vessels. We are advised by the United States that the international regime depends upon the principle of reciprocity. That is to say, the certification of a vessel by the government of its own flag nation warrants that the ship has complied with international standards, and vessels with those certificates may enter ports of the signatory nations. Brief for United States 3.

Illustrative of treaties and agreements to which the United States is a party are the International Convention for the Safety of Life at Sea, 1974, 32 U. S. T. 47, T. I. A. S. No. 9700, the International Convention for Prevention of Pollution from Ships, 1973, 17 I. L. M. 546, and the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, With Annex, 1978 (STCW), S. Treaty Doc. No. 96–1, C. T. I. A. No. 7624.

The United States argues that these treaties, as the supreme law of the land, have pre-emptive force over the state regulations in question here. We need not reach that issue at this stage of the case because the state regulations we address in detail below are pre-empted by federal statute and regulations. The existence of the treaties and agreements on standards of shipping is of relevance, of course, for these agreements give force to the longstanding

rule that the enactment of a uniform federal scheme displaces state law, and the treaties indicate Congress will have demanded national uniformity regarding maritime commerce. See *Ray*, 435 U. S., at 166 (recognizing Congress anticipated "arriving at international standards for building tank vessels" and understanding "the Nation was to speak with one voice" on these matters). In later proceedings, if it is deemed necessary for full disposition of the case, it should be open to the parties to argue whether the specific international agreements and treaties are of binding, pre-emptive force. We do not reach those questions, for it may be that pre-emption principles applicable to the basic federal statutory structure will suffice, upon remand, for a complete determination.

III

In *Ray* v. *Atlantic Richfield, supra,* the Court was asked to review, in light of an established federal and international regulatory scheme, comprehensive tanker regulations imposed by the State of Washington. The Court held that the PWSA and Coast Guard regulations promulgated under that Act pre-empted a state pilotage requirement, Washington's limitation on tanker size, and tanker design and construction rules.

In these cases, petitioners relied on *Ray* to argue that Washington's more recent state regulations were pre-empted as well. The Court of Appeals, however, concluded that *Ray* retained little validity in light of subsequent action by Congress. We disagree. The *Ray* Court's interpretation of the PWSA is correct and controlling. Its basic analytic structure explains why federal pre-emption analysis applies to the challenged regulations and allows scope and due recognition for the traditional authority of the States and localities to regulate some matters of local concern.

At the outset, it is necessary to explain that the es-

sential framework of *Ray*, and of the PWSA which it interpreted, are of continuing force, neither having been superseded by subsequent authority relevant to these cases. In narrowing the pre-emptive effect given the PWSA in *Ray*, the Court of Appeals relied upon OPA's saving clauses, finding in their language a return of authority to the States. Title I of OPA contains two saving clauses, stating:

> "(a) Preservation of State authorities . . .
>
> "Nothing in this Act or the Act of March 3, 1851 shall—
>
> "(1) affect, or be construed or interpreted as preempting, the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to—
>
> "(A) the discharge of oil or other pollution by oil within such State . . . .
>
> . . . . .
>
> "(c) Additional requirements and liabilities; penalties
>
> "Nothing in this Act, the Act of March 3, 1851 (46 U. S. C. 183 et seq.), or section 9509 of [the Internal Revenue Code of 1986 (26 U. S. C. 9509]), shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof—
>
> "(1) to impose additional liability or additional requirements
>
> . . . . .
>
> "relating to the discharge, or substantial threat of a discharge, of oil." 33 U. S. C. §2718.

The Court of Appeals placed more weight on the saving clauses than those provisions can bear, either from a textual standpoint or from a consideration of the whole federal regulatory scheme of which OPA is but a part.

The saving clauses are found in Title I of OPA, captioned Oil Pollution Liability and Compensation and creating a liability scheme for oil pollution. In contrast to the Washington rules at issue here, Title I does not regulate vessel operation, design, or manning. Placement of the saving clauses in Title I of OPA suggests that Congress intended to preserve state laws of a scope similar to the matters contained in Title I of OPA, not all state laws similar to the matters covered by the whole of OPA or to the whole subject of maritime oil transport. The evident purpose of the saving clauses is to preserve state laws which, rather than imposing substantive regulation of a vessel's primary conduct, establish liability rules and financial requirements relating to oil spills. See *Gutierrez* v. *Ada*, 528 U. S. ___, ___ (2000) (slip op., at 5) (words of a statute should be interpreted consistent with their neighbors to avoid giving unintended breadth to an Act of Congress).

Our conclusion is fortified by Congress'decision to limit the saving clauses by the same key words it used in declaring the scope of Title I of OPA. Title I of OPA permits recovery of damages involving vessels 'from which oil is discharged, or which pos[e] the substantial threat of a discharge of oil." 33 U. S. C. §2702(a). The saving clauses, in parallel manner, permit States to impose liability or requirements 'relating to the discharge, or substantial threat of a discharge, of oil." §2718(c). In its titles following Title I, OPA addresses matters including licensing and certificates of registry, 104 Stat. 509; duties of senior licensed officers to relieve the master, *id.*, at 511; manning standards for foreign vessels, *id.*, at 513; reporting of marine casualties, *ibid.*; minimum standards for plating thickness, *id.*, at 515; tank vessel manning requirements, *id.*, at 517; and tank vessel construction standards, *id.*, at 517–518, among other extensive regulations. If Congress had intended to disrupt national uniformity in all of these

matters, it would not have done so by placement of the saving clauses in Title I.

The saving clauses are further limited in effect to "this Act, the Act of March 3, 1851 . . . or section 9509 of the Internal Revenue Code." §2718(a) and (c). These explicit qualifiers are inconsistent with interpreting the saving clauses to alter the pre-emptive effect of the PWSA or regulations promulgated thereunder. The text of the statute indicates no intent to allow States to impose wide-ranging regulation of the at-sea operation of tankers. The clauses may preserve a State's ability to enact laws of a scope similar to Title I, but do not extend to subjects addressed in the other titles of the Act or other acts.

Limiting the saving clauses as we have determined respects the established federal-state balance in matters of maritime commerce between the subjects as to which the States retain concurrent powers and those over which the federal authority displaces state control. We have upheld state laws imposing liability for pollution caused by oil spills. See *Askew* v. *American Waterways Operators, Inc.*, 411 U. S., at 325. Our view of OPA's savings clauses preserves this important role for the States, which is unchallenged here. We think it quite unlikely that Congress would use a means so indirect as the savings clauses in Title I of OPA to upset the settled division of authority by allowing states to impose additional unique substantive regulation on the at-sea conduct of vessels. We decline to give broad effect to saving clauses where doing so would upset the careful regulatory scheme established by federal law. See, *e.g.*, *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 385 (1992); *American Telephone & Telegraph Co.* v. *Central Office Telephone, Inc.*, 524 U. S. 214, 227-28 (1998).

From the text of OPA and the long-established understanding of the appropriate balance between federal and state regulation of maritime commerce, we hold that the

pre-emptive effect of the PWSA and regulations promulgated under it are not affected by OPA. We doubt Congress will be surprised by our conclusion, for the Conference Report on OPA shared our view that the statute "does not disturb the Supreme Court's decision in *Ray* v. *Atlantic Richfield Co.*, 435 U. S. 151 (1978)." H. R. Conf. Rep. No. 101–653, 101, p. 122 (1990). The holding in *Ray* also survives the enactment of OPA undiminished, and we turn to a detailed discussion of that case.

As we mentioned above, the *Ray* Court confronted a claim by the operator of a Puget Sound refinery that federal law precluded Washington from enforcing laws imposing certain substantive requirements on tankers. The *Ray* Court prefaced its analysis of the state regulations with the following observation:

> "The Court's prior cases indicate that when a State's exercise of its police power is challenged under the Supremacy Clause, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.' *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947)." 435 U. S., at 157.

The fragmentary quote from *Rice* does not support the scope given to it by the Court of Appeals or by respondents.

Ray quoted but a fragment of a much longer paragraph found in *Rice*. The quoted fragment is followed by extensive and careful qualifications to show the different approaches taken by the Court in various contexts. We need not discuss that careful explanation in detail, however. To explain the full intent of the *Rice* quotation, it suffices to quote in full the sentence in question and two sentences preceding it. The *Rice* opinion stated: "The question in each case is what the purpose of Congress was. Congress

legislated here in a field which the States have traditionally occupied. So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." 331 U. S., at 230 (citations omitted).

The qualification given by the word "so" and by the preceding sentences in *Rice* are of considerable consequence. As *Rice* indicates, an "assumption" of nonpreemption is not triggered when the State regulates in an area where there has been a history of significant federal presence. See also *Jones* v. *Rath Packing Co.*, 430 U. S. 519, 525 (1977) ("assumption" is triggered where "the field which Congress is said to have pre-empted has been traditionally occupied by the States"); *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 485 (1996) (citing *Rice* in case involving medical negligence, a subject historically regulated by the States). In *Ray*, and in the case before us, Congress has legislated in the field from the earliest days of the Republic, creating an extensive federal statutory and regulatory scheme.

The state laws now in question bear upon national and international maritime commerce, and in this area there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers. Rather, we must ask whether the local laws in question are consistent with the federal statutory structure, which has as one of its objectives a uniformity of regulation for maritime commerce. No artificial presumption aids us in determining the scope of appropriate local regulation under the PWSA, which, as we discuss below, does preserve, in Title I of that Act, the historic role of the States to regulate local ports and waters under appropriate circumstances. At the same time, as we also discuss below, uniform, national rules regarding general tanker design, operation, and seaworthiness have been mandated by Title II of the PWSA.

The *Ray* Court confirmed the important proposition that the subject and scope of Title I of the PWSA allows a State to regulate its ports and waterways, so long as the regulation is based on 'the peculiarities of local waters that call for special precautionary measures." 435 U. S., at 171. Title I allows state rules directed to local circumstances and problems, such as water depth and narrowness, idiosyncratic to a particular port or waterway. *Ibid.* There is no pre-emption by operation of Title I itself if the state regulation is so directed and if the Coast Guard has not adopted regulations on the subject or determined that regulation is unnecessary or inappropriate. This principle is consistent with recognition of an important role for States and localities in the regulation of the Nations waterways and ports. *E.g.*, *Cooley*, 12 How., at 319 (recognizing state authority to adopt plans 'applicable to the local peculiarities of the ports within their limits'). It is fundamental in our federal structure that states have vast residual powers. Those powers, unless constrained or displaced by the existence of federal authority or by proper federal enactments, are often exercised in concurrence with those of the national government. *McCulloch* v. *Maryland,* 4 Wheat. 316 (1819).

As *Ray* itself made apparent, the States may enforce rules governed by Title I of the PWSA unless they run counter to an exercise of federal authority. The analysis under Title I of the PWSA, then, is one of conflict preemption, which occurs 'when compliance with both state and federal law is impossible, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress.'" *California* v. *ARC America Corp.,* 490 U. S. 93, 100–101 (1989) (citations omitted). In this context, Coast Guard regulations are to be given pre-emptive effect over conflicting state laws. *City of New York* v. *FCC,* 486 U. S. 57, 63–64 (1988) ("[A] federal agency acting within the scope of its

congressionally delegated authority may pre-empt state regulation'and hence render unenforceable state or local laws that are otherwise not inconsistent with federal law"). *Ray* defined the relevant inquiry for Title I pre-emption as whether the Coast Guard has promulgated its own requirement on the subject or has decided that no such requirement should be imposed at all. 435 U. S., at 171–172; see also, *id.*, at 178 ("where failure of . . . federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute, States are not permitted to use their police power to enact such a regulation. *Bethlehem Steel Co.* v. *New York State Labor Relations Board,* 330 U. S 767, 774 (1947)"). *Ray* also recognized that, even in the context of a regulation related to local waters, a federal official with an overview of all possible ramifications of a particular requirement might be in the best position to balance all the competing interests. *Id.*, at 177.

