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# BEYOND THE SEA AND *SPECTOR*: RECONCILING PORT AND FLAG STATE CONTROL OVER CRUISE SHIP ONBOARD ENVIRONMENTAL PROCEDURES AND POLICIES

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## I. INTRODUCTION

Like the crack of a rifle, the shattering sound echoes through the inlet as a slab of blue ice sloughs off the face the mountainous glacier. Unfettered, the ice cascades with all the violence of an avalanche into the frigid waters below. Welcome to calving season in Glacier Bay.<sup>1</sup>

Alaska's economy depends on cruise ships to bring tourists to its remote natural attractions like Glacier Bay National Park.<sup>2</sup> Without cruise ships, the majority of Alaska tourists would never experience

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† J.D. Candidate, California Western School of Law, 2008; B.A., Politics & Government, University of Puget Sound, 2004; B.A., Business, University of Puget Sound, 2004. I wish to thank Professor John E. Noyes and the dozens of others whose eyes scoured this article. They are greatly responsible for its significant evolution to its present form. Also, I cannot thank my parents enough for their unfailing support throughout the years. First, at age ten when I announced my desire to work on a cruise ship and now, fifteen years later, as I try to make that childhood dream come to fruition. This Article is dedicated to them, for they are mostly to blame for my consuming cruise ship obsession. Here's to them and all my past and future shipmates who are hypnotized by the sea, ships and "ship life."

1. Calving is the breaking away of a mass of ice from a tidewater glacier or ice shelf. *DICTIONARY OF GEOLOGICAL TERMS* 71 (Robert L. Bates & Julia A. Jackson eds., Anchor Press/Doubleday 1984). Cruise ships sailing the Alaskan Inside Passage itinerary usually spend nine to ten hours cruising the inlets of Glacier Bay National Park and stop at a major tidewater glacier. Glacier Bay National Park and Preserve, Cruise Ships in Glacier Bay, <http://www.nps.gov/glba/planyourvisit/cruise.htm> (last visited May 1, 2007).

2. See *BUS. RESEARCH & ECON. ADVISORS, INT'L COUNCIL OF CRUISE LINES, THE CONTRIBUTION OF THE NORTH AMERICAN CRUISE INDUSTRY TO THE U.S. ECONOMY IN 2005* 42-43 (2006) [hereinafter *BREA*], available at [http://www.iccl.org/resources/2005\\_economic\\_study.pdf](http://www.iccl.org/resources/2005_economic_study.pdf). Cruise industry direct expenditures generated 21,389 jobs and \$792 million in income during 2005. *Id.* at 43. Alaska is ranked fourth in U.S. direct expenditures generated by the cruise industry with \$994 million during the 2005 Alaska season. *Id.* at 42.

the glacier calving phenomenon.<sup>3</sup> And in turn, the cruise industry's livelihood depends on keeping the natural wonders of Alaska and the world pristine, as no one wants to travel to polluted, bygone paradises.<sup>4</sup>

Port states<sup>5</sup> have clear authority to regulate the overboard discharges of foreign-flagged vessels.<sup>6</sup> The main focus of environmental enforcement has typically applied to only overboard activities, but in the aftermath of pollution violation convictions, the port state has used its power to regulate onboard activities on cruise ships through plea agreements establishing environmental compliance programs.<sup>7</sup> This article examines the jurisdictional struggle between port and flag states<sup>8</sup> to control cruise ship environmental activities that do not directly affect the environment of the port state or its waters. The Supreme Court's plurality decision in *Spector v. Norwegian Cruise Line Ltd.*<sup>9</sup> raises questions of traditional flag state jurisdiction. Theoretically, the *Spector* decision would bring purely onboard activities within the reach of port state control and would inhibit the autonomy of an industry that is cognizant of its environmental responsibility and obligations. The article contends

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3. During the height of the Alaska summer season, 45,000 tourists each day pass through Alaskan waters on cruise ships. Andrew Schulkin, Note, *Safe Harbors: Crafting an International Solution to Cruise Ship Pollution*, 15 GEO. INT'L ENVTL. L. REV. 105, 106 (2002).

4. In 2005, about 3.2 million cruise passengers visited Alaskan ports. BREA, *supra* note 2, at 42.

5. The term "port state" refers to the authority of the country in which a port of call (i.e., a cruise ship stop) is located. Port state control "operates on the basis that when ships call at ports in different countries, those countries have the right to inspect them to ensure that they are seaworthy." EUROPEAN MAR. SAFETY AGENCY, IMPROVING PORT STATE CONTROL 2 (2007), available at <http://www.emsa.europa.eu/Docs/psc/leaflet-psc.pdf>.

6. See *infra* notes 32-39 and accompanying text.

7. See *infra* notes 86-94 and accompanying text. The latest example of state and federal efforts to control cruise ship waste is the Alaskan state program requiring rangers to inspect ships' waste disposal methods and to make sure the ship is not polluting the state's waters. Charles Q. Choi, *Cruise Lines Face More Policing of Waste Disposal*, N.Y. TIMES, Mar. 25, 2007, at TR 10(L). A ballot referendum passed in 2006 created the ranger program. *Id.* The program applies to ships with more than 250 passengers and is funded by a four dollar passenger tax. *Id.* The four dollars also "pay[s] for satellite transponders to track the ships' movements in and out of state waters." *Id.* The tax is expected to raise \$3.6 million annually, although the ranger program is estimated to cost about \$5 million a year. *Id.*

8. "The common legal understanding of 'flag state' is the administration or the government of the state whose flag the ship is entitled to fly." MAR. INT'L SECRETARIAT SERVS., SHIPPING INDUSTRY GUIDELINES ON FLAG STATE PERFORMANCE 4 n.1 (2d ed. 2006), available at <http://www.marisec.org/flag-performance/flag-performance.pdf>.

9. See *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 129 (2005) (holding that even though flag state law generally governs internal ship affairs, the foreign-flagged ships were within Title III's "public accommodation" and "specific public transportation" provisions).

that cruise ships' onboard environmental activities should remain industry-regulated and controlled. First, the article explores the industry's pollution problems of the past, then argues that present environmental costs, port state regulations, and customer concern provide a strong enough incentive for the industry to faithfully regulate shipboard environmental activities. Cruise ships now consistently meet end-of-pipe regulations and standards, thus making any further interference with onboard operations, policies, and pollution prevention procedures unwarranted.<sup>10</sup>

The only effective and efficient way to preserve the last desirable portages on Earth is to give the cruise industry leeway in developing and managing cruise ships' onboard procedures and policies. Genuine cruise industry commitment and efforts in environmental stewardship and conservation will not materialize in a setting where punitive regulations and restrictions control the purely onboard activities and operations of cruise ships. Powerful offboard motivators such as monetary penalties and negative publicity induce the cruise ships to change their ways and ultimately shape the ships' onboard procedures and policies. These motivators negate the need for port states to regulate purely onboard activities.

The article has five parts plus the introduction and the conclusion. Part II explains the how cruise ships utilize foreign-flag registries and presents an overview of the conflict between port and flag state jurisdiction. Part III examines the history of cruise ship pollution and discusses the different types of cruise ship wastes and environmental compliance procedures. Part IV gives an overview of the current environmental regulations that affect cruise ships, focusing on onboard regulations. Part V considers the impact of *Spector* on environmental measures onboard foreign-flagged cruise ships. Part VI explores how recent voluntary industry compliance

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10. End-of-pipe regulates pollution after it has occurred and focuses on the "identification, processing and disposal of discharges or waste." Daniel Chudnovsky & Andrés López, *Environmental Management and Innovative Capabilities in Argentine Industry*, in *INDUSTRIAL INNOVATION AND ENVIRONMENTAL REGULATION* 81 n.1 (Saeed Parto & Brent Herbert-Copley eds., 2007). The cruise industry has moved past the pre-probation era where command and control regulations were the only means to gain environmental progress. Email from Cruise Line Environmental Compliance Insider to Asia Wright (May 3, 2007, 08:36 PST) (on file with author) (This information comes from email correspondence with a cruise company employee who wished to remain anonymous). The industry now recognizes that the business imperative of environmental protection is more productive. *Id.* A panel of researchers organized by the nonprofit group Conservation International and the industry group International Council of Cruise Lines (ICCL) said in 2006 that "purified wastewater from ships in motion had negligible environment impact." Choi, *supra* note 7, at TR 10(L).

efforts have been effective in leading to progressive environmental practices and reducing pollution incidents, thus making onboard regulations cumbersome and possibly harmful to the industry's new attitude toward environmental stewardship.

## II. PORT AND FLAG STATES

### A. Ships' Registry

The world's oceans cover 70% of the Earth's surface.<sup>11</sup> Increasingly, traveling across these oceans by cruise ship is proving to be the preferred mode of transportation.<sup>12</sup> Despite the mammoth sizes of modern cruise ships, shipyards around the globe cannot keep up with demand for new ships.<sup>13</sup> As of 2004, there were more than 230 cruise ships worldwide with another 40 to 60 ships to be delivered by 2006.<sup>14</sup> The largest ships sailing today carry more than five thousand passengers and crew.<sup>15</sup> As ships grow in size, so does business. Every year the cruise industry generates billions of dollars for the U.S. economy.<sup>16</sup> Currently, twelve companies represent the

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11. Eric V. Hull, Comment, *Soiling the Sea: The Solution to Pollution is Still Dilution—A Re-Evaluation of the Efficacy of 40 C.F.R. § 122.3 and Annex IV of MARPOL*, 3 BARRY L. REV. 61, 62 (2002) (examining the development of the cruise industry in North America).

12. See Ron O'Grady, *Cruise Ships Threaten Disaster in Antarctic*, N.Z. HERALD, Sept. 13, 2006 (stating that cruise ships are the major trend in travel and represent the fastest growing sector of the tourism industry).

13. *Id.* In the last few decades, the cruise ships have truly reflected their nickname of "floating cities." Cruise ships currently under construction tower eighteen decks in height to accommodate 3600 passengers and 1400 crew members. *Id.* Between 2000 and 2007, eighty-eight new cruise ships will have been introduced. Choi, *supra* note 7, at TR 10(L).

14. Aaron Courtney et al., *Multijurisdictional Regulation of Cruise Ship Discharges*, 19 NAT. RESOURCES & ENVTL. 50, 50 (2004).

15. *Id.* Currently, Royal Caribbean Cruises owns the largest ship in the world, *Freedom of the Seas*, weighing in at 160,000 tons with the capacity to carry 4370 passengers. See Associated Press, *Royal Caribbean Orders Largest-Ever Cruise Ship*, MSNBC.com, Feb. 6, 2006, <http://www.msnbc.msn.com/id/11199685/>. However, *Freedom of the Seas* will seem like a toy compared to the monster ship Royal Caribbean expects to add to the fleet in Fall 2009. Known now only as "Project Genesis," the ship will be the world's largest and most expensive cruise ship (with a price tag of \$1.24 billion and holding up to 6400 passengers). *Id.*

16. U.S. ENVTL. PROT. AGENCY, CRUISE SHIP WHITE PAPER 3 (2000) [hereinafter CRUISE SHIP WHITE PAPER], available at [http://www.epa.gov/owow/oceans/cruise\\_ships/white\\_paper.pdf](http://www.epa.gov/owow/oceans/cruise_ships/white_paper.pdf); see also, Hull, *supra* note 11, at 65 ("The fastest growing segment of the industry is based in North America. In the U.S., passenger load increased by nearly 60% from 1990-2000, reaching 6.9 million passengers in 2000. Combined, the industry contributed \$17.9 billion to the U.S. economy in 2000, while creating 257,000 jobs throughout the country."). In 2006 the number of passengers reached to more than 12 million, a great increase from about half a million in 1970. Choi, *supra* note 7, at TR 10(L).

majority of cruise ship activity in U.S. waters.<sup>17</sup> Embarking from at least sixteen U.S. ports, their ships travel to numerous foreign destinations.<sup>18</sup>

Cruise ships must have a country of registry to engage in international commerce and operate in international waters.<sup>19</sup> In addition to requiring compliance with internationally recognized conventions, these flag states typically have certain crew nationality, ship owner citizenship and ship building requirements for vessels that sail under their flags.<sup>20</sup>

Generally, the shipping industry gravitates toward countries with open registries.<sup>21</sup> A ship is considered to be using a “flag of convenience” or flagged under an open registry when it is registered in a country other than the beneficial ship owner’s country.<sup>22</sup> The International Transport Workers’ Federation (ITF) lists thirty-two countries as flag-of-convenience providers.<sup>23</sup> This registration practice in commercial shipping was historically used to conceal criminal or questionable activities, but now it is used primarily for

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17. The top twelve companies listed alphabetically are: Carnival Cruises, Celebrity Cruises, Cunard Line, Europa Cruises Corporation, Holland America Line, International Shipping Partners, La Cruise, Norwegian Cruise Line, Palm Beach Casino Line, Princess Cruises, Royal Caribbean International, and Tropicana Cruises. CRUISE SHIP WHITE PAPER, *supra* note 16, at 3.

