

Draft for Sign On

November 5, 2009

Governor Arnold Schwarzenegger  
State Capitol  
Sacramento, CA 95814

Dear Governor Schwarzenegger:

On Friday, October 30<sup>th</sup>, a mishap with a fuel transfer on the Dubai Star tanker resulted in a bunker fuel spill in the San Francisco Bay. This unfortunate accident occurred nine days short of the second anniversary of the infamous Cosco Busan accident that fouled San Francisco Bay waters, spoiled beaches as far north as Pt. Reyes and as far south as Pacifica, and killed over 1,300 sea birds. While the Cosco Busan event served as a wake-up call and highlighted the State's dramatically deficient spill response mechanisms, this spill, naturally, is a test of our success at rectifying our previous inability to respond effectively to a fuel spill two years hence.

Sadly, we have not met the test. Given the location of the spill, and the ideal conditions on the water at the time, there is no reason that adequate precautionary measures and an effective response time would not have been possible to contain this fuel before it washed up on sensitive beaches, closed fisheries, and killed more sea birds. We respectfully urge you to take immediate action to strengthen California's emergency spill response regulations so we can do what is necessary, and available to be done, to adequately protect our valuable coastal environment and the economy it supports.

The Dubai Star spill impacted sensitive fisheries and bird habitat along the shore of the East Bay. Fuel impacted eelgrass beds that provide habitat for economically important herring fisheries. Fishermen in the Bay Area are already suffering from herring population declines, which were likely exacerbated by the Cosco Busan spill two years ago.

Since the spill last week, we have talked with representatives of the Coast Guard, the California Office of Spill Prevention and Response, and other relevant agencies. According to the Coast Guard, containment boom was not placed around the Dubai Star until approximately 1 p.m. – *more than 6 hours after the spill was first reported*. This delay does not comply with existing state regulations and is simply unacceptable.

California State regulations (14 Cal. Code Regs. § 844.3) require vessels conducting fuel transfers to either pre-boom the vessel **or** have boom on hand to respond to a potential spill within 30 minutes. Unfortunately, in the case of the Dubai Star, the shipping company did neither. In fact, Coast Guard officials have told us that *they have never known a vessel to pre-boom for a fuel transfer in San Francisco Bay*.

Early reports from the Dubai Star indicated a mere 1-5 gallons of bunker fuel had spilled



on October 30. Now, we have an unconfirmed estimate that the spill was as large as 400 to 800 gallons. In the case of the Cosco Busan, what was initially reported as a 140-gallon fuel spill was in reality a spill of much greater magnitude, with more than 50,000 gallons of bunker fuel spilling into the Bay. Because of the slow on-the-water response much of that fuel spread beyond containment; less than 17,000 gallons was recovered 10 days later, and toxic bunker fuel permeated the ecosystem to the great detriment of local fisheries, marine wildlife, and all who have a stake in the health of our Bay and beaches.

We commend your office and the legislature for taking action on the flawed response in the Cosco Busan spill by reforming California's policies on oil spill response and preparedness, substantially improving communication and coordination between state agencies and local authorities, and requiring on-the-water oil spill responders to demonstrate their readiness and competence. While the response to the Dubai Star incident testifies to improved communication efforts between first responders, it also shows that more reform is needed to protect the important waters of San Francisco Bay.

In the case of the Dubai Star, had adequate precautionary measures such as mandatory pre-booming been taken, the spill would have been confined near the vessel, where complete or substantial containment would have been possible. Pre-booming is relatively inexpensive; the cost to California is notably higher when bunker fuel is allowed to spread far from the spill site. It is economically and environmentally prudent to use the means we have available to prevent bunker fuel from spilling into the Bay, and stop it as soon as possible when it does spill. Yet, visible all morning on local news channels were images of the Dubai Star with no boom in sight and a growing oily sheen spreading into the Bay waters for miles.

The 1990 Lempert-Keene-Seastrand Oil Spill Prevention and Response Act established the Office of Spill Prevention and Response (OSPR) and charged your office, through the OSPR Administrator, to provide the best achievable protection of the coast and marine waters. *Both Washington and Alaska have mandatory regulations in place that require pre-booming around vessels engaged in fuel transfers in the Puget Sound and Prince William Sound respectively, and additional measures to contain spills.*<sup>1</sup> The Washington Department of Ecology has found pre-booming to be "highly effective at trapping or containing spilled oil" and reducing the amount of oil spilled in Puget Sound. In fact, just last week (November 5<sup>th</sup>), there was a spill of jet fuel from a U.S. Navy vessel in Puget Sound and the spill was contained because the ship was pre-boomed as a standard precaution. *We should implement these best practices to protect San Francisco Bay.*

The woefully inadequate spill prevention and lack of immediate response on October 30<sup>th</sup> is not a wake-up call. We learned well two years ago what kind of devastation comes from bunker fuel spilled into our waters. Any disregard for state law is unacceptable, but this situation clearly demands strengthened standards. Fuel spills will undoubtedly occur

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<sup>1</sup> Washington State oil transfer regulation – WAC 173-184-110, available at <http://www.ecy.wa.gov/programs/spills/rules/173-184.html>.

State of Alaska oil transfer regulation - 18 AAC 75.025, available at [http://www.dec.state.ak.us/spar/statutes\\_regs.htm#article01](http://www.dec.state.ak.us/spar/statutes_regs.htm#article01).

again as ships fuel in San Francisco Bay on an ongoing basis. Californians deserve assurance that our responsible state agencies will indeed do what is entirely possible to prevent fuel from spreading throughout the Bay and reaching marshes, wetlands and other sensitive wildlife habitat.

Therefore, we respectfully urge you to take immediate action to improve California's OSPR prevention measures. We ask you to strengthen regulations by requiring mandatory pre-booming of vessels conducting fuel transfers in San Francisco Bay, including containment boom that surrounds both vessels involved in the fuel transfer. If pre-booming would not be effective in containing a fuel spill due to currents or weather conditions, then fuel transfers should not be allowed during this time period or at this location. Finally, we ask that you direct relevant state agencies to improve enforcement of existing regulations to prevent oil spills in San Francisco Bay and to require the release of verified public information regarding oil spills as soon as practicable.

Sincerely,

Pacific Environment

Other Signers