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## WHEN SELF-POLICING DOES NOT CUT IT: CRUISING, RCRA, AND HAZARDOUS WASTE ON THE HIGH SEAS

Chris Ryan and Michelle Bedoya\*

What do you call an entity that generates over one ton of hazardous waste every week? Would you be surprised that the answer could be Jewel of the Seas? While Radiance of the Seas might bring to mind the estimated 1300 gallons per week of photo processing wastes or 270 pounds of spent fluorescent lights discarded per week by the Royal Caribbean fleet, its name was certainly not inspired by that fact.<sup>1</sup> Certainly, Splendour of the Seas was not intended to be a tongue-in-cheek reference to the 2050 pounds of discarded and expired chemicals the fleet produced per week.<sup>2</sup> There is equally little chance that Allure of the Seas is in reference to the 280 pounds of solid medical waste that Royal Caribbean's ships produce every month.<sup>3</sup>

The fact that these are merely estimates goes a long way to show the culture of secrecy surrounding hazardous waste production and regulation on major cruise lines.<sup>4</sup> With a 2014 registry of 410 cruise ships in the Cruise Line International Association (expected to expand by an additional twenty-four by the end of the calendar year), these floating behemoths produce untold hundreds of tons of hazardous waste annually.<sup>5</sup> That number, not entirely surprising, is more than many factories.<sup>6</sup> Just one of these ships can produce significantly more hazardous waste than the average American town.<sup>7</sup>

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1. *Cruise Ship Discharge Assessment Report, Section 6: Hazardous Waste*, EPA, 1, 3 (2008), [http://water.epa.gov/polwaste/vwd/upload/2009\\_01\\_28\\_oceans\\_cruise\\_ships\\_section6\\_hazardouswaste.pdf](http://water.epa.gov/polwaste/vwd/upload/2009_01_28_oceans_cruise_ships_section6_hazardouswaste.pdf).

2. *Id.*

3. *Id.*

4. *Id.* at 4.

5. *State of the Cruise Industry in 2014: Global Growth in Passenger Numbers and Product Offerings*, CRUISE LINE INT'L ASS'N, INC. (Jan. 16, 2014) available at [http://dev.cruising.org/vacation/news/press\\_releases/2014/01/state-cruise-industry-2014-global-growth-passenger-numbers-and-product-o](http://dev.cruising.org/vacation/news/press_releases/2014/01/state-cruise-industry-2014-global-growth-passenger-numbers-and-product-o).

6. Compare Ross A. Klein, *Getting a Grip on Cruise Ship Pollution*, FRIENDS OF THE EARTH, 1, 4 (2009), <http://www.foe.org/system/storage/877/69/c/499/Getting-a-grip-on-cruise-ship-pollution.pdf> (an average cruise ship on a one week voyage produces 130 gallons of hazardous waste each trip), with *Hazardous Wastes – Sources of Hazardous Wastes, Protection From Hazardous Wastes, Government Management Strategies, Treatment and Disposal Technology*, SCIENCE.JRANK.ORG, <http://science.jrank.org/pages/3237/Hazardous-Wastes.html> (last visited Oct. 23, 2015) (average hazardous waste produced by all small quantity generators is between 100-1000 kg/year, which include scientific labs, photo developers, auto garages, dry cleaners, and others, showing that cruise lines alone produce more than small generators as an aggregate).

7. As of the 2002 U.S. Census of Governments, the average local jurisdiction population in the United States is 6200. Wendell Cox, *America Is More Small Town Than We Think*, NEW GEOGRAPHY (Sept. 10, 2008), available at <http://www.newgeography.com/content/00242-america-more-small-town-we-think>. Further,

While it would seem the sensible thing to apply the same sort of restrictions and protections offered by the Resource Conservation and Recovery Act (RCRA)—and such regulations are followed once the hazardous waste meets dry land—the cruise lines are under no such obligation while in international waters or off the United States' coastline.<sup>8</sup> The concept of immunity from prosecution based on actions happening in international waters is not the only tricky legal factor at play.<sup>9</sup> In fact, “[c]ruise line corporations and their ships are not traditionally American-owned or registered; thus, regulating their affairs domestically may involve U.S. encroachment upon the sovereignty of countries where the cruise lines are based or where the incidents occur.”<sup>10</sup> Further, the accountability of the entire industry is based on a system of self-regulation and self-reporting.<sup>11</sup> “The only statistics available . . . are those the industry voluntarily reports . . .”<sup>12</sup> When reporting such figures is not strictly mandated or policed, accountability can take a direct hit.<sup>13</sup> Friends of the Earth, a collective of environmental groups from seventy-four countries, grades cruise lines in four categories—sewage treatment, air pollution reduction, water quality compliance, and transparency.<sup>14</sup> Of the sixteen cruise lines recorded in the 2014 report card, not a single one rated above an “F” grade for the category of transparency.<sup>15</sup>

This article suggests that Congress proposes legislation requiring complete RCRA compliance for all cruise lines that feature American ports of call—with the stipulation that should they not comply, they will lose the ability to tender or dock in American cities. It will begin with a brief description of the interplay between the subjects of RCRA regulation and the cruise industry. It will then discuss major waste violations in recent history and their impact on the environment and the necessity for new legislation. Finally, it will give suggestions for how Congress might hold cruise lines accountable for the hazardous waste produced on board, regardless of whether it is treated in American facilities or not, as well as provide a model of sustainability for the industry at large.

