

**(e) Identification of jurisdictional agencies**

With respect to the development of each water resources project, the Secretary shall identify, as soon as practicable, all Federal, State, and local government agencies and Indian tribes that may—

- (1) have jurisdiction over the project;
- (2) be required by law to conduct or issue a review, analysis, or opinion for the project; or
- (3) be required to make a determination on issuing a permit, license, or approval for the project.

**(f) State authority**

If the coordinated review process is being implemented under this section by the Secretary with respect to the development of a water resources project described in subsection (b) within the boundaries of a State, the State, consistent with State law, may choose to participate in the process and to make subject to the process all State agencies that—

- (1) have jurisdiction over the project;
- (2) are required to conduct or issue a review, analysis, or opinion for the project; or
- (3) are required to make a determination on issuing a permit, license, or approval for the project.

**(g) Memorandum of understanding**

The coordinated review process developed under this section may be incorporated into a memorandum of understanding for a water resources project between the Secretary, the heads of Federal, State, and local government agencies, Indian tribes identified under subsection (e), and the non-Federal interest for the project.

**(h) Effect of failure to meet deadline****(1) Notification**

If the Secretary determines that a Federal, State, or local government agency, Indian tribe, or non-Federal interest that is participating in the coordinated review process under this section with respect to the development of a water resources project has not met a deadline established under subsection (d) for the project, the Secretary shall notify, within 30 days of the date of such determination, the agency, Indian tribe, or non-Federal interest about the failure to meet the deadline.

**(2) Agency report**

Not later than 30 days after the date of receipt of a notice under paragraph (1), the Federal, State, or local government agency, Indian tribe, or non-Federal interest involved may submit a report to the Secretary, explaining why the agency, Indian tribe, or non-Federal interest did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, or opinion or determination on issuing a permit, license, or approval.

**(3) Report to Congress**

Not later than 30 days after the date of receipt of a report under paragraph (2), the Secretary shall compile and submit a report to the Committee on Transportation and Infrastructure of the House of Representatives, the

Committee on Environment and Public Works of the Senate, and the Council on Environmental Quality, describing any deadlines identified in paragraph (1), and any information provided to the Secretary by the Federal, State, or local government agency, Indian tribe, or non-Federal interest involved under paragraph (2).

**(i) Limitations**

Nothing in this section shall preempt or interfere with—

- (1) any statutory requirement for seeking public comment;
- (2) any power, jurisdiction, or authority that a Federal, State, or local government agency, Indian tribe, or non-Federal interest has with respect to carrying out a water resources project; or
- (3) any obligation to comply with the provisions of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and the regulations issued by the Council on Environmental Quality to carry out such Act.

(Pub. L. 110-114, title II, §2045, Nov. 8, 2007, 121 Stat. 1103.)

## REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (b) and (i)(3), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

## CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

## “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110-114, set out as a note under section 2201 of this title.

**CHAPTER 37—ORGANOTIN ANTIFOULING PAINT CONTROL**

Sec. 2401.	Findings; purpose.
2402.	Definitions.
2403.	Prohibition on application of organotin antifouling paints on certain vessels.
2404.	Prohibition of certain organotin antifouling paints and organotin additives used to make such paints.
2405.	Certification.
2406.	Monitoring and research of ecological effects.
2407.	Alternative antifouling research.
2408.	Water quality criteria document.
2409.	Penalties.
2410.	Other authorities; State laws.

**§ 2401. Findings; purpose****(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.

(Pub. L. 100-333, §2, June 16, 1988, 102 Stat. 605.)

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.’”

**§ 2402. Definitions**

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.

(Pub. L. 100-333, §3, June 16, 1988, 102 Stat. 605.)

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.

**§ 2403. Prohibition on application of organotin antifouling paints on certain vessels**

**(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.

(Pub. L. 100-333, §4, June 16, 1988, 102 Stat. 606.)

## 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.

**§ 2404. Prohibition of certain organotin anti-fouling paints and organotin additives used to make such paints**

**(a) Interim prohibition of certain organotin anti-fouling 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.

(Pub. L. 100-333, § 5, June 16, 1988, 102 Stat. 606.)

## 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.

## 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.

**§ 2405. Certification**

**(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.

(Pub. L. 100-333, § 6, June 16, 1988, 102 Stat. 607.)

**§ 2406. Monitoring and research of ecological effects**

**(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.

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

## 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, §333, Sept. 23, 1996, 110 Stat. 2485, as amended by Pub. L. 106-65, div. A, title X, §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].”

## § 2407. Alternative antifouling research

### (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.

(Pub. L. 100-333, §8, June 16, 1988, 102 Stat. 608.)

