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# COAST GUARD

## Oil Spill Liability Trust Fund Not Being Used to Pay All Allowable Costs



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**Resources, Community, and  
Economic Development Division**

B-242524.2

August 12, 1991

The Honorable John B. Breaux  
Chairman, Subcommittee on Merchant Marine  
Committee on Commerce, Science  
and Transportation  
United States Senate

The Honorable Frank R. Lautenberg  
Chairman, Subcommittee on Transportation  
and Related Agencies  
Committee on Appropriations  
United States Senate

The Honorable William Lehman  
Chairman, Subcommittee on Transportation  
and Related Agencies  
Committee on Appropriations  
House of Representatives

The Honorable W. J. (Billy) Tauzin  
Chairman, Subcommittee on Coast Guard  
and Navigation  
Committee on Merchant Marine  
and Fisheries  
House of Representatives

In August 1990, responding to concerns about the massive Exxon Valdez oil spill in Alaska's Prince William Sound, the Congress passed the Oil Pollution Act of 1990 (P.L. 101-380) (OPA). This act significantly expanded the nation's oil spill prevention and response activities. It also activated the Oil Spill Liability Trust Fund. The fund was originally created by the Omnibus Budget Reconciliation Act of 1986 with the provision that no money could be expended from the fund until the enactment of comprehensive oil spill legislation. OPA made the fund available to federal agencies to pay for costs related to oil spill prevention and response activities.

Section 1012(g) of OPA requires GAO to issue an interim report to the Congress by August 18, 1991, on the implementation of the OPA provisions regarding the fund. Specifically, this report provides information on the fund's receipts and disbursements as of March 31, 1991, and the status

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of activities under way to fully implement the provisions of OPA regarding the fund, including the development of regulations.

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## Results in Brief

The Department of the Treasury maintains all receipts and accounts for the fund according to established policies and procedures used to administer federal trust funds. Deposits into the fund totaled \$526.6 million through March 31, 1991. This amount consisted of transfers from previously existing pollution funds replaced by the fund and deposits from taxes, cost recoveries, penalties, and investment returns. Disbursements from the fund totaled \$14.3 million through March 31, 1991. According to Coast Guard officials, all disbursements were for federal oil spill removal expenses.

The President gave the Coast Guard authority to use the fund to pay federal oil spill removal costs under OPA. According to Coast Guard officials, the Coast Guard is currently developing regulations to administer these payments. Until these new regulations are issued, the Coast Guard is using procedures developed for a previously existing pollution fund to pay federal spill removal costs. However, these procedures hinder federal agencies from recovering all of their spill removal costs for two reasons.

- The procedures do not adequately define the types of allowable costs to be paid by the fund or provide guidance on standards and methodologies that agencies should use in computing and recovering their costs. As a result, agencies have submitted inconsistent and incorrect claims for reimbursement in the past.
- The procedures do not allow for payment of the full cost of agency personnel not normally involved in spill response, which OPA now allows. Consequently, agencies involved in oil spill removal will have to pay for these costs with money that would otherwise be available for other purposes or will have to request supplemental appropriations.

Finally, while the President has delegated to the Coast Guard the authority to use the fund for spill removal, as of July 15, 1991, he had not delegated the authority to make the fund available for other purposes authorized by OPA. Consequently, payments for costs for other purposes allowable under OPA have not been made. For example, OPA allows payment from the fund for third-party damage claims and the cost of initiating natural resource damage assessment studies, but no agency can pay these costs until the President delegates the authority to do so.

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## Background

OPA significantly enhanced the nation's oil spill prevention and response activities and repealed or amended the oil spill provisions of several existing laws. For example, it changed the liability limits of spillers for oil spill removal costs and damages, required double hulls on most oil tankers, required additional contingency planning and preparedness by government agencies and potential spillers, and mandated federal direction of the cleanup of major spills.

Although OPA made the spiller primarily responsible for all spill response costs, up to the liability limit, it allows payment from the fund for costs covering such activities as federal oil spill removal efforts and the initiation of natural resource damage assessments. The Coast Guard then seeks to recover these costs from any party liable for the costs of the spill. OPA also authorizes payment from the fund for such costs when the spiller cannot pay or has reached its limit of liability, and allows the fund to compensate parties damaged by a spill when compensation is not available from the spiller (third-party claims).