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American homes generate 1.6 million tons of household hazardous waste per year, with *as much as* 100 pounds accumulating in basements, garages, and storage closets per home. *Household Hazardous Waste*, CITY OF RIVERSIDE, <http://www.riversideca.gov/publicworks/trash/HHW.asp> (last visited Oct. 23, 2015). Royal Caribbean produces an estimated 10,842 pounds per week of photo waste alone. *Cruise Ship Discharge Assessment Report*, *supra* note 1, at 3.

8. Asia N. Wright, Note, *Beyond the Sea and Spector: Reconciling Port and Flag State Control over Cruise Ship Onboard Environmental Procedures and Policies*, 18 DUKE ENVTL. L. & POL'Y F. 215, 230–31 (2007).

9. *Id.* at 223.

10. Sarah J. Tomlinson, *Smooth Sailing? Navigating the Sea of Law Applicable to the Cruise Line Industry*, 14 VILL. SPORTS & ENT. L.J. 127, 130 (2007).

11. *Id.* at 134.

12. *Id.* at 128–29.

13. *Needless Cruise Pollution: Passengers Want Sewage Dumping Stopped*, OCEANA 1, 5, [http://usa.oceana.org/sites/default/files/reports/polling\\_report1.pdf](http://usa.oceana.org/sites/default/files/reports/polling_report1.pdf) (last visited Nov. 6, 2015).

14. *2014 Cruise Ship Report Card*, FRIENDS OF THE EARTH, <http://www.foe.org/cruise-report-card> (last visited Oct. 23, 2015).

15. *Id.* Granted, the cruise lines reviewed were under no obligation to report to the Friends of the Earth, but it becomes difficult nevertheless not to.

## I. FROM RCRA TO ROYAL CARIBBEAN

As mentioned in the introduction to this article, RCRA governs any entity that creates above a certain threshold of hazardous waste.<sup>16</sup> Wastes are deemed “hazardous” when they appear in one of the four hazardous waste lists (i.e., F-List, K-List, P-List, or U-List),<sup>17</sup> or exhibit any one (or more) of four characteristics: ignitability, corrosivity, reactivity, and toxicity.<sup>18</sup> Waste is considered ignitable where “(1) it is liquid and has a flash point below 140 degrees Fahrenheit; (2) it is a flammable solid; (3) it is an ignitable compressed gas; or, (4) it is classified by the U.S. Department of Transportation as an oxidizer.”<sup>19</sup> A waste is designated corrosive if “(1) it is aqueous (i.e., water-based) and has a pH of 2.0 or lower (i.e., a strong acid) or 12.5 or more (i.e., a strong alkali); or (2) it can corrode steel at a rate of greater than ¼ inch per year.”<sup>20</sup> Reactivity is more nebulously defined as “includ[ing] wastes that are unstable, react with water or form hazardous mixtures with water, are capable of releasing toxic cyanide or sulfide gases under certain conditions, are explosive, or are capable of detonating under certain conditions.”<sup>21</sup> Finally, toxic wastes “contain[] any of 40 different hazardous constituents at a concentration equal to or greater than a certain amount. These 40 constituents include 8 metals, 6 pesticides, 2 herbicides, 10 volatile organic compounds (VOCs), and 14 semi-volatile organic compounds (SVOCs).”<sup>22</sup>

The average cruise ship creates around a dozen types of hazardous waste, running the gamut across all four characteristics: photo processing wastes, dry cleaning wastes, print shop wastes, photocopying and laser printer cartridges, used cleaners, solvents, paints and thinners, incinerator ash, fluorescent and mercury vapor bulbs, batteries, and spent explosives.<sup>23</sup> Aside from the problems accompanying self-reporting (discussed infra section II), it is often difficult to decide *how* RCRA will interact with cruise ships. When is the hazardous waste deemed “generated” for purposes of RCRA? Are the cruise ships considered small or large quantity generators?

RCRA rules that cover small-quantity generators (those that generate more than 100 kilograms but less than 1,000 kilograms of hazardous waste per month) are less stringent than those for large-quantity generators (generating more than 1,000 kilograms per

16. *Resource Conservation and Recovery Act (RCRA) Overview*, EPA (Oct. 21, 2015), available at <http://www2.epa.gov/rcra/resource-conservation-and-recovery-act-rcra-overview>.

17. *Cruise Ship Discharge Assessment Report*, *supra* note 1, at 1.

