

Crossing the Line



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In an unprecedented move, the Obama administration is calling on BP to abandon the protection of the Oil Pollution Act of 1990, which limits BP’s liability under federal law to \$75 million in damages, plus cleanup costs.

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As horrible as the damage from the spill might be, abandoning the rule of law, which is what the administration’s proposals imply, is worse. BP has not been convicted of anything yet, nor is the magnitude of damages known, so BP should be free to operate as a legal company in the meantime. This might mean that, when judgments occur in future years, BP will be bankrupt and unable to pay. That is unfortunate, but it is what the rule of law requires.

BP has every right to avail itself of the protections of the 1990 Act. The company may choose to pay more than its legal obligation out of concern for public relations, but that should be BP’s choice, not the result of strong-arming by politicians.

And BP did not cause workers to be idled at other deep-water drilling sites; the administration caused that by imposing its moratorium. The lessons learned from the BP spill may ultimately suggest that future drilling should be curtailed or that oil companies should pay more up front as a “down payment” against possible damages. But that is relevant to future decisions, not existing arrangements.

The rule of law can have unpleasant consequences in specific cases. But abandoning that rule is worse because it means that politicians can reward the business or individuals they like without regard for consistency, fairness or economic efficiency. Businesses operating without rule of law learn that political connections, not good business decisions, are the path to profits.

The U.S. should not fix past mistakes, by government or BP, by punishing BP in inappropriate ways. The way to balance cheap oil and the environment is to hold BP accountable as much as possible under existing policies and then design better policies for the future.