

BP-OIL SPILL RELATED CRIMES, PLEAS & SETTLEMENTS

BP Exploration & Production, Inc., and its related entities, agreed to plead guilty to the following criminal violations resulting from the Deepwater Horizon Oil Spill:

- Eleven Felony Counts of Violations of 18 U.S.C. §1115 (Seaman Manslaughter), United States v. BP Exp. & Prod., Inc., No. 12-CR-292 (E.D. La. 11/15/12) (Vance, J.) (“Guilty Plea Agreement”);
- One felony count of violation of 18 U.S.C. §1505 (Obstruction of Congress), Id.;
- One misdemeanor count of a violation of 33 U.S.C. §§1319(c)(1)(A) & 1321(b)(3) (Clean Water Act), Id.;
- One misdemeanor count of a violation of 16 U.S.C. §§703 & 707(a) (Migratory Bird Treaty Act), Id.

In order to plead guilty, BP agreed to a set of facts to support the guilty plea. Known as a “Factual Allocation”, the document outlines the basis for BP’s guilt. BP plead to the following facts:

- “BP, as the designated operator . . . was ultimately responsible for conducting operations at Macondo in a way that ensured the safety and protection of personnel, equipment, natural resources, and the environment,” Factual Allocation, Exhibit “A”, Guilty Plea Agreement, at 14;
- “BP’s negligent conduct . . . was a proximate cause of the deaths of eleven men and pollution resulting from the Macondo Well blowout,” Id. at 15;
- “BP . . . engaged in neglect through which the following persons were destroyed: Jason Christopher Anderson; Aaron Dale Burkeen; Donald Neal Clark; Stephen Ray Curtis; Gordon Lewis Jones; Roy Wyatt Kemp; Karl Dale Kleppinger, Jr.; Keith Blair Manuel; Dewey Allen Revette; Shane Michael Roshto; and Adam Taylor Weise . . . ,” Id.;
- “On or about April 20, 2010, . . . BP did negligently discharge and cause to be discharged oil in connection with activities under the Outer Continental Shelf Lands Act and which may have affected natural resources belonging to, appertaining to, and under the exclusive management of the United States, in such quantities as may be harmful . . . ,” Id. at 15-16;

- “On or about May 24, 2010, . . . BP did corruptly . . . with an improper purpose endeavor to influence, obstruct, and impede the due and proper exercise of the power of inquiry under the which an inquiry and investigation was being had by a Committee of the united States House of Representatives into the amount of oil flowing from the Macondo Well (“flow rate”) through the following omissions and false and misleading statements in its May 24, 2010 response (“Markey Response”) to the Committee on Energy and Commerce: BP, through a former vice president, withheld information and documents relating to multiple flow-rate estimates prepared by BP engineers that showed flow rates far higher than 5,000 BOPD, including as high as 96,000 BOPD.” Id. at 16.

BP also plead guilty to lying to its shareholders for the same reason it plead guilty to lying to Congress – BP lied about the flow-rate. By lying about the flow-rate, BP lied to its shareholders concerning the value of the stock. As part of the guilty plea, BP agreed to pay \$525 million to the SEC to establish a fund to administer to injured shareholders. SEC v. BP, plc, No. 12-2774 (12/10/12) (“Judgment”) (Barbier, J.).

BP also administratively settled with the EPA to allow it to resume bidding operations with the Government. In re BP plc, EPA Case Nos. 12-0295-00, 12-0295-02, 12-0295-05, 12-0295-06, 12-0295-19 (03/13/14) (“Administrative Agreement”). While the Administrative Agreement did not include bases for the agreement itself, the obligations imposed upon BP center upon safety requirements and reporting. These terms are discussed below.

I. Criminal Penalties

BP agreed to the following sentences:

- A. Payment of criminal fines totaling \$1.256 billion as follows:
 - Seaman Manslaughter, the maximum statutory fine of \$500,000 per count, totaling \$5.5. million, Guilty Plea Agreement, § 4(b)(i)(A);
 - Clean Water Act, a total of \$1.15 billion to be paid to the Oil Spill Liability Trust Fund, Guilty Plea Agreement, § 4(b)(i)(B);
 - Migratory Bird Treaty Act, \$100 million to be paid to the North American Wetlands Conservation Fund, Guilty Plea Agreement, § 4(b)(i)(C); and
 - Obstruction of Congress, the maximum statutory fine of \$500,000, Guilty Plea Agreement, § 4(b)(i)(D).

