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Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

## NEW FOCUS ON REGULATING OFFSHORE DRILLING AND PRODUCTION

### BSEE Director Bromwich Addresses International Association of Drilling Contractors (IADC) Conference

Austin, TX. Thursday, November 10, 2011, 10:54 AM

*Bureau of Safety and Environmental Enforcement (BSEE) Director Michael R. Bromwich delivered remarks today during the International Association of Drilling Contractors' Drilling and Production Keynote Breakfast here. Director Bromwich discussed ongoing regulatory reform efforts and highlighted plans to strengthen the bureau's enforcement tools and processes. Director Bromwich's remarks as prepared for delivery are below:*

Good morning. Thank you for the opportunity to be here with you today to discuss issues of mutual interest and concern. It is great to be back in Austin and to be back at the Barton Creek Resort. History has an odd way of repeating itself, and our lives present us with strange coincidences. The first time I came to Barton Creek was almost exactly ten years ago. It was in connection with a disaster in the energy sector – in that case an explosion of a natural gas pipeline in Carlsbad, New Mexico, in August of 2000. Some of you may recall it. That explosion killed 12 members of an extended family, including infants and young children, who were camping near the pipeline. The explosion and fire in that case were caused by internal corrosion in a high-speed natural gas pipeline. Before the explosion and the tragic deaths, internal corrosion on high-speed pipelines was unknown and unexpected in industry circles and unknown to and unexpected by the regulators, in that case the Office of Pipeline Safety. The accident caused the regulatory agency to issue an immediate safety alert, led to an extensive set of regulatory and criminal investigations, and prompted a thorough self-examination by the company and the industry as a whole about the safety of onshore natural gas pipelines. I was here in 2001 because one of the directors of the company that owned the pipeline lived here and was having his deposition taken here. I had been asked to conduct the internal investigation for the company that owned the pipeline.

Ten years later, here I am – back at Barton Creek, and standing here as the direct result of another unexpected tragedy: the blowout in April 2010 at the Macondo well, the explosions and fires on the Deepwater Horizon rig and the tragic deaths of twelve crew members and serious injuries to many others. And as all of you know, the tragic loss of life was followed, over the subsequent 87 days, by an oil spill of enormous and sickening magnitude, amounting to approximately 4.9 million barrels, in the Gulf of Mexico.

#### ***I. Deepwater Horizon, Its Aftermath and MMS***

The Deepwater Horizon explosion, fires, deaths, and oil spill shocked the nation, sent shock waves through the offshore industry, and reverberated throughout the world. In the immediate aftermath of the blowout, and in the midst of the agony of the ongoing spill, a moratorium on deepwater drilling was imposed, which I know affected all of you directly and immediately. It seems like a long time ago, but it has been a mere 18 months since industry and government were being forced to admit to each other and to the outside world that the industry and government safeguards designed to prevent a deepwater blowout had not prevented this blowout; that no one had prepared adequately for containing a subsea blowout; and that tools for responding to a major oil spill had advanced little in the twenty years since the Exxon Valdez.

There was plenty of blame to go around, much of it assigned to the companies involved in drilling the well, but much of it assigned to the former MMS. It is an undeniable fact that the agency had experienced some ugly, highly-publicized episodes of corruption and misconduct in the years preceding the spill. Even though those episodes only involved a tiny fraction of the agency's employees, politicians and some elements of the media

worked to fit those episodes into a narrative that spread the blame for the Deepwater Horizon explosion, deaths, and oil spill to the agency. That was never based on facts or analysis, but that did not prevent it from becoming the widely accepted conventional wisdom. That was deeply unfair, and many agency personnel are still smarting from the relentless blows to the agency's reputation that were delivered almost daily for many months. I know that mere mention of the deepwater moratorium sets your teeth on edge, and that's because of the impact it had on the level of activity in the Gulf of Mexico and the continuing economic damage it has done to your businesses. We understand that and truly regret the harm suffered by many businesses and their employees. But what the Department of Interior saw at the time, both before and after I arrived in late June 2010, was a set of risks associated with deepwater drilling that had been badly underestimated – by everyone; a regulatory regime that badly needed to be bolstered and reinforced – as quickly as possible; containment capabilities that needed to be developed – which had never existed; and spill response assets, which were being almost fully absorbed with the Macondo spill, and that needed to be made available in sufficient quantities to deal with a potential new spill. Our responsibilities were different than yours – your duties ran to your employees and your shareholders; ours ran to the public, most of which, outside of Louisiana and Texas, knew comparatively little about offshore drilling until the blowout and spill. Our public responsibilities are what drove the decision to impose the moratorium and to leave it in place until the middle of October 2010 – until new drilling safety regulations had been put in place, until the well had been capped and killed, and until spill response assets were once again available to deal with an oil spill.

