

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

June 29, 2010

To: Members of the Subcommittee on Health

Fr: Committee on Energy and Commerce Democratic Staff

Re: Subcommittee Markup on H.R. _____, the “Deepwater Horizon Health Response Act of 2010”

On Thursday, July 1, 2010, at 2:00 p.m., in room 2123 Rayburn House Office Building, the Subcommittee on Health will meet in open markup session to consider H.R. _____, the “Deepwater Horizon Health Response Act of 2010”.

I. BACKGROUND

Oil spills pose health risks for both responders involved in the cleanup activities and individuals living and working in the affected communities. Studies undertaken following the Exxon Valdez disaster in Alaska in 1989, and other major oil spills around the world, have detected a range of health risks to those affected by a spill. These risks are primarily due to inhaling toxic vapors, physical contact with the oil through skin contact or ingestion, and psychological stress in confronting the devastation. The physical conditions associated with work in the area of an oil spill, such as extreme heat or cold, can also contribute to health risks.

After the 1989 Exxon Valdez disaster, the National Institute for Occupational Safety and Health (NIOSH) observed an increase in respiratory symptoms, headaches, throat and eye irritation, rashes and other skin problems among cleanup workers. Similar health conditions were reported among cleanup workers involved in the Braer oil spill in Shetland, Scotland in 1993, and the Prestige oil spill in Spain in 2002. Negative health effects have been observed more frequently among cleanup workers with more prolonged

exposure to polluted areas, who have skin contact with oil, and who eat while in contact with oil.¹

In previous major oil spills, residents in the surrounding communities exposed to the oil suffered physical complaints similar to the cleanup workers, as well as significant incidence of mental health disorders. Following the Exxon Valdez disaster, community residents suffered elevated rates of anxiety disorder, post-traumatic stress disorder, and depression.²

Little is known about the long-term effects of oil spill exposures. Follow-up studies of cleanup workers involved with the Prestige oil spill in Spain found persistent respiratory symptoms one to two years following exposure. Several chemicals in the vapors related to crude oil have known carcinogenic potential, but it is not yet clear whether these exposures do, in fact, increase the rate of cancer.

The use of dispersants as part of the *Deepwater Horizon* response actions could potentially contribute to additional health risks.

II. SECTION-BY-SECTION DESCRIPTION OF THE “DEEPWATER HORIZON HEALTH RESPONSE ACT OF 2010”

Section 1. Short Title

This section would establish the “*Deepwater Horizon* Health Response Act of 2010” as the title.

Section 2. Identification and Monitoring of Adverse Health Effects Resulting From Deepwater Horizon Incident

The Centers for Disease Control and Prevention’s (CDC) Agency for Toxic Substances and Diseases Registries (ATSDR) has authority to establish exposure and health registries under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).³ However, CERCLA’s definition of “hazardous substance” excludes petroleum and natural gas.⁴

¹ Grist, *Oil Spills and Human Health: Lessons from History* (May 10, 2010) (online at www.grist.org/article/oil-spills-and-human-health-lessons-from-history/) (accessed June 11, 2010).

² *Id.*

³ The Superfund hazardous substance cleanup program was created by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, P.L. 96-510). It was enlarged and reauthorized by the Superfund Amendments and Reauthorization Act of 1986 (SARA, P.L. 99-499). CERCLA, as amended, is codified at 42 U.S.C. 9601-9675.

⁴ The scope of “hazardous substances” covered by CERCLA explicitly excludes multiple forms of both oil and natural gas: “The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through

Section 2 directs the Secretary of Health and Human Services to establish a national surveillance program to track the health of people affected by the Deepwater Horizon oil leak. It then gives the Secretary the authority to establish a voluntary registry of information on the exposures and health of people at risk to permit identification of any health problems and facilitate research. The Secretary may use the registry to (1) identify and monitor adverse health effects resulting from the oil leak; (2) support research on identification, diagnosis, prevention, or treatment of adverse health effects; and (3) facilitate the identification, diagnosis, prevention or treatment of adverse health effects. The bill also gives the Secretary the authority to establish registries if necessitated by any significant oil spill in the future.

With respect to any Deepwater Horizon oil leak health surveillance activities, the Secretary is required to coordinate activities and programs with state, local, and tribal entities. The Secretary is also required to consult with the Administrator of the Environmental Protection Agency, the Administrator of the Occupational Safety and Health Administration, and heads of other federal departments and agencies as appropriate. In establishing and conducting the registry, the Secretary also should, as appropriate, enter into contracts or agreements with governmental and nongovernmental entities, including universities and hospitals.

The \$21 million is authorized for the program in fiscal year 2011 and \$4 million is authorized each year thereafter through fiscal year 2015.

Section 3. Emergency Response for the Gulf States

Section 3 permits the Substance Abuse and Mental Health Services Administration to use up to 1% of its discretionary appropriations to support Gulf states in providing services to address mental health and substance abuse needs that have arisen as a result of the Deepwater Horizon oil leak. States may use the funds to offer outreach, crisis counseling, brief intervention, referrals and treatment.

Section 4. Administration of National Disaster Medical System

The Assistant Secretary for Preparedness and Response (ASPR) coordinates the Department's disaster response activities. ASPR's responsibilities include management of the National Disaster Medical System (NDMS), which supplements state and local health services when needed in a potential or current public health emergency. Under current law, ASPR cannot use a third-party contractor to process medical claims once NDMS is activated.⁵

(F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).” 42 U.S.C. 9601.

⁵ According to Federal Acquisition Regulations, the consideration of claims is an inherently governmental function, but it may be contracted out by explicit statutory language. Federal Acquisition Regulation (Subpart 7.5). https://www.acquisition.gov/far/html/Subpart%207_5.html

Section 4 allows ASPR to use third-party contractors to process claims when NDMS is activated.

Section 5. Grants in Public Health Emergency Situations

The Assistant Secretary for Preparedness and Response (ASPR) does not have grant making authority, even in public health and medical emergencies. Section 5 gives ASPR grant making authority to speed its ability to fund partners in potential public health emergencies.