

DRAFT MINUTES
Massachusetts Oil Spill Prevention and Response Act Advisory Committee
Friday, June 22, 2012
Commonwealth Museum, Boston, MA

Attendees

Ben Ericson, MassDEP	Ed Anthes-Washburn, New Bedford HDC
Rich Packard, MassDEP	Brian House, Moran Environmental Recovery
Chris Ayers, MassDEP	Elise DeCola, Nuka Research
Karen Pelto, MassDEP	Garrett Keegan, Green Seal Environmental
Seth Schofield, Mass. Asst. Attorney General	Carole Loomis, Boston Coastwise Pilots
Ed Leblanc, USCG	Garret Meyer
Paul Milone, Weymouth Harbormaster	Gary Oliveira, McAllister Towing
Mark Rasmussen, Coalition for Buzzards Bay	Nate Stevens, Cumberland Gulf
David Janik, MA EEA / CZM	Korrin Petersen, Coalition for Buzzards Bay
Steve Dodge, Mass Petroleum Council	Gary Hedman, Horsley Witten Group
Tom Bushy, Deputy Commissioner of Pilots	Michael Salviati, USCG Sector Boston

Welcome / Litigation Status

Ben Ericson, Assistant Commissioner, Massachusetts Department of Environmental Protection (MassDEP), welcomed the group and reviewed the agenda planned for the meeting. Ben introduced himself to the Oil Spill Act Advisory Committee (OSAAC) as this was the first Committee meeting following his appointment as Assistant Commissioner, and provided a brief background of his history with MassDEP and oil spill prevention and spill response.

Mr. Ericson then introduced Rich Packard, Oil Spill Act (OSA) Program Manager, who welcomed attendees and provided a general summary of the planned meeting agenda. Mr. Packard then introduced Seth Schofield, Massachusetts Assistant Attorney General, to brief the Committee and attendees on the status of litigation associated with the OSA since enactment by the legislature in 2005, summarized below:

- In 2005, the United States, acting on behalf of the United States Coast Guard (USCG), sued the Commonwealth, claiming that certain provisions of the Massachusetts Oil Spill Prevent and Response Act (MOSPRA) are unconstitutional.
- In 2006, the District Court rules that federal law “preempts” MOSPRA and enjoins Massachusetts from implementing the challenged provisions.
- In 2007, the US 1st District Court of Appeals disagrees with the District Court ruling, in part, and reinstates MOSPRA’s tugboat escort, enhanced personnel, and certificate of financial assurance requirements.
- The U.S. subsequently asks the District Court to enjoin MOSPRA’s escort and enhanced personnel requirements based on a 2007 USCG Final Rule for Buzzards Bay.

- In 2008, the Commonwealth sues the U. S. claiming that the USCG violated the National Environmental Policy Act (NEPA), for failing to adequately assess the environmental impact associated with the USCG Final Rule for Buzzards Bay.
- In 2010, the District Court ruled that the USCG violated NEPA by categorically exempting itself from the requirement to conduct an Environmental Assessment. The court determining that the violation was harmless, however, and ruled that the USCG's Final Rule for Buzzards Bay (33 CFR 165.100) could stand and that the federal rules invalidated MOSPRA's escort and personnel requirements.
- In 2011, the US 1st District Court of Appeals disagreed, ruling that the USCG's violation of the NEPA was not harmless.
- In response, U.S. Court of Appeals lifted the injunction that prevented implementation of Massachusetts General Laws (M.G.L.):
 - M.G.L. c. 21M, s. 4, *Manning of Towing Vessels and Barges*
 - M.G.L. c. 21M, s. 6, *Tugboat Escort requirements in Buzzards Bay*
- The District Court also remanded the Final Rule for Buzzards Bay to the USCG for compliance with the NEPA.

Elements that have been removed from the MOSPRA through legislative action include the mandatory vessel routes, alcohol testing requirements, and Marine Pilot requirements.

For additional information and updates on ongoing litigation, refer to the fact sheet "*Massachusetts Oil Spill Act Requirements for Tugboat Escorts*" available at: <http://www.mass.gov/dep/cleanup/oilsprep.htm>

Status of the Marine Pilot and Escort Tug Programs

Mr. Packard, reviewed the current status of the OSA programs:

As of July 12, 2011, MassDEP will no longer pay for a State Pilot to accompany a vessel towing or pushing a double-hulled tank barge loaded with 6,000 or more barrels of oil through Buzzards Bay and the Cape Cod Canal, even if the tank vessel chooses to provide 24-hour advance notice of the vessel's intent to operate in Buzzards Bay and the Canal.

