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## **Two years later: the tragedy of the Deepwater Horizon oil spill**

The most significant findings from the investigations that succeeded the Deepwater Horizon rig explosion are that the safety failures leading up to the tragedy are not isolated to BP, but rather reflect a systemic problem in the offshore drilling industry as a whole, and that existing regulations are inadequate to prevent future offshore catastrophes.

To be clear, BP is one of the worst offenders in the industry. In the past several years alone, BP has pled guilty to two crimes and paid more than \$730 million in fines and settlements to the U.S. government and state governments, in civil lawsuit judgments for environmental crimes and willful neglect of worker safety rules, and in penalties for manipulating energy markets.

But BP is not alone in putting profit before safety is endemic in the oil industry. The “fine them and let them keep drilling” response that has characterized government handling of oil industry accidents and spills has not altered the way the industry does business. And while profoundly tragic, the Deepwater Horizon rig explosion and the subsequent three-month gush of oil into the Gulf offered not just an opportunity to significantly reform our regulatory approach to offshore drilling, but to challenge the way we enforce corporate accountability and demand a serious discourse on transitioning away from our oil dependency.

Unfortunately, even the worst oil spill disaster in U.S. history hasn’t convinced the majority of our policy-makers that significant changes need to be made to protect the lives of those who work in this industry and the marine ecosystems that many other industries depend on . Since the BP oil spill, no comprehensive spill legislation has been signed into law. In fact, several bills passed by the U.S. House of Representatives this year have contained provisions to weaken the lease review process.

Meanwhile, leases for more than 20 million acres of federal waters have been issued, including new leases for BP – even while the Gulf of Mexico and its communities are still reeling from the damages caused by the spill.

An investigation by the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, which released its final report in January 2011, revealed that accident risks have dramatically increased in recent years due to the targeting of oil resources in deeper water. Further, the industry's capacity and approach to managing accidental spill risks has remained stagnant, and the U.S. oil and gas regulatory regime is relatively ineffectual.

In general, Public Citizen supported the recommendations set forth by the commission to address these conclusions. <http://www.citizen.org/documents/OSCRRecommendations.pdf>

Two years later, in an environment of increased deepwater drilling, we have reviewed five areas of the commission’s report to assess to what degree, if any, its proposals to increase drilling



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safety and industry accountability have been enacted. The answer: Not enough has been done to prevent another catastrophe.

### **Safety Culture in the Offshore Drilling Industry**

The commission staff found BP, Halliburton and Transocean's safety lapses to be chronic. It recommended that an independent safety body review all phases of drilling operations to assure they met the highest standards, and police industry management and safety operations.

In response, the industry has established the Center for Offshore Safety, which is operated by the industry's chief lobby organization, the American Petroleum Institute (API) – which has already bought at least \$4.3 million in ads this year, which either target politicians who challenge the agenda of the oil industry or promote those who tout the industry agenda.

**Charging API, which criticized the new safety and environmental regulations, saying they would slow down the permitting process, with ensuring that industry operates under the highest safety standards negates the credibility of this effort and does not reflect the intent of the recommendation.**

### **Regulatory Oversight**

The commission confirmed the administration's assertion that the Minerals Management Service's (MMS) role of awarding oil drilling leases while regulating operations creates a conflict of interest. For years, the government apparatus responsible for overseeing the oil industry has been mired in scandal due to its cozy relationship with oil companies.

To this end, the commission proposed that the four functions of the regulatory regime – offshore leasing, revenue collection and auditing, permitting and operational safety, and environmental protection – be housed in distinct and separate offices under the Department of the Interior (DOI).

Since April 20, 2010, the structure of the Minerals Management Service has been reorganized into three divisions – the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue.

**Though the regulatory regime has been restructured almost to the specifications of the commission, Congress has still not cemented the reorganization into law. Further, it still remains to be seen whether the reorganization will address the issues of the past – namely that the industry's influence over the regulatory body has resulted in thousands of drilling permits issued with minimal environmental review or due diligence of oil spill response and containment plans.**

### **Environmental Review**

The commission found that the production of oil and gas has trumped the need for sound environmental analysis of the impacts of drilling on the marine and coastal ecology.



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Its recommendations focused on changes to improve the quality of the environmental reviews during the planning, leasing, exploration and development stages of oil drilling, including conducting Environmental Impact Statement for Exploration Plans, and Development and Production Plans in accordance with the National Environmental Policy Act (NEPA).

