

Seatrade

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Clay Maitland, founding chairman of NAMEPA (North American Marine Environment Protection Association), offers his view on the likely implications for shipping of Deepwater Horizon.



■ Clay Maitland

A famous American once said: 'It's unwise to make predictions, especially about the future.' Here, however, are several observations.

It is increasingly clear that the disaster in the Gulf of Mexico originated from many contributing causes. The result will no doubt be the introduction in the USA of a tougher, but acceptable, regulatory regime, confined at first to offshore drilling. However, if this new regulatory framework does not also extend to the tanker trades, there will, when tanker-related spills inevitably occur in future, be at that time a harsher political and public retaliation for the shipping industry to deal with.

So, in analysing the 'knock-on' effect of the Macondo blow-out, the first answer must be: it depends on whether we can get a risk management regime that really does work.

Two effects of the Macondo well disaster are likely to be (1) growing public and political demands for enforcement of an effective safety culture throughout the shipping industry, not just for offshore drillers; and (2) a recognition by stakeholders that effective safety, quality and risk management are vital to the survival of a company.

The plight of BP and other parties has been a dramatic warning that no company is shielded from liability nowadays. We are reminded again of the truth of the adage that a fool is a person who knows the cost of everything, and the value of nothing.

Cost control is well and good, if it doesn't sink your business. Risk awareness, and its management, deserve a budget of their own, not to be held hostage to number crunchers. That lesson applies to all sectors of the shipping industry.

The imposition by governments, under vast public pressure, of mandatory safety management systems, subject to audit, for every ship that comes to the US (and, later, to Europe), and with respect to its owner, has been brought closer by this disaster. For shipping's private sector, flag state administrations and port state control authorities, this means that the International Safety Management Code (Chapter IX of SOLAS) will become more important. The Code's substance must become more visibly a part of the US Oil Pollution Act (OPA '90).

The number, detail and frequency of inspections and audits will increase. The way in which the company's safety culture, ashore as well as aboard, is implemented, will come under closer scrutiny by the US government.

Another result of the Macondo blow-out is that in an oil spill, the attitude of the authorities, particularly in the US, is and will be unforgiving. So will the public reaction. Liability for damages will not be entitled to any sort of limitation. There will, in particular, be no 'as agents only' shell of anonymity available to the beneficial owners; other parties, particularly charterers and lenders, should take note that the boundaries of risk and liability in the US are hazy, uncertain, and extensive. They will be roughly handled. Civil fines and criminal penalties will of course be increased.

Finally, shipowners, particularly those with related assets in the business, should be aware that these can be vulnerable in light of the litigious atmosphere hereabouts. Shipowners will perhaps feel that they deserve a better fate than to be lumped in with Big Oil. But, on reflection, Big Oil may have done them a big favour.