

# Marine

## News

JULY 2009

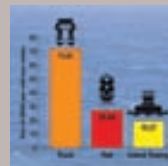
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# Gone Green

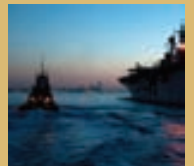
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## Minimizing Your Liability for Environmental Incidents



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Starting with the federal government's prosecution of the captain of the Exxon Valdes for his role in the oil spill in Alaska, state and federal authorities have been more aggressive in prosecuting corporations, their officers and employees for incidents involving marine pollution. In addition to prosecutors' increasing zeal, both the federal government and numerous state governments have passed additional laws that can be used to criminalize actions that were previously negligent in nature. A pollution incident that may seem inconsequential to a vessel operator could pose a very serious threat to the company, its officers and employees. The key to minimizing this threat is to plan your environmental response prior to the occurrence of the event. Although you will remain liable for the clean up costs, prosecutors are less likely to pursue an action if they find that the vessel owner acted reasonably and responsibly.

Every marine operator should have in place a detailed environmental emergency response plan. The plan should be prepared specifically for the company's needs, taking into account the type and location of operations that are to be expected by your vessels. Once the plan is formulated, it should be distributed to each employee with additional copies available for review on each vessel. In addition to a written plan, training should be provided on an ongoing basis to help familiarize both office and field employees on the specifics of the plan and how to respond in the event of an incident.

Pollution incidents or spills are inevitable when operating in the offshore environment. Considering the low threshold for what the regulations consider pollution, reportable situations could include anything from a small spill of fuel that occurs while fueling the vessel, a dis-

charge resulting from pumping out a bilge that became contaminated during engine maintenance, to a vessel collision that causes the release of hundreds of thousands of gallons of oil. Assuming that a spill is inevitable during the life of your company, your response to a spill is key to minimizing liability on behalf of vessel owners or operators. There are numerous laws and regulations in place that affect each vessel operator differently depending upon the location or jurisdiction in which your vessels operate. For example, different rules apply to an ocean going tank carrier than to a water taxi operating on a self contained inland waterway. With that in mind, each vessel operator may have slightly different requirements when creating and implementing a specific plan. Many of the interest groups and trade associations that you belong to have draft plans that can be utilized and modified to satisfy your needs, including plans prepared by the American Waterway Operators and the International Maritime Organization. The purpose of the plan is to provide guidance to the vessel's captain and officers regarding steps to be taken when a pollution incident has occurred or is likely to occur. The primary purpose of the plan is to set into motion the necessary actions to minimize the discharge and mitigate the effects of a discharge. Effective planning will make sure that necessary actions are taken in a structured, logical and timely manner. An effective plan will use flow charts and checklists to guide the vessel's captain through the various actions and decisions that will be required during an incident response. Charts and checklists provide a visible form of information eliminating the chance of an error during the early stages of dealing with an emergency situation.

As with any program, it is important to have a policy that serves as the guiding principle for the plan. These policies help set the table for the employees to understand and adopt the procedures. Although the details vary, most policy statements have the following principles:

- The safety of employees, equipment and the public is the primary principle in all operations
- Safety pertaining to employees, equipment and the

public takes precedence over expediency or shortcuts and overrides any operational goals

- All employees will make every attempt to reduce the possibility of accidents
- Employees will report all accidents or near misses to their supervisors immediately
- All employees are responsible for becoming familiar with and conforming to all company safety policies as well as state and federal rules and regulations to create a safe working environment
- The company will embrace a proactive approach to preventing health, safety and environmental incidents through prevention via the pre-planning of job tasks and the implementation of effective contingency plans

Once the goals of the plan are determined, the specifics of the plan can be worked out. Response plans must contain several elements including vessel particulars, reporting requirements, what to do in the event of a discharge, how to report a discharge and how the response will be coordinated with national and/or local authorities. In addition to these topics, a plan may also contain additional information such as a description of the response equipment to be utilized in the event of a release, information on how to handle public relations, check lists to be used in the case of an emergency, procedures for critical tasks that could cause a pollution incident, or the requirements for conducting ongoing drills.

Each vessel's plan should provide the particulars for the vessel. Although this information can easily be provided by the vessel's captain, in the event of an emergency, this information may need to be provided quickly at a time when the captain

may not be available. The plan should identify the name of the vessel, the vessel's owner and operator, the official number, the flag, port of registry, vessel builder, gross tonnage, length, draft, etc. If this information is included in the emergency response document, any crew member will be able to provide this pertinent data to

the authorities.