**No regulations have been proposed to strengthen practices and procedures under the National Environmental Policy Act (NEPA). Environmental assessments are still being prepared without adequate site-specific data and they even include portions of Environmental Impact Statements prepared before the Macondo well blowout. Adequate standards of environmental analysis have yet to be adopted by the Department of the Interior. The oil industry must no longer be permitted to bypass federal environmental law.**

### **Oil Spill Response**

The commission concluded that neither the National Contingency Plan – the federal government’s blueprint for responding to both oil spills and hazardous substance releases – nor the industry plans were up to the challenge of a major spill. To that end, the commission recommended a series of changes to the National Contingency Plan including the need for more state and local involvement in spill contingency planning and training, and updated dispersant testing protocols to ensure more comprehensive testing prior to product listing or pre-approval.

Regarding industry spill response plans, the commission recommended a more thorough review process, which should include plan approval not only by the Department of the Interior, but by other agencies such as National Oceanic and Atmospheric Administration, the U.S. Coast Guard and the Environmental Protection Agency.

Further, it recommended that federal agencies revise regulations to encourage the development of more efficient oil recovery equipment and that Congress increase federal funding for spill response research.

**To date, no formal modifications have been made to the National Contingency Plan or to dispersant testing protocols. The role of federal agencies other than DOI in approving industry oil spill response plans has not been formally authorized. Funding for comprehensive federal oil pollution research and development efforts has not been awarded.**

### **Oil Spill Containment**

The commission found that once the blowout preventer (BOP) failed to operate properly, there was no well containment system in place. Further, little of the industry’s massive resources have been employed to advance drilling and containment technology.



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To address the epic shortsightedness of allowing deepwater drilling with just one line of defense to prevent an oil spill, the commission recommended new regulations to significantly upgrade the requirements for blowout preventers and the integrity of deepwater well designs. It also recommended that the industry develop, demonstrate and maintain readily deployable resources for well containment.

The Department of the Interior is currently crafting a rule that will upgrade the requirements for blowout preventers, and it now requires that response plans include a well containment system.

**The containment systems the industry has developed since the Macondo well blowout have not been proven to be effective under conditions of deepwater drilling. Depending on where the systems are stored in relation to the location of the well, it could take several weeks to deploy the containment systems, during which time a substantial amount of oil could be released into the marine ecosystem.**

### **Liability Caps and Financial Responsibility**

As the magnitude of the BP spill and the toll it was taking on the ecosystem and local industries was unfolding, it became clear that the cleanup costs were going to be massive. It was determined that if a company with less money than BP had caused the spill, the company likely would have declared bankruptcy long before paying anything close to the damages caused.

The Oil Spill Pollution Act caps liability for damages from spills from offshore facilities at \$75 million, and lessees are required to demonstrate only financial responsibility in an amount of \$35 million to \$150 million. If the responsible party cannot cover all of the damages, the Oil Spill Liability Trust Fund is available to cover damages up to \$1 billion per incident. All of these provisions were established more than 20 years ago and do not reflect today's costs. To date, BP has paid \$14 billion for clean-up and \$6.3 billion in spill victim compensation.

To address the clearly inadequate financial responsibility requirements and liability limits for oil spills, the commission proposed amending the Oil Spill Pollution Act to raise the liability cap by using a phased-in approach; raise financial responsibility requirements, using a phased-in approach; and increase the per-incident limits on payouts from the Oil Spill Liability Trust Fund. The commission also suggested that either regulators or insurance companies perform an evaluation of risk to set criteria for financial responsibility levels in determining premiums.

**Congress has not enacted any legislation to update the Oil Spill Pollution Act to reflect the current financial risk of offshore drilling accidents and shield taxpayers from bearing the cost of cleaning up the oil industry's mess.**

The Gulf of Mexico oil spill is a story of two tragedies. First is the explosion on the Deepwater Horizon rig that claimed 11 lives and the consequent oil spill that claimed an untold number of livelihoods among Gulf Coast residents, as well as ecological devastation that is still unfolding. Second is the feeble response from those charged with protecting American citizens and our environment. The lack of political will to implement new regulations and amend existing oil spill



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legislation after the worst environmental disaster in U.S. history is an outrage. Public Citizen calls on Congress to immediately act to better protect American workers, taxpayers and our marine resources.