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# Newsroom

## Logan on BP Settlement

The New Orleans Times-Picayune gives Dean David Logan the last word on BP's settlement of criminal claims stemming from the Deepwater Horizon oil spill.

**FROM the New Orleans Times-Picayune:**

["BP's profits-first culture prompts 11 felony guilty pleas, \\$4.5 billion in fines"](#) by Mark Schleifstein, NOLA.com, The Times-Picayune By Mark Schleifstein, NOLA.com



**NEW ORLEANS, November 15, 2012** - Citing gross negligence and what it called the company's profits-first culture, the federal government on Thursday announced it had entered into a settlement with BP of all criminal claims stemming from the Deepwater Horizon oil spill, fining the company a record \$4.5 billion and securing 11 felony pleas from the company for the 11 people killed in the April 2010 blast.

The oil giant's settlement with the U.S. Department of Justice calls for \$4 billion to be paid in installments over five years, and a \$525 million settlement with the Securities and Exchange Commission to be paid over three years, the government and BP said. The SEC settlement is based on the company's lowballing of estimates of how much oil was flowing from the well in the days and weeks after the April 20, 2010, rig explosion.

Under the plea agreement, BP will plead guilty to 11 felony counts of misconduct or neglect of ships' officers relating to the loss of 11 lives, the equivalent of manslaughter charges; one misdemeanor count under the Clean Water Act; one misdemeanor count under the Migratory Bird Treaty Act; and one felony count of obstruction of Congress. The agreement must still be approved by U.S. District Judge Sarah Vance, before whom BP officials appeared on Thursday.

The settlement is likely to prove a boon for Louisiana, with \$1.2 billion out of the settlement to be used to restore barrier islands and to build a Mississippi River freshwater and sediment diversion.

During a Thursday afternoon news conference in New Orleans, a cadre of federal officials took BP to task over the explosion and spill, criticizing the company for a culture of profit and privilege, including instances where BP purposely lowballed the amount of oil flowing into the Gulf.

U.S. Attorney Eric Holder said the government's action against the company aims "to hold accountable those who bore responsibility for this tragedy." Holder said the government also is looking forward to the government's trial on Clean Water Act civil violations against BP, now scheduled for Feb. 25, "in which we intend to prove that BP was grossly negligent in causing the oil spill."

If the company is found grossly negligent at that trial, BP could face fines of \$21 billion or more, based on the release of 4.1 million barrels of oil during the spill. But BP is expected to argue that, despite its guilty plea, it should not be found grossly negligent, which would limit its liability under the Clean Water Act to as little as \$5 billion.

BP said in a news release Thursday that it would "vigorously defend itself against remaining civil claims." Lanny Breuer, assistant attorney general for the criminal division, who joined Holder in New Orleans Thursday, said the explosion of the rig "was a disaster that resulted from BP's culture of privileging profit over prudence; and we allege that BP's most senior decision makers onboard the Deepwater Horizon negligently caused the explosion."

The government announced manslaughter charges Thursday against BP's two top men on the rig, as well as a vice president accused of trying to deceive Congress and the public about how much oil was spilling.

Breuer said the government hopes BP's acknowledgement of its misconduct, through its agreement to plead guilty to 11 counts of felony manslaughter, "brings some measure of justice to the family members of the people who died onboard the rig."

Bob Dudley, BP's group chief executive, issued a statement saying that "All of us at BP deeply regret the tragic loss of life caused by the Deepwater Horizon accident as well as the impact of the spill on the Gulf coast region. Holder said the settlement includes \$2.4 billion, of which Louisiana will get half, for environmental projects, such as the projects listed in the state's master plan for coastal restoration and protection.

Coastal Protection and Restoration Authority chairman Garret Graves said the barrier island work may include projects already proposed for Barataria Bay and Terrebonne Parish, and in the Breton and Chandeleur islands. Projects could also include a major diversion of freshwater and sediment into Barataria Bay or a proposal to divert Mississippi River water into the Central Wetlands Unit adjacent to the Lower 9th Ward in New Orleans and Chalmette, and farther east into wetlands destroyed by the Mississippi River-Gulf Outlet.

The state has already sought to tap an earlier \$1 billion in BP money for some of those projects. The oil giant set the money aside as an advance payment on its expected Natural Resource Damage Assessment requirements.

Gov. Bobby Jindal praised Thursday's settlement as "an important first step in holding BP accountable for the tragic loss of 11 lives in the Deepwater Horizon tragedy."

