

25 SEPT 1979

STATEMENT OF
REAR ADMIRAL WAYNE E. CALDWELL
U. S. COAST GUARD
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U. S. HOUSE OF REPRESENTATIVES
26 SEPTEMBER 1979

MR. CHAIRMAN, AND MEMBERS OF THE SUBCOMMITTEE, I AM REAR ADMIRAL WAYNE E. CALDWELL, CHIEF OF THE OFFICE OF MARINE ENVIRONMENT AND SYSTEMS. I AM ACCOMPANIED TODAY BY CAPTAIN CHARLES R. CORBETT, CHIEF OF THE COAST GUARD'S MARINE ENVIRONMENT PROTECTION DIVISION. I WOULD LIKE TO THANK YOU FOR THIS OPPORTUNITY TO PRESENT TO THE SUBCOMMITTEE THE COAST GUARD'S VIEW ON H.R. 85, THE COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT.

THE CONGRESS AND THE ADMINISTRATION HAVE RECOGNIZED THE NEED FOR A UNIFORM POLLUTION DAMAGE COMPENSATION SCHEME OR SUPERFUND BILL FOR SOME TIME. VARIOUS BILLS WERE INTRODUCED IN THE 94TH AND 95TH CONGRESSES, AS WELL AS THIS CONGRESS. THE ADMINISTRATION HAS SUBMITTED A SUPERFUND BILL (INTRODUCED AS H.R. 3441) WHICH, SIMILAR TO H.R. 85, WOULD ESTABLISH A LIABILITY AND COMPENSATION SCHEME FOR OIL POLLUTION. THE ADMINISTRATION HAS ALSO SUBMITTED A BILL, (INTRODUCED AS H.R. 4566), WHICH WOULD ESTABLISH A SIMILAR SCHEME APPLICABLE NOT ONLY TO OIL BUT ALSO TO HAZARDOUS SUBSTANCE POLLUTION AND RELEASES FROM UNCONTROLLED HAZARDOUS WASTE DISPOSAL SITES. IT IS THE VIEW OF THE DEPARTMENT OF TRANSPORTATION AND THE COAST GUARD THAT LEGISLATION OF THIS TYPE IS A HIGH PRIORITY NEED AS WE STRIVE TO MEET THE NATION'S ENERGY NEEDS IN AN ENVIRONMENTALLY CONSCIOUS MANNER.

OVER THE LAST DECADE, INCREASING PUBLIC CONCERN OVER THE STATE OF THE MARINE ENVIRONMENT LED TO THE PASSAGE OF A NUMBER OF LEGISLATIVE MEASURES TO IMPROVE THE QUALITY OF OUR NATION'S WATERS. THE FEDERAL WATER POLLUTION CONTROL ACT (FWPCA), AS AMENDED, PROVIDES THE PRINCIPAL LEGISLATIVE AUTHORITY TO ACHIEVE THIS GOAL.

SECTION 311 OF THIS ACT PROHIBITS THE DISCHARGE OF OIL OR HAZARDOUS SUBSTANCES AND PROVIDES FOR THE REQUIRED REPORTING OF OIL AND HAZARDOUS SUBSTANCE DISCHARGES; FOR THE IMPOSITION OF PENALTIES, AND FOR THE FEDERAL CLEANUP AND MITIGATION OF SPILLS. THIS SECTION ALSO ESTABLISHED A REVOLVING FUND TO COVER THE COSTS OF FEDERAL REMOVAL EFFORTS.

SINCE THE ENACTMENT OF THE WATER QUALITY IMPROVEMENT ACT OF 1970, WHICH INCLUDED THE PREDECESSOR TO SECTION 311, THE COAST GUARD, TOGETHER WITH THE ENVIRONMENT PROTECTION AGENCY, HAS GAINED VALUABLE EXPERIENCE IN POLLUTION LAW ENFORCEMENT AND POLLUTION RESPONSE.