18. Courtney et al., *supra* note 14, at 50.

19. United Nations Convention on the Law of the Sea, art. 94, 110(1)(d), Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS] (“Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship . . . is not justified in boarding it unless there is reasonable ground for suspecting that . . . the ship is without nationality . . .”), available at [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf); see also Elmer C. Maddy, *Acquisition and Ownership of Vessels*, 47 TUL. L. REV. 489, 489 (1973) (“[A] ship without a flag and without ship’s papers is without nationality and therefore could not enjoy protection from any State.”).

20. International Council of Cruise Lines, International Maritime Industry—Background & Facts, <http://www.iccl.org/faq/imi.cfm> (last visited Jan. 7, 2007) [hereinafter IMI].

21. See Maria J. Wing, Comment, *Rethinking the Easy Way Out: Flags of Convenience in the Post-September 11th Era*, 28 TUL. MAR. L.J. 173, 174-75 (2003) (addressing the complications of Flags of Convenience in fostering national security).

22. See Stephen Thomas, Jr., *State Regulation of Cruise Ship Pollution: Alaska’s Commercial Passenger Vessel Compliance Program as a Model for Florida*, 13 J. TRANSNAT’L L. & POL’Y 533, 539 (2004).

23. International Transport Workers’ Federation, FOC Countries, <http://www.itfglobal.org/flags-convenience/flags-convenien-183.cfm> (last visited Jan. 7, 2007) [hereinafter FOC Countries].

economic reasons and sanctuary from restrictive regulatory environments.<sup>24</sup>

All the major cruise lines sailing to U.S. ports are registered under non-U.S. flags.<sup>25</sup> The most popular registries are usually developing nations, such as Panama, Liberia, Malta and the Bahamas, all of which rely economically on the revenue from vessel registration fees.<sup>26</sup> In 2000, 90 of the world's 223 cruise ships were registered in Panama or Liberia.<sup>27</sup> The largest cruise line group in the world, Carnival Corporation (incorporated in Panama), registers its ships in Panama, Bahamas, Netherlands, United Kingdom, Bermuda, and Italy.<sup>28</sup> Almost 90% of the commercial vessels calling on U.S. ports are foreign-flagged.<sup>29</sup> Non-U.S. flag registries dominate because U.S. laws are generally the most restrictive of all maritime nations.<sup>30</sup> Convenience registry critics feel that cruise lines choose developing nations' registries because as flag states, these nations are not only reluctant to discipline major contributors to their economies, but also do not have the resources to enforce regulations or even punish polluters.<sup>31</sup>

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24. See H. Edwin Anderson, III, *The Nationality of Ships and Flags of Convenience: Economics, Politics, and Alternatives*, 21 TUL. MAR. L.J. 139, 157 (1996). Criminal or questionable activities usually involved alcohol. During the 1920s, a few U.S. vessels, including two cruise liners, were reflagged in Panama to avoid U.S. laws banning alcohol retail. *Id.* at 156. As far as money incentives, vessels with open registries enjoy low taxes, low fees, and no crew requirements. LOUIS B. SOHN & JOHN E. NOYES, *CASES AND MATERIAL ON THE LAW OF THE SEA* 107 (2004).

25. See ROSS A. KLEIN, *CRUISE SHIP BLUES: THE UNDERSIDE OF THE CRUISE SHIP INDUSTRY* 139 (2002).

26. Schulkin, *supra* note 3, at 115.

27. *CRUISE SHIP WHITE PAPER*, *supra* note 16, at 3.

28. Thomas, *supra* note 22, at 540. Carnival Corporation operates over sixty ships worldwide including Carnival Cruise Lines, P&O Princess, Holland-America Line, and Costa Cruises. *Id.* at 538. The second largest cruise company, Royal Caribbean Cruises (incorporated in Liberia) flags its ships in Liberia, Norway, and Panama. *Id.* at 540.

29. IMI, *supra* note 20.

30. Hull, *supra* note 11, at 67. In addition to requiring the vessel owner to be a U.S. citizen, 75% of the U.S. flagged vessel's crew must be U.S. citizens or residents and the hull, superstructure and majority of the interior must be constructed in U.S. ship yards. See IMI, *supra* note 20.

31. Schulkin, *supra* note 3, at 115. These critics see foreign-flagged ships as a means for the cruise industry to avoid U.S. environmental laws. Hull, *supra* note 11, at 67.

### B. Jurisdictional Conflict

Port and flag states have concurrent jurisdiction over a vessel in territorial seas.<sup>32</sup> When a ship is operating on the high seas, the nation of registry has exclusive jurisdiction over the ship flying its flag.<sup>33</sup> However, a port state retains the power to regulate pollution discharges from vessels sailing through a port state's territorial sea.<sup>34</sup>

The United Nations Convention on the Law of the Sea (UNCLOS) embodies the main source of international law outlining port state jurisdiction over the seas.<sup>35</sup> Most importantly, UNCLOS provides that foreign vessels are subject to laws of a port state when they are within the port state's territorial waters.<sup>36</sup> Aside from this restriction, UNCLOS enables a flag state to extend its nationality to its registered ships and thus gives the flag state "absolute jurisdiction over the construction, design and manning standards of its flag vessels."<sup>37</sup> A port state can only interfere with a foreign-flagged vessel that has released pollutants in the port state's territorial sea or exclusive economic zone.<sup>38</sup> It is through UNCLOS and customary international laws that flag states obtain sole jurisdiction to initiate legal disciplinary actions against any flag vessels involved in a pollution incident on the high seas.<sup>39</sup>

## III. HISTORY OF CRUISE SHIP POLLUTION

Several environmental groups believe the cruise industry has a legacy of polluting our oceans.<sup>40</sup> Indeed, the largest environmental

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32. Schulkin, *supra* note 3, at 114, 120; *cf.* UNCLOS, *supra* note 19, art. 3 (stating that every state can establish the extent of its territorial sea up to twelve nautical miles).

33. UNCLOS, *supra* note 19, art. 92; Schulkin, *supra* note 3, at 114, 120.

34. UNCLOS, *supra* note 19, art. 21; Schulkin, *supra* note 3, at 114, 120.

35. *See* Schulkin, *supra* note 3, at 120. *See generally* UNCLOS, *supra* note 19.

36. UNCLOS, *supra* note 19, art. 92; Schulkin, *supra* note 3, at 120 ("A flag state retains exclusive jurisdiction over vessels flying its flag except where UNCLOS or other international agreements grant jurisdiction to another state.").

37. William A. Goldberg, *Cruise Ships, Pollution, and International Law: The United States Takes On Royal Caribbean Cruise Lines*, 19 WIS. INT'L L.J. 71, 76 (2000) (examining the *United States v. Royal Caribbean Cruises Ltd.*, 11 F.Supp.2d 1358 (S.D. Fla. 1998) decision and how the court avoided the jurisdiction issue).

38. *See* UNCLOS, *supra* note 19, art. 19; Schulkin, *supra* note 3, at 120.

39. Goldberg, *supra* note 37, at 76-77.

40. LINDA NOWLAN & INES KWAN, W. COAST ENVTL. L., CRUISE CONTROL—REGULATING CRUISE SHIP POLLUTION ON THE PACIFIC COAST OF CANADA 28 (2001), available at <http://www.wcel.org/wcelpub/2001/13536.pdf> (citing Bluewater Network's estimate that cruise ships are responsible for 77% of maritime pollution). *See, e.g.*, Bluewater Network, Safeguarding the Seas, [http://www.bluewaternet.org/campaign\\_ss\\_cruises.shtml](http://www.bluewaternet.org/campaign_ss_cruises.shtml) (last visited

finer ever levied in the United States have been given to the cruise industry.<sup>41</sup> Although cruise ships were a small part of the problem in the past, they now have the opportunity to become part of the solution to ocean pollution.<sup>42</sup>

#### A. *A Sea of Pollution Incidents*

Illegal ocean-dumping practices gained mass media exposure when two passengers videotaped Princess Cruises' employees throwing plastic trash bags into the Atlantic Ocean.<sup>43</sup> Initially, changing industry waste disposal habits proved to be a larger challenge than some anticipated. To combat the unseemly trend, the United States took a different approach to enforce pollution laws. *United States v. Royal Caribbean Cruises Ltd.*<sup>44</sup> illustrates the new wave of pollution enforcement in the U.S.

In 1993, the U.S. Coast Guard caught Royal Caribbean's *Nordic Empress* dumping oil in Bahamian waters as it headed to Miami.<sup>45</sup> In

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Oct. 29, 2007); Earthjustice, Global Shipping and the Cruise Industry, <http://www.earthjustice.org/library/background/ocean-pollution-global-shipping-and-the-cruise-industry.html> (last visited Nov. 28, 2007); Oceana, Protecting the World's Oceans: Stop Cruise Ship Pollution, <http://www.oceana.org/north-america/what-we-do/stop-cruise-ship-pollution> (last visited Oct. 29, 2007). Such critics believe the foreign-flag system is insufficient in policing and enforcing pollution regulations since statistics show foreign-flag states act upon less than two percent of pollution-dumping cases referred to them by the U.S. Department of State. See Hull, *supra* note 11, at 68; see also U.S. GEN. ACCT. OFF., REP. TO CONG. REQUESTERS, GAO/RCED-00-48, MARINE POLLUTION: PROGRESS MADE TO REDUCE MARINE POLLUTION BY CRUISE SHIPS, BUT IMPORTANT ISSUES REMAIN 9, 40-52 (2000) [hereinafter GAO], available at <http://www.gao.gov/archive/2000/rc00048.pdf> (reporting that between 1993-1998 there were 104 confirmed cases of illegal discharges of oil, garbage and hazardous wastes into U.S. waters and nearby seas). However, this is probably because the majority of registry states are "ill-equipped or unmotivated to pursue enforcement." Hull, *supra* note 11, at 68.

41. Hull, *supra* note 11, at 68 ("Foreign-flagged cruise ships sailing in U.S. waters have a poor record of compliance with both U.S. and international environmental laws.")

42. Northwest Cruise Ship Association, Cruising for the Facts—Cruise Industry Myths and Facts, <http://nwcruiseship.org/group.cfm?menuId=95> (last visited May 1, 2007) ("The ocean is our home. . . . [I]ts very vitality depends on clean, healthy oceans and pristine marine sanctuaries. Clearly, it is in our inherent business interest as well as the public interest to be the strongest possible stewards of our industry's lifeblood—the environment."). There are no reported beach closures due to cruise ship contamination. *Id.* Actually, beach warnings and closures result from land wastewater discharges or runoff by local communities. *Id.*

43. This led to the United States Attorney's Office in Miami levying \$500,000 in fines, the largest ocean-dumping penalty to date in 1993, against Princess Cruises, Inc. Rebecca Becker, Note, *MARPOL 73/78: An Overview in International Environmental Enforcement*, 10 GEO. INT'L ENVTL. L. REV. 625, 625 (1998).

44. *United States v. Royal Caribbean Cruises Ltd.*, 11 F. Supp. 2d 1358, 1361 (S.D. Fla. 1998) (denying RCCL's motion to dismiss 18 U.S.C.S. § 1001 violation charges).

45. *Id.* at 1361.

an unprecedented defense, officials at Royal Caribbean contended that the company had immunity from criminal prosecution in the United States because its ships sail under foreign flags.<sup>46</sup> Pursuant to the International Convention for the Prevention of Pollution from Ships (“MARPOL”),<sup>47</sup> only Liberia had jurisdiction to prosecute Royal Caribbean because the *Nordic Empress* sailed under a Liberian flag.<sup>48</sup> Liberia accepted the company’s claims that no dumping occurred and asked the Coast Guard to “erase the incident from its records.”<sup>49</sup>

Nonetheless, using a novel tactic to exert jurisdiction over the *Nordic Empress*, the U.S. Department of Justice indicted Royal Caribbean, not for violating dumping laws, but for making false statements to the U.S. Coast Guard.<sup>50</sup> True, the ship was untouchable because the discharges occurred in international waters, but the company still had to answer to the United States for presenting the Coast Guard in Miami with false oil record books omitting the discharges.<sup>51</sup> The cruise line eventually paid \$9 million in fines.<sup>52</sup> After *Royal Caribbean Cruises Ltd.*, cruise companies’ strongest defense was deflated. The cruise industry would no longer be able to assert that the United States lacked jurisdiction to prosecute in cases where cruise lines lied about discharges in foreign waters.<sup>53</sup>

Granted, *Royal Caribbean Cruises Ltd.* is not the only pollution scandal, but it marked the beginning of a string of successful prosecutions against cruise lines. Royal Caribbean again faced penalties in 1999 when it pleaded guilty to twenty-one federal felony

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46. Douglas Frantz, *Gaps in Sea Laws Shield Pollution by Cruise Lines*, N.Y. TIMES, Jan. 3, 1999, § 1, at 1.

