

Overview of Current Issues in Crude Oil Regulation

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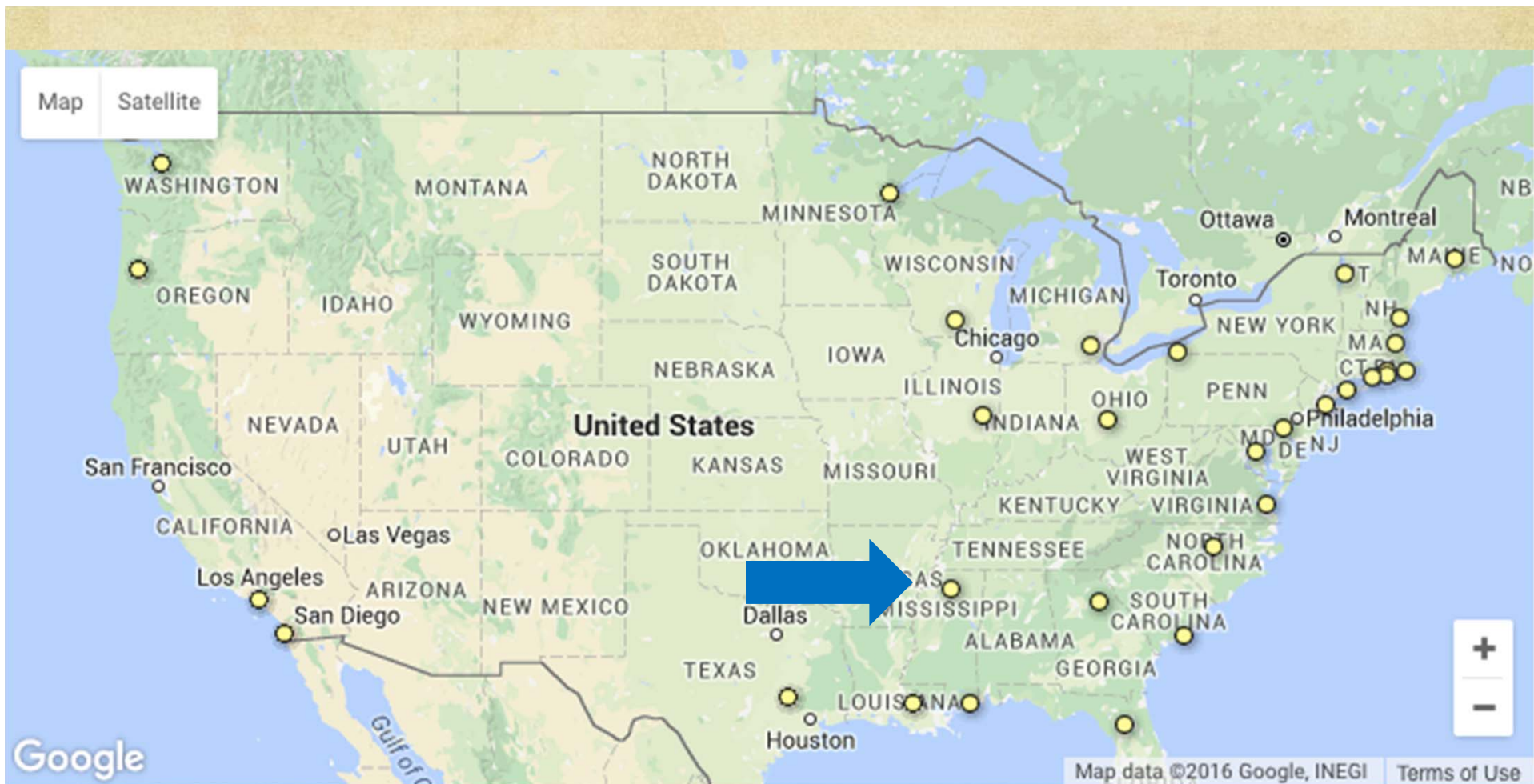
University of Mississippi School of Law