PREVENTION OF OIL SPILLS, HOWEVER, IS THE KEY TO PROTECTING OUR WATERS AND OUR VALUABLE NATURAL RESOURCES FROM ENVIRONMENTAL DAMAGE. THE RASH OF TANKER ACCIDENTS DURING THE WINTER OF 1976-77 PROMPTED PRESIDENT CARTER TO ORDER A MULTI-AGENCY EFFORT TO DEVELOP A COMPREHENSIVE LEGISLATIVE AND EXECUTIVE PROGRAM TO

PREVENT OIL SPILLS, COMBAT THEM EFFECTIVELY WHEN THEY OCCUR, AND TO COMPENSATE THOSE SUFFERING DAMAGES OR LOSS FROM SUCH SPILLS. SEVERAL IMPORTANT MEASURES HAVE BEEN TAKEN TO CURB THE INCIDENCE OF OIL POLLUTION AS A RESULT OF THESE 1977 PRESIDENTIAL INITIATIVES INCLUDING: THE COAST GUARD'S TANKER BOARDING PROGRAM, WHICH HAS BEEN FULLY IMPLEMENTED FOR MORE THAN TWO YEARS; AND IMPLEMENTATION OF EQUIPMENT AND PROCEDURAL REQUIREMENTS, MANDATED BY THE PORT AND TANKER SAFETY ACT OF 1978. A NUMBER OF MEASURES HAVE ALSO BEEN TAKEN TO IMPROVE THE NATIONAL POLLUTION RESPONSE ORGANIZATION, SUCH AS, IMPROVED CONTINGENCY PLANNING, THE DEVELOPMENT OF A COMPUTERIZED NATIONAL RESPONSE EQUIPMENT INVENTORY, PROVISION OF IMPROVED SCIENTIFIC SUPPORT TO ON-SCENE COORDINATORS, COORDINATED REGIONAL RESPONSE TEAM AND ON-SCENE COORDINATOR TRAINING EXERCISES, AND INCREASED PARTICIPATION BY THE STATES ON THE REGIONAL RESPONSE TEAMS.

WHILE THESE ACTIONS INDICATE THAT SIGNIFICANT STRIDES ARE BEING TAKEN TO REDUCE THE INCIDENCE OF OIL SPILLS, IT IS ALSO PAINFULLY APPARENT THAT OIL SPILLS, INCLUDING THOSE RANDOM AND INFREQUENT CATASTROPHIC DISCHARGES, DO AND WILL CONTINUE TO OCCUR. A MAJOR GAP IN THIS NATION'S OIL POLLUTION PROGRAM REMAINS. THAT IS THE NEED TO PROVIDE A UNIFORM, COMPREHENSIVE SYSTEM FOR ESTABLISHING LIABILITY AND PROVIDING TIMELY COMPENSATION FOR THOSE SUFFERING LOSSES FROM OIL DISCHARGES. WHILE EXISTING STATUTES ESTABLISH

LIABILITY ON THE PART OF THE SPILLER FOR THE COSTS OF CLEANUP, THEY DO NOT ADDRESS THE QUESTION OF THIRD PARTY DAMAGES. LEGISLATION, PROVIDED BY THE ENACTMENT OF H.R. 85, H.R. 3441, OR H.R. 4566, WOULD GO A LONG WAY IN ADDRESSING THIS REMAINING PROBLEM. IN RESPONSE TO THE PRESIDENTIAL INITIATIVES OF 1977, THE COAST GUARD OFFICE OF MARINE ENVIRONMENT AND SYSTEMS WAS DIRECTED TO CONDUCT A STUDY TO DETERMINE A MEANS TO COLLECT A FEE TO SUPPORT A SUPERFUND, SUCH AS THAT PROVIDED FOR IN H.R. 85 AND H.R. 3441. THE FINAL REPORT OF THAT STUDY WAS SUBMITTED TO THE PRESIDENT LAST YEAR. THE STUDY INDICATED THAT A \$150M LEVEL OF FUNDING WILL BE REACHED IN ABOUT A YEAR'S TIME, ASSUMING A THREE CENTS A BARREL FEE ON OIL. I AM TODAY, WITH YOUR PERMISSION, MR. CHAIRMAN, SUBMITTING THE STUDY FOR THE RECORD AND FOR YOUR CONSIDERATION.

