

# Why Isn't BP Under Criminal Investigation?

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In-depth Report: [THE BP OIL SLICK](#)

Why hasn't the government launched a criminal investigation into BP?

That's the question several former Environmental Protection Agency (EPA) officials have been asking in the aftermath of the catastrophic explosion aboard the Deepwater Horizon drilling rig last month that killed 11 employees and ruptured a newly drilled well 5,000 feet below the surface and has spewed tens of millions of gallons of oil into the Gulf of Mexico, which now stands as the largest spill in US history.

Like previous BP-related disasters in Alaska and Texas, evidence has emerged that appears to show BP knowingly [cut corners on maintenance and safety](#) on Deepwater Horizon's operations, which, [according to blogger bmaz](#), who writes about legal issues at Emptywheel, could amount to [criminal violations of the Clean Water Act](#). Additionally, because people were killed, BP and company officials could also face prosecution for [negligent and reckless homicide](#).

Scott West, the former special agent-in-charge at the EPA's Criminal Investigation Division, who spent more than a year probing allegations that BP committed crimes in connection with a massive oil spill on Alaska's North Slope in 2006, said the company's prior felony and misdemeanor convictions should have immediately "raised red flags" and resulted in a federal criminal investigation.

"If the company behind this disaster was Texaco or Chevron I would have likely waited a couple of days before I started talking to people," West said. "And the reason for that is those corporations do not enjoy the current criminal history that BP does."

West, who Truthout profiled in an [investigative report](#) last week about the Bush administration's apparent scuttling of West's criminal probe into BP in 2007, was harshly critical of the way the disaster has been handled by the government. He said in an interview that BP and the oil conglomerate's executives are "known as liars" and the fact that the government has treated "and continues" to treat the company with kid gloves is "outrageous."

"BP is a convicted serial environmental criminal," West said. "So, where are the criminal investigators? The well head is a crime scene and yet the potential criminals are in charge of that crime scene. Have we learned nothing from this company's past behavior?"

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Bob Wojnicz, a former EPA special agent who conducted criminal investigations into the Olympic Pipeline explosion in Bellingham, Washington, in 1999 and worked with West probing the oil spill in Alaska that resulted from a severely corroded pipeline, agreed.

In the case of the Olympic pipeline explosion, which killed three children, Wojnicz said the National Transportation Safety Board (NTSB), one of the agencies involved in the investigation, treated it “like an accident.” But EPA “got involved right away and we looked at the incident and found apparent crimes and were able to make recommendations for charges. You can’t really get to that point unless you have preliminary criminal investigation into what happened.”

“So how is BP somehow above being treated like any other criminal suspect?” asked Wojnicz, who is also an attorney. “Recall that they are not just criminal suspects – they are convicted criminals still on federal probation. This whole affair needs to be aired out thoroughly. There is more than enough information available to justify initiating a criminal investigation. The fact that this has not yet happened is evidence of either gross incompetence by government officials or complicity by those officials in covering-up the true nature of BP’s conduct. Either of those possibilities is completely unacceptable and should be dealt with immediately and harshly.”

West said the EPA, along with, perhaps, the FBI, would be one of the agencies to lead a criminal probe because of possible criminal violations of the Clean Water Act.

“At the end of the day if it turned out to be a God-awful accident then you go home,” West said. “But everything is lost by waiting.”

#### Attorneys Dispatched

On Wednesday, however, BP’s Chief Executive Tony Hayward [said](#) he had not been informed that BP is the subject of a criminal investigation.

Tracy Russo, a Justice Department spokeswoman, told Truthout that she could not comment on specific questions about whether or not a criminal probe has been launched.

But in a [letter](#) sent Tuesday to Sen. Barbara Boxer (D-California), the chairman of the Senate Committee on Environment and Public Works, Assistant Attorney General Ronald Welch appears to confirm that the incident is still being treated by the government as a civil matter.

