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As you know, we have all been concerned over the approach of August 8 - the deadline established by the U.S. Congress for all non-tank vessels of 400 gross (ITC) tons or more to have a Coast Guard approved oil spill response plan. It now appears that deadline will no longer technically apply.

In a notice published Friday, June 24 in the Federal Register, the Coast Guard has stated that it "... will not enforce the Act until regulations are issued and in effect." As you all know, the Coast Guard issued NVIC 01-05 in February of this year, which sets out interim "guidelines" for response plans, but the Coast Guard has stated that the NVIC is not itself enforceable, and that Coast Guard enforcement must await effective final regulations. In light of the procedure for proposing, soliciting comments, and finalizing any regulation, it seems highly unlikely the regulation will be in effect for a number of months.

However, while the pressure of the August 8 deadline may technically be off, there are good reasons for vessels that are, or think they may be, 400 ITC tons or more to proceed with submitting and obtaining approval of response plans, pursuant to the NVIC guidelines. Although the Coast Guard will apparently not be expressly basing any negative actions upon the lack of an approved plan after August 8, it is quite likely they will take note if a vessel lacks such a plan by that date, and may be more critical of any enforceable problems that are found during inspections. Should a covered vessel have a spill after August 8 and before obtaining approval of a cleanup plan, it is possible the absence of a plan will be reflected in the fines the Coast Guard decides to impose.

Last but not least, of course, is the fact that a vessel that has a pre-arranged cleanup plan with a contractor is likely to save a good deal in costs and general grief in dealing with the cleanup if and when a spill occurs.

As you know, several national cleanup contractors in the U.S. are offering to prepare contingency plans for individual vessels that will meet the current guidance set out in the NVIC, and to do so for very low prices. (One exception to this may be for vessels that operate in very remote areas of the U.S. or its territories, where there are few available cleanup contractors and where, therefore, the cost of obtaining a plan and enrolling with an available contractor may be quite high.)

Therefore, vessel owners and operators should not put the non-tank vessel response plan requirement out of their minds simply because the technical compliance deadline has been

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delayed. The reality is that such plans will ultimately be required; and even before they are, vessel owners stand to avoid a good deal of expense and aggravation if they have a plan in place.

The Coast Guard's June 24 notice also has a brief discussion on the issue of ultimately applying the non-tank response plan requirement to vessels that do not have an official measurement under the International Tonnage Convention - the system of measurement to be used in determining if a vessel must comply with the plan requirement -- but rather are measured only in registered tonnage. The Coast Guard warns that a vessel's registered tonnage is generally less than what its ITC measurement would be, and suggests that vessel owners assume that vessels at or somewhat less than 400 registered tons will probably be subject to the plan requirement. Comments as to how to deal with vessels that do not have an ITC measurement are solicited.

You may access a copy of the June 24 Federal Register containing the Coast Guard's notice at <http://www.legros.com/aboutus/resources.php>.