While *Ray* explained that Congress, in Title I of the PWSA, preserved state authority to regulate the peculiarities of local waters if there was no conflict with federal regulatory determinations, the Court further held that Congress, in Title II of the PWSA, mandated federal rules on the subjects or matters there specified, demanding uniformity. *Id.*, at 168 ("Title II leaves no room for the States to impose different or stricter design requirements than those which Congress has enacted with the hope of having them internationally adopted or has accepted as the result of international accord. A state law in this area . . . would frustrate the congressional desire of achieving uniform, international standards"). Title II requires the Coast Guard to impose national regulations governing the general seaworthiness of tankers and their crews. *Id.*, at 160. Under *Ray*'s interpretation of the Title II PWSA provision now found at 46 U. S. C. §3703(a), only the

Federal Government may regulate the "design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning" of tanker vessels.

In *Ray*, this principle was applied to hold that Washington's tanker design and construction rules were pre-empted. Those requirements failed because they were within a field reserved for federal regulation under 46 U. S. C. §391a (1982 ed.), the predecessor to §3703(a). We reaffirm *Ray*'s holding on this point. Contrary to the suggestion of the Court of Appeals, the field of pre-emption established by §3703(a) cannot be limited to tanker "design" and "construction," terms which cannot be read in isolation from the other subjects found in that section. Title II of the PWSA covers "design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning" of tanker vessels. *Ibid.* Congress has left no room for state regulation of these matters. See *Fidelity Fed. Sav. & Loan Assn.* v. *De la Cuesta,* 458 U. S. 141 (1982) (explaining field pre-emption). As the *Ray* court stated: "[T]he Supremacy Clause dictates that the federal judgment that a vessel is safe to navigate United States waters prevail over the contrary state judgment. Enforcement of the state requirements would at least frustrate what seems to us to be the evident congressional intention to establish a uniform federal regime controlling the design of oil tankers." 435 U. S., at 165.

The existence of some overlapping coverage between the two titles of the PWSA may make it difficult to determine whether a pre-emption question is controlled by conflict pre-emption principles, applicable generally to Title I, or by field pre-emption rules, applicable generally to Title II. The *Ray* Court acknowledged the difficulty, but declined to resolve every question by the greater pre-emptive force of Title II. We follow the same approach, and conflict pre-

emption under Title I will be applicable in some, although not all, cases. We recognize that the terms used in §3703(a) are quite broad. In defining their scope, and the scope of the resulting field pre-emption, it will be useful to consider the type of regulations the Secretary has actually promulgated under the section, as well as the section's list of specific types of regulation that must be included. Useful inquiries include whether the rule is justified by conditions unique to a particular port or waterway. See *id.*, at 175 (a Title I regulation is one "based on water depth in Puget Sound or on other local peculiarities"). Furthermore, a regulation within the State's residual powers will often be of limited extraterritorial effect, not requiring the tanker to modify its primary conduct outside the specific body of water purported to justify the local rule. Limited extraterritorial effect explains why *Ray* upheld a state rule requiring a tug escort for certain vessels, *id.*, at 171, and why state rules requiring a registered vessel (*i.e.*, one involved in foreign trade) to take on a local pilot have historically been allowed, *id.*, at 159–160. Local rules not pre-empted under Title II of the PWSA pose a minimal risk of innocent noncompliance, do not affect vessel operations outside the jurisdiction, do not require adjustment of systemic aspects of the vessel, and do not impose a substantial burden on the vessel's operation within the local jurisdiction itself.

IV

The field pre-emption rule surrounding Title II and §3703(a) and the superseding effect of additional federal statutes are illustrated by the pre-emption of four of Washington's tanker regulations. We address these b e-cause the attempted reach of the state rules is well demonstrated by the briefs and record before us; other parts of the state regulatory scheme can be addressed on remand.

First, Washington imposes a series of training require-

ments on a tanker's crew. WAC §317–21–230; see also Appendix, *infra*, at ___. A covered vessel is required to certify that its crew has "complete[d] a comprehensive training program approved by the [State]." The State requires the vessel's master to "be trained in shipboard management" and licensed deck officers to be trained in bridge resource management, automated radar plotting aids, shiphandling, crude oil washing, inert gas systems, cargo handling, oil spill prevention and response, and shipboard fire fighting. The state law mandates a series of "weekly," "monthly," and "quarterly" drills.

This state requirement under WAC §317–21–230 does not address matters unique to the waters of Puget Sound. On the contrary, it imposes requirements that control the staffing, operation, and manning of a tanker outside of Washington's waters. The training and drill requirements pertain to "operation" and "personnel qualifications" and so are pre-empted by 46 U. S. C. §3703(a). Our conclusion that training is a field reserved to the Federal Government receives further confirmation from the circumstance that the STCW Convention addresses "training" and "qualification" requirements of the crew, Art. VI), and that the United States has enacted crew training requirements. *E.g.*, 46 CFR Pts. 10, 12, 13, 15 (1999).

The second Washington rule we find pre-empted is WAC §317–21–250; see also, Appendix, *infra*, at ___–___. Washington imposes English language proficiency requirements on a tanker's crew. This requirement will dictate how a tanker operator staffs the vessel even from the outset of the voyage, when the vessel may be thousands of miles from Puget Sound. It is not limited to governing local traffic or local peculiarities. The State's attempted rule is a "personnel qualification" pre-empted by §3703(a) of Title II. In addition, there is another federal statute, 33 U. S. C. §1228(a)(7), on the subject. It provides: "[N]o vessel . . . shall operate in the navigable

waters of the United States . . . , if such vessel . . . while underway, does not have at least one licensed deck officer on the navigation bridge who is capable of clearly understanding English." The statute may not be supplemented by laws enacted by the States without compromising the uniformity the federal rule itself achieves.

The third Washington rule we find invalid under field pre-emption is a navigation watch requirement in WAC §317–21–200. Washington has different rules for navigation watch, depending on whether the tanker is operating in restricted visibility or not. We mention the restricted visibility rule below, but now evaluate the requirement which applies in general terms and reads: '[T]he navigation watch shall consist of at least two licensed deck officers, a helmsman, and a lookout." The general watch requirement is not tied to the peculiarities of Puget Sound; it applies throughout Washington's waters and at all times. It is a general operating requirement and is pre-empted as an attempt to regulate a tanker's 'operation" and 'manning"under 33 U. S. C. §3703(a).

We have illustrated field pre-emption under §3703(a) by discussing three of Washington's rules which, under the current state of the record, we can determine cannot be enforced due to the assertion of federal authority found in that section. The parties discuss other federal statutory provisions and international agreements which also govern specific aspects of international maritime commerce. In appropriate circumstances, these also may have pre-emptive effect.

For example, the record before us reveals that a fourth state rule cannot stand in light of other sources of federal regulation of the same subject. Washington requires vessels that ultimately reach its waters to report certain marine casualties. WAC §317–21–130; see also Appendix, *infra*, at ___. The requirement applies to incidents (defined as a 'collision," 'allision," 'near-miss incident,"

'marine casualty" of listed kinds, 'accidental or inte n-tional grounding," 'failure of the propulsion or primary steering systems," 'failure of a component or control sy s-tem," 'fire, flood, or other incident that affects the vessel's seaworthiness," and 'spills of oil"), regardless of where in the world they might have occurred. A vessel operator is required by the state regulation to make a detailed report to the State on each incident, listing the date, location, and weather conditions. The report must also list the government agencies to whom the event was reported and must contain a 'brief analysis of any known causes" and a 'description of measures taken to prevent a reoccurrence." *Ibid.*

The State contends that its requirement is not pre-empted because it is similar to federal requirements. This is an incorrect statement of the law. It is not always a sufficient answer to a claim of pre-emption to say that state rules supplement, or even mirror, federal require-ments. The Court observed this principle when Commerce Clause doctrine was beginning to take shape, holding in *Sinnot* v. *Davenport,* 22 How. 227 (1859), that Alabama could not require vessel owners to provide certain infor-mation as a condition of operating in state waters even though federal law also required the owner of the vessel 'to furnish, under oath . . . all the information required by this State law." *Id.*, at 242. The appropriate inquiry still remains whether the purposes and objectives of the fe d-eral statutes, including the intent to establish a workable, uniform system, are consistent with concurrent state regulation. On this point, Justice Holmes' later observ a-tion is relevant: '[W]hen Congress has taken the partic u-lar subject matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go." *Charleston & Western Carolina R. Co.* v. *Varn-ville Furniture Co.,* 237 U. S. 597, 604 (1915).

We hold that Congress intended that the Coast Guard regulations be the sole source of a vessel's reporting obligations with respect to the matters covered by the challenged state statute. Under 46 U. S. C. §6101, the Coast Guard "shall prescribe regulations on the marine casualties to be reported and the manner of reporting," and the statute lists the kinds of casualties that the regulations must cover. See also §3717(a)(4) (requiring the Secretary of Transportation to "establish a marine safety information system"). Congress did not intend its reporting obligations to be cumulative to those enacted by each political subdivision whose jurisdiction a vessel enters. The State's reporting requirement is a significant burden in terms of cost and the risk of innocent noncompliance. *The Roanoke*, 189 U. S. 185, 195 (1903) (the master of a vessel is in a position "such that it is almost impossible for him to acquaint himself with the laws of each individual State he may visit"). Furthermore, it affects a vessel operator's out-of-state obligations and conduct, where a State's jurisdiction and authority are most in doubt. The State reporting requirement under WAC §317–21–130 is pre-empted.

V

As to conflict pre-emption under Title I, Washington argues that certain of its regulations, such as its watch requirement in times of restricted visibility, are of limited extraterritorial effect and necessary to address the peculiarities of Puget Sound. On remand, the Court of Appeals or District Court should consider whether the remaining regulations are preempted under Title I conflict pre-emption or Title II field pre-emption, or are otherwise pre-empted by these Titles or under any other federal law or international agreement raised as possible sources of pre-emption.

We have determined that Washington's regulations

regarding general navigation watch procedures, English language skills, training, and casualty reporting are preempted. Petitioners make substantial arguments that the remaining regulations are preempted as well. It is preferable that the remaining claims be considered by the Court of Appeals or by the District Court within the framework we have discussed. The United States did not participate in these cases until appeal. Resolution of these cases would benefit from the development of a full record by all interested parties.

We infer from the record that Washington is not now enforcing its regulations. If, pending adjudication of the case on remand, a threat of enforcement emerges, the Court of Appeals or the District Court would weigh any application for stay under the appropriate legal standards in light of the principles we have discussed and with recognition of the national interests at stake.

When one contemplates the weight and immense mass of oil ever in transit by tankers, the oil's proximity to coastal life, and its destructive power even if a spill occurs far upon the open sea, international, federal, and state regulation may be insufficient protection. Sufficiency, however, is not the question before us. The issue is not adequate regulation but political responsibility; and it is, in large measure, for Congress and the Coast Guard to confront whether their regulatory scheme, which demands a high degree of uniformity, is adequate. States, as well as environmental groups and local port authorities, will participate in the process. See 46 U. S. C. §3703(a) (requiring the Coast Guard to consider the views of "officials of State and local governments," "representative of port and harbor authorities," and "representatives of environmental groups" in arriving at national standards).

The judgment of the Court of Appeals is reversed, and remand for further proceedings consistent with this opinion.

It is so ordered.

