

BP CRIMINALS IN THE GULF

✖ The major media and rest of the country are catching on to what should have been patently obvious from the start, i.e. the discharge from the BP Deepwater Horizon catastrophe in the Mississippi Canyon offshore oilfield in the Gulf of Mexico is many factors larger than was being disclosed by either the relentlessly dishonest BP or the US government partnering with them in the disaster response. But while the public attention has been focused on the Top Kill well closure attempt and the mind numbing spill cam BP was finally forced to “allow” the public to see, hearings have been proceeding in not only Congress as covered by Emptywheel (see [here](#) and [here](#)), but also in Kenner Louisiana in front of a joint Coast Guard/MMS Federal inquiry board.

There have been startling revelations, especially out of the Kenner joint inquiry. The New Orleans Times Picayune is once again on a path to a Pulitzer for their disaster coverage and has given comprehensive coverage from Kenner and The Hill in Washington. Here are some items from the evidence set being adduced in Kenner and Congress:

The failed blowout preventer on the Deepwater Horizon oil rig had a hydraulic leak and a dead battery in one of its control pods, and testing in the hours before an April 20 explosion revealed that pressure in the well was dangerously out of whack.

While some data were being transmitted to shore for safekeeping right up until the April 20 blast, officials from Transocean, the rig owner, told Congress that the last seven hours of its data are missing and that all written logs were lost in the explosion.

Heavy drilling fluid was unconscionably replaced with lighter seawater against industry standards just prior to the blowout. Over heated objections by experts on the scene, BP management supervisors overruled drillers, and insisted on displacing the mud with seawater

The broken blow out preventer had not been inspected in over five years.

BP was in a severe economic and time crunch to finish the job quickly and were over six weeks behind schedule.

Immediately leading up to the explosion, BP used procedures that violated their own drill plan; and in spite of indications of a "very large abnormality," kept testing until they got something they could disingenuously claim fulfilled the test.

BP management supervisors refused to run the comprehensive cement bond log test, a definitive test of the integrity of a well's cement mandated by Federal Regulations if there are concerns with the results of negative and positive pressure tests like were clearly present.

The BP management official on Deepwater Horizon making the unconscionable decisions, over the vehement objections of seasoned drilling experts, Robert Kaluzza has refused to testify by invoking his 5th Amendment criminal right against self incrimination.

BP officials aboard the rig wanted to skip required pressure tests and tried to impose a drilling plan sent directly from BP's Houston headquarters that had not been approved, as required, by the federal government's Minerals Management Service.

As a direct and proximate result of the above described reckless, wanton, willful, and grossly negligent conduct, eleven men are dead and the biggest environmental disaster in history has been unleashed on the fragile and critical Gulf of Mexico, threatening the lives and livelihoods of untold numbers of American families. Some of the toxic death foisted upon the environment cannot even be seen because it lurks in deep giant underwater plumes miles wide by miles long.

The applicable criminal provisions of the Clean Water Act are set out in 33 USC 1319, which in pertinent part provide:

(c) Criminal penalties

(1) Negligent violations

Any person who—

(A) negligently violates section 1311, 1312, 1316, 1317, 1318, 1321 (b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342 (a)(3) or 1342 (b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State; or

shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or by both.

(2) Knowing violations

Any person who—

(A) knowingly violates section 1311, 1312, 1316, 1317, 1318, 1321 (b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342 (a)(3) or 1342 (b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State;

shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or by both.

(3) Knowing endangerment

(A) General rule

Any person who knowingly violates section 1311, 1312, 1313, 1316, 1317, 1318, 1321 (b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this

subparagraph, be subject to a fine of not more than \$1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

(B) Additional provisions

For the purpose of subparagraph (A) of this paragraph—

(i) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury—

(I) the person is responsible only for actual awareness or actual belief that he possessed; and

(II) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

(ii) it is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(I) an occupation, a business, or a profession; or

(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent; and such defense may be established

under this subparagraph by a preponderance of the evidence;

(iii) the term "organization" means a legal entity, other than a government,

established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and

(iv) the term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

The Federal criminal provisions for negligent and reckless homicide (statutorily known as manslaughter) are contained in 18 USC 1112 and specify:

(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

Voluntary—Upon a sudden quarrel or heat of passion.

Involuntary—In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of voluntary manslaughter, shall be fined under this title or imprisoned not more than 15 years, or both;

Whoever is guilty of involuntary manslaughter, shall be fined under this title or imprisoned not more than 8 years, or both.

It is hard, if not impossible, to find any way

that the conduct of both BP and its key decision making officials responsible for the Deepwater Horizon catastrophe, and corresponding mass loss of life, do not fit within the ambit of the above crimes. Why has the Obama Administration and its DOJ not acted? Why is there not a dedicated criminal investigation open and securing critical evidence?

As best as can be ascertained, the only real DOJ Main assets sent to the Gulf scene are Tony West and Ignacia Moreno, the talking heads for the Civil Division and Environmental Divisions respectively, a tasking that screams of a total coddle the petroleum industry and manage the fallout move, not a get tough criminal consideration.

The DOJ could also be using the Texas Refinery Fire probation case that BP is still under the court's jurisdiction for from their 2007 felony conviction as an easy investigatory and prosecutorial tool; but the DOJ will not even address the thought, much less act on it.

Why?

The Obama Administration and its DOJ owes the citizens a better effort than they have mustered to date. It is funny they are out trying to prosecute Guantanamo defense attorneys for doing their jobs and are still hell bent to persecute inconsequential marijuana crimes, but have no burning desire to go hard after BP, the biggest environmental criminal in history. How can that be?

UPDATE: I have two things to add. First, is an article just was put up by Jason Leopold at Truthout which dovetails perfectly with this post. It is dead on point with the subject of this post and relates multiple former senior EPA criminal and debarment authorities asking the same questions about focus as are raised in this post; a must read.

Secondly, as I described above, 33 USC 1319 contains the criminal provision of the Clean Water Act. Specifically, 33 USC 1319(c)(1)(A)

and 1319(c)(2)(A), through their reference to multiple other provisions, but most notably 33 USC 1312, make the toxic contamination of navigable waterways and wetlands a crime. For an idea of just what contamination of wetlands we are dealing with here, check out this chilling overflight video and post by the National Wildlife Federation. This is criminal in multiple senses of the term.

[Graphic – BP: Broken Promises. Logo design by Foye 2010 submitted as part of the Art For Change BP Logo Redesign Contest and used with permission]