

110TH CONGRESS
2D SESSION

S. 2881

To establish national standards for discharges from cruise vessels into the waters of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 2008

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish national standards for discharges from cruise vessels into the waters of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Clean Cruise Ship Act of 2008”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

Sec. 4. Prohibitions on the discharge of sewage, graywater, bilge water, sewage sludge, incinerator ash, and hazardous waste.

- Sec. 5. Effluent limits for discharges of sewage, graywater, and bilge water.
- Sec. 6. Alaskan cruise vessels.
- Sec. 7. Inspection and sampling.
- Sec. 8. Employee protection.
- Sec. 9. Judicial review.
- Sec. 10. Enforcement.
- Sec. 11. Citizen suits.
- Sec. 12. Sense of Congress on ballast water.
- Sec. 13. Sense of Congress on air pollution.
- Sec. 14. Funding.
- Sec. 15. Effect on other law.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Cruise vessels carry millions of people
4 through North American waters each year, showcase
5 some of the most beautiful ocean areas in the United
6 States, and provide opportunities for passengers to
7 relax and enjoy the oceans and marine ecosystems.

8 (2) A single cruise vessel generates a tremen-
9 dous amount of waste each week, including an esti-
10 mated 140,000 to 210,000 gallons of blackwater
11 (sewage) and 1,000,000 gallons of graywater (in-
12 cluding wastewater from dishwashers, showers, laun-
13 dry, baths, and washbasins). Onboard amenities
14 such as photo-processing, dry-cleaning, and hair-
15 dressing also generate hazardous waste streams.

16 (3) In its final report, “An Ocean Blueprint for
17 the 21st Century”, released in 2004, the United
18 States Commission on Ocean Policy found that these
19 waste streams and the cumulative impacts caused
20 when cruise vessels repeatedly visit the same envi-

1 ronmentally sensitive areas, “if not properly dis-
2 posed of and treated, can be a significant source of
3 pathogens and nutrients with the potential to threat-
4 en human health and damage shellfish beds, coral
5 reefs, and other aquatic life,” thus threatening the
6 very environments cruise vessel passengers seek to
7 explore.

8 (4) The cruise industry has grown by more
9 than 6 percent annually since 2003 and is projected
10 to continue growing. Cruise vessel capacity is also
11 expanding dramatically; today cruise vessels can
12 transport 5,000 passengers and crew members, but
13 the next generation of cruise vessels is expected to
14 carry 7,000 passengers and crew members. As the
15 total number of passengers increases and the num-
16 ber of passengers per ship increases, the volume of
17 waste entering these ocean ecosystems and the im-
18 pact of that waste on ocean ecosystems will also in-
19 crease.

20 (5) In a 2005 report requested by the Inter-
21 national Council of Cruise Lines, the Ocean Con-
22 servation and Tourism Alliance (OCTA) Science
23 Panel recommended that “[a]ll blackwater should be
24 treated”, that discharging treated blackwater should
25 be “avoided in ports, close to bathing beaches or

1 water bodies with restricted circulation, flushing or
2 inflow”, and that blackwater should not be dis-
3 charged within 4 nautical miles of shellfish beds,
4 coral reefs, or other sensitive habitats.

5 (6) The OCTA Science Panel further rec-
6 ommended that graywater be treated in the same
7 manner as blackwater and that sewage sludge be off-
8 loaded to approved land-based facilities.

9 (7) The United States lacks a comprehensive
10 wastewater management policy for large passenger
11 vessels, and a new statutory regime for managing
12 wastewater discharges from large passenger vessels
13 that applies throughout the United States is needed
14 to protect coastal and ocean areas from pollution
15 generated by cruise vessels, to reduce and better reg-
16 ulate discharges from cruise vessels, and to improve
17 monitoring, reporting, and enforcement of standards
18 regarding discharges.

19 (b) PURPOSE.—The purpose of this Act is to protect
20 the health and beauty of the marine and coastal eco-
21 systems that cruise passengers enjoy, by—

22 (1) prohibiting the discharge of any untreated
23 sewage, graywater, or bilge water from a cruise ves-
24 sel calling on a port of the United States into the
25 waters of the United States;

1 (2) prohibiting the discharge of any sewage
2 sludge, incinerator ash, or hazardous waste from a
3 cruise vessel calling on a port of the United States
4 into the waters of the United States;

5 (3) establishing new national effluent limits for
6 the discharge of treated sewage, treated graywater,
7 and treated bilge water from cruise vessels not less
8 than 12 miles from shore in any case in which the
9 discharge is not within an area in which discharges
10 are prohibited; and

11 (4) ensuring that cruise vessels calling on ports
12 of the United States comply with all applicable envi-
13 ronmental laws.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) ADMINISTRATOR.—The term “Adminis-
17 trator” means the Administrator of the Environ-
18 mental Protection Agency.

19 (2) BILGE WATER.—The term “bilge water”
20 means waste water that includes lubrication oils,
21 transmission oils, oil sludge or slops, fuel or oil
22 sludge, used oil, used fuel or fuel filters, or oily
23 waste.

1 (3) CITIZEN.—The term “citizen” means a per-
2 son that has an interest that is or may be adversely
3 affected by any provision of this Act.

4 (4) COMMANDANT.—The term “Commandant”
5 means the Commandant of the Coast Guard.

6 (5) CRUISE VESSEL.—The term “cruise ves-
7 sel”—

8 (A) means a passenger vessel (as defined
9 in section 2101(22) of title 46, United States
10 Code), that—

11 (i) is authorized to carry at least 250
12 passengers; and

13 (ii) has onboard sleeping facilities for
14 each passenger; and

15 (B) does not include—

16 (i) a vessel of the United States oper-
17 ated by the Federal Government; or

18 (ii) a vessel owned and operated by
19 the government of a State.

20 (6) DISCHARGE.—The term “discharge”—

21 (A) means a release, however caused, of
22 bilge water, graywater, hazardous waste, incin-
23 erator ash, sewage, or sewage sludge from a
24 cruise vessel; and

1 (B) includes any escape, disposal, spilling,
2 leaking, pumping, emitting, or emptying of a
3 substance described in subparagraph (A).

4 (7) EXCLUSIVE ECONOMIC ZONE.—The term
5 “exclusive economic zone” has the meaning given
6 that term in section 107 of title 46, United States
7 Code.

8 (8) GRAYWATER.—The term “graywater”
9 means galley, dishwasher, bath, spa, pool, and laun-
10 dry waste water.

11 (9) GREAT LAKE.—The term “Great Lake”
12 means—

13 (A) Lake Erie;

14 (B) Lake Huron (including Lake Saint
15 Clair);

16 (C) Lake Michigan;

17 (D) Lake Ontario; or

18 (E) Lake Superior.

19 (10) HAZARDOUS WASTE.—The term “haz-
20 arduous waste” has the meaning given that term in
21 section 1004 of the Solid Waste Disposal Act (42
22 U.S.C. 6903).

23 (11) INCINERATOR ASH.—The term “inciner-
24 ator ash” means ash generated during the inciner-
25 ation of solid waste or sewage sludge.

1 (12) NO DISCHARGE ZONES.—The term “no
2 discharge zones” means important ecological areas
3 including marine sanctuaries, marine protected
4 areas, marine reserves, marine national monuments,
5 national parks, and national wildlife refuges.

