

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	Criminal No. 4:07-cr-434
	§	
BP PRODUCTS NORTH AMERICA INC.	§	Honorable David Hittner
Defendant	§	

VICTIMS' RESPONSE TO BP SENTENCING MEMORANDUM

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW Alisa Dean, et al., Victims of the crime at issue, in Response to the Sentencing Memorandum submitted by Defendant BP Products, and would show the Court:

I. INTRODUCTION

The Statement of Facts, Joint Motion to Dispense with Pre-Sentence Report and BP Sentencing Memorandum are misleadingly favorable to BP in numerous respects, including:

- a) Omitting 28 of 30 cases in BP's long history of violations when "reporting" BP's history;

- b) Omitting the crucial role of the parent, BP p.l.c. (hereafter “BP Global,” in the crime; and failing to inform the Court of the immunity provisions for BP Global and its subsidiaries for other crimes in other localities nationwide;
- c) Failing to inform the Court of BP’s \$80 billion net worth and its \$1 billion profit obtained from this crime.

This Court is the authority charged by law with independently assessing and imposing punishment in this criminal case. Such an independent assessment of punishment will require that the Court have available full information customarily required by the judiciary, including a Pre-Sentence Report.

Victims ask only that the Court defer its decision on acceptance of the Plea Agreement until the Court has the benefit of a full Pre-Sentence Report that provides a full history of BP and its conduct and addresses the issues raised herein.

II. ISSUES OF CONCERN

Statutory factors to be considered by the Court under 18 U.S.C. §§ 3553 and 3572 include:

1) The history of the Defendant (18 U.S.C. § 3553(a)(1)).

In approximately 30 cases, BP has been fined for violations involving repeated deaths, injuries, environmental violations and fraud. It has repeatedly agreed to both criminal and civil penalties with promises to reform. Virtually all of

this record is concealed by omission from BP and Government filings purporting to disclose BP's history; those filings report only two of the 30 cases. BP's history is summarized below. (See Exhibit E for further details; dates are publication dates, not event dates.) Note the frequent repetition of similar events in the same locality.

BP should be ordered to disclose its entire record through a Pre-Sentence investigation, and the Joint Motion to dispense with that investigation should be denied.

February 6, 1985 -- BP fined £15,000 on safety charge after North Sea fire.

March 22, 1988 -- British Petroleum fined £750,000 after the deaths of three men in two separate explosions at the company's refinery at Grangemouth, Scotland.

December 22, 1988 -- British Petroleum and others were fined more than £40 million by the European Commission for participating in two illegal price-fixing and market-sharing cartels.

October 24, 1990 -- BP Oil to pay \$2.3 million fine for dumping toxic waste into Delaware River; EPA said BP had violated waste water discharge permit 6,500 times.

July 16, 1991 -- BP fined a record \$135,000 for violations leading to fatal explosion at Ferndale, Washington refinery; explosion killed one and injured six others.

December 18, 1992 -- BP Exploration fined £10,000 for explosion on North Sea drilling platform injuring two workmen.

April 22, 1994 -- BP Chemicals fined £200,000 for violations resulting in huge blaze at Grangemouth docks two years ago; one man was killed and three others burned.

August 25, 1994 -- BP was fined \$2.6 million by the Colombian environmental authority for pollution of a Colombian river.

October 19, 1998 -- BP was fined £125,000 for attempting to manipulate the Brent Oil Futures Market; BP provided inaccurate information and failed to fully cooperate with the investigation.

November 4, 1998 -- BP Oil New Zealand fined the maximum fine of \$200,000 after discharging 9,000 liters of diesel into a stream in New Zealand; the fine was lowered to \$4,000 in environmental court.

JANUARY, 1999 -- TIME PERIOD CHARGED IN THIS CRIMINAL INFORMATION BEGINS.

May 5, 1999 -- BP paid \$1.4 million civil penalty and entered Consent Decree in U.S. District Court in Toledo, Ohio to resolve Clean Air Act violations.

May 11, 1999 -- BP fined the maximum £20,000 over explosion and fire on offshore gas platform.

February 3, 2000 -- Alaska -- BP fined \$15.5 million and sentenced to 5 years probation pursuant to settlement agreement for failing to report dumping hazardous materials at North Slope Alaska oil field; described as one of the worst environmental crimes in the history of North Slope oil development. "We are committed to insuring this never happens again," said BP spokesman.

