

Abandoned Vessel Enforcement U.S. EPA's Recent Lessons Learned By Sara Goldsmith, EPA



EPA Federal Enforcement Authority 101



- **CERCLA** – Hazardous Substances, Pollutants & Contaminants
- **Clean Water Act (CWA), Section 311, as amended by the Oil Pollution Act (OPA)** – Oil
- The National Oil and Hazardous Substances Pollution Contingency Plan **(the NCP)** implementing regs for EPA and USCG for responding to above discharges/releases

CERCLA Triggers . . .



A substantial threat or release of hazardous substance, contaminant or pollutant into environment; and

Imminent & substantial danger to public health or welfare

What does this really mean??

Substantial Endangerment = only a “reasonable cause for concern for public health and the environment, without quantification.”

Imminent = means that all the factors are present to create the endangerment, although the harm may not be realized for years.

Imminent **does not mean** immediate or tantamount to an emergency!

CWA 311/OPA Triggers . . .



Substantial threat or actual discharge of Oil; and

Into or on the Navigable Waters/Adjoining Shorelines

**If Discharge Poses Substantial Threat to Public Health or Welfare,
Federal On Scene Coordinator (OSC) must direct response**

EPA & Coast Guard Jurisdiction Broad Authority!!



EPA = discharges & releases threatening the **INLAND ZONE**

USCG = discharges & releases threatening the **COASTAL ZONE**

- **Hazardous Substance Response under NCP**
 - “the OSC may . . . remove and, if necessary, destroy a vessel release or threatening to release CWA hazardous substances, by whatever means are available.” 40 CFR 300.415(c)(1) & (c)(2)
- **Oil Removal under NCP:**
 - “the OSC may . . . remove and, if necessary, destroy a vessel discharging or threatening to discharge, by whatever means are available.” 40 CFR 300.305(d)(1) and 300.322(b)(3)
- **“Take whatever additional response actions are deemed appropriate.”**
40 CFR 300.415(3)(iii)

Lesson One: Presume Abandoned Vessels Release Hazardous Substances and/or Oil And Evaluate the Risks Accordingly

- **EPA 2011 Petaluma Precedent Removal**

- Hull, Decking, and Engine Compartment of the Vessels contained

- Heavy Metal Paints
- Asbestos
- PCBs
- Lead Acid Batteries
- Mercury Switches and Ballasts
- Radium Dial
- Waste Oil

- Orphan Containers Onboard

- Corrosives
- Ignitables
- Flammables
- Compressed Gases



EPA and CalRecycle Partner to Cleanup Petaluma River in 2011

- **EPA - Hazardous Substances - \$651,586**
- **CalRecycle - Solid Waste - \$495,000**
- **Sonoma County Sheriff's Marine Unit:**
Adjudicated Vessels Abandoned
- **Removed 11 vessels, 6 river debris sites, 3 vehicles inside barge, 3 piers, and 3 barges which contained:**
 - 445 cu yds. Non-Friable Asbestos
 - 18 cu yds. Hazardous Waste Solid
 - 1090 pounds of Miscellaneous Hazardous Waste
 - 72 lead Acid Batteries



