

111TH CONGRESS
2D SESSION

H. R. 5608

To amend the Federal Water Pollution Control Act and the Outer Continental Shelf Lands Act to improve oil spill response plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2010

Mr. MARKEY of Massachusetts introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Federal Water Pollution Control Act and the Outer Continental Shelf Lands Act to improve oil spill response plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Better Oil Spill Re-
5 sponse Plan Act of 2010”.

1 **SEC. 2. WORST CASE DISCHARGES.**

2 Section 311(d) of the Federal Water Pollution Con-
3 trol Act (33 U.S.C. 1321(d)) is amended by adding at the
4 end the following:

5 “(5) WORST CASE DISCHARGES.—Not later
6 than 180 days after the date of enactment of this
7 paragraph, and every 5 years thereafter, the Presi-
8 dent shall publish and provide to each Area Com-
9 mittee established under subsection (j)(4) an esti-
10 mate of the worst case discharges, including sub-
11 surface discharges, that are possible in each area de-
12 scribed in an Area Contingency Plan under sub-
13 section (j)(4)(C)(ii), based on the oil and gas explo-
14 ration, development, and production activities that
15 are being conducted or are planned to be conducted
16 at various locations and depths in each area.”.

17 **SEC. 3. REVISION OF NATIONAL CONTINGENCY PLAN.**

18 (a) IN GENERAL.—Not later than 270 days after the
19 date of enactment of this Act, the President shall revise
20 the National Contingency Plan prepared under section
21 311(d) of the Federal Water Pollution Control Act (33
22 U.S.C. 1321(d)) and, as necessary, the regulations re-
23 quired under section 311(j) of such Act (33 U.S.C.
24 1321(j)). Such revisions shall take into account the fol-
25 lowing:

1 (1) The adequacy of the National Contingency
2 Plan in place at the time of the explosion involving
3 the mobile offshore drilling unit Deepwater Horizon
4 to respond to the volume, source, and duration of
5 the discharge caused by that explosion.

6 (2) Any findings and options related to the Na-
7 tional Contingency Plan made by the National Com-
8 mission on the BP Deepwater Horizon Oil Spill and
9 Offshore Drilling established by the President by
10 Executive Order 13543 (75 Fed. Reg. 29397).

11 (3) The estimate of the worst case discharges
12 published under section 311(d)(5) of such Act (as
13 added by section 2 of this Act).

14 (b) REVISIONS AND AMENDMENTS.—Section
15 311(d)(3) of such Act (33 U.S.C. 1321(d)(3)) is amended
16 to read as follows:

17 “(3) REVISIONS AND AMENDMENTS.—The
18 President—

19 “(A) shall revise or otherwise amend the
20 National Contingency Plan whenever the esti-
21 mate of the worst case discharges published
22 under paragraph (5) materially changes; and

23 “(B) may, as the President deems advis-
24 able, revise or otherwise amend the National
25 Contingency Plan at any time.”.

1 **SEC. 4. REVISION OF AREA CONTINGENCY PLANS.**

2 (a) UPDATING OF WORST CASE DISCHARGE.—Sec-
3 tion 311(j)(4)(C)(i) of the Federal Water Pollution Con-
4 trol Act (33 U.S.C. 1321(j)(4)(C)(i)) is amended to read
5 as follows:

6 “(i) when implemented in conjunction
7 with the National Contingency Plan, be
8 adequate to mitigate or remove a worst
9 case discharge, as estimated under sub-
10 section (d)(5), and to mitigate or prevent
11 a substantial threat of such a discharge,
12 from a vessel, offshore facility, or onshore
13 facility operating in or near the area;”.

14 (b) AREA CONTINGENCY PLAN REVISION.—Not later
15 than 18 months after the date of enactment of this Act,
16 each Area Committee shall revise its Area Contingency
17 Plan established under section 311(j) of the Federal
18 Water Pollution Control Act (33 U.S.C. 1321(j)) and sub-
19 mit such revisions to the President for review. Such revi-
20 sions shall take into account:

21 (1) The adequacy of the Area Contingency Plan
22 in place at the time of the explosion involving the
23 mobile offshore drilling unit Deepwater Horizon to
24 respond to the volume, source, and duration of the
25 discharge caused by that explosion.

1 (2) Revisions made to the National Contingency
2 Plan pursuant to section 3 of this Act.

3 (3) Any findings and options related to the Na-
4 tional Contingency Plan made by the National Com-
5 mission on the BP Deepwater Horizon Oil Spill and
6 Offshore Drilling established by the President by
7 Executive Order 13543 (75 Fed. Reg. 29397).

8 (4) The estimate of the worst case discharges
9 provided to the Area Committee by the President
10 under section 311(d)(5) of such Act (as added by
11 section 2 of this Act).

