

BP OIL SLICK THE RESULT OF REPUBLICAN DOJ AND REGULATORY POLICY

The economic and environmental damage resulting from the exploding fireball compromise of the Deepwater Horizon oil platform may be unprecedented, with the potential to emit the equivalent of up to four Exxon Valdez breakups per week with no good plan to stop it. There will be plenty of finger pointing among BP, Transocean and Halliburton, while it appears the bought and paid for corporatist Congress put the screws to the individual citizens and small businesses by drastically limiting their potential for economic recovery; all in the course of insuring big oil producers like BP have effectively no damage liability for such losses.

How did this happen? There are, of course, a lot of pertinent factors but, by far, the one constant theme underlying all is the mendacious corporate servitude of the Republican party, their leaders and policies. The arrogance and recklessness of BP and its oily partners gestated wildly under the Bush/Cheney administration.

Until the turn of the decade, BP had a relatively decent safety and environmental record compared to others similarly situated. Then BP merged with American oil giant Amoco and started plying the soft regulated underbelly of Republican rule in the US under oil men George Bush and Dick Cheney. Here from the Project On Government Oversight (POGO) is an excellent list of BP misconduct, almost all occurring and/or whitewashed under the Bush/Cheney Administration. If you open the door, foxes eat the chickens.

But it is not just regulatory policy behind the

open and notorious recklessness of BP and its ilk, it is intentional policy at the Department of Justice as well. Here is how the former Special Agent In Charge for the EPA Criminal Investigative Division, Scott West, described the DOJ coddling of BP under the Bush/Cheney Administration:

In March 2006, a major pipeline leak went undetected for days, spilling a quarter-million gallons of oil on the Alaskan tundra. The spill occurred because the pipeline operator, British Petroleum (BP), ignored its own workers warnings by neglecting critical maintenance to cut costs. The spill sparked congressional hearings and a large federal-state investigation. Despite the outcry, in a settlement announced in late October 2007, BP agreed to one misdemeanor charge carrying three-year probation and a total of only \$20 million in penalties (a \$12 million fine with \$8 million in restitution and compensatory payments).

The settlement resulted from a sudden U.S. Justice Department August 2007 decision to wrap up the case, according to West. That precipitous shutdown meant

Felony charges would not be pursued and the agreement foreclosed any future prosecutions. No BP executive faced any criminal liability for a spill second in size only to the Exxon Valdez;

The fines proposed by Justice (to which BP immediately agreed) were only a fraction of what was legally required under the Alternative Fines Act. EPA had calculated the appropriate fine levels as several times what Justice offered BP – ranging from \$58 million to \$672

million, depending upon the economic assumptions; and

The BP Alaska settlement is part of a pattern of “lowball” corporate public safety and pollution settlements engineered by the Bush Justice Department. In that October 2007 settlement package, Justice asked for only \$50 million in fines for the BP Texas refinery explosion in which 15 people died – penalties not carrying strong deterrent value for a big multi-national corporation

The above is verbatim from a formal complaint filed with the Inspector General of the DOJ, Glen Fine, by West and a group known as Public Employees for Environmental Responsibility (PEER). The complaint went on to quote West as follows:

Never ...have I had a significant environmental criminal case shut down by the political arm of the Department of Justice, nor have I had a case declined by the Department of Justice before I had been fully able to investigate the case. This is unprecedented in my experience.

When a chief agency criminal investigator cannot get traction for the prosecution of crimes, and considers the internal DOJ policy to be complicit, you might have a problem. It appears, however, the complaint went nowhere, which is not IG Glen Fine’s fault as, once again, DOJ accountability has been prevented by the fact that, unique to executive agencies, the DOJ IG has no jurisdiction over the conduct of the attorneys in the DOJ and goodness knows neither OPR nor David Margolis would countenance such an investigation.

By the way, since I have not seen anybody else mention it, much less the Obama/Holder DOJ appear to care, it should be pointed out that BP, despite the bend over sweetheart comprehensive deal the Bush DOJ worked out for them, is *still* on at least two different criminal probations for their malevolent reckless and intentional conduct. One case was for the Alaska spill and BP was placed on criminal probation for three years starting in December 2007. The other case was a felony plea resulting from the Texas City Refinery explosion. Here is the plea agreement from the Texas City Refinery case and here is the concurrent statement of facts in support thereof.

As special Agent Scott West complained, they were indeed sweetheart deals cut in a comprehensive settlement swath by the Bush DOJ; nevertheless there are still multiple criminal probations BP is still operating under. Where is the DOJ on this now? Contemplating a third strike, repeat offender takedown of BP? No, there has been nary a peep in this regard from the Obama/Holder DOJ. In fact, the only lawyers DOJ has indicated they are assigning the BP Deepwater Horizon catastrophe are Civil Division and Natural Resource Division talking heads Tony West and Ignacia Moreno. Nope, par for the course, the DOJ is sending managers to smooth the waters, not prosecutors and investigators to bring accountability.