APPENDIX TO OPINION OF THE COURT

"1. Event Reporting— WAC 317–21–130. Requires operators to report all events such as collisions, allisions and near-miss incidents for the five years preceding filing of a prevention plan, and all events that occur thereafter for tankers that operate in Puget Sound.

"2. Operating Procedures— [Watch Practices WAC–317–21–200.] Requires tankers to employ specific watch and lookout practices while navigating and when at anchor, and requires a bridge resource management system that is the standard practice throughout the owner's or operator's fleet, and which organizes responsibilities and coordinates communication between members of the bridge.

"3. Operating Procedures— Navigation WAC— 317–21–205. Requires tankers in navigation in state waters to record positions every fifteen minutes, to write a comprehensive voyage plan before entering state waters, and to make frequent compass checks while under way.

"4. Operating Procedures— Engineering WAC— 317–21–210. Requires tankers in state waters to follow specified engineering and monitoring practices.

"5. Operating Procedures— Prearrival Tests and Inspections WAC— 317–21–215. Requires tankers to undergo a number of tests and inspections of engineering, navigation and propulsion systems twelve hours or less before entering or getting underway in state waters.

"6. Operating Procedures— Emergency Procedures WAC— 317–21–220. Requires tanker masters to post written crew assignments and procedures for a number of shipboard emergencies.

"7. Operating Procedures— Events WAC— 317–21–225. Requires that when an event transpires in state waters, such as a collision, allision or near miss incident, the

operator is prohibited from erasing, discarding or altering the position plotting records and comprehensive written voyage plan.

"8. Personnel Policies, Training— WAC— 317–21–230. Requires operators to provide a comprehensive training program for personnel that goes beyond that necessary to obtain a license or merchant marine document, and which includes instructions on a number of specific procedures.

"9. Personnel Policies— Illicit Drugs and Alcohol Use— WAC 317–21–235. Requires drug and alcohol testing and reporting.

"10. Personnel Policies— Personnel Evaluation— WAC 317–21–240. Requires operators to monitor the fitness for duty of crew members, and requires operators to at least annually provide a job performance and safety evaluation for all crew members on vessels covered by a prevention plan who serve for more than six months in a year.

"11. Personnel Policies— Work Hours WAC— 317–21–245. Sets limitations on the number of hours crew members may work.

"12. Personnel Policies— Language WAC— 317–21–250. Requires all licensed deck officers and the vessel master to be proficient in English and to speak a language understood by subordinate officers and unlicensed crew. Also requires all written instruction to be printed in a language understood by the licensed officers and unlicensed crew.

"13. Personnel Policies— Record Keeping WAC— 317–21–255: Requires operators to maintain training records for crew members assigned to vessels covered by a prevention plan.

"14. Management WAC— 317–21–260. Requires operators to implement management practices that demonstrate active monitoring of vessel operations and maintenance, personnel training, development, and fitness, and technological improvements in navigation.

"15. Technology WAC— 317–21–265. Requires tankers

to be equipped with global positioning system receivers, two separate radar systems, and an emergency towing system.

"16. Advance Notice of Entry and Safety Reports WAC— 317–21–540. Requires at least twenty-four hours notice prior to entry of a tanker into state waters, and requires that the notice report any conditions that pose a hazard to the vessel or the marine environment." 148 F. 3d, at 1053 (footnote omitted).

Anchorage Daily News

Friday, March 17, 2000

Facts needed to form cruise ship regulations

By MICHELE BROWN
and THOMAS BARRETT

Alaskans are concerned about how the cruise ship industry is affecting our air and water and what the industry is doing to control and mitigate the waste it creates. We need information. We need answers. We need sound waste management, and we need monitoring and verification.

The best way to get there is through an open, full discussion. That discussion takes a willingness by all parties involved to listen, a commitment to act and thoughtful analysis.

Three months ago we opened the dialogue to thoroughly review the industry's waste management and disposal practices and to publicly discuss what is being done and what should be done to improve the situation.

The Alaska Department of Environmental Conservation asked the U.S. Coast Guard, the U.S. Environmental Protection Agency and the Southeast Conference (a group representing Southeast Alaska communities) to join cruise industry officials for a discussion on ways to improve controls on ship pollution. Clear objectives were set out:

* First, identify the waste streams and spill risks that could affect Alaska's air and water resources.

* Second, develop pollution prevention and waste management solutions that will eliminate or reduce effects, including better technology and management practices.

* Third, asses what process is needed to verify compliance.

* Fourth, keep Alaskans informed.

Work groups have begun fact finding on air emissions, wastewater discharges, waste disposal management, oil spill prevention and response and environmental leadership. Those groups will prepare reports that will be widely circulated for public review and comment.

Once we have accurate facts that we know are sound, we can structure management and regulatory decision making upon that foundation. The work groups will make public reports on that aspect

of their work as well.

We're on an aggressive schedule. We want a good handle on all the facts when the first cruise ships arrive in Southeast in a few months. And we are seeing progress. The cruise ship industry committed to no waste discharge into so called "doughnut holes" - areas beyond our three-mile limit but within the inside waters of Southeast Alaska - and will stage additional oil pollution response equipment in Southeast.

Though we're all eager for solutions, casting blame or rushing to conclusions will only delay sound outcomes. Lots of ideas will be explored. That's exactly how it should work. Some recent press reports have focused on one or two of those ideas and expressed them as done deals. They aren't.

Some reports suggested that the cruise ship industry has been offered the option of solely voluntary compliance and an "enforcement shield," to protect against any enforcement action taken from data it submits to state or federal agencies. This is not the case. Full compliance with applicable laws and regulations has never been at issue.

We all want action. The Department of Environmental Conservation and the U.S. Coast Guard are critically concerned about the wastes that enter our environment from cruise ships. We are committed to determining proper monitoring procedures for cruise ship operations and to assessing water and air quality conditions to determine actual pollution levels and sources. However, we must be sure the actions we take do indeed protect our air, water and shoreline.

We all need to work together to collect and scrutinize the necessary facts upon which we can make the right decisions to monitor and control pollution. Work group members include local government, environmentalists, and industry and community members. The work group meetings are open. Please join us in that discussion.

q Michele Brown is commissioner of the Alaska Department of Environmental Conservation. U.S. Coast Guard Rear Admiral Thomas J. Barrett is commander, 17th Coast Guard District, Commander, U.S. Naval Forces Alaska. Work group activities can be tracked on the DEC's web site:
www.state.ak.us/local/akpages/ENV.CONSERV/

press/cruise/cruise.htm.

From: Colleen Bradley
To: BUTZ, PETER; O'BRIEN, TOM
Date: 3/7/00 7:02AM
Subject: Cruise ship pollution

From the New York Times, March 7, 2000 (I've given hard copies to Sven and Randy)

Pollution by Cruise Ships Still a Problem, Report Says

By DOUGLAS FRANTZ

A report by Congressional investigators being released Tuesday shows that officials from the Coast Guard and the Justice Department are expressing concern about the effect on sensitive marine life of the millions of gallons of waste water being discharged legally by cruise ships at sea and in port.

The concerns persist despite progress by ship owners in disposing of waste, the report says. The findings are part of an analysis of the industry's pollution record by the General Accounting Office, an investigative arm of Congress. The report was commissioned by Democratic Reps. John Dingell of Michigan and Henry Waxman of California.

Most cruise ships using American ports fly foreign flags, and the report said there were 87 confirmed cases of foreign-registered cruise ships illegally discharging waste, oil, garbage and hazardous material from 1993 to 1998, the latest year for which figures are available. The number of cases declined to eight in 1997 and nine in 1998 from a high of 24 in 1994.

The cruise companies were credited with helping to reduce the numbers through improved technology and a stronger commitment to eliminating illegal discharges, the report said. Public attention was focused on cruise ship pollution in 1998 and last year when Royal Caribbean Cruises International pleaded guilty to a fleetwide conspiracy to discharge waste illegally over several years.

But federal officials cautioned that the decline might also be the result of fewer resources allocated by the Coast Guard, the primary regulatory agency, to detecting pollution. The decline has occurred as the number of cruise ships has grown dramatically.

Miami has the highest concentration of cruise ships in the country, but the Coast Guard district there reduced the time spent monitoring environmental compliance by more than 50 percent from 1993 to 1998.

In addition, the report said that Coast Guard inspectors were hampered by the size and complexity of the cruise ships. Ships using American ports are inspected four times a year, but the typical inspection lasts only four to six hours and must cover fire drills, life-boat launchings and record checks along with examination of anti-pollution equipment.

Federal officials told investigators that they were more worried about the millions of gallons of untreated "gray water" dumped legally by cruise ships each year.

Under federal and international regulations, ships can discharge gray water from sinks, showers, kitchens, laundries and other facilities anywhere, including in ports. Justice Department officials said a new definition of gray water might be necessary to reflect the growth of the industry since the regulations were written more than 20 years ago.

Last year, the Coast Guard began examining whether standards for dumping the untreated water needed to be tightened after complaints by environmental groups and Alaskans that discharges might threaten endangered whales and other marine life in Alaska's Inside Passage.

Tuesday's report dealt only with ocean pollution, but air pollution is also a growing concern. Last week, the Environmental Protection Agency said that all six major cruise lines that sail to Alaska violated state and federal air pollution laws last summer.

The alleged violations involved 13 ships and could lead to fines of up to $27,500 per ship per day. The companies have said they do not believe laws were broken.

U.S. agencies are playing a larger role in enforcing pollution laws because of what the report called a breakdown in regulation by the countries of registry, like Liberia and Panama. Cruise lines register ships in those countries to avoid American taxes and other rules. "While I'm encouraged that the industry is apparently more sensitive to environmental concerns, it is clear that self-policing and self-regulation have limits," said Dingell, the senior Democrat on the House Commerce Committee. "The Coast Guard is stretched thin and it may be that we will need to look at ways to increase their resources to guard against environmental abuses in the future."

United States
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Alaska
Idaho
Oregon
Washington

EPA News Release

00-13

February 29, 2000

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CRUISE LINES VIOLATE AIR STANDARDS, EARN EPA REPRIMAND

The EPA today issued Notices of Violation (NOVs) to six companies operating large cruise ships that fouled the air in Juneau, Seward and Glacier Bay last summer. The 13 ships were monitored as they toured southeast Alaska, at times emitting smoke that significantly exceeded state and federal limits for visible emissions.

Responding to dozens of citizen complaints and media reports of large volumes of smoke billowing from the stacks of cruise ships, EPA investigators found numerous violations of the state's Marine Vessel Visible Emission Standards which govern the amount and duration of particulate matter discharges into the air. To assist the state in enforcing its smoke limits within Glacier Bay National Park, EPA investigators also worked with park rangers to monitor smoke emitted from ships visiting the area.

The NOVs were issued to the following companies:

- Holland America Line-Westours, Inc. (operating the Nieuw Amsterdam, Statendam, Veendam, Westerdam ships);
- Princess Cruises, Inc. (Dawn Princess, Sea Princess, Sun Princess);
- Celebrity Cruises, Inc. (Galaxy, Mercury);
- Norwegian Cruise Lines, Inc. (Dynasty, Wind);
- Carnival Cruise Lines, Inc. (Jubilee); and
- World Explorer Cruises, Inc. (Universe Explorer)

-more-

The EPA NOVs allege failure to comply with emission standards and failure to report excess emissions to the state. The companies will have the opportunity to meet with the EPA to discuss the violations before EPA takes any further enforcement action which could include compliance orders and/or assessment of penalties.

"Last year, over 550 cruises to southeast Alaska were taken by nearly 600,000 people from all corners of the earth," said EPA Regional Administrator Chuck Clarke. "Clearly, the strength of the cruise industry in Alaska is due entirely to the breathtaking beauty of the environment, the tourist industry's greatest asset.