12 (c) PRESIDENTIAL REVIEW.—Not later than 180
13 days after the date on which an Area Contingency Plan
14 is submitted to the President under subsection (b), the
15 President shall—

16 (1) review the plan;

17 (2) require amendments to the plan if the plan
18 does not meet the requirements of section 311(j)(4)
19 of such Act (33 U.S.C. 1321(j)(4)); and

20 (3) approve the plan if the plan meets the re-
21 quirements of that section.

22 (d) CONSISTENCY WITH NATIONAL CONTINGENCY
23 PLAN DISPERSANT SCHEDULE.—Section 311(j)(4)(C)(iv)
24 of such Act (33 U.S.C. 1321(j)(4)(C)(iv)) is amended by
25 inserting after “dispersants or other mitigating substances

1 and devices” the following: “(consistent with the schedule
2 prepared under subsection (d)(2)(G))”.

3 (e) PERIODIC REVISION OF AREA CONTINGENCY
4 PLAN.—Section 311(j)(4)(C)(viii) of such Act (33 U.S.C.
5 1321(j)(4)(C)(viii)) is amended to read as follows:

6 “(viii) be updated periodically by the
7 Area Committee, including at any time
8 that the estimate of the worst case dis-
9 charges published under section 311(d)(5)
10 is materially changed for the area or the
11 National Contingency Plan is materially
12 revised.”.

13 **SEC. 5. TANK VESSEL, NONTANK VESSEL, AND FACILITY RE-**
14 **SPONSE PLANS.**

15 (a) IN GENERAL.—Not later than 180 days after the
16 date of enactment of this Act, the President shall revise
17 the regulations issued under section 311(j)(5) of the Fed-
18 eral Water Pollution Control Act (33 U.S.C. 1321(j)(5))
19 to ensure that each response plan required under that sec-
20 tion—

21 (1) is based on a realistic assessment of worst
22 case discharge scenarios, drawing from the estimate
23 of the worst case discharges provided under section
24 311(d)(5) of such Act (as added by section 2 of this
25 Act), for each tank vessel, nontank vessel, or facility,

1 including a deep subsurface wellhead discharge asso-
2 ciated with such tank vessel, nontank vessel, or facil-
3 ity;

4 (2) is based on an accurate assessment of the
5 physical and ecological characteristics of the area in
6 which the vessel, nontank vessel, or facility is oper-
7 ating, drawing from the portion of the Area Contin-
8 gency Plan prepared under section 311(j)(4)(C)(ii)
9 of such Act (33 U.S.C. 1321(j)(4)(C)(ii)) that de-
10 scribes the area;

11 (3) includes a demonstration and supporting
12 certification by the owner or operator of a tank ves-
13 sel, nontank vessel, or facility of such owner's or op-
14 erator's capacity to fully implement the plan; and

15 (4) meets such other requirements as the Presi-
16 dent may prescribe.

17 (b) APPROVAL OF RESPONSE PLAN REQUIRED.—

18 (1) IN GENERAL.—Section 311(j)(5) of such
19 Act (33 U.S.C. 1321(j)(5)) is amended—

20 (A) by striking subparagraph (G); and

21 (B) by redesignating subparagraphs (H)
22 and (I) as subparagraphs (G) and (H), respec-
23 tively.

24 (2) APPLICABILITY.—The amendment made
25 under paragraph (1)(A) shall not be construed to af-

1 fect any waiver issued under section 311(j)(5)(G) of
2 such Act (33 U.S.C. 1321(j)(5)(G)) before the date
3 of enactment of this Act.

4 (c) CAPACITY TO IMPLEMENT RESPONSE PLANS.—
5 Section 311(j)(6) of such Act (33 U.S.C. 1321(j)(6)) is
6 amended to read as follows:

7 “(6) CAPACITY TO IMPLEMENT RESPONSE
8 PLANS.—

9 “(A) EQUIPMENT REQUIREMENTS AND IN-
10 SPECTION.—The President may require—

11 “(i) periodic inspection of containment
12 booms, skimmers, vessels, and other major
13 equipment used to mitigate or remove dis-
14 charges; and

15 “(ii) vessels operating on navigable
16 waters and carrying oil or a hazardous
17 substance in bulk as cargo, and nontank
18 vessels carrying oil of any kind as fuel for
19 main propulsion, to carry appropriate re-
20 moval equipment that employs the best
21 technology economically feasible and that
22 is compatible with the safe operation of the
23 vessel.

24 “(B) DEMONSTRATION OF CAPACITY TO
25 RESPOND.—The President shall require the

1 owner or operator of a vessel or facility required
2 to submit a response plan under this subsection
3 to demonstrate, not less frequently than once
4 each year, that such owner or operator has the
5 capacity, including the necessary equipment,
6 personnel, or logistical capacity, to implement
7 the response plan.

8 “(C) EFFECT OF FAILURE TO DEM-
9 ONSTRATE CAPACITY TO RESPOND.—If the
10 President determines that an owner or operator
11 of a vessel or facility has failed to demonstrate
12 the capacity to implement the response plan,
13 and such owner or operator does not remedy
14 such failure within such reasonable time period
15 as the President may prescribe, the President
16 shall revoke the approval of the response plan
17 required under paragraph (5).

