

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

Cathy Janasie

Research Counsel- National Sea Grant Law Center

University of Mississippi School of Law

RAE/TCS 2016

December 14, 2016



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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



<https://www.thestar.com/news/canada/quebecexplosion.html>

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/>

Contact Me:

Cathy Janasie

National Sea Grant Law Center

The University of Mississippi School of Law

(662) 915-7775

cjanasie@olemiss.edu



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