

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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