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Ken Salazar, corporatism and the BP oil spill

By Glenn Greenwald

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After I argued last week that most of the criticisms of Obama's post-spill conduct seemed overblown to me, I noted that there is substantial evidence reflecting quite negatively on the administration's pre-spill behavior. Most incriminating were the episodes described by this *Washington Post* article from earlier this month, in which the Interior Department "exempted BP's calamitous Gulf of Mexico drilling operation from a detailed environmental impact analysis." Specifically, "the department's Minerals Management Service (MMS) [gave] BP's lease at Deepwater Horizon a 'categorical exclusion' from the National Environmental Policy Act (NEPA) on April 6, 2009." For any government approval given to projects that could significantly impact the environment, NEPA generally requires that the relevant agency assess "the environmental impact of the proposed action," and it specifically requires for oil exploration projects that the Interior Department review the proposed project for, among other things, its environmental impact (h/t Brendan).

It was those legal requirements for which MMS issued an exemption for the BP Deepwater Horizon project. The issuance of those exemptions was preceded by extensive lobbying by BP, which -- as usual -- succeeded in its objectives: "The agency's oversight role has devolved to little more than rubber-stamping British Petroleum's self-serving drilling plans," said Center for Biological Diversity's Kierán Suckling.

The Obama White House clearly recognizes how damaging this exemption story could be, because the President, unprompted, raised that issue several times in his Press Conference last week. This is the explanation he gave as to why his Interior Department issued those exemptions to BP:

[T]here is a thorough environmental review as to whether a certain portion of the Gulf should be leased or not. . . . Under current law, the Interior Department has only 30 days to review an exploration plan submitted by an oil company. That leaves no time for the appropriate environmental review. The result is, they're continually waived. And this is just one example of a law that was tailored by the industry to serve their needs instead of the public's.

That excuse made very little sense to me as soon as I heard it. It seems highly unlikely that Congress -- which is not exactly notorious for imposing excessively rigorous regulations on the oil industry -- would enact a statutory requirement which, self-evidently, would be too rigorous to meet. But even if that were true -- even if Congress really did impose an impossible-to-meet 30-day period for conducting environmental reviews -- why didn't the Obama administration, whose party controls the Congress, ever ask that the law be amended to provide 60 or 90 days, or however much time is needed to complete the review? Or why didn't Interior officials tell the oil industry that they would refuse to issue these permits until the industry had their lobbyists instruct Congress to change the law to allow for a more reasonable timeframe? Instead, faced with a supposedly impossible-to-meet statutory requirement of conducting environmental reviews, the Interior Department just threw its hands up and circumvented the spirit of the law by oh-so-reluctantly and helplessly handing out exemptions like candy to any oil company that asked? Is that at all believable?

Even if that 30-day excuse were true, it reflects very poorly on the administration. But as *The Washington Post*, in a good piece of reporting, noted on Tuesday: that excuse is false. An appellate court in 2008 rejected the 30-day interpretation now being asserted by Obama officials everywhere. That 9th Circuit ruling, in the case of *Alaska Wilderness League, et al. v. Kempthorne*, is really quite instructive to read, both because it illustrates how false is the excuse of Obama officials and, more generally, because of what it reveals about how completely co-opted MMS regulators are by the oil industry.

In that case, numerous environmental groups sued in order to challenge the Bush Interior Department's approval of a Shell Oil plan to drill multiple offshore exploratory oil wells over a three-year period in the Alaskan Beaufort Sea. This is what happens frequently: environmental groups have to sue in order to prevent the Interior Department and the oil industry from working jointly to circumvent Congressional regulations for drilling projects. Just as was true for the BP Deepwater Horizon project, MMS in the Shell case had issued an exemption from the legal requirement that an environmental impact study be conducted before the drilling project could be approved, notwithstanding numerous, serious concerns raised even by Bush Interior Department officials about the impact of the Shell project.

The excuse the Bush administration gave for failing to conduct that review is the same one Obama gave in his press conference. As the court put it: "MMS argues that the strict timelines in OCSLA indicate that an EIS is not a feasible option at the exploration stage. The agency only has thirty days to approve or disapprove of an exploration plan" and officials "argue that thirty days is not enough time to generate a full EIS." The court categorically rejected that excuse (emphasis added):

The agency may be correct that it is difficult for an agency to conduct a full EIS in only thirty days, but its argument that OCSLA precludes such a result is unconvincing. There is flexibility built into the regulatory scheme so that the agency can perform its full duties under NEPA. The thirty-day clock begins to run only when an exploration plan is deemed complete. 30 C.F.R. § 250.233(a). If the agency is able to identify gaps before that point,

then it can request that information be added before the proposal is finalized. See 30 C.F.R. § 250.231(b). Additionally, at the end of the thirty-day review period, the agency may opt to require modifications to an EP if there are concerns that it does not comport with environmental standards. 30 C.F.R. § 250.233(b). These options give the agency additional time to consider a plan and compile an environmental impact statement, if necessary. To say simply that the agency only has thirty days to complete a full EIS is misleading.

