

Congress of the United States
Washington, DC 20515

November 5, 2009

Secretary Janet Napolitano
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Admiral Thad W. Allen
Commandant
United States Coast Guard
Coast Guard Headquarters
2100 Second Street, SW
Washington, DC 20593

Dear Secretary Napolitano and Commandant Allen:

We were recently very disappointed to learn that the United States Coast Guard is preparing to challenge a new Commonwealth of Massachusetts law that will dispatch state-provided escort tugs to oil barges transiting through Buzzards Bay, (Chapter 101 of the Acts of 2009 “An Act Preventing Oil Spills in Buzzards Bay”). We request that the Coast Guard respect Massachusetts’ right to implement these appropriate safeguards that are inarguably within the state’s jurisdiction, and we strongly urge the Coast Guard to take no legal action against the Commonwealth.

This important law was enacted in response to the devastating oil spill that occurred in Buzzards Bay when a barge ran aground and leaked an estimated 100,000 gallons of heavy oil into the bay. In light of the recent and previous oil spills by barges in the Buzzards Bay area, we believe that Massachusetts’ new requirements on oil barges are prudent and necessary. Furthermore, this law was specifically drafted to avoid Constitutional preemption arguments that were previously brought by the Department of Justice and the United States Coast Guard in federal court against the 2004 Massachusetts Oil Spill Prevention Act.

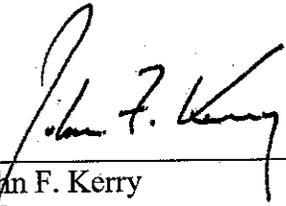
This new law places the burden on the Commonwealth to provide the escort tugs to oil vessels, rather than a state requirement that the vessel hire an escort tug. Massachusetts clearly has a right to provide such a service. Additionally, the new law also provides industry with the opportunity to request a state licensed pilot to navigate the barge through the Bay, but in no way does it require industry to take that pilot. We also find the Coast Guard’s objections unusual since a nearly identical law was signed by Governor Patrick in 2008, (Chapter 268 of the Acts of 2008 “An Act Further Protecting Buzzards Bay”) requiring the state to dispatch tugs to accompany oil barges through Buzzards Bay, the Coast Guard rightfully did not challenge this law. This 2009 law was passed to clarify the 2008 law.

Furthermore, the United States Coast Guard’s letter is surprising in light of the May 20, 2009 Memorandum to the Heads of Executive Departments and Agencies from President Obama regarding preemption. The President’s memorandum explicitly recognizes that both State and Federal law “often operate concurrently to provide independent safeguards for the public.” and “Throughout our history, State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government.” It goes on to state that the

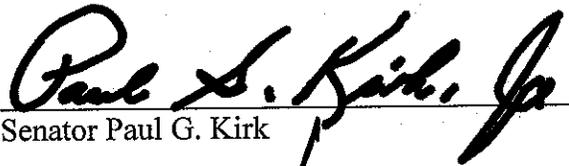
“preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is appropriate for them to apply to themselves rules and principles that reflect these circumstances and values.”

The State legislature has passed a comprehensive bill that will make great strides in preventing future spills in the region. We urge you to comply with our request, and not challenge this important law. Thank you for your time and attention to this matter and we look forward to your response.

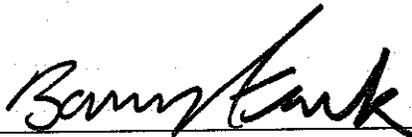
Sincerely,



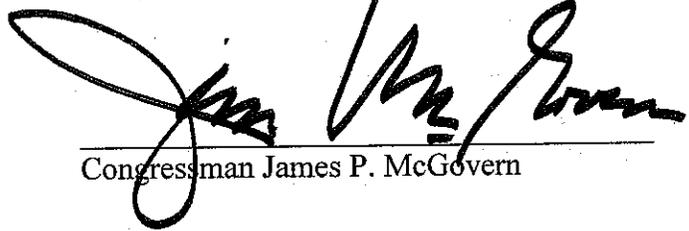
Senator John F. Kerry



Senator Paul G. Kirk



Congressman Barney Frank



Congressman James P. McGovern



Congressman William D. Delahunt