

US Code

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TITLE 33 - NAVIGATION AND NAVIGABLE WATERS

CHAPTER 39—SHORE PROTECTION FROM MUNICIPAL OR COMMERCIAL WASTE

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CHAPTER 39—SHORE PROTECTION FROM MUNICIPAL OR COMMERCIAL WASTE

SUBCHAPTER I—SHORE PROTECTION

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SUBCHAPTER I—SHORE PROTECTION

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§ 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, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1411 et seq.]; and
 - (E) dredged or fill material subject to regulation under title I of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1411 et seq.], the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), or the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 et seq.).
- (4) “person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.
- (5) “receiving facility” means a facility or operation where municipal or commercial waste is unloaded from a vessel.
- (6) “United States”, when used in a geographic sense, means the States of the United States, Puerto Rico, the District of Columbia, the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, and any other territory or possession of the United States.
- (7) “waste source” means a facility or vessel from which municipal or commercial waste is loaded onto a vessel, including any rolling stock or motor vehicles from which that waste is directly loaded.

(Pub. L. 100–688, title IV, § 4101, Nov. 18, 1988, 102 Stat. 4154.)

References in Text

Presidential Proclamation Number 5030, referred to in par. (2)(D), is set out under section 1453 of Title 16, Conservation.

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in par. (3)(D) and (E), is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of that Act is classified generally to subchapter I (§ 1411 et seq.) of chapter 27 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in par. (3)(E), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

The Rivers and Harbors Appropriation Act of 1899, referred to in par. (3)(E), is act Mar. 3, 1899, ch. 425, 30 Stat. 1151, as amended, which enacted sections 401, 403, 404, 406 to 409, 411 to 416, 418, 502, 549, 686, and 687 of this title. For complete classification of this Act to the Code, see Tables.

Short Title

Section 4001 of title IV of Pub. L. 100–688 provided that: “This title [enacting this chapter] may be cited as the ‘Shore Protection Act of 1988’.”

Territorial Sea of United States

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

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§ 2602. Vessel permits and numbers

(a) In general

A vessel (except a public vessel as defined in section 2101 of title 46) may not transport municipal or commercial waste in coastal waters without—

- (1) a permit for that vessel from the Secretary of Transportation; and
- (2) displaying a number or other marking on the vessel as prescribed by the Secretary under chapter 123 or section 12502 (b) of title 46.

(b) Permit applications

Application for a permit required by subsection (a) of this section shall be made by the vessel owner or operator and include—

- (1) the name, address, and telephone number of the vessel owner and operator;
- (2) the vessel’s name and identification number;
- (3) the vessel’s area of operation;
- (4) the vessel’s transport capacity;
- (5) a history of the types of cargo transported by that vessel during the previous year, including identifying the type of municipal or commercial waste transported as—
 - (A) municipal waste;
 - (B) commercial waste;
 - (C) medical waste; or
 - (D) waste of another character.
- (6) any other information the Secretary may require; and
- (7) an acknowledgment.

(c) Effective date of permits

A permit issued under this section—

- (1) is effective 30 days after the date on which it was issued;
- (2) may be issued only for a period of not more than 5 years after the effective date of the permit;
- (3) may be renewed for periods of not more than 5 years only by the vessel owner or operator that applied for the original permit; and
- (4) is terminated when the vessel is sold.

(d) Denial of permits

The Secretary may, or at the request of the Administrator shall, deny the issuance of a permit for any vessel if the owner or operator of the vessel has a record of a pattern of serious violations of—

- (1) this subchapter;
- (2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
- (3) the Marine Protection, Research, and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.];
- (4) the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401 et seq.); or

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(5) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(e) Permit decision

The Secretary, after consultation with the Administrator, shall issue or deny a vessel permit under this section within 30 days after receiving a complete application. On denying the issuance of the permit for a vessel the Secretary shall—

- (1) notify the applicant of the denial and the reasons for the denial; and
- (2) provide an opportunity for a hearing on the denial.

(f) Maintaining permit

(1) In general

The permit issued for a vessel under this chapter shall be maintained in a manner prescribed by the Secretary.

(2) Endorsements

If a vessel is a documented vessel, the Secretary may endorse a permit on the vessel's certificate of documentation.

(g) Vessel information system

The Secretary may include information in a permit in the vessel information system maintained under chapter 125 of title 46.

(Pub. L. 100–688, title IV, § 4102, Nov. 18, 1988, 102 Stat. 4155.)

References in Text

The Solid Waste Disposal Act, referred to in subsec. (d)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 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 6901 of Title 42 and Tables.

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in subsec. (d)(3), is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended, which is classified generally to chapters 27 (§ 1401 et seq.) and 41 (§ 2801 et seq.) of this title and chapters 32 (§ 1431 et seq.) and 32A (§ 1447 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

The Rivers and Harbors Appropriation Act of 1899, referred to in subsec. (d)(4), is act Mar. 3, 1899, ch. 425, 30 Stat. 1151, as amended, which enacted sections 401, 403, 404, 406 to 409, 411 to 416, 418, 502, 549, 686, and 687 of this title. For complete classification of this Act to the Code, see Tables.