The excuse which the court condemned as "misleading" is exactly the one Obama and his aides have been repeatedly making for why they issued exemptions to BP: namely that, as the President put it, "under current law, the Interior Department has only 30 days to review an exploration plan submitted by an oil company. That leaves no time for the appropriate environmental review." As a result, the court found that MMS's approval of Shell's drilling plan (including the exemptions it issued) violated NEPA, and thus invalidated the approval and ordered MMS to re-review the proposal in compliance with the law. That decision was issued in November, 2008 -- before the Obama administration even began -- so the notion that Obama Interior officials believed they only had 30 days to conduct a review, and that it therefore was forced to issue exemptions to BP, lacks credibility, to put that mildly.

Had MMS complied with the law and conducted an EIS of the BP project, would that have prevented the spill? It's impossible to say, but quite possibly not. But the broader point illustrated by this is the important one: the extent to which the Executive Branch continues to be beholden to, controlled by, the industries it ostensibly regulates.

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What makes all of this particularly egregious in the BP case is how predictable it was. An Interior Department review itself found in 2008 that MMS was "a dysfunctional organization that has been riddled with conflicts of interest, unprofessional behavior and a free-for-all atmosphere for much of the Bush administration's watch," findings which "provoked immediate outrage in Congress." It was long known that the Interior Department, for at least the last decade, was nothing but a rubber stamp for the oil industry.

Yet who did Obama choose to head the Interior Department? Ken Salazar, notorious for being beholden to the very industries he would be regulating. As reflected by this December, 2008 *New York Times* article -- headlined: "Environmentalists Wary of Obama's Interior Pick" -- many environment groups knew exactly what Salazar would do:

While industry officials praised his moderation, Mr. Salazar drew harsh criticism from some environmentalists.

"He is a right-of-center Democrat who often favors industry and big agriculture in battles over global warming, fuel efficiency and endangered species," said Kieran Suckling,

executive director of Center for Biological Diversity, which tracks endangered species and habitat issues. "He is very unlikely to bring significant change to the scandal-plagued Department of Interior. It's a very disappointing choice for a presidency which promised visionary change."

Daniel R. Patterson, formerly an official of the Interior Department's Bureau of Land Management and now southwest regional director of the Public Employees for Environmental Responsibility, an advocacy group, said that Mr. Salazar has justifiably become the most controversial of Mr. Obama's cabinet appointees.

"Salazar has a disturbingly weak conservation record, particularly on energy development, global warming, endangered wildlife and protecting scientific integrity," said Mr. Patterson, who was elected last month to the Arizona House of Representatives from Tucson and who supports fellow Arizonan Mr. Grijalva for the Interior job. "It's no surprise oil and gas, mining, agribusiness and other polluting industries that have dominated Interior are supporting rancher Salazar -- he's their friend."

By revealing contrast, "oil and mining interests praised Mr. Salazar's performance as a state official and as a senator, saying that he was not doctrinaire about the use of public lands." NPR -- in a December, 2008 report headlined: "Environmentalists Fuming Over Salazar's New Post" -- added: "Among those cheering the apparent Salazar nomination are the mining and agriculture industries, which generally backed Republican John McCain for president. 'I first heard it Monday and was excited because I have worked with him when I used to live in Colorado,' said Laura Skaer, executive director of the Northwest Mining Association. 'I know that he's fair and balanced'."

Salazar turned out to be exactly what it was obvious he would be when Obama chose him. As *Mother Jones'* Kate Sheppard reported this week, Salazar hired Sylvia B. Vaca for the position of deputy administrator for land and minerals management. Who is Vaca? She's a former BP Executive who is the classic case of the revolving-door sleaze that runs the Federal Government on behalf of the industries it purportedly regulates. She was an Interior Department official during the Clinton administration, and then -- when the GOP took over -- she went to BP where she "held several senior management positions with the company," then went back to the Interior Department under Salazar. Though she did not work on BP matters, she is, as Sheppard put it, "an excellent example of the revolving door between government and industry that MMS has been accused of facilitating" (h/t Susie Madrak).

