

greenchange



June 16, 2010

Robert F. Gilligan, Speaker of the House  
Richard C. Cathcart, Minority Leader  
Delaware House of Representatives  
P.O. Box 1401  
Dover, DE 19903

Patricia M. Blevins, Majority Leader  
F. Gary Simpson, Minority Leader  
Delaware Senate  
P.O. Box 1401  
Dover, DE 19903  
Via fax

**RE: Revoking the corporate charter of BP America Inc.,  
a Delaware corporation**

Dear Speaker Gilligan, Representative Cathcart, and Senators Blevins and Simpson:

As you know, BP America Inc. has caused the worst man-made environmental disaster in American history: the Gulf of Mexico oil gusher.

The poisonous effects of this oil spill will linger for decades, if not longer.

The cost of this disaster, in terms of environmental destruction, wildlife killed, landscapes despoiled, livelihoods wrecked, lives lost, is incalculable.

You and your colleagues in the Delaware General Assembly have a special opportunity -- and a duty -- to bring BP America Inc. to justice for the tremendous wrong that it has committed. BP America Inc. is incorporated in the state of Delaware. The company exists only because of a grant of corporate privileges by the state of Delaware.

Because of the severity of the disaster BP has unleashed, as well as its record of crime and lawlessness, BP America Inc. deserves the most severe punishment that can be applied to a corporation: the corporate death penalty -- that is, revocation of its corporate charter.

95 El Capitan Drive San Rafael, CA 94903  
415.472.2859  
[www.greenchange.org](http://www.greenchange.org)

The Delaware General Assembly can revoke the charter of any corporation incorporated in Delaware -- including BP America Inc. -- by a special act. Justice demands that you enact such a special act. It is a penalty as grave as the deeds this company has done, but it is also the surest way to end its spree of lawlessness and destruction, and to warn other corporations never to do the same.

Since the Delaware Constitution of 1831, the Delaware General Assembly has been empowered to revoke charters of corporations incorporated in Delaware.<sup>1</sup> The Delaware Court of Chancery has upheld the legislature's "reserved power of revocation" after Delaware adopted its most recent constitution, in 1897. In *Wilmington City Railway Co. v. People's Railway Co.*, the court ruled that one aspect of the Delaware General Assembly's "general legislative power" is the "power to revoke or amend a corporate charter," and noted that the General Assembly's "reserved power of revocation contained in a constitution became a part of all subsequent charters, as if written in the charters themselves ipsissimis verbis [literally]."<sup>2</sup>

### **A: BP is at fault for the massive Gulf of Mexico oil spill**

BP's chief executive, Tony Hayward, admits that BP is "absolutely responsible" for the Gulf of Mexico oil rig blowout,<sup>3</sup> which killed 11 workers and injured 17 more.

The April 20 catastrophic explosion at the Deepwater Horizon rig and subsequent oil spill was not entirely an accident; it was the result of BP's reckless pursuit of profit at the expense of the environment and safety. In its extensive investigation of the events preceding the oil rig blowout, the *Wall Street Journal* concluded that "BP made choices over the course of the project that rendered this well more vulnerable to the blowout." The *Journal* also reported that:

- BP "cut short a procedure involving drilling fluid that is designed to detect gas in the well and remove it before it becomes a problem, according to documents belonging to BP and to the drilling rig's owner and operator, Transocean Ltd."
- BP "skipped a quality test of the cement around the pipe—another buffer against gas—despite what BP now says were signs of problems with the cement job and despite a warning from cement contractor Halliburton Co."
- "Once gas was rising, the design and procedures BP had chosen for the well likely gave this perilous gas an easier path up and out, say well-control experts....BP has admitted a possible "fundamental mistake" in concluding that it was safe to proceed with mud

---

<sup>1</sup> "No act of incorporation, except for the renewal of existing corporations, shall be hereafter enacted without the concurrence of two-thirds of each branch of the legislature, and with a reserved power of revocation by the legislature." Delaware Constitution of 1831, Art. 2, §17.

<sup>2</sup> *Wilmington City Ry. Co. v. People's Ry. Co.*, 47 A. 245, 248 (Del. Ch. 1900).

