



December 4, 2012

Administrator Lisa P. Jackson
Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

Dear Administrator Jackson,

On behalf of our 300,000 members and supporters, and millions of Americans concerned about how our tax dollars are spent, we want to congratulate the EPA for exercising its contractor suspension authority against the criminal felon corporation, BP Plc. We were pleased that the suspension covered the entire corporate entity, not just isolated subsidiaries; and that the Department of Interior indicated that it would rely on the suspension determination and not permit BP to bid on new leasing contracts while the suspension remains in effect.

However, we are deeply disturbed by news reports indicating the temporary suspension announced by your agency on November 28 will be resolved in a matter of weeks. We are writing to urge you to debar BP, as the 14 criminal guilty pleas and past criminal history demonstrate BP to be a nonresponsible entity. This debarment should last through the company's five-year criminal probation period, and should include access to new government oil and natural gas leases, in addition to contracts.

Apparently, the theory behind a short suspension and a rapid finding that BP has remade itself into a responsible contractor is based on the company coming into compliance with the terms of its felony plea agreement with the Department of Justice, including the adoption of a risk management monitor and independent auditor.¹

We believe a short suspension would be a grave error, for three independent reasons that all point to the same conclusion: There is no way to deem BP a

¹ BP's probationary period requires BP to establish a "process safety and risk management monitor and an independent auditor, who will oversee BP's process safety, risk management and drilling equipment maintenance with respect to deepwater drilling in the Gulf of Mexico. BP is also required to retain an ethics monitor to improve BP's code of conduct for the purpose of seeking to ensure BP's future candor with the United States government." www.justice.gov/opa/pr/2012/November/12-ag-1369.html

responsible entity for purposes of obtaining federal contracts until it has proved such over a matter of years.

The law on debarment gives discretion to the government, but turns on the basic concept of whether a company can be considered to operate responsibly and in a trustworthy fashion. If evidence indicates that a company does not so operate, the government should not enter into contracts with it, not for punitive reasons so much as to protect the taxpayer interest. Under the law, EPA may debar a company for commission of an offense “indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor,” or for the offense of making of false statements or other deceptions implicating a company’s potential responsibility as a contractor.² This legal framework makes clear that BP should be debarred for a matter of years.

1. The BP Gulf Oil Disaster Evidenced Corporate Irresponsibility of Epic Proportions

The April 20, 2010, explosion of the Deepwater Horizon oil rig triggered what may well be the worst environmental disaster in U.S. history. Nearly 5 million barrels of oil gushed into the Gulf of Mexico over the course of 87 days. As a result of the explosion and spill, 11 workers were killed and 16 more were seriously injured, Gulf Coast states have sustained approximately \$40 billion in economic losses, a reported \$10 billion will be required to manage ongoing health problems, and thousands of birds, sea turtles, marine mammals and other aquatic life have been harmed or killed.

The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling cited failure of management and an industry culture that puts profits over safety as key causes of the explosion that tore through the Deepwater Horizon drilling rig on April 20, 2010. The commission concluded that the Macondo well blowout was preventable and its immediate causes could be traced to a series of identifiable mistakes made by BP and its contractors.

The Justice Department’s and the Securities and Exchange Commission’s investigations have reached similar conclusions. Assistant Attorney General Lanny A. Breuer of the Justice Department’s Criminal Division said, “The explosion of the rig was a disaster that resulted from BP’s culture of privileging profit over prudence.” Robert Khuzami, Director of the U.S. Securities and Exchange Commission’s (SEC) Division of Enforcement, noting BP’s attempts to hide the severity of the catastrophe, said, “Good corporate citizenship and responsible crisis management means that a company can’t hide critical information simply because it fears the backlash.”

² 48 CFR § 9.406-2(a)

The criminal guilty pleas entered by BP on November 15 for the company's role in the deaths of 11 people and the polluting of the Gulf of Mexico reveal the company to be a nonresponsible entity for purposes of obtaining contracts and securing drilling leases.

The Department of Justice believed BP's corporate practices to be so suspect, and its crimes so severe, that it required the company to serve a five-year criminal probation.³

Although BP obviously did not intend to create the Gulf disaster, that disaster cannot be considered an accident. The deaths of 11 men on BP's oil platform were a direct result of the company's willful actions and inactions. The poisoning of the Gulf waters with almost 5 million barrels of oil was a direct result of the company's willful actions and inactions.

We of course hope that this disaster will not be repeated, and that BP's claims to adopt a new safety culture will be proven true, and that the plea agreement monitoring mechanisms will succeed. But such aspirational objectives do not meaningfully offset a demonstrated record of irresponsibility that resulted in such horrifying damage.

