

Deepwater Horizon Oil Crisis Leads To Congressional Action

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July 21, 2010

While BP's successful installation of a mechanical cap on July 15th suggests that the flow of oil by the Deepwater Horizon oil well may have been contained, the legislative response to the oil spill is just beginning to surge. With one bill already signed into law, two others passed by the House and many more circulating committees, regulations concerning offshore drilling may undergo significant changes in the coming weeks. Further, as some Members of Congress attempt to capitalize on the momentum generated by the oil spill by enacting far-reaching legislation, the regulatory impact may be felt by many energy producers, not just those in the oil sector. The Obama administration also continues to press forward with its own regulatory response.

Current State of Affairs in the Gulf

After stopping the flow of oil into the Gulf on Thursday, July 15th, BP continues to work with the government to perform tests and devise strategies to ensure that the leakage does not resume. Specifically, BP is studying the feasibility of a "static kill" or "bullheading," which would add heavy mud to permanently seal the capped well. While some voiced concerns that the recently discovered presence of methane gas two miles from the well suggested the cap was compromised, BP and government officials continue to assert that the gas is a natural result and does not present any evidence of damage.

With officials hopeful that the well may be permanently capped, there will be increased attention on the clean up strategy. President Obama has pledged to restore the Gulf Coast and in June appointed Navy Secretary Ray Mabus to develop the "Gulf Coast restoration plan." In addition to the primary task of cleaning up the oil itself, the restoration plan will likely include rebuilding surrounding wetlands and reducing storm surge. Devising the restoration plan will present difficult choices between commercial interests in offshore energy and waterway shipping industries. Current estimates anticipate that the restoration will cost at least \$12.5 billion.

Recent Legislative Action

Legislation Signed into Law

On June 15th, President Obama signed into law a bill authorizing advances from the Oil Spill Liability Trust Fund ("the Fund") to be used to address damage caused by the explosion of the Deepwater Horizon oil rig. The Fund was initially created in 1986, but Congress did not actually authorize appropriations for the Fund until 1990 through the Oil Pollution Act (OPA).

Although the legislation's reach is limited to the Deepwater Horizon oil spill, it demonstrated that Congress would react expediently to the crisis and foreshadowed the more far-reaching initiatives currently under debate.

Legislation Passed by the House

Two bills in response to the oil spill crisis have already been passed by the House and are currently before the Senate.

H.R. 5503, the Securing Protections for the Injured from Limitations on Liability Act, passed on July 1st, would eliminate general liability caps established by the Limitation of Liability Act for personal injury or death on seagoing vessels. In addition, the legislation imposes increased liabilities for any wrongful action causing death on the high seas by allowing personal representatives of the decedent to bring a civil action for pecuniary and nonpecuniary (loss of care, comfort, and companionship) loss. The bill also alters the definition of high seas for the purposes of these actions, extending admiralty jurisdiction for such cases from three to 12 miles from the United States coast. The legislation is currently before the Senate Committee on Commerce, Science, and Transportation.

In addition, the House passed H.R. 5481 on June 23rd to allow the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling established by President Obama to issue subpoenas to compel witness testimony and the production of relevant documents, so long as the Attorney General does not object. The bill has been placed on the Senate calendar.

On July 21st, the full House was poised to consider two bills reported out of the Committee on Science and Technology last week. H.R. 2693, the Federal Oil Spill Research Program Act, would amend OPA to direct the President to create a federal research committee to (1) establish a program for conducting oil pollution research, development, and demonstration; (2) submit to Congress an assessment of the status of oil spill prevention and response capabilities; and (3) establish the priorities for federal oil spill research and development. H.R. 5716, the Safer Oil and Natural Gas Drilling Technology Research and Development Act, would amend the Energy Policy Act of 2005 to direct the Secretary of Energy to implement a deepwater technologies research and development program and, additionally, would shift the focus of the existing petroleum resources research and development program to the development of technologies for safety and accident prevention.

Legislation Before Committees

With over 40 bills introduced addressing issues relating to the explosion of the Deepwater Horizon oil rig and subsequent oil spill, it remains to be seen whether Congress will enact limited initiatives revising the existing regulatory framework or whether it will enact sweeping legislation transforming the larger legal landscape. While legislation imposing heightened safety requirements on offshore drilling and creating a bipartisan committee to research oil spill prevention has garnered broad bipartisan support, more far-reaching initiatives have raised concerns, which may ultimately make the measures difficult to pass.