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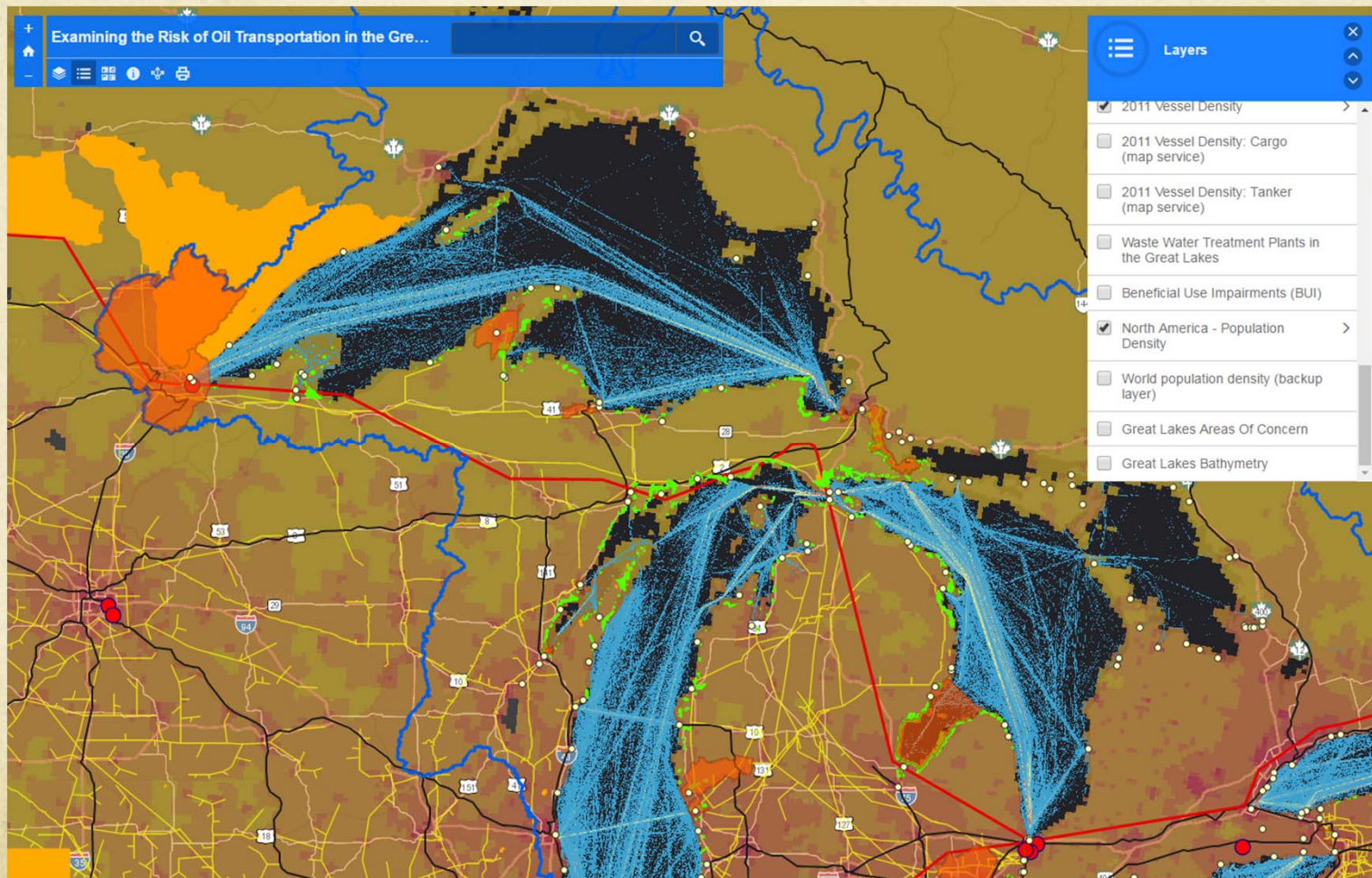

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Flashback to Jamie's Presentation:



From Great Lakes Commission- Issues and Trends Surrounding the Movement of Crude Oil in the Great Lakes-St. Lawrence River Region

