

Long Island Business NEWS

JULY 9-15, 2010 | VOL. 57 | NO. 31 | \$2.00 | libn.com

Gulf spill: Local governments expect the best, plan for worst

Municipalities ready to deal with legal claims stemming from BP oil hitting our shores

By STEWART AIN

Should the oil spill in the Gulf of Mexico reach our shores, government officials here are not taking any chances.

They began meetings last month to discuss steps to take should the oil threaten to disrupt our thriving fishing, boating, recreation and tourism industries. They reviewed the area contingency plan that was first developed nationally after the 1989 Exxon Valdez oil spill in Alaska. Among the subjects discussed were who to contact at the first sign of an oil slick, who would coordinate the operation and which clean-up crews would be called in.

These planning sessions could also be helpful should Long Island municipalities be hit with lawsuits from businesses claiming they suffered monetary losses because local governments were ill-prepared for the oil.

"If they are going to claim we were asleep at the switch, it would be very difficult for them to make that claim," said Daniel Adams, town attorney for East Hampton.

"We had a meeting with village representatives within the town, representatives from Southampton Town, Suffolk representatives, Coast Guard officials and representatives from the New York State Department of Environmental Conservation," he said. "The meeting was not geared to just legal issues. It was more of a practical meeting – are we ready, and what happens if ..."

"Anybody can sue anybody for anything," Adams added. "Do I think such a suit would have merit and prevail? No. First of all, we didn't cause the spill. A suit against us would be going against the wrong target. They should be going after the spiller, not the responder."

Miriam Villani, an attorney who specializes in environmental law, said British Petroleum is the "ultimate responsible party" and the one to which claims should be sent.

"Municipalities don't have general immunity," she cautioned. "If they were negligent in their preparation for the oil ... if they did nothing and didn't even let the Coast Guard know that the oil was here, they could be sued."

Villani, a partner in the law firm of Sahn Ward & Baker, in Uniondale, said however that "coming up with a claim that would prevail against a municipality would be difficult in this situation."

But James Callahan III, commissioner of the Nassau County Office of Emergency Management, said the New York State Executive Law clearly exempts municipalities from liability "for any claim based upon the exercise or performance or failure to exercise or perform a discretionary function or duty."

He said his office met June 16 with state and local representatives to review steps to take in the event the oil spill reaches here.

"We anticipate that if we get anything it will be in the form of tar balls," Callahan said. "We don't anticipate oil floating on the top. We have a 1 percent chance of it coming up here 120 days from now. It depends on storms and hurricanes."

Katrina Kuh, an associate professor of

law at Hofstra Law School, said the more likely scenario is one in which Long Island municipalities would file claims with BP.

"The claims are governed by the Oil Pollution Act of 1990, which provides guidelines for the recovery of damages," she said. "If a local government was required to deal with contamination of our beaches or the surrounding water, that is a recognized type of damage potentially compensable under the Oil Pollution Act."

Villani said should BP refuse to pay the claim, municipalities could then seek reimbursement from the Oil Spill Liability Trust Fund, which was created by the Oil Pollution Act and whose coffers are filled by taxes paid at the pump. She said the fund now has \$1 billion.

If all municipal claims are still not satisfied, Kuh said, municipalities could then file suit against BP.

But Coast Guard Lt. David Barnes, supervisor of Marine Safety Detachment in Coram, stressed that the trajectory of the oil spill, based on computer models, indicates that it "may go up around the Carolinas and then push out to the east. None of it would come more north than the Carolinas if it gets into the Gulf Stream."

However, should oil be found in the waters off Long Island, Barnes said his crews are prepared to find the ones responsible.

"Our first job is to mitigate – to stop the hazard to the environment," he said. "While we are doing that, if we don't have the responsible party presented to us – such as a leaking boat – we will gather samples and do an investigation of the source."

"Our folks are well-trained and we have the equipment to take samples.... Our role is to assure that safe and effective cleanup is being done."