

# **OIL POLLUTION DESKBOOK**

**2<sup>nd</sup> Edition**

by

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ENVIRONMENTAL LAW INSTITUTE

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# OIL POLLUTION DESKBOOK

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## About the Author

Russ Randle wrote the 1991 version of the *Oil Pollution Deskbook* and has returned to write the second edition. He has practiced, published, and taught about most aspects of environmental law since 1981, during which time he has served as chair of Patton Boggs LLP's environmental group, Year-in-Review Vice-Chair of the American Bar Association's (ABA's) Superfund Committee (part of the ABA's Section on Environment, Energy, and Resources), and author of numerous articles on environmental issues, including several about the 2010 *Deepwater Horizon* disaster. His clients have included oil and technology companies, municipalities, individuals, and environmental groups. Russ also has been advising several clients concerning the BP *Deepwater Horizon* disaster. Because of this broad and lengthy experience, he has handled difficult issues under most federal environmental laws, some in litigation, some in transactions, some in administrative rulemaking, and some in legislative efforts.

Russ graduated from Princeton University, *magna cum laude*, in 1977, from Yale Law School in 1980, where he was an editor on the *Yale Law Journal*, and clerked for U.S. District Judge John H. Pratt (1980-81). As part of his pro bono work, he serves on the boards of DC Appleseed, where he works on Anacostia River cleanup issues, the American Friends of the Episcopal Church of Sudan (AFRECS), for which he does human rights work, and as a deputy representing the Diocese of Virginia at the General Convention of the Episcopal Church.

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# Foreword

Oil spills have marked key moments in American environmental history and, arguably, have provided the impetus for significant change in U.S. environmental law. Many credit the Santa Barbara oil spill and the fires on the Cuyahoga River with helping to shepherd in the environmental activism of the 1970s and the blooming of federal environmental law. The *Exxon Valdez* spill of over 10 million gallons of oil in March 1989 had citizens everywhere riveted to television pictures of sea animals and birds struggling to stay alive. While I was at the U.S. Department of Justice (DOJ), I had mounted on my wall a bald eagle, labeled “the billion dollar eagle,” on loan to me from the U.S. Fish and Wildlife Service. That eagle was to have been a trial exhibit in the civil case, but we were able to settle the case (for a billion dollars) in 1991. The Oil Pollution Act (OPA) is a direct product of the Exxon disaster.

Then, in 2010, the nation spent the better part of the spring and summer watching unimaginable quantities of oil gush from the *Deepwater Horizon* into the Gulf of Mexico. Like the *Exxon Valdez* spill, but on a bigger stage, citizens watched the loss of marine mammals, bird life, and protective marshes. Eleven people died and 40 were injured in this ecological tragedy. This disaster again spawned a massive amount of litigation, much of it grounded in the OPA. Until I became President of the Environmental Law Institute (ELI), I was supervising the work of the Environment and Natural Resources Division, DOJ, in that litigation, and I frequently consulted the first edition of the *Oil Pollution Deskbook*.

These historic and tragic events captured the public’s attention and, at times, spurred political action, but the startling reality is that on average, in the United States, over 1 million gallons of oil are still spilled each year in thousands of spills. While this is a large number, it is also important to recognize that as recently as the 1980s and early 1990s, over 10 million gallons of oil were spilled annually. Thus, real progress is being made thanks to efforts like OPA, better technology, and improved management on behalf of product stewards.

ELI proudly publishes the *Oil Pollution Deskbook, Second Edition*, as an effort to explain what the 1990 OPA is and how it has been implemented. This second edition was updated to include the lessons from *Deepwater Horizon*, and it is the best source for the law in this area. It includes in one place documents essential in understanding what the law is so far, and what it may become.

The *Oil Pollution Deskbook* leads off with expert analysis of the Act by Russ Randle, a partner in the Washington, D.C., office of Patton Boggs LLP. A longtime observer of and participant in environmental law, Russ brings a practiced eye to the Act and what it really means. Next comes the text of the Act itself. What follows is the absolutely essential collection of legislative history and other documents that will guide agencies and courts in implementing the statute and the reader in understanding it.

The *Oil Pollution Deskbook* is part of ELI’s Deskbook series, which combines the invaluable experience of the top practitioners in the field with the encyclopedic coverage and keen insight provided by the staff of the *Environmental Law Reporter*. Deskbooks provide practicing attorneys, students, environmental professionals, and government officials an “at-the-fingertips” resource for accessing and understanding environmental law. The series covers climate change, endangered species, NEPA, TSCA, FIFRA, wetlands, and many other topics by combining in-depth analysis of the topic with necessary reference materials, such as regulations, guidance documents, and forms.

The Deskbooks are natural partners to ELI’s flagship resource, the *Environmental Law Reporter*. *ELR* is an attorney-edited gateway to researching and understanding environmental law and policy, with coverage since 1971 available online in an easily searchable format. *ELR* couples thousands of insightful articles on environmental law and policy with the most important updates, decisions, statutes, regulations, and agency documents and a cumulative index and bibliography to help you navigate this highly complex area of law. More information about the Deskbooks, *ELR*, and ELI is available at [www.eli.org](http://www.eli.org).

The Environmental Law Institute makes law work for people, places, and the planet. With its non-partisan, independent approach, ELI promotes solutions to tough environmental problems. The Institute's unparalleled research and highly respected publications inform the public debate and build the institutions needed to advance sustainable development. We hope the *Oil Pollution Deskbook* provides valuable insight into this vital area of environmental law and regulation.

—John C. Cruden, President  
Environmental Law Institute