

Steve Maley
Operations Manager
Badger Oil Corporation

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“The Deepwater Horizon Incident:
Are the Minerals Management Service Regulations Doing The Job?”

BACKGROUND

My name is Steve Maley. I am a petroleum engineer with 32 years of industry experience. I serve Badger Oil Corporation as its Operations Manager. Badger is headquartered in Lafayette, Louisiana, with a satellite office in Houma, Louisiana.

Badger doesn't own pipelines, refineries or gas stations; rather, we are an “independent” explorer and producer. Badger operates a total of 10 active wells on 6 platforms, in waters no deeper than about 200 feet, all in the Western Gulf of Mexico. Most of our production is gas. In addition, we have interests in 6 producing leases on the Outer Continental Shelf that are operated by industry partners. We don't have deepwater leases, and have no interest in becoming a deepwater company.

Badger drilled its first well in the Gulf in 2003, but our key engineering and operations staff of seven - the folks responsible for keeping our operations safe, clean and efficient - averages some 35 years of industry experience, much of that in the Gulf of Mexico.

INTERACTION WITH MMS

Badger has interacted on multiple occasions with MMS staff from several of the District offices, as well as the Gulf of Mexico Region office in New Orleans. We usually have weekly contact by telephone or email with MMS, or more frequently when we're busy.

In 2008, Badger was honored to be a finalist for the MMS SAFE Award, in the moderate size operator category.

Generally, the relationship between the operators/lessees and the MMS is one of mutual respect for the stewardship roles that each of us has to carry out.

The alleged “cozy relationship” with lessees is at odds with my day-to-day experience. Our company's dealings with MMS office staff have been professional and conducted at arm's-length. MMS has a cadre of middle management professionals that impress me as dedicated and capable public servants who do their best to deliver regulatory technical oversight in an arena that has become increasingly political.

At no time have we found that our status as a remitter of royalty made any difference in our dealings with MMS staff who deal with safety or permitting.

OFFSHORE REGULATION: WHAT'S WORKING?

Fifty thousand wells have been drilled on the Outer Continental Shelf. From 1970 until March, 2010, the total volume of oil spilled due to blowouts was 1,500 barrels.

Figures 1 and 2 in the attachment show the reported incident rates (OSHA recordable incidents and Lost Time Accidents) for Drilling Operations, and for Combined Drilling-Construction-Production Operations for the 13-year period from 1996-2008. Industry has worked hard to make continuous improvement. Figure 3 shows the drilling well blowout rate for the same period.

These graphs are evidence that somebody's doing something right. Incident rates like these compare very favorably with any heavy industry you care to name.

The industry's performance is all the more impressive when you consider that oil and gas operations are conducted in a hostile marine environment and often in extreme weather conditions.

As a taxpayer and a citizen of Louisiana, I'm glad that the MMS has undertaken positive initiatives for safety and the environment, including:

- Subsurface safety valves, which prevented blowouts on hundred of hurricane-topped platforms
- The "Idle Iron" initiative
- Promotion of "Stop Work" policies
- Safe Lifting Workshops for the use of offshore cranes

There have been a number of occasions when Badger has complied with a request from MMS staff or inspectors to make specific modifications to our facilities in the interest of safety, sometimes at considerable cost. These were not modifications that are specified by any regulations. We made a judgment that to comply was in the interest of building a better relationship with our regulator.

WHAT'S NOT WORKING?

In attempting to answer the question "The Deepwater Horizon Incident: Are the MMS Regulations Doing the Job?", as an engineer, my first question is, "What went wrong?" I've heard all kinds of theories: Was it improper well design? Equipment failure? Human error? Any or all three may have played a role in this unprecedented disaster.

Without knowing what went wrong, there is no way to make a reasoned judgment on whether existing regulations were adequate and not followed, or if some gap in current regulations set the stage for the failure.

In its approach to safety management, MMS attempts to meld two processes that are fundamentally distinct from the operator's perspective: Drilling and Production. My basis for making this statement is the 2009 Notice of Proposed Rulemaking regarding Safety and

Environmental Management Systems (SEMS). I commented then, and I still believe, that Drilling and Production are so different that it is a mistake to attempt to manage their safety processes in the same way.

Production processes take place at fixed installations that are always under the control of the operator. Drilling processes take place on MODUs – mobile offshore drilling units – that are contracted by the operator (the lessee) only temporarily. Not only does the drilling rig owner, the contractor, have superior knowledge of his equipment and crew, the rig’s OIM (Offshore Installation Manager) is effectively the captain of the ship.

