

UK P&I CLUB



US POLLUTION RISKS

August 2014

Federal & State Pollution Laws Summaries

- Liability and Compensation
- COFR and VRP Requirements

Federal & State Laws on Liability

Federal & State Laws	Responsible Parties	Nature of Liability	Statutory Defenses (*See note)	Recoverable Damage & Limitation				Test for Breaking Right of Limitation
				Cleanup Costs	NRD	Property Damage & Consequential Loss	Pure Economic Loss	
Federal OPA	shipowner, operator, demise charterer, possibly cargo owner	strict, joint and several	usual defences, but strict conditions	double hull tanker of 3000gt or less: greater of \$4,272,000 or \$2000/gt; double hull tanker more than 3000gt: greater of \$17,088,000 or \$2000/gt; single hull but double sides tanker of 3000gt or less: greater of \$6,408,000 or \$3200/gt; single hull but double sides tanker more than 3000gt: greater of \$23,496,000 or \$3200/gt; non tank vessels: greater of \$854,400 or \$1000/gt				gross negligence or wilful misconduct; failure to report a spill or to co-operate in spill response; failure to comply with USCG order
Alabama	shipowner, operator, demise charterer, possibly cargo owner	wrongful act, omission or negligence (punitive and compensatory damages allowed in case of willful or wanton conduct; compensatory alone in case of negligence or act of omission)	not applicable	unlimited	unlimited (for costs of restoration only)	no recoverability	no recoverability	not applicable
Alaska	cargo owner or person having control over oil; ship-owner, operator, bailee/ carrier of oil, person disposing of oil, person accepting oil	strict, joint and several	usual defences, but strict conditions	unlimited				not applicable
California	cargo owner, transporter of oil, person accepting responsibility for the oil; shipowner, operator, demise charterer, charterer (lessee), person accepting responsibility for the vessel	strict, joint and several	usual defenses under strict conditions (no defenses for government's removal costs)	unlimited				not applicable
Connecticut	person directly or indirectly causes pollution	strict, joint	none	Cleanup costs: 1.5 x costs and expenses (negligence); 2 x costs and expenses (wilful misconduct); administrative cost of 10% of actual cost plus interest	unlimited but "damage" not clearly defined		not applicable	
Delaware	shipowner, operator	strict, joint and several	usual defenses	tanker: \$300/gt up to \$30m other vessel: \$150/gt				gross negligence or wilful misconduct within privity and knowledge; gross or wilful violation
Florida	shipowner, operator, demise charterer; cargo owner, if shipowner fails to pay	strict, joint and several	usual defenses but strict conditions	vessel of 3,000gt or less carrying pollutant as cargo: greater of \$2 million or \$1,200/gt; vessels more than 3,000gt carrying pollutant as cargo: greater of \$10 million or \$1,200/gt; other vessels: greater of \$500,000 or \$600/gt	compensation schedule based on volume of spill and other factors	unlimited (for anyone who can demonstrate damage as direct result of the spill)		gross negligence or wilful misconduct within privity; failure to report a spill or to cooperate in spill response

