



North Carolina Department of Environment and Natural Resources

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

April 7, 2011

MEMORANDUM

TO: NORTH CAROLINA GENERAL ASSEMBLY
The Honorable Thom Tillis, Speaker of the House of Representatives
The Honorable Phil Berger, President Pro Tempore

FROM: Kari Barsness
Director of Legislative and Intergovernmental Affairs

SUBJECT: Coastal Resources Commission Review of Existing Laws and Regulations Pertaining
to Offshore Energy Exploration and Production

Pursuant to SL 2010-179, the N.C. Coastal Resources Commission is directed by the General Assembly to review existing laws and regulations that pertain to offshore energy exploration and production in light of the explosion, sinking and subsequent discharge of oil from the British Petroleum Deepwater Horizon offshore drilling rig by April 1, 2011. Please consider the Coastal Resources Commission report attached as the formal submission.

If you have any questions or need additional information, please contact me by phone at (919) 715-4189 or via e-mail at Kari.Barsness@ncdenr.gov.

cc: DENR Assistant Secretary Robin Smith
Jim Gregson, Director, Division of Coastal Management
Kristin Walker, Fiscal Research Division
Lanier McRee, Fiscal Research Division
Claire Hester, Fiscal Research Division
Mariah Matheson, Research Division

North Carolina Coastal Resources Commission



NC COASTAL RESOURCES COMMISSION REVIEW OF EXISTING LAWS AND REGULATIONS PERTAINING TO OFFSHORE ENERGY EXPLORATION AND PRODUCTION

REPORT AND RECOMMENDATIONS APRIL 1, 2011

Introduction

In response to the BP Deepwater Horizon explosion and resulting oil spill, the General Assembly passed S836 (SL 2010-179) to address the possibility of such an event occurring in, or having some effect on North Carolina. Specifically, the General Assembly (1) clarified the liability for damages caused by the discharge of oil, gas or drilling wastes into state coastal fishing waters or offshore waters; (2) provided for the review of information required for a proposed offshore fossil fuel facility in order to determine consistency with state guidelines for the coastal area; (3) directs the Coastal Resources Commission (CRC) to review existing laws and regulations that pertain to offshore energy regulation and production; (4) directs the Department of Crime Control and Public Safety to review the State Oil Spill Contingency Plan; and (5) directs the Department of Environment and Natural Resources to review limitations on recovery of damages to public resources or the cost of oil or other hazardous substance cleanup pursuant to the Oil Pollution and Hazardous Substance Control Act.

In addition to directing the CRC to review existing statutes and rules, the General Assembly amended the Coastal Area Management Act (CAMA), creating a new section (113A-119.2 Review of Offshore Fossil Fuel Facilities) that incorporate some provisions of the Commission's existing 15A NCAC 7M .0400 Coastal Energy Policies. Specifically, the CAMA amendment incorporates some elements from 15A NCAC 7M .0403 Definitions, the N.C. Oil Pollution and Hazardous Substance Control Act, as well as elements of federal definitions.

Assessment of Legislative Actions

These actions by the General Assembly address concerns that were raised as the impacts of the BP oil spill on the Gulf region began to manifest themselves, the questions about how such an event could have been prevented, and what was deemed necessary to prepare North Carolina for a similar event.

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Division of Coastal Management
Department of Environment and Natural Resources
400 Commerce Ave., Morehead City, N.C. 28557
Phone 252-808-2808 Fax 252-247-3330

The discharge of oil or other substances into the environment and corresponding liabilities are found in N.C.G.S. 143-215.75 *et seq.*, known as the Oil Pollution and Hazardous Substances Control Act (OPHSCA). This state law complements the federal Water Pollution Control Act that imposes liability for spills of petroleum products. The OPHSCA requires the reporting of a spill to DENR, corrective actions, restitution to state and local governments for cleanup, liability for damages and civil penalties in the case of intentional or negligent discharges. A notable change in the OPHSCA is the dissociation of the liability limits contained in the federal Oil Pollution Act. That liability is currently capped at \$75 million. The General Assembly amendments remove any limits for oil spills occurring within the territorial jurisdiction (three nautical miles) of the state. In addition to removing a liability cap in state waters, the changes expand the liability provisions for any exploration activities, as well as damages associated with cleanup measures such as chemical dispersants. Other amendments to the OPHSCA, such as expanding the definition of “Offshore Waters” to include any coastal state bordering the Atlantic Ocean and the Gulf of Mexico, addressed the possibility of oil from the Gulf having an impact on North Carolina.

The General Assembly actions also address questions that arose in the wake of the BP spill with regard to information required for the review of an offshore fossil fuel facility. In addition to incorporating definitions found in the OPHSCA, the CAMA amendments include the federal requirements related to spills and other discharges, an assessment of alternatives to the offshore facility that would minimize spills, and an assessment of a spill that could cause a temporary or permanent violation of federal and state water quality standards.

With regard to federal requirements addressing “unauthorized discharges,” exploration and development plans must include:

- **Bonds** - The activities and facilities proposed in the exploration or development plan are or will be covered by an appropriate bond (30 CFR part 256, subpart I);
- **Financial Responsibility** - A demonstration of oil spill financial responsibility for proposed facilities (30 CFR part 253);
- **Relief Well Capacity** - A demonstration of the financial capability to drill a relief well and conduct other emergency well control operations.
- **Suspension of Activities** - A discussion of any suspensions of operations that may be necessary in the course of operations.
- **Blowout Scenario** - A scenario for the potential blowout of the proposed well that would be expected to have the highest volume of liquid hydrocarbons. The scenario should include the estimated flow rate, total volume and maximum duration of the potential blowout. The blowout scenario is also required to include a discussion of the potential for the well to bridge over, the likelihood for surface intervention to stop the blowout, the availability of a rig to drill a relief well, and rig package constraints. There is also a requirement for an estimated amount of time it would take to drill a relief well.

