

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

APALACHICOLA RIVERKEEPER, et
al.,

Plaintiffs

v.

TAYLOR ENERGY COMPANY, LLC

Defendant

Case No. 2:12-cv-00337

Judge: Susie Morgan

Section E

Magistrate: Karen Wells Roby

Division 4

**Plaintiffs' Motion for Consideration of Supplemental Information, and for
Judicial Notice of Newly Released U.S. Government Documents
Relevant to Taylor's Summary Judgment Motion**

Plaintiffs (collectively the “Waterkeepers”) respectfully move this Court to consider and take judicial notice of newly released, supplemental information from the U.S. Department of Interior’s Bureau of Safety and Environmental Enforcement (BSEE), the Bureau of Ocean Energy Management (BOEM), and the U.S. Coast Guard. That information directly contradicts arguments that Taylor makes in its Motion for Summary Judgment (ECF No. 149).

As grounds for their Motion, the Waterkeepers state:

Newly Posted Government Reports

1. After more than a decade of public silence about the Taylor Oil Spill, the U.S. government—through BSEE, BOEM, and the Coast Guard—has released information to the public about the spill.

Judicial Notice of Public Records

2. Judicial Notice of public records is appropriate under Fed. R. Evid. 201 (providing for judicial notice of facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”) and Fed. R. Evid. 803(8) (creating a hearsay exception for records “of a public office” that set out “in a civil case ... factual findings

from a legally authorized investigation.”). The Fifth Circuit held, “we fail to see any merit to an objection to the panel taking judicial notice of the state agency’s own website.” *Coleman v. Dretke*, 409 F.3d 665, 667 (5th Cir. 2005).¹ The newly issued government documents are posted at <http://www.bsee.gov/Inspection-and-Enforcement/Accidents-and-Incidents/Taylor-Energy/Taylor-Energy/Mississippi-Canyon-20-%28MC20%29-Oil-Discharge/>. The reports are attached as Exhibit 1 (the BSEE and BOEM report), and Exhibit 2 (the U.S. Coast Guard Fact Sheet). These reports are copied from the government’s web page and the web address has been added to the top of each report.

**Government Reports Contradict
Taylor’s Representations to this Court.**

The following table compares Taylor’s representations to this Court with the Government’s newly posted information:

Taylor’s Representations	U.S. Government Reports
<p>Taylor’s representation to this Court is: “there is unanimity from all federal regulators—including the Coast Guard, and the U.S. Department of the Interior—that further remedial action by Taylor is not recommended.” Taylor Mem. at 11, ECF No. 149-1. Taylor also says “there is no action that Taylor can take to completely eliminate the sheen.” Taylor Mem. at 13.</p>	<p>BSEE and BOEM report: “<u>there is still more that can be done by Taylor to control and contain the oil that is discharging from the MC-20 site.</u>” Ex. 1 at 2 (emphasis added). Further, “[d]ecommissioning of the wells at the site, required under the regulations and the 2008 Trust Agreement, has not yet been completed. For example, not all of the wells have been permanently plugged and abandoned.” Ex. 1 at 1-2 (emphasis added).</p>

¹ See also *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir.2010) (“It is appropriate to take judicial notice of this information, as it was made publicly available by government entities . . . , and neither party disputes the authenticity of the web sites or the accuracy of the information displayed”); *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 702 n. 22 (10th Cir. 2009) (“It is not uncommon for courts to take judicial notice of factual information found on the world wide web.”) (internal citations and quotation marks omitted); *St. Clair v. JP Morgan Chase Bank, N.A.*, No. 13-CV-01317, 2014 WL 4661956 n.1 (E.D. Cal. Sept. 18, 2014) (taking notice of a document “available on the FDIC official website” because the court “may verify the accuracy of the [document] by visiting the FDIC’s official website”).

