

United States Senate

WASHINGTON, DC 20510

May 6, 2010

The Honorable Harry Reid
Majority Leader
United States Senate
S-221, The Capitol
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-208, The Capitol
Washington, DC 20510

The Honorable Barbara Boxer
Chairman
Committee on Environment and
Public Works
United States Senate
Washington, DC 20510

The Honorable James M. Inhofe
Ranking Member
Committee on Environment and
Public Works
United States Senate
Washington, DC 20510

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

We are writing to urge you to pass the Big Oil Bailout Prevention Legislative Package (S.3305 and S.3306) as soon as possible. The White House has expressed support for this legislation and the Speaker of the House has pledged to move it quickly, so it is critical that the Senate act to make sure polluters pay for the damage from their spills and not taxpayers, small business owners, states, or municipalities.

Some have reported in the media that BP (or whoever is ultimately found to be the Responsible Party [RP]) will be paying for all the costs and damages associated with the Deepwater Horizon spill. Unfortunately, that might not be the case.

According to the Oil Pollution Act of 1990, the RP is responsible for all costs related to mitigating or cleaning up the spill without limit. This means that they will have to pay for the use of booms, cleaning up spills, rehabilitating wildlife, skimming for oil, attempts to stop the spill, etc.

However, the RP enjoys a \$75 million dollar cap on liability for damages. That means the RP will not have to pay more than \$75 million for damages such as lost business revenues from

fishing or tourism, natural resources damages, or lost tax revenues of state and local governments.

Once that RP liability cap is hit, people, businesses or governments can make claims against the Oil Spill Liability Trust Fund. However, there is a \$1 billion per incident cap on payouts from the fund.

It is critical to quickly pass our legislative package because the Big Oil Bailout Prevention Liability Act (S.3305) would raise the liability cap for offshore oil well spills from \$75 million to \$10 billion. Considering that the 5 largest oil companies enjoyed over \$23 billion in *profits* this quarter alone, we feel this number is more than reasonable to make sure people and businesses are made whole from a spill. Despite concerns some have raised about retroactivity, we are confident the bill will survive any legal challenges. After all, one need only look to the Superfund program to know there is strong precedent for legislation addressing past pollution.

The other part of our package, the Big Oil Bailout Prevention Trust Fund Act (S.3306) would do several things. Perhaps most importantly the bill would eliminate the \$1 billion per incident cap on claims against the Oil Spill Liability Trust Fund. As you know the Trust Fund is comprised of a small fee on oil producers and importers. This Fund makes sure that if an individual polluter cannot pay for all the damages from a spill, then the industry as a whole can. But we worry that the \$1 billion cap per incident might mean some go uncompensated after a large spill.

The Big Oil Bailout Prevention Trust Fund Act would also allow community responders to access the fund for preparation and mitigation up front, rather than waiting for reimbursement later. Right now communities and small businesses are racing to protect themselves from an oil slick the size of Jamaica headed their way, but many do not have the resources they need to make these preparations. This bill would allow local communities to access these funds in advance so they can prepare for the worst, instead of just getting compensated for damages later.

Finally, the Big Oil Bailout Prevention Trust Fund Act would eliminate the \$500 million cap on natural resources damages. The destruction of wildlife habitat and other natural wonders should not be artificially capped. Polluters must pay for all their damages, not just business related ones.

Thank you for your ongoing leadership on energy and environmental issues. We stand ready to work with you to identify opportunities to pass this legislation as quickly as possible. The damage is being done now; at the very least we should make sure polluters are paying for the damage they cause.

Sincerely,



ROBERT MENENDEZ
United States Senator



BILL NELSON
United States Senator



FRANK R. LAUTENBERG
United States Senator



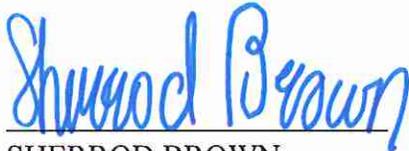
SHELDON WHITEHOUSE
United States Senator



KIRSTEN GILLIBRAND
United States Senator



BERNARD SANDERS
United States Senator



SHERROD BROWN
United States Senator