The Federal Water Pollution Control Act, referred to in subsec. (d)(5), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

Effective Date

Section 4204(b) of Pub. L. 100–688 provided that: “Section 4102(a) of this Act [33 U.S.C. 2602 (a)] is effective 240 days after the date of enactment of this Act [Nov. 18, 1988].”

Availability of Applications

Section 4204(a) of Pub. L. 100–688 provided that: “The Secretary shall make vessel applications for permits to be issued under section 4102 of this Act [33 U.S.C. 2602] publicly available within 60 days after the date of enactment of this Act [Nov. 18, 1988].”

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§ 2603. Waste handling practices

(a) In general

(1) Loading

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The owner or operator of the waste source shall take all reasonable steps to assure that all municipal or commercial waste is loaded onto a vessel in a manner that assures that waste deposited in coastal waters is minimized.

(2) Securing

The owner or operator of a vessel shall assure that all municipal or commercial waste loaded onto the vessel is secured by netting or other means to assure that waste will not be deposited into coastal waters during transport.

(3) Offloading

The owner or operator of the receiving facility shall take all reasonable steps to assure that any municipal or commercial waste is offloaded from a vessel in a manner that assures that waste deposited into coastal waters is minimized.

(4) Cleaning up

The owner or operator of any waste source or receiving facility shall provide adequate control measures to clean up any municipal or commercial waste which is deposited into coastal waters.

(b) Regulations

The Administrator, in consultation with the Secretary of Transportation, shall prescribe regulations—

- (1) requiring that waste sources, receiving facilities, and vessels provide the means and facilities to assure that the waste will not be deposited into coastal waters during loading, offloading, and transport;
- (2) requiring, as appropriate, the submission and adoption by each responsible party of an operation and maintenance manual identifying procedures to be used to prevent, report, and clean up any deposit of municipal or commercial waste into coastal waters, including record keeping requirements; and
- (3) if the Administrator determines that tracking systems are required to assure adequate enforcement of laws preventing the deposit of municipal or commercial waste into coastal waters, requiring installation of the appropriate systems within 18 months after the Administrator makes that determination.

(Pub. L. 100–688, title IV, § 4103, Nov. 18, 1988, 102 Stat. 4156.)

Effective Date

Section 4204(c) of Pub. L. 100–688 provided that: “Section 4103 of this Act [33 U.S.C. 2603] takes effect 60 days after the date of enactment of this Act [Nov. 18, 1988].”

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§ 2604. Suspension, revocation, and injunctions

(a) Suspension and revocation

After notice and opportunity for a hearing, the Secretary of Transportation may, and at the request of the Administrator shall, suspend or revoke a permit issued to a vessel under this chapter for a violation of this chapter or a regulation prescribed under this chapter.

(b) Injunctions

The Secretary or the Administrator may bring a civil action to enjoin any operation in violation of this chapter or a regulation prescribed under this chapter in the district court of the United States for the district in which the violation occurred.

(Pub. L. 100–688, title IV, § 4104, Nov. 18, 1988, 102 Stat. 4157.)

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§ 2605. Enforcement

(a) General authority

The Secretary of Transportation shall enforce this chapter under section 89 of title 14. The Secretary may authorize other officers or employees of the United States Government to enforce this chapter under that section.

(b) Periodic examinations

The Secretary shall conduct periodic examinations of vessels operating under this chapter transporting municipal or commercial waste to determine that each of these vessels has a permit issued under section 2602 of this title.

(c) Refusal of clearance

The Secretary of the Treasury may refuse the clearance required by section 60105 of title 46, to any vessel subject to this chapter which does not have a permit required under section 2602 of this title.

(d) Denial of entry and detention

If a vessel does not comply with this chapter, the Secretary of Transportation may—

- (1) deny entry to any place in the United States; and
- (2) detain at the place in the United States from which it is about to depart.

(e) Persistent violators

The Administrator shall conduct an investigation of the owner or operator of a vessel or facility if the owner has 5 or more separate violations during a 6-month period.

(Pub. L. 100–688, title IV, § 4105, Nov. 18, 1988, 102 Stat. 4157.)

Codification

In subsec. (c), “section 60105 of title 46” substituted for “section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91)” on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

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§ 2606. Subpena authority

(a) General authority

In an investigation under this chapter, the attendance and testimony of witnesses, including parties in interest, and the production of any evidence may be compelled by subpena. The subpena authority granted by this section is coextensive with that of a district court of the United States, in civil matters, for the district in which the investigation is conducted.

(b) Subpena authority

An official designated by the Secretary of Transportation or Administrator to conduct an investigation under this chapter may issue subpoenas as provided in this section and administer oaths to witnesses.