18. *What is Hazardous Waste?*, CONN. DEP’T OF ENERGY & ENVTL. PROT., [http://www.ct.gov/deep/cwp/view.asp?a=2718&q=451894&depNAV\\_GID=1967](http://www.ct.gov/deep/cwp/view.asp?a=2718&q=451894&depNAV_GID=1967) (last visited Oct. 23, 2015).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Cruise Ship Discharge Assessment Report*, *supra* note 1, at 1.

month), and it is unclear whether cruise ships are classified as large or small generators of hazardous waste.<sup>24</sup>

In addition to RCRA, multiple other acts work in regulating the harmful products of the cruise industry.<sup>25</sup> Bilge water, for example, can contain harmful quantities of discharge oil or hazardous substance, and is regulated by Section 311 of the Clean Water Act.<sup>26</sup> MARPOL, Annex I, implements the requirement of ships creating and maintaining an oil record book for inspection by the United States Coast Guard.<sup>27</sup> The Clean Air Act, meanwhile, sets standards for air quality, directly affecting the large, Category 3 diesel marine engines.<sup>28</sup>

Because there still exist gray areas in terms of much waste regulation, the U.S. Commission on Ocean Policy, relying on the EPA's White Paper on cruise industry waste, recommended to Congress to establish a new regulatory regime, including, "uniform discharge standards and waste management procedures[;] thorough recordkeeping requirements to track the waste management process[;] required sampling, testing, and monitoring by vessel operators using uniform protocols[; and] flexibility and incentives to encourage industry investment in innovative treatment technologies."<sup>29</sup>

The EPA's recommendation was introduced to Congress as the Clean Cruise Ship Act, though the bill was never acted upon and quietly died without even a vote.<sup>30</sup> Further frustrating the environmental community, while the EPA did examine the creation and management of hazardous waste streams, the report it drafted did not "include recommendations or options to address management of cruise ship wastes."<sup>31</sup>

## II. THE BARE MINIMUM—HOW LACK OF MEANINGFUL REGULATION ALLOWS THE CRUISE INDUSTRY TO SKATE BY WITH IMPUNITY

With its nearly 34,000 miles of coastline, Alaska is a cruise-line destination for a good portion of the year—in fact, some estimates place the number of cruise tourists in the millions annually.<sup>32</sup> While that sort of tourism clearly is beneficial to Alaska's economy, there are occasional drawbacks—such as that personified by the 1998 and 1999 plea agreements between Royal Caribbean and the United States Department of Justice.<sup>33</sup>

24. CLAUDIA COPELAND, CONG. RESEARCH SERV., RL 32450, CRUISE SHIP POLLUTION: BACKGROUND, LAWS AND REGULATIONS, AND KEY ISSUES 13 (2008).

25. *Cruise Ship Discharge Assessment Report*, *supra* note 1, at 4, 8.

26. COPELAND, *supra* note 24, at 14.

27. *Id.*

28. *Id.* at 16.

29. *Id.* at 23–24.

30. *Id.* at 24.

31. *Id.* at 24–25.

32. Andrew Schulkin, Note, *Safe Harbors: Crafting an International Solution to Cruise Ship Pollution*, 15 GEO. INT'L ENVTL. L. REV. 105, 106 (2002).

33. *Id.*

In 1998, Royal Caribbean pled guilty to several charges relating to its illegal dumping of hazardous waste and other materials, accepting a \$9 million penalty and five years corporate probation.<sup>34</sup> The Justice Department was not so easily satisfied—it continued the investigation, uncovering twenty-one additional counts to which Royal Caribbean inevitably pled guilty.<sup>35</sup> This time, the penalty was double the initial—\$18 million, for a combined total of \$27 million in punitive fines—higher even than the one paid by the Exxon Valdez for its Alaskan spill.<sup>36</sup>

The Environmental Protection Agency, in its press release condemning the actions of Royal Caribbean, announced:

In a plea agreement, filed in U.S. District Court in six cities, Royal Caribbean admitted that it routinely dumped waste oil from its fleet of cruise ships, such as the environmentally sensitive Inside Passage of Alaska. It also pleaded guilty to the unprecedented charge that it deliberately dumped into U.S. harbors and coastal areas many other types of pollutants, including hazardous chemicals from photo processing equipment, dry cleaning shops and printing presses. The \$18 million fine is the largest ever to be paid by a cruise line in connection with polluting U.S. waters.<sup>37</sup>

Royal Caribbean, due to their actions, had to operate under a court-supervised environmental compliance plan for the ensuing five-year period, but, less than a month later, reluctantly admitted to dumping again.<sup>38</sup>

Among its admitted violations were the midnight dumping of harmful quantities of waste oil off the coast of Alaska, New York, and Miami; RCRA violations for hazardous waste storage; keeping false record books for the purpose of substantially misrepresenting its oil records to the coast guard; and discharging known pollutants, including photo and dry cleaning waste, directly into the ocean.<sup>39</sup> As seen by those admissions, this was not an act of accidental noncompliance—it was a directly flagrant flaunting of the rules. The fact is, the violations were almost characteristic of a comical scheme from a movie; “Royal Caribbean has acknowledged in its guilty pleas that in the early 1990s, the engine rooms on five of its ships were rigged with secret piping that allowed oily bilge to bypass

34. Charles Fishman, *One Big Problem - “Save the Waves”*, FAST COMPANY (Feb. 29, 2000, 5:00 AM), <http://www.fastcompany.com/38792/one-big-problem-save-waves>.

35. *Id.*

36. *Id.* The Exxon Valdez cost around \$2 billion to clean up, but the criminal fine imposed was only \$25 million—two million shy of that imposed on Royal Caribbean. Kiley Kroh, *25 Years After Exxon Valdez Oil Spill, Company Still Hasn’t Paid for Long-Term Environmental Damages*, THINK PROGRESS (July 15, 2013, 2:11 PM), <http://thinkprogress.org/climate/2013/07/15/2301451/25-years-after-exxon-valdez-oil-spill-company-still-hasnt-paid-for-long-term-environmental-damages/>; see Fishman, *supra* note 34.

