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A BILL TO AMEND THE OIL POLLUTION ACT OF 1990 TO DOUBLE THE LIABILITY LIMITS FOR SINGLE-HULL TANKERS AND TANK BARGES FOR 2009, AND FOR OTHER PURPOSES

AUGUST 22, 2008.—Ordered to be printed

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Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 2700]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 2700) to amend the Oil Pollution Act of 1990 to double the liability limits for single-hull tankers and tank barges for 2009, and for other purposes, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

BACKGROUND

This bill to amend the Oil Pollution Act of 1990 to double liability limits for single-hull tankers and tank barges for 2009, and for other purposes, would double existing federal liability limits for responsible parties to an oil spill in U.S. waters if the spill comes from a single-hull tank vessel, and remove all federal limitations on liability for such spills occurring after 2009.

After the *Exxon Valdez* oil spill on March 24, 1989, in Prince William Sound, Alaska, this Committee in the 101st Congress reported legislation which was later enacted as the Oil Pollution Act of 1990 (Public Law 101-380). This comprehensive legislation overhauled the nation's marine oil spill prevention and response policies, and specifically recognized the risks of catastrophic oil spills due to the single-hull design of certain tank vessels. Consequently, the Oil Pollution Act of 1990 set a deadline of 2010 for the phase-out of the use of certain single-hull tank vessels in the U.S., with exten-

sions to 2015 for certain of those ships with double-sides only or double-bottom only.

Under the Oil Pollution Act of 1990, liability for cleanup costs and damages resulting from oil spills rests with a ‘responsible party’ who is usually the owner or operator of a vessel. In the event of a spill, the responsible party must pay removal costs incurred by the government or others, and damages to claimants who are injured by the spill. Damages may include natural resources damages, damages to real or personal property, damages for loss of a subsistence use of a natural resource (fishing, etc.), damages for lost revenue or profit caused by a spill, and damages for the cost of government response necessitated by the spill.

The Oil Pollution Act of 1990 set limitations on liability for damages and cleanup costs for parties deemed responsible for a spill. Damage and cleanup costs exceeding these limits could be paid out of the federal Oil Spill Liability Trust Fund, which is capitalized by a \$0.05 tax on each barrel of oil. The Coast Guard Authorization Act of 2006 (Public Law 109–241) increased the liability limits for all types of vessels, and is mandated to adjust liability limits for inflation every three years. This bill would further increase liability limits for one year and then phase out all liability limits for single-hull tank vessels.

Since 1990, no single-hull tank vessel has been built in the United States. More robust double-hull tank ship designs have been built and used throughout the world, as other countries took similar action to phase out the use of single-hull tank vessels for certain petroleum commodities. Recently, some countries, including those in the European Union, have taken action to phase out single-hull tank vessels more rapidly than the 2015 deadline required by the Oil Pollution Act of 1990.

According to the Government Accountability Office, between 1990 and 2006, there were 24 major oil spills from tank vessels in the U.S. (i.e., those spills requiring federal intervention and assistance for cleanup and damages, including cleanup and damages claims to the federal Oil Spill Liability Trust Fund, totaling more than \$1 million). Government Accountability Office, Maritime Transportation, Major Oil Spills Occur Infrequently, but Risks to the Federal Oil Spill Fund Remain, GAO–07–1085 (2007).

PURPOSE OF THE LEGISLATION

The Committee believes that while the Oil Pollution Act of 1990 provides a firm deadline for the complete phase-out of the use of single-hull tank vessels in the U.S., current federal limitations on liability may not be sufficient to deter such ships from being used in the U.S. petroleum trade after they have been banned from other countries sooner than they will be banned in the U.S. As such, this bill would double existing liability limits to \$6,000 per gross ton for single-hull tank vessels during calendar year 2009, and remove all federal limitations on liability after 2009. This complete removal of liability limits is intended to encourage oil tank vessel owners and petroleum shippers to begin using double-hull tank vessels earlier than outlined in the Oil Pollution Act of 1990.

During debate on the bill at executive session on May 19, 2008, Committee members expressed concern that the bill as drafted may be interpreted to have retroactive effect—that is, the updated li-

ability limits would apply to spills occurring before 2009. Committee members present, including the bill's sponsor, agreed that this was not the intent of the bill and that further amendment of the language may be required to ensure the bill would reflect no retroactive effect.

