Statement of

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Good morning, Mr. Chairman. I am Tom Allegretti, President and CEO of The American Waterways Operators (AWO). On behalf of AWO's 350 member companies, thank you for the opportunity to testify at this important hearing.

We are here today because the members of AWO share your deep disappointment and, indeed, anger at the situation that gave rise to this hearing – the oil spill that fouled more than a hundred miles of the Lower Mississippi River in July, soiling the marine environment and disrupting maritime commerce. We know that Congress and the public have zero tolerance for oil spills, and rightly so. For the hundreds of AWO members who try hard to do the right thing, day in and day out, this accident is a sobering reminder that while we are proud of our industry's safety record and the dramatic declines in accidents and spills that we have achieved over the past decade, we are not yet where we need to be. We can, and must, do better. Zero spills is our goal, as it is yours.

We understand from Coast Guard and media reports that when this spill occurred, the towboat *Mel Oliver*, operated by DRD Towing, was under the control of an individual who lacked the legal authority to operate the vessel except under the direct supervision of a licensed Master or Mate/Pilot. The master had apparently left the vessel, leaving an Apprentice Mate/Steersman in charge. Let us be clear: this is a violation of current law, Coast Guard regulation, and the AWO Responsible Carrier Program.[1] AWO will neither defend nor seek to explain away such conduct on the part of any company in our industry. It is simply unacceptable and it is inexcusable.

We are here today because we share the Subcommittee's determination that accidents like this one never happen again. We offer below four recommendations for actions that Congress, the Coast Guard, and our industry can take in support of this essential goal. First, however, we want to place this accident in context by providing some important information on our industry's safety record and the initiatives we have undertaken over the past 15 years to live out our commitment to marine safety and environmental stewardship. We know that context can be cold comfort when oil is in the water and people and the environment are suffering from the effects of a major spill. But, the truth is that this spill is not representative of the way our industry operates and the care we take to uphold the public trust.

The Tugboat, Towboat and Barge Industry in Context

The tugboat, towboat, and barge industry is the largest segment of the U.S.-flag domestic fleet, operating nearly 4,000 tugboats and towboats and over 27,000 dry and liquid cargo barges on the inland rivers, on the Atlantic, Pacific and Gulf coasts, on the Great Lakes, and in ports and harbors around the country. Barges and towboats are a vital part of America's transportation system. The industry safely and efficiently moves over 800

[1] DRD Towing, which failed an AWO Responsible Carrier Program recertification audit in May, failed to complete the process of requesting probationary status from AWO and had its membership terminated on August 5.

million tons of cargo each year in the domestic commerce of the United States. These cargoes are vital building block commodities on which American farmers, factories and consumers depend. Our industry employs more than 30,000 American mariners as crewmembers on our vessels, providing good family-wage jobs with great potential for career advancement.

The tugboat, towboat, and barge industry is safe, environmentally responsible, cost-efficient, and uncommonly progressive in partnering with government to make our nation's waterways as safe and as clean as possible. Last year, a study conducted by the Texas Transportation Institute for the U.S. Department of Transportation found that inland waterways transportation is the safest, most environmentally-friendly and most economical form of freight transportation. In a modal comparison, the study found that waterways transportation has the lowest personnel injury and fatality record, the lowest hazardous material spill record, and generates the least amount of emissions compared to rail or truck transportation. Last year, our industry achieved record lows for crew fatalities and tank barge oil spills. Between 1994 and 2007, tank barge spills declined by 99.5%, and tank barges account for a smaller percentage of marine spill volume than tank ships, cargo ships, and marine transportation facilities. Today, the U.S. tank barge fleet is 85% double-hulled, well ahead of the 2015 deadline set by the Oil Pollution Act of 1990.

The Industry's Safety Journey

These impressive results are not a coincidence. They are the result of more than 15 years of concerted industry effort – in cooperation with Congress and the Coast Guard – to put into practice our commitment to safe operation and zero spills. Fourteen years ago, AWO became the first transportation trade association to establish a code of safe practice and environmental stewardship for member companies. Since 2000, the AWO Responsible Carrier Program (RCP) has been a condition of membership in AWO, and members must pass an independent safety audit every three years or forfeit their membership in the association. The program has evolved over time. We have incorporated new requirements – some based on the lessons of past casualties – and established more stringent training and qualification standards for RCP auditors. We are serious about the integrity of the RCP, and we have put our money where our mouth is, terminating the memberships of more than two dozen companies over the last eight years for failure to comply with the terms of the program. DRD Towing is the most recent example.

AWO was also the first maritime trade association to establish a public-private sector partnership with the Coast Guard. The Coast Guard-AWO Safety Partnership, established in 1995, is a serious, working partnership aimed at getting ahead of safety or environmental challenges and taking proactive steps to address them. Over the last 13 years, the Partnership has launched more than 30 Quality Action Teams on subjects ranging from preventing crewmember falls overboard, to safe operational procedures in the event of high or low water, to practices for the safe management of crew travel time. Through the Partnership, AWO member leaders meet regularly with the Coast Guard to

track trends in industry safety performance and develop interventions to keep those trends moving in the right direction.

We have also worked closely with Congress and the Coast Guard to make sure that all companies – not just those who choose to belong to AWO – live by the same high standards. Five years ago, the leadership of the tugboat, towboat, and barge industry took the unprecedented step of asking the Commandant of the Coast Guard to request statutory authority from Congress to establish a new inspection regime for towing vessels. Over the past four years, we have worked closely with the Coast Guard – with oversight and leadership from this Subcommittee – to implement the Congressional mandate incorporated in the Coast Guard and Maritime Transportation Act of 2004. We took this step because we believed it was necessary to take our industry to the next level of safety. We are proud of the safety accomplishments we have achieved through the Responsible Carrier Program, but we recognized a legitimate and essential role for government in helping us build on our successes and ensure that they extend throughout the entire industry. Safety begins in the corporate boardroom, and the RCP is based on that fundamental premise. When companies are unwilling to embrace their responsibility, government must step in.

