Internal documents reveal criminal negligence

Obama administration's "escrow" account will shelter BP

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As more evidence comes to light showing that BP disregarded basic safety considerations at its Deepwater Horizon drill site, it has become clear that the Obama administration's move to create an escrow account to compensate victims is a maneuver to shield the corporation and its top shareholders.

According to law, there is potentially no cap to liability for damages if criminal negligence can be proven. A mountain of evidence proves this is in fact the case. This includes internal BP documents and memos released by the House Energy and Commerce Committee this week. Written in the days before the explosion, the documents reveal that the company knowingly disregarded concerns over safety in the rig's drill capping operations. The rig exploded on April 20, killing 11 workers and creating one of the worst environmental catastrophes in history.

"We found a pattern," concluded committee chair Rep. Henry Waxman (Democrat, California) in an accompanying letter. "Every time [BP] had a decision to make they decided to cut corners; to do things faster than they otherwise should have been done; to do it less expensively and the consequence of this, as one independent expert told us, was horribly negligent. They violated what their own employees were recommending they do, they violated their own industry practices and they ignored the recommendation of contractors who told them to do certain tests to avoid safety concerns."

BP made at least five dangerous cost-cutting decisions in the days and hours before the explosion, the committee found. "Time after time, it appears that BP made decisions that increased the risk of a blowout to save the company time or expense," the letter to Hayward stated. "If this is what happened, BP's carelessness and complacency have inflicted a heavy toll on the Gulf, its inhabitants, and the workers on the rig."

Among other negligent acts, BP chose to use a well tubing design that left few barriers against the eruption of gas. This was despite an internal review prepared in mid-April which warned that such a design would leave the seal assembly on the wellhead as the "only barrier" in the event of cement failure—and even though an internal BP study had predicted cement failure. "Cement simulations indicate it is unlikely to be a successful cement job due to formation breakdown," BP wrote days before the blast.

"Despite this warning...BP did not run a 9- to 12-hour procedure called a cement bond log to assess the integrity of the cement seal" or bond log, the House Committee commented. "BP had a crew from [contractor] Schlumberger on the rig on the morning of April 20 for the purpose of running a cement bond log, but they departed after BP told them their services were not needed. An independent expert consulted by the Committee called this decision 'horribly negligent.'"

More damning revelations emerged related to the process of placing centralizers, which insure that tubing is centered in the well bore. If the tubing is placed incorrectly, experts say it is difficult or impossible to properly replace mud at the time of well capping, increasing the chances of blowout. The industry standard is to use 21 centralizers—also the number suggested by contractor Halliburton for the Deepwater Horizon—but BP chose to use only six. Four days before the explosion, Halliburton warned BP that if it proceeded as planned the well would have a "SEVERE gas flow problem."

BP responded by stating that putting in place additional centralizers would take too long. "It will take 10 hours to install them," a BP representative wrote. "I do not like this." Another BP official acknowledged the risks related to using few centralizers, but concluded, "who cares, it's done, end of story, will probably be fine."

The House Energy Committee also found that BP skipped over recommended testing of heavy mud circulation in the well, which requires at most 12 hours, and that it bypassed placing an extra seal known as a "lockdown sleeve" that might have prevented a blowout. It found further evidence that company officials were aware of the dangers. One engineer even referred to the operation

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as “a nightmare well.”

Dozens of similarly negligent decisions were made dating back to the planning and environmental risk assessment of the drilling site, as numerous government documents, investigative reports, and worker testimony have revealed. Most of these decisions—including several in the lead-up to the blast—were approved by Obama administration regulators, especially the Minerals Management Service (MMS) of the Department of the Interior. Any serious investigation of the BP Gulf spill would turn up further evidence of government culpability in the disaster—and would expose the dire safety conditions under which scores of oil rigs continue to operate.

The ongoing revelations of BP’s negligence expose the content of Obama’s plan for an escrow account, of an as yet unstated funding level, that would be administered by a supposedly independent third party. BP will likely go along with the plan—“provided that it has certain assurances,” the *Washington Post* notes. At a Wednesday meeting in the White House, BP CEO Tony Hayward and Chairman Carl-Henric Svanberg will ask Obama to impose “a limit to its liability” and see to it that the “escrow account [is] administered by someone the company can trust.”

Indeed, whatever the escrow account’s value—reports vary from $5 billion to over $20 billion—it will serve to shield BP from the real financial damages the spill has caused, which could be upwards of $1 trillion and far surpass the London-based firm’s market capitalization.

After the Exxon Valdez disaster, Congress passed the Oil Pollution Act of 1990, which capped at $75 million oil firms’ total liability for economic and environmental damages to private parties. The paltry sum was not indexed for inflation and remains at the same level.

However, legal experts say that the cap does not apply to spills caused by criminal negligence. Given the overwhelming evidence of BP’s willful disregard for standard and legally-mandated safety and environmental procedures, BP could face years of lawsuits from those affected—fishermen, small business owners, oil industry workers, and even home owners. Obama’s escrow account proposal seeks to forestall this possibility while mollifying popular anger.

The US corporate elite, predictably, responded with hostility to Obama’s latest gesture—which came after a week of bitter denunciations from British financial circles over supposedly “irresponsible” criticism of BP by US politicians.

On Monday, markets sent lower by 9 percent BP shares, which have now fallen by almost half since the explosion. On Tuesday, Fitch Ratings downgraded BP’s credit rating from AA to BBB, just above junk status, citing the possibility of a $20 billion escrow account. The cost of insuring $10 million in BP debt rose to $515,000 from $424,000.

BP’s bond yields simultaneously increased by more than three percentage points, to 10.847 percent, triggering “buy” recommendations from financial analysts skeptical that BP will be allowed to enter bankruptcy. “As a bondholder all you really care about is that they stay in business,” Keith Springer, president of Capital Financial Advisory Services told the *Wall Street Journal*. “Once this is over, they’re going to be a viable company.”

More likely than bankruptcy is a scenario in which BP’s shareholders would be protected by the absorption of the company by another oil major, such as Exxon Mobil or Shell—who are “licking their chops” over the prospect, according to the *New York Times*’ Andrew Ross Sorkin. Sorkin speculated that BP’s oil spill liabilities could then be dumped into a “Bad BP,” but Obama’s escrow account may make such a step unnecessary.

Such commercial calculations no doubt played a role in the Congressional testimony given by executives of Exxon, Shell, ConocoPhillips, and Chevron, who joined Lamar McKay, BP’s head of US operations, before the House Energy Committee. The other oil majors left McKay to fend for himself, each indicating that the disaster resulted from BP departing from industry norms.

“This incident represents a dramatic departure from industry norms in deepwater drilling,” said Rex Tillerson, CEO of the world’s largest oil firm, Exxon. “We do not proceed with operations if we cannot do so safely.”

The chance to further weaken a wounded rival dovetailed with the effort to portray offshore oil drilling as safe and the disaster as a one-off accident. Under questioning the oil executives admitted that they are no better prepared to deal with a deep-sea spill than BP. “Like BP in its much-ridiculed disaster plan, the companies listed the phone number of a long-dead marine scientist and raised concerns about protecting walruses—not found in the gulf,” noted the *Guardian*.

The Deepwater Horizon disaster is no more an accident than the implosion of financial markets two years ago that has led to the worst economic and social crisis since the Great Depression. In both cases, the decades-long promotion of the “free market,” the subordination of the productive forces to the profit demands of the corporate and financial elite, and the gutting of regulations created conditions that, sooner or later, would inevitably lead to disaster.

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