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Federal & State Laws	Responsible Parties	Nature of Liability	Statutory Defenses (*See note)	Recoverable Damage & Limitation				Test for Breaking Right of Limitation
				Cleanup Costs	NRD	Property Damage & Consequential Loss	Pure Economic Loss	
Georgia	shipowner, operator, demise charterer	intentional or negligence	not applicable	unlimited	unlimited (for replacing damaged natural resources only)	no recoverability	no recoverability	not applicable
Guam	shipowner, operator, demise charterer	no specific provisions	none		no specific provisions			not applicable
Hawaii	shipowner, operator, demise charterer, person disposing of oil, person accepting oil	strict	usual defences but strict conditions	\$700m	\$700m	no recoverability	no recoverability	unbreakable limit
Louisiana	shipowner, operator, demise charterer	strict	usual defences, but strict conditions	tanker of 3,000gt or less: greater of \$2 million, or \$1,200/gt; tanker of more than 3,000gt: greater of \$10 million or \$1,200/gt; dry cargo ship: greater of \$500,000 or \$600/gt				gross negligence or wilful misconduct; violation of safety, construction or operating rules; failure to report a spill; failure to cooperate in spill response
Maine	any person, vessel, licensee, agent or servant, including a carrier destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place	strict	usual defences	unlimited				not applicable
Maryland	person responsible for discharge, including owner, operator or person in charge of vessel.	strict, joint and several	none	unlimited	unlimited	unlimited for real or personal property damage directly caused by spill	no recoverability	not applicable
Massachusetts	shipowner, operator, charterer, transporter, person who causes or is legally responsible for spill	strict, joint and several	usual defences but strict conditions	unlimited	unlimited	unlimited	3x amount for shellfish and fishery resources	not applicable
Mississippi	shipowner, operator, demise charterer	strict	none	unlimited	no recoverability	no recoverability	no recoverability	not applicable
New Hampshire	person who directly or indirectly causes or suffers the discharge	strict for containment, cleanup, restoration and removal. negligence or intentional for property damage.	none	2 x costs if wilfully fails to comply with any requirement and unlimited	no recoverability	1 1/2 times the damage	no recoverability	not applicable
New Jersey	person in any way responsible for the oil discharged	strict, joint and several	imited defences (an act or omission caused solely by war, sabotage, or God, or a combination thereof)	3x costs and removal if non-compliance with State directive; unlimited	\$150/gt (for costs of restoration only)	\$150/gt	\$150/gt	gross negligence or wilful misconduct within privity and knowledge; gross or wilful violation of safety, construction or operating rule

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Federal & State Laws	Responsible Parties	Nature of Liability	Statutory Defenses (*See note)	Recoverable Damage & Limitation				Test for Breaking Right of Limitation
				Cleanup Costs	NRD	Property Damage & Consequential Loss	Pure Economic Loss	
New York	shipowner, operator, demise charterer	strict	usual defences but strict conditions	tanker of 3,000gt or less: greater of \$2 million or \$1,200/gt; tanker of more than 3,000gt: greater of \$10 million or \$1,200/gt; other vessel subject to OPA90: greater of \$500,000 or \$600/gt; other vessel not subject to OPA90: \$300/gt				gross negligence or wilful misconduct within privity and knowledge, gross or wilful violation of safety, construction or operating rule; failure to report a spill; failure to cooperate in spill response
North Carolina	shipowner, operator, demise charterer	strict, joint and several	usual defences	State cleanup costs cannot exceed OPA90 limits.	damages equal to cost of all reasonable and necessary investigations and to restock/replenish fish and wildlife.	unlimited (for property damage only)	no recoverability	no specific provisions
Oregon	shipowner, operator, demise charterer, carrier, cargo owner	strict	usual defences	unlimited	unlimited	unlimited	unlimited	not applicable
Pennsylvania	shipowner, operator, demise charterer	public nuisance		no specific provisions				
Puerto Rico	person responsible for discharge	strict	none	unlimited	unlimited	no recoverability	no recoverability	not applicable
Rhode Island	shipowner, operator	strict for state claims; negligence or intentional for private claims	usual defences	unlimited	unlimited (for costs of restoration only)	unlimited (negligence required)		not applicable
South Carolina	shipowner, operator, demise charterer, person causing the discharge	strict	no specific provisions					
Texas	shipowner, operator, other person who causes, allows, or permits discharge	strict	usual defences but strict conditions	\$1m for vsl <300gt that do not carry oil; \$5m for vsl < 8000gt; \$600/gt not exceeding \$50m for vsl > 8000gt	tanker of 3,000gt or less: greater of \$2 million or \$1,200/gt; tanker > than 3,000gt: greater of \$10 million or \$1,200/gt; dry cargo ship: greater of \$500,000 or \$600/gt	no recoverability		gross negligence or wilful misconduct; failure to cooperate in spill response
Virgin Islands	shipowner, operator	strict	usual defences	unlimited	unlimited (for "other damage")			not applicable
Virginia	shipowner, operator, charter, other person who otherwise exercises control over vessel	strict	usual defences but strict conditions	unlimited	greater of 10m or \$500/gt		no recoverability	gross negligence or wilful misconduct; violation of safety, construction or operating rules; failure to report a spill, to cooperate in spill response, to cleanup
Washington	person owning oil or having control over oil	strict	usual defences	unlimited	not < than \$1 nor > than \$100 per gallon of oil spilled per compensation schedule	unlimited	unlimited	no specific provisions