6 (13) PASSENGER.—The term “passenger”
7 means a paying passenger.

8 (14) PERSON.—The term “person” means—

9 (A) an individual;

10 (B) a corporation;

11 (C) a partnership;

12 (D) a limited liability company;

13 (E) an association;

14 (F) a State;

15 (G) a municipality;

16 (H) a commission or political subdivision
17 of a State; or

18 (I) an Indian tribe.

19 (15) SEWAGE.—The term “sewage” means—

20 (A) human body wastes; and

21 (B) the wastes from toilets and other re-
22 ceptacles intended to receive or retain human
23 body wastes.

24 (16) SEWAGE SLUDGE.—The term “sewage
25 sludge”—

1 (A) means any solid, semi-solid, or liquid
2 residue removed during the treatment of on-
3 board sewage;

4 (B) includes—

5 (i) solids removed during primary,
6 secondary, or advanced waste water treat-
7 ment;

8 (ii) scum;

9 (iii) septage;

10 (iv) portable toilet pumpings;

11 (v) type III marine sanitation device
12 pumpings (as defined in part 159 of title
13 33, Code of Federal Regulations); and

14 (vi) sewage sludge products; and

15 (C) does not include—

16 (i) grit or screenings; or

17 (ii) ash generated during the inciner-
18 ation of sewage sludge.

19 (17) TERRITORIAL SEA.—The term “territorial
20 sea”—

21 (A) means the belt of the sea extending 12
22 nautical miles from the baseline of the United
23 States determined in accordance with inter-
24 national law, as set forth in Presidential Procla-

1 mation number 5928, dated December 27,
2 1988; and

3 (B) includes the waters lying seaward of
4 the line of ordinary low water and extending to
5 the baseline of the United States, as determined
6 under subparagraph (A).

7 (18) WATERS OF THE UNITED STATES.—The
8 term “waters of the United States” means the wa-
9 ters of the territorial sea, the exclusive economic
10 zone, and the Great Lakes.

11 **SEC. 4. PROHIBITIONS ON THE DISCHARGE OF SEWAGE,**
12 **GRAYWATER, BILGE WATER, SEWAGE**
13 **SLUDGE, INCINERATOR ASH, AND HAZ-**
14 **ARDOUS WASTE.**

15 (a) PROHIBITIONS ON DISCHARGE OF SEWAGE,
16 GRAYWATER, AND BILGE WATER.—Except as provided in
17 subsection (c) or section 6, no cruise vessel calling on a
18 port of the United States may discharge sewage,
19 graywater, or bilge water into the waters of the United
20 States, unless—

21 (1) the effluent of treated sewage, treated
22 graywater, or treated bilge water meets all applicable
23 effluent limits established under this Act and is in
24 accordance with all other applicable laws;

1 (2) the cruise vessel is underway and pro-
2 ceeding at a speed of not less than 6 knots;

3 (3) the cruise vessel is not less than 12 nautical
4 miles from shore;

5 (4) the cruise vessel is not discharging in no
6 discharge zones; and

7 (5) the cruise vessel complies with all applicable
8 management standards established under this Act.

9 (b) PROHIBITION ON DISCHARGE OF SEWAGE
10 SLUDGE, INCINERATOR ASH, AND HAZARDOUS WASTE.—

11 No sewage sludge, incinerator ash, or hazardous waste
12 may be discharged into the waters of the United States.

13 Such sewage sludge, incinerator ash, and hazardous waste
14 shall be off-loaded at an appropriate land-based facility.

15 (c) SAFETY EXCEPTION.—

16 (1) SCOPE OF EXCEPTION.—The provisions of
17 subsections (a) and (b) shall not apply in any case
18 in which—

19 (A) a discharge is made solely for the pur-
20 pose of securing the safety of the cruise vessel
21 or saving a human life at sea; and

22 (B) all reasonable precautions have been
23 taken to prevent or minimize the discharge.

24 (2) NOTIFICATION OF COMMANDANT.—

1 (A) IN GENERAL.—If the owner, operator,
2 master, or other individual in charge of a cruise
3 vessel authorizes a discharge described in para-
4 graph (1), such individual shall notify the Com-
5 mandant of the decision to authorize the dis-
6 charge as soon as practicable, but not later
7 than 24 hours, after authorizing the discharge.

8 (B) REPORT.—Not later than 7 days after
9 the date on which an individual described in
10 subparagraph (A) notifies the Commandant of
11 a decision to authorize a discharge under para-
12 graph (1), the individual shall submit to the
13 Commandant a report that includes—

14 (i) the quantity and composition of
15 each discharge authorized under paragraph
16 (1);

17 (ii) the reason for authorizing each
18 such discharge;

19 (iii) the location of the vessel during
20 the course of each such discharge; and

21 (iv) such other supporting information
22 and data as are requested by the Com-
23 mandant.

1 (C) DISCLOSURE OF REPORTS.—Upon re-
2 ceiving a report under subparagraph (B), the
3 Commandant shall—

4 (i) transmit a copy of the report to
5 the Administrator; and

6 (ii) make the report available to the
7 public.

8 **SEC. 5. EFFLUENT LIMITS FOR DISCHARGES OF SEWAGE,**
9 **GRAYWATER, AND BILGE WATER.**

10 (a) EFFLUENT LIMITS.—

11 (1) IN GENERAL.—Not later than 12 months
12 after the date of the enactment of this Act, the Ad-
13 ministrator shall promulgate effluent limits for sew-
14 age, graywater, and bilge water discharges from
15 cruise vessels calling on ports of the United States.

16 (2) REQUIREMENTS.—The effluent limits shall,
17 at a minimum—

18 (A) be consistent with the capability of the
19 best available technology to treat effluent;

20 (B) require compliance with all relevant
21 State and Federal water quality standards; and

22 (C) take into account the best available
23 scientific information on the environmental ef-
24 fects of sewage, graywater, and bilge water dis-
25 charges, including levels of nutrients, total and

1 dissolved metals, pathogen indicators, oils and
2 grease, classical pollutants, and volatile and
3 semivolatile organics.

4 (b) MINIMUM LIMITS.—The effluent limits promul-
5 gated under subsection (a) shall require, at a minimum,
6 that treated sewage, treated graywater, and treated bilge
7 water effluent discharges from cruise vessels, measured at
8 the point of discharge, shall, not later than the date de-
9 scribed in subsection (d), meet the following standards:

10 (1) IN GENERAL.—The discharge shall satisfy
11 the minimum level of effluent quality specified in
12 section 133.102 of title 40, Code of Federal Regula-
13 tions (or a successor regulation).

14 (2) FECAL COLIFORM.—With respect to the
15 samples from the discharge during any 30-day pe-
16 riod—

17 (A) the geometric mean of the samples
18 shall not exceed 20 fecal coliform per 100 milli-
19 liters; and

20 (B) not more than 10 percent of the sam-
21 ples shall exceed 40 fecal coliform per 100 milli-
22 liters.

23 (3) RESIDUAL CHLORINE.—Concentrations of
24 total residual chlorine in samples shall not exceed 10
25 milligrams per liter.

