

STATEMENT

OF

CAPTAIN WARREN G. LEBACK
MARITIME ADMINISTRATOR

ON

BEHALF OF

THE

MARITIME ADMINISTRATION
DEPARTMENT OF TRANSPORTATION

BEFORE THE

SENATE COMMITTEE ON
GOVERNMENTAL AFFAIRS

ON THE HANDLING OF JONES ACT WAIVERS
TO ALLEVIATE THE FUEL CRISIS IN THE NORTHEAST

JANUARY 16, 1990

STATEMENT OF THE HONORABLE CAPTAIN WARREN G. LEBACK, MARITIME ADMINISTRATOR, DEPARTMENT OF TRANSPORTATION, BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS ON THE HANDLING OF JONES ACT WAIVERS TO ALLEVIATE THE FUEL CRISIS IN THE NORTHEAST.

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS CAPTAIN WARREN G. LEBACK, AND I AM THE MARITIME ADMINISTRATOR, MARITIME ADMINISTRATION (MARAD) IN THE DEPARTMENT OF TRANSPORTATION. I AM HERE TODAY TO REVIEW MARAD'S RESPONSIBILITIES IN THE ENFORCEMENT OF THE JONES ACT AND TO DESCRIBE RECENT ACTIONS OF THE AGENCY IN HANDLING WAIVER REQUESTS TO ALLOW THE USE OF FOREIGN VESSELS TO CARRY RESIDENTIAL HEATING FUELS FROM PUERTO RICO AND THE GULF TO THE U.S. EAST COAST.

THE DECLARATION OF POLICY CONTAINED IN SECTION 101 OF THE MERCHANT MARINE ACT OF 1936 DECLARES, AS RELEVANT TO THE DOMESTIC TRADES, THAT:

o A U.S. FLAG MERCHANT MARINE IS NECESSARY FOR THE NATIONAL DEFENSE AND DEVELOPMENT OF DOMESTIC COMMERCE. IT SHOULD BE:

- a) SUFFICIENT TO CARRY OUR DOMESTIC WATERBORNE COMMERCE AND TO PROVIDE SHIPPING SERVICE ESSENTIAL TO MAINTAIN THE FLOW OF SUCH COMMERCE AT ALL TIMES.
- b) ABLE TO SERVE AS A NAVAL OR MILITARY AUXILIARY IN WARTIME OR NATIONAL EMERGENCY.

- c) OWNED AND OPERATED BY U.S. CITIZENS UNDER U. S.-FLAG.
- d) COMPOSED OF U.S.-BUILT AND U.S. CITIZEN MANNED VESSELS.
- e) SUPPLEMENTED BY SHIPBUILDING AND REPAIR FACILITIES.

THE JONES ACT (46 U.S.C. 883) IS SECTION 27 OF THE MERCHANT MARINE ACT OF 1920. AT THE TIME OF ITS ENACTMENT, IT REAFFIRMED NATIONAL POLICIES THAT WERE ALREADY OVER A CENTURY OLD. BASICALLY, IT REQUIRES THAT ALL SHIPMENTS OF MERCHANDISE BY WATER OR BY LAND AND WATER BETWEEN PORTS IN THE UNITED STATES, WHETHER DIRECT OR VIA A FOREIGN PORT, MUST BE MADE IN VESSELS WHICH ARE BUILT IN THIS COUNTRY, DOCUMENTED UNDER U.S. LAW, AND OWNED AND MANNED BY U.S. CITIZENS.

THROUGH ITS PROVISIONS, THE JONES ACT ENSURES THAT WE HAVE, IN BEING, A WATER TRANSPORTATION CAPABILITY THAT IS EXCLUSIVELY SUBJECT TO OUR OWN NATIONAL CONTROL RATHER THAN UNDER THE CONTROL OF FOREIGN SUPPLIERS, MANAGEMENT, OR LABOR. A CRITICAL ELEMENT OF THAT CAPABILITY IS THE FLEET OF PETROLEUM PRODUCT CARRIERS WHICH CAN BE DRAWN UPON FOR THE MOVEMENT OF MILITARY FUEL IN WARTIME. THE REQUIREMENT FOR DOMESTIC CONSTRUCTION OF THE VESSELS ALSO WORKS TO HELP SUSTAIN A SHIPBUILDING AND REPAIR ESTABLISHMENT WHICH REPRESENTS A CRITICAL NATIONAL MOBILIZATION RESOURCE.

