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## **BOEMRE Director Makes Case for Regulatory Reform at Oil and Gas Law Conference**

**New Orleans, LA –** Today, Bureau of Ocean Energy Management, Regulation and Enforcement Director Michael R. Bromwich delivered the keynote address at the First International Offshore Oil & Gas Law Conference in New Orleans, La.

Director Bromwich discussed lessons learned from the Deepwater Horizon blowout and spill, ongoing regulatory reform efforts, and the reorganization of the former Minerals Management Service.

Director Bromwich's remarks, as prepared for delivery, are below:

Good morning. Thank you very much for inviting me to speak at this inaugural International Offshore Oil & Gas Law Conference. It is a pleasure to be here with you to discuss issues of mutual interest and concern relating to offshore drilling.

It was less than six months ago that I became the Director of the Bureau of Ocean Energy Management, Regulation and Enforcement with a mandate, from the President and the Secretary of the Interior, to reform the government's regulation of offshore energy development and the agency responsible for it. Since that time, we have been working diligently to make the changes necessary to restore public confidence in the safety and environmental soundness of oil and gas drilling and production on the U.S. Outer Continental Shelf (OCS).

My remarks today will address the future of offshore regulation of oil and gas operations in U.S. waters. But to understand what the future holds, we need to have a clear-eyed view of the recent past and the lessons that we can properly draw from the events we have collectively experienced. So before I turn to where we are headed, I want to take a few moments to reflect on where we have been, and discuss the many reforms and changes we have implemented over the past several months.

The explosion and sinking of the Deepwater Horizon rig took the lives of 11 workers, injured many others, and caused millions of barrels of oil to spill uncontrolled into the Gulf of Mexico for close to three months. In some ways, it seems like that horrible accident took place a very long time ago; but in other ways the shockwaves from that seminal event continue as though it happened yesterday. It has become the most investigated and reviewed environmental incident of our time.

Deepwater Horizon – the explosions, the sinking, the endless, sickening flow of oil – cast the most profound doubt on the assumptions that up to that point had been shared by government, the industry, and the American people about the risks posed by offshore drilling. Deepwater Horizon has been a call to action for all of us. The truth – acknowledged by some in the industry but denied by others – is that we had become complacent over time. One of the consequences of that complacency was that our safety regulations and technology failed to keep pace with the industry's expansion to open new frontiers, including deepwater, to oil and gas exploration and development.

Even before the many investigations began, the need for change was immediately apparent. It became abundantly clear that there were significant shortcomings in drilling safety practices and equipment and that industry and the government collectively lacked the ability to quickly gain control over a wild well in deepwater. Once oil started flowing into the Gulf, spill response capabilities were taxed to the limit.

In response to the spill, the Administration launched the largest oil spill response in our nation's history. And since that event, we at BOEMRE have undertaken the most aggressive and comprehensive reform of offshore oil and gas regulation and oversight in U.S. history. This includes the comprehensive reorganization of the former Minerals Management Service, as well as the implementation of improved standards for drilling practices, safety equipment, and environmental safeguards.

### **I. The Moratorium on Offshore Drilling**

The progress we have made in the areas of drilling safety, subsea containment, and spill response were central to Secretary Salazar's decision to lift the moratorium on deepwater drilling on October 12, nearly two months ahead of its original schedule. As you know, the Secretary first directed BOEMRE to suspend certain deepwater drilling activities on May 28. This was a necessary step to give the government and industry time to evaluate the potential causes of the blowout and spill, address the ongoing crisis, and begin to put in place additional safeguards that would reduce the risks of similar spills in the future.

Last July, the Secretary asked me to conduct a comprehensive assessment of the status of drilling and workplace safety, subsea containment capability, and the availability and effectiveness of spill response resources. The Secretary specifically held out the possibility that, depending on my findings with respect to these three critical areas, the deepwater drilling moratorium imposed on July 12 could be narrowed in scope or duration.

In carrying out this assignment, I led a series of public forums in eight cities across the country – six of them in the Gulf of Mexico. During these forums, a total of 61 experts from the academic community, the oil and gas industries, conservation and environmental groups, and local businesses provided thoughtful and valuable comments about drilling and workplace safety, well containment, and oil spill response, as well as other issues related to offshore drilling. I also heard from 37 elected officials regarding these issues, including the significant economic effects that the oil spill and the deepwater drilling suspension were having on their constituents.

In addition to hearing from the forum panelists, we received hundreds of written comments from the public. In addition to the activities associated with the public forums, I also held dozens of individual meetings with industry representatives, environmental groups and other stakeholders. At the same time, we also compiled and reviewed a number of relevant reports and other documents that became available including the results of BP's own internal investigation.