37. *Department of Justice Announced That Royal Caribbean Cruises Ltd., Has Agreed to Pay a \$18 Million Criminal Fine*, EPA, (July 21, 1999) [hereinafter *Royal Caribbean Criminal Fine*], available at <http://yosemite.epa.gov/opa/admpress.nsf/6427a6b7538955c585257359003f0230/d4cf84427956628e852567b50070ccaf>.

38. *Id.*; Fishman, *supra* note 34.

39. *Royal Caribbean Criminal Fine*, *supra* note 37.

expensive onboard pollution-treatment devices and to be poured directly overboard.”<sup>40</sup>

To suggest that Royal Caribbean was alone in this sort of deceitful action would be far from accurate. Holland America, a division of the Carnival Corporation, was fined \$10,000 in 2004 for falsely certifying that it was performing environmental audits when no such inspections were taking place.<sup>41</sup> The Hannah Glover and Rockmore line was fined \$300,000 in 2010 for dumping raw, untreated sewage directly into coastal waters and the Charles River.<sup>42</sup> In 2006, the Texas Treasure pled guilty to charges of obstructing coast guard investigations into its illegal dumping of waste oil and deliberately bypassing pollution prevention equipment.<sup>43</sup> The point is that the culture of subversion is not confined to a single corporate entity, but rather endemic of the entire cruise industry. The list of fines and penalties consulted in the drafting of this paper listed over fifty fines as currently “pending” adjudication, targeting more than two-dozen cruise ships and lines.<sup>44</sup> This is a clear sign that self-regulation is failing the cruise industry—and failing the coastal towns and ocean life.

Meanwhile, the federal government seems to be taking a backseat to the states on the issue of coastal purity. Back in September of 2001,

California became the second state—after Alaska—to decide that federal regulations governing what cruise ships can and cannot dump are too weak, and to respond by implementing its own laws. After a state task force report found that pollutants [“]are routinely discharged from vessels into California’s coastal waters,[“] the state passed legislation that prohibits dumping of sewage sludge hazardous materials, and bilge water containing oil, and instructs California’s Environmental Protection Agency to ask the federal government to prohibit all such discharges within the state’s national marine sanctuaries. Although the laws do not include limits on the expulsion of blackwater (from toilets) or graywater (from sinks, showers, and laundry), many see this as an important first step.<sup>45</sup>

While it is obviously in the states’ best interests to regulate anything that might harm their citizens or property, an agency already exists whose sole purpose is to

40. Fishman, *supra* note 34.

41. *Pollution and Environmental Violations and Fines, 1992–2012 (Only Those Reported in the Media or Public Documents)*, CRUISE JUNKIE DOT COM, <http://www.cruisejunkie.com/envirofines.html> (last visited Oct. 23, 2015).

42. *Id.*

43. *Id.*

44. *Id.*

45. Justice Thomas A. Dickerson, *The Cruise Passenger’s Rights and Remedies 2014: The COSTA CONCORDIA Disaster: One Year Later, Many More Incidents Both on Board Megaships and During Risky Shore Excursions*, 38 TUL. MAR. L.J. 515, 556–57 n.206 (2014). As of the writing of this paper, only California and Alaska have enacted laws prohibiting ocean dumping beyond their shores. *Id.* at 556.

protect in cases of pollution and waste—the United States Environmental Protection Agency. The problem, then, is one of lack of authority—the EPA cannot regulate what happens in international waters, and the cruise ships are not treated as large generators of hazardous waste for RCRA and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) purposes.

### III. POTENTIAL SOLUTIONS

While the above discussion centers around what is not perfect and what has not been accomplished, it is important to note that there have certainly been strides made to lessen pollution from the cruise-line industry.<sup>46</sup> The International Convention for the Prevention of Pollution from Ships, commonly known as MARPOL, covers various sources and methods of pollution across six Annexes of the Convention.<sup>47</sup> MARPOL currently hosts 136 countries as signatories, including the United States.<sup>48</sup> MARPOL deals with everything from garbage, to harmful liquids, to air pollution, actively governing roughly ninety-eight percent of the shipping industry and over eighty-five percent of the cruise line industry.<sup>49</sup>

Unfortunately, most of the rest of the world, in terms of cruise-line destinations and ports of call, views the United States' enforcement efforts of MARPOL as “heavy handed,” themselves turning a blind eye to the “88 million gallons of oil . . . discharged illegally” by cruise lines each year.<sup>50</sup> Most signatories of MARPOL believe that dumping in international waters should be policed by the cruise lines' flag country, which more often than not is not the United States—but rather a country with a much more lenient standard.<sup>51</sup> In fact, the situation has escalated to the point where the United States does the majority of all MARPOL police-work:

Early MARPOL enforcement cases brought by the United States were generally consistent with the international regulatory regime in that the cases brought against foreign flag ships were based on discharges of oil or plastic wastes that occurred in U.S. territorial waters. Over the years, “mission creep” has vastly expanded the scope of U.S. MARPOL enforcement program to the point where it is now wholly irrelevant where the alleged improper discharges occurred. In fact, none of the recent MARPOL enforcement cases brought in the United States have involved allegations of intentional pollution in U.S. waters. Rather, in its role as port State,

46. See, e.g., *Cruise Ship Discharge Assessment Report, Section 1: Introduction*, EPA 1, 1 (2008), [http://water.epa.gov/polwaste/vwd/upload/2009\\_01\\_28\\_oceans\\_cruise\\_ships\\_section1\\_intro.pdf](http://water.epa.gov/polwaste/vwd/upload/2009_01_28_oceans_cruise_ships_section1_intro.pdf).