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Federal & State COFR Requirements

Federal & State COFR Requirements	Vessels required to have COFR	COFR		Evidence of Financial Responsibility	
		Tankers	Other Vessels		
Federal OPA	any vessel over 300 gt	double hull tanker of 3000gt or less: greater of \$4,272,000 or \$2000/gt; double hull tanker more than 3000gt: greater of \$17,088.00 or \$2000/gt; single hull but double sides tanker of 3000gt or less: greater of \$6,408,000 or \$3200/gt; single hull but double sides tanker more than 3000gt: greater of \$23,496,000 or \$3200/gt		greater of \$854,000 or \$1000/gt	self-insurance, letter of credit, insurance, surety, guarantee or other evidence of financial responsibility
Alaska	tanker (including oil barges); non-tankers	Tanker carrying crude oil: greater of \$501.60/barrel or \$167.20m, tanker carrying non crude oil: greater of \$167.20/barrel or \$1.672m, subject to a maximum of \$58.52m		Non-tank vessels over 400gt – carrying persistent product, greater of \$501.60/barrel or \$8.360m; - carrying non-persistent product, greater of \$167.20/barrel or \$1.672m	tankers; use charterer, oil company, or terminal's COFR; nontank vessels; use P&I Club Certificate of Entry (deductible endorsement is needed if deductible exceeds \$50,000)
California	tanker; non-tanker; vessels carrying oil as secondary cargo (VCOASC)	tankers and barges with capacity of 150,000 barrels or more \$1b; for smaller tankers and barges, based on the quantity of oil carried and risk, but amount cannot be less than expected costs from a worst case oil spill.	\$300 million for nontank vessels 300 GT or greater; but administrator may establish a lower standard of financial responsibility for vessels carrying oil as a secondary cargo. The standard is based on the quantity of oil that can be carried, and must be no less than the expected costs from a reasonable worst case oil spill into waters of the state. For example, \$2,000,000 for carrying capacity from less than 1 to not more than 10 barrels; \$5,000,000 for carrying capacity greater than 10 to not more than 50 barrels; \$10,000,000 for carrying capacity greater than 50 to not more than 500 barrels; \$18,900,000 for carrying capacity greater than 500 to not more than 1,000 barrels.		P & I Club Certificate of Entry accepted
Delaware	any vessel over 300 gt	\$300/gt with a minimum of \$250,000 and a maximum of \$30m		\$150/gt	self-insurance, insurance, surety, guarantee
Florida	all vessels transporting oil as cargo	same as OPA amounts			OPA COFR accepted
Louisiana	tanker capable of carrying 10,000 gallons of oil	same as OPA amounts			OPA COFR accepted (for tanker not covered by OPA, ie. below 100gt, but capable of carrying 10,000 gallons of oil, owner or operator must establish and maintain evidence in a form prescribed by the state.
Maryland	any vessel carrying more than 25 barrels of oil	\$500/gt		\$500/gt	bond or other evidence approvable by Dept. of Environment, OPA COFR accepted
Massachusetts	any vessel transporting or discharging oil as cargo	\$1 billion		vessels carrying less than 6,000b, \$5m	P & I Club Certificate of Entry accepted, self-insurance, insurance, surety, letter of credit or other evidence approved by state