On October 1, after completing this intensive fact-gathering process, I submitted a report to the Secretary that described the progress that had been made and outlined recommendations on moving forward. The Report concluded that sufficient progress had been made on the constellation of issues that originally supported the moratorium to justify lifting it almost two months ahead of the November 30 expiration date.

What had changed that allowed us to feel comfortable with that decision? First, containment capabilities had improved – industry had developed a number of containment mechanisms intended specifically for use in deepwater. Going forward, we expect further improvements in this area. As you know, industry has committed to develop a permanent inventory and widely available set of containment resources that will be available in the event of future deepwater blowouts. The first initiative in this area was the Marine Well Containment Corporation launched by the four majors in July, and subsequently joined by BP. The second and more recent initiative has been formed by approximately two dozen independent and smaller operators centered on Helix and its vessels.

A second important development was that the attempts to permanently plug the Macondo well had finally succeeded, and oil was no longer flowing into the Gulf. This meant that a significantly greater number of spill response resources had become available in the event another spill took place.

Finally, we had implemented a number of new rules and regulations, which became effective immediately and significantly raised the bar for drilling safety.

On the basis of this information, the Secretary lifted the moratorium on October 12, 2010. Since that time, BOEMRE has been working diligently to review applications for permits to drill in deepwater and ensure that they comply with the new regulations. We are still facing a severe shortage of resources but have temporarily re-assigned personnel from other regions and reallocated within the Gulf of Mexico region to assist in the review of permits in the Gulf of Mexico. My staff is working hard to process permit applications. We are not slow-walking them in any way or for any reason. Despite frequent claims, comments and slogans to the contrary by industry representatives and their allies, there is no de facto moratorium. Our progress in processing permits has been slower than industry would like, but we have been doing the best that we can with the resources we have. Comments that suggest anything else are neither factually accurate nor helpful in any way. In fact, they are an insult to the hardworking men and women in our agency. I want to be clear: we will not cut corners in the permit review process and permits will be approved only when we are satisfied that all applicable regulatory requirements are met. Our priority remains, as it must, to ensure that oil and gas drilling is done in a safe and environmentally responsible manner.

That said, we have heard a number of questions about our new regulations, the Notices To Lessees (NTL), and how we will apply National Environmental Protection Act (NEPA) requirements going forward with respect to deepwater drilling operations. As many of you may know, we are preparing a guidance document, which we intend to be a comprehensive description of the "way forward" for permitting in deepwater. We have discussed the contents of the guidance with a number of companies and have received input on the guidance from them and from American Petroleum Institute (API). While it probably is not realistic that this guidance will resolve every question that an operator may have about the deepwater permitting process, we intend for the guidance to address the significant questions that we have heard and to present a clear path to move forward the resumption of work in deepwater.

The issues that will be addressed in the deepwater permit guidance document include:

- **Safety Interim Final Rule:** Including clarification of issues regarding the incorporation of RP 65 standards related to casing and cementing.
- **NTL-10 Compliance:** Including clarification of (1) who constitutes an "authorized official" for purposes of the corporate compliance statement, and (2) and the categories of drilling operations for which subsea containment information is required. In particular, we will clarify that drilling operations that were allowed under the moratorium will not require additional subsea containment information at this time.
- **Inspections:** A description of BOEMRE's approach to the witnesses of BOP testing, including stump and on bottom tests.
- **NTL-06 and Worst Case Discharge calculations:** Clarification of the applicability of NTL-06 to certain operations, including sidetracks, depending on whether WCD information for a particular reservoir already has been submitted.
- **Oil Spill Response Plans (OSRP):** While we are not requiring the submission of revised OSRPs at this time, we will provide guidance regarding additional information that operators should submit regarding spill response and surface containment in light of worst case discharge calculations.
- **Revisions to Exploration Plans/Development Operations Coordination Documents (DOCD) and Environmental Assessments:** This is an area in which there has been a number of questions, particularly with respect to how we will be

addressing previously approved plans. The guidance we will be issuing will explain how we will implement the policy I announced in August that BOEMRE no longer will routinely use categorical exclusions to approve deepwater drilling plans. In short, we will be asking operators to submit a modest amount of information about proposed operations under previously approved plans – information that we believe should be readily available – and we will conduct an environmental assessment that builds on our previous NEPA work for the plan and takes into account new information available since the Deepwater Horizon spill. We are already working on these environmental assessments and intend to complete them as expeditiously as possible – in a matter of weeks, not months.

We hope and trust that this guidance will substantially clarify some of the difficult and complex issues that have arisen in recent months. We are committed to working with industry to provide additional guidance on these and other issues.

## **I. Overview of New Environmental and Safety Regulations**

I'll turn now to a discussion of some of the new rules and regulations we have put in place.