"Since the cruise industry profits so handsomely from Alaskan environmental jewels it should understand that it needs to protect them as well."

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February 25, 2000

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CRUISE INDUSTRY PROPOSES VOLUNTARY DISCHARGE POLICY THAT EXCEEDS STATE/FEDERAL STANDARDS

JUNEAU – The Alaska cruise ship industry has unveiled a voluntary water discharge policy that elevates discharge standards well beyond what is required by law.

The initiative was introduced during a two-day meeting with representatives from the Alaska Department of Environmental Conservation, the U.S. Coast Guard, environmental and community groups and the cruise ship industry. The new policy expands and confirms the commitments the industry introduced last December.

North West CruiseShip Association members told the gathering that the cruise ship lines serving Alaska are prepared to go well beyond compliance to ensure that Alaska's coastlines and harbors remain pristine. The new volunteer initiatives include:

- Development of initiatives for tertiary treatment of black water.
- Development of new systems to treat gray water.
- Expansion of incinerator systems to include food waste.
- Research and development of "green" diesels.

The new guidelines complement the voluntary standards set out by association members last year, including:

-MORE-

- Enhanced oil spill response program that includes staging $1.3 million in new response equipment in Southeast Alaska.

- No discharge of any gray or treated black water in any port in Alaska.
- Separation of waste streams.
- Disposal of solid wastes at landfills best equipped to handle the waste.
- Installation of oily waste separators that produce effluents with less than 15 parts-per-million oil.

These volunteer standards take Alaska cruise ship companies well beyond compliance with state and federal regulations.

The cruise ship association has volunteered to provide information on waste water discharges and, in cooperation with the Coast Guard, to develop a protocol for random sampling and testing of gray and treated black water. It supported a voluntary monitoring program for stack emissions, including particulates and sulfur dioxide.

"We understand that many Alaskans have questions about our operating procedures," said John Hansen, president of the North West CruiseShip Association. "Part of the problem is that we haven't adequately communicated what we're already doing and what we're prepared to do to make our operations even better.

"The bottom line is that we share a common goal. We want our operations to leave the smallest footprint possible on the environment because that's good for Alaska – and it's good for our business."

The association pledged support to gather baseline data on all sources of discharge, including onshore installations and marine sources.

The North West CruiseShip Association represents eight cruise lines serving Southeast and Southcentral Alaska. The member companies bring 97 percent of cruise ship visitors to Alaska.

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The New York Times 3Jan99

Gaps in Sea Laws Shield Pollution by Cruise Lines

Douglas Frantz

Shortly after 10 A.M. on Oct. 25, 1994, radar and infrared sensors aboard a Coast Guard jet over the Atlantic off Puerto Rico detected a possible oil discharge. As the aircraft swept low, its crew saw a long oil slick trailing a ship entering the San Juan harbor.

The vessel was then the largest cruise ship in the world, Royal Caribbean's Sovereign of the Seas, a floating resort the length of three football fields. When Coast Guard inspectors boarded the ship in port, its officers denied discharging any oil.

Suspicious, the Coast Guard and Justice Department opened what would grow into a four-year inquiry leading to the discovery of a **fleet-wide conspiracy within Royal Caribbean Cruises Ltd. to save millions of dollars by dumping oily waste into the ocean.** Last June the cruise line pleaded guilty to conspiracy and obstruction of justice, admitted that its ships had rigged pipes to bypass anti-pollution equipment, agreed to pay a record $9 million in fines and promised the dumping would never happen again.

Astonishingly, the **next month** it did. The Nordic Empress, another Royal Caribbean ship, was discovered discharging oily waste and creating false records to cover it up. Moreover, the **new dumping incident** occurred even though the company knew it remained under Federal investigation for other discharge incidents.

An examination of the criminal investigation, plus new details about the latest incident, shows how **difficult** it is for authorities **to police the booming cruise industry as it launches ever larger ships**, and how determined the industry is to make itself exempt from American regulation.

The review offers strong evidence that the dumping of oil and other wastes by cruise ships, which can create lasting pollution problems in oceans and coastal areas, is more common than previously known. And it reveals an influential industry that has assembled an international lobbying force to plead its case. Royal Caribbean's included **two former United States Attorneys General, Elliot L. Richardson** and **Benjamin R. Civiletti.**

In defending itself, Royal Caribbean, a Liberian corporation with its headquarters in Miami, made what the Justice Department described as an unprecedented claim: that a private company doing business in the United States was immune from criminal prosecution because its ships fly foreign flags.

All major cruise ship owners -- including Disney, which launched its first ship, the 2,200-passenger Magic, last summer -- **sail their ships under foreign flags.** By registering with so-called flag countries in exchange for substantial fees, the owners avoid American corporate taxes and can pay lower wages to foreign crews. Financial documents show that Royal Caribbean saves approximately **$30 million a year** in United States taxes by registering its ships in **Norway** and **Liberia.**

Critics say the savings come at the price of muddied jurisdiction and lax enforcement by the flag

countries, one of the most prominent of which, Liberia, has been devastated by ethnic warfare and divided government most of the last decade. One Federal study found that **foreign countries took action in only 2 of 111 dumping cases referred to them by the United States**. Generally, flag countries have jurisdiction over ships in international waters and the United States asserts jurisdiction in its territorial waters.

These questions are raised just as concern is deepening that the industry's explosive growth is posing new threats to the environment, from the popular Caribbean to the pristine coastline of Alaska.

Royal Caribbean officials said the company had instituted tough new environmental compliance procedures. But the company did not succeed in having the case against it closed with its guilty plea. Instead, the company's discharge practices remain under investigation by Federal grand juries in Anchorage, Los Angeles, Miami and New York, according to a senior company official and its own recent filings with the Securities and Exchange Commission.

The outlines of the country's biggest ocean pollution investigation have been public since the company's admission of guilt. But the full extent of the dumping scheme, and the existence of the lobbying effort, was pieced together from court records in San Juan and Miami and from interviews with Federal officials and current and former Royal Caribbean employees.

The newest cruise ships carry 2,000 or more passengers and up to 1,000 crew members. Disposing of the waste they generate costs hundreds of thousands of dollars a year for each ship, which is one reason, authorities say, that crews sometimes disregard pollution laws.

In recent years other cruise lines have been fined at least six times for dumping oil and refuse. Last summer the Holland America Line, a division of the Carnival Corporation, pleaded guilty to discharging oily waste in Alaska's Inside Passage and paid $2 million in penalties. The Investigation Told of Discharge, Prosecutors Move In

Word that the Sovereign of the Seas had discharged oily waste in October 1994 reached the Justice Department in Washington the day after the incident. In three inspections that October day, the Coast Guard had seen oil in pipes and elsewhere indicating that oily waste had been sent directly overboard. Most convincingly, lab tests matched oil from the ship to a sample taken from the slick by a Coast Guard boat.

Royal Caribbean argued that the discharge was an isolated oversight. But Richard A. Udell, a career prosecutor in the Justice Department's environmental section, found indications to the contrary in Coast Guard data bases.

The records showed that more than a year before, on Feb. 1, 1993, a Coast Guard jet had spotted an oil slick behind the Nordic Empress, off the Bahamas en route to Miami. A videotape taken from the jet showed a slick that appeared to be a perfect match to the videotaped discharge from the Sovereign of the Seas. The Nordic Empress's officers had also denied discharging anything.

On Oct. 25, 1994, inspectors had videotaped the engine room of the Sovereign of the Seas in San Juan; four days later, when the ship arrived in Miami, a second videotape was taken. Comparing them, Mr. Udell noticed that a set of pipes present on Oct. 25 was gone on Oct. 29. Government experts determined that the **pipes had bypassed a critical anti-pollution device** known as an oil-water separator.

On any ship, oil drips from machinery and collects along with sea water in the bilges. The separator filters

out oil so the water can be discharged and the oil stored for disposal in port. Each time the separator is operated, the event must be noted in the ship's oil record book. The Coast Guard relies on the books to monitor compliance with pollution laws.

The oil record book of the Sovereign of the Seas contained no record of a discharge. Later, a ship's engineer testified before a Federal grand jury that there had been none. The officers of the Nordic Empress had made the same claim in 1993, supported by their oil record book.

It took several months, but Coast Guard investigators eventually discovered similar bypass systems on the Nordic Empress and other Royal Caribbean ships. They began to doubt the authenticity of the oil logs.

Confronted by the evidence, witnesses changed their stories. They testified that Royal Caribbean ships regularly bypassed pollution devices and dumped oily waste overboard, usually at night to avoid detection. An engineer from one ship, the Song of America, testified that the oil-water separator was operated so infrequently that it did not work when he did try to use it. They also admitted that the oil record books were falsified so routinely that they were known among many engineers as Eventyrbok, which means fairy tale book in Norwegian.

As for the disappearing pipes on the Sovereign of the Seas, engineers said they had been ordered to cut them up on the voyage from San Juan to Miami and drop them in a trash bin, according to court records.

Oil-water separators are notoriously troublesome to operate. But company engineers testified that the bypass systems, which had been in operation on some ships since 1990, were partly the result of the company's **bonus incentives**. Membranes for the separator cost as much as $80,000 a year per ship and disposing of waste oil in port can cost $300,000 a year. By saving this money, a ship's officers could receive bigger year-end bonuses for staying under budget.

The savings was the Government's strongest evidence that senior management may have known of the conspiracy, said Government officials involved in the case.

But investigators were stymied in following the trail because crucial witnesses, all foreign employees of Royal Caribbean, had left the company and either returned home or taken jobs with other cruise lines outside the United States, the officials said. No senior company officials were charged.

The Defense Cruise Line Throws Big Guns Into Battle

As evidence mounted, Royal Caribbean's lawyers tried to reach a deal. People involved in the negotiations said that in the fall of 1996 the company offered to plead guilty to some charges and pay a substantial fine. But the department rejected the offer and within weeks prosecutors told company lawyers to expect a 35-count indictment.

Mr. Civiletti, who was Attorney General under President Jimmy Carter, and two of his law partners, Judson W. Starr and Joseph G. Block, both former Justice Department environmental chiefs, had tried to negotiate the plea bargain. Other former Government officials working for the company had lobbied the State Department and Pentagon in an effort to persuade the Justice Department not to file charges.

The mission of the lobbying and legal arguments was not to refute the accusations, which would prove irrefutable, but to dispute the authority of the United States to bring charges. The former officials argued

that asserting American jurisdiction undermined international Law of the Sea and could lead other nations to interfere with American vessels, particularly military ships.

Some senior State and Pentagon officials agreed with the international law argument, but in a later legal brief, the Justice Department accused unnamed former Government officials on Royal Caribbean's payroll of providing incomplete and inaccurate information in those private sessions, something company lawyers deny.

A pre-indictment review is not unusual in a major case, and in this instance the Justice Department approved an indictment reduced to 10 counts. On Dec. 11, 1996, the grand jury in San Juan indicted Royal Caribbean and two engineers from the Sovereign of the Seas. The indictment accused the company of conducting a fleet-wide conspiracy to illegally discharge oily waste, but restricted most of the counts to the Sovereign of the Seas. The inquiry into the 1993 Nordic Empress discharge was shifted to a Federal grand jury in Miami.

Justice Department officials said Royal Caribbean's lobbying played no role in reducing the number of counts. "Like every other case, the appropriate charges were based solely on the facts and the law," said Myron Marlin, the department's chief spokesman. "In the end, the prosecution produced two criminal convictions, a record fine, and the case has had a ripple effect throughout the industry, not to mention that the investigation is still continuing."

Legal maneuvering intensified after the indictment. The company's team expanded to include four retired admirals, a former acting assistant attorney general, a former Coast Guard commandant and a former deputy assistant secretary for oceans at the State Department.