I understand that things may well have looked different from your perspective, but that's the way things looked from ours. I have heard some truly loopy arguments about the reasons the moratorium was imposed and maintained, but I was there and I know the decisions that were made were made in utter good faith and without any of the ulterior, political motives that have frequently been attributed to those of us at Interior.

## ***II. Reforming Offshore Regulation***

Tragedy and disaster frequently lead to reexamining accepted truths and old ways of doing business. I know that Deepwater Horizon prompted a flurry of activity within the offshore industry. It had the same effect within the government. Even before I arrived at Interior in late June 2010, structural flaws had been identified within the former MMS that had impeded and impaired its ability to carry out core regulatory and enforcement functions. The same agency that collected royalties and revenues from offshore leases was responsible for making balanced decisions about offshore resource development – and with both regulating the industry and enforcing those regulations.

The agency never had the resources to do all of those important and complicated things, much less do them well, and inherent tension between and among those quite different missions caused the emphasis on some to come at the expense of others. It seems quite clear that raising revenue for the federal Treasury came to be viewed as job one by generations of MMS directors. And that was an important mission – after all, royalties and revenues from drilling on public lands, onshore and offshore, were the second largest contributor to federal revenues after the federal income tax. That in turn drove resource development decisions, and undoubtedly gave those decisions more of a pro-development bias than if there had been no pressure to generate that revenue. But in the meantime, the regulatory and enforcement components of the agency's missions suffered from a case of extreme neglect and resource deprivation. This was well-known to people inside the agency, and it was fully confirmed by the independent BP Spill Commission through its interviews of former MMS directors. Those former directors acknowledged that their top priority was raising revenue for the Treasury.

So as we dealt with the crisis presented by Deepwater Horizon and its aftermath, and immediately reconstituted and renamed MMS as BOEMRE, we set about the important task of remedying the imbalances in the agency that had devalued the regulatory and enforcement missions for the sake of revenue generation. We did that through a major reorganization that by now is undoubtedly familiar to almost all of you. In October 2010, as the first step, we split off the revenue collection piece of the agency and it was placed in a separate reporting chain within Interior to ensure that it no longer drove the resource development or the regulatory and enforcement decisions. That was the easy part. It was easy because although it had driven MMS's agenda for many years, the revenue and royalty collection function – renamed as the Office of Natural Resource Revenue (ONRR) -- was largely separate as an operational and functional matter even before it was made into a separate agency.

The harder part was separating the resource development function from the regulatory and enforcement functions. That took time and was far more complex. We considered a number of structural and organizational alternatives, and ultimately selected the structure that seemed most likely to eliminate the tension that existed between the agency's different missions while at the same time maintaining operational continuity and efficiency. We think we have accomplished that through the creation of the two new agencies that opened their doors on

October 1 as the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE).

The creation of BOEM and BSEE to replace BOEMRE, initially announced more than a year ago and now fully implemented, replaces separates offshore resource management from safety, environmental oversight, and enforcement. This provides our permitting engineers and inspectors in BSEE, who are central to overseeing safe offshore operations, with greater independence and clearer mission focus. Our goal has been to create an aggressive but fair regulator that can effectively keep pace with the risks of offshore drilling and will work to promote safety and compliance in offshore operations.

In BOEM, we have created an agency that ensures that sound environmental reviews are conducted and that the potential environmental effects of proposed operations are given appropriate weight in making decisions related to the management of offshore resources. Leasing and plan approval decisions must take all relevant considerations into account and will be properly balanced, as required by law.