47. International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, 1340 U.N.T.S. 184, as amended by Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, Feb. 17, 1978, 1340 U.N.T.S. 61 [hereinafter MARPOL]. MARPOL is the acronym formed by the first three letters of “marine” and “pollution.” See *id.*

48. Goldberg, *supra* note 37, at 71.

49. *Id.*

50. United States v. Royal Caribbean Cruises Ltd., 11 F. Supp. 2d 1358, 1361 (S.D. Fla. 1998); see also Frantz, *supra* note 46, § 1, at 1 (explaining that the *Nordic Empress* discharged waste and that RCCL created false records to hide the fact).

51. MARPOL, *supra* note 47, art. 4(2)-(4); Goldberg, *supra* note 37, at 71-72 (“While making a false statement to the Coast Guard is a crime in the United States, this was one of the first times that the statute was used in this manner.”).

52. Laura K. S. Welles, Comment, *Due to Loopholes in the Clean Water Act, What Can a State Do to Combat Cruise Ship Discharge of Sewage and Gray Water?*, 9 OCEAN & COASTAL L.J. 99, 103 (2003).

53. Goldberg, *supra* note 37, at 90.

violations for rigging ship pipes to bypass pollution monitoring equipment.<sup>54</sup> The company had to pay \$27 million in criminal fines.<sup>55</sup> In 2002, Carnival Corporation pleaded guilty to criminal charges for falsifying records to cover up evidence that six of its ships dumped oily bilge water into the ocean from 1996 until 2001.<sup>56</sup> Additionally, it was discovered that Carnival engineers circumvented the 1980 Prevention of Pollution from Ships Act<sup>57</sup> by intentionally flushing clean water past oil content meters to trick the sensors into measuring the clean water rather than the unfiltered bilge waste dumped into the sea.<sup>58</sup>

### B. Types of Pollution

UNCLOS defines “pollution of the marine environment” as the “introduction by man, directly or indirectly, of substances or energy into the marine environment . . . result[ing] . . . in such deleterious effects as harm to living resources and marine life, hazards to human health, [and] hindrance to marine activities . . . .”<sup>59</sup> Pollutants, however, are inherent in the operation of any vessel. To effectively and safely operate, “all vessels, including cruise ships, discharge wastes.”<sup>60</sup> Generally, modern cruise ships have garbage treatment

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54. Edwin McDowell, *For Cruise Ships, A History of Pollution*, N.Y. TIMES, June 16, 2002, § 5, at D3. The company also confessed to illegally discharging dry-cleaning chemicals into Alaskan, Puerto Rican, and Floridian waters. *Id.*

55. Meredith Dahl, *The Federal Regulation of Waste from Cruise Ships in U.S. Waters*, 9 ENVTL. L. 609, 630 (2003).

56. McDowell, *supra* note 55, § 5, at D3.

57. Prevention of Pollution from Ships Act, 33 U.S.C. §§ 1901-1915 (2005). This Act implemented the provisions of MARPOL. *Id.*

58. McDowell, *supra* note 54, § 5, at D3 (“The Carnival Corporation was ordered to pay \$18 million in fines and perform community service, received five years’ probation and must submit to a court-supervised worldwide environmental-compliance program for each of its cruise ships.”). Royal Caribbean engineers also used this tactic to discharge waste directly into the sea on a regular and routine basis. KLEIN, *supra* note 25, at 88. To bypass the oily water separator (anti-pollution equipment), three methods were used: 1) a concealed connection beneath the engine-room deck plates allowing bilge water to be pumped overboard via the clean bilge system ejector pump; 2) a pipe routing waste from the bilge waste tank to the overboard discharge pipe downstream from the oily waste separator; 3) pumping bilge wells directly overboard with the ejector pump. *Id.* A Coast Guard investigation revealed that allegedly while in U.S. ports, the ejector pump bypass system’s rubber hose would be removed, and then the connection between the clean and oily bilge systems would be closed off with “metal plate to conceal the existence and use of the hose to bypass the oily water separator.” *Id.* at 88-89 (citing ‘Sovereign of the Seas’ Operator in Two Key Defensive Moves Against Coast Guard Oil Dumping Charges, LLOYD’S LIST, Dec. 23, 1996, at 3).

59. UNCLOS, *supra* note 19, art. 1.

60. Courtney et al., *supra* note 14, at 50.

systems, including compactors, incinerators, pulpers, and shredders.<sup>61</sup> Even with these systems, cruise ships face storage problems at sea because of the sheer amount of garbage generated daily and the fact that the port reception facilities are unable to accommodate the cruise ships.<sup>62</sup> Every twenty-four hours, even “small” cruise ships with six hundred crew members and 1,400 passengers produce several tons of waste, which has to be stored in some way.<sup>63</sup>

There are six distinct categories of cruise ship waste: sewage, gray water, air emissions, hazardous waste, solid waste, and oily bilge water.<sup>64</sup> Sewage or “black water” is the waste collected from ship toilets.<sup>65</sup> Black water is more concentrated than domestic sewage because the cruise ship sewage system uses less water than is used on land.<sup>66</sup> The water collected from sinks, showers, galleys, and laundry is considered “gray water.”<sup>67</sup> Cruise ship engines release air pollutants such as carbon dioxide, carbon monoxide, and particulate matter.<sup>68</sup> Hazardous waste on board is generated by the ships’ dry cleaners, photo processing labs, and hair salons.<sup>69</sup> International laws prohibit dumping solid waste into the ocean.<sup>70</sup> Oily bilge water is

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61. Dahl, *supra* note 55, at 617.

62. *Id.*

63. O’Grady, *supra* note 12.

64. Schulkin, *supra* note 3, at 109. Ballast water is another type of ship discharge. Vessels use ballast water, which is seawater, to provide stability and adjust the vessel’s draft in loading situations. Uniform National Discharge Standards, Acronyms and Definitions, <http://unds.bah.com/acronyms.html> (last visited May 3, 2007). Ballast water can contain pollutants, such as oil, and is the main source of non-native species introductions into coastal and estuarine waters. Hull, *supra* note 11, at 82 (“Yet, with few exceptions, the discharge of ballast water remains unregulated.”).

65. Schulkin, *supra* note 3, at 109-10. The germs contained in sewage can “contaminate shellfish beds and harm other life, while phosphates, nitrates and other wastewater compounds can trigger huge growths of algae that cloud the water, reduce oxygen, smother corals and kill fish.” Choi, *supra* note 7, at TR 10(L).

66. Nowlan & Kwan, *supra* note 41, at 16 (“During peak summer season, with an average of 20 ships carrying 2,000 passengers each, the daily discharge of sewage is approximately 2.5 million gallons per day (9.5 million liters), equivalent to the entire amount of sewage discharged in the city of Juneau.”).

67. Schulkin, *supra* note 3, at 110.

68. *Id.* (“Ships may also release air pollution if they incinerate their solid waste.”). The biggest issues with air emission pollutants involve sulfur dioxide, particular matter, and oxides of nitrogen (a smog precursor). Email from Cruise Line Environmental Compliance Insider to Asia Wright, *supra* note 10.

69. Schulkin, *supra* note 3, at 111 (“These wastes are supposed to be stored, offloaded at port, and then properly disposed of on land.”).

70. Even though plastic disposal is prohibited, plastic finds its way into the black water system, and from there, into the ocean. GAO, *supra* note 41, at 34. A third-party environmental audit found that passengers flushed plastic products, such as toothbrushes,

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created by the operation of the ship's engines, steam systems and evaporator dumps and then accumulates in the lowest part of the ship's hull.<sup>71</sup>

Because each waste category is stored and disposed of differently, laws generally treat and regulate ship waste separately.<sup>72</sup> During a weeklong voyage, a typical cruise ship produces more than eight tons of solid waste, one million gallons of gray water, and about 210,000 gallons of sewage.<sup>73</sup> Current U.S. and international laws legally permit vessels to discharge treated, or in some cases, untreated sewage and other liquid wastes into the sea.<sup>74</sup>

#### IV. GOVERNING ENVIRONMENTAL REGULATIONS

##### A. Discharge Regulation Overview

In general, there are several international treaties, such as the International Convention for the Prevention of Pollution from Ships

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plastic bottles, disposable razors and feminine hygiene products, down the toilet. *Id.* The approved toilet vacuum systems on board cruise ships usually cannot remove plastic debris from the black water waste unless they are installed with special filters. *Id. But cf.* Email from Cruise Line Environmental Compliance Insider to Asia Wright, *supra* note 10 (explaining that this is not true for all cruise lines because the ships' traditional Marine Sanitation Devices (MSD) have a filter process that takes plastics out).

71. Schulkin, *supra* note 3, at 111 ("Both the United States and Canada prohibit the discharge of oily bilge water with an oil content above 15 parts per million. . . . Violations of international oil pollution standards still occur when oil separators malfunction or are deliberately disconnected by the crew."). According to a 2000 Environmental Protection Agency report, a ship can produce more than 25,000 gallons of oily bilge water from engines and machinery a week. Choi, *supra* note 7, at TR 10(L).

72. See Schulkin, *supra* note 3, at 109.

73. PEW OCEANS COMM'N, AMERICA'S LIVING OCEANS: CHARTING A COURSE FOR SEA CHANGE 4 (2003), available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Protecting\\_ocean\\_life/env\\_pew\\_oceans\\_final\\_report.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Protecting_ocean_life/env_pew_oceans_final_report.pdf).

74. Hull, *supra* note 11, at 61-62 ("For example, untreated black water may be freely discharged into U.S. waters beyond three miles from shore, while both gray water and ballast water may be freely discharged into U.S. coastal waters without regard to distance from shore."). The great majority of cruise ships treat their water with state of the art treatment systems using either ultra filtration or reverse osmosis. Email from Cruise Line Environmental Compliance Insider to Asia Wright, *supra* note 10.

(MARPOL)<sup>75</sup> and the London Convention<sup>76</sup> governing vessel-based pollution discharges.<sup>77</sup>

MARPOL is the foremost international convention that addresses the discharge of pollutants at sea, whether by accident or ordinary use.<sup>78</sup> MARPOL's provisions include standards governing everything from equipment to maximum discharge levels, as well as prohibitions of ships in special areas.<sup>79</sup> Unlike MARPOL, which generally regulates incidental waste discharges, the London Convention regulates deliberate waste discharges.<sup>80</sup> The London Convention is implemented in the United States through the Ocean Dumping Act.<sup>81</sup> Under the London Convention, the dumping of gray water wastes is allowed as long as a special permit is obtained and certain conditions are met.<sup>82</sup>

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75. MARPOL, *supra* note 47. The European Union, the United States and many Caribbean regulators have adopted MARPOL marine pollution regulations. Lee Hayhurst, *Are Cruising's Ethics All at Sea?*, TRAVEL WKLY., Sept. 8, 2006, at 33.

76. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Dec. 29, 1972, 26 U.S.T. 2403, 1046 U.N.T.S. 120 [hereinafter London Convention].

77. Although no current national cruise ship pollution legislation exists in the United States, several states have mandated different requirements to address cruise ship discharges. *Cruise Ship Industry Cites Voluntary Efforts in Opposing Mandates*, INSIDE GREEN BUS., Oct. 4, 2006 ("For example, California has passed no-discharge laws, Alaska has set strict effluent standards, Maine requires discharge permits, Hawaii requires reporting of discharges, and Washington and Florida have entered into voluntary agreements with industry to reduce cruise ship pollution."). States such as Alaska, Maine and California have taken the direction of passing strict environmental standards for the industry. Usually, this means no dumping in waters near the states' shores. Editorial, *Laws Should Govern Cruise Ship Industry*, HONOLULU ADVERTISER, Feb. 18, 2005, at 16A.

