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## The Gulf Spill: Who Should Investigate?

How to stop the gusher of oil and minimize the damage from the spill are still the key top-of-mind issues following the explosion and fire at the Deepwater Horizon drill rig.

But right behind are a broad range of questions about what happened and what are the implications---questions about the risk of deep sea drilling, the systems and processes to prevent accidents, the default systems if an accident occurs, the readiness to act if that accident is catastrophic, where lines should be drawn between public and private responsibility and, given the risks, the role of deep sea drilling off our shores in America's energy future.

There are two types of investigations.

One type will ***look backward***. It will assess whether actions by both public and private entities met ***existing standards***.

The result of private inquiries by BP and other implicated businesses will be (should be) to discipline employees who failed, according to company norms, to design, build and operate the various elements of a high technology drilling project.

The result of public inquiries by the Minerals and Management Service of the Interior Department, by EPA, by the Justice Department and by private litigants in federal or state court will be to discipline governmental employees who failed to discharge their duties under law and regulation but, more dramatically and importantly, to fix liability, assess actual harm and exact damages (compensatory or punitive) from the private parties responsible for violations of those existing rules.

A second type of inquiry will ***look forward***. It will assess what are the ***appropriate public and private systems, processes and standards for the future***. Most importantly, it will try to assess deeper root causes (beyond violations of existing standards). On the public side, such questions can, among

other things, address failures of regulatory structures, standards, oversight and enforcement. From the perspective of private industry, such causes can range from technological complexity to cost-cutting or deadline pressures to a pervasive absence of a safety culture that insists on asking and answering the right questions in design, resources, monitoring, management and implementation.

Ultimately, this second type of inquiry will seek to answer the question whether the health, safety and environmental risks of off-shore drilling (especially in deep water requiring high technology) can be reduced enough to avoid catastrophic accidents while still maintaining enough commercial return to sustain this economically risky activity.

From the public perspective, this second type of inquiry should be carried out by a bipartisan commission selected by Congress and the president and be comprised of individuals from government, business, law, and academia. With the aid of an expert professional staff, it can address the important public policy issues about the future with care and credibility. More targeted congressional and executive inquiries can supplement, but not supplant, such a commission. Obviously, such a group will not definitively answer all questions, but it will provide an important consensus document which can be a strong foundation for future changes in legislation, regulation or public management.

The events in the Gulf have resulted in equivalent or greater loss of life and will lead to more damage to the environment than other seminal accidents involving a complex interaction between science, technology, public policy and organizational behavior which, in the past, led to formation of such commissions with broad mandates-- the loss of control at the Three Mile Island nuclear plant and the Challenger and Columbia tragedies. Members of Congress are already proposing such a commission because of well-founded skepticism that conflicts of interest and lack of breadth disable the Minerals Management Service -- which together with the Coast Guard has begun an inquiry into mistakes under existing standards -- from proposing appropriate policy going forward. (See, for example, ["Independent Inquiry into Oil is Urged."](#))

From the private perspective, the board of directors of BP needs to repeat what it did following the March, 2005 explosion at its Texas City refinery which killed 15 and caused more than 170 injuries. Then, at the recommendation of the U.S. Chemical Safety and Hazard Investigation Board, the company formed an independent panel to conduct a thorough review of the company's safety culture, safety management systems and safety oversight of its U.S. refineries and to make appropriate recommendations for internal company action. The panel was headed by former Secretary of State James Baker and was comprised of leaders from government, business, labor, and academia.

Such a panel would again ask a broad set of questions about BP's safety culture and safety management systems, this time in the context of BP's wide-spread drilling operations, both on land and at sea. Importantly, it would examine whether BP had truly addressed the findings of the 2007 Baker Commission report which was uncompromising in its criticism of BP's safety culture and safety management. In brief, the Baker Commission concluded that BP then had serious deficiencies in leadership consistency, systemic risk assessment, effective early warning systems, adequate risk abatement and appropriate education and training. The company subsequently settled both criminal and civil cases involving the Texas explosion and paid tens of millions of dollars in fines, penalties, and settlements. Due, in part, to the Texas explosion and other environmental and safety problems, BP's iconic CEO, John Brown, left the company. The new, independent BP panel could also compare BP's record to industry best practices, including those of Exxon Mobile which has a reputation today as best in class.

Such an internal panel is a necessary complement to the public commission because, at the end of the day, only through internal changes in company leadership, management, systems, processes and culture are risks truly reduced.

Such a panel is also necessary to remind BP management that it -- not its vendors and subcontractors -- is ultimately responsible for drilling safety. Yes, Transocean owned the rig, the blowout preventer was made by a specialist company (Cameron International) and certain critical engineering services (cementing the wellhead) were provided by Halliburton. But, contractors were also involved at Texas City.

The larger point is that these vendors were all working under BP's direction -- and, while there may be legal disputes about apportionment of damages under existing contracts, this well was ultimately BP's responsibility. It hired the contractors and would profit from the oil. It can set the safety standards for itself and its suppliers with respect to all aspects of the project -- from design to implementation to prevention to default mechanisms to contingency planning in the event of catastrophe.

Thus, just as a bipartisan commission should focus on the right public policies going forward, so too the independent BP commission should outline appropriate company safety standards and processes for risky BP drilling projects (which would cover both BP and its subs). The company is too preoccupied with finger-pointing and allocation of money damages under past contracts, and too responsible for the Gulf spill, to do that essential forward-looking task itself.

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