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**FEDERAL AND STATE ACTION ON THE TRAGEDY AT THE *DEEPWATER HORIZON*/MACONDO WELL:**

- **CONSENT DECREE WITH BP TO COLLECT CIVIL PENALTY AND NATURAL RESOURCE DAMAGES**
- **PROGRAMMATIC DAMAGES ASSESSMENT AND RESTORATION PLAN FOR GULF OF MEXICO REGION.**

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**CONSENT DECREE**

Overview. The federal-state Consent Decree with BP Exploration & Production Inc. (BP) consists of about 100 paragraphs and 11 appendices. The Consent Decree details what BP must do to resolve the complaints filed against it by the federal government, and the five Gulf States, for the company's role in the *Deepwater Horizon*/Macondo Well tragedy. The Consent Decree will be lodged with the U.S. District Court in New Orleans, and public comment will be sought for 60 days. The federal government and the states will then consider the public comment and determine whether to seek court approval of the Consent Decree (Paragraphs 80 – 83). BP consents to entry of the Consent Decree without further notice (Paragraph 83).

The Consent Decree has three major components:

**1. Payment Terms.** BP must pay the federal and state governments the following sums, under schedules set forth in the Decree:

- \$5.5 billion, plus interest, as a civil penalty under the Clean Water Act; this penalty is subject to the RESTORE Act, which allocates 80% of the penalty for environmental restoration and economic development projects in the five Gulf States; this sum also resolves penalty claims related to incidents-of-noncompliance that DOI's Bureau of Safety and Environmental Enforcement issued to BP concerning the Macondo Well (Paragraphs 10-14);
- \$8.1 billion in natural resource damages, including \$1 billion previously committed for early restoration projects; the designated federal and state trustee agencies will use these funds to restore injured natural resources in the Gulf of Mexico region (Paragraphs 15-17 and 19);

- Up to an additional \$700 million in natural resource damages for unknown conditions and adaptive management (Paragraph 21); and
- \$600 million to further reimburse the governments for assessment and removal costs, and to pay for lost royalties and resolve a False Claims Act investigation (Paragraphs 22-24).

Note: In addition to the federal-state Consent Decree with BP, in separate agreements the company is also resolving economic damages claims of state and local governments:

- \$4.9 billion in total to the five Gulf States; and
- Up to \$ 1 billion to local governments that presented such claims.

## **2. Injunctive Relief.**

The Consent Decree, at paragraph 34, summarizes the commitments to process safety, corporate ethics, and other operational improvements that BP made in resolving both the criminal charges it faced for the *Deepwater Horizon/Macondo Well* disaster and the specter of disbarment and suspension from further commercial dealings with the federal government. The details of those commitments are in Appendices 4, 5, and 6 of the Consent Decree. BP also acknowledges compliance with those requirements and their continuing vitality under the plea agreement and EPA administrative agreement that created them (Paragraphs 35-36).

Appendix 11 specifies information that BP will post on a publicly-available web site, thereby allowing everyone greater insight into BP's performance under the plea agreement and EPA administrative agreement (Paragraph 38).

## **3. Compliance Assurance.**

The Consent Decree contains a number of terms to assure BP's compliance with the Decree and to resolve future contingencies.

Guaranty. Although the Consent Decree is with BP Exploration & Production Co., the company that owned and operated the Macondo Well, BP's North American and UK parent companies – BP Corporation North America Inc. and BP p.l.c., respectively -- are also signing the Consent Decree and are providing guaranties that all payments will be made (Paragraph 32 and Appendices 8 and 9).

Acceleration of Payments. Should BP p.l.c. file for bankruptcy, become insolvent, or go through a change of ownership, the Consent Decree's acceleration clause allows the governments to require BP to make all payments under the Consent Decree immediately (Paragraphs 30 and 31).

Stipulated Penalties. If BP fails to meet the deadline for any payment or to comply with the injunctive relief portions of the Consent Decree, stipulated penalties

against BP are available to the governments, as a supplemental sanction (Paragraphs 44-45).

Dispute Resolution. Should BP dispute any issue concerning the Consent Decree, its dispute resolution provisions place on BP the burden of proof in almost all instances (Paragraphs 54-59).

Acknowledging Federal Tax Law. BP may not take a tax deduction, or capitalize into inventory or basis, any portion of the assessed civil penalty (Paragraph 14).

## **NATURAL RESOURCE DAMAGES PAID UNDER CONSENT DECREE WILL FUND FEDERAL-STATE PLAN FOR RESTORATION IN THE GULF**

Damage Payments for Restoration. The amount of natural resource damages that BP must pay is set forth in Consent Decree Paragraphs 15, 17, and 21. Those payments total \$8.8 billion, as presently scheduled.

Damages Assessment and Restoration Plan. At the same time the Consent Decree is available to the public for review and comment, the Trustee Council (composed of four federal agencies and designated trustees from each of the five Gulf States) will make available for public review:

- A 1,000-plus-page proposal, comprised of a draft natural resource damages assessment and restoration plan and a draft environmental impact statement; those documents describe (1) the injuries to natural resources and lost natural resource services caused by the oil spill; and (2) the types of restoration projects contemplated and the amounts available for restoration in “restoration areas” (described below) across the Gulf Region; and
- A collection of key documents (thousands of them) considered by the Trustee Council in developing the damages assessment and restoration plan – referred to as the Administrative Record.

Restoration Categories and Areas. The proposed restoration plan expands upon Appendix 2 to the Consent Decree, which provides a broad description of where and how the natural resource damages payments will be allocated to various restoration categories and geographic areas. The restoration areas include each of the Gulf States; the Five-State Gulf Region as a whole; the Open Ocean of the Gulf of Mexico; and Unknown Conditions and Adaptive Management.

Public Meetings. During the period for written public comments on the draft restoration plan, the federal and state trustees plan to hold public meetings at locations in each Gulf State and in Washington, D.C. The meetings will allow the public to learn

more about the natural resource restoration planning process and provide further opportunity for public input.

Consideration of Comment and Final Plan. After these meetings and the close of the public comment period, the Trustee Council will consider the input received and is expected to adopt a final damages assessment and restoration plan. That final plan will frame all restoration work for natural resources in the Gulf region funded by natural resource damages payments made by BP under the federal-state Consent Decree.