"The largest criminal fine in history is certainly fitting for the inexcusable negligence that led to this disaster," Jindal said, adding that the spill's impacts continue to accrue in the state on a daily basis.

"In Louisiana, our fishermen are experiencing extraordinary impacts," he said. "Shrimp, crabs, oysters and other seafood are in decline. The majority of BP's liability remains outstanding and we will hold them fully accountable."

Most of the criminal charges stem from what BP, in a news release, called the "negligent misinterpretation" by two of its employees of a key test conducted on board the Deepwater Horizon."

"BP acknowledged this misinterpretation more than two years ago when it released its internal investigation report," the news release said. "Today's agreement is consistent with BP's position in the ongoing civil litigation that this was an accident resulting from multiple causes, involving multiple parties, as found by other official investigations."

BP has also agreed to a term of five years' probation.

Holder said the Thursday charges would not end the criminal investigation.

But the settlement agreement includes a commitment by the Justice Department to forgo additional charges against the corporation, as long as the company continues to assist in any additional criminal investigation. It makes no such assurances for individuals.

Justice also agrees to advise federal agencies considering whether to bar BP from billions of dollars in future government contracts that the company cooperated in pleading guilty and future investigations. BP is a major supplier of fuels to the Department of Defense.

The agreement calls for \$2.4 billion of the settlement money to be paid to the National Fish & Wildlife Foundation and \$350 million to be paid to the National Academy of Sciences, both over five years.

The National Fish & Wildlife Foundation often works closely with the U.S. Fish & Wildlife Service on environmental restoration issues involving national parks and refuges, and it is likely some of that money will be used for restoration projects in Louisiana. The National Academy is the nation's foremost science organization. It conducts studies at the behest of Congress and federal agencies on a wide variety of scientific and engineering topics.

Academy President Ralph Cicerone said the money would fund a 30-year research program to advance scientific and technical understanding of drilling and hydrocarbon production and transportation in the Gulf of Mexico and on the United States' outer continental shelf."

Money also will be spent to develop advanced environmental monitoring systems, Cicerone said.

Thursday's plea agreement is not BP's first brush with the law in the United States.

The company pleaded guilty to felony violations of the Clean Air Act and paid a \$50 million fine following a 2005 explosion at the company's Texas City refinery that killed 15 and injured 180 others. The federal Occupational Safety and Health Administration later charged that BP failed to comply with a settlement agreement involving the accident, and the company was cited for alleged safety violations during a 2009 inspection of that plant.

Attorney General Eric Holder outlines BP settlement Attorney General Eric Holder outlines BP settlement Attorney General Eric Holder outlines charges in BP's \$4.5 billion settlement of criminal charges stemming from the 2010 Deepwater Horizon disaster. Watch video

The company also entered a deferred prosecution agreement with the Justice Department in 2007 in connection with an alleged conspiracy by BP to manipulate the market to increase the price of propane gas in February 2004. And BP pled guilty to criminal Clean Water Act violations and was fined \$20 million after it spilled 200,000 gallons of oil in the 2006 rupture of a pipeline at Prudhoe Bay, Alaska..

BP is far from having settled its debts. David Uhlmann, the former head of the Justice Department's Environmental Crimes Section and a law professor at the University of Michigan, said BP is likely to pay even more in natural resource damage claims as well as civil penalties under the Clean Water Act than it did in Thursday's settlement.

"The criminal fine is a record amount, but it pales in comparison to the \$30 to \$40 billion that BP faced under the Clean Water Act," Uhlmann said in an e-mail Thursday.

Before BP, the highest corporate criminal fine on record was \$1.2 billion paid by the Pfizer drug company in 2009 for marketing fraud involving Bextra pain medicine.

The fine imposed against Exxon Valdez following its 1989 grounding and oil spill in Prince William Sound, Alaska, was only \$150 million, and a federal court waived \$125 million of the fine to cover the company's cleanup efforts.

Such a waiver will not be allowed under the plea agreement, which prohibits the company from receiving tax benefits in the United States or elsewhere for paying the fine. The company also won't be able to use the fines as an offset against other outstanding civil complaints, including the potential Clean Water Act fines.

BP said that under the deal, the company also will take additional actions, enforceable by the federal court, to enhance the safety of its drilling operations in the Gulf of Mexico.

"These requirements relate to BP's risk management processes, such as third-party auditing and verification, training, and well control equipment, and processes such as blowout preventers and cementing.

