

Tulane Environmental Law Clinic

April 23, 2015

101-127

Secretary Sally Jewell  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Admiral Paul F. Zukunft  
Commandant of the Coast Guard  
U.S. Coast Guard  
2703 Martin Luther King Jr Ave SE  
Washington DC 20593-7000

Secretary Jeh Johnson  
U.S. Department of Homeland Security  
245 Murray Lane SW  
Washington, D.C. 20528

Re: The Taylor Oil Spill into the Gulf of Mexico:  
Request for a Public Process to Determine a Response Plan to Abate Risks from the  
Ongoing Oil Spill from the Destroyed Taylor Energy Oil Platform at Mississippi  
Canyon 20, and for Public Disclosure of Facts and Data Underlying the Spill and  
Response

Dear Secretary Jewell, Secretary Johnson, and Admiral Zukunft:

We write on behalf of the Apalachicola Riverkeeper, Louisiana Environmental Action  
Network, and Waterkeeper Alliance (collectively “the Waterkeepers”), and their members.<sup>1</sup>

### Overview

The Taylor Oil Spill has been ongoing in the Gulf of Mexico for more than 10 years. The U.S. Department of Interior and the U.S. Coast Guard have responded with a secret process for oversight of Taylor Energy’s response that lacks credibility and is poised to result in poor, uninformed decisions. The government’s secrecy about an ongoing major oil spill in U.S. waters also violates Congress’ goal of public participation in Clean Water Act decisions.

By withholding data and plans about the Taylor Oil Spill response from public scrutiny and debate, DOI and the Coast Guard have cut themselves off from the expertise and ideas of outside commenters and experts—from industry, the environmental community, academia, and the public at large. Isolated from outside scrutiny and comment, DOI and the Coast Guard spent years accepting Taylor Energy’s low-ball estimates of the rate of spilled oil and ignoring the best-available scientific techniques. Not until the Associated Press questioned the government about these estimates did DOI and the Coast Guard’s Unified Command face up to the fact that

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<sup>1</sup> The Waterkeepers are nonprofit corporations that seek to protect environmental resources on behalf of their members. They are plaintiffs in an environmental “citizen enforcement” case about the Taylor spill at Mississippi Canyon 20, *Apalachicola Riverkeeper, et al., v. Taylor Energy Co. LLC*, No. 2:12-cv-00337 (E.D. La.).

Taylor's reports cannot be trusted.<sup>2</sup> The Coast Guard has determined that the Taylor Oil Spill "poses a threat to the public health or welfare."<sup>3</sup> Yet Taylor claims that the Unified Command has now agreed that "further remedial action by Taylor ... is not recommended."<sup>4</sup> This situation cries out for the "virtues of sunlight as a disinfectant."<sup>5</sup>

The Taylor Oil Spill flows from wells in less than 500 feet of water. Failure to achieve full abatement of this spill would raise profound questions about the wisdom of permitting offshore drilling in much deeper waters and under higher pressures. Every participant in the offshore drilling process has an incentive to employ creativity and expertise in solving the Taylor Oil Spill problem. It would be wrong to call it quits and walk away from an ongoing oil spill while refusing to disclose the information that might inform creative analysis and resolution.

For these reasons, DOI and the Coast Guard should:

- Suspend any final decision-making processes until completing a process of vetting the relevant information and considerations in public view;
- Promptly disclose and make available on a Web site the data and information that would inform any final decision on response to the Taylor Oil Spill; and
- Provide for a public hearing and a public comment period before deciding on a final resolution to the Taylor Oil Spill.

### Analysis

Congress provided for the public's involvement in government decisions about water pollution, mandating that "Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator [of EPA] or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States."<sup>6</sup> Because EPA published the National Contingency Plan, which governs DOI and the Coast Guard's oversight of the Taylor Oil Spill, Congress' instructions apply directly to the Taylor Oil Spill.

