

# oil spill INTELLIGENCE REPORT®

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## **RESTORE Act Passes US Congress**

More than one year after first being introduced in the US Senate (as S.186), the RESTORE Act was finally passed in conference by both houses of the US Congress on 29 June 2012. RESTORE (the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act) became part of H.R. 4348 and the Moving Ahead for Progress in the 21st Century Act (MAP-21), with an amended title of “An act to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.” The new title accurately sums up the behemoth legislation, which includes funding for the repair and construction of transportation-related infrastructure, changes in flood insurance requirements, and extends current interest rates for federal Stafford loans for college students. The bill eked through Congress just prior to the July 4<sup>th</sup> recess.

The RESTORE Act portion of the legislation just passed is much the same as recent incarnations of the bill in both the House (H.R. 3096) and Senate (S.1400) (see *OSIR*, 27 October 2011). Per Section 1602 of the House Report 112-557, 80% of “administrative and civil penalties paid by responsible parties ... in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon pursuant to a court order, negotiated settlement, or other instrument in accordance with section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321)” will be deposited in a Gulf Coast Restoration Trust Fund in the US Treasury. These fines will likely total at least US \$5.4 billion (\$1,100 per barrel for 4.9 million barrels spilled), even without a finding of gross negligence on the part of BP. The majority of the monies will be distributed directly to the five Gulf Coast states of Alabama, Florida, Louisiana, Mississippi, and Texas for economic and environmental restoration projects. Nearly one-third of the penalties will go to fund implementation of a Comprehensive Plan

that will be developed by a Gulf Coast Ecosystem Restoration Council. Council members will include the Secretary of the Interior, the Secretary of the Army, the Secretary of Commerce, the Administrator of the US Environmental Protection Agency, the Secretary of Agriculture, “the head of the department in which the [US] Coast Guard is operating,” and the Governors of the five Gulf Coast States.

Not surprisingly, the RESTORE Act enjoyed a broad base of support from the five Gulf Coast states, as well as a number of environmental organizations, including the National Wildlife Federation and the Environmental Defense Action Fund. Supporters also included Vanishing Paradise, a coalition of more than 700 hunting and fishing organizations. The entire package of legislation also garnered bipartisan support in both houses of Congress, a rarity in the current political climate. The “ayes” in the House of Representatives were split almost evenly among 186 Republicans and 187 Democrats; the 52 “nay” votes were all from Republicans. Of 93 senators voting on the legislation, 48 Democrats, 24 Republicans, and one Independent voted to pass the bill; 19 Republicans voted against it.

More surprising was the fact that those voting against the legislation included a number of representatives and senators from the Gulf States, including one representative from Alabama; five representatives and one senator from Florida; and seven representatives and one senator from Texas. Among the more adamantly opposed to the bill was Florida Senator Marco Rubio, who said, in response to the Senate’s March 2012 vote on legislation to include the RESTORE Act, “What started as a genuine bipartisan effort to dedicate as much BP fine money as possible towards Gulf Coast restoration has now turned into a raw deal that increases taxes, creates a new environmental bureaucracy, and could steer money to places like

the Great Lakes and west coast that had nothing to do with the oil spill. This is no longer a Gulf Coast restoration bill, it's a federal power grab that exploits the BP spill to pay for special-interest projects driven by the usual what's-in-it-for-me Washington mentality."

However, Louisiana Senator Mary Landrieu's response to Friday's vote appeared to represent the majority opinion: "This is a historic moment for our region. The Gulf Coast states and our coastal residents and businesses should be very proud of Congressional action today. The RESTORE Act directs that 80% of the penalty money be invested along the Gulf Coast where the injury occurred when

the Deepwater Horizon blew up more than two years ago. These funds will help jumpstart, in a significant way, coastal restoration in Louisiana. We have the science, the plan, and the will, and all we needed was the money — let's get started."

For more information, see <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:H.R.4348>; [www.govtrack.us/](http://www.govtrack.us/); <http://landrieu.senate.gov/mediacenter/pressreleases/06-29-2012-4.cfm>; <http://vanishingparadise.org/press-releases/national-sportsmans-group-hails-congressional-progress-on-restore-act/>; and [www.rubio.senate.gov/public/index.cfm/2012/3/senator-rubio-comments-on-restore-act-vote](http://www.rubio.senate.gov/public/index.cfm/2012/3/senator-rubio-comments-on-restore-act-vote).

## Enbridge Michigan (USA) Spill, Two Years Later

Nearly two years after approximately 1 million gallons (23,800 barrels) of heavy tar sands oil leaked from an Enbridge Energy Partner's (Enbridge's) pipeline into Michigan's (USA) Kalamazoo River watershed, most of the river and Morrow Lake have finally been reopened to the public.

