

Public Law 100-333
100th Congress

An Act

To prohibit the use of certain antifouling paints containing organotin and the use of organotin compounds, purchased at retail, used to make such paints.

June 16, 1988
[H.R. 2210]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Organotin Antifouling Paint Control Act of 1988".

Organotin
Antifouling
Paint Control
Act of 1988.
Hazardous
materials.
Environmental
protection.
33 USC 2401
note.
33 USC 2401.

SEC. 2. 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 Act is to protect the aquatic environment by reducing immediately the quantities of organotin entering the waters of the United States.

SEC. 3. DEFINITIONS.

33 USC 2402.

For purposes of this Act:

(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 6 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.

33 USC 2403.

SEC. 4. PROHIBITION ON THE APPLICATION OF ORGANOTIN ANTIFOULING PAINTS ON CERTAIN VESSELS.

(a) **PROHIBITION.**—Subject to section 12(d), and except as provided in subsection (b), 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) 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.

33 USC 2404.

SEC. 5. PROHIBITION OF CERTAIN ORGANOTIN ANTIFOULING PAINTS AND ORGANOTIN ADDITIVES USED TO MAKE SUCH PAINTS.

(a) **INTERIM PROHIBITION OF CERTAIN ORGANOTIN ANTIFOULING PAINTS.**—Subject to section 12(d), no person in any State may—

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

(2) apply to a vessel an antifouling paint containing organotin; unless the antifouling paint is certified by the Administrator as being a qualified antifouling paint containing organotin.

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

Maritime
affairs.

SEC. 6. CERTIFICATION.

33 USC 2405.

(a) **INITIAL CERTIFICATION.**—Not later than 90 days after the date of the enactment of this Act, 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 the date of the enactment of this Act 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), 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); 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.

SEC. 7. MONITORING AND RESEARCH OF ECOLOGICAL EFFECTS.

Water.
33 USC 2406.

(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 the date of the enactment of this Act. 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.

Termination
date.
Reports.

(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) **REPORT.**—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) 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).

(e) **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.

(f) **FIVE-YEAR REPORT.**—At the end of the 5-year period beginning on the date of the enactment of this Act, 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—

Safety. (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 9 of this Act and any applicable water quality standards; and

Safety. (3) recommendations for additional measures to protect human health and the environment.

33 USC 2407. **SEC. 8. ALTERNATIVE ANTIFOULANT 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 the date of the enactment of this Act, 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).

33 USC 2408. **SEC. 9. 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 304(a) of the Federal Water Pollution Control Act (33 U.S.C. 1314(a)).

33 USC 2409. **SEC. 10. PENALTIES.**

(a) **CIVIL PENALTIES.**—(1) Any person violating section 4 or 5 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 4 or 5 is liable to the United States Government for the civil penalty assessed under subsection (a). 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 4 or 5 shall be fined not more than \$25,000, or imprisoned for not more than one year, or both.

33 USC 2410. **SEC. 11. OTHER AUTHORITIES; STATE LAWS.**

(a) **OTHER AUTHORITIES OF THE ADMINISTRATOR.**—Nothing in this Act shall limit or prevent the Administrator from establishing a lower permissible release rate for organotin under authorities other than this Act.

(b) **STATE LAWS.**—Nothing in this Act 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 Act.

SEC. 12. EFFECTIVE DATES; USE OF EXISTING STOCKS.

33 USC 2401
note.

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act shall take effect on the date of its enactment.

(b) **TERMINATION OF INTERIM PROHIBITION.**—Section 5(a) 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, the Administrator, not later than 90 days after the date of the enactment of this Act, 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.

Approved June 16, 1988.

LEGISLATIVE HISTORY—H.R. 2210 (S. 1788):

HOUSE REPORTS: No. 100-400 (Comm. on Merchant Marine and Fisheries).

SENATE REPORTS: No. 100-237 accompanying S. 1788 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD:

- Vol. 133 (1987): Nov. 9, considered and passed House.
Dec. 11, considered and passed Senate, amended, in lieu of S. 1788.
Dec. 18, House concurred in Senate amendment with an amendment.
- Vol. 134 (1988): Apr. 18, Senate concurred in House amendment with an amendment.
May 24, House concurred in Senate amendment.