M.G.L. c. 21M, s. 6 mandates that vessel operators hire their own Tugboat Escort, so no double hulled tank barge loaded with 6,000 or more barrels of oil will be "unaccompanied by a tugboat escort", as provided in M.G.L. c. 21M, s. 9(b).

The owner or operator of a tank vessel carrying 6,000 barrels or more of oil as cargo *may* continue to provide 24-hour advanced notice to MassDEP of its intent to operate the vessel in Buzzards Bay. The delineation of the Buzzards Bay Area of Special Interest mimics the established the USCG area delineation.

The industry is responsible for self-certification of compliance with the requirements, non-compliant tugs may self-certify except for the ABS fire-fighting 1 requirement. Fire-fighting 1 (or 2 or 3) are class notations, granted to vessels by the American Bureau of Shipping, built and

equipped in compliance with the relevant ABS class requirements. These requirements are based upon experience and an appraisal of future vessels, size of object to be protected and available fire-fighting equipment. Non-compliant tugs are only used when a waiver for “exigent circumstance” is given by MassDEP. Six waivers were granted from January 1, 2011 through July 11, 2011 (end of SPTE program), and 24 waivers were granted from July 12, 2011 through December 31, 2011 when industry has been paying for escorts. Gary Oliveira of McAllister towing reported that, to his knowledge, there have been no delays in vessel escort due to escort providers.

Ongoing Program Implementation Activities

Mr. Packard and Elise DeCola, Nuka Research, reviewed the status of the ongoing OSA program activities:

Equipment Procurement

Mr. Packard reported that MassDEP has completed its distribution of 76 spill equipment trailers to 69 communities. In addition, 2,000 feet of 36-inch offshore boom was purchased and staged at the State Pier in New Bedford and Massachusetts Maritime Academy in Bourne. MassDEP has determined that six additional oil spill equipment trailers are being procured to provide adequate response readiness for Boston Harbor. To ensure response readiness, MassDEP has installed several small solar chargers to keep outboard engine batteries at full charge, and is considering expanding this to additional trailers.

MassDEP is continuing its commitment to provide annual maintenance and restocking of trailers, as well as training first responders on how to use the equipment. Mr. Packard stated that MassDEP has developed a Deployment Policy (i.e., standard operating procedure), which provides guidance for communities on when and how to use their trailer in a mutual aid scenario. He noted that in the case of large spills affecting multiple communities, mutual aid decisions will be made by the unified command as part of the ICS. MEMA and the USCG will help MassDEP implement this protocol.

Geographic Response Plans

Mr. Packard and Ms. DeCola of Nuka Research reported that in 2011 Geographic Response Plans (GRP) were developed for coastal resources along the South Shore from Cohasset to the east end of the Cape Cod Canal, completing GRP coverage over for all Massachusetts coastal areas except Mt. Hope Bay and the lower Taunton River. Using a collaborative workgroup approach, protection strategies were developed for coastal sites based on environmental sensitivity criteria, vulnerability, and the feasibility of protecting the identified resources. Development of the sixth and final coastal GRP covering Mt. Hope Bay and the lower Taunton River was begun in June 2012.

Ms. DeCola also discussed the need to identify additional funding for to reimburse Town for OT/Backfill costs. Funding has been allocated under the Homeland Security Exercise and Evaluation Program (HSEEP) administered through the Federal Emergency Management

Agency (FEMA) to fill this gap and allow local municipalities to participate in the MassDEP sponsored training.

GRP Field Testing Exercises

During 2011, the Marine Oil Spill Program sponsored and conducted first responder field exercises / GRP tests in the following coastal communities:

- May 11, 2011 – New Bedford / Fairhaven: New Bedford Harbor at Popes Island
- July 26, 2011 – Somerset / Swansea: Coles River
- September 27, 2011 – Chatham / Harwich: Stage Harbor
- October 30, 2011 – Quincy / Braintree / Weymouth: Fore Town River

The City of Lynn has requested training on response resource deployment.

The Committee then discussed several additional topics briefly, including the use of Automatic Identification System (AIS) data to monitoring compliance of single and double-hulled vessels with the provisions of MOSPRA. Potential cost savings may be available to MassDEP if the data can be obtained from the Department of Conservation and Recreation (DCR) which hosts a AIS transponder on their property. A recommendation was made to follow up with Rick Cunio, Program Director at DCR.

OSA Program Plan & Trust Fund Status

In April 2010, the MassDEP Commissioner raised the 2¢ per barrel fee on petroleum products to 5¢ per barrel. The fee is directed into the OSA Trust Fund to pay for the various OSA programs and activities. When the MassDEP operated a state funded escort tug 228 double-hulled escorts were conducted from Jan 1 – July 11, 2011, at a cost of \$2.1 million. Other expenditures include development of GRP sites, maintenance of response trailers, and administrative costs. As of July 12, 2011, MassDEP no longer funded the State Provided Tug Escort (SPTE) program and the state funded marine pilot program, resulting in increased revenues for the second half of 2011 and first half of 2012.

