

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

**HORNBECK OFFSHORE SERVICES,
LLC, et al.,**

Plaintiffs,

v.

**KENNETH LEE “KEN” SALAZAR, in
his official capacity as Secretary, United
States Department of the Interior;
UNITED STATES DEPARTMENT OF
THE INTERIOR; MICHAEL R.
BROMWICH, in his official capacity as
Director, Bureau of Ocean Energy
Management, Regulation, and
Enforcement; and BUREAU OF OCEAN
ENERGY MANAGEMENT,
REGULATION, AND ENFORCEMENT,**

Defendants.

CIVIL ACTION No. 10-1663(F)(2)

SECTION F

JUDGE FELDMAN

**MAGISTRATE 2
MAGISTRATE WILKINSON**

DEFENDANTS’ STATUS REPORT PURSUANT TO JUNE 22, 2010, ORDER

Defendants, Kenneth Lee Salazar, the United States Department of the Interior, Michael R. Bromwich,¹ and the Bureau of Ocean Energy Management, Regulation, and Enforcement, (collectively “Defendants”), hereby file this Status Report in compliance with this Court’s Order of June 22, 2010. Dkt. #68.

¹ Michael R. Bromwich is automatically substituted for Bob Abbey as Director of the Bureau of Ocean Energy Management, Regulation, and Enforcement pursuant to Fed. R. Civ. P. 25(d).

A. BACKGROUND

On May 28, 2010, the Secretary of the Interior (“Secretary”) issued a Directive entitled “Suspension of Outer Continental Shelf (OCS) Drilling of New Deepwater Wells” (hereinafter “May 28 Directive”). The May 28 Directive instructed the Bureau of Ocean Energy Management, Regulation, and Enforcement (“BOEM”) to issue a temporary six-month suspension of certain pending, current, and approved offshore drilling operations of deepwater wells. See Dkt. #7-2 at 66. BOEM implemented the May 28 Directive by sending temporary suspension letters to each affected operator and by issuing a Notice to Lessees, NTL No. 2010-N04, effective May 30, 2010 (“NTL”) (Dkt. #7-2 at 68).

Plaintiff Hornbeck Offshore Services, L.L.C. and other Plaintiffs challenged the May 28 Directive and moved for a preliminary injunction, which this Court granted on June 22, 2010. The Court found that Plaintiffs were likely to succeed on the merits of their claims because, *inter alia*, Defendants, on the record then before the Court, had failed to (1) explain the relationship between their factual findings and the scope of the challenged suspension order; (2) analyze the safety threat posed by the rigs affected by the suspension order; (3) explain the six-month duration of the challenged suspensions; and (4) cogently explain why they had exercised their discretion in the given manner. Dkt. #67 at 17, 19-21.

The Court ordered that Defendants “are hereby immediately prohibited from enforcing the [May 28 Directive and NTL], as applied to all drilling on the OCS in water at depths greater than 500 feet.” Dkt. #68 at 3. The Court further ordered that “defendants shall file with this Court and serve on plaintiffs within 21 days from the date of entry of this Preliminary Injunction a report in writing setting forth in detail the manner and form in which defendants have complied with the terms of this Preliminary Injunction.” Dkt. #68 at 3. By subsequent order dated June

24, 2010 (Dkt. #82), the Court amended its June 22 Order by extending the Secretary's time in which to report compliance from 21 to 30 days.

This Status Report complies with this Court's request for a report setting forth the manner and form in which Defendants have complied with the terms of its Preliminary Injunction Order.

B. DEFENDANTS HAVE COMPLIED WITH THIS COURT'S JUNE 22, 2010, PRELIMINARY INJUNCTION ORDER.

Defendants took immediate steps to implement this Court's Preliminary Injunction Order and to ensure that the May 28 Directive would not be enforced against any operator pending a final determination on the merits of Plaintiffs' claims. Specifically, the Secretary, on June 23, 2010, issued a memorandum to all employees of the Department of the Interior ("Interior") informing them "that they are not to take any action to enforce the [the May 28 Directive], or to enforce [the] NTL . . . , until additional orders are received from [the Secretary]." See Immediate Prohibition from Enforcing the Moratorium on Drilling New Deepwater Wells, Dkt. #77-1.

