

February 2000

**IT COULD HAPPEN HERE:
WHAT MUST HAPPEN IN THE WAKE OF
THE ERIKA OIL SPILL****INTRODUCTION**

- On 12 December 1999, a corroded bulkhead caused the oil tanker Erika to break in half 30nm off the coast of Brittany, and release 10 - 15,000 tonnes of heavy fuel oil into the sea.
- Pollution has since affected 400km of coast and an estimated 300,000 birds.
- This disaster could have happened anywhere, including off the UK coast. February 15 sees the anniversary of the Sea Empress oil spill which affected the UK's coast directly.
- The ship was chartered by oil giant TotalFina which owned its cargo. Other oil companies had refused to charter the Erika for safety reasons but TotalFina preferred to use a cheaper, older vessel to transport its fuel.
- Despite being the owners of the polluting fuel TotalFina will get away without legal liability for the damage it has caused.
- Shipping law failed to prevent an unfit and unsafe vessel from being used.
- Urgent action must be taken to prevent another spill of this type and to protect biodiversity and public health and safety.
- Action must also be taken to ensure that, in the future, corporations are held legally responsible for pollution they cause.

This briefing paper describes the impacts of the leaked oil, the weaknesses in current regulation which led to the spill and the reasons why TotalFina will get away without legal liability for damage it has caused.

The paper also details what must be done to prevent another oil spill of this type, calling on the UK government to take a lead on shipping safety and environmental liability issues in Europe, on TotalFina to be held responsible and on the insurance industry to stop investing in environmentally irresponsible companies.

Finally, it gives details of what you can do including:

- asking the UK Government to take the lead in Europe in making the environmental liability regime as comprehensive as possible and in creating a tough new regulatory regime for coastal shipping;
- asking your pension holder and insurance company to stop investing in environmental and social destruction;
- switching to renewable energy.

IMPACT

The stretch of coast affected by oil includes eight Special Protection Areas (SPAs) designated under the European Birds Directive. As well as these and other coastal habitats, the pollution has affected marine mammals and fish.

The biggest impact on wildlife is the devastating effect the oil has had on birds. 61,247 birds have been found, 54,354 of which are dead.¹ The majority of these are Guillemots, many of which were UK breeding birds overwintering in

Brittany. Estimates for the proportion of carcasses recovered after a spill range from 0.3% to 56%² and fairly conservative estimates for the total number of birds affected by this spill are in the region of 300,000.

There will also be many long term impacts of this spill. These are difficult to predict but data from previous comparable spills such as the one from the Sea Empress and the Exxon Valdez give some indicators.

Erika's cargo is claimed to be heavy fuel oil which is prone to forming a stable water-in-oil emulsion known as "chocolate mousse". In some conditions, chocolate mousse persists for 20 years.³ Ten years on from the Exxon Valdez disaster in 1989, oil remains below the surface on the coast, continually damaging wildlife.⁴

Long term ecological changes including changes in species diversity, species and population numbers can also be expected as a result of the Erika spill. Only two out of 28 species injured by the Exxon Valdez spill have recovered and population declines are continuing for many affected species.⁵

Serious economic damage is also expected, with damage to livelihoods resulting from pollution of fish and shellfish and fears of reduced tourism. Native commercial fishermen whose livelihoods were affected by the Exxon Valdez spill still have incomes below 1989 levels.

TOTALFINA

TotalFina⁶ is the fifth largest integrated oil and gas company in the world and the third largest in Europe. It is in the process of merging with Elf Aquitaine and already owns 95 per cent of Elf. The resultant company will be the world's fourth largest oil and gas group.⁷ TotalFina's profits for 1998 were £603 million; Elf's were £368 million.⁸

TotalFina has already been widely criticised for its operations in Burma where much foreign aid has been withdrawn and investment by oil companies generates much of the income for the military regime. In 1996, having paid US\$200 million in taxes⁹, Total were named as the principal support of the military regime.¹⁰ Construction of Total's pipelines in Burma destroyed rainforest and it has been accused of using child and slave labour as well as forcibly relocating villagers.¹¹

Elf's contributions to human rights, political and environmental problems in Africa have also been criticised. For example, Friends of the Earth's recent report "Capital Punishment" exposes the links between investment and environmental damage. For example, Elf has close relations with Congo's military dictator who replaced the democratically elected President in 1997 after a four month bloody civil war.