Many of these former officials filed affidavits saying the United States could not charge the company under international law. Some contacted former colleagues in a continuing effort to settle the case, according to court records and interviews.

Mr. Richardson, who was Attorney General under President Nixon and held other top Government posts, sought meetings with high-level Administration officials and acknowledged raising the issue with Thomas R. Pickering, the Under Secretary of State and an old friend.

"I mentioned it briefly to Tom Pickering," Mr. Richardson said. "The conversation was brief because the matter was in litigation."

The effort was international. An influential Norwegian family owns a large share of Royal Caribbean and its members helped enlist the Norwegian Government, people involved said. On March 12, 1997, a delegation from the Norwegian Embassy delivered a diplomatic note to the State Department seeking jurisdiction because the Sovereign of the Seas flies a Norwegian flag. They met with Mr. Pickering and other officials, people involved in the talks said.

Along with the prosecutors' steadfast contention that the United States had jurisdiction, they believed another reason not to cede authority was the poor record of flag countries on previous pollution referrals.

In 1992, the State Department had reviewed 111 cases in which accusations of cruise ships dumping garbage overboard had been referred to flag countries. The study found that the countries acknowledged receipt of the referral in only 35 cases and that the only penalties were small fines in two cases. As a result, the State Department halted referrals on dumping in United States territorial waters.

The Nordic Empress had been in international waters when it was discovered discharging oil in 1993, so in July of that year the matter was referred to Liberia because the ship flew a Liberian flag. Liberia accepted the company's claims that no dumping occurred and asked the Coast Guard to expunge the incident from its records, according to Liberian records.

Even after Royal Caribbean admitted lying about the Nordic Empress discharge last June, Liberia decided no action was necessary. The investigation was completed and closed in 1994, said David Crede, chief of investigations for Liberian Services Inc., a private company in Reston, Va., that is Liberia's agent for vessels flying its flag. In the case of the Sovereign of the Seas, the Norwegian Embassy said its officials had looked into the case and decided that no action was warranted. The Outcome After Legal Setbacks, A Plea of Guilty

The Nordic Empress had discharged its waste in international waters, but the ship had presented the Coast Guard in Miami with an oil record book that omitted the discharge. So, on Feb. 19, 1998, Royal Caribbean was indicted in Miami, not for dumping but on a single count of making a false statement to the Coast Guard.

On April 22 and 23, a pivotal hearing took place in Federal District Court in Miami in which the cruise line asked Judge Donald M. Middlebrooks to dismiss the charges.

The Federal judge in San Juan handling the Sovereign of the Seas case, Juan M. Perez-Gimenez, had already rejected the company's claim that the United States lacked jurisdiction and had ordered the case to trial in June.

At the Miami hearing, Mr. Civiletti argued that the United States had overreached its authority. He said that Liberia had jurisdiction and that that country had determined there was insufficient evidence of a crime. He also produced a surprise diplomatic note from the Liberian Embassy in Washington to the State Department asking that the case be dismissed.

Mr. Udell countered that Royal Caribbean's false statement to the Coast Guard, plus its extensive presence here, subjected the company to American law. Although its ships fly various flags of convenience, he said, "Royal Caribbean is as much a part of Miami as the Miami Dolphins."

The company called Mr. Richardson as an expert witness, because he had been the chief American negotiator at the United Nations conference that led to the Law of the Sea treaty. He testified that only Liberia could prosecute the discharge, and warned that the case would undermine the navigational freedom established by the United Nations convention.

But Mr. Richardson seemed less certain when the prosecutor, Thomas Watts-Fitzgerald, asked whether his view would change if the ship had produced a record required by the Coast Guard that contained a misrepresentation. It might well, Mr. Richardson replied.

On May 12, Judge Middlebrooks rejected the motion to dismiss, ruling that the United States had authority to press charges because of the false statement to the Coast Guard.

Losing on the jurisdiction issue and faced with indisputable evidence, Royal Caribbean pleaded guilty on June 3 in both cases and agreed to pay $9 million in fines. The Government called the violations so pervasive and longstanding that the criminal conduct amounted to a routine business practice.

Unlike most plea bargains, this one did not end Royal Caribbean's criminal liability. The company refused

to yield to Government demands that it turn over the results of an internal inquiry, citing fears that employees would refuse to cooperate in future internal investigations. As a result, the company acknowledged, additional grand juries are contemplating similar charges.

The cruise line struggled to put the episode behind it. "We deeply regret our role in polluting the marine environment and we are particularly sorry for the attempts to conceal that pollution," Jack Williams, the company president, said in a statement. "These acts were inexcusable, they were wrong and we accept full responsibility for these violations."

But that effort hit a stunning shoal. On July 15, the company notified the Coast Guard that engineers aboard the Nordic Empress had tampered with pollution devices and discharged oily waste into the ocean. The company said a junior engineer had reported it.

When the Coast Guard questioned engineering personnel the next day, it was like stepping back in time. The chief engineer, Michael Psomadakis, a Greek citizen, denied that there had been a discharge and presented an oil record book that supported him, according to court records and a Coast Guard agent's affidavit. Mr. Psomadakis was served with a grand jury subpoena on the spot.

Two days later, the company held its own hearing and dismissed Mr. Psomadakis and another engineer. On July 19, company personnel escorted him to a Miami hotel to pick up his belongings for the trip home to Greece. He was given his passport and plane ticket and then evaded agents of the Federal Bureau of Investigation who were waiting to talk to him, simply by walking out another exit.

Nancy J. Wheatley, who was hired by Royal Caribbean last June as senior vice president for safety and the environment, and William K. Reilly, the former administrator of the Environmental Protection Agency, who joined the Royal Caribbean board last January, said in interviews that the company had implemented a vigorous new environmental compliance program under Government supervision.

Mr. Reilly said he believed the company's management was committed to cleaning up its past problems.

"Obviously everyone is chagrined about what has happened and somewhat stunned by the seriousness of the allegations," Mr. Reilly said. "The Justice Department set out to get Royal Caribbean's attention, and they got it."

Ms. Wheatley said the latest incident showed that the system was working, because a junior officer came forward and was supported by management.

"We know we don't have a business if the oceans aren't a beautiful place to go," Ms. Wheatley said.

But prosecutors were shocked. At a court hearing in September, they said the conduct, which was under investigation, demonstrated the difficulty in changing a pervasive culture of ingrained criminal conduct.

GRAPHIC: Photos: In 1994, a Coast Guard photograph, right, detected a possible oil discharge from Royal Caribbean's Sovereign of the Seas cruise ship, above, which led to a four-year inquiry into a fleet-wide conspiracy. (U.S. Coast Guard, below; Laura Kleinhenz for The New York Times)(pg. 1); A video of the engine room of the Sovereign of the Seas on Oct. 25, 1994, showed a pipe, upper right, that Government experts say was used to bypass a device that filters oil in the bilges. Four days later, a second video showed, the pipe had been removed. (United States Coast Guard)(pg. 20)

NORTH WEST
CRUISESHIP
ASSOCIATION

March 20, 2000

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NWCA SHIPS WILL DELIVER MORE THAN $200 MILLION TO SOUTHEAST'S ECONOMY THIS SEASON

The cruise lines of the North West CruiseShip Association (NWCA) will inject more than $200 million into Southeast Alaska's economy this season.

Twenty-two member ships will bring an estimated 609,000 passengers to Southeast ports of call. Juneau should see more than $80 million flow into its economy with 379 dockings, a slight increase from 369 a year ago.

Skagway should experience a $60 million season with 320 NWCA dockings, delivering 533,504 passengers. An estimated 10,000 additional travelers will visit Ketchikan this season, adding $53 million to its economy.

Haines is expected to realize almost $10 million from NWCA operations, followed by Sitka with $11.3 million.

Four new NWCA ships will visit Southeast this season. The Ocean Princess will replace the Crown Princess. Ocean Princess, a 77,000-ton vessel finished this year, will carry 2,020 passengers and a crew of 900. Holland America introduces the Volendam, a 63,000-ton vessel launched last year that carries 1,440 passengers and a crew of 642. It replaces the Volendam and Noordam.

MORE

Norwegian Cruise Lines' Norwegian Sky will make 21 calls this season, replacing the Norwegian Dynasty. The Norwegian Sky is an 80,000-ton vessel finished last year, which carries 2,020 passengers and a crew of 800.

Radisson Seven Seas introduces the Seven Seas Navigator, a 30,000-ton vessel built in 1998, which carries 490 passengers and a crew of 321.

"These new, state-of-the-art ships will offer a quality shipboard experience for visitors to Alaska, along with the most advanced operational, safety and environmental systems," said John Hansen, NWCA president.

The member companies of the North West CruiseShip Association account for 97 percent of all cruise ship visitors to Alaska. Member companies include Carnival Cruise Lines, Celebrity Cruises, Crystal Cruises, Norwegian Cruise Line, Holland America Line, Princess Cruises, Radisson Seven Seas, Royal Caribbean and World Explorer Cruises.

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2000 CRUISE SEASON
NWCA SHIP LIST

Line	Ship	Tonnage	Passengers	Crew	Year Built	Refurbished
Carnival	Jubilee	47,262	1,486	670	1986	1998
Celebrity	Galaxy	76,522	1,896	908	1996	
	Mercury	77,713	1,870	908	1997	
Crystal	Harmony	49,400	1,006	545	1990	1997
Holland America	Nieuw Amsterdam	33,930	1,214	542	1983	1997
	Ryndam	55,451	1,266	588	1994	1997
	Statendam	55,451	1,266	588	1992	1998
	Veendam	55,540	1,264	588	1996	1998
	Volendam	63,000	1,440	618	1999	
	Westerdam	53,872	1,494	642	1986	
Norwegian	Nor. Sky	80,000	2,002	800	1999	
	Nor. Wind	50,764	1,748	617	1993	
Princess	Dawn Princ.	77,000	2,020	900	1997	
	Ocean Princ.	77,000	2,020	900	2000	
	Regal Princ.	69,845	1,596	696	1991	1998
	Sea Princ.	77,000	1,950	900	1998	
	Sky Princ.	46,314	1,184	550	1984	1998
	Sun Princ.	77,000	2,020	900	1995	1998
Radisson	Seven Seas Navigator	30,000	490	321	1998	
Royal Caribbean	Rhapsody of the Seas	78,491	2,000	765	1997	
	Vision of the Seas	78,491	2,000	765	1998	
World Explorer	Universe Explorer	23,879	734	365	1958	1995

Cruise-related spending and costs
By local government

	Total 2000 Spending	1997 Government costs	1997 Net gain (loss)
Ketchikan (city and borough)	$52,800,000	$1,219,995	$2,466,505
Wrangell	291,515	41,950	(1,550)
Sitka	11,330,000	293,730	391,270
Juneau	80,300,000	1,296,850	2,957,150
Haines (city and borough)	9,685,740	281,351	142,649
Skagway	60,200,000	187,122	861,878
TOTAL	$214,607,250	$3,309,498	$6,840,702

Source: Cruise Industry Impacts on Local Government in Southeast Alaska, Prepared for Southeast Conference – January, 1998

1997 Cruise-related spending and tax revenues in Southeast Alaska

- Cruise ship passenger spending totaled $160 million during 1997, including $120 million in taxable spending.
- Cruise ship crew generated $10 million in taxable spending.
- Taxable spending in support of cruise line operations totaled just under $10 million in 1997. Cruise lines spent another $18 million on maritime services, medical services for crew, state/federal government fees and other non-taxable services.
- Sales tax revenues totaled $7 million in 1997.
- Port fees generated another $3.2 million in local government revenues.