DURING THE EARLY MONTHS OF THE KOREAN WAR, LEGISLATION WAS ENACTED WHICH PROVIDED FOR ADMINISTRATIVE WAIVERS OF THE NAVIGATION AND VESSEL INSPECTION LAWS, WHICH INCLUDED BUT ARE NOT LIMITED TO THE JONES ACT (ACT OF DECEMBER 27, 1950; P.L. 81-891; 64 STAT. 1120). WHEN IT IS DEEMED NECESSARY FOR THE NATIONAL DEFENSE OF THE UNITED STATES, THESE LAWS CAN BE WAIVED.

THE CUSTOMS SERVICE IN THE DEPARTMENT OF THE TREASURY IS RESPONSIBLE FOR PROCESSING JONES ACT WAIVER REQUESTS FOR PARTICULAR PROPOSED SHIPMENTS. THE CUSTOMS SERVICE SEEKS COMMENTS FROM MARAD AND OTHER INTERESTED AGENCIES. CUSTOMS CONSIDERS THESE COMMENTS AND PREPARES A RECOMMENDATION TO THE ASSISTANT SECRETARY OF THE TREASURY FOR ENFORCEMENT WHO MAKES THE APPROVAL OR DENIAL. BEFORE IT MAKES A RECOMMENDATION, MARAD DETERMINES IF SUITABLE U.S. VESSELS ARE AVAILABLE TO PERFORM THE SHIPMENT. IN CONSIDERING A WAIVER, MARAD MUST REVIEW WHETHER OR NOT THE NATIONAL DEFENSE INTEREST WOULD BE COMPROMISED. IF THE NATIONAL DEFENSE INTEREST IS NOT HARMED, MARAD WILL RECOMMEND DENIAL TO THE CUSTOMS SERVICE. PURELY COMMERCIAL DELIVERY TERMS, WHETHER OR NOT ECONOMICALLY VITAL TO A SHIPPER OR CONSIGNEE, CANNOT GOVERN THE AVAILABILITY DETERMINATION - THE LANGUAGE OF THE WAIVER STATUTE SIMPLY GIVES NO STANDING TO COMMERCIAL CONSIDERATIONS.

IT SHOULD BE NOTED, HOWEVER, THAT MARAD RECOMMENDATIONS ARE NOT BINDING ON THE U.S. CUSTOMS SERVICE OF THE DEPARTMENT OF THE TREASURY. OUR PRINCIPAL EXPERTISE AND COMMENTS IN ANY WAIVER

CASE RELATE TO THE AVAILABILITY OF U.S. FLAG VESSELS. THE WAIVER REVIEW PROCESS IS NOT DONE IN A VACUUM; THE VIEWS OF OTHER AGENCIES ARE ALSO GIVEN FULL WEIGHT. IT IS POSSIBLE THAT THE ARGUMENTS OF OTHER AGENCIES WILL PREVAIL AS TO THE REQUIRED TIMING OF A SHIPMENT AND ITS RELATION TO THE NATIONAL DEFENSE AND A RULING OPPOSED TO MARAD'S RECOMMENDATION WILL BE MADE.

BETWEEN DECEMBER 22, 1989 AND JANUARY 3 OF THIS YEAR, MARAD RECEIVED LETTERS FROM THE U.S. CUSTOMS SERVICE REQUESTING ADVICE ON REQUESTS FROM SIX DIFFERENT COMPANIES FOR WAIVERS TO PERMIT FOREIGN-FLAG VESSELS TO TRANSPORT FUEL OIL OR PROPANE BETWEEN U.S. DOMESTIC POINTS. MARAD RECOMMENDED DISAPPROVAL OF FOUR REQUESTS FOR FOREIGN-FLAG CARRIAGE OF HEATING OIL BECAUSE OF THE AVAILABILITY OF U.S.-FLAG VESSELS. HOWEVER, MARAD INTERPOSED NO OBJECTION TO THE WAIVERS FOR FOREIGN-FLAG PROPANE CARRIAGE AFTER A THOROUGH CHECK REVEALED NO U.S.-FLAG PROPANE CARRIERS WERE AVAILABLE. THE DETAILS REGARDING THE APPLICANTS AND MARAD'S ACTIONS ON THESE REQUESTS ARE AS FOLLOWS:

- AROCHEM CORPORATION OF STANFORD, CONNECTICUT. THIS COMPANY REQUESTED "AN IMMEDIATE GRANT OF AN EXEMPTION FROM THE AMERICAN FLAG VESSEL REQUIREMENT IMPOSED UNDER THE JONES ACT FOR THE DURATION OF THE WINTER OF 1990 FOR THE DELIVERIES OF [NO. 2 AND NO. 6 FUEL OIL FOR SHIPMENTS FROM THE U.S. GULF COAST TO THE EAST

COAST]." IN OTHER WORDS, AROCHEM REQUESTED A BLANKET WAIVER FOR THE SEASON. NO PARTICULAR VESSELS WERE THE SUBJECT OF THE REQUEST. AROCHEM DID STATE THAT IT HAD A JANUARY 15, 1990 DELIVERY COMMITMENT FOR 230,000 BARRELS OF NO. 6 FUEL OIL DESTINED FOR "A MAJOR NEW YORK AREA HEATING OIL DISTRIBUTION CONCERN."