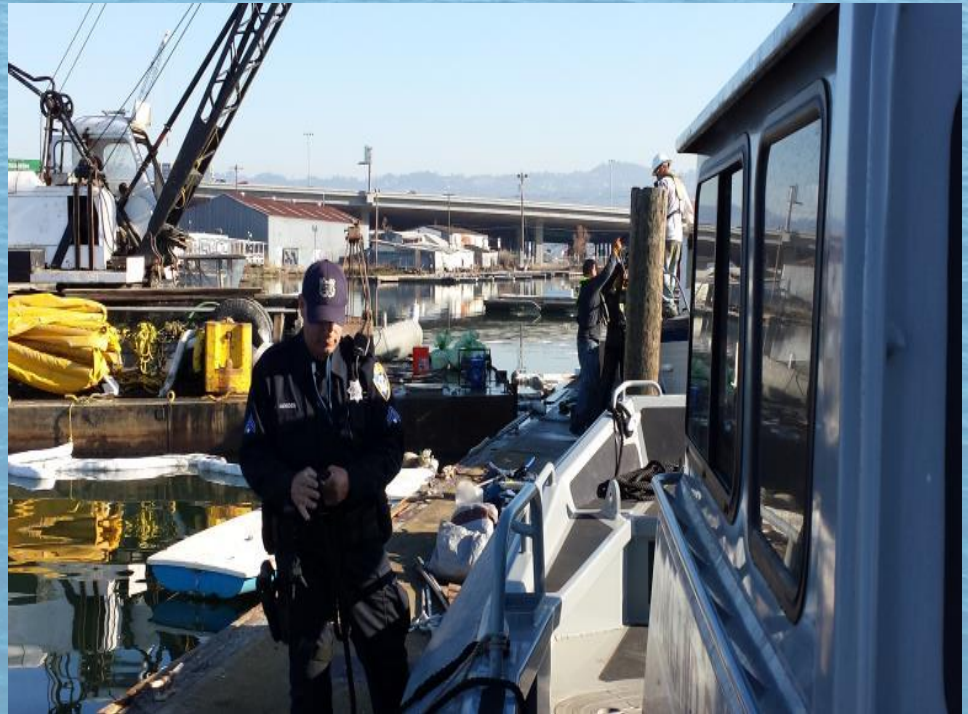
What EPA Found at Oakland Estuary Cleanup 2013



- Hazardous Substances
 - Asbestos Containing Material 17,700 Lbs
 - Waste Paint Related Material 3,270 Lbs
 - Flammable Liquid 1,000 Gal
 - Acid Liquid 40 Lbs
 - Toxic Liquid 120 Lbs
 - Waste Oil 50 Gal
 - Explosives (flares) 32 Units
 - Marine Batteries 29 Units
 - Non-RCRA Debris 33 Yds
 - Miscellaneous (antifreeze, aerosols) 145 Lbs
- Sediments (California Hazardous) 1700 Cubic Yds
- Propane containers, E-Waste, etc. Various

CalRecycle Cleanup Stats on Oakland Estuary

- 73 Sites Processed
 - 58 Vessels
 - 9 Debris Sites
 - 4 Docks
 - 2 Shore Lines



Lesson Two: Early Intervention Saves \$\$ and Minimizes Impact to Environment The Respect One Month BEFORE Sinking



Vanessa R. Maylin / Special to the Chronicle

EPA cleaning up AFTER the Respect Sank!



Respect Abandoned April 2006 Sank April 2007 & Owner Identified



- March 2007: SF Chronicle Story Predicts the Respect Will Sink.
- April 2007: SF Chronicle Story After it Sinks “Since [the March 2007] report . . . , the **Army Corps of Engineers helped locate the boat's owner [Ronald Cook], a longtime ship captain from Vancouver, British Columbia**, who had planned to tow the Respect to a Seattle shipyard for restoration. . . . The spot will be marked with a buoy, and **the owner has pledged to hire contractors to raise the boat. . . .**



Rivers and Harbors Act makes it unlawful for owner to sink a Vessel in Navigable Waters ACOE can remove & owner liable for costs

- “The RHA says: “It shall not be lawful . . . to sink, or permit or cause to be sunk, vessels or other craft in navigable channels.” U.S. v. Rafael, 349 F.Supp.2d 84, 92 (D. Mass. 2004)

“navigable channel” is not limited to the dredged, buoy marked channels

- “Whenever the navigation of any river, lake, harbor, sound, bay, canal, or **other navigable water of the U.S.** shall be obstructed or endangered by any sunken vessel, boat,, and. . . the sunken vessel . . . shall be subject to be broken up, removed, sold, or otherwise disposed of by [ACOE] at [its] discretion, without liability for any damage to the owners. . . . The owner, lessee, or operator . . . shall be liable to U.S. for the cost of removal or destruction & disposal.”



