

Testimony of Elgie Holstein
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Subcommittee on Energy and Environment
of the House Committee on Energy and Commerce

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Mr. Chairman and members of the subcommittee, I appreciate this opportunity to join you in a discussion about how to prevent a recurrence of the ongoing oil spill tragedy in the Gulf of Mexico.

Environmental Defense Fund is a national environmental organization that searches for solutions that maximize economic incentives for solving environmental problems. While we do not oppose offshore drilling -- we understand that oil will remain part of our energy mix for some time to come -- we do believe that America must accelerate its movement toward a clean energy future.

Domestic oil and gas exploration and production will undoubtedly continue. But the industry must act now to rebuild public trust and confidence in its ability to conduct its activities safely and responsibly. In turn, the government must demonstrate a renewed commitment to safeguarding the public's natural resources and our economy. The draft legislation before this subcommittee is a good start in moving that agenda forward with respect to the high-risk wells that are an increasing part of our domestic energy development.

Introduction

The current crisis in the Gulf is an ongoing nightmare -- a daily worsening of an environmental and economic crisis of staggering proportion. Wetlands, wildlife, and fish are paying a terrible price along the Gulf Coast. But the disaster is also precipitating an economic crisis, which, a mere five years after Katrina, once again threatens the livelihoods of coastal communities, businesses, and workers.

Therefore, it is entirely appropriate that even before the blown out well is finally brought under control, Congress should begin to consider the kinds of changes we need to ensure that something like this never happens again. As you undertake that effort, it is important to note that the Deepwater Horizon was operating on the frontier of modern offshore drilling, at depths deeper than humans can go. Yet wells in far deeper water have been drilled and will become commonplace in years to come. Even wells that are not drilled in deep water may, depending on the geologic, geographic and environmental setting, present a risk to public and worker safety, the environment, and the economy.

Before I address specific provisions of the draft legislation you have before you, I would like to take a few moments to suggest a set of principles that I believe should form a framework for guiding government regulatory requirements and industry practice. I am happy to see many of those principles reflected in the draft legislation.

Principles

1. Technology, procedures and regulations must evolve to meet changing requirements. The technical complexity of high-risk drilling, and the high-pressure producing zones they often seek, underscore the necessity for continuous improvement in the performance and safety-related characteristics of the equipment used. The federal government should co-sponsor with industry research and development efforts designed to ensure continuous improvement in equipment and procedures used in high-risk drilling, as well as in emergency response to any accidents that may occur.
2. Safety systems must be redundant, integrated into key equipment and processes, and designed to be accessible from multiple pathways. Redundancy and defense-in depth are core safety principles in industrial environments. Safety equipment must be designed for placement at key process points, and it should be capable of automatic triggering. Communications and control systems supporting such equipment must be accessible remotely and mechanical equipment must be capable of both remote and local activation.
3. Safety systems should be designed to protect workers and the environment first, not exploration and production budgets. The loss of eleven lives on the Deepwater Horizon was the tragic beginning of a series of losses that continue to mount, including the accelerated loss of wildlife and wetlands, the impacts on sport and commercial fishermen and their associated industries, the loss of tourism, etc. Accordingly, commitments made to the development and deployment of high-risk well safety systems are investments in economic, environmental and legal protection.
4. Rapid-response capabilities should be developed to ensure that in the event of low-probability/high consequence events, there will be sufficient and appropriate equipment and other resources available to respond quickly with oil containment and clean-up equipment. Key repair and response equipment should be pre-positioned so that it can be transported promptly to well sites.
5. New high-risk drilling regulations should require the use of realistic estimates of the amount of oil that could spill in the event of a worst-case scenario. Permit applicants should be required to provide robust and defensible models that offer realistic assessments of the risk and the consequences of the loss of well control and of other failures.

6. Oversight, enforcement, and compliance activities should be funded primarily by industry, including the cost of inspections, oil capture and clean-up vessels and equipment, well control and disaster-response specialists, etc.
7. Regulations should ensure that future permitting decisions and the regulatory requirements upon which they are based, entail realistic estimates of the risk associated with proposed new drilling projects. A new regulatory philosophy should be developed to ensure that the public interest in worker, environmental, and economic protection is fully protected.
8. Communications equipment and protocols used in high-risk drilling should permit off-site monitoring by qualified and authorized third-party experts and inspectors, including those representing federal and state governments.

Draft Legislation

The draft legislation under review by this subcommittee meets many of the standards suggested by the principles above, as discussed further below.

