

–CITE–

33 USC CHAPTER 37 – ORGANOTIN ANTIFOULING PAINT CONTROL 01/06/03

–EXPCITE–

TITLE 33 – NAVIGATION AND NAVIGABLE WATERS

CHAPTER 37 – ORGANOTIN ANTIFOULING PAINT CONTROL

–HEAD–

CHAPTER 37 – ORGANOTIN ANTIFOULING PAINT CONTROL

–MISC1–

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33 USC Sec. 2401 01/06/03

–EXPCITE–

TITLE 33 – NAVIGATION AND NAVIGABLE WATERS

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Sec. 2401. Findings; purpose

–STATUTE–

- (a) Findings

The Congress finds the following:

(1) Antifouling paints containing organotin biocides are used to prevent the build-up of barnacles and other encrusting organisms on vessels.

(2) Laboratory and field studies show that organotin is very toxic to marine and freshwater organisms at very low levels.

(3) Vessels that are less than 25 meters in length and are coated with organotin antifouling paint account for a large amount of the organotin released into the aquatic environment.

(4) The Environmental Protection Agency has determined that concentrations of organotin currently in the waters of the United States may pose unreasonable risks to oysters, clams, fish, and other aquatic life.

(b) Purpose

The purpose of this chapter is to protect the aquatic environment by reducing immediately the quantities of organotin entering the waters of the United States.

–SOURCE–

(Pub. L. 100–333, Sec. 2, June 16, 1988, 102 Stat. 605.)

–MISC1–

EFFECTIVE DATE; USE OF EXISTING STOCKS

Section 12 of Pub. L. 100–333 provided that:

"(a) In General. – Except as provided in subsection (b), this Act [enacting this chapter] shall take effect on the date of its enactment [June 16, 1988].

"(b) Termination of Interim Prohibition. – Section 5(a) [section

2404(a) of this title] shall remain in effect until a final decision regarding the release of organotin into the aquatic environment by antifouling paints, pursuant to the process initiated by the Administrator's Position Document 1 dated January 8, 1986 –

"(1) is issued by the Administrator; and

"(2) takes effect.

"(c) Final Decision Defined. – For purposes of subsection (b), a final decision shall be considered to have taken effect upon the date of the expiration of the time for making any appeal with respect to such decision or, in the case of any such appeal, the resolution of such appeal.

"(d) Use of Existing Stocks. – Notwithstanding the prohibitions contained in sections 4 and 5 [sections 2403 and 2404 of this title], the Administrator, not later than 90 days after the date of the enactment of this Act [June 16, 1988], shall provide reasonable times –

"(1) not to exceed 180 days after the date of the enactment of this Act, for the continued sale, delivery, purchase, and receipt of any antifouling paints containing organotin and organotin additives that exist before the date of the enactment of this Act; and

"(2) not to exceed one year after the date of the enactment of this Act, for the application of any antifouling paints containing organotin and organotin additives that exist before the date of the enactment of this Act."

SHORT TITLE

Section 1 of Pub. L. 100–333 provided that: "This Act [enacting this chapter] may be cited as the 'Organotin Antifouling Paint Control Act of 1988'."

–End–

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33 USC Sec. 2402 01/06/03

–EXPCITE–

TITLE 33 – NAVIGATION AND NAVIGABLE WATERS

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Sec. 2402. Definitions

–STATUTE–

For purposes of this chapter:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "antifouling paint" means a coating, paint, or treatment that is applied to a vessel to control fresh water or marine fouling organisms.

(3) The term "estuary" means a body of water having an unimpaired connection with open sea, where the sea water is measurably diluted with fresh water derived from land drainage, and such term includes the Chesapeake Bay and estuary–type areas of the Great Lakes.

(4) The term "organotin" means any compound of tin used as a biocide in an antifouling paint.

(5) The term "person" means any individual, and partnership, association, corporation, or organized group of persons whether incorporated or not, or any government entity, including the military.

(6) The term "qualified antifouling paint containing organotin" means an antifouling paint containing organotin that –

(A) is allowed to be used under the terms of the final decision referred to in section 12(c); or

(B) until such final decision takes effect, is certified by the Administrator under section 2405 of this title as having a release rate of not more than 4.0 micrograms per square centimeter per day.