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<sup>2</sup> Michael Kunzelman and Jeff Donn, *Secrecy shrouds decade-old oil spill in Gulf of Mexico*, Washington Post, (April 16, 2015) ([http://www.washingtonpost.com/national/energy-environment/secrecy-shrouds-decade-old-oil-spill-in-gulf-of-mexico/2015/04/16/6f8f9070-e449-11e4-ae0f-f8c46aa8c3a4\\_story.html](http://www.washingtonpost.com/national/energy-environment/secrecy-shrouds-decade-old-oil-spill-in-gulf-of-mexico/2015/04/16/6f8f9070-e449-11e4-ae0f-f8c46aa8c3a4_story.html)). The AP noted: "In many [Taylor] reports over the years, there are glaring inconsistencies between the estimated size of the sheen and the corresponding volume calculation. One example: The longest sheen reported was 1,170 square miles in October 2009, but the report estimated the slick contained only 1.58 gallons of oil. Even if this slick covered just 1 percent of the stated area, a simple calculation shows it would be stretched to seven billionths of an inch thick — far too thin for the eye to see. Hundreds of other reports are similarly questionable."

<sup>3</sup> U.S. Coast Guard letter to Taylor (Nov. 24, 2008) (TAY-025576). EPA has determined that oils discharges "may be harmful to public health or welfare of the environment of the United States" if they cause "a film or sheen upon or discoloration of the surface of the water." 40 C.F.R. § 110.3. The Taylor Oil Spill creates "a sheen on the surface of the water." U.S. Coast Guard, Administrative Order Number 006-08 (Sept. 23, 2008).

<sup>4</sup> No. 2:12-cv-00337 (E.D. La., ECF No. 149-1 at 11. All "ECF" citations are available on the federal courts' "pacer" web site: <https://www.pacer.gov/psco/cgi-bin/links.pl>.

<sup>5</sup> *Ashcraft v. Louisiana Coca-Cola Co.*, No. CIV.A. 86-80, 1986 WL 14781, at \*1 (E.D. La. Dec. 19, 1986); *Plante v. Gonzalez*, 575 F.2d 1119, 1127 n.13 (5th Cir. 1978) ("Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.") (quoting Justice Brandeis).

<sup>6</sup> Clean Water Act § 101(e), 33 U.S.C. § 1251(e).

Taylor has been spilling oil into the Gulf of Mexico since 2004. That year, an underwater mudslide destroyed Taylor's drilling platform and buried its wells in an underwater canyon. Mudslides in that underwater canyon were a known risk since at least 1983.<sup>7</sup> Despite that risk, Taylor drilled 10 wells there in the early 1990s, in addition to 18 wells that it purchased in the same location.<sup>8</sup> The result was the Taylor Oil Spill, which "could amount to one of the 10 biggest spills in American history."<sup>9</sup>

Taylor is now pushing for "final resolution" of its response to this ongoing oil spill without any opportunity for input from the public or outside experts.<sup>10</sup> Taylor's spill reports have understated the amount of oil spilled and that continues to be spilled.<sup>11</sup> In fact, an expert who works with the Waterkeepers used a bucket in June 2014 to scoop up more oil at one location than Taylor had reported was released in an entire day.<sup>12</sup>

Based on documents that DOI and the Coast Guard have withheld from the public, Taylor Energy claims "unanimity" that "no further action should be taken beyond the actions Taylor has already taken."<sup>13</sup> Taylor asserts that DOI and the Coast Guard have agreed that "that further remedial action by Taylor (whether through soil dredging, disposal, or capping or further well intervention) is not recommended."<sup>14</sup> But no such agreement has been publicly vetted. A decision to give up on abating the ongoing Taylor Oil Spill would raise serious questions about the nation's ability to manage the risks from continued deepwater drilling.

Nobody knows what additional errors would emerge in Taylor's plans for a "final resolution" if they were available to the public and technical experts not employed by Taylor. Public airing of Taylor's plans and purported factual support would tend to identify errors before they are set in stone. The AP has noted that government, "lacking the industry's expertise and resources, often must rely on companies and their contractors to assess and contain offshore spills."<sup>15</sup> Yet here DOI and the Coast Guard have cut themselves off from the input and expertise of anyone other than Taylor and its paid consultants.

