The Safety Case, in the US Context

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Precedents for Deepwater Horizon

- Exxon Valdez
- The Challenger
- Piper Alpha
Piper Alpha Gives Rise to the Safety Case

- What is a safety case?
- What was the theory behind its adoption?
- What was to be the process?
- What was to be the content?
- What has been the reality?
Appeal of Safety Case Approach

- Vests decisions in entities that are best informed
- Potential for more up to date, flexible practices
- Potential for cultural transformation within corporations
- Potential to foster industry–regulator dialogue
Necessary Conditions

- Some initial distance between industry and regulators
- Independent authority and willingness of regulators to really say No
- Backup penalties or strong incentives for industry
Do Those Conditions Obtain in US?

- Claims of “Agency Capture”
- Claims of “Group think” and Homogeneity of worldview
- National and Regional Political Power of Oil Industry
- Central Importance to Certain US Regions and States
- Very weak constraints provided by citizen suit litigation
Safety Case with Greater Incentives/Penalties

- NEPA as Contract
  Make environmental reviews the overt responsibility of the party seeking government permission (e.g. a lease or exploration plan)
- Treat their good faith review of environmental consequences and mitigation planning as a contractual quid pro quo of obtaining government permission
More NEPA as Contract

- Permission could be revoked – contract rescinded – if ex post it is clear the permittee did not make a good faith review and good faith plan
- Citizen suits would be allowed to force government enforcement of rescission right
- Rescission would not happen much at all but corporate management would have a strong incentive to eliminate this even as a minor risk
BAST

- Company reviews also would need to identify BASTs and explain why they were not to be implemented
- BAST would be based on global industry, not US limited
Draconian Burden on Industry?

- Actually compelling what makes sense for most responsible, long-term actors in industry right now
- Creates strong incentives to raise overall industry standard
- Avoid accidents triggered by lax or too-cost-conscious actors
- Drive development of safety cultures
- *All this is to the long-term benefit of industries*