On June 30th, the Senate Committee on Environment and Public Works passed S. 3305, the Big Oil Bailout Prevention Liability Act of 2010, which would remove-retroactively-the \$75 million liability limit under the Oil Pollution Act. On the same day, the Senate Energy and Natural Resources Committee approved S. 3516, the Outer Continental Shelf Management Reform Act, which would codify the changes made by Secretary Salazar to divide the former Minerals Management Service into three separate entities to separate its leasing, enforcement, and revenue collection duties. The bill would also set up a new research program within the Interior Department to help develop better drilling technology and, in addition, would increase safety and environmental requirements for leasing plans and for drilling wells, and increase inspections and penalties for violations.

In the House, the Committee on Energy and Commerce approved the Blowout Prevention Act of 2010 (H.R. 5626) by a vote of 48-0 (with one member voting "present") on Thursday, July 15th; the bill would create minimum standards for blowout preventers, require testing of redundancy barriers and

mandate third-party certification of well design. The legislation requires a chief executive officer to declare in writing before obtaining a permit for a high-risk well that (1) the blowout preventer will stop a blowout from occurring, (2) an oil response plan is in place which would promptly stop a blowout even if one did occur, and (3) the drilling corporation could complete a relief well within 90 days of a blowout. Violations of the bill may result in a criminal penalty with up to \$10 million in fines and 10 years of imprisonment.

The House Natural Resources Committee also approved legislation on Thursday, July 15th. Approved 27-21 in a largely party-line vote, the CLEAR Act (H.R. 3534) would raise royalty rates for energy production, prevent companies with poor safety records from obtaining drilling permits, impose ethical standards for oil and gas inspectors, eliminate exemptions from environmental reviews and require \$900 million of energy revenue to be allocated to the Land and Water Conservation Fund. It would also create a public land leasing program for wind and solar energy development.

While the larger bill was approved by a narrow margin, the Committee unanimously approved a provision to establish a non-partisan, independent National Commission on Outer Continental Shelf Oil Spill Prevention. The Commission would be composed of 10 members, with each party appointing five members, and be required to finish a report within 180 days. A Senate committee has approved an identical measure designed to respond to criticisms that President Obama's National Oil Spill Commission lacks the requisite expertise to complete a comprehensive study.

Other measures currently before Congress include legislation that: requires offshore drilling vessels to be built and flagged in the United States, expands the scope of the Interior Department's authority in enforcing safety standards, and precludes former Bureau of Ocean Energy (BOE) officials from working for an oil or gas company for at least two years after working at BOE.

With comprehensive legislation expected to be debated in the Senate and the House in late July, the coming weeks will show just how ambitious Congress plans to be in enacting energy legislation.

The Obama Administration Response

As Congress develops its path forward, the Obama administration's response to the disaster continues. On May 19th, Interior Secretary Salazar announced that the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEM) (formerly the Minerals Management Service, or "MMS") would be divided into three separate entities, with the goal of separating environmental enforcement from revenue collection-the agency is now composed of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resource Revenue.

On May 22nd, President Obama established the bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, tasked with examining the root causes of the accident and providing recommendations on preventing and mitigating the impact of any future spills that result from offshore drilling. The Commission, co-chaired by former Florida Governor and former Senator Bob Graham and former EPA Administrator William Reilly, held its first public meeting on July 12th and is expected to present a final report to the President within six months of that initial meeting.

Additionally, several investigations into the incident are ongoing: in April, Interior Secretary Salazar and Homeland Security Secretary Napolitano initiated a joint investigation into the cause of the event; in May, the Administration requested that the National Academy of Engineering conduct an independent technical investigation; and in June, Attorney General Eric Holder announced that he

had opened a criminal investigation of BP.

Finally, the Administration's efforts to temporarily restrict offshore drilling continue as it attempts to "ensure that drilling activity undertaken on the Nation's Outer Continental Shelf (OCS) is conducted in a manner that is safe for workers, coastal communities, and the environment." In late April, President Obama issued an order for the federal government to cease issuing new offshore drilling leases until a thorough review determined whether more safety systems were necessary. On May 28th, the President extended that moratorium, halting approval of new permits for deepwater drilling (wells in water deeper than 500 feet) and suspending drilling at 33 existing exploratory wells in the Gulf to provide time for newly-appointed Commission to do its work. In response to a lawsuit filed by a number of affected companies who claimed the moratorium would cause economic harm to the oil and gas industry, a federal judge blocked the moratorium on June 22nd, stating that the Interior Department failed to provide adequate reasoning for the drilling suspension. On July 8th, a federal appeals court judge rejected the administration's request that the June 22nd ruling be lifted while the case goes to trial. In the face of that ruling, the administration issued a revised moratorium on July 12th. The new ban, effective through November 30th, does not affect existing platforms (only projects seeking new drilling permits) and applies only to wells using subsea blowout preventers or surface blowout preventers on a floating device (i.e., the suspension of activity is not based upon water depth).

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