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Docket Management Facility
(USCG-2000–8079)
U.S. Department of Transportation
Room PL-401
400 Seventh Street, S.W.
Washington, DC 20590-0001

Re: Notice of Public Meeting and Request for Comments (USCG–2000-8079) on Setting the Environmental Agenda of the Coast Guard for Oil Pollution – Prevention, Preparedness, Response, and Restoration – in the 21st Century, 65 Fed. Reg. 62408 (October 18, 2000)

Dear Sir/Madam:

The American Petroleum Institute (API) represents over 500 companies involved in all aspects of the oil and gas industry (Exploration and Production, Refining, Marketing and Transportation). On behalf of its members, API works with the U.S. Coast Guard (USCG) on many regulatory matters, especially the development of regulations pursuant to the Oil Pollution Act of 1990 (OPA). We have a substantial interest in USCG activity affecting oil spill prevention, preparedness, response, and restoration and we respectfully submit the following comments regarding the October 18, 2000 notice as well as those issues discussed during the December 12, 2000 public meeting.

The petroleum industry has a history of working closely with government agencies, universities, and research centers to reduce the frequency and impact of oil spills. As a result of new operating procedures and research into advanced technologies, the industry has made tremendous progress in preventing spills over the past decade. In 1999, the latest year that Coast Guard statistics are complete, less than 200 barrels were spilled by tankers out of over 3.2 billion barrels of oil delivered to the U.S. This represents the lowest amount spilled since the Coast Guard began publishing data in 1973. And more than three-fourths of those spills were fewer than 10 gallons—less than a car's fuel tank holds.

Even as the industry strives to reduce the numbers and sizes of oil spills further, we have continued to learn about the best ways to respond when, despite all of our precautions, a spill does occur. Since OPA's passage, the industry has invested nearly $17 billion in oil spill prevention and response. When a spill occurs, various government agencies and industry start to immediately work to retrieve the spilled oil and minimize its impact on the environment. But there is always room for improvement. To that end, the petroleum industry continues to search for new and improved ways to make our environmental footprint as light as possible.

For the past several years API has advocated the acceptance of a variety of spill response alternatives such as high-rate recovery methods instead of continued reliance on mechanical methods. We worked closely with the USCG throughout its public meetings in 1998-1999, strongly encouraging thorough consideration and evaluation of high-rate response methods, along with the existing mechanical recovery methods vis-a-vis the existing "caps," in order to improve the nation's overall response capabilities at the most reasonable cost.

The USCG's commitment to involve numerous stakeholders in the early stages of the regulatory development process proved beneficial to all involved parties. Industry representatives were able to provide data, correct some misperceptions, and offer constructive comments directly to USCG staff. Many of our key suggestions were addressed in subsequent editions of the USCG Discussion Paper provided throughout the process on the USCG website. In the end, many of the more complex issues were discussed, worked through, and developed as a result of this open process. Unfortunately, the "expeditious" notice of proposed rulemaking (NPRM) that we were working towards never materialized. We were disappointed to learn in the fall of 2000 that this effort will now be further delayed because it is being tied directly to the "2003 Caps Study." Increasing the mechanical "caps" by 25% is not supported by data and would not automatically increase spill response readiness.

In order for the USCG to better understand the risks and challenges we face in transporting oil along the nation's coastlines and waterways as we enter a new century, a series of questions have been posed to interested stakeholders. API's offers the following responses and comments to most of the 19 questions:

1. What source do you see as presenting the biggest risk of oil pollution?

API understands that the USCG will comprehensively examine the risk assessment studies currently available to assess the greatest future risks for oil pollution. API expects that effort to yield recommendations based on the best available risk assessments. We strongly urge the USCG to continue to work with the other Federal agencies responsible for implementing oil spill prevention and response programs.[1] Industry continues to stress that all EPA and USCG Federal On Scene Coordinators (FOSCs) and key state government personnel need to work in tandem on essential preparedness and response elements, including: (1) training of government (Federal and state) response personnel, (2) exercising under the National Preparedness for Response Exercise Program (PREP), (3) and coordinating an effective response using the Incident Command System (ICS).

2. How do you see that risk changing over the next ten years?

API believes that potential spill sources are similar to the sources that existed ten years ago (i.e. tanks, pipelines, service stations, petroleum transport and other commercial vessels, etc.).

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[1] The U.S. Environmental Protection Agency (EPA), Minerals Management Service (MMS), DOT Research and Special Programs Administration/Office of Pipeline Safety (DOT-RSPA/OPS), and the US Coast Guard (USCG).

However, while the potential spill sources remain the same, the petroleum industry has made great strides in its prevention and response efforts.

For example, the risk of oil spills from petroleum transportation is at historic lows as a result of a variety of factors: (1) improvements in vessel technology and crew training, (2) USCG leadership in establishing a strong port state control program, and (3) implementation of the provisions of OPA. This risk will continue to lessen as double-hull vessels replace single-hull vessels, international requirements such as the International Safety Management (ISM) and the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW) are implemented, and global port state control efforts improve.

