

UNITED STATES SENATE REPORT

FAILURE OF LEADERSHIP: PRESIDENT OBAMA AND THE FLAWED FEDERAL RESPONSE TO THE BP DISASTER



**An Oversight Report by Sen. James M. Inhofe, Ranking Member
Senate Committee on Environment and Public Works**

AUGUST 2010

Contact:

Matt Dempsey Matt_Dempsey@epw.senate.gov (202) 224-9797

David Lungren David_Lungren@epw.senate.gov (202) 224-5642

Report Online at www.epw.senate.gov/inhofe

Executive Summary:

In this report, we explain the various constitutional and legal authorities available to President Obama and federal agencies under his control—authorities that could have enabled them to respond to the BP disaster as expeditiously as possible. The authorities come directly from the Constitution, as well as emergency authority under various environmental and administrative law statutes. Yet, as we recount, in many important instances, these authorities were either ignored or fitfully exercised.

President Obama and Administration officials failed in several instances to remove regulatory and bureaucratic impediment, and to ensure that proper and adequate resources were available to address the BP disaster.

In short, President Obama failed to exercise the necessary presidential leadership in a time of crisis.

This EPW Minority report documents specific examples of the President's failure to demonstrate leadership. They include:

- **Assistance.** In the aftermath of the *Deepwater Horizon* explosion, multiple offers of assistance from foreign governments, corporations, and international bodies poured into the State Department. Yet for weeks, despite the clear need for additional resources, the State Department failed to act on them.
- **Skimmers.** President Obama failed to do everything necessary to deploy available skimming vessels. For example, he refused to issue waivers under the Jones Act, which prevented foreign vessels from working with American counterparts to skim oil from the Gulf.
- **Dispersants.** EPA's management of dispersants was unfocused, and its communications about their safety and effectiveness was contradictory –all of which created confusion about their use. Moreover, top officials from the Obama White House contributed to this confusion, as they issued statements about dispersants that, at best, glossed over EPA's concerns, or, at worst, were deliberately designed to conceal them.
- **Workplace Rules.** OSHA enforced ad-hoc rules and requirements that severely restricted needed legal and operational flexibility in response efforts. OSHA, for example, mandated 20-minute shifts for clean-up workers and required 40-hour training courses for potential supervisors.

“But make no mistake: We will fight this spill with everything we’ve got for as long as it takes.”

– **President Barack Obama, Oval Office Address, June 15, 2010**

“There's enormous frustration here. For sure, everybody's mad as hell at BP... [but] people here are very frustrated and now I think angry at the federal response as being slow and inadequate.”

– **Sen. David Vitter (R-La.), Member, Senate Committee on Environment and Public Works, June 2, 2010**

“These people are crying. They're begging for something down here and it just looks like he's not involved in this. Man, you got to get down here and take control of this, put somebody in charge of this thing and get this thing moving. We're about to die down here. “

– **James Carville, Democratic Strategist, native of Louisiana, May 26, 2010**

TABLE OF CONTENTS

INTRODUCTION	6
SECTION 1: Confusion on the Scene: “I Don’t Know Who is in Charge”	7
SECTION 2: Presidential and Agency Authority	9
SECTION 3: What Happened on the Ground	12
SECTION 4: Conclusion	20
APPENDIX A:	21
APPENDIX B:	24

INTRODUCTION

On April 20, 2010, the *Deepwater Horizon*, an offshore oil rig leased by BP, exploded in calamitous fury in the Gulf of Mexico. Officials confirmed soon after the accident that 11 crew members of the offshore vessel were tragically killed. The environmental consequences of the accident quickly became manifest as oil from the “Macondo well” spewed wildly into the Gulf.

The BP spill is the largest oil spill in U.S. history. According to the latest official estimate, the Macondo well blowout released 4.9 million barrels of oil into the Gulf^f. By contrast, the *Exxon Valdez* spilled about 250,000 barrels into Prince William Sound.ⁱⁱ To date, BP has paid over \$2 billion for environmental remediation and committed \$20 billion to a victims’ compensation fund. Many believe the total costs for the disaster could reach as high as \$50 billion, if not more.ⁱⁱⁱ

Shortly after the *Deepwater Horizon* exploded, officials at the scene determined that oil was leaking from a broken riser pipe. On April 24, Coast Guard Rear Admiral Mary Landry described the incident as a “very serious spill.”^{iv} By April 25, the spill covered 580 square miles and was only 31 miles from the ecologically sensitive Chandeleur Islands, which form the easternmost point of Louisiana.^v

Despite the clear urgency of the situation, President Obama and political leaders in the Obama Administration failed to react quickly, and with urgency, opting in some cases to pursue other endeavors as oil spewed into the Gulf.^{vi} As Sen. Roger Wicker (R-Miss.) put it, President Obama was:

slow in listening to state and local leaders, slow in...getting skimmers to

the Gulf, slow in understanding the seriousness of this crisis, and slow in taking ownership and responsibility for the recovery.^{vii}

Sen. Wicker’s comments are borne out by the facts. It took President Obama 9 days to speak to the American people about the event, and he waited 12 days before visiting the Gulf first-hand to assess response operations. On June 16th, 57 days into the oil spill, President Obama finally hosted a 20-minute, face-to-face meeting with former BP CEO Tony Hayward.

Between April 23rd and June 19th, however, President Obama found time to play eight rounds of golf, to take two vacations, to attend two rock concerts and a baseball game, and to be a guest on the Jay Leno and George Lopez talk shows.

Not only did the President and members of his Administration fail to react with appropriate urgency, but when they did

“I’m not going to rest -- and none of the gentlemen and women who are here are going to rest -- or be satisfied until the leak is stopped at the source, the oil on the Gulf is contained and cleaned up, and the people of this region are able to go back to their lives and their livelihoods.”

President Obama, May 2, 2010

Reality: Between April 23 and June 19, President Obama took two vacations, played 8 rounds of golf, attended two concerts, and a baseball game. He was also a guest on two talk shows.

act, they left bureaucratic barriers in place that obstructed response efforts.

In this report, we recount examples of the Administration's failure to respond decisively and effectively to the BP disaster. We contend that President Obama and federal agencies under his control failed to exercise the available legal authority under the Constitution and federal statutes. These are authorities that could have enabled the President to respond to the crisis as expeditiously as possible.

President Obama: *"And I want everybody to know that everybody here -- at every level -- is working night and day to end this crisis. We're considering every single idea out there, especially from folks who know these communities best."*

Reality on the ground: OSHA decrees that shade must be located within 100 yards of work activity at all times; work must be conducted by workers in as small as 10 minute intervals per hour.

I. CONFUSION ON THE SCENE: "I Don't Know Who is in Charge"

"They promised us they were going to get it done as quickly as possible." But "every time you talk to someone different at the Coast Guard, you get a different answer." --
Gov. Bobby Jindal, June 18, 2010

Throughout the Gulf crisis, local officials expressed frustration over the federal government's waffling, indecision, and bureaucratic confusion—all of which created a leadership vacuum. The Secretary of Homeland Security, Janet Napolitano, delayed her declaration of a "Spill of National Significance" for eight days, thus adding to the confusion on the ground.^{viii} This outcome runs counter to the Oil Pollution Act of 1990, which puts the President squarely in charge of responding to an oil spill. But, as Plaquemines Parish President Billy Nungesser testified on June 10th before the Senate Homeland Security and Governmental Affairs subcommittee, "I don't know who is in charge. Is it BP? Is it the Coast Guard? I have spent more time fighting the officials and the Coast Guard than fighting the oil."^{ix} [quote in text box]

Winston Groom, a Louisiana native and author of *Forrest Gump*, succinctly summed up the Administration's overall response effort: "The cleanup effort is drowning in the proverbial sea of red tape."^x

