

November 14, 2011

Chief
Regulations and Standards Branch
Bureau of Safety and Environmental Enforcement
381 Elden Street, MS-4024
Herndon, Virginia 20170-4817

RE: Revisions to Safety and Environmental Management Systems (SEMS), 1010-AD73

Dear Regulations and Standards Branch Chief:

Oceana appreciates the opportunity to comment on the proposed Revisions to Safety and Environmental Management Systems (Regulation Identifier Number 1010-AD73). The proposed rulemaking entitled “Revisions to Safety and Environmental Management Systems” (“Revisions to SEMS”) follows a number of other reforms enacted by the former Bureau of Ocean Energy Management, Regulation and Enforcement (“BOEMRE”) in response to the disastrous Deepwater Horizon spill. These reforms aim to enhance offshore drilling safety by rectifying problems in the regulation of offshore drilling that were made evident by the disaster.

Oceana commends BOEMRE’s interest and the ongoing interest of the Bureau of Ocean Energy Management (“BOEM”) and the Bureau of Safety and Environmental Enforcement (“BSEE”) in making offshore drilling safer. However, as Oceana demonstrated in a recent report, titled *False Sense of Safety*,¹ measures implemented since the Deepwater Horizon disaster have failed to make offshore drilling safe. This failure is a result of two sets of issues. First, overarching problems in the regulation of the offshore oil and gas industry have not yet been addressed, and these overarching problems undermine new safety measures. Second, flaws in the new safety measures themselves exist that undermine their efficacy. Until overarching problems in offshore regulation and flaws in new safety measures are both addressed, new safety measures will not make the necessary improvements to offshore drilling safety.

The new safety regulations in the proposed Revisions to SEMS suffer from the two sets of issues listed above. Namely, the proposed regulations are undercut by overarching problems in the regulation of offshore drilling, and have been proven to be ineffective. Both factors are discussed in turn below. Most notably, BP had in place on the Deepwater Horizon rig a number of internal policies that mirror various SEMS requirements, including the proposed Job Safety Analysis (“JSA”) and Stop Work Authority (“SWA”) revisions, yet these policies failed to prevent the disastrous blowout and spill. This fact in and of itself provides practical evidence that SEMS and the proposed revisions will not greatly increase the safety of offshore drilling. Oceana urges BSEE, in issuing its final rulemaking, to correct the flaws highlighted below in the new regulations and to immediately address overarching

¹ Available on Oceana’s website at www.oceana.org/safetyreport

problems in offshore regulation. Until it does so, BSEE and BOEM should stop permitting new drilling.

The Proposed Revisions to SEMS are Undercut by Overarching Problems in the Regulation of Offshore Drilling

During the Deepwater Horizon spill and in subsequent investigations, such as that of the National Commission and Joint Investigation Team, many overarching problems in the regulation of the offshore oil and gas industry were uncovered. Despite the widespread acknowledgement of their existence and severity, many of these problems have not yet been addressed, as documented in detail in Oceana's recent report, *False Sense of Safety*.² These overarching problems undermine the regulation of offshore drilling in general, and specifically the effectiveness of the new regulations in the proposed Revisions to SEMS rulemaking. Thus, until these persistent problems are fixed, the proposed regulations will have limited benefits for offshore safety.

For this reason, Oceana urges BSEE to immediately correct persistent overarching problems in offshore regulation that are within its authority, and to work to correct those that are not. This would include taking the following actions prior to approving additional drilling:

1. Remove the authority that allows BOEM and BSEE to grant "departures", or exemptions, from regulations.
2. Increase fines enough to counteract the economic incentives that make violating regulations and corner-cutting lucrative.
3. Address the critical deficiencies in blowout preventers that were uncovered by the Macondo blowout and subsequent investigations continue.
4. Improve BSEE's oversight and inspection capabilities to a level commensurate with the scale of offshore drilling.
5. Ensure a "fundamental transformation" in the offshore industry's safety culture, the importance of which was noted by the National Commission.³

To date, efforts by BOEMRE, BOEM and BSEE to address these problems have not been adequate. Oceana notes that some of the overarching problems cannot be corrected by agency action alone. For instance, greatly increasing BSEE's inspection capabilities and the limit for civil penalties require legislation. Nonetheless, BSEE can – and should – inform Congress of the danger posed by not passing such legislation, and furthermore support such legislation by not allowing further drilling until the necessary legislation is passed.

² Available on Oceana's website at www.oceana.org/safetyreport

³ 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*. 11 Jan. 2011. Page 217.

Proposed New Regulations in Revisions to SEMS are Flawed

Stop Work Authority (“SWA”) Programs do not Work

One of the proposed regulations would require operators to authorize a Stop Work Authority (“SWA”) program, wherein any employee on a facility could stop work at any given time if a threat or danger to an individual, property, and/or the environment exists. Such a program, if fully implemented and utilized by employees, would make offshore drilling safer by giving the power to stop work to more employees, thereby increasing the chances potential problems would be caught and stopped before they occur.

Yet, the facts surrounding the Deepwater Horizon disaster cast serious doubt as to whether such a program would actually be appropriately utilized by employees. On the Deepwater Horizon, Transocean, BP, and Halliburton all had stop work policies in place, and all of the witnesses from those companies who testified before the Joint Investigation Team furthermore stated that they were aware of their SWA.⁴ However, no employees spoke up and invoked his or her SWA in the hours preceding the blowout⁵ despite numerous warning signs that would have been evident to various teams of workers, including the negative pressure test team, cementing team, and well abandonment team.