UNITED STATES	CANADA
Rail	
Federal <ul style="list-style-type: none"> • Pipeline and Hazardous Materials Safety Administration (PHMSA): <ul style="list-style-type: none"> ◦ proposed regulations for phasing out of DOT-111 tank cars ◦ standards for next generation of tank cars • Department of Transportation (DOT): <ul style="list-style-type: none"> ◦ Notice of Proposed Rulemaking (NPRM) for Hazardous Materials: Enhanced Tank Cars Standards and Operational Controls for High-Hazard Flammable Trains ◦ Advance Notice of Proposed Rulemaking (ANPRM) for Hazardous Materials: Oil Spill Response Plans for High-Hazard Flammable Trains ◦ Emergency Orders <ul style="list-style-type: none"> ▪ stricter standards to transport crude oil by rail ▪ prohibiting shippers to switch to alternate classification involving less stringent packaging ▪ carriers must inform first responders about crude oil transported through their communities ◦ Letter to American Association of Railroads outlining actions that can be taken voluntarily immediately by industry • Federal Railroad Administration (FRA) & USDOT <ul style="list-style-type: none"> ◦ Operation Classification, primarily targeting shipments from the Bakken formation State <ul style="list-style-type: none"> • New York: <ul style="list-style-type: none"> ◦ new targeted rail inspection and training campaign ◦ multi-agency report on crude oil transportation ◦ Executive Order directing agencies to petition U.S. DOT to strengthen rail car standards and to assess federal agencies' needs and risks ◦ letter to governor of North Dakota urging quick action on regulations to reduce volatility of Bakken crude oil • Minnesota: <ul style="list-style-type: none"> ◦ new laws: stricter oversight of railroad companies, more railway inspections, better emergency response training and preparedness ◦ In 2014, amendment of Chapter 115E of the <i>Oil and Hazardous Substance Discharge Preparedness Law</i>: railroads must provide training for fire departments along unit train routes and specific timeframes for deploying equipment and trained staff for unit train ◦ letter to the Governor of North Dakota advocating for conditioning standards to reduce volatility of Bakken crude oil 	Federal <ul style="list-style-type: none"> • Transport Canada – regulation: <ul style="list-style-type: none"> ◦ new regulations for federally regulated road and rail crossings ◦ amends existing regulations to identify and address safety risks ◦ companies must hold a valid Railway Operating Certificate to operate on federally regulated railways in Canada ◦ amendments requiring 35 provincially regulated railway and light-rail companies operating on federal track to develop and implement Safety Management System ◦ formalizing new DOT-111 tank car standards and three-year phase out of old ones ◦ improving data reporting requirements for railways to proactively identify and address safety risks before accidents happen ◦ monetary penalties for Railway Safety Act (RSA) violations ◦ amendment to RSA to speed up approvals in emergencies – RSA allows for emergency directives to compel a railway company to cease unsafe activities or compel mitigation of immediate threats to safe railway operations • Transportation Safety Board <ul style="list-style-type: none"> ◦ Investigation report for the Lac-Mégantic accident • Proposed settlement between victims of the Lac-Mégantic and Montreal Maine and Atlantic Canada Co., its insurance carrier, rail-car manufacturers and some oil producers. Three companies have not agreed to participate: World Fuel Services, Canadian Pacific Railway and Irving Oil.

Why are we concerned?

Table 2: Accidents resulting in oil spills since the Lac-Mégantic accident on July 6, 2013* (spills in Great Lakes states are shaded)

Date	Mode of transportation	Location	Amount spilled (gallons)*
8/13/2013	Pipeline	Erie, IL	772,800
9/29/2013	Pipeline	North Dakota	865,200
10/19/2013	Rail	Gainford, AB	unknown
11/7/2013	Rail	Aliceville, AL	2,730,000
12/30/2013	Rail	Casselton, ND	475,000
1/7/2014	Rail	Plaster Rock, NB	unknown
1/18/2014	Pipeline	Rowatt (Regina), SK	5,250
2/3/2014	Rail	between Red Wing and Winona, MN	12,000
2/13/2014	Rail	Vandergrift, PA	10,000
2/24/2014	Barge/Tanker	Vacherie, LA	31,500
3/19/2014	Pipeline	Colerain Township, OH	10,000
3/22/2014	Barge/Tanker	Galveston Bay, TX	168,000
4/30/2014	Rail	Lynchburg, VA	30,000
5/10/2014	Rail	Lasalle, CO	7,930
5/14/2014	Pipeline	Bakersfield, CA	190,000
5/28/2014	Pipeline	Delta National Wildlife Refuge, LA	2,100
5/28/2014	Pipeline	Powder River, WY	25,000
6/7/2014	Pipeline	New Town, ND	29,000
6/11/2014	Truck	St. George, UT	4,000
6/29/2014	rail	Port of Albany, NY	4,200
10/13/2014	pipeline	Lake Caddo, LA	168,000
12/1/2014	pipeline	Red Heart Creek, AB	15,850
12/16/2014	pipeline	Regina, MB	56,700

