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Comment
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BLAME GAME: THOUGHTS ON THE DEEPWATER HORIZON OIL SPILL

The Gulf Coast of Mexico will never be the same. Even after billions of dollars are spent on clean-up efforts,¹ the Gulf's \$234 billion dollar economy² will not be bouncing back quickly, nor will the natural habitats of birds, fish and other marine life that call the Gulf home. Months after the explosion of the Deepwater Horizon oil rig, there is little consensus on exactly how many gallons of oil spilled into the ocean³ and although the leak is now capped, concerns linger as experts work to permanently close the damaged pipeline.⁴

The far-reaching effects of the spill raise the question of responsibility. Was poor regulatory oversight by the U.S. government the weak linchpin that led to the failure of safeguards? Or does most of the blame belong to British Petroleum ("BP"), the company in charge of operations the day of the accident? Did BP's greed for greater profit lead to risky drilling practices that caused the accident? As we struggle to measure the environmental damage, implement clean-up operations, and help the thousands of people who depend on fishing and tourism in the Gulf, a central question remains: Who is to blame for the accident?

The Spotlight on British Petroleum: Listening, watching, and waiting for answers

Public anger at BP continues to increase since the disaster began. A steady stream of video footage and photographs captured oil gushing into the water and coating the ocean surface. The media has only stoked the coals by releasing off-putting clips of Tony Hayward, BP's Chief Executive,⁵ on newscasts⁶ and over the worldwide web.⁷

On April 21, 2010, one day after the explosion on the Deepwater Horizon, BP launched an internal investigation⁸ in an attempt to discover what caused the accident and fire that led to the oil spill. Early on in the investigation, BP announced that the "accident was brought about by the failure of a number of processes, and highlighted mechanisms -- procedures and equipment -- that should have prevented the disaster."⁹

BP's response to the accident has been far from coordinated or expedient and its efforts, including the company's efforts to payout individuals and businesses impacted by the spill, have failed to satisfy the public's questions about responsibility.

Many agree that the oil industry pushed the limits of drilling technology by sinking ever deeper wells; however, the other side of the issue points to the Minerals Management Service ("MMS"), the government agency in charge of regulating offshore drilling at the time of the spill. MMS failed to enforce safety measures as proactively or aggressively as possible. Now that the broad damage from the disaster becomes clear, one may rightly question why BP was allowed to conduct such risky operations on the Deepwater Horizon oil rig in the first place.

The Minerals Management Service and Consequences of Inadequate Oversight Government regulators have known for quite some time¹⁰ that deepwater drilling operations present special challenges¹¹ and pose tremendous risks to sensitive coastal areas.¹² MMS assumed a dual role of fostering and policing the industry -- collecting royalty payments from the drilling companies while also levying fines for violations of the law.¹³

Financed by the estimated \$13 billion dollars a year it collected in oil royalties, MMS largely escaped the kind of scrutiny that other governmental agencies receive in the appropriations process.¹⁴ Critics of MMS describe a culture of lax oversight and cozy ties to the oil industry.¹⁵ It was reported that, federal regulators responsible for oversight of drilling in the Gulf of Mexico allowed industry officials to complete inspection reports in pencil with the knowledge that regulators would trace over them in pen before submitting the reports to MMS.¹⁶

In recent years, MMS moved away from requiring specific safety measures in offshore drilling and instead set broad performance goals that were left up to the industry to meet. Michael Saucier, an MMS official who testified in joint MMS-Coast Guard hearings on the Deepwater Horizon accident, commented that the agency “highly encouraged,” but didn’t require, companies to have back-up systems to trigger blowout preventers in case of an emergency.¹⁷ “Highly encouraged? How does that translate to enforcement?” asked Coast Guard Capt. Hung Nguyen, co-chair of the investigation. “There is no enforcement,” Mr. Saucier replied in the hearing.

A recent New York Magazine article by James Surowiecki raised the question of whether regulation itself has become delegitimized.¹⁸ Surowiecki suggests that “the way we think about regulators, and how they think of themselves, has a profound impact on the work that they do. Without a view of regulation as legitimate, shortcuts and abuses are bound to occur, on both the part of the regulators and the industries they are supposed to be regulating. As the idea of regulation has become less legitimate, particularly as incidents like the Deepwater Horizon oil spill occur, regulators become less effective and companies may feel more comfortable ignoring them.

Rising above the Fray: Moving forward and cleaning up

Whether BP ignored MMS, or vice versa, is a hard question to answer. It was probably a combination of both. With support from the Obama administration, Interior Secretary Ken Salazar has taken steps to split MMS into three separate branches: one responsible for energy development, another for safety and enforcement, and a third that is responsible for leasing and revenue collection.¹⁹ This administrative move may be a good first step to increase the accountability of regulators overseeing projects like the Deepwater Horizon. The increased accountability fostered within each branch, may lead to a greater sense of authority and responsibility on the part of regulators. While this small step may not have the effect of preventing each and every accident, it could reduce the risk of such a tragedy happening again.