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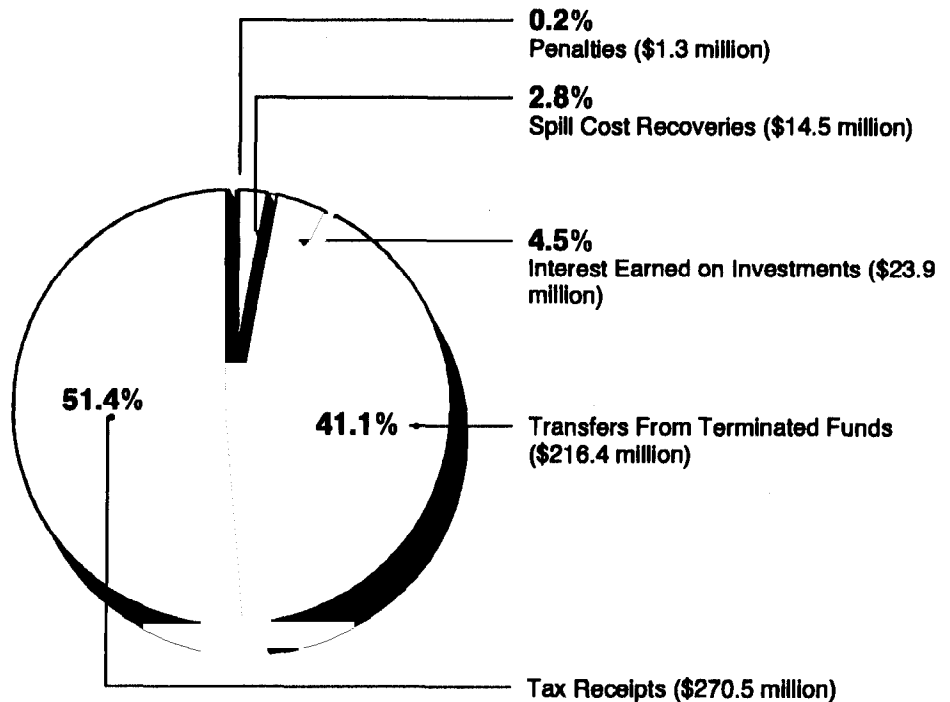
## Fund Receives Revenues From Several Sources

The Oil Spill Liability Trust Fund has received revenues from five sources: (1) balances transferred from three oil pollution funds terminated in 1990,<sup>1</sup> (2) taxes on domestically produced oil and imported oil refined in the United States, (3) penalties levied by the Coast Guard for spill prevention regulation violations, (4) cost recoveries from the spiller or other liable party, and (5) interest earned on fund investments. As of March 31, 1991, the fund had total deposits of \$526.6 million (see fig. 1 for a breakdown of the amounts received from each source). Tax receipts and money transferred from terminated funds accounted for most of these revenues.

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<sup>1</sup>After OPA was enacted, the fund received the balances and liabilities of funds established under three laws: section 311(k) of the Federal Water Pollution Control Act, the Deepwater Port Act of 1974, and the Outer Continental Shelf Lands Act Amendments of 1978. These funds paid for spill response in the inland and coastal zones, deepwater ports, and offshore areas, respectively.

**Figure 1: Sources of Revenues for the Oil Spill Liability Trust Fund**



Note: Totals as of March 31, 1991.

Two agencies have collected revenues for the fund. One agency, the Internal Revenue Service, collects a 5-cent tax on each barrel of domestically produced oil or imported oil refined in the United States. Industry makes these payments every 2 weeks to the Treasury's general fund. According to Treasury officials, these oil spill fund receipts are transferred from the general fund to the oil spill fund each month. The 5-cent tax does not apply, however, in any fiscal quarter following a quarter in which the unobligated balance of the fund reaches its \$1-billion statutory limit. A Treasury official estimated that the fund would reach this limit sometime in fiscal year 1993, assuming a major spill does not occur. Another agency, the Coast Guard, recovers federal spill removal costs from parties liable for oil spill costs and collects penalties for violations of its pollution prevention regulations. These receipts are also deposited into the oil spill fund.