47. *Id.* at 4.

48. *MARPOL: The Basics*, MARINE DEFENDERS, <http://www.marinedefenders.com/commercial/marpol.php> (last visited Oct. 23, 2015).

49. *Id.*; PATRICIA PARK, *INT'L LAW FOR ENERGY AND THE ENV'T* 51 (2d ed. 2013).

50. Gregory Linsin & Jeanne Grasso, *MARPOL Enforcement in the United States*, 1 MAR. PROF'L, no. 2, 8 (2011), available at

<http://www.blankrome.com/siteFiles/Publications/4CE98E0D31AE27C50E54B1BF77D31DFE.pdf>.

51. *Id.*



the United States has arrogated unto itself the primary compliance assurance role that was intended by international law to be performed by the flag State.<sup>52</sup>

In spite of that, pollution trends do not seem to have shifted much for the better.<sup>53</sup> While some would call for a lessening of the United States' role as environmental watchdog,<sup>54</sup> an alternative argument would be that the United States should instead change its tactics in a different way—close its ports to cruise lines whose flag states do not adequately self-police. The United States accounts for over fifty percent of all cruise-line activity each year.<sup>55</sup> The prospect of losing that market will likely be all the disincentive that a cruise line needs to strongly consider self-policing.

Cruise lines in general have hardly been amenable to change and regulation.<sup>56</sup> They have even, in many instances, claimed that the United States Department of Justice does not have jurisdiction, especially when their parent corporations are registered in other countries.<sup>57</sup> Royal Caribbean, for example, “hired several high-powered former Justice Department lawyers to argue the federal government lacked jurisdiction to prosecute. Royal Caribbean is incorporated in Liberia.”<sup>58</sup> The judge did not buy that argument, and the case ended up costing Royal Caribbean the aforementioned \$27 million.<sup>59</sup>

Other cruise lines saw the way the wind was blowing, and decided that compliance was the best tactic:

When subpoenas arrived at Carnival Corp. a year later, the corporate response was far different. Carnival didn't question jurisdiction and instead handed over 1,200 boxes of records and began negotiating a deal. In April, the company pleaded guilty in Miami, agreed to set up a compliance program and paid an \$18 million fine. Just three months later, Justice announced Norwegian's guilty plea and \$1million fine. The government's press release said Norwegian, a Bermuda corporation, had turned itself in and lauded the company's “corporate citizenship.” In its own announcement, Norwegian said only that it had “discovered

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52. *Id.*

53. *See id.*

54. *Id.* Namely the author of this study, who believes the United States is overreaching and putting the cruise and shipping industries in danger of being over-regulated.

55. Kalena S. Bailey et al., *Sustainable Tourism and the Cruise Line Industry*, UNC KENAN-FLAGLER BUS. SCH. (2004), <https://extranet.kenan-flagler.unc.edu/kicse/ORIG%20Shared%20Documents/Sustainable%20Tourism%20and%20the%20Cruise%20Line%20Industry.pdf>.

56. *See Cruise Ship Pollution*, SEINE MAR., (Nov. 7, 2002, 7:15 PM), <http://www.seinemaritime.net/suports/uploads/files/Cruise%20ship%20pollution.pdf>.

57. *Id.*

58. *Id.*

59. *Id.*

reporting irregularities” and “immediately reported these problems to the government.”<sup>60</sup>

With such ready compliance, it would not be much of a stretch to believe that cruise lines can be brow-beaten into following RCRA and CERCLA, even should they operate under a foreign flag. Though it might be taking the idea to the extreme, it would be refreshing to make such compliance and a necessity for access to United States’ ports, even when cruise ships are servicing other countries. For example, a cruise line whose ships were found to be dumping oil or hazardous waste around Asia would find itself unable to dock in America for the next year. Giving MARPOL or RCRA such reach and teeth would potentially do a great bit of good for the environment in general, and no cruise line would want to give up such a lucrative market. Additionally, a recent Carnival Cruise Lines’ official report has stressed that potential port unavailability will harm futures sales and profitability.<sup>61</sup> Assuredly, improper discharge management and ecological impacts *should* affect a company’s ability to operate in United States ports or coastal routes. These effects will directly impact a cruise-line organization’s market share and revenue growth. When answering to shareholders, it would be difficult to claim that a penny of prevention would not be worth the pound of cure.