As we try to understand the causes behind the spill and continue the clean-up process, the dispute continues over who is to blame. Congressional hearings,²⁰ investigations,²¹ and frenzied media reporting have provided few, if any, concrete answers to this question. There will always be tension over how to maximize the benefit of natural resources while minimizing the harm to the environment. Instead of players shirking responsibility, perhaps it is time to refocus our energy and resources. The blame game is a dead end and in the interest of moving forward now to clean up the Gulf, maybe it is best to stop finger pointing and work together.

Footnotes

¹ Steve Hargreaves, Oil Spill Costs: What will BP really pay, CNN Money, May 6, 2010

² Steve Hargreaves, Oil spill damage spreads through Gulf economies, June 1, 2010,

³ Newshour: Gulf Leak Meter, available at <http://www.pbs.org/newshour/rundown/oil-ticker>

⁴ Morning Edition: BP Nears Permanent Fix For Leaking Oil Well (National Public Radio broadcast July 27, 2010) (transcript

available at <http://www.npr.org/templates/story/story.php?storyId=128789536>)

⁵ On July 27th, BP announced that, by mutual agreement with the BP board, Tony Hayward is to step down as group chief executive with effect from October 1, 2010. He will be succeeded as of that date by fellow executive director Robert Dudley. Press Release, British Petroleum, BP CEO Tony Hayward to Step Down and be Succeeded by Robert Dudley (July 27, 2010) (available at <http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7063976>).

⁶ PBS Newshour: BP CEO's Testimony Draws Upbraiding by Many on House Energy Panel (PBS television broadcast June 17, 2010) (available at http://www.pbs.org/newshour/bb/environment/jan-june10/oil_06-17.html)

⁷ Trade the Trend's: Where in the World is Tony Hayward? BP Plc CEO Cancels Tuesday's Oil Tycoon Meeting & Speech (Trade the Trend's Channel broadcast June 21, 2010) (available at http://www.youtube.com/watch?v=_8vKD8XbfY0)

⁸ Press Release, British Petroleum, BP Briefs US Government on Initial Perspectives of Deepwater Horizon Investigation -- Focus is on Seven Control Mechanisms (May 25, 2010) (available at <http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7062374>).

⁹ Id

¹⁰ Ben Casselman and Guy Chazan, Disaster Plans Lacking at Big Rigs, Wall St. J., May 18, 2010, available at <http://online.wsj.com/article/SB10001424052748703315404575250591376735>

¹¹ Wajid Rasheed, Deepwater drilling faces challenges, E&P Magazine, December 1, 2002, available at <http://www.epmag.com/archives/features/3050.htm>

¹² Posting of Dan Farber to Legal Planet Blog, <http://legalplanet.wordpress.com/2010/05/31/weve-known-the-risks-in-the-gulf-for-forty-years> (May 21, 2010)

¹³ Ian Urbina, In Gulf, It Was Unclear Who Was in Charge of Rig, N.Y. Times, June 5, 2010, available at http://www.nytimes.com/2010/06/06/us/06rig.html?_r=2

¹⁴ John M. Broder and Michael Luo, Reforms Slow to Arrive at Drilling Agency, N.Y. Times, May 30, 2010, available at

¹⁵ Noelle Straub, Interior Probe Finds Fraternalizing, Porn and Drugs at MMS Office in La., N.Y. Times, May 25, 2010, available at <http://www.nytimes.com/gwire/2010/05/25/25greenwire-interior-probe-finds-fraternizing-porn-and-dru-45260.html>. PDF copy of the Inspector General's report, available at http://www.eenews.net/public/25/15844/features/documents/2010/05/25/document_gw_02.pdf

¹⁶ Ian Urbina, Inspector General's Inquiry Faults Regulators, N.Y. Times, May 24, 2010, available at <http://www.nytimes.com/2010/05/25/us/25mms.html>

¹⁷ Ben Casselman and Guy Chazan, *supra* note 9

¹⁸ James Surowiecki, The Financial Page, The Regulation Crisis, The New Yorker, June 14, 2010, available at http://www.newyorker.com/talk/financial/2010/06/14/100614ta_talk_surowiecki

¹⁹ Noelle Straub, Interior Unveils Plan to Split MMS Into 3 Agencies, N.Y. Times, May 20, 2010, available at <http://>

www.nytimes.com/gwire/2010/05/20/20greenwire-interior-unveils-plan-to-split-mms-into-3-agen-72654.html

- ²⁰ U.S. House of Representatives, Committee on Energy and Commerce Investigates Deepwater Horizon Oil Rig Spill, documents and testimony available at http://energycommerce.house.gov/index.php?option=com_content&vi
- ²¹ U.S. House of Representatives, Committee on Natural Resources Investigation of the Deepwater Horizon Oil Rig Explosion, documents and testimony available at <http://resourcescommittee.house.gov/index.php?option=com>

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