



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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Commissioner

The Honorable Marc Pacheco, Senate Chair
Joint Committee on Natural Resources, Environment, and Agriculture
State House, Room 313-B
Boston, MA 02133

The Honorable Anne Gobi, House Chair
Joint Committee on Natural Resources, Environment, and Agriculture
State House, Room 473-B
Boston, MA 02133

June 20, 2012

Dear Chairman Pacheco and Madame Chair Gobi,

Please find below MassDEP's annual report on exigent circumstances as required by the Massachusetts Oil Spill Prevention Act (MOSPA).

The MOSPA in paragraph (f) of section 9 of chapter 21M of the Massachusetts General Laws, as most recently amended by chapter 101 of the Acts of 2009, reads:

(f) the Commissioner may waive the requirement of subsection (b) or (d) upon determination that exigent circumstances exist. No such authorization shall be construed to relieve or otherwise limit the liability of an owner or operator of a tank vessel for any oil spill from such tank vessel that occurs while the tank vessel enters or operates in Buzzards Bay. The Commissioner shall report, annually, not later than January 1, to the joint committee on the environment, natural resources, and agriculture, as well as report in the *Environmental Monitor*, the number of occasions that such exemptions were authorized.

On July 11, 2011, the United States Court of Appeals for the First Circuit issued a ruling which lifted the injunction that had prevented MassDEP from implementing and enforcing MOSPA's manning and tugboat escort requirements under Mass. Gen. Laws Chapter 21M, ss.4, 6, and 314 CMR 19.00.

As a result of this ruling, beginning on July 12, 2011, the requirement for owners or operators of single and double-hulled tank barges carrying 6,000 or more barrels of oil

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through Buzzards Bay and the Cape Cod Canal to hire a tugboat escort was reinstated. The effect of this ruling was to relieve MassDEP of its obligation to provide double-hulled tank barges and their towing vessels with a state funded tugboat escort.

In addition, the reinstatement of the requirement that owners and operators hire their own tugboat escort means that no double hulled tank barge loaded with 6,000 or more barrels of oil will be "unaccompanied by a tugboat escort," as provided in M.G.L. c. 21M, s. 9(b). Therefore MassDEP is no longer required to fund state pilots for double-hulled tank barges and their towing vessels carrying 6,000 or more barrels of oil through Buzzards Bay and the Cape Cod Canal.

During 2011 tank barges loaded with oil made 472 transits through Buzzards Bay and the Cape Cod Canal. The Department provided state funded tugboat escort services for 228 double hulled tank barges from January 1 – July 14, 2011 and from July 15, - December 31, 2011 the tug/barge industry hired an escort tug for 244 single and double hulled tank barges transiting through Buzzards Bay and the Cape Cod Canal.

Please find attached the Department's report on 6 occasions from January 1 – July 14, 2011 where the contractor providing state funded tugboat escort services was unable to provide a tugboat matching the exact specifications of the law, and the Department approved use of a less-than-the-standard tugboat. In each instance, compelling circumstances such as to heavy vessel traffic or mechanical problems prevented the use of the escort tugboats whose use the Department has contracted for.

This annual report also includes 24 occasions from July 15 – December 31, 2011 where the owner or operator of single or double-hulled tank barge carrying 6,000 or more barrels of oil through Buzzards Bay and the Cape Cod Canal could not hire a tugboat escort matching the exact specifications of the law, and the Department approved the use of a less-than-the-standard tugboat.

Though we are not required to report instances where the State Provided Tugboat Escort or a privately hired tugboat escort came to the assistance of the vessel it escorted, the Department has included a description of these instances as they represent examples where these MOSPA provisions have added a level of safety to vessels navigating Buzzards Bay and reduced the risk of future oil spills.

Sincerely,



Ken Kimmell
Commissioner

Massachusetts Oil Spill Prevention Act

MGL Chapter 21 M Section 9

Report on “Exigent Circumstances” Waiver Requests

And

Vessels Requesting Escort Tugboat Assistance in 2011

M.G.L. c. 21M, §9(f), effective September 24, 2009 (*An Act Preventing Oil Spills in Buzzards Bay*), enables the Commissioner of the Department of Environmental Protection (MassDEP) to waive the requirements of M.G.L. c. 21M, §9(b) regarding the dispatch of a state pilot and §9(d) the dispatch of a state-provided tugboat escort upon determination that exigent circumstances exist.

