

GULF SPILL: Justice Department lawsuit against BP imminent *(12/15/2010)* **Lawrence Hurley and Paul Quinlan, E&E reporters**

The Obama administration is finally ready to pull the trigger on its long-awaited lawsuit over the massive Deepwater Horizon spill.

The Justice Department is set to announce today that it will be filing a multipronged civil suit against oil giant BP PLC, which owns the well, and Transocean Ltd., the owner of the oil rig, that could potentially lead to billions of dollars in damages.

The federal government has long signaled its intent to file suit over the April 20 spill (Greenwire, Oct. 25). The government's lawyers will likely focus on seeking relief under the Clean Water Act and the Oil Pollution Act.

Under the Oil Pollution Act, enacted in the wake of the 1989 Exxon Valdez oil spill, the government can seek damages and removal costs from any responsible party for the discharge of oil. Damages are defined to include both economic damages and natural resources damages.

Penalties for the 4.9-million-barrel spill under the Clean Water Act could range from a minimum of \$5.4 billion, based on a \$1,100-per-barrel fine, to as much as \$21.1 billion, or \$4,300 per barrel, if the spill is deemed the result of "gross negligence."

"The question will be, are they saying that there is gross negligence and what are they saying about the amount of oil that was spilled?" said Paul Harrison, the Environmental Defense Fund's senior director for the Mississippi River. "Those are the two factors that define how much money will come from the Clean Water Act penalties."

Charles Tebbutt, an attorney with the nonprofit Center for Biological Diversity, which has filed its own lawsuit against BP and Transocean, said the case was "a slam-dunk on liability."

BP will attempt to reduce its exposure as much as possible by challenging the number of barrels spilled, he added.

BP did not immediately return a call seeking comment about the lawsuit.

U.S. District Judge Carl Barbier of the Eastern District of Louisiana will handle the government's claims, along with dozens of consolidated claims filed by private plaintiffs, who are also seeking damages under the Oil Pollution Act.

Although BP has created a \$20 billion compensation fund aimed at deterring lawsuits, it has not stopped numerous plaintiffs -- represented by some of the most prominent trial lawyers in the nation -- from filing suit.

Back in September, the government outlined its interest in civil litigation in a court filing before Barbier in which Justice Department attorneys asked for a separate "government track" for the

litigation. Gulf Coast states, including Louisiana and Alabama, are pursuing their own civil claims.

Barbier has scheduled his next status conference in the litigation for this Friday.

Arguments over restoration funding

The Justice Department's action comes as wrangling continues behind closed doors on Capitol Hill over how to divide up and spend the potentially tens of billions that could result from a successful suit.

The Obama administration has recommended that a "significant amount" of that money be devoted to Gulf Coast restoration, including long-stalled efforts to repair disappearing Louisiana coastal wetlands and barrier islands that are essential to stopping hurricanes and restoring health to the fishery and ecosystem. But leaders of Gulf Coast states remain at odds, with Louisiana officials calling for 80 percent of the money and Alabama Sen. Richard Shelby (R) pushing for an equal distribution (Greenwire, Nov. 23).

Complicating that debate on Capitol Hill, which lawmakers had hoped would conclude before the end of the year but that now appears likely to stretch into 2011, is the prospect that the Congressional Budget Office could attach a multibillion-dollar price tag to legislation that seeks to divert money to Gulf Coast restoration.

Advocates fear that, despite broad support for using spill money to restore the Gulf Coast, an outsized price tag for legislation to do just that could gin up strong opposition from spending hawks in Congress.

"To be frank, it is going to be hard to convince Congress to give up those monies," said Aaron Viles, campaign director for the Gulf Restoration Network (Greenwire, Oct. 21).

If the law doesn't change, whatever billions result from a lawsuit or settlement will flow directly into a congressional trust fund used to pay for future oil spill cleanups called the Oil Spill Liability Trust Fund. Lawmakers could then either tap the fund to pay for environmental restoration or, some fear, raid it for other purposes.

"We do have the resources now available to help," Louisiana Sen. Mary Landrieu (D) told the Oil Spill Commission earlier this year. "Not only fix what was damaged, stop the land loss, but invest smartly in the future of not just Louisiana and Mississippi, but the entire Gulf Coast, a region that is extremely important to our nation."