



U.S. Department of Justice

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MJS

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PRESS RELEASE

**BOUCHARD TRANSPORTATION COMPANY AGREES  
TO PLEAD GUILTY TO CRIMINAL CHARGES AND PAY \$10 MILLION FINE  
RELATED TO APRIL 2003 BUZZARDS BAY OIL SPILL**

Boston, MA... United States Attorney Michael J. Sullivan; Michael E. Hubbard, Special Agent in Charge of the Environmental Protection Agency Region I's Criminal Investigation Division; William Schenkelberg, Special Agent in Charge of the Northeast Region of the U.S. Coast Guard Investigative Services; and Thomas J. Healy, Special Agent in Charge of the U.S. Fish and Wildlife Service's Office of Law Enforcement, announced today the filing of a criminal Information charging **BOUCHARD TRANSPORTATION COMPANY** ("BTC"), based in Hicksville, New York, in connection with the April 27, 2003 oil spill in Buzzards Bay. In a plea agreement also filed with the Court today, **BTC** has agreed to plead guilty to both counts in the Information, pay a fine of \$10 million, and comply with several remedial measures designed to prevent any future spills by **BTC**.

The Information charges **BTC** with one count of violating the Clean Water Act by negligently causing the discharge of thousands of gallons of oil into Buzzards Bay on April 27, 2003, when the oil barge its tugboat was towing, traveled outside the clearly marked Buzzards Bay channel and struck rocky shoals lying at a depth of 22 feet. **BTC** negligently caused the oil spill because its employee, the mate in charge of the vessel, operated the tugboat in a negligent manner and because **BTC** allowed this individual to remain at the helm of one of its tugboats despite repeated concerns that were raised about his competency.

The second count of the indictment alleges that **BTC** violated the Migratory Bird Treaty Act by killing protected bird species as a result of this oil spill. According to the Information, the April 2003 oil spill killed 450 federally protected birds, necessitated the closure of thousands of acres of shellfish beds in Buzzards Bay, and affected close to 90 miles of Massachusetts' beaches and coastline.

"The U.S. Attorney's Office is committed to protecting the precious natural resources in Buzzards Bay and throughout the Commonwealth," stated U.S. Attorney Sullivan. "This substantial fine of \$10 million will provide critically needed funds to enhance conservation efforts. Bouchard Transportation will also be required to comply with strict requirements aimed at preventing this type of environmental tragedy from ever happening again."

### The Criminal Charges

As alleged in the Information, the oil spill occurred during the afternoon of April 27, 2003, a bright and clear day. A BTC owned and operated tugboat, named the *Evening Tide*, was traveling en route from Philadelphia to Sandwich, Massachusetts. The *Evening Tide* was towing an unpowered barge loaded with over four million gallons of #6 oil, a thick, viscous and adhesive petroleum. All navigational, communications, and steering systems aboard the *Evening Tide* were in good working order. Navigational charts identifying all hazards in the area, which are published by the National Oceanic and Atmospheric Administration, were on-board the *Evening Tide* in paper and electronic form.

According to the Information, while traveling northwards, the *Evening Tide* veered off course as neared the first green buoy marking the beginning of Buzzards Bay channel. The *Evening Tide* and the barge traveled to the west of the first green buoy, the Information alleges, striking a series of rocks. The impact from the collision ripped a twelve foot hole in the bottom of the barge, rupturing one of the barge's ten separate tanks containing oil.

The Information alleges that on the afternoon of April 27, 2003, the Mate was at the helm of the *Evening Tide* (the "Evening Tide Mate") and was the person responsible for navigating and piloting the tugboat and barge during these hours. According to the Information, the *Evening Tide* Mate allowed the boat to drift off course and towards the rocks when he left the wheelhouse for an extended period of time to work at the stern of the tugboat. In leaving the wheelhouse unoccupied, the *Evening Tide* Mate violated the *Evening Tide*'s "Watch Standing Orders" which stated that the Mate or Captain shall, "never leave the bridge unattended while underway."

The Information also alleges that the *Evening Tide* Mate did not monitor radio communications. As a result, the Information alleges, the *Evening Tide* Mate missed efforts by a vessel traveling behind the tugboat to warn the *Evening Tide* Mate that his boat was heading out of the clearly marked Buzzards Bay Channel.

According to the Information, BTC was on notice of complaints concerning the competency of the *Evening Tide* Mate. In particular, other captains who had worked with the *Evening Tide* Mate during his eight months with the company had raised questions with BTC's headquarters about whether the *Evening Tide* Mate was sufficiently qualified to be at the helm of a tugboat towing a barge loaded with oil.

