

## **Engineer Arrested, Feds Probe BP's Spill Response**

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NEW ORLEANS (AP) — By arresting a former BP engineer Tuesday, federal prosecutors for the first time showed their hand in the Gulf oil spill case, saying they were probing whether BP PLC and its employees broke the law by intentionally lowballing how much oil was spewing from its out-of-control well.

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Two years and four days after the drilling-rig explosion that set off the worst offshore oil spill in U.S. history, Kurt Mix, 50, of Katy, Texas, was arrested Tuesday and charged with two counts of obstruction of justice for allegedly deleting about 300 text messages that indicated the blown-out well was spewing far more crude than the company was telling the public at the time.



The charges are not likely to affect a proposed class-action settlement that would resolve more than 100,000 claims by people and businesses who blame economic losses over the spill. A federal judge is expected Wednesday to consider granting preliminary approval of the \$7.8 billion civil settlement between BP and a committee of plaintiffs.

The case against Mix brings the first criminal charges in the Justice Department's Deepwater Horizon probe. If convicted, Mix could get up to 20 years in prison and a \$250,000 fine on each count. Mix was released on \$100,000 bail.

In an affidavit, the U.S. Department of Justice said it was investigating whether BP and its employees broke the law "by intentionally understating" how much oil was leaking.

Legal experts said this was likely just the first move by the Justice Department. The federal agency made it clear the investigation still is ongoing and suggested more people could be arrested.

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"Did anyone else know about this? Was this gentleman, shall we say encouraged or pushed to do this? Did he do it under orders? Did he do it under duress?" said Anthony Michael Sabino, a professor at St. John's University School of Law in New York and an expert in white-collar crimes.

"When you're a prosecutor you start with the little fish and you hope the little fish helps you catch a medium-sized fish; then you go after the big fish until you get the biggest fish of all," Sabino added. "It's going up the food chain ... If you jump the gun, and you don't have the pieces in place, you ruin the case."

Seth Pierce, a Los Angeles-based commercial defense lawyer, said the Justice Department's move was "almost like you would see in a mafia case, where they go and try to apply a lot of pressure on really low-level guys in the hopes of turning them, or flipping them, into witnesses for the state."

Pierce called Mix a "weak spot" prosecutors might try to exploit because he no longer works for BP.

"He might not have as much loyalty to the company," he said.

An attorney for Mix, Joan McPhee, described the charges as misguided and that she is confident Mix will be exonerated.

"The government says he intentionally deleted text messages from his phone, but the content of those messages still resides in thousands of emails, text messages and other documents that he saved," she said. "Indeed, the emails that Kurt preserved include the very ones highlighted by the government."

Federal investigators have been looking into the causes of the blowout and the actions of managers, engineers and rig workers at BP and its subcontractors Halliburton and Transocean in the days and hours before the April 20, 2010, explosion.

It is now clear that prosecutors also are looking at the aftermath of the blast, when BP scrambled for weeks to plug the leak.

In outlining the charges, the government suggested Mix knew the rate of flow from the busted well was much greater than the company publicly acknowledged.

Prosecutors also said BP gave the public an optimistic account of its May 2010 efforts to plug the well via a technique called a "top kill," even though the company's internal data and some of the text messages showed the operation was likely to fail.

An accurate flow-rate estimate is necessary to determine how much in penalties BP and its subcontractors could face under the Clean Water Act. In court papers, prosecutors appeared to suggest the company was also worried about the effect of the disaster on its stock price.

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In a statement, BP said it is cooperating with the Justice Department.

"BP had clear policies requiring preservation of evidence in this case and has undertaken substantial and ongoing efforts to preserve evidence," the statement said.

The FBI said in court papers that Mix repeatedly was notified by BP that instant messages and text messages needed to be preserved.

In public statements, the company professed optimism that the top kill would work, giving it a 60 to 70 percent chance of success.

On May 26, the day the top kill began, Mix estimated in a text to his supervisor that more than 15,000 barrels of oil per day were spilling — three times BP's public estimate of 5,000 barrels and an amount much greater than what BP said the top kill could probably handle.

At the end of the first day, Mix texted his supervisor: "Too much flow rate — over 15,000 and too large an orifice." Despite Mix's findings, BP continued to make public statements that the top kill was proceeding according to plan, prosecutors said. On May 29, the top kill was halted and BP announced its failure.

BP stock closed at \$41.91 Tuesday, a drop of just 4 cents. Analysts said investors evidently recognized the charges involved just one, low-ranking employee and saw no hint yet of any kind of larger cover-up on BP's part.

The explosion aboard the Deepwater Horizon drilling rig killed 11 workers. More than 200 million gallons of crude oil leaked from the well off the Louisiana coast before it was capped.

Under the Clean Water Act, polluters can be fined \$1,100 to \$4,300 per barrel of spilled oil, with the higher amount imposed if the government can show the disaster was caused by gross negligence.

Tom Becker, a fisherman in Biloxi, Miss., and head of the Mississippi Charter Boat Captains Association, said he wasn't surprised by the allegations.

"I don't trust BP one bit. That's what I've thought all along. It's like, 'What are they trying to hide today?'" Becker said.

He said his mistrust of BP had led him to hold out and not settle legally with the company over damages. He said his business has not recovered and he has no fishing trips booked for July, August or September, his busiest months. He blames that on the lingering perception that the Gulf is ruined and on high gas prices.

"I just wish we could get over it quick, but I don't see it happening, even though BP wants to pay everybody off and get them to shut up," Becker said.

Alabama Attorney General Luther Strange said he was pleased "the Justice

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Department is focused on holding those with criminal culpability accountable."

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*Associated Press writers Kevin McGill in New Orleans; Ramit Plushnick-Masti in Houston; Holbrook Mohr in Jackson, Miss.; and Bob Johnson in Montgomery, Ala., contributed to this report.*

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