(c) Failure to comply

When a person fails to obey a subpoena issued under this section, the district court of the United States for the district in which the investigation is conducted or in which the person failing to obey is found, shall on proper application issue an order directing that person to comply with the subpoena. The court may punish as contempt any disobedience of its order.

(d) Witness fees

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A witness complying with a subpoena issued under this section may be paid for actual travel and attendance at the rate provided for witnesses in the district courts of the United States.

(Pub. L. 100-688, title IV, § 4106, Nov. 18, 1988, 102 Stat. 4157.)

References in Text

This chapter, referred to in subsec. (b), was in the original “this part” and was translated as reading “this title” to reflect the probable intent of Congress.

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§ 2607. Fees

The Secretary of Transportation may collect a fee under section 9701 of title 31 of not more than \$1,000, from each person to whom a permit is issued under this subchapter for a permitting system and to maintain information.

(Pub. L. 100-688, title IV, § 4107, Nov. 18, 1988, 102 Stat. 4158.)

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§ 2608. Civil penalty procedures

(a) General procedures

After notice and an opportunity for a hearing, a person found by the Secretary of Transportation to have violated this chapter or a regulation prescribed under this chapter for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary 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.

(b) Compromising penalties

The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty under this chapter until the assessment is referred to the Attorney General.

(c) Referral to Attorney General

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

(d) Refund of penalty

The Secretary may refund or remit a civil penalty collected under this chapter if—

- (1) application has been made for refund or remission of the penalty within one year from the date of payment; and
- (2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed.

(Pub. L. 100-688, title IV, § 4108, Nov. 18, 1988, 102 Stat. 4158.)

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§ 2609. Penalties

(a) General penalty

Except as provided in subsection (b) of this section, a person violating this chapter is liable to the United States Government for a civil penalty of not more than \$25,000. Each day of a continuing violation is a separate violation. A vessel involved in the violation also is liable in rem for the penalty.

(b) Operating without a permit

TITLE 33 - CHAPTER 39 - SUBCHAPTER II RELATED PROVISIONS

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A person violating section 2602 of this title is liable to the United States Government for a civil penalty of not more than \$10,000. Each day of a continuing violation is a separate violation. A vessel involved in the violation also is liable in rem for the penalty.

(c) Criminal penalty

Any person that knowingly violates, or that knowingly aids, abets, authorizes, or instigates a violation of this chapter, shall be fined under title 18, imprisoned for not more than 3 years, or both.

(d) Payments for information

The court, the Secretary of Transportation, or the Administrator, as the case may be, may pay up to one-half of a fine or penalty to any person giving information leading to the assessment of the fine or penalty.

(Pub. L. 100-688, title IV, § 4109, Nov. 18, 1988, 102 Stat. 4158.)

SUBCHAPTER II—RELATED PROVISIONS

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§ 2621. Study and recommendations

(a) Study

The Administrator, in consultation with the Secretary of Transportation, shall conduct a study to determine the need for, and effectiveness of additional tracking systems for vessels to assure that municipal or commercial waste is not deposited in coastal waters. In conducting this study, the Administrator shall use the data collected from its permitting and enforcement activities under this chapter. In determining the effectiveness of tracking systems, the Administrator shall rely on the information provided by the Secretary under subsection (b) of this section. The report shall include a recommendation whether additional tracking systems are needed. This study shall be submitted to Congress within 24 months after November 18, 1988.

(b) Recommendations

The Secretary shall provide recommendations to the Administrator concerning the various tracking systems that might be applicable to vessels transporting municipal or commercial waste which the Secretary currently is studying. The Secretary shall consider the relative effectiveness of various systems and the relative costs of the systems both to the United States Government and to the vessel owner.

(Pub. L. 100–688, title IV, § 4201, Nov. 18, 1988, 102 Stat. 4159.)

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§ 2622. Relation to other laws

(a) Effect on Federal and State laws

This chapter does not affect the application of any other Federal or State law, statutory or common, including the Marine Protection, Research, and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.] and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(b) Effect on foreign vessels

This chapter shall be carried out with respect to foreign vessels consistent with the obligations of the United States under international law.

(Pub. L. 100–688, title IV, § 4202, Nov. 18, 1988, 102 Stat. 4159.)

References in Text

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in subsec. (a), is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended, which is classified generally to chapters 27 (§ 1401 et seq.) and 41 (§ 2801 et seq.) of this title and chapters 32 (§ 1431 et seq.) and 32A (§ 1447 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (a), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 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 6901 of Title 42 and Tables.

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§ 2623. Authorization of appropriations

There are authorized to be appropriated \$1,500,000 for each of the fiscal years 1989 and 1990, to carry out this chapter.

(Pub. L. 100–688, title IV, § 4203, Nov. 18, 1988, 102 Stat. 4160.)