

**STATEMENT OF
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DEPUTY SECRETARY OF THE INTERIOR
BEFORE
THE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE**

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Thank you, Chairman Bingaman, Ranking Member Murkowski, and Members of the Committee, for the opportunity to discuss liability, enforcement, and financial responsibility issues related to oil production on the Outer Continental Shelf, including those associated with the ongoing response to the Deepwater Horizon rig explosion.

Before we begin let me express my sympathy to the families of those who lost their lives and the many who were injured or have lost their livelihood in this massive environmental disaster. This spill continues to command our time and resources at the Department of the Interior as we work to ensure that the spill is stopped; that those responsible are held accountable; and that the natural resources along the Gulf Coast are protected and restored.

Introduction

Secretary Salazar said when he appeared before you last week that we at the Department have been actively and aggressively engaged in this spill from day one. The Secretary has been to the Gulf Coast and Houston many times to ensure all that can be done to stop the spill is being done; to monitor the effects of the spill on our lands and waters in the Gulf; and to direct the Department's response to this tragedy.

I left for the Gulf the morning after the explosion to help provide senior, on-the-ground leadership and communication with principals in Washington. Working with Rear Admiral Landry, we stood up a Joint Command structure in those early days, and moved from a search and rescue effort to a spill response effort. I have continued to be involved in the response to this disaster each and every day from April 20 forward. I have returned to the Gulf twice since that initial trip, and I am working virtually around the clock on Gulf-related response activities, coordinating our Department's efforts in responding to the spill, both in terms of capping the well, and in working to protect our trust resources from damage from the spill.

The Secretary has detailed the many actions that we have taken in response to the explosion and spill and the major changes that we have been making at the Minerals Management Service – not just over the past 5 weeks, but over the past 16 months – to address prior ethics issues, strengthen its independence, balance its mission, increase safety, and improve management, regulation, and oversight of operations on the Outer Continental Shelf (OCS). This kind of fundamental change does not always come easily or instantaneously, but we have been committed to a reform agenda in the Department since our arrival a little more than a year ago, and we are determined to see it through.

The latest manifestation of these reforms, the reorganization of MMS, was announced by the Secretary last week. The Secretarial Order released last week creates three separate entities within the Department to address the three distinct and conflicting missions of the MMS – safety and enforcement, energy development, and revenue collection. We will be consulting with Congress as we work out the details of this reorganization. The result

will be a strong and independent framework that will hold energy companies accountable and in compliance with the law of the land.

Those Responsible Will Be Accountable

We are here today to address issues of liability and enforcement as it pertains to oil and gas development on the OCS. Let me begin by noting that the President has been very clear in this regard: we will not rest until this spill is contained and we will aggressively pursue compensation for all costs and damages from BP and other responsible parties. There should be no doubt that all responsible parties will be held accountable for paying costs associated with this spill, including all costs of the government in responding to the spill and compensation for loss and damages that arise from the spill.

At the urging of Secretary Salazar and Secretary Napolitano, in a recent letter BP has confirmed that it will pay for all of these costs and damages regardless of whether the statutory liability cap contained in the Oil Pollution Act applies. The bottom line is that, while the investigations as to the cause are still underway, those found responsible will be held fully accountable for their actions.

Outer Continental Shelf Enforcement

Specific to development on the OCS, the Outer Continental Shelf Lands Act (OCSLA) provides the Department with the authority to manage access to and development of energy and mineral resources on the OCS and to ensure that operations on the OCS are safe and protective of the environment. Under its provisions, the Department has the authority to, among other things, promulgate and enforce safety and environmental regulations; investigate and report on major fires, oil spills, death or serious injury;

review allegations of any violation of safety regulations under the Act; and summon witnesses and require the production of information.

In order to determine whether an operator's performance on the OCS is in compliance with applicable laws and regulations, the OCSLA provides for scheduled onsite inspections at least once a year of each facility on the OCS and also periodic unannounced onsite inspections where no advance notice is given. If those inspections find noncompliance with applicable requirements, a wide range of enforcement actions can be taken, depending on the circumstances, ranging from written warnings to financial penalties, to drilling and/or production shut-ins of platforms, wells, equipment, or pipelines.

As a matter of policy, Minerals Management Service inspectors and field engineers conduct complete inspections of all safety devices and environmental standards for drilling activities approximately once a month while drilling rigs are on location. MMS also conducts inspections of up to 3,600 OCS production facilities every year. Finally, MMS conducts unannounced inspections generally targeting operators for whom compliance concerns exist or who are conducting inherently dangerous operations, such as welding, construction activities, and normal production activities at the same time.

