

Glenn A. Fine, Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W. Suite 4706  
Washington, D.C. 20530-0001

Via mail and fax 202 514-4001

November 10, 2008

Dear Inspector General Fine:

I am writing on behalf of Scott West, who until last week was a Special Agent-in-Charge for the U.S. Environmental Protection Agency, Criminal Investigation Division, and is represented in this matter by Public Employees for Environmental Responsibility (PEER), to investigate whether the criminal prosecution of the largest oil spill in the history of Alaska's North Slope was improperly blunted.

### **Background**

In March 2006, a major pipeline leak went undetected for days, spilling a quarter-million gallons of oil on the Alaskan tundra. The spill occurred because the pipeline operator, British Petroleum (BP), ignored its own workers warnings by neglecting critical maintenance to cut costs. The spill sparked congressional hearings and a large federal-state investigation. Despite the outcry, in a settlement announced in late October 2007, BP agreed to one misdemeanor charge carrying three-year probation and a total of only \$20 million in penalties (a \$12 million fine with \$8 million in restitution and compensatory payments).

The settlement resulted from a sudden U.S. Justice Department August 2007 decision to wrap up the case, according to West. That precipitous shutdown meant –

- Felony charges would not be pursued and the agreement foreclosed any future prosecutions. No BP executive faced any criminal liability for a spill second in size only to the *Exxon Valdez*;
- The fines proposed by Justice (to which BP immediately agreed) were only a fraction of what was legally required under the Alternative Fines Act. EPA had calculated the

appropriate fine levels as several times what Justice offered BP – ranging from \$58 million to \$672 million, depending upon the economic assumptions; and

- The BP Alaska settlement is part of a pattern of “lowball” corporate public safety and pollution settlements engineered by the Bush Justice Department. In that October 2007 settlement package, Justice asked for only \$50 million in fines for the BP Texas refinery explosion in which 15 people died – penalties not carrying strong deterrent value for a big multi-national corporation.

In a statement attached to this complaint, Mr. West [ATTACHMENT I] said:

“Never ...have I had a significant environmental criminal case shut down by the political arm of the Department of Justice, nor have I had a case declined by the Department of Justice before I had been fully able to investigate the case. This is unprecedented in my experience.”

### **Specific Request**

We are asking your office to specifically review two aspects of this matter:

#### ***1. Whether Fine Levels Were Appropriate***

The analysis produced by EPA specialists determined that much higher fines were required under the Alternative Fines Act [ATTACHMENT II].

Moreover, a major corporation like BP with substantial profits merits stiffer financial penalties than a smaller corporation would need in order to bring about needed change in the corporate culture. A \$20 million fine is essentially a rounding error in terms of the money BP makes in Alaska. There is little deterrent value in this amount to encourage BP to change its ways or for other major oil companies to change theirs.

Although the Department of Justice [DOJ] claims it based the fine amount on previous settlements in cases such as the Olympic Pipeline explosion, the Seladang Ayu sinking, and the BP Texas City explosion this is not an adequate explanation. Olympic Pipeline and Seladang Ayu were inordinately low settlements (and in the case of the Seladang Ayu, improperly charged as well) that should also be reviewed by the OIG for the same reasons the BP Alaska case needs to be reviewed and certainly should not be allowed to stand as precedents for future environmental criminal settlements.

As illustrated by these cases, the deterrence value of criminal fines is being systematically undermined by this DOJ. The Texas City BP refinery explosion case settlement is even more outrageous than the BP Alaska spill case settlement. In that case, 15 persons were killed as a result of the same corporate attitude towards corrosion control that resulted in the oil spill on the North Slope.

## ***2. Whether the Investigation Was Prematurely Closed Down.***

While we acknowledge that DOJ has broad prosecutorial discretion, that discretion is not limitless. Nor is it beyond analysis. Particularly in matters involving major and complex corporate environmental crimes, some care should be taken to ensure that the public interest is protected.

In this instance, Mr. West was a veteran senior environmental criminal manager, ~~and~~ but was systematically cut off by DOJ in his attempts to keep this investigation alive.

In the spring of 2007, DOJ was investing a large amount of financial resources and manpower into the case (both in the District of Alaska and at Main Justice Environmental Crimes Section). As recently as June 2007, the lead Assistant U.S. Attorney (AUAS) wrote about her optimism that the government had a powerful case [ATTACHMENT III].

At that time, Mr. West believed that he and his team were finally breaking through some roadblocks and closing in on identifying senior BP officials as criminal targets and establishing the basis for bringing felony charges against the corporation.

Then in an August 2007 roundtable meeting, DOJ officials demanded to know what charges could be proven TODAY. When informed that additional charges could not be yet proven, DOJ rammed through the settlement we now have and the investigation went “bust”.

According to Mr. West, there was a large body of evidence in the government’s possession that had not yet even been reviewed. Mr. West questioned DOJ’s “rush to settlement” and was vocal that there was at least another year of investigative work to do before charging decisions could realistically be discussed. He was denied that additional year as he was then denied an additional 6 months, and finally denied 3 more months. He was told BP case was ready to settle now.

While DOJ now apparently claims that all of the investigators and their agencies were in agreement, that was not the case. At the time, the AUSA said that the “the door is open to future individual charges” but, in reality, DOJ had pulled its resources and the investigation was shut down.

There are other senior EPA criminal investigative managers who can corroborate Mr. West’s account, but they cannot openly talk at this time because their jobs would be in jeopardy. If your office chooses to interview any of them, Mr. West can provide contact information.

If you have questions or require additional information, do not hesitate to contact me at (202) 265-PEER.

Sincerely,

Jeff Ruch  
PEER Executive Director