Taylor's Representations	U.S. Government Reports
<p>Taylor says: "there is no evidence to suggest that any wells are leaking." Taylor Statement of Facts at 4, ¶ 18, ECF No. 149-2. Further, Taylor asserts that a "small residual sheen persists as the result of soil contamination that cannot safely and feasibly be addressed." Taylor Mem. at 37, ECF No. 149-1.</p>	<p>BSEE and BOEM report, "<u>oil is most likely emanating from one or more of the 25 wells.</u>" Ex. 1 at 1 (emphasis added). This is "because the discharge volume is greater than can reasonably be accounted for by oil released from sediment only." <i>Id.</i></p>
<p>Taylor suggests that "the average release at MC20 is approximately 2 gallons per day." Taylor Statement of Facts at 6, ¶ 29, ECF No. 149-2.</p>	<p>The U.S. Coast Guard Fact Sheet reports, "The average reported daily oil volume on the sea surface over the past seven months has been in the range of over 2 barrels (<u>84 gallons</u>); the volume on over 75 days was greater than 1 barrel, including 23 days of volume greater than 3.8 barrels (<u>160 gallons</u>) and 4 days greater than 35 barrels (<u>1,470 gallons</u>). These spill size and volume estimates are based on reports submitted by Taylor Energy's contractors to the NRC [National Response Center]." Ex. 2 at 2 (emphasis added). BSEE and BOEM state, "the daily volume of oil discharging ... has fluctuated between a low of less than one barrel of oil (1 barrel = 42 gallons) to a high of 55 barrels (<u>2,329 gallons</u>). Ex. 1 at 1 (emphasis added).</p>
<p>Taylor suggests that "there are no significant environmental harms associated with the incidents at MC20 and any sheen." Taylor Statement of Facts at 4, ¶ 17.</p>	<p>The government reports, "BSEE's current estimate is that the oil discharge from the site, if left unchecked, <u>could continue for 100 years or more.</u>" Ex. 1 at 1 (emphasis added).</p>
<p>Taylor represents to this Court that it "has complied with every order issued to it by the USCG in connection with the response activities at MC20." Taylor Statement of Facts at 2, ¶ 9.</p>	<p>The U. S. Coast Guard Fact Sheet states that an administrative order "directs Taylor Energy to submit a written plan including a projected timeline for fabrication and installation [of a new containment dome]. As of May 1, 2015, <u>the final engineering design of the new dome is not complete, and the dome has not been installed.</u>" Ex. 2 at 2 (emphasis added).</p>

Taylor's Representations

U.S. Government Reports

Further, the BSEE and BOEM Report state, "In February 2008, MMS sent Taylor a **Notice of Incident of Noncompliance** for failure to provide the required supplemental bonding." Ex. 1 at 1 (emphasis added). Later, "Taylor Energy fulfilled its supplemental bonding obligations and resolved the pending administrative citation." *Id.* (MMS is the Minerals Management Service, the predecessor agency to BSEE and BOEM.)

Wherefore:

This Court should consider and take judicial notice of the newly released U.S. government documents.

Respectfully submitted this 22nd day of May, 2015

/s Adam Babich

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2015, I caused a copy of this document to be served through the Court's CM/ECF system to all parties registered to receive electronic notice.

/s Adam Babich

Adam Babich



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Taylor Energy Oil Discharge at MC-20 Site and Ongoing Response Efforts



The Department of the Interior's Bureau of Safety and Environmental Enforcement (BSEE) and the Bureau of Ocean Energy Management (BOEM) have worked with the U.S. Coast Guard under a Unified Command to monitor and respond to discharges from Taylor Energy's Mississippi Canyon 20 (MC-20) site since the oil production platform and 25 of 28 connected wells were impacted and damaged during Hurricane Ivan in 2004. The multi-agency effort has worked continuously to prevent and control the oil discharge, improve the effectiveness of containment around the source of the oil discharge, and mitigate environmental impacts.

BSEE and the Coast Guard have also worked closely with representatives of Taylor Energy to mitigate the impacts of the discharge associated with the felled platform. Collaborative efforts have resulted in removal of the platform deck, removal of subsea debris, decommissioning of the oil pipeline, and efforts to plug nine of the 25 impacted wells. Despite these efforts, there is an ongoing oil discharge from Taylor Energy's MC-20 site.