PROFITS BEFORE SAFETY AND THE ENVIRONMENT

TotalFina claim in its Health Safety and Environment Charter: "No economic priority shall overrule considerations of health and safety at work and respect for the environment."¹² But TotalFina is far behind the rest of the oil industry in not employing rigorous criteria when chartering ships.

Shell inspects its tankers on an annual basis. It inspected Erika in May 1998 and again in January 1999 and decided on both occasions that she was not fit for use.¹³ Due to poor performance, BP also removed the Erika from its list of acceptable ships in May 1999.

A preliminary report by the French government states that TotalFina did not employ as rigorous criteria for the chartering of Erika as it does for the chartering of ships destined for longer voyages. It also found that lower standards are employed when selecting vessels to carry black products (fuel, tar). These are more polluting but cheaper than white products (naphtha, kerosine, gasoline) which need better quality and cleaner cisterns for their transportation.¹⁴

In other words, in order to cut costs, the least safe ships are being used to transport the most polluting (but least valuable) oil products.

Shell and BP would not and did not use the Erika for safety reasons. TotalFina itself would not have used her for a longer journey or to carry a more valuable cargo. By claiming economic priorities do not overrule considerations of health, safety and respect for the environment, TotalFina has greenwashed the public, Governments and investors.

WHO FOOTS THE BILL?

TotalFina chartered the vessel and owns the oil which has devastated Brittany's coastline, yet Bertrand Thouilin, TotalFina's head of maritime transport, has declared that it is "in no way responsible for the pollution in the sea."¹⁵ TotalFina originally blamed Tevere Shipping, the ship owner, for the disaster. Currently, it is blaming RINA, the certification agency and the fact that it did not have access to the classification reports.¹⁶

Despite initial protestations that it is not liable (other than via FIPOL see below), TotalFina has bowed to public and political pressure to assume some responsibility for the spill and will finance the recovery of the remaining cargo - £37 million (400 million francs) - and "donate"¹⁷ a total of £27 million (290 million francs) over the next five years for the cleaning of the coast and restoration of ecological balance.¹⁸ After further pressure it has added another £2.75 million (30 million francs) for tourist promotion. In total, TotalFina is "donating" a trivial 2 per cent of its profits over a five year period¹⁹

This is not enough. French President Jacques Chirac declared "it is no longer acceptable that the community bears the brunt of damage caused by the rampant pursuit of profit".²⁰ But if TotalFina does not admit full responsibility and provide full compensation, this is exactly what will happen - the public, NGOs involved in the clean-up, the insurers and the environment will foot the bill.

- Friends of the Earth believe TotalFina must assume responsibility for the spill and finance the entire clean-up operation.
- TotalFina must also listen to the message of tens of thousands of people who have demonstrated against it in France²¹ and who refuse to listen to its greenwash. TotalFina must engage with civil society - the public and NGOs - in finding solutions for minimising impacts of this spill; for preventing another spill of this kind from a TotalFina vessel; and in developing an environmentally and socially responsible and sustainable business strategy.

UK CAN HELP CHANGE LIABILITY LAWS

Despite being responsible for the oil, TotalFina, one of the richest corporations in the world, is not legally liable for any of the damage it has caused.

Two international conventions, adopted under the auspices of the International Maritime Organisation, govern liability and compensation for oil spills from ships. Under the International Convention on Civil Liability, liability for the Erika disaster is placed on Tevere Shipping, the ship owner. The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage provides an additional system of compensation. The owners of the cargo contribute to the fund (FIPOL) set up by this Convention.

The EC Draft White Paper on environmental liability may provide one way of ensuring that, in Europe, oil companies are responsible for cleaning up their own mess in the future. This law would not apply retroactively and so will not affect the Erika oil spill. But if it was already in place TotalFina would be finding itself liable for damage to livelihoods, biodiversity and the clean-up.

The White Paper, however, does not go far enough. The Birds and Habitats Directives on which it is based provide protection to species as well as sites (SPAs and SACs) and the new liability regime must therefore also cover liability for listed flora and fauna outside Natura 2000 areas, especially for wide ranging species.

- The UK Government must take a lead in making the environmental liability regime as comprehensive and free of get out clauses as possible to protect biodiversity and public health and safety in order to meet the public expectation that polluters should pay.

SHIPPING REGULATIONS ARE INADEQUATE

Shipping standards designed to prevent marine pollution from ships are governed by the International Convention on the Prevention of Marine Pollution from Ships (MARPOL).

