

Justice Department DEEPWATER HORIZON Lawsuit May Spur Congressional Action

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As has been widely reported, the Justice Department filed yesterday a civil lawsuit in the United States District Court for the District of New Orleans against BP and eight other companies involved in the DEEPWATER HORIZON oil spill. In its action, the Federal Government seeks civil penalties under the Clean Water Act and under the Oil Pollution Act of 1990 (OPA), including unlimited liability for clean-up costs and natural resource damages.

Not as widely reported is the possibility that this suit may spur Congress to act on the issue of oil spill liability. The litigation has renewed discussion about new legislation addressing such spills, which in recent weeks has seemed unlikely to pass before Congress adjourns for the year. For example, Sen. Mary L. Landrieu (D-LA), renewed her call for legislation requiring that oil spill penalties be divided among affected states “based on need and the damages they incurred,” and Rep. Edward J. Markey (D-MA), Chairman of the House Energy and Commerce Committee, Energy and the Environment Subcommittee, called upon the Senate to take action before recessing in order to bolster the Government’s case.

The House passed [HR 3534](#) in late July along party lines, and a Senate companion measure, [S. 3663](#), stalled after Republicans and some key Democrats from oil states objected to elimination of the \$75 million liability cap provided by existing law.

The Justice Department’s move, which was widely expected, alleges that the defendants committed various safety and operating regulations, which under existing law permit unlimited liability under OPA for clean-up costs and natural resource damages. The Government’s common application of this exception to the OPA liability limits raises questions about the actual impact of lifting OPA liability caps under the pending legislative proposals.

1 Min Read

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