### ***III. New Capabilities and Functions in BSEE***

In shaping BSEE, we knew that substantial changes needed to be made to transform a set of the most historically neglected functions of the agency into a unified organization capable of carrying out crucial regulatory, oversight, and enforcement functions. In creating the new structure for BSEE, we identified a number of areas in which functions that had never existed needed to be created, and others that had been given few resources and little attention were strengthened. For example, MMS never had a training program for its offshore inspectors, even though the inspections program is a central part of the agency's oversight responsibilities. It was bad enough that the agency was asked to inspect more than 3,000 facilities with fewer than 60 inspectors; the problem was compounded because the agency had never developed its own training program. That was the product of historical failures of leadership as well as a shortage of budgetary resources. We have addressed that problem through the creation of National Offshore Training and Learning Center and the hiring of a first-ever training director with experience in developing comprehensive training programs.

In addition, the agency had never developed an organized and coherent program for environmental enforcement. Some committed agency personnel took it on themselves to perform this function, but they received negligible management or leadership support for doing so. To fill that gap, we have established for the first time an Environmental Enforcement Division. This Division will provide sustained regulatory oversight that is focused on compliance by operators with existing environmental regulations,. It will ensure that operators keep the promises they have made at the time they obtain their leases, submit their plans, and apply for their permits.

Beyond these important efforts to build new capacities within the agency, we are engaging in a wholesale reexamination of many of our functions, processes and procedures. We began doing that over a year ago through the formation of implementation teams within the agency, and that work continues to move forward. That includes our permitting functions, our regulatory development functions, our inspections functions, and our enforcement functions. Here are some of the highlights.

#### **Permitting**

On permitting, we have made enormous strides in recent months to review and approve permits, and to increase the transparency of our process. The numbers tell only part of the story, but an important part of the story.

Shallow water: To date, 91 new shallow water well permits have been issued since new safety and environmental standards were implemented on June 8, 2010. Only 16 of these permits are currently pending, with 8 having been returned to the operator for more information.

For deepwater permits requiring subsea containment: Since the first successful demonstration of containment capabilities in mid-February, we have approved 182 permits for 55 unique wells. At present, we have 27 permits pending, and 14 permits returned to the operator with requests for additional information, frequently information regarding containment.

Deepwater activities not requiring subsea containment: 48 of these permits have been approved since June 2010, with 2 permits pending, and 2 permits returned to the operator with requests for additional information. These activities include water injection wells and procedures using surface blowout preventers.

I am aware that these numbers are not as high as you would like them to be, and not as high as they were before Deepwater Horizon, but the world has changed irrevocably since then. The applications that are submitted must meet a suite of new requirements, and our drilling engineers give extremely close scrutiny to these applications. I know of no one who denies that things are improving – and they are improving in part because of changes we have made in the permit review process.

We have published a permit application completeness checklist to reduce the frequency with which operators submit incomplete applications, so they know exactly what is required. Our drilling engineers have begun conducting completeness checks before beginning their in-depth reviews to flag at the outset significant omissions in the application package. We have established and disseminated to operators our priorities for reviewing permit applications – assigning the highest priority to permits for ongoing operations. And finally, we for the first time allowed authorized users of our online application system (eWells) to track the status of their permit applications. This answered the call from many operators for greater transparency in our permitting process.

When I met with a group of Gulf of Mexico operators less than a month ago, I asked them whether on January 1, they would have predicted that the number of deepwater unique wells we had permitted would attain the levels they had reached by that late October day. All of them acknowledged they would not have - that the level of permitting in deepwater had exceeded the expectations they had 10 months earlier. And that was before we approved a large number of permits between that meeting and the end of October. This was not - and is not - a request for praise, but it is a suggestion that in a world of short memories, we recall where we stood at the beginning of the year - and the very different place we are today. And that gives you some insight into my reaction when I hear a chorus of complaints about the pace of permitting - and when I hear the recycled and tired use of phrases like "de facto moratorium," "permitterium" and other phrases that mean absolutely nothing and fail to describe reality. I have the same reaction when I see legislative proposals, offered by otherwise serious people, that would, among other things, deem applications to drill approved after a certain number of days have passed no matter how deficient the applications.