1 (c) REVIEW AND REVISION OF EFFLUENT LIMITS.—

2 The Administrator shall—

3 (1) review the effluent limits promulgated under
4 subsection (a) at least once every 5 years; and

5 (2) revise the effluent limits as necessary to in-
6 corporate technology available at the time of the re-
7 view in accordance with subsection (a)(2).

8 (d) COMPLIANCE DATE.—

9 (1) IN GENERAL.—The date described in this
10 subsection is—

11 (A) with respect to new vessels put into
12 water after the date of the enactment of this
13 Act, 2 years after such date of enactment; and

14 (B) with respect to vessels in use as of
15 such date of enactment, 5 years after such date
16 of enactment.

17 (2) NEW VESSEL DEFINED.—In this subsection,
18 the term “new vessel” means a vessel the keel of
19 which is laid, or that is at a similar stage of con-
20 struction, on or after the date of the enactment of
21 this Act.

22 **SEC. 6. ALASKAN CRUISE VESSELS.**

23 (a) IN GENERAL.—An Alaskan cruise vessel shall not
24 be subject to the provisions of this Act (including regula-

1 tions promulgated under this Act) until the date that is
 2 10 years after the date of the enactment of this Act.

3 (b) DEFINITION OF ALASKAN CRUISE VESSEL.—In
 4 this section, the term “Alaskan cruise vessel” means a
 5 cruise vessel—

6 (1) while the vessel is operating in waters of the
 7 State of Alaska, as defined in section 159.305 of
 8 title 33, Code of Federal Regulations; and

9 (2) that complies with all relevant laws and reg-
 10 ulations of the State of Alaska while in transit from
 11 a port of call outside of the State of Alaska to the
 12 waters of the State of Alaska.

13 **SEC. 7. INSPECTION AND SAMPLING.**

14 (a) DEVELOPMENT AND IMPLEMENTATION OF IN-
 15 SPECTION PROGRAM.—

16 (1) IN GENERAL.—The Administrator shall pro-
 17 mulgate regulations to implement a sampling and
 18 testing program, and the Commandant shall promul-
 19 gate regulations to implement an inspection pro-
 20 gram, sufficient to verify that cruise vessels calling
 21 on ports of the United States are in compliance
 22 with—

23 (A) this Act (including regulations promul-
 24 gated under this Act);

1 (B) the Federal Water Pollution Control
2 Act (33 U.S.C. 1251 et seq.) (including regula-
3 tions promulgated under that Act);

4 (C) other applicable Federal laws and reg-
5 ulations; and

6 (D) all applicable requirements of inter-
7 national agreements.

8 (2) INSPECTIONS.—The program shall require
9 that—

10 (A) regular announced and unannounced
11 inspections be conducted of any relevant aspect
12 of cruise vessel operations, equipment, or dis-
13 charges, including sampling and testing of
14 cruise vessel discharges; and

15 (B) each cruise vessel that calls on a port
16 of the United States be subject to an unan-
17 nounced inspection at least once per year.

18 (b) REGULATIONS.—

19 (1) IN GENERAL.—Not later than 1 year after
20 the date of the enactment of this Act, the Com-
21 mandant, in consultation with the Administrator,
22 shall promulgate regulations that, at a minimum—

23 (A) require the owner, operator, master, or
24 other individual in charge of a cruise vessel to
25 maintain and submit annually a logbook detail-

1 ing the times, types, volumes, flow rates, ori-
2 gins, and specific locations of, and explanations
3 for, any discharges from the cruise vessel;

4 (B) provide for routine announced and un-
5 announced inspections of—

6 (i) cruise vessel environmental compli-
7 ance records and procedures; and

8 (ii) the functionality and proper oper-
9 ation of installed equipment for abatement
10 and control of any cruise vessel discharge,
11 including equipment intended to treat sew-
12 age, graywater, or bilge water;

13 (C) require the sampling and testing of
14 cruise vessel discharges that require the owner,
15 operator, master, or other individual in charge
16 of a cruise vessel—

17 (i) to conduct that sampling or testing
18 at the point of discharge; and

19 (ii) to produce any records of the
20 sampling or testing;

21 (D) require any owner, operator, master,
22 or other individual in charge of a cruise vessel
23 who has knowledge of a discharge from the
24 cruise vessel in violation of this Act (including
25 regulations promulgated under this Act) to re-

1 port immediately the discharge to the Com-
2 mandant, who shall provide notification of the
3 discharge to the Administrator; and

4 (E) require the owner, operator, master, or
5 other individual in charge of a cruise vessel to
6 provide to the Commandant and Administrator
7 a blueprint of each cruise vessel that includes
8 the location of every discharge pipe and valve.

9 (2) DISCLOSURE OF LOGBOOKS.—Upon receiv-
10 ing a logbook described in paragraph (1)(A), the
11 Commandant shall—

12 (A) transmit a copy of the logbook to the
13 Administrator; and

14 (B) make the logbook available to the pub-
15 lic.

16 (c) EVIDENCE OF COMPLIANCE.—

17 (1) VESSEL OF THE UNITED STATES.—

18 (A) IN GENERAL.—A cruise vessel reg-
19 istered in the United States to which this Act
20 applies shall have a certificate of inspection
21 issued by the Commandant.

22 (B) ISSUANCE OF CERTIFICATE.—The
23 Commandant may issue a certificate described
24 in subparagraph (A) only after the cruise vessel
25 has been examined and found to be in compli-

1 ance with this Act, including prohibitions on
2 discharges and requirements for effluent limits,
3 as determined by the Commandant.

4 (C) VALIDITY OF CERTIFICATE.—A certifi-
5 cate issued under this paragraph—

6 (i) shall be valid for a period of not
7 more than 5 years, beginning on the date
8 of issuance of the certificate;

9 (ii) may be renewed as specified by
10 the Commandant; and

11 (iii) shall be suspended or revoked if
12 the Commandant determines that the
13 cruise vessel for which the certificate was
14 issued is not in compliance with the condi-
15 tions under which the certificate was
16 issued.

17 (D) SPECIAL CERTIFICATES.—The Com-
18 mandant may issue special certificates to cer-
19 tain vessels that exhibit compliance with this
20 Act and other best practices, as determined by
21 the Commandant, after public notice and com-
22 ment.

23 (2) FOREIGN VESSEL.—

24 (A) IN GENERAL.—A cruise vessel reg-
25 istered in a country other than the United

1 States to which this Act applies may operate in
2 the waters of the United States, or visit a port
3 or place under the jurisdiction of the United
4 States, only if the cruise vessel has been issued
5 a certificate of compliance by the Commandant.

6 (B) ISSUANCE OF CERTIFICATE.—The
7 Commandant may issue a certificate described
8 in subparagraph (A) to a cruise vessel only
9 after the cruise vessel has been examined and
10 found to be in compliance with this Act, includ-
11 ing prohibitions on discharges and requirements
12 for effluent limits, as determined by the Com-
13 mandant.

14 (C) ACCEPTANCE OF FOREIGN DOCU-
15 MENTATION.—The Commandant may consider
16 a certificate, endorsement, or document issued
17 by the government of a foreign country under
18 a treaty, convention, or other international
19 agreement to which the United States is a
20 party, in issuing a certificate of compliance
21 under this paragraph. Such a certificate, en-
22 dorsement, or document shall not serve as a
23 proxy for certification of compliance with this
24 Act.