John Young, Jefferson Parish Councilman-at-Large, witnessed first-hand the Administration's irresolution in the aftermath of the accident. According to Young's testimony before the Senate Environment and Public Works Committee on July 27, 2010, federal, state, and local officials, including EPA Administrator Lisa Jackson, Interior Department Secretary Ken Salazar, and Secretary of Homeland Security Janet Napolitano, met on April 30th to discuss how governments at various levels could coordinate spill response actions. As Young recounted:

At that meeting, we made a recommendation on behalf of Jefferson Parish and specifically on behalf of the Towns of Grand Isle

and Lafitte that the federal government, in coordination with state and local governments, to immediately implement a plan and to mobilize the necessary equipment and manpower to execute that plan—to protect our coastline, bays, marshes, wetlands and estuaries, as well as our economy. It was also recommended at that meeting that, although BP was the “responsible party” and, therefore, obligated to pay for all damages resulting from the disaster, BP should concentrate all of their resources on capping the oil well and stopping the flow of oil into the Gulf of Mexico. This recommendation was met with silence by the federal officials representing the Obama administration at that meeting. [Emphasis in the original]^{xi}

As Young concluded, “In contrast to successful state and local efforts, the federal government and various federal agencies not only have *not* helped us but, in some cases, have actually hindered our efforts to protect ourselves.” [text box] Sen. Roger Wicker (R-Miss.) agreed. “Many of [President Obama’s] actions have actually taken us in the wrong direction.”^{xii}

Louisiana was thus forced to take extraordinary measures to protect itself, including devising a plan to construct rock dikes to prevent oil from leaking into Barataria Bay. But when Louisiana Gov. Bobby Jindal (R) requested a permit to implement the plan from the Army Corps of Engineers, the Corps dithered for a month before responding. As Gov. Jindal

exclaimed in frustration, “Get out of the way; move this bureaucracy out of the way.”^{xiii}

On July 3, Col. Allen Lee, Commander of the Corps’ New Orleans district, rejected the permit, citing “adverse environmental impacts.” Lee infuriated local officials by not proposing an alternative plan.

On July 6, Sen. David Vitter (R-La.) summed up this frustration in a letter to Col. Lee:

In denying the permit, the Corps cited potential for adverse environmental impacts on the bay by the rock dikes. I along with thousands of directly affected Louisiana citizens find this ironic because the oil spill itself is an environmental catastrophe beyond measure. All efforts must be made to limit/lessen the environmental impact of the spill itself. This current impasse is yet another example of the federal bureaucratic bottleneck that so often crushes the can-do attitude of our local communities.^{xiv}

“This current impasse is yet another example of the federal bureaucratic bottleneck that so often crushes the can-do attitude of our local communities.”

**Senator David Vitter,
July 6, 2010**

As Grand Isle Mayor David Camardelle said, “One of the things that really gets me is they didn’t offer us an alternative plan and they didn’t offer us a plan of their own. They just said, ‘No’.” “This latest decision is yet another example,” said Jefferson Parish Councilman Chris Roberts, “of a broken bureaucratic process of disconnected talking heads that are far removed from reality.”^{xv xvi}

That “bureaucratic process” provoked outrage in Sen. George Lemieux (R-Fla.), who went to the Senate floor to vent his frustration over the Administration’s seeming inability to procure an adequate number of skimming vessels for the Gulf (see more on skimmers below). As Lemieux said:

When I met with Admiral Allen, I asked him about the 2,000 skimmers he had reported were available in this country and why those skimmers weren't in the Gulf of Mexico now, some 65 days after this disaster first started. I got answers ranging from, well, some are obligated to be other places in case there is an oil spill—to me, that is like saying your house is burning down and we can't send a fire truck because we may need a fire truck for another house that might burn down...

II. PRESIDENTIAL AND AGENCY AUTHORITY

“But as I said yesterday, and as I repeated in the meeting that we just left, I ultimately take responsibility for solving this crisis. I’m the President and the buck stops with me.”

--President Barack Obama, May 28, 2010

President Obama has compared the BP disaster to a war; thus he should have exercised his executive authority to respond accordingly. This would have enabled executive branch officials to override bureaucratic obstacles otherwise blocking the most efficient and productive courses of action. But during the early stages of the BP disaster, President Obama chose not to use that authority. “I think really,” said Sen. John Cornyn (R-Texas):

we need the president to step up and assert himself and to say, let's cut through the red tape, let's cut through the chain of command, and let's get the assets where they need to be in order to protect the beaches and the people of that important region.^{xvii}

But unfortunately, that was not the case. As Councilman Young noted in his Senate testimony:

The President of the United States has executive authority and should have exercised his executive authority early on to cut through the bureaucratic red tape to more effectively and expeditiously respond to this disaster and emergency situation. The President himself compared this disaster to a war and stated, ‘We will do what it takes for as long as takes to win this war.’ Unfortunately, the federal action was lacking and ineffective. If we were being invaded by a foreign enemy, we would be occupied territory by now – and we are heavily occupied by oil.

On April 22nd, according to the official White House timeline of the Administration’s response, President Obama convened a meeting in the Oval Office with

“principals across the government to discuss the situation and ongoing response efforts, and ordered that the administration use every single available resource at its disposal to respond to the event and investigate its cause.”^{xviii} Yet available federal resources in many cases were devoted to empowering bureaucracy more interested in enforcing rules than in containing and cleaning up oil. President Obama kept bureaucratic barriers in place, in some instances even creating new ones, and his underlings in turn responded fitfully and indecisively.^{xix}

The Oil Pollution Act

One of the central statutes governing the federal government’s response to an oil spill is the Oil Pollution Act of 1990 (OPA). The OPA specifies that the *President* shall ensure effective and immediate removal, mitigation, or prevention of a substantial threat to human health and welfare. While this authority is delegable to the various departments and agencies, the responsibility remains with the President.^{xx} And while the President may involve state, local, and private resources, including the party responsible for the oil discharge pursuant to the required response plan, the authority and responsibility to act expeditiously lies with him. This would also apply to utilizing mitigation resources and measures, such as berms, rock dikes, and skimmers to protect shorelines and inland waters of the various Gulf States.

The OPA was passed following the *Exxon Valdez* disaster in 1989. OPA Section 4201 amended Section 311 (c) of the Clean Water Act to, according to the Congressional Research Service, “provide the President (delegated to the USCG or EPA) with three options: perform cleanup immediately (‘federalize’ the spill), monitor

the response efforts of the spiller, or direct the spiller’s cleanup activities.”^{xxi} The revised response authorities addressed concerns that “precious time would be lost while waiting for the spiller to marshal [sic] its cleanup forces.”^{xxii}

As OPA clearly prescribes the President’s role, the Constitution confers broad authority on the President to deal with emergency situations, both at home and abroad. Many of the inherent powers of the President stem from Article II of the U.S. Constitution, which states in Section 1 that, “The executive Power shall be vested in a President”. Section 2 of Article II addresses the President’s civilian power over the military and vesting him with the power of “Commander-in-Chief” of the US armed services.

One manifestation of executive power under the Constitution is the executive order—a legally binding order issued by the President to federal agencies directing their execution of congressionally established laws or policies. In the BP disaster, President Obama rarely issued executive orders to remove obstacles. As Sen. George Lemieux (R-Fla.) asked, “Why aren't we approaching this issue with a sense of urgency? Why doesn't the President sign an Executive order waiving any legal constraints? Why aren't we doing everything possible to marshal those resources into the Gulf of Mexico?”