Ultimately, though, MMS holds the operator responsible for safety compliance. That’s because the MMS only has a contractual relationship (via the oil and gas lease) with its lessee, the operator.

As detailed in Sunday’s Washington Post (“Aboard a shallow-water gas rig, regulatory confusion keeps crew waiting”, 6/13), the deepwater drilling moratorium has spilled over to affect the shallow water operators. Badger is one of those firms in “permit limbo”; three workover permits we once had have been verbally rescinded, with no clear read on what will resolve the situation. There is no way that this situation accrues to anyone’s benefit. It can even be argued that it is detrimental to safety by deferring work that could have been done in ideal weather (May/June) into the heart of hurricane season.

Another area of concern is the organizational focus of the MMS. Less than a year ago, while in the Region office in New Orleans for a meeting, I happened to overhear two staffers commenting about their changing career opportunities as the focus shifted away from oil and gas and toward renewable energy programs, specifically wind. The change was apparent on the MMS website, and was even highlighted by Secretary Salazar on his nationwide series of public forums on the Five Year Plan.

GOALS

Within days of the Deepwater Horizon explosion, I saw an Associated Press report which stated that “The U.S. Minerals **and** Management Service [sic] ... [is] developing regulations aimed at preventing human error” I was struck with the irony of that statement.

Neither the MMS, nor the U.S. Congress will ever come up with regulations that can “prevent human error”, any more than we can prevent gravity. The goal must be to minimize human error to the extent possible.

To support that goal, regulations need to be well-crafted, easy to follow and easy to communicate. Complex regulations, and too many of them, get in the way of good communication and can lead to the human error that they try to prevent.

ETHICAL ISSUES

MMS’s critics point to recent investigations as evidence of the “cozy relationship” between the Service and its regulated community.

Personnel from the Royalty-in-Kind Office in Denver did behave inappropriately with oil industry personnel, but their relationship was not of a regulatory nature. The episode resulted from a management failing, but certainly does not reflect on the relationship of MMS with operators in the Gulf.

Two DOI Inspector General Reports issued 5/25/2010 detail ethical lapses of the former Gulf of Mexico Regional Supervisor, and an audit of the Lake Charles District Office. A few facts are worth noting for the record:

- The investigation and subsequent conviction of the Regional Supervisor resulted from an internal tip.
- The IG notes that subsequent to the Regional Supervisor's termination in 2007, MMS clarified its ethical expectations, and the relatively minor abuses in the Lake Charles office ceased.
- Neither of the two reports documented any unethical behavior involving an operator/lessee.

IN CONCLUSION

Offshore energy plays a vital role in the energy security of the United States, and in the economy of the entire Gulf South. The moratorium on deepwater drilling is particularly disastrous for Louisiana.

In the Gulf of Mexico, a forty-year record of improving safety and environmental performance proves that the industry and government can work together toward a safe, clean and secure supply of energy.

The near-term alternative to domestic oil production is to haul the stuff in from overseas in boats, historically the largest source of damaging spills. Tanker spills tend to happen in our rivers, bays, and estuaries, not fifty miles offshore.

No process in any industry can be made entirely risk-free. We can, however, learn from our mistakes. The regulatory process is already changing to accommodate the recommendations of the panel from the National Academy of Engineering.

It's time to get back to work.