Implementation of the State-Provided Tugboat Escort (SPTE) program began on March 29, 2010 when MassDEP signed a contract with McAllister Towing Co. During calendar year 2011 MassDEP operated a State-Provided Tugboat Escort (SPTE) program from January 1, 2011 – July 14, 2011 and from July 15 – December 31, 2011 owners of tug and barge units were required to hire tugboats to escort their vessels through Buzzards Bay and the Cape Cod Canal. This report documents requests to waive the specific equipment requirements applicable to state or privately funded escort tugboats as well as instances when an escort tugboat responded to assist the tug/tank barge while being escorted.

During the period January 1, 2011 – July 14, 2011, MassDEP’s State-Provided Tugboat Escort (SPTE) contractor conducted 228 tugboat escorts for double-hulled tank barges, carrying more than 6,000 barrels of oil as cargo, operating in Buzzards Bay and the Cape Cod Canal. During that same period, 6 requests were received from McAllister Towing Co. to utilize a tugboat escort that did not meet all the specifications of a SPTE. All six (6) requests were approved because exigent circumstances existed under the provisions of Chapter 21M §9(f).

From July 15, - December 31, 2011 the tug/barge industry hired an escort tug for 244 single and double hulled tank barges transiting through Buzzards Bay and the Cape Cod Canal. During this 6 month time frame 24 requests were made and approved to utilize an escort tugboat that did not meet all of the specifications as described in the MOSPA.

In each case the request was approved by MassDEP so as to not to significantly disrupt energy services to the public. The substitute escort tug approved for use in most cases met all requirements except for the ABS Fire Fighting 1 standard. The approved escort tugs did however meet a fire fighting standard that was deemed acceptable for the state

provided escort tug and provided a capability that is consistent with industry practice for towing or providing assistance to tank barges of the size that transit Massachusetts coastal waters.

Exigent Circumstance Waiver Requests January 1 – July 12, 2011

From January 1, 2011 through July 12, 2011 there were 6 occasions when due to exigent circumstances a waiver for the state provided escort tug was requested and approved.

January 4, 2011 The tug Elizabeth McAllister, which does not comply with the requirement that a tugboat escort have a minimum of 4000 hp, was utilized to escort the Morton Bouchard Jr./B-220. The primary SPTE the Rowan McAllister and the backup SPTE the Bruce McAllister were occupied escorting other vessels for MassDEP. The tug Liberty from subcontractor Boston Towing & Transportation Co was also unavailable.

January 5, 2011 The tug Elizabeth McAllister, which does not comply with the requirement that a tug boat escort have a minimum of 4000 hp, was utilized to escort the Frederick Bouchard/B-210. Due to a combination of bad weather and multiple vessels waiting for a favorable tide several vessels planned to transit Buzzards Bay and the Cape Cod Canal within a 12 hour time frame. The Rowan McAllister and the Bruce McAllister were occupied escorting vessels.

February 2, 2011 The tug Nancy McAllister, which does not comply with the requirement that a tug boat escort must have a minimum of 4000 hp, was utilized to escort the Ruth Reinauer/RTC-102. The primary SPTE the Rowan McAllister and the backup SPTE the Bruce McAllister were occupied escorting other vessels for MassDEP. The tug Liberty from subcontractor Boston Towing & Transportation Co was also unavailable.

March 12, 2011 The tug Harold Reinauer, which does not comply with the requirement that a tug boat escort must have a minimum of 4000 hp, was utilized to escort the Meredith Reinauer/RTC-150. The primary SPTE the Rowan McAllister and the backup SPTE the Bruce McAllister were occupied escorting other vessels for MassDEP. The tug Liberty from subcontractor Boston Towing & Transportation Co was also unavailable.

April 25, 2011 The tug Reliance, which does not comply with the requirement that a tug boat escort must have a minimum of 4000 hp, was utilized to escort the Freedom/Barbara C. The primary SPTE the Rowan McAllister and the backup SPTE the Bruce McAllister were occupied escorting other vessels for MassDEP. The tug Liberty from subcontractor Boston Towing & Transportation Co was also unavailable.

May 9, 2011 The tug Reliance, which does not comply with the requirement that a tug boat escort must have a minimum of 4000 hp, was utilized to escort the Freedom/Barbara C. The Cape Cod Canal was closed for several hours due to fog. When it reopened multiple vessels had planned to transit Buzzards Bay and the Cape Cod Canal within a 6 hour time frame. All available escort tugs were utilized to escort these vessels.

