Concerns With the Deepwater Horizon Oil Spill Trust

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On the day before BP p.l.c. CEO Tony Hayward was set to testify for the first time before Congress on his company’s role in the Deepwater Horizon Gulf of Mexico oil disaster, the administration hastily announced a voluntary agreement with BP to establish a $20 billion escrow fund to compensate victims.¹

Nearly two months later, Public Citizen acquired a copy of the contract² and we have identified five broad problems with the agreement that require significant modification if the public interest is to be adequately served and BP is to be held properly accountable:

1. The Trust agreement is with BP Exploration & Production, Inc. BP Exploration & Production, Inc. is a wholly-owned subsidiary of BP America Production, which in turn is a subsidiary of BP Company North America, which is a subsidiary of BP Corporation North America, which is a subsidiary of BP America, Inc., which is a subsidiary of the ultimate parent company BP p.l.c..³ There are three areas of concern on this issue:

   a. This agreement with a subsidiary five-parts removed from the parent corporation provides the government with limited access to assets with which to secure adequate collateral for the BP Oil Spill Victim Compensation Fund. Public Citizen research indicates that BP Exploration & Production, Inc. seems to be involved only in Gulf of Mexico offshore oil and gas exploration and production.

   b. BP Exploration & Production Inc is the subsidiary that was operating the Deepwater Horizon exploration rig at the Macondo prospect in the Gulf of Mexico. Therefore, the Department of Justice and other federal and state agencies most likely will focus criminal and civil proceedings against this subsidiary. Public Citizen forecasts likely conflicts arising if the Department of Justice seeks to bring criminal charges with the threat of potential sanctions – including revocation of BP Exploration & Production leasing rights in the Gulf of Mexico – with the government’s interest in enforcing the terms of the Trust agreement.

¹ www.whitehouse.gov/the-press-office/fact-sheet-claims-and-escrow
² www.citizen.org/documents/2010-8-9TrustAgreement.pdf
³ www.citizen.org/documents/BP-Subsidiaries-Chart.pdf
Enforcing the Trust agreement necessitates continued access to Gulf leases by BP Exploration & Production, Inc.

c. Numerous safety problems have been identified at BP as being the cause of the explosion and resulting oil gusher at BP’s Macondo site. The government’s Trust agreement requires that BP maintain a robust and possibly expanded presence in the Gulf of Mexico despite these managerial safety issues. Public Citizen envisions potential conflicts of interest where regulatory concerns with BP’s offshore drilling operations may conflict with the government’s interest in continuing to allow BP offshore oil production to continue in order to provide the collateral for the Trust agreement. While the Trust agreement allows for Trustees to negotiate additional collateral, the agreement is only with a subsidiary quite distant from the parent company – one that the parent company failed to include on its list of “more important subsidiaries.”

2. The definition of “Damage Claims” includes: a) claims by victims processed through the fund, b) financial settlements and judgments reached outside the fund process, such as through private civil litigation, c) financial claims associated with damages to natural resources, and d) reimbursements to state and local governments associated with spill-response cleanup. This broad definition of damage claims likely will leave substantially less than $20 billion available to compensate individuals and businesses for economic losses associated with the spill, which most likely will leave payments (and monies needed for coastal and marine restoration) shortchanged.

3. The Trust agreement provides no mechanism to require BP to provide additional financing should the $20 billion be inadequate to meet all damage claims. Given the fact that the $20 billion fund must cover claims from victims and local and state governments, and be used for coastal and marine restoration, it is probable that the amounts in the fund will be prematurely exhausted.

4. Article VI C renders the administration and operations of the Trust non-transparent. This section explicitly states that the Trustees “shall not be required to render any annual or other periodic accounts . . .” The Trust agreement lacks any requirements to timely report to the public the number of claims filed, the number processed, aggregate amounts in settlements paid, and breakouts of the four separate categories of payments allowed by the fund.

5. There is a “scheduled expiration date” (defined in Article IX) of April 30, 2016, with limited opportunities for the Trustees to extend the deadline beyond this date. Public Citizen is concerned that such a relatively short expiration date precludes adequate assessment of long-term health, economic and natural resource damages from the oil gusher.

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4 See Note 43 at www.sec.gov/Archives/edgar/data/313807/000095012310021364/u08439e20vf.htm