78. Tasha J. Power, Comment, *Vessel-Based Pollution: Major Developments in 2004*, COLO. J. INT'L ENVTL. L. & POL'Y 153, 155 (2004); compare MARPOL, *supra* note 48 (regulating the incidental discharge of waste), with London Convention, *supra* note 77 (regulating only the deliberate discharge of waste from vessels). The Convention is actually a combination of two treaties, drafted in 1973 and 1978, respectively, during meetings of the International Maritime Organization (IMO). Schulkin, *supra* note 3, at 121. Members of the United Nations formed the IMO as a multinational maritime organization to impose strict liquid waste emission polices and guidelines. *Id.*; see Hayhurst, *supra* note 75, at 33. Originally, the 1948 Geneva United Nations Maritime Conference created the IMO to encourage cooperation between ship-owning nations; however, today the IMO advances the "twin goals of 'safe shipping and cleaner oceans.'" Goldberg, *supra* note 37, at 74 (quoting Becker, *supra* note 43, at 627).

79. Power, *supra* note 78, at 155-56.

80. *Id.* at 157; see also IMO, Frequently Asked Questions, [http://www.imo.org>About/mainframe.asp?topic\\_id=774](http://www.imo.org>About/mainframe.asp?topic_id=774) (last visited Jan. 21, 2007).

81. 33 U.S.C. § 1402(f) (2005); see also Courtney et al., *supra* note 14, at 52.

82. London Convention, *supra* note 76, art. III; see Power, *supra* note 78, at 157-58 ("The 1996 Protocol to the London Convention [LC 96] is more restrictive than [LC 72], and it will

The comprehensive international agreements MARPOL and the London Convention create obligations for states to follow in preventing vessel pollution.<sup>83</sup> However, the concern of this article is not the regulations applying to overboard discharges, but environmental regulations applying to only onboard activities. Discharges have been the primary focus of environmental enforcement; however, in the wake of cruise ship convictions and plea agreements, the port state has become more involved in overseeing and regulating onboard activities which have traditionally been left to the flag state authority.

### *B. Onboard Regulations*

A port state enjoys jurisdiction and authority to regulate ship activities such as discharges because discharges affect the health of the port state's ecosystem and local fishing sector. Yet it is unclear whether the port state is justified in regulating purely onboard activities such as onboard environmental procedures and waste management plans.

Despite the blurring of jurisdictional boundaries, several U.S. District Courts mandated that three cruise companies follow environmental compliance plans after the companies pled guilty to marine discharge violations occurring from 1993 through 1998.<sup>84</sup> First, Royal Caribbean in 1998 agreed to implement a comprehensive Environmental Compliance Program controlling onboard vessel practices of storage, treatment and waste disposal streams.<sup>85</sup> Eventually, Royal Caribbean would plead guilty to twenty-one felony counts and agree to pay \$18 million in fines.<sup>86</sup> Later that year, Holland America Line was convicted for discharging oily waste into

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replace [LC 72] upon its entry into force. In particular, [LC 96] creates a 'reverse list' under which *all* dumping is prohibited unless specifically allowed.") (emphasis in original).

83. Schulkin, *supra* note 3, at 119.

84. John F. Cooney, *Multi-Jurisdictional and Successive Prosecution of Environmental Crimes: The Case for a Consistent Approach*, 96 J. CRIM. L. & CRIMINOLOGY 435, 443-44 (2006). The plans were a condition set forth in the defendant companies' plea agreements. *Id.*

85. Plea Agreement at 1-3, *United States v. Royal Caribbean Cruises Ltd.*, 11 F. Supp. 2d 1358 (S.D. Fla. 1998) (No. 98-103-CR); *see also* Cooney, *supra* note 85, at 442. The charges and fines among the six U.S. Attorneys' Offices were as follows: Southern District of Florida, four counts, \$3 million; Southern District of New York, four counts, \$3 million; Central District of California, three counts, \$3 million; District of Alaska, seven counts, \$6.5 million; District of the Virgin Islands, two counts, \$1.5 million; District of Puerto Rico, one count, \$1 million. Cooney, *supra* note 85, at 443.

86. Plea Agreement at 7-19, *United States v. Royal Caribbean Cruises Ltd.*, No. CR 99-167 (C.D. Cal. June 21, 1999); *see also* Cooney, *supra* note 85, at 443.

U.S. waters, thus violating the Act to Prevent Pollution from Ships.<sup>87</sup> Along with paying a \$1 million fine and donating another \$1 million to the National Parks Foundation, the company was placed on five years of probation.<sup>88</sup> The terms of the probation required the establishment of a court supervised, company-wide environmental compliance program.<sup>89</sup> In April 2002, when Carnival pleaded guilty to six felony counts of presenting false oil records, the company agreed to pay \$18 million (\$9 million of this sum was in the form of community service payments) in fines and to implement a worldwide Environmental Compliance Plan applying to all twelve of its operating cruise lines, including those not involved in the violations.<sup>90</sup> Also in 2002, Norwegian Cruise Line agreed to pay a \$1 million fine and adopt a fleet-wide comprehensive Environmental Compliance Plan for failure to maintain an accurate oil record book.<sup>91</sup> All of the compliance plans prescribe comprehensive and specific waste management procedures.<sup>92</sup>

Additionally, the International Safety Management (ISM) Code<sup>93</sup> mandates an environmental compliance plan.<sup>94</sup> Requirements pertaining to passenger ships are codified in the U.S. Coast Guard

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87. Prevention of Pollution from Ships Act, 33 U.S.C.S. §§ 1901-1915 (LexisNexis 2007). DEP'T OF JUST., No. 06-19-98, OPERATOR OF HOLLAND AMERICAN CRUISE LINE PLEADS GUILTY TO FELONY ENVIRONMENTAL OFFENSES AND AGREES TO PAY \$2 MILLION (1998), available at <http://www.usdoj.gov/opa/pr/1998/June/290.htm.html> [hereinafter DEP'T OF JUST.]; see also Dennis L. Bryant, *The Maritime Compliance Program: Foghorn Protection for the Shipowner*, 24 TUL. MAR. L.J. 591, 620 (2000).

88. DEP'T OF JUST., *supra* note 87; see also Bryant, *supra* note 87, at 620.

89. DEP'T OF JUST., *supra* note 87; see also Bryant, *supra* note 87, at 620.

90. Plea Agreement at 4-9, United States v. Carnival Corp., No. CR 02-20350 (S.D. Fla. Apr. 17, 2002); see also Cooney, *supra* note 85, at 445. United States based Carnival Corporation operates twelve cruise lines and more than eighty ships with a total passenger capacity of almost 144,000. Hoover's Company Records, Carnival PLC, [http://www.hoovers.com/carnival-plc/ID\\_43629/free-co-factsheet.xhtml](http://www.hoovers.com/carnival-plc/ID_43629/free-co-factsheet.xhtml) (last visited Feb. 24, 2007).

91. Plea Agreement at 1-4, United States v. Norwegian Cruise Line Ltd., No. CR 02-20631 (S.D. Fla. July 31, 2002). See also Cooney, *supra* note 85, at 445.

92. CRUISE SHIP WHITE PAPER, *supra* note 16, at 18.

93. International Safety Management (ISM) Code for the Safe Operation of Ships and for Pollution Prevention, adopted as an Annex to the IMO's Assembly Resolution A. 741(18) Nov. 4, 1993. Addressing laws and regulations pertaining to safety and the environment, the ISM Code was later incorporated into the International Convention for the Safety of Life. International Convention for the Safety of Life, Nov. 4 1974, 32 U.S.T. 47, 14 I.L.M. 959 [hereinafter SOLAS], available at [http://www.imo.org/Conventions/contents.asp?topic\\_id=257&doc\\_id=647](http://www.imo.org/Conventions/contents.asp?topic_id=257&doc_id=647). The ISM Code is the only oversight program that is mandatory. *Id.* ch. IX.

94. CRUISE SHIP WHITE PAPER, *supra* note 16, at 11. Although the primary focus of the code is safety, it has a substantial environmental protection component. See *id.*

regulations.<sup>95</sup> Under this management system the cruise lines must establish procedures to ensure their vessels comply with applicable U.S. regulations and international conventions to which the United States is party.<sup>96</sup> The District Court's Environmental Compliance Plan mandates and the ISM Code seem to exceed the port state jurisdiction by trying to guide activities that are purely onboard activities, but these activities are traditionally left to the flag state to govern.

To illustrate a portion of the comprehensive and specific waste management procedures, the rest of this section looks specifically at waste management of hazardous chemicals used onboard. Hazardous chemicals are used in a variety of operations ranging from routine maintenance such as cleaning and painting, to passenger services such as dry cleaning, beauty parlors, and photography processing labs.<sup>97</sup> The chemical wastes from these procedures and facilities are collected, brought ashore for disposal in strict compliance with shoreside regulations, and then tracked using a computerized tracking system.<sup>98</sup> Because hazardous chemicals are used onboard, the Environmental Protection Agency (EPA) and environmental protection groups feel that cruise ships are subject to the Resource Conservation and Recovery Act (RCRA)<sup>99</sup> requirements.<sup>100</sup> RCRA

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95. See generally 33 C.F.R. § 96 (2007).

96. 33 C.F.R. § 96.240(b). This includes having procedures for internal audits. See *id.* § 96.240(f)-(g).

97. CRUISE SHIP WHITE PAPER, *supra* note 16, at 10.

98. *Environmental Commitment: Additional Policies*, <http://www.hollandamerica.com/about/environmental.do?env=additional> (last visited Mar. 18, 2007). *But cf.* Email from Cruise Line Environmental Insider to Asia Wright, *supra* note 10 (explaining not all lines use a computerized system to track the disposal process).

99. Resource Conservation and Recovery Act, 42 U.S.C.S. §§ 6901-6992(k) (LexisNexis 2007). In 2001, EPA headquarters sent a Memorandum to EPA regional offices developing procedures for assigning identification numbers to individual cruise ships for purposes of RCRA. Memorandum from Elizabeth Cotsworth, Director, Office of Solid Waste, to RCRA Senior Policy Managers, Regions 1-10 (Dec. 4, 2001), available at <http://www.epa.gov/epaoswer/osw/meeting/pdf02/cruise.pdf>. The EPA regional office assigns an identification number to each individual ship which is put on all hazardous waste offloaded in the United States. *Id.* at 3. Cruise ships must then notify the selected state or corresponding EPA regional office of its hazardous waste activities. *Id.* In addition to complying with RCRA requirements, the ships must provide copies of manifests or annual reports required by state law. *Id.* Even ships that have never sailed in the United States have EPA ID numbers. Email from Cruise Line Environmental Compliance Insider to Asia Wright, *supra* note 10.

100. CRUISE SHIP WHITE PAPER, *supra* note 16, at 10. The cruise industry does not have to comply with all RCRA standards, but does comply with RCRA in the disposal of wastes landed in the United States. Email from Cruise Line Environmental Compliance Insider to Asia Wright, *supra* note 10. Some records required under RCRA are maintained, but not all. *Id.*

governs and dictates the disposal of hazardous waste on land and gives the EPA authority to control hazardous waste, establishing a “cradle-to-grave system” from the point of generation to disposal.<sup>101</sup> Under RCRA, hazardous waste generators, such as dry cleaning operators, must obtain an ID number, prepare a manifest for waste accumulation and ensure proper record-keeping, packaging and labeling.<sup>102</sup>

Because the photo processing waste streams include spent fixer, spent cartridges, expired film and silver flake, this operation has the potential to be regulated under RCRA.<sup>103</sup> Even though cruise ships must abide by regulations dealing with disposal of hazardous waste landed on shore, the EPA holds the view that these regulations do not apply to ships at sea or in U.S. waters.<sup>104</sup>

Under industry-created standards, Cruise Lines International Association (CLIA) member lines follow two methods for dealing with photographic and X-ray development fluids. Either the waste is treated on the ship and the residual fluid is landed ashore as industrial waste, or the waste is assumed to be hazardous and is not treated, so RCRA requirements apply.<sup>105</sup> The onboard dry cleaning units generate waste comprised of dirt, oils, filter materials and spent solvent.<sup>106</sup> Like the photograph processing waste, the material from

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101. See 40 C.F.R. §§ 260-299 (2007); see also *Resource Conservation and Recovery Act*, <http://www.epa.gov/region5/defs/html/rcra.htm> (last visited Mar. 18, 2007) (noting that this “includes the generation, transportation, treatment, storage, and disposal of hazardous waste”).