From July 13 – December 31, 2011 the MassDEP’s state funded escort tug program was suspended and provisions requiring industry to hire an escort tug for single and double hulled tank barges were reinstated. Regulatory requirements for an industry provided escort boat tug are more stringent than for the state provided escort tugboat and therefore fewer escort tugs are available that met the equipment requirements. This resulted in an increase in the number of requests to use an escort tug that did not meet the equipment requirements in the MOSPA.

The following table reflects 24 occasions when due to exigent circumstances a waiver to use an escort tug that was not fully compliant was requested and approved.

Escort Tugboat Waivers July – December 2011

Date	Towing Vessel	Barge	Cargo	Quantity	Escort Tug Used
7/12/2011	Quenames	Portland	# 6 oil	22,000	McAllister Sisters
7/17/2011	Marjorie B. McAlister	RTC-60	Jet Fuel	50,000	McAllister Sisters
7/19/2011	Ruth Reinauer	RTC 102	Diesel	30,000	McAllister Sisters
8/1/2011	Ruth Reinauer	RTC 102	Jet Fuel	100,000	McAllister Sisters
8/11/2011	Austin Reinauer	RTC 100	Diesel	57,000	McAllister Sisters
8/16/2011	Jane A Bouchard	B-225	Gasoline	111,000	McAllister Sisters
8/20/2011	Potomac	DS-58	Gasoline	50,000	McAllister Sisters
8/23/2011	Frederick E. Bouchard	B-210	Jet Fuel	89,000	McAllister Sisters
9/27/2011	McKinley Sea	DBL-103	Diesel	65,000	McAllister Sisters
10/7/2011	Joanne Reinauer	RTC 81	Gasoline	100,000	Reliance

10/6/2011	Mary Turecamo	Portland	Gasoline	100,000	McAllister Sisters
10/8/2011	Java Sea	DBL-104	Gasoline & Ethanol	40,000	McAllister Sisters
10/14/2011	Ellen Bouchard	B-284	Gasoline	80,000	McAllister Sisters
10/23/2011	Linda Moran	Houston	# 6 oil	108,000	Reliance
10/23/2011	Marjorie B. McAlister	RTC-60	Jet Fuel + Lt cycle oil	36000 + 24,000	McAllister Sisters
11/6/2011	Barney Turecamo	Georgia	#6 oil	108,000	McAllister Sisters
11/6/2011	Mary Turecamo	Portland	Gasoline	75,000	McAllister Sisters
11/16/2011	Barbara McAllister	B-220	# 2 oil	100,000	Iona McAllister
11/28/2011	Mary Turecamo	Portland	Jet fuel	80,000	Iona McAllister
12/11/2011	Barney Turecamo	Georgia	# 6 oil	106,000	Iona McAllister
12/18/2011	Gulf Service	Energy 11104	Diesel	100,000	Iona McAllister
12/26/2011	Ruth Reinauer	RTC-102	#2 oil	100,000	Iona McAllister
12/27/2011	Irish Sea	DBL-103	# 2 oil	100,000	Iona McAllister
12/31/2011	Morgan Reinauer	RTC-101	Gasoline	100,000	Iona McAllister

Request to Assist Escorted Vessel

During the period January 1 - July 12, 2011, the State Provided Tugboat Escort was called upon to render assistance on only one occasion while escorting a vessel through Buzzards Bay and the Cape Cod Canal.

March 27, 2011 A crew member from the tug Pathfinder severely injured his hand during the process of changing from towing to pushing the tank barge Chesapeake. The injured crew member was placed on the SPTE McAllister Sisters for transportation to a waiting ambulance at Mass Maritime Academy. The state pilot and the tug/barge unit Pathfinder/Chesapeake waited at anchor for the escort tug to return before continuing its transit through the canal.

From July 13 – December 31, 2011 many of the vessels that were required to hire a tug boat escort under the reinstated MOSPA provisions chose to utilize the services of the escort tug to assist them during the transits of Buzzards Bay and the Cape Cod Canal. Some of the requests for assistance were made to allow the vessel to continue to proceed during bad weather conditions while others were the result of a mechanical or steering malfunction or to provide additional horsepower to a vessel traveling against the tide.

These assists represent the some examples where the use of an escort tug may reduce the risk of a navigational incident or oil spill and provide an additional level of safety for vessels.