<sup>3</sup> Giles Whittell and Dearball Jordan, "BP 'ultimately responsible' for oil spill." *Times of London*, 3 May 2010.

removal, according to a memo from two Congressmen released Tuesday night.”

- A “BP manager overseeing final well tests apparently had scant experience in deep-water drilling. He told investigators he was on the rig to “learn about deep water,” according to notes of an interview with him seen by the Journal.”<sup>4</sup>

In their devastating letter recounting the events surrounding the BP oil rig explosion, U.S. House Energy and Commerce Committee Chairman Henry Waxman and subcommittee Chairman Bart Stupak wrote to BP CEO Tony Hayward that “In spite of the well’s difficulties, BP appears to have made multiple decisions for economic reasons that increased the danger of a catastrophic well failure. In several instances, these decisions appear to violate industry guidelines and were made despite warnings from BP’s own personnel and its contractors. In effect, it appears that BP repeatedly chose risky procedures in order to reduce costs and save time and made minimal efforts to contain the added risk.”<sup>5</sup>

The *New York Times* reported that “Several days before the explosion on the Deepwater Horizon oil rig, BP officials chose, partly for financial reasons, to use a type of casing for the well that the company knew was the riskier of two options, according to a BP document.”<sup>6</sup>

BP’s contingency plans for an oil spill disaster at the Deepwater Horizon were carelessly prepared and completely inadequate. According to the *Guardian* and *Associated Press*, BP’s plan “was riddled with errors and miscalculations, including the naming of a long-deceased scientist as a recommended expert on wildlife contamination.”<sup>7</sup>

## **B: The destruction unleashed by BP is enormous**

The BP oil gusher is the worst environmental disaster in American history. Many news organizations have rightly identified it as such, including the *Washington Post*,<sup>8</sup> *Newsweek*,<sup>9</sup> *Associated Press*,<sup>10</sup> *Reuters*,<sup>11</sup> *CNN*,<sup>12</sup> *McClatchy*,<sup>13</sup> *Los Angeles Times*,<sup>14</sup> *Boston Globe*<sup>15</sup> and

---

<sup>4</sup> Ben Casselman and Russell Gold, “BP Decisions Set Stage for Disaster.” *Wall Street Journal*, 27 May 2010.

<sup>5</sup> Correspondence from U.S. Reps. Henry Waxman and Bart Stupak, House Committee on Energy and Commerce, to BP Chief Executive Officer Tony Hayward, 14 June 2010.

<sup>6</sup> Ian Urbina, “BP Used Riskier Method to Seal Well Before Blast.” *New York Times*, 26 May 2010.

<sup>7</sup> Andrew Clark, “BP Contingency Plan For Dealing With Oil Spill Was Riddled With Errors.” *Guardian* and *Associated Press*, 9 June 2010.

<sup>8</sup> Juliet Eilperin and Glenn Kessler, “After delays, U.S. begins to tap foreign aid in gulf spill.” *Washington Post*, 14 June 2010.

<sup>9</sup> Jon Meacham, “What an Umpire Could Teach BP.” *Newsweek*, 14 June 2010.

<sup>10</sup> Darlene Superville, “Obama to meet families of 11 killed in oil spill.” *Associated Press*, 10 June 2010.

<sup>11</sup> Keith Weir and Jeffrey Jones, “Britain sticks up for BP amid spill, shares rise.” *Reuters*, 12 June 2010.

*ABC News*.<sup>16</sup> Some prominent officials have also endorsed this view, including President Barack Obama.<sup>17</sup>

The total amount of oil released from the Macondo well thus far is unknown. The federal government's most recent estimate is that 35,000 to 60,000 barrels of oil are escaping each day.<sup>18</sup>

Since the oil is still gushing out, and much of it remains under the ocean's surface, and away from coastline, much of the spill's destructive effects have not yet been realized. The *Huffington Post* reported that "As little as 1/60th of the oil belching from a blown-out deep-sea BP well could be making it all the way up to the surface of the Gulf of Mexico right away, judging from the results of a field test of a similar scenario conducted in 2000 ....The findings suggests that oil from the spill could continue to emerge months if not years from now, and hundreds if not thousands of miles away."<sup>19</sup>