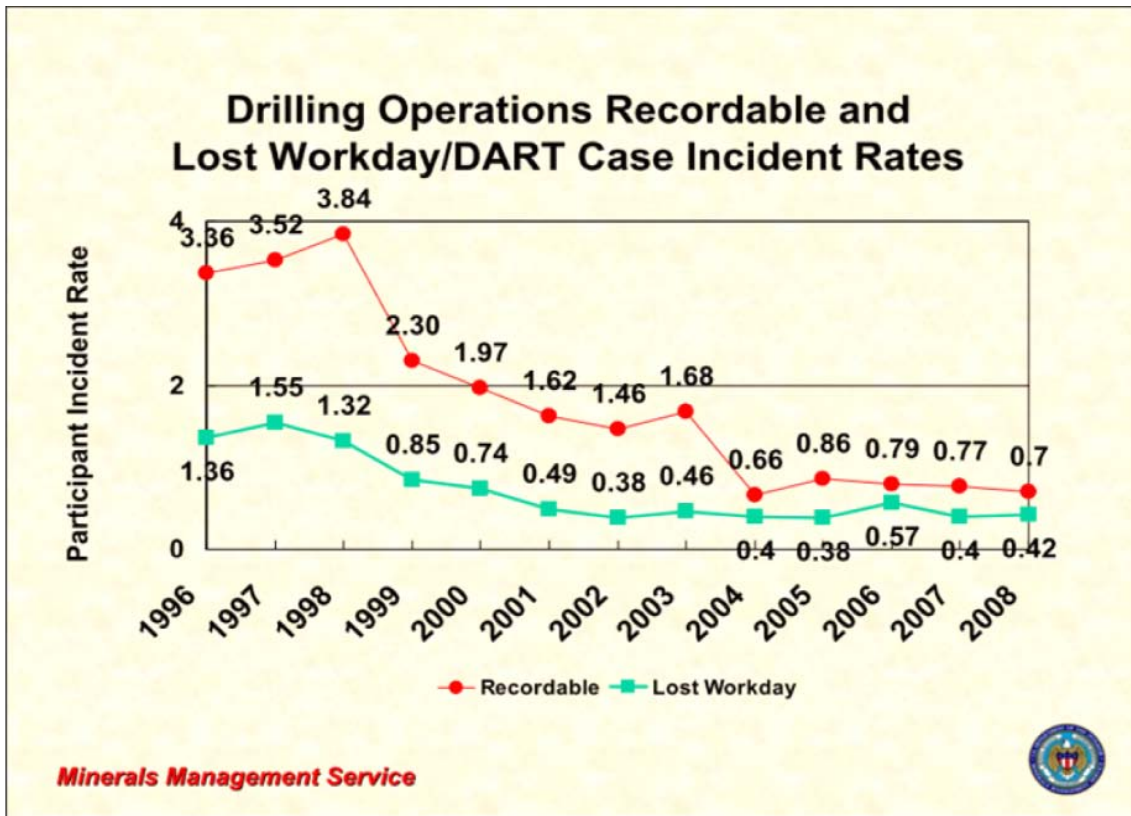


Figure 1. Drilling Operations Incident Rates, 1996-2008.