MARAD REVIEWED THE AROCHEM REQUEST WITH A NUMBER OF U.S. TANKER OPERATORS, INCLUDING REPRESENTATIVES OF:

AMERICAN TRADING TRANSPORTATION COMPANY, INC.

COVE MARITIME COMPANIES, INC.

MORMAC MARINE TRANSPORT, INC.

OVERSEAS SHIPHOLDING GROUP/MARITIME OVERSEAS CORPORATION

AS A RESULT OF THESE CONTACTS, AROCHEM WAS OFFERED THE FOLLOWING U.S.-FLAG TANKERS:

- o MORMACSKY, AVAILABLE TO LOAD A CARGO IN PUERTO RICO ABOUT JANUARY 4.
- o DELAWARE TRADER, AVAILABLE ABOUT JANUARY 20
- o COVE TRADER, AVAILABLE ABOUT THE END OF JANUARY.
- o COVE LIBERTY, AVAILABLE ABOUT THE END OF JANUARY.
- o COVE LEADER, AVAILABLE ABOUT THE END OF JANUARY.
- o OVERSEAS CHICAGO, AVAILABLE ABOUT JANUARY 20.

BASED ON THIS SAMPLING, MARAD CONCLUDED THAT THERE WAS AMPLE TANKER TONNAGE GENERALLY AVAILABLE FOR THE CURRENT HEATING SEASON THAT COULD BE USED BY ANY QUALIFIED DISTRIBUTOR OR TRADER WHO WOULD ENTER INTO THE NECESSARY ARRANGEMENTS TO UTILIZE SUCH TONNAGE. ACCORDINGLY, MARAD RECOMMENDED DENIAL OF THE AROCHEM REQUEST.

-ENRON GAS LIQUIDS, INC., OF HOUSTON, TEXAS. THIS FIRM REQUESTED AN IMMEDIATE WAIVER FOR USE OF THE SPANISH VESSEL BUTADIEZ TO TRANSPORT PROPANE FROM THE GULF TO THE EAST COAST. WITH NO U.S. VESSELS AVAILABLE FOR THE TRANSPORT OF PROPANE, MARAD ADVISED CUSTOMS THAT WE WOULD NOT OBJECT TO THE WAIVER. ENRON WAS UNABLE TO HOLD THE VESSEL, HOWEVER, WHICH WAS ALREADY LOADED WITH THEIR CARGO FOR DELIVERY TO EUROPE. I SUGGEST THAT ENRON'S TIMING ON ITS ACTION WAS SIMPLY UNREALISTIC.

-BAY STATE GAS COMPANY OF CANTON, MASSACHUSETTS. THIS FIRM INITIALLY REQUESTED WAIVERS FOR TWO PROPANE CARRIERS, THE ITALIAN-FLAG LPG VESSEL ALESSANDRO VOLTA AND THE DANISH-FLAG LPG VESSEL SVEN MAERSK. BAY STATE COULD NOT HOLD A COMMITMENT ON THE ALESSANDRO VOLTA OVER THE WAIVER ACTION PERIOD, SWITCHED TO THE BUTADIEZ MENTIONED EARLIER, AND FINALLY REQUESTED A WAIVER ONLY FOR THE SVEN MAERSK. MARAD ADVISED CUSTOMS AS IT DID FOR THE ENRON REQUEST, THAT IT HAD NO OBJECTION TO GRANTING THE WAIVER.

-A.I.C. LIMITED, REPRESENTED BY LEWIS, RICE & FINGRSH OF ST. LOUIS. THIS FIRM CHARTERED THE BELGIAN-FLAG VESSEL PETROBULK LEOPARD TO CARRY FUEL OIL FROM TEXAS TO EUROPE. ACCORDING TO ITS APPLICATION, A.I.C. FOUND, EARLY INTO THE VOYAGE, THAT IT WOULD BE MORE ADVANTAGEOUS TO SELL THE FUEL OIL CARGO IN NORTH AMERICA. ACCORDINGLY, THE VESSEL WAS DIVERTED TO FREEPORT, BAHAMAS, WHERE THE OIL HAD BEEN PARTIALLY OFF-LOADED WHEN THE APPLICATION WAS MADE. A.I.C. WANTED TO RELOAD THE PETROBULK LEOPARD AND DELIVER THE CARGO TO THE U.S. EAST COAST. MARAD RECOMMENDED DENIAL OF THIS REQUEST ON THE BASIS OF A DEMONSTRATED GENERAL AVAILABILITY OF U.S.-FLAG TANKERS.

