

U.S. Department of Justice

Environment and Natural Resources
Division

*Environmental Crimes Section
P.O. Box 23985
Washington, DC 20026-3985*

*Telephone (202) 305-0321
Facsimile (202) 305-0397*

September 8, 2010

Honorable Lee H. Rosenthal
United States District Judge
Southern District of Texas
515 Rusk Avenue
Houston, TX 77002

Re: United States v. BP Products North America Inc., 4:07-cr-434, SD TX

Dear Judge Rosenthal:

This is to inform the Court of the status of BP Products North America, Inc.'s ("BP") alleged non-compliance with requirements of the September 22, 2005 Settlement Agreement executed between OSHA and BP, which was incorporated into the March 12, 2009 Plea Agreement between the United States and BP. As the Court ordered in its Judgment of March 13, 2009, BP must comply with the requirements of the Settlement Agreement as conditions of its probation under the Plea Agreement.

I. Background

In July 2009, OSHA informed the Environmental Crimes Section and the U.S. Attorney's Office ("Department of Justice") that BP was not in compliance with the Settlement Agreement. The two most significant allegations of non-compliance concerned the requirements to conduct a facility-wide relief valve ("RV") study and implement a facility-wide Safety Instrumented System ("SIS"). In October 2009, pursuant to its own enforcement authority, OSHA filed a Failure to Abate notice with the Occupational Safety and Health ("OSH") Review Commission. OSHA also cited BP for willful violations of process safety management regulations concerning safety risks deriving from BP's alleged non-compliance with the Settlement Agreement. Under the terms of the Settlement Agreement and OSHA's own enforcement powers, OSHA also sought a hearing before the OSH Review Commission.

In January 2010, the Department of Justice informed BP that if it failed to resolve the allegations of non-compliance to OSHA's satisfaction, the government might seek revocation and/or extension of probation. In the interest of judicial economy, the Department of Justice did not immediately move this Court to modify or revoke BP's probation, but has closely monitored the situation to determine if BP could resolve the alleged noncompliance with OSHA. In the ensuing months, the Department of Justice remained in contact with OSHA to make certain that any resolution with BP would ensure compliance with the terms of the Settlement Agreement by March 12, 2012, as ordered by the Court.

II. Conditions of Stipulation Agreement

OSHA and BP have executed a Stipulation and Agreement resolving the allegations of non-compliance. Copies of the signed Stipulation and Agreement, original Settlement Agreement and Judgment are attached hereto. In summary, the Stipulation and Agreement now requires: 1) extending completion of the requirements under the Settlement Agreement until March 12, 2012; 2) specific tasks required for BP to accomplish the facility-wide RV study and SIS; 3) specific deadlines for tasks that BP must meet; and 4) a third-party monitor to verify compliance.

The Department of Justice has discussed the executed agreement in detail with OSHA and BP. In addition, the Department of Justice has been in contact with the U.S. Probation Office and explained the terms of the Stipulation and Agreement to ensure that the probation officer is apprised of the current status of the case. Further, the Department of Justice been in contact with victims' counsel over the past several months to provide them an opportunity consult with the government and express their views concerning the case. This included written correspondence, a phone conference in January 2010, and two meetings at the U.S. Attorney's Office in Houston, on June 22 and August 24.

All requirements of the original Settlement Agreement must be completed by March 12, 2012, when BP's probation currently terminates. Therefore, it is the United States' position that the conditions of the Stipulation and Agreement are also conditions of BP's probation under the Plea Agreement. BP agrees with this position and is filing a letter with the Court to that effect. As a result, the Department of Justice is not seeking a revocation or extension of probation at this time.

Should the Court have any questions, please do not hesitate to have your chambers contact me at (202) 305-0351 or Assistant U.S. Attorney Mark McIntyre at (713) 567-9572.

Respectfully,

/S/ Daniel W. Doohar
Daniel W. Doohar
Senior Trial Attorney
Environmental Crimes Section
U.S. Department of Justice

cc: AUSA Mark McIntyre, SD TX
Counsel of Record
Barbara Schoephoerster, U.S. Probation Office
William Miller, EPA-CID
Janice Holmes, OSHA