Court rules BP acted with “gross negligence” in 2010 Gulf of Mexico oil spill

By Tom Hall
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Federal judge Carl Barbier ruled last Thursday that oil giant BP acted with “gross negligence” during the 2010 Deepwater Horizon disaster. The ruling, part of a civil suit case involving the federal government and five US states bordering the Gulf of Mexico, could potentially quadruple the fines the company faces under the Clean Water Act.

Under the federal Clean Water Act, “simple” negligence carries a maximum penalty of $1,100 per barrel; gross negligence carries a $4,300 per barrel maximum fine. Using the official government estimate of 4.2 million barrels of spilled oil BP could be liable for up to $18 billion in penalties.

The ruling passed Thursday is an important factor in determining financial penalties when the third and final phase of the trial begins, currently scheduled for next January. The lawsuit progressed through the first two trial phases in April and October of last year. Barbier has yet to decide on the amount of oil released in the spill. BP disputes the official government estimate, preferring instead the much lower figure of 2.45 million barrels.

In his decision, Barbier also apportioned BP 67 percent of the blame for the disaster. Swiss-based Transocean, Ltd, which owned and operated the Deepwater Horizon rig, was apportioned 30 percent. Haliburton, the cement contractor for the rig, was apportioned 3 percent. The latter two firms were also found to have acted with simple negligence.

Barbier also decided that under the jurisprudence of the US 5th Circuit Court of Appeals, which covers district courts from Louisiana, Mississippi, and Texas, BP is not liable for punitive damages. Barbier’s decision also only holds two BP subsidiaries, BP Exploration and Production and BP America Production Company, liable for penalties; BP plc., the publicly-traded parent company, was exempted.

BP immediately announced its intention to appeal the ruling, telling the press, “An impartial view of the record does not support the erroneous conclusion reached by the District Court.” The energy conglomerate intends to tie up the ruling in court and eventually see a reduction in fines.

The Deepwater Horizon disaster, which began in April 2010 with an explosion aboard the rig and continued throughout the summer, was the worst environmental disaster in American history. In addition to claiming the lives of 11 workers, it released a record amount of oil into the Gulf of Mexico, resulting in an enormous oil slick visible from space and affecting wildlife in an area of 68,000 square miles (180,000 km2). Oil in the form of viscous tarballs continued to wash ashore for years after the disaster, killing plants which play a vital role in holding soil together in low-lying Louisiana marshes, and accelerating the process of coastal erosion.

The fishing industry was deeply affected by the spill. Oyster production in Louisiana, which typically accounts for one third of all oyster production nationwide, dropped by half in 2010. Four years later, the oyster population in the Gulf of Mexico has yet to rebound, and continues to suffer lower birth rates and higher mortality rates than before the spill.

Louisiana fishermen, who suddenly found themselves without livelihoods after the oil spill, took jobs with BP during the cleanup effort. There they were exposed to highly toxic chemical dispersants, which sent dozens of workers to the hospital with respiratory ailments. The widespread use of chemical dispersants was itself a purely cosmetic solution, aimed above all at preventing the public embarrassment of oil visibly washing ashore and floating around in the Gulf, and actually increased the exposure of marine life to the oil spill.

From the beginning, the Obama administration did everything in its power to shield BP from financial liability. The Department of Interior's Mineral Management Service actually exempted BP from producing an environmental impact study before drilling with the Deepwater Horizon rig in 2009. During the disaster, the Obama administration continuously worked to frustrate attempts to uncover the extent of the spill, treating as good coin the low ball estimates produced by BP. The company was not only allowed to remain in charge of the cleanup effort, but the National Guard was deployed to effectively act as the company's private security.

Obama then announced the creation of the Gulf Coast Claims Facility (GCCF) aimed at capping BP's liabilities and shielding it from lawsuits from Gulf Coast residents who had been ruined by the spill. Administered by Kenneth Feinberg, infamous for his role in reaching miserly settlements with victims of Agent Orange and relatives of 9/11 victims, as well as his prior relationship with the Obama administration as the "pay czar" after the 2008 financial crisis, the GCCF pressured claimants into accepting paltry, but immediate payments in exchange for waiving their right to sue BP.

In the ongoing litigation process, BP has tried as hard as possible to exculpate itself from financial responsibility for the disaster. In 2012, BP pled guilty to 14 criminal charges, including 11 counts of manslaughter for the workers killed by the initial explosion and one count of lying to Congress, and paid a paltry $4 billion dollar fine. No executive spent a single day in jail as part of the settlement.

Last year, the company unsuccessfully asked Barbier to throw out a settlement they had previously reached with residents affected by the oil spill. BP will likely use the complexities of the current civil suit to attempt to reach a similar settlement to the criminal case.

BP officials consider the expenses involved in the Deepwater Horizon disaster as a one-off deduction, and essentially cost of doing business. Although they have sold billions of dollars' worth of assets to help pay for expenses stemming from the case, BP's profits have already begun to rebound, increasing in the second quarter by 36 percent compared to last year, to $3.49 billion, beating analysts' forecasts. Even if BP is penalized the maximum figure of $18 billion, it would still be less than a single year's worth of profits for the oil giant, which recorded more than $23 billion in profits last year.

The federal government is also eager to bring BP back into the fold in the Gulf of Mexico. Earlier this year, the EPA ban on BP acquiring new tracts in the Gulf of Mexico was lifted to fanfare in the business press.