The US Environmental Protection Agency (EPA) and Enbridge still disagree over the actual amount of oil that spilled in July 2010, when Enbridge pipeline 6B ruptured and leaked unabated for over 17 hours before being discovered by a public utility worker (see *OSIR*, 29 July 2010, 30 September 2010, and 21 June 2012). EPA claims that more than 1.1 million gallons (26,190 barrels) of tar sands oil have been collected from the area. Enbridge believes the total spill amount was just above 800,000 gallons (19,047 barrels). The National Transportation Safety Board has not yet

released the results of its investigation into the cause of the 2010 rupture.

EPA has announced that cleanup is in its final stage. "We're at a really good juncture here. Much of EPA's work is complete," explained Ralph Dollhopf, coordinator of the EPA team overseeing the cleanup process. "We've gone about it systematically and methodically. ... It's been a successful cleanup and a complicated one, and we think it's gone well."

One stretch of the river reopened earlier this year. Thirty-four miles (54.7 kilometers) more of the river and all of Morrow Lake were finally reopened in late June 2012. Only about a one-quarter mile (0.4-kilometer) stretch of the waterway remains closed. EPA believes that the remaining stretch will reopen later this summer. A few other small areas

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remain on restriction, and are marked by buoys. Ongoing work activities will be visible at certain locations, and some submerged oil still remains in the river. Visitors may also see a sheen along the water's surface, but a sheen may also be caused by motorboat activity, normal runoff from parking lots, or vegetation decomposition.

The State Department of Community Health has determined that the residual oil presents no long-term hazards to those who come in contact with it, although it may irritate the skin. Well water tests and air quality tests do not show any oil-related hazards to human health.

"The river seems vibrant. It seems alive. There are many fish, wildlife, birds of prey. When the public goes out there, I think they're going to be pleased to see that not only has the oil been cleaned up, but the integrity of the river system has been protected in the process," EPA's Dollhopf reported. "They really won't see the effects of the cleanup. They'll see the river as they remember it, or perhaps even better."

Some environmentalists believe it may be too soon to reopen the waterways. "This is one of the biggest tar sands oil cleanups ever, and there are a lot of questions about what we do know and what we don't know," explained Josh Mogerman of the Natural Resources Defense Council. Mogerman

says that tar sands oil is fundamentally different from other types of oil. "We're putting folks along the banks of the Kalamazoo River into a bit of a science experiment."

Enbridge officials met recently with nearby residents to explain plans for a new and improved regional pipeline. The new line will be capable of carrying 500,000 barrels (21 million gallons) of Canadian tar sands crude oil daily. Line 6B has operated at a reduced level since it ruptured in 2010; however, at full capacity, it could only carry 450,000 barrels (18.9 million gallons) per day. Joe Martucci, an Enbridge spokesperson, says the company has been talking with property owners who will be impacted by the new pipeline route. "Generally the reception has been fairly positive in terms of understanding the need for the project," Martucci said.

Enbridge must await the approval of the Michigan Public Service Commission, which doesn't plan to make a decision regarding the new pipeline plan until late 2012 or early 2013. If approved, the new line could be operational as early as fall 2013.

For more information, see [www.michiganradio.org/post/enbridge-will-outline-plans-new-oil-pipeline-tonight-marshall](http://www.michiganradio.org/post/enbridge-will-outline-plans-new-oil-pipeline-tonight-marshall); <http://tinyurl.com/7y985xw>; and [www.businessweek.com/ap/2012-06-21/much-of-kalamazoo-river-to-open-2-yrs-after-spill](http://www.businessweek.com/ap/2012-06-21/much-of-kalamazoo-river-to-open-2-yrs-after-spill).

## Plains Midstream Canada Spill Update

A class action lawsuit seeking US \$75 million in damages has been filed against Plains Midstream Canada for an oil spill in early June 2012 that allegedly led to a decline in property valuations around affected waterways near Sundre, Alberta (Canada). The lawsuit claims negligence on the part of Plains Midstream Canada for allowing approximately 3,000 barrels (126,000 gallons) of light sour crude oil to leak from the Rangeland Pipeline into Jackson Creek, which then flowed rapidly into Red Deer River and Gleniffer Lake and Reservoir (see *OSIR*, 14 June 2012). The lawsuit says that the oil company should have known that pipelines are vulnerable during periods of heavy rainfall. Since the rupture coincided with late spring rains and mountain snow melt, the river was running high at the time of the spill, and the oil left what is described as a "bathtub ring" of oil on shoreline plants.

Officials say that restoration will take months. "I have every confidence [Red Deer River] will be equal or better than its previous ecological condition," said Curtis Brock, a water quality specialist with the province, which is overseeing the remediation efforts by Plains Midstream. "There's going to be a slight alteration [to the river], but nothing out of the ordinary for what has occurred. It's going to take a little bit of time." Skimmers, booms, and absorbents have been used by crews in the cleanup effort. Brock said that the approach has been strategically low-impact because they do not want "the treatment to be worse than the symptoms."