Demonstrated Ability to Prevent and Contain Leaks. (Section 2) This section emphasizes a critical ingredient of high-risk drilling reform, namely, ensuring accountability on the part of both industry and government. The draft leaves to the President the discretion to assign the performance of the government's obligations and responsibilities under the bill. This is an appropriate reflection of the ongoing discussions about the appropriate allocation of responsibilities for high-risk drilling. However, EDF supports the need to ensure that enforcement and oversight work are carried out independently of the government's leasing functions. .

In addition, the required demonstration and determination provisions of section 2 ensure that both senior industry representatives and government regulators have a formal role in – and clear accountability for -- confirming the adequacy, performance, condition, and capabilities of well control equipment, as well as the necessary response and intervention plans and other emergency back-up equipment, personnel and protocols should a spill occur. The requirement to demonstrate the capability to begin promptly the drilling of emergency relief well is an especially important feature of the draft.

Blowout Preventer Requirements. (Section 3) This section prescribes some important, minimum technical requirements and standards for high-risk wells, and, importantly, embraces the principle of redundancy in the design and deployment of intervention and back-up systems. However, the section also usefully allows for the substitution of alternate mechanisms if, in the opinion of the appropriate federal official, they would be more effective. In this way, the

draft in effect allows the government to create a performance-based standard, which can evolve as needed in response to technology change, new exploration challenges, risk analyses, changing regulatory requirements, etc.

The reporting, certification and re-certification requirements of subsection (b) are tied to physical inspections of blowout preventers. They represent another welcome check on the appropriateness, functionality, and effectiveness of critical hardware used in high-risk drilling. We believe that such requirements should be extended to any other equipment that, in the federal official's judgment, may be critical to preventing or containing loss of well control.

Ensuring Safe Wells and Cementing. (Section 4) The additional certification requirements in this section, as well as the protocols to prevent fires and explosion, will help establish public confidence in well planning, design, and execution, as well as in the protection of rig workers. The pre-drilling, third-party certification requirements will help ensure that best practices will be applied in all high-risk drilling operations. The provision reflects the principle that the bar should be set high with respect to equipment and procedural standards and that opportunistic cost-cutting should never become part of the design safety equation.

Stop-Work Requirements. (Section 5) In establishing a firm safety basis for stop-work requirements applicable to operators and their contractors, this section correctly adopts one of the most basic and effective approaches to industrial worker and operational safety. We especially support the incentives for safe industry operation called for in the draft. This section might usefully be expanded, however, to ensure that government inspectors retain the right to issue stop-work orders based on any inspections or other monitoring that they perform, or in response to new information about the threats posed by certain design or operational conditions. Such orders would be based on findings that regulations were being violated or that operational conditions were posing, or had the potential to pose, unacceptable risks to safety and well control.

Independent Technical Advice and Certification. (Section 6) Because the draft legislation correctly puts so much emphasis on third-party verification and high technical standards, the formation of an independent technical advisory committee ensures that regulators will receive high-quality professional advice regarding regulations, standards, equipment, and – very important – high-risk well practices in use outside the United States.

Assuming that the advisory committee will operate under the provisions of the Advisory Committee Act, the draft ensures that there will be transparency and opportunities for public engagement. However, the legislation should probably also specify that occupational and environmental health and safety experts be included on the committee, as well as on the expert review panels.

In addition, the fee assessment structure proposed in the draft appropriately ensures that the cost of the third-party certifiers performing reviews, inspections, etc. be recoverable from operators.

Regulations and Orders. (Section 7) Of particular note is the draft's provision allowing the issuance of interim orders prior to the issuance and effective date of initial regulations. The provision allows high-priority technical improvements to be implemented as soon as possible, for example, those that may identified as a result of the investigations into the causes of the Deepwater Horizon blowout.

Well Control and Blowout Prevention Inspectors. (Section 8) Unannounced agency inspections and observations are, again, a standard feature of environmental, occupational and industrial safety regimes. In addition, the assessment of fees on operators is an appropriate means of paying for such inspections and observations. The Subcommittee should consider, however, expanding the inspections section. For example, in the case of an operator or contractor with a history of problems or violations, the appropriate federal official should have the authority to place inspectors on platforms and ships as often as necessary, and for as long as necessary, to ensure compliance with applicable regulations.

Citizen suits, penalties, whistleblower protections, and Chemical Safety Board. (Sections 9-14) These provisions are useful additions to the protective framework established by the draft legislation. They also underscore the broader public's interest in ensuring that high-risk wells are drilled safely and professionally, as well as the government's need to obtain sound information in the wake of any accidents.

I appreciate this opportunity to appear before you today, and I look forward to any questions you may have.