The next section of the plan should assist the crew in determining whether a discharge of oil, probable or actual, should be reported and to whom it should be reported. As such, the first element of the vessel's

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## SHIPYARD SEEKS TO LIQUIDATE ASSETS

Capable, neat and modern shipyard looks to sell its assets including land, improvements and equipment. The property is 6.5 acres in South Louisiana and a local river which provides direct access to the Intra-coastal Waterway. A variety of steel and aluminum projects up to 175' have been completed in the yard. The property is located in a parish with no current zoning laws.

All metal buildings are less than 6 years old and were built to current building code. There is a 50' wide by 200' long by 40' eave height paint/finishing shed. This shed has forced ventilation and filtration. The main fabrication shed consists of two construction bays that each measure 60' by 160' with a 35' eave. All construction sheds are on concrete slabs. Adjacent to the main construction bay is a tool room/material preparation/break area in a 34' x 120' x 20' eave height building. There is a 30' wide back down boat ramp. The property has over 30,000 square feet of concrete paving.

All shop equipment is included in the sale, please request list. Office is approximately 1,800 square feet wood frame construction with five offices, conference room, waiting area, kitchen and two bathrooms.

**For additional information, please contact:**  
[shipyardforsale@live.com](mailto:shipyardforsale@live.com) or ph. 332.322.3303.

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but one of their core, non-delegable responsibilities and establish the expectation that it must be exercised at all levels, no excuses. And if you are

a deckhand or customer service representative, your responsibilities to exercise leadership are no less than those who have ultimate responsibili-

ty for the enterprise. Leadership is action at all levels; the safety of the ship and the success of the business depend on it.

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## Minimizing Your Liability for Environmental Incidents

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response is to assess the nature of the incident. The crewmember who becomes aware of the discharge should immediately alert the other crew members, identify the spill source and then a spill assessment can be conducted. Once the spill is assessed, the vessel's captain can determine whether the discharge should be reported.

It is important that the crew knows that reporting a spill is required whenever there is a discharge of oil resulting from damage to the vessel or its equipment, an intentional discharge for the purpose of securing the safety of the vessel or saving a life at sea, or if a discharge of oil occurs during the operation of the vessel.

The captain should report the spill by the quickest means possible, whether via radio or telephone. The plan should include a contact list that the captain can use to report the incident. Under most circumstances, the list should include contacting the company's operation center, the dock/terminal operator where the vessel is working, and the state and federal authorities. The captain should provide an initial report that includes the location of the spill, the characteristics of the oil spilled, the disposition of the vessel and its cargo, the movement of the slick and the type of assistance required.

This section of the plan should include a listing of all of the govern-

ment agencies and designated response companies that should be contacted in the case of an emergency. These agencies could include entities such as the United States Coast Guard, MMS, the adjoining state's Oil Spill Response Office, the adjacent state's Department of Environmental Quality, the State Police Hazardous Material Unit, and the State Police Emergency Response Unit. Specific numbers for each state that your vessel operates in should be included as part of the plan.

Once the incident is properly reported, the crew should immediately take navigational and seamanship measures to control the discharge. Navigational measures could include determining whether the vessel should alter course, position, speed, change the list and/or trim, anchor, etc. Seamanship measures could include implementation of measures to prevent additional discharge, determination of the seaworthiness of the vessel, the need to ballast or de-ballast, transfer of cargo, leak sealing, firefighting, etc.

The plan should also provide the procedures for dealing with specific events that may cause a spill. Such events can include the transfer of fuel while fueling the vessel, the transfer of material from the vessel to another vessel or platform, leakage from equipment on deck such as winches, pumps, etc. or the leakage of material caused by a vessel casualty.

Once a spill is reported, there is a flurry of activity from the company, spill response companies, the Coast Guard, and other state and local authorities. The efficient coordination between the vessel and the authorities is vital. The response to cleaning up the spill is usually performed by shore based personnel. However, the vessel operator and its crew are expected to cooperate fully with the entity managing the cleanup, usually the government.

The plan should also designate which member of the crew is responsible for documenting the incident by maintaining logs. As the captain is usually very busy during an emergency incident, it may be wise to designate a mate or other similar officer for this task.

Additionally, the plan should detail which company representatives are authorized to issue statements or give information to any of the entities that may request information that are not included in the plan. Ship board personnel need to be authorized to provide information to MMS, Coast Guard, State Police, etc., but not to provide information to local media, environmental groups, etc. The plan should designate which company representative is responsible for providing information to these other entities.

Once a suitable plan is in place, vessels should conduct drills to practice its response to such an incident.