



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

In re: Oil Spill by the Oil Rig "*Deepwater
Horizon*" in the Gulf of Mexico, on
April 20, 2010

MDL No. 2179

SECTION: J

This Document Relates To: 10-4536

Honorable CARL J. BARBIER
Magistrate Judge SHUSHAN

Ex 12198
Worldwide
Court Reporters, Inc.

UNITED STATES' THIRD SUPPLEMENTAL RESPONSE TO
DEFENDANTS' FIRST SET OF DISCOVERY REQUESTS
TO THE UNITED STATES OF AMERICA
RELATING TO THE CLEAN WATER ACT PENALTY PHASE

The United States of America by its undersigned Counsel, and pursuant to Rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure, as well as the instructions of Magistrate Judge Shushan, hereby submits the following objections and second supplemental responses to Defendants' First Set of Discovery Requests to the United States of America Relating to the Clean Water Act Penalty Phase.

Except as explicitly set forth herein, the responses and objections set forth in United States' First Supplemental Response to Defendants' First Set of Discovery Requests to the United States of America Relating to the Clean Water Act Penalty Phase are unchanged.

III. INTERROGATORIES

10. Identify the total amount of Oil-Related Materials that you contend were contained, collected, dispersed, burned, and cleaned up as a result of the Response Activities, as well as the amount of Oil-Related Materials that were removed through natural processes, including the portions of the total volume attributable to each process (for example, through the use of skimming, boom, dispersants, *in situ* burning, shoreline cleanup, and natural processes), and a detailed description of how you performed these analyses. As part of your response, please identify the persons most knowledgeable about, and all statements, documents, and other materials that describe or reflect, the analyses.

OBJECTIONS: The United States objects to this interrogatory for the reasons set forth in its Seriousness Motion, its brief in support of the Seriousness Motion, its reply in support of

the Seriousness Motion, and the US 26(f) Report. Moreover, the United States objects to this request as overbroad in light of the Court's ruling cited in the United States' objections to Request for Production 1.

In addition, the United States objects to this request for production as calling for the premature disclosure of expert opinions. As the United States has already disclosed, the United States anticipates that its evidence regarding the actual and potential environmental harm caused by the Defendants' violation will be presented through expert testimony that will be disclosed in accordance with the schedule to be established by the Court.

The United States further objects to this interrogatory because it seeks information not reasonably calculated to lead to the discovery of admissible evidence in this Phase of the litigation. The focus of the penalty phase is the seriousness of the Defendants' violations, not whether other activities have also impacted the environment of the Gulf of Mexico. If interpreted to call for discovery into the detailed environmental impact of Defendants' violations or the removal actions, this interrogatory is a stalking horse intended to provide Defendants a preview of the natural resource damages claims not yet brought by the United States.

RESPONSE: Subject to, and without waiving its objections, the United States responds as follows:

Pursuant to Federal Rule of Civil Procedure 33(d), the United States directs Defendants to the documents produced in response to previously served requests for production 73, 78-85, and 123-127, as well as the Rule 30(b)(6) testimony Mark Miller.

SUPPLEMENTAL RESPONSE: Subject to and without waiving the foregoing objections, the United States provides the following supplemental response:

As stipulated in 810,000 barrels of "Collected Oil" were collected during the spill.

“Collected Oil” is oil that flowed from the subsurface reservoir, through the well, through the blow-out preventer, and never came into contact with any ambient sea water, and was not released to the environment in any way (other than via flaring approved by the FOSC). See Stipulation Mooting BP’s Motion for Partial Summary Judgment Against the United States, Rec. Doc. 8620 (Feb. 19, 2013).

SECOND SUPPLEMENTAL RESPONSE: Subject to and without waiving the foregoing objections, the United States provides the following supplemental response:

Pursuant to the Order Regarding BPXP's Motion to Compel Discovery from U.S. (Rec. Doc. 12950), the United States hereby states that the ultimate fate of the oil-related materials discharged from the explosion and eighty-seven day discharge from Defendants' well is still the subject of scientific inquiry during the course of the natural resources damage assessment.

Reserving its right to provide more detailed or refined analysis in later phases such as a claim for natural resource damages, for purposes of the Penalty Phase the United States will rely upon stipulations and other proof submitted in Phase 2 as well as the Oil Budget Calculator's estimate of the amounts of oil contained, collected, dispersed, burned, and cleaned up as a result of the Response Activities. The estimates based upon the proof submitted in Phase 2 and the Oil Budget Calculator are summarized in the attached table:

Calculated Values	Cumulative
Discharged	5,000,000
Recovered via RITT and Top Hat	810,000
Dispersed Naturally	763,948
Evaporated or Dissolved in the waters of the Gulf	1,242,668
Available for Recovery	2,183,384
Chemically dispersed	418,075
Burned	263,900
Skimmed	156,694
Remaining in the Waters of the Gulf	1,344,715

See TREX-9182 at A2.7; United States' Proposed Findings of Fact for Quantification Segment of the Phase Two Trial, Rec. Doc. 12048-1 (Dec. 20, 2013); Stipulation Mooting BP's Motion for Partial Summary Judgment Against the United States, Rec. Doc. 8620 (Feb. 19, 2013).