THE BLOWOUT AT THE MEXICAN EXPLORATORY WELL IXTOC I ON 3 JUNE 1979, REMINDS US THAT OIL SPILLS WILL CONTINUE AND THAT THERE IS A NEED FOR A SUPERFUND.

-- A FEW WORDS ABOUT THE STATUS OF THE MEXICAN SPILL--

THE WELL IS LOCATED IN THE BAY OF CAMPECHE, ABOUT 50 MILES OFF-SHORE FROM CUIDAD DEL CARMEN. THE RATE OF DISCHARGE WAS INITIALLY ESTIMATED AT ABOUT 30 THOUSAND BARRELS DAILY, BUT DUE TO ACTIONS TAKEN BY PEMEX, THE OWNERS OF THE WELL, THE RATE IS REPORTED TO

HAVE BEEN REDUCED TO BETWEEN 10 AND 20 THOUSAND BARRELS PER DAY. INITIALLY, THE GOVERNMENT OF MEXICO USED WORLDWIDE COMMERCIAL RESOURCES TO COMBAT THE DISCHARGE RATHER THAN SOLICITING OR ACCEPTING ASSISTANCE FROM OTHER GOVERNMENTS. RECENTLY, THE GOVERNMENT OF MEXICO REQUESTED AND RECEIVED HELP FROM THE U.S. COAST GUARD AND THE EPA. A NATIONAL STRIKE FORCE TEAM HAS OPERATED UNTIL RECENTLY, USCG OIL RECOVERY EQUIPMENT AT THE WELL SITE. AT TIMES, THE TEAM HAS COLLECTED ABOUT 5,000 BARRELS PER DAY. THE TEAM IS STILL ON SCENE PROVIDING ADVICE TO THE GOVERNMENT OF MEXICO ON BEACH CLEANUP ORGANIZATION, BUT THE EQUIPMENT HAS BEEN RELEASED TO RETURN TO THE UNITED STATES.

ON OUR OWN SHORES, THE COAST GUARD'S FIRST RESPONSE WAS TO THE THREAT, AND THEN TO THE IMPACT OF THE OIL. BY 7 AUGUST, OIL, IN THE FORM OF SMALL TAR BALLS, HAD REACHED THE TEXAS BEACHES.

THE FIRST PRIORITIES HAVE BEEN TO KEEP THE OIL OUT OF THE BAYS AND THE ESTUARIES WHICH ARE THE JUVENILE BREEDING AND FEEDING GROUND OF MANY IMPORTANT SPECIES OF BIRD AND MARINE LIFE; FORTUNATELY, THE BARRIER ISLANDS ACT AS A NATURAL BOOM. OIL ON THE BEACHES OF THE FINE-GRAINED, HARD-PACKED SAND BARRIER ISLANDS IS REMOVED AS SOON AS POSSIBLE IF IT IMPACTS ENVIRONMENTALLY SENSITIVE AREAS, COMMERCIAL OPERATIONS, SUCH AS HOTELS AND MOTELS, OR IF IT APPEARS ON FREQUENTLY USED PUBLIC BEACHES. THE REMAINDER IS REMOVED MORE DELIBERATELY.

FUNDING FOR OUR RESPONSE ACTIVITIES IS PROVIDED BY THE SECTION 311(K) POLLUTION REVOLVING FUND. THE ON-SCENE COORDINATOR IS

PRESENTLY OPERATING UNDER AN ALLOWANCE OF \$6.5M. IT HAS BEEN ESTIMATED THAT COSTS ASSOCIATED WITH THE SPILL MAY RISE TO ABOUT \$11M. THIS DOES NOT INCLUDE THE COSTS INCURRED BY THE U. S. GOVERNMENT FOR WELL SITE RESPONSE OPERATIONS. THE GOVERNMENT OF MEXICO HAS AGREED TO PAY THE COSTS OF OUR ACTIVITIES AT THE WELL SITE. THE QUESTION OF COMPENSATION FOR COSTS AND DAMAGES INCURRED AS A RESULT OF THE IMPACT OF THE OIL ON THE COASTS OF THE UNITED STATES HAS YET TO BE RESOLVED, BUT IT IS UNDER INTENSIVE EXAMINATION WITHIN THE ADMINISTRATION AT THE PRESENT TIME.

