

STATEMENT OF SECRETARY OF TRANSPORTATION  
SAMUEL K. SKINNER  
BEFORE THE COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION  
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 11, 1989

**OIL SPILL LIABILITY AND COMPENSATION**

GOOD MORNING MR. CHAIRMAN,

I AM VERY PLEASED TO BE HERE THIS MORNING TO REITERATE THE ADMINISTRATION'S CONTINUED STRONG SUPPORT FOR COMPREHENSIVE OIL SPILL LIABILITY AND COMPENSATION LEGISLATION. I HAVE TRANSMITTED A BILL TO THE CONGRESS THIS MORNING AND, ALTHOUGH I WISH WE COULD HAVE MADE THE BILL AVAILABLE FOR YOUR REVIEW SOONER, I WANT TO ASSURE YOU THAT WE HAVE BEEN WORKING AROUND THE CLOCK TO GET IT TO YOU TODAY.

WITH ME TODAY IS ADMIRAL PAUL A. YOST, COMMANDANT OF THE COAST GUARD, RECENTLY RETURNED FROM VALDEZ, ALASKA.

FIRST LET ME SAY, MR. CHAIRMAN, HOW PLEASED I AM THAT YOU ARE HOLDING A HEARING ON THIS MATTER AS QUICKLY AS YOU ARE.

THIS COMMITTEE HAS BEEN A LEADER IN THE SEARCH FOR A BIPARTISAN OIL SPILL BILL FOR SEVERAL YEARS, AND IT IS NOTABLE THAT H.R. 1465 WAS INTRODUCED BEFORE THE EXXON VALDEZ DISASTER THAT HAS PROMPTED SO MUCH RECENT CONCERN. WE HOPE THE SENATE WILL PROCEED JUST AS QUICKLY WITH LEGISLATION AND ALSO WITH ITS ADVICE AND CONSENT TO RATIFICATION OF THE INTERNATIONAL PROTOCOLS. WE CONSIDER THE INCLUSION OF THE 1984 INTERNATIONAL PROTOCOLS IMPLEMENTATION AN ESSENTIAL ELEMENT OF THE PACKAGE.

MY COMMENTS TODAY ARE MADE WITHIN THE CONTEXT OF BOTH BILLS AND SHOULD BE CONSTRUED AS AN EFFORT ON THE PART OF THE ADMINISTRATION TO WORK WITH THE CONGRESS TOWARD ENACTMENT AS SOON AS IS POSSIBLE.

TODAY I WILL ADDRESS SEVERAL MAJOR ISSUES OF CONCERN TO THE ADMINISTRATION AND OF COURSE, WE WILL BE AVAILABLE TO WORK WITH YOU ON THE TECHNICAL DETAILS.

I SHOULD NOTE, AT THE OUTSET, THAT WE SUPPORT MANY ASPECTS OF THE LIABILITY AND COMPENSATION SYSTEM ESTABLISHED BY H.R.1465. HOWEVER, OUR POSITION DIFFERS FROM YOUR BILL IN SEVERAL KEY AREAS.

FIRST, WITH RESPECT TO RESPONSIBLE PARTY LIABILITY LIMITS, THE ADMINISTRATION RECOMMENDS RAISING THE LIMITS FOR TANKERS, AT \$500 PER GROSS TON, TO \$78 MILLON. THAT AMOUNT

IS COMPARABLE TO THE CURRENT SHIPOWNER LIABILITY LEVEL UNDER THE INTERNATIONAL PROTOCOLS.

SECOND, WE AGREE THAT THE SHIPOWNER LEVELS OF LIABILITY SHOULD BE BACKED UP WITH A COMPENSATION FUND, PAID FOR BY A FEE ON OIL, OF \$500 MILLION PER INCIDENT. THIS BILL WOULD BE THE QUALIFIED AUTHORIZING LEGISLATION TO FINANCE THE FUND AND WOULD EXTEND COLLECTION OF THE 1.3 CENT PER BARREL FEE FOR THE FIVE YEARS EXTENDED. BUT WE ARE ALSO PROPOSING THAT THE FUND CAN BE RAISED TO A HIGHER PER INCIDENT LEVEL WHEN THE PRESIDENT DETERMINES THAT IT IS NECESSARY TO DO SO.

THIRD, CONSISTENT WITH LONG-STANDING EXECUTIVE BRANCH VIEWS, WE DO NOT BELIEVE THE COMPENSATION FUND SHOULD BE AVAILABLE FOR A BROAD RANGE OF SPECULATIVE OR THEORETICAL THIRD PARTY DAMAGES. HOWEVER, WE WOULD PROVIDE THAT THERE BE NO PREEMPTION OF REMEDIES AVAILABLE UNDER STATE LAWS FOR SUCH DAMAGES, EXCEPT TO THE LIMITED EXTENT NEEDED TO IMPLEMENT THE PROTOCOLS.

