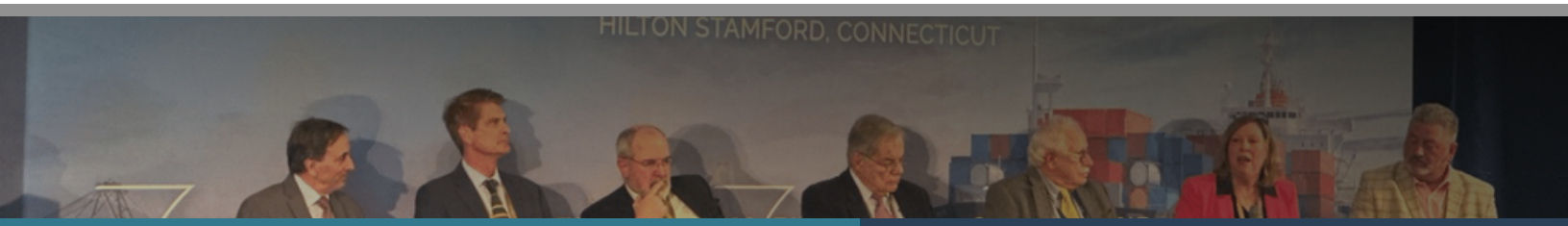

Chairman's Corner

Welcome to the OPA 90 Forum Newsletter!

June 2025

Dear readers,

Thank you for your interest in the OPA 90 Forum. In this issue of the Newsletter, we look into the future with curiosity and optimism. Specifically, we have author contributions from our members on Salvage and Marine Firefighting, Environmental Protection, National Resource Damage Assessment, Fuel Transition, UW Ship Repair, Responder Immunity, and my perspective on regulatory enforcement of OPA 90 regulations.

Administration transitions bring change, and we will watch how federal authorities will exercise their enforcement powers involving vessel incidents and oil spill responses. Agencies like the U.S. Coast Guard (USCG), Bureau of Safety and Environmental Enforcement (BSEE), and Department of Justice (DOJ), and others will assess risk, causation, culpability, and environmental damages. I ponder the potential shifts in enforcement under an administration that prioritizes deregulation and economic growth over stringent environmental oversight.

OPA 90 is a proven framework for preventing and mitigating environmental damages. Responsible operators will continue to take preventive measures and conduct thorough responses when significant pollution risks arise. Such actions are essential for minimizing liabilities from future claims, and we advise employing the "Prudent Over-Response" principle for safeguarding life, the environment, and property. This is best achieved through proactive activation of Vessel or Facility Response Plans.

This shift offers an opportunity for responsible parties to strengthen preparedness and compliance without fearing immediate penalties for minor infractions or incidental releases. Operational excellence, prioritizing safety, and a prudent over-response culture will assist in protecting against penalties.

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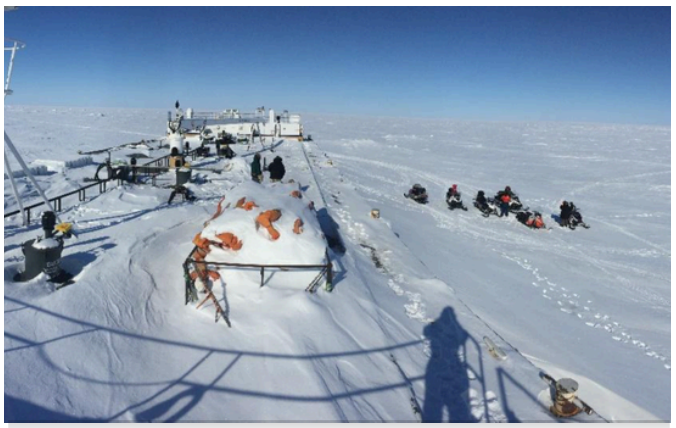


For all stakeholders, the fundamentals of OPA 90 remain intact: liability, pre-contracted rapid response, and sound preparedness. Prevention, preparedness, and timely, prudent over-response posture are vital for protecting economic and environmental interests.