<u>Escort Tugboat Assists September - December 2011</u>			
Date Requested	Towing Vessel	Barge	Comments
9/13/2011	Marjorie B. McAlister	RTC 62	Escort tug stood by while at anchor due to poor visibility
9/26/2011	McKinley Sea	DBL-103	Escort tug ask to lead the through Cape Cod Canal due to poor visibility
9/26/2011	Mary Turecamo	Portland	Escort tug stood by while at anchor due to poor visibility
9/26/2011	Christine McAllister	RTC-502	Escort tug stood by while at anchor due to poor visibility
10/2/2011	Magothy	DS-502	Escort tug tied up to the Magothy/DS-502 to give power assist through Cape Cod Canal because of ebb tide
10/22/2011	Java Sea	DBL-103	Escort tug tied up to the barge due to steering problems on the tug and assisted through canal
10/28/2011	Penn #6	Penn # 4	Escort tug tied up to and assisted the barge to tie up the west stakes due to bad weather
10/30/2011	Penn #6	Penn # 4	Escort tug tied up to and assisted the Penn #6/Penn # 4 from the west stakes through the canal
10/31/2011	Bluefin	Penn#4	Escort tug tied up to and assisted the barge from Cleveland Ledge through the canal
11/1/2011	Morton Bouchard Jr.	B-210	Escort tug stood by the barge waiting for flood tide
11/6/2011	Barney Turecamo	Georgia	Escort tug tied up to the barge while at anchor waiting for fog to lift
11/23/2011	Java Sea	DBL-104	Escort tug stood by while at anchor due to poor visibility

12/7/2011	Tasman Sea	DBL-104	Escort tug stood by while at anchor due to poor visibility
12/12/2011	Mary Turecamo	Portland	Escort tug tied up to the barge to give power assist through Cape Cod Canal
12/24/2011	McKinley Sea	DBL-134	Escort tug stood by the barge until cleared to enter canal due to draft restriction
12/27/2011	Quenames	Bunker Portland	Escort tug picked up pilot from Quenames and transferred to pilot boat

Noteworthy Incidents

January 20, 2011 The Vane Bros tug/barge Susquehanna/DS-59 was monitored by MassDEP's escort tug contractor on the computerized Automated Information System as it approached Buzzards Bay from the west heading to Sprague oil terminal in New Bedford. This vessel had not made the voluntary notification to MEMA of its intent to enter and transit Buzzards Bay. MassDEP staff and escort tug contractor made contact with the vessel and with the Vane Bros corporate office to identify its destination and determined if the vessel was eligible for a state provided escort tug and state funded pilot. The SPTE shadowed/escorted the Susquehanna/DS-59 into the Sprague oil terminal in New Bedford harbor. MassDEP staff subsequently contacted the Vane Bros corporate office to advise them of the Massachusetts state escort tug and state funded pilot provisions.

February 26, 2011 The McAllister Towing of Narragansett Bay contacted MassDEP and requested permission to temporarily remove the Rowan McAllister from service as the State Provided Tugboat Escort. The company had been contacted by the USCG and requested to respond to the M/V Dintelborg which was in distress some 70 miles SE of Cape Cod. The vessel, a 438 foot bulk carrier hauling steel, had encountered heavy weather causing a fire and complete loss of power and engines. The Rowan McAllister towed the stricken vessel 160 NM through 60 mph winds to Buzzards Bay where it was held by several tugboats in the lee of the Elizabeth Islands. The vessel had several hundred thousand gallons of bunker fuel on board. On March 1, 2011 when the weather cleared the vessel was safely towed into Providence, RI for repairs with the assistance of 2 other tugboats.

October 22, 2011 The Java Sea/DBL-103 carrying 65,000 barrels of ethanol, which is not covered by the escort requirements of MOSPA and not required to hire an escort tug, contacted MassDEP requesting permission to enter Buzzards Bay without an escort to anchor and evaluate a steering problem. The vessel's captain was advised to contact the USCG and the USACoE Buzzards Bay Control to report the incident. The USCG and the USACoE Buzzards Bay Control instructed the vessel to proceed to anchor in Buzzards Bay to evaluate the problem. On October 23, 2011 the vessel completed its transit through the Cape Cod Canal utilizing the services of an escort tug after determining that a steering pump had failed and back-up hydraulic systems were functioning for steering control.