



Deepwater Horizon Oil Spill: Preliminary Assessment of Federal Financial Risks and Cost Reimbursement and Notification Policies and Procedures

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Summary

On April 20, 2010, an oil spill of national significance in the Gulf of Mexico followed an explosion on the offshore drilling unit Deepwater Horizon (the Deepwater Horizon oil spill). The Deepwater Horizon was owned and operated by BP America Production Company (BP) as part of the Macondo project. 152 days later, on September 8, 2010, BP confirmed the completion of cementing operations to prevent further oil from spilling from the Macondo well to which the Deepwater Horizon was attached when it exploded. In order to coordinate the federal response to the Deepwater Horizon oil spill, the National Incident Commander established the Deepwater Incident Services Team (IST) consisting of 18 federal agencies, including the U.S. Coast Guard and the Department of Justice (DOJ). The U.S. Coast Guard's National Pollution Funds Center (NPFC) designated two BP subsidiaries, BP Exploration and Production and its guarantor, BP Corporation North America, Inc.--and five other corporations as "Responsible Parties" for Deepwater Horizon oil spill related claims. Shortly after the spill, at the direction of the NPFC, BP established a facility to receive and process all claims against Responsible Parties. In June 2010, as a result of an oral agreement between the administration and BP, BP established a new claims processing facility, the Coast Claims Facility (GCCF). GCCF began operations on August 23, 2010, and is responsible for handling claims from individuals and businesses for damages resulting from the Deepwater Horizon oil spill. BP also established an irrevocable trust (Trust), to which BP is to provide a total of \$20 billion by 2014, primarily for the purpose of paying GCCF and other claims related to the Deepwater Horizon oil spill. The total cost to clean up the spill and potentially unprecedented spill, the damage to the environment, as well as the potential impact on the livelihood and economic status of businesses and individuals in the region will undoubtedly be significant. Current estimates from BP and Oxford Economics in the tens of billions of dollars. However, the full extent of costs and the extent to which they will ultimately be paid by the Responsible Parties or federal, state, or local governments is unknown at this time and depends on a variety of factors. The complex legal framework for oil spill liability and response funding will play an integral role in determining who is responsible for ultimately paying the costs associated with the Deepwater Horizon oil spill. In this regard, the Oil Pollution Act of 1990, as amended (OPA), which Congress enacted after the Exxon Valdez spill in 1989, authorized the establishment of the Oil Spill Liability Trust Fund (Fund), which is administered by NPFC and is subject to certain caps on the amount of expenditures. The Fund was established to pay for certain oil spill cleanup costs and damages using revenues from the Fund for immediate response costs and when the Responsible Parties cannot be identified or do not have sufficient assets. OPA also provided that the federal government may subsequently seek reimbursement for these costs from the Responsible Parties. Since the Deepwater Horizon oil spill, a number of related legislative proposals have been introduced. The objectives of this study were to provide a preliminary assessment of (1) financial risk exposures to the Fund and the federal government as a result of the Deepwater Horizon oil spill, and (2) the Coast Guard's NPFC cost reimbursement policies and procedures for Deepwater Horizon oil spill costs.

Because the total costs of the Deepwater Horizon oil spill are still unknown, the federal government's exposure as a result of the oil spill is also unknown. BP has voluntarily established a Trust to be funded incrementally up to \$20 billion, has paid other costs outside of the Trust, and has stated that it will continue to pay additional costs. BP's financial condition and its continuing resolve to stand behind its public commitments will be key factors if additional costs need to be paid. Certain statutory limits on the amount of federal funding for response costs and damages are intended to mitigate the exposure. For example, OPA establishes a cap on the amount of funds that can be expended on each oil spill. NPFC has billed the Responsible Parties for the Deepwater Horizon oil spill \$581 million for response activities performed by nine federal government agencies and 11 state government agencies. After NPFC authorizes reimbursement, the government agencies are paid from the Fund for actual expenditures. BP has paid NPFC \$518.4 million as of October 12, 2010. The Fund is currently approaching the OPA-established \$1 billion per incident cap on total expenditures in the relatively near future.

Consequently, unless the statute is amended to exclude amounts reimbursed by Responsible Parties, the Fund may be unable to pay any OPA compensable claims or other Deepwater Horizon oil spill-related claims above that limit. Our preliminary assessment of the design of Coast Guard's NPFC's policies and procedures for obtaining reimbursement for Deepwater Horizon oil spill costs found they did not always reflect current practices and were not sufficiently detailed to ensure they could be followed consistently. For example, NPFC's policies for identifying and notifying Responsible Parties are dated 1996, when the Coast Guard was part of the U.S. Department of Transportation, and are marked "draft." The federal government has been involved in overseeing Responsible Parties' claims processing resulting from the Deepwater Horizon oil spill. Following the spill, DOJ, the Department of Homeland Security (DHS) and various other federal agencies have been overseeing the establishment of the claims process and monitoring claims processing activities by BP on behalf of the designated Responsible Parties. Congress may wish to consider amending OPA or enacting new legislation that eliminates the Fund's incident expenditure cap to the extent that it does not take into account reimbursements from Responsible Parties. In this regard, Congress may want to consider setting a Fund cap associated with an incident based on net expenditures (expenditures less reimbursements). In order to help establish and maintain effective reimbursement policies and procedures for the Fund, we recommend that the Secretary of Homeland Security direct the Director of the U.S. Coast Guard's NPFC to update NPFC's policies and procedures to include (1) current Fund reimbursement billing practices that reflect both a percentage of federal agencies' obligations as well as expenditures, and (2) specific procedural guidance on processing DOD requests for reimbursement using Interdepartmental Purchase Requests (MIPRs). In order to ensure that all Responsible Parties are aware of their responsibilities for an oil spill, we recommend that the Secretary of Homeland Security direct the Director of NPFC to (1) update NPFC's current policies to reflect current organization and structure and management directives, and (2) update NPFC's current procedures to provide detailed guidance and procedures for identifying and notifying Responsible Parties and documenting all Responsible Party notifications.

Recommendations

Our recommendations from this work are listed below with a Contact for more information. Status will be updated from "In process" to "Open," "Closed - implemented," or "Closed - not implemented" based on our findings.

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Matters for Congressional Consideration

Recommendation: Congress may wish consider amending OPA or enacting new legislation that eliminates the Fund's \$1 billion per incident expenditure cap to the extent that it does not take into account reimbursements from Responsible Parties. In this regard, Congress may want to consider setting a Fund cap associated with an incident based upon net expenditures (expenditures less reimbursements).

Status: In process

Comments: When we determine what steps the Congress has taken, we will provide updated information.

Recommendations for Executive Action

Recommendation: In order to help establish and maintain effective cost reimbursement policies for the Fund, the Secretary of Homeland Security should direct the Director of the U.S. Coast Guard's NPFC to update NPFC's policies and procedures to include (1) current Fund reimbursement billing practices that reflect both a percentage of federal agencies' obligations as well as expenditures, and (2) specific procedural guidance on processing DOD requests for reimbursement using MIPRs.

Agency Affected: Department of Homeland Security

Status: In process

Comments: When we confirm what actions the agency has taken in response to this recommendation provide updated information.

Recommendation: In order to ensure that all Responsible Parties are properly notified of their responsibilities in the event of an oil spill, the Secretary of Homeland Security should direct the Director of NPFCA to (1) update NPI policies to reflect current organization and structure and managements' directives, and (2) update I procedures to provide detailed guidance and procedures for identifying and documenting all Responsible Party notifications.

Agency Affected: Department of Homeland Security

Status: In process

Comments: When we confirm what actions the agency has taken in response to this recommendation provide updated information.