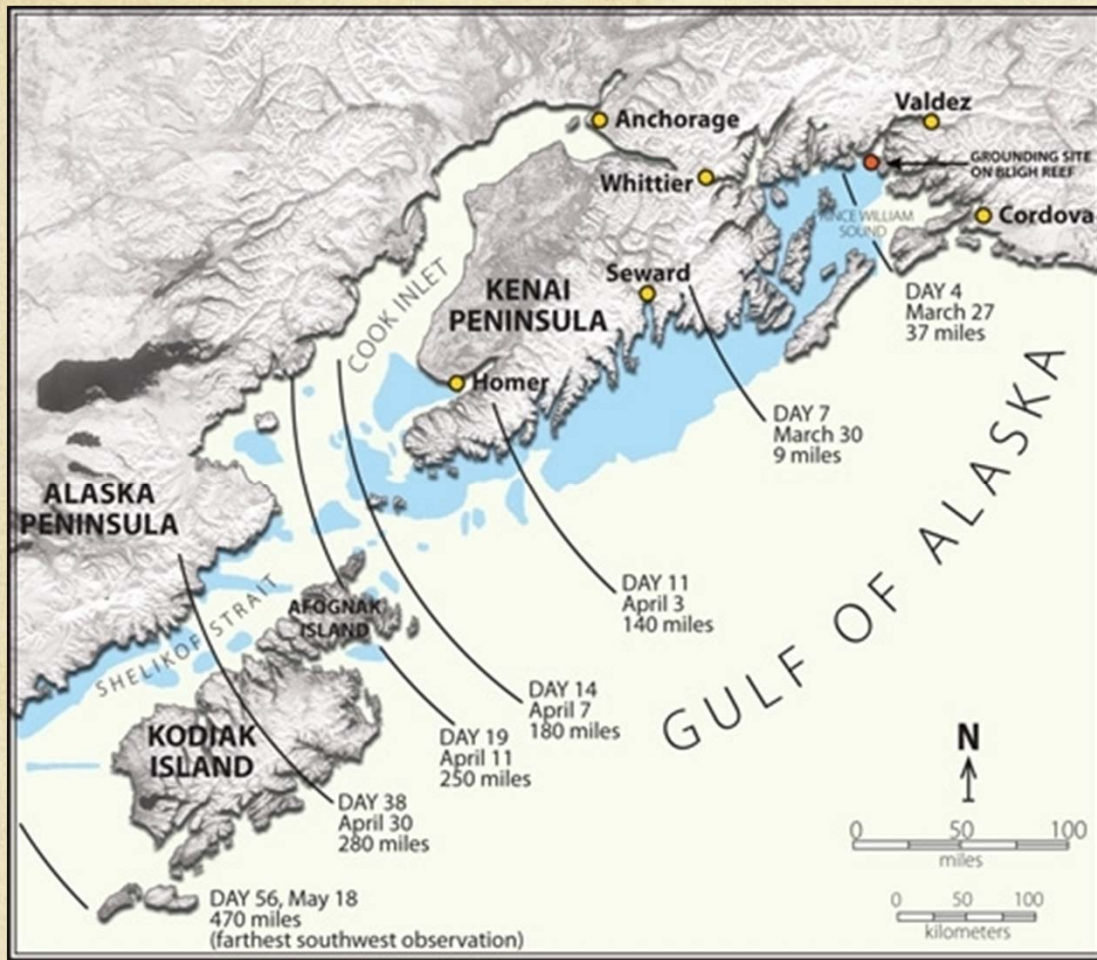
* Amount of initial spill. Amount recovered not considered

Only accidents with spills of more than 1,000 gallons were compiled. Accidents in storage and processing facilities are not included

Great Lakes Commission- Issues and Trends
Surrounding the Movement of Crude Oil in the
Great Lakes-St. Lawrence River Region