Cruise-related spending by Southeast Alaska's local governments

- Southeast Alaska's local governments incur relatively few additional costs as a result of providing services to cruise lines, passengers and crew. In general, communities are able to provide basic services within their existing staffing and service infrastructure.

- Cruise passengers affect a broad range of local government services, including emergency medical services, public utilities and libraries, with police departments the most affected.

- The cost of providing these services is small compared to the local government revenues generated by the cruise industry.

- New costs associated with the cruise industry to local governments totaled $2.2 across the region.

- Direct overhead costs that can be allocated to the cruise industry totaled $1.2 million.

Source: Cruise Industry Impacts on Local Government in Southeast Alaska, Prepared for Southeast Conference – January, 1998

Visitor industry creates 4,154 jobs for Southeast

	# of Jobs	Payroll (in millions of dollars)
Transportation		
Local & interurban passenger transport	248	$3.7
Water transportation	393	11.7
Air transportation	525	21.5
Transportation services	124	2.8
Retail		
General merchandise stores	50	1.0
Food stores	79	1.9
Apparel & accessory stores	40	0.6
Eating & drinking places	543	8.3
Miscellaneous retail	948	12.5
Services		
Hotels & other lodging places	1,105	17.8
Auto rentals	18	0.4
Amusement & recreation services	334	4.1
Total	4,407	$86.1
% attributable to pleasure visitors	94%	

VISITOR-RELATED EMPLOYEMENT IN SOUTHEAST **4,154 jobs**
$81.1 million payroll

Source: Economic Impacts of Alaska's Visitor Industry
May 1999 McDowell Group, Inc.

Southeast Alaska
Local Government Taxation

	Sales	Property	Bed	Other
Haines				
City	4.0%	5.85 mills	-	-
Borough	1.5%	4.50 mills	-	-
Total	5.5%	10.35 mills	-	-
Juneau	5.0%	12.02 mills	7.0%	3.0% liquor 6.0% tobacco
Ketchikan				
City	3.5%	5.86 mills	6.0%	-
Gateway Borough	2.0%	7.50 mills	4.0%	-
Total	5.5%	13.36 mills	10.0%	-
Petersburg	6.0%	10.00 mills	4.0%	-
Sitka	5.0%	6.00 mills	6.0%	2¢/gallon fuel
Skagway	4.0%	7.00 mills	8.0%	-
Wrangell	7.0%	12.00 mills	$4/night	

Southcentral Ports

Seward				
City	3.0%	3.12 mills	4.0%	-
Borough	2.0%	8.08 mills	-	-
Total	5.0%	11.20 mills	4.0%	
Valdez	-	20.00 mills	6.0%	-

How visitors get to Alaska

	Summer 1989	Summer 1990	Summer 1991	Summer 1992	Summer 1993	Summer 1994	Summer 1995	Summer 1996	Summer 1997	Summer 1998	Summer 1999
Domestic air	329,900	421,100	446,900	503,400	543,700	600,200	625,300	673,500	706,600	706,000	737,500
International air	22,500	22,500	21,800	20,400	19,600	19,100	17,700	31,200	29,000	27,500	31,900
Cruise ship	187,500	243,600	252,200	275,600	317,500	370,600	368,600	437,500	509,700	568,000	596,000
Alaska ferries	43,100	46,500	48,800	45,900	50,900	49.700	47,300	42,000	33,100	37,000	36,000
Highway	109,500	112,000	110,000	124,000	120,600	125,300	124,300	118,900	115,200	128,500	127,000

Source: Alaska Visitor Arrivals, Summer 1999 - McDowell Group

NORTH WEST
CRUISESHIP
ASSOCIATION

Background Paper on NWCA Environmental Initiatives

Several days ago, the Environmental Protection Agency (EPA) issued notices of violation (NOVs) to six member companies of the North West CruiseShip Association (NWCA), alleging that 13 of our ships emitted more smoke than allowed by law. This is an allegation NWCA members take very seriously and are determined to rectify. Unfortunately some media reports did not accurately report the complete story.

NWCA represents eight cruise lines that bring 97 percent of cruise ship visitors to Alaska. NWCA members brought more than 570,000 visitors to Alaska last year. This year, we expect to bring more than 600,000 visitors, who will inject more than $274 million into the state's economy. Cruise ships represent one of the few, real, growth industries in this state.

NWCA and its member companies are committed to operating in the most environmentally friendly manner possible. The association and its members have proposed several environmental initiatives that take the industry well beyond compliance, including:

- A voluntary water discharge policy that elevates discharge standards well beyond what is required by law.

- A voluntary enhanced oil spill response program that includes staging $1.3 million in new response equipment in Southeast Alaska. This cooperative program benefits the entire marine industry by making available additional response equipment and trained personnel.

- A policy of no discharge of any gray or treated black water in any port in Alaska.
- Separation of waste streams.
- Disposal of solid wastes at landfills best equipped to handle the waste.
- Agreement to treat all Inside Passage waters as territorial waters, including the so-called "doughnut holes."
- Installation of opacity meters on most ships that will log stack emissions during the season.
- Using "head" tax receipts to replicate the state's Department of Environmental Conservation's "Juneau Air Quality Sulfur Dioxide Monitoring Project," which was conducted in 1995.

In addition, NWCA members agreed to provide self-collected data to regulators on various waste streams and have previously installed oily waste separators that produce effluents with less than 15 parts-per-million oil. Members also support current legislation to eliminate TBT anti-fouling paint in Alaska waters. EPA's actions may compromise these cooperative efforts.

Background

Several years ago, NWCA implemented a voluntary program to monitor stack emissions. This program ran concurrently with a state-funded effort until 1996 when the legislature deleted the program based on DEC's findings that the cruise industry posed no significant air quality problems. Each year, NWCA contracts opacity readers in Southeast Alaska. When these readers find problems, they notify the lines, which then correct the problem.

NWCA collects this data because its members want their operations to be as noninvasive as possible. When the EPA requested copies of last summer's readings, the member lines

readily turned the data over. We thought we were all driven by a common goal to make our operations better.

For reasons NWCA doesn't fully understand, the EPA used the data we collected against our member lines to issue the NOVs, which are similar to indictments.

A science open to interpretation

Opacity reading is an inexact art that has evolved little since the 1800s. It involves comparing a ship's stack emission against a template. Readers are given one-to-two-days of training. Accurate readings are affected by a number of environmental conditions, including the background (mountains, for example, may skew the readings), the ship's angle and cloud conditions. Many NOVs are dismissed due to problems with opacity readings.

DEC conducted a scientific ambient air study in Juneau in 1995. Monitoring sites were located behind the Foodland Shopping Center near Egan Drive and in the playground of Capital Elementary School on Fifth Street. The study found that "at no time did any observed concentrations (of sulfur dioxide) exceed state or federal health standards. The highest measured concentration of sulfur dioxide for the project was 23 percent of the 24-hour health standard, and 15 percent of the three-hour health standard." It is worth noting that the highest reading from the Foodland site came on a day no ships were in port.

NWCA members support replicating this research this season, funded by Juneau's new "head" tax receipts.

EPA's actions raise serious concerns

Last December DEC Commissioner Michele Brown hosted a forum to discuss waste management and disposal practices of cruise ships. The forum included representatives from DEC, EPA, the Coast Guard, the Southeast Conference and the cruise ship industry. The forum led to formation of an Executive Steering Committee and four work groups. EPA has fully participated in the process. For the process to work effectively,

candid discussion and disclosure must take place among the regulators, the enforcers and the industry.

Two of the working groups have asked NWCA members to increase its self-monitoring and share the findings to improve environmental standards. EPA's decision to requisition our data and then use it against our member lines certainly diminishes the motivation to self-monitor, and undermines the larger objective of achieving improvements. We're prepared to cooperate as long as the data we collect is used for productive, not punitive goals. We need a protocol that shields our member lines while baseline figures are being developed. These types of shields are widely accepted as an effective way for regulators to improve many industries' environmental performance. They are common industry practices and our proposal is supported by the Southeast Pilots Association and the Alaska Conservation Council.

Committed to environmental excellence

The member companies of NWCA are firmly committed to operating in the most environmentally excellent manner possible. That's why we implemented the voluntary emission program and that's why we instituted an aggressive initiative program to minimize our impact on Alaska waterways. However, we believe it is fundamentally unfair to use our voluntary initiatives to punish us.

Despite EPA's disappointing action and the negative press it generated, NWCA's eight member lines remain committed to participating in a cooperative process with the state.

CRUISE SHIP REGULATION IN ALASKA

International cruise ships are subject to a strict regulatory framework. This begins with the International Maritime Organization (IMO), the United Nations' specialized agency responsible for improving maritime safety and preventing pollution from ships. The IMO adopts conventions and it is the responsibility of Governments to put these into effect and enforce them. These include:

1. The International Convention for the Safety of Life at Sea, 1974 (SOLAS)
2. The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78)
3. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW)

In waters subject to the jurisdiction of the United States, the Coast Guard is responsible for enforcing IMO rules as well as U.S. federal laws and regulations. This includes the U.S. Clean Water Act and EPA Clean Air Act. The Coast Guard inspects every cruise ship quarterly to verify compliance with safety and environmental regulations.

The U.S. Public Health Service, USDA, the U.S. Customs Service and INS also inspect and enforce regulations. The National Park Service requires permits that regulate ship operations in Glacier Bay

The State of Alaska requires that Alaska marine pilots be present on the bridge at all times while ships are in Alaska waters. Air emissions are subject to Alaska DEC and EPA regulation.

Cruise ships have aggressive environmental management programs which have been developed with the assistance of outside environmental and safety professionals. Underwriters and classification societies inspect and verify that systems and procedures are in place.

The average cruise ship is subject to over 60 inspections per year.
It is not accurate to claim that cruise ships are unregulated. Many layers of regulation has been developed by experts and implemented worldwide through these conventions, which are treaties in their own right. The Coast Guard is vigilant in enforcement and prosecutes offences.

Modern cruise ships have management systems in place for all waste streams. From solid waste to shower water, these systems ensure compliance with regulations and protection of the environment.

NORTH WEST
CRUISESHIP
ASSOCIATION

Memorandum on Waste Management Practices and Procedures in Alaska

November 30, 1999

North West CruiseShip Association

Memorandum on Waste Management Practices and Procedures in Alaska

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The member lines of the North West CruiseShip Association (NWCA) have been closely involved in development of the cruise industry waste management practices and procedures published by the International Council of Cruise Lines (ICCL). NWCA fully supports the practices and procedures set out in the paper and its member companies incorporate them into their own environmental management plans. NWCA represents eight cruise lines which bring 97 percent of cruise ship visitors to Alaska.

The ICCL paper makes reference to visiting "interesting places in the world" as integral to the cruise industry. This certainly applies to Alaska where guests come to enjoy not just the interesting places but the spectacular natural beauty of Alaska. Alaska is unique in many respects, and NWCA understands the importance of adapting operations to the Inside Passage and other areas of coastal Alaska.

With this in mind, there are some factors, additional to the ICCL paper, which are of particular interest or concern relating to waste management practices and procedures in Alaska.

Solid waste

The first relates to the disposal of solid waste. The current practice of our member lines is to collect on-board recyclable and non-incineratable solid waste and unload them in port for recycling or safe disposal. For the most part, very little is taken ashore in Southeast Alaska ports. Basically, the only shore disposal is through Juneau's private incineration company. Some pallet boards are recycled in Ketchikan. By far, the majority of the solid waste (and all hazardous waste) is unloaded at the port of Vancouver and disposed of and tracked by certified waste disposal companies. Those ships that home-port in other West Coast ports similarly dispose of waste in those ports according to the requirements in those jurisdictions. This practice will continue in the future. In addition, all the cruise lines, individually, constantly seek ways to minimize the volume of solid waste.

