The Legal Framework Governing the Movement of Crude Oil through the Great Lakes Region

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Oil Pollution Act of 1990
Oil Pollution Act ("OPA")

- Exxon Valdez highlighted gaps in the US regulatory framework.
- Among its provisions, OPA tried to fill these gaps with:
  - New vessel construction requirements
  - Requiring planning for oil spills
  - Expanding federal response process and enforcement authority
  - Increasing penalties and potential liabilities
Spill Prevention

- Certain facilities are required to prepare Facility Response Plans - FRPs

- Applies to owners and operators of offshore and onshore facilities that could reasonably be expected to cause "substantial harm" to the environment by discharging oil into or on navigable waters

- Must submit plan to EPA

- Lays out how the facility will respond to an oil spill
Vessels

http://www.sea-way.org/blog/ExxonValdez3.JPG
Pipelines

http://blog.nwf.org/wp-content/blogs.dir/11/files/2012/07/Enbridge-Pipeline.jpg
Rail

Oil Spill Regulation

- **Clean Water Act § 311:**
  - Prohibits discharge of oil in harmful quantities into navigable waters and adjoining shorelines.
  - Violations subject to civil and criminal penalties.

- **Oil Pollution Act of 1990**
  - Discharge of oil
  - Into navigable waters
  - That is “harmful to public health or welfare or the environment”
Oil Pollution Act of 1990

- Responsible Parties have strict liability for damages and cleanup costs.
  - RPs include the lessee or permit holder of the area and owners/operators of the vessels and pipelines.

- Defenses to liability limited to acts of God, acts of war or acts of third parties (carefully defined)

- Liability capped at total of all removal costs plus $75 million per incident
  - Cap lifted where incident was caused by gross negligence, willful misconduct, or violation of a federal safety, construction, or operating regulation

  - Lifted if RP fails to report incident or cooperate in removal activities

  - Govt. bears burden of proof that the liability limits do not apply
Criminal & Civil Penalties

- CWA civil penalties –
  - For unlawful discharge, failure to remove discharge, or failure to comply with an order relating to discharge.
  - Standard Penalty: Up to $25,000 per day or $1,000 per barrel discharge
  - If gross negligence or willful misconduct, no less than $100,000.

- CWA criminal violations include negligent discharge of oil (added by the OPA90)

- Other statutes with criminal provisions include the Migratory Bird Treaty Act, the Outer Continental Shelf Lands Act, the Refuse Act, and the Endangered Species Act
Oil Spill Liability Trust Fund

- Provides emergency response funding
- Used to pay for removal costs and other damages that the RP has not covered
  - Including damages to private claimants if RP is unable or unwilling to pay
- Spending limit of $1 billion per incident and natural resource damages cannot exceed $500 million (of the total)
- Efforts to raise cap after BP spill
- Funded by $.05 per barrel tax on crude oil received at refineries or on petroleum products imported to, consumed in, or warehoused in the United States, to a level of $1 billion
- Raised to $.08 per barrel through 2016 by the Energy Improvement and Extension Act of 2008
Thank You!

NSGLC Website:

http://nsglc.olemiss.edu/

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