THE QUESTION OF LIABILITY UNDER ANY SYSTEM IS ONE WHICH ULTIMATELY IS DETERMINED THROUGH JUDICIAL PROCEEDINGS. THE PARTICULAR SITUATION IN ANY CASE IS, OF COURSE, THE MAJOR CONTROLLING FACTOR IN ANY REMEDY. KEEPING THIS IN MIND, I BELIEVE IT TO BE HIGHLY LIKELY THAT IF H.R. 85 HAD BEEN ENACTED PRIOR TO THE INCURRENCE OF COSTS AND DAMAGES FROM CAMPECHE SPILL, CLAIMS FOR COSTS AND DAMAGES OF THE SORT LISTED IN SECTION 103(A) COULD HAVE BEEN COMPENSATED.

I SAY THIS FOR THE FOLLOWING REASONS. UNDER THE PROVISIONS OF H.R. 85, CLAIMS ARE ASSERTABLE WHEN THEY ARISE OUT OF, OR DIRECTLY RESULT FROM "OIL POLLUTION." IT IS APPARENT THAT "OIL POLLUTION" FROM THE CAMPECHE SPILL EXISTS, WITHIN THE CONTEXT OF THE DEFINITION PROVIDED IN THIS BILL. FOR THIS REASON, CLAIMS PRESUMABLY COULD BE ASSERTED UNDER SECTION 103(A) OF THE BILL.

THE RESOLUTION OF THE QUESTION OF THE LIABILITY OF THE OWNER OR OPERATOR FOR THESE CLAIMS WOULD REQUIRE FURTHER FACTUAL DEVELOPMENT AND ANALYSIS. HOWEVER, SECTION 104(F) MAKES THE FUND LIABLE (SUBJECT TO VERY FEW DEFENSES) WITHOUT LIMITATION FOR ANY ESTABLISHED CLAIMS. THEREFORE, WHILE THE QUESTION OF ULTIMATE OWNER OR OPERATOR LIABILITY, UNDER H.R. 85, CANNOT BE DETERMINED AT PRESENT, IT WOULD SEEM THAT THE CLAIMANTS FROM THE CAMPECHE SPILL COULD RECOVER FROM THE SUPERFUND, AS DEFINED IN H.R. 85.

WHILE WE WILL CONTINUE TO TAKE MAXIMUM ADVANTAGE OF OUR EXISTING STATUTORY AUTHORITY FOR OIL POLLUTION RESPONSE AND LAW ENFORCEMENT, IT IS EVIDENT THAT STATUTORY AUTHORITY FOR COPING WITH THE ENTIRE OIL POLLUTION PROBLEM IS LESS THAN ADEQUATE. I WILL STATE WHAT I BELIEVE ARE THE PRINCIPAL LIMITATIONS.

THE FWPCA DOES NOT ADDRESS ITSELF TO THE QUESTION OF LIABILITY OR COMPENSATION FOR DAMAGES, OTHER THAN THE COSTS OF POLLUTION REMOVAL. THE COAST GUARD SUPPORTS THE CONCEPT OF PROVIDING COMPENSATION FOR LOSSES TO PROPERTY, NATURAL RESOURCES AND THE ECONOMIC LIVELIHOOD OF FISHERMEN BEYOND THE DISCHARGERS LIABILITY OR ABILITY TO PAY AS PROVIDED IN H.R. 3441, AND H.R. 4566.

