



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

The Honorable Marc Pacheco, Senate Chair
Joint Committee on Natural Resources, Environment, and Agriculture
State House, Room 313-B
Boston, MA 02133

The Honorable Anne Gobi, House Chair
Joint Committee on Natural Resources, Environment, and Agriculture
State House, Room 473-B
Boston, MA 02133

March 28th, 2011

Dear Chairs,

With apologies for the delay in the submission of this report, please find below our annual report on exigent circumstances as required by the Buzzards Bay Oil Spill Act.

The Oil Spill Act in paragraph (f) of section 9 of chapter 21M of the Massachusetts General Laws, as most recently amended by chapter 101 of the Acts of 2009, reads:

(f) the Commissioner may waive the requirement of subsection (b) or (d) upon determination that exigent circumstances exist. No such authorization shall be construed to relieve or otherwise limit the liability of an owner or operator of a tank vessel for any oil spill from such tank vessel that occurs while the tank vessel enters or operates in Buzzards Bay. The Commissioner shall report, annually, not later than January 1, to the joint committee on the environment, natural resources, and agriculture, as well as report in the *Environmental Monitor*, the number of occasions that such exemptions were authorized.

I am pleased to report that the Department provided tugboat escort services for 264 vessel trips through Buzzards Bay during that time period. Please find attached the Department's report on 10 circumstances where the contractor providing tug escort services was unable to provide a tug matching the exact specifications of the law, and the Department approved use of a less-than-the-standard tugboat. In each instance,

compelling circumstances prevented the timely use of the tugboats whose use the Department has contracted for, either due to multiple trips or due to mechanical troubles.

Though we are not required to report instances where the State Provided Tugboat Escort provided additional assistance to the vessel it escorted, the Department felt a description of these circumstances would be of interest to the Committee, and I am pleased to include a description of those circumstances following the required report.

For the current fiscal year, the combined cost of the State Provided Tugboat Escort program (\$2.6 million for FY11) and the state-provided marine pilot program (\$840,000 for FY11) is estimated at \$3.4 million. This will rise to \$4.6 million by 2015 when the federally mandated elimination of single hulled tank barges takes effect. 25% of transits are currently made by single hulled barges, which are not covered by the Massachusetts Oil Spill Act. Annual revenues are projected at \$3.8 to \$4.2 million.

If you need any further assistance, please feel free to contact my Legislative Director Zachary Crowley at (617) 292-5946.

Sincerely,

Ken Kimmell
Commissioner

Massachusetts Oil Spill Act

MGL Chapter 21 M Section 9

Report on “Exigent Circumstances” Waiver Requests

And

Requests for Assistance

March 29, 2010 – December 30, 2010

M.G.L. c. 21M, §9(f), effective September 24, 2009 (*An Act Preventing Oil Spills in Buzzards Bay*), enables the Commissioner of the Department of Environmental Protection (MassDEP) to waive the requirements of M.G.L. c. 21M, §9(b) regarding the dispatch of a state pilot and §9(d) the dispatch of a state-provided tugboat escort upon determination that exigent circumstances exist.

Implementation of the State-Provided Tugboat Escort (SPTE) program began on March 29, 2010 when MassDEP signed a contract with McAllister Towing Co. This report covers the period March 29, 2010 – December 31, 2010 and documents Exigent Circumstances Waiver Requests as well as instances when the SPTE provided assistance at the request of the tug/tank barge. When the SPTE responds to a request for assistance a private contract is negotiated between McAllister Towing Co. and the vessel being assisted.

During the period March 29, 2010 – December 31, 2010, MassDEP’s Oil Spill Prevention and Response Program conducted 264 state-provided tugboat escorts for double-hulled vessels carrying more than 6,000 barrels of oil as cargo, operating within Buzzards Bay and the Cape Cod Canal. During that same period, ten (10) requests were received from McAllister Towing Co. to utilize a tugboat escort that did not meet all the specifications of a SPTE. All ten (10) requests were approved due to exigent circumstances under the provisions of Chapter 21M §9(f).

In each case the request was approved by MassDEP. These approvals were granted in an effort to prevent significantly disrupting energy services to the public during inclement weather and because the tugs used (a tug with 2,500 - 3000 hp twin screw power capability, compared to the 4,000 hp twin screw specified by statute) were consistent with industry practice.

As you read through the descriptions of exigent circumstance waiver requests, the following introductory information may offer some useful context:

MassDEP has contracted with McAllister Towing of Narragansett Bay to provide escort tug services in Buzzards Bay and the Cape Cod Canal. The tugs *Rowan McAllister* and *Bruce McAllister* are the primary and secondary escort tugs provided by McAllister Towing for escort work performed under Chapter 21M. In addition, McAllister has, upon exigent circumstance, made three additional tugs available for escort services. These tugs are the *Resolute* and the *Reliance* 3,000 hp twin screw coastal towing tugs, and the *Puma*, a 2,500 hp twin screw coastal towing tug.

Boston Towing and Transportation is a subcontractor to McAllister Towing and has made 3 tugs available for escort services if needed, including the *Justice* and the *Liberty*. All of these tugs meet the standards of the law and the contract specifications.

In most instances the escort of a double hulled tank barge traveling through Buzzards Bay and the Cape Cod Canal requires 4 – 6 hours depending on the vessel.

When requested by the owner or operator a relevant tank vessel, MassDEP also will dispatch a state licensed pilot to board the vessel towing the tank barge to provide assistance while navigating Buzzards Bay and the Cape Cod Canal.

Exigent Circumstance Waiver Request

From March 29th through December 3rd, 2010 four occasions required an exigent circumstance waiver.