With strong industry support, the Congressionally-authorized Towing Safety Advisory Committee (TSAC), a federal advisory group that includes representatives from the barge and towing industry, maritime labor, cargo shippers, ports and terminals, and the general public, has recommended an innovative and effective regulatory approach to towing vessel inspection that would, among other things, require all towing companies to implement a safety management system like the Responsible Carrier Program or the International Safety Management (ISM) Code. The goal of this approach is to meet all of the statutory requirements established by Congress for inspected vessels while focusing the program on what statistics consistently demonstrate to be the biggest cause of towing vessel casualties: human error, whether in the actions of personnel onboard a vessel or management decisions made on shore. This approach is consistent with the National Transportation Safety Board's 2000 recommendation that the Coast Guard require all towing companies to implement a safety management system.

Under the TSAC-recommended approach to towing vessel inspection, failing a safety audit would trigger immediate notification of the Coast Guard, which would force the company to correct the problem or get its vessels off the water. A company's vessels could lose their license to operate – their Certificates of Inspection – in the case of serious safety management system violations. To put teeth in the program without creating unnecessary burdens for the vast majority of companies who work hard to do the right thing, TSAC has recommended a risk-based enforcement regime in which companies with questionable safety records or poor performance on safety audits would be subject to the lion's share of Coast Guard enforcement resources.

Recommendations

In short, accidents like the *Mel Oliver* spill are not the norm in our industry. The culture of mediocrity that gives rise to such incidents stands in stark contrast to the culture of safety and stewardship that AWO members have embraced and continually worked to strengthen over the past 15 years. Both this Subcommittee and the Coast Guard can count on AWO to be a willing partner in working to ensure that such incidents never happen again. To that end, we offer four recommendations for action:

1. First, the Coast Guard should publish a notice of proposed rulemaking (NPRM) by the end of the year to implement Congress's 2004 towing vessel inspection mandate, based on the recommendations of the Towing Safety Advisory Committee. While operation of the *Mel Oliver* without a properly licensed master on board was a clear violation of existing law and Coast Guard regulation, TSAC's emphasis on a safety management system as a core component of the forthcoming inspection regulations would provide an important additional tool for preventing such incidents in the future. Non-compliance with a safety management system is a leading indicator of casualties. Had the TSAC-recommended inspection regulations been in place this year, the Coast Guard would have been notified when the company operating the *Mel Oliver* failed a third-party safety management system audit in May, which could have forced the company to tighten up its procedures for ensuring that only properly licensed personnel crew its vessels. The inspection rulemaking is a complex regulatory package, but the Coast Guard has received extensive technical input from TSAC and has already done most of the hard work; the agency should publish the NPRM as soon as possible, but certainly not later than the end of this year.

2. Second, the Coast Guard should institute a targeted enforcement program that focuses on towing companies known to have marginal operating practices and safety records. This kind of risk-based enforcement scheme is another core component of the TSAC recommendations for the towing vessel inspection regime, but the Coast Guard need not wait until the new rules are published to exercise its existing authority to enforce current law and regulation. This should be done without disrupting the operations of the vast majority of towing companies and vessels that operate safely and within the bounds of current law. While the culture of mediocrity is not the norm in our industry, both industry and the Coast Guard know that pockets of substandard operation still persist – and where to find them. The Coast Guard should identify those operators whose performance evidences insufficient regard for the law and target its enforcement resources on those companies.

3. Third, AWO should – and will – develop a procedure to provide its member companies with real-time information when a company fails a Responsible Carrier Program audit. The Responsible Carrier Program requires participating companies to abide by "vendor safety" procedures for ensuring that companies that provide towing and fleeting services to their vessels comply with

appropriately high standards of safety. AWO will develop a means to provide immediate notification to all of our members when a company has failed an RCP audit in order to facilitate their exercise of due diligence with respect to the safety of their vendors.

4. Fourth, the Coast Guard should work with the Towing Safety Advisory Committee to review Navigation and Vessel Inspection Circular (NVIC) 4-01, which provides guidance on implementing the towing vessel officer licensing regulations, and make any needed clarifications and improvements. While the *Mel Oliver* spill did not result from a lack of understanding of current Coast Guard guidance, we believe this unfortunate incident can serve as a "teachable moment" and an opportunity to add clarity to areas of the regulations that may not be consistently understood throughout the industry. The Coast Guard should also work with industry – through TSAC, the Coast Guard-AWO Safety Partnership, and other appropriate vehicles – to educate towing companies and mariners on compliance issues such as what it means to "directly supervise" an individual holding an Apprentice Mate/Steersman license.

Conclusion

Mr. Chairman, Mr. Ranking Member, and Members of the Subcommittee, thank you for the opportunity to testify today. Allow me to conclude by reiterating AWO's deep commitment to working with you and with the Coast Guard to ensure that the culture of safety and stewardship is embraced throughout the tugboat, towboat, and barge industry. We are committed to learning the lessons of the *Mel Oliver* spill and to ensuring that some good comes forth from this terrible incident. You can be assured that we will work with you to implement the recommendations we have offered here and to learn whatever other lessons may emerge when the Subcommittee's hearing record is complete and the Coast Guard's casualty investigation is concluded. Please know that you have in AWO a partner in good faith who shares your commitment to upholding the public trust and to operating on our nation's waterways with constant attention to safety, stewardship, and full compliance with the law.

Thank you.