



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

Massachusetts Oil Spill Act Lawsuit Status

Reformatted December 2017

Lawsuit Update - July 14, 2011

Mass Oil Spill Prevention Act Reinstated as of July 12, 2011

On May 27, 2010, Massachusetts challenged the U.S. District Court decision, summarized below, which permanently enjoined Massachusetts from enforcing the Massachusetts Oil Spill Prevention Act's (MOSPA) Tugboat Escort and manning requirements. On May 17, 2011, the United States Court of Appeals for First Circuit issued its judgment and opinion, finding that the District Court erred in its decision. The First Circuit reversed the District Court's judgment in favor of the U.S. Coast Guard, vacated the District Court's injunction, and remanded the case back to the District Court with instructions to remand the case back to the Coast Guard for further proceedings.

On July 11, 2011, the First Circuit issued its mandate, which lifted the injunction that had prevented MassDEP from implementing and enforcing MOSPA's manning and Tugboat Escort requirements, Mass. Gen. Laws Chapter 21M, ss.4, 6, and 314 CMR 19.00. As a result, as of July 12, 2011, MOSPA's manning (M.G.L. c. 21M, s.4) and Tugboat Escort (M.G.L. c. 21M, s.6) requirements are in effect. The regulations governing Tugboat Escorts are set forth in 314 CMR 19.03, and are available below.

Because double-hulled tank barges carrying 6,000 or more barrels of oil through Buzzards Bay and the Cape Cod Canal are now required to hire a Tugboat Escort, double-hulled tank barges and their towing vessels are no longer eligible to receive a State-funded Pilot and/or a State-provided Tugboat Escort. However, until further notice, MassDEP intends to continue to operate the voluntary Transit Notification program outlined in 314 CMR 19.04 for both single and double-hulled barges and their towing vessels intending to transit through or operate in Buzzards Bay and the Cape Cod Canal.

Further information regarding the sections of Chapter 21M and 314 CMR 19.00 that are now in effect is included in fact sheets that can be found on the [Marine Oil Spill Prevention and Response Program](#) web pages.

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.
TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

Lawsuit Update - June 24, 2011

PLEASE NOTE: STATE-PROVIDED ESCORT TUG, PILOT AND NOTIFICATION PROGRAMS REMAIN IN EFFECT IN BUZZARDS BAY UNTIL FURTHER NOTICE. PLEASE CONTINUE TO MONITOR THIS WEBSITE FOR UPDATES.

On May 27, 2010, Massachusetts challenged the U.S. District Court decision, summarized below, that permanently enjoined Massachusetts from enforcing tugboat escort and personnel and manning requirements. One year later on May 17, 2011, the First Circuit Court issued its judgment and opinion, finding that the District Court erred in its decision. The First Circuit Court reversed the District Court's judgment in favor of the U.S. Coast Guard, vacated the injunction against Massachusetts' enforcement of its Oil Spill Act, and remanded the case back to the District Court with instructions to require the Coast Guard to conduct additional rulemaking proceedings for its 2007 regulations (33 CFR 165.100) pertaining to Buzzards Bay. The Circuit Court decision takes effect when it issues its mandate, which is anticipated to be in early July 2011, provided that neither the United States nor Industry appeal the decision.

This website will be updated when the Circuit Court issues its mandate. MassDEP is in the process of preparing fact sheets that will explain what requirements are in effect when the mandate issues.

Lawsuit Update - April 5, 2010

On March 31, 2010, the U.S. District Court for the District of Massachusetts issued a judgment which permanently enjoins Massachusetts from enforcing the personnel and manning requirements for tank vessels and the tug escort provisions for certain vessels in Buzzards Bay that were enacted by Chapter 251 of the Acts of 2004. Specifically, the District Court found that the following provisions of the Oil Spill Act, as enacted in 2004, are preempted by Federal law, and Massachusetts may not enforce them:

- M.G.L. c. 21M, s4(a)
 - The navigation watch on all tow vessels transiting Buzzards Bay and carrying 6,000 or more barrels of oil shall consist of at least 1 licensed deck officer or tow vessel operator;
 - Three licensed officers or tow vessel operators shall be on a tow vessel whenever the vessel is towing;
- M.G.L. c. 21M, s4(b)
 - Crew requirements for tank barges shall consist of 2 personnel, 1 of whom shall be a certified tanker-man under 46 CFR subpart 12.20;
- M.G.L. c. 21M, s6(a)
 - All tank vessels carrying 6,000 or more barrels of oil must hire a tug escort in order to enter or transit Buzzards Bay.