The Anti-Drilling Commission

In one of the few instances when he did issue an executive order, he established a highly partisan and biased national commission to investigate the causes of the BP spill.^{xxiii} The commission roster is straight from anti-drilling activists’ wish list. Commissioner Frances Beinecke, president

of the National Resources Defense Council, has been a persistent critic of offshore drilling. So has Fran Ulmer, who also served as a board member of the Union of Concerned Scientists, a group strongly opposed to offshore drilling. One of the commission's co-chairs is former Governor of Florida and Democratic Senator Bob Graham, who fought drilling off the coast of Florida throughout his career. The other co-chair – and the group's token Republican – William Riley, served as EPA Administrator under President George H.W. Bush. Riley also was the former president and chairman of the World Wildlife Fund, another group opposed to offshore drilling.^{xxiv} What's more, none of the commissioners has any expertise in petroleum engineering, modern drilling techniques, rig safety, or blowout preventers. Other members include Terry Garcia, who is vice president of the National Geographic Society; Donald Boesch of the University of Maryland, who is a biological oceanographer; and Cherry Murray of Harvard University, who specializes in physics and optics.^{xxv}

The 'Good Cause' Exemption

Congress also has granted federal agencies specific authority to deal with emergency situations, such as the "good cause exemption" under the Administrative Procedures Act.^{xxvi} The good cause exemption allows agencies to expedite their rulemaking process and bypass the typical procedural requirements of notice and comment periods when they are found to be "impracticable, unnecessary, or contrary to the public interest."

The good cause exemption could have been used by federal agencies to overcome regulatory barriers—and help those agencies minimize the risk of litigation. But none thus far have utilized it,

despite the fact that there clearly was a need to do so.

The Coast Guard, for example, could have issued an emergency rulemaking waiving inspection requirements on skimmers for life preservers and fire extinguishers. Instead, the Coast Guard prevented 16 vessels from skimming oil because they lacked these inspections. "The Coast Guard came and shut them down," Gov. Jindal complained. "You got men on the barges in the oil, and they have been told by the Coast Guard, 'Cease and desist. Stop sucking up that oil.'"^{xxvii}

Similarly, OSHA issued and enforced a raft of regulatory requirements during the crisis that hindered clean-up operations. They included a 40-hour training course for potential supervisors overseeing beach clean-up, as well as 4-hour training course for handling oiled plants. OSHA rulemakings under the good cause exemption could have streamlined or even waived those requirements to help expedite the oil spill response.^{xxviii xxix}

Whether through constitutional authority granting executive power to handle emergencies, or statutory authority positioning the President as leader during oil spills, under federal law, President Obama is in charge. What's more, he possessed ample authority to respond quickly and remove obstacles standing in his way. President Obama seemed to understand this. "I take responsibility," he said during a news conference on May 27. "It is my job to make sure that everything is done to shut this down."^{xxx} Yet his actions, or lack thereof, throughout the crisis indicate otherwise.

III. WHAT HAPPENED ON THE GOUND

As the following examples show, President Obama failed in several instances to remove regulatory and bureaucratic impediments blocking the response effort, and failed to ensure the availability of the resources needed to address the BP disaster. As Sen. Jeff Sessions (R-Ala.) remarked, “Everybody makes mistakes. But I got to tell you, when people are hurting like they are...along the Gulf Coast the president does need to be engaged totally.”^{xxx1}

In short, the President failed to demonstrate leadership in a time of crisis. The examples include:

- **Dilatory responses to multiple requests from foreign countries to provide aid and assistance;**
- **Delays in deploying adequate domestic skimming vessels;**
- **Refusal to issue waivers under the Jones Act;**
- **Wavering decisions on the use of dispersants, despite a pre-approved list ready for use in emergency situations; and**
- **Refusal to override OSHA’s workplace safety rules, devised on scene, that hamstrung and, in some cases, prevented, cleanup efforts.**

Refusal to Act on Offers of Foreign Aid

In the aftermath of the *Deepwater Horizon* explosion, multiple offers of assistance from foreign governments, corporations, and international bodies

poured into the State Department. Yet for weeks, despite the clear need for additional help and resources, the State Department failed to act on them. To this day, many of those offers remain “under consideration.”

As *The Washington Post* reported on June 14, “Four weeks after the nation's worst environmental disaster, the Obama Administration saw no need to accept offers of state-of-the-art skimmers, miles of boom or technical assistance from nations around the globe with experience fighting oil spills.” State Department spokesman Gordon Duguid told reporters on May 19, “We’ll let BP decide on what expertise they do need. We are keeping an eye on what supplies we do need. And as we see that our supplies are running low, it may be at that point in time to accept offers from particular governments.”^{xxxii}

As oil spilled into the Gulf, it became clear that state and local officials needed more resources. President Obama apparently understood this when he said on May 19, “I will do everything to stop this...” Yet the record shows that multiple offers of assistance had been made prior to Obama’s statement but were left unresolved. According to a State Department chart documenting the status of foreign offers, as of June 23, the latest date for which such information was publically available, 25 countries had offered resources to help with oil spill response.

The chart, which has since been removed from the State Department website, shows offers began on April 29, and they included skimmers, fire and containment boom, dispersants, sweeping arms, personnel, technical assistance, bird rehabilitation equipment, storage vessels, and high-capacity collectors. (As this report went to press, EPW Minority Staff requested

an original copy of the chart to insert in the report but were denied by State Department Congressional Affairs.) Of the approximately 60 separate offers made—many containing multiple resources—more than two months after the spill began 46 remained “under consideration.”^{xxxiii}

State and local officials desperately needed these resources, but they were

Here is a truncated State Department list of the countries, the resources they offered, and when they were offered, all of which, as of June 23, were “under consideration”:

- **Joint United Nations Environment Programme/Office for the Coordination of Human Affairs** (April 29): People/technical – technical and resource facilitation
- **Spain** (April 30): Containment, fire boom, sweeping arms
- **Russia** (May 7): Containment boom, vessels, oil storage containers, people/technical
- **Germany** (May 12): Containment and fire boom
- **Japan** (May 12): Containment boom
- **European Maritime Agency** (May 13): Containment boom, skimmers, vessels
- **France** (May 19 and June 14): Containment and fire boom, people/technical
- **Israel** (June 14): Containment boom
- **Italy** (June 17): Facilitation – private companies offering vessels, people/technical

Jones Act Waiver

In addition, application of the Jones Act further complicated the Administration’s ability to respond to offers of assistance from foreign countries. The Jones Act, which dates back to 1920, requires that all goods transported in coast-wide trade between United States ports be carried in United States flagged vessels, constructed in the United States, owned by United States citizens, and crewed by United States citizens.

blocked by the State Department. “It is clear we don’t have the resources we need to protect our coast,” Gov. Jindal said on May 24. “We need more boom, more skimmers, more vacuums, more jack-up barges that are still in short supply. Let’s be clear: Every day that this oil sits is one more day that more of our marsh dies.”^{xxxiv}

Currently, there are two ways that a foreign vessel can obtain an administrative Jones Act waiver. The Jones Act allows for foreign vessels to receive a waiver to assist in the recovery and transportation of oil if the Coast Guard, in consultation with the U.S. Department of State, determines, on a case-by-case basis, that domestic vessels cannot be “engaged” in a timely manner to respond to an oil spill, and if the foreign country has laws that would give the United States vessels the same privileges—further

delaying response time and mitigation efforts.

The Jones Act contains a separate waiver process for vessels that may not actually be recovering or transporting oil, but assisting with the response efforts, that requires the approval and review by three Federal agencies – the U.S. Coast Guard, the Maritime Administration, and Customs and Border Protection.

The Jones Act has been waived as part of disaster response in the past, including a waiver to assist in response to Hurricane Katrina nearly five years ago.