### **Regulatory Changes**

On the subject of regulatory developments, you all are familiar with our Drilling Safety rule, which went into effect a little more than a year ago, and which established new requirements for well design, casing and cementing – and well control procedures and equipment, including blowout preventers. In addition, I know that you are fully familiar with our Workplace Safety (or SEMS) rule that requires operators to systematically identify risks and establish barriers to those risks through a comprehensive safety and environmental management program. Because the SEMS rule required substantial work by many operators, we delayed enforcement of the rule for a year. Starting next week, we will begin to enforce compliance.

And last month, we proposed a follow-up rule that further advances the purposes of the SEMS rule. Among other things, it requires third-party independent audits of SEMS programs, authorizes the broad exercise of Stop Work Authority, and provides all employees with the right to report a possible safety or environmental violation and to request a government investigation of the facility. We look forward to the comments from the offshore industry and others as this proposed rule moves through the rulemaking process.

Finally, in the relatively near future, we expect to make available for public comment additional proposed regulations to address the recommendations contained in our report of the investigation into the Deepwater Horizon blowout, which was issued in mid-September. In order to ensure that we incorporate the very best ideas and best practices of the offshore industry and other interested stakeholders, we will proceed through a notice and comment rulemaking process that will begin with an Advance Notice of Proposed Rulemaking. This involves an additional and optional step in the rulemaking process. It is our hope and expectation that at the end of this process, we will develop consensus proposals that will significantly enhance safety and environmental protection.

### **Inspections**

On inspections, we have taken a number of steps to shore up this central oversight function. Most importantly, we have hired a significant number of new inspectors – 37 new inspectors since July of 2010, with 9 additional inspectors committed to come on board by January 1. That will mean we have increased our inspections corps by close to 80% in 18 months. In addition, we are improving our risk-based approach to inspecting offshore facilities and important safety equipment, such as BOPs. We have also, through our new Training and Learning Center, put two groups of new inspectors through a core curriculum in offshore inspections. And finally, we are equipping our inspectors with new equipment and tools, including handheld computers, to make our inspections process more efficient and effective.

### **Enforcement**

Last but not least, let me turn to enforcement because I know it is an issue of significant importance to you. Because of a combination of factors ranging from inadequate resources to mission confusion to lack of a strong enforcement ethic, the agency has throughout its 28-year history never focused sufficiently on developing an aggressive, consistent and balanced enforcement program. We need to change that, and we will. As I have discussed on numerous occasions over the past six months, we have extended our regulatory reach to include contractors as well as operators. I know that has not endeared me to this group, nor to the various elected

officials who have criticized us for not limiting our regulatory and enforcement authority to operators. We did not take this step lightly, nor did we take it before fully satisfying ourselves that we had the legal authority to do so. But once we concluded that we did, there was no good reason not to do so. The fact that we had unilaterally decided to grant immunity to all non-operators was a misguided act of administrative grace rather than a result dictated by law or good policy. The fact that we had followed a bad practice was not a sufficient reason to continue it.

The reason for the change is simple. We have the legal basis to exercise such regulatory authority, and there is no persuasive reason in law or logic not to do so. In my judgment, it is simply inappropriate to voluntarily limit our regulatory actions to operators if in fact we have authority that reaches more broadly to the activities of all entities involved in developing offshore leases. I am convinced that we can fully preserve the principle of holding operators fully responsible, and in most cases, solely responsible, without sacrificing the ability to pursue regulatory actions against contractors for serious violations. Regulators in other industries in this country and other offshore regulators abroad think it is bizarre that we have historically limited our regulatory authority in the way that we have. As I have said many times, we will be careful and measured in applying our regulatory authority to contractors, but we will not hesitate when we determine it is appropriate and necessary. As you know, in connection with our Deepwater Horizon investigation, we concluded that there were regulatory violations committed by BP, TransOcean, and Haliburton, and a first wave of Incidents of Non-Compliance were issued last month. I believe in a system of legal and regulatory accountability, and the issuance of those INCs reflects my view that such accountability is not limited to operators. I know it is a new view for this industry, but I am convinced it is the right view.