If an operator is found in violation of a safety or environmental requirement, MMS issues a citation requiring that the violation be fixed within 14 days. On average about 24,000 inspections per year are conducted and 2,500 Incidents of Non-Compliance (INCs) are issued. Many of these INCs are for minor non-compliance issues such as marking equipment improperly, but some are for serious non-compliance issues such as

unauthorized bypassing of safety devices. The latter triggers an automatic civil penalty referral, discussed in detail below, and may result in a component or facility shut-in.

Issuance of a facility shut-in order is a serious and expensive penalty for non-compliance as it stops all production until the issue is fixed. In 2009, MMS issued 97 INCs that resulted in shutting-in a production facility and 20 that resulted in shutting-in a drilling facility.

Evidence of serious non-compliance may result in the assessment of civil or criminal penalties for failure to comply with requirements under the law, a license, a permit, or any regulation or order issued under the Act. These provisions are found in section 24 of the Act (43 U.S.C. §1350), and are currently set at not more than \$35,000 per day for civil administrative penalties, or \$100,000 per day for criminal penalties.

Violations that cause injury, death, environmental damage, or pose a threat to human life or the environment will trigger a Civil Penalty Review. Civil penalties are reviewed and assessed by the MMS under three categories that reflect the severity and number of operator violations. From fiscal year 2000 through FY 2008 over \$18 million in civil penalties were collected.

In the spirit of working to improve and reform the MMS inspection program, and as part of our MMS reform agenda, in September 2009 the Secretary asked the National Marine Board, an arm of the highly respected National Academy of Sciences, to direct an independent review of MMS's inspection program for offshore facilities. The results of that review are due to us this fall and will help us enhance the effectiveness of that program as we implement our reforms.

We are also addressing the program through changes to the budget. The MMS inspection program, which currently has 55 inspectors in the Gulf of Mexico Region and 7 in the Pacific and Alaska Regions, would receive under the President's fiscal year 2011 Budget funding for an additional 6 inspectors for offshore oil and gas facilities in the Gulf, an increase of more than 10 percent. In addition, the Administration's recently submitted legislative proposal to address the BP oil spill also contains, among other things, a request for an additional \$29 million for the Department to further increase its inspection capability, as well as to support the development of new enforcement and safety regulations, and to carry out studies needed in light of this event.

The Outer Continental Shelf Lands Act Amendments Act

The Outer Continental Shelf Lands Act Amendments Act, S. 3346, proposes to increase the amount of the civil penalties available under the OCSLA to \$75,000 per day; provide for a mandatory civil penalty of not more than \$150,000 per day, without regard to the allowance of a time period for corrective action, for continuing violations that constitute a threat of serious, irreparable, or immediate harm or damage to life, including fish and aquatic life, property, mineral deposits, or the environment; and increase criminal penalties for violations to \$10 million.

The maximum daily civil penalty was adjusted to \$35,000 by regulation in March 2007. While the Department published a notice summarizing review of the amount of this maximum civil penalty in the Federal Register in January 2010, we recognize that the underlying statutory requirements have not been amended in 20 years, when the amount for civil penalties was changed as part of the Oil Pollution Control Act of 1990. Moreover, the statutory amount for criminal penalties has not been amended since its

enactment in 1978 when the existing criminal penalty provisions of not more than \$100,000 per day or imprisonment for not more than 10 years were put in place.

The investigations into the Deepwater Horizon explosion and this spill have not been completed, so it is premature to speculate as to the extent to which the proposed increased penalty provisions would apply to this particular matter. Nevertheless, given the time that has elapsed since these provisions were last amended, we believe it is appropriate to consider thoughtful increases in the amount of both civil and criminal penalties under the Act. We welcome the opportunity to work with Congress on this matter as this legislation moves forward.

Conclusion

The Department is committed to ensuring that we are doing all we can to assist those in the Gulf Coast region to persevere through this disaster and that our important places are protected and restored. We are working to ensure that BP and other responsible parties are doing all they can to stop the discharge of oil and meet their responsibilities – and commitments – to the region. The reforms we are putting in place will ensure the integrity of the OCS program into the future. And the joint investigation we are carrying out with the Department of Homeland Security and the 30 day safety review ordered by the President will provide us with valuable information and will help us identify what caused this tragedy and what safety measures should be immediately implemented.

We will get to the bottom of this disaster and will hold those responsible fully accountable.