However, during the emergency response to the BP disaster, the Obama Administration failed to issue a Jones Act waiver. This was a barrier blocking foreign vessels from working with their American counterparts to skim oil from the Gulf. “This is something that should have been done weeks ago,” said Sen. Kay Bailey Hutchison (R-Texas), Ranking Member of the Senate Commerce, Science, and Transportation Committee. “It wasn’t done...if the President would issue an Executive Order, that would do it. But since he hasn’t, and since weeks have passed, I think it’s time for congress to take the reins and try to do everything that is within our power to mitigate the damage to the gulf.”

Skimmers

On June 15, President Obama observed that, “we’ve made preparations from day one to stage equipment for a worse-case scenario.” Yet the Administration clearly failed in this regard, specifically with respect to deploying an adequate number of skimming vessels to collect discharged oil.

For several weeks, Sen. Roger Wicker (R-Miss.) demanded that the Obama administration eliminate “the unnecessary bureaucratic obstacles impeding the cleanup effort,” including the delays in getting more skimming vessels to the Gulf Coast. Wicker pointed out that “more than half a million barrels of oil have flowed into the Gulf during the time it has taken the administration to respond to the request for more skimmers.”^{xxxv}

According to the Coast Guard, after the *Deepwater Horizon* exploded, there were 2,000 available skimmers in the US. On day 65 of the crisis, according to the National Response Resource Inventory, there were 251 skimmers in Coast Guard district 7, which includes Florida, Georgia, and South Carolina. In Coast Guard district 8, which includes, among other states, Texas and Louisiana, there were 599. Thus, between the Gulf coast, Texas, and Florida, there were 850 skimmers. Yet it was unclear how many skimmers were actually in use.

The Coast Guard reported to Sen. George Lemieux (R-Fla.) that 108 skimmers were being used in the Gulf. “Where are the other 742 skimmers,” Sen. Lemieux asked, “and why aren’t they being deployed?” Sen. Lemieux continued:

When I met with Admiral Allen, I asked him about the 2,000 skimmers he had reported were available in this country and why those skimmers weren’t in the Gulf of Mexico now, some 65 days after this disaster first started. I got answers ranging from, well, some are obligated to be other places in case there is an oil spill—to me, that is like saying your house is burning down and we can’t send a fire truck because we may need a fire

truck for another house that might burn down—to this answer: They are legally constrained. This is what I heard from the Navy yesterday when I met with them. Some 35 skimmers they would like to bring down are legally constrained.

xxxvi

Sen. Lemieux noted further that skimmers available throughout the country were not being utilized. For example, in the Coast Guard district that includes California, there were 227; in the district that includes Washington State, there were 158; in the district that includes Michigan and other

“President Obama said today he is going to use the gulf disaster to immediately push a new energy bill through Congress. I got an idea ... How about first using the Gulf disaster to fix the Gulf disaster.”

Jay Leno, June 15, 2010

Great Lakes States, there were 72; in the district that includes Maine, New Hampshire, and Vermont, there were 160; in the district that includes the mid-Atlantic, there were 157. “Why are these skimmers not headed to the Gulf of Mexico? Why are they not there already?” Sen. Lemieux asked.

Connie Moran (D), Mayor of Ocean Springs, Mississippi, was equally critical of the failure of the federal government to requisition skimmers. After touring the area

around Horn Island (a long, thin barrier island off the coast of Mississippi), she said:

Sure enough about a 10 to 15 foot wide strip of orange oil (was visible). We followed it for five miles long as far as the eye could see. What we found so outrageous is that we were promised by the Unified Command that a situated mobile (unit) would have skimmers and vessels to meet this at the pass. First they would fight it in the Gulf and then they would meet it at the pass to prevent it from coming into the Sound and there was no boat there.^{xxxvii}

Local mayors reportedly contemplated purchasing their own skimmers instead of relying on the federal government, but they feared getting overwhelmed by bureaucracy. The Obama Administration did nothing to alleviate those concerns. As Gulf coast author Winston Groom recently wrote:

The mayors of a number of small towns along the coast are seeking to purchase their own skimmers instead of relying on the effort by BP and the government, but that leaves open the danger of government regulators insisting on weeks of training and testing before they can be put to use. When the oil is upon you, it is not a matter of weeks, but of hours, even minutes.^{xxxviii}

By failing to do everything necessary to deploy available skimming vessels, the Obama Administration left local officials in the lurch. There was no excuse for such failure, as President Obama and federal officials on the scene possessed multiple authorities to generate the needed supply of skimming vessels to remove oil from the Gulf. But they were not exercised, and the

lack of leadership resulted in confusion and a disjointed response.

President Obama, June 15:
“Now, a mobilization of this speed and magnitude will never be perfect, and new challenges will always arise. I saw and heard evidence of that during this trip. So if something isn’t working, we want to hear about it. If there are problems in the operation, we will fix them.”

Dispersants

The Obama Administration’s response effort was also marred by the inconsistent application of dispersants—an important tool used in preventing oil from reaching the Gulf coast.

Dispersants are agents that can help break up oil and accelerate its natural biodegradation. At this point, it appears that the decision to use dispersants, both on and under the surface, greatly assisted efforts to prevent oil from washing ashore. While there are questions about the long-term impacts related to the subsurface application and volume of dispersants used in the Gulf, those questions are not the subject of this report. *What is at issue here is the federal government’s dithering response in overseeing BP’s application of dispersants during the early stages of the spill.*

In order to understand how the Administration mismanaged dispersant application, it is important to note that, as the crisis in the Gulf unfolded, the EPA had a *pre-approved* “schedule of dispersants”—basically a list of chemicals deemed safe for

use in the event of an oil spill (pre-approved means the dispersants went through testing by third-party, EPA-certified labs). That schedule of dispersants is required by Subpart J of the National Contingency Plan (NCP), which was updated after the *Exxon Valdez* disaster.

Specifically, Subpart J of the NCP was created from sections 311(d)(2) of the Clean Water Act and 4201(a)(G) of the Oil Pollution Act, which require the *President* to prepare a “schedule of dispersants, other chemicals, and other oil spill mitigating devices and substances, if any, that may be authorized for use on oil discharges...”^{xxxix}

The purpose of this pre-approved list was to empower EPA to apply dispersants without delay. As EPA explained upon publication of the list on September 15, 1994, “any potential for delay...will be alleviated through the preplanning that is required for the use of dispersants.” The current dispersants list was approved by then-EPA Administrator Carol Browner in 1994 (Browner is now Director of the White House Office of Energy and Climate Change Policy).^{xi} Additionally, the dispersants used to mitigate the Gulf spill were “pre-approved” by EPA’s Regional Response Team.

Yet during the spill, EPA’s interventions—in which the agency required BP to submit to a real-time approval process—along with its unsteady management of how and when dispersants were to be used, undermined the purpose behind having a pre-approved list: to ensure a steady, consistent, expeditious application of dispersants.

BP began applying dispersants on April 23, and continued using them for several weeks. During that time, activist

groups began issuing baseless warnings about the potential environmental damage dispersants could cause.^{xli}

On May 15, EPA and the Coast Guard authorized BP to use dispersants underwater. “The use of the dispersant at the source of the leak,” EPA and the Coast Guard said in a May 15 press release, “represents a novel approach to addressing the significant environmental threat posed by the spill.” According to “preliminary testing results,” the two agencies reported that “subsea use of the dispersant is effective at reducing the amount of oil from reaching the surface – and can do so with the use of less dispersant than is needed when the oil does reach the surface.”^{xlii}

Days later, EPA changed course based on concerns about subsea application of dispersants. On May 20, EPA ordered BP to stop using dispersants altogether. The May 20 directive was an “addendum” to a May 10 EPA directive governing subsurface dispersant monitoring and assessment. EPA ordered BP to “determine whether there was a less toxic, equally effective product” with sufficient available quantities than COREXIT 9500A—the dispersant BP was using, and one already on the pre-approved schedule of dispersants.^{xliii} EPA established several criteria for BP to follow in its evaluation, and gave BP 24 hours to report its results.