1 (D) VALIDITY OF CERTIFICATE.—A certifi-
2 cate issued under this section—

3 (i) shall be valid for a period of not
4 more than 24 months, beginning on the
5 date of issuance of the certificate;

6 (ii) may be renewed as specified by
7 the Commandant; and

8 (iii) shall be suspended or revoked if
9 the Commandant determines that the
10 cruise vessel for which the certificate was
11 issued is not in compliance with the condi-
12 tions under which the certificate was
13 issued.

14 (d) CRUISE OBSERVER PROGRAM.—

15 (1) IN GENERAL.—Not later than 1 year after
16 the date of the enactment of this Act, the Com-
17 mandant shall establish and carry out a program for
18 the placement of 1 or more trained independent ob-
19 servers on each cruise vessel.

20 (2) PURPOSES.—The purposes of the cruise ob-
21 server program established under paragraph (1) are
22 to monitor and inspect cruise vessel operations,
23 equipment, and discharges to ensure compliance
24 with—

1 (A) this Act (including regulations promul-
2 gated under this Act); and

3 (B) all other relevant Federal laws, regula-
4 tions, and international agreements.

5 (3) RESPONSIBILITIES.—An observer described
6 in paragraph (1) shall—

7 (A) observe and inspect—

8 (i) onboard environmental treatment
9 systems;

10 (ii) use of shore-based treatment and
11 storage facilities;

12 (iii) discharges and discharge prac-
13 tices; and

14 (iv) blueprints, logbooks, and other
15 relevant information, including fuel con-
16 sumption and atmospheric emissions;

17 (B) have the authority to interview and
18 otherwise query any crew member with knowl-
19 edge of vessel operations;

20 (C) have access to all data and information
21 made available to government officials under
22 this section;

23 (D) immediately report any known or sus-
24 pected violation of this Act or any other appli-

1 cable Federal law or international agreement
2 to—

3 (i) the Coast Guard; and

4 (ii) the Environmental Protection
5 Agency; and

6 (E) maintain a logbook to be submitted to
7 the Commandant and the Administrator annu-
8 ally and to be made available to the public.

9 (4) ADAPTIVE MANAGEMENT.—The program
10 established and carried out by the Commandant
11 under paragraph (1) shall also include—

12 (A) a method for collecting and reviewing
13 data related to the efficiency and operation of
14 the program; and

15 (B) periodic revisions to the program
16 based on the data collected under subparagraph
17 (A).

18 (5) REPORT.—Not later than 3 years after the
19 establishment of the program described in paragraph
20 (1), the Commandant shall submit to Congress a re-
21 port describing—

22 (A) the results of the program;

23 (B) recommendations for optimal observer
24 coverage; and

1 (C) other recommendations for improve-
2 ment of the program.

3 (e) ONBOARD MONITORING SYSTEM PILOT PRO-
4 GRAM.—

5 (1) IN GENERAL.—Not later than 1 year after
6 the date of the enactment of this Act, the Adminis-
7 trator of the National Oceanic and Atmospheric Ad-
8 ministration, in consultation with the Administrator
9 and the Commandant, shall establish, and for each
10 of fiscal years 2008 through 2013, shall carry out,
11 with industry partners as necessary, a pilot program
12 to develop and promote commercialization of tech-
13 nologies to provide real-time data to Federal agen-
14 cies regarding—

15 (A) discharges of sewage, graywater, and
16 bilge water from cruise vessels; and

17 (B) functioning of cruise vessel compo-
18 nents relating to fuel consumption and control
19 of air and water pollution.

20 (2) TECHNOLOGY REQUIREMENTS.—Tech-
21 nologies developed under the program described in
22 paragraph (1)—

23 (A) shall have the ability to record—

24 (i) the location and time of discharges
25 from cruise vessels;

1 (ii) the source, content, and volume of
2 the discharges; and

3 (iii) the state of components relating
4 to pollution control at the time of the dis-
5 charges, including whether the components
6 are operating correctly; and

7 (B) shall be tested on not less than 10 per-
8 cent of all cruise vessels operating in the terri-
9 torial sea of the United States, including large
10 and small vessels.

11 (3) PARTICIPATION OF INDUSTRY.—

12 (A) COMPETITIVE SELECTION PROCESS.—
13 Industry partners willing to participate in the
14 program may do so through a competitive selec-
15 tion process conducted by the Administrator of
16 the National Oceanic and Atmospheric Admin-
17 istration.

18 (B) CONTRIBUTION.—A selected industry
19 partner shall contribute not less than 20 per-
20 cent of the cost of the project in which the in-
21 dustry partner participates.

22 (4) ADAPTIVE MANAGEMENT.—The program
23 established and carried out by the Administrator of
24 the National Oceanic and Atmospheric Administra-
25 tion pursuant to paragraph (1) shall also include—

1 (A) a method for collecting and reviewing
2 data related to the efficiency and operation of
3 the program; and

4 (B) periodic revisions to the program
5 based on the data collected under subparagraph
6 (A).

7 (5) REPORT.—Not later than 3 years after the
8 date of the enactment of this Act, the Administrator
9 of the National Oceanic and Atmospheric Adminis-
10 tration shall submit to Congress a report describ-
11 ing—

12 (A) the results of the program;

13 (B) recommendations for continuing the
14 program; and

15 (C) other recommendations for improving
16 the program.

17 **SEC. 8. EMPLOYEE PROTECTION.**

18 (a) PROHIBITION OF DISCRIMINATION AGAINST PER-
19 SONS FILING, INSTITUTING, OR TESTIFYING IN PRO-
20 CEEDINGS UNDER THIS ACT.—No person shall terminate
21 the employment of, or in any other way discriminate
22 against (or cause the termination of employment of or dis-
23 crimination against), any employee or any authorized rep-
24 resentative of employees by reason of the fact that the em-
25 ployee or representative—

1 (1) has filed, instituted, or caused to be filed or
2 instituted any proceeding under this Act; or

3 (2) has testified or is about to testify in any
4 proceeding resulting from the administration or en-
5 forcement of the provisions of this Act.

6 (b) APPLICATION FOR REVIEW; INVESTIGATION;
7 HEARINGS; REVIEW.—

8 (1) IN GENERAL.—An employee or a represent-
9 ative of an employee who believes that the termi-
10 nation of the employment of the employee has oc-
11 curred, or that the employee has been discriminated
12 against, as a result of the actions of any person in
13 violation of subsection (a) may, not later than 30
14 days after the date on which the alleged violation oc-
15 curred, apply to the Secretary of Labor for a review
16 of the alleged termination of employment or dis-
17 crimination.

18 (2) APPLICATION.—A copy of an application for
19 review filed under paragraph (1) shall be sent to the
20 respondent.

21 (3) INVESTIGATION.—

22 (A) IN GENERAL.—On receipt of an appli-
23 cation for review under paragraph (1), the Sec-
24 retary of Labor shall carry out an investigation
25 of the alleged violation.

1 (B) REQUIREMENTS.—In carrying out this
2 subsection, the Secretary of Labor shall—

3 (i) provide an opportunity for a public
4 hearing at the request of any party to the
5 review to enable the parties to present in-
6 formation relating to the alleged violation;

7 (ii) ensure that, at least 5 days before
8 the date of the hearing, each party to the
9 hearing is provided written notice of the
10 time and place of the hearing; and

11 (iii) ensure that the hearing is on the
12 record and subject to section 554 of title
13 5, United States Code.

