



March 20, 2013

Administrator Bob Perciasepe
Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

Dear Administrator Perciasepe,

We write to you today to provide additional information to the letter we submitted on December 4, 2012, in response to the EPA decision to exercise its contractor suspension authority against BP Plc, which has affiliated companies that pled guilty to criminal felonies.

Our original letter urges that the debarment of BP Plc. and its affiliates should last through the a five-year criminal probation period for BP Exploration and Production, Inc, and should include access to new government oil and natural gas leases, in addition to contracts.

The December 4 letter provides three reasons why the suspension should not be lifted before the BP affiliate has met the terms of its probation, and has demonstrated that it has corrected behavior that contributed to the Deepwater Horizon rig explosion for a period of no less than five years.

We believe that developments since we submitted our letter further bolster our argument that BP cannot be deemed a responsible entity for purposes of obtaining federal contracts until it has proved such over a matter of years.

We provide the following additional comments to support our conclusion:

- BP's defense strategy in the civil trial with the federal government implies that the corporation does not recognize the role of critical managerial failures that lead to the Deepwater Horizon rig explosion;
- A new lawsuit filed against BP affiliates by the California Attorney General's office suggests that BP continues to make operational decisions that prioritize profit over safety; and
- The obstruction of an investigation into why BP knowingly provided Congress with inaccurate and incomplete information about the rate of oil spilling into the Gulf of Mexico reveals that BP is still an untrustworthy contract partner.

The additional comments are discussed in more detail and have been incorporated into our 3 core arguments:

1. The BP Gulf Oil Disaster Evidenced Corporate Irresponsibility

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 injured, 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 as a key cause 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."¹ 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

The criminal guilty plea entered by a BP plc affiliated company 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 civil trial between BP and the federal government commenced on February 25. The initial phase of these proceeds before U.S. District Judge Carl Barbier is to determine what caused the blowout and determine responsibility for the disaster. BP's defense strategy is apparently to deflect responsibility by pointing a finger at its key contractors Transocean Ltd. (rig owner) and Halliburton (well cementer).

The corporation cannot correct managerial and operational issues – mandated by the terms of its probation – if it does not recognize that the issues exist.

2. BP Has a Long Record of Irresponsible Activity

The November 2012 guilty plea is only the most recent in a long history of systemic criminal and other unlawful activity by BP affiliates:

¹ www.justice.gov/opa/pr/2012/November/12-ag-1369.html

² www.sec.gov/news/press/2012/2012-231.htm

- In October 2007, a BP plc affiliated company 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 2006.³
- In October 2007, a BP plc affiliated company 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.⁴ In February 2009, BP agreed to pay a \$12 million civil penalty for “noncompliance with a 2001 consent decree and Clean Air Act regulations requiring strict controls on benzene . . . generated during petroleum refining” at BPs Texas City refinery.⁵ In September 2005, OSHA fined BP \$21 million and entered into a settlement agreement under which BP agreed to corrective actions to eliminate hazards similar to those that caused the explosion.⁶ In October 2009, OSHA determined that a BP plc affiliated company 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.⁷
- In October 2007, a BP plc affiliated company agreed to pay \$303 million to settle allegations it manipulated the U.S. propane market.⁸
- Prior to the Deepwater Horizon incident, BP plc and affiliates paid millions of dollars in fines for many other regulatory and legal violations.⁹
- In February 2013, the California Attorney General’s office filed a lawsuit against BP West Coast Products, BP Products North America and Atlantic Richfield Co., in Alameda County Court, claiming that since October 2006, BP has “tampered with or disabled leak detection devices, and failed to test secondary containment systems, conduct monthly inspections, train employees in proper protocol, and maintain operational alarm systems, among other violations.” The office found that BP violated hazards laws at gas stations in 37 counties in California.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.

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 the recent plea agreement.

³<http://yosemite.epa.gov/opa/admpress.nsf/ab2d81eb088f4a7e85257359003f5339/1af659cf4ce8a7b88525737f005979be>

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

⁵ www.justice.gov/opa/pr/2009/February/09-enrd-140.html

⁶ www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=11589

⁷ www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=16674

⁸ www.cftc.gov/PressRoom/PressReleases/pr5405-07

⁹ www.energyvox.org/2010/05/05/cost-of-doing-business-bps-550-million-in-fines-2-criminal-convictions/

¹⁰ <http://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-sues-bp-and-arco-over-environmental-violations>

¹¹ 48 CFR § 9.406-2(a).

3. A BP Affiliate Has Pleaded Guilty to Obstruction of Congress

Under debarment guidelines, special attention is paid to crimes of perfidy,¹² 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 Exploration and Production, Inc.'s recent plea agreement involves violation not just of environmental and shipping law, but obstruction of Congress. The plea 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 ("flow rate") through ... omissions and false and misleading statements."¹³

This was not a small matter or technical violation. The obstruction of Congress involved deceit by the BP affiliated company 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 affiliated companies as responsible contractors.

On February 20, Representative Edward Markey submitted a letter¹⁴ to the EPA urging the agency to not lift the debarment once the civil suit between BP and the federal government has been resolved because BP has yet to provide Congress with documentation it requested in the spring and summer of 2010. Representative Markey also sent a letter to BP CEO Robert Dudley last month requesting again that "BP produce to Congress all documents related to the spill and provide a full accounting of how and why BP's responses to Congress' investigation were flawed and when BP became aware that all documents had not been given to Congress."¹⁵

Not only did the BP affiliate knowingly mislead Congress about the scale of the spill in the Gulf of Mexico, but BP has continued to obstruct a Congressional investigation of the spill for the past 3 years. BP's inability or refusal to respond to direct request by Congress provides further evidence that the corporation is not in compliance with standards that determine a corporate entity eligible for federal contracts.

¹² 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").

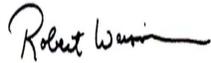
¹³ www.justice.gov/iso/opa/resources/43320121115143613990027.pdf (exhibit A)

¹⁴ http://democrats.naturalresources.house.gov/sites/democrats.naturalresources.house.gov/files/documents/2013-02-20_EPA_BP.pdf

¹⁵ http://democrats.naturalresources.house.gov/sites/democrats.naturalresources.house.gov/files/documents/2013-02-20_Markey_BP_.pdf

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 the lengthy track record of repeat criminal violations by various BP plc affiliates means that BP can no longer be trusted to effectively serve as a contractor or as a federal leaseholder. The company's 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,

A handwritten signature in black ink, appearing to read "Robert Weissman".

Robert Weissman, President

A handwritten signature in black ink, appearing to read "Tyson Slocum".

Tyson Slocum, Energy Program Director

Cc: Richard A. Pelletier, EPA Debarring Official