

POWER OF THE AUSTRALIAN GOVERNMENT TO INTERVENE IN OIL SPILLS

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This short note focuses on whether the Australian Government has remedial power in the event of an oil spill occurring, rather than on preventative measures. In other words, we are concerned here with what happens if 'the worst comes to the worst'.

In the aftermath of the BP Macondo oil well blowout in the Gulf of Mexico on 22 April 2010, the question of whether governments can intervene to compel a petroleum producer to expeditiously clean up an oil spill is of great concern to many communities.

It is now apparent that some governments do not have the legislative power to mandate urgent clean-up of oil spills and are instead limited to recovering damages for environmental harm caused. Understandably, this is unacceptable to affected communities, which expect immediate action to minimise the impact of a spill on their livelihood and on the environment.

Australia in this regard is uniquely positioned. The Government has power, under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (**Offshore Petroleum Act** or **OPA**), to direct a petroleum titleholder to clean up a spill, failing which the Government may step in and do so at the titleholder's expense.

Even so, there is still some doubt about how fast the Government can step in if the titleholder is unwilling or unable to perform the clean up as directed.

Past Oil Spills in Australia

Australia has experienced a number of relatively minor oil spills, although nothing on the scale of BP Macondo.

One of the worst spills occurred in the Montara oil field in the Timor Sea, off the northern coast of Western Australia, following a blowout from the Montara wellhead platform on 21 August 2009.¹ The Montara blowout caused an uncontrolled discharge of oil and gas that continued until 3 November 2009 (a total of 74 days) at a rate of 64 tonnes per day. The spill is estimated to have cost the operator, PTTEP Australasia (a subsidiary of the Thai company PTT), at least \$170 million to clean up the spill and repair the damage.²

¹ Australian Petroleum Production & Exploration Association (APPEA), 'Montara & Gulf of Mexico Information' (2010): <http://www.appea.com.au/index.php?option=com_content&view=article&id=703:montara-a-gulf-of-mexico-information&catid=183:media-releases&Itemid=600087> accessed 19 August 2010.

² Rebecca Lawson, Perth Now, 'Federal Government Keeps Montara Report Under Wraps' (2010): <<http://www.perthnow.com.au/business/news/govt-keeps-montara-report-under-wraps/story-e6frg2qu-1225881484858>> accessed 19 August 2010.

In addition to the Montara incident, six other offshore well blowouts have occurred during drilling and production operations in Australia.³

Power of the Government to Intervene

Under the Offshore Petroleum Act, the relevant government authority may give a titleholder "*a direction as to any matter in relation to which regulations may be made*".⁴ These matters include "*the clean-up or other remediation of the effects of the escape of petroleum...*".⁵ Moreover, a direction can also be given to third parties, such as employees or agents of the titleholder or other persons concerned with the production operations and relevant vessels, aircraft, structures, or installations.⁶

Additionally, the Offshore Petroleum Act empowers the relevant government authority to direct a titleholder to "*plug or close off, to the satisfaction of the Designated Authority, all wells made in the title area by any person engaged or concerned in those operations*"⁷ and to "*make good, to the satisfaction of the Designated Authority, any damage to the seabed or subsoil in the title area caused by any person engaged or concerned in those operations*"⁸.

The consequence of breaching any of these directions is that the government authority "*may do any or all of the things required by the direction to be done*"⁹ at the cost and expense of that person¹⁰.

Possible Shortcomings in the Legislation

Although the Australian Government has power to intervene to compel a producer to clean up an oil spill, by giving a direction and by performing the clean up itself and recovering the costs, there is no specific authority for the Government in an emergency situation to bypass the 'issuing of a direction' process prior to attending to the clean up of the spill itself. Nor is it specified how much time must be provided to a titleholder to comply with a direction before the Government is able to intervene.

Those possible shortcomings may be significant if there is a future uncontrolled discharge of oil on a scale comparable to the BP Macondo spill and immediate action is required to prevent catastrophic environmental harm. This risk may be quite remote but the consequences may warrant another look at the legislation.

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³ APPEA, above n1, at p 4.

⁴ OPA, s 574(2).

⁵ OPA, s 782(1).

⁶ OPA, s 574(3).

⁷ OPA, s 586(2)(b).

⁸ OPA, s 586(2)(d).

⁹ OPA, s 577(1).

¹⁰ OPA, s 577(3).