Oil Pollution Act of 1990

1989



<http://www.ship-disasters.com/wp-content/uploads/2012/02/Exxon-Valdez1.jpg>



<http://www.sea-way.org/blog/ExxonValdez3.JPG>

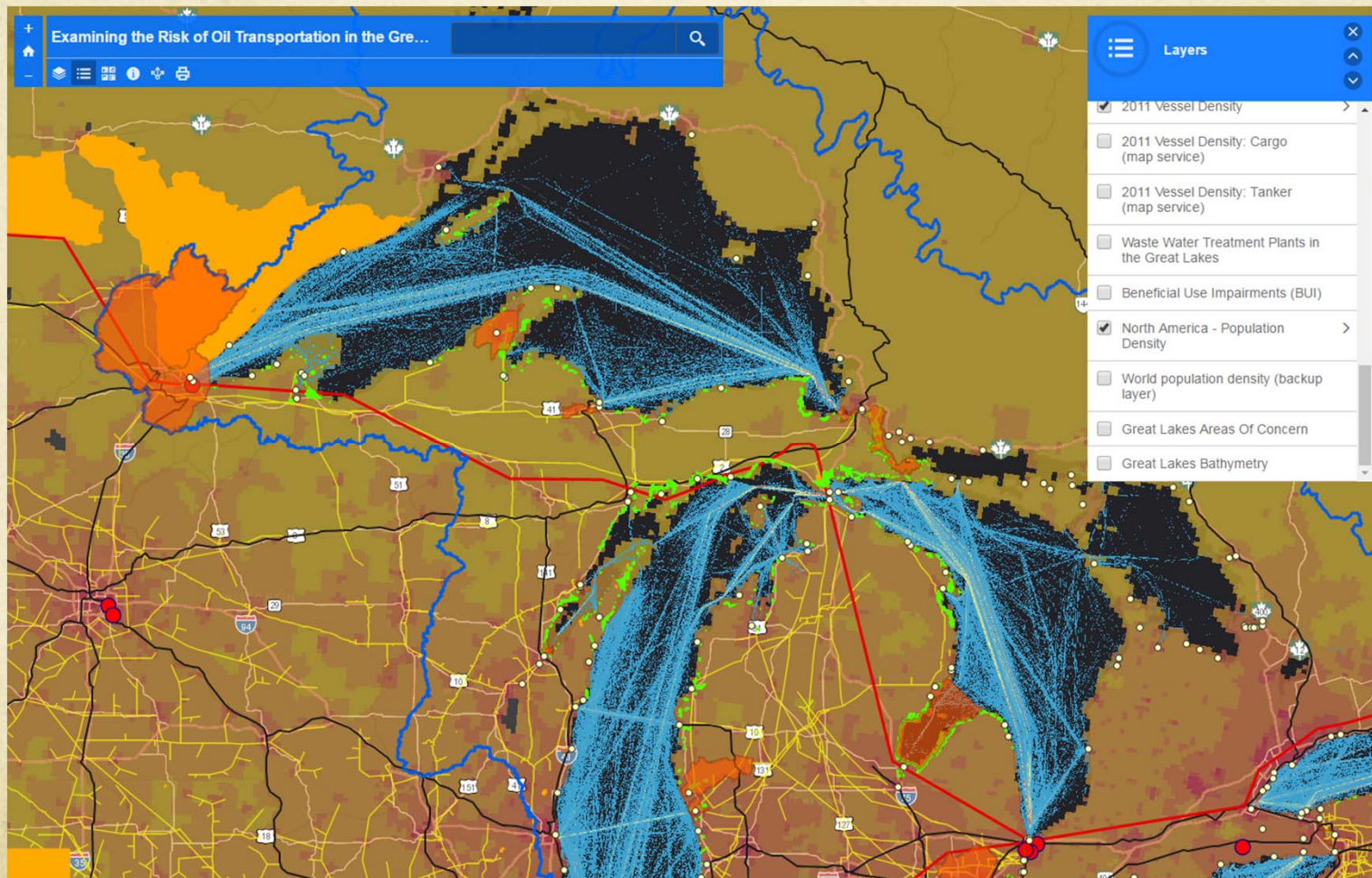
Oil Pollution Act ("OPA")

- Exxon Valdez highlighted gaps in the US regulatory framework.
- Among its provisions, OPA tried to fill these gaps with:
 - New vessel construction requirements
 - Requiring planning for oil spills
 - Expanding the federal response process and enforcement authority
 - Increasing penalties and potential liabilities