April 17, 2000 -- BP agreed to pay \$32 million to resolve claims under the False Claims Act that corporation underpaid royalties due for oil produced on federal and Indian leases since 1988.

June 14, 2000 -- BP fined £15,000 for unlawfully polluting Allan River in Scotland.

June 25, 2000 -- BP fined \$10 million for air pollution violations at the US Refineries; ordered to spend \$500 million to reduce emissions.

January 19, 2001 -- BP to pay \$9.5 million civil penalty under consent decree with U.S. District Court, Hammond, Indiana, to resolve allegations of Clean Air Act violations at eight refineries owned by BP. Refineries involved include Texas City, Texas.

October 13, 2001 -- BP fined over £200,000 for exposing workers to gas leaks on offshore gas platform.

January 19, 2002 -- BP fined £1 million after admitting safety breaches at petrochemical plant in Grangemouth, Scotland; BP expressed “unqualified regret” for the incidents.

June 6, 2002 -- Alaska -- BP fined \$300,000 for failing to meet leak detection standards on oil pipelines in Alaska.

June 22, 2002 -- BP fined €35,000 by European Commission for providing misleading information on merger.

February 1, 2003 -- Alaska -- Alaska state regulators fine BP maximum \$7,000 fine for explosion injuring a worker, following a previous on-site accident killing another worker. Previous December, U.S. Judge began requiring BP to provide unrestricted access to Alaskan operations to verify compliance with federal, state and local environmental health and safety laws while on probation, noting that BP had been on probation since 2000.

November 17, 2004 -- BP fined £200,000 for gas leak on North Sea oil platform.

January 18, 2005 -- Alaska -- BP fined \$1.42 million for safety violation in Prudhoe Bay oilfield in Alaska.

MARCH 23, 2005 -- TEXAS CITY REFINERY EXPLOSION.

December 5, 2005 -- BP fined £25,000 after diesel spill into North Sea. A BP spokesman said, “We have learned lessons.”

April 25, 2006 -- BP fined \$2.4 million for unsafe operations at Oregon, Ohio refinery; OSHA identified a number of violations similar to those found during investigation of fatal explosion last year at Texas City, Texas.

February 21, 2007 -- BP ordered to carry out £320,000 clean-up operation at Luton Petral Station after pollution found in ground water supplies 1,000 times above acceptable drinking standards.

June 2, 2007 -- BP Products North America, Inc. fined \$869,150 for leaky underground storage tanks at 8 locations in Michigan. Spokesman for the Department of Environmental Quality said, "Usually owners try to work with us, but in this case it hasn't happened."

October 25, 2007 -- BP to pay \$303.5 million in fines, penalties and restitution for manipulation of propane market.

October 25, 2007 -- Alaska-- BP to pay \$12 million in fines with 3 years probation for Alaskan oil pipeline spills.

2) The nature and circumstances of the offense (18 U.S.C. § 3553(a)(1)).

The Defendant is BP Products North America Inc. ("BP"), a subsidiary of London-based BP p.l.c. (which uses the trade name "BP Global"). The Statement of Facts submitted by the Government and BP entirely omits reference to the role of BP Global in the crime committed.

The U.S. Chemical Safety Board ("CSB") has laboriously documented a timeline (Exhibit A, attached) showing:

- a) BP Global's knowledge of unsafe conditions, including predictions of a catastrophe, at the Texas City Plant and at many other BP sites in the U.S. and around the world; and
- b) Requests (which were denied) for additional safety, maintenance and training resources made to BP Global by a frightened local plant management.

Federal law requires, through procedures called Process Safety Management ("PSM"), that the plant be maintained with up-to-date equipment design, mechanical integrity of equipment, up-to-date operating procedures, proper training for all personnel, and thorough investigation of all incidents, and corrections of deficiencies (among other requirements). These requirements largely overlap the requirements of the Clean Air Act; the crime here is failure to comply with these requirements.

BP Global acquired the Texas City plant as part of its purchase of Amoco in 1999. The plant already had a history of repeated releases of highly hazardous petroleum vapors to atmosphere, with at least one resulting fire and numerous previous deaths. By the date of the explosion, the previous deaths would total 23. Plant engineering and OSHA recommendations to replace the atmospheric stacks with flares had not been implemented. Equipment design, mechanical integrity,

operating procedures, training and incident investigation were all documented as poor. Exhibit A (Timeline from CSB Final Report) entries prior to 1999.