On May 22, BP responded in a letter to EPA that COREXIT was “a better choice for subsea application, based on the information currently available.” BP also noted that it had “246,380 gallons of COREXIT that are available for immediate use,” but that it did “not have a stockpile of dispersants that meet the criteria” outlined in the May 20th directive. And BP found that COREXIT was more “effective” than the

alternatives. “BP continues to believe that COREXIT was the best and most appropriate choice at the time when the incident occurred, and that COREXIT remains the best option for subsea application.”^{xliv}

In a letter in response to BP, dated May 26, EPA characterized BP’s response to its directive as “insufficient.” “We believe the response lacked sufficient analysis and focused more on defending your initial decisions than on analyzing possible better options.” Because of BP’s insufficient response, EPA indicated it would proceed with its own testing “to determine whether there is indeed a less toxic, more effective dispersant available in the volumes necessary for a crisis of this magnitude.”^{xlv}

Attached to its letter was another “addendum” to its May 10 directive, which ordered BP to stop using dispersants on the surface. In the “rare” event of exemptions, EPA required BP to get approval from the Federal On-Scene Coordinator (FOSC):

BP must make a request in writing to the FOSC providing justification which will include the volume, weather conditions, mechanical or means for removal that were considered and the reason they were not used, and other relevant information to justify the use of surface application. The FOSC must approve the request and volume of dispersant prior to initiating surface application.^{xlvi}

BP was also required to “limit the total amount of surface and subsurface dispersant applied each day to the minimum amount possible.” BP, according to the directive, was required to “establish an

overall goal of reducing dispersant application by 75% from the maximum daily amount.” EPA limited the “maximum subsurface application of dispersant” to “not more than 15,000 gallons in a single calendar day.”^{xlvi}

These commands were issued despite the fact that, just two days earlier, on May 24, EPA Administrator Lisa Jackson, during a press conference with Coast Guard Rear Admiral Mary Landry, touted the limited environmental impact from dispersants and the effectiveness of dispersants as tool to combat oil. “Under the circumstances,” Jackson said, “the overall results to-date are positive. Our tracking indicates that the dispersants are breaking up the oil and speeding its bio degradation, with limited environmental impact at this time.” “In other words,” Jackson continued, “dispersants continue to be the best of two very difficult choices. Their use inevitably means that we are making environmental trade-offs.” EPA, she said, “will continue to do all we can to address this crisis in the most aggressive and responsible way possible.”^{xlviii}

As the record shows, EPA’s management of dispersants was ad-hoc and unfocused, and its communications about

their safety and effectiveness contradictory, all of which created unnecessary confusion about their use. Moreover, top officials from the Obama White House contributed to this confusion, as they issued statements about dispersants that, at best, glossed over EPA’s concerns, or, at worst, were deliberately designed to conceal them.

That is the only plausible reading of comments made by White House Energy and Climate Change Czar Carol Browner on May 25, when she said, “We think dispersants are an important part of how we move forward and how we protect our coastal community.” Instead of conveying EPA’s concerns about toxicity, she suggested EPA’s main concern was focused on the adequacy of dispersant supplies—a fact not supported by the record. “As it turns out,” Browner said, “there are not as many being manufactured as people thought in the quantities needed. What EPA did yesterday was direct BP to use less of this dispersant while they continue study what other alternatives may be available.”^{xlx}

EPA Administrator Lisa Jackson

“In the meantime, we will continue to do all we can to address this crisis in the most aggressive and responsible way possible.” EPA Press Conference, May 24, 2010

“Dispersants are chemicals that help break up the oil with the goal of preventing damage in the water and mitigating the potential impact of landfall.” Deepwater Horizon Response Teleconference, May 12, 2010

“We know that dispersants are less toxic than oil.” EPA Press Conference, May 24, 2010

“Our tracking indicates that the dispersants are breaking up the oil and speeding its bio degradation, with limited environmental impact at this time.” EPA Press Conference, May 24, 2010

Carol Browner – Director of the White House Office of Energy and Climate Change Policy (Administrator of EPA from 1993-1999)

“We think dispersants are an important part of how we move forward and how we protect our coastal community.” **Good Morning America, George's Bottom Line, May 25, 2010**

Despite EPA's fits and starts on dispersants throughout the spill, the agency on August 2 released the results of its tests on COREXIT 9500A. The results confirmed that “the dispersant used in response to the Gulf oil spill, COREXIT 9500A, is generally no more or less toxic than the other available and tested alternatives.”¹

Occupational Safety and Health Administration

Another example of the Obama Administration's refusal to set aside bureaucracy and red tape can be found by reading the “Heat Stress Management Plan” developed by the Occupational Safety and Health Administration (OSHA).

Developed as the crisis unfolded, the plan required, among other things, that “[s]hade must be located within 100 yards of work activity at all times.” Moreover, OSHA's plan stated that “workers new to working in a hot environment, workers returning after 3 weeks of cooler weather, or

returning after being sick” must “acclimatize by working 10 minutes per hour on days 1 and 2. On days 3 and 4, the work time can be increased to 15 minutes per hour.”^{li}

The OSHA rules were strongly opposed by local officials—but the Administration did nothing to revise or streamline them. Councilman Young, stated in testimony that OSHA's rules were an impediment; they should have been scrapped and the “clean-up work force should have been tripled so 60 minutes out of each hour could have been dedicated to clean-up of the coastline, bays, marshes, wetlands and estuaries.”^{lii}

OSHA's heavy-handed intervention got worse. Workers “cutting and removing oiled plants (on shore)” were required by OSHA to take a 4-hour course on “Shoreline Spilled Oil Response.”^{liii} On May 19, the U.S. Department of Labor issued a press release noting OSHA's requirement for a “one- to two-hour training course” for “employees who will only engage in general beach cleanup, such as removing trash and clean debris.” And for potential supervisors of those employees, OSHA required a “more rigorous” 40-hour course.^{liv}

What's more, OSHA issued an unequivocal statement that the 40-hours of such training could not be shortened. “We have received reports that some are offering this training in significantly fewer than 40 hours, showing video presentations and offering only limited instruction,” said Assistant Secretary of Labor for OSHA Dr. David Michaels. “This training cannot be shortened to anything less than 40 hours.”^{lv}

OSHA's requirements provide consummate examples of the contradiction between President Obama's statements to “do everything possible” to address the spill,

and his actions—allowing the federal bureaucracy to maintain a business-as-usual approach, replete with enforcement of ad-hoc rules and requirements, to responding to the nation’s largest oil spill.

IV. CONCLUSION

President Obama and members of his Administration clearly failed in their responsibility to exhibit decisive leadership during the BP disaster. Instead of removing red tape, bureaucracy, and onerous regulations, the Obama Administration kept them in place, and refused to exercise available legal authorities to remove impediments blocking the most effective and efficient courses of action. President Obama treated the BP disaster as if it were business as usual, rather than a crisis of national significance. The result was a federal response effort that was doomed to fail from the very beginning.

APPENDIX A

TIMELINE OF EVENTS

Tuesday, April 20 – An explosion occurred on the *Deepwater Horizon* oil rig. The rig, which was leased by BP from Transocean Ltd., was located 41 miles off the coast of Louisiana, and had 126 people onboard, 17 of which were injured and 11 presumed dead.

Friday, April 23 – President Obama’s started a 3-day vacation in Asheville, NC. The sunken *Deepwater Horizon* rig was also found 1,500 feet from the blowout preventer. An oil sheen was reported with approximately 8,400 gallons on the water, but no apparent leak was discovered. First day that surface dispersants are used.

Saturday, April 24 – According to the White House, government officials discover leaking oil, although an aerial view the very next day showed the oil spill size was approximately 48 miles wide by 39 miles long.

