

Oil Spill in the Gulf – Who is in Charge?

EPRINC staff has received a large number of inquiries on who has ultimate responsibility to address the clean up and related responses following the April 20, 2010 blowout and subsequent oil spill at BP's Macondo well. These authorities are delineated in the Oil Pollution Act of 1990.¹ The highlights are summarized in this document.

As a result of the Macondo blowout, the federal government has ordered a six month moratorium on deepwater drilling. A forthcoming EPRINC report will evaluate the economic, energy security, environment, and safety issues associated with exploring for and developing the deep water resources of the U.S. Gulf of Mexico.

The Oil Pollution Act of 1990: Defining Authority and Liability

In response to the Exxon Valdez oil spill of 1989, Congress passed comprehensive oil spill legislation: The Oil Pollution Act of 1990 (OPA). Prior to the passing of OPA, oil spills were governed by a patchwork of environmental regulations. OPA defines the reach of federal authority in response to oil spills and provides means to prevent and treat oil spills. OPA also broadened the liability of responsible parties associated with oil spill cleanup and damages.

Federal Authority in Oil Spill Response

OPA provides the federal government with the discretion to “federalize” and lead oil spill cleanup on its own, to monitor the responsible party’s cleanup of the spill, or to allow the responsible party to independently carry out the cleanup as it sees fit.

Determining the Extent of Cleanup

The federal government is responsible for determining the level of cleanup to address the spill. Although the authorities in the states may be consulted, the final determination of the resources required and the extent of cleanup rests with the federal government. States have the authority to require additional cleanup from the responsible party, but this effort will not necessarily receive federal funding.²

¹ Congressional Research Service, *Oil Spills in U.S. Coastal Waters: Background, Governance, and Issues for Congress*, April 30, 2010

² *Ibid*, page 9.

National Contingency Plan

OPA requires the President to “establish procedures and standards (as part of the NCP) for responding to worst-case oil spill scenarios.”³

Scope of Liabilities

The Deepwater Horizon is *initially* considered a “tank vessel.” Therefore, under OPA the responsible party (in this case, BP) must cover 100% of cleanup costs incurred by governments and private parties. It is also responsible for a “range of liable damages to include the following:”

- injury to natural resources,
- loss of personal property (and resultant economic losses),
- loss of subsistence use of natural resources
- lost revenues resulting from destruction of property or natural resource injury,
- lost profits resulting from property loss or natural resource injury, and
- costs of providing extra public services during or after spill response.,⁴

Limits to Liability Costs

Because the Deepwater Horizon is viewed as both a tanker vessel and a mobile offshore drilling unit (MODU) it faces two levels liability. As a tanker vessel, its costs are capped in accordance with tanker vessel liabilities. Tanker vessel liabilities currently range from \$2,100 to \$3,200 per gross ton of capacity depending on whether or not a vessel has single or double hulls. However, as a MODU, liabilities rise if removal and damage costs exceed the tanker vessel liability cap. For a MODU the liability is capped at \$75 million plus all clean up costs.

It is important to note that acts of gross negligence or willful misconduct expose companies to liabilities above the cap.

³ Ibid, page 10. OPA Section 4201(b), amending Section 311(d)(2)(J) of the CWA

⁴ Ibid, pages 11-12

The Oil Spill Liability Trust Fund

The Oil Spill Liability Trust Fund is used to pay for oil spill cleanup costs and damages. The Trust Fund receives revenues from several sources, including an \$0.08 per barrel tax on oil produced in or imported into the United States as well recovered costs from parties responsible for oil spills. The fund was established in 1986 but revenues were not collected until the passing of OPA after the Valdez spill.⁵ It was expected to reach \$1.5 billion by the end of FY 2009 and is capped at \$2.7 billion. The fund is designated for the following purposes:

- prompt payment of costs for responding to and removing oil spills;
- payment of the costs incurred by the federal and state trustees of natural resources for assessing the injuries to natural resources caused by an oil spill, and developing and implementing the plans to restore or replace the injured natural resources;
- payment of parties' claims for uncompensated removal costs, and for uncompensated damages (e.g., financial losses of fishermen, hotels, and beachfront businesses);
- payment for the net loss of government revenue, and for increased public services by a state or its political subdivisions; and
- payment of federal administrative and operational costs, including research and development, and \$25 million per year for the Coast Guard's operating expenses.⁶

⁵ http://www.uscg.mil/npfc/About_NPFC/osltf.asp

⁶ Congressional Research Service, *Oil Spills in U.S. Coastal Waters: Background, Governance, and Issues for Congress*, April 30, 2010, page 13