- B. Pay \$350 million to the National Academy of Sciences for the purposes of oil spill prevention and response in the Gulf of Mexico, Guilty Plea Agreement, Exhibit “B”, No. 34);
- C. Pay \$2.394 billion to the National Fish and Wildlife Foundation, Guilty Plea Agreement, Exhibit “B”, No. 35;
- D. A statutory-maximum term of five years of probation, Guilty Plea Agreement, § 4(c);
- E. Hire an independent process safety monitor experienced in process safety and risk management and familiar with complex industrial operations such as deepwater oil and gas drilling, Guilty Plea Agreement, Exhibit “B”, No.1(a);
- F. Hire an independent ethics monitor familiar with the best practices of corporate codes of conduct, including implementation, training and enforcement, Guilty Plea Agreement, Exhibit “B”, No.1(b);
- G. Perform at least one Safety and Environmental Management System (“SEMS”) audit for every contracted drilling rig currently in BP’s fleet, Guilty Plea Agreement, Exhibit “B”, No.5;
- H. Conduct at least two SEMS audits during the remaining contract term for every contracted drilling rig currently in BP’s fleet with a remaining contract term of six years or more, Guilty Plea Agreement, Exhibit “B”, No.5.;
- I. Conduct one SEMS audit for each of its operated platforms, Guilty Plea Agreement, Exhibit “B”, No.7);
- J. Verify that all required and recommended testing and maintenance of the BOP is performed in accordance with manufacturer recommendations and API recommended practice, Guilty Plea Agreement, Exhibit “B”, No. 9;
- K. Maintain a real-time drilling operations monitoring center, Guilty Plea Agreement, Exhibit “B”, No.12;
- L. Train each Command Officer, Section Chiefs, and their Staff at least once a year and require their participation in at least one table top oil spill response exercise per year, Guilty Plea Agreement, Exhibit “B”, No.14;

- M. Maintain a crisis management organization, including two crisis management centers, consisting of at least six crisis management professionals to assist in oil spill response training and drills, Guilty Plea Agreement, Exhibit “B”, No.15;
- N. Conduct annual training with the Marine Well Containment Company, Guilty Plea Agreement, Exhibit “B”, No.16;
- O. Participate in industry oil spill response drills at least once per year, Guilty Plea Agreement, Exhibit “B”, No. 18;
- P. Create a public website that contains the following information: (1) lessons learned from the Deepwater Horizon incidence; (2) annual progress reports on tis compliance with the special terms of probation; (3) annual summaries of recordable safety incidents, says away from work, hydrocarbon spill and the volume thereof; and (4) an annual list of all incidents of noncompliance with regulations or probation, including corrective actions and penalties assessed, Guilty Plea Agreement, Exhibit “B”, No. 23;
- Q. Maintain a safety organization that has the authority to intervene or stop any operation that it deems unsafe, Guilty Plea Agreement, Exhibit “B”, No. 25; and
- R. Hire a third party auditor to review and report on BP’s compliance with the above listed terms, Guilty Plea Agreement, Exhibit “B”, No. 26.

II. Civil Settlement Agreement with the EPA.

On November 28, 2012, the Environmental Protection Agency Suspension and Debarment Official (“EPA SDO”) issued a Notice of Suspension to BP based, in part, on the criminal charges to which BP pled guilty. Administrative Agreement between BP and EPA, § III(C)(6) (“Administrative Agreement”).

On February 1, 2013, the EPA SDO issued a Notice of Statutory Disqualification to BP based on BP’s conviction for violating the Clean Water Act. Administrative Agreement, § III(C)(10).

In order to lift its suspension, BP settled with the EPA by agreeing to the following provisions:

- A. Comply in full with its previous terms and conditions of probation set in its Plea Agreement with the United States Department of Justice and its SEC Judgment Order, Administrative Agreement, § V(1) &(2);

- B. Provide the EPA Independent Auditor and EPA Authorized representatives with the reports of the Ethics Monitor and Process Safety Monitor, Administrative Agreement, § VI(1));
- C. Maintain a Code of Conduct to (1) Provide rules and/or guidance for compliance in areas such as Health & Safety, Security and the Environment, conflicts of interest, competition, trade restrictions, export controls, money laundering, and bribery and corruption; (2) Include or reference guidance to assist Employees in making proper decisions when faced with difficult situations involving Ethics or Compliance; (3) Specify that Employees are obligated to report discovery of any violations or potential violations of the Code or legal requirements; and (4) Include a zero tolerance statement against any form of retaliation against Employees or Contractors who raise good faith concerns regarding compliance, safety and/or ethics, Administrative Agreement, § VII (5)(A);
- D. Create policies and/or standards and control processes designed to prevent, detect and remediate unethical or illegal conduct including (1) maintaining a centrally organized, online register to record potential conflicts of interest; and (2) maintaining a centrally organized “gifts and entertainment” register to record receiving and giving of gifts and entertainment between itself and third parties, Administrative Agreement, § VII(6);
- E. Create a communication plan that promotes awareness of Ethics and Compliance Topics, including: communication activities to be undertaken ; the status of such activities; the channel of communications and the timing of such messaging and actions, Administrative Agreement, § VII(7);
- F. Create a centralized database to track Ethics and Compliance training, subject to review by the Ethics Monitor, Administrative Agreement, § VII(9);
- G. Create a program to allow Employees, Contractors or other third parties to raise concerns or seek guidance about Ethics & Compliance, Administrative Agreement, § VII(10); and
- H. Provide an evaluation of BP’s Ethics and Compliance programs by an outside consultant to the EPA Independent Auditor, the EPA Authorized Representatives and the Ethics Monitor, Administrative Agreement, § VII(16).