The fact that no employees exercised their SWA, though, is not surprising, given the lack of anonymity in such situations and fears of reprisal. In a survey of Deepwater Horizon crew members requested by Transocean, 46% of crew members felt that “some of the workforce feared reprisals for reporting unsafe situations.”⁶ Similar concerns have been reported by workers in the North Sea.⁷ Such concerns illustrate the pressure workers feel in not hindering development, and suggest federally-mandated SWA programs will not work as intended.

In light of these concerns, BSEE should make every effort to afford protection to workers who utilize their SWA. For instance, the new regulations pertaining to SWA programs should offer legal or financial protection to workers who utilize their SWA or otherwise raise concerns about safety conditions. BSEE should include in its final rulemaking provisions that would impose significant penalties on operators that discriminate against workers who legitimately exercise their SWA. It is doubtful such protection alone would entirely eliminate retaliations by companies, but it would at least afford some protection to workers and so increase the odds that they would use their SWA when necessary.

BP Had in Place Internal Policies Similar to Job Safety Analysis and Other Aspects of SEMS When the Deepwater Horizon Disaster Occurred

The proposed Revisions to SEMS add additional requirements for conducting a Job Safety Analysis (“JSA”), which is required under SEMS. JSAs aim to reduce the risks associated with

⁴ Joint Investigation Team. "Volume II: Report regarding the causes of the April 20, 2010 Macondo well blowout." *Report of Investigation*. 14 Sept. 2011. Pages 189-190.

⁵ *Id.*

⁶ 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*. 11 Jan. 2011. Page 224.

⁷ Macalister, Terry, and Rob Evans. “North Sea oil: Whistleblowers speak out.” *The Guardian*. 5 Jul. 2011. <http://www.guardian.co.uk/business/2011/jul/05/north-sea-oil-whistleblowers>

offshore drilling by having operators preemptively assess potential risks and hazards of each activity and take action to reduce those risks. The proposed revisions would lead to JSAs being prepared for more activities and for all personnel involved with any given activity, and would also require that employees be trained in developing and implementing a JSA. While these revisions, and their potential improvements to safety, are welcome, the Deepwater Horizon disaster suggests requiring JSAs will have a limited effect on offshore safety.

BP had in place a number of internal policies that mirror JSAs, as well as other aspects of SEMS, at the time of the Deepwater Horizon blowout. These policies included Operating Management Systems (“OMS”), which provided a standardized approach to risk management;⁸ a Management of Change (“MOC”) process, which pertained to temporary or permanent changes in any aspect of drilling operations including personnel changes;⁹ a communications plan to help determine who should make decisions concerning rig operations;¹⁰ safety rules called the “golden rules”, which required identification of hazards and risks associated with activities on a regular basis;¹¹ and management of risk in its drilling well operations policy (“DWOP”).¹²

Yet, despite having these internal policies in place, BP employees failed to follow them, and in some cases cut corners to lower costs without formally assessing risks.¹³ This failure could be attributed to a lack of a penalty for not following them, since they were self-imposed policies, but as mentioned before and discussed at length in Oceana’s report *False Sense of Safety*, the penalties BSEE can assess are, relative to operating costs, negligible. Also, BSEE’s inspection and oversight capabilities are lacking – a fact Director Bromwich himself has stated.¹⁴ Consequently, it is unlikely that mandating JSAs to be performed and followed will increase how often offshore workers comply with their JSAs when a project timeline is at stake.

It is not Oceana’s intention, by highlighting these potential problems with JSAs and the revisions to JSA requirements, to discourage BSEE from implementing the additional JSA requirements. Rather, Oceana’s intention is to make BSEE aware of the shortcomings in the proposed revisions so that BSEE can include additional provisions in its final rulemaking that address these shortcomings.

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⁸ Joint Investigation Team. "Volume II: Report regarding the causes of the April 20, 2010 Macondo well blowout." *Report of Investigation*. 14 Sept. 2011. Page 176.

⁹ *Id.* Page 179.

¹⁰ *Id.* Page 183.

¹¹ *Id.* Page 183.

¹² *Id.* Page 176.

¹³ *Id.* Page 191.

¹⁴ Bromwich, Michael R. Statement on discussion draft legislation to reorganize the Interior Department's offshore energy agencies. Testimony before the House Committee on Natural Resources on 15 Sept. 2011. Page 8. <http://naturalresources.house.gov/UploadedFiles/BromwichTestimony09.15.11.pdf>

Oceana commends BSEE's and BOEM's ongoing interest in making offshore drilling safer and preventing future disasters like the Deepwater Horizon spill from occurring. But while laudable, the proposed Revisions to SEMS, like previous safety measures implemented after the Deepwater Horizon incident, will not greatly improve the safety of offshore drilling for two reasons. Overarching problems in offshore regulation identified in the wake of the Deepwater Horizon spill persist, undermining the effect of the proposed regulations. And some of the proposed regulations, namely those that pertain to JSAs and SWA programs, have been proven to be inadequate.

In issuing the final rulemaking, BSEE should fix the previously-identified flaws in the proposed regulations. Furthermore, Oceana urges BSEE to stop permitting drilling until overarching problems in the regulation of offshore drilling are resolved and additional, more stringent safety measures are issued. Such measures may include requiring dual blind shear rams on all blowout preventers and increasing funding for spill response and cleanup technology research and development. Only then will offshore drilling truly be made safer, and until then it will continue to pose major risks to human life and the oceans.

If any further clarification or explanation is required, you may contact me at 202-467-1953 or jsavitz@oceana.org. We appreciate the opportunity to comment on this proposed rulemaking.

Sincerely,

Jacqueline Savitz
Senior Scientist, Senior Campaign Director
Oceana