Instead of allocating funds to bring the plant into compliance with the law, BP Global immediately directed a 25% cost cut, and another 25% cost cut late in 2004 in spite of repeated reports to London management warning of the increasingly dangerous (and unlawful) conditions in the plant. See Exhibit A.

BP's Global received GHSER ["Getting Health, Safety and Environment Right"] Audits which documented the poor physical and safety management conditions of the Texas City Plant and other BP facilities. In September 2003, the Texas City infrastructure and assets were reported in "poor" condition; in March 2004, similar failings were found to be common among BP locations; in June 2004, Texas City procedures were rated "poor" for failure to investigate previous incidents.

By July, 2004, Plant Manager Don Parus (deposition pages attached as Exhibit B) was aware that there was a "culture" of "casual compliance" with safety and regulatory requirements. (See Exhibit B, Parus deposition, at pp. 150-151). By that time, lack of maintenance and a state of disrepair of physical facilities would have been obvious to someone in the refinery business. (Exhibit B, Parus Deposition, at pp. 119-121). In that month, London-based John Manzoni, BP Global Chief Executive, Refining and Marketing, who reported directly to BP

Global CEO Lord John Browne, visited the plant. Parus made a PowerPoint presentation to Manzoni (Exhibit B, Parus deposition, at pp. 136-140), calling attention to 11 releases, 23 people injured and 1 recent fatality, a decade of “underinvestment” in the refinery, the “brutal facts of our position,” as well as outstanding financial performance providing profit almost double the financial plan. (Exhibit C). In response, BP Global called for yet more reductions in maintenance to further increase profitability. (Exhibit A, July 2004).

After two employees were killed in September 2004, Parus traveled to London to visit with Manzoni again about the safety situation (Exhibit B, Parus Deposition at pp. 119-120). Recent BP audits showed “poor” performance in safety procedures, and plant management considered the plant “not a safe place to work.” (Exhibit A, October-November 2004).

All of these reports and protests documented and advised BP Global not only that the Texas City Refinery plant was unsafe and dangerous, but also that it was in violation of federal law. Yet BP Global called for yet another 25% budget cut, restoring less than half after protests. (Exhibit A, late 2004).

The first “root cause” of the explosion identified by the CSB related to BP Global, including the finding that it

“did not provide adequate resources to prevent major accidents; budget cuts impaired process safety performance at the Texas City refinery.” (Exhibit D, Chemical Safety Board Report excerpt).

Yet the Statement of Facts submitted to the Court by the Government and BP omit all reference to the culpability of BP Global, the effect of its budget cuts and failure to provide needed financial resources, and instead focus all blame on lower level, local personnel.

But the Plea Agreement provides immunity for BP Global and all subsidiaries from any other Federal Clean Air Act prosecution “arising out of the same conduct” (*i.e.*, operating its plants in violation of the law while profiting from and condoning the violations). Nothing filed with this Court reveals what other potential prosecutions, for what violations or where, are affected by the immunity provisions. The immunity is clearly a nationwide grant, not limited to this explosion, nor to this District.

It is “the world turned upside down” when a guilty plea becomes the vehicle for immunity for those who supervised and profited criminal conduct resulting in 15 deaths and hundreds of injuries.

3) History of Continued Violations (18 U.S.C. § 3553(a)(1)).

Since June, 2006, BP has been in violation of its critical agreement with OSHA (Exhibit I) as it fails to bring its operations into compliance with federal law.

By its agreement, BP obligated itself to obtain a “comprehensive audit and analysis of the PSM systems” (Exhibit H, p. 2) at the Texas City Refinery by an

independent expert (“PSM Expert”), and to implement all feasible recommendations.

Instead of the comprehensive audit required by the OSHA Agreement, BP obtained an audit of selected samples from “selected operating units . . . of the Refinery, rather than a full review.” (Exhibit J, AcuTech June 2006 Report, p. 6).

The results of this “snapshot” found numerous, widespread concerns:

“... [T]here appeared to be a proliferation of ‘draft’ or non-institutionalized policies, procedures and systems in use, with a lack of unified and integrated document control system ... As a result, certain actual practices are not captured fully in the documents, especially operating procedures. Recognition of the importance for such document control as it applies to PSM also seems to be lacking, with a general awareness and understanding gap of PSM existing on throughout the site.” (Exhibit J, p. 8).