MARAD'S RECOMMENDATION TO CUSTOM'S ON THESE FIRST FOUR CASES WAS FAXED OUT ON DECEMBER 27. HAVING RECEIVED CUSTOM'S REQUEST ON DECEMBER 26TH, OUR ACTION, INCLUDING INITIAL DISCUSSION, RESEARCH, MAKING OF A DECISION, AND PREPARATION OF RESPONSE WAS COMPLETED IN LESS THAN TWO WORKING DAYS.

-COSCOL MARINE CORPORATION, REPRESENTED BY PAUL A. SCOFF OF HOUSTON TEXAS. ON DECEMBER 27, THIS FIRM ASKED FOR A WAIVER TO USE THE LIBERAN-FLAG TANKER PRODICOS TO CARRY FUEL OIL FROM NEW ORLEANS TO SOUTH BOSTON. THE PRODICOS WOULD HAVE BEEN USED IN PLACE OF THE U.S.-FLAG TANKER SPRAY, A 29,200 DWT VESSEL (OR ABOUT 198,000 BBL OF FUEL OIL). THE PRODICOS WOULD HAVE CARRIED AN ADDITIONAL 40,000 BBL ACCORDING TO THE APPLICANT'S LETTER TO CUSTOMS. MARAD RECOMMENDED DENIAL OF THIS WAIVER BASED ON ITS

EARLIER ASSESSMENT OF U.S.-FLAG AVAILABILITY. CUSTOMS SENT A COPY OF THE REQUEST TO MARAD ON DECEMBER 28, AND MARAD REPLIED ON DECEMBER 29.

-SHARPGAS, INC./CHESAPEAKE UTILITY, NEW ORLEANS. THIS FIRM ORIGINALLY REQUESTED A WAIVER TO USE THE ALESSANDRO VOLTA, PREVIOUSLY MENTIONED IN CONNECTION WITH THE BAY STATE GAS REQUEST, TO CARRY PROPANE FROM THE MOUNT BELLEVIEW TERMINAL IN HOUSTON TO MARCUS HOOK, PENNSYLVANIA. THIS REQUEST WAS MODIFIED TO SUBSTITUTE THE NORWEGIAN LPG VESSEL KONGSGAS FOR THE ALESSANDRO VOLTA AND, LATER, MODIFIED AGAIN TO REQUEST USE OF THE NORWEGIAN LPG NORGAS VOYAGER, WHICH HAS A CAPACITY OF 2.1 MILLION GALLONS OF PROPANE. MARAD'S RESPONSE ON THIS REQUEST WAS SIMILAR TO THOSE ON THE OTHER PROPANE REQUESTS; MARAD ADVISED THAT THERE WERE NO SUITABLE U.S.-VESSELS AVAILABLE FOR THE PROPOSED SHIPMENT. HENCE, MARAD HAD NO OBJECTION TO RECOMMENDING THE WAIVER. THIS RESPONSE WAS FAXED TO CUSTOMS ON JANUARY 5, AND TREASURY GRANTED THE WAIVER ON JANUARY 10. THE PROCEDURES FOLLOWED IN THESE CASES, AS THEY INVOLVED MARAD, REFLECTED EXTREMELY PROMPT AGENCY ACTION.

THE OBJECTIVES OF THE JONES ACT ARE AS VALID TODAY AS THEY WERE WHEN ENACTED. AT A TIME WHEN WE HAVE ALREADY EXPERIENCED A MAJOR DECLINE IN U.S.-FLAG TONNAGE AND IN U.S. SHIPBUILDING ACTIVITY, IT IS ALL THE MORE VITAL TO PRESERVE WHAT REMAINS OF

U.S. MARITIME CAPABILITY. THE EVENTS OF THE PAST FEW WEEKS ONLY UNDERSCORE THE IMPORTANCE AND THE GREAT POTENTIAL OF A MODERN U.S.-FLAG MERCHANT FLEET. MARAD BELIEVES THE JONES ACT CONTINUES TO BE CRITICALLY IMPORTANT TO THE NATIONAL DEFENSE AND COMMERCIAL NEEDS OF THIS COUNTRY.

THIS CONCLUDES MY PREPARED STATEMENT. I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE.

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