



The American Waterways Operators

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Docket Management Facility (M-30)
U.S. Department of Transportation
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001

RE: Nontank Vessel Response Plans and Other
Vessel Response Plan Requirements
(USCG-2008-1070)

Dear Sir or Madam:

On behalf of The American Waterways Operators (AWO), thank you for the opportunity to comment on the notice of proposed rulemaking (NPRM) establishing response plan requirements for nontank vessels. AWO is the national trade association for the inland and coastal tugboat, towboat and barge industry. AWO's 300 member companies own or operate about two-thirds of the towing vessel horsepower in the U.S. domestic fleet, including nearly all of the approximately 700 towing vessels over 400 gross tons that will be affected by this rulemaking.

AWO approaches this rulemaking from the perspective of an organization that is deeply committed to leadership in marine safety and environmental protection. In 1994, we became the first transportation trade association to adopt a code of safe practice for member companies. Since 2000, compliance with the AWO Responsible Carrier Program has been a condition of association membership, and members must undergo an independent third-party audit every three years to demonstrate their continued compliance. AWO was also the first maritime trade association to enter into a formal safety partnership with the U.S. Coast Guard. Since 1995, the Coast Guard-AWO Safety Partnership has launched more than 30 government-industry quality action teams that have produced meaningful improvements in towing vessel safety and environmental stewardship.

AWO offers two overarching comments on the NPRM:

1. First, the Coast Guard should be very sensitive to the unique history of this rulemaking and the fact that affected nontank vessel owners and operators have been operating under Coast Guard-approved nontank vessel response plans since August 2005. The Coast Guard should not require vessel owners to make changes to plans that have worked well for more than four years.

The Tugboat, Towboat and Barge Industry Association

2. Second, the Coast Guard should take into account the different risk profile of nontank vessels, and specific classes of nontank vessels, and ensure that response plan requirements for nontank vessels do not exceed the requirements currently in place for tank vessels. In addition, the Coast Guard should provide the option of an “Alternative Response Plan” approach (modeled after the very successful Alternative Security Program concept pursuant to 33 CFR 101.120(b)), under which an organization can develop an alternative response plan that is consistent with the intent of the regulations but tailored to the specific risk factors and operational profile of a particular class of vessels.

We elaborate on these two points and recommend several specific changes to the NPRM below.

Regulatory History

The Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293) required affected nontank vessel owners to prepare and submit response plans by August 2005 or lose their franchise to operate in U.S. waters. In February 2005, the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) 01-05 to provide interim guidance to assist vessel owners in meeting this statutory requirement. The NVIC thus became the de facto regulation that vessel owners were required to use as the model for submission of their initial nontank vessel response plans.¹ AWO’s canvassing of affected member companies confirms that the owners of towing vessels over 400 gross tons have relied on NVIC 01-05 to develop the response plans under which they have been operating for more than four years. (In substance, NVIC 01-05 closely mirrored the existing response plan regulations for tank vessels.) This history reinforces the importance of consistency as the Coast Guard belatedly establishes regulatory requirements for nontank vessel response plans. The Coast Guard should not add requirements to the proposed regulations that differ from the requirements of the NVIC or exceed the response plan requirements for tank vessels, since that is the guidance upon which nontank vessel owners have relied to develop their current Coast Guard-approved response plans.

Towing Vessel Risk Profile

In addition to bearing in mind the history of this rulemaking, the Coast Guard should also give great weight to the risk profile posed by nontank vessels, and specific classes of nontank vessels, as it finalizes the proposed regulations. As we stated in our response to the Coast Guard’s June 2005 Request for Comments, towing vessels present a very different environmental risk profile than large nontank ships that carry persistent oil as bunker fuel. Towing vessels over 400 gross tons typically have a fuel capacity range of 31,000 to 130,000 gallons. These vessels use non-persistent #2 diesel as fuel, and may also carry several hundred to several thousand gallons of lube oil. In addition, the arrangement of towing vessel fuel tanks mitigates the risk of a total loss of onboard fuel in the event of a high-intensity grounding, collision, or other casualty affecting the vessel’s hull. Most towing vessels are designed with a series of separate fuel tanks along the length

¹ NVIC 01-05 was published with no prior opportunity for public comment. While the Coast Guard did publish a Notice and Request for Comments in June 2005 and make minor changes to the NVIC in February 2006, these steps came too late to affect the submission of the initial round of nontank vessel response plans. As we stated in our testimony at the October 28 public meeting in Washington, D.C., this is the inverse of how the regulatory process is supposed to work. Neither actual nor de facto regulatory requirements should be issued without prior opportunity for public comment.

of each side of the vessel, reducing the potential for significant spill volume in the relatively rare event that a fuel tank is breached.