SUMMARY OF THE LEGISLATION

Section 1. Increased single-hull liability limits for 2009

This section would amend Section 1004(a)(1)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2704) to update limitations on liability for the calendar year 2009 and beyond. For CY 2009, the liability limit for oil spills involving single-hull tank ships would be \$6,000 per gross ton, up from \$3,000 per gross ton. After 2009, federal liability for oil spills from such vessels would not be limited, to the extent the U.S. Constitution allows.

LEGISLATIVE HISTORY

On December 8, 2004, Senators Lautenberg and Corzine introduced S. 3035, the Oil Spill Prevention and Liability Act of 2004, which proposed, inter alia, phasing out federal limitations on liability for single-hull tank vessels. The Committee took no action on the bill; however, several of the bill's provisions were included in the enacted version of the Coast Guard Authorization Act of 2006.

On March 4, 2008, Senator Lautenberg introduced S. 2700. It was referred to the Committee on Environment and Public Works, which did not hold any hearings on the bill.

On May 21, 2008, the Committee on Environment and Public Works approved the bill by voice vote.

ROLLCALL VOTES

There were no rollcall votes during the consideration of the bill by the Committee. A Lautenberg substitute amendment that provided technical corrections to clarify dates in which proposed changes to certain federal oil spill liability limits will apply was adopted by unanimous consent.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the Committee agrees with the findings of the Congressional Budget Office, noted below, that this bill would impose no Federal intergovernmental unfunded mandates on State, local or tribal governments. The bill does not directly impose any private sector mandates.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

S. 2700—A bill to amend the Oil Pollution Act of 1990 to double the liability limits for single-hull tankers and tank barges for 2009

Summary: S. 2700 would amend the Oil Pollution Act of 1990 (OPA) to raise the statutory limits on liability that owners or operators of single-hull tanker vessels face when an oil spill occurs. The bill would double the liability limits for spills that occur during the

2009 calendar year and essentially eliminate such limits for spills that occur after 2009.

CBO estimates that enacting higher limits would reduce direct spending from the Oil Spill Liability Trust Fund (OSLTF) by \$3 million over the 2009–2013 period and by \$6 million over the 2009–2018 period. Enacting S. 2700 would not affect revenues or spending subject to appropriation.

S. 2700 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2700 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—									
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
CHANGES IN DIRECT SPENDING										
Estimated Budget Authority	*	*	–1	–1	–1	–1	–1	–1	*	*
Estimated Outlays	*	*	–1	–1	–1	–1	–1	–1	*	*

Note.—* = reduction in direct spending of less than \$500,000.

Basis of estimate: S. 2700 would raise existing limits on the liability of owners or operators of single-hull tanker vessels that are responsible for oil spills into U.S. navigable waters. Under existing law, specified liability limits determine the total amount that a responsible party must pay to clean up an oil spill and to compensate third parties for damages. If the costs of a spill exceed those limits, the federal government generally pays any remaining costs and claims from the OSLTF. Current liability limits for single-hull tanker vessels generally vary with the size of the vessel. For example, the liability limit for single-hull tanker vessels that weigh less than 3,000 gross tons is the greater of \$3,000 per ton or \$6 million per spill, whereas the liability limit for single-hull tanker vessels that weigh more than 3,000 gross tons is the greater of \$3,000 per ton or \$22 million per spill.

Under S. 2700, the per-ton liability limit for single-hull tank vessels would be raised from \$3,000 to \$6,000 for spills that occur in 2009 (the per-spill limits would not change). For spills occurring after 2009, no limit is specified by the bill; instead, the limit would be established at the maximum allowable amount that is consistent with the due process requirements of the fifth amendment of the Constitution. CBO assumes that this provision would essentially eliminate any limit of liability for spills occurring after 2009 from single-hull tank vessels.

The savings to the federal government associated with raising (and subsequently eliminating) liability limits for single-hull tanker vessels is uncertain because significant oil spills are relatively rare and cannot be predicted. In fact, since the implementation of OPA in 1991, liability limits have been applied only five times for spills from single-hull vessels. In total, those spills have accounted for about \$262 million—around 60 percent of the \$409 million that has been spent from the OSLTF through 2007. Moreover, spills from single-hull vessels could be even rarer in the future because OPA re-

quires that the use of such vessels be phased out by 2015. At present, total tonnage carried by single-hull tankers is roughly 115 million tons, an 84 percent decline from the 1998 level.

