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ONE HUNDRED ELEVENTH CONGRESS

**Select Committee on  
Energy Independence and Global Warming  
U.S. House of Representatives  
Washington, DC 20515**

EDWARD J. MARKEY, MASSACHUSETTS  
CHAIRMAN

June 9, 2010

President Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

The one constant since the explosion aboard the Deepwater Horizon oil rig has been the oil pouring into the Gulf of Mexico. The federal government's leadership and messaging have been far more erratic.

As Ranking Member of the House Select Committee on Energy Independence and Global Warming, I am concerned about the federal response to the disaster. It has become increasingly difficult to determine exactly who is in charge of the response to the oil spill, and the consequences can be measured in lost jobs, economic hardship, and mounting environmental damage.

Initial reports from the unified command center, where BP and federal agencies were working in concert to address the oil spill, were that the well was leaking at a rate of about 1,000 barrels per day.<sup>1</sup> About a week later, official estimates had increased by five times the original rate to 5,000 barrels per day. Coast Guard logs, however, show that just hours after the explosion, officials believed that the actual rate was closer to 8,000 barrels per day.<sup>2</sup> Three days after the accident, the Coast Guard estimated that a full blowout could lead to a spill rate of 64,000 to 110,000 barrels per day.<sup>3</sup> Yet, despite being warned by aides that this spill could quickly eclipse the Exxon Valdez incident, the Administration did not disclose these figures to the public.

Worse still, according to ABC News, the Administration had access to footage of the underwater leaks within hours of the spill. Coast Guard officials apparently told ABC News that BP "refused to allow them to release the more startling images, arguing they were proprietary."<sup>4</sup>

BP had a lot to gain by low-balling estimates. Not only does a smaller leak mean better public relations, but fines are directly tied to the amount of oil leaked per day. The Administration's seemingly blind acceptance of BP's estimates and its deference to BP's claims of propriety suggest a failure of leadership in the face of a developing crisis.

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<sup>1</sup> Campbell Robertson and Leslie Kaufman, *Size of Spill in Gulf of Mexico Is Larger Than Thought*, The New York Times (April 28, 2010), available at <http://www.nytimes.com/2010/04/29/us/29spill.html?pagewanted=1>.

<sup>2</sup> Frank James, *Feds Knew Early Spill Was Worse Than They Let On: Reports*, NPR (June 3, 2010), available at [http://www.npr.org/blogs/thetwo-way/2010/06/feds\\_knew\\_early\\_spill\\_was\\_wors.html](http://www.npr.org/blogs/thetwo-way/2010/06/feds_knew_early_spill_was_wors.html).

<sup>3</sup> *Id.*

<sup>4</sup> *BP and Feds Withheld Videos Showing Massive Scope of Oil Spill*, ABC News (June 3, 2010), available at <http://abcnews.go.com/Blotter/bp-feds-withheld-videos-showing-massive-scope-oil/story?id=10819367>.

The consequences were potentially significant as the government's slow response seemed paced with its acknowledgment of the scope of the disaster. It was a full nine days after the explosion before the Department of Homeland Security declared the accident "a spill of national significance" - an essential legal categorization for certain federal assistance.

The wetlands of Louisiana have suffered firsthand from this disorganization. In response to repeated requests by Louisiana state officials for permission to build up to 24 barriers to protect 90 miles of wetlands from approaching oil, officials from the White House, Coast Guard, Army Corps of Engineers, Fish and Wildlife Service, National Oceanic and Atmospheric Administration, and Environmental Protection Agency spent much of May debating the best approach. After the long delay, they approved a single barrier, causing Louisiana Governor Bobby Jindal to compare the federal response to "telling a drowning man to wait."<sup>5</sup> If one barrier is safe, he asked, why didn't the government approve the other 23?

Additionally troubling has been the Administration's apparent lack of regulatory oversight. News reports have identified several instances where government employees signed off on waivers and permits allowing Deepwater Horizon to proceed without putting in place appropriate safety measures. According to a June 5 *New York Times* article:

When BP officials first set their sights on extracting the oily riches under what is known as Mississippi Canyon Block 252 in the Gulf of Mexico, they asked for and received permission from federal regulators to exempt the drilling project from federal law that requires a rigorous type of environmental review.

When company officials wanted to test the blowout preventer, a crucial fail-safe mechanism on the pipe near the ocean floor, at a lower pressure than was federally required, regulators granted an exception.

Regulators granted yet another exception when BP sought to delay mandatory testing of that blowout preventer because they had lost "well control," weeks before the rig exploded.

On the Deepwater Horizon...[MMS] approved a drilling plan for BP that cited the "worst case" for a blowout as one that might produce 250,000 barrels of oil per day, federal records show. But the agency did not require the rig to create a response plan for such a situation.

