

Calendar No. 518

111TH CONGRESS
2D SESSION**S. 3305****[Report No. 111-249]**

To amend the Oil Pollution Act of 1990 to require oil polluters to pay the full cost of oil spills, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4, 2010

Mr. MENENDEZ (for himself, Mr. NELSON of Florida, Mr. LAUTENBERG, Mr. CARDIN, Mr. SCHUMER, Mr. WHITEHOUSE, Mr. SANDERS, Mr. BROWN of Ohio, Mrs. GILLIBRAND, Mr. KAUFMAN, Mrs. MURRAY, Mr. REED, Ms. KLOBUCHAR, Mrs. FEINSTEIN, Mr. MERKLEY, Ms. STABENOW, Mr. FEINGOLD, Mr. DURBIN, Mrs. SHAHEEN, Mr. CASEY, Mr. LEAHY, Mr. HARKIN, Mr. FRANKEN, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

AUGUST 5, 2010

Reported by Mrs. BOXER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend the Oil Pollution Act of 1990 to require oil polluters to pay the full cost of oil spills, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Big Oil Bailout Pre-
3 vention Liability Act of 2010”.

4 **SEC. 2. LIMITS ON LIABILITY FOR OFFSHORE FACILITIES.**

5 Section ~~1004(a)(3)~~ of the Oil Pollution Act of 1990
6 (~~33 U.S.C. 2704(a)(3)~~) is amended by striking
7 “\$75,000,000” and inserting “\$10,000,000,000”.

8 **SEC. 3. EFFECTIVE DATE.**

9 This Act and the amendments made by this Act take
10 effect on April 15, 2010.

11 **SECTION 1. SHORT TITLE.**

12 *This Act may be cited as the “Big Oil Bailout Preven-*
13 *tion Unlimited Liability Act of 2010”.*

14 **SEC. 2. REMOVAL OF LIMITS ON LIABILITY FOR OFFSHORE**
15 **FACILITIES.**

16 (a) *IN GENERAL.*—Section 1004(a)(3) of the Oil Pollu-
17 tion Act of 1990 (33 U.S.C. 2704(a)(3)) is amended by
18 striking “plus \$75,000,000” and inserting “and the liabil-
19 ity of the responsible party under section 1002”.

20 (b) *EFFECTIVE DATE.*—The amendment made by this
21 section takes effect on April 15, 2010.

22 **SEC. 3. CLAIMS PROCEDURE.**

23 Section 1013(c)(2) of the Oil Pollution Act of 1990 (33
24 U.S.C. 2713(c)(2)) is amended by striking “settled by any
25 person by payment within 90 days” and inserting “settled
26 in whole by any person by payment within 30 days”.

1 **SEC. 4. OIL AND HAZARDOUS SUBSTANCE RESPONSE PLAN-**
 2 **NING.**

3 (a) *NATIONAL RESPONSE SYSTEM.*—Section 311(j)(5)
 4 of the Federal Water Pollution Control Act (33 U.S.C.
 5 1321(j)(5)) is amended—

6 (1) in subparagraph (A), by adding at the end
 7 the following:

8 “(iii) The President shall ensure that
 9 the regulations promulgated pursuant to
 10 this paragraph are designed to prevent, to
 11 the maximum extent practicable, injury to
 12 the economy, jobs, and the environment, in-
 13 cluding to prevent—

14 “(I) loss of, destruction of, or in-
 15 jury to, real or personal property;

16 “(II) loss of subsistence use of nat-
 17 ural resources;

18 “(III) loss of revenue;

19 “(IV) loss of profits or earning ca-
 20 pacity;

21 “(V) an increase in the cost of
 22 providing public services to remove a
 23 discharge; and

24 “(VI) loss of, destruction of, or in-
 25 jury to, natural resources.

1 “(iv) *The President shall promulgate*
2 *regulations that clarify the requirements of*
3 *a response plan in accordance with sub-*
4 *paragraph (D).”;*

5 (2) *by striking subparagraph (D) and inserting*
6 *the following:*

7 “(D) *A response plan required under this*
8 *paragraph shall—*

9 “(i) *be consistent with the requirements*
10 *of the National Contingency Plan and Area*
11 *Contingency Plans;*

12 “(ii) *identify the qualified individual*
13 *having full authority to implement removal*
14 *actions, and require immediate communica-*
15 *tions between that individual and the ap-*
16 *propriate Federal official and the persons*
17 *providing personnel and equipment pursu-*
18 *ant to clause (iii);*

19 “(iii) *identify, and ensure by contract*
20 *or other means approved by the President*
21 *the availability of, private personnel and*
22 *equipment in the quantities necessary,*
23 *staged and available in the appropriate re-*
24 *gion to respond immediately to and sustain*

1 *the response effort for as long as nec-*
2 *essary—*

3 “(I) to remove, to the maximum
4 *extent practicable, a worst-case dis-*
5 *charge (including a discharge resulting*
6 *from fire or an explosion);*