ACOE may Remove Vessels that pose a Potential Obstruction to Navigation

“ It is not necessary that the wreck be a present, actual obstruction to navigation before action can be taken by the CORPs, the CORPS may act if a sunken vessel “endangers,” i.e., poses a potential hazard to navigation under conditions which may be reasonably anticipated to occur. . . . “

U.S. v. Rafael, 349 F.Supp.2d 84, 95 (D. Mass. 2004)



ACOE's "Action Determination" to Not Remove Sunken Respect

ACOE, in consult w/USCG, weighs 3 factors:

1. Safety Risk Hazard: Respect is a potential hazard and potential obstruction to navigation (still actionable under RHA) but not actual hazard/obstruction
2. Economic Impact: One nearby facility claimed economic impact, but ACOE found no merit in claim; &
3. Cost to Remove: ACOE estimated minimum **\$500,000** to remove (rough b/c unknown what extent haz sub/oil)

Respect Joins 4 Other Sunken Wrecks in the Very Same Location

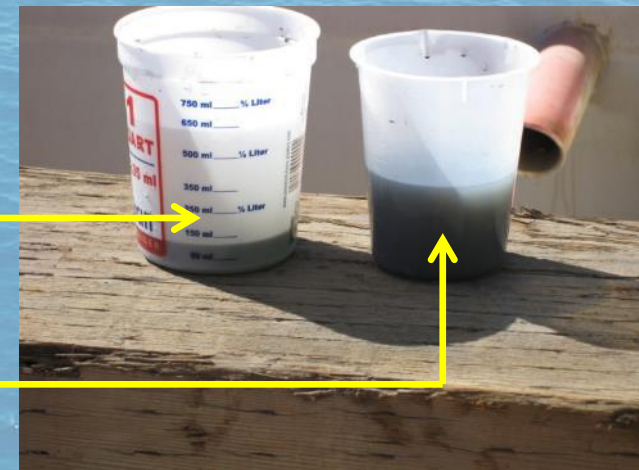
ACOE Memo states: “The Respect joins another tugboat [the “Captain,” shown below, which EPA also removed at great expense], two barges, and one other unidentified vessel all laying on canal bottom near this location.”

Action Taken: USCG marked the vessel with buoys and NOAA charted the wreck to warn commercial and private vessels.



Cost To EPA to Remove Sediments Alone From the Respect approx \$700,000

- Approximately **1700 Cubic Yards** of sediment were removed from inside the tugs “Captain Al and “Respect”
- Over **1 Million Gallons** of water was discharged back into estuary after sediments were allowed to settle out



Sediment settles out with the help of a flocculent

Sediment slurry before settling



EPA's Costs at Oakland Estuary

- Total project ceiling of \$3.6m and total recoverable costs > \$5m
 - 4 large sunken wrecks (Respect, Captain & 2 commercial fishing vessels); and
 - All hazardous wastes and contaminated debris from approx 73 targets, including sunken wrecks, illegally moored vessels, dilapidated docks, piers, pilings and other like marine debris



Coast Guard Spent > \$2.6m on Respect to Raise and Remove Oil



Who is the Owner of the Respect When It Sank? Captain Cook (I'm not kidding!)

- **AUGUST 27, 2003: U.S. ANNOUNCES SENTENCING OF “CAPTAIN” COOK FOR ILLEGALLY DUMPING ASBESTOS INTO THE SEA**
- A federal district court sentenced Cook to 24 months incarceration and 3 years supervised release. Cook, a Canadian citizen from Victoria, British Columbia, was convicted under the Ocean Dumping Act and the Act to Prevent Pollution from Ships as the individual responsible for illegally dumping trash bags full of asbestos and renovation debris into the Gulf of Mexico.
- Cook lead a crew performing demolition on an old ferry boat, that was being transformed into river boat gambling casino. To save costs, crew bagged demolition debris, including plastic garbage bags full of asbestos, and threw it overboard into Pacific Ocean, Gulf of Mexico, and Caribbean Sea at Cook's direction. Witnesses reported hundreds of bags were dumped; assumed a significant amount discharged, as asbestos removal estimated at \$600,000 to \$1.7 million.