Boxer and six other senators who are members of the Environment and Public Works panel [wrote](#) to Attorney General Eric Holder May 17 requesting that he launch a “inquiry” to determine whether BP lied to the federal government about whether it could adequately respond to oil spills in the Gulf.

The senators’ letter cited a February 2009 document BP sent to federal regulators that said, “in the event of an unanticipated blowout resulting in an oil spill, it is unlikely to have an impact based on the industry wide standards for using proven equipment and technology for such responses, implementation of BP’s Regional Oil Spill Response Plan which address available equipment and personnel, techniques for containment and recovery and removal of the oil spill.”

But on May 10, BP released a statement that said the “techniques being attempted or

evaluated to contain the flow of oil on the seabed involve significant uncertainties because they have not been tested in these conditions before.”

The company has also been accused of [publicly lying](#) about the volume of oil that began gushing out of the deep sea well, which government geologists now estimate could be five times higher than BP’s own assessment.

Questions about the veracity of statements made by the likes of Hayward and others about the oil gusher has convinced Larry Schweiger, the president and chief executive of the National Wildlife Federation, that BP has engaged in a massive cover-up.

“It is now clear that BP had hoped to cover up the damage of their oil spill by withholding video evidence of the size of the gushers and preventing independent analysis. In Washington, it’s been said that ‘it’s not the crime, it’s the cover-up’ – but in this case, it’s both the crime and the cover-up that are an outrage.”

Although Welch told Boxer that the Justice Department’s “long-standing policy” is to “neither confirm nor deny the existence of a [criminal] investigation” he said the agency has “sent formal demands to [BP], Transocean [the owner of the Deepwater Horizon] and other companies to ensure the preservation of potentially relevant information.”

“These letters invoke legal requirements in anticipation of litigation,” Welch wrote. “Department officials have spoken with BP and Transocean counsel to ensure they are complying with these demands.”

The Justice Department would not release the letters agency officials sent to BP and other companies that calls for the preservation of the documents.

In his letter to Boxer, Welch added that three weeks ago Holder “dispatched a team of attorneys from the Environment and Natural Resources Division (ENRD) and the Civil Division within the Department to monitor the oil spill in the Gulf of Mexico and assess the legal position of the United States in the aftermath of this environmental disaster.”

“The team, headed by Ignacia Moreno, Assistant Attorney General for ENRD, and Tony West, Assistant Attorney General for the Civil Division, met with the United States Attorney for the Eastern District of Louisiana and the rest of the response team in New Orleans, as well as with state officials,” Welch wrote. “Subsequently, Ms. Moreno and Mr. West convened a meeting of all of the United States Attorneys in the Gulf region to assure a coordinated effort.

“The Department team is examining the full range of affirmative legal options that may be available to the United States. The team is providing daily legal advice and coordination for federal attorneys from across the Government, a vital function. Department attorneys also are defending the interests of the United States in suits brought by others.”

While Welch’s letter may allude to the possibility of a criminal investigation down the road, West said the correspondence makes clear that the disaster is still being treated as “an accident.”

“The magnitude of this disaster rivals any we have seen and yet it is being treated as an accident by the government,” said Scott West, who spent nearly two-decades at the EPA’s Criminal Investigation Division. “I bet there are 1,000 criminal investigators in the federal government looking at this and are asking ‘what the heck is going on?’ but they can’t speak out of school. So I am going to give them voice.”

By comparison, a pipeline rupture that occurred last November at BP’s Prudhoe Bay operations, which resulted in a 46,000 gallon oil spill, immediately lead the EPA’s Criminal Investigation Division to issue a [statement](#) saying the agency was working with the FBI to investigate the cause of the incident and to determine if any laws were broken.

“The (EPA) Criminal Investigation Division is continuing to work in concert with our federal and state partners, and British Petroleum, to assess the situation associated with the Nov. 29 rupture,” said Tyler Amon, the acting special agent-in-charge of the Northwest office of the EPA’s criminal division. “This matter is under investigation.”