On that same day, BOEM sent letters to the operators who had received temporary suspension letters pursuant to the May 28 Directive. The new letters alerted the operators of the Court's preliminary injunction and explained that "[b]ased on the Court's Order granting preliminary injunction, neither the NTL nor the order directing suspension of operations has legal effect on your operations at this time." E.g., Dkt. #77-2. The letters also enclosed copies of the Preliminary Injunction Order. In this manner, each of the operators who had been affected by the May 28 Directive were duly and immediately notified that the May 28 Directive had been enjoined and that it would not be enforced against them.

The two actions described above fully comply with the Preliminary Injunction Order. Furthermore, as we advised the Court would occur, the Secretary has taken additional action

which is relevant here insofar as it renders the May 28 Directive without legal effect and rescinds its implementing NTL and suspension letters. See Dkt. #77 at 3 (advising that Interior would issue a new suspension decision that reflects new information and more fully explains the need for a pause in deepwater drilling operations). On July 12, 2010, the Secretary, pursuant to his ongoing duty under the OCSLA to assure safe and environmentally sound OCS activities, issued a new decision directing the suspension of certain drilling operations and the cessation of approval of pending or future applications for such drilling until November 30, 2010, subject to modification if the Secretary determines that the existing threats to life, property, and the environment have been sufficiently addressed (“July 12 Directive”). See U.S. Motion to Dismiss, Dkt #125-4 (Cruickshank Decl. ¶ 3 & Ex. A).² The July 12 Directive expressly replaces and supersedes the May 28 Directive and rescinds the NTL. Ex. A at 22. Similarly, new suspension letters were issued that rescind and supersede the temporary suspension letters that implemented the May 28 Directive. See e.g., Dkt. #125-4 (Cruickshank Decl. ¶ 4 & Ex. B). Interior has thus withdrawn the challenged agency action that was preliminarily enjoined by this Court. Accordingly, with all the prior actions having been rescinded and superseded, there is no remaining challenged conduct subject to the preliminary injunction.

As explained in Defendants’ Motion to Dismiss, in issuing the July 12 Directive the Secretary analyzed information gathered both before and after the May 28 Directive and determined that a temporary suspension “is required to mitigate a clear threat that additional deepwater drilling poses of serious, irreparable, or immediate harm to life, to property, or to the

² Defendants have moved separately to dismiss the above-captioned lawsuit on grounds that the challenge to the May 28 Directive is now moot. See Dkt. # 125. The memorandum submitted in support of Defendants’ motion to dismiss provides more detailed information on the July 12 Directive and the legal ramifications associated with its issuance. The July 12 Directive, which appears on the Docket as Exhibit A to the Declaration of Walter D. Cruickshank (Dkt. #125-4), is cited herein as “Ex. A.”

marine, coastal or human environment.”³ Ex. A at 2. In making this determination, the Secretary provided a thorough explanation of his reasoning. The Secretary’s July 12 Directive explains the unique risks associated with the suspended drilling operations and explains the need for additional safety procedures, equipment, and inspection protocols to address those risks prior to the resumption of deepwater drilling. Ex. A at 7-12. Of equal importance to these drilling safety issues, the Secretary’s July 12 Directive explains the need for a temporary suspension to address critical spill-containment and response deficiencies. Ex. A at 12-16. Specifically, the Secretary recognized that the OCS drilling industry currently has limited capability to stop an uncontrolled blowout of an oil well in deepwater. Ex. A at 12-13. The Secretary also recognized that there are insufficient available response resources should another deepwater spill occur while the containment and clean-up efforts relating to the Macondo well continue. Ex. A at 14-16. Thus, the July 12 Directive thoroughly explains the basis for the Secretary’s new decision after considering all of the relevant factors, and by doing so addresses the concerns stated by this Court in its decision preliminarily enjoining the May 28 Directive.

In sum, the Secretary fully complied with this Court’s Preliminary Injunction Order by promptly instructing agency employees not to enforce the May 28 Directive and the associated NTL, and by notifying affected operators that the order of suspension would have no legal effect on their operations. The Secretary later issued a July 12 Directive that expressly superseded the May 28 Directive and rescinded the NTL. Because they have been superseded and rescinded, the May 28 Directive, the NTL, and the corresponding suspension letters have no continuing legal effect and thus have no enforceable provisions.

³ Plaintiffs have acknowledged that Defendants have the “right to engage in appropriate fact finding, data analysis and risk assessment followed perhaps by additional agency action.” Dkt. #77 at 3.

Dated: July 22, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2010, I caused a copy of the foregoing to be served through the Court's CM/ECF System to all parties.

/s/ Guillermo A. Montero
Guillermo A. Montero
Attorney for Defendants