

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**PROSECUTION STAFF SUMMARY REPORT
(Cecilio Felix)
MEETING DATE: April 9, 2008**

ITEM: 5

SUBJECT: **Cosco Busan Oil Spill – Hearing to Consider Resolution Authorizing Referral to Attorney General for Judicial Enforcement of November 2007 Oil Spill**

CHRONOLOGY: No prior board actions on this item

DISCUSSION: The attached Resolution (Appendix A) refers the November 7, 2007, Cosco Busan oil spill case to the California Attorney General's Office and authorizes the Attorney General to seek judicially imposed civil penalties and/or other remedies on behalf of the Water Board. Given the gravity of the spill, this referral will allow the Board to pursue greater civil liability than would otherwise be allowed if the Board adopted an administrative civil liability order, as well as enable the Attorney General to coordinate with other State agencies that may be seeking judicial remedies.

In January 2008, based on the evidence in the record, Board staff circulated a tentative resolution authorizing the Cosco Busan oil spill case to the Attorney General's Office. That tentative resolution named only Regal Stone Limited, the ship owner. Since then, lawsuits claiming damages from multiple parties were filed in state and federal courts (Appendix B), and the US Coast Guard recently issued an Incident Specific Preparedness Review report (ISPR) (Appendix C) describing the incident and the involvement of various parties.

Based on developments in the case, including an evaluation of the lawsuits, the ship's vessel contingency plan, and the ISPR report, staff revised and recirculated a tentative resolution in March. The revised resolution names as dischargers Regal Stone Limited, the owner of the Cosco Busan; Fleet Management Ltd, the ship operator; Hanjin Shipping Co., Ltd., lessee of the vessel; Synergy Maritime Ltd., employer of the crew; and John Cota, the ship pilot.

The only written comments staff received are from Hanjin Shipping Co., Ltd. (Appendix D). Hanjin requested that they not be named in the referral for the following reasons: 1) Hanjin did not lease the vessel, rather, they only chartered the vessel for the transport of cargo; 2) Hanjin's control of the vessel was limited to specifying the vessel's ports of call and contracting space for transport of cargo; and 3) Hanjin had no control of the crew, officers, operation,

nor the navigation of the vessel, and thus did not cause or permit the discharge. Hanjin asserts that based on prior court rulings and their interpretation of the Water Code, they should not be held strictly liable for the release.

The revised tentative resolution has not been modified to exclude Hanjin as a discharger. The facts as to Hanjin's role in the spill have yet to be fully borne out; however, prosecution staff believe that at this preliminary stage Hanjin caused or permitted a discharge. First, as the ship charterer, Hanjin was for all practical purposes the lessee of the vessel. There are numerous State Board orders holding lessees responsible for discharges into waters of the State. Second, it is alleged in the City of San Francisco's lawsuit that Hanjin owned the spilled bunker fuel, further giving rise to liability. Accordingly, it is appropriate to include Hanjin in the proposed resolution. The Attorney General can decide to not include Hanjin in the lawsuit if during the course of their investigation evidence suggests that Hanjin did not have the requisite knowledge and control to be liable.

Although the attorney for John Cota has verbally requested that Mr. Cota not be named, no written comment expressing this request was submitted.

RECOMMEN-
DATION:

Adopt the Revised Tentative Resolution Authorizing Attorney General Referral

ATTACHMENTS

Appendix A – Revised Tentative Resolution for Referral to Attorney General
Appendix B – Complaint filed by City and County of San Francisco, City of Oakland, City of Richmond, and People of the State of California in California Superior Court, and Complaint filed by USA in US District Court
Appendix C – US Coast Guard ISPR Report
Appendix D – Comments on the Revised Tentative Resolution

APPENDIX A

Revised Tentative Resolution for Referral to Attorney General

APPENDIX B

Complaint filed by City and County of San Francisco, City of Oakland, City of Richmond, and People of the State of California in California Superior Court

Complaint filed by USA in US District Court

APPENDIX C

Incident Specific Preparedness Review (ISPR) report

APPENDIX D

Comments on the Revised Tentative Resolution