GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington D C 20230

April 12, 2005

The Honorable Don Young
Chairman, Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515-6256

Dear Mr. Chairman:

This letter provides the views of the Department of Commerce on H.R. 1412, the "Delaware River Protection Act of 2005." The Department supports the intent of this legislation to better prepare the Nation to respond to spills, and appreciates support for the National Oceanic and Atmospheric Administration's (NOAA's) efforts in oil spill response and research.

H.R. 1412 amends several existing laws, including the Oil Pollution Act of 1990 and the Federal Water Pollution Control Act. The Department supports the changes made to the Oil Pollution Act to create a submerged oil removal program. The Department defers to the Department of Homeland Security with regard to those provisions of H.R. 1412 that would adjust the limits of liability for tank vessels, update the Philadelphia Area Contingency Plan, and establish a Delaware River and Bay Oil Spill Advisory Committee.

The Department believes that the response to the *M/T Athos I* spill might have been more efficient if methods were available to quickly identify the subsurface location of submerged oil. The additional research authorized in Section 7 of this bill could assist in identification and testing of new response technologies for that purpose. However, the Department recommends further broadening the research and development program language. More detailed comments on the bill are enclosed.

The Department requests that the authorization levels be consistent with the President's FY 2006 Budget Request. The Department of Commerce appreciates the opportunity to present views on H.R. 1412, and we look forward to working with you as this bill moves through the legislative process. The Office of Management and Budget has advised that there is no objection to the transmittal of these views from the standpoint of the Administration's program.

Sincerely,

Jane T. Dana

Jane T. Dana
Acting General Counsel

Enclosure

cc: The Honorable James L. Oberstar

SPECIFIC COMMENTS BY THE DEPARTMENT OF COMMERCE (DEPARTMENT) ON H.R. 1412, THE DELAWARE RIVER PROTECTION ACT

Section 3

Section 3 of H.R. 1412 places a high priority on enhancing the Army Corps of Engineers' capabilities to detect submerged obstructions in navigable channels through the use of advanced sonar and other technologies. As the Federal Government's other leader in detecting submerged obstructions, the Commerce Department's National Oceanic and Atmospheric Administration (NOAA) works extensively with the private sector, the University of New Hampshire Joint Hydrographic Center, and Federal partners, on sonar technology improvements. The Department recommends identifying NOAA as a Federal Government leader in the detection of submerged obstructions, in addition to the Army Corps of Engineers. This change would emphasize NOAA's important role in both technology development and operations to detect obstructions to navigation.

The Department suggests the following language (changes/additions are shown in italics):

> "SEC. 3. SENSE OF CONGRESS REGARDING THE DETECTION OF SUBMERGED OBSTRUCTIONS *FOR NAVIGATION SAFETY.*
>
> It is the sense of the Congress that the Secretar*ies* of the Army *and Commerce* should—
>
> *"(1) place a high priority on enhancing the Army Corps of Engineers' and the National Oceanic and Atmospheric Administration's capabilities to detect submerged obstructions in the navigable waterways of the United States through the use of advanced sonar and other technologies; and..."*

Section 7

Section 7 of H.R. 1412 would amend the Oil Pollution Act of 1990 by adding Section 7002, "Submerged Oil Program," which would create a new submerged oil research and development program within NOAA, in collaboration with the U.S. Coast Guard. Under H.R. 1412 the U.S. Coast Guard, in conjunction with NOAA, would conduct a demonstration project on submerged oil removal techniques. The current bill language requires this demonstration project to take place in the Delaware River. The Department believes allowing flexibility in the location of such demonstration projects would allow for the most cost-effective and useful test possible. If the intent is for the U.S. Coast Guard to demonstrate the technology developed by NOAA pursuant to this section, the Department agrees with the views expressed by the Department of Homeland Security that the timeline for the project should reflect this intent more clearly.

Additionally, it is important to note that in the past it has been very difficult to obtain the appropriate permits necessary to conduct a controlled spill exercise. For this reason, if it is the intent of the Committee that the U.S. Coast Guard, NOAA, and their partners conduct a controlled spill in the Delaware River in order to fulfill the requirements of the demonstration project, then the Department agrees with the recommendation of the Department of Homeland Security that the project's timeline be extended.

The Department agrees that further research is needed in areas of spill response, such as submerged oil. Overall, research in both the private and public sectors has declined dramatically as large spills have become less frequent.

The Department also recommends adding the concept of "detection" to the language in Section 7. This addition would allow us the opportunity to explore alternate technologies such as Remote Operated Vehicles and sonar. The Department suggests the following language, which modifies Section 7002(a)(1) and provides a new subsection (a)(1)(c). Additions are shown in italics:

> "(1) ESTABLISHMENT.—The Undersecretary of Commerce for Oceans and Atmosphere, in conjunction with the Commandant of the Coast Guard, shall establish a program to *detect*, monitor, and evaluate the environmental effects of submerged oil. Such a program shall include the following elements:
>
> " (A) The development of methods to remove, disperse, or otherwise diminish the persistence of submerged oil.
>
> " (B) The development of improved models and capacities for predicting the environmental fate, transport, and effects of submerged oil.
>
> *" (C) The development of techniques to detect and monitor submerged oil."*