Sincerely,

Douglas Martin
Chairman
OPA 90 Forum

New Member

Please welcome our newest OPA 90 Forum Member:
Capt. Paul Foran

Integration of the Salvage and Marine Firefighting Provider into the Unified Command

By Michael Oder, Sr., Deputy Chief Marine Firefighting Division, IES LLC

During a shipboard fire, especially one occurring in U.S. waters, effectively integrating the Salvage and Marine Firefighting (SMFF) provider into the Unified Command (UC) structure is crucial for a coordinated and timely response. Unified Command, a key component of the Incident Command System (ICS), allows multiple agencies and stakeholders to work together with a common set of objectives and a unified incident action plan. Given the complexity of shipboard emergencies, the role of the SMFF provider cannot be overstated.

Under the Oil Pollution Act of 1990 (OPA 90), vessel response plans (VRPs) must identify pre-contracted SMFF providers. These specialized teams bring critical capabilities to the scene, including onboard firefighting, vessel stability assessment, dewatering, damage control, and eventual salvage or towage operations. However, to maximize the value of their expertise, SMFF providers must be embedded within the UC early in the incident. This requires early activation of the VRP.

The first step in integration is establishing communication between the SMFF provider and the Federal On-Scene Coordinator (FOSC), typically the U.S. Coast Guard. The SMFF representative should be present at the command post or participate virtually if necessary. Their operational knowledge, understanding of the vessel's systems, and access to VRP-specific information can guide tactical decisions and help avoid delays in deploying equipment and personnel.

Within the UC, the SMFF provider typically contributes to the Operations Section, often within the Marine Firefighting or Salvage Branches. Their technical advisors support planning efforts, ensuring that the objectives in the Incident Action Plan are achievable and safe. Specially trained Marine Firefighters can help guide the local responders in vessel familiarization, vessel systems, and tactical considerations. They also liaise with the vessel owner/operator to provide updates and ensure contract compliance.

Effective integration ensures that efforts are not duplicated and that all stakeholders – federal, state, local, and private – are working from a shared understanding of the situation. This collaboration also enhances responder safety, particularly when entering a hazardous marine environment where structural integrity, hazardous materials, and fire dynamics must be continually assessed.

Integrating the SMFF provider into Unified Command is not just a regulatory requirement; it is a strategic imperative. By bringing specialized maritime expertise to the table early and embedding them within the command structure, response operations are streamlined, risks are reduced, and outcomes are significantly improved.

Navigating the Fuel Transition

By Torbel Hertel, Group Vetting Director, V-Ships

As the maritime industry faces unprecedented challenges and opportunities on its journey towards a sustainable future, the importance of technical and strategic foresight cannot be overstated.

Navigating this complex regulatory landscape will require robust decarbonisation strategies from ship owners, regardless of their size. As the maritime sector transitions to a low carbon economy, those who proactively adapt to these changes will be best positioned to thrive. At V., we recognise the critical need for strategic insight in this evolving environment.

Our expertise in ship management and a multitude of technical services at our disposal through SeaTec equips us to guide ship owners through the intricate process of integrating alternative fuels into their fleets, ensuring compliance with forthcoming regulations while maintaining operational efficiency.