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Federal & State COFR Requirements	Vessels required to have COFR	COFR		Evidence of Financial Responsibility
		Tankers	Amount Other Vessels	
New Jersey	any vessel over 300 gt	same as OPA amounts	same as OPA amounts	OPA COFR accepted, self-insurance, guarantee, insurance, surety, letter of credit
New York	any vessel	same as OPA amounts	same as OPA amounts	OPA COFR accepted, insurance, self-insurance, surety, guarantee, letter of credit
Oregon	any vessel over 300 gt	3000 GT or less, \$1200 per GT or \$2 million, whichever is greater Over 3000 GT, \$1200 per GT, or \$10 million, whichever is greater	\$600 per GT, or \$500,000, whichever is greater.	OPA COFR accepted
Rhode Island	tanker	same as OPA amounts		OPA COFR accepted
South Carolina	lightering vessel (however oil transfer operations in SC are almost exclusively performed at terminals)	\$14m		self-insurance, insurance, surety, or other evidence acceptable by Dept. of Health and Environmental Control
Texas	any vessel capable of carrying 10,000 gallons of oil as cargo or fuel	same as OPA amounts	same as OPA amounts; if a vessel is not required under federal law to maintain evidence of financial responsibility, then owner or operator of that vessel must establish and maintain evidence in an amount and form prescribed by the state.	OPA COFR accepted (P&I Certificate of Entry accepted, but direct action permitted by Texas law) [for vessel not covered by OPA ie. below 300gt, but capable of carrying 10,000 gallons of oil as cargo or fuel, the practical COFR situation is unknown]
Virgin Islands	any vessel, including any barge	based on the tonnage of the ship or the cargo carried	based on the tonnage of the ship or the cargo carried	bond, insurance, self-insurance, surety, other evidence satisfactory to the Territory
Virginia	tanker capable of carrying 15,000 gallons of oil as cargo	Proof of federal COFR or 500/gt		OPA COFR accepted (P&I Certificate of Entry accepted, but direct action permitted by Virginia law) self-insurance, insurance, guaranty or surety, or any other method approved by the State
Washington	any vessel	tanker: \$1b; barge: greater of \$300/gt or \$5m	Cargo or Passenger Vessel over 300 GT: \$300 million (except a Passenger Vessel travelling between Washington and a foreign country, which is greater of \$600 per GT, or \$500,000.) Fishing Vessels over 300 GT: -Carrying predominantly nonpersistent oil: greater of \$133.40 per incident for each bbl of oil storage capacity, or \$1,334,000. Carrying predominantly persistent oil: greater of \$400.20 per incident for each bbl of oil storage capacity, or \$6,670,000.	insurance, self-insurance, surety; OPA COFR accepted so long the level of financial responsibility required by the federal government is the same as or exceeds state requirements; for tanker, cargo or passenger vessel, exempt if entered with an IG Club and insured for amounts that meet or exceed State requirements

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Federal & State Vessel Contingency Plan Requirements

Federal & State Vessel Contingency Plan Requirements	Tankers required to have C-Plan (or VRP)	Other Vessels required to have C-Plan	Other Plans Required	Comments
Federal OPA	vessels carrying oil as cargo must have a VRP approved by USCG	Nontank vessels (400gt or above) trading to the US must have a VRP approved by USCG	vessels over 400gt must have a SOPEP approved by their flag State.	
Alaska	tanker or oil barge must have a contingency plan approved by the Dept. of Environmental Conservation	Nontank vessels must have a contingency plan approved by the Dept. of Environmental Conservation	Federal VRP plans in Alaska: USCG requires vessels transiting Western Alaska to enroll in a network. (For further details, see circular 28/13)	for tankers, practical solution: enrol into C-Plan held by charterers, oil companies, terminals; for both tankers and non tankers the contract of those OSROs in Alaska are not approvable by IG. Additional insurance required (contact Managers for info on additional insurance)
California	tanker or barge must have a contingency plan approved by Office of Spill Prevention & Response	nontank vessels of 300GT or greater/Vessels Carrying Oil as Secondary Cargo (VCOASC) must have CPlan approved by Office of Spill Prevention & Response		C-Plan requirements do not apply to vessels in innocent passage
Florida	tank vessels capable of carrying 10,000 gallons of oil as cargo or fuel must maintain a C-Plan for Dept. of Environmental Protection inspection	other vessels capable of carrying 10,000 gallons of oil as cargo or fuel must maintain a C-Plan for Dept. of Environmental Protection inspection		SOPEP would satisfy the State C-Plan requirements, if it has a written designation of an officer who is responsible for training crew for spill response and for coordinating response efforts in a spill
Guam	Though Guam has no C-Plan requirements, federal VRP requires tankers to enroll with both Guam Response Services Ltd and T&T/OSROCO. T&T/OSROCO's contract has been approved by IG, however Guam Response Services Ltd's contract is not approved, which needs extra cover. (contact Managers for assistance)			
Louisiana	all vessels are required to submit a federal VRP to Dept. of Environmental Quality	although all vessels are required to submit a federal VRP, there is no enforcement of this requirement on nontank vessels		in relation to tankers, OPA VRP is acceptable to the State
Maine	tankers and vessels constructed or adapted to carry or that carry oil or hazardous material in bulk as cargo or cargo residue must have a federal VRP for Dept. of Environmental Protection inspection			in relation to tankers, OPA VRP is acceptable to the State
Maryland	tankers must have federal VRP for State review upon request			in relation to tankers, OPA VRP is acceptable to the State

