

Getting off light:

BP's plea bargain to settle its criminal liability in the Texas City refinery explosion needs close judicial scrutiny

Given its extensive history of environmental law violations and plant accidents in the United States, the British-based energy giant BP seems to have found that federal prosecutors in Houston have a surprisingly sympathetic ear.

Despite the company's admitted negligence that led to the 2005 Texas City refinery explosion that killed 15 workers, the government's suggested penalty is only \$50 million and three years' probation. That's far less than a \$303.5 million fine BP is paying the government to avoid prosecution for rigging the propane trading market.

A lawyer who represents a dozen clients either injured in the explosion or who lost a family member makes a very convincing argument that government lawyers glossed over BP's poor maintenance record and failed to assess a penalty commensurate with the consequences.

Corpus Christi plaintiff lawyer David Perry reasons that because BP made more than \$1 billion in profits during the half decade when it neglected required safety maintenance in Texas City, it should at least pay that much in federal fines. While the company has paid out more than \$1 billion in personal injury settlements with victims, that amount does not figure in the federal criminal litigation.

Perry notes that the government's plea filing failed to mention 28 of 30 company violations. He's asking the judge presiding over the case to order a thorough pre-sentencing evaluation to fashion an appropriate penalty for BP. Both the company and federal lawyers oppose conducting the evaluation.

Getting a decision might take a while. First U.S. District Judge Gray Miller recused himself from the case because his former employer, the Houston-based law firm of Fulbright & Jaworski, represented BP in litigation arising from the Texas City disaster. His replacement, U.S. District Judge David Hittner, then followed suit, reportedly because of a friendship with an expert witness for BP.

There are other issues regarding BP's conduct that should be explored before any plea agreement is approved. The company hired a state environmental engineer in 2003 to help secure an air quality permit from his agency for the Texas City refinery before the explosion. That might have violated state revolving-door statutes and indicates BP was trying to avoid disclosing conditions at the plant that were in violation of mandated safety standards.

After working for two years on BP's air quality application as a state regulator, Texas Commission on Environmental Quality employee Ruben Herrera then hired on with BP and worked with his former TCEQ colleagues to get the company the permit. Before he left, Herrera suggested that BP withdraw the original application and file a new one. Now

the company claims that the maneuver did not violate law because Herrera assisted them on a different application than the one he originally worked on.

That rationale is technical but not persuasive, and does not disguise the clear intent of BP to use insider knowledge and influence by a former regulator to get a permit for which it might not have been qualified. Such behavior, coupled with a lengthy list of violations across the United States in the past decade, merits more than a slap on the hand and some of the company's spare change.

The next federal judge to oversee the plea bargain should give the company's track record a tough analysis before approving what looks like the gift of a lenient sentence.

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