Tuesday, April 27 – Thomas Strickland, Department of the Interior chief of staff and Assistant Secretary for Fish and Wildlife and Parks, flew to the Grand Canyon for a three day white-water rafting trip with his wife on what was called a “work-focused” trip by a member of the Administration.

Wednesday, April 28 – The first of numerous controlled, on-location burns were conducted for approximately 30 minutes.

Thursday, April 29 – 9 days after the explosion, the President addressed the American people for the first time on the Gulf disaster.

Saturday, May 1 – The Obama Administration named Admiral Thad Allen to direct efforts in the Gulf.

Sunday, May 2 – 12 days after the explosion, President Obama visited the Gulf Coast for the first time to inspect response operations.

Wednesday, May 5 – 15 days after the explosion, Secretary of the Interior Ken Salazar visited the Gulf for the first time to survey response efforts.

Friday, May 7 – Secretary Salazar announced that all offshore drilling permit applications will be halted beginning April 20. No new applications for drilling permits, Salazar said, will go forward until the Department of the Interior completed the safety review process requested by President Obama.

Tuesday, May 11 – Secretary of the Interior Ken Salazar announced a set of new regulations for oil and gas companies operating on the Outer Continental Shelf.

Saturday, May 15 – EPA and the Coast Guard authorized the use of subsea dispersants for the first time.

Thursday, May 20 – Despite the fact that BP was using a pre-approved dispersant, EPA issued a directive requiring “BP to identify and use a less toxic and more effective dispersant from the list of EPA authorized dispersants” for use on the surface and subsea. This directive effectively halted the use of dispersants on the surface for two days and subsurface for one.

Saturday, May 22 – BP responded in a letter to EPA that COREXIT was “a better choice for subsea application, based on the information currently available.”

Monday, May 24 – EPA ordered “BP to ‘take immediate steps to significantly scale back’ its use or find alternatives to the dispersants being used. .

Wednesday, May 26 – EPA declared BP’s response to the May 20 directive “insufficient” and orders BP to “significantly scale back the overall use of dispersants.”

Thursday, May 27 – President Obama extended the deepwater drilling moratorium for six months and canceled a lease sale off of Virginia. Liz Birnbaum, head of the Minerals Management Service (MMS, which has since be renamed the ‘Bureau of Ocean Energy Management, Regulation, and Enforcement’), resigned. University of New Hampshire Coastal Response Research Center, EPA, NOAA, and Coast Guard held a two-day science meeting to study dispersant use and potential impacts in the Gulf. According to Nancy Kinner, co-director of the UNH Coastal Response Research Center, “the consensus of the group that up to this point, use of dispersants and the effects of dispersing oil into the water column has generally been less environmentally harmful than allowing the oil to migrate on the surface into the sensitive wetlands and near shore coastal habitats.”

Monday, May 31 – A "federally convened group of scientists" recommended BP and the U.S. continue spraying dispersants into the ocean. BP began its third attempt to contain leaking oil, which will involve "slicing off the leaking pipe at the top of the well's broken blow-out preventer, placing a cap over the leak and channeling the captured oil and gas to a vessel on the surface."

Wednesday, June 16 – 57 days into the oil spill, President Obama finally hosted a 20-minute, face-to-face meeting with BP CEO Tony Hayward.

Wednesday, June 23 – A U.S. judge overturned a six-month ban on drilling in water deeper than 500 feet. Secretary Salazar quickly said he would “issue a new order imposing a moratorium on deep-water drilling that would contain additional information showing why it was necessary.”

Thursday, June 24 – BP and other companies based their oil spill response plans on “U.S. government projections that gave very low odds of oil hitting shore.”

Wednesday, June 30 – EPA releases a study comparing the toxicity of eight preapproved oil dispersants. This report found that all eight dispersants alone were less toxic than oil itself and Correxit 9500 – the only dispersant being manufactured for use in the Gulf – was rated “Practically Non-Toxic” to small fish and “Slightly Toxic” to mysid shrimp.

Monday, July 12 – Secretary Salazar "issued a second moratorium to replace an earlier ban that was tossed out in federal court."

Thursday, July 15 – BP reported positive tests results from the sealing of the more secure cap.

Monday, August 2 – EPA releases a second study comparing the toxicity of Louisiana Sweet Crude Oil alone and mixtures of each of the 8 dispersants combined with the oil. The results of the study indicated that the dispersant-oil mixtures are generally no more toxic to the species than oil alone.

Wednesday, August 4 – The Obama Administration announced that approximately three-quarters of the spilled oil has “already evaporated, dispersed, been captured or otherwise eliminated – and that much of the rest is so diluted that it does not seem to pose much additional risk of harm.” In addition, BP claimed its static kill procedure, pumping heavy drilling mud to push oil from the well back into the reservoir, to be successful.

Primary Sources

<http://www.whitehouse.gov/blog/2010/05/05/ongoing-administration-wide-response-deepwater-bp-oil-spill>)

http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.Blogs&ContentRecord_id=8408bd41-802a-23ad-4464-ad127e495a41&Issue_id=

<http://www.epa.gov/bpspill/dispersants.html>

APPENDIX B

25 countries

U.S. Department of State Chart on Deepwater Horizon Oil Spill Response:
International Offers of Assistance from Governments and International Bodies
June 23, 2010 10:30 AM

Country/Entity	Date of Offer	Resources Offered	Status of Offer	Reimbursement Required?
Belgium	15 June 2010	Skimmers	Under consideration	Yes
	14 June 2010	Fire Boom	Under consideration	
Canada		Dispersant	Under consideration	Yes
		Containment and Fire Boom	Accepted 9,843 ft containment boom accepted June 4. Arrived on scene and now in the field for staging. *More boom offered 14 June, under consideration.	
	30 April 2010	People/technical	Unknown. This offer was made directly from British Columbia to the Gulf Coast States.	
China via IMO	14 June 2010	Containment Boom	Under consideration.	Yes
Croatia	5 May 2010	People/technical – proposed solution	Proposed solution has been shown to engineers and technical experts, will be incorporated into response as needed.	Yes
European Maritime Safety Agency	13 May 2010	Containment Boom	Under consideration	Yes
		Skimmers		
		Vessels	Under consideration. Only the USCG can accept this vessel offer.	
		Sweeping arms	Under consideration	
France		Dispersant	Declined. These chemicals are not approved for use in the U.S.	Yes
	19 May 2010	Containment and Fire Boom	Under consideration. *More boom offered 14 June,	

April offer
 Accepted
 May
 June
 Declined

U.S. Department of State Chart on Deepwater Horizon Oil Spill Response:
International Offers of Assistance from Governments and International Bodies
June 23, 2010 10:30 AM

France Cont.			Under consideration.	
	18 May 2010	People/technical	Under consideration	
		Bird rehabilitation equipment	Under consideration	
Germany	12 May 2010	Containment and Fire Boom	Under consideration *More boom offered 15 June, under consideration.	Yes
		People/technical	Under consideration	
International Maritime Organization (IMO)	05 May 2010	People/technical	Accepted. Requested IMO to send communication to all 169 Member States and the maritime community generally regarding use of websites provided by the U.S. to assist in safe navigation in the Gulf of Mexico	n/a
Ireland	30 April 2010	General offer of assistance	Under consideration	Yes
Israel (via IMO)	14 June 2010	Containment Boom	Under consideration.	Yes
Italy	17 June 2010	Facilitation - private companies offering vessels, people/technical	Under consideration	
Japan	12 May 2010	Containment Boom	Under consideration.	
Joint UNEP OCHA Environment Unit	29 April 2010	People/technical – technical and resource facilitation	Under consideration	Yes
Kenya (via IMO)	14 June 2010	Fire Boom	Under consideration.	Yes
Mexico	03 May 2010	Dispersant	Under consideration.	Boom was offered gratis, other materials and equipment were purchased
		Containment Boom Skimmers	BP purchased 13,780 feet of boom and two skimmers in early May. Arrived in field and now on scene.	
Monitoring and Information Center (EU)	30 Apr 2010	People/technical – coordination of offers among member states	Accepted	n/a