### The Terms of Plea Agreement

Under the terms of the plea agreement, BTC will be required to pay \$9 million of the \$10 million fine at the time of sentencing. \$7 million of the fine proceeds will be deposited in the North American Wetlands Conservation Fund for BTC's violations of the Migratory Bird Treaty Act. This fund is used by the Department of the Interior to finance public-private partnerships aimed at carrying out long term conservation projects that provide and enhance habitat for the migratory birds, fish and wildlife which depend on these fragile areas for their survival. The other \$2 million will be directed toward the Oil Spill Liability Trust Fund for BTC's violations of the Clean Water Act. The Oil Spill

Liability Trust Fund is administered by the U.S. Coast Guard and used to pay clean up costs and damage claims for oil spills in which the responsible party is unknown.

**BTC** will also be placed on probation for a period of three years. The final \$1 million portion of the criminal fine will be suspended and will be imposed only if **BTC** fails to comply with the conditions of probation. The conditions of probation imposed through the plea agreement include several remedial measures designed to prevent this type of oil spill from occurring again, including the following:

- **BTC** will be required to hire a local pilot, experienced with the waters of Buzzards Bay, to guide **BTC** tugboats and barges through Buzzards Bay;
- **BTC** will adhere to an extensive compliance program designed to address various operational deficiencies pertinent to the oil spill, including the hiring process for new mates, the training program for new mates, and **BTC**'s evaluation system for mates and captains;
- all **BTC** vessels will be required to maintain radio communications with other vessel traffic at all times; and
- **BTC** will be required to place a crew member inside the wheelhouse at all times.

#### *The Investigation*

As a condition of its plea agreement with the United States, **BTC** has also agreed to disclose to the government the results of its internal investigation into this oil spill.

The investigation is continuing.

The investigation is being conducted by the Environmental Protection Agency's Criminal Investigation Division, the U.S. Coast Guard Investigative Services, and the U.S. Fish and Wildlife Service's Office of Law Enforcement. The U.S. Attorney would also like to recognize the U.S. Secret Service and the Massachusetts Environmental Police for their assistance to investigators on the case. This case is being prosecuted by Assistant U.S. Attorneys Joshua S. Levy and Nadine Pellegrini, along with the Environmental Protection Agency's Senior Criminal Enforcement Counsel, Peter Kenyon. The federal investigation also received substantial assistance from Assistant Attorney General Paul Molloy of the Massachusetts Attorney General's Environmental Crimes Strike Force.

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Bouchard Transportation Company Press Statement:  
March 29, 2004

Morton S. Bouchard III, President/ CEO

In my first public statement since this most unfortunate accident, I would like to begin by apologizing to the citizens of Massachusetts and Rhode Island who have been affected by the accident. I assure you that I personally feel your anger and disgust about the effects of this accident, and that I have made and will continue to make changes within Bouchard that will help prevent the likelihood of another such tragedy.

This past month I took the lead in persuading the industry to accept the voluntary navigation routing system that was proposed by the Northeast Pilots and the Coalition for Buzzards Bay, and I commend their efforts in working within our industry to see that the energy needs of the citizens of Massachusetts are met in an environmentally safe manner.

During the calendar year 2003 and to date in 2004, Bouchard affiliates transported:

<b>2004</b>	<b>TOTAL VOLUMES</b>	<b>TRIPS</b>
New England Area Deliveries:	January 01 through March 15	
PROVIDENCE	1,136,787 BBLs	11
NEW BEDFORD	64,362 BBLs	1
SANDWICH/BOSTON	2,496,151 BBLs	26
PORTSMOUTH	599,560 BBLs	6
PORTLAND	712,610 BBLs	8
BUCKSPORT SEARSPORT	149,507 BBLs	2
<b>TOTALS</b>	<b>5,158,977 BBLs</b>	<b>54</b>

<b>Year 2003</b>	<b>TOTAL VOLUME MOVED</b> 227,251,095 BBLs	<b>Total Moves Made</b> 4,036
<b>New England Area Deliveries:</b>		
PROVIDENCE	4,636,880 BBLs	94
NEW BEDFORD	717,979 BBLs	9
SANDWHICH	1,596,222 BBLs	18
BOSTON	5,141,967 BBLs	59
PORTSMOUTH	1,452,531 BBLs	22
PORTLAND	4,703,895 BBLs	59
BUCSPORT SEARSPORT	739,370 BBLs	11
<b>TOTALS</b>	<b>18,988,844 BBLs</b>	<b>272</b>

We are committed to serving the energy needs of New England safely and to contributing to the area's economic health.

Bouchard has spent over \$200 million dollars on double hulls, was the first domestic tug and barge company to build double hull tank barges in 1990, and has 12 in operation with the 13th due for delivery in May 2004. Future construction projects are also being studied.

As you would expect in any settlement, Bouchard is not in full agreement with all aspects of the plea agreement. However, we feel that it is in the best interests of the communities and citizens affected to put this aspect of the incident behind us and to move forward. This agreement does not, of course, affect our continued commitment to working in cooperation with the state and federal authorities in resolving claims and in participating in the joint natural resource damage assessment process.

Once again, sincerest apologizes from my family, my employees, and myself.

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For further information please contact:  
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