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THE WHITE HOUSE
WASHINGTON

June 21, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PAUL H. O'NEILL
FROM: JAMES E. CONNOR *JEC*
SUBJECT: Comprehensive Oil Pollution
Liability Legislation

Confirming a phone call to your office, the President reviewed your memorandum of June 15th on the above subject and has approved the recommendation to direct DOT to inform Congress and negotiate higher limits of liability for the Domestic Comprehensive Fund legislation.

Please follow-up with the appropriate action.

cc: Dick Cheney

THE WHITE HOUSE
WASHINGTON

June 21, 1976

MR. PRESIDENT:

Comprehensive Oil Pollution
Liability Legislation

The attached memorandum prepared by Paul O'Neill was staffed to Messrs. Buchen, Cannon, Friedersdorf, Greenspan, Zarb, Marsh, Scowcroft and Seidman.

They all concur with OMB's recommendation.

Alan Greenspan provided some supporting comments which are at TAB A.

OMB informs us that this matter must go forward today as the mark-up on this legislation will begin very shortly.

Jim Connor



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 15 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PAUL O'NEILL, ACTING DIRECTOR

O'Neill

SUBJECT: Comprehensive Oil Pollution Liability Legislation

Issue: Should the Administration agree to separate the proposed enabling legislation for two International Conventions on Oil Spill Liability and Compensation from the proposed legislation which establishes a comprehensive domestic liability and compensation system.

Background: Last July you submitted to Congress the "Comprehensive Oil Pollution Liability and Compensation Act of 1975" (H.R. 9294) (Statement and Fact Sheet attached) which:

- ° Establishes a domestic fund to cover claims for oil spill damages;
- ° Creates a uniform nationwide system of strict liability for oil spill damages and procedures for settlement of claims; and
- ° Implements two International Conventions dealing with oil pollution caused by tankers on the high seas. (The Liability and Fund Conventions.)

The U.S. was a strong proponent of the two International Conventions, which were submitted to the Senate in 1970 and 1972. Internationally, the Liability Convention took force in June 1975 without U.S. participation; however, the Fund Convention has not received the requisite ratifications and has not yet taken force. Neither Convention has been approved by the Senate.

The House Merchant Marine and Fisheries Committee has completed hearings on this and competing bills and has held several markup sessions. There has been strong sentiment expressed by House Committee members against inclusion of the enabling legislation for the two International Conventions for two reasons:

- ° The Senate has taken no action on either Convention and has shown little interest in considering them this session.

° The Convention's effective limits of liability are below levels of protection readily available in the international insurance markets and below the limits imposed on domestic vessels under the Administration's proposal.

As it now stands, it appears that we will lose two other key issues:

° Unlimited liability on a no-fault basis for cleanup costs probably will be passed.

° There will be no preemption of State liability laws included in the bill.

Discussion

Although the Senate has taken no action on either ratification of the Conventions or the Comprehensive proposal which includes implementing legislation for the Conventions, we have been assured by the Committee staff that hearings will be scheduled and swift action will be taken on the domestic fund provision of the bill once the House Merchant Marine & Fisheries Committee has completed its consideration. We understand that the several Senate committees with jurisdiction over parts of the bill have agreed on a process for joint consideration of the bill using the Commerce Committee's Ocean Policy Study Group as was done with the Deep Water Ports Act.

The key to possible enactment of this legislation is the action which the Coast Guard Subcommittee takes on the bill. If the Administration were to separate the Conventions' implementing legislation from the domestic fund provisions, that action could be used to negotiate away from unlimited cleanup liability to a higher limit which is more realistic (25-30M limit per vessel). This would be closer to a level which might be acceptable to Congressman Studds, whose bill is the leading competitor. Resolving this issue should help reduce opposition to the preemption provision.

Issue: The proposal is to separate the Conventions' implementing legislation from the domestic system and to agree to higher limits of liability for cleanup costs.

Pros:

° Little chance of Senate approval of the Conventions at this time.

° Unwillingness to negotiate on separation of Conventions' implementing legislation seriously jeopardizes any chance for support of our positions for limited liability for

cleanup costs and preemption, thus, forcing a possible veto situation on a bill likely to be highly sensitive to coastal States.

° The limits of liability under the Convention are lower than those currently insurable in international markets, and could be exceeded by a spill the size of Torrey Canyon. Higher domestic limits of liability could be used by the U.S. in an attempt to influence the International Community to raise limits under the Convention.

Cons:

° Separation may be viewed as the abandonment of U.S. policy of seeking international solutions to problems of ocean pollution and may undercut U.S. influence in international organizations seeking to deal with these problems.