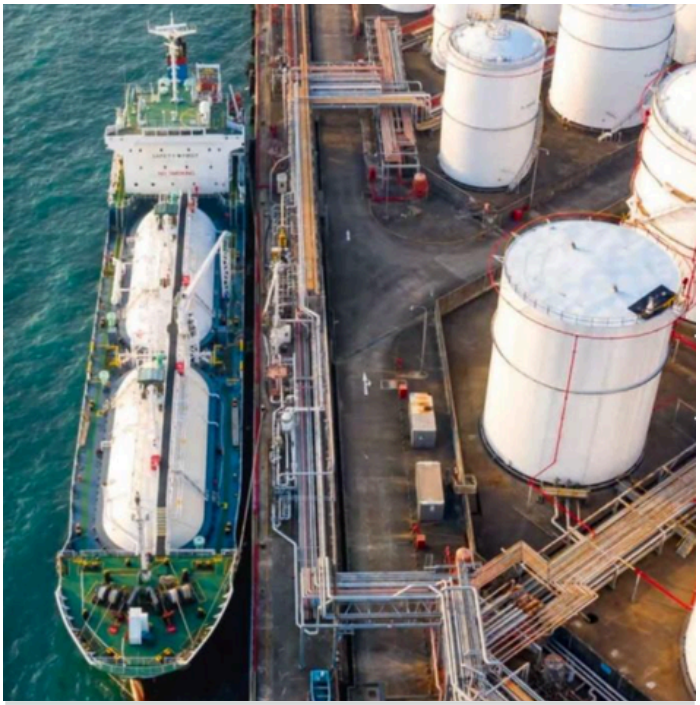
This paper delves into the technical and strategic requirements for transitioning to zero emission fuels and adhering to emerging regulations. By summarizing the current and anticipated regulatory landscape, as well as practical guidance on the adoption of alternative fuels, we aim to support ship owners in making informed decisions that will secure their competitive edge in the future maritime industry.

Here we summarize and explore the maritime industry's path to achieving net-zero emissions by 2050, by examining alternative fuels like hydrogen, ammonia, methanol, and biodiesel, alongside innovative technologies such as air lubrication systems, wind propulsion, and onboard carbon capture and highlight the main challenges in adopting alternative fuels:

Infrastructure Development:
Limited availability of bunkering facilities for alternative fuels like hydrogen, ammonia, and methanol.

Safety Concerns:
Ammonia is highly toxic, corrosive, and flammable, requiring robust safety measures and crew training. Handling and storage of fuels like hydrogen and methanol pose operational risks.

Fuel Availability and Scalability:
Limited feedstock for biodiesel and bio-oils, making them unsuitable for long-term industry-wide adoption.



Cost Implications:
High production costs for e-fuels like green methanol and hydrogen due to reliance on renewable energy and carbon capture technologies. Financial penalties for non-compliance with regulations like FuelEU Maritime and EU ETS.

Retrofit and Compatibility:
Existing vessels require modifications to engines, fuel systems, and storage tanks to accommodate alternative fuels.

Operational Challenges:
Lower energy density of fuels like methanol and ammonia necessitates larger storage tanks, reducing cargo capacity.

Market Adoption:
Slow industry-wide transition due to high upfront costs and limited commercial availability of alternative fuels.

V. stands ready to support ship owners through this transformative period and together, we can navigate the complexities of this new era and build a cleaner, greener future for all.

Shake Up at DOJ Energy and Natural Resources Division

By Eugene O'Connor, Partner, Montgomery, McCracken, Walker & Rhoades LLC

In a Memorandum dated March 25, 2025, Deputy Attorney General Todd Bianche, announced a sweeping reorganization at the U.S. Department of Justice. This included a major reorganization of the DOJ's of Energy and Natural Resources Division ("ENRD"), such as termination of senior career attorneys, reassignment of others to the Office of Sanctuary Cities, consolidation of various sections within the ERND and eliminating certain field offices. Some career managers have resigned rather than accept reassignment.

All pending litigation or settlements being handled by the ENRD have been paused. The pause is temporary, but for how long is unknown. This is regrettable, because in a major incident we are handling we were making some headway on a settlement, but negotiations have come to an abrupt halt.

The intention for the pause is unclear, but it appears to be to allow incoming ENRD attorneys and staff time to familiarize themselves on pending matters to allow for potential change in course, or on specific cases.

It is hard to predict what impact these measures may have on pending cases. It is not known how long the pause order may last or what will happen with pending settlement negotiations.

The pause order does not apply to the States, some of whom depend on the ENRD to take the lead on environmental cases.

