

May 18, 2010

Senator Robert Menendez
U.S. Senate
Washington, DC 20510

Senator Frank R. Lautenberg
U.S. Senate
Washington, DC 20510

Senator Bill Nelson
U.S. Senate
Washington, DC 20510

Dear Senators Menendez, Lautenberg and Nelson:

RE: SUPPORT FOR THE BIG OIL BAILOUT PREVENTION ACT OF 2010

The undersigned consumer, environmental, campus and public interest groups strongly support passage of the Big Oil Bailout Prevention Act of 2010, the Big Oil Bailout Prevention Liability Act of 2010, and the Big Oil Bailout Prevention Trust Fund Act of 2010 (H.R. 5214, S. 3305, and S. 3306, respectively). These bills amend the Oil Pollution Act of 1990, as well as the Internal Revenue Code relating to the Oil Spill Liability Trust Fund expenditures: to raise retroactively the liability cap for offshore oil spills from \$75 million to \$10 billion; to eliminate the \$1 billion per incident cap on claims against the Oil Spill Liability Trust Fund; and to allow claimants to have up front access to the fund as well as to collect from future fund revenues if claims exceed the current fund, now at about \$1.6 billion. Given the scale of the current disaster, and the heightened risks that ultra-deepwater drilling poses to worker safety and the environment, there should be no liability cap at all. Liability caps allow companies like BP to avoid bearing responsibility for the full cost of damage it inflicts. This legislation is the least that Congress must do to provide some assistance to the victims of the Deepwater Horizon spill.

These bills are needed for three reasons: first, to authorize timely compensation to those with economic losses from the Deepwater Horizon rig explosion and spill; second, to reduce taxpayer funding of an unwarranted bailout of the parties responsible for this spill; and third, to provide appropriate financial incentives for oil companies to prioritize worker and environmental safety. We recognize, however, that ultimately the only way to minimize the risks of another major oil spill is to eliminate our reliance on oil.

The Deepwater Horizon calamity is already a major environmental disaster, resulting not only in the presumed deaths of 11 workers but also profound ecological damage, untold human health problems for area residents and likely billions of dollars in economic costs for coastal communities. At a minimum, more than 200,000 gallons (5,000 barrels) of oil

are spilling into the Gulf every day, with some reports now putting the flow at 70,000 barrels a day. It is estimated that it will take months to stop the flow.

The current \$75 million liability cap could allow BP to evade responsibility for most of the billions of dollars in damage it has caused to communities and businesses in Gulf states. The Oil Spill Liability Trust Fund, which was supposed to be a back-up source of funds, is clearly inadequate. Right now, it only has \$1.6 billion and has a limit of a \$1 billion limit per incident.

With \$6 billion in profit just in the first three months of 2010, BP can afford to cover the costs for this disaster for which it is responsible. Other oil companies, like Exxon (\$6.3 billion) or Conoco (over \$2.1 billion) also made enormous profits this quarter. If companies cannot afford to bear responsibility for their actions then they should not be allowed to take on the risks associated with drilling.

The burden to pick up the tab for this harm and any similar future catastrophes should not be shifted from the oil companies that are responsible onto the backs of taxpayers. As U.S. Senator Robert Menendez (D-NJ) said after sponsoring the Senate bill, “We can’t let the burden fall on the taxpayers. We should ensure that those who cause the damage are fully responsible.”

DELAY CANNOT BE TOLERATED.

Current law allows the \$75 million cap to be overridden in cases of “gross negligence or willful misconduct,” or where the responsible party violated “an applicable Federal safety, construction or operating regulation.” BP, legally responsible since it was leasing the rig, is already claiming that the explosion was not its fault.

Whether or not gross negligence by BP can be proven, it should be expected that BP will try every conceivable legal maneuver to avoid fitting within this exception, just as Exxon did over the 1989 Valdez spill. Although the Exxon case was a fight over punitive damages and not liability, it is still instructive. Exxon fought residents and fishermen in court for 19 years, never paying a dime. By the time the U.S. Supreme Court got the case, its ruling reduced the punitive damages award to one-tenth (i.e., 10 cents on the dollar) of what the original jury found to be fair – a mere \$507.5 million. Moreover, by then an estimated 6,000 to 8,000 of the original plaintiffs had died.

CURRENT LAW LIMITS THE CONSEQUENCES OF DANGEROUS PRACTICES AND ENCOURAGES UNSAFE CORPORATE BEHAVIOR.

Imposition of financial liability is critical to ensuring the deterrence of unsafe practices and to creating proper economic incentives for companies to allocate proper resources to safety. The possibility of financial liability deters wrongdoers from repeating their negligence or misconduct, and gives them the proper economic incentives to act safely and responsibly.

Companies like BP, who are not assessed the full cost of damages they inflict, may not take sufficient precautions to prevent future harm. That seems clearly to have been the case here. The incompetence of the Interior Department's Minerals Management Service combined with the extremely low liability cap allowed BP to avoid pursuing adequate safety measures, which might have prevented this catastrophic blowout.

A rash of corporate and regulatory disasters in recent months related to dirty energy production have cost numerous lives, and widespread environmental and economic damage. Examples include: the recent revelations of radioactive tritium leaks and lying under oath by Vermont Yankee nuclear plant officials; the Upper Big Branch mine explosion in West Virginia that killed 29 miners and further revelations of massive safety violations at this and other Massey Energy mines; and the oil refinery and drilling explosions, including an April explosion and fire at a Tesoro refinery in Washington State. The last thing we should do as a country is subsidize bad behavior by corporate miscreants. Instead, we must hold them accountable for the harm they cause.

Sincerely,

Alliance for Justice
Arizona Advocacy Network
California Students Sustainability
Coalition
Campus Progress
Center for Biological Diversity
Center for Justice & Democracy
Chesapeake Climate Action Network
Citizen Action/Illinois
Citizen Action of New York
Citizen Action of Wisconsin
Colorado Progressive Action
Connecticut Citizen Action Group
ConsumerWatchdog
Corporate Ethics International
Earth Day Network
EcoLaw Massachusetts
Essential Information
Florida Citizen Action Network
Friends of the Earth
Georgia Rural Urban Summit
Greenpeace
Indigenous Environmental Network
Iowa Citizen Action Network
Maine People's Alliance
Michigan Citizen Action
Missouri Progressive Vote Coalition
National Consumers League

New Hampshire Citizens Alliance for
Action
New Jersey Citizen Action
New York Public Interest Research Group
(NYPIRG)
North Shore Waterfront Conservancy of
Staten Island
NDPeople.org
Oil Change International
Oregon Action
Ocean State Action
PennAction
Progressive Maryland
ProgressOhio
Public Citizen
Responsible Endowments Coalition
Southern Energy Network
Southwest Workers' Union
SustainUS
Tennessee Citizen Action
United Action for Idaho
USAction
U.S. Public Interest Research Group
(U.S. PIRG)
Washington Citizen Action Network
Washington Student Public Interest
Research Group
West Virginia Citizen Action Group