Furthermore, BP’s probation officer, Mary Frances Barnes, told Truthout that the EPA and FBI’s investigation will determine if BP Exploration Alaska violated the terms of its probation.

But in the Gulf, the longer the government waits to conduct a criminal probe, West and Wojnicz said, the harder it will be to obtain accurate information about the events that lead up to the explosion.

“As time passes, people’s memories fade,” West said. “It’s just a natural thing. The subjects of the investigation (BP and senior managers) have had over a month to sanitize records and get stories straight.”

West said there should have also been a subpoena immediately issued for emails and other documents that may shed light on the events leading up to the spill and the discussions that took place afterwards.

“The thing that has brought most criminals down is their email,” West said. “The first thing you do is grab the servers so they can’t be doctored. But this company does not appear to be under a court order to produce or preserve so what’s to stop them from tampering with potential evidence?”

In fact, Congress has already been informed that seven hours of data leading up to the explosion aboard Deepwater Horizon is now [missing](#).

“While some data were being transmitted to shore for safekeeping right up until the April 20 blast, officials from Transocean, the rig owner, told Congress that the last seven hours of its data are missing and that all written logs were lost in the explosion,” the Associated Press reported May 13.

“The gap poses a mystery for investigators: What decisions were made — and what warnings might have been ignored? Earlier tests, which suggested that explosive gas was leaking from the mile-deep well, were preserved.”

## Jurisdiction

West said if he were the special agent-in-charge of the EPA’s Dallas office, which has

jurisdiction over the area of the Gulf where the Deepwater Horizon sank, he would have “dispatched criminal investigators immediately just as I did in March 2006, as the special agent-in-charge in Seattle when BP’s negligence resulted in the dumping of crude onto the North Slope of Alaska.”

Ivan Vikin is the EPA’s special agent-in-charge assigned to the Dallas office that would have jurisdiction over the Gulf disaster. His voicemail said he was “traveling on official business,” which may indicate he is in fact conducting a preliminary investigation. He did not return calls for comment. An EPA senior criminal investigator who works in another office, who spoke on condition of anonymity because of the sensitive nature of the issue, said officials in the criminal division “are under direct orders not to talk about this case.”

“We were told to direct all questions [about the Gulf disaster] to headquarters,” the EPA senior criminal investigator said. “But I can tell you that a criminal investigation has not been approved and for the life of me I can’t understand why.”

An EPA spokesperson did not return numerous calls for comment on whether Vikin has initiated a criminal investigation. Asked whether a criminal investigation could be proceeding, but conducted under the cover of secrecy, West said, based on his experience, if that were the case it would be “damn near impossible” to contain leaks.

“Sure, it’s possible but highly unlikely,” West said. “We’re not hearing about guys with a gun and a badge knocking on doors and asking questions or subpoenas being issued for documents. If that were taking place we would know about it, especially on something this big. You’re just not hearing about it and that’s the first clue that a criminal investigation isn’t happening.”

Wojnicz agreed. He said if there was a criminal investigation the media would “be all over it.”

“You can try, but you can’t keep something like this secret,” he said. “And you would think that this administration may do themselves a favor if they announced an investigation because of the public relations nightmare they are dealing with over their handling of it.”

West said it’s also possible that people in government have been saying “‘if we start a criminal investigation then BP will clam up and we will lose their cooperation and right now we just need to stop the flow of oil and conduct a criminal investigation later.”

“I’ve heard that argument over and over during my tenure and I challenged it and said it was bullshit. The EPA tried to pull that with me when I sent an agent up to the North Slope after the pipeline rupture saying my criminal investigators were ‘getting in the way.’ It’s a ridiculous statement. Criminal investigators work with emergency responders all the time and do not get in the way. It takes experience to know how to challenge this kind of push back when you’re faced with it. If that were the case with the Gulf, the criminal investigator could say ‘if you keep it up I may have to make an obstruction of justice referral to the US attorney.’ But who has the balls to do that?”