An approved Oil Spill Response Plan (OSRP) is also required (30 CFR part 254, subpart B) by the Bureau of Ocean Energy Management, Regulation and Enforcement (formerly Minerals Management Service), which includes:

- The location of primary oil spill equipment base and staging area.
- The name(s) of oil spill removal organization(s) for both equipment and personnel.

- The calculated volume of the worst case discharge scenario (30 CFR 254.26(a)), and a comparison of the appropriate worst case discharge scenario in an approved regional OSRP with the worst case discharge scenario that could result from the proposed exploration/development activities;
- A description of the worst case discharge scenario that could result from proposed exploration/development activities (30 CFR 254.26(b), (c), (d) and (e)).
- Modeling report for a potential oil or hazardous substance spill.

Coastal Resources Commission Review

While the CRC has been recently charged with reviewing the rules and statutes related to offshore energy exploration, there have been, and currently still are ongoing similar efforts. The Commission has considered and acted upon recommendations from the Division of Coastal Management's Ocean Policy Steering Committee (2009) to incorporate the siting of wind facilities in the CRC's 15A NCAC 7H .0208 Use Standards and the 15A NCAC 7M .0400 Coastal Energy Policies. The amendments adopted by the CRC to the Coastal Energy Policies also include a broadening of language to cover all ocean-based energy development and not exclusively oil and gas development. The Commission has also heard from the Legislative Research Commission Advisory Subcommittee on Offshore Energy Exploration, whose recommendations were couched in light of the BP Deepwater Horizon accident in the Gulf of Mexico. In addition to further study and analysis, the Legislative Research Commission recommended coordination with the Governor's Scientific Advisory Panel on Offshore Energy. During the intervening time, the Commission has heard updates on the Governor's Scientific Advisory Panel progress, which is charged with analyzing the feasibility of tapping offshore energy sources and identifying the benefits and areas of concern related to energy resources. The Governor's Scientific Advisory Panel is also studying current laws, rules, processes and procedures that affect the use of offshore energy resources, such as federal leasing programs, state and federal permitting programs and local zoning and ordinances.

More recently, North Carolina has requested the formation of a task force in response to an unsolicited application for an offshore wind energy lease. To facilitate wind energy development, the U.S. Department of Interior has created a framework utilizing state task force involvement in granting leases, easements and right-of-ways for renewable energy development activities. The purpose of the task force process is to assist the state in the leasing process and procedures for specific actions necessary for the development of offshore renewable energy.

In reviewing both state and federal regulations, the Commission has found that a great deal of change has occurred and continues to be proposed for offshore energy exploration both for conventional sources as well as renewable forms. At the federal level, the Bureau of Ocean Energy, Management Regulation and Enforcement (BOEMRE) recently announced revised drilling and workplace safety regulations. The revised drilling rules address 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. The safety rules include development of a comprehensive safety and environmental management program that identify the potential hazards and risk-reduction strategies for all phases of activity – well design and construction, operation and maintenance and decommissioning of platforms. According to BOEMRE, additional safety measures, as well as more stringent requirements for blowout preventers, is expected in the near future.

In addition, the Department of the Interior has reorganized its internal structure for managing the nation's offshore resources in the wake of the BP Deepwater Horizon accident. The Bureau of Ocean Energy Management, Regulation and Enforcement has been further split into the Bureau of Ocean Energy Management (BOEM), which will be responsible for leasing, plan administration, environmental studies, National Environmental Policy Act analysis, resource evaluation and the Renewable Energy Program; and the new Bureau of Safety and Environmental Enforcement (BSEE) that will administer safety and environmental regulation functions.

In the course of its review, the CRC has learned that the U.S. Department of the Interior has announced a new oil and gas leasing strategy that continues to focus on worker safety, oversight and environmental safeguards. The BOEM is continuing the process of developing a Programmatic Environmental Impact Statement for geological and geophysical (G&G) studies in the Mid and South Atlantic Regions. The G&G studies are seen as being critical to future development of oil, gas and wind energy, as well as non-energy mineral resources such as sand and gravel. The Programmatic EIS is expected to be completed in 2012. However, the Mid and South Atlantic Regions are no longer being considered for potential development in the 2012-2017 5-Year Lease Program. BOEM's intention is to focus resources on areas that currently have active leases.

Recommendation

The recent actions of the General Assembly to amend the N.C. Coastal Area Management Act and N.C. Oil Pollution and Hazardous Substances Control Act with regard to the review of offshore energy projects as well as the liability associated with spills has paralleled federal actions to address the issues associated with offshore energy exploration and production. Given that the Commission has acted upon recommendations from Coastal Management's Ocean Policy Steering Committee to incorporate the siting of wind facilities in the CRC's Use Standards and Coastal Energy Policies, and has broadened the language to cover all ocean-based energy development, the Coastal Resources Commission recommends allowing the Governor's Scientific Advisory Panel to complete its work and recommendations. The fact that the North Carolina OCS area is not included in the 2012-2017 5-Year Lease Program gives the state time to thoughtfully consider these actions of the General Assembly as well as the forthcoming recommendations and actions of other state entities working on the issue.