

Oil Spill Task Force

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February 13, 2012

Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Ms. Jackson,

I am writing on behalf of the U.S. member agencies of the Pacific States/British Columbia Oil Spill Task Force to petition that the U.S. Environmental Protection Agency take rulemaking action to increase the Limits of Liability for non-transportation related onshore facilities regulated by your agency by the total amount of increase in the Consumer Price Index since 1990.

The 1990 Oil Pollution Act (OPA) section 1004(d)(4) states that *“The President shall, by regulations **issued not less often than every 3 years**, adjust the limits of liability specified in subsection (a) to reflect significant increase in the Consumer Price Index (CPI).”* The authority to adjust liability limits for inflation pursuant to OPA section 1004 (d)(4) was delegated by the President to various agencies in section 4 of Executive Order 12777, October 18, 1991 and was to be accomplished through regulation. The Delaware River Protection Act of 2006 amended the provision authorizing further increases to limits based on consumer price index increases to begin from the date of enactment of the Act.

On January 6, 2010, the U.S. Coast Guard adopted a final rule adjusting Limits of Liability for vessels and deepwater ports. The following statement was in the rule: *...to ensure future consistency in inflation adjustments to the limits of liability for all OPA 90 oil spill source categories, the Coast Guard has coordinated the CPI adjustment methodology with DOT, EPA, and DOI. In addition, the Coast Guard, DOT, EPA, and DOI have agreed to coordinate the CPI inflation adjustments to the limits of liability for facilities (i.e., for MTR onshore facilities regulated by Coast Guard, NMTR onshore facilities regulated by DOT, **NTR onshore facilities regulated by EPA**, and offshore facilities regulated by DOI) as part of the next cycle of inflation adjustments to the limits of liability. This phased approach will allow adequate time for the additional interagency coordination necessary to ensure consistency in implementing the CPI adjustments to the OPA 90 limits of liability for all onshore and offshore facilities.*

Two years later – and almost twenty-two years since OPA 90 was passed - the OPA liability limits for non-transportation related onshore facilities still have not been adjusted for the increase in the CPI.

In the National Pollution Funds Center’s 2010 Report on Oil Pollution Act Liability Limits to Congress (see <http://www.uscg.mil/npfc/> and click on “Liability Limits Report” on the home page) it is stated on page 11 that “Roughly half of the removal costs in Figure 11 (*Total Fund Expenditures*) are for facility discharges; liability limits for facilities, as previously discussed, are more than adequate at this time.” Although the NPFC may consider them to be

adequate, oil spill data collected by the Pacific States/British Columbia Oil Spill Task Force in our U.S. member jurisdictions since 2002 consistently shows facilities as a major source of spills (53% of total non-crude volume and 41% of crude volume 2002-2011). This also applies to pipelines, which were the source for 57% of crude oil spilled by volume over that same nine-year period. We believe that the aging infrastructure in facilities and pipelines represents sufficient risk (equipment failure accounted for 52% of the non-crude volume and 72% of the crude volume in 2011 as well as 57% of the total volume for 2002-2011) to justify increasing their limits of liability by the CPI since 1990.

The U.S. member agencies of the Pacific States/British Columbia Oil Spill Task Force are the Alaska Department of Environmental Conservation, the Washington Department of Ecology, the Oregon Department of Environmental Quality, the Office of Spill Prevention and Response in the California Department of Fish and Game, and the Hawaii Department of Health. Each of these member agencies has a legal obligation to protect the environment within their jurisdictions from oil spills and ensuring a timely and effective response to oil spills is crucial to environmental protection. In addition, it is in the interest of the British Columbia Ministry of Environment - our Canadian member agency - that the jurisdictions of Alaska and Washington are able to respond efficiently and effectively to transboundary spill events.

Our U.S. member agencies' ability to respond to oil spills relies in part on response partnerships with federal agencies partially funded by the Oil Spill Liability Trust Fund. Our member agencies also rely on reimbursements of their own response costs from the Fund. As noted in the Oil Spill Liability Trust Fund's FY 2004-FY 2008 Report, oil spill response funds spent in our U.S. member jurisdictions during that period were as follows: Alaska: \$5,657,464; California: \$12,166,544; Hawaii: \$2,006,338; Oregon: \$3,904,391; and Washington: \$7,328,903.

In addition to our concerns regarding the solvency of the Oil Spill Liability Trust Fund, we feel that adequate Limits of Liability help prevent oil spills. Since the authority for increasing these Limits by the CPI has been in place for over twenty years, the U.S. Environmental Protection Agency should no longer shirk its responsibility to use that authority.

Thanking you for your prompt attention to this petition for rulemaking, I remain,

Sincerely yours,

Jean R. Cameron

Jean R. Cameron
Executive Coordinator
Pacific States/British Columbia Oil Spill Task Force

cc: Lynn Beasley, U.S. EPA
Kathryn Lawrence, U.S. EPA Region 9
Chris Field, U.S. EPA Region 10
Benjamin White, U.S. Coast Guard
Greg Buie, National Pollution Fund Center