° Unilateral action by the U.S. could result in undesirable retaliatory action against U.S. shipping by other nations.

° Substantially reduces incentives for Senate approval of Conventions, as the domestic system would provide extensive protection under almost all circumstances without them.

Recommendation

OMB, DOT, DOJ, DOI, and CEQ recommend that the Administration proceed to negotiate the separation of the International Conventions' implementing legislation from the domestic fund provision of the Comprehensive Oil Spill legislation and agree to higher limits of liability for cleanup costs. State Department does not object as long as we continue to support ratification of the Conventions.

RRF

Agree; direct DOT to inform Congress and negotiate higher limits of liability for the Domestic Comprehensive Fund legislation.

_____ Disagree; pursue ratification of the Conventions in concert with a domestic fund.

_____ See me.

Attachments

EMBARGOED FOR RELEASE
UNTIL 12:00 NOON (EDT)

July 9, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

I am transmitting today proposed legislation entitled the "Comprehensive Oil Pollution Liability and Compensation Act of 1975."

This legislation would establish a comprehensive and uniform system for fixing liability and settling claims for oil pollution damages in U.S. waters and coastlines. The proposal would also implement two international conventions dealing with oil pollution caused by tankers on the high seas.

I consider this legislation to be of high national importance as we seek to meet our energy needs in an environmentally sound manner. Those energy needs require accelerated development of our offshore oil and gas resources and the increased use of tankers and deep water ports. This proposal would provide a broad range of protection against the potential oil spills necessarily associated with these activities.

In recent years, we have taken significant steps to limit and control oil pollution in the waters of the United States. Yet, in 1973 alone, there were 13,328 reported oil spills totalling more than 24 million gallons. One-third of the oil spilled is from unidentified sources, where compensation cannot be obtained under existing law. The ability of claimants damaged by spills to seek and recover full compensation is further hampered by widely inconsistent Federal and State laws. Various compensation funds have been established or proposed, resulting in unnecessary duplication in administration and in fee payments by producers and consumers.

This legislation would help protect our environment by establishing strict liability for all oil pollution damages from identifiable sources and providing strong economic incentives for operators to prevent spills. Equally important, the bill will provide relief for many oil-related environmental damages which in the past went uncompensated. For example, State and local governments will be able to claim compensation for damages to natural resources under their jurisdiction.

This legislation would replace a patchwork of overlapping and sometimes conflicting Federal and State laws. In addition to defining liability for oil spills, it would establish a uniform system for settling claims and assure that none will

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go uncompensated, such as in cases where it is impossible to identify the source of the spill. The legislation provides for a fund of up to \$200 million derived from a small fee on oil transported or stored on or near navigable waters.

This legislation would also implement two international conventions -- signed in 1969 and 1971 -- which provide remedies for oil pollution damage from ships. These conventions provide remedies for U.S. citizens under many circumstances where a ship discharging oil that reaches our shores might not otherwise be subject to our laws and courts. Protection of the international marine environment is basically an international problem since the waters, currents, and winds that spread and carry ocean pollution transcend all national boundaries.

In proposing implementation of the conventions, I am mindful of the fact that the Senate has not yet given its advice and consent to either of them. I urge such action without further delay. The 1969 convention came into force internationally on June 19, 1975, without our adherence, and the continuing failure of the United States to act on such initiatives may weaken or destroy the prospects of adequate international responses to marine pollution problems.

GERALD R. FORD

THE WHITE HOUSE,

July 9, 1975.

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EMBARGOED FOR RELEASE
UNTIL 12:00 NOON (EDT)

July 9, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

Comprehensive Oil Pollution Liability
and Compensation Act of 1975

The President is today transmitting legislation to Congress which would: (1) establish a domestic fund to cover claims for oil spill damages, (2) create a uniform nationwide system of strict liability for oil spill damages and settlement of claims, and (3) implement two international conventions dealing with oil pollution caused by tankers on the high seas.

BACKGROUND

Three major changes in the way oil is produced and transported may increase the possibility of oil spills affecting seacoasts, bays and harbors:

- The beginning of tanker shipments between the terminal of the Trans-Alaskan Pipeline at Valdez, Alaska, and the West Coast.
- Construction of deep water ports to accommodate supertankers.
- Expansion of drilling in the Outer Continental Shelf.

Existing and prospective legal arrangements designed to provide compensation to parties damaged by a spill include two international conventions and three Federal laws, all of which limit the liability of certain polluters and establish separate funds to pay clean-up costs and damages not paid by the polluter. In addition, various State laws provide differing degrees of liability and compensation for offshore drilling operations and for vessels within their coastal waters.