3. How do you see the waterborne transport of oil changing over the next ten or twenty years?

The U.S. imports 55 percent of our petroleum needs, compared to 47 percent just 10 years ago and 35 percent in the 1970s. These imports will continue to grow as long as the U.S. energy policy does not include a concerted effort to increase domestic exploration and production of our oil and natural gas resources. In the absence of such a policy, growing energy imports, (some 10 million barrels a day of crude oil and petroleum products), will continue to be delivered to the U.S. by tankers through the nation's ports.

4. What best practices for prevention, if any, from what industry or company, should we urge for uniform application throughout the waterborne transport of oil?

The USCG should encourage the expansion of programs that improve vessel quality, such as *Qualship 21*. The USCG should also consider incentives that would encourage the design of vessels that exceed minimum statutory requirements.

5. Should the Coast Guard concentrate its efforts toward preventing oil pollution on vessels and management, or on measures external to the vessel, such as Vessel Traffic Services, port risk assessments, and the like?

The USCG needs to increase its focus on external measures without diminishing its efforts toward vessels and management. API urges the USCG to look for ways to strengthen the port state control program. For example, API is ready to work with USCG to determine how best to incorporate cargo owners and charterers into the PSC matrix, recognizing the complexities of oil transportation and trading. Risk-based assessments should be the underpinning for any USCG efforts to prevent oil spills.

API also suggests that the USCG review the "NOSAC Subcommittee on Collision Final Report - Deepwater Facilities in the Gulf of Mexico," April 1999. API members participated in this study, and the report has 15 recommendations that merit consideration.

6. Do you perceive the public as becoming less tolerant of the risks of oil pollution? If yes, how is that affecting shipping, mariners' practice, and efforts toward prevention?

API and its members are proud that an increasing amount of oil is being delivered with a diminishing number of accidents. Nonetheless, industry strives for 100% safe delivery of crude oil and petroleum products because the public expects no less.

7. How will mariners' roles change with respect to preventing oil pollution in the future?

Programs such as ISM and SCTW are increasing mariners' awareness and responsibility, but these gains are being eroded by the increasing application of strict criminal liability to oil spills. The threat of inevitable criminal prosecutions for accidental oil spills does not improve the mariner's sense of responsibility and may act as a disincentive for mariners to stay in the business.

8. Should the Coast Guard be equally prepared for spills from foreign sources and for those from domestic ones? If so, how should we advance preparedness for spills from foreign sources (perhaps through the International Maritime Organization or classification societies)?

We are uncertain what the USCG is referring to. Regarding spills in US waters, API believes the USCG already has this authority and is well prepared to respond to such spills, regardless of their source.

9. Should response plans for other sources of spills mirror the response plans for vessels envisioned by OPA 90?

We are uncertain about what constitutes "other sources." Facility response plans (FRPs) mirror vessel response plans or VRPs. We expect that the final hazardous substance response plan requirements for both vessels and facilities will mirror the OPA oil response plans. Unfortunately, most state response plans do not mirror the Federally-required FRPs nor VRPs, and many of them go far beyond the OPA requirements. This ultimately makes the Unified Command decision-making process much more complex. More importantly, it makes compliance more burdensome and costly to the regulated community and makes the level playing field advocated by Federal and states alike much more difficult (if not impossible) to achieve. Our preference would be that all response plans—hazardous substances and oil and Federal and state alike—mirror one another.

10. Should non-tank vessels have to contract resources for worst cases, as tank vessels must under OPA 90?

Yes, but only if they meet the same type of criteria for posing "significant and substantial harm to the environment," as mandated by OPA. API supports the current exemption in OPA for offshore supply vessels.

11. Should the scope of, frequency of, and criteria for spill response exercises align with those in the Preparedness for Exercise Program (PREP)?

Yes. As you know, PREP was created with the cooperation, commitment, and active involvement of the entire response community. Representatives from Federal and state government, the oil and transportation industry, response contractors, and the public cooperated to develop a quality, consensus-based approach for exercising response plans. This, in turn, provided learning opportunities and enhanced preparedness without the environmental risks associated with an actual or potential spill event.

A public workshop was conducted on August 29, 2000 in Washington, D.C. This workshop was extremely important in maintaining the PREP Program as the bedrock of America's preparedness infrastructure. Conducting PREP workshops and sustaining the PREP process will help assure continued improvement in responding to environmental emergencies throughout the U.S.

A number of important comments regarding the successes and failings of the current PREP Program were made during the August 29 session, which remained largely unaddressed by the four sponsoring organizations. We understand that the National Scheduling Coordination Committee (NSCC) has been tasked with responding to those issues, as well as providing a status report on the remaining action items from the August 1997 two-day workshop held in Alexandria, Virginia. The NSCC report was expected to be made publicly available sometime during the fall of 2000. We anxiously await the final report of that committee.

12. Should Qualified Individuals for non-tank vessels meet the same standards as those required for tank vessels?

Yes. The impacts of the spill are the same, regardless of its source, so the responsibilities and qualifications of the QI should also be the same.

13. Should strategies for response to, and mitigation of, other sources of spills differ from those used for sources of spills identified under OPA 90? How?