The Treasury maintains fund receipts according to the policies and procedures it uses to administer federal trust funds. It invests the oil spill fund deposits in Treasury securities until they are needed.

As of March 31, 1991, the Coast Guard paid out from the fund \$14.3 million, which Coast Guard officials said was for federal spill removal costs. Additionally, nearly \$7 million was obligated for federal spill removal costs in fiscal 1991 but had not yet been paid.

## Procedures Do Not Provide Adequate Guidance on Federal Oil Spill Removal Activities or Cost Calculations

Six days after OPA was enacted, the President delegated the authority to make the fund available for federal oil spill removal activities under OPA—one of several spill-related activities covered by the fund—to the Coast Guard.<sup>2</sup> The Coast Guard is currently developing regulations to administer these payments. While these new regulations are being developed, the Coast Guard is using regulations from a previously existing pollution fund—the fund established under section 311(k) of the Federal Water Pollution Control Act—to pay for federal oil spill removal activities. However, as we reported to the Congress in March 1991, the 311(k) reimbursement procedures contained several weaknesses that limited federal agencies' ability to obtain reimbursement for millions of dollars of removal costs incurred in the Exxon Valdez spill.<sup>3</sup> These weaknesses included the following:

- The procedures did not clearly describe the range of activities for which agencies are eligible for reimbursement. As a result, Coast Guard spill coordinators responsible for approving agencies' costs had denied reimbursement to some agencies while allowing payment to other agencies for similar activities. For example, the Coast Guard paid the Federal Aviation Administration for the costs it incurred in providing additional air traffic control during the spill, but did not pay the Occupational Health and Safety Administration for its additional safety inspections at the spill site.
- The Coast Guard did not provide adequate guidance to clarify standards and methods to be used in computing and recovering costs from the fund. In the absence of clear guidance, agencies used different methods. For example, agencies used several different methods to determine the

<sup>2</sup>The President delegated the authority to use the fund to pay for federal oil spill removal costs to the Secretary of Transportation in August 1990. The Secretary redelegated this authority to the Commandant of the Coast Guard.

<sup>3</sup>Coast Guard: Millions in Federal Costs May Not Be Recovered From Exxon Valdez Oil Spill (GAO/RCED-91-68, Mar. 5, 1991).

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retirement costs of personnel involved in the spill response. As a result, some agencies substantially underbilled and others substantially overbilled for costs incurred.

Our report recommended that the Coast Guard address these weaknesses. Coast Guard officials stated that they are considering our recommendations while drafting the new fund regulations but have not yet decided whether or how they will be incorporated. We believe that if the new regulations do not provide better guidance on allowable costs and on the way in which they should be calculated, as we recommended, federal agencies will continue to have problems obtaining full reimbursement from spillers or the fund for spill-related costs, as happened in the Exxon Valdez incident.

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## Federal Agencies Are Not Reimbursed for All Response Costs Recovered From Spillers

OPA and its legislative history also provide guidance regarding another issue we discussed in our previous report. In previous spills, the full cost of cleaning up a spill, up to a specified liability limit, was to be paid by the spiller or the responsible party and deposited in the 311(k) fund. However, federal agencies that incurred removal costs were reimbursed for only part of the amount spent. The 311(k) regulations limited agencies' reimbursements to costs that were not ordinarily funded by an agency's regular appropriations and were not incurred during normal operations. These allowable "incremental" costs included those for supplies and equipment, overtime for civilian personnel, and the operation of vehicles, vessels, or aircraft. Under the 311(k) regulations, incremental costs did not include base salaries of agency response personnel and depreciation of government-owned equipment.

In the case of the Exxon Valdez spill, as of September 30, 1990, about \$29 million was collected from Exxon but was not paid to the federal agencies for nonincremental response costs. This amount remained in the 311(k) fund for future use. Some federal agencies involved in the Exxon Valdez oil spill removal objected to not receiving full reimbursement from the 311(k) fund for the excluded costs because they had to pay for these costs from their existing budgets.