June 11, 2010 Permission was requested to use an escort tug, the *Resolute*, a tug with less horsepower than required by statute (3,000 hp rather than 4,000 hp). The request was granted because the primary *Rowan McAllister* and the backup *Bruce McAllister* as well as the tug *Liberty* from subcontractor Boston Towing & Transportation Co. were occupied escorting other vessels under the contract.

July 15, 2010 Permission was requested to use an escort tug, the *Resolute*, a tug with less horsepower than required by statute (3,000 hp rather than 4,000 hp). This request was granted due to a combination of bad weather and the number of vessels waiting for a favorable tide resulted in multiple vessels scheduling transits of Buzzards Bay and the Cape Cod Canal within a 12 hour time frame. While the *Rowan McAllister* and the *Bruce McAllister* were escorting vessels the *Resolute* was used to conduct a partial escort and was then relieved by the *Rowan McAllister*.

September 25, 2010 Permission was requested to use the tug *Reliance*, a tug with less horsepower than required by statute (3,000 hp rather than 4,000 hp). This request was granted. On the evening of September 24, 2010 the Cape Cod Canal was closed to vessel traffic for approximately 10 hours due to fog. This closure resulted in a backup of 5 tug/barge units attempting to transit within an 18

hr time period after the reopening of the canal. During this time the *Rowan McAllister*, the *Bruce McAllister* and the tug *Liberty* were used to escort 4 of the tug/barge units scheduled to transit Buzzards Bay & the Cape Cod Canal. The *Reliance* was needed to escort the 5th unit.

December 3, 2010 Permission was requested to utilize the tug *Reliance* (a tug with 3,000 hp rather than 4, 000 hp). This request was granted because the *Rowan McAllister* was needed to tow the barge B-264 to its destination in Boston when the tug *Evening Tide* experienced mechanical trouble. During this time the tug *Bruce McAllister* and the *Justice* were engaged conducting other escorts.

In early December 2010, the *Bruce McAllister* experienced mechanical trouble. Repairs were conducted throughout the remainder of the month, which resulted in 6 instances where a backup tug was called into service.

December 5, 2010 Permission was requested to use the tugs *Reliance* (a 3,000 hp tug) and *Puma* (a 2,500 hp tug). The request was granted to manage the expected heavy vessel traffic, and scheduling changes by vessels en route. Only the tug *Reliance* was utilized on December 5, 2010.

December 14, 2010 Permission was requested to utilize the tug *Reliance* (a 3,000 hp tug). The request was granted to manage the heavy vessel traffic. During this time the tug *Rowan McAllister* and the *Justice* were also engaged conducting escorts.

December 15, 2010 Permission was requested on December 14, 2010 to utilize the tug *Reliance* (a 3,000 hp tug) for a transit on the 15th. The request was granted to manage the heavy vessel traffic that was expected. During this time the tug *Rowan McAllister* and the *Justice* were also engaged conducting escorts.

December 17, 2010 Permission was requested to utilize the tug *Reliance* (a 3,000 hp tug) and *Puma* (a 2,500 hp tug). The request was granted to manage the heavy vessel traffic that was expected. During this time the tug *Rowan McAllister* and the *Justice* were also engaged conducting escorts.

December 18, 2010 Permission was requested to utilize the tug *Reliance* (3,000 hp) and *Puma* (2,500 hp). The request was granted to manage the heavy vessel traffic that was expected. During this time the tug *Rowan McAllister* and the *Justice* were also engaged conducting escorts.

December 19, 2010 Permission was requested to utilize the tug *Reliance* (3, 000 hp) and *Puma* (2,500 hp). The request was granted to manage the heavy vessel traffic that was expected. During this time the tug *Rowan McAllister* and the *Justice* were also engaged conducting escorts.

Request to Assist Escorted Vessel

In addition to the waiver requests, during the time period of March 29th through December 31st, the State Provided Tugboat Escort was called upon to render assistance on three (3) occasions to the vessel it was escorting while transiting Buzzards Bay and the Cape Cod Canal.

September 26, 2010 On this date the *Rowan McAllister*, while escorting the tug/barge unit Penn #4/Penn #90, was asked to assist the vessel on its transit through Buzzards Bay and the Cape Cod Canal. Many tug/barge units while transiting Buzzards Bay and the Cape Cod Canal with a loaded barge will change from towing to pushing for increased control and stability.

The process of changing from towing a barge to pushing the barge involves releasing the fully loaded barge from the towing vessel and allowing it to float freely while the towing vessel quickly travels to the rear of the slowly moving barge and places itself into the push “notch” in the rear of the barge.

On this date the tug Penn #4 was reluctant to change from towing to pushing the tank barge Penn #90 due to rough weather. The Penn #4 requested that the *Rowan McAllister* place a line on the barge to stabilize it and to complete the escort through Buzzards Bay and the Cape Cod Canal while tied together. This additional service was performed under a private agreement between McAllister and the Penn #4.

November 23, 2010 On this date the tug Penn #4 experienced a small fire in one of the engine smoke stacks while towing the barge Penn #90, which was carrying 5,000,000 gallons of oil through Buzzards Bay. The Penn #4 requested the *Rowan McAllister* to charge its fire hoses and stand by in case they were needed to extinguish the stack fire. The fire was eventually put out by the crew of the Penn #4.

Also during this event, state pilot Mark Foley, dispatched by MassDEP under Chapter 21M, provided assistance to the Captain from the bridge of the Penn #4.

December 3, 2010 On this date while approaching the entrance to Buzzards Bay, the tug Evening Tide with the barge B-264 experienced engine trouble and could not continue its voyage. The *Rowan McAllister* was asked to tow the barge B-264 to its destination in Boston while the Evening Tide returned to a New York shipyard for repairs.