At his Press Conference, Obama blamed the Bush administration for what he called the "cozy relationship" between MMS and the oil industry, but was then asked by CBS' Chip Reid: "you knew as soon as you came in, and Secretary Salazar did, about this cozy relationship. But you continued to give permits -- some of them under questionable circumstances. Is it fair to blame the Bush administration? Don't you deserve some of that?" In reply, Obama acknowledged:

Well -- well, let -- let me just make the point that I made earlier, which is, Salazar came in and started cleaning house, but the culture had not fully changed in MMS. And absolutely, I take responsibility for that. There -- there wasn't sufficient urgency in terms of the pace of how those changes needed to take place.

Was hiring a BP executive one of the ways that Salazar was trying to end the "cozy relationship" between Interior and the oil industry? Was automatically issuing exemptions from NEPA's Environmental Impact Study requirement a way of doing so? Of course "there wasn't sufficient urgency" in cleaning up MMS. What happened here was obvious: Obama chose one of the most industry-pleasing, industry-subservient Democrats to head the Interior Department despite what everyone knew was the pervasive corruption at that Department and its serving as an industry rubber stamp for years. And Obama got exactly what was obvious he would get by making that choice.

Of course, back in late 2008, objections to Salazar from environmental groups were dismissed as the obsolete, left-wing purity obsessions of ideologues. We were in a Post-Partisan, Pragmatic Age where such concerns were no longer valid. In fact, note how the industry representatives invoked classic Obama jargon to heap praise on Salazar: "'Nothing in his record suggests he's an ideologue,' said Luke Popovich, spokesman for the National Mining Association. . . . industry officials praised his moderation. . . . oil and mining interests praised Mr. Salazar's performance as a state official and as a senator, saying that he was not doctrinaire about the use of public lands."

In Obama's Washington, "centrism" and "pragmatism" mean allegiance to the corporate interests that run the government, and anyone who objects to any of that is an "ideologue" or a purist or too "doctrinaire." And, of course, as is true for every issue -- from gay rights to judicial selections, from reproductive rights to economic policy -- there were a handful of D.C. environment groups (such as the Sierra Club) who masquerade as progressive organizations but whose overriding mission was to blindly validate whatever the Democratic Party and the White House do, and they defended the Salazar pick (numerous environmental groups are now calling for Salazar's resignation).

Most amazingly, even as BP continues to spew oil in unfathomable quantities into the Gulf, this all continues now: "The Obama administration waived environmental reviews for 26 new offshore drilling projects even as the BP oil disaster spewed hundreds of thousands of gallons of crude oil into the Gulf of Mexico." And just this week: MMS "approved a new drilling permit for an offshore well in the Gulf of Mexico."

In this episode one thus finds virtually every harmful dynamic of the Obama era. Indeed, this story is found in virtually every realm. Ken Salazar and Sylvia Vaca are to the Interior Department what the countless Goldman, Sachs officials are to Treasury and other financial regulatory arms of the Obama administration. The administration has taken some commendable steps to at least create the appearance of limiting lobbying influence, but the corporate ownership of the Federal Government is as strong as ever.

Ken Salazar, the BP exemptions, and the very dubious excuses being offered to justify them illustrate that as much as anything.

UPDATE: In a *New York Times* article detailing internal BP documents regarding safety concerns for the Deepwater Horizon project, this passage appears:

One of the final indications of such problems was an April 15 request for a permit to revise [BP's] plan to deal with a blockage, according to federal documents obtained from Congress by the Center for Biological Diversity, an environmental advocacy group.

In the documents, company officials apologized to federal regulators for not having mentioned the type of casing they were using earlier, adding that they had "inadvertently" failed to include it. In the permit request, they did not disclose BP's own internal concerns about the design of the casing.

Less than 10 minutes after the request was submitted, federal regulators approved the permit.

Now that's some fast rubber-stamping.

UPDATE II: *The Huffington Post's* Sam Stein reports that "in the first three months of this year alone, . . . BP has hired at least 27 lobbyists who formerly worked in Congress or the executive branch." BP also hired the Podesta Group, the firm owned by the brother of Obama transition chief and President of Center for American Progress John Podesta, where they received the services of numerous former Democratic and GOP officials, as well as Tony Podesta himself. Writes Stein: "Tony Podesta declined a request for comment, as did the White House."