Although these costs were not reimbursable to agencies under previous law, OPA expanded the scope of allowable payments from the fund. Under Section 1012(a)(5) of OPA, the fund is made available to the President for payment of



federal administrative, operational, and personnel costs and expenses reasonably necessary for . . . the implementation, administration, and enforcement of the Act [OPA] . . . with respect to prevention, removal, and enforcement related to oil discharges.

The legislative history of this provision explains that agencies should be reimbursed for full costs, including base salaries for personnel not normally involved in spill response. The joint explanatory statement in the conference committee report on OPA stated the following:

Both incremental and base costs should be included, except for persons normally available for oil spill response, when calculating the cost of federal efforts to respond to a spill. Reimbursement for these costs should be sought from the responsible party, and agencies that assist in oil spill response actions should be fully compensated by the fund or by the responsible party for that assistance.

While using the 311(k) procedures until new regulations are implemented, the Coast Guard has not taken any steps—such as implementing interim regulations—to allow agencies reimbursement for their nonincremental costs. Coast Guard officials said that they are considering implementing interim regulations or making procedural changes to allow for the payment of such costs.

We believe that the Coast Guard needs to act quickly to ensure that agencies are reimbursed for all allowable costs. It is common practice for agencies to issue interim regulations to allow implementation of a new authority before permanent regulations are finalized. If an agency provides some service outside of its normal activities during a spill response and is not fully reimbursed by the fund, it will have to pay for that activity with money that would otherwise be available for some other purpose. As a result, unless the agency receives a supplemental appropriation, the agency would have to operate for the rest of the year at a reduced level of funding, which could impair its ability to meet all of its planned mission objectives.

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## **Costs Other Than Removal Costs Cannot Be Paid Until Authority Is Delegated**

In addition to authorizing payment for spill removal, OPA authorized payment from the fund for other costs related to spill prevention and response, such as the cost of initiating natural resource damage assessments and paying third-party claims. Section 1013(e) of OPA requires the President to promulgate regulations regarding the presentation, filing, processing, settlement, and adjudication of claims against the fund. However, as of July 15, 1991, the President had not delegated the authority to any agency to pay these costs from the fund. According to

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an Office of Management and Budget official, the proposed executive order delegating all authority under OPA has followed the normal approval process for executive orders and is taking the expected time to complete, considering its level of complexity. Coast Guard officials said that unless it is delegated the authority, the Coast Guard cannot pay these costs.

Coast Guard officials said that they anticipate being delegated the authority to pay third-party claims and initial damage assessment costs and have been drafting regulations governing these payments from the fund since February 1991. As of June 30, 1991, the Coast Guard had received two claims totaling about \$362,000 for third-party damages. Coast Guard officials told us that once they are delegated the authority to pay such costs, they plan to make payments for these purposes without waiting until the regulations are completed, using the language in OPA to judge the adequacy of the claims.

Coast Guard officials said that they are also considering issuing interim regulations to inform the public of the availability of the fund and of the proper procedures to use to submit a claim. In our opinion, unless the Coast Guard issues such interim regulations, it will not be able to ensure that agencies and the public are reimbursed promptly for all allowable costs.

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## Conclusions

As of March 31, 1991, the Oil Spill Liability Trust Fund had reached more than one-half of its \$1-billion limit, beyond which no further taxes on domestically produced oil or imported oil refined in the United States will be collected. As of the same date, the Coast Guard had disbursed \$14.3 million from the fund.

The Coast Guard was delegated authority to use the fund to pay for federal spill removal costs and is using regulations written for the terminated 311(k) pollution fund to pay these costs. As we previously reported, federal agencies have not been reimbursed for certain costs because of deficiencies in these procedures. In addition, these regulations do not allow the payment of the full response costs now allowed under OPA. Unless the Coast Guard takes steps to improve these procedures and regulations, federal agencies involved in oil spill removal may not be reimbursed for all allowable removal costs.