Raising the liability limits would reduce federal costs for spills from single-hull vessels that occur during the 2009–2014 period, after which we expect that the use of such vessels will be phased out. CBO estimates that, starting in 2009, enacting S. 2007 would reduce direct spending from the OCLTF until all anticipated claims on single-hull vessels have been paid. Based on the cost of previous spills from such vessels (adjusted for the decline in the amount of fuel likely to be carried by such tankers in the future), CBO estimates that the bill would reduce spending by \$500,000 in each of fiscal years 2009 and 2010 and by \$1 million in each of fiscal years 2011 through 2016. Savings would be lower in 2009 and 2010 because some claims for spills that occur in those years would be paid in later years.

Intergovernmental and private-sector impact: S. 2700 contains no intergovernmental or private sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Deborah Reis, Jeffrey LaFave, and Gregory Hitz. Impact on State, Local, and Tribal Governments: Neil Hood. Impact on the Private Sector: Jacob Kuipers.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

EVALUATION OF REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication in the report of the Committee estimate of the regulatory impact made by the bill as reported. No regulatory impact is expected by the passage of the bill. The bill will not affect the personal privacy of individuals.

ADDITIONAL VIEWS OF MR. INHOFE

The Oil Pollution Act (33 U.S.C. 2701 et seq.) was originally enacted in 1990 in response to the *Exxon Valdez* spill in Alaska: Congress recognized the need to adopt legislation that would establish an oil spill trust fund to assure the public that in the event of a spill, cleanups would be done without a financial burden on the taxpayer if a responsible party could not pay. In addition, Congress found it imperative to include spill liability limits for law-abiding responsible parties in order to sustain the crucial oil transport industry. Congress, acknowledging that a higher likelihood of spills exists with single hull tankers, called for the reasonable phasing out of single hull vessels by 2010, unless the vessel has a double bottomed or double sided hull. However, if a vessel operator is found to be in violation of Coast Guard laws and regulations at the time of a spill, liability limits are waived and the responsible party must pay the entire cost of cleanup, regardless of the set liability limits established under the Oil Pollution Act. This ensures that tanker vessels follow the laws and regulations that protect our valuable water resources.

In 2006, Congress amended the Oil Pollution Act of 1990 by adjusting the 16-year-old liability limits by nearly 40% to account for inflation. Congress also authorized the Coast Guard to review and adjust liability limits every three years at the rate of inflation based on the Consumer Price Index (CPI) to ensure responsible parties met the true intent of the law. The next liability adjustment is scheduled for 2009.

S. 2700, a bill to amend the Oil Pollution Act of 1990, raises the liability limits for year 2009 and strikes the liability limits after 2010 for any single hull vessel (or vessel with double sides or double bottoms). Anecdotal statements regarding European Union laws and regulations will ultimately initiate the expanded use of single hull vessels in the United States have no factual evidence to illustrate that conclusion. I believe the ultimate removal of liability limits is unnecessary and creates an excessive burden on vessel owners who comply with the law and the current single hull phase-out established by Congress. I also believe this legislation comes at a difficult time during record-high oil prices and that this country needs to boost supply, not minimize it through laws that would discourage the delivery and transport of oil. Congress created the 25-year single hull phase-out timetable with the understanding that the critical tanker industry would suffer great economic hardships during a shortened compliance schedule. Therefore, Congress should maintain the unfettered compliance schedule outlined in the Oil Pollution Act of 1990.

JAMES M. INHOFE.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

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OIL POLLUTION ACT OF 1990

* * * * *

SEC. 1004. LIMITS ON LIABILITY.

(a) GENERAL RULE.—Except as otherwise provided in this section, the total of the liability of a responsible party under section 1002 and any removal costs incurred by, or on behalf of, the responsible party, with respect to each incident shall not exceed—

(1) for a tank vessel, the greater of—

[(A) \$1,200 per gross ton; or]

(A) *with respect to a single-hull vessel, including a single-hull vessel fitted with double sides only or a double bottom—*

(i) *\$3,000 per gross ton, if the incident for which liability is imposed under section 1002 occurs after the date of enactment of this clause and before January 1, 2009;*

(ii) *\$6,000 per gross ton, if the incident for which liability is imposed under section 1002 occurs after December 31, 2008, and before January 1, 2010; and*

(iii) *the maximum amount allowable, consistent with the substantive due process requirements of the Fifth Amendment to the United States Constitution, if the incident for which liability is imposed under section 1002 occurs after December 31, 2009;*

* * * * *