International Waters within the Inside Passage

Secondly, we want to address the matter of the "doughnut holes" that have received much attention in the media in recent days. These areas are, by definition, locations in the Inside Passage that are three miles or more from land, and therefore deemed to be International Waters, and not subject to the same environmental regulations as areas within U.S. territorial waters. The NWCA member lines have given careful thought to this issue. Our position is as follows: For the purpose of environmental management we will make it our policy to consider all areas of the Alaska Inside Passage, including the so-called "doughnut holes," to be part and parcel of the Inside Passage and the territorial waters of the U.S. As such, our operating practices and procedures will be no different in these locations compared to the rest of the Inside Passage. In other words, cruise ships will not discharge waste in these locations that would not be allowed in the territorial waters.

Ballast water

The third item relates to ballast water, and protection from release of non-indigenous species in Alaska waters. Cruise ships coming to Alaska follow a practice of discharging all ballast tank water that may contain tropical or other non-indigenous species before arrival in Vancouver, replacing it with Pacific northwest water. This practice is monitored by the Canadian Coast Guard. In the course of the Alaska cruise season, any ballast water taken on or released is strictly water of the Pacific northwest, and not subject to importation of species not native to this region.

Oil spill response

The fourth matter is spill response. Our member lines fully recognize the sensitive environment in the Inside Passage and the importance of having an effective response program in place. Each ship has a well established and Coast Guard-approved oil spill prevention program that is required by international treaty. Oil spill contingency planning for each ship is documented in the "Shipboard Oil Pollution Emergency Plan" which contains the procedures used for oil spill prevention and response. This plan covers training, equipment and planning for effective cleanup in the event of a spill.

In order to improve the effectiveness of oil spill response, NWCA members, in cooperation with Southeast Stevedoring and SEAPRO, have developed a cooperative spill response program in which the resources of each of the partners can be pooled for efficiency and more effective use in the event of an oil spill.

SEAPRO will outfit a number of barges with emergency response equipment for NWCA and moor the barges in strategic locations in the Inside Passage. Southeast Stevedoring will be provide a number of vessels of opportunity to transport the barges, deploy the booms and assist in spill response. SEAPRO will provide the overall management of these resources in addition to making their own equipment and trained personnel available. This cooperative program will be of benefit not only to the cruise industry but the entire marine industry in Southeast Alaska by making available additional response equipment and trained personnel for emergency response. To maintain a high state of readiness for the cruise industry program, annual response exercises will be conducted with the US Coast Guard.

Air emissions

The final item is air emissions. It is an important matter in Alaska, most notably in Juneau with its unique geography, but also throughout coastal Alaska. This is a complicated subject which does not lend itself to simple solutions. The elements include ships' power system characteristics, fuel, power requirements for maneuvering, operation and maintenance, number of ships in port, atmospheric conditions, objective observations and more. The cruise lines have invested in technology and operational practices over the years to reduce emissions. In order to continue to improve industry performance NWCA members are prepared, as group, in cooperation with the DEC, to establish a working group comprised of technical staff to examine the issue of air emissions.

North West CruiseShip Association
November 30, 1999

CRUISE INDUSTRY
WASTE MANAGEMENT
PRACTICES AND PROCEDURES

The cruise industry is dedicated to preserving the marine environment and oceans upon which our ships sail. As a stated industry policy, International Council of Cruise Lines (ICCL) members have adopted aggressive programs of waste minimization, waste reuse and recycling, and waste stream management. ICCL members are working in a number of areas to identify and implement new technologies in order to improve the environmental performance of our ships. ICCL member lines currently have policies in place which meet or exceed the stringent standards set forth in international treaties and applicable U.S. laws.

Introduction

The cruise industry is inextricably linked to the environment. Our business is to bring people to interesting places in the world, over the water. Recognizing the future of the industry depends on a clean and healthy environment, cruise industry senior management is committed to being stewards of the environment and setting policies that will make the industry a leader in environmental performance.

This policy document has been developed under the auspices of the industry's professional organizations, ICCL, the Florida Caribbean Cruise Association (FCCA), and the North West CruiseShip Association (NWCA). The goal of this document is to formalize cruise industry waste management practices.

In the development of industry management practices, the members of the ICCL have endorsed policy goals based upon the following fundamental principles:

- Fully comply with applicable laws and regulations
- Maintain cooperative relationships with the regulatory community
- Design ships to be environmentally friendly
- Embrace new technology
- Conserve resources through purchasing strategies and product management
- Minimize waste generated and maximize reuse and recycling
- Optimize energy efficiency through conservation and management
- Manage water discharges
- Educate staff, guests and the community.

Discussion

Just as on shore, ship operations and passengers generate waste as part of many daily activities. On ships, waste is generated while underway and in port. Because ships move, the management of these wastes becomes more complicated than for land-based activities, as the facilities and laws change with the location of the ship.

Facilities on the ships and management practices must be designed to take into account environmental laws and regulations around the world. Moreover, because waste management ultimately becomes a local activity, the local port infrastructure, service providers and local waste disposal vendors are factors in the decision-making processes.

On an international level, environmental processes are an important part of the International Maritime Organization's (IMO's) policies and procedures for the maritime industry. The cruise industry has incorporated environmental performance into Safety Management Systems (SMS) and MARPOL-mandated Waste Management Manuals. Under agreements and laws specific to many nations, these programs are routinely reviewed by port states to ensure compliance. For example, in the United States, the U.S. Coast Guard has jurisdiction over environmental matters in ports and waterways and conducts examinations that include review of environmental systems, SMS documentation and such MARPOL-mandated documents as the Oil Record Book and the Garbage Record Book.

The industry effort to develop management practices has focused on the traditional high volume wastes (garbage, graywater, blackwater and bilge water), pollution prevention and the small quantities of hazardous waste produced onboard. In the process, ICCL members have shared waste management strategies and technologies, while focusing on a common goal of waste reduction.

The process of waste reduction includes waste prevention, the purchasing of products that have recycled content or produce less waste, and recycling or reuse of wastes that are generated. The ultimate goal is to have the waste reduction culture absorbed into every facet of cruise vessel operation. A fully integrated system beginning with the design of the vessel must address environmental issues at every step.

Management practices for waste reduction must start before a product is selected. Eco-purchasing and packaging are vital to the success of any environmental program, as are strategies to change packaging, processes and management to optimize the resources used.

The commitment of the industry to this cooperative effort has been quite successful as companies have shared information and strategies.

Waste handling procedures

Hazardous wastes and waste streams onboard cruise vessels are identified and segregated for individual handling and management in accordance with appropriate laws and regulations. Hazardous wastes are not discharged overboard nor are they commingled or mixed with other waste streams.

Photo processing, including X-Ray development fluid waste

Discussion

There are several waste streams associated with photo processing operations that have the potential to be regulated under the Resource Conservation and Recovery Act (RCRA). These waste streams include spent fixer, spent cartridges, expired film and silver flake.

Photographic fixer removes the unexposed silver compounds from the film during the developing process. The spent fixer can have as much as 2000-3000 parts per million (ppm) of silver. Silver bearing waste is regulated by RCRA as a hazardous waste if the level of silver exceeds 5 ppm as determined by the Toxicity Characteristic Leaching Procedure (TCLP) test.

Silver recovery units are used to reclaim the silver from the used fixer waste stream. There are two types of recovery units. These are active (with electricity) and passive (without electricity) units. The active unit uses electricity to plate silver onto an electrode. The passive unit uses a chemical reaction between steel wool and silver to remove most of the silver from solution.

The effluent from the silver recovery process must be tested before it can be discharged. The regulatory limit for silver discharge is 5 ppm.

Industry goal: *To prevent the discharge of harmful quantities of silver or silver oxides into the marine environment.*

Handling method 1:
Treat used photographic and X-ray development fluids to remove silver for recycling.

Verify that the effluent from the recovery unit is less than 5 parts per million (ppm) silver as measured by EPA-approved methodology.

After treatment, the residual waste stream fluid is non-hazardous and may be landed ashore or discharged in accordance with the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

Handling method 2:
Assume used photographic and X-ray development fluids to be a hazardous waste and land ashore in accordance with the requirements of the Resource Conservation and Recovery Act (RCRA).

Next steps: To identify effective and efficient digital photo technology or other technologies to reduce hazardous waste stream generation.

Dry-cleaning waste fluids and contaminated materials

Discussion

Shipboard dry cleaning facilities use a chlorinated solvent called perchlorethylene (also known as PERC or tetrachloroethylene) as a dry cleaning fluid. This is the approved dry cleaning solvent for these units. Operators must receive specific required training for the correct use of this chemical and its associated precautions. This solvent must be used in accordance with all safety procedures including appropriate personal protective equipment (PPE).

The dry cleaning units produce a small volume of waste from the bottoms of the internal recovery stills and filter media. This waste is comprised of dirt, oils, filter material, and spent solvent. Each ship utilizing these dry-cleaning units produces approximately two pounds of waste material weekly. However, the amount may vary greatly by season and passenger load. This material is classified as hazardous waste under RCRA and must be handled accordingly.

Industry goal: *To prevent the discharge of chlorinated dry-cleaning fluids, sludge and contaminated filter materials into the environment.*

Handling method:
Perchloroethylene (PERC) and other chlorinated dry-cleaning fluids, contaminated sludge and filter materials are hazardous waste and are to be landed ashore in accordance with the requirements of RCRA.

Next steps: Research and investigate the use of alternative dry cleaning processes such as CO^2 and "wet" processes for use onboard ships.

Print shop waste fluids

Discussion

Print shop waste may contain hazardous waste. Printing solvents, inks and cleaners all may contain hydrocarbons, chlorinated hydrocarbons, and heavy metals that can be harmful to human and aquatic species. Recent advances in printing technology and substitution of chemicals that are less hazardous reduces the volume of print shop waste generated and reduces the impact of these waste products.

The cruise industry will, whenever possible, utilize both printing methods and the chemicals used in the printing process that produce both less volume of waste and less hazardous waste products. Shipboard printers will be trained in ways to minimize printing waste generated. Alternative printing inks such as soy based, non-chlorinated, hydrocarbon-based ink products will be used whenever possible. All printshop waste including waste solvents, cleaners and cleaning cloths will be treated as hazardous waste, if such waste contains chemical components that may be considered as hazardous by regulatory definitions. All other waste will be treated as non-hazardous.

Industry goal: *To prevent the discharge of harmful printing materials (inks) and cleaning chemicals into the environment.*

Handling method 1:
When using traditional or non-soy based ink and chlorinated solvents, treat all print shop waste as hazardous and discharge ashore in accordance with RCRA.

Handling method 2:
Use non-toxic based printing ink such as soy-based, non-chlorinated solvents, and other non-hazardous products to eliminate hazardous waste products.

Next steps: Increased use of non-toxic based printing ink and non-chlorinated solvents and other non-hazardous products to eliminate the hazardous waste component within the stream.

Photo copying and laser printer cartridges

Discussion

Increased use of laser and photo copying equipment on shore as well as onboard ship results in the generation of increased volumes of waste cartridges, inks and toner materials. Cruise ships should use only such inks, toners and printing/copying cartridges that contain non-hazardous chemical components. None of these cartridges or their components should be disposed of by discharge into the marine environment. In recognition of the industry's goal of waste minimization, these cartridges should, whenever possible, be returned to the manufacturer for credit, recycling or for refilling.

Industry goal: *To return photo copying and laser printer cartridges for recycling.*

Handling method:
Wherever possible, photo copying and laser printer cartridges will be collected, packaged and returned for recycling.

