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In the wake of disaster



The BP oil spill is spewing thousands of barrels of oil into the Gulf of Mexico each day.

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The disastrous failure, which is spewing thousands of barrels of oil each day into the Gulf of Mexico, has raised many questions about federal oversight of the oil industry. One emergency measure after another has failed to stop the flow, and even if the latest control efforts succeed, the Gulf and its coastline will suffer unprecedented ecological and economic harm. Lee Breckenridge, associate dean and professor at Northeastern's School of Law, answers questions about the long-term legal and environmental effects of such a large-scale spill.

Why weren't U.S. laws strict enough to prevent this oil spill?

The United States actually has many strong laws to regulate the industry and deal with oil spills. Federal law, which was greatly strengthened after the Exxon Valdez and Santa Barbara oil spills, requires careful environmental assessment and planning, control of oil discharges in water and wetlands and special protection of marine mammals and other designated species. Existing legal requirements, if properly followed and enforced, ought to have prevented a catastrophe like this.

What went wrong?

Failures in the regulatory review of BP's plans may be partly to blame. Even though the U.S. Minerals Management Service has the power to insist on safeguards and limitations on offshore oil drilling, BP apparently avoided close scrutiny and took advantage of lax agency reviews and exemptions. BP calculated a "worst-case scenario" even larger than most experts' projections for the actual spill, as regulations required, but BP then gained permission to go ahead with drilling without genuinely preparing for the risk of a massive spill in deep water.

Seemingly, no one in a position of authority took the worst-case scenario seriously enough to address the consequences or consider the alternatives. There may also have been important violations of legal requirements during BP's operations, both before and after the explosion on the rig. Such details should become clearer as current investigations get under way.

The U.S. Department of the Interior is set to restructure the offshore drilling regulatory agency, separating safety and environmental enforcement activities of the Minerals Management Service from those relating to revenue generation and collection. Why was this decision made?

The main purpose of the restructuring plan is to reduce the appearance of a conflict of interest and to protect public employees who evaluate and regulate environmental risks from being pressured or biased toward allowing commercial activities. Federal agencies' leasing of federal public lands — national forests and grazing lands, as well as submerged lands on the Outer Continental Shelf — has always created difficult tensions between the goals of economic development and federal responsibilities to protect the environment. Oil and gas operations pose especially difficult problems for effective environmental oversight because of the high economic value of the resources, the pervasive political influence of the petroleum industry and the enormous revenues generated for public and private coffers alike.

Will this reorganization be beneficial?

An agency restructuring might help, but simply reorganizing the staff is unlikely to do enough. Strong leadership, explicit commitments to upholding the intent of environmental laws and adequate funding and staffing support for environmental assessments and other science-based work will be critical to bringing leasing

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practices into line with sound environmental policy.

What legal actions and changes are we likely to see in response to this oil spill?

Even if BP is not at fault, it will have to pay the costs of cleaning up the oil, restoring the aquatic habitat and mitigating environmental harm. But litigation over potential criminal claims, as well as the amounts of civil penalties and damages owed to federal, state and private parties could easily last for decades.

We can also expect to see new legislative proposals imposing more safeguards on drilling practices, raising penalties for noncompliance and increasing the penalties that companies must pay for economic and ecological harm.

Are current policies on the exploitation of fossil fuel resources effective in balancing the need for economic growth with the goal of ecological protection?

The United States has made great strides in controlling industrial pollution, but U.S. laws and policies remain woefully inadequate to ensure the sustainable and ecologically wise development of energy resources.

The failure to limit greenhouse gas emissions and address the dangers of global climate change, in particular, is a matter of grave concern. Will the crisis in the Gulf only divert legislators' attention from these looming climate-change issues, or will they spur genuine efforts to reform national energy policy? One can only hope that controversies over the oil spill will boost rather than derail initiatives to reduce the national dependence on fossil fuels and develop alternative sources of energy.

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