When an oil spill from a towing vessel does occur, it is most commonly the result of a vessel fueling operation, and it is generally small in volume, as Coast Guard casualty data confirms. Appendix E to the Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis cites 109 towing vessel oil spill incidents that occurred from 2002-2006, for a total of 269 barrels spilled, or less than two-and-a-half barrels per incident. AWO's analysis of these spills indicates that 64 occurred during fueling operations, 21 were caused by other types of equipment failure, 11 were caused by other types of human error, and three occurred while a vessel was on drydock. Only 10 incidents resulted from groundings, allisions or collisions, for a total of 46 barrels spilled. Viewed in context, towing vessel oil spills caused by groundings, allisions or collisions represented 17 percent of the total oil spilled by towing vessels, and .005 percent of the total nontank vessel spill volume between 2002 and 2006.

The design, operational characteristics and casualty history of towing vessels strongly suggest that towing vessels over 400 gross tons do not pose a significant risk of the kind of catastrophic spill that led to the imposition of this statutory mandate. This reinforces the argument above that the response plan requirements for nontank vessels should not exceed the requirements for tank vessels. It also suggests the merits of including a provision allowing an association or consortium of vessel owners to develop and submit for approval an Alternative Response Plan modeled after the Alternative Security Program concept in 33 CFR Part 101. An Alternative Response Plan could be tailored to the operational profile, design characteristics and casualty history of a vessel class and allow for a more nuanced approach than provided for under the NPRM. (An approved Alternative Security Program for towing vessels might, for example, adopt a more streamlined approach to salvage, firefighting, lightering, dispersants and aerial tracking capability than proposed in the NPRM, reflecting the extremely limited likelihood that such resources will be required to respond to a spill from such a vessel.) This might be of particular benefit to owners of towing vessels engaged solely in the movement of dry cargo barges, who did not have the option of expanding an existing tank vessel response plan to include towing vessels.

Recommended Modifications

With the foregoing discussion as backdrop, AWO recommends the following specific changes to the proposed regulatory requirements:

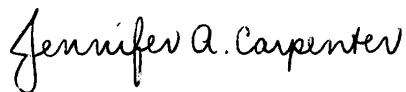
- §155.5035(h)(11) uses the undefined term "inland rivers" to distinguish those operations that are not subject to the requirement for aerial tracking capability. AWO urges the Coast Guard to instead use the term "rivers and canals" as defined in the existing tank vessel response plan regulations at 33 CFR 155.1020.
- §155.5035(b)(5)(i)(O), requires plan holders to include in notification procedures section of the plan "Details of P&I Club and Local Correspondent," as applicable. This requirement is not contained in the tank vessel response plan regulations and should not be included in the requirements for nontank vessel response plans. Moreover, most inland towing companies do not use membership in a P&I Club for vessel and pollution liability coverage. (If the Coast Guard's concern is ensuring that a vessel owner has adequate coverage to meet its financial obligations in the event of a spill, we submit that the Certificate of Financial Responsibility

requirements, not the vessel response plan regulations, are the more appropriate vehicle to address that concern.)

- §155.5035(c)(1)(iv)-(xi) contain several new requirements for inclusion in the shipboard spill mitigation procedures section of the plan, including personnel protection issues, protective equipment, threats to health and safety, containment and other response techniques and isolation procedures, which are not included in either the NVIC or the tank vessel response plan regulations. These requirements should be deleted. They are not necessary, and it is not appropriate to require a longer and more complex plan for a nontank vessel than for a tank vessel.
- §155.5035(c)(2) requires plan holders to reference vessel-specific checklists produced under the ISM Code. Not only is this a new requirement not contained in either the NVIC or the existing tank vessel response plan regulations, but it is simply not applicable to inland towing vessels and many coastal towing vessels, which are not required to comply with the ISM Code. This requirement should be deleted.
- Amend §155.5067 to clarify that an Alternative Response Plan may be submitted by an association or consortium on behalf of a class of vessels and approved by Commandant (CG-543), as opposed to the local Captain of the Port. We understand the existing §155.5067 to have been developed with an eye toward vessels operating in remote geographic areas in which access to the required response resources in the specified time frames may be impossible. We recommend that the Coast Guard expand this concept to allow for Alternative Response Plans tailored to the design and operation of a class of vessels that share common operating characteristics.

Thank you for the opportunity to comment. We would be pleased to answer any questions or provide further information as the Coast Guard sees fit.

Sincerely,



Jennifer A. Carpenter