

U.S. Department of Justice

Environment and Natural Resources
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September 10, 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 clarify the government's letter of September 8, 2010. As stated in our September 8 letter, OSHA and BP have executed a Stipulation and Agreement (dated August 12, 2010), resolving OSHA's earlier determination that BP was not in compliance with the original Settlement Agreement, the requirements of which are conditions of BP's probation.

To ensure accuracy, the government writes to clarify four items set forth in the "Background" section of our September 8 letter. First, the government stated that the "two most significant" allegations by OSHA regarding non-compliance with the Settlement Agreement were a failure to perform a facility-wide relief valve ("RV") study and fully implement a facility-wide Safety Instrumented Systems ("SIS"). These were in fact the only allegations of noncompliance alleged by OSHA with regard to the Settlement Agreement. Regarding the SIS, the allegation was that BP had failed to implement an industry standard related to the SIS.

Second, the government stated in its September 8 letter that "[i]n 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."

The procedural history was such that OSHA issued the Failure to Abate notices to BP, not directly to the OSH Review Commission. As BP had the right to contest the notices, the case was to be adjudicated by the OSH Review Commission. Before the case was adjudicated by the OSH Review Commission, BP resolved the allegations of noncompliance to OSHA and DOJ's satisfaction.

Third, the government stated in its September 8 letter that OSHA issued citations for willful violations concerning safety risks deriving from BP's alleged non-compliance with the Settlement Agreement. More accurately, the citations do not do not allege any violations of the 2005 Settlement Agreement, and resolution regarding those citations remains pending in the OSHA administrative process. DOJ has determined that the citations do not have an effect on BP's compliance with the conditions of probation.

Fourth, the government stated that the Court's Judgment in a Criminal Case requires BP to comply with the Settlement Agreement by March 12, 2012. More accurately, the Court's order requires BP to comply with the 2005 Settlement Agreement as a condition of probation, which is scheduled to terminate March 12, 2012.

As stated in our letter of September 8, all requirements of the original Settlement Agreement, as clarified and scheduled by the August 12, 2010 Stipulation and 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.

Attached with this letter are copies of the Court's Judgment in a Criminal Case, the original Settlement Agreement, and the executed Stipulation and Agreement. 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. Thank you for the opportunity to provided the above clarification to the Court.

Respectfully,

/S/
Daniel W. Dooher
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