102. See 40 C.F.R. § 262 (2007); see also U.S. ENVTL. PROT. AGENCY, PROFILE OF THE DRY CLEANING INDUSTRY 46 (1995), <http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/dryclng.pdf>. (“Generators can accumulate hazardous waste for up to ninety days (or 180 days depending on the amount of waste generated) without obtaining a permit.”).

103. ATTACHMENT TO CLIA STANDARD, CRUISE INDUSTRY WASTE MANAGEMENT PRACTICES 3 (2006) [hereinafter CLIA ATTACHMENT], available at <http://www.cruising.org/industry/PDF/CLIAWasteManagement.pdf>. It is unclear whether regulations apply to cruise ships because of the difficulty of classifying cruise ships:

Is a cruise ship a “small quantity generator”—producing less than 2,200 pounds of hazardous waste per month—or a “large quantity generator”—producing more than that amount? A small quantity generator is subject to less stringent record keeping and reporting than a large quantity generator. In determining which category a ship falls into, is each ship taken as an independent entity or is the cruise line taken as a whole.

KLEIN, *supra* note 25, at 97-98.

104. KLEIN, *supra* note 25, at 97.

105. *Id.* The EPA approved methodology in treating the waste stream involves removing silver content from the fluids for recycling and then verifying the effluent from the recovery process is less than five parts per million (ppm) silver. *Id.*

106. *Id.* at 4. Ships using dry cleaning units produce about two pounds of waste material every week. *Id.*

the dry cleaning waste is also classified as hazardous waste under RCRA and is disposed of in accordance with RCRA's requirements.<sup>107</sup>

Industry insiders feel that applying RCRA to onboard activities achieves little protection and is unsuitable for cruise ships because several RCRA provisions, like specific container labeling and secondary containment requirements, are problematic to implement onboard and have uncertain environmental benefit given space limitations.<sup>108</sup> Further, the 2000 Bluewater Network petition to EPA Administrator Carol Browner suggested that the lack of clarity in EPA hazardous waste requirements, in conjunction with the RCRA, results in "insufficient regulation and oversight of cruise line hazardous waste management practices."<sup>109</sup> However, despite these sentiments, some record keeping procedure requirements under RCRA are already being applied to cruise ships via Memorandums of Understanding (MOUs),<sup>110</sup> such as Florida's.<sup>111</sup>

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107. *Id.*

108. Email from Cruise Line Environmental Compliance Insider to Asia Wright, *supra* note 10. However, the industry does feel that proper identification, characterization, manifesting, labeling, and packaging of hazardous wastes placed into the transportation system for disposal in the United States is relevant, appropriate, and of value in protecting the environment. *Id.* Under RCRA, cruise ships are not Large Quantity Generators (LQG), but are considered Conditionally Exempt Small Quantity Generators (CESQG). *Id.* Most ships generate between 200 and 1,000 kg per month. *Id.*

109. CRUISE SHIP WHITE PAPER, *supra* note 16, at 4.

110. Generally, a memorandum of understanding (MOU) is a "well-accepted type of legal instrument in international law and practice . . . [and acts] as 'an informal but nevertheless legal agreement' between two or more parties." John H. McNeill, *International Agreements: U.S.-UK Practice Concerning the Memorandum of Understanding*, 88 AM. J. INT'L. L. 821, 821 (1994) (quoting ARNOLD MCNAIR, *THE LAW OF TREATIES* 15 (1961)). MOUs in the environmental context are usually agreement between companies and governments to resolve criminal charges, where a "company agrees to undertake certain corrective actions, accept responsibility for its misconduct, and pay a monetary penalty. In return, if the company complies with the agreement over a specific, monitored period, the government agrees not to pursue the criminal charges." Christopher A. Wray & Robert K. Hur, *Corporate Criminal Prosecution in a Post-Enron World: The Thompson Memo in Theory and Practice*, 43 AM. CRIM. L. REV. 1095, 1159 n. 301 (2006).

111. Memorandum of Understanding between Fla. Dept. of Env'tl. Prot. (FDEP), the Fla. Caribbean Cruise Assoc. (FCCA), and the Int'l Council of Cruise Lines (ICCL) (2001), available at [http://www.iccl.org/resources/fdep\\_mou.cfm](http://www.iccl.org/resources/fdep_mou.cfm); see also Thomas, Jr., *supra* note 22, at 549 ("The agreement accepts industry waste management standards, voluntarily adopted by the cruise industry, and relies on the Coast Guard for reporting, inspection, and enforcement."). In 2001, the FDEP, the FCCA, and the ICCL signed a MOU in which the industry members committed to meeting or exceeding the Florida state laws concerning the disposal of wastewater. *Id.*

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V. IMPACT OF *SPECTOR* ON FOREIGN-FLAGGED  
CRUISE SHIPS' ONBOARD ENVIRONMENTAL ACTIVITY

*Spector* is the first case of the twenty-first century to involve a foreign ship's internal affairs.<sup>112</sup> In *Spector*, several disabled cruise passengers and their companions filed a class action suit against Norwegian Cruise Line for alleged violations of Title III of the Americans with Disabilities Act of 1990 (ADA).<sup>113</sup>

The issue presented in *Spector* was whether Title III, which prohibits discrimination on the basis of disability by "public accommodations," applied to foreign-flag cruise ships in U.S. waters.<sup>114</sup> Norwegian Cruise Line, a Bermuda corporation with its principal place of business in Miami, Florida, has registered almost all of its ships in other countries.<sup>115</sup> On one hand, international law recognizes that ports and territorial waters are governed under the jurisdiction of the territorial state.<sup>116</sup> On the other, international law gives a flag state jurisdiction over its vessels.<sup>117</sup> The problem is "reconciling these concurrent, overlapping jurisdictions."<sup>118</sup> Simply, at the *Spector* opinion's core was the problem of agreeing on the meaning of international comity.<sup>119</sup> Generally, comity refers to the recognition which one state allows within its territory to the acts of another state in regards to international duty, convenience and the rights of its own citizens or persons under the protection of its laws.<sup>120</sup>

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112. Symeon C. Symeonides, *Cruising in American Waters: Spector, Maritime Conflicts, and Choice of Law*, 37 J. MAR. L. & COM. 491, 493 (2006) (arguing *Spector* did not implicate a foreign ship's internal affairs, except in a minor and hypothetical way). Even though six justices joined Justice Kennedy's opinion, only two parts of the opinion retained a majority of the court. *Id.*

113. *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 126 (2005).

114. *Id.* at 125.

115. *Id.* at 126. The NCL cruise ships the *Norwegian Sea* and *Norwegian Star*, the subjects of the *Spector* case, were registered in the Bahamas. *Id.*

116. See, e.g., UNCLOS, *supra* note 19, art. 2 ("[T]he sovereignty of a coast state extends, beyond its land territory and internal waters . . . to an adjacent belt of sea, described as the territorial sea."); Duncan B. Hollis, *International Decision: Spector v. Norwegian Cruise Line Ltd.*, 99 AM. J. INT'L L. 881, 887 (2005).

117. See, e.g., UNCLOS, *supra* note 19, art. 94 ("[Flag state has the duty to] effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag."); Hollis, *supra* note 116, at 887-88.

118. Hollis, *supra* note 116, at 888.

119. See *Spector*, 545 U.S. at 130-33; Hollis, *supra* note 116, at 887 (suggesting the problem in *Spector* stemmed from the Court's failure to agree on the meaning of international comity in application of the internal affairs rule).

120. *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895) (holding the comity of the U.S. did not require the court to give conclusive effect to the judgments of the courts of France).

Before *Spector*, U.S. courts deferred to flag state jurisdiction concerning vessels in port.<sup>121</sup> Typically, it was understood that:

[A]ll matters of discipline and all things done on board which affect only the vessel or those belonging to her, and [do] not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged . . . .<sup>122</sup>

However, problems with flag states remaining faithful to their international law duties have caused territorial sovereigns to assert jurisdiction over certain issues, namely, oil pollution.<sup>123</sup> The U.S. Supreme Court's decision in *Spector* marks the departure from giving flag states primary jurisdiction over their flagged vessels.<sup>124</sup>

Usually matters involving "only the internal affairs of a foreign ship will not implicate American interests," although it is possible for cases involving a ship's internal affairs to implicate American interests and the tranquility of the port.<sup>125</sup> For example, *Wildenhus's Case* involved a Belgian crewman's homicide committed below decks of a Belgian ship in an American port.<sup>126</sup> Even though the incident "clearly involved the ship's internal order and discipline," the *Wildenhus* Court held that the nature of the incident could create disorder and disturb the tranquility of public order in the port and thus was within the reach of American law.<sup>127</sup>

Writing for the plurality in *Spector*, Justice Kennedy found that although the requirement of a clear statement of congressional intent could limit Title III's application to foreign-flag cruise ships, the need for congressional intent did not apply to other duties imposed under Title III.<sup>128</sup> Justice Kennedy noted the long-held rule that U.S.

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121. See *Hollis*, *supra* note 116, at 888. Compare *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 124 (1923) ("[The] ship of one country voluntarily entering the territorial limits of another subjects herself to the jurisdiction of the latter.") with *Lauritzen v. Larsen*, 345 U.S. 571, 585 (1953) (reasoning that flag state law must supersede territorial law because the law of the ship cannot change every time the ship enters different waters) and *McCullough v. Sociedad Nacional De Marineros De Hond.*, 372 U.S. 10, 21 (1963) (recognizing the well-established international law rule that the law of the flag state ordinarily governs the internal affairs of a ship).

122. *Mali v. Keeper of the Common Jail (Wildenhus's Case)*, 120 U.S. 1, 12 (1887).

123. See *Hollis*, *supra* note 116, at 888.

124. *Id.*

125. *Symeonides*, *supra* note 112, at 494.

126. *Id.* at 498.

127. *Id.* at 494. See *Wildenhus's Case*, 120 U.S. at 18.

128. *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 125 (2005) (suggesting congressional intent necessary only in instances involving the removal of physical barriers).

statutes are “presumed to apply to conduct that takes place aboard a foreign-flag vessel in United States territory if the interests of the United States or its citizens, rather than interests internal to the ship, are at stake.”<sup>129</sup> However, U.S. statutes cannot apply to foreign-flag ships “[a]bsent a clear statement of congressional intent . . . [and cannot] regulate matters that involve only the internal order and discipline of the vessel, rather than the peace of the port.”<sup>130</sup>

In her concurring opinion, Justice Ginsburg took the road that Justice Kennedy refused to explore.<sup>131</sup> According to Justice Ginsburg, “[w]hen international relations are not at risk, and there is good reason to apply our own law,” U.S. law applies even though internal ship affairs are involved or the legislation lacks a clear statement of congressional intent.<sup>132</sup> For Justice Ginsburg, the strong interest in “ensuring that U.S. resident cruise passengers enjoy Title III’s protections” and absence of actual conflict with international legal obligations rendered the demand for a clear congressional statement unnecessary.<sup>133</sup> Justice Scalia dissented, reasoning that Title III did not apply because Congress did not clearly express its intent for ADA regulations to apply to foreign-flag ships when those laws interfere with the ship’s internal order.<sup>134</sup> The purpose of the “internal order” clear statement requirement is to avoid conflicts between congressional legislation and the ship’s flag state laws or international obligations.<sup>135</sup> According to Justice Scalia, the requirement of a clear statement of congressional intent is triggered when there is a possibility, not certainty, of discord and conflict between jurisdictions and international treaties.<sup>136</sup>

Altogether, the different *Spector* opinions impact the regulation of foreign flagged cruise ships’ internal affairs. *Spector* not only implicates disabled access regulation, but also envelops other onboard activities and procedures such as environmental

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129. *See id.* at 130.

130. *See id.*

131. Symeonides, *supra* note 112, at 496.

132. *See Spector*, 545 U.S. at 145 (Ginsburg, J., concurring). *See also* Symeonides, *supra* note 112, at 496.

133. *See Spector*, 545 U.S. at 145 (Ginsburg, J., concurring). *See also* Symeonides, *supra* note 112, at 496-97.

134. *See Spector*, 545 U.S. at 149 (Scalia, J., dissenting).

135. *Id.* at 152 (“That structural modifications required under Title III qualify as matters of ‘internal order’ is confirmed by the fact that they may already conflict with the International Convention for the Safety of Life at Sea (SOLAS).”).

