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K-SEA

DEPT. OF TRANSPORTATION
DOCKETS

K-SEA Transportation Corp.

Docket Management Facility (USCG-2001-8661) -25
U.S. Department of Transportation
Room PL-401
400 Seventh Street SW
Washington, D.C. 20590-0001

2003 APR -7 P 1:20

April 7, 2002

Dear Sir:

On behalf of K-Sea Transportation Corporation, I appreciate the opportunity to respond to the proposed rulemaking: Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions [USCG-2001-8661]

K-Sea Transportation Corporation transports oil products domestically on the East and Gulf Coasts with most of our activity being in the Northeast. Also, we transport vegetable oils internationally. K-Sea operates 17 tugs, 3 small inland tankers, and 25 barges; and employees approximately 360 people. K-Sea is a member of the American Waterways Operators and supports their views on the subject proposed regulations. However, we have additional views and concerns beyond what they have expressed previously or what we anticipate that they will express in the future.

OVERVIEW:

Simply put, this rulemaking is not justified: it solves a problem that does not exist. The costs are extreme yet it does not by itself prevent any oil from being spilled. The rulemaking is based upon an old analysis and data that is longer valid. Worse, the mechanical recovery, aerial tracking, dispersants, and in_situ burning resources have been available for many years.

ANALYSIS

The Regulatory Analysis (RA) is largely based on a Programmatic Regulatory Assessment Accounting Model (PRAAM) that was drafted in 1996. This model has not been validated using current data.

The RA uses actual data from 1981 to 1995 and forecasted data from 1996 to 2025.[1] For barges, the difference between the forecasted spill amounts and the actual spill amounts is huge. The forecast for 2002 appears to be slightly more than one million gallons while the actual amount spilled was 133,450 gallons. The RA melted into the PRAAM information from Public Workshops that the Coast Guard held in 1998: almost five years ago. Most of the benefits realized from the Oil Pollution Act of 1990 and its associated rulemaking occurred well before this date. Also, more data is now available.

[1]Regulatory assessment for Changes to Vessel and Facility Response Plans, page 48

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Both the PRAAM and RA get high marks for glitz and may have been useful at one time. However, at this point in time, they are not useful. A model should be a reflection of reality. This is not true for the RA. The easiest way to explain this is to refer to page 48 of the RA. There appears to be a significant discontinuity in the curve for spill data beginning starting in 1991. This was not picked up at the time by PRAAM since there is a large normal variance in the data. However, the very low spill amount continues until the present. This decline cannot be explained by the various regulatory changes caused by OPA 90: clearly the decline started before the changes were initiated. The decline was probably caused by attitudinal changes by the Coast Guard and Industry. Of course, one can make the hypothesis that the regulatory changes really had no, or minimal, affect on the number and size of oil spills.

Even if one accepts the data used in the rulemaking as true, this would still not result in a Net Present Value (NPV) of $10,000 or more per barrel spilled for the preferred alternate as stated by the Coast Guard. Most, if not all, of the mechanical recovery, aerial tracking, dispersants, and in_situ burning resources that the Coast Guard imputes would become available because of this rulemaking have been available for many years. From this, one can readily assume that these are being presently used to the maximum possible extent and no additional benefit would be gained from the proposed rulemaking.

The Coast Guard is also overly optimistic concerning the use of dispersants. While many States have agreements with the Federal Government concerning the use of dispersants, these agreements will not result in any noticeable increase use of dispersants. Political considerations will continue to negate the use of dispersants in the future as they have in the past. Also, agreements with States should not be construed as meaning wide spread agreement concerning dispersant use.

SPECIFIC COMMENTS

The rulemaking is generally very well written; albeit we disagree that it is necessary. Nevertheless, we offer the following comments. In no way do we mean to infer that we think the rulemaking is justified.

¶155.1035(i)(10): (minor wording)

> The below comments assume that the plan holder has contracted with an Oil Spill Removal Organization (OSRO).
>
> Towards the end of the paragraph, the rulemaking states "If an oil spill removal organization has been evaluated by the Coast Guard and its capability has been determined to equal or exceed the response capability needed by the owner or operator, the section may identify the oil spill removal organization only, and not the information required in paragraphs (i)(10)(i) though (10)(iii) of this section.

However, the part of the section immediately before paragraph (i)(10)(i) requires that the Geographic-specific appendix for each COTP "list the resource providers and specific resources, including appropriately trained dispersant-application personnel...." By a very precise reading of the rulemaking, the listing of an OSRO does not illuminate this requirement. The listing of this information would serve no useful purpose as the typical plan holder and Captain of the Port personnel to not have the background to appreciate it. The listing of the information would unnecessarily clutter the plan.

¶155.1040(i)(10) is very similar but more clearly written.

¶155.1035(i)(11): (minor wording)

This paragraph should make it clear that in-situ burn resources are not required. The wording "if appropriate" is used.

¶155.1035(i)(12): (**significant**)

This paragraph would put an unreasonable burden on the plan holder. Very few plan holders have the expertise to do this. Also, listing all of the resources would unnecessarily clutter the plan. **I strongly recommend that you include this as a requirement for OSRO's to be classed.**

CONCLUSION:

Again, this regulation is not justified. If the Coast Guard feels very strong that it is necessary, then another analysis should be done using an updated model. The Programmatic Regulatory Assessment Accounting Model (PRAAM) that was drafted in 1996 is no longer valid.

Richard J. Heym
Director, Safety and Compliance