Spill Draws Criminal Probe

By Thomas Catan
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The U.S. has launched criminal and civil investigations into the Gulf of Mexico oil spill—the latest move by the Obama administration to show it is taking aggressive action amid bipartisan criticism of its response to the disaster.

“We have what we think is a sufficient basis for us to have begun a criminal investigation,” said U.S. Attorney General Eric Holder Tuesday after meeting in New Orleans with state attorneys general and federal prosecutors from the region. Mr. Holder noted that 11 people died in the April 20 rig accident that precipitated the spill.

In a press conference, Mr. Holder said there is “a wide range of possible violations.” He declined to specify the target of the investigation because he said authorities aren’t “clear on who should ultimately be held liable” and didn’t want to “cast aspersions.”

The Justice Department is looking for violations of some of the same environmental laws that Exxon was charged with breaching during its 1989 Valdez spill in Alaska, among other criminal laws.

The government’s move turned up the heat on BP PLC as the British oil giant’s shares came under pressure over its mounting woes, plunging 13% in trading.

A BP spokesman said Tuesday the company “will cooperate with any inquiries that the Department of Justice undertakes, just as we are doing in response to the other inquiries that are already ongoing.”

Transocean Ltd., the BP contractor that owned the doomed rig, said in a statement that it is continuing to cooperate with all inquiries.

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relevant authorities, adding: “We have not been named in any criminal investigation and we will not speculate on actions the Justice Department may or may not take.”

The Justice Department had been reluctant to send in investigators while the spill continued to gush, according to people familiar with the situation, in part because they feared that efforts to mount a prosecution could hinder BP’s efforts to plug the leak.

But in recent days, administration officials have taken steps to show that they, and not BP, are in command of the disaster response. For example, the administration and BP no longer are holding joint press briefings on the spill response.

Mr. Holder said that he believes parties who might be...
probed such as BP have an incentive to redouble their cleanup efforts since they would likely want to “mitigate whatever damages they have caused.”

Earlier on Tuesday, President Barack Obama also raised the issue of legal action. “If our laws were broken, leading to this death and destruction, my solemn pledge is that we will bring those responsible to justice on behalf of the victims of this catastrophe and the people of the Gulf region,” Mr. Obama said during a White House appearance.

The administration’s talk of a criminal investigation raises the stakes in the clash with BP. Already, Mr. Obama has called for tougher regulation of the oil industry, new laws to allow tougher punishments for future lapses, and aggressive investigation of those implicated in the past crisis—a pattern he has followed in responding to the Wall Street meltdown and the Massey coal mine disaster.

A decision not to prosecute—or to settle out of court—could expose the White House to more criticism from the Gulf region and others calling for a hard line on BP.

Any criminal fraud case could also be complicated by the notion that it appears the government signed off on many of the moves that may have led to the spill, said Noah Hall, a law professor at Wayne State University Law School in Detroit who has worked on behalf of environmental groups in the past.

Legal experts said bringing a civil case against BP for violating the federal Clean Water Act could be relatively straightforward. But to bring a successful criminal case, the government must generally show the defendant knowingly flouted the law or that the pollution was the result of negligence.

“There’s a big difference between financial accountability and criminal prosecution,” said Paul McNulty, a former U.S. deputy attorney general under President George W. Bush, and now at the law firm Baker & McKenzie LLP.

The government could use various fraud statutes that would hold individuals or BP as a corporation responsible if anyone is found to have made false statements, legal experts say.

Exxon, which faced criminal charges for breaking environmental laws, has spent more than $4.3 billion as a result of the Exxon Valdez accident, including compensatory payments, cleanup payments, settlements and fines, according to ExxonMobil, the successor company.

Over the past decade, BP has had several run-ins with the feds. In October 2007 the company settled a government investigation of a deadly accident at a refinery in Texas, a 2006 pipeline leak in Alaska and improper propane trading in 2003 and 2004.

BP pleaded guilty to a felony violation of workplace safety rules in the refinery case; pleaded guilty to a misdemeanor violation of federal clean water rules in the pipeline spill; and entered a deferred prosecution agreement to settle the propane price manipulation matter.

Any criminal litigation likely would take years to sort out, especially if it involves complex environmental laws, legal experts said. And by then the public pressure may be off BP and related companies.

Even before Mr. Holder’s statement Tuesday, the threat of legal and financial backlash against BP’s Russia deal with investors, who hammered BP shares after its bid to block the flow of oil from its broken well failed over the weekend.

The fallout from the spill has hurt even companies without a direct connection to the disaster.

Especially hard hit have been drilling contractors and other oil service companies that are losing business due to the offshore drilling moratorium imposed by President Obama in the wake of the spill. In all, the spill has wiped out some $80 billion in market value in oil industry shares through Friday, Tudor Pickering estimated. The figure adjusts for declines in the broader stock market.

President Obama’s recently announced six-month moratorium on drilling operations could lead to the loss of 40,000 U.S. jobs by the end of the summer, according to Lee Hunt, president of the International Association of Drilling Contractors.

The first wave of job losses is expected in less than two weeks when all deep water offshore drilling officially comes to a halt.

The 8,250 people who work on these rigs—approximately two rotating crews of 125 workers for each of the 33 idle rigs—will be the first to lose their jobs.

BP shareholders fear the final costs of the spill, which already stand at $990 million, could prove crippling.

In another reflection of market jitters, the cost of insuring BP’s debt hit a record high Tuesday, shooting up 75%. It now costs an average of $729,000 a year to insure $10 million of debt issued by the company.

Most analysts say BP’s balance sheet is robust enough to absorb the cost of the spill. But some say the backlash against BP in the U.S. could weaken it enough to make it a takeover target.

BP on Tuesday began its latest attempt to capture the oil and gas leaking from the damaged well by making preparations to saw off a damaged riser pipe. The pipe will be replaced with a containment device that is supposed to channel oil up to a ship on the surface. The operation could take between 24 to 36 hours.

On Tuesday, the Environmental Protection Agency and other federal agencies met with film director James Cameron and more than 20 scientists, engineers and other technical experts in a brainstorming session on stopping the oil leak, according to Associated Press. The director of “Titanic” and “Avatar” is considered an expert on underwater filming and remote vehicle technologies, the AP said.

—Lauren Etter, Perry Stein and Dionne Searcce contributed to this article.