These arrangements provide a patchwork of differing and sometimes conflicting compensation for damages; just as significantly, various types of discharges of oil and various types of damages are not covered, resulting in a situation in which a damaged party may find recovery impossible; further, a number of compensation funds, each based on a tax on oil, have been established or proposed, resulting in an unnecessary burden on consumers and the oil industry.

A. OBJECTIVES OF THE PRESIDENT'S PROPOSAL

1. Insure that any damaged party (including individuals or governments) will be compensated regardless of the source of the oil spill.
2. Clearly fix responsibility and liability for an oil spill and the appropriate producing or transporting company.

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To meet these objectives, this legislation specifies the types of damages that would be recognized and the procedures to be followed in obtaining recovery. A claimant could recover from a discharger, but if the amount of the claim exceeded the discharger's liability, or if the discharger were not known, the claimant could be paid from a fund of up to \$200 million which is derived from a tax of one to three cents on each barrel of oil produced or transported on or near navigable waters.

From the standpoint of the barge, tanker, pipeline or drilling platform owner, the proposal establishes the basis for liability and limits it to specific maximum amounts. Penalties in the form of interest payments and fines would be imposed on dischargers who fail to accept responsibility for prompt settlement of claims in cases where liability is later found to exist.

The claims settlement system and the fund would be administered by the Department of Transportation.

International Conventions

The two international conventions deal with the liability of tanker owners for damages caused within the territorial sea of any Nation which is a party to the conventions. They were negotiated under the auspices of the International Maritime Consultative Organization, a specialized agency of the United Nations, in 1969 and 1971. The two conventions were submitted for advice and consent of the Senate in 1970 and 1972, respectively.

The 1969 convention, signed but not yet ratified by the United States, enters into force on June 19 without the U.S. as a party. The President's statement calls on the Senate to give its advice and consent to the two conventions.

B. SPECIFICS OF THE PRESIDENT'S PROPOSAL

The Proposed Legislation:

1. Establishes a domestic fund.
 - Having a \$200 million ceiling.
 - Financed by a fee not to exceed 3¢ per barrel on certain oil, the amount of the fee to be at the discretion of the Secretary of Transportation.

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2. Provides specific damages recoverable by broad classes of claimants.

- Damages recoverable:
 - oil removal costs;
 - injury to or loss of use of real or personal property;
 - injury to or loss of use of natural resources;
 - loss of earnings,
 - loss of tax revenue for up to one year.
- Claimants eligible to file:
 - any agency of the U.S. Government, for oil removal cost;
 - the President, or any Governor, as trustee for natural resources,
 - any U.S. citizen who incurs removal costs, damages to property or significant economic loss because of an oil spill;
 - any State or political subdivision for loss of up to one year's tax revenue;
 - certain foreign claimants in limited situations.

3. Establishes strict liability for the discharger with varying limits and limited defenses.

- Limits of liability:
 - vessels and ships -- the lesser of the \$150 per gross ton or \$20,000,000;
 - onshore or offshore facility -- not to exceed \$50,000,000, to be determined by the Secretary of Transportation,
 - in cases of gross negligence or willful misconduct, liability would be unlimited.
- Discharger's defenses:
 - act of war, civil war, or insurrection,
 - act of God,
 - any combination thereof.

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4. Sets up a uniform system of claims settlement and appeal, using procedures established by the Secretary of Transportation.
 - Secretary formally designates discharger, if known.
 - Claimant files initial claim against designated discharger.
 - discharger has 90 days to make settlement; or
 - he can deny designation.
 - If settlement is not obtained from designated discharger, claimant may:
 - sue discharger in U.S. District Court; or
 - file claim against fund.
 - If no discharger is designated or claim falls within scope of 1969 or 1971 international conventions, claimant files against fund:
 - fund has 90 days to make settlement,
 - failure to settle claim in requested amount can be appealed administratively;
 - in some cases, appeal may be made to U.S. District Court.
5. Allows fund to subrogate claims.
 - Fund collects from discharger if found liable:
 - the damages paid;
 - administrative cost of claims settlement; and
 - interest.
 - Fund collects all claims payments damages from any liable third party.
 - Fund collects all claims payments under international conventions.
6. Repeals existing Federal liability statutes and funds.
 - Federal Water Pollution Control Act \$35 million fund, as it relates to oil spills.
 - Trans-Alaskan Pipeline Act liability and \$100 million fund.
 - Deepwater Ports Act liability and \$100 million fund.
7. Preempts any State funds and laws for areas covered by this proposal.