We have raised the bar for equipment, safety, and environmental safeguards in the drilling and production stages – and we will continue to respond responsibly in the coming months as additional information about the causes of the Deepwater Horizon blowout becomes available.

First, as you know, we have implemented two new rules that raise standards for the oil and gas industry's operations on the OCS. One of these rules strengthens requirements for safety equipment and drilling procedures; the other improves workplace safety by addressing the performance of personnel and systems on drilling rigs and production platforms.

The first rule, the Drilling Safety Rule, is an emergency rulemaking that puts in place tough new standards for well design, casing and cementing and well control equipment, such as blowout preventers. Operators are now required to obtain independent third-party inspection and certification of each stage of the proposed drilling process. An engineer must also certify that blowout preventers meet new standards for testing and maintenance and are capable of severing the drill pipe under anticipated well pressures.

The second rule we implemented is the Safety and Environmental Management Systems (SEMS) Rule, which aims to reduce the human and organizational errors that lie at the heart of many accidents and oil spills. The rule, sometimes referred to as the Workplace Safety Rule, covers all offshore oil and gas operations in Federal waters and makes mandatory the currently voluntary practices in the API Recommended Practice 75 (RP 75).

Operators now are required to develop a comprehensive safety and environmental management program that identifies the potential hazards and risk-reduction strategies for all phases of activity, from well design and construction, to operation and maintenance, and finally to the decommissioning of platforms. Although many companies had developed such SEMS systems on a voluntary basis in the past, many had not. And our reviews had demonstrated that the percentage of offshore operators that had adopted such programs voluntarily was declining.

In addition to the new rules, we have issued a number of Notices to Lessees that provide additional guidance to operators on complying with existing regulations.

For example, NTL-06 (the Environmental NTL) requires that all oil spill response plans include a well-specific blowout and worst-case discharge scenario and that operators also provide the assumptions and calculations behind these scenarios. My staff and I are working closely with operators to provide guidance on what information is required to comply with these new requirements.

Last month, we issued NTL-10 that requires each operator seeking to drill in deepwater provide a corporate statement that it will conduct the applied-for drilling operation in compliance with all BOEMRE regulations, including the new Drilling Safety Rule. The NTL also confirms that BOEMRE will be evaluating whether each operator has submitted adequate information to demonstrate that it has access to, and can deploy, subsea containment resources that would be sufficient to promptly respond to a deepwater blowout or other loss of well control. This information will help us evaluate operators' compliance with current spill response regulations.

## **II. Reorganization**

In addition to these new requirements for operators, we are looking inward and improving our own policies and programs.

We are continuing to move forward with the reorganization of the former Minerals Management Service. In its place, we are creating three strong, independent entities to carry out the missions of promoting energy development, regulating offshore drilling, and collecting revenues. In the past, these three conflicting functions resided within the same bureau, creating the potential for internal conflict and an increased risk of a pro-development bias. This will no longer be the case.

The revenue collection arm of the former MMS has already become the Office of Natural Resources Revenue. In the next year, the offshore resource management and enforcement programs will also become separate, independent organizations.

We have been busy interviewing dozens of Bureau employees in all of our regional offices; collecting and analyzing data relating to the Bureau's processes, systems and regulatory metrics; and developing various models and options for restructuring and reforming the Bureau.

This work has been painstaking and time consuming, but it is critical to informed decision-making regarding the transformation of the Bureau.

During hearings last week, staff from the National Commission on the BP Deepwater Horizon Oil Spill presented various recommendations regarding regulatory oversight of offshore operations. Many of these recommendations are consistent with the reform agenda we are actively pursuing. For example, the Commission staff recommended that:

"[The] regulatory regime should evolve from one of basic prescriptive regulations to a system of augmented baseline regulations supplemented with a proactive risk based performance approach specific to individual facilities, operations and environments." As a general proposition, I agree with this recommendation, and it is consistent with the Drilling Safety Rule and the SEMS Rule that we promulgated earlier this year.

The staff also offered proposed recommendations regarding the new structure of the nation's offshore energy regulators. Again, the staff's recommendations appear to be very much in line with the structure that we have been developing for the separation of leasing and environmental review functions from safety and environmental enforcement functions.

### **III. Implementation Teams and Other Reforms of BOEMRE Policies**

As part of our reform effort, we have created 11 Implementation Teams that are responsible for analyzing various aspects of BOEMRE's regulatory structure and helping to implement the reform agenda that I have for BOEMRE. These teams are integral to our reorganization effort and are considering the various recommendations for improvement that we have received from, for example, the Safety Oversight Board commissioned by Secretary Salazar. These teams are already hard at work analyzing various aspects of our organization and laying the foundations for lasting change to the way BOEMRE does business.