As the injunction relates to tug escort provisions, it enjoins Massachusetts from enforcing the provisions only in Buzzards Bay. The escort provisions remain in full force and effect in Vineyard Sound and Mount Hope Bay. Moreover, in November 28, 2007, the United States and the shipping industry claimants agreed to dismiss their challenges to the Oil Spill Act's certificate of financial assurance requirements and these requirements remain in full force and effect as well.

Massachusetts has 60 days to appeal the District Court decision.

PLEASE NOTE: The District Court's injunction extends only to the provisions of the Oil Spill Act enacted in 2004, as described above. The provisions of the Oil Spill Act enacted in 2008 and 2009 pertaining to 24-hour notification, state-funded marine pilots and state-provided tug escorts remain in full force and effect in Buzzards Bay.

Lawsuit Update - August 28, 2008

Following the issuance of new federal regulations, described below, the United States again asked the District Court to enjoin the enforcement of the personnel and manning requirements and the tug escort provisions of the Oil Spill Act.

On August 27, 2008, the District Court issued a preliminary injunction that prevents Massachusetts from enforcing the personnel and manning requirements and the tug escort provisions, pending resolution of the District Court proceedings. As the injunction relates to tug escort provisions, it enjoins Massachusetts from enforcing the provisions only in Buzzards Bay. The escort provisions remain in full force and effect in Vineyard Sound and Mount Hope Bay. Moreover, last November 28, 2007, the United States and the Shipping Industry claimants agreed to dismiss their challenges to the Oil Spill Act's certificate of financial assurance requirements and these requirements therefore remain in full force and effect as well.

Lawsuit Update - December 19, 2007

On November 28, 2007, new regulations issued by the United States Coast Guard for Buzzards Bay became effective. Regulated Navigation Area; Buzzards Bay, MA; Navigable Waterways Within the First Coast Guard District, 72 Fed. Reg. 50,052 (Aug. 30, 2007) (to be codified at 33 C.F.R. s. 165.100). The new federal regulations require tugboat escorts only for all single hulled tank barges carrying 5,000 or more barrels of oil or other hazardous material through Buzzards Bay. The new regulations also require a federally licensed pilot, who is not a member of the crew, to direct and control a vessel towing a single hulled tank barge carrying 5,000 or more barrels of oil through Buzzards Bay, and establish a Vessel Movement Reporting System.

Lawsuit Update

In January 2005, the United States brought suit in U.S. District Court claiming that the following provisions of the Massachusetts Oil Spill Act are preempted by Federal law: state pilotage requirements, personnel and manning requirements, tank vessel design requirements, drug and alcohol testing provisions, tugboat escort provisions, mandatory vessel routing requirements, and the certificate of financial assurance requirement. In 2006, the District Court held that the challenged provisions of the Oil Spill Act were preempted and unconstitutional under the Supremacy Clause of the U.S. Constitution. The District Court permanently enjoined Massachusetts from enforcing those seven provisions.

Massachusetts appealed the District Court decision. In June 2007, the U.S. Court of Appeals for the First Circuit found that the District Court erred in concluding that Federal law preempted the Oil Spill Act, and erred in entering a permanent injunction. On August 20, 2007, the First Circuit Court issued a mandate lifting the permanent injunction, pending further District Court proceedings, as the injunction relates to three provisions: personnel and manning requirements; tug escort provisions; and the certificate of financial assurance requirement.

The personnel and manning requirements, tug escort provisions, and certificate of financial assurance requirements are therefore in force as of August 20, 2007.

Statute and Regulations

Chapter 359 of the Acts of 2010, Section 11

- [Mass General Court Chapter 359 of the Acts of 2010, Section 11](#)
An Act Making Appropriations for the Fiscal Years 2010 and 2011 to Provide for Supplementing Certain Existing Appropriations and For Certain Other Activities



Chapter 101 of the Acts of 2009

- [Mass General Court Chapter 101 of the Acts of 2009](#)
An Act Preventing Oil Spills in Buzzards Bay

Chapter 268 of the Acts of 2008

- [Mass General Court Chapter 268 of the Acts of 2008](#)
An Act Further Protecting Buzzard's Bay

Chapter 251 of the Acts of 2004

- [Mass General Court Chapter 251 of the Acts of 2004](#)
- [Chapter 251 of the Acts of 2004: An Act Relative to Oil Spill Prevention and Response in Buzzards Bay and Other Harbors and Bays of the Commonwealth](#)  

Chapter 457 of the Acts of 2004: An Act Relative to Vessel Safety

- [Mass General Court Chapter 457 of the Acts of 2004: An Act Relative to Vessel Safety](#)

314 CMR 19.00: Oil Spill Prevention and Response

- [314 CMR 19.00: Oil Spill Prevention and Response](#)  