It should also be understood this reorganization plan and pause order relating to the ENRD should not affect responses to oil spills or substantial threats of pollution. The ENRD does not take the lead on oil spill response. Typically, the U.S. Coast Guard takes the lead on incident response.

<u>WHAT CONSTITUTES A SUBSTANTIAL THREAT OF A SPILL UNDER OPA 90?</u>

On April 27, 2006, a large tank vessel strayed from her intended path towards an oil refinery on the SE coast of Puerto Rico. Shortly after midnight, she went aground on soft coral while awaiting the harbor pilot. She was a double hulled, an ice-strengthened ship and spilled no oil.

The Federal On- Scene Coordinator ("FOSC") declared that there was a "substantial threat of a discharge" of oil, which qualifies as an "incident" under OPA. This opens the wide array of damages available against the Responsible Party under OPA which may not otherwise be available to governmental or private claimants.

The next morning, the ship refloated with high tide. The FOSC directed her to proceed on her own power to anchorage. In port, a dive survey found "ONLY COSMETIC DAMAGE (PAINT SCRAPINGS)" on the hull.

At issue in pending litigation arising from this situation is who determines if a "substantial threat of a discharge is presented, how is that determination made and can it be final and binding on a Responsible Party who has not been afforded due process, i.e. an opportunity to present evidence that the situation did not constitute a substantial threat.

A FOSC "must document the factors considered and the basis for the decision that a specific situation presented a substantial threat of discharge."

The FOSC did not even write down he thought there was a substantial threat. Although the magnitude of a spill, *if one occurred*, could be "MAJOR," the probability of a spill was "LOW. The district court excluded that analysis by conducting an arbitrary and capricious review of a supposed decision by the FOSC during the grounding, that it presented a "substantial threat."

The FOSC had critical responsibilities for marine safety, and no one questions the wisdom of his activities during the grounding. But even assuming he believed the ship risked spilling oil, that belief should not constitute a binding determination of OPA liability.

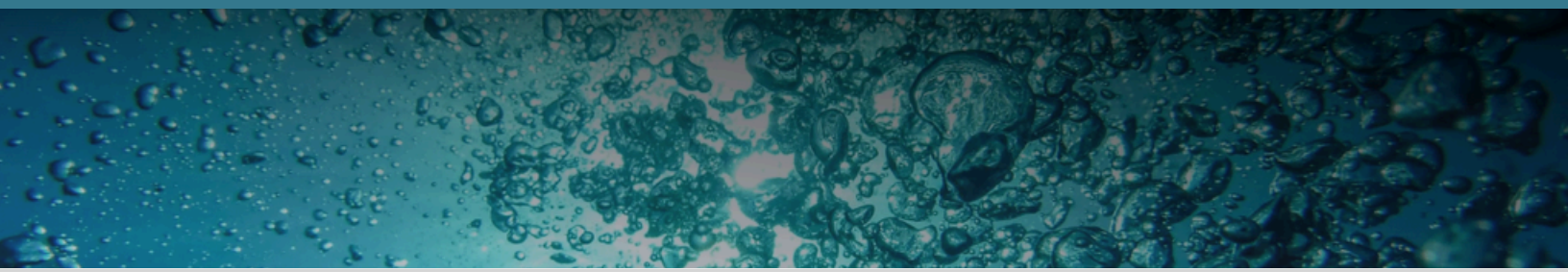
The Government claims that because the ship carried a full cargo of crude oil, the grounding presented a substantial threat. The shipowner interests contend that, regardless of the amount of oil on the ship, the threat of a spill in this situation was not "substantial" but rather, in the Coast Guard's own words, "low.'

This issue is one of the subjects of a pending appeal by the shipowner interests in the Court of Appeals for the First Circuit. A decision is expected by summer 2025.