U.S. Department of State Chart on Deepwater Horizon Oil Spill Response:
International Offers of Assistance from Governments and International Bodies
June 23, 2010 10:30 AM

MIC)				
Netherlands	30 April 2010	Vessel w/ storage capacity	Under consideration	Yes
		Skimmers	Accepted on May 23. BP purchased three rigid Koseq sweeping arms accepted May 23.	
		People/technical	Under consideration	
Norway	30 April 2010	Dispersant	Under consideration	Yes
		Containment and Fire Boom	Purchased by BP directly	
		Skimmers	Eight skimming systems accepted in early May.	
		People/technical	Under consideration	
Portugal	21 Jun 2010	high-capacity collectors (Model: TRANSREC 250)	Under Consideration	Yes
Romania	30 April 2010	General offer of support	Under Consideration	Yes
Russia	7 May 2010	Containment Boom	Under consideration	Yes
		Vessels		
		Oil storage containers		
		People/technical		
Republic of Korea	2 May 2010	Dispersant	Under consideration	Yes
		Containment Boom	Under consideration	
		Skimmers	Under consideration	
		People/technical	Under consideration	
Spain	30 April 2010	Containment and Fire Boom	Under consideration *More boom offered 14 June, under consideration.	Yes
		Sweeping arms	Under consideration	
Sweden	30 April 2010	Containment and Fire Boom	Under consideration	Yes
		Skimmers – Three total	*More skimmers offered 15 June, under consideration.	

U.S. Department of State Chart on Deepwater Horizon Oil Spill Response:
International Offers of Assistance from Governments and International Bodies
June 23, 2010 10:30 AM

		Vessels – One Combination vessel, three small recovery boats	Under consideration *Another vessel offered 15 June, under consideration	
		People/technical	Under consideration	
Tunisia (via IMO)	14 June 2010	Fire Boom	Under consideration	Yes
Qatar	14 June 2010	Boom	Under consideration	Yes
UAE	10 May 2010	Dispersant	Under consideration	Yes
		Containment Boom	Under consideration	
		Skimmers	Under consideration	
		People/technical	Under consideration	
United Kingdom	30 April 2010	Dispersant	Under consideration. Only 11 tons of chemicals offered are licensed for use in the U.S.	Yes
		Containment Boom	Under consideration	
Vietnam	05 May 2010	Vessel w/ sweeping arms	Under consideration	Yes

60

-
- ⁱ “Oil spill dumped 4.9 million barrels into Gulf of Mexico, latest measure shows,” Joel Achenbach and David Farenthold, *The Washington Post*, 3 August 2010 (<http://www.washingtonpost.com/wp-dyn/content/article/2010/08/02/AR2010080204695.html>)
- ⁱⁱ The National Oceanic and Atmospheric Administration, “What’s the story on Oil Spills?” ([http://response.restoration.noaa.gov/topic_subtopic_entry.php?RECORD_KEY\(entry_subtopic_topic\)=entry_id,subtopic_id,topic_id&entry_id\(entry_subtopic_topic\)=184&subtopic_id\(entry_subtopic_topic\)=8&topic_id\(entry_subtopic_topic\)=1](http://response.restoration.noaa.gov/topic_subtopic_entry.php?RECORD_KEY(entry_subtopic_topic)=entry_id,subtopic_id,topic_id&entry_id(entry_subtopic_topic)=184&subtopic_id(entry_subtopic_topic)=8&topic_id(entry_subtopic_topic)=1))
- ⁱⁱⁱ Jim Polson, “BP Well Gushing as Much as 60,000 Barrels a Day,” *Bloomberg*, 15 June 2010 (<http://www.businessweek.com/news/2010-06-16/bp-gulf-well-gushing-as-much-as-60-000-barrels-a-day-update3-.html>)
- ^{iv} “Oil rig wreck leaks into Gulf of Mexico,” *CBC News*, 24 April 2010 (<http://www.cbc.ca/world/story/2010/05/02/www.cbc.ca/m/rich/world/story/2010/05/07/www.cbc.ca/m/rich/world/story/2010/04/24/deepwater-horizon-oil-rig-leaking.html>)
- ^v “Robot subs trying to stop Gulf oil leak,” *CBC News* 25 April 2010 (<http://www.cbc.ca/world/story/2010/04/25/oil-rig-leak.html>)
- ^{vi} “While Oil Slick Spread, Interior Department Chief of Staff Rafted with Wife on ‘Work-Focused’ in Grand Canyon,” Jake Tapper, *ABC News*, 5 May 2010 (<http://blogs.abcnews.com/politicalpunch/2010/05/while-oil-slick-spread-interior-department-chief-of-staff-rafted-with-wife-in-grand-canyon-.html>)
- ^{vii} Remarks by Sen. Roger Wicker, *Weekly Republican Radio Address*, 19 June 2010
- ^{viii} Testimony by Janet Napolitano before the Senate Committee on Homeland Security and Governmental Affairs, 17 May 2010 (http://www.dhs.gov/ynews/testimony/testimony_1274125488135.shtm)
- ^{ix} Testimony by Billy Nungesser, President of Plaquemines Parish, before the Senate Committee on Homeland Security and Government Affairs, 10 June 2010 (http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=1ffce333-958d-4601-959f-bb4b15e66cc7)
- ^x “Oil Messed Up,” by Winston Groom, *The Weekly Standard*, 12 July 2010 (<http://www.weeklystandard.com/articles/oil-messed>)
- ^{xi} Testimony of John Young, *Jefferson Parish Council*, before the Senate Committee on Environment and Public Works, 27 July 2010.
- ^{xii} *Ibid* at vii.
- ^{xiii} “Obama bureaucracy soils the Gulf,” *Editorial*, *The Washington Times*, 25 June 2010 (<http://www.washingtontimes.com/news/2010/jun/25/obama-bureaucracy-soils-the-gulf/>)
- ^{xiv} “Vitter Blasts EPA, Corps, NOAA Over Bureaucratic Delays,” 6 July 2010 (<http://insidelouisiananews.com/?p=4282>)
- ^{xv} “Corps rejects plan; oil in Lake Ponchartrain,” by Sandy Davis, *2theadvocate*, 6 July 2010 (<http://www.2theadvocate.com/news/latest/97863974.html>)
- ^{xvi} “Corps denies Jefferson Parish’s requests to use rocks to block oil from Barataria Bay,” Richard Rainey, *The Times Picayune*, 3 July 2010 (http://www.nola.com/news/gulf-oil-spill/index.ssf/2010/07/corps_denies_jefferson_parishs.html); “Corps provides status of rock dike emergency permit request,” *Army Corps of Engineers press release*, 3 July 2010 (<http://www.mvn.usace.army.mil/pao/jprdstatuspacketjuly3.pdf>)
- ^{xvii} “Obama under fire for oil spill response,” Julie Mason, *The Examiner*, 7 June 2010
- ^{xviii} “The Ongoing Administration Response to the Deepwater BP Oil Spill,” *White House blog* (<http://www.whitehouse.gov/blog/2010/05/05/ongoing-administration-wide-response-deepwater-bp-oil-spill>)
- ^{xix} The Oil Pollution Act requires the preparation of a National Contingency Plan with many planning steps from the President, through the federal bureaucracy, to the state and local levels. The NCP was an available, detailed plan mandated by law to be initiated immediately.
- ^{xx} Section 311 of the CWA states “(1) GENERAL REMOVAL REQUIREMENT
(A) The President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance—
(i) into or on the navigable waters; (ii) on the adjoining shorelines to the navigable waters;(iii) into or on the waters of the exclusive economic zone; or(iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

^{xxi} “Oil Spills in U.S. Coastal Waters: Background, Governance, and Issues for Congress,” Congressional Research Service, by Jonathan L. Ramseur, 30 April 2010 (http://assets.opencrs.com/rpts/RL33705_20100430.pdf)

^{xxii} U.S. Congress, House Committee on Merchant Marine and Fisheries, Report accompanying H.R. 1465, Oil Pollution Prevention, Removal, Liability, and Compensation Act of 1989, 1989, H.Rept. 101-242, Part 2, 101st Cong., 1st sess., p. 84.