Captain Cook's Legacy after Incarceration. . .

Many thanks to Canadian Coast Guard Auxiliary #37 for close-up access to the burned boat.



CapL Ralph Hull

The Florence Filberg arrived in the Sooke Harbour Basin (Nov. 07) & wedged herself in.



Coast Guard Aux. #37

Still smoldering within Coast Guard containment booms, one day after the blaze.



Mary P. Brooke

The wreckage awaits removal. Some debris has already broken loose and has either floated away or dropped to the ocean floor.



Mary P. Brooke

For whoever ends up paying, the removal cost estimate is \$120,000 to \$250,000. Meanwhile, the view for East Sooke homes is not so grand.

Apparently after release from Jail Captain Cook continues abandoning vessels

- Cook, 74, still lives in Victoria, B.C. and allegedly continues to abandoned vessels
- **2004:** Cook allegedly owned **Mary Macklin**, a tugboat beached on the shores of Patricia Bay, B.C. before it was destroyed by fire in July 2004
- **2008:** Lawsuit against Cook for unauthorized moorage of large tug **Pacific Challenge** in B.C. Court order forced Cook to remove vessel
- **2009:** Cook owned and abandoned the **Florence Filberg**, 124-foot tugboat, in Sooke Harbor, B.C. in 2007, where it stayed as eyesore until 2009, when arsonists set it ablaze. It cost district \$120,000 - \$250,000 (CAD) to remove/dispose the charred remains. Had Florence been removed b/f fire cost estimated \$10,000 CAD.

What We've Known for Awhile . . .

Abandoned Vessels Cause Marine Pollution

- **July 1992 GAO Report, *Abandoned Vessels Are Polluting the Waterway*: “*Abandoned vessels have been and are likely to continue to be sources of pollution and illegal dumping sites for hazardous materials and, as a result, costly to the federal government .*”**



Marine Debris Research, Prevention & Reduction Act of 2006 (“the Marine Debris Act”)

- No Enforcement Tools, Rather Requires Federal Coordination to Study and Address Marine Debris
- Establishes **IMDCC, *the Interagency Marine Debris Coordinating Committee***, NOAA Chair, EPA Vice-Chair
- USCG and NOAA have lead programs and roles. Also ACOE, FWS, Navy, MMC etc.
- Requires Biennial Progress Reports to Congress

Abandoned Vessels = Marine Debris

2010-2011 IMDCC Report to Congress

Marine Debris means any persistent solid material that is manufactured or processed and directly or indirectly, intentionally or unintentionally, disposed of or abandoned into the marine environment or the Great Lakes.

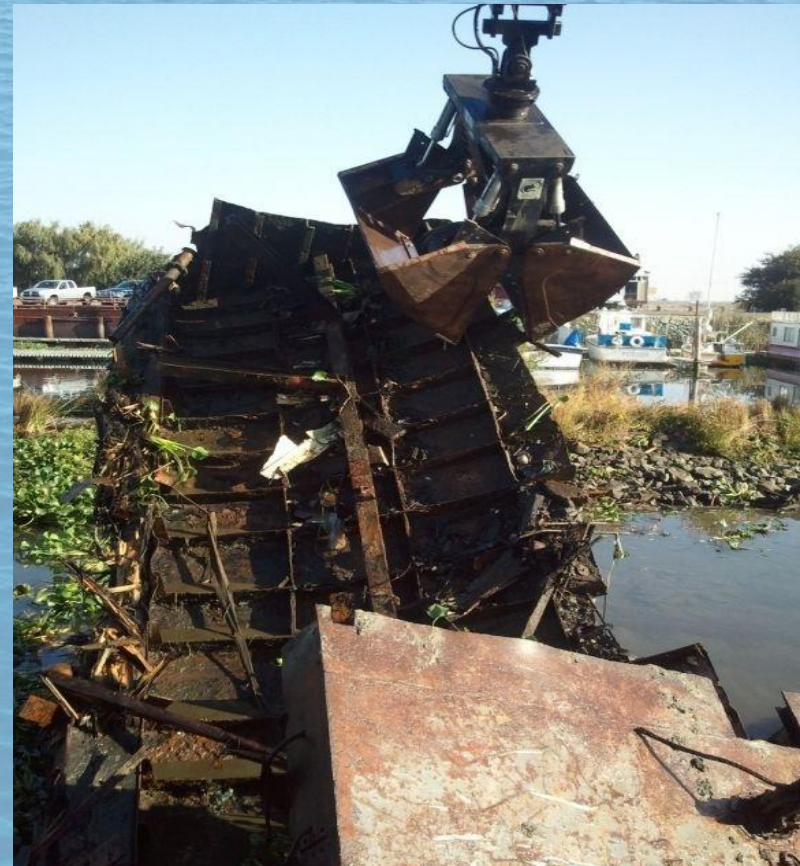
See Marine Debris Act, 33 U.S.C. § 1956(3)

