



30-01

www.scaa-spill.org

August 3, 2001

- ◆ In his capacity as SCAA's president, Dave Usher will be making several presentations at some industry conferences over the next several months. One of the things he will focus on is how the declining number of oil spills occurring in the U.S. is affecting clean up contractors, what these contractors are doing to remain viable between spill events, and what public and private sector entities needing response services can do to ensure that these contractors remain viable. ***We would like to get information from our member contractors on this issue – How has the decline in the number of oil spills affected your company? What have you done to offset the loss of revenue that was generated by responding to these spills? What should public and private sector potentially responsible parties be doing to ensure a national response capability is maintained? Please send your response and/or comments to us via e-mail (mikes@scaa-spill.org) or facsimile (1-313-849-1623). We want to hear from you!!***
- ◆ **Editorial:** We have followed with great interest and concern recent developments with Washington State's unannounced drill program. We were happy to see that one of our members, NRC, decided to maintain its state approval by adding resources to a remote area that the state believed was not adequately protected by existing response organizations and resources operating in the region. Of more import, however, are the issues that this recent situation has raised as a whole for our industry. As you may be aware, several states - particularly California and now Washington - have increased their unannounced drill activity. One of the primary reasons for this is an underlying concern that the national Preparedness for Response Exercise Program ("PREP") is not sufficiently ensuring response plan holder compliance with existing regulations. This development is troubling for a number of reasons, including safety and costs. On the safety side, on-scene responders must use their best judgment whether to deploy on-scene resources during inclement weather and/or sea conditions during a response exercise or during an actual spill event. During a drill scenario, responders should not be penalized because safety concerns dictate postponing resource deployment – having the resources on site and ready to deploy should be the criteria upon which responders are judged during the exercise. On the cost side, the drills themselves have overshadowed the issue of unannounced drills. These drills can cost tens of thousands of dollars to conduct, and it is not clear whether the OSRO will be able to recover the costs. In certain states, the state regulators expect the OSRO's to participate in the drills at their own cost. Even in states where the plan holder is expected to pay for the exercise, payment issues can become difficult. Beyond the issues of safety and costs lie deeper-rooted

problems, such as the continuing disconnect between what the regulators request of plan holders and what the law currently requires. This disconnect causes a variety of detrimental effects, such as shifting the well-accepted concept of regulatory planning standards to performance standards, and confusing the boundaries between state and federal jurisdiction. Interestingly, this latter issue is one that many thought the INTERTANKO victory in their suit against Washington State would have clarified. However, it now appears that further work is needed to avoid the increased costs and time burdens associated with redundant and conflicting state and federal regulations. ***We welcome any comments from the membership on this editorial!!***

- ◆ The Department of Transportation's Research and Special Programs Administration will host two public meetings regarding its proposed rulemaking to clarify the applicability of the Hazardous Materials Regulations to certain functions and activities, including the loading, unloading, and storage of hazardous materials. The meetings will be held on September 14, 2001 in Washington, DC, and on October 30, 2001 in Diamond Bar, California. The RSPA has also extended its comment period on the proposed rulemaking until November 30, 2001. The docket number is RSPA-98-4952 (HM-223). For more information on the public meetings or the proposed rulemaking, contact Mr. Michael Johnsen at 1-202-366-8553. (Source: *Maritime Items* and *Federal Register*)
- ◆ As a follow up to last weeks' article about two recent counter-terrorism exercises, we thought we'd share an interesting comment that was made by one of the participants in the exercises. Former Governor Frank Keating (R-Oklahoma) played the governor of Oklahoma during the scenario involving the simulated smallpox virus. Keating said that he had to convince the federal officials that the best response was a local response to the crises, and that he was surprised by the "prejudice against state and local responders" he found among federal officials. (Source: *Emergency Preparedness News*)
- ◆ The preliminary program for the 17th Annual International Conference on Contaminated Soils, Sediments, and Water has been issued. The event will take place October 22-25, 2001 at the University of Massachusetts, Amherst. More information on the conference can be obtained on line at www.umasssoils.com.
- ◆ Halron Oil Company (Green Bay, Wisconsin) has for sale a 10,000-barrel barge that was formerly used to transport fuel oil. The barge has been cleaned and certified gas free, and could be used during oil spill response as a deck barge or dredge barge. It is equipped with a small crane on deck. The company reports that the barge is "too good to scrap", but "not good enough to have fuel oil on the Great Lakes" because it is not double-hulled. The asking price is USD \$50,000. For more information, contact Jim or Bart at 1-800-236-5858.
- ◆ **Work/Life/Health:** Disciplining or terminating an employee that is covered under the Family Medical Leave Act ("FMLA") for reasons relating to their FMLA leave can put your company in legal hot water. However, employees that fraudulently use FMLA leave are subject to disciplinary action based on your company's policies and procedures. Keep the following tips in mind when making an employment decision when the FMLA is involved: (1.) Familiarize yourself with the rules and regulations of the FMLA. (2.) Ensure that all employees sign that they have read and understand the policies in your company's employee handbook - this will provide proof that the company has provided employees with their FMLA rights, and proof that employees are aware of your company policies and the consequences for violating them. (3.) When an employee requests FMLA leave, ask for medical certification that would include the date leave will start, when it will end, and why the leave is necessary. (4.) Reiterate to employees that they have the right to be reinstated after FMLA leave, but that there are some exceptions to the rule. These include employees designated as "key" employees; employees who do not return to work once their FMLA leave is over; employees who would have lost their jobs anyway even if they hadn't been on leave; and those who are approved for FMLA leave for fraudulent reasons. (Source: *Managers Legal Bulletin*)
- ◆ **Quote of the Week:** "The true way goes over a rope which is not stretched at any great height but just above the ground. It seems more designed to make people stumble than to be walked upon." - Franz Kafka (1883-1924), *The Great Wall of China. Reflections*