Part 2 of the Audit Report, addressing issues upon which OSHA placed “special emphasis,” was submitted August 16, 2006. (Exhibit K). A typical example of BP’s reported action is that on “relief valves” -- the issue raised by BP’s failure for years to complete a relief valve study which should have revealed the inadequate capacity of the relief valves in the ISOM unit. The auditors reported that they did not examine the actual design or capacity of any specific relief valve to determine if it had the proper capacity and setpoint. The auditors planned to review BP’s future work on this subject in the future. (Exhibit. K, p. 12).

Under the OSHA Agreement, the independent expert (AcuTech) was to continue its work after the June 2006 report, and to make two semiannual Progress Reports and a Final Report. "Each Safety Report shall include the deficiencies found and recommendations for corrections." (Exhibit.H, p. 12).

The two Progress Reports are presently available. The first states that AcuTech has "not performed any additional audits or follow-up verification activities"; the second reports no new findings and further reports: "The progress reported regarding the status of and progress on the initial audit recommendations are based solely on information provided by BP." (Exhibit F).

The auditors have not verified that BP has brought itself into compliance on any single PSM issue. (See Exhibit F, Affidavit of Mike Sawyer.)

4) The seriousness of the offense (18 U.S.C. § 3553(a)(2)(a)).

It is impossible to overstate, and difficult to comprehend, the severity of the outcome of this crime, which resulted in the immediate deaths of 15 persons, all of whom were totally innocent workers engaged in their daily work, and injured hundreds more.

While it is difficult to comprehend the magnitude of the harm done, perhaps it is more difficult to comprehend the decisions which led to the disaster. The root cause found by the CSB originates with top management's decisions to operate the plant while starving it of funds for needed maintenance, training and enforcement

of federal regulatory requirements. These decisions were made (a) by top international management, not lower level personnel; (b) thoughtfully, after ample time for consideration; (c) while holding written reports detailing the multiple deficiencies which required remediation; (d) with full knowledge that workers had died and would probably die in the future; (e) with ample funds available to remedy the issues (see Items 5 and 6, below); (f) after payment of multiple previous fines for safety, pollution and fraud violations; and (g) for the purpose of enhancing profits.

Stripped to its essentials, BP's decision was to profit monetarily from human death and injury. And, even now, it continues to fail to bring the Texas City Plant into compliance with the law.

5) Defendant's Income, Earning Capacity and Financial Resources (11 U.S.C. § 3572(a)(1)).

BP's most recent Annual Report (2006; Exhibit G) reports:

Annual Profit -- \$22.286 billion; up from \$17.2 billion in 2004, the last full year before the Texas City explosion. In 2005, profit was \$22.6 billion.

Net Worth (Stockholders Equity) -- \$84.6 billion, up from \$79.9 billion in 2005.

6) The Need to Deprive Defendant of Illegally Obtained Gains (11 U.S.C. § 572 (a)(5)).

Exhibit H contains an email sent by plant manager Don Parus on March 18, 2005, just five days before the explosion. It documents BP's profit from the illegal operation of the plant over the 14 month period immediately preceding the explosion as follows:

2004	\$930 million
Jan. 2005	\$100 million
Feb. 2005	\$51 million
	<hr/>
Total	\$ 1,081 million (Exhibit H, pp. 2-3)

The fine proposed by the Plea Agreement is \$50 million; after subtraction of that fine, BP's profit from its illegal operation of the plant while in violation of federal law would be reduced to \$1.031 billion, as BP retained about 95% of its illegal profit.

III. CONCLUSION

At the appropriate time, Victims expect to argue that the Court should impose the maximum fine and require a longer period of probation with strict supervision of BP's remedial actions.

Now, however, our request of the Court is much more limited.

Victims respectfully request that the Court:

- 1) Take the Plea Agreement under advisement and defer ruling until receipt and consideration of a comprehensive Pre-Sentencing Report;
- 2) Direct that the Pre-Sentencing Report include:
 - a) Full history of BP legal violations, including those related to environmental releases, safety and/or fraud, and the effectiveness of past fines in protecting the public;
 - b) BP is in compliance or not with its OSHA Settlement Agreement; it is respectfully suggested that the Probation Office obtain advice from independent experts in the refining industry who are unrelated to BP, its counsel or retained experts;
 - c) BP's profit from illegal operation of the Texas City Refinery for the 6 year period charged in the Criminal Information;
 - d) What investigations and potential prosecutions outside this District will be affected by the immunity provisions for BP Global and its subsidiaries.

Respectfully submitted,

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