“Abandoned and derelict vessels are a type of marine debris that can damage sensitive marine habitats and marine life. If they lie within a navigational path, ADVs can also pose a threat to other vessels.”

See IMDCC Report October 2012 at 50.

EPA R9 Abandoned Vessel Cleanups Since 2011 with USCG & CalEPA

- **Over 200 Abandoned Vessels & Other Marine Debris Removed**
 - Petaluma River,
 - Bodega Bay,
 - the California Bay-Delta,
 - The Sacramento River,
 - Humboldt Bay,
 - Tijuana Estuary
 - Oakland Estuary
- **Total combined approx \$15 million**
 - 40% EPA's Regional Superfund Allowance
 - 20% National Oil Spill Liability Trust Fund.
 - Approx 40%, CalEPA (\$650k from Cosco Busan
 - Oil Spill Settlement fund)



Lesson Three:

Removing Abandoned Vessels is Expensive!!

Who Should Pay? Gov't vs. Primary User?

- Seattle Times, Sept 8, 2012: *“Despite a program whose sole mission is to deal with derelict vessels, Washington state just can't keep up with the tide of these potential environmental catastrophes.”*
- “There are the boats that appear out of nowhere in state waters, dumped by their owners. Those that break anchor and float away, battering the docks or creating a hazard to navigation. Those that the owner swears are seaworthy, right up to the day they sink. They may contain oil, asbestos and other hazards. Despite all that, the state just lets most of them sit — one leak away from trouble. **But the main reason derelict vessels are so vexing is this: The economics just don't pencil out.** The entire budget for WA state's agency is \$750,000, yet it can cost far more than that to dispose of a single large vessel.”



CA AWAFF \$4300/Per Vessel
CA VTIP \$1700/Per Vessel



- **After Abandoned: CA Abandoned Watercraft Abatement Fund** provides funds to public agencies to remove, store and dispose of abandoned, wrecked, or dismantled vessels or any other partially submerged objects which pose a substantial hazard to navigation, from navigable waterways or adjacent public property, or private property with the landowner's consent.
- **See** California Harbors and Navigation Code, Section 525
- **Before Abandoned: CA Vessel Turn-In Program (VTIP)** which provides grants to public local agencies to administer a turn-in program in their jurisdiction. Effective January 2010, the VTIP provides an alternative for boat owners to surrender an unwanted recreational vessel to participating public local agencies. Funding for VTIP comes from the Abandoned Watercraft Abatement Fund (AWAF). **See** California Harbors and Navigation Code, Section 525.5



What to do?

It Takes a Village . . .

- Enforcement First against Responsible Parties, CERCLA, CWA/OPA, RHA
- Use ACOE's Extremely Broad and Strong RHA Authority to Remove Abandoned Vessels (or order their removal) **before** they sink?
- Increased CERCLA and CWA/OPA Capacity and Funding to Access and Remove environmental threats - Congress' Attention – via IMDCC?
- Policy/Legislation: Similar federal take-back program and abatement fund for larger commercial vessels? Increase capacity to dispose vessels in US?
- Policy/Legislation: Financial assurance or environmental insurance requirements for large vessels to offset ultimate disposal costs? (You do not have to have boater's insurance in California)