C. SPECIFICS OF THE INTERNATIONAL CONVENTIONS

1. Implements International Convention on Civil Liability for Oil Pollution Damage.
 - Signed by almost 40 countries, including the United States, at Brussels on November 29, 1969.
 - Enters into force without the U.S. as a party on June 19.
 - Establishes strict liability for tanker owners for damages caused within the territory or territorial sea of a contracting party.
 - Limits the shipowners' liability under most circumstances to not more than \$15 million. However, in cases where damages result from the actual fault of the owner, there is no limitation of liability.
 - Provides a clear legal remedy for oil pollution damage in many cases where U.S. Courts would otherwise not be able to acquire jurisdiction over a discharger.
2. Implements International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.
 - Concluded at Brussels on December 18, 1971, as a companion to the 1969 convention.
 - Limited to Nations which are also parties to the 1969 convention.
 - Not yet ratified by the United States, or by a sufficient number of Nations to bring into force.
 - Establishes an international fund -- paid for by charges on oil received within a Party Nation.
 - The international fund can be sued in the courts of Nations Parties to the Convention, and will provide compensation in cases where there is no shipowner liability under the 1969 convention or damage exceeds limits in the 1969 convention.
 - The total amount of compensation available under the 1969 and 1971 conventions can be up to \$32,400,000 per incident, and may be further increased up to \$64,800,000 by the Fund Assembly, a body created by the convention.

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COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

ALAN GREENSPAN, CHAIRMAN
PAUL W. MACAVOY
BURTON G. MALKIEL

June 18, 1976

MEMORANDUM FOR DR. JAMES E. CONNOR

FROM: Paul W. MacAvoy 

SUBJECT: Paul O'Neill Memo 6/15/76 re: Comprehensive
Oil Pollution Liability Legislation

We concur with the recommendations made by the other agencies that the Administration proceed to negotiate the separation of the implementing legislation for the International Conventions dealing with oil pollution caused by tankers from the comprehensive oil spill legislation. We also concur with the recommendation that the Administration accept a higher limit of liability.

We also agree with OMB that any compromise legislation should include both a limitation on liability and preemption of state liability laws. We are concerned that the legislation may not include the preemption of state's liability laws. We are particularly concerned with the specter of all coastal states passing separate liability laws and establishing new regulatory authority whose obligation it is to enforce the separate regulations. The double liability which might be incurred by a firm who had the misfortune to cause an oil spill which affected more than one state could have adverse economic effects.



STAFFING

THE WHITE HOUSE
WASHINGTON

June 21, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PAUL H. O'NEILL ✓
FROM: JAMES E. CONNOR JEC
SUBJECT: Comprehensive Oil Pollution
Liability Legislation

Confirming a phone call to your office, the President reviewed your memorandum of June 15th on the above subject and has approved the recommendation to direct DOT to inform Congress and negotiate higher limits of liability for the Domestic Comprehensive Fund legislation.

Please follow-up with the appropriate action.

cc: Dick Cheney

June 21, 1976

MR. PRESIDENT:

Comprehensive Oil Pollution
Liability Legislation

The attached memorandum prepared by Paul O'Neill was staffed to Messrs. Buchen, Cannon, Friedersdorf, Greenspan, Zarb, Marsh, Scowcroft and Seidman.

They all concur with OMB's recommendation.

Alan Greenspan provided some supporting comments which are at TAB A.

OMB informs us that this matter must go forward today as the mark-up on this legislation will begin very shortly.

Jim Connor

THE WHITE HOUSE
WASHINGTON

June 21, 1976

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MR PRESIDENT:

Comprehensive Oil Pollution
Liability Legislation

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They all concur with OMB's recommendation.

Alan Greenspan provided some supporting comments which are at TAB A.

~~At this writing no response has been received from Frank Zarb., however,~~ OMB informs us that this matter must go forward today as the mark-up on this legislation will begin very shortly.

Jim Connor



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUN 15 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PAUL O'NEILL, ACTING DIRECTOR

SUBJECT: Comprehensive Oil Pollution Liability Legislation

Issue: Should the Administration agree to separate the proposed enabling legislation for two International Conventions on Oil Spill Liability and Compensation from the proposed legislation which establishes a comprehensive domestic liability and compensation system.

Background: Last July you submitted to Congress the "Comprehensive Oil Pollution Liability and Compensation Act of 1975" (H.R. 9294) (Statement and Fact Sheet attached) which:

- Establishes a domestic fund to cover claims for oil spill damages;
- Creates a uniform nationwide system of strict liability for oil spill damages and procedures for settlement of claims; and
- Implements two International Conventions dealing with oil pollution caused by tankers on the high seas. (The Liability and Fund Conventions.)

