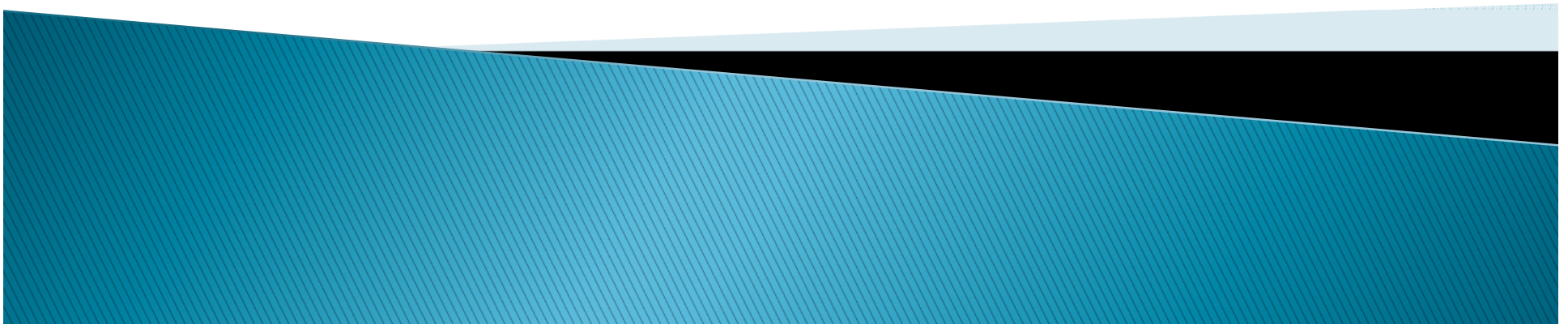


# The Safety Case, in the US Context

David A. Dana



# Precedents for Deepwater Horizon

- ▶ Exxon Valdez
- ▶ The Challenger
- ▶ Piper Alpha



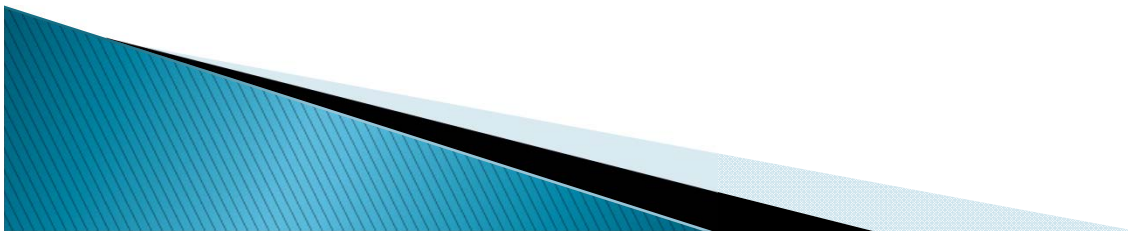
# Piper Alpha Gives Rise to the Safety Case

- ▶ 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



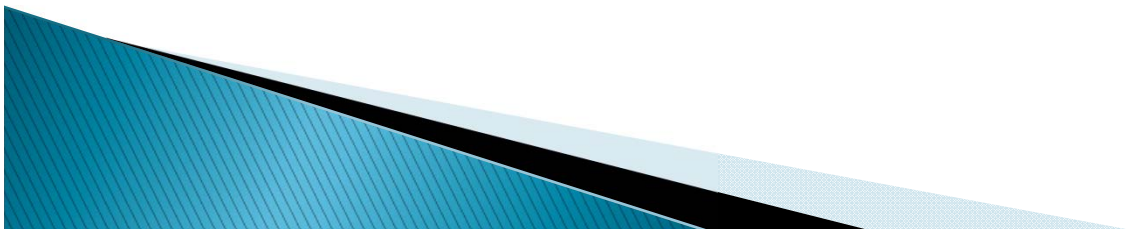
# More NEPA as Contract

- ▶ Permission could be revoked – contract rescinded – if ex post it is clear the permittee did not make a good faith review and good faith plan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*