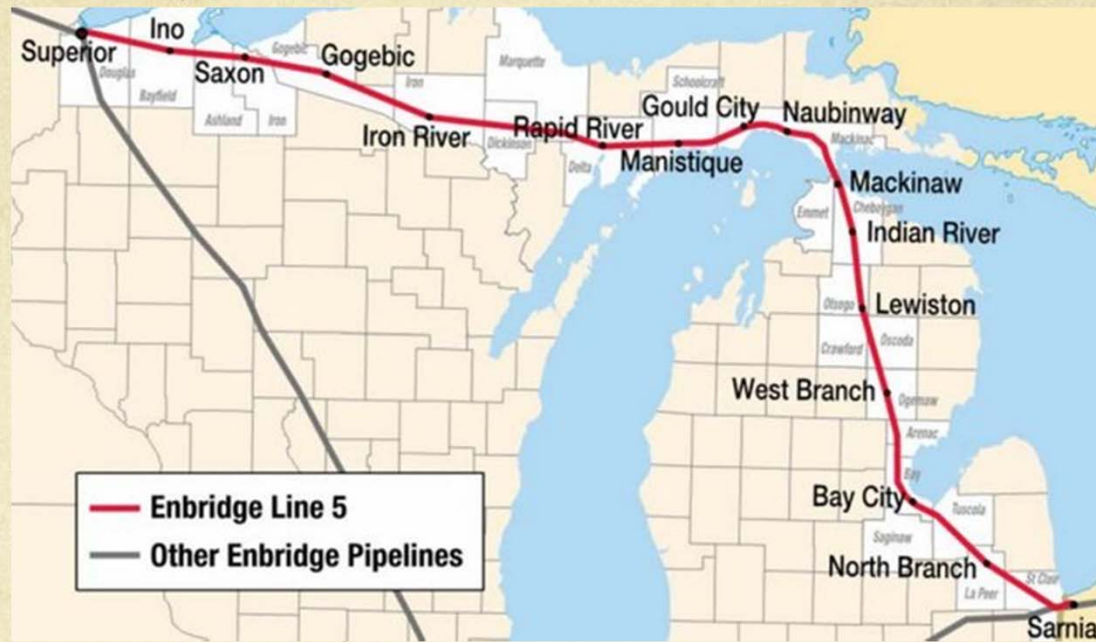
Spill Prevention

- Certain facilities are required to prepare Facility Response Plans- FRPs
- Applies to owners and operators of offshore and onshore facilities that could reasonably be expected to cause "substantial harm" to the environment by discharging oil into or on navigable waters
- Must submit plan to EPA
- Lays out how the facility will respond to an oil spill

Vessels: Flashback to Jamie's Presentation



Pipelines



Rail



Sûreté du Québec ✓

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[#déflagration](#) à [#LacMégantic](#) : photographie prise à partir de l'hélicoptère de la Sûreté du Québec.



RETWEETS

375

LIKES

32



7:21 AM - 6 Jul 2013



375



32



Oil Spill Regulation

- Clean Water Act § 311:
 - Prohibits discharge of oil in harmful quantities into navigable waters and adjoining shorelines.
 - Violations subject to civil and criminal penalties
- Oil Pollution Act of 1990
 - Discharge of oil
 - Into navigable waters
 - That is “harmful to public health or welfare or the environment”

Oil Pollution Act of 1990

- Responsible Parties (RP) have strict liability for damages and cleanup costs
 - RPs include the lessee or permit holder of the area and owners/operators of the vessels and pipelines
- Defenses to liability limited to acts of God, acts of war or acts of third parties (carefully defined)
- Liability capped at total of all removal costs plus \$75 million per incident
 - Cap lifted where incident was caused by gross negligence, willful misconduct, or violation of a federal safety, construction, or operating regulation
 - Lifted if RP fails to report incident or cooperate in removal activities
 - Govt. bears burden of proof that the liability limits do not apply

Damages – 6 Types

- 3 only recoverable by government:
 - Damages for injury or loss of natural resources
 - Damages for increased cost of public services incurred by the state during the removal activities
 - Damages equal to net loss of taxes, royalties, rents and fees owed to governments
- 3 recoverable by private claimants:
 - Economic losses from destruction of real or personal property
 - “the loss of profits or impairment of earning capacity due to the loss of property or natural resources”
 - Damages due to loss of subsistence use of natural resources

Criminal & Civil Penalties

- CWA civil penalties –
 - For unlawful discharge, failure to remove discharge, or failure to comply with an order relating to discharge
 - Standard Penalty: Up to \$25,000 per day or \$1,000 per barrel discharge
 - If gross negligence or willful misconduct, no less than \$100,000
- CWA criminal violations include negligent discharge of oil (added by OPA)
- Other statutes with criminal provisions include the Migratory Bird Treaty Act, the Outer Continental Shelf Lands Act, the Refuse Act, and the Endangered Species Act