136. *Id.* at 153-54.

management. Following *Spector* reasoning, internal ship affairs concerning cruise ship environmental management are capable of implicating port state interests. A ship's internal environmental order and discipline can disturb the tranquility of a port's public order if the public feels that cruise ships are harming the quality of life of the port and surrounding waters. Specifically, a ship's alleged substandard environmental procedures confined to onboard activities could still lead to consequences affecting the port or coastal state. For instance, when Royal Caribbean's *Mariner of the Seas* left Port Canaveral, it was not to a chorus of *bon voyage*, but rather to the shouts of antipollution protestors.<sup>137</sup> A man with a bullhorn shouted angrily while an airplane overhead towed a banner reading, "Got Sewage? Royal Caribbean Dumps Daily."<sup>138</sup> The anti-cruise ship sentiment spans from coast to coast. The same year of the Royal Caribbean protest, West coast environmentalists in San Francisco protested the docking of the *Crystal Harmony*.<sup>139</sup>

In essence, the *Spector* decision implies that onboard cruise ship environmental management and procedures are within reach of the port state's control. To be sure, the decision is tentative, because the nine Justices could not agree on a "single, coherent approach to international comity" when regulating a foreign ship's internal affairs.<sup>140</sup> Unfortunately, this only adds to the confusion of

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137. Willoughby Mariano, *Cruise Ship Has Bumpy Bon Voyage; Dozen Met to Protest Royal Caribbean's System of Wastewater Disposal, Saying it Polluted*, ORLANDO SENTINEL, Nov. 17, 2003, at B3. The protestors were from Oceana, a Washington based environmental group. *Id.* The group, which has 35,000 members, negotiated with Royal Caribbean officials for several months about installing special water treatment systems onboard Royal Caribbean ships. *Id.* The equipment costs \$2 million to \$3 million to install and at the time three of the company's twenty-seven ships used the experimental systems. *Id.*

138. *Id.* Speaking out against cruise ships is not beneath celebrities. For example, Leonardo DiCaprio is a "fierce environmentalist" who rails against cruise ships that dump garbage offshore. Mark Schwed, *Celebrities with Causes; Stars Make Appearances, Donate Time, Money to a Variety of Worthy Crusades*, REC. (Kitchener-Waterloo), July 12, 2005, at B3.

139. *Activists Protest Docking of Cruise Ship*, L.A. TIMES, June 3, 2003, at 8. The environmentalists alleged the cruise ship would generate "huge amounts of sewage, wastewater garbage and air pollution in San Francisco Bay." *Id.* In 2003, the *Crystal Harmony* was one of the seventy-seven cruise ships expected to dock in San Francisco. *Id.* In 2002 the *Crystal Harmony* had released 36,000 gallons of wastewater into the Monterey Bay National Marine Sanctuary in California. Choi, *supra* note 7, at TR 10(L). Mimi Weisband, a Crystal Cruises spokeswoman, in response to the incident said, "It was a terrible mistake, and contrary to our own policy to never discharge in any marine sanctuary." *Id.* Although the discharge created a negative reaction, the discharge of treated wastewater was legal since it occurred fourteen miles offshore while maritime law allows discharges of *untreated* wastewater twelve miles offshore. *Id.*

140. Hollis, *supra* note 116, at 881.

determining when U.S. laws apply to cruise ships.<sup>141</sup> The *Spector* decision is alarming because it portends the erosion of flag state jurisdiction.<sup>142</sup> *Spector* greases the slippery slope by allowing port states to regulate the isolated onboard activities of cruise ships.<sup>143</sup> Granted, port states have an interest in preserving the quality of their waters, but infringing upon flag state jurisdiction in the process is unnecessary. No specific shipboard environmental management practices are significant enough to trigger the interest of the port state. In regards to the onboard process of labeling hazardous containers, the port state is only concerned that the containers are properly labeled when landed ashore and not with how they are labeled while onboard.

Achieving better industry environmental polices and procedures will not be accomplished by using plea agreement mandates and regulations to dictate proper standards for environmental onboard management. Current market incentives and pollution repercussions effectively keep the industry in check and serve as a harsh wake-up call for cruise companies to improve environmental performance by meeting and exceeding existing comprehensive federal and international standards.<sup>144</sup>

## VI. CHARTING A COURSE AWAY FROM *SPECTOR*

### A. *Cruise Ship Pollution Curbing Techniques: Turning the Tide*

In the twenty-first century, cruise ship companies are taking an active role in environmental stewardship by improving waste management procedures and voluntarily installing and retrofitting ships with state-of-the-art pollution control technologies.<sup>145</sup> Not only

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141. *Id.*

142. *Id.*

143. *Id.*

144. Cruise Lines International Association, Environmental Standards, <http://www.iccl.org/policies/environment.cfm> (last visited Sept. 20, 2007).

145. *Contra* Dahl, *supra* note 55, at 614 (arguing that although cruise ships are taking steps to address pollution, those measures have not prevented cruise ships from continuing to create environmental problems). In recent years, several incidents occurred where cruise ships violated memorandum of understanding agreements (MOU) with the port state. In February of 2005, Norwegian Cruise Line violated its voluntary agreement with Hawaii when its vessel, *Pride of Aloha*, discharged about seventy tons of treated effluent into Honolulu Harbor. Even though the memorandum of understanding prohibits cruise ships from dumping wastewater and chemicals in coastal waters, the agreement has no provisions of enforcement or penalties. Because Hawaii has limited resources compared to the number of ships visiting its ports, the state relies on cruise ships to report dumping incidents. Lynda Arakawa, *Cruise Company*

do the companies have to protect the natural resources upon which they base their living, but they also face consumer reactions to their pollution ethics.<sup>146</sup>

Cruise ships generate garbage and waste, but so does any population on land. Even though the cruise industry steadily grows in passenger capacity, cruise ships over the last ten years have managed to cut waste and garbage almost in half.<sup>147</sup> Moreover, cruise ship companies' attitudes and behavior towards pollution and environmental compliance have changed course as new waste water systems are being installed on existing ships, and are now considered standard on ships currently under construction.<sup>148</sup> The International Council of Cruise Lines (ICCL) has invested \$50 million in developing new waste management technology.<sup>149</sup>

Letting the cruise industry manage itself may at first seem counterintuitive, but the truth is that cruise ship companies can benefit by independently pursuing ecological sustainability and efficiency.<sup>150</sup> More freedom and discretion to self-regulate and

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*Violated Accord*, HONOLULU ADVERTISER, Mar. 12, 2005, at 1C. In 2005, a ship sailing to Alaska from its Seattle homeport was fined for dumping untreated wastewater into Washington State waters. Lisa Stiffler & Kristen Millares Bolt, *Celebrity Cruises Fined For Dumping Wastewater Poured into Sound, Strait*, SEATTLE POST-INTELLIGENCER, Nov. 17, 2006, at A1. Celebrity Cruises was fined \$100,000 in November of 2006 by the Washington Department of Ecology when it discovered the vessel *Mercury* dumped more than 500,000 gallons of untreated wastewater into Puget Sound and the Strait of Juan de Fuca. *Id.* The fine was the first issued in Washington for a violation contrary to a 2004 voluntary agreement between the Ecology Department, the NorthWest CruiseShip Association and the Port of Seattle. *Id.* The 2004 agreement prohibits wastewater discharges that are not treated by an advanced treatment system. *Id.* To show commitment toward the environment, Celebrity Cruises voluntarily paid \$30,000 more than it was required to pay for the discharge incident. Choi, *supra* note 7, at 10.

146. *Contra* McDowell, *supra* note 54. After the Carnival verdict and guilty plea, most of the two dozen travel agents asked by *Cruise Week* whether Carnival's business would be negatively impacted said there would be little or no impact. *Id.*

147. Northwest Cruise Ship Association, Frequently Asked Questions, <http://nwcruiseship.org/group.cfm?menuId=95> (last visited Dec. 17, 2007) (reporting that the industry grows about 7.6% annually in cruise capacity).

148. *See* Hull, *supra* note 11, at 95. *But see* Schwed, *supra* note 138 (arguing that despite recent improvements cruise ships continue to pollute the oceans without regard to public safety or the environment).

149. Elaine Dickinson, *Cruise Ships Under Scrutiny*, BOAT U.S. MAG., Sept. 2002, at 36. "We agree it's important to move forward with sound environmental practices," ICCL President, Michael Crye said. *Id.* "The mechanics of how we get there may differ." *Id.* Crye, a former Coast Guard officer, says environmental reports such as The Ocean Conservancy's report are based on old data, taken out of context, or ignore greater sources of pollution (cargo ships, fixed wastewater outfalls from cities and agricultural runoff). *Id.*

150. Alison Gill et al., *The Challenges of Integrating Tourism into Canadian and Australian Coastal Zone Management*, 26 DALHOUSIE L.J. 85, 141 (2003).

establish their own environmental management policies yields better performance than burdening or punishing companies with restrictive environmental compliance regulations. Inspired by economic incentives to become more environmentally friendly, the industry will make more progress in environmental stewardship if the industry is left alone to voluntarily work as a collaborator with port state legislators and agencies to develop environmental standards.<sup>151</sup> The industry has already made major changes that evidence its environmental policies and practices are genuine and a permanent fixture in future operations. Cruise ships, for example, are now built with more efficient engines that use cleaner fuels and technically advanced propulsion systems.<sup>152</sup> These new ships rely on improved sources of power such as gas turbine engines and diesel electric power plants.<sup>153</sup>

In 2001, Holland America Line spent \$2.5 million to install a treatment system on the *Zaandam* that “through a series of filters, bacterial action and ultraviolet radiation . . . turn[s] all of the ship’s sewage and gray water into water that is nearly drinkable.”<sup>154</sup> Some Holland America Line ships like the *Zaandam* use a Zenon treatment system, a combined bioreactor, ultrafiltration and UV system that discharges effluents with suspended solids consistently below

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151. Holland America Line in its “quest to continually improve [its] Environmental Management System . . . works with other business partners to maximize recycling opportunities.” *Inside Passages*, Oct.-Nov. 2007, at 20 (on file with author). “By reducing solid waste and increasing recycling, these planned efforts ultimately benefit our 2007 Objectives and Targets and, thereby, our environment.” *Id.* Holland America Line has been working with garbage and recycling vendors in San Diego and Ft. Lauderdale to increase the quantity and variety of materials the ships recycle. *Id.* Also, Cruise companies are voluntarily going “green” in a variety of company operating areas. For example, Holland America Line recently started printing one of its in house publications on recycled paper. *Id.* at 21. *But see* KLEIN, *supra* note 25, at 101 (“History has demonstrated that environmental responsibility has not been voluntarily assumed. Most industry innovations and initiatives have followed a pattern: deny that their behavior is a problem, lobby government to not impose regulations, resist enforcement, and, after being caught, announce new regulations or commitments.”).

152. KLEIN, *supra* note 25, at 87. Advanced podded propulsion systems like the Azipod and Mermaid are attractive to cruise companies because they are “cost-effective and eliminate a number of main components (long shaft lines, reduction gears, rudders, rudder machinery, transversal stern thrusters), which reduces breakdowns and maintenance costs.” *Id.*

153. *Id.*

154. Kim Murphy, *Alaska Seeks to Clean Up Cruise Ships Waste: Fed-up State is Posed to Adopt World’s First Comprehensive Controls on Discharges*, L.A. TIMES, May 10, 2001, at A24. There are no comparable shore-side facilities that treat waste water near this level. Celebrity Cruises plans to spend more than \$50 million to improve wastewater purification systems on its nine ships. Choi, *supra* note 7, at TR 10(L).

required standards.<sup>155</sup> After being filtered through the system the discharge water is pure enough that it would meet EPA drinking water standards if it was not for a slight saline content.<sup>156</sup> The ability of the Zenon system to turn black and gray wastewater into almost drinkable water “leads the field in entrepreneurial and innovative solutions.”<sup>157</sup> Also addressing the problem of liquid waste, Royal Caribbean’s *Freedom of the Seas* was the first in the company’s fleet to be fitted with an advanced waste water purification system that processes all waste water.<sup>158</sup>

In an attempt to raise environmental awareness, cruise companies now educate their crews about the importance of protecting the environment.<sup>159</sup> Several companies, in an effort to ensure the company is on a course of continuous improvement, have implemented a program in which shipboard and shoreside employees can submit ideas to develop better environmental procedures and policies.<sup>160</sup> Also, a hotline is available for employees and passengers to make reporting suspected pollution violations easier.<sup>161</sup>

In the new millennium, the industry is making noticeable improvements. A 2004 EPA sampling of cruise ships in Alaska shows the ships’ existing onboard technologies and wastewater purifications systems are performing “extremely well.”<sup>162</sup> The tests showed that

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155. See Hull, *supra* note 11, at 95.