In addition to extending our regulatory authority to contractors, I think it is past time to make more rational and efficient the process by which we impose civil penalties. Under our current process, it can take up to a year to determine whether civil penalties should be imposed after the issuance of Incidents of Non-Compliance. That is entirely and unacceptably too long, and I have directed my staff to find a way to significantly reduce that time. I have also said repeatedly that we need to increase the maximum rate for civil penalties, because I do not believe that a top fine of \$40,000 per day, per incident, is any type of meaningful deterrent in an industry in which operators pay between \$500,000 to \$1 million per day for a rig. We will be working through the legislative process to remedy that.

We have accomplished a lot over the past 15 months – both in terms of structural and regulatory reforms. Going forward, our challenge will be to ensure that our efforts to enhance safety will not languish as the memory of the Deepwater Horizon accident fades into the past. To this end, in January, Secretary Salazar established the Ocean Energy Safety Advisory Committee to advise us on a broad range of issues related to offshore energy safety. This committee consists of some of the brightest minds from industry, the academic community and government in the United States. I met with the committee, led by former Sandia Labs Director Tom Hunter, on three occasions, including during their meeting in Washington earlier this week, and I am very pleased with its progress and the commitment of its members to helping us. They are scheduled to provide us with preliminary recommendations by the end of this year.

#### ***IV. Conclusion***

Through sixteen months of careful thought and hard work, we have worked to create the structure, select the leadership, and obtain the resources needed to fulfill our responsibilities to the American public. We need our people to approach regulation, oversight, and enforcement in a way that is tough, but fair, which places safety above all else, which promotes the responsible development of our nation's energy resources, and ensures all reasonable steps are taken to protect the fragile coastal and marine environment.

We need everyone to remain involved with these issues – from industry, government, and elsewhere -- to embrace those goals and to recognize their importance. We cannot afford to have our critics take liberties with the facts, forget the past, and pretend that Deepwater Horizon never happened. The efficient approval of plans and permits matter, but they are not the only things that matter. Those plans and permits must comply with the standards and requirements that help ensure safety and environmental protection. For us, Deepwater Horizon was a seminal event in the history of offshore drilling that will – and should – have a lasting impact on the way we do business. It has driven much of what we have done over the past sixteen months, and much of the agenda we will be pursuing as we move forward.

As you know, I will be stepping down as the Director of BSEE in the near future – in fact, before the end of the year. Throughout these last 16 months, as the Director of BOEMRE and now the Director of BSEE, I have met personally with many of you and with others in the offshore industry. I have heard repeatedly the same message – we need a strong regulator, with the necessary resources to effectively carry out its mission. We need consistency and clarity in the regulations, and we need consistency in enforcement. And we need efficiency and regularity in

the permitting process.

I believe we have created a structure that provides for that consistency, clarity and efficiency, and we will continue to fight for the resources necessary to be effective and efficient. I will tell you this; there will be no question about the agency's commitment or focus as a regulator. We know what is at stake, and we will not allow a return to complacency. That will not change when I leave.

For me personally, it has been a challenging and rewarding year. I was asked to head the agency to help it through the crisis, to implement the reorganization, and to make the necessary and appropriate institutional changes to make offshore exploration, development and production safer and more environmentally responsible. Those were the goals, and thanks to the enormous efforts of many, we have achieved those goals. But the task of the agency will never be done, and much of what needs to be done in the future will be shaped by the relationships it has with the world outside the agency – including, most notably, the offshore industry.

I am extremely proud of what we have accomplished, and I am very optimistic about what lies ahead. I firmly believe we have significantly enhanced the safety of offshore operations, and particularly deepwater drilling, and I think the industry is better and safer for what we collectively have gone through. But this is an ongoing project. Industry and government need to continue to evolve and adapt as technology advances to ensure the regulatory system keeps pace with the industry. And we need to keep communicating and sharing our insights even when we disagree.

Thank you for your time and your attention. I am happy to take any questions you might have in the time we have remaining.

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