The U.S. was a strong proponent of the two International Conventions, which were submitted to the Senate in 1970 and 1972. Internationally, the Liability Convention took force in June 1975 without U.S. participation; however, the Fund Convention has not received the requisite ratifications and has not yet taken force. Neither Convention has been approved by the Senate.

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- The Senate has taken no action on either Convention and has shown little interest in considering them this session.

- The Convention's effective limits of liability are below levels of protection readily available in the international insurance markets and below the limits imposed on domestic vessels under the Administration's proposal.

As it now stands, it appears that we will lose two other key issues:

- Unlimited liability on a no-fault basis for cleanup costs probably will be passed.

- There will be no preemption of State liability laws included in the bill.

Discussion

Although the Senate has taken no action on either ratification of the Conventions or the Comprehensive proposal which includes implementing legislation for the Conventions, we have been assured by the Committee staff that hearings will be scheduled and swift action will be taken on the domestic fund provision of the bill once the House Merchant Marine & Fisheries Committee has completed its consideration. We understand that the several Senate committees with jurisdiction over parts of the bill have agreed on a process for joint consideration of the bill using the Commerce Committee's Ocean Policy Study Group as was done with the Deep Water Ports Act.

The key to possible enactment of this legislation is the action which the Coast Guard Subcommittee takes on the bill. If the Administration were to separate the Conventions' implementing legislation from the domestic fund provisions, that action could be used to negotiate away from unlimited cleanup liability to a higher limit which is more realistic (25-30M limit per vessel). This would be closer to a level which might be acceptable to Congressman Studts, whose bill is the leading competitor. Resolving this issue should help reduce opposition to the preemption provision.

Issue: The proposal is to separate the Conventions' implementing legislation from the domestic system and to agree to higher limits of liability for cleanup costs.

Pros:

- Little chance of Senate approval of the Conventions at this time.

- Unwillingness to negotiate on separation of Conventions' implementing legislation seriously jeopardizes any chance for support of our positions for limited liability for

cleanup costs and preemption, thus, forcing a possible veto situation on a bill likely to be highly sensitive to coastal States.

° The limits of liability under the Convention are lower than those currently insurable in international markets, and could be exceeded by a spill the size of Torrey Canyon. Higher domestic limits of liability could be used by the U.S. in an attempt to influence the International Community to raise limits under the Convention.

Cons:

° Separation may be viewed as the abandonment of U.S. policy of seeking international solutions to problems of ocean pollution and may undercut U.S. influence in international organizations seeking to deal with these problems.

° Unilateral action by the U.S. could result in undesirable retaliatory action against U.S. shipping by other nations.

° Substantially reduces incentives for Senate approval of Conventions, as the domestic system would provide extensive protection under almost all circumstances without them.

Recommendation

OMB, DOT, DOJ, DOI, and CEQ recommend that the Administration proceed to negotiate the separation of the International Conventions' implementing legislation from the domestic fund provision of the Comprehensive Oil Spill legislation and agree to higher limits of liability for cleanup costs. State Department does not object as long as we continue to support ratification of the Conventions.

_____ Agree; direct DOT to inform Congress and negotiate higher limits of liability for the Domestic Comprehensive Fund legislation.

_____ Disagree; pursue ratification of the Conventions in concert with a domestic fund.

_____ See me.

Attachments

EMBARGOED FOR RELEASE
UNTIL 12:00 NOON (EDT)

July 9, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

I am transmitting today proposed legislation entitled the "Comprehensive Oil Pollution Liability and Compensation Act of 1975."

This legislation would establish a comprehensive and uniform system for fixing liability and settling claims for oil pollution damages in U.S. waters and coastlines. The proposal would also implement two international conventions dealing with oil pollution caused by tankers on the high seas.

I consider this legislation to be of high national importance as we seek to meet our energy needs in an environmentally sound manner. Those energy needs require accelerated development of our offshore oil and gas resources and the increased use of tankers and deep water ports. This proposal would provide a broad range of protection against the potential oil spills necessarily associated with these activities.

In recent years, we have taken significant steps to limit and control oil pollution in the waters of the United States. Yet, in 1973 alone, there were 13,328 reported oil spills totalling more than 24 million gallons. One-third of the oil spilled is from unidentified sources, where compensation cannot be obtained under existing law. The ability of claimants damaged by spills to seek and recover full compensation is further hampered by widely inconsistent Federal and State laws. Various compensation funds have been established or proposed, resulting in unnecessary duplication in administration and in fee payments by producers and consumers.