The DOJ under the politicized Republican rule of Bush and Cheney instituted a preference for coddling corporate malfeasants like BP and Exxon with lax civil measures instead of punitive criminal prosecutions and, in the process, created a get rich windfall program for their friends to serve as "monitors" for the civil settlements. The policy was begun when Bush first took office and was formally instituted as DOJ policy by Bush/Cheney water carrier Paul McNulty in 2006. From an April 2008 New York Times article by Eric Lichtblau:

In a major shift of policy, the Justice Department, once known for taking down giant corporations, including the accounting firm Arthur Andersen, has put off prosecuting more than 50 companies suspected of wrongdoing over the last three years.

Instead, many companies, from boutique outfits to immense corporations like American Express, have avoided the cost and stigma of defending themselves against criminal charges with a so-called deferred prosecution agreement, which allows the government to collect fines and appoint an outside monitor to impose internal reforms without going through a trial. In many cases, the name of the monitor and the details of the agreement are kept secret.

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But critics of the agreements question that assertion. Charles Intrigo, a former federal prosecutor in Miami who specializes in money-laundering issues, said that huge penalties, like the \$65 million fine for American Express Bank International in 2007, were “peanuts” compared with the damage posed by a criminal conviction.

Neutering the criminal deterrent of the DOJ criminal process for big business and corporate interests, and gutting of regulatory agencies, is the Republican ethos. It is what they live for, and what gets us where we are with catastrophes like the Gulf oil slick. A guest poster at Digby, Debcoop, hit the nail on the head:

The fault lies with the ideology and mores of the Republican party and its theory of government. Their solution to this country's energy's future is to drill anywhere and everywhere. In their theory of government, government has no right to control who, what, where and

how the natural resources of this country or this planet are exploited or not exploited, resources that are needed by us all and are needed to protect us all. Like my friend Jim Gilliam said in a private email, government is supposed regulate corporate behavior not just be their willing partner/follower. This is a lesson that we all need to keep in mind and that includes the president.

In the Republican theory of government, government regulation is inherently evil or at least counterproductive. So under George Bush et al, the only regulation in the Gulf has been self regulation. This oil spill is the fault of Republican ideology.

It is who the Republicans are, and what they do. And when they cannot accomplish their goals by legislating in service to corporate masters, they pack the Supreme Court with corporatist ideologues like Roberts, Alito and Thomas. The result is directly displayed by the 2008 decision in *Exxon Shipping Co. v. Baker*:

...a nakedly activist decision that pulls its standard for limiting damages out of thin air, demonstrates hostility to the role of Congress, and continues a pattern of ignoring the Framers' views on the importance of civil juries. Progressives would do well to treat this decision with resounding scorn, and highlight it as a textbook example of why the Supreme Court matters.

The case arose from the 1989 Exxon Valdez spill, wherein Exxon allowed Joseph Hazelwood, a relapsed alcoholic, drunk at the time, to the helm of a massive oil tanker navigating the treacherous waters of Alaska's Prince William Sound at night. The ship ran into a reef, ruptured and spilled 11 million gallons of crude oil,

devastating the Sound's fragile and pristine ecosystem. Grant Baker is one of 32,000 commercial fishermen and Alaska Natives that sued Exxon for their economic losses and for punitive damages against Exxon.

More than 6,000 of these victims have died during the course of this litigation, which Exxon has tenaciously prolonged for 16 years with appeal after appeal. In 2006, the Ninth Circuit Court of Appeals cut what was originally a \$5 billion jury verdict down to \$2.5 billion. Today, the Court cut this again for Exxon to a maximum of \$500 million.

It is not just the Republicans however, Democrats have become the same kind of servile lackeys for big corporate interests as the Republicans. The Obama DOJ has continued the Bush/Cheney/McNulty policy of coddling corporate criminals with civil treatment as opposed to hard criminal prosecution and conviction of both corporations and their leaders. And if Barack Obama follows through with his imposterous determination to appoint a "moderate consensus builder" like Elena Kagan to replace John Paul Stevens, you can expect even more corporatist decisions from the Supreme Court.

Business/government symbiotic corporatism is becoming the defining characteristic of our government; the United States is on the road to neo-feudalism in a land run by the New Robber Barons. The oil slick in the Gulf can either be a wake up call, or grease for a further slide down the current slope.

UPDATE: Jason Leopold has a new article up at Truthout that meshes perfectly with this post. As I noted above, BP was on criminal probation for the Texas City Refinery fire; Jason follows up with the literally dirty details of just how repetitively and badly BP has wantonly violated said probation:

"It was the most comprehensive and detailed investigation the CSB has ever done," Bresland said March 24, marking the fifth anniversary of the refinery explosion. "Our investigation team turned up extensive evidence showing a catastrophe waiting to happen. That cost-cutting had affected safety programs and critical maintenance; production pressures resulted in costly mistakes made by workers likely fatigued by working long hours; internal audits and safety studies brought problems to the attention of BP's board in London, but they were not sufficiently acted upon. Yet the company was proud of its record on personnel safety." According to OSHA, BP has not only failed to comply with the terms of its settlement agreement, it has knowingly committed hundreds of new violations that continue to endanger the lives of its refinery workers. Still, as highlighted in a January 2007 report issued by a panel chaired by former Secretary of State James Baker III, systemic issues related to process safety were not limited to the firm's Texas City refinery. In fact, they were widespread.

Leopold's article is a good read and gives a good bead on the reckless operating philosophy of BP which gestated under the lax regulatory and prosecutorial Republican regime of Bush/Cheney as discussed in the body of this post above.