Based on data collected from nearly daily overflights since September 2014, oil sheens have been observed and reported by Taylor Energy to be as large as 1.5 miles wide and 14 miles long, with an average of 1 mile wide and 5.5 miles long, covering an average area of 8 square miles. Over this period, the daily volume of oil discharging from the MC-20 site has fluctuated between a low of less than one barrel of oil (1 barrel = 42 gallons) to a high of 55 barrels (2,329 gallons). The average reported daily oil volume on the sea surface over the past seven months has been over 2 barrels (84 gallons); the volume on over 75 days was greater than 1 barrel, including 23 days of volume greater than 3.8 barrels (160 gallons) and 4 days greater than 35 barrels (1,470 gallons). These spill size and volume estimates are based on reports submitted by Taylor Energy's contractors to the National Response Center (NRC). All NRC reports can be viewed at www.nrc.uscg.mil.

BSEE's current estimate is that the oil discharge from the site, if left unchecked, could continue for 100 years or more.

The specific source(s) of discharge at the MC-20 site are not fully known. However, because the discharge volume is greater than can reasonably be accounted for by oil released from sediment only, oil is most likely emanating from one or more of the 25 wells.

Taylor had originally been ordered by the Minerals Management Service (MMS) in October 2007 to permanently plug and abandon all the wells by June 2008. In November 2007, MMS issued Taylor an order to provide supplemental bonding to guarantee performance of Taylor's decommissioning obligations at the site. In December 2007, MMS ordered Taylor to prevent any 2 further hydrocarbon seepage from the MC-20 site. In February 2008, MMS sent Taylor a Notice of Incident of Noncompliance for failure to provide the required supplemental bonding.

The Department of the Interior and Taylor Energy entered into a Trust Agreement in 2008 wherein Taylor Energy committed funds to fulfill obligations under the Outer Continental Shelf Lands Act (OCSLA) regarding the MC-20 site. By entering into the Agreement, Taylor Energy fulfilled its supplemental bonding obligations and resolved the pending administrative citation with respect to those obligations. Decommissioning of the wells at the site, required under the regulations and the 2008 Trust Agreement, has not yet been completed. For example, not all of the wells have been

permanently plugged and abandoned. Future work to be performed under the Trust Agreement will be determined based on site conditions and the availability of applicable technology.

In addition to its obligations under OCSLA, pursuant to the Oil Pollution Act (OPA) and BOEM regulations, Taylor Energy is required to provide evidence of financial responsibility (e.g., bond, insurance) demonstrating that it can fulfill its OPA obligations (e.g. removal, compensation for damages) for oil spills from the MC-20 site.

Significant uncertainty exists about future events, including discharge sources, cross-flows, pressure recharge in the oil reservoirs, evolving technology, and suitable remedial measures.

There is still more that can be done by Taylor to control and contain the oil that is discharging from the MC-20 site. BSEE and BOEM are committed to working with the Unified Command to contain and stop the ongoing oil spill.



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Taylor Energy U.S. Coast Guard Fact Sheet



13 May 2015

U. S. Coast Guard Fact Sheet

Taylor Energy Oil Discharge at MC-20A Well Site and Ongoing Response Efforts

The U.S. Coast Guard, as the Federal On Scene Coordinator (FOSC) under a Unified Command (UC) which includes the Bureau of Safety and Environmental Enforcement (BSEE), the Bureau of Ocean Energy Management (BOEM), and the Responsible Party, Taylor Energy, has monitored and responded to discharges from Taylor Energy's Mississippi Canyon 20A (MC-20A) well site resulting from damage to the oil production platform and 25 connected wells during Hurricane Ivan in 2004. The multi-agency effort has worked continuously to prevent and control the discharge, improve the effectiveness of containment around the leaking oil, and mitigate environmental impacts.

Taylor Energy is the Responsible Party required to pay for oil spill recovery and response costs under the Oil Pollution Act of 1990 (OPA). As the Responsible Party, Taylor Energy has a continuing legal obligation to respond to the ongoing oil discharge from the MC-20A well site and must comply with the Coast Guard's Administrative Orders.

The FOSC is responsible for directing and overseeing all response operations associated with the discharge of oil into the Gulf of Mexico from the Taylor Energy MC-20A well site. The Coast Guard, as the FOSC, facilitates UC meetings with Taylor Energy and federal inter-agency representatives, including BSEE and BOEM, to ensure an effective response posture is being maintained at the field level. The UC's collaborative efforts have resulted in the removal of the platform deck, removal of subsea debris, decommissioning of the oil pipeline, and intervention of nine of the 25 impacted wells.

