

Outline of Russ Randle Remarks
Environmental Law Institute
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I. Past Legislation:

Section 311, CWA, 1970	Santa Barbara, California Oil Spill 1969
Port & Tanker Safety Act, 1978	Argo Merchant, Nantucket, December 1976
Oil Pollution Act, 1990	Exxon Valdez, March 1989

II. Differences in 2010

- Renewed focus on offshore drilling, not transportation
- Largest spill ever; great depth of release
- May be largest commercial fishery loss from spill in US history
- US share of offshore drilling market much less than for oil transport

III. Issues for New Legislation

Liability Limits

- Inflation index under regulations
- Insurance availability and effects on competition
- Lifting of caps for violations of standards

Tax on oil for Oil Liability Trust Fund

- Increase?

Penalty levels

- Currently \$1K per barrel; \$3k for gross negligence

Response planning

- Identify and remedy deficiencies

- Federal response capability to be added?

- Restriction or moratorium on deepwater drilling?

- IV Expected Litigation:
- A. Criminal investigations
 - B. Civil enforcement, including strict liability for penalties
 - C. Contractual debarment issues
 - D. State & local government OPA claims for
 - 1. NRD
 - 2. Lost tax revenue
 - 3. Increased public service costs
 - E. Private Party OPA Claims
 - 1. Property damage and economic loss from destroyed property
 - 2. Lost profits caused by injury, including NRD injuries
 - 3. Lost subsistence use
 - F. Responsible Part Contribution Claims Under OPA
 - G. Product Liability Claims
 - H. Common law and state statutory law claims against responsible parties
 - I. Insurance coverage issues
 - J. Foreign Claimant Issues
 - 1. Cuba
 - 2. "Downstream" states
 - 3. Fishery rights cases, Mexican fishing issues?

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