UK INSURANCE INDUSTRY: INVESTING IN POLLUTION

MARPOL is implemented by the International Maritime Organisation (IMO) and applies to the Erika since Malta is signatory. Under Annex I: Prevention of Pollution by Oil, product carriers of 30,000 dwt and above that are 25 years old and were not constructed according to various requirements of the 1978 Protocol to MARPOL 73/78 have to be fitted with double hulls.

Erika, a 24 year old product carrier, was not a double hull tanker and did not have other arrangements in place. However, reports suggest that the spill would not have been prevented if the ship was double-hulled.

The spill was caused by the poor condition of the ship (a corroded bulkhead)²², which proves that MARPOL does not contain strict enough measures to prevent disasters such as these. In addition to this, the MARPOL regulations have been criticised for being unclear and inconsistent.

- Tough international legislation is needed to prevent another oil spill of this type. The UK Government, as an important shipping nation, must therefore take the lead internationally in calling for improvements to MARPOL including stricter regulations for older ships, increased transparency and regulation of flags of convenience.
- There is a an urgent need for regional legislation within Europe, which does not have an equivalent to the Oil Pollution Act introduced in the USA in 1990. Legislation is required in Europe to avoid a race to the bottom with shipping standards, especially for the transport of hazardous substances. Rather, standards should be at least as high as those around the USA.
- There is also an urgent need for national legislation to protect sensitive marine environments. Friends of the Earth urge the UK Government to introduce a Marine Conservation Bill to promote the sustainable conservation of marine habitats and species. This should include real protection for sites and species from threats such as oil spills.

TotalFina's shareholders are not deterred by its disregard for public and environmental health and safety and appear happy to invest in environmentally destructive companies. Prudential Assurance, Standard Life Assurance, CGU, Norwich Union Life & Pensions, Equitable Life Assurance Society, AXA Sun Life, Legal and General Group, Royal and Sun Alliance, Scottish Equitable plc, Barclays Life Assurance Ltd, Clerical Medical & General Life Assurance Society, Friends' Provident Life Office have all invested in TotalFina and/or Elf in the past two years²³ during which time its low shipping standards have been in operation.

This oil spill is yet another example of the UK insurance industry investing ordinary people's money directly in destruction of the environment and of livelihoods.

The financial sector has the potential to influence other economic players' behaviour and to encourage them to integrate environmental and social best practice with economic aims. And as well as strong moral reasons, there are strong economic reasons why it should now do so.

Investment in fossil fuels is investment in climate change. Institutional investors must take into consideration factors other than the short-term requirements of their shareholders, or pollution and scarcity of resources will ultimately threaten their profits.

It is the insurance industry which will ultimately foot much of the bill for clean-up after the Erika and investors who loose out when companies such as TotalFina suffer loss of public confidence and therefore of business. This means higher premiums and lower returns for investors and pension and insurance holders.

Environmental and social impacts of investment must therefore be taken into consideration for the long term sustainability of the industry itself and for the short term returns of investors and fund holders.

Insurance companies must therefore employ investment strategies that reward environmentally successful companies and penalise those with unsustainable practices.

Institutional investors can influence companies through:

- direct dialogue to improve performance of companies;

- withdrawal of investment from the worst companies;
- direct advocacy for tougher public policy and legal measures.²⁴

The insurance industry must use these strategies to develop investment screening which supports environmental and social best practice.

The insurance industry should seriously consider the implications of investing in all oil companies. Investment in companies supplying renewable energy is an investment in the long term future of the environment and in their businesses.

By investing in companies which are developing and implementing best practices and by threatening withdrawal of investment from companies which are not, the insurance industry can encourage companies such as TotalFina to clean up their act.

CONCLUSIONS AND RECOMMENDATIONS

TOTALFINA

TotalFina must assume responsibility for the spill and finance the entire clean-up and restoration operation and rebuild local livelihoods.

TotalFina must engage with civil society - the public and NGOs - in order to:

- find solutions for minimising the impacts of this spill;
- prevent another spill from a TotalFina vessel;
- create an environmentally and socially sustainable business strategy.

THE UK GOVERNMENT

The UK Government must take a lead in Europe to ensure that a tough new regulatory regime for coastal shipping of hazardous substances is introduced.

The UK Government must take the lead internationally to make changes to improve MARPOL regulations including stricter regulations for older vessels, increased transparency and regulation of flags of convenience.

The UK Government must take a lead in Europe to ensure that the proposed environmental liability regime is as comprehensive as possible to protect biodiversity.

The UK Government must introduce a Marine Conservation Bill to promote the sustainable conservation of marine habitats and species. This should include protection for sites and for mobile, wide-ranging species as well as provisions to preserve the quality of the wider sea and its ecological processes.