14 (C) FINDINGS OF SECRETARY.—On com-
15 pletion of an investigation under this para-
16 graph, the Secretary of Labor shall—

17 (i) make findings of fact;

18 (ii) if the Secretary of Labor deter-
19 mines that a violation did occur, issue a
20 decision, incorporating an order and the
21 findings, requiring the person that com-
22 mitted the violation to take such action as
23 is necessary to abate the violation, includ-
24 ing the rehiring or reinstatement, with

1 compensation, of an employee to the
2 former position of the employee; and

3 (iii) if the Secretary of Labor deter-
4 mines that there was no violation, issue an
5 order denying the application.

6 (D) ORDER.—An order issued by the Sec-
7 retary of Labor under subparagraph (C) shall
8 be subject to judicial review in the same man-
9 ner as orders and decisions of the Adminis-
10 trator are subject to judicial review under this
11 Act.

12 (e) COSTS AND EXPENSES.—In any case in which an
13 order is issued under this section to abate a violation, at
14 the request of the applicant, a sum equal to the aggregate
15 amount of all costs and expenses (including attorneys'
16 fees), as determined by the Secretary of Labor, to have
17 been reasonably incurred by the applicant for, or in con-
18 nection with, the institution and prosecution of the pro-
19 ceedings, shall be assessed against the person committing
20 the violation.

21 (d) DELIBERATE VIOLATIONS BY EMPLOYEES ACT-
22 ING WITHOUT DIRECTION FROM EMPLOYER OR
23 AGENT.—This section shall not apply to any employee
24 who, without direction from the employer of the employee

1 (or agent of the employer), deliberately violates any provi-
2 sion of this Act.

3 **SEC. 9. JUDICIAL REVIEW.**

4 (a) REVIEW OF ACTIONS BY ADMINISTRATOR OR
5 COMMANDANT; SELECTION OF COURT; FEES.—

6 (1) REVIEW OF ACTIONS.—

7 (A) IN GENERAL.—Any interested person
8 may petition for a review, in the United States
9 court of appeals for the circuit in which the
10 person resides or transacts business directly af-
11 fected by the action of which review is re-
12 quested—

13 (i) of an action of the Administrator
14 in promulgating any effluent limit under
15 section 5; or

16 (ii) of an action of the Commandant
17 or the Administrator in carrying out an in-
18 spection, sampling, or testing under section
19 7.

20 (B) DEADLINE FOR REVIEW.—A petition
21 for review under subparagraph (A) shall be
22 made—

23 (i) not later than 120 days after the
24 date of promulgation of the limit or stand-

1 ard with respect to which the review is
2 sought; or

3 (ii) if the petition for review is based
4 solely on grounds that arose after the date
5 described in clause (i), as soon as prac-
6 ticable after that date.

7 (2) CIVIL AND CRIMINAL ENFORCEMENT PRO-
8 CEEDINGS.—An action of the Commandant or Ad-
9 ministrators with respect to which review could have
10 been obtained under paragraph (1) shall not be sub-
11 ject to judicial review in any civil or criminal pro-
12 ceeding for enforcement of such action.

13 (3) AWARD OF FEES.—In any judicial pro-
14 ceeding under this subsection, a court may award
15 costs of litigation (including reasonable attorneys'
16 and expert witness fees) to any prevailing or sub-
17 stantially prevailing party in any case in which the
18 court determines such an award to be appropriate.

19 (b) ADDITIONAL EVIDENCE.—

20 (1) IN GENERAL.—In any judicial proceeding
21 instituted under subsection (a) in which review is
22 sought of a determination under this Act required to
23 be made on the record after notice and opportunity
24 for hearing, if any party applies to the court for
25 leave to introduce additional evidence and dem-

1 onstrates to the satisfaction of the court that the ad-
2 ditional evidence is material and that there were rea-
3 sonable grounds for the failure to introduce the evi-
4 dence in the proceeding before the Commandant or
5 Administrator, the court may order the additional
6 evidence (and evidence in rebuttal of the additional
7 evidence) to be taken before the Commandant or Ad-
8 ministrator, in such manner and on such terms and
9 conditions as the court determines to be appropriate.

10 (2) MODIFICATION OF FINDINGS.—On admis-
11 sion of additional evidence under paragraph (1), the
12 Commandant or Administrator—

13 (A) may modify findings of fact of the
14 Commandant or Administrator, as the case may
15 be, relating to a judicial proceeding, or make
16 new findings of fact, by reason of the additional
17 evidence; and

18 (B) shall file with the return of the addi-
19 tional evidence any modified or new findings,
20 and any related recommendations, for the modi-
21 fication or setting aside of any original deter-
22 minations of the Commandant or Adminis-
23 trator.

1 **SEC. 10. ENFORCEMENT.**

2 (a) IN GENERAL.—Any person that violates a provi-
3 sion of section 4 or any regulation promulgated under this
4 Act may be assessed—

5 (1) a class I or class II civil penalty described
6 in subsection (b); or

7 (2) a civil penalty in a civil action under sub-
8 section (c).

9 (b) AMOUNT OF ADMINISTRATIVE PENALTY.—

10 (1) CLASS I.—The amount of a class I civil
11 penalty under subsection (a)(1) may not exceed—

12 (A) \$10,000 per violation; or

13 (B) \$25,000 in the aggregate, in the case
14 of multiple violations.

15 (2) CLASS II.—The amount of a class II civil
16 penalty under subsection (a)(1) may not exceed—

17 (A) \$10,000 per day for each day during
18 which the violation continues; or

19 (B) \$125,000 in the aggregate, in the case
20 of multiple violations.

21 (3) SEPARATE VIOLATIONS.—Each day on
22 which a violation continues shall constitute a sepa-
23 rate violation.

24 (4) DETERMINATION OF AMOUNT.—In deter-
25 mining the amount of a civil penalty under sub-

1 section (a)(1), the Commandant or the court, as ap-
2 propriate, shall consider—

3 (A) the seriousness of the violation;

4 (B) any economic benefit resulting from
5 the violation;

6 (C) any history of violations;

7 (D) any good faith efforts to comply with
8 the applicable requirements;

9 (E) the economic impact of the penalty on
10 the violator; and

11 (F) such other matters as justice may re-
12 quire.

13 (5) PROCEDURE FOR CLASS I CIVIL PENALTY.—

14 (A) IN GENERAL.—Before assessing a civil
15 penalty under this subsection, the Commandant
16 shall provide to the person to be assessed the
17 penalty—

18 (i) written notice of the proposal of
19 the Commandant to assess the penalty;
20 and

21 (ii) the opportunity to request, not
22 later than 30 days after the date on which
23 the notice is received by the person, a
24 hearing on the proposed penalty.

1 (B) HEARING.—A hearing described in
2 subparagraph (A)(ii)—

3 (i) shall not be subject to section 554
4 or 556 of title 5, United States Code; but

5 (ii) shall provide a reasonable oppor-
6 tunity to be heard and to present evidence.