(7) The term "release rate" means the rate at which organotin is released from an antifouling paint over the long term, as determined by the Administrator, using –

(A) the American Society for Testing Materials (ASTM) standard test method which the Environmental Protection Agency required in its July 29, 1986, data call-in notice on tributyltin compounds used in antifouling paints; or

(B) any similar test method specified by the Administrator.

(8) The term "retail" means the transfer of title to tangible personal property other than for resale, after manufacturing or processing.

(9) The term "Secretary" means the Secretary of the Navy.

(10) The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the

Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States.

(11) The term "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

–SOURCE–

(Pub. L. 100–333, Sec. 3, June 16, 1988, 102 Stat. 605.)

–REFTEXT–

REFERENCES IN TEXT

Section 12(c), referred to in par. (6)(A), is section 12(c) of Pub. L. 100–333, which is set out as a note under section 2401 of this title.

–End–

–CITE–

33 USC Sec. 2403 01/06/03

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TITLE 33 – NAVIGATION AND NAVIGABLE WATERS

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Sec. 2403. Prohibition on application of organotin antifouling paints on certain vessels

–STATUTE–

(a) Prohibition

Subject to section 12(d), and except as provided in subsection

(b) of this section, no person in any State may apply to a vessel that is less than 25 meters in length an antifouling paint

containing organotin.

(b) Exceptions

Subsection (a) of this section shall not prohibit the application of a qualified antifouling paint containing organotin on –

(1) the aluminum hull of a vessel that is less than 25 meters in length; or

(2) the outboard motor or lower drive unit of a vessel that is less than 25 meters in length.

–SOURCE–

(Pub. L. 100–333, Sec. 4, June 16, 1988, 102 Stat. 606.)

–REFTEXT–

REFERENCES IN TEXT

Section 12(d), referred to in subsec. (a), is section 12(d) of Pub. L. 100–333, which is set out as a note under section 2401 of this title.

–SECREFP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2409 of this title.

–End–

–CITE–

33 USC Sec. 2404 01/06/03

–EXPCITE–

TITLE 33 – NAVIGATION AND NAVIGABLE WATERS

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Sec. 2404. Prohibition of certain organotin antifouling paints and

organotin additives used to make such paints

–STATUTE–

(a) Interim prohibition of certain organotin antifouling paints

Subject to section 12(d), no person in any State may –

(1) sell or deliver to, or purchase or receive from, another person an antifouling paint containing organotin; or

(2) apply to a vessel an antifouling paint containing organotin;

unless the antifouling paint is certified by the Administrator as being a qualified antifouling paint containing organotin.

(b) Prohibition of certain organotin additives

Subject to section 12(d), no person in any State may sell or deliver to, or purchase or receive from, another person at retail any substance containing organotin for the purpose of adding such substance to paint to create an antifouling paint.

–SOURCE–

(Pub. L. 100–333, Sec. 5, June 16, 1988, 102 Stat. 606.)

–REFTEXT–

REFERENCES IN TEXT

Section 12(d), referred to in text, is section 12(d) of Pub. L. 100–333, which is set out as a note under section 2401 of this title.

–MISC1–

EFFECTIVE DATE

Section effective June 16, 1988, with subsec. (a) to remain in effect until a final decision, as defined in section 12(c) of Pub.

L. 100–333, regarding release of organotin into the aquatic environment by antifouling paints, is issued and takes effect, see section 12(a) to (c) of Pub. L. 100–333, set out as an Effective Date; Use of Existing Stocks note under section 2401 of this title.

–SECREP–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2409 of this title.

–End–

–CITE–

33 USC Sec. 2405 01/06/03

–EXPCITE–

TITLE 33 – NAVIGATION AND NAVIGABLE WATERS

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Sec. 2405. Certification

–STATUTE–

(a) Initial certification

Not later than 90 days after June 16, 1988, the Administrator shall certify each antifouling paint containing organotin that the Administrator determines has a release rate of not more than 4.0 micrograms per square centimeter per day on the basis of the information submitted to the Environmental Protection Agency before June 16, 1988, in response to its July 29, 1986, data call–in notice on tributyltin or any other data call–in notice.

(b) Subsequent certification

After the initial period of certification required by subsection

(a) of this section, and not later than 90 days after the receipt of information with regard to an antifouling paint containing organotin submitted –

(1) in response to a data call–in referred to in subsection (a) of this section; or

(2) under any provision of law;

the Administrator shall certify such paint if, on the basis of such information, the Administrator determines that such paint has a release rate of not more than 4.0 micrograms per square centimeter per day.