The Coast Guard has not made payments from the fund for costs other than federal spill removal costs because the executive order delegating

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authority for implementing other aspects of the fund had not been issued as of July 15, 1991. Coast Guard officials said that they anticipate being delegated responsibility for paying for other spill-related costs covered by the fund, and once they are delegated the authority they will do so. Issuing interim regulations would help ensure that natural resource trustees and the public are aware of the availability of the fund and the proper procedures for seeking payment for these costs.

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## Recommendations

We recommend that the Secretary of Transportation take steps to ensure that the Commandant of the Coast Guard

- implements the recommendations included in our previous report concerning improvements needed to make certain that federal spill-related removal costs are appropriately paid;
- establishes interim regulations incorporating the OPA provision for full reimbursement of all costs incurred by agencies and agency personnel not normally involved in spill response, including the cost of their salaries; and
- establishes, if delegated the authority by the President, interim procedures for the proper payment of damages to third-party claimants and the costs of initiating natural resource damage assessment studies.

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## Scope and Methodology

We conducted our work between February and July 1991. During that time, we interviewed officials and reviewed documents at Coast Guard and Treasury headquarters and at Coast Guard offices in New Orleans, Louisiana; Chesapeake, Virginia; and Alameda, California. Our purpose was to determine what actions had been taken to implement the Oil Spill Liability Trust Fund. We did not perform a financial audit of the fund.

As you requested, we did not obtain official agency comments on this report. However, we did discuss the facts contained in the report with responsible program officials, and we incorporated their comments as appropriate. These officials generally agreed with our findings. We performed our work in accordance with generally accepted government auditing standards.

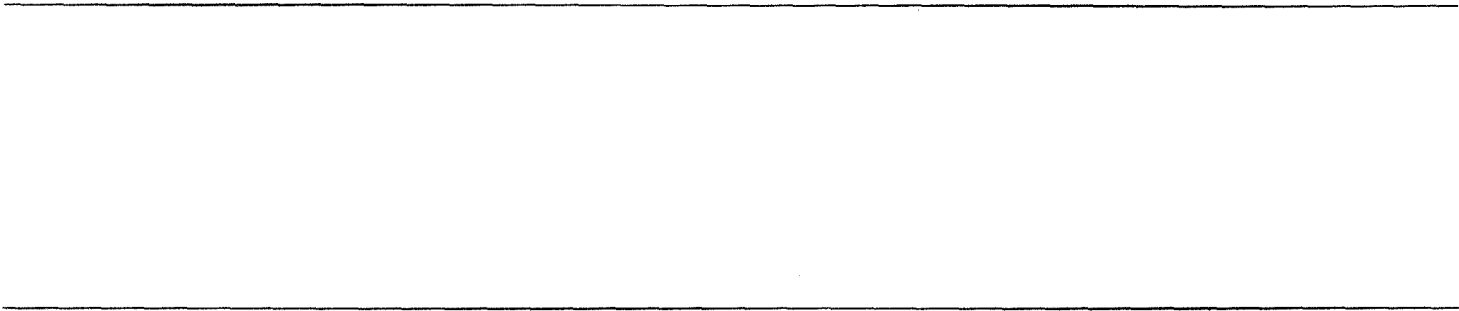
We are sending copies of this report to the Secretaries of Transportation and Treasury; the Commandant, U.S. Coast Guard; and other interested parties. We will make copies available to others upon request.

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This work was performed under the direction of Kenneth M. Mead, Director, Transportation Issues, who can be reached at (202) 275-1000. Other major contributors to this report are listed in appendix I.



J. Dexter Peach  
Assistant Comptroller General



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# Major Contributors to This Report

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**Resources,  
Community, and  
Economic  
Development Division,  
Washington, D.C.**

Emi Nakamura, Assistant Director  
Steven R. Gazda, Assignment Manager  
James R. Sweetman, Jr., Staff Evaluator

---

**Office of the General  
Counsel**

David Hooper, Staff Attorney

---

**Seattle Regional Office**

Randall B. Williamson, Evaluator-in-Charge  
Ronald E. Thompson, Site Senior  
Leo H. Kenyon, Senior Evaluator  
Stanley G. Stenersen, Adviser

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