THE LACK OF LEGISLATION ADDRESSING THIRD PARTY DAMAGES HAS LED TO THE ENACTMENT OF SEVERAL FEDERAL STATUTES WHICH ESTABLISH SPECIAL PURPOSE COMPENSATION FUNDS. THESE ARE: (1) THE TRANS-ALASKA PIPELINE (TAPS) FUND, WHICH PROVIDES FOR REMOVAL COSTS

AND DAMAGES FROM POLLUTION FROM VESSELS TRANSPORTING TAPS OIL BETWEEN THE VALDEZ TERMINAL AND U.S. PORTS; (2) THE POLLUTION FUND ESTABLISHED BY TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978, WHICH COVERS REMOVAL COSTS AND DAMAGES FROM OIL POLLUTION INCIDENTS, RELATED TO ACTIVITIES ON THE U.S. OUTER CONTINENTAL SHELF; AND (3) THE DEEPWATER PORT ACT FUND, FOR DISCHARGES AT A DEEPWATER PORT. THE COAST GUARD SUPPORTS THE SUPERFUND CONCEPT WHICH WILL REPEAL THE LEGISLATION ESTABLISHING THESE SPECIAL PURPOSE FUNDS AND PROVIDE A SINGLE, UNIFORM APPROACH TO OIL POLLUTION LIABILITY AND COMPENSATION.

ANOTHER LIMITATION IN PRESENT AUTHORITY RELATES TO THE SIZE AND NATURE OF THE FWPCA SECTION 311(K) POLLUTION FUND. THE FUND IS AUTHORIZED AT, BUT HAS NEVER REACHED, A LEVEL OF \$35M. IT IS MAINTAINED BY REMOVAL COSTS RECOVERED FROM THE DISCHARGERS, PENALTY COLLECTION, AND CONGRESSIONAL APPROPRIATIONS. THE MOST RECENT APPROPRIATION WAS A \$13M SUPPLEMENTAL REQUEST RECEIVED IN JULY, 1979. THE FUND, AT TIMES, HAS REACHED DANGEROUSLY LOW LEVELS. THE ESTIMATED BALANCE IN THE FUND IN THE FISCAL YEAR ENDING SEPTEMBER, 1979 IS \$6M. THE COAST GUARD SUPPORTS THE \$150M TO \$200M LEVEL OF FUNDING CONTAINED IN H.R. 85 AND THE MAINTENANCE OF THE SUPERFUND BY THE BARREL FEE COLLECTION ON DOMESTIC AND IMPORTED OIL. THIS HIGHER LEVEL OF FUNDING WILL PROVIDE A LARGER BASE FOR FUNDS AVAILABLE FOR POLLUTION RESPONSE ACTIVITIES THAN IS NOW AVAILABLE UNDER THE SECTION 311(K) FUND

AND WILL ALLEVIATE THE NEED TO FREQUENTLY REQUEST APPROPRIATIONS FROM CONGRESS FOR OIL POLLUTION ACTIVITIES. ADDITIONALLY, THIS HIGH LEVEL OF FUNDING WILL INSURE ADEQUATE AND AVAILABLE COMPENSATION TO THOSE DAMAGED BY OIL POLLUTION INCIDENTS.

THE BILLS BEFORE THIS CONGRESS REFLECT THE PAST EFFORTS AND EXTENSIVE DELIBERATIONS OF PREVIOUS CONGRESSES IN FORMULATING POLLUTION LIABILITY AND COMPENSATION SCHEMES. THE NEED FOR COMPREHENSIVE LIABILITY AND COMPENSATION LEGISLATION IS CLEAR, AND IT IS THE HOPE OF THE COAST GUARD THAT ENACTMENT WILL COME WITH THIS CONGRESS. I WOULD AGAIN LIKE TO THANK THE SUBCOMMITTEE FOR THE OPPORTUNITY TO DISCUSS THE COAST GUARD'S VIEWS ON THIS LEGISLATION AND WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU OR THE OTHER MEMBERS MAY HAVE AT THIS TIME.