156. Press Release, Holland America, Zenon Happens! Holland America Ships Convert Wastewater to Near-Drinking Water Quality, (July 30, 2001), <http://www.thetimesharebeat.com/archives/2001/htl/htlJuly126.htm> (“Holland America has a history of embracing new environmental technologies and exceeding existing regulations. The company . . . emphasizes waste reduction and recycling, compliance with all international environmental guidelines, and a decision to incorporate zero-discharge wastewater treatment plants and cleaner-burning propulsion technology into its ships.”).

157. Gill et al., *supra* note 150, at 141.

158. Hayhurst, *supra* note 75, at 33.

159. Several companies employ an environmental officer onboard to enforce environmental regulations, oversee systems and equipment as well as train crew as to their responsibilities. Employees who throw rubbish overboard or dump waste are now fired. See *id.* Royal Caribbean employees must sign a pledge to protect the environment and are required to explain the concept behind the Save the Waves to passengers. Royal Caribbean and the Environment, <http://www.royalcaribbean.com/ourCompany/environment/saveTheWaves.do> (last visited Sept. 20, 2007).

160. *Inside Passages*, Dec. 2006-Jan. 2007, at 19 (on file with author). For Holland America Line, the ideas must meet certain criteria, such as directly reduce the potential environmental impact of a significant environmental aspect, have a high benefit-to-cost ratio or immediately save the company money. *Id.*

161. See McDowell, *supra* note 54, at 3.

162. *Durban Urges EPA Release of Cruise Ship Study Ahead of Bill Rewrite*, INSIDE THE EPA, Sept. 29, 2006 (quoting Michael Crye, current Cruise Lines International Association

these systems often achieved much higher effluent quality standards than the land-based wastewater treatment plants cruise ships would have to visit when in port.<sup>163</sup> In 2006, three Holland America Line's Vista class ships earned the coveted Green Planet Award for outstanding environmental standards.<sup>164</sup> The company's commitment to responsible environmental stewardship is evidenced by the advanced waste water treatment system on most of its ships, and the three ships' shore power plug-in systems that significantly reduce fuel consumption and greenhouse gas emissions.<sup>165</sup> Further, environmental awareness is breeding a new kind of cruise ship. Carnival's environmental and shipbuilding departments have incorporated a "green ship" concept into the design and building process of its new ships.<sup>166</sup> As a result, four of Carnival's Spirit class ships have received "Green Star" designations for meeting the stringent environmental standards of the Italian ship classification and management certification society.<sup>167</sup>

Returning to the issue concerning the problem of hazardous wastes, Cruise Lines International Association (CLIA) member cruise lines have agreed to incorporate several industry waste management standards into their respective Safety Management

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(CLIA) executive vice president for the technical and regulatory affairs and former president of the ICCL). Crye estimates that 40% of the members' 130 ships (two-thirds of the world fleet) have installed advanced wastewater systems. Choi, *supra* note 7, at TR 10(L). Each of the systems costs \$2 million to \$10 million per ship and can take six to twelve months to install. *Id.* Crye believes these new systems made the Clean Cruise Ship Act, a bill first introduced in 2004 by Democratic Representative Farr, unnecessary. The Clean Cruise Ship Act, which has been stymied in Congress since its introduction would "make it illegal for cruise ships to discharge any wastewater, treated or otherwise, within 12 nautical miles of United States shores, and would apply strict rules for discharging treated wastewater up to 200 nautical miles off shore." *Id.*

163. Durban Urges EPA Release of Cruise Ship Study Ahead of Bill Rewrite, *supra* note 162. See also Email from Cruise Line Environmental Compliance Insider to Asia Wright, *supra* note 10 (emphasizing that the advanced waste water purification systems used on ships outperform every municipal wastewater treatment plant in the State of Alaska).

164. Three Holland America Line Ships Earn Kuoni's Coveted 2006 Green Planet Award, CANADA NEWSWIRE, Dec. 19, 2006 ("The Green Planet Award was established six years ago by Kuoni [Switzerland] to recognize eco-minded hotels and resorts; it was extended to cruise ships in 2003. The award has become the Swiss travel industry's best-known seal of approval in the environmental field."). Holland America Line's Vista class ships receiving the honor were the *ms Noordam*, *ms Westerdam* and *ms Oosterdam*. *Id.*

165. *Id.* Ships are already plugging into shore power states to reduce air emissions in Alaska, Washington, and California. Choi, *supra* note 7, at TR 10(L).

166. Carnival Virtual Press Kit, *Carnival Maintains Fleetwide Environmental Programs*, [http://www.carnival.com/CMS/Articles/environmental\\_virtual\\_.aspx](http://www.carnival.com/CMS/Articles/environmental_virtual_.aspx) (last visited Sept. 20, 2007).

167. *Id.* The "Green Star" designation was established by the Registro Italiano Navale Group (RINA). *Id.*

Systems.<sup>168</sup> Holland America Line, in particular, is actively working to reduce hazardous materials used by onboard dry cleaning and photo lab processes.<sup>169</sup> Holland America Line's new 2,044 passenger Signature class ship, the *Eurodam*, will be outfitted with environmentally responsible "wet cleaning" machines.<sup>170</sup> Under the new "wet cleaning" system, the old perchloroethylene based dry cleaning machines are replaced with soy, orange and banana oil based machines.<sup>171</sup> Holland America Line's onboard photo labs use a silver recovery system to separate the silver content from spent photo chemicals so that both can be further treated or recycled.<sup>172</sup> However, this whole process can be eliminated as digital photography technology becomes more widespread.<sup>173</sup>

Several pressures on the industry are motivating cruise companies to keep their ship pollution practices clean. For one, cruise ship companies do not want to be forced to discharge to land-based treatment plants to dispose of ship sewage.<sup>174</sup> Thus, there is a push to develop onboard systems with the ability to treat ship waste effluent to a sufficient quality standard so it can be discharged at sea rather than the land-based treatment plants.<sup>175</sup> The industry's increased commitment to voluntary environmental standards has created competitive advantages for companies in the cruise market.<sup>176</sup>

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168. CRUISE LINES INTERNATIONAL ASSOCIATION, CRUISE INDUSTRY WASTE MANAGEMENT PRACTICES AND PROCEDURES (2006), <http://www.cruising.org/industry/PDF/CLIAWasteManagementAttachment.pdf>. Member lines now minimize the discharge of silver and use the best available technology to reduce the silver content of waste from photo processing, including X-ray development fluids from the ships' medical centers. *Id.* Also, the member lines actively prevent the discharge of chlorinated dry cleaning fluids, sludge and other byproducts overboard. *Id.*

169. *Environmental Commitment: Additional Policies*, *supra* note 98.

170. *Holland America Line Eurodam Contract; Newest Luxury Cruise Ship to use Winning Brands' Solvent Free Solutions*, MARKET WIRE, Feb. 9, 2007. The 86,000 ton, \$450 million dollar *Eurodam* is under construction and expected for delivery in 2008. *Id.*

171. *Environmental Commitment: Additional Policies*, *supra* note 98.

172. *Id.*

173. *See id.*

174. *Durban Urges EPA Release of Cruise Ship Study Ahead of Bill Rewrite*, *supra* note 162.

175. *See id.*

176. Gill et al., *supra* note 150, at 139 (describing that the two industry-operated cruise associations, NWCA and the ICCL, have jurisdiction over their member cruise vessels "each with their own set of voluntary environmental policies and regulations that in many cases exceed the federal legislative requirements in Canada and the United States"). The quality of gray and black water discharges continues to improve as the cruise industry installs more advanced treatment systems to comply with Alaskan legislation. SCI. ADVISORY PANEL & ALA. DEP'T OF ENV'T CONSERVATION, THE IMPACT OF CRUISE SHIP WASTEWATER DISCHARGE ON ALASKA WATERS 76 (2002), available at <http://www.dec.state.ak.us/>

Cruise lines have an economic incentive to improve environmental performance. The potential of incurring major fines for violating pollution laws has become a very real probability and has made cruise companies reassess environmental management practices.<sup>177</sup> The fear of negative publicity is another driving force. For example, in the Princess case where video cameras captured employees throwing trash bags over the side, the negative publicity created a strong incentive for the company to comply with regulations.<sup>178</sup>

The ICCL<sup>179</sup> released a Cruise Industry Waste Management Practices and Procedures report outlining the voluntary waste procedures of member cruise lines in response to public concern for cruise ship pollution.<sup>180</sup> The ICCL is responsible for facilitating the major cruise lines' "participation in the regulatory and policy development process and promot[ing] all measures that foster a safe, secure and healthy cruise ship environment."<sup>181</sup> All of the ICCL's member lines' procedures "meet and exceed the international requirements for removing oil from bilge and wastewater prior to

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water/cruise\_ships/pdfs/impactofcruiseship.pdf; see also ALA. DEP'T OF ENV'T CONSERVATION, ASSESSMENT OF CRUISE SHIP AND FERRY WASTEWATER IMPACTS IN ALA. 30-35 (2004), , available at [http://www.dec.state.ak.us/water/cruise\\_ships/pdfs/assessmentreport2004.pdf](http://www.dec.state.ak.us/water/cruise_ships/pdfs/assessmentreport2004.pdf) (finding that the quality of large cruise ship wastewater reflects continued increases in the number of vessels with advanced treatment systems). The fact is that in order to meet the standards in Alaska, the industry installed technology that rendered the ships' effluent cleaner than the shore based treatment plants. Email from Cruise Line Environmental Compliance Insider to Asia Wright, *supra* note 10 (arguing that the danger in forcing cruise ships to discharge ashore removes the economic and environmental incentives to invest in advanced equipment).

177. See Becker, *supra* note 43, at 640.

178. *Id.* at 641. Publicity also works as a motivator for enforcers. *Id.* Although the Coast Guard knew about the videotape, it didn't take action until eight months afterwards when it learned NBC News was interested in broadcasting the footage. *Id.* at 641-42.

179. In 2006, the International Council of Cruise Lines merged with its sister organization, Cruise Lines International Association (CLIA). Cruise Lines International Association Cruise Industry Policies & Resources, <http://www.cruising.org/industry/tech-intro.cfm> (last visited Apr. 4, 2007) ("CLIA exists to promote all measures that foster a safe, secure and healthy cruise ship environment, educate, train its travel agent members, and promote and explain the value, desirability and affordability of the cruise vacation experience."). Pursuant to an agreement filed with the Federal Maritime Commission under the Shipping Act of 1984, CLIA acts as a non-governmental consultative organization to the IMO. *Id.* Comprised of twenty-one major cruise lines serving North America, CLIA is the world's largest cruise association. *Id.*

180. Dahl, *supra* note 55, at 624-25.

181. Gill et al., *supra* note 150, at 140 ("Under the direction of the chief executives of its member lines, ICCL advocates industry positions to key domestic and international regulatory organizations, policymakers and other industry partners."). Through the IMO, the ICCL in July of 2001 "developed new consistent and uniform international standards which apply to all vessels engaged in international commerce." *Id.*

discharge.”<sup>182</sup> Further, the cruise lines have agreed to do the following:

[A]ll blackwater will be processed through a Marine Sanitation Device (MSD), certified in accordance with U.S. or international regulations, prior to discharge. For ships traveling regularly on itineraries beyond territorial coastal waters, discharge will take place only when the ship is more than 4 miles from shore and when the ship is traveling at a speed of not less than 6 knots. For vessels whose itineraries are fully within US territorial waters, discharge shall comply fully with U.S. and individual state legislation and regulations.<sup>183</sup>

In 2000, the ICCL’s counterpart on the U.S. west coast, Northwest CruiseShip Association, developed voluntary standards with Alaskan state and federal legislators adopting procedures that went beyond any existing legal compliance regulations.<sup>184</sup> The new standards include banning wastewater discharges in or within ten miles of ports and prohibiting untreated black water discharges anywhere in Alaska. The Association’s member lines were also required to spend \$1.4 million toward new oil spill response equipment.<sup>185</sup>

Alliances with environmental organizations will foster accomplishments and advances for both the cruise industry and conservation groups. To illustrate, Carnival’s collaboration with the International SeaKeepers Society led to the installation of scientific data-gathering devices on the Carnival Triumph and Carnival Spirit.<sup>186</sup> Monitoring ocean water quality, the devices transmit data via satellite to various environmental groups, agencies and universities in hopes of aiding in the assessment and research of ocean pollution, global climate changes, and cyclic weather patterns.<sup>187</sup>

In many cases, the bad reputation of some cruise lines is unwarranted. In fact, cruise companies themselves report many of the environmental accidents.<sup>188</sup> Under the current system, cruise

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182. Dahl, *supra* note 55, at 631.