7 “(II) to mitigate damage from a
8 *discharge; and*

9 “(III) to prevent or reduce a sub-
10 *stantial threat of such a discharge;*

11 “(iv) demonstrate the financial capa-
12 *bility to pay for removal costs and dam-*
13 *ages;*

14 “(v) describe the training, equipment
15 *testing, periodic unannounced drills, and*
16 *response actions of persons on the vessel or*
17 *at the facility, to be carried out under the*
18 *plan to ensure the safety of the vessel or fa-*
19 *cility and to meet the requirements of this*
20 *subparagraph;*

21 “(vi) describe the environmental effects
22 *of the response plan methodologies and*
23 *equipment;*

24 “(vii) describe the process for commu-
25 *nication and coordination with Federal,*

1 *State, and local agencies before, during, and*
 2 *after a response to a discharge;*

3 “(viii) *identify performance standards*
 4 *for the quantity of oil or hazardous sub-*
 5 *stance that will be removed under the re-*
 6 *sponse plan immediately following the dis-*
 7 *charge and at regular, identified periods,*
 8 *including provisions for reporting the de-*
 9 *gree to which actual removal meets the re-*
 10 *quired performance standards;*

11 “(ix) *in the case of oil production,*
 12 *drilling, and workover facilities, describe*
 13 *the specific measures to be used in response*
 14 *to a blowout or other event involving loss of*
 15 *well control;*

16 “(x) *identify potential economic and*
 17 *ecological impacts of a worst-case discharge*
 18 *and response activities to prevent or miti-*
 19 *gate, to the maximum extent practicable,*
 20 *those impacts in the event of a discharge;*

21 “(xi) *be updated periodically; and*

22 “(xii) *be resubmitted for approval of*
 23 *each significant change.”; and*

24 (3) *in subparagraph (E), by striking clauses (i)*
 25 *through (v) and inserting the following:*

1 “(i) require notice of the proposed re-
2 sponse plan to be published in the Federal
3 Register and provide for a public comment
4 period for the plan of at least 30 days;

5 “(ii) promptly review the response
6 plan;

7 “(iii) require amendments to any plan
8 that does not meet the requirements of this
9 paragraph;

10 “(iv) approve any plan only after find-
11 ing, based on evidence in the record, that—

12 “(I) the response plan meets the
13 requirements of subparagraph (D);

14 “(II) there have been 1 or more
15 field tests of the plan in the area in
16 which the tank vessel, nontank vessel,
17 or facility is proposed to operate, and
18 the results of that field testing are pub-
19 licly available;

20 “(III) the methods and equipment
21 proposed to be used under the response
22 plan are demonstrated to be techno-
23 logically feasible in the area and under
24 the conditions (including the depth of a
25 well, in the case of an offshore facility)

1 *in which the tank vessel, nontank ves-*
 2 *sel, or facility is proposed to operate;*

3 “(IV) *the available scientific in-*
 4 *formation about the area allows for*
 5 *identification of potential impacts to*
 6 *ecological areas and protection of those*
 7 *areas in the event of a discharge, in-*
 8 *cluding adequate surveys of wildlife;*
 9 *and*

10 “(V) *the response plan describes*
 11 *the quantity of oil likely to be removed*
 12 *in the event of a worst-case discharge;*

13 “(v) *obtain the written concurrence of*
 14 *such other agencies as the President deter-*
 15 *mines to be appropriate;*

16 “(vi) *review each plan periodically*
 17 *thereafter; and*

18 “(vii) *in the case of a plan for a*
 19 *nontank vessel, consider any applicable*
 20 *State-mandated response plan in effect on*
 21 *August 9, 2004, and ensure consistency to*
 22 *the maximum extent practicable.”.*

23 (b) *DEFINITIONS.—Section 311(a)(24)(B) of the Fed-*
 24 *eral Water Pollution Control Act (33 U.S.C.*
 25 *1321(a)(24)(B)) is amended by inserting “, including from*

1 *an unanticipated and uncontrolled blowout or other loss of*
 2 *well control,” after “foreseeable discharge”.*

3 **SEC. 5. REPORTS.**

4 *Not later than 180 days after the date of enactment*
 5 *of this Act and every 90 days thereafter until all claims*
 6 *resulting from the blowout and explosion of the mobile off-*
 7 *shore drilling unit Deepwater Horizon that occurred April*
 8 *20, 2010, and resulting hydrocarbon releases into the envi-*
 9 *ronment, have been paid, the administrator of the fund de-*
 10 *scribed in paragraph (1) shall submit to Congress a report*
 11 *that describes—*

12 *(1) the status of the compensation fund estab-*
 13 *lished by British Petroleum Company to pay claims*
 14 *resulting from the blowout and explosion; and*

15 *(2) each claim that has been paid from that*
 16 *fund.*

Amend the title so as to read: “A bill to amend the Oil Pollution Act of 1990 and the Federal Water Pollution Control Act to require oil polluters to pay the full cost of oil spills, and for other purposes.”.

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