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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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August 11, 2010

Mr. Lamar McKay  
President and CEO,  
BP America, Inc.  
501 Westlake Park Boulevard  
Houston, Texas, 70779

Dear Mr. McKay:

On August 2, 2010, the Deepwater Horizon Unified Command released updated flow rate estimates for the amount of BP oil that flowed into the Gulf of Mexico prior to the initial capping of the Deepwater Horizon well on July 15, 2010. These estimates reflect the collaborative work and discussions of the National Incident Command's Flow Rate Technical Group (FRTG), led by United States Geological Survey Director Marcia McNutt, and a team of Department of Energy scientists and engineers, led by Energy Secretary Dr. Steven Chu.

According to the FRTG estimate, 53,000 barrels of oil per day were leaking from BP's well immediately preceding its closure using the capping stack. However, at the beginning of the spill, 62,000 barrels per day were leaking from the well. Because the well flowed for 87 days, approximately 4.9 million barrels flowed into the gulf. The FRTG estimate has a plus or minus 10 percent uncertainty range.

As you know, BP is a participant in the Unified Command and assisted in the preparation of these estimates. BP has not publicly indicated disagreement with these estimates.

Under current law, BP will be assessed fines for each barrel of oil spilled. These fines will range from a minimum of \$1100 per barrel to up to \$4300 per barrel. The amount of oil spilled will also be used in assessing the extent of natural resource

Mr Lamar McKay  
Page 3 of 3

damages. The 53,000-62,000 barrel per day figure far exceeds BP's initial estimates of 1,000-5,000 barrels per day and much more closely resembles the so called "worst case" scenario cited by BP officials of 60,000 barrels per day.

I am writing to ask whether BP will accept this more definitive FRTG estimate as the basis for its per barrel spill liability and for other legal purposes, including the assessment of natural resources damages, as well. As is evident, each per day change in the flow rate, when compiled over the 87 day life of the spill, may be worth billions of dollars to BP if in fact it is found guilty of gross negligence with regard to this spill. For instance, for every 10,000 barrels of oil spilled per day at \$4,300 per barrel, over the more than 80 days that oil spilled into the ocean, the fine would be increased by \$3.5 billion. The total size of the spill will also affect the amount of damages BP would have to pay for the spill's effect on natural resources in the Gulf of Mexico.

BP's official website:

(<http://www.bp.com/extendedsectiongenericarticle.do?categoryId=40&contentId=7061813a>) declares that:

"BP is doing everything we can to make this right. We continue to work to stop the flow of oil, clean up the environmental damage, and help make sure that people are compensated for their losses."

A similar message has been conveyed through BP's extensive advertising campaign relating to its Gulf spill response activities. In light of BP's stated commitment to "make this right," the American public deserves to know whether BP plans on accepting the federal government's official flow-rate estimate for liability purposes or whether it plans on litigating this number and low-balling the amount of oil that actually flowed into the gulf. Accordingly it is incumbent upon BP to stipulate that it will accept the FRTG's latest flow rate estimates when the government seeks to collect its fine and assess other damages caused by the Deepwater Horizon Macondo well blowout. We know that this has been the worst environmental disaster in our nation's history and it is high time for BP to legally "own up" to that fact as well.

Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Michael Goo or Michal Freedhoff of my staff at 202-225-2836.

Sincerely,



Edward J. Markey  
Chairman  
Subcommittee on Energy and Environment

Mr Lamar McKay

Page 3 of 3

Cc: Honorable Henry Waxman, Chairman,  
Committee on Energy and Commerce  
Honorable Joe Barton, Ranking Member  
Honorable Fred Upton, Ranking Member  
Dr. Marcia McNutt, United States Geological Survey and Chair, Flow Rate  
Technical Committee