Some oceanographers predict that the impact of the spill will be widespread and difficult to remediate. Curtis C. Ebbesmeyer, an experienced oceanographer who has worked for oil companies, wrote in the *Wall Street Journal* that "the oil from Deepwater Horizon will ride the Gulf Stream across the Atlantic. In years to come, some will wash up on European shores, and some will reach the Arctic Ocean and continue along global conveyor belts of currents. Whales, dolphins and other animals will dive through the petro-infused slabs, suffering possible toxic exposures. The unprecedented deepwater injection of chemical dispersants to break up the petroleum before it reaches the surface may only worsen the impact. It will cause more oil to remain suspended longer in these stratified slabs, where there is no way to remove it."<sup>20</sup>

There is very little data so far regarding the extent of the oil spill's destruction. But the early reports on wildlife status are not encouraging. On June 11<sup>th</sup>, The *New Orleans Times-Picayune* reported that "Hundreds of birds including pelicans, seagulls, terns and gannets are being gathered by wildlife teams in an effort both to save them from their veils of oil and to help them recover from the effects that it can have on their lungs and digestive systems." It also notes that "about 1,000 dead animals --- birds, turtles and dolphins -- have been reported..."<sup>21</sup>

---

<sup>12</sup> "The legal and political disaster for BP expands, even as the environmental disaster for the Gulf becomes more evident by oil drenched pelicans." *CNN*, 5 June 2010.

<sup>13</sup> Warren P. Strobel and Patricia Mazzei, "BP device starts collecting oil, but too late for Florida coast." *McClatchy*, 5 June 2010.

<sup>14</sup> Peter Nicholas, "Obama agenda bogged down in oil." *Los Angeles Times*, 3 June 2010.

<sup>15</sup> Erin Ailworth, "On the trail of deep-sea oil." *Boston Globe*, 15 June 2010.

<sup>16</sup> Jake Tapper, "The Right One; Emoter-in-Chief." *ABC News*, 2 June 2010.

<sup>17</sup> "Remarks by the President to the Nation on the BP Oil Spill." 15 June 2010.

<sup>18</sup> "Gulf oil leak revised upward again." *UPI*, 15 June 2010.

<sup>19</sup> Dan Fromkin, "Gulf Oil Spill: Vast Majority Of Pollution Could Lurk Below Surface For Months Or Years." *Huffington Post*, 21 May 2010.

<sup>20</sup> Curtis C. Ebbesmeyer, "How Far Will the Gulf Gusher Spread?" *Wall Street Journal*, 3 June 2010.

<sup>21</sup> Katy Reckdahl, "When animal rescues fall short, evidence of oil spill's toll on wildlife is collected." *New Orleans Times-Picayune*, 11 June 2010.

Some scientists expect the BP oil spill may well cause severe ecological damage by harming creatures at the bottom of the food chain. According to *Newsweek*,

“The organisms most likely to be harmed by the oil plumes are those at the base of the food chain,” says biological oceanographer Andrew Juhl of Lamont-Doherty. “Most of the primary producers, such as phytoplankton, live throughout the water column. Effects on them would cascade to the larger species...”<sup>22</sup>

Crude oil is composed of some toxic chemicals and known carcinogens, including polycyclic aromatic hydrocarbons. The type of oil released by the BP spill also is particularly pernicious, because it is a heavier blend than most oil recovered off the coast of Louisiana.

"If I had to pick a bad oil, I'd put this right up there." [said Ed Overton, who heads a federal chemical hazard assessment team for oil spills]... The first analysis of oil spill samples showed it contains asphalt-like substances that make a major sticky mess, he said.... This oil also emulsifies well, Overton said. Emulsification is when oil and water mix thoroughly together, like a shampoo, which is mostly water, said Penn State engineering professor Anil Kulkarni. It "makes a thick gooey chocolate mousse type of mix," Kulkarni said. And once it becomes that kind of mix, it no longer evaporates as quickly as regular oil, doesn't rinse off as easily, can't be eaten by oil-munching microbes as easily, and doesn't burn as well, experts said. That type of mixture essentially removes all the best oil clean-up weapons, Overton and others said.<sup>23</sup>

### **C: BP's long record of lawlessness and disregard for environmental and safety laws**

BP has a long history of illegal and unethical conduct, and of violations of environmental and safety laws. According to Public Citizen, BP has “the worst safety and environmental record of any oil company operating in America.” During the last eleven years, BP and its subsidiaries have pled guilty to three environmental crimes, as well as agreeing to defer the prosecution of a one-count criminal information.<sup>24</sup> Since 1995, BP has paid nearly \$1.6 billion in fines.<sup>25</sup> Because BP's lawless conduct is so extensive, there is merely room here to present highlights.