## § 2408. Water quality criteria document

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.

(Pub. L. 100-333, §9, June 16, 1988, 102 Stat. 608.)

## § 2409. Penalties

### (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.

(Pub. L. 100-333, §10, June 16, 1988, 102 Stat. 608.)

## § 2410. Other authorities; State laws

### (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.

(Pub. L. 100-333, §11, June 16, 1988, 102 Stat. 608.)

### CHAPTER 38—DUMPING OF MEDICAL WASTE BY PUBLIC VESSELS

Sec.	
2501.	Findings.
2502.	Definitions.
2503.	Prohibition.
2504.	Guidance.

#### § 2501. Findings

The Congress finds the following:

(1) The washing ashore of potentially infectious medical wastes from public vessels of the United States may pose serious and widespread risks to public health and to the welfare of coastal communities.

(2) Current Federal law provides inadequate protections against the disposal of such wastes from such vessels into ocean waters.

(3) Operators of such vessels must take immediate action to stop disposing of such wastes into ocean waters.

(Pub. L. 100-688, title III, §3102, Nov. 18, 1988, 102 Stat. 4152.)

#### SHORT TITLE

Section 3101 of subtitle A [ §§3101-3105 ] of title III of Pub. L. 100-688 provided that: "This subtitle [enacting this chapter] may be cited as the 'United States Public Vessel Medical Waste Anti-Dumping Act of 1988'."

#### § 2502. Definitions

For the purposes of this chapter:

##### (1) Potentially infectious medical waste

The term "potentially infectious medical waste" includes isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes; and other disposable medical equipment and material that may pose a risk to the public health, welfare or the marine environment.

##### (2) Public vessel

The term "public vessel" means a vessel of any type whatsoever (including hydrofoils, air-cushion vehicles, submersibles, floating craft whether propelled or not, and fixed or floating platforms) that is owned, or demise chartered, and operated by the United States Government, and is not engaged in commercial service.

(Pub. L. 100-688, title III, §3103, Nov. 18, 1988, 102 Stat. 4152.)

#### § 2503. Prohibition

After 6 months after November 18, 1988, no public vessel shall dispose of potentially infectious medical waste into ocean waters unless—

(1)(A) the health or safety of individuals on board the vessel is threatened; or

(B) during time of war or a declared national emergency;

(2) the waste is disposed of beyond 50 nautical miles from the nearest land; and

(3)(A) in the case of a public vessel which is not a submersible, the waste is sterilized, properly packaged, and sufficiently weighted to prevent the waste from coming ashore after disposal; and

(B) in the case of a public vessel which is a submersible, the waste is properly packaged and sufficiently weighted to prevent the waste from coming ashore after disposal.

(Pub. L. 100-688, title III, §3104, Nov. 18, 1988, 102 Stat. 4152.)

#### § 2504. Guidance

Not later than 3 months after November 18, 1988, the Secretary of Defense and the head of each affected agency, in consultation with the Administrator of the Environmental Protection Agency, shall each issue guidance for public vessels under the jurisdiction of their agency regarding implementation of section 2503 of this title.

(Pub. L. 100-688, title III, §3105, Nov. 18, 1988, 102 Stat. 4153.)

### CHAPTER 39—SHORE PROTECTION FROM MUNICIPAL OR COMMERCIAL WASTE

#### SUBCHAPTER I—SHORE PROTECTION

Sec.	
2601.	Definitions.
2602.	Vessel permits and numbers.
2603.	Waste handling practices.
2604.	Suspension, revocation, and injunctions.
2605.	Enforcement.
2606.	Subpena authority.
2607.	Fees.
2608.	Civil penalty procedures.
2609.	Penalties.

#### SUBCHAPTER II—RELATED PROVISIONS

2621.	Study and recommendations.
2622.	Relation to other laws.
2623.	Authorization of appropriations.

#### SUBCHAPTER I—SHORE PROTECTION

#### § 2601. Definitions

In this chapter—

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

(2) "coastal waters" means—

(A) the territorial sea of the United States;

(B) the Great Lakes and their connecting waters;

(C) the marine and estuarine waters of the United States up to the head of tidal influence; and

(D) the Exclusive Economic Zone as established by Presidential Proclamation Number 5030, dated March 10, 1983.

(3) "municipal or commercial waste" means solid waste (as defined in section 6903 of title 42) except—

(A) solid waste identified and listed under section 6921 of title 42;

(B) waste generated by the vessel during normal operations;

(C) debris solely from construction activities;

(D) sewage sludge subject to regulation under title I of the Marine Protection, Re-