In addition to the work of the implementation teams, we are moving forward with a number of other internal reforms. We are undertaking a review of categorical exclusions to ensure that our policies are in full compliance with NEPA. The public comment period closed on November 8, and we are in the process of reviewing and analyzing the comments we received. While our review is ongoing, I have directed BOEMRE to restrict the use of categorical exclusions for offshore oil and gas development to activities involving limited environmental risk.

Finally, to address conflicts of interest, we have issued a tough new recusal policy that will reduce the potential for real or perceived conflicts of interest. Employees in our district offices must notify their supervisor about any potential conflict of interest and request to be recused from performing any official duty in which such a conflict exists. Thus, our inspectors will be required to recuse themselves from performing inspections of the facilities of former employers. Also, our inspectors must report any attempt by industry or by other BOEMRE personnel to inappropriately influence, pressure or interfere with his or her official duties. Soon we will be issuing a broader version of the policy that applies these ethical standards across the agency.

All of these measures will help us ensure the rigorous, unbiased oversight of offshore drilling.

### **IV. Future Reforms**

While we have already put in place significant pieces of our comprehensive reform agenda, our work is far from complete. In the near future, BOEMRE will proceed through the standard notice and comment rulemaking process to implement further safety measures, including establishing additional requirements for blowout preventers and remotely operated vehicles (ROVs).

The Bureau will also consider additional workplace safety reforms through the rulemaking process, including requirements for independent third-party verification of operators' SEMS programs.

Over the past two months, especially since our new rules were announced at the end of September, we have heard from countless companies, trade associations, and Members of Congress of the significant anxiety that currently exists in the industry that we will soon change the rules of the permitting process significantly, thereby creating further uncertainty about what is required to conduct business on the OCS. This is not the case. Barring significant, unanticipated revelations from the ongoing investigations into the root causes of the Deepwater Horizon incident, I do not anticipate further emergency rulemakings.

But at the same time, we can no longer accept the view that the appropriate response to a rapidly evolving, developing and changing industry, which employs increasingly sophisticated technologies, is for the regulatory framework and the applicable rules to remain frozen. Over time, the regulatory framework and the specific requirements must keep pace. We will continue to analyze information that becomes available, including the findings and recommendations of the ongoing investigations into the causes of the Deepwater Horizon spill— and we will implement reforms necessary to make offshore oil and gas production safer, smarter and with stronger protections for workers and the environment. In developing these reforms, we will balance the need for regulatory certainty against the need to act on new insights and adapt to changing technology. And importantly, the processing of drilling permit applications and proposed drilling plans will not be delayed while these additional reforms are developed.

You know as well as I do that we can always do better -- and that we must always remain open to improvements in our regulations to develop the necessary culture of safety. In the past, industry has in many instances reflexively opposed new regulations. That is no more responsible than the mindless multiplication of new requirements for their own sake. We must strike a new balance that fully involves industry in the regulatory process but that recognizes the need for us to exercise independent judgment.

Our challenge in the months and years ahead is to ensure that we do not once again become complacent, but rather that we continue

to make progress in developing state-of-the-art safety, containment, and response capabilities. Government, industry, and the best minds in our universities must collaborate on ongoing research and development to create cutting-edge technologies in areas such as well condition sensor capabilities and remote BOP activation, among others. Government and industry must also work together to establish the necessary procedures and structures to address containment in the case of a blowout. It is critical to ensure that, in the event of a blowout, containment resources are immediately available, regardless of the owner or operator involved. These are goals that we must pursue aggressively.

As an important step in this effort, Secretary Salazar has proposed establishing an "Ocean Energy Safety Institute" designed to facilitate research and development, training and implementation in the areas of offshore drilling safety, blowout containment and spill response. If established, this Institute would be a collaborative initiative involving government, industry, academia and scientific experts. Among the Institute's objectives would be:

- Advancing safe and environmentally responsible offshore drilling through collaborative research and development in the areas of drilling safety, containment and spill response;
- Developing advanced drilling technology testing and implementation protocols;
- Understanding full-system risk and reliability for the offshore environment;
- Developing an enduring research and development capability and an expertise base useful both for preventing and responding to accidents;
- Developing training and emergency response exercises;
- Increasing opportunities for communication and coordination among industry, government, academia and the scientific community; and
- Developing a larger cadre of technical experts who can oversee or otherwise participate in deepwater drilling-related activities.

Most importantly, this Institute is an important component of a long-term strategy to address on an ongoing basis the technological needs and inherent risks associated with offshore drilling, and deepwater drilling in particular.

Going forward, it is my hope that industry and government will continue to cooperate as we move ahead toward safer, more environmentally responsible drilling in the Outer Continental Shelf.

Thank you for your time and attention.

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