The agreement also requires the appointment of two monitors -- both to serve for four years -- to keep track of the company's process safety and risk management procedures concerning deepwater drilling in the Gulf, and to monitor the company's ethics.

BP said it hasn't been advised by any federal agency of plans to suspend or debar the company in connection with the plea agreement. Under federal law, companies convicted of certain criminal acts can be barred from contracting with federal agencies.

Robert Khuzami, director of enforcement for the SEC, said the \$525 million fine is the third-largest in that agency's history.

Despite its huge price tag, the settlement is likely to assist BP in assuring its investors that the company's two years of efforts to reduce its liability from the accident and spill are succeeding.

BP's stock closed at \$40.30 on the New York Stock Exchange on Thursday, up 14 cents. On Oct. 30, the company reported earnings of \$5.2 billion for the third quarter of 2012.

BP said it already had recorded charges against its pre-tax income through September 2012 for \$38.1 billion related to the Deepwater Horizon accident and spill, which included the \$525 million for the SEC settlement. The criminal charge settlement will add \$3.85 billion to those charges on its books, and will be reflected in the company's December 2012 financial statement. Charges against BP employees outlined Charges against BP employees outlined Assistant Attorney General for the criminal division Lanny Breuer outlines criminal charges brought against BP employees stemming from the 2010 Deepwater Horizon disaster. Watch video

Legal experts and industry analysts who have been following the case generally agreed the deal was fair to both sides.

Edward Sherman, a law professor at Tulane University who studies complex litigation, said that while some people may have been surprised at the "relative smallness" of the settlement, "you have to remember that these are only the criminal penalties, and there are still other actions pending."

Factoring in the time saved by not going to trial, "this seems to me to be a reasonable amount," Sherman said. "Even a company that's as large as BP cannot easily come up with that sum of money."

Blaine LeCesne, a tort law professor at Loyola University, said it's hard to measure how high the government's criminal claims could have climbed "because you don't know how many potential violations could've been brought, and what the collective amount of that could've been."

Still, LeCesne said the settlement helps BP because it allows the company "to know exactly what the loss is, and it'll bring an end to those criminal prosecutions, from a company standpoint."

"It's a sizable punitive action, and obviously it's going to cause BP some financial discomfort," LeCesne said.

Pavel Molchanov, an oil company analyst with Raymond James, said that unlike the government's civil suit, there was no roadmap or framework in place as to what the criminal penalties would add up to.

"It simply depends on what the two sides agree on," said Molchanov, adding that the deal will bring BP's total bill for the 2010 disaster to about \$42 billion and counting.

"It's not cheap, obviously, but it helps to reduce the legal overhang surrounding the company," Molchanov said.

The price tag will doubtless tick up after the upcoming civil proceedings, which will set penalties based on the number of gallons of oil and other chemicals that were spilled into the Gulf.

Several legal experts, including Holly Doremus, a professor at the University of California at Berkeley who specializes in environmental law, said they don't expect the settlement reached Thursday will have a bearing on the potential civil penalties, which are "really about putting back together what they've messed up."

"No matter how much money they pay in criminal penalties, that doesn't fix the damage," Doremus said.

A series of government investigations in the wake of the Macondo well blowout have spread blame for the disaster.

In early 2011, a presidential commission reported that BP, Halliburton and Transocean were all responsible for time-saving and cost-cutting decisions that created unacceptable risks at the well.

Later that year, a team of Coast Guard officials and federal regulators issued a report that found BP was ultimately responsible for the spill, charging that the company violated federal regulators, ignored important warnings and made bad decisions during the cementing of the well, which was a mile beneath the Gulf of Mexico.

BP has said it accepts some responsibility, while urging other companies to pay their share.



**David Logan, dean of Roger Williams**

**University School of Law, said** resolving the criminal settlement should provide BP executives with "some sense of relief."

"There are probably an unprecedented number of pieces to this puzzle, and now another one has slid into place," **Logan said**, calling the settlement "about the best they could hope for."

While some Gulf Coast residents may have heard of the criminal charges and wondered aloud whether former BP chief Tony Hayward would be whisked away in cuffs, Logan said that was unlikely from the start.

"It's rare you actually see the top dog doing the perp walk," **Logan said**.

*For full story, click [here](http://www.nola.com/news/gulf-oil-spill/index.ssf/2012/11/bps_profits-first_culture_prom.html). [http://www.nola.com/news/gulf-oil-spill/index.ssf/2012/11/bps\_profits-first\_culture\_prom.html]*