This legislation would help protect our environment by establishing strict liability for all oil pollution damages from identifiable sources and providing strong economic incentives for operators to prevent spills. Equally important, the bill will provide relief for many oil-related environmental damages which in the past went uncompensated. For example, State and local governments will be able to claim compensation for damages to natural resources under their jurisdiction.

This legislation would replace a patchwork of overlapping and sometimes conflicting Federal and State laws. In addition to defining liability for oil spills, it would establish a uniform system for settling claims and assure that none will

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go uncompensated, such as in cases where it is impossible to identify the source of the spill. The legislation provides for a fund of up to \$200 million derived from a small fee on oil transported or stored on or near navigable waters.

This legislation would also implement two international conventions -- signed in 1969 and 1971 -- which provide remedies for oil pollution damage from ships. These conventions provide remedies for U.S. citizens under many circumstances where a ship discharging oil that reaches our shores might not otherwise be subject to our laws and courts. Protection of the international marine environment is basically an international problem since the waters, currents, and winds that spread and carry ocean pollution transcend all national boundaries.

In proposing implementation of the conventions, I am mindful of the fact that the Senate has not yet given its advice and consent to either of them. I urge such action without further delay. The 1969 convention came into force internationally on June 19, 1975, without our adherence, and the continuing failure of the United States to act on such initiatives may weaken or destroy the prospects of adequate international responses to marine pollution problems.

GERALD R. FORD

THE WHITE HOUSE,

July 9, 1975.

EMBARGOED FOR RELEASE
UNTIL 12:00 NOON (EDT)

July 9, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

Comprehensive Oil Pollution Liability
and Compensation Act of 1975

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BACKGROUND

Three major changes in the way oil is produced and transported may increase the possibility of oil spills affecting seacoasts, bays and harbors:

- The beginning of tanker shipments between the terminal of the Trans-Alaskan Pipeline at Valdez, Alaska, and the West Coast.
- Construction of deep water ports to accommodate supertankers.
- Expansion of drilling in the Outer Continental Shelf.

Existing and prospective legal arrangements designed to provide compensation to parties damaged by a spill include two international conventions and three Federal laws, all of which limit the liability of certain polluters and establish separate funds to pay clean-up costs and damages not paid by the polluter. In addition, various State laws provide differing degrees of liability and compensation for offshore drilling operations and for vessels within their coastal waters.

These arrangements provide a patchwork of differing and sometimes conflicting compensation for damages; just as significantly, various types of discharges of oil and various types of damages are not covered, resulting in a situation in which a damaged party may find recovery impossible; further, a number of compensation funds, each based on a tax on oil, have been established or proposed, resulting in an unnecessary burden on consumers and the oil industry.

A. OBJECTIVES OF THE PRESIDENT'S PROPOSAL

1. Insure that any damaged party (including individuals or governments) will be compensated regardless of the source of the oil spill.
2. Clearly fix responsibility and liability for an oil spill and the appropriate producing or transporting company.

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To meet these objectives, this legislation specifies the types of damages that would be recognized and the procedures to be followed in obtaining recovery. A claimant could recover from a discharger, but if the amount of the claim exceeded the discharger's liability, or if the discharger were not known, the claimant could be paid from a fund of up to \$200 million which is derived from a tax of one to three cents on each barrel of oil produced or transported on or near navigable waters.

From the standpoint of the barge, tanker, pipeline or drilling platform owner, the proposal establishes the basis for liability and limits it to specific maximum amounts. Penalties in the form of interest payments and fines would be imposed on dischargers who fail to accept responsibility for prompt settlement of claims in cases where liability is later found to exist.

The claims settlement system and the fund would be administered by the Department of Transportation.

International Conventions

The two international conventions deal with the liability of tanker owners for damages caused within the territorial sea of any Nation which is a party to the conventions. They were negotiated under the auspices of the International Maritime Consultative Organization, a specialized agency of the United Nations, in 1969 and 1971. The two conventions were submitted for advice and consent of the Senate in 1970 and 1972, respectively.

The 1969 convention, signed but not yet ratified by the United States, enters into force on June 19 without the U.S. as a party. The President's statement calls on the Senate to give its advice and consent to the two conventions.

B. SPECIFICS OF THE PRESIDENT'S PROPOSAL

The Proposed Legislation:

1. Establishes a domestic fund.

- Having a \$200 million ceiling.

- Financed by a fee not to exceed 3¢ per barrel on certain oil, the amount of the fee to be at the discretion of the Secretary of Transportation.

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2. Provides specific damages recoverable by broad classes of claimants.

- Damages recoverable:

- oil removal costs;
- injury to or loss of use of real or personal property;
- injury to or loss of use of natural resources;
- loss of earnings,
- loss of tax revenue for up to one year.