7 (6) PROCEDURE FOR CLASS II CIVIL PEN-
8 ALTY.—

9 (A) IN GENERAL.—Except as otherwise
10 provided in this subsection, a class II civil pen-
11 alty shall be assessed and collected in the same
12 manner, and subject to the same provisions, as
13 in the case of civil penalties assessed and col-
14 lected after notice and an opportunity for a
15 hearing on the record in accordance with sec-
16 tion 554 of title 5, United States Code.

17 (B) RULES.—The Commandant may pro-
18 mulgate rules for discovery procedures for hear-
19 ings under this subsection.

20 (7) RIGHTS OF INTERESTED PERSONS.—

21 (A) PUBLIC NOTICE.—Before issuing an
22 order assessing a class II civil penalty under
23 this subsection, the Commandant shall provide
24 public notice of, and reasonable opportunity to

1 comment on, the proposed issuance of each
2 order.

3 (B) PRESENTATION OF EVIDENCE.—

4 (i) IN GENERAL.—Any person that
5 comments on a proposed assessment of a
6 class II civil penalty under this subsection
7 shall be given notice of—

8 (I) any hearing held under this
9 subsection relating to such assess-
10 ment; and

11 (II) any order assessing the pen-
12 alty.

13 (ii) HEARING.—In any hearing de-
14 scribed in clause (i)(I), a person described
15 in clause (i) shall have a reasonable oppor-
16 tunity to be heard and to present evidence.

17 (C) RIGHTS OF INTERESTED PERSONS TO
18 A HEARING.—

19 (i) IN GENERAL.—If no hearing is
20 held under subparagraph (B) before the
21 date of issuance of an order assessing a
22 class II civil penalty under this subsection,
23 any person that commented on the pro-
24 posed assessment may, not later than 30

1 days after the date of issuance of the
2 order, petition the Commandant—

3 (I) to set aside the order; and

4 (II) to provide a hearing on the
5 penalty.

6 (ii) NEW EVIDENCE.—If any evidence
7 presented by a petitioner in support of the
8 petition under clause (i) is material and
9 was not considered in the issuance of the
10 order, as determined by the Commandant,
11 the Commandant shall immediately—

12 (I) set aside the order; and

13 (II) provide a hearing in accord-
14 ance with subparagraph (B)(ii).

15 (iii) DENIAL OF HEARING.—If the
16 Commandant denies a hearing under this
17 subparagraph, the Commandant shall pro-
18 vide to the petitioner, and publish in the
19 Federal Register, notice of and the reasons
20 for the denial.

21 (8) FINALITY OF ORDER.—

22 (A) IN GENERAL.—An order assessing a
23 class II civil penalty under this subsection shall
24 become final on the date that is 30 days after

1 the date of issuance of the order unless, before
2 that date—

3 (i) a petition for judicial review is
4 filed under paragraph (10); or

5 (ii) a hearing is requested under para-
6 graph (7)(C).

7 (B) DENIAL OF HEARING.—If a hearing is
8 requested under paragraph (7)(C) and subse-
9 quently denied, an order assessing a class II
10 civil penalty under this subsection shall become
11 final on the date that is 30 days after the date
12 of the denial.

13 (9) EFFECT OF ACTION ON COMPLIANCE.—No
14 action by the Commandant under this subsection
15 shall affect the obligation of any person to comply
16 with any provision of this Act.

17 (10) JUDICIAL REVIEW.—

18 (A) IN GENERAL.—Any person against
19 which a civil penalty is assessed under this sub-
20 section, or that commented on the proposed as-
21 sessment of such a penalty in accordance with
22 paragraph (7), may obtain review of the assess-
23 ment in a court described in subparagraph (B)
24 by—

1 (i) filing a notice of appeal with the
2 court within the 30-day period beginning
3 on the date on which the civil penalty
4 order is issued; and

5 (ii) simultaneously sending a copy of
6 the notice by certified mail to the Com-
7 mandant and the Attorney General.

8 (B) COURTS OF JURISDICTION.—Review of
9 an assessment under subparagraph (A) may be
10 obtained by a person—

11 (i) in the case of assessment of a class
12 I civil penalty, in—

13 (I) the United States District
14 Court for the District of Columbia; or

15 (II) the district court of the
16 United States for the district in which
17 the violation occurred; or

18 (ii) in the case of assessment of a
19 class II civil penalty, in—

20 (I) the United States Court of
21 Appeals for the District of Columbia
22 Circuit; or

23 (II) the United States court of
24 appeals for any other circuit in which

1 the person resides or transacts busi-
2 ness.

3 (C) COPY OF RECORD.—On receipt of no-
4 tice under subparagraph (A)(ii), the Com-
5 mandant shall promptly file with the appro-
6 priate court a certified copy of the record on
7 which the order assessing a civil penalty that is
8 the subject of the review was issued.

9 (D) SUBSTANTIAL EVIDENCE.—A court
10 with jurisdiction over a review under this para-
11 graph—

12 (i) shall not set aside or remand an
13 order described in subparagraph (C) un-
14 less—

15 (I) there is not substantial evi-
16 dence in the record, taken as a whole,
17 to support the finding of a violation;
18 or

19 (II) the assessment by the Com-
20 mandant of the civil penalty con-
21 stitutes an abuse of discretion; and

22 (ii) shall not impose additional civil
23 penalties for the same violation unless the
24 assessment by the Commandant of the civil
25 penalty constitutes an abuse of discretion.

1 (11) COLLECTION.—

2 (A) IN GENERAL.—If any person fails to
3 pay an assessment of a civil penalty after the
4 assessment has become final, or after a court in
5 a proceeding under paragraph (10) has entered
6 a final judgment in favor of the Commandant,
7 the Commandant shall request the Attorney
8 General to bring a civil action in an appropriate
9 district court to recover—

10 (i) the amount assessed; and

11 (ii) interest that has accrued on the
12 amount assessed, as calculated at currently
13 prevailing rates beginning on the date of
14 the final order or the date of the final
15 judgment, as the case may be.

16 (B) NONREVIEWABILITY.—In an action to
17 recover an assessed civil penalty under subpara-
18 graph (A), the validity, amount, and appro-
19 priateness of the civil penalty shall not be sub-
20 ject to judicial review.

21 (C) FAILURE TO PAY PENALTY.—Any per-
22 son that fails to pay, on a timely basis, the
23 amount of an assessment of a civil penalty
24 under subparagraph (A) shall be required to

1 pay, in addition to the amount of the civil pen-
2 alty and accrued interest—

3 (i) attorneys' fees and other costs for
4 collection proceedings; and

5 (ii) for each quarter during which the
6 failure to pay persists, a quarterly non-
7 payment penalty in an amount equal to 20
8 percent of the aggregate amount of the as-
9 sessed civil penalties and nonpayment pen-
10 alties of the person that are unpaid as of
11 the beginning of the quarter.

12 (12) SUBPOENAS.—

13 (A) IN GENERAL.—The Commandant may
14 issue subpoenas for the attendance and testi-
15 mony of witnesses and the production of rel-
16 evant papers, books, or documents in connec-
17 tion with hearings under this subsection.

18 (B) REFUSAL TO OBEY.—In case of contu-
19 macy or refusal to obey a subpoena issued
20 under this paragraph and served on any per-
21 son—

22 (i) the district court of the United
23 States for any district in which the person
24 is found, resides, or transacts business, on
25 application by the United States and after

1 notice to the person, shall have jurisdiction
2 to issue an order requiring the person to
3 appear and give testimony before the Com-
4 mandant or to appear and produce docu-
5 ments before the Commandant; and

6 (ii) any failure to obey such an order
7 of the court may be punished by the court
8 as a contempt of the court.