Underwater Rudder Repair

BY CLASS-A WET UNDERWATER GROOVE WELD

By Phoenix International Holdings, LLC



During a routine in-water survey of a general cargo vessel's underwater (U/W) hull, a 55-inch linear indication was located on the port rudder shell plating. Phoenix International Holdings, Inc. (Phoenix) was directed by the customer to rapidly develop an American Bureau of Shipping (ABS) class-approved repair plan and execute the waterborne repair. The repair plan was approved and showcased Phoenix's latest Welding Procedure Specification WPS-407-W, Class A Groove Weld. This procedure was specifically developed to offer a wet-welded ABS class-approved permanent repair option without the need for a dry chamber or habitat, thereby enabling repairs efficiently without delay to the ship's schedule.

Highly qualified Welder/Divers from Phoenix's Virginia, Florida, California, and Hawaii offices supported this repair over four attendances in Honolulu, Hawaii.

The bullets below outline the work conducted during each attendance:

- Magnetic particle inspection (MT), indication excavation, interference removal
- Joint preparation and root weld
- Final weld out, magnetic particle/visual inspections, interference reinstallation, and Hycote application (preservation)
- Rudder void dewatering and nitrogen purge

This high-tempo repair operation was executed safely, on schedule, and on budget.

Horizontal Linear Indication Post Drill Stop and U/W MT Inspection

Excavation and Joint Preparation

Completed Weld Repair

Phoenix capabilities are directed to underwater inspection, maintenance, and repair; deep ocean survey, search and recovery; submarine rescue; construction; subsea tieback; plug and abandonment; subsea mining; archaeological; and documentary projects.

Natural Resource Damage Assessment in a New Political Landscape

By Greg Challenger, President of Polaris Applied Sciences, Inc.

Natural Resource Damage Assessment (NRDA) under the Oil Pollution Act of 1990 (OPA 90) addresses the impacts of oil spills on the environment. Natural resources that may be injured by oil spills include marine, aquatic and shoreline ecosystems and their services, wildlife, recreational use lost, and cultural resources.

OPA 90 provides the legal framework for federal agencies, including the National Oceanic and Atmospheric Administration (NOAA), United States Fish & Wildlife Service (USFWS), states, tribes and foreign governments (collectively, the Trustees) to conduct cooperative NRDA's with the Responsible Party (RP). A cooperative approach is important since the Responsible Party must pay for costs of assessment and restoration actions to compensate the public. Many coastal states also have separate NRDA regulations and will participate in the cooperative NRDA process.

Under OPA 90 the Trustees are afforded "rebuttable presumption", meaning they do not have to demonstrate their injury determination is accurate. Since the burden is on the Responsible Party (RP) to support or refute accuracy, it is in their interest to collect sufficient data to defend against claims of ecological or recreational loss resulting from a discharge or substantial threat of discharge of oil.

Since the new administration took office, over 2,300 Department of Interior (DOI) employees and over 800 scientists at NOAA have been removed from service. Future uncertainty in the stability of the regulatory programs remains due to the potential for additional dismissals, proposed changes to retirement benefits, and incentive programs offered to employees to seek early retirement. NOAA's budget is reportedly being cut from $6.1B to $4.45B in 2025. The result of cuts may be fewer available personnel assessing oil spill damage, limited or inadequate weather or trajectory forecasts, fewer field studies, or greater use of consultant contractors to fulfill Trustee roles.

Although the Responsible Party (RP) must fund National Resource Damage (NRD) assessment costs and restoration actions, authorities often request NRDA initiation funds from the National Pollution Funds Center (NPFC) administered by the U.S. Coast Guard to rapidly deploy sufficient resources to begin studies without potential delays or the need for technical input or concurrence of study merits with the RP's scientific advisors. The downsizing of government, funding