FOURTH, WE WOULD KEEP THE OUTSTANDING BALANCE IN THE TRANS ALASKA PIPELINE FUND AVAILABLE FOR UNCOMPENSATED COSTS ARISING FROM THE EXXON VALDEZ SPILL, PENDING RESOLUTION OF ALL CLAIMS.

FIFTH, WE PROVIDE IMPROVED ENFORCEMENT AUTHORITY UNDER THE CLEAN WATER ACT. THE PRESIDENT CAN ORDER REMOVAL TO AVOID

THREATS OF FURTHER POLLUTION. HIGHER CIVIL PENALTIES AND COURT-IMPOSED INJUNCTIVE RELIEF ARE AVAILABLE.

SIXTH, WE ESTABLISH A HIGH CIVIL PENALTY--UP TO \$10 MILLION -- TO BE ASSESSED AGAINST SPILLERS IN THOSE CASES WHERE NATURAL RESOURCES ARE DESTROYED AND CANNOT BE RESTORED OR REPLACED. THIS PENALTY IS IN ADDITION TO THE SPILLER'S LIABILITY LIMITS.

WITH RESPECT TO A NUMBER OF OTHER ISSUES, WE SUPPORT THE HOUSE APPROACH TO "INLAND OIL BARGES", AS THEY ARE CALLED IN THE CLEAN WATER ACT. WE ARE AWARE THAT THERE ARE SOME WHO SUGGEST THIS CATEGORY OF VESSEL SHOULD BE AFFORDED SPECIAL TREATMENT DUE TO THE LOW MARGIN OF PROFIT ASSOCIATED WITH THESE OPERATIONS--AND WE ARE SYMPATHETIC WITH THAT. ON THE OTHER HAND, THESE BARGES OPERATE IN CONGESTED AND ENVIRONMENTALLY SENSITIVE AREAS AND PROTECTION FROM THEIR SPILLS MUST BE PROVIDED. WE THEREFORE SUPPORT THE COMPROMISE APPROACH OF H.R. 1465 IN APPLYING THE SAME LIABILITY LEVELS AS THOSE FOR SHIPS OTHER THAN TANK VESSELS.

WE ALSO SUPPORT YOUR APPROACH IN MAKING THE DOMESTIC FUND AVAILABLE TO STATE GOVERNMENTS FOR IMMEDIATE CLEANUP COSTS. WE VALUE THE STATES AS PARTNERS IN RESPONSE EFFORTS, BOTH ON OUR REGIONAL RESPONSE TEAMS AND AS INDEPENDENT AGENTS IN EFFECTING A QUICK RESPONSE TO OIL

SPILLS. THE FUND ADMINISTRATOR MUST HAVE CONTROL OVER THE DIRECT DRAW AND WE URGE YOU TO CONSIDER THE LESSER AMOUNT OF \$50,000 AS AN INITIAL DRAW. THIS WOULD IN NO WAY AFFECT THE TOTAL AMOUNT THAT A STATE COULD ULTIMATELY DRAW IN INCREMENTAL LEVELS, AS LONG AS THE FUND ADMINISTRATOR COULD BE ASSURED THAT THE NECESSARY AGREEMENTS BETWEEN HIS OR HER AGENCY AND THE STATE ARE BEING EFFECTIVELY CARRIED OUT.

THE DEPARTMENT SEES NO NEED FOR THE PROVISION IN H. R. 1465 THAT "REQUIRES" THE GOVERNOR TO AGREE ON THE LEVEL OF CLEANUP. WE ARE COMFORTABLE THAT THE MECHANISM EMBODIED IN THE REGIONAL RESPONSE TEAMS, WHERE STATES HAVE A FULL VOICE IN THE LEVEL OF CLEANUP, IS SUFFICIENT TO ENSURE THAT STATE GOVERNORS' CONCERNS OVER ADEQUATE CLEANUP ARE MET. EVEN IN A CASE AS COMPLEX AS THE EXXON VALDEZ, WE ARE CONFIDENT THAT AGREEMENT CAN BE REACHED, AS IT ALWAYS HAS IN THE PAST.

THE IMPLEMENTATION AND ULTIMATE ADOPTION OF THE 1984 PROTOCOLS IS AN ESSENTIAL PART OF OUR PROPOSAL. WE MUST REMEMBER THAT WE MAY NOT ALWAYS HAVE THE RESOURCES OF AN EXXON WITH WHICH TO RESPOND TO A SPILL OR A U.S COMPANY WITH LARGE RESOURCES AGAINST WHICH WE CAN EFFECTIVELY PROCEED.

THE PROTOCOLS WERE NEGOTIATED IN 1984 WITH EXTENSIVE GUIDANCE FROM BOTH HOUSES OF CONGRESS. SIMPLY PUT, THE

PROTOCOLS PROVIDE HIGH LIMITS OF LIABILITY FOR SEAGOING TANKERS CARRYING PERSISTENT OIL IN BULK--\$78 MILLION FOR SHIP OWNERS AND \$260 MILLION PER INCIDENT FROM THE INTERNATIONAL FUND. THEY OFFER PROMPT AND CERTAIN RIGHT OF RECOVERY FOR BOTH PUBLIC AND PRIVATE VICTIMS OF OIL SPILLS AND THEY DEMAND COMPULSORY INSURANCE.