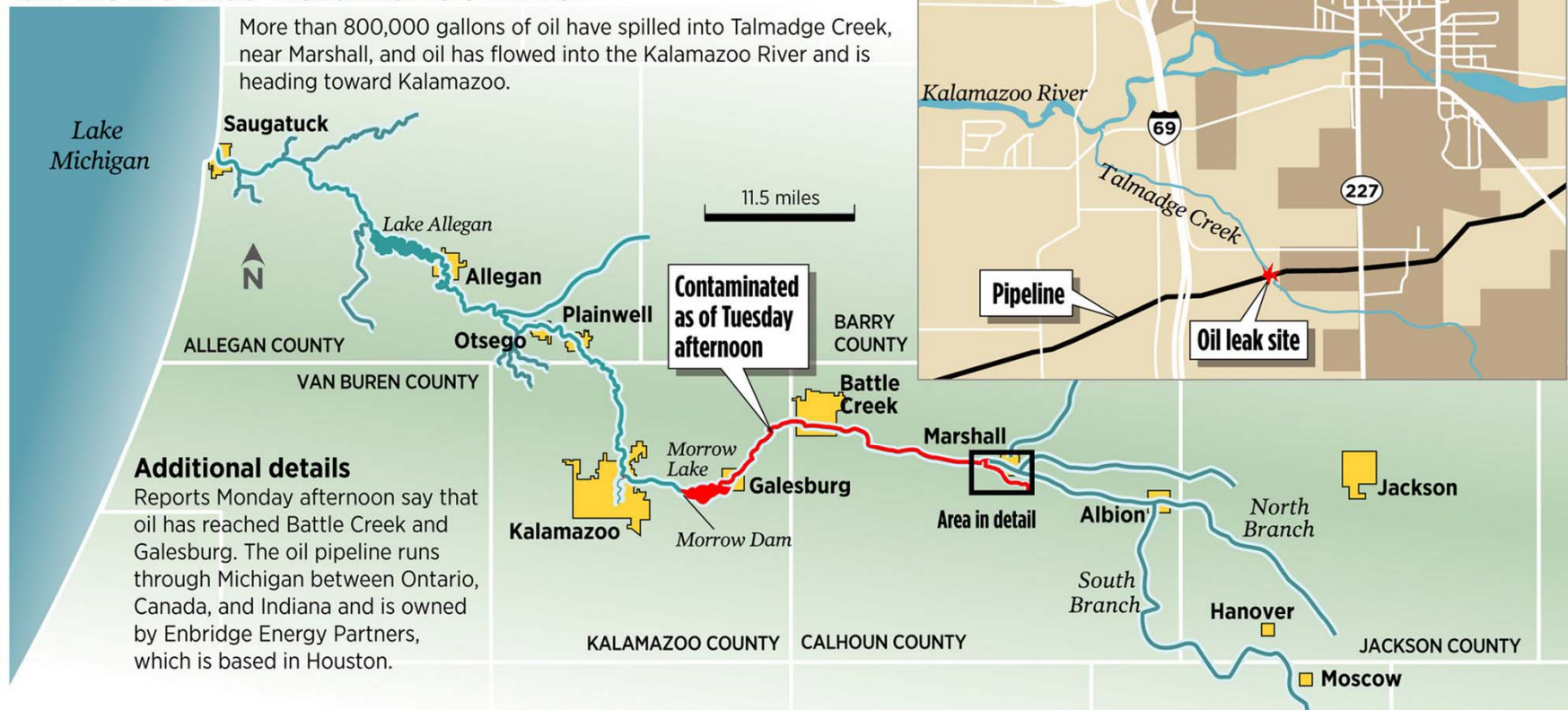
Factors in Determining Penalty under the CWA

1. Seriousness of violation(s)
2. Any economic benefit to the violator
3. Degree of culpability
4. Any other penalties from the incident
5. History of prior violations
6. Nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge
7. Economic impact of the penalty on the violator
8. Other matters as justice may require



Oil flows into Kalamazoo River

More than 800,000 gallons of oil have spilled into Talmadge Creek, near Marshall, and oil has flowed into the Kalamazoo River and is heading toward Kalamazoo.