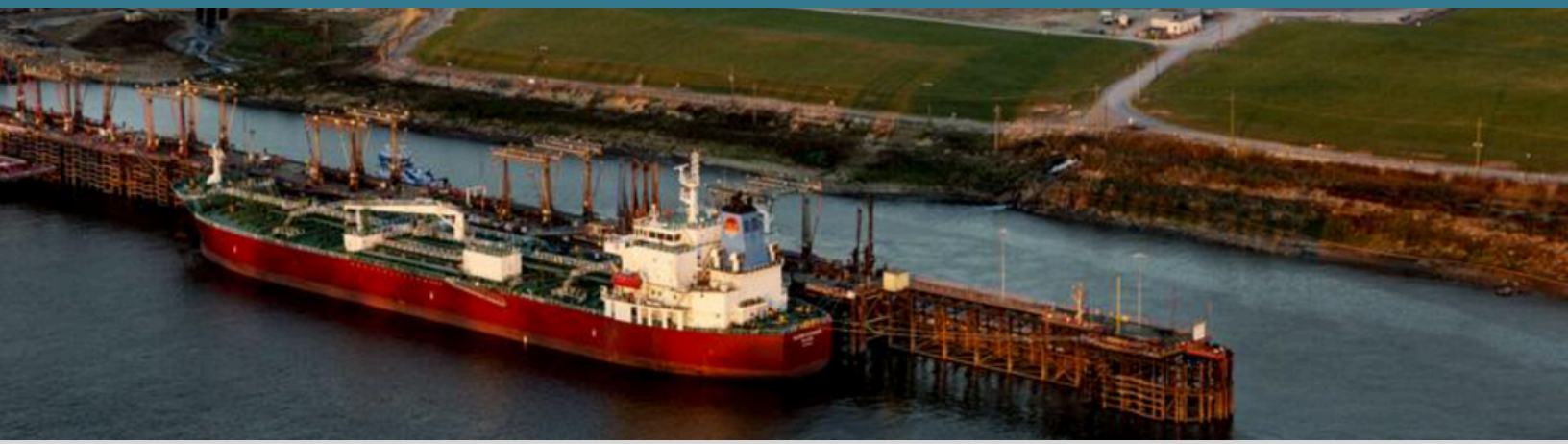
uncertainty in the new administration, and an emphasis on deregulation at the federal level could have implications for the oil spill response and assessment community. States may also not have the resources to fill potential federal gaps in NRDA. The incident response and assessment may rely more on contractors (Responsible Party or Trustee) to provide adequate trajectory and weather data, exposure information and modelled ecological fate and effects.

There is a strong desire among owners and insurers to mitigate damages, control risk, meet corporate sustainability goals and international sustainability reporting requirements. A prudent RP should desire to collect defensible data in cooperation with the Trustees regardless of potential changes in the Federal program to assess damage under OPA 90.

Quality technical data from NRDA can also support fishery, mariculture, and other commercial impact evaluations. A robust approach aimed at technically supported outcomes provides the basis for a restoration program and results in greater potential for expedited settlement. Trustee engagement, transparency and the collection of relevant and defensible injury data remains the advisable approach under any administration.

New Trends in EPA Facility Response Plan (FRP) Requirements

By John Carroll, Assoc Managing Director, Witt O'Brien's



While there have been no recent changes to the Oil Pollution Act of 1990 (OPA 90), the regulatory focus often changes with new regimes and new initiatives. The Environmental Protection Agency (EPA), for example, is continually evolving how they inspect and audit facilities under their portion of OPA90.

If you have a Facility Response Plan (FRP) regulated by the EPA, pay attention to these trend shifts in key plan elements during your next annual review or tabletop exercise to avoid deficiencies during your next FRP review.

Booming Strategies: EPA is looking for a complete set of strategies based on your fully calculated planning distance. These strategies need not be full-blown tactical maps. They can be designated places where you could deploy boom along the full planning distance. A simple aerial with lines suffices.

Firefighting Foam: Most FRPs will state they have X amount located at Y, or just state they don't have it. The EPA now wants to see where you would secure additional foam once onsite sources are depleted. If you have none, address how and where you would source it.

Air Monitoring: The EPA is now looking for a discussion about how and where you would source air monitoring. Simply stating "through x contractor" will suffice. You can also address your capabilities and where you would secure more resources if the need is beyond those capabilities.