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Federal & State Vessel Contingency Plan Requirements	Tankers required to have C-Plan (or VRP)	Other Vessels required to have C-Plan	Other Plans Required	Comments
New Jersey	vessels involved in lightering operations are required to submit a Contingency Plan called DCR (discharge response, cleanup, removal) for Dept. of Environmental Protection's approval		prevention plan DPCC (discharge prevention, control and counter-measure) is required for vessels involved in lightering operations. DPCC must be certified by a professional engineer.	as USCG currently does not permit lightering in NJ waters, NJ's DCR and DPCC requirements are not currently applied to vessels.
New York	vessels involved in lightering operations are required to submit a federal VRP to Dept of Environmental Conservation		may require a habitat protection program for lightering operations	in relation to vessels involved in lightering operations, OPA VRP is acceptable to the State
Oregon	vessels constructed or adapted to carry oil in bulk as cargo or cargo residue must have a C-Plan approved by Department of Environmental Quality	cargo vessels, passenger vessels, dredge vessels must have a C-Plan approved by Department of Environmental Quality		C-Plan requirements can be satisfied through participation in CP of MFSA (Maritime Fire and Safety Association). However, MFSA's plan does not cover Coos Bay or Newport.
South Carolina	vessels involved in lightering operations are required to demonstrate that they implement the State and federal prevention and VRP requirements in order to obtain a registration certificate from Dept. of Health and Environmental Control			
Texas	any vessel with a capacity to carry 10,000 gallons or more of oil as fuel or cargo or otherwise required under OPA	any vessel with a capacity to carry 10,000 gallons or more of oil as fuel or cargo; if vessel is in excess of 400 gross tons and required by the International Maritime Organization to have a current shipboard oil pollution emergency plan (SOPEP)		
Virginia	tankers capable of carrying 15,000 gallons of oil or more as cargo are required to submit a federal VRP to Dept. of Environmental Quality	all dry cargo vessels, passenger vessels must submit a C-Plan for Dept. of Ecology 's approval		OPA VRP is acceptable to the State
Washington	all tank vessels must submit a C-Plan for Dept. of Ecology approval	Cargo vessels of 300 GT or greater Passenger vessels of 300 GT or greater, with a fuel capacity of 6,000 gallons or greater Fish processing vessels of 300 GT or greater		C-Plan requirements can be satisfied through participation in WSMC (Washington State Maritime Cooperative)'s C-Plan. However, WSMC's C-Plan does not cover Columbia River; vessels operating on Columbia River must also participate in MFSA's C-Plan. C-Plans prepared for federal government or another state that satisfy Washington State requirements and rules may be accepted

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This is one of a series which aims to share the legal expertise within the Club with our Members. These charts were first produced in 1996. They are updated from time to time as necessary.

About us

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Chao Wu Legal Director



Chao has a doctorate in law and is based in London as Legal Director, where she is responsible for giving general legal advice, including guidance on the legal aspects of P&I Club documentation, and on the legal aspects of cover for Members' contractual arrangements. She represents the Club on various subcommittees and working groups of the International Group of P&I Clubs. Chao speaks Mandarin, French and Shanghainese.

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Kevin started in Thomas Miller's former Houston office, handling UKP&I and UKFD&D claims. Kevin moved to San Francisco in 1997. There he became involved with the TT Club, and managed Thomas Miller's San Francisco office from 2000. Kevin has been resident in our New Jersey office since 2006, involved in the TT, UKP&I, and UK Defence Clubs. He is our Americas Environmental specialist,

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Disclaimer

This document provides an overview of certain laws and regulations relating to oil pollution risks in the USA. While every effort has been made to ensure its accuracy, it is only a guide. If you require formal legal advice, you should consult your lawyer.

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