## A Powerful Company

Jeanne Pascal was the debarment counsel at the EPA’s Seattle office who spent more than a decade working on issues related to environmental crimes BP had been convicted of.

Debarment is a process that happens when a company is convicted of a crime and prohibited from receiving government contracts for a certain time period. Pascal first started working on debarment with BP when the company was convicted of a felony in connection with illegally dumping hazardous waste in the late 1990s in Alaska.

In an interview, Pascal said there “doesn’t appear to be a criminal investigation and there should be.”

“This is a company that views itself as above the law,” Pascal said. “Now why is that? The only thing I can come up with to explain the failure to launch a criminal investigation is that BP has so much political influence. Congress needs to step up if the president won’t do the right thing. The FBI ought to be investigating this matter criminally along with EPA and [Department of Interior]. This is the fifth major incident committed by this company in 10 years.”

She said the power the company wields might be due, in large part, to the fact that BP supplies the military with 80 percent of its fuel needs. Because of that, she had to proceed with caution. BP pled guilty to a felony in connection with a March 2005 explosion at BP’s Texas City refinery, which claimed the lives of 15 employees and injured 170 others; BP pled guilty to a criminal misdemeanor for two oil spills in Alaska in March and August 2006 due to a severely corroded pipelines on which BP failed to perform maintenance; and, BP entered a deferred prosecution agreement related to price fixing scheme involving propane trading.

“If I had debarred BP while they were supplying 80 percent of the fuel to US forces it would have been almost certain that the Defense Department would have been forced to get an exception,” Pascal said. “There’s a provision in the debarment regulations that says in a time of war or extreme need exceptions can be granted to debarment so that federal agencies with critical needs can continue doing business with debarred contractors. I was in a quandary. If I moved forward with debarment we would have had a major federal contractor doing business with the federal government with no governmental oversight or audit provisions. I felt oversight terms and conditions were critical with BP, so I pursued settlement of the matter in the hopes of getting oversight and audit terms.”

Pascal said she has observed similarities in BP’s response to what happened aboard the Deepwater Horizon and the revelations that the company had been illegally dumping toxic waste at Endicott Island in that BP’s initial response was then, and has been, to blame its contractors when, in fact, BP’s “company man” on drilling rigs has control over drilling operations.

“When there is a failure they blame the contractor,” Pascal said. “BP is the most retaliatory company I ever dealt with. They punish employees for bringing Health Safety and Environmental (HSE) concerns to the management or to regulators. BP management then fails to take responsibility. They manage the way they operate with profit foremost in their minds.”

A major criticism shared by West, Wojnicz and Pascal is that Obama has moved forward with an independent commission to study what caused the disaster and make sure it doesn’t happen again without the commencement of a criminal investigation and the subpoena and testimonial powers that gives the government the ability to compel documents and witness testimony. A civil approach relies too heavily on the veracity of what the company will be willing to disclose; and in this situation thoroughness is critical.



Wojnicz said a presidential commission “is a feel-good measure that the White House is putting out there to show they are making some kind of inquiry.”

“They’ll call witnesses and ask for documents and give certain people all the time they need to figure out what they are going to say,” Wojnicz said. “There really is no place for this right now.”

West said he intends to keep the pressure on and speak out about the urgent need for a criminal probe.

“Criminal enforcement of the nation’s environmental laws is a powerful and effective tool to achieve compliance with those laws,” West said. “EPA Criminal Investigation Division is the best entity available for this work, yet the managers within [the agency] are timid at best and obstructionist at worst. If they are not going to bring criminal enforcement to bear in this, the most egregious assault on our environment, then when will they? So if we, as a nation, want the criminal enforcement program to work as Congress intended, then we need to send the current crop of managers home and bring in new ones who will.”

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