



NATIONAL WILDLIFE FEDERATION®

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October 10, 2012

Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder;

I'm deeply concerned by recent media reports that BP continues to shirk responsibility for causing the largest environmental disaster this country has seen. If the reports are true, BP is proposing to settle for less than half of what it could face at trial under existing federal law. This would be an unacceptable and unjust result for the American people. For 87 days, millions of barrels of Louisiana sweet crude oil gushed into one of the most productive ecosystems in the world: the Gulf of Mexico. Though the well has been plugged for over two years, oil continues to coat wetlands and beaches, and it will take decades to discover the insidious long-term effects on the ecosystem.

In the wake of other environmental disasters, Congress enacted federal laws aimed at compensating the public for the harm caused by unreasonably risky shortcuts. These measures seek to both compensate for actual damage to natural resources and to deter future violations. If the reports are true, BP has proposed a settlement offer that does not begin to do either. Allowing BP to escape the consequences of its bad actions would be an injustice to people of the Gulf region and the many others who depend on this ecosystem.

According to the Oil Pollution Act (OPA), a responsible party is liable for actual damages and clean-up costs. This includes harm to natural resources and the loss of services that healthy ecosystems provide to the public. The science is still underway to assess the extent of the environmental damage caused by the spill, and the National Wildlife Federation does not have access to all of the scientific data already collected. However, amounts paid in similar oil discharges suggest the potential scope of OPA liability. For example, following the 1989 grounding of the Exxon Valdez tanker in Prince William Sound, Exxon paid the equivalent of \$152 per gallon in 2012 dollars after accounting for inflation. Approximately 206 million gallons were released in the Deepwater Horizon oil disaster. If BP and the U.S. government were to settle for a similar per-gallon amount, the compensatory restoration amount alone would be over \$31 billion.

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In addition to compensating the public for damage to natural resources, a responsible party faces civil and criminal penalties to deter the type of misconduct that led to the illegal discharge in the first place. BP faces penalties under the Marine Mammal Protection Act, the Migratory Bird Treaty Act, the Endangered Species Act, and the Outer Continental Shelf Lands Act based on the environmental impacts and the level of misconduct associated with the discharge. These fines could be in the hundreds of millions of dollars. BP also faces substantial penalties for violating the Clean Water Act (CWA). The legislative history reflects that it was the intent of Congress for the Act to be given broad interpretation to protect and restore America's waters.

As a result, the Act contains severe penalties for violations. Under the law, if the discharge was the result of negligence, BP faces penalties of \$1100 per barrel of oil spilled. Recent pleadings by your agency suggest there is evidence that BP's actions actually constitute gross negligence, which would increase those fines to \$4300 per barrel. The best estimates are that 4.9 million barrels of Macondo oil were released from the well, and at that rate, BP would be liable for \$21 billion in Clean Water Act civil fines. BP also faces millions of dollars of fines for the discharge of methane gas from the well. The Clean Water Act's criminal provisions could give rise to billions of dollars of additional liability.

The natural resource damage caused by BP is enormous, and long-term research and monitoring will be necessary in order to know just how far-reaching these impacts will be. Oil continues to wash ashore. There are already indications that there are environmental impacts far from the location of the spill. One study found residue from the Deepwater Horizon disaster inside the eggs of White Pelicans in Minnesota. The full extent of the harm can take years to manifest. For example, it took years after the Exxon Valdez disaster for the herring population to crash, and in over 30 years since, it still has not recovered.

Offshore drilling in deep waters continues, and is expected to move into deeper and more dangerous waters. If BP is allowed to avoid the civil and criminal fines it is responsible for, the federal government will have failed to achieve justice for injured parties and it will have failed to deter future recklessness that puts our environment at risk.

In summary, any settlement of the Deepwater Horizon litigation must take into account both the letter and intent of our environmental laws; the extent of the recklessness of the defendants; and the extent of the damage they caused. To accept anything less would shortchange the many communities that rely on a healthy Gulf ecosystem.

Thank you in advance for your consideration. If you or your staff have any questions or would like to discuss this further, please contact John Kostyack, Vice President of Wildlife Conservation at (202)797-6879.

Sincerely,

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A handwritten signature in black ink, appearing to read 'Larry Schweiger', with a long horizontal flourish extending to the right.

Larry Schweiger
President and CEO
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