

## Ensuring Offshore Platform Safety During The Pandemic

By Marcella Burke and Karl Heisler

(May 5, 2020, 4:07 PM EDT) - COVID-19 presents the oil and gas sector with several novel safety considerations, including in relation to drilling rigs and production platforms. These are self-contained vessels, in which workers routinely live and work in close contact.

It is not uncommon, for example, for a production platform in the Gulf of Mexico to have a housing capacity for upwards of 200 people, all living in compressed quarters. Transmission could reach offshore installations through foreign-flagged vessels and mariners who service U.S. offshore rigs under exemptions from the Jones Act, on the reasoning that suitable, domestically flagged vessels are not available.

Technological and environmental challenges also pose risks for both offshore and onshore operators that the spread of COVID-19 or another infectious disease might compound. Industry stakeholders should consider exploring whether their incident response plans are sufficiently comprehensive in light of this unprecedented pandemic.

### Protecting Health, Safety, Property and the Environment: Considerations for Offshore Operators in a Pandemic

Federal regulations issued by the U.S. Bureau of Safety and Environmental Enforcement, or BSEE, require offshore operators to maintain "all equipment and work areas in a safe condition," and direct them to "immediately control, remove, or otherwise correct" any health or safety hazard.[1]

There does not appear to be any meaningful guidance for the application of this regulation to a pandemic, but such an interpretation is not beyond the pale, given the threat that COVID-19 poses to the offshore workplace — and, by extension, to safe operations.

BSEE regulations also require offshore operators to implement safety and environmental management systems, or SEMS, designed to enhance the safety of operations by reducing the frequency and severity of accidents.[2] Recognizing that worker safety and pollution control are largely dependent on proper human behavior, SEMS programs place a premium on the human aspects of accident mitigation.



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A SEMS program must include a job safety analysis that, among other things, identifies health hazards and recommends actions to eliminate or reduce the risk of workplace injury or illness.[3] SEMS programs must "meet or exceed the standards of safety and environmental protection" set forth in the American Petroleum Institute's Recommended Practice 75, which the regulations incorporate by reference.[4]

This document imposes a variety of additional performance-based standards, many of which implicate "the interactions of individuals with each other" — a basic concept that has taken on new meaning on offshore rigs and platforms applying social distancing practices recommended by the U.S. Centers for Disease Control and Prevention.

BSEE regulations further empower the agency to issue orders to shut in operations of a facility in the U.S. Gulf of Mexico because of a "threat of serious, irreparable, or immediate harm to health, safety, property, or the environment." [5]

As a practical matter, if a national self-quarantine or other restrictions limit the ability of BSEE's 187 inspectors to oversee safety or environmental protection, then BSEE may direct a suspension of operation activities for all or part of lease or unit areas under its existing authority in 30 C.F.R. Section 250.172(b)-(c). At least three BSEE employees have tested positive for the virus thus far.

In the face of a COVID-19 outbreak, offshore operators may consider, under their particular circumstances, whether to suspend operations on their own accord, too. At least one operator suspended a project in the North Sea after a worker tested positive for COVID-19.

Another operator recently evacuated all nonessential personnel from its Gulf of Mexico facilities after two workers tested positive. Reports suggest that other operators have halted, reduced or delayed nonessential activity, interrupted helicopter services, and, in some cases, quarantined potentially infected rig workers in U.K.-based oil fields to reduce the risk of infection on platforms.

Suspending operations could, in certain cases, be pragmatic. Short of suspension, operators are taking several other steps to mitigate the threat as well, including temperature checks and questionnaires at heliports, enhanced cleaning and disinfection protocols, extended rotation schedules and isolation periods.

To date, these efforts have been met with some success. Although testing remains limited, the U.S. Coast Guard has only tracked 26 cases of COVID-19 in offshore facilities in the Gulf of Mexico as of April 26 — a relatively low infection rate as compared with the approximately 15,000 people who work on them at any given time.

And the industry remains vigilant. Lessons learned from the 660 sailors that contracted COVID-19 while aboard the USS Theodore Roosevelt resonate.

### **OPA Onshore Emergency Response Plans and Pandemic Response**

COVID-19 could likewise impact incident response efforts that are unrelated to the disease itself. With this pandemic, and outbreaks of Ebola, SARS, and the bird and swine flus in the not-too-distant past, onshore operators should explore whether incident response plans ought to account for such infectious diseases in the future.

Under the Oil Pollution Act, certain onshore facilities must maintain a facility response plan designed to prepare to respond to a worst-case discharge.[6] A facility response plan is intended to help an owner or operator develop a response organization, and ensure the availability of response equipment and trained personnel.

Incident response plans can take for granted that all participants are together making decisions in the same incident command center, as contemplated by the Federal Emergency Management Agency's National Incident Management System. Incident command systems place a premium on human interaction.

But such close proximity may cut against the CDC's social distancing recommendations, and may further implicate the employer's general duty, as enforced by the U.S. Occupational Safety and Health Administration, to maintain a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm." [7]

One infected response worker — who may show no symptoms — could infect the entire incident command, which could, in turn, hamstring the initiative. Onshore facilities deemed critical infrastructure have accordingly been standing up virtual incident commands in preparation for worker shortages, supply chain disruptions and other foreseeable impacts from COVID-19.

Preparations and workarounds like these — either through remote incident response, or personal protective equipment — may become necessary in an effort to ensure effective incident response.

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[1] 30 C.F.R. § 250.107.

[2] 30 C.F.R. § 250.1900.

[3] 30 C.F.R. § 250.1911(b).

[4] 30 C.F.R. §§ 250.198, 1902(c).

[5] 30 C.F.R. § 250.107(d).

[6] 40 C.F.R. § 112.20 (non-transportation-related) & 49 C.F.R. Part 194 (transportation-related).

[7] 29 U.S.C. § 654.