THE INSURANCE INDUSTRY

The insurance industry must develop investment screening in order to support environmental and social best practice. This should include:

- consideration of withdrawing investment from all oil and fossil fuel companies;
- direct dialogue with companies in order to improve their environmental and social performance;
- withdrawal of investment from the worst companies.

The insurance industry must also directly advocate tougher public policy and legal measures to promote best practice and sustainability.

WHAT YOU CAN DO

Write to your MP. A suggested letter is given below. Please send copies of MP's responses to: The Parliamentary Unit, Friends of the Earth, 26-28 Underwood Street, London N1 7JQ. This will help provide us with vital campaigning information. To find out who your MP is you can use your postcode to search on the House of Commons web site at <http://www.locata.co.uk/commons/> or contact the House of Commons Enquiry Line on 020 7219 4272.

Write to your pension holder and insurance company. Ask them:

- if they invest in TotalFina
- what steps they are taking to ensure their investment (i.e. your money) supports environmental and social best practice and not social destruction.

Switch to renewable energy.

For details of how and a copy of Friends of the Earth's Green Energy Guide write to: Green Energy Guide, Friends of the Earth, 56-58 Alma Street, Luton LU1 2PH.

Alternatively visit Friends of the Earth's web site: <http://www.foe.co.uk/climatechange/>

SAMPLE LETTER TO YOUR MP

Dear

I am concerned about the frequency of big oil spills from tankers in Europe and that international legislation is not preventing them. I would be very grateful if you could raise this matter with the Environment Minister on my behalf.

Please ask the Minister what measures he has taken to ensure a spill such as the one for the Erika will not happen off the UK coast. Please ask him to introduce a marine environment bill to protect the UK's marine environment from further spills, and press him to push for tough new international and European legislation on coastal shipping of hazardous substances.

I am also disturbed that TotalFina, the oil company responsible for the spill, is not legally liable for damage to biodiversity, livelihoods and to public health. Would you also raise this matter with the Minister, and urge him to take the lead in Europe in making the environmental liability regime as comprehensive as possible to protect biodiversity and public health and safety.

Many thanks for your help.
Yours sincerely

NOTES

1. Figures at 8/2/00. From LPO / Birdlife International web site: <http://assoc.wanadoo.fr/lpo-paris/LPOIdF/Actualit/bil0802.htm>
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4. Friends of the Earth (1999) The Exxon Files: Probably the Worst Oil Company in the World Friends of the Earth: London
5. Ibid
6. Formed in 1999 when Total S.A. acquired Petrofina S.A.
7. TotalFina web site: <http://www.total.com/merger/us/index.htm>
8. 1999 Fortune Global 5 Hundred web site: <http://www.pathfinder.com/fortune/global500/compindex.html> Exchange rate \$1 = £0.612
9. Corporate Watch (01/12/96) Issue no. 2. From Ethical Consumer Database: <http://www.ethicalconsumer.org/>
10. by the leader of the Burmese opposition party Seedlinks. Issue No. 22 (01/08/96). From Ethical Consumer Database: <http://www.ethicalconsumer.org/>
11. Ethical consumer Database: <http://www.ethicalconsumer.org/>
12. TotalFina's Health Safety and Environment Charter: http://www.total.com/us/cahier/y_charter.html
13. Planet Ark 17 January 2000: Focus - France pushes for tighter Shipping Rules <http://www.planetark.org/>
14. Commission Permanente d'Enquêtes Sur les Événements de Mer (2000) [Preliminary report by the French Government's Ministry of Equipment, Transport and Housing] Available at: http://www.equipement.gouv.fr/erika_rapport.htm
15. Planet Ark, 20 December 1999. Focus: French Minister wants Tougher Tanker Laws www.planetark.org/
16. TotalFina web site <http://www.total.com>
17. TotalFina web site <http://www.total.com>
18. Exchange rate 0.0919
19. Based on five years annual profit at the same level as 1998.
20. Planet Ark 24 January 2000: France's Chirac vows to make ocean polluters pay www.planetark.org/
21. Planet Ark 7 February 2000: French oil spill protestors take to streets www.planetark.org/
22. Commission Permanente d'Enquêtes Sur les Événements de Mer (2000) [Preliminary report by the French Government's Ministry of Equipment, Transport and Housing] Available at: http://www.equipement.gouv.fr/erika_rapport.htm
23. Friends of the Earth (2000) "Capital Punishment" Friends of the Earth: London
24. Ibid.