---

<sup>22</sup> Sharon Begley, “What the Spill Will Kill.” *Newsweek*, 14 June 2010.

<sup>23</sup> Seth Borenstein, “Oil spill is the ‘bad one’ experts feared.” *Associated Press*, 30 April 2010.

<sup>24</sup> See, generally, Tyson Slocum, “Cost of Doing Business: BP's \$730 million in fines/settlements + 2 criminal convictions.” Public Citizen, 5 May 2010.

Richard Mauer and Anna M. Tinsley, “Gulf oil spill: BP has a long record of legal, ethical violations.” *McClatchy newspapers*, 8 May 2010.

<sup>25</sup> Project on Government Oversight (POGO) Federal Contractor Misconduct Database.

In September 1999, BP Exploration (Alaska) pled guilty to one felony count of a hazardous substance crime regarding the disposal of toxic wastes into a well hole on Endicott Island, Alaska.<sup>26</sup>

In 2004, a Texas Public Interest Research Group report found that “BP’s U.S. facilities have had more than 3565 accidents since 1990, ranking first in the nation.”<sup>27</sup>

The Occupational Safety and Health Administration (OSHA) has punished BP with the two largest fines in OSHA’s history. On March 23, 2005, an explosion at BP’s Texas City refinery killed fifteen workers and injured 170 others. In response, OSHA fined BP Products North America a record \$21.3 million, “nearly double the next largest fine in OSHA history,” said Solicitor of Labor Howard M. Radzely. \$20.7 million of the fines were levied for what OSHA termed “egregious willful violations.”<sup>28</sup>

The U.S. Chemical Safety and Hazard Investigation Board’s investigation of the Texas City explosion blamed BP for the explosion and presented a withering assessment of the company. It found that the Texas City disaster “was caused by organizational and safety deficiencies at all levels of the BP Corporation. Warning signs of a possible disaster were present for several years, but company officials did not intervene effectively to prevent it.”<sup>29</sup>

On October 25, 2007, BP and several of its subsidiaries agreed to pay \$373 million in fines. As a part of that settlement:

- BP pled guilty to a felony violation of the Clean Air Act, and agreed to pay \$50 million in criminal fines regarding the BP Texas City refinery explosion.
- BP pled guilty to a violation of the Clean Water Act, and agreed to pay \$12 million in criminal fines and \$4 million in criminal restitution to the state of Alaska, relating to pipeline leaks of crude oil. According to the Department of Justice, it was the largest spill ever to occur on the North Slope. One of the leaks “resulted in more than 200,000 gallons of crude oil spreading over the tundra and reaching a nearby frozen lake, where oil spread out onto the ice along one shore.” Granta Nakayama, EPA’s Assistant Administrator for Enforcement and Compliance Assurance explained that “BP committed serious environmental crimes in our two largest states, with terrible consequences for

---

<sup>26</sup> “BP Exploration [Alaska] Pleads Guilty To Hazardous Substance Crime; Will Pay \$22 Million, Establish Nationwide Environmental Management System.” U.S. Department of Justice news release, 23 September 1999.

<sup>27</sup> “BP Facilities Lead Nation in Chemical and Refinery Accidents Since 1990, Despite Industry-Touted Safety Measures.” Texas Public Interest Research Group, 24 March 2005.

<sup>28</sup> “OSHA Fines BP Products North America More Than \$21 Million Following Texas City Explosion.” U.S. Department of Labor news release, 22 September 2005.