183. CLIA ATTACHMENT, *supra* note 103, at 11.

184. Gill et al., *supra* note 150, at 139.

185. *Id.*

186. Carnival Virtual Press Kit, *supra* note 166.

187. *Id.* Another example of joint collaboration is CLIA’s work with Conservation International scientists in developing global maps of coral reefs, shellfish beds and other sensitive areas. Choi, *supra* note 7, at TR 10(L). These maps would help the cruise ships avoid discharging untreated wastewater within four miles of designated areas. *Id.*

188. GAO, *supra* note 41, at 17 (showing that self-reports from foreign-flagged represented the largest percentage (37%) in the method of detecting illegal discharge cases in U.S. waters).

ships are deterred from violating environmental laws and regulations by the threat of large fines.<sup>189</sup> Cruise companies like other business entities are rational economic actors who act to maximize profits.<sup>190</sup> Fines for cruise ship pollution now range in the millions, so the costs of noncompliance often outweigh the benefits of noncompliance.<sup>191</sup> Simply, cruise ship compliance is obtained because it has reached a point where the “penalties [are] high enough and the probability of detection great enough that it becomes economically irrational . . . to violate environmental requirements.”<sup>192</sup>

Further, it is economically counterintuitive for the cruise companies to spend millions of dollars to upgrade and install waste management technologies onboard their ships just to use removable pipes to circumvent pollution monitoring equipment. Being environmentally friendly has become good business. Now, cruise companies realize there exist “direct relationships between environmental performance, their reputation, their customers, their stakeholders, their comparative advantage and their profits.”<sup>193</sup> Also, the mindset of controlling pollution at the point of discharge shifts to preventing pollution when the “diminishing returns and increasing cost-ineffectiveness of end-of-pipe pollution control become apparent.”<sup>194</sup> By developing sustainable environmental policies and using new technologies, cruise companies reduce costs, capture emerging green markets, gain first-mover advantages in the industry, and at the same time ensure long-term company profitability, better community relations and an improved image.<sup>195</sup>

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189. Dahl, *supra* note 55, at 654.

190. See Clifford Rechtschaffen, *Deterrence vs. Cooperation and the Evolving Theory of Environmental Enforcement*, 71 S. CAL. L. REV. 1181, 1186 (1998) (explaining that the traditional practice of environmental enforcement is based on a deterrence model where company compliance decisions are made in self-interest).

191. Noncompliance benefits can be “money saved by not purchasing pollution control equipment or taking other required measures,” *Id.* at 1186, while noncompliance costs include “costs of implementing control measures once a violation is detected, plus any additional penalties imposed for being found in violation, multiplied (discounted) by the probability that the violations will be detected.” *Id.* at 1186-87.

192. *Id.* at 1187. *But cf.* Email from Cruise Line Environmental Compliance Insider to Asia Wright, *supra* note 10 (arguing cruise ships do not violate environmental requirements because they have a “culture of compliance and a commitment to do the right thing”).

193. Gill et al., *supra* note 150, at 141.

194. Daniel J. Fiorino, *Rethinking Environmental Regulation: Perspectives on Law and Governance*, 23 HARV. ENVTL. L. REV. 441, 459 (1999) (proposing a conceptual transition from an old to a new environmental regulation regime).

195. Gill et al., *supra* note 150, at 141.

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Simply, the cruise industry is changing its ways after finding that “good environmental behavior has proven itself to be directly related to revenue and has thus begun a new paradigm of corporate environmentalism.”<sup>196</sup> This is evidenced by the cruise companies and associations’ voluntary self standards encouraging compliance beyond standing regulations.<sup>197</sup> To maintain the commitment to environmental stewardship, cruise companies have incorporated environmental mandates and mission statements into their business plans. By adhering to those standards the cruise companies maintain an improved reputation.<sup>198</sup> Companies in the cruise ship industry hope to achieve long-lasting environmental results with an approach for the synergy of people, policies, procedures and technology working together.<sup>199</sup>

*B. ISO 14001: Maintaining Industry Promises*

In June 2006, Holland America Line’s Environmental Management System (EMS) was certified to conform to the International Organization for Standardization (ISO) 14001 standard from the accredited ship classification society, Lloyd’s Register Quality Assurance.<sup>200</sup> ISO 14001 is an environmental management system for organizations to develop and implement policies and objectives to support environmental protection.<sup>201</sup> The system focuses

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196. *Id.*

197. *Id.*

198. *Id.* In the last ten years Royal Caribbean has donated about \$10 million to the Nature Conservancy, World Wildlife Fund and other organizations through its Ocean Fund program. Choi, *supra* note 7, at TR 10(L).

199. See HOLLAND AMERICA LINE INC., HOLLAND AMERICA LINE ENVIRONMENTAL COMMITMENT (2006), available at [http://www.hollandamerica.com/pdfs/media/factsheets/EnvironmentalCommitment\\_FactSheet.pdf](http://www.hollandamerica.com/pdfs/media/factsheets/EnvironmentalCommitment_FactSheet.pdf).

200. *Three Holland America Line Ships Earn Kuoni’s Coveted 2006 Green Planet Award*, *supra* note 164 (“Holland America Line demonstrates its commitment to responsible environmental practices through a comprehensive fleetwide program that emphasizes waste reduction and recycling, compliance with all international environmental guidelines and a decision to incorporate cleaner-burning propulsion technology into the line’s new ships.”). The ISO is a nongovernmental organization headquartered in Geneva, Switzerland. Bryant, *supra* note 87, at 613. ISO comprises a worldwide federation of national standards from approximately 130 nations. *Id.* The Carnival family of cruise lines achieved ISO 14001 certification in 2006. Email from Cruise Line Environmental Compliance Insider to Asia Wright, *supra* note 10 (estimating that the cruise industry probably has the highest percentage of ISO 14001 certified operations).

201. See Int’l Org. For Standardization, ISO 14001:2004(E) v (2004); see also Bryant, *supra* note 87, at 614 (“Another concept that pervades the ISO 14000 series is sustainable development.”).

mainly on flag state and international environmental laws and regulations.<sup>202</sup> The ISO system is not just a performance audit, “it is a system designed to make certain that the *procedures* for tracking performance are in place and being maintained.”<sup>203</sup> Because U.S. environmental regulation and disclosure laws are so complex, adopting an ISO system “makes a good deal of sense.”<sup>204</sup>

The environmental model is based on establishing objectives and processes to deliver results, then implementing those processes and monitoring the processes to achieve continual improvement.<sup>205</sup> Also, Carnival’s twenty-two cruise ships recently received certification of its ISO 14001 Environmental Management System.<sup>206</sup> The ISO system has a unique advantage of being a market-driven voluntary system.<sup>207</sup> The EPA may encourage companies to adopt standards, but the “real driver of widespread adoption is the global market-place.”<sup>208</sup> Efforts by Holland America Line and Carnival show that the companies want to maintain a high level of environmental management performance. Even though the mandates of the plea agreements have expired, the companies do not want their standards to slide back down to levels prior to the implementation of compliance procedures. The majority of companies today understand the importance of being viewed by the market as good environmental citizens.<sup>209</sup> Royal Caribbean had certainly learned its lesson and the company’s *Explorer of the Seas* is a prime example of cruise companies taking environmental conservation seriously. Once the subject of a boycott effort in 2003, Royal Caribbean is now receiving praise from environmentalists.<sup>210</sup> Last September, members of Friends of Casco Bay, a major force behind waste-discharge controls in Maine ports, toured the *Explorer’s* two full-service environmental science laboratories.<sup>211</sup> Instead of

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202. Int’l Org. for Standardization, ISO 14001:2004(E) v (2004); see also Bryant, *supra* note 87, at 616–17.

203. Paula C. Murray, *Inching Toward Environmental Regulatory Reform—ISO 14000: Much Ado About Nothing or a Reinvention Tool?*, 37 AM. BUS. L.J. 35, 69 (1999).

204. *Id.* at 70.

205. See Int’l Org. for Standardization, ISO 14001:2004(E) v (2004).

206. Carnival Virtual Press Kit, *supra* note 166.

207. Murray, *supra* note 203, at 69.

208. *Id.* at 69-70.

209. *Id.* at 70.

210. John Richardson, *Giant Cruise Ship in Port Gives Environmentalists Hope*, PORTLAND PRESS HERALD (Maine), Sept. 22, 2007, at B1.

211. *Id.* The lab at the top of the ship facilitates atmospheric research while the lab at the bottom of the ship monitors ocean conditions. *Id.* The labs are a joint venture between Royal Caribbean and the University of Miami’s Rosenstiel School. *Id.* “Royal Caribbean donates the

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creating a stir within the port, the *Explorer's* appearance in Portland Harbor generated a hopeful feeling from conservationists.<sup>212</sup>

Achieving a 14001 certification is important because the ISO system can reduce the likelihood of violation of government environmental standards.<sup>213</sup> Cruise lines currently undertake environmental reviews and audits to assess environmental performance, but to be effective, it is necessary for these reviews and audits to be conducted "within a structured management system that is integrated within the organization."<sup>214</sup> Adopting the ISO 14001 standard in conjunction with the International Safety Management system is ideal because both systems go hand-in-hand with the implementation of a maritime compliance program.<sup>215</sup> Cruise companies are voluntarily becoming ISO 14001 certified because industry leaders feel the management system promotes high standards for "technical competence, impartiality, and independence."<sup>216</sup>

ISO 14001 certification is a big step forward in the development of a new environmental approach and change in industry behavior. Congressional involvement dictating the industry's environmental onboard behavior is not required.<sup>217</sup> Instead, the real solution to the pollution problem is changing the philosophy of environmental stakeholders, such as the EPA.<sup>218</sup> The "big stick" mentality, which once was essential in compelling overboard cruise company

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lab space and two cabins for a lab technician and a visiting scientist who monitor the data collection and send it via satellite to databases that are available to scientists, students and teachers on the Internet (<http://oceanlab.rsmas.miami.edu/exploreredata.html>)." *Id.* Passengers can also enjoy lectures given by the onboard scientists. *Id.*

212. *Id.* Cathy Ramsdell, executive director of the Friends of Casco Bay remarked in regards to the arrival of the *Explorer*, "They're making progress." *Id.*

213. Bryant, *supra* note 87, at 614-15.

214. Int'l Org. for Standardization, ISO 14001:2004(E) v (2004).

215. Bryant, *supra* note 87, at 615-16; see also Donald A. Carr & William L. Thomas, *Devising a Compliance Strategy Under the ISO 14000 International Environment Management Standards*, 15 PACE ENVTL. L. REV. 85, 87 (1997).

216. *Lloyd's Register Quality Assurance Issues ISO 14001 cert. to HAL and Windstar*, CRUISE INDUSTRY NEWS, Aug. 21, 2006, available at [http://www.cruiseindustrynews.com/index.php?option=com\\_content&task=view&id=125&Itemid=58](http://www.cruiseindustrynews.com/index.php?option=com_content&task=view&id=125&Itemid=58) (quoting Stein Kruse, President and CEO for Holland America Line and Windstar Cruises as saying that "[e]nvironmental integrity is ingrained in our people and evident throughout our systems. For many years, we have emphasized environmental awareness, conservation, waste reduction, and recycling in all our operations").

217. Murray, *supra* note 203, at 70.

218. *Id.*

compliance, now hinders onboard pollution prevention.<sup>219</sup> The ISO system is the means to foster evolutionary change in American environmental policy and rebuild trust among the industry members, environmental groups and the EPA.<sup>220</sup>

## VII. CONCLUSION

Even though the *Spector* decision seems to place the onboard activities of cruise ships within the reach of port state environmental regulations, the traditional jurisdictional boundaries of port and flag states should be maintained. Instead of port states and the industry positioning themselves as adversaries, they should work together, especially since the economic wealth of each depends on the other. It is possible for both groups to protect their self interests while at the same time promoting an environmentally friendly industry. Keeping the authoritative integrity of the flag state intact gives the cruise industry the freedom to achieve environmental standards on its own terms. This freedom and flexibility produces positive results as today the industry's voluntary environmental standards currently meet, and in some cases exceed, port state standards. The days of blatant and shameless cruise ship pollution violations are gone. The industry has turned over a new "green" leaf and is taking the initiative to self-regulate and develop policies to reduce the environmental impact of its vessels.

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219. *Id.*

220. *Id.* at 71.