



## **New Finding of Facts and Conclusions of Law from Deepwater Horizon Trial Finds BP was Grossly Negligent & is Exposed to Clean Water Act Penalties at a Higher Rate**

**A summary sheet from the Tulane Institute on Water Resources Law & Policy**

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On September 4, Judge Barbier of the Eastern District of Louisiana Federal Court released the Findings of Fact and Conclusions of Law from Phase One of the Deepwater Horizon trial that will determine most federal cases against BP, Transocean, Halliburton, and others. The trial has been divided into multiple phases, and Phase One, held February through April of 2013, determined the fault of the various defendants.

In the first step towards determining how large their Clean Water Act civil penalties could be, Judge Barbier found that the spill occurred because of BP Exploration & Production, Inc.'s gross negligence and willful misconduct. Therefore, BP can be subject to enhanced civil penalties – up to \$4,300 per barrel of oil discharged.

The decision also held that BP, Transocean, and Halliburton are each liable under maritime law for the blowout, explosion, and spill. BP was reckless while Transocean and Halliburton were negligent. The court apportioned fault with 67% to BP, 30% to Transocean, and 3% to Halliburton. These penalties would impact potential maritime law punitive damages against the three. However, as the opinion states, even though "BP's conduct warrants the imposition of punitive damages," Fifth Circuit precedent prevents that.

One of the biggest questions asked upon the release was whether the apportionment of fault under maritime law affected the potential Clean Water Act civil penalties for BP. The answer is "no," but it may shine a light on where the judge's thoughts wind up as to the per-barrel penalties he ends up levying. It would be easier to imagine him penalizing BP the full 100% of the potential fine had he found them 100% at fault for the spill.

However, one should not assume this is the last word on these matters. BP has already said that they will appeal the finding, and one could imagine the plaintiffs also appealing the matter (such as challenging that Fifth Circuit maritime punitive damages precedent all the way to the Supreme Court). How this all shakes out after appeal(s) is anyone's guess, but, at the very least, should negotiations for settlement take place any time soon, they will take place on different footing than before.