2. BP Has a Long Record of Irresponsible Activity

Last month's guilty pleas are only the most recent in a long history of systemic criminal activity by BP:

- In October 2007, BP pleaded guilty to one misdemeanor of the Clean Water Act, and agreed to serve three years probation, pay \$4 million to the National Fish and Wildlife Foundation to support research and activities on the North Slope, pay \$4 million in restitution to the State of Alaska and a \$12 million fine for spilling 200,000 gallons of crude oil onto the Alaskan tundra in March 2006.⁴ In March 2009, the Department of Justice filed a civil lawsuit against BP for failing "to comply in a timely manner with a Corrective Action Order" involving this oil spill.⁵
- In October 2007, BP agreed to pay a \$50 million fine, pleaded guilty to a felony violation of the Clean Air Act and agreed to serve three years of probation for the Texas City refinery explosion.⁶ In February 2009, BP paid a \$12 million civil penalty for "noncompliance with a 2001 consent decree and Clean Air Act regulations requiring strict controls on benzene . . . generated

³ www.justice.gov/opa/pr/2012/November/12-ag-1369.html

⁴ <http://yosemite.epa.gov/opa/admpress.nsf/ab2d81eb088f4a7e85257359003f5339/1af659cf4ce8a7b88525737f005979be>

⁵ www.justice.gov/opa/pr/2009/March/09-enrd-287.html

⁶ <http://yosemite.epa.gov/opa/admpress.nsf/ab2d81eb088f4a7e85257359003f5339/1af659cf4ce8a7b88525737f005979be>

during petroleum refining” at BPs Texas City refinery.⁷ In September 2005, OSHA cited BP for 296 “Egregious Willful Violations” and other violations associated with the explosion, fining BP \$21.36 million and entering into a settlement agreement under which BP agreed to corrective actions to eliminate hazards similar to those that caused the explosion. In October 2009, OSHA determined that BP was in non-compliance with the settlement agreement, finding 270 “notifications of failure to abate” and 439 new willful violations, resulting in the \$87.43 million fine.⁸

- In October 2007, BP also was forced to pay \$303 million to settle allegations it manipulated the U.S. propane market.⁹
- Prior to the Deepwater Horizon incident, the company paid millions of dollars in fines for many other dozens of regulatory and legal violations.¹⁰

Debarment regulations emphasize the importance of whether contractors have committed other offenses that indicate a lack of business integrity or responsibility.¹¹ In BP’s case, the list of prior irresponsible actions is disturbingly long; indeed, one nonprofit organization estimates that, including Deepwater Horizon penalties, BP is the worst criminal offender among all government contractors.¹²

Of special importance in BP’s case is not only that it is a repeat offender, but that it has repeatedly violated the terms of its compliance and other agreements with the government. This both provides important direct evidence of the company’s lack of integrity and emphasizes how mistaken it would be to rely on compliance commitments made by BP in its recent plea agreement.

3. BP Has Pleaded Guilty to Obstruction of Congress

Under debarment guidelines, special attention is paid to crimes of perfidy,¹³ since they so centrally implicate a company’s ability to operate responsibly and for the government to rely on information provided by the contractor.

In this regard, it is of special note that BP’s recent plea agreement involves violation not just of environmental and shipping law, but obstruction of Congress. The plea

⁷ www.justice.gov/opa/pr/2009/February/09-enrd-140.html

⁸ http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=16674

⁹ <http://www.cftc.gov/PressRoom/PressReleases/pr5405-07>

¹⁰ www.energyvox.org/2010/05/05/cost-of-doing-business-bps-550-million-in-fines-2-criminal-convictions/

¹¹ 48 CFR § 9.406-2(a).

¹² <http://www.contractormisconduct.org/index.cfm/1,73,221,html?ContractorID=61&ranking=65>

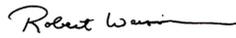
¹³ 48 CFR § 9.406-2(a)(1) (fraud), (a)(3) (“embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property”), (a)(5) (“any other offense indicating a lack of business integrity or business honesty”).

arrangement includes acknowledgement by BP that it “did corruptly, that is, with an improper purpose, endeavor to influence, obstruct, and impede the due and proper exercise of the power of inquiry under 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 (“the flow rate”) through ... omissions and false and misleading statements.”¹⁴

This was not a small matter or technical violation. The obstruction of Congress involved deceit by BP as to the scale of environmental harm occurring while oil continued to flow into the Gulf (BP falsely stated that it believed the rate to be 5,000 barrels per day, though its internal estimates showed rates far higher). A deceit from a top company official -- after the Macondo explosion and blowout had already occurred -- speaks directly to the inability of the government to trust BP as a responsible contractor.

Taxpayers place our trust in government officials to ensure that our money is entrusted to contractors that will abide by the highest standards. It is clear that, as a repeat criminal felon, BP no longer can be trusted to effectively serve as a contractor or as a federal leaseholder. Its promises to do better going forward are not a sufficient basis for finding that it is a responsible entity. After all BP has done, only a demonstrated record of responsible conduct over a period of years can satisfy that threshold.

Sincerely,



Robert Weissman, President



Tyson Slocum, Energy Program Director

Cc:

Richard A. Pelletier, EPA Debarring Official

¹⁴ <http://www.justice.gov/iso/opa/resources/43320121115143613990027.pdf> (exhibit A)