Another suggestion is the implementation of a Sustainability Management and Performance program (or SMP), with which cruise lines that wish to dock in United States’ waters must comply. The theme of an SMP program is sustainable tourism. In 1992, the Worldwide Fund for Nature defined sustainable tourism as “tourism and associated infrastructure that both now and in the future operate[] within natural capacities for the regeneration and future productivity of resources—natural, social and cultural . . . .”<sup>62</sup>

60. *Id.*

61. FY2013 Form 10-K, Carnival reports: “Negative publicity concerning the cruise business in general or us in particular, including any adverse environmental impacts of cruising, could impact the demand for cruises, affect our reputation and harm our future sales and profitability.” Additionally, NCL discloses in its FY2013 Form 10-K: “(t)he availability of ports is affected by a number of factors, including, but not limited to, (...) local governmental regulations and local community concerns about port development and other adverse impacts on their communities from additional tourists.” The company further states: “(a)ny limitations on the availability of our ports of call could adversely affect our business, financial condition and results of operations.” Nashat Moin, *Cruise Lines Research Brief*, SUSTAINABLE INDUSTRY CLASSIFICATION SYS. (Dec. 2014), available at [http://www.sasb.org/wp-content/uploads/2014/12/SV0205\\_Cruise\\_Brief.pdf](http://www.sasb.org/wp-content/uploads/2014/12/SV0205_Cruise_Brief.pdf).

62. David Johnson, *Environmentally Sustainable Cruise Tourism: A Reality Check*, 26 MARINE POL’Y 4 (2002), available at <http://www.sciencedirect.com/science/article/pii/S0308597X02000088>.

In 1992 Tourism Concern and Worldwide Fund for Nature defined sustainable tourism as tourism and associated infrastructure that both now and in the future operates within natural capacities for the regeneration and future productivity of resources—natural, social and cultural; recognizes the contribution that people and communities, customs and lifestyles past and present, make to the tourism experience; accepts that these people must have an equitable share in the economic benefits of tourism; and is guided by the wishes of all stakeholders, especially local people and communities in host areas.

*Id.*

The idea of sustainable tourism is not a recently developed concept for the cruise-line industry.<sup>63</sup> Back in 2002, the first International Conference on Responsible Tourism in Destinations (RTD) addressed sustainable tourism concerns.<sup>64</sup> The RTD concluded with the Cape Town Declaration, which defined responsible tourism as tourism that “minimaliz[es] negative economic, and environmental, and social impacts . . . .”<sup>65</sup> Right after the Cape Town Declaration, the World Summit on Sustainable Development was assembled.<sup>66</sup> Four industry bodies prepared a preliminary report on the topic.<sup>67</sup> One of these bodies was the International Council of Cruise Lines.<sup>68</sup> The report’s primary focus was on waste management practices and procedures, addressed from an industry (rather than environmentally responsible) perspective.<sup>69</sup> Despite cruise lines’ awareness of sustainable tourism and their capability of minimizing hazardous waste, there is barely any evidence that cruise-line companies have attempted to mitigate their cumulative environmental impacts.<sup>70</sup>

Sustainable tourism is positively attainable, as evidenced by multiple models.<sup>71</sup> Currently, there exist several “green cruises” that seek to mitigate their environmental impacts. Holland America’s Oosterdam Ship has made improvements for both energy efficiency and waste reduction by implementing a blackwater treatment system and by eliminating waste from<sup>72</sup> going overboard.<sup>73</sup> Celebrity Cruises’ Solstice class ship includes a water filtration system that returns all waste water and blackwater to near purified conditions before it is dumped back into the ocean.<sup>74</sup> More surprisingly, Royal Caribbean Cruise Lines’ Independence of the Seas has actually established an environmental management plan.<sup>75</sup> Perhaps wary of further sanctions, Royal Caribbean also recently spent \$100 million to convert its waste water treatment system to an advanced purification system.<sup>76</sup>

Although cruise-line organizations have implemented certain sustainable practices that align with the theme of sustainable tourism, “[t]he regulations that govern activities related to waste streams and ecological impact depend on a ship’s flag state and current location. The modern patchwork of legislation has led to lax

63. See Ross A. Klein, *Responsible Cruise Tourism: Issues of Cruise Tourism and Sustainability*, 18 J. HOSPITALITY & TOURISM MGMT. (Jan. 1, 2011), available at <http://www.freepatentsonline.com/article/Journal-Hospitality-Tourism-Management/296255043.html>.

64. *Id.*

65. *Id.*

66. See *id.*

67. *Id.*

68. *Id.*

69. Klein, *supra* note 63.

70. Juan Gabriel Brida & Sandra Zapata, *Cruise Tourism: Economic, Socio-cultural and Environmental Impacts*, 1 INT’L. J. LEISURE & TOURISM MARKETING, no. 3, at 205, 219 (2010), available at [http://www.researchgate.net/publication/228304461\\_Cruise\\_Tourism\\_Economic\\_Socio-Cultural\\_and\\_Environmental\\_Impacts](http://www.researchgate.net/publication/228304461_Cruise_Tourism_Economic_Socio-Cultural_and_Environmental_Impacts).

71. See Kristin Underwood, *Seven Ocean-Friendly Eco Cruises Hitting the High Seas*, TREEHUGGER (June 3, 2009), <http://www.treehugger.com/natural-sciences/7-ocean-friendly-eco-cruises-hitting-the-high-seas.html>.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

and regardless enforcement compared to other industries.”<sup>77</sup> “Practicing responsible cruise tourism would suggest having consistent practices, at the highest level of responsibility, across jurisdictions rather than variable practices based on what is permitted by one jurisdiction versus another. The issue is not what one can get away with, but what is responsible behaviour for the environment.”<sup>78</sup> The EPA should require cruise-line organizations to demonstrate compliance with an SMP program, which demonstrates that cruise-line organizations are systematically carrying out sustainable best practices. Potentially, Congress can outline what industry standard sustainable best practices are and require them via regulatory guidelines.

