



# Clean Energy Jobs <sup>and</sup> Oil Company Accountability Act

## **Subpoena Power and the Deepwater Horizon Oil Spill and Offshore Drilling Commission**

### ***Background and Importance***

On May 21, 2010, President Obama issued an executive order that established the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (Oil Spill Commission) to examine the root causes of the spill. By November, the Oil Spill Commission will issue recommendations about how we can prevent—and mitigate the impact of—any future spills that result from offshore drilling.

However, the Oil Spill Commission lacks the legal authority, *i.e.* subpoena power, necessary to require the attendance and testimony of witnesses as well as the production of records and documents on the Deepwater Horizon oil spill. The efficacy of the Oil Spill Commission's report could be diminished if it is unable to obtain all of the information from BP and others about the incidents aboard the Deepwater Horizon rig and the subsequent spill. The inability to gather this information could hinder efforts to ensure that future oil spills are prevented.

### ***Subpoena Power***

On June 23, the House of Representatives passed legislation that provides subpoena power to the Oil Spill Commission by a vote of 420 to 1 (H.R. 5481). The Clean Energy Jobs and Oil Company Accountability Act would give the Oil Spill Commission the subpoena power it may need to compel the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, and other documents, all of which will be critical in issuing a complete report.

The legislation would only allow a subpoena to be issued by agreement of the Co-Chairs of the Oil Spill Commission or the affirmative vote of a majority of its members.

The Oil Spill Commission would also be required to notify the Attorney General of the Commission's intent to issue a subpoena under this section, the identity of the witness, and the nature of the testimony sought before issuing such a subpoena. The Attorney General can block the issuance of a subpoena if he objects to the issuance of the subpoena on the basis that the taking of the testimony is likely to interfere with any Federal or State criminal investigation or prosecution or pending investigation under the Civil False Claims Act') or other Federal statute providing for civil remedies, or any

civil litigation to which the United States or any of its agencies is or is likely to be a party.

### ***Historical Precedent***

In 1963, Congress passed [\*\*S.J. Res. 137\*\*](#) which granted subpoena power to the President's Commission on the Assassination of President Kennedy, as established by President Johnson through [\*\*Executive Order 11130\*\*](#).

In 1979, Congress passed [\*\*S.J. Res. 80\*\*](#), which granted subpoena power to the President's Commission on the Accident at Three Mile Island, as established by President Carter through [\*\*Executive Order 12130\*\*](#).

In 2002, Congress passed [\*\*H.R. 4628\*\*](#), which granted subpoena power to the National Commission on Terrorist Attacks upon the United States to examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001.

In 2009, Congress passed [\*\*S. 386\*\*](#), which granted subpoena power to the Financial Crisis Inquiry Commission to examine the causes, domestic and global, of the financial crisis of 2008.