

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

December 3, 2010

Mr. Robert Dudley
Chief Executive Officer
BP PLC, 1 St. James's Square
London SW1Y4PD
United Kingdom

Dear Mr. Dudley:

I write to request information regarding statements that BP now questions federal scientists' estimates of flow rate from the Macondo Well. Specifically, according to press reports¹, BP has indicated that the actual flow rate may be as much as 50% lower than the 53,000-62,000 barrel per day (4.9 million barrels total) estimate upon which the Federal Flow Rate Technical Group (FRTG) arrived. This is particularly surprising since BP's May 4, 2010 briefing to the House Energy and Environment Subcommittee² as well as its own internal documents³ obtained on May 24, 2010 *also* indicate the potential for a 60,000 barrel per day flow of oil.

I wrote⁴ to BP on August 11, 2010 requesting that it accept the federal estimate as the basis for its per barrel spill liability and for other legal purposes, including the assessment of natural resource damages. In an August 24, 2010 letter⁵, BP declined to do so, stating that BP was continuing to evaluate these estimates.

BP's new claim that the spill is much smaller than previously thought flies in the face of multiple lines of evidence, and raises questions as to whether this is a scientific finding, or a litigious position.

The federal government engaged independent scientists and used multiple, unrelated techniques to arrive at its flow-rate estimate. Additional independent peer-reviewed studies have

¹ See for example "BP Says Spill Rate Was Lower Than Estimates", December 3, [Wall Street Journal](#) online

² http://www.dallasnews.com/sharedcontent/dws/news/texasouthwest/stories/DN-oilspill_05tex.ART.State.Edition2.e0e73.html

³ <http://globalwarming.house.gov/files/WEB/flowrateBP.pdf>

⁴ http://globalwarming.house.gov/files/LTTR/2010-08-11_toBPFlowRate.pdf

⁵ <http://globalwarming.house.gov/files/LTTR/LETTER.PDF>

corroborated the conclusions. As a participant in the Unified Command and as a supplier of some of the raw data the FRTG used to arrive at its assessment, BP had every opportunity to provide its views on the methodologies that were being used by the variety of scientific sub-groups, which all arrived at the same flow rate estimates. It was with surprise that I learned that BP, in a document entitled "BP's Preliminary Response to the Flow Rate and Volume Estimates Contained in Staff Working Paper No. 3" stated that it believes these estimates are "flawed," rely on "incomplete or inaccurate information," "rest in large part on assumptions that have not been validated, and are subject to far greater uncertainties that have been acknowledged."

Under current law, BP could be fined up to \$4,300 per barrel of oil spilled if it is found to be guilty of gross negligence with regard to this spill. Clearly, BP has considerable financial motivation to argue for a lower flow rate, since every 10,000 barrels of oil spilled per day over the 87 day life of the spill could cost BP an extra \$3.5 billion. In its "Preliminary Response" document, BP expressed confidence that "a complete, comprehensive and rigorous analysis of the flow issue will show that less, and possibly far less, oil was discharged from the Macondo well than the amounts reflected in the August 2 DOE/FRTG Estimate." However, BP failed to provide any factual or technical basis for such confidence whatsoever, and instead relied on speculation and conjecture to cast doubt on the federal scientists' efforts.

Since I agree with BP's August 24 statement to me that "it is important to determine the amount of oil that was discharged from the MC 252 well into the Gulf of Mexico," I request your prompt responses to the following requests for information:

1. Please provide all documents, including emails, correspondence, analysis, memos, meeting minutes or other materials obtained or prepared by BP as part of its participation in and cooperation with the FRTG efforts to estimate the flow rate of the BP Macondo well.
2. Please provide all documents, including emails, correspondence, analysis, memos, meeting minutes or other materials obtained or prepared by BP as part of its own internal efforts to estimate the flow rate of the BP Macondo well.
3. Please provide all documents, including emails, correspondence, analysis, memos, meeting minutes or other materials obtained or prepared by BP as part of its efforts to prepare its paper entitled "BP's Preliminary Response to the Flow Rate and Volume Estimates Contained in Staff Working Paper No. 3."

Thank you for your assistance and cooperation in responding to this request. The Subcommittee requests that a full and complete response to this inquiry be provided no later than close of business, December 17, 2010. Please contact Dr. Michal Freedhoff of the Energy and Environment Subcommittee staff at 202-225-2836 if you should have any questions.

Sincerely,



Edward J. Markey