Unified Command Activities and Key Milestones

- Oil that is discharging into the Gulf of Mexico from the well site is rising to the ocean surface and causing a visible oil sheen. From 2004-2008, the Coast Guard's involvement in Taylor Energy was minimal due to no observed sheen in the vicinity of the MC-20A well site. However, in 2008, after the MC-20A site was identified as the source of daily sheen reports, a UC was established with Taylor Energy, USCG, BSEE, & BOEM to direct response efforts for the on-going releases from the Taylor Energy MC-20A well site.
- In 2008, the Coast Guard issued Taylor Energy an Administrative Order that required Taylor Energy to, among other things, conduct daily overflights of the MC-20A well site to visually monitor the oil discharges. Taylor contracts daily overflights of the area, with support from Coast Guard pollution responders and BSEE personnel, to monitor the discharge and report findings regarding the presence and estimated volume of oil on the ocean surface to the National Response Center (NRC). In the even
- In 2009, a subsea containment system (domes placed over projected leaking well sites) was installed on the seafloor at the MC-20A site.
- By 2011, efforts had been taken to plug nine of the wells, with 16 wells remaining to be addressed. In

addition, subsea debris, including the platform deck, was removed and the oil pipeline was decommissioned.

- In March 2012, an incident action plan (IAP) was approved by the UC that established standard procedures for monitoring the site and responding to discharges.
- In 2012, due to problems with the original containment system, the FOSC issued an Administrative Order requiring the design, construction, and installation of a new containment dome that will more effectively capture the on-going discharge from the site. Along with the design specs, the AO directs Taylor Energy to submit a written plan including a projected timeline for fabrication and installation. As of May 1, 2015, the final engineering design of the new dome is not complete, and the dome has not been installed.
- In 2013, the last remaining operational containment dome was decommissioned due to damaged components and lack of efficiency/recovery of oil.
- In August 2014, the UC led a joint aerial observation workshop that included the Coast Guard, BSEE, NOAA, and Taylor Energy's representatives and contractors. At that workshop, the aerial observation methodology used to estimate quantity and rate of discharge was reviewed and revised. The Coast Guard and NOAA have placed observers on the Taylor Energy-contracted flights to verify the new approach is being adhered to. The Coast Guard believes that the consistency of sheen size and rate of discharge estimates from reporting parties has improved since this workshop.
- In addition to Taylor Energy's flights, the Coast Guard and NOAA periodically conduct their own overflights to validate sheen reporting methodology and retain independent oversight.
- The reported extent (size, dimensions, character) of the observed oil is a result of very dynamic and highly variable environmental conditions such as sea state, wind speed, and water currents. Calculations of daily oil volume are estimates based on observations of percent cover, sheen color, and dimensions. As such, there is some natural variability in reports.
- Based on data collected from nearly daily overflights since September 2014, oil sheens have been observed and reported by Taylor Energy to be as large as 1.5 miles wide and 14 miles long, with an average of 1 mile wide and 5.5 miles long, covering an average area of 8 square miles. Over this period, the daily volume of oil discharging from the MC-20 well site has fluctuated between a low of less than one barrel (1 barrel = 42 gallons) to a high of 55 barrels of oil (2,329 gallons). The average reported daily oil volume on the sea surface over the past seven months has been in the range of over 2 barrels (84 gallons); the volume on over 75 days was greater than 1 barrel, including 23 days of volume greater than 3.8 barrels (160 gallons) and 4 days greater than 35 barrels (1,470 gallons). These spill size and volume estimates are based on reports submitted by Taylor Energy's contractors to the NRC. All NRC reports can be viewed at www.nrc.uscg.mil.
- The Coast Guard, working with the UC members, is committed to exploring all options to control and contain the oil that is discharging from the well site and to ensure Taylor Energy will work to permanently stop the ongoing oil spill. The Coast Guard remains committed to Responsible Party oversight and coordination to:
 - Contain and recover as much discharge product as possible;
 - Mitigate environmental impacts; and
 - Pursue all available response options.