- Claimants eligible to file:

- any agency of the U.S. Government, for oil removal cost;
- the President, or any Governor, as trustee for natural resources;
- any U.S. citizen who incurs removal costs, damages to property or significant economic loss because of an oil spill;
- any State or political subdivision for loss of up to one year's tax revenue;
- certain foreign claimants in limited situations.

3. Establishes strict liability for the discharger with varying limits and limited defenses.

- Limits of liability:

- vessels and ships -- the lesser of the \$150 per gross ton or \$20,000,000;
- onshore or offshore facility -- not to exceed \$50,000,000, to be determined by the Secretary of Transportation;
- in cases of gross negligence or willful misconduct, liability would be unlimited.

- Discharger's defenses:

- act of war, civil war, or insurrection,
- act of God,
- any combination thereof.

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4. Sets up a uniform system of claims settlement and appeal, using procedures established by the Secretary of Transportation.

- Secretary formally designates discharger, if known.

- Claimant files initial claim against designated discharger.

-- discharger has 90 days to make settlement; or

-- he can deny designation.

- If settlement is not obtained from designated discharger, claimant may:

-- sue discharger in U.S. District Court; or

-- file claim against fund.

- If no discharger is designated or claim falls within scope of 1969 or 1971 international conventions, claimant files against fund:

-- fund has 90 days to make settlement,

-- failure to settle claim in requested amount can be appealed administratively;

-- in some cases, appeal may be made to U.S. District Court.

5. Allows fund to subrogate claims.

- Fund collects from discharger if found liable:

-- the damages paid;

-- administrative cost of claims settlement; and

-- interest.

- Fund collects all claims payments damages from any liable third party.

- Fund collects all claims payments under international conventions.

6. Repeals existing Federal liability statutes and funds.

- Federal Water Pollution Control Act \$35 million fund, as it relates to oil spills.

- Trans-Alaskan Pipeline Act liability and \$100 million fund.

- Deepwater Ports Act liability and \$100 million fund.

7. Preempts any State funds and laws for areas covered by this proposal.

C. SPECIFICS OF THE INTERNATIONAL CONVENTIONS

1. Implements International Convention on Civil Liability for Oil Pollution Damage.
 - Signed by almost 40 countries, including the United States, at Brussels on November 29, 1969.
 - Enters into force without the U.S. as a party on June 19.
 - Establishes strict liability for tanker owners for damages caused within the territory or territorial sea of a contracting party.
 - Limits the shipowners' liability under most circumstances to not more than \$15 million. However, in cases where damages result from the actual fault of the owner, there is no limitation of liability.
 - Provides a clear legal remedy for oil pollution damage in many cases where U.S. Courts would otherwise not be able to acquire jurisdiction over a discharger.

2. Implements International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.
 - Concluded at Brussels on December 18, 1971, as a companion to the 1969 convention.
 - Limited to Nations which are also parties to the 1969 convention.
 - Not yet ratified by the United States, or by a sufficient number of Nations to bring into force.
 - Establishes an international fund -- paid for by charges on oil received within a Party Nation.
 - The international fund can be sued in the courts of Nations Parties to the Convention, and will provide compensation in cases where there is no shipowner liability under the 1969 convention or damage exceeds limits in the 1969 convention.
 - The total amount of compensation available under the 1969 and 1971 conventions can be up to \$32,400,000 per incident, and may be further increased up to \$64,800,000 by the Fund Assembly, a body created by the convention.

#####



FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

June 21, 1976

DEPUTY ADMINISTRATOR

MEMORANDUM FOR JIM CONNOR
SECRETARY TO THE CABINET

FROM: ERIC R. ZAUSNER
DEPUTY ADMINISTRATOR

SUBJECT: ISSUE PAPER ON COMPREHENSIVE OIL
POLLUTION LIABILITY LEGISLATION

I concur with the recommendation of OMB and the other agencies that, as a means of producing an acceptable compromise on oil pollution liability, the Administration negotiate and accept the separation of that portion of the comprehensive oil spill legislation dealing with the international conventions and allow Congress to act now on the important domestic provisions.

I view the need for resolution of our current fragmented domestic laws on oil spill liability as particularly important, since failure to satisfactorily resolve coastal state concerns may hinder the development of our OCS oil and gas resources.

I emphasize in particular the resolution of the two key issues of limiting liability and preempting state laws.

COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

ALAN GREENSPAN, CHAIRMAN
PAUL W. MACAVOY
BURTON G. MALKIEL

June 18, 1976

MEMORANDUM FOR DR. JAMES E. CONNOR

FROM: Paul W. MacAvoy *pm*

SUBJECT: Paul O'Neill Memo 6/15/76 re: Comprehensive
Oil Pollution Liability Legislation

We concur with the recommendations made by the other agencies that the Administration proceed to negotiate the separation of the implementing legislation for the International Conventions dealing with oil pollution caused by tankers from the comprehensive oil spill legislation. We also concur with the recommendation that the Administration accept a higher limit of liability.

We also agree with OMB that any compromise legislation should include both a limitation on liability and preemption of state liability laws. We are concerned that the legislation may not include the preemption of state's liability laws. We are particularly concerned with the specter of all coastal states passing separate liability laws and establishing new regulatory authority whose obligation it is to enforce the separate regulations. The double liability which might be incurred by a firm who had the misfortune to cause an oil spill which affected more than one state could have adverse economic effects.



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 16, 1976

Time:

FOR ACTION:

cc (for information):

✓ Phil Buchen

Frank Zarb

✓ Jim Cannon

✓ Jack Marsh

✓ Max Friedersdorf

✓ Brent Scowcroft

✓ Alan Greenspan

✓ Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: Friday, June 18

Time: 2 P.M.

SUBJECT:

Paul O'Neill memo 6/15/76 re
Comprehensive Oil Pollution
Liability Legislation

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

For Your Comments

___ Draft Remarks

REMARKS:

*Sudman - agree with OMB.
Cannon - agree with OMB.
Marsh - agree with OMB
Friedersdorf - agree with OMB
Greenspan (concur with OMB - see comments)
Scowcroft (Danis) concur
Buchen (support OMB recommendation)*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 16, 1976

Time:

FOR ACTION:

cc (for information):

Phil Buchen

Frank Zarb

Jim Cannon

Jack Marsh

Max Friedersdorf

Brent Scowcroft

Alan Greenspan

Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: Friday, June 18

Time: 2 P.M.

SUBJECT:

Paul O'Neill memo 6/15/76 re
Comprehensive Oil Pollution
Liability Legislation

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

X

For Your Comments

Draft Remarks

REMARKS:

*agree with
OAM B
JWS*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 16, 1976

Time:

FOR ACTION:

cc (for information):

Phil Buchen

Frank Zarb

Jack Marsh

Jim Cannon

Brent Scowcroft

Max Friedersdorf

Bill Seidman

Alan Greenspan

FROM THE STAFF SECRETARY

DUE: Date: Friday, June 18

Time: 2 P.M.

SUBJECT:

Paul O'Neill memo 6/15/76 re
Comprehensive Oil Pollution
Liability Legislation

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

X

For Your Comments

Draft Remarks

REMARKS:

I concur with our recommendation -

Just
June 17, 1976

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

THE WHITE HOUSE

WASHINGTON

June 18, 1976

MEMORANDUM FOR: JIM CONNOR

FROM: MAX FRIEDERSDORF 

SUBJECT: Paul O'Neill memo 6/15/76 re
Comprehensive Oil Pollution Liability Legislation

The Office of Legislative Affairs recommends Option 1.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 16, 1976

Time:

FOR ACTION:

cc (for information):

Phil Buchen

Frank Zarb

Jim Cannon

Jack Marsh

Max Friedersdorf

Brent Scowcroft

Alan Greenspan

Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: Friday, June 18

Time: 2 P.M.

SUBJECT:

Paul O'Neill memo 6/15/76 re
Comprehensive Oil Pollution
Liability Legislation

ACTION REQUESTED:

_____ For Necessary Action

_____ For Your Recommendations

_____ Prepare Agenda and Brief

_____ Draft Reply

X

_____ For Your Comments

_____ Draft Remarks

REMARKS:

Recommnd OPTION #1

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President

MEMORANDUM

NATIONAL SECURITY COUNCIL

3491

June 18, 1976

MEMORANDUM FOR: JAMES CONNOR

FROM: Jeanne W. Davis *JWD*

SUBJECT: Paul O'Neill Memo of June 15, 1976
re Comprehensive Oil Pollution
Liability Legislation

The NSC Staff concurs with OMB's memorandum to the President
re Comprehensive Oil Pollution Liability Legislation.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: June 16, 1976

Time:

FOR ACTION:

cc (for information):

Phil Buchen

Frank Zarb

Jim Cannon

Jack Marsh

Max Friedersdorf

Brent Scowcroft

Alan Greenspan

Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: Friday, June 18

Time: 2 P.M.

SUBJECT:

Paul O'Neill memo 6/15/76 re
Comprehensive Oil Pollution
Liability Legislation

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Support OMB Recommendations
E. Schmidt 6/18

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jim Connor
For the President