<sup>29</sup> “Investigation Report: Refinery Explosion and Fire (15 killed, 180 injured), BP: Texas City, Texas, March 23, 2005.” U.S. Chemical Safety and Hazard Investigation Board, Report No. 2005-04-I-TX, March, 2007.

people and the environment.”

- BP agreed to pay a criminal penalty of \$100 million and a civil penalty of \$125 million for fraud and market manipulation, “as part of an agreement to defer the prosecution of a one-count criminal information...charging BP America Inc. with conspiring to violate the Commodity Exchange Act and to commit mail fraud and wire fraud....According to the criminal information, in February 2004, traders working for a BP America Inc. subsidiary used the financial resources of BP to purchase more than the available supply of TET propane. BP then sold a portion of their supply to other market participants at an artificially inflated price.”<sup>30</sup>

On February 19, 2009, BP Products North America agreed to pay \$180 million to settle Clean Air Act violations at its Texas City, Texas refinery.<sup>31</sup>

On October 30, 2009, OSHA issued a record-breaking \$87.4 million fine for “failure to correct potential hazards faced by employees” at its Texas City refinery. This included 270 “notifications of failure to abate” along with 439 “new willful violations.” Assistant Secretary of Labor Jordan Barab said that “BP was given four years to correct the safety issues identified pursuant to the settlement agreement, yet OSHA has found hundreds of violations of the agreement and hundreds of new violations.”<sup>32</sup>

On March 8, 2010, OSHA proposed a \$3 million fine for BP North American and BP-Husky Refining LLC refinery operating in Oregon, Ohio regarding “42 alleged willful violations...and 20 alleged serious violations for exposing workers to a variety of hazards...”<sup>33</sup>

Over the years, BP has repeatedly faced internal concerns about its own conduct. The *Washington Post* and *ProPublica* reported that “A series of internal investigations over the past decade warned senior BP managers that the oil company repeatedly disregarded safety and environmental rules and risked a serious accident if it did not change its ways.”<sup>34</sup>

Regarding BP’s criminal environmental record, Jeanne Pascal, a former EPA debarment attorney explained “They are a recurring environmental criminal and they do not follow U.S. health safety

---

<sup>30</sup> “British Petroleum to Pay More Than \$370 Million in Environmental Crimes, Fraud Cases; Charges Result from 2005 Texas Refinery Explosion, Alaska Pipeline Leaks and Attempt to Manipulate Markets.” U.S. Department of Justice news release, 25 October 2007.

<sup>31</sup> “BP Products to Pay Nearly \$180 Million to Settle Clean Air Violations at Texas City Refinery.” U.S. Department of Justice news release, 19 February 2009.

<sup>32</sup> “US Department of Labors [sic] OSHA issues record-breaking fines to BP.” U.S. Department of Labor news release, 30 October 2009.

<sup>33</sup> “US Labor Department's OSHA proposes more than \$3 million in fines to BP-Husky refinery near Toledo, Ohio.” U.S. Department of Labor news release, 8 March 2010.

<sup>34</sup> Abrahm Lustgarten and Ryan Knutson, “Reports at BP Over Years Find History of Problems.” *Washington Post* and *ProPublica*, 8 June 2010.

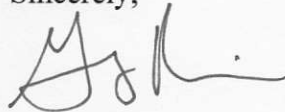
and environmental policy....None of the other supermajors have an environmental criminal record like they do.”<sup>35</sup>

**D: Conclusion**

The corporate death penalty is an important and useful punishment for corporations that have shown contempt for the laws of our nation. It is also vital as a deterrent. We must make an example of BP to help ensure that never again will America suffer another man-made environmental disaster as egregious as the one BP has created.

Serial corporate criminals are willing to kill people and wildlife, poison the water and land, and then pay the relevant fines, because it is more profitable to do so than to respect life, wildlife, health, the environment and the law. It is for this reason that ordinary legal and regulatory action and fines cannot correct their behavior; drastic and permanent punitive actions are the only appropriate measures. In this case, the proper penalty is to revoke the corporate charter of BP America Inc.

Sincerely,



Gary Ruskin  
Co-founder

---

<sup>35</sup> Abrahm Lustgarten and Ryan Knutson, “Reports at BP Over Years Find History of Problems.” *Washington Post* and *ProPublica*, 8 June 2010.