Regulators did not require that a containment dome be kept on the rig to speed the response to a spill. After the rig explosion, BP took two weeks to build one on shore and three days to ship it out to sea before it was lowered over the gushing pipe on May 7.

Michael J. Saucier, an official with the Minerals Management Service, said that his agency "highly encouraged" — but did not require — companies to have backup systems to trigger blowout preventers in case of an emergency.<sup>6</sup>

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<sup>5</sup> Ian Urbina, *In Gulf, It Was Unclear Who Was In Charge of Rig*, *The New York Times* (June 5, 2010), available at <http://www.nytimes.com/2010/06/06/us/06rig.html>.

<sup>6</sup> *Id.*

The article identifies internal memorandums and documents from the different contractors involved in constructing and operating the rig that warn of substandard materials that violate safety and design guidelines. Nevertheless, federal regulators “gave the rig a pass at several critical moments,” which included postponing a safety test of the blowout preventer.<sup>7</sup>

The issues raised in the above mentioned article, in conjunction with questions about who and to what extent all the principals are responsible when it comes to building a rig in the gulf are perhaps the impetus for Attorney General Eric Holder’s launch of a criminal investigation. But even with this announcement, one can see the footprint of the Administration’s mixed messages and lack of clarity because the AG declines to identify the investigation’s target, stating uncertainty over “who should ultimately be held liable.”<sup>8</sup> The uncertainty of the investigation’s target further highlights that your Administration is still wondering “whose ass to kick.”

Given the number of agencies and private companies involved in the disaster in the Gulf, I would appreciate a response to the following questions:

- 1) Why were the initial Coast Guard estimates about oil flow not made public?
- 2) Film Director James Cameron recently organized a meeting to which he invited federal officials from EPA, the Energy Department, NOAA and Coast Guard.<sup>9</sup> What came of this meeting? Please provide any records or documents that came out of this meeting.
- 3) Does the Administration have any new approaches, independent of BP, Halliburton or Transoceanic, to resolve this disaster? Are there any ongoing or planned discussions between Administration officials and other private sector people not directly involved with the Deepwater Horizon rig?
- 4) Has EPA proposed any new and innovative technological solutions to assist with the oil spill clean-up?
- 5) Thus far, the solutions implemented to stop the gushing oil seem to be “real-time” ideas generated as the previous ones fail. Many of these are no different from the tactics used in 1979 when the Ixtoc I well blew up off the coast of Mexico. How will the Administration improve upon the regulatory system in order to minimize the chances of a repeat of what we currently face?
- 6) To what extent has the Administration weighed in on the various tactics to stop the oil leak? Are the methods implemented so far the best possible ones? Are there other tactics BP could have used earlier that may have contained the spill, but perhaps at high economic cost to BP?

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

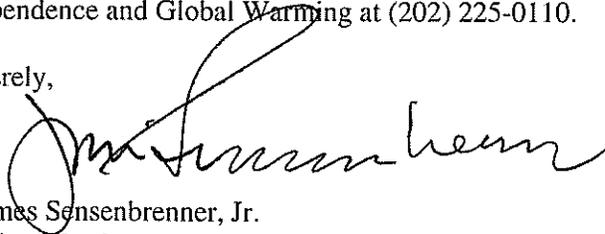
<sup>9</sup> Rebecca Keegan, *James Cameron’s Oil-Spill Brainstorming Session: “It Was Time to Sound the Horn,”* Vanity Fair (June 3, 2010), available at <http://www.vanityfair.com/online/oscars/2010/06/james-camersons-oil-spill-brainstorming-session-it-was-time-to-sound-the-horn.html>.

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- 7) How many times have government safety inspectors visited Deepwater Horizon during your tenure as President? Please provide all inspection documents and records of Deepwater Horizon since January 2009, including all contingency safety plans.
- 8) Under what circumstances did Elizabeth Birnbaum leave her post as head of the Minerals Management Service? Did she resign or was she forced to step down?
- 9) You have made comments about the cozy relationship between regulators and oil companies, and vowed to reform MMS. Was Elizabeth Birnbaum part of that problem? How do you propose to reform MMS?
- 10) What is your long-term environmental plan to protect and rejuvenate the affected coastline?
- 11) What is your long-term plan to protect the jobs of those affected by this disaster and to reinvigorate the economy of their hometowns?

I would appreciate a response to these questions by Friday July 2, 2010. If your staff has any questions about my inquiry, please have them contact Raj Bharwani at the Select Committee on Energy Independence and Global Warming at (202) 225-0110.

Sincerely,



F. James Sensenbrenner, Jr.  
Ranking Member  
Select Committee on Energy Independence  
and Global Warming

Cc. Carol Browner, Assistant to the President for Energy and Climate Change