

## KEY POST-SPILL ENERGY POLICY ISSUES BEGIN TO EMERGE

*By Bob Szabo and Rick Agnew*

At the end of an eventful week in the oil spill crisis, the major issues in the federal policy debate began to take shape. This week, the President addressed the nation from the Oval Office for the first time in his Presidency; met with BP leadership at the White House and announced with them the establishment of a \$20 billion BP financed fund for oil spill clean up, compensation and restoration; appointed a former Inspector General and prosecutor as the person responsible for leading the effort to reform the Minerals Management Service (MMS) and the offshore drilling program; and directed the Secretary of the Navy, Ray Mabus, to develop a plan for restoration of the gulf region. Congressional hearings continued, reaching a crescendo with the testimony of the heads of all major oil companies before a House Energy and Commerce Committee panel and, finally, an appearance by Tony Hayward, CEO of BP, before the same Congressional panel, with predictable atmospherics and predictable results.

From the problems that have been revealed by, or emerged during, the spill crisis, the initial report developed by the Department of the Interior, and the various hearings in Congress, it is increasingly apparent that the federal policy and regulatory response will refine and possibly redefine at least the offshore oil and gas program, and possibly have broader implications as well. Five key issues are likely to be central to the federal policy debate that will begin in earnest after the July 4<sup>th</sup> Congressional recess. We will continue to watch and report on these and other developments, and we welcome your reactions and suggestions.

### 1. THE MORATORIUM

For the western region of the gulf, and the State of Louisiana in particular, the continued moratorium on drilling in gulf waters deeper than 500 feet is economically devastating. Louisiana elected officials are calling on the Administration to either lift the moratorium or develop a process for quickly releasing rigs operating in deep gulf waters to continue their drilling activities. Even the most sympathetic observers believe it will be very difficult for the Administration to modify the moratorium while oil continues to escape from the blown out well.

### 2. LIABILITY

Clearly, a principal issue in the policy debate will be the issue of liability for future spills that may occur in deep offshore waters. Which participants in offshore drilling will be liable for clean up and compensation for economic loss? Will there be limits on liability? Will insurance companies be able and willing to underwrite these liability risks? If so, at what cost? Will some current participants in the offshore drilling



program be “priced out” of the program?

### 3. TIGHTER SAFETY AND ENVIRONMENTAL REGULATIONS

It seems reasonably certain that federal regulation of offshore drilling for both safety of the workers involved in the operations and protection of the environment will become tighter and more rigorous. The past application of the National Environmental Policy Act (NEPA) is likely to change. Current regulations will be enforced more rigorously than in the past, and new regulations surely will be forthcoming, the only question being the strength and reach of the regulations. The facts revealed to date about practices in the current offshore program, as well as a political atmosphere in which few elected or appointed officials will rise to the defense of the oil companies, almost ensures that the forthcoming regulations are likely to be as aggressive as possible.

### 4. FEDERAL DEPARTMENT OR AGENCY RESPONSIBILITY IN FUTURE ADMINISTRATION OF THE OFFSHORE PROGRAM

Will the Department of the Interior retain its jurisdiction over the offshore program? The Secretary of the Interior has announced plans for reorganizing the MMS into three separate bureaus inside the Department. More dramatic changes could be forthcoming from Congress or even the President after his Commission has made its recommendations. If the Department retains jurisdiction over the program, will there be any enhanced role for other federal agencies such as the Environmental Protection Administration, the National Oceanic and Atmospheric Administration or others? What impacts will these reorganizations have on offshore oil and gas development as well as offshore renewable energy development?

### 5. POSSIBLE ROLES OF STATES AND COASTAL COUNTIES, PARISHES AND BOROUGHES IN THE NEW OFFSHORE PROGRAM

The current program mostly has been administered by the federal government without a meaningful role for the states – and no role for the coastal counties, parishes and boroughs. The current oil spill disaster has underscored the fact that coastal parishes, counties and states suffer the brunt of an offshore drilling accident that results in the release of crude oil into the water. Today coastal states and coastal counties do not receive any of the revenue from federal offshore drilling despite the obvious impacts from offshore drilling on those states and coastal areas. Congress, led by Senator Mary Landrieu (D-LA), has adopted legislation that will provide a share of offshore revenue to Texas, Louisiana, Alabama and Mississippi beginning in 2017. As the offshore program is revised by both Congressional and Executive Branch action, coastal states and, perhaps, coastal counties, parishes and boroughs, can be expected to demand a role in an offshore program in which they clearly have an interest.

### FOR MORE INFORMATION

For energy and financial sector clients interested in following the ongoing federal regulatory and policy developments relating to Gulf of Mexico oil spill, Van Ness Feldman offers significant depth of experience and capabilities. Over half of the firm’s 80 lawyers and policy advisors have worked as congressional staff, or at the



U.S. Departments of the Interior and Energy, the U.S. Environmental Protection Agency, and the White House (including the Council on Environmental Quality). We have formed a dedicated Oil Spill team that is monitoring developments and providing strategic advice to a range of clients. For more information, please contact Bob Szabo ([rgs@vnf.com](mailto:rgs@vnf.com)), Rick Agnew ([raa@vnf.com](mailto:raa@vnf.com)), John Iani ([lji@vnf.com](mailto:lji@vnf.com)), Sam Kalen ([smk@vnf.com](mailto:smk@vnf.com)) or Curt Moffatt ([jcm@vnf.com](mailto:jcm@vnf.com)), or your usual Van Ness Feldman point of contact at 202.298.1800.

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