9 (c) CIVIL ACTION.—The Commandant may com-
10 mence, in the district court of the United States for the
11 district in which the defendant is located, resides, or trans-
12 acts business, a civil action to impose a civil penalty under
13 this subsection in an amount not to exceed \$25,000 for
14 each day of violation.

15 (d) CRIMINAL PENALTIES.—

16 (1) NEGLIGENT VIOLATIONS.—A person that
17 negligently violates section 4 or any regulation pro-
18 mulgated under this Act commits a Class A mis-
19 demeanor under title 18, United States Code.

20 (2) KNOWING VIOLATIONS.—Any person that
21 knowingly violates section 4 or any regulation pro-
22 mulgated under this Act commits a Class D felony
23 under title 18, United States Code.

24 (3) FALSE STATEMENTS.—Any person that
25 knowingly makes any false statement, representa-

1 tion, or certification in any record, report, or other
2 document filed or required to be maintained under
3 this Act or any regulation promulgated under this
4 Act, or that falsifies, tampers with, or knowingly
5 renders inaccurate any testing or monitoring device
6 or method required to be maintained under this Act
7 or any regulation promulgated under this Act, com-
8 mits a Class D felony under title 18, United States
9 Code.

10 (e) REWARDS.—

11 (1) PAYMENTS TO INDIVIDUALS.—

12 (A) IN GENERAL.—The Commandant or
13 the court, as the case may be, may order pay-
14 ment, from a civil penalty or criminal fine col-
15 lected under this section, of an amount not to
16 exceed $\frac{1}{2}$ of the civil penalty or fine, to any in-
17 dividual who furnishes information that leads to
18 the payment of the civil penalty or criminal
19 fine.

20 (B) MULTIPLE INDIVIDUALS.—If 2 or
21 more individuals provide information described
22 in subparagraph (A), the amount available for
23 payment as a reward shall be divided equitably
24 among the individuals.

1 (C) INELIGIBLE INDIVIDUALS.—No officer
2 or employee of the United States, a State, or an
3 Indian tribe who furnishes information or ren-
4 ders service in the performance of the official
5 duties of the officer or employee shall be eligible
6 for a reward payment under this subsection.

7 (2) PAYMENTS TO STATES OR INDIAN
8 TRIBES.—The Commandant or the court, as the
9 case may be, may order payment, from a civil pen-
10 alty or criminal fine collected under this section, to
11 a State or Indian tribe providing information or in-
12 vestigative assistance that leads to payment of the
13 penalty or fine, of an amount that reflects the level
14 of information or investigative assistance provided.

15 (3) PAYMENTS DIVIDED AMONG STATES, IN-
16 DIAN TRIBES, AND INDIVIDUALS.—In a case in
17 which a State or Indian tribe and an individual
18 under paragraph (1) are eligible to receive a reward
19 payment under this subsection, the Commandant or
20 the court shall divide the amount available for the
21 reward equitably among those recipients.

22 (f) LIABILITY IN REM.—A cruise vessel operated in
23 violation of this Act or any regulation promulgated under
24 this Act—

1 (1) shall be liable in rem for any civil penalty
2 or criminal fine imposed under this section; and

3 (2) may be subject to a proceeding instituted in
4 the district court of the United States for any dis-
5 trict in which the cruise vessel may be found.

6 (g) COMPLIANCE ORDERS.—

7 (1) IN GENERAL.—If the Commandant deter-
8 mines that any person is in violation of section 4 or
9 any regulation promulgated under this Act, the
10 Commandant shall—

11 (A) issue an order requiring the person to
12 comply with such section or requirement; or

13 (B) bring a civil action in accordance with
14 subsection (c).

15 (2) COPIES OF ORDER; SERVICE.—

16 (A) CORPORATE ORDERS.—In any case in
17 which an order under this subsection is issued
18 to a corporation, a copy of the order shall be
19 served on any appropriate corporate officer.

20 (B) METHOD OF SERVICE; SPECIFICA-
21 TIONS.—An order issued under this subsection
22 shall—

23 (i) be by personal service;

1 (ii) state with reasonable specificity
2 the nature of the violation for which the
3 order was issued; and

4 (iii) specify a deadline for compliance
5 that is not later than—

6 (I) 30 days after the date of
7 issuance of the order, in the case of a
8 violation of an interim compliance
9 schedule or operation and mainte-
10 nance requirement; or

11 (II) such date as the Com-
12 mandant, taking into account the seri-
13 ousness of the violation and any good
14 faith efforts to comply with applicable
15 requirements, determines to be rea-
16 sonable, in the case of a violation of
17 a final deadline.

18 (h) CIVIL ACTIONS.—

19 (1) IN GENERAL.—The Commandant may com-
20 mence a civil action for appropriate relief, including
21 a permanent or temporary injunction, for any viola-
22 tion for which the Commandant is authorized to
23 issue a compliance order under this subsection.

24 (2) COURT OF JURISDICTION.—

1 (A) **IN GENERAL.**—A civil action under
2 this subsection may be brought in the district
3 court of the United States for the district in
4 which the defendant is located, resides, or is
5 doing business.

6 (B) **JURISDICTION.**—A court described in
7 subparagraph (A) shall have jurisdiction to
8 grant injunctive relief to address a violation and
9 require compliance by the defendant.

10 **SEC. 11. CITIZEN SUITS.**

11 (a) **AUTHORIZATION.**—Except as provided in sub-
12 section (c), any citizen may commence a civil action on
13 the citizen’s own behalf—

14 (1) against any person (including the United
15 States and any other governmental instrumentality
16 or agency to the extent permitted by the eleventh
17 amendment to the Constitution of the United
18 States) that is alleged to be in violation of—

19 (A) the conditions imposed by section 4;

20 (B) an effluent limit or performance stand-
21 ard under this Act; or

22 (C) an order issued by the Administrator
23 or Commandant with respect to such a condi-
24 tion, an effluent limit, or a performance stand-
25 ard; or

1 (2) against the Administrator or Commandant,
2 in a case in which there is alleged a failure by the
3 Administrator or Commandant to perform any non-
4 discretionary act or duty under this Act.

5 (b) JURISDICTION.—The district courts of the United
6 States shall have jurisdiction, without regard to the
7 amount in controversy or the citizenship of the parties—

8 (1) to enforce a condition, effluent limit, per-
9 formance standard, or order described in subsection
10 (a)(1);

11 (2) to order the Administrator or Commandant
12 to perform a nondiscretionary act or duty described
13 in subsection (a)(2); and

14 (3) to apply any appropriate civil penalties
15 under section 10(b).

16 (c) NOTICE.—No action may be commenced under
17 this section—

18 (1) before the date that is 60 days after the
19 date on which the plaintiff gives notice of the alleged
20 violation—

21 (A) to the Administrator or Commandant;
22 and

23 (B) to any alleged violator of the condition,
24 effluent limit, performance standard, or order
25 described in subsection (a)(1); or

1 (2) if the Administrator or Commandant has
2 commenced and is diligently prosecuting a civil or
3 criminal action on the same matter in a court of the
4 United States (but in any such action, a citizen may
5 intervene as a matter of right).

