

COMMENT SETS Oil Spill Prevention and Response Emergency Regulations, 314 CMR 19.00		
Comment Set	Written or Oral (Hearing Date)	Name and Affiliation of Person(s) Who Submitted Comments
1	Written and oral (March 30 and 31, 2009 hearings)	Captain Arthur Fournier, Canal Towing and Assist Service, owner and operator, Buzzards Bay, MA
2	Oral (March 30, 2009 hearing)	Michael Power, Boston Towing.
3	Written and oral (March 31, 2009 hearing)	Nicole deSibour, Vice President ,The American Waterways Operators, Atlantic Region, Arlington, VA
4	Written	Jim Ryan, Operations Manager, Miller Marine Services, Port Jefferson, New York

Summary of Public Comments on the Oil Spill Prevention and Response Emergency Regulations, 314 CMR 19.00
4/13/09

Summary of Comment	Commenter	MassDEP's Response to Comment as Addressed in the Final Amendments
<ul style="list-style-type: none"> Having tugs escorting vessel, rather than sitting at a dock hours away is the only way to prevent incidents before they occur. (Testimony provides a summary of 22 incidents where emergency assistance was provided by Canal Towing and Assist) 	Fournier	MassDEP is not going forward with the rescue tug provisions at this time. The Massachusetts legislature is currently considering changes to the statute relative to the tugboat escort requirements. Any related changes to the regulations will not be made until the statute has been amended.
<ul style="list-style-type: none"> The statute should not require tugboat escorts have a particular type of firefighting system that is inappropriate for petroleum fires. The statute requires a Class I fire fighting vessel that uses a high pressure, water-based system. This class is appropriate for LNG tankers, but not for vessels carrying petroleum. Petroleum fires should be fought with foam to contain the fire. Water spread petroleum fires. 	Fournier	MassDEP is not going forward with the rescue tug provisions at this time. The Massachusetts legislature is currently considering changes to the statute relative to the tugboat escort requirements. Any related changes to the regulations will not be made until the statute has been amended.
<ul style="list-style-type: none"> Specifying Class I vessels will result in a response that will worsen conditions and narrows the companies that can compete for the tugboat escort services. 	Fournier	MassDEP is not going forward with the rescue tug provisions at this time. The Massachusetts legislature is currently considering changes to the statute relative to the tugboat escort requirements. Any related changes to the regulations will not be made until the statute has been amended.
<ul style="list-style-type: none"> The law should be amended (suggested language provided) to remove the Class I requirement and define tugboat escort as "equipped with such fire fighting equipment and meet such load line classifications as the commissioner may specify by regulation..." 	Fournier	MassDEP is not going forward with the rescue tug provisions at this time. The Massachusetts legislature is currently considering changes to the statute relative to the tugboat escort requirements. Any related changes to the regulations will not be made until the statute has been amended.
<ul style="list-style-type: none"> These emergency regulations must not be extended or made permanent because the Commonwealth's authority to regulate issues of vessel safety, vessel operations and navigation are preempted by the federal authority of the US Coast Guard (USCG). 	deSibour	The comment raises legal arguments that are subject to ongoing litigation. MassDEP will not comment outside of the context of the litigation.
<ul style="list-style-type: none"> The 24-hour notification is duplicative of USCG requirements. Most tank vessels traversing Buzzards Bay are already notifying the Vessel Movement Reporting System Center. 	deSibour	Notification is not a requirement. It is strictly voluntary.

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Summary of Comment	Commenter	MassDEP's Response to Comment as Addressed in the Final Amendments
<ul style="list-style-type: none"> The 24-hour notification requirement is not reasonable. Weather and geography determine the operator's route and that decision cannot always be made 24 hours ahead of time. Also, the notification requirement and attendant penalties could serve as an incentive for operators to avoid navigating through Buzzards Bay. 	deSibour	Notification is not a requirement. It is strictly voluntary.
<ul style="list-style-type: none"> It is not clear that rescue tugs would achieve the goals that the Commonwealth expects of them. A November 1999 study by the Coast Guard (<i>Regulatory Assessment, Use of Tugs to Protect Against Oil Spill, in the Puget Sound Area</i>) determined rescue tugs would be high-cost and low-benefit as they have little or no capability to prevent collisions, allisions, or groundings. 	deSibour	MassDEP is not going forward with the rescue tug provisions at this time. The Massachusetts legislature is currently considering changes to the statute relative to the tugboat escort requirements. Any related changes to the regulations will not be made until the statute has been amended.
<ul style="list-style-type: none"> The funding for the pilotage benefits in actuality comes from the operators who pay a tax on the petroleum. The regulations indicate that the Commonwealth pays for the "pilotage and reasonable associated costs." Based on the experience of the state of Washington, taxing schemes have not been effective in generating sufficient revenue to adequately fund rescue tugs. 	deSibour	Following consultation with industry representatives and based on MassDEP's current calculations, MassDEP has determined that the funding provided by the petroleum fee is adequate to support the state-funded pilotage services at this time.
<ul style="list-style-type: none"> Mr. Power supports the requirement to provide tugboat escort services. Effective protection requires that the tugboat be in close proximity to the transiting vessels. Mr. Power described several actual incidents that required an emergency response from a tugboat in close proximity to the vessel. 	Power	MassDEP is not going forward with the rescue tug provisions at this time. The Massachusetts legislature is currently considering changes to the statute relative to the tugboat escort requirements. Any related changes to the regulations will not be made until the statute has been amended.
<ul style="list-style-type: none"> Miller Marine Services supports the rescue tug as a preventative measure to protect the resource of Buzzards Bay. Miller's tug and tug operators meet the requirements specified in 314 CMR 19.00. 	Ryan	MassDEP is not going forward with the rescue tug provisions at this time. The Massachusetts legislature is currently considering changes to the statute relative to the tugboat escort requirements. Any related changes to the regulations will not be made until the statute has been amended.