Taylor takes the position that its so-called "final resolution" will fall apart if people find out about what is going on and why.<sup>16</sup> Taylor claims that: "Public disclosure ... during a crucial point in the government's review ... jeopardizes Taylor's diligent efforts" and that public

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<sup>7</sup> Woodward-Clyde Oceaneering, Geology and Engineering Analyses Block 20, Mississippi Canyon Area, Gulf of Mexico, (March 1983), p. 1—17, 1—21 & 1—22 (No. 2:12-cv-00337 (E.D. La., ECF No. 189-1)). The AP reports, "In 1969, Hurricane Camille caused a mudslide that destroyed a platform and damaged another." See footnote 2, above.

<sup>8</sup> 2 ECF No. 131-2 at p. 11, lines 8-22.

<sup>9</sup> See MSNBC Report, <http://www.msnbc.com/greenhouse/watch/the-biggest-us-oil-spill-405106755753>.

<sup>10</sup> No. 2:12-cv-00337 (E.D. La., ECF No. 154 at 2.)

<sup>11</sup> Letter of Student attorneys Rachel Talentino and Ravinder Khinda & attorney Machel Hall to Michael Beatty (April 16, 2014) (No. 2:12-cv-00337 (E.D. La., ECF No. 180-3)). The AP reports, "While Taylor insists it has acted "responsibly" throughout its spill response, the pattern of dubious pollution reports makes it difficult to assess the company's reports of progress in controlling the leak." See footnote 2, above.

<sup>12</sup> No. 2:12-cv-00337 (E.D. La., ECF No. 180-4 ¶¶ 27-28).

<sup>13</sup> No. 2:12-cv-00337 (E.D. La., ECF No. 149-1 at 11).

<sup>14</sup> No. 2:12-cv-00337 (E.D. La., ECF No. 149-1 at 11).

<sup>15</sup> See footnote 2, above. The AP report noted, "A presidential commission that investigated BP's spill identified that [governmental reliance on industry expertise] as a weakness." See also National Commission on the BP Deepwater Horizon, Oil Spill and Offshore Drilling, *Deep Water, The Gulf Oil Disaster and the Future of Offshore Drilling, Report to the President* 68, 76-77, 126-27, 234-35 (Jan. 2011).

<sup>16</sup> No. 2:12-cv-00337 (E.D. La., ECF No. 154 at 2).

disclosure “could create severe negative consequences to ... the Federal Government’s ability to conduct its review and analysis consistent with federal law.”<sup>17</sup> Federal law, however, is to the contrary.<sup>18</sup> In a democracy, difficult governmental decisions should be publicly vetted, not kept secret. As Supreme Court Justice Brandeis famously wrote: “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”<sup>19</sup>

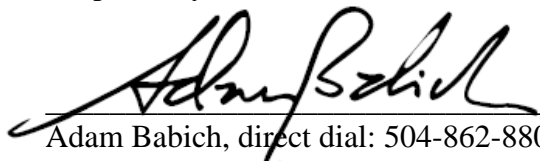
### Conclusion and Request

For all of the foregoing reasons and pursuant to 5 U.S.C. § 555(e), the Waterkeepers respectfully petition the U.S. Department of Interior and the Coast Guard to announce immediately that they will:

- Suspend any final decision-making processes until completing a process of vetting the relevant information and considerations in public view;
- Promptly disclose and make available on a Web site the data and information that would inform any final decision on response to the Taylor Oil Spill; and
- Provide for a public hearing and a public comment period before deciding on a final resolution to the Taylor Oil Spill.

The Waterkeepers respectfully request a response to this petition as soon as possible which in any event should be within the next 30 days.<sup>20</sup>

Respectfully submitted,



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<sup>17</sup> No. 2:12-cv-00337 (E.D. La., ECF No. 154 at 2).

<sup>18</sup> Clean Water Act § 101(e), 33 U.S.C. § 1251(e) (quoted in text accompanying footnote 6, above).

<sup>19</sup> See <http://www.brandeis.edu/legacyfund/bio.html>.

<sup>20</sup> See *EnSCO Offshore Co. v. Salazar*, 781 F. Supp. 2d 332, 339 (E.D. La. 2011) (finding in the offshore drilling context “that delays beyond thirty days are unreasonable”).