BESIDES PROVIDING A COMPREHENSIVE AND EFFECTIVE INTERNATIONAL REGIME, THE PROTOCOLS PROVIDE BENEFITS NOT AVAILABLE UNDER A PURELY DOMESTIC SYSTEM. THESE INCLUDE ENFORCEABILITY OF U.S. JUDGMENTS IN FOREIGN COURTS AND COVERAGE OF SPILLS AFFECTING U.S. WATERS FROM VESSELS IN INNOCENT PASSAGE (NOT CALLING AT A U.S. PORT). FURTHER, THE INTERNATIONAL FUND REMAINS LIABLE IF THE DISCHARGER HAS LEGITIMATE DEFENSES OR IS INSOLVENT FOR ANY REASON WHATSOEVER.

AS YOU KNOW MR. CHAIRMAN, HOUSE LEGISLATION HAS SUPPORTED THE PROTOCOLS SINCE 1984, AND THE ADMINISTRATION HAS VIGOROUSLY SUPPORTED THEIR INCLUSION IN EVERY HOUSE BILL SINCE THAT TIME. STATE GOVERNMENTS, INDIVIDUALLY, AND THROUGH THE COASTAL STATES ORGANIZATION AND THE NATIONAL GOVERNORS' ASSOCIATION, HAVE STRONGLY SUPPORTED THE PROTOCOLS, EVEN THOUGH THIS MEANT ACCEPTING LIMITED PREEMPTION OF STATE LIABILITY STATUTES WHERE NECESSARY IN EXCHANGE FOR THE BENEFITS OF THE PROTOCOLS.

THE INTERNATIONAL REGIME IS ALSO GOOD FINANCIAL INSURANCE. ASSUMING OUR FUTURE SPILL EXPERIENCE (EXCLUDING THE EXXON VALDEZ) REMAINS ABOUT THE SAME AS DURING THE PAST EIGHTEEN YEARS, OUR FINANCIAL RETURN WOULD JUST ABOUT EQUAL OUR CONTRIBUTIONS TO THE INTERNATIONAL FUND. A SINGLE CATASTROPHIC SPILL IN THE RANGE OF \$150 MILLION IN AN EIGHTEEN YEAR PERIOD WOULD RESULT IN A NET ECONOMIC BENEFIT. OBVIOUSLY THE EXXON VALDEZ INCIDENT WOULD HAVE GENERATED SUBSTANTIAL NET BENEFITS TO THE U.S. FROM THE INTERNATIONAL FUND.

I WOULD ALSO LIKE TO ADD THAT OUR CREDIBILITY IN THE WORLD MARITIME COMMUNITY HAS BEEN CALLED INTO QUESTION BY OUR FAILURE TO RATIFY THE PROTOCOLS. SIXTY-NINE NATIONS NEGOTIATED THE 1984 PROTOCOLS. THE CONGRESS AND THE ADMINISTRATION SENT THE U. S. DELEGATION TO THE DIPLOMATIC CONFERENCE WITH TOUGH OBJECTIVES. AS BELIEF GREW THAT THE U. S. WOULD BECOME A PARTNER IN THE IMPROVED CONVENTIONS, MANY DELEGATIONS BECAME MORE FLEXIBLE AND THE U.S. GOAL OF AN INTERNATIONAL REGIME WITH HIGH LIABILITY LEVELS WAS ACHIEVED.

SOME HAVE EXPRESSED THE VIEW THAT THIS ESSENTIALLY DIPLOMATIC CONSIDERATION MAY NOT BE IMPORTANT. I THINK OTHERWISE. THE U. S. HAS BEEN A LEADER IN WORLD MARITIME SAFETY AND ENVIRONMENTAL NEGOTIATIONS. I BELIEVE THAT WE WILL PUT THAT POSITION OF LEADERSHIP AT RISK UNLESS WE MAKE

GOOD ON WHAT WAS CONSIDERED TO BE A PROMISE TO RATIFY THE PROTOCOLS IF OUR GOALS WERE MET.

MR. CHAIRMAN, THIS CONCLUDES MY STATEMENT. I LOOK FORWARD TO WORKING WITH YOU AND THE SENATE IN MOVING QUICKLY FORWARD IN ENACTMENT OF OIL SPILL LIABILITY AND COMPENSATION THAT WILL PROVIDE THOSE DAMAGED BY OIL SPILLS WITH SWIFT AND SURE RELIEF, AS WELL AS ADEQUATE FUNDS FOR CLEANUP AND RESTORATION OF OUR NATURAL RESOURCES.

THANK YOU