The United States identifies the authors and contributors to the Oil Budget Calculator Technical Documentation as the individuals most knowledgeable about the Calculator estimates, which constitute the United States contentions, as of May 1, 2014, regarding the total amount of oil-related materials that were contained, collected, dispersed, burned, and cleaned up as a result of Response Activities. Those authors and contributors are:

Lehr, Bill National Oceanic and Atmospheric Administration (NOAA)
Bristol, Sky U.S. Geological Survey (USGS)
Possolo, Antonio National Institute of Standards and Technology (NIST)
Allen, Alan, Spiltec
Boufadel, Michel, Temple University
Coolbaugh, Tom, ExxonMobil
Daling, Per, SINTEF
Fingas, Merv, Environment Canada (retired)
French McCay, Debbie, Applied Science Associates
Goodman, Ron Innovative, Ventures Ltd.
Jones, Robert NOAA
Khelifa, Ali, Environment Canada
Lambert, Pat, Environment Canada
Lee, Ken, Fisheries and Oceans Canada
Leifer, Ira University of California Santa Barbara
Mearns, Alan, NOAA
Overton, Ed, Louisiana State University
Payne, James, Payne Environmental Consultants
Beegle-Krause, C.J., NOAA
Farr, Jim, NOAA
Galt, Jerry, NOAA
Hammond, Steve, U.S. Geological Survey
Lasheras, Juan, University of California San Diego
Mabile, Nere, BP
Miller, Mark, NOAA
Svekovsky, Jan, Ocean Imaging
Yapa, Pooji, Clarkson University

The United States also identifies the witnesses who testified on behalf of the United States in the

Quantification Phase trial and depositions as other individuals knowledgeable about the total amount of oil discharged, an input into the question of how much was collected, burned, etc.

THIRD SUPPLEMENTAL RESPONSE: Subject to and without waiving the foregoing objections, the United States amends its foregoing response in a single respect as follows:

The United States inadvertently used the numbers from table A2.2, which is the first version of the Oil Budget Calculator. These numbers were corrected and refined in the second version, as set forth in the Technical Documentation. Accordingly, the United States amends its response as follows:

Calculated Values	Cumulative*
Discharged	5,000,000
Recovered via RITT and Top Hat	810,000
Dispersed Naturally	640,000
Evaporated or Dissolved in the waters of the Gulf	1,200,000
Available for Recovery	2,400,000
Chemically dispersed	770,000
Burned	260,000
Skimmed	160,000
Other Oil	1,200,000
Dispersant Used	44,000
*All unlabeled values in barrels; rounded to 2 significant digits	

See TREX-9182 at A2.6; United States' Proposed Findings of Fact for Quantification Segment of the Phase Two Trial, Rec. Doc. 12048-1 (Dec. 20, 2013); Stipulation Mooting BP's Motion for Partial Summary Judgment Against the United States, Rec. Doc. 8620 (Feb. 19, 2013).

JOSHUA WILKENFELD
Acting Deputy Assistant Attorney General
Civil Division
PETER FROST
Director, Torts Branch, Civil Division
Admiralty and Aviation
SHARON SHUTLER
MALINDA LAWRENCE
LAURA MAYBERRY
Trial Attorneys
R. MICHAEL UNDERHILL, T.A.
Attorney in Charge, West Coast Office

Respectfully submitted,

SAM HIRSCH
Acting Assistant Attorney General
Environment & Natural Resources Division
MICHAEL MCNULTY
SARAH HIMMELHOCH
Senior Level E-Discovery Coordinator
NANCY FLICKINGER
Senior Attorney
PATRICK CASEY
RICHARD GLADSTEIN
DANIEL S. SMITH
Senior Counsel
ABIGAIL ANDRE
A. NATHANIEL CHAKERES
ANNA CROSS
RACHEL HANKEY
JUDY HARVEY
RACHEL KING
ERICA PENCAK
BRANDON ROBERS
GORDON YOUNG
Trial Attorneys

/s/ Sarah D. Himmelhoch
STEVEN O'ROURKE
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Telephone: 202-514-2779
Facsimile: 202-514-2583
E-mail: steve.o'rourke@usdoj.gov
KENNETH A. POLITE, JR.
United States Attorney
Eastern District of Louisiana
SHARON D. SMITH
Assistant United States Attorney
Eastern District of Louisiana

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served on all counsel by electronically uploading the same to Lexis Nexis File & Serve in accordance with Pretrial Order No. 12, which will send a notice of electronic filing in accordance with the procedures established in MDL 2179.

/s/ Sarah D. Himmelhoch