Unused and outdated pharmaceuticals

Discussion

In general ships carry varying amounts of pharmaceuticals. The pharmaceuticals range from over-the-counter products such as anti-fungal creams to prescription drugs such as epinephrine. Each ship stocks an inventory based on its itinerary and the demographics of its passenger base. All pharmaceuticals are managed to ensure that their efficacy is optimized and that disposal is done in an environmentally responsible manner.

When disposing of pharmaceuticals the method used must be consistent with established procedures. Pharmaceuticals and medications which are off specification or which have exceeded their shelf-life, and stocks that are unused and out of date, cannot be used for patients and therefore must be removed from the ship. Further, each regulatory jurisdiction has a posting of listed pharmaceuticals that must be considered hazardous waste once the date has expired or the item is no longer considered good for patient use.

Through onboard management of the medical facility, stocks of such listed pharmaceuticals are returned to the vendor prior to date of expiration. Pharmaceuticals that are being returned and which have not reached their expiration date are shipped using ordinary practices for new products.

Safety and health

The handling of all expired listed pharmaceuticals must be in accordance with established procedures and all personnel handling this waste must receive appropriate training in the handling of hazardous materials. As guidance, the U.S. Environmental Protection Agency (EPA) has issued a report that clarifies the fact that

residuals, such as epinephrine, found in syringes after injections are not considered an acutely hazardous waste by definition and may be disposed of appropriately in sharps containers. All Universal Precautions will be adhered to when handling sharps.

Industry goal: *To ensure that unused and/or outdated pharmaceuticals are effectively and safely disposed.*

Handling method 1:
Establish a reverse distribution system for returning unexpired, unopened non-narcotic pharmaceuticals to the original vendor.

Handling method 2:
Appropriately destroy narcotic pharmaceuticals onboard ship in a manner that is witnessed and recorded.

Handling method 3:
Land listed pharmaceuticals in accordance with local regulations. Listed pharmaceuticals are a hazardous waste having chemical compositions which prevent them from being incinerated or disposed of through the ships sewer systen . Listing of such pharmaceuticals may vary from state to state.

Handing method 4:
Dispose of other non-narcotic and non-listed pharmaceuticals through onboard incineration or landing ashore.

Fluorescent and mercury vapor lamp bulbs

Discussion

The recycling of fluorescent lights and high intensity discharge (HID) lamps is a proven technology capable of reliably recovering greater that 99 percent of the mercury in the spent lights. This is done by using a crush-and-sieve method. In this process, the spent tubes are first crushed and then sieved to separate the large particles from the mercury containing phosphor powder. The phosphor powder is collected and processed under intense heat and pressure. The mercury is volatized and then diluted to the required purity. The glass particles are segregated and recycled into fiberglass. Aluminum components are also recycled separately.

Storage and handling of used lights pose no compatibility problems; nevertheless, storage and shipment of the glass tubes is best done keeping the glass tubes intact. These items are classified as "universal waste" when they are shipped to a properly permitted recycling facility as such, testing is not required.

Safety and health

Fluorescent and mercury vapor lamps contain small amounts of mercury that could potentially be harmful to human health and the environment. To prevent human exposure and contamination of the environment, these lamps must be handled in an environmentally safe manner. Recycling of mercury from lamps and other mercury containing devices is the preferred handling method and is encouraged by various states. The recycling of fluorescent lights and HID lamps keeps potentially hazardous materials out of landfills, saves landfill space and reduces raw materials production needs.

Industry goal: *To prevent the release of mercury.*

Handling method:
Collect fluorescent and mercury vapor lamps for recycling or land disposal.

Batteries

Discussion

If not properly disposed of, spent batteries may constitute a hazardous waste stream. Most of the large batteries are on tenders and standby generators. Small batteries used in flashlights and other equipment and by passengers account for the rest. There are four basic types of batteries used.

Lead-acid batteries – These are used in tenders and standby generators. They are wet, rechargeable and usually six-celled. They contain a sponge lead anode, lead dioxide cathode and sulfuric acid electrolyte. The electrolyte is corrosive. These batteries require disposal as a hazardous waste, unless recycled or reclaimed.

Lead-acid batteries use sulfuric acid as an electrolyte. Battery acid is extremely corrosive, reactive and dangerous. Damaged batteries must be drained into an acid-proof container. The leaking battery is then placed in another acid-proof container, and both the electrolyte and the damaged battery placed in secure storage for proper disposal as a hazardous waste.

Nickel-cadmium (NiCad) batteries – These are usually rechargeable, and contain wet or dry potassium hydroxide as electrolyte. The potassium hydroxide is corrosive and the cadmium is a characteristic hazardous waste. Therefore, NiCad batteries must be disposed of as hazardous waste, unless recycled or reclaimed.

Lithium batteries – These are used as a power source for flashlights and portable electronic equipment. All lithium batteries must be disposed of as hazardous waste or sent out for reclamation.

Alkaline batteries – These are common flashlight batteries and are also used in many camera flash attachments, cassette recorders, etc. They should be recycled, properly disposed or reclaimed.

Discarded batteries must be isolated from the refuse waste stream to prevent potentially toxic materials from inappropriate disposal. The wet-cell battery-recycling program is kept separate from the dry battery collection process. Intact wet-cell batteries are sent back to the supplier. Dry-cell batteries are manifested to a licensed firm for recycling.

Industry goal: *To prevent the discharge of spent batteries into the marine environment.*

Handling method:
Collect spent batteries and return for recycling or land disposal.

Bilge and oily water residues

Discussion

The area of the ship at the very bottom of the hull is known as the bilge. The bilge is the area where water collects from various operational sources such as water lubricated shaft seals, propulsion system cooling, evaporators, and other machinery. All engine and machinery spaces also collect oil that leaks from machinery fittings and engine maintenance activities. In order to maintain ship stability and eliminate potential hazardous conditions from oil vapors in engine and machinery spaces, the bilge spaces must be periodically pumped dry. In discharging bilge and oily water residues, both international regulations (MARPOL) and United States regulations require that the oil content of the discharged effluent be less than 15 parts per million and that it not leave a visible sheen on the surface of the water.

All ships are required to have equipment installed onboard that limits the discharge of oil into the oceans to 15 parts per million when a ship is en route and provided the ship is not in a special area where all discharge of oil is prohibited. Regulations also require that all oil or oil residues, which cannot be discharged in compliance with these regulations, be retained onboard or discharged to a reception facility. The equipment and processes implemented onboard cruise ships to comply with these requirements are complex and sophisticated.

Industry goal: *To meet and exceed the international requirements for removing oil from bilge and wastewater prior to discharge.*

Handling method:
Process bilge and oily water residue prior to discharge to remove oil residues, such that oil content of the effluent is less than 15 ppm as specified by MARPOL Annex 1.

Glass, cardboard, aluminum and steel cans

Discussion

Management of shipboard generated waste is a challenging issue for all ships at sea. This is true for cruise vessels, other commercial vessels, military ships, fishing vessels and recreational boats. Waste products in earlier days were made from natural materials and were mostly biodegradable. Today's packaging of food and other products presents new challenges for waste management. A large cruise ship today can carry over 3000 passengers and crew. Each day, an average cruise passenger will generate two pounds of dry trash and dispose of two bottles and two cans.

A strategy of source reduction, waste minimization and recycling has allowed the cruise industry to significantly reduce shipboard generated waste. To attain this, cruise ship operators are adopting a multifaceted strategy that begins with waste minimization to decrease waste from provisions brought onboard. This means purchasing in bulk, encouraging suppliers to utilize more efficient packaging, reusable packaging and packaging materials that are more environmentally friendly – those that can be more easily disposed of or recycled. In fact, through this comprehensive strategy of source reduction, total waste on passenger vessels has been reduced by nearly half over the past ten years.

Another important component of the industry's waste reduction strategy is product or packaging recycling. Glass, aluminum, other metals, paper, wood and cardboard are, in most cases, recycled.

Industry goal: *To eliminate the disposal of MARPOL Annex V wastes into the marine environment through improved reuse and recycling opportunities.*

Handling method:
Handle in accordance with the above industry goal or otherwise comply with the strict requirements of MARPOL when in international waters.

Incinerator ash

Discussion

Incinerator ash is not normally a hazardous waste. Through relatively straightforward waste management strategies, items that would cause the ash to be hazardous are separated from the waste stream and handled according to accepted hazardous waste protocols. In general, source segregation for waste streams is one of the foundation stones for onboard waste management and is incorporated into the waste management manual required by MARPOL. Waste management for onboard waste streams include the following: source reduction, minimization, recycling, collection, processing and discharge ashore. This allows the incinerator to be used primarily for food waste, contaminated cardboard, trash and wood.

Incinerator ash should be tested at least once quarterly for the first year of operation to establish a baseline. Testing may then be conducted once a year. A recognized test procedure should be used to demonstrate that ash is not a hazardous waste. The test may include the following metals as indicators for toxicity: arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver. Special attention is placed on the removal of batteries from the incinerator waste stream. The use of incinerators saves landfill space and prevents the build-up of material onboard that could become the breeding ground for insects, rodents and other vermin.

Industry goal: *To reduce the production of incinerator ash by minimizing the generation of waste and maximizing recycling opportunities.*

Handling method:
Proper hazardous waste management procedures onboard assure that waste products that will result in a hazardous ash are not introduced into the incinerator. Non-hazardous incinerator ash may be disposed of at sea in accordance with MARPOL Annex V. Ash identified as being hazardous must be disposed of ashore in accordance with RCRA.

Graywater

The term graywater is used on ships to refer to wastewater that is generally incidental to the operation of the ship. The International Maritime Organization (IMO) defines graywater as including drainage from dishwasher, shower, laundry, bath and washbasin drains. The U.S. Clean Water Act (formally know as the Federal Water Pollution Control Act) includes galley, bath and shower water in its definition. The U.S. regulations

implementing this act do not include a further definition of gray water. However, the regulations do include a provision that exempts all of the wastewater included in the IMO definition and other discharges incidental to the operation of a ship from the Clean Water Act's permitting program (formally known as the National Pollution Discharge Elimination System (NPDES) program). Finally, the US Coast Guard regulations include provisions that essentially combine the two definitions from the IMO and the Clean Water Act. These definitions indicate that there is global acceptance of the fact that gray water is not considered harmful to the environment. None of the definitions of graywater include blackwater (discussed below) or bilgewater from the machinery spaces.

The conclusion to be drawn from these various regulations is that wastewater discharges incidental to the operation of a ship are generally not subject to permitting or other regulatory programs.

Handling method:
Graywater will be discharged only while ships are underway.

Blackwater

Most cruise ships separate waste from toilets, urinals, and other similar facilities (including sinks and drains in the medical facility) from other wastewaters. This separated waste is called "blackwater."

Blackwater is processed using an approved "Marine Sanitation Device" (MDS) that is intended to prevent the discharge of untreated or inadequately treated blackwater. Marine Sanitation Devices use physical, chemical and/or biological processes to allow effluent from the process to be discharged with characteristics that are similar to effluents from conventional, shoreside wastewater treatment plants.

All MSDs are certified and approved by the U.S. Coast Guard. The U.S. Coast Guard consults with the Environmental Protection Agency in evaluating processes used by MSDs.

The U.S. Coast Guard regularly inspects MSDs while onboard ships for proper operation during their Control Verification Examinations. If the Coast Guard has reason to believe that an MSD is not properly operating, it can require the vessel owner to have the effluent sampled and analyzed by a qualified wastewater laboratory, with the results reported to the Coast Guard.

Handling method:
Blackwater will be discharged only while underway and in accordance with applicable regulations.

Conclusion

This paper has presented an overview of most waste management practices and procedures utilized onboard the cruise ships operated by members of the International Council of Cruise Lines. We are constantly working to improve waste management handling procedures.