Response Scenarios: EPA is looking for plausible incident scenarios, not just generic discussions, in which everything fails and the product leaves the site. A bulleted list of what will occur for such events suffices.

Aquatic Conditions: EPA wants you to discuss the water conditions at the locations where your spill scenarios discharge to predict how fast a spill would move, where it would go, etc. Note water body conditions during different parts of the season and tie them into your planning discussions.

Contact Table Personnel Responsibilities: The EPA wants to see the actual roles of listed response personnel. This need not be an extensive, detailed discussion. It can be as simple as noting something like: "Initial Spill Responder or Planning/Logistic Support" next to the person's title. This extra information gives people an idea of why they are in the plan so you can coordinate an effective incident response.

Environmental Sensitivity Maps (ESM): Everything identified in your vulnerability analysis as potentially impacted should be noted on the ESM. Also list all the contact details for everything identified.

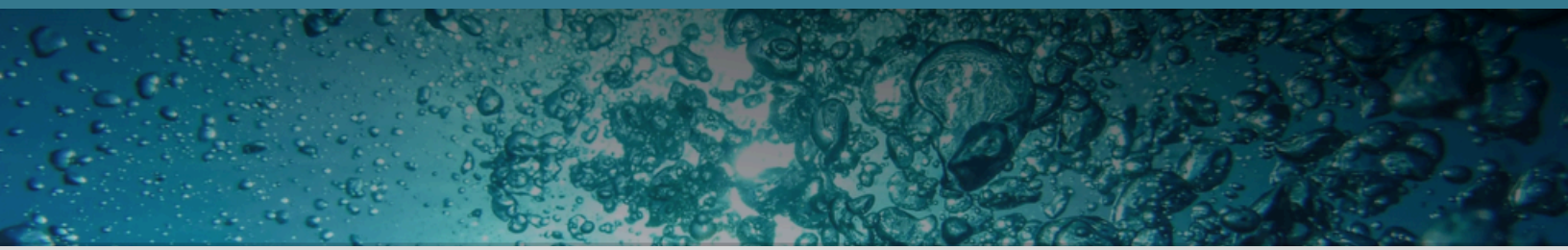
Drainage Discussions: The EPA has a set standard for this. You must address everything in Appendix F Section 1.7.3. Failing to address every required item will result in a finding.

Emergency Response Action Plan (ERAP): This must be a standalone plan that is not different from the core plan other than being slimmed down. It cannot reference out to other documents.

Other items to address: Oil Spill Removal Organization (OSRO) contracts that are expired or not properly rated for the response area; tank tables that are outdated; diagrams that are not compliant with the EPA FRP checklist; internal and external contacts that are not current. Also, old and outdated vulnerability analyses.

Mechanical Removal and Responder Immunity

Dennis L. Bryant, Bryant's Maritime Consulting



EXECUTIVE SUMMARY: In 1998, an obscure, last minute addition to the Coast Guard Authorization Act amended section 311 of the Federal Water Pollution Control Act (FWPCA), expanding the definition of "discharge", and clarifying the liability of responders engaged in preventing the substantial threat of a discharge. These amendments immunize responders from liability for damages from oil spills during mechanical removal activities undertaken under the National Contingency Plan (NCP) or as directed by the Federal On-Scene Coordinator (FOSC), including mechanical removal operations intended to prevent the substantial threat of a discharge.

Discussion

On October 10, 1998, Representative Michael T. Gilcrest (R-MD), Chair of the Coast Guard and Maritime Transportation Subcommittee, rose on the House Floor to present the final version of the Coast Guard Authorization Act of 1998 (H.R. 2204). He had introduced the original version on July 21, 1997, and then guided it, with various amendments, through the Subcommittee, the Transportation and Infrastructure Committee, and the full House. He also participated in the Conference Committee negotiating differences with his Senate counterparts. Today was the culmination of all that work.

Reviewing the bill for the record, Representative Gilchrest noted several amendments to the bill's text, stating:

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