This entire argument, though, is ancillary to another one: before addressing the idea of compliance, the EPA and Congress need to address the subject of uniformity. Under current systems of reporting, cruise lines have been happy to work with the EPA and state governments and report their waste storage and disposal data. However, the problem occurs where different states, at which the cruise ships dock, assign different identification numbers and systems, resulting in confusion and multiple reports for the same waste.<sup>79</sup> The cruise industry has proposed a simple system where,

[a] cruise ship [would] determine[] its American-based home port State (the State in which it has its main port of call). After determining the home port State, the cruise line would notify that State or EPA Regional office of its hazardous waste activities and the generator size of each cruise ship based on the quantity of hazardous waste generated per ship in accordance with 40 CFR 261.5(c). The home port State or EPA Regional office will issue an EPA identification number for each individual cruise ship using the current established procedure. The number will reflect the home port State initials and ten alpha numeric characters.<sup>80</sup>

This common-sense system makes entirely too much sense not to be implemented, and the very fact that the cruising industry itself concocted it shows that it is willing to meet regulators half-way—even if the idea might be inspired by the concept of *less* total reporting done to multiple states. The total end would see *more accurate* reporting, in that there would likely be less chance of confusion on both the states’ and the cruise lines’ part, as only one set of reports would need to be made.

Cruise lines have had to, with a historic consistency, pay out major fines for breaking environmental laws.<sup>81</sup> The environmental costs of the sector are incalculable because the cruise-line industry is, in general terms, an unregulated

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77. Moin, *supra* note 61.

78. Klein, *supra* note 63.

79. *Cruise Ship Discharge Assessment Report*, *supra* note 1.

80. *Id.*

81. Brida & Zapata, *supra* note 70, at 218.

activity.<sup>82</sup> Furthermore, it is difficult to even measure these impacts despite enforcing environmental standards for the industry. Cruise lines are notorious for their lack of transparency in their self-reporting.<sup>83</sup>

Currently, the EPA has only half-heartedly urged cruise-line companies to implement programs that address cruise lines' adverse environmental impacts. One tepid approach includes the encouragement of Safety Management Systems (SMS) plans for: "(1) developing enhanced waste management systems to implement the companies' environmental policies and highlight proper waste-handling procedures; (2) increasing internal and third party audit oversight of environmental procedures to prevent illegal discharges; and (3) improving waste management and equipment to reduce or better treat waste items."<sup>84</sup> The SMS plans comprise a portion of what the EPA termed environmental management systems (EMS).<sup>85</sup> "An EMS is a formal set of procedures and policies that describe how an organization will assess and manage its potential impacts on the environment, focusing on both regulated and unregulated activities."<sup>86</sup> Once a cruise-line organization implements EMS properly, it has the potential to move that organization beyond compliance with current regulations and into a vigorously progressive process for reducing harmful impacts on the environment.<sup>87</sup> The benefits of adopting such a system include "addressing all significant environmental impacts of an organization, whether regulated or not; [e]mphasizing pollution prevention instead of corrective action; [f]ocusing on continual improvement in environmental performance, instead of only complying with legal requirements; and [e]stablishing more open and constructive relationships with outside stakeholders and regulatory agencies."<sup>88</sup>

The EPA's Cruise Ship White Paper stipulates that the "EPA is currently working . . . to *encourage* the use of EMSs in order to assure compliance and address significant unregulated environmental impacts."<sup>89</sup> While "encouragement" sounds altruistic and speaks to less of a regulatory and more of an amiable relationship with the cruise-line industry, the oceans are still being polluted on a daily basis, with thousands of tons of hazardous wastes that include the aforementioned blackwater, graywater, solid waste, hazardous waste, bilge water, and ballast water.<sup>90</sup> A single ship with 3000 passengers releases 15,000 to 30,000 gallons of blackwater; between 90,000 to 255,000 gallons of graywater; and eight metric tons of oily bilge water *per day*.<sup>91</sup>

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82. *Id.*

83. *See* discussion *supra* section II.

84. *Cruise Ship White Paper*, EPA (Aug. 22, 2000), available at [http://water.epa.gov/polwaste/vwd/upload/2004-10\\_12\\_w\\_oceans\\_cruise\\_ships\\_white\\_paper.pdf#\\_ga=1.80628375.1842573051.1445058101](http://water.epa.gov/polwaste/vwd/upload/2004-10_12_w_oceans_cruise_ships_white_paper.pdf#_ga=1.80628375.1842573051.1445058101).

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. Brida & Zapata, *supra* note 70, at 219.

91. *Id.*

Even in the face of such encouragement, the cruise-line industry continues to break environmental laws and often has had to pay through the nose as a result.<sup>92</sup> Certainly, fines can be a hefty penalty for the cruise-line industry, but fines do little to alleviate the egregious amount of pollution that occurs as a result of cruise line's insolent dumping. In reality, while a fine of \$27 million may seem like a harsh penalty for a cruise line like Royal Caribbean, the sum is paltry compared to its \$2 billion gross income last year.<sup>93</sup> For an industry with a war chest that measures in the high eleven to twelve figures, such a fine equates to a mere slap on the wrist. Instead of the current method of encouragement, followed with the inevitable fining when such encouragement is laughed off as ineffectual, the EPA should reevaluate and take a more thorough and systematic approach.