MassDEP expects program expenditures including maintenance of the spill equipment trailers; development of remaining GRPs; oil spill response field trainings; administrative activities related to annual updates to the plan and budget; and other projects to continue. Without the significant expenditures associated with the SPTE and Marine Pilot programs, the OSA Trust Fund may be able to support expanded training and education programs. Mr. Ericson expressed a desire to better establish the revenue management goals of the fund to maintain long-term viability.

New Bedford Harbor Waste Oil & Bilge Water Collection Facility

Mr. Ed Anthes-Washburn, Acting Port Director of the New Bedford Harbor Development Commission (NBHDC), and Mr. Garrett Keegan of Green Seal Environmental, presented a proposal to use OSA Trust Funds to finance a bilge water collection and treatment facility in

New Bedford in order to address the chronic small “mystery” oil spills that occur in the harbor. Green Seal Environmental examined several different scenarios and evaluated similar facilities in other states to find the best solution for New Bedford Harbor. Key stakeholders were consulted during the project, including boat owners, the USCG, and MassDEP. Green Seal and the NBHDC had previously presented the bilge water collection and treatment facility information during the December 2011 Committee meeting, no significant changes were identified in the preferred alternative or operational costs.

Based on their research, Green Seal Environmental and the NBHDC are proposing a truck-based collection program with a centralized treatment system. The treatment system would be two-tiered, consisting of a gravity coalescing oil-water separator for primary treatment and a cartridge filter type oil-water separator for secondary treatment.

The capital needed for the design and installation of this facility is approximately \$700,000 (\$228,000 for treatment equipment plus \$388,000 for the collection tanks, treatment units, and storage building). Mr. Anthes-Washburn explained that the operation and maintenance of the system, expected to be \$107,000 annually, would be covered through a dockage fee levied on vessels. He asked that MassDEP and the OSAAC consider using funds from the OSA Trust Fund to help support part of the capital costs for this project.

Mr. Ericson discussed possibilities for using funds from the OSA Trust Fund and questioned the Committee on the funding request process for external organizations or communities. The Committee expressed interest in moving the discussion forward to determine programmatic concerns and identify any policy questions.

Joint USCG / MassDEP Buzzards Bay Double Hull Barge Study

Mr. Ericson and Mr. Packard led a brief discussion of the joint USCG / MassDEP Buzzards Bay Double Hull Barge Study. The scope of the study is still being developed and but it is hoped that the Study represents an opportunity for USCG / MassDEP to focus their evaluation on risks posed by double hull barges. A Memorandum of Understanding establishing the details of the study is expected to be finalized in the coming months.

New Business / Next Steps

David Janik of Coastal Zone Management identified several areas of concern or interest for the Committee to consider, including:

- Improved outreach to municipalities during GRP exercises, training, and maintenance of trailers.
- Do the GRP’s include a ranking order of sensitive areas to be protected?
- Do the response trailers contain sufficient inventory to deploy the most important or sensitive areas identified in each GRP, and is the Committee analyzing the capabilities of municipalities to respond.

Mr. Packard explained that the primary objective of the trailers is to provide the municipal first responders with a response capability during the initial 24 -48 hours of a spill only and that after that additional professional resources would be arriving to protect other sensitive areas.

The Committee also discussed what role MassDEP might play in recovery/salvage of abandoned vessels and debris management. Mr. Ericson stated that while MassDEP Bureau of Waste Site Cleanup (BWSC) does respond to releases of oil or hazardous materials from abandoned vessels, management is under the DCR. Mr. Ericson also noted that funding through DCR is limited and managed to provide for large-scale immediate response actions, when necessary.

The Committee established several Action Items:

- The Committee will evaluate programmatic concerns or policy questions associated with funding the proposed New Bedford harbor bilge water recovery project. A summary proposal and project details should be circulated to the Advisory Committee.
- The Committee expressed a desire to better establish the Program Plan and identify priority commitments. In light of increased revenue and decreased expenditures this will become increasingly important.
- If there are significant developments, new legislation, or changes in litigation over the next six months, a Committee meeting will be scheduled for December 2012. Otherwise, meetings will be held on an annual basis (June 2013).

Adjournment

Mr. Ericson and Mr. Packard thanked everyone for their participation and adjourned the meeting, and noted that the presentations and meeting minutes will be posted on the MassDEP OSA website.