6 (d) VENUE.—

7 (1) IN GENERAL.—Any civil action under this
8 section shall be brought in—

9 (A) the United States District Court for
10 the District of Columbia; or

11 (B) any other district court of the United
12 States for any judicial district in which a cruise
13 vessel or the owner or operator of a cruise ves-
14 sel is located.

15 (2) INTERVENTION.—In a civil action under
16 this section, the Administrator or the Commandant,
17 if not a party, may intervene as a matter of right.

18 (3) PROCEDURES.—

19 (A) SERVICE.—In any case in which a civil
20 action is brought under this section in a court
21 of the United States, the plaintiff shall serve a
22 copy of the complaint on—

23 (i) the Attorney General;

24 (ii) the Administrator; and

25 (iii) the Commandant.

1 (B) CONSENT JUDGMENTS.—No consent
2 judgment shall be entered in a civil action
3 under this section to which the United States is
4 not a party before the date that is 45 days after
5 the date of receipt of a copy of the proposed
6 consent judgment by—

7 (i) the Attorney General;

8 (ii) the Administrator; and

9 (iii) the Commandant.

10 (e) LITIGATION COSTS.—

11 (1) IN GENERAL.—A court of jurisdiction, in
12 issuing any final order in any civil action brought in
13 accordance with this section, may award costs of liti-
14 gation (including reasonable attorneys' and expert
15 witness fees) to any prevailing or substantially pre-
16 vailing party, in any case in which the court deter-
17 mines that such an award is appropriate.

18 (2) SECURITY.—In any civil action under this
19 section, the court of jurisdiction may, if a temporary
20 restraining order or preliminary injunction is sought,
21 require the filing of a bond or equivalent security in
22 accordance with the Federal Rules of Civil Proce-
23 dure.

24 (f) STATUTORY OR COMMON LAW RIGHTS NOT RE-
25 STRICTED.—Nothing in this section restricts the rights of

1 any person (or class of persons) under any statute or com-
2 mon law to seek enforcement or other relief (including re-
3 lief against the Administrator or Commandant).

4 (g) CIVIL ACTION BY STATE GOVERNORS.—A Gov-
5 ernor of a State may commence a civil action under sub-
6 section (a), without regard to the limitation under sub-
7 section (c), against the Administrator or Commandant in
8 any case in which there is alleged a failure of the Adminis-
9 trator or Commandant to enforce an effluent limit or per-
10 formance standard under this Act, the violation of which
11 is causing—

12 (1) an adverse effect on the public health or
13 welfare in the State; or

14 (2) a violation of any water quality requirement
15 in the State.

16 **SEC. 12. SENSE OF CONGRESS ON BALLAST WATER.**

17 It is the sense of Congress that action should be
18 taken to enact legislation requiring strong, mandatory
19 standards for ballast water to reduce the threat of aquatic
20 invasive species.

21 **SEC. 13. SENSE OF CONGRESS ON AIR POLLUTION.**

22 It is the sense of Congress that action should be
23 taken to enact legislation requiring strong, mandatory
24 standards for air quality with respect to incineration and

1 engine activities of cruise vessels to reduce the level of
2 harmful chemical and particulate air pollutants.

3 **SEC. 14. FUNDING.**

4 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There
5 are authorized to be appropriated to the Commandant and
6 the Administrator such sums as are necessary to carry out
7 this Act for each of fiscal years 2009 through 2013.

8 (b) **CRUISE VESSEL POLLUTION CONTROL FUND.**—

9 (1) **ESTABLISHMENT.**—There is established in
10 the general fund of the Treasury a separate account
11 to be known as the “Cruise Vessel Pollution Control
12 Fund” (referred to in this section as the “Fund”).

13 (2) **AMOUNTS.**—The Fund shall consist of such
14 amounts as are deposited in the Fund under sub-
15 section (c)(5).

16 (3) **USE OF AMOUNTS IN FUND.**—The Adminis-
17 trator and the Commandant may use amounts in the
18 Fund, without further appropriation, to carry out
19 this Act.

20 (c) **FEES ON CRUISE VESSELS.**—

21 (1) **IN GENERAL.**—The Commandant shall es-
22 tablish and collect from each cruise vessel a reason-
23 able and appropriate fee for each paying passenger
24 on a cruise vessel voyage, for use in carrying out
25 this Act.

1 (2) ADJUSTMENT OF FEE.—

2 (A) IN GENERAL.—The Commandant shall
3 biennially adjust the amount of the fee estab-
4 lished under paragraph (1) to reflect changes in
5 the Consumer Price Index for All Urban Con-
6 sumers published by the Department of Labor
7 during each 2-year period.

8 (B) ROUNDING.—The Commandant may
9 round the adjustment in subparagraph (A) to
10 the nearest $\frac{1}{10}$ of a dollar.

11 (3) FACTORS IN ESTABLISHING FEES.—

12 (A) IN GENERAL.—In establishing fees
13 under paragraph (1), the Commandant may es-
14 tablish lower levels of fees and the maximum
15 amount of fees for certain classes of cruise ves-
16 sels based on—

- 17 (i) size;
- 18 (ii) economic share; and
- 19 (iii) such other factors as are deter-
20 mined to be appropriate by the Com-
21 mandant and Administrator.

22 (B) FEE SCHEDULES.—Any fee schedule
23 established under paragraph (1), including the
24 level of fees and the maximum amount of fees,
25 shall take into account—

- 1 (i) cruise vessel routes;
2 (ii) the frequency of stops at ports of
3 call by cruise vessels; and
4 (iii) other relevant considerations.

5 (4) COLLECTION OF FEES.—A fee established
6 under paragraph (1) shall be collected by the Com-
7 mandant from the owner or operator of each cruise
8 vessel to which this Act applies.

9 (5) DEPOSITS TO FUND.—Notwithstanding any
10 other provision of law, all fees collected under this
11 subsection, and all penalties and payments collected
12 for violations of this Act, shall be deposited into the
13 Fund.

14 **SEC. 15. EFFECT ON OTHER LAW.**

15 (a) UNITED STATES.—Nothing in this Act restricts,
16 affects, or amends any other law or the authority of any
17 department, instrumentality, or agency of the United
18 States.

19 (b) STATES AND INTERSTATE AGENCIES.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), nothing in this Act precludes or denies
22 the right of any State (including a political subdivi-
23 sion of a State) or interstate agency to adopt or en-
24 force—

1 (A) any standard or limit relating to the
2 discharge of pollutants by cruise vessels; or

3 (B) any requirement relating to the control
4 or abatement of pollution.

5 (2) EXCEPTION.—If an effluent limit, perform-
6 ance standard, water quality standard, or any other
7 prohibition or limitation is in effect under Federal
8 law, a State (including a political subdivision of a
9 State) or interstate agency may not adopt or enforce
10 any effluent limit, performance standard, water
11 quality standard, or any other prohibition that—

12 (A) is less stringent than the effluent limit,
13 performance standard, water quality standard,
14 or other prohibition or limitation under this
15 Act; or

16 (B) impairs or in any manner affects any
17 right or jurisdiction of the State with respect to
18 the waters of the State.

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