–SOURCE–

(Pub. L. 100–333, Sec. 6, June 16, 1988, 102 Stat. 607.)

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2402 of this title.

–End–

–CITE–

33 USC Sec. 2406 01/06/03

–EXPCITE–

TITLE 33 – NAVIGATION AND NAVIGABLE WATERS

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Sec. 2406. Monitoring and research of ecological effects

–STATUTE–

(a) Estuarine monitoring

The Administrator, in consultation with the Under Secretary of

Commerce for Oceans and Atmosphere, shall monitor the concentrations of organotin in the water column, sediments, and aquatic organisms of representative estuaries and near-coastal waters in the United States. This monitoring program shall remain in effect until 10 years after June 16, 1988. The Administrator shall submit a report annually to the Speaker of the House of Representatives and to the President pro tempore of the Senate detailing the results of such monitoring program for the preceding year.

(b) Navy home port monitoring

The Secretary shall provide for periodic monitoring, not less than quarterly, of waters serving as the home port for any Navy vessel coated with an antifouling paint containing organotin to determine the concentration of organotin in the water column, sediments, and aquatic organisms of such waters.

(c) Navy research of ecological effects

The Secretary shall continue existing Navy programs evaluating the laboratory toxicity and environmental risks associated with the use of antifouling paints containing organotin.

(d) Assistance to States

To the extent practicable, the Administrator shall assist States in monitoring waters in such States for the presence of organotin and in analyzing samples taken during such monitoring.

(e) Five-year report

At the end of the 5-year period beginning on June 16, 1988, the Administrator shall submit a report to the Speaker of the House of

Representatives and to the President pro tempore of the Senate

providing an assessment of –

- (1) the effectiveness of existing laws and rules concerning organotin compounds in ensuring protection of human health and the environment;
- (2) compliance with water quality criteria established pursuant to section 2408 of this title and any applicable water quality standards; and
- (3) recommendations for additional measures to protect human health and the environment.

–SOURCE–

(Pub. L. 100–333, Sec. 7, June 16, 1988, 102 Stat. 607; Pub. L. 104–106, div. A, title X, Sec. 1064(f), Feb. 10, 1996, 110 Stat. 445.)

–MISC1–

AMENDMENTS

1996 – Subsecs. (d) to (f). Pub. L. 104–106 redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out heading and text of former subsec. (d). Text read as follows: "The Secretary shall submit a report annually to the Administrator and to the Governor of each State in which a home port for the Navy is monitored under subsection (b) of this section detailing the results of such monitoring in the State. Such reports shall be included in the annual report required to be submitted under subsection (a) of this section."

NAVY PROGRAM TO MONITOR ECOLOGICAL EFFECTS OF ORGANOTIN

Pub. L. 104–201, div. A, title III, Sec. 333, Sept. 23, 1996, 110

Stat. 2485, as amended by Pub. L. 106–65, div. A, title X, Sec.

1067(5), Oct. 5, 1999, 113 Stat. 774, provided that:

"(a) Monitoring Requirement. – The Secretary of the Navy shall, in consultation with the Administrator of the Environmental Protection Agency, develop and implement a program to monitor the concentrations of organotin in the water column, sediments, and aquatic organisms of representative estuaries and near-coastal waters in the United States, as described in section 7(a) of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2406(a)). The program shall be designed to produce high-quality data to enable the Environmental Protection Agency to develop water quality criteria concerning organotin compounds.

"(b) Funding. – The Administrator of the Environmental Protection Agency shall provide, in advance, such sums as are necessary to the Secretary of the Navy for the costs of developing and implementing the program under subsection (a).

"(c) Written Agreement. – The Secretary of the Navy and the Administrator of the Environmental Protection Agency shall enter into a written agreement setting forth the actions that the Secretary plans to take under subsection (a) and the funding that the Administrator agrees to provide under subsection (b). If the Secretary determines that the Administrator will not enter into such an agreement, the Secretary shall notify the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate not later than 30 days after such

determination.

"(d) Nonimpairment of Mission. – Compliance with subsection (a) shall be conducted in such a manner so as not to impair the ability of the Department of the Navy to meet its operational requirements.

"(e) Report. – Not later than June 1, 1997, the Secretary of the Navy shall submit to Congress a report containing the following:

"(1) A description of the monitoring program developed pursuant to subsection (a).