^{xxiii} “Executive Order – National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling,” 22 May 2010 (<http://www.whitehouse.gov/the-press-office/executive-order-national-commission-bp-deepwater-horizon-oil-spill-and-offshore-dri>)

^{xxiv} Editorial: The Antidrilling Commission *The White House choices seem to have made up their minds. The Wall Street Journal*, June 22, 2010 (http://online.wsj.com/article/NA_WSJ_PUB:SB10001424052748704895204575320892241446242.html)

^{xxv} “The Anti-Drilling Commission: The White House choices seem to have made up their minds,” editorial, the Wall Street Journal, 22 June 2010 (http://online.wsj.com/article/SB10001424052748704895204575320892241446242.html?mod=WSJ_Opinion_AboveLEFTTop#printMode)

^{xxvi} 5 USC 553 (b) (3) (B)

^{xxvii} “BP Oil Spill: Against Gov. Jindal’s Wishes, Crude-Sucking Barges Stopped by Coast Guard,” by David Muir and Bradley Blackburn, ABC News, 18 June 2010 (<http://abcnews.go.com/WN/bp-oil-spill-gov-bobby-jindal-wishes-crude-story?id=10946379>)

^{xxviii} “US Department of Labor’s OSHA distributes oil spill cleanup safety guides, fact sheets,” US Department of Labor, 19 May 2010 (<http://www.dol.gov/opa/media/press/osha/osha20100690.htm>)

^{xxix} In both the Coast Guard and OSHA examples, in order to address any safety concerns, the agencies could have issued notices making the public aware of those concerns, and of the risks involved in the response effort.

^{xxx} “Obama Oil Spill Press Conference: Government in Charge of Oil Spill Disaster Response,” by Jennifer Loven and Tom Raum, AP, 27 May 2010 (http://www.huffingtonpost.com/2010/05/27/obama-oil-spill-press-con_n_592149.html)

^{xxxi} “Sessions Sounds Off On Oil Spill, Sestak Saga,” *Hannity*, 27 May 2010 (<http://www.foxnews.com/story/0,2933,593683,00.html>)

^{xxxii} “After delays, U.S. begins to tap foreign aid for gulf oil spill,” by Juliet Eilperin and Glenn Kessler, the Washington Post, 14 June 2010 (<http://www.washingtonpost.com/wp-dyn/content/article/2010/06/13/AR2010061304232.html>)

^{xxxiii} On August 5, the minority staff from the EPW Committee contacted the State Department to obtain an electronic copy of the June 23 chart, but were informed by a State Department official that the it did not want the public to see it.

^{xxxiv} “BP Oil Spill: Gov. Jindal Asks for Permission to Build Barrier Islands,” by Jake Tapper and Bradley Blackburn, ABC News, 24 May 2010 (<http://abcnews.go.com/WN/bp-oil-spill-louisiana-governor-bobby-jindal-asks/story?id=10731680>)

^{xxxv} “Senate Wicker Looks into Delays in Oil Spill Cleanup and Hears from Deepwater Horizon Widows,” Press Release, 30 June 2010 (http://wicker.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord_id=8aebdbb-040b-7f50-3852-86ce75a44094&Region_id=&Issue_id=)

^{xxxvi} Floor statement of Sen. George Lemieux (R-Fla.), 23 June 2010 (<http://thomas.loc.gov/cgi-bin/query/D?r111:4:./temp/~r111U8sARw:>)

^{xxxvii} “As oil creeps into Mississippi, anger from Gulf Coast Mayor,” CNN.com, 28 June 2010 (<http://campbellbrown.blogs.cnn.com/2010/06/28/as-oil-creeps-into-mississippi-anger-from-gulf-coast-mayor/>)

^{xxxviii}

^{xxxix} Subpart J: The National Oil and Hazardous Substances Contingency Plan (NCP) Product Schedule (<http://www.epa.gov/emergencies/content/ncp/factsheet.htm>)

^{xl} Environmental Protection Agency: National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule (http://www.epa.gov/oem/content/frps/09_94_fulltext.htm)

^{xli} “Oil Cleanup Chemicals Worry Environment Watchdogs,” Deborah Zabarenko, Reuters, 4 May 2010 (<http://www.reuters.com/article/idUSN0411028320100504>)

^{xlii} “Coast Guard and EPA Approve Use of Dispersant Subsea in Further Effort to Prevent Oil from Reaching U.S. Shoreline,” joint EPA-Coast Guard press release, Deepwater Horizon Unified Command, 15 May 2010 (<http://www.deepwaterhorizonresponse.com/go/doc/2931/551271/>)

-
- ^{xliii} Testimony by Dr. Paul Anastas, Assistant Administrator, Office of Research and Development, Environmental Protection Agency, before the Senate Committee on Environment and Public Works, 4 August 2010
- ^{xliiv} Letter to EPA
- ^{xlv} Letter to David Rainey, Vice President, Exploration and Production, BP, from EPA Administrator Lisa Jackson, 26 May 2010 (<http://www.epa.gov/bpspill/dispersants/Rainey-letter-052610.pdf>)
- ^{xlvi} “Dispersant Directive Monitoring and Assessment Directive – Addendum 3,” Environmental Protection Agency to BP, 26 May 2010 (<http://www.epa.gov/bpspill/dispersants/directive-addendum3.pdf>)
- ^{xlvii} “Dispersant Directive Monitoring and Assessment Directive – Addendum 3,” Environmental Protection Agency to BP, 26 May 2010 (<http://www.epa.gov/bpspill/dispersants/directive-addendum3.pdf>)
- ^{xlviii} Statement by EPA Administrator Lisa P. Jackson from Press Conference on Dispersant Use in the Gulf of Mexico with US Coast Guard Rear Admiral Landry, 24 May 2010 (<http://www.epa.gov/bpspill/dispersants/statement-dispersant-use-may24.pdf>)
- ^{xlix} Carol Browner on “Good Morning America: George’s Bottom Line,” 25 May 2010 (<http://blogs.abcnews.com/george/2010/05/carol-browner-gulf-oil-spill-is-worst-in-history.html>)
- ¹ Testimony by Dr. Paul Anastas, Assistant Administrator, Office of Research and Development, Environmental Protection Agency, before the Senate Committee on Environment and Public Works, 4 August 2010
- ⁱⁱ Deepwater Horizon Onshore Clean-up Task Force, Occupational Safety and Health Administration: Heat Stress Management Plan, 8 June 2010 (http://www.osha.gov/oilspills/heatstress_houma.pdf)
- ⁱⁱⁱ Testimony of John Young, Jefferson Parish Council, before the Senate Committee on Environment and Public Works, 27 July 2010.
- ^{liii} OSHA (http://www.osha.gov/oilspills/tasks/on_vegetation.html)
- ^{liiv} “US Department of Labor’s OSHA distributes oil spill cleanup safety guides, fact sheets,” US Department of Labor, 19 May 2010 (<http://www.dol.gov/opa/media/press/osha/osha20100690.htm>)

^{lv} Ibid. at xlii