

As Richard noted in an [earlier post](#), today, British oil company and deep water drilling giant, BP, [announced](#) that it had reached settlements of all federal criminal and securities claims related to the [2010 Deepwater Horizon oil spill in the Gulf of Mexico](#) with the Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ). The criminal plea agreement and securities violation resolution remain subject to federal court approval before they are final.

Find the essential details of the settlement and FAQs about the settlement after the jump.

Settlement Breakdown:

- BP pleads guilty to 14 criminal charges, including:
 - 11 felony counts of manslaughter under maritime law (18 U.S.C. § 1115, [“Misconduct or Neglect of Ships Officers”](#));
 - 1 misdemeanor count under the Clean Water Act;
 - 1 misdemeanor count of unlawfully “taking, killing, or possessing migratory birds” under the [Migratory Bird Treaty Act](#) (16 U.S.C. § 703); and
 - 1 felony count of obstruction of Congress (based on two communications to a member of Congress underestimating the amount of oil leaking from the Macondo well during the spill).
- BP and the SEC resolved securities claims under sections 10(b) and 13(a) of the [Securities Exchange Act of 1934](#) and its regulations (related to oil flow rate estimates BP provided in three SEC reports shortly after the well explosion in April and May of 2010).
- Payments include the following: \$1.25 billion in criminal fines; \$2.4 billion to the National Fish and Wildlife Foundation, \$350 million to the National Academy of Science, and \$535 million to the SEC. Payments will be dispersed over a period of three to five years.
- BP will be under probation for five years.
- BP will be subject to an injunction prohibiting it from violating securities laws and regulations. If BP violates the injunction, the SEC could petition the Court to hold BP in contempt.
- Two monitors will be appointed for four-year terms to monitor process safety and risk management, and ethics implementation and enforcement.

- BP has agreed to take additional, court-enforceable actions to enhance drilling safety in the Gulf of Mexico, including: third-party auditing, training, well-control processes (e.g., blow-out preventers and cementing), working with academia and regulators to develop new drilling safety technology.
- At this time, BP has not been debarred from contracting with the federal government, although federal law provides that companies convicted of certain criminal acts can be disqualified from federal government contracting. (This is not so surprising considering that BP [reports](#) it has invested over \$52 billion in United States drilling over the past five years and employs 23,000 Americans).
- An exhibit to the plea agreement will contain an “allocution” that will list all of the facts to which BP admits.

So BP finally admits it was guilty—is the legal saga now over?

Unfortunately, no. First, BP’s guilt admission is not such extraordinary news. BP’s [2010 report on its internal investigation of the Deepwater Horizon disaster](#) essentially acknowledged that a [negative pressure test conducted aboard the Deepwater Horizon](#) was negligently misinterpreted: “The Transocean rig crew and BP well site leaders reached the incorrect view that the test was successful and that well integrity had been established” (p. 10). The allocution nonetheless could provide some interesting factual admissions.

Second, the federal civil claims have not yet been resolved. Federal civil penalties under the Clean Water Act could be much larger, in the \$10 billion to \$20 billion range. Notably, [Carl-Henric Svanberg, BP’s Chairman, made a statement](#) that this criminal settlement allows BP’s officers and legal team to “vigorously defend the company against the remaining civil claims.”

In addition to the federal civil claims, there are remaining state and federal Natural Resource Damages (NRD) claims under the Oil Pollution Act, pending private civil claims not covered by BP’s settlement with the Plaintiff’s Steering Committee (PSC) in [multidistrict litigation \(MDL\) No. 2179](#), as well as private securities claims in MDL No. 2185, among other claims.

Prior to this settlement announcement, DOJ was rumored to be pursuing a “global settlement” of all claims, including both criminal and civil claims. Apparently, the parties could not reach a global settlement.

Will \$4.5 billion be enough money to recover the Gulf from the damages of the oil

spill?

Criminal penalties are intended to punish wrongdoers—not restore ecosystems. The natural resource damages paid by BP under the Oil Pollution Act will be used to restore the Gulf. In addition, with the recently-passed RESTORE Act (which I mentioned in an [earlier post](#)), a portion of any civil penalties recovered by the federal government under the Clean Water Act will be diverted broadly to environmental and economic restoration projects in the Gulf Coast region.

Still, this is the largest criminal plea agreement that DOJ has ever secured—the next-largest criminal penalty was a \$1.2 billion fine imposed on pharmaceutical company Pfizer in 2009. (Note that [E&E News reports](#) that the DOJ inspector general’s office has spent more than \$7 million over the past several years on the government’s criminal case against BP.)

To date, BP has spent over \$14 billion on clean-up, committed \$1 billion to early natural resource damage restoration projects, paid \$9 billion to private claimants for economic, property, and medical damages, and committed in its recent settlement with the PSC to paying an estimated \$7.8 billion in additional payments to private claimants.

How can a corporation plead guilty to crimes?

Although the U.S. Supreme Court famously declared in *Citizens United* that corporations are “people,” that case is not the basis for BP’s criminal liability here. Under federal law, corporations may be held liable for the crimes of their officers and employees. Instead of serving jail time or suffering the death penalty, corporate entities pay criminal fines. (Some states also recognize corporate criminal liability. *See generally*, Model Penal Code § 2.07 “Liability of Corporations, Unincorporated Associations and Persons Acting, or Under a Duty to Act, in Their Behalf”).

Importantly, DOJ continues to prosecute individuals for crimes related to *Deepwater Horizon*. Indeed, [federal indictments released shortly after the settlement was announced today](#) charge two BP well site leaders with manslaughter, and BP’s Vice President of Exploration for the Gulf of Mexico, David Rainey, has been charged with obstruction of Congress and false statements. Previously, a former BP engineer had been charged with obstruction of justice.