The EPA recently released a Strategic Plan for the years 2014–2018.<sup>94</sup> “The Strategic Plan charts the course for advancing EPA’s priorities and mission to protect human health and the environment.”<sup>95</sup> More specifically, goal five of the plan stipulates that the Agency’s work shall consist of “Protecting Human Health and the Environment by Enforcing Laws and Assuring Compliance,” with one strategy listed as “working toward a sustainable future.”<sup>96</sup> In order to facilitate, in part, the Strategic Plan’s goals, the EPA must systematically regulate the cruise-line industry’s hazardous waste operations. Encouragement and suggestion have not been effective methods in invoking cruise line industry compliance with environmental laws. The EPA must no longer passively make recommendations—it must actively regulate cruise-line industry operations in regards to waste and pollution in order to mitigate the culture and practice of hazardous waste being discarded into the fragile oceans. Self-policing has been woefully insufficient.

This Strategic Plan provides the EPA an opportunity to reassess the efficiency of its current performance measures and to contemplate new ones.<sup>97</sup> Historically, the EPA’s enforcement actions were focused on their level of activity (e.g., numbers of inspections) and case-specific results for enforcement cases (e.g., pounds of pollutants reduced).<sup>98</sup> However, the EPA declared “these metrics are useful, and we will continue reporting on them, but they tell only part of the story. An effective program should target the biggest problems first.”<sup>99</sup> It has become apparent that even the EPA recognizes in its own plan the need for incisive and innovative enforcement actions.

As an observation, the time is right to begin a stricter approach to environmental policing. After the series of high-profile environmental disasters in

92. *Id.*

93. *Royal Caribbean Cruises Ltd.*, MARKETWATCH, <http://www.marketwatch.com/investing/stock/rcl/financials> (last visited Aug. 9, 2015).

94. *Fiscal Year 2014–2018 EPA Strategic Plan*, EPA (Apr. 10, 2014), available at <http://nepis.epa.gov/Exe/ZyPDF.cgi/P100KB1L.PDF?Dockey=P100KB1L.PDF>.

95. *EPA Strategic Plan*, EPA, <http://www2.epa.gov/planandbudget/strategicplan> (last visited Aug. 29, 2015).

96. *Id.*

97. *Fiscal Year 2014–2018 EPA Strategic Plan*, *supra* note 94.

98. *Id.*

99. *Id.*

the past few decades, many regions have enacted more prophylactic measures to ensure their coastlines remain pristine. In August of 2014, environmental concerns prompted officials in Venice to ban ships above 40,000 metric tons from Saint Mark's basin in Giudecca Canal.<sup>100</sup> Following that, October 2014 saw residents of Key West vote against coastal dredging due to serious environmental concerns.<sup>101</sup> It is increasingly evident that concerns for the environment, whether for its general welfare or for the economic benefits it bequeaths coastal communities, are prompting officials to act in ways to prevent further damage to the oceans and other bodies of water.

Finally, harkening back to the hypothetical question in the opening of this article, it is almost unthinkable that cruise lines have yet to be classified as large generators of hazardous waste for purposes of RCRA regulatory compliance. Some cruise lines even "argue that they generate less than 100 kilograms per month and therefore should be classified in a third category, as 'conditionally exempt small-quantity generators,' a categorization that allows for less rigorous requirements for notification, recordkeeping, and the like."<sup>102</sup>

Giving cruise lines such regulatory immunity would be potentially catastrophic, considering the amount of waste actually generated. While indeed a small quantity of tinier ships may produce much less, it is still a ship populated with a large group of both staff and customers. These ships are mobile cities, creating and storing all the waste from thousands of people each day: "Unlike a typical freighter, which might carry a dozen crewmembers, a large cruise ship typically carries at least 2,000 passengers and 1,000 crew, generating as much waste as a small city. Cruise ships also sail through fragile ecosystems like Florida's coral reefs and Alaska's Inside Passage."<sup>103</sup>

Though the idea would be a hard pill for the cruise industry to swallow, this suggestion is to look not to the amount of waste produced per ship—but rather per cruise line in total. Do not make the Enchantment of the Seas a Small Quantity Generator—make Royal Caribbean as a whole a Large Quantity Generator. Most will undoubtedly protest, but as seen in the examples illustrated in this article, the industry as a whole is in need of strict accounting.

In conclusion, perhaps the best solution is not to adopt a whole new regulatory scheme, but rather to work at better implementing those which already exist. If RCRA and MARPOL can be better administered in a way that makes regulation and tracking of waste smarter, then there may be incentive for more transparency. The industry as a whole needs to embrace sustainable tourism practices. While in recent years juggernauts like Royal Caribbean have been fined to the tune of multiple million dollars, the industry does seem like it is making strides to right its ship. In the event that flagrant flaunting of MARPOL and RCRA persists, states can close their ports to ships from the offending fleet. Hopefully, the threat of this

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100. Moin, *supra* note 61.

101. *Id.*

102. COPELAND, *supra* note 24, at 14.

103. *Cruise Ship Pollution*, *supra* note 56.

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alone will be enough to increase compliance and reduce pollution and contamination from hazardous wastes.