

Judge's Ruling on Gulf Oil Spill Lowers Ceiling on the Fine BP Is Facing. New York Times, By J. Schwartzjan 15, 2015

The Gulf oil spill is recognized as the worst oil spill in U.S. history. Within days of the April 20, 2010 explosion and sinking of the Deepwater Horizon oil rig in the Gulf of Mexico that killed 11 people, underwater cameras revealed the BP pipe was leaking oil and gas on the ocean floor about 42 miles off the coast of Louisiana. By the time the well was capped on July 15, 2010 (87 days later), an estimated 3.19 million barrels of oil had leaked into the Gulf.

A federal judge will hold BP responsible for spilling 3.19 million barrels of oil into the Gulf of Mexico in the 2010 Deepwater Horizon disaster — a finding that could lead to a penalty of nearly \$14 billion. Judge Carl J. Barbier of Federal District Court in New Orleans issued the ruling on Thursday. Judge Barbier wrote that the company actually spilled four million barrels of oil into the gulf but, considering its collection efforts, BP should be held responsible for a net discharge of 3.19 million, or about 134 million gallons. The estimated number of barrels is substantially less than the five million barrels experts for the federal government estimated (4.19 million after taking collection efforts into account), and substantially more than the 3.26 million the company said had been released (2.45 million after collection). Because Judge Barbier previously found the company grossly negligent in causing the spill, the maximum penalty for each barrel under the Clean Water Act is \$4,300. BP is appealing the court's gross negligence finding.

If the government's estimate had been used, the penalty could have been as much as \$18 billion. Under Judge Barbier's ruling, the figure could be as high as about \$13.7 billion. In Thursday's ruling, Judge Barbier did not demonstrate how he arrived at the 3.19 million barrel figure. In fact, he wrote, the evidence from the government and from the company was "voluminous, dense, highly technical, and conflicting."

He gave examples of the complexities of the conflicting arguments. "Both sides presented evidence to support their cumulative flow estimates," he wrote, "and each mounted effective attacks on the other's calculations." Ultimately, Judge Barbier wrote, "There is no way to know with precision how much oil discharged into the Gulf of Mexico." However, "after weighing all of the evidence and considering all of the arguments," he arrived at four million barrels.

Edward F. Sherman, a professor at Tulane University Law School who has closely observed the case, said he found Judge Barbier's decision to be an intelligent approach to a conflict of experts. "At times we claim precision," he said, but "there's no way to precisely find the numbers, so why not pick a number as he did, reasonably between the two numbers provided by the parties?"

A former federal prosecutor of environmental crimes, David M. Uhlmann of the University of Michigan Law School, called the decision "a major victory for BP" because it reduced the company's potential liability by billions of dollars.

Companies are rarely assessed the greatest possible penalty, and he said that the ultimate penalty could come to \$10 billion or exceed it, "but not by much."