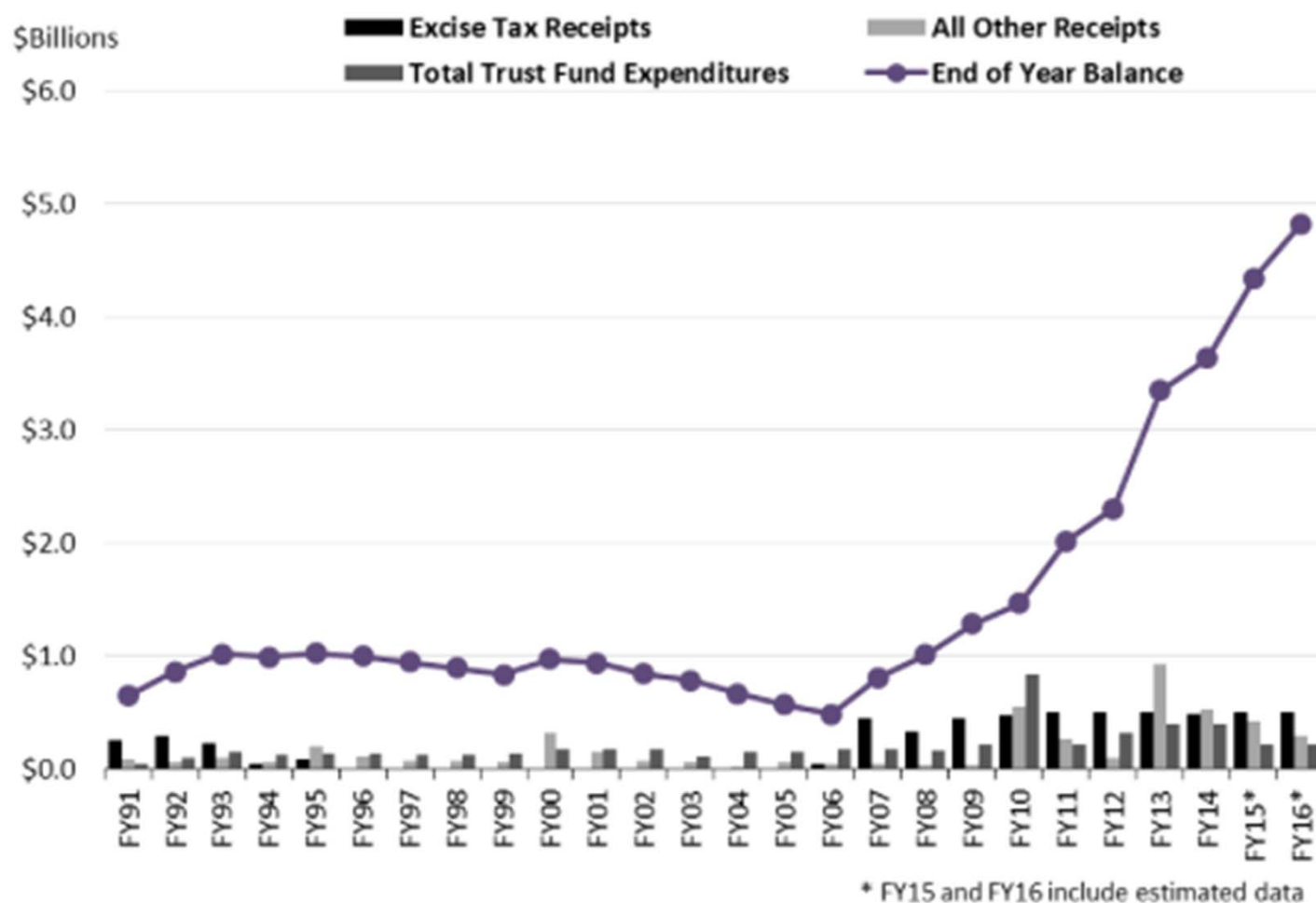
Source: Michigan Department of Natural Resources and Environment

GAZETTE GRAPHIC/KRIS KINKADE

Oil Spill Liability Trust Fund

- Provides emergency response funding
- Used to pay for removal costs and other damages that the Responsible Party (RP) has not covered
 - Including damages to private claimants if RP is unable or unwilling to pay
- Spending limit of \$1 billion per incident and natural resource damages cannot exceed \$500 million (of the total)
 - Efforts to raise cap after BP spill
- Funded by \$.05 per barrel tax on crude oil received at refineries or on petroleum products imported to, consumed in, or warehoused in the United States, to a level of \$1 billion
- Raised to \$.08 per barrel through 2016 by the Energy Improvement and Extension Act of 2008

Figure 2. Oil Spill Liability Trust Fund
Receipts, Expenditures, and End-of-Year Balances



Source: Prepared by CRS; data from annual Office of Management and Budget, *Budget of the United States Government*, Appendices.

Notes: The initial gap between the end-of-year balance (line) and the receipts-expenditures columns is due to the FY1991 starting balance of \$358 million. The relative increases in "other receipts" in 1995 and 2000 are due to transfers from the Trans-Alaska pipeline fund of \$119 million and \$182 million, respectively. The increases in expenditures and "other receipts" between 2010 and 2013 are related to the 2010 Deepwater Horizon oil spill.

Oil Taxed v. Oil Covered

- “Oil” has a different meaning under the tax code and OPA.
- 2011 IRS Technical Advice Memorandum: “tar sands imported into the United States are not subject to the excise tax imposed by § 4611 of the Internal Revenue Code.”
- OPA oil definition- “[O]il” means oil of any kind or in any form.
- What does this mean?

Resources

- Great Lakes Commission- Issues and Trends Surrounding the Movement of Crude Oil in the Great Lakes-St. Lawrence River Region:
 - <http://glc.org/files/projects/oil/GLC-Oil-Report-20150220-FINAL.pdf>
 - <http://glc.org/files/projects/oil/GLC-Oil-Report-IssueBrief4-20150220.pdf>
- OSLTF- Congressional Research Service:
 - <https://www.fas.org/sgp/crs/misc/R43128.pdf>

Thank You!

NSGLC Website:

<http://nsglc.olemiss.edu/>

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