



CLIENT ADVISORY LETTER 2009-01
January 5, 2009

RE: OSPR Proposes Shorter Response Times in California High Volume Ports

Dear Client:

On behalf of National Response Corporation we take this opportunity to wish you all a very Happy New Year.

It is hard to believe another year has come and gone. Last year began with a continued response to a major oil spill in San Francisco, California. On November 7, 2007 a non tank vessel struck the San Francisco-Oakland Bay Bridge spilling about 54,000 gallons of heavy bunker fuel into San Francisco Bay. NRC, along with its vast network of spill responders, successfully worked with federal and local agencies to clean up the spill that affected more than 400 miles of coastline.

While the spill was cleaned up in a few short months, the event has become a catalyst for new regulations in California and, as a result, California's Office of Spill Prevention and Response (OSPR) has proposed amending its oil spill regulations to require shortened response times in certain high volume ports (HVP). If passed, instead of 6 hours, OSROs will have only 2 hours to deploy containment boom and 4 hours to begin on-water recovery operations in certain geographic areas (or Oil Pollution Risk Areas) within the high volume ports of San Francisco and LA/Long Beach. Although OSPR had good intentions with these new regulation changes, given some of the proposals that were recently vetoed by Governor Schwarzenegger, the shortened time frames may result in higher costs to plan holders and possible unsafe conditions for OSROs.

The California regulators have gone on record to say that they do not believe the new requirements will result in increased costs to shipowners or industry, but we disagree. We are prepared to analyze their reasoning in depth, but for current purposes we provide a simple summary. More specifically, the proposed requirements do not fully account for the different routes and locations non tank vessels trade as compared to tankers when suggesting resources to meet a reduced time frame that already exist for tankers. Further, the proposed regulations do not account for the fact that California's regulations are performance standards, not planning standards as used in the Federal OPA 90 regulations. Thus, OSROs must have more than the minimum resources required by the regulations to ensure that they can meet the requirements.

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In light of the above, we urge you to consult with your Qualified Individuals (QIs), P & I Club representatives and trade associations regarding this issue. With specific regard to your QIs, we note that you may have received initial information from them that indicated vessel owners need not be concerned with these new regulations because it will be the responsibility of the OSRO to comply with these requirements. While it is true that the OSRO has to implement the resource changes to meet the new regulations, it is still the vessel owner's responsibility to have a plan that meets the requirements. Thus, we recommend that you strongly oppose these requirements because we believe the added regulations are likely to drive up costs as OSROs will be forced to increase both personnel and equipment inventories in order to meet the more stringent requirements. Further, the shorter time frame could pose additional unsafe risks to responders if they are forced to meet tighter response times, particularly when responding in adverse weather conditions.

Even Governor Arnold Schwarzenegger cited the safety of responders as a concern when he vetoed a similar bill in the California legislature on September 29, 2008. In fact, Governor Schwarzenegger vetoed three of eleven new legislative bills passed by the California assembly in the wake of the San Francisco spill. The governor singled out Bill # SB 1056 that would have required tank and non tank vessel operators to respond to spills in San Francisco Bay within two hours, instead of six, as a concern because "it would force Oil Spill Response Organizations (OSRO) to respond in potentially unsafe circumstances."

These proposed changes to Oil Spill Contingency Plans under the California Code of Regulations (Sections 790, 811.02 and 827.02) will be reviewed by OSPR until January 27, 2009. We urge you to send your written comments to OSRP by that date or to attend the public hearings, which will be held on January 22, 2009 in Sausalito, CA and January 27, 2009 in Long Beach, CA. More information about the proposed changes to the regulation can be found on OSPR's web site at www.dfg.ca.gov/ospr/law/regs_rev.html.

We will continue to monitor this latest regulation change closely and keep you updated on any new developments. As always, I welcome you to contact me directly, if there is anything I can do to assist you.

Best regards,

A handwritten signature in black ink, appearing to read "Steven A. Candito".

Steven A. Candito
President

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