

ANDREW M. CUOMO
GOVERNOR



JOE MARTENS
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

April 29, 2014

Admiral Robert J. Papp, Jr.
Commandant
U.S. Coast Guard
2100 2nd Street S.W.
Washington, D.C. 20593

Dear Admiral Papp:

In recent years, the number of trains and volume of crude oil moving through New York has increased significantly, resulting in increased risks of spills, of damage to the environment, and of threats to public health and safety. These risks have been dramatically demonstrated by derailments, spills, and fires in Lac-Megantic, Canada; North Dakota; Pennsylvania; Alabama and elsewhere. Four crude oil train car derailments have occurred in New York in the last several months, though fortunately with no spills.

Governor Cuomo issued Executive Order 125 (EO125) on January 28, 2014 requiring State agencies to fully evaluate New York's prevention, preparedness, and response capabilities to respond to crude oil accidents. Under the EO125, the New York State Department of Environmental Conservation (DEC) is reviewing all aspects of our environmental readiness. In that review, we have determined that there are four areas where action by the United States Coast Guard (USCG) is needed. The first is to complete the development of best practices for responding to spills of crude oil required under the Oil Spill Prevention Act of 1990 (OPA-90). The second is to complete updates of Area Contingency Plans and Geographic Response Plans in critical locations across the state. Third is to ensure that Vessel Response Plans reviewed by USCG fully address the hazards presented by the transportation of crude oil, particularly on the Hudson River and in New York Harbor. Lastly, a civilian planning position should be established in Sector NY in order to provide organizational continuity to better support preparedness and response in New York.

Best Practices

Subchapter IV of OPA-90 is known as the Oil Pollution Research and Development Program. Section 2761 of the statute established a federal Interagency Coordinating Committee on Oil Pollution Research (ICOPR) to coordinate oil pollution research and technology development and demonstration among the Federal agencies, in cooperation with industry, research



institutions, state governments, and other nations. It fosters cost-effective research mechanisms and the joint funding of research. The committee is chaired by the USCG.

Section 2761 of OPA-90 also addresses the development of best practices and methods for oil spill prevention and response. Section 2762 specifically addresses submerged (sinking) oil such as tar sands oils and the development of methods to detect, monitor, disperse, and remove submerged oils.

The development of these best practices and technologies, as required by Subchapter IV of OPA-90, has not been fully implemented. OPA-90 requires biennial reporting to Congress on the activities carried out by the ICCOPR and the compilation and updating of an Oil Pollution Research and Technology Plan every five years. The most recent Research and Technology Plan is dated 1997 and currently remains in draft format under its third revision. While there is significant ongoing research into oil spill response best practices, results from this research are largely unavailable. The five-year plan update required by OPA-90 is 22 years overdue. Updates of contingency plans in New York would benefit from the release of this information.

The ICCOPR should complete and issue the Research & Technology Plan, which was planned for the end of 2013. Additionally, updates on response technologies and best practices involving both floating and sinking crude oils and the compilation of a comprehensive best practices manual are needed. The results should be distributed to the state and federal agencies engaged in planning, preparedness, and response programs related to oil spills.

Updates of Area Contingency Plans and Geographic Response Plans

The USCG is responsible for creating and maintaining Area Contingency Plans (ACPs) for coastal areas of the United States. To protect specific areas, state, local, and federal governments may cooperate to develop Geographic Response Plans (GRPs). GRPs are developed for resources which may be especially sensitive to the risk of oil spills. In these identified areas, specific action plans and strategies are developed to protect these resources.

Under OPA-90 and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR Part 300), ACPs are initiated by a federal agency and developed by an Area Committee of qualified federal, state, and local personnel. The Area Committee provides a forum for agencies to develop constructive working relationships while identifying issues, problems, and solutions in advance of a response action. Although ACPs exist for the coastal areas of New York, they need to be revised to account for the increased risks associated with the rise in crude oil transported through the State. Environmental Sensitivity Index maps need to be updated for the Hudson River Estuary as well as the areas of the Eastern Great Lakes potentially affected by the transportation of crude oil. USCG should partner with New York to create GRPs throughout the coastal areas to address risks to specific critical areas.

Review of Vessel Response Plans

The USCG has jurisdiction for spill planning and response in the coastal zone including the review of Vessel Response Plans (VRPs). Vessels owners are required to prepare a VRP to ensure adequate plans and resources are available to respond to incidents involving spills and

fires. VRPs contain several critical elements needed for responding to a discharge of crude oil. These include procedures to minimize the impact of a spill, the identification of the vessel's designated Oil Spill Response Organization (OSRO), listing qualified individuals who can make technical and financial decisions for the ship operators during an incident, and identifying the organizations that have knowledge and responsibility for operations related to salvaging (including structural stability, emergency towing, and external emergency transfer operations). The USCG also tracks and maintains an inventory of spill response assets available for use in designated areas.

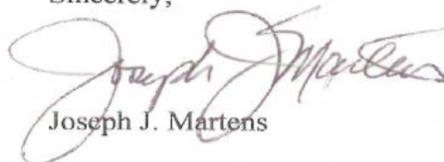
I request that USCG undertake a comprehensive review of the current state of preparedness to respond to spills of crude oil in New York navigable waters. This should include an evaluation of the current frequency and completeness of VRP reviews, the availability of response equipment, trained personnel, and treatment/disposal options for recovered product from a range of spill types and sizes. To ensure that VRPs are effective, USCG should also determine whether increased response drills for reasonable worst-case scenarios are warranted. Additionally, I request that USCG clearly define the limits of moving OSRO personnel and equipment from one area to another during spills of national significance such as the Deepwater Horizon spill in the Gulf of Mexico. Once this comprehensive review is complete, I request that the results of this comprehensive review and planned changes be shared with DEC.

Civilian Planning Position in Sector NY

The Port of New York and New Jersey is a very complex area with several overlapping state and local jurisdictions and is an economic engine for the region. During an emergency, the effectiveness of a response is increased when those involved have experience working together. This takes time to develop and is hindered by the regular shifting of personnel to other areas. The USCG Sector New York State has, for many years, used junior USCG officers to be the primary contact with the Area Committee. While these officers have performed very well, their normal rotations result in the loss of their local knowledge, experience, and contacts. Accordingly, we request that USCG establish a civilian planning position in Sector NY in order to provide organizational continuity to better support New York State-centered preparedness and response.

DEC is looking forward to working cooperatively with USCG on these important issues.

Sincerely,



Joseph J. Martens

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