The USCG needs to aggressively lead the National Response Team (NRT) into taking proactive charge of the national response mechanism and lead the NRT member agencies in unison along the same path: similar interpretations of OPA's intent; FRPs/VRPs are not performance documents; PREP has been agreed to (signed) by USCG, EPA, MMS, DOT and should be followed (not "adjusted" by each individual FOSC nor agency representative).

14. What needs improvement in control of and assessment for response to spills? (These comprise modeling, remote sensing, direct-reading instruments, and field technologies.) How?

Improvements in nighttime surveillance of oil spills and remote sensing of the thickness of oil slicks are needed. Improvement in both of these have the potential of greatly enhancing response capability and effectiveness by enabling 24-hour response in open water and in maximizing productivity of equipment through priority response to the thickest oil accumulations.

15. What needs improvement in cleanup methods and technologies? (These comprise in-situ burning, dispersants, mechanical recovery, shoreline cleanup, bioremediation, and other innovations.) How?

The USCG should expedite the development of dispersant regulations to drive technological advancements and level the playing field for those that fund the pre-positioned equipment and contracts.

17. Should we consider specific sources of funding for further improvements? (These may comprise per-barrel taxes, port tariffs, users' fees, or others.) Should the Oil Spill Liability Trust Fund or a similar source be available for preventative measures?

The Oil Spill Liability Trust Fund (OSTLF) was established by Congress to finance oil pollution prevention and cleanup responsibilities of various Federal agencies, up to $50 million of emergency resources, and all valid claims from injured parties resulting from oil spills. The petroleum industry funded the OSTLF to its current $1 billion level through a 5 cent tax was levied on each barrel of oil produced domestically or imported into the U.S., and the OSTLF balance has remained above $1 billion since 1994. The petroleum industry should not be expected to pay for further OSTLF prevention expenditures for sources <u>outside</u> the petroleum industry, particularly since the petroleum industry's oil spill record has improved so much over the past decade.

18. What improvements would you make to the U.S. Marine Transportation System to minimize the risk of pollution?

The safety of the marine transportation system depends not only on safe vessel operation but also on a safe waterway infrastructure, including waterway maintenance, improvements, and management. These investments not only improve safety and U.S. competitiveness internationally, but sustain long-term protection of the environment as well. Infrastructure investments in navigation channels, such as dredging programs, are critically needed, as well as accurate and current navigational charts for U.S. waterways and expanded use of vessel traffic control systems. API applauds the continued leadership of the USCG in the MTS initiative to view the entire marine transportation system holistically.

19. Given that the costs of improving the infrastructure of the Marine Transportation System could be significant, what portion of these costs of improvement to reduce the risk of pollution should the public bear?

Because of the broad benefits provided by U.S. waterways, general revenues should contribute, in large measure, to the infrastructure improvements. A user fee covering a portion of infrastructure costs could be acceptable if: (1) the fees are paid by all beneficiaries, (2) the sizes of fees are commensurate with the cost or value of the services rendered, and (3) the beneficiaries have input into prioritization and fund allocation. We urge the USCG and other Federal agencies to utilize the MTS National Advisory Council to explore this issue further.

While this USCG public meeting and notice focuses primarily on trends affecting the marine transportation sector, it is important to note that many of the key oil spill-related issues, risks, and challenges are emerging from segments of the petroleum industry that the USCG has little to no direct authority to regulate. As mentioned in our response to question #1 above, API deems it imperative that all four Federal OPA agencies, as well as state agencies, begin speaking with a single voice on essential OPA-related prevention, preparedness, and response elements. If the goal of this particular USCG initiative is to "identify likely threats to the environment and to receive ideas on which to base prevention, preparedness, and response programs and needs in the future," we assert that this can only be accomplished through effective clear communication among Federal and state regulators and truly cooperative projects that will aid in solving identified problems.

Currently, API is working with the Texas General Lands Office (TGLO), USCG, National Oceanic and Atmospheric Administration (NOAA), and other interested sponsors on a *Texas Shallow Water Dispersant Demonstration***.** This cooperative project is intended to demonstrate that dispersants can effectively and safely be applied in shallow water, nearshore environments – potential "at risk" environments for oil spills in the 21st century. Critical approvals for this important demonstration lie with the EPA. While the Planning Workgroup responsible for the demonstration is attempting to address every detail to ensure EPA's approval, this serves as an example of where cooperative research – with potentially huge benefits to the nation's nearshore environments –could again be stalled by a single agency, whose program goals for spill prevention and response do not correlate with those of its sister agencies.

API appreciates the opportunity to provide comments on this important notice. Protecting the environment while producing, transporting, refining, and marketing fuel is a challenge the petroleum industry must meet every day. For all of the benefits oil has brought to modern society, risk is inherent in taking it from the Earth -- in drilling wells, storing fuel for future use, and transporting it from place to place. API and its members are committed to minimizing these risks. We are hopeful that the USCG will continue to tap this tremendous resource of industry experts as you move forward in this endeavor. Should you have any questions regarding these comments, please feel free to contact me or Ms. Stephanie Meadows at (202) 682-8578.

Sincerely,

Robert L. Greco III