Researchers from the University of Lethbridge (Lethbridge, Alberta) are also on location at the spill site studying the impacts of the spill on fresh water ecosystems. It is too soon to gauge the

long-term impacts to the river, but monitoring will continue for years.

The oil spill and subsequent 21-day closure of the river and lake slowed tourism in the popular vacation area. Most of the waterways have now been reopened, with the exception of the southwest corner of the lake, where one containment boom remains. Alberta Environment reported that the water quality has tested safe for recreation use. Cleanup will continue along the shoreline, but swimming, boating, and shoreline fishing is

permitted once again. The agency is recommending that people not consume the fish until results from further testing are complete.

For more information, see [www.calgaryherald.com/news/Teams+work+clean+Deer+River+spill/6831766/story.html](http://www.calgaryherald.com/news/Teams+work+clean+Deer+River+spill/6831766/story.html); [www.digitaljournal.com/article/327299](http://www.digitaljournal.com/article/327299); [www.timescolonist.com/business/Law+suit+seeks+over+Alberta+spill/6830325/story.html](http://www.timescolonist.com/business/Law+suit+seeks+over+Alberta+spill/6830325/story.html); and [www.calgaryherald.com/news/alberta/spill+tainted+Gleniffer+Lake+reopens+Canada+weekend/6857371/story.html](http://www.calgaryherald.com/news/alberta/spill+tainted+Gleniffer+Lake+reopens+Canada+weekend/6857371/story.html).

### **Deep Sea to Be Scrapped**

The Washington (USA) Department of Natural Resources (DNR) recently announced that the fishing vessel *Deep Sea*, which sank after catching fire in Penn Cove, off Whidbey Island, Washington, will be dismantled and disposed after an investigation into the circumstances surrounding the incident is complete. The *Deep Sea* was a derelict vessel that caught fire and went down in Penn Cove on 13 May 2012 (see *OSIR*, 23 May 2012). An unknown volume of diesel fuel spilled as a result of the fire and sinking; an estimated 5,000 gallons (119 barrels) of oil were recovered from the vessel's tanks and surrounding waters during response and salvage operations. DNR has requested the assistance of the King County (Washington) Sheriff's Fire Investigation Unit in determining the cause of the fire.

A Unified Command, including representatives of the US Coast Guard (USCG), Washington Department of Ecology (Ecology), and Island County (Washington), coordinated raising the *Deep Sea*, which was completed on 3 June 2012. Additional assistance was provided to the Unified Command by the Washington Departments of Health (DOH) and Fish and Wildlife; the US National Oceanic and Atmospheric Administration (NOAA); and the King County Sheriff's Office. On 6 June 2012, weather conditions allowed the vessel to be towed to the Stabbert Maritime Yacht and Ship Dry Dock, in Seattle (Washington), for eventual disposal.

Ecology estimates the costs of responding to the fire and oil spill, plus raising the vessel, at approximately US \$1.5 million, costs the state hopes will be reimbursed by the USCG National Pollution Funds Center. DNR's Derelict Vessel Removal Program, together with funding from the Washington 2012 Jobs Now Act appropriation, will initially cover fees for dismantling and disposing the *Deep Sea*. Proceeds from the sale of the scrap will be credited back to the state. DNR has not yet released a final estimate of costs to scrap the *Deep Sea*, which will depend, in part, on the amount of toxic materials found on board. Disposal is anticipated to be complete in July 2012. It is not clear what action, if any, will be taken to recover damages from the vessel's owner.

In related news, DOH has lifted the temporary ban on the harvest of shellfish in Penn Cove, with the exception of Madrona Beach. Shellfish from Madrona Beach continued to exhibit indications of petroleum contamination in odor and taste tests conducted by the DOH and NOAA in early June.

For more information, see [www.dnr.wa.gov/BusinessPermits/News/Pages/2012\\_06\\_07\\_deep\\_sea\\_nr.aspx](http://www.dnr.wa.gov/BusinessPermits/News/Pages/2012_06_07_deep_sea_nr.aspx); [www.ecy.wa.gov/programs/spills/incidents/FVdeepsea/index.html](http://www.ecy.wa.gov/programs/spills/incidents/FVdeepsea/index.html); [www.doh.wa.gov/Newsroom/2012NewsReleases/12072PennCoveUpdateNewsRelease.aspx](http://www.doh.wa.gov/Newsroom/2012NewsReleases/12072PennCoveUpdateNewsRelease.aspx); [www.ecy.wa.gov/news/2012/179.html](http://www.ecy.wa.gov/news/2012/179.html); and <http://earthfix.opb.org/water/article/sunken-vessel-off-whidbey-island-to-be-removed-sun/>.