18 “(D) REGULATIONS.—Not later than 180
19 days after the date of enactment of the Better
20 Oil Spill Response Plan Act of 2010, the Presi-
21 dent shall issue regulations to implement sub-
22 paragraphs (B) and (C).”.

23 **SEC. 6. SAFE DISPERSANTS.**

24 (a) APPROVAL OF DISPERSANTS, OTHER CHEMI-
25 CALS, AND OTHER SPILL MITIGATING DEVICES AND SUB-

1 STANCES.—Section 311(d)(2)(G) of the Federal Water
2 Pollution Control Act (33 U.S.C. 1321(d)(2)(G)) is
3 amended to read as follows:

4 “(G) A schedule, prepared in cooperation
5 with the States, identifying—

6 “(i) dispersants, other chemicals, and
7 other spill mitigating devices and sub-
8 stances, if any, that may be used in car-
9 rying out the Plan, using criteria for the
10 evaluation of safety and efficacy of the
11 dispersants, other chemicals, and other
12 spill mitigating devices and substances, en-
13 suring that—

14 “(I) in selecting dispersants,
15 other chemicals, and other spill miti-
16 gating substances to place on the
17 schedule, the President shall require a
18 manufacturer of a dispersant, other
19 chemical, or other spill mitigating
20 substance to submit data on such dis-
21 persant, other chemical, or other spill
22 mitigating substance, prepared by a
23 laboratory approved by the President,
24 regarding—

1 “(aa) efficacy on particular
2 types of oil;

3 “(bb) safety for known and
4 reasonably anticipated uses;

5 “(cc) the chronic effects of
6 sustained use on marine, coastal,
7 estuarine, and freshwater envi-
8 ronments;

9 “(dd) the effects on selected
10 aquatic species that represent life
11 at various ocean depths, includ-
12 ing effects on benthic-dwelling
13 organisms and coral reefs;

14 “(ee) the effects on marine
15 life resulting from subsurface ap-
16 plication;

17 “(ff) the effects on early life
18 stages of aquatic organisms, in-
19 cluding eggs and larvae;

20 “(gg) a list of all constituent
21 ingredients; and

22 “(hh) material safety data
23 sheets that describe the potential
24 acute health impacts on humans
25 who are involved in application

1 activities and who may reason-
2 ably be exposed during such ac-
3 tivities;

4 “(II) in selecting dispersants,
5 other chemicals, and other spill miti-
6 gating substances to place on the
7 schedule, the President may place re-
8 strictions on the authorized quantities
9 and conditions of use of any such dis-
10 persant, other chemical, or other spill
11 mitigating substance;

12 “(ii) the waters in which such
13 dispersants, other chemicals, and other
14 spill mitigating devices and substances
15 may be used safely; and

16 “(iii) the quantities of such
17 dispersants, other chemicals, or other spill
18 mitigating devices and substances which
19 can be used safely in such waters, which
20 schedule shall provide in the case of any
21 dispersant, other chemical, other spill miti-
22 gating device or substance, or waters not
23 specifically identified in such schedule that
24 the President, or his designee, may, on a
25 case-by-case basis, identify the dispersants,

1 other chemicals, and other spill mitigating
2 devices and substances which may be used,
3 the waters in which they may be used, and
4 the quantities in which they can be used
5 safely in such waters.”.

6 (b) DISCLOSURE OF CHEMICAL CONSTITUENTS.—

7 The President shall not place a dispersant, other chemical,
8 or other spill mitigating substance on the schedule pre-
9 pared under section 311(d)(2)(G) of such Act (33 U.S.C.
10 1321(d)(2)(G)) unless the President receives assurances
11 satisfactory to the President that the manufacturer of
12 such dispersant, other chemical, or other spill mitigating
13 substance will publicly disclose, upon a declaration that
14 a discharge is classified as a spill of national significance,
15 the constituent ingredients of such dispersant, other chem-
16 ical, or other spill mitigating substance that will be used
17 to carry out a National Contingency Plan, Area Contin-
18 gency Plan, or response plan for a tank vessel, nontank
19 vessel, or facility in response to such discharge.

20 **SEC. 7. ENFORCEMENT OF OIL SPILL RESPONSE PLANS**
21 **FOR OFFSHORE FACILITIES.**

22 Section 5(a) of the Outer Continental Shelf Lands
23 Act (43 U.S.C. 1334(5)(a)) is amended as follows:

24 (1) In paragraph (7) by striking “; and” and
25 inserting a semicolon.

1 (2) In paragraph (8) by striking the period and
2 inserting “; and”.

3 (3) By adding at the end the following:

4 “(9) requiring compliance with the response
5 plan requirements of section 311(j) of the Federal
6 Water Pollution Control Act (33 U.S.C. 1321(j)).”.

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