"(2) An analysis of the results of the monitoring program as of the date of the submission of the report.

"(3) Information about the progress of Navy programs, referred to in section 7(c) of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2406(c)), for evaluating the laboratory toxicity and environmental risks associated with the use of antifouling paints containing organotin.

"(4) An assessment, developed in consultation with the Administrator of the Environmental Protection Agency, of the effectiveness of existing laws and rules concerning organotin compounds in ensuring protection of human health and the environment.

"(f) Sense of Congress. – (1) It is the sense of Congress that the Administrator of the Environmental Protection Agency, in consultation with the Secretary of the Navy, should develop, for purposes of the national pollutant discharge elimination system, a model permit for the discharge of organotin compounds at shipbuilding and ship repair facilities.

"(2) For purposes of this subsection, the term 'organotin' has the meaning provided in section 3 of the Organotin Antifouling Paint Control Act of 1988 (33 U.S.C. 2402).

"(g) Termination. – The program required by subsection (a) shall terminate five years after the date of the enactment of this Act [Sept. 23, 1996]."

–End–

–CITE–

33 USC Sec. 2407 01/06/03

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Sec. 2407. Alternative antifouling research

–STATUTE–

(a) Research

The Secretary and the Administrator shall conduct research into chemical and nonchemical alternatives to antifouling paints containing organotin.

(b) Report

At the end of the 4–year period beginning on June 16, 1988, the Administrator, in consultation with the Secretary, shall submit a report to the Speaker of the House of Representatives and to the President pro tempore of the Senate detailing the results of the research conducted pursuant to subsection (a) of this section.

–SOURCE–

(Pub. L. 100–333, Sec. 8, June 16, 1988, 102 Stat. 608.)

–End–

–CITE–

33 USC Sec. 2408 01/06/03

–EXPCITE–

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Sec. 2408. Water quality criteria document

–STATUTE–

Not later than March 30, 1989, the Administrator shall issue a final water quality criteria document concerning organotin compounds pursuant to section 1314(a) of this title.

–SOURCE–

(Pub. L. 100–333, Sec. 9, June 16, 1988, 102 Stat. 608.)

–SECREf–

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2406 of this title.

–End–

–CITE–

33 USC Sec. 2409 01/06/03

–EXPCITE–

TITLE 33 – NAVIGATION AND NAVIGABLE WATERS

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Sec. 2409. Penalties

–STATUTE–

(a) Civil penalties

(1) Any person violating section 2403 or 2404 of this title shall be assessed a civil penalty of not more than \$5,000 for each offense.

(2) After notice and an opportunity for a hearing, a person found by the Administrator to have violated section 2403 or 2404 of this title is liable to the United States Government for the civil penalty assessed under subsection (a) of this section. The amount of the civil penalty shall be assessed by the Administrator by written notice. In determining the amount of the penalty, the Administrator shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(3) The Administrator may compromise, modify, or remit, with or without consideration, a civil penalty assessed under this section until the assessment is referred to the Attorney General.

(4) If a person fails to pay an assessment of a civil penalty after it has become final, the Administrator may refer the matter to the Attorney General for collection in the appropriate United States district court.

(b) Criminal penalties

Any person knowingly violating section 2403 or 2404 of this title shall be fined not more than \$25,000, or imprisoned for not more than one year, or both.

–SOURCE–

(Pub. L. 100–333, Sec. 10, June 16, 1988, 102 Stat. 608.)

–End–

–CITE–

33 USC Sec. 2410 01/06/03

–EXPCITE–

TITLE 33 – NAVIGATION AND NAVIGABLE WATERS

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Sec. 2410. Other authorities; State laws

–STATUTE–

(a) Other authorities of Administrator

Nothing in this chapter shall limit or prevent the Administrator from establishing a lower permissible release rate for organotin under authorities other than this chapter.

(b) State laws

Nothing in this chapter shall preclude or deny any State or political subdivision thereof the right to adopt or enforce any requirement regarding antifouling paint or any other substance containing organotin. Compliance with the requirements of any State or political subdivision thereof respecting antifouling paint or any other substance containing organotin shall not relieve any person of the obligation to comply with the provisions of this chapter.

–SOURCE–

(Pub. L. 100–333, Sec. 11, June 16, 1988, 102 Stat. 608.)

-End-