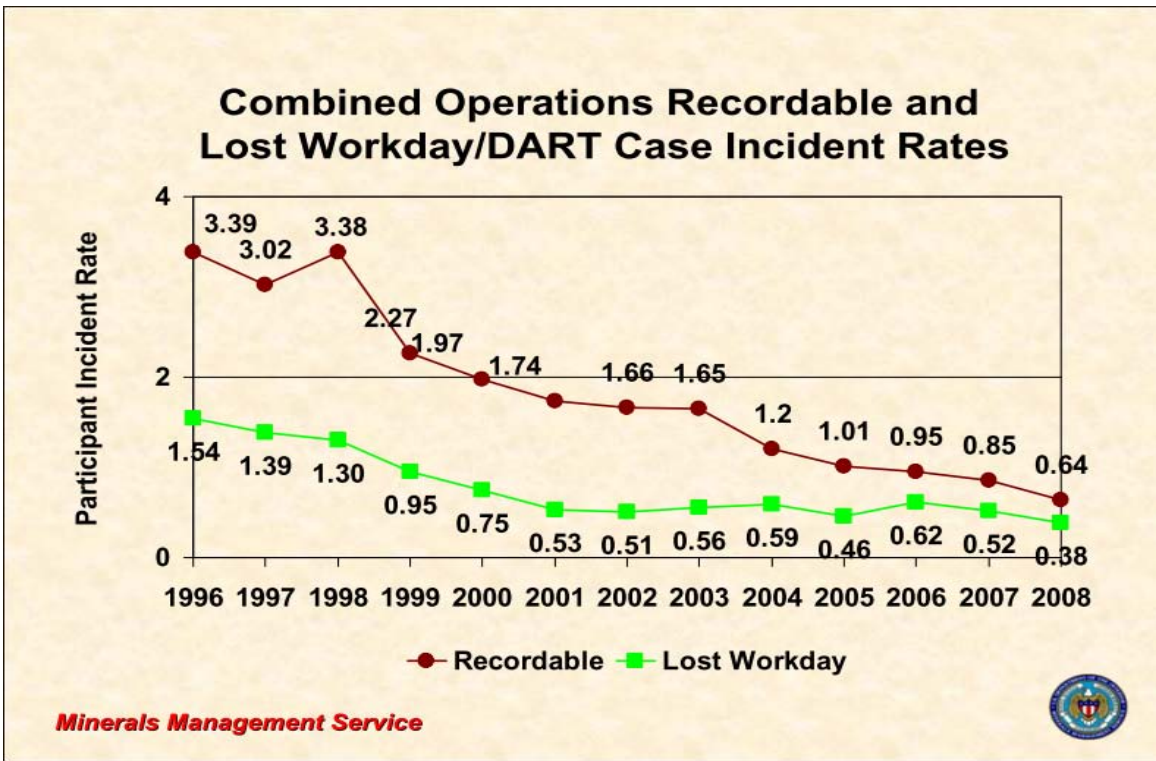


Figure 2. Combined Operations Incident Rates, 1996-2008.
 (“Combined” = Drilling, Construction and Production.)

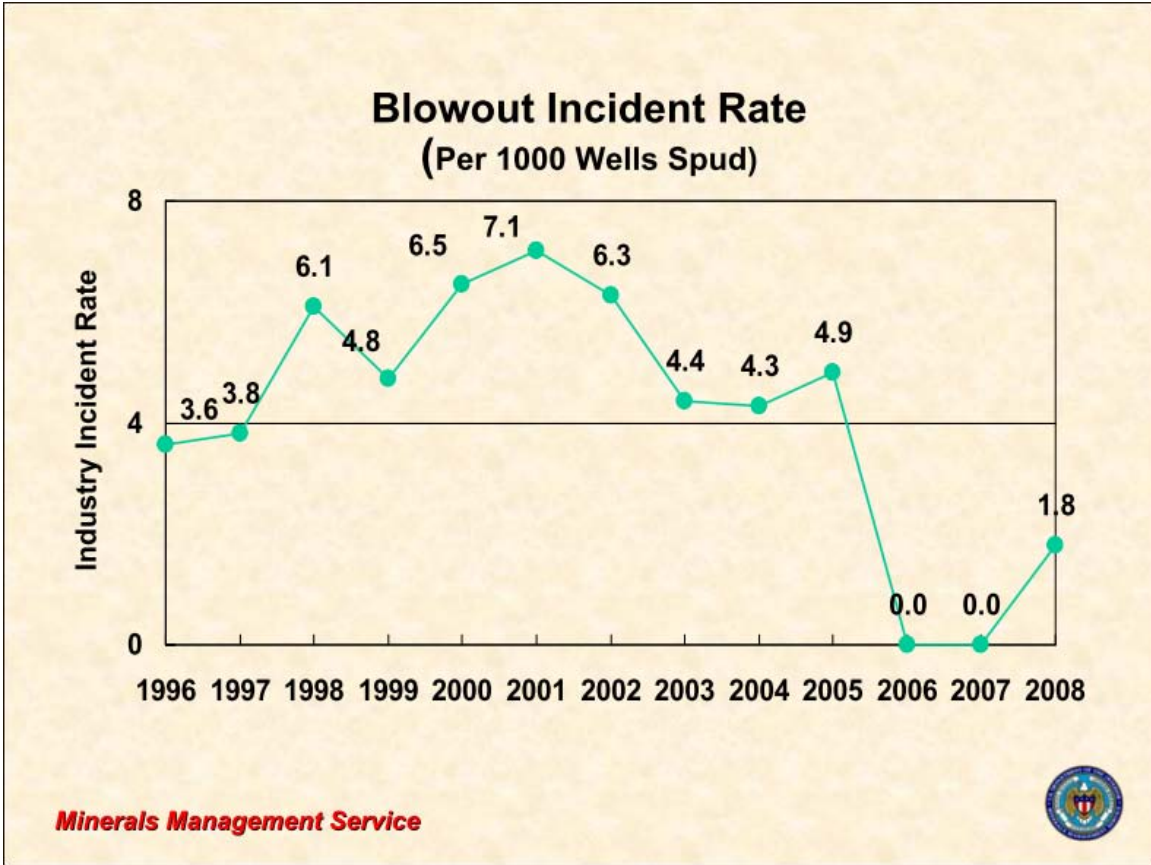


Figure 3. Blowout Incident Rate per 1000 Wells Spud.

Source (all charts): http://www.mms.gov/perfmeas/PDFs/PM_Charts_08.pdf