

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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| UNITED STATES OF AMERICA, and |) | |
| |) | |
| THE STATE OF TEXAS, |) | |
| |) | |
| Plaintiffs, |) | Civil Action No. <u>SA-15-CV-676</u> |
| |) | |
| v. |) | |
| |) | |
| KOCH PIPELINE COMPANY, L.P., |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMPLAINT

The United States of America (United States), by the authority of the Attorney General, and through the undersigned attorneys, acting on behalf of the Secretary of the United States Department of the Interior, and the State of Texas (Texas), acting on behalf of the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department, and the Texas General Land Office, file this Complaint and allege as follows:

I. NATURE OF THE ACTION

1. This is a civil action brought pursuant to the Oil Pollution Act (OPA), 33 U.S.C. § 2701, et seq., for damages for injury to, destruction of, loss of, or loss of use of, certain natural resources, and the costs of assessment thereof, against Koch Pipeline Company, L.P., in connection with the October 18, 1998, release of 963 barrels of crude oil from Defendant's former crude oil receiving station (Facility) in Karnes County, Texas (Incident).

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter and the parties hereto, pursuant to OPA Section 1017(b), 33 U.S.C. § 2717(b); and 28 U.S.C. §§ 1331 and 1345.

3. This Court has personal jurisdiction over the Defendant because the Facility is located within the jurisdictional boundaries for the United States District Court for the Western District of Texas, as established by Congress under 28 U.S.C. § 124(d)(4).

4. Venue is proper in this District, pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. §§ 1391, and 1395, because this is the judicial district in which the Incident and resulting natural resource damages occurred.

III. AUTHORITY

5. The United States Department of Justice has the authority to bring this action on behalf of the Department of the Interior Fish and Wildlife Service (DOI/FWS) under 28 U.S.C. §§ 516 and 519.

6. The United States brings this action on behalf of the Department of the Interior (DOI), a federal agency that has been delegated authority by the President to act on behalf of the public with respect to natural resources and their supporting ecosystems belonging to, appertaining to, managed by, or controlled by the United States. Exec. Order No. 12580, as amended by Exec. Order No. 12777; Section 1006 of OPA, 33 U.S.C. § 2706; and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300.600.

7. The State of Texas joins this action on behalf of the Texas Commission on Environmental Quality (TCEQ), the Texas Parks and Wildlife Department (TPWD), and the Texas General Land Office (GLO), state agencies that have been designated by the Governor of Texas to act on behalf of the public as trustees for natural resources, including their supporting

ecosystems, within the boundary of the state or belonging to, managed by, controlled by, or appertaining to such state. 33 U.S.C. § 2706(b)(3), and the NCP, 40 C.F.R. § 300.605.

8. The United States, through the DOI's Fish and Wildlife Service (FWS), and the State of Texas, through TCEQ, TPWD and GLO are Trustees for a variety of natural resources in and around the Defendant's former Facility, located in Karnes County, Texas. 33 U.S.C. § 2706.

IV. DEFENDANT

9. Koch Pipeline Company, L.P. is a Delaware limited partnership licensed to do business in Texas.

10. At all times relevant, Defendant owned and operated a crude oil receiving station located in Karnes County, Texas.

11. Defendant is a "person" within the meaning of OPA Section 1001(27), 33 U.S.C. § 2701(27).

V. STATEMENT OF FACTS RELATING TO NATURAL RESOURCE DAMAGES

12. Defendant formerly owned and operated a 50,000-barrel tank as part of a crude oil receiving station, located approximately 400 feet from Marcelinas Creek in Karnes County, Texas. Marcelinas Creek is a perennial stream, which flows into the San Antonio River, which in turn feeds into the Guadalupe River, a major water source for the San Antonio Bay Estuary, and the Gulf of Mexico beyond.

13. On October 18, 1998, 963 barrels of crude oil discharged from the Facility, about 783 of which escaped the Facility's containment system and entered Marcelinas Creek where floodwaters carried the crude oil several miles downstream to a collection point just below the creek's intersection with County Road 237. The floodwaters transported the oil beyond the banks of the creek, coating vegetation and the riparian area downstream with oil as the waters receded.

14. This unauthorized discharge of oil resulted in an injury or harm to “natural resources” throughout the area of the spill, within the meaning of OPA Section 1001(20), 33 U.S.C. § 2701(20), including resources under the trusteeships of the DOI, TCEQ, TPWD and GLO. The discharge has resulted in harm to, injury to, destruction of, loss of, or loss of use of, natural resources including, but not limited to, surface water, migratory bird species, freshwater wetland habitat, riparian vegetation, multiple tree species, understory, coastal and native grasses, and the banks of the creek in the vicinity of the Incident.

VI. STATUTORY BACKGROUND

15. OPA Section 1002(a), 33 U.S.C. § 2702(a), provides that “each responsible party for . . . a facility from which oil is discharged . . . into or upon the navigable waters . . . is liable for the damages . . . specified in subsection (b) that result from such incident.”

16. Pursuant to OPA Section 1001(32), 33 U.S.C. § 2701(32), “responsible party” means . . . (B) In the case of an onshore facility . . . any person owning or operating the facility.”

17. OPA Section 1001(14), 33 U.S.C. § 2701(14), defines “incident” as “any occurrence . . . involving one or more . . . facilities . . . resulting in the discharge . . . of oil.”

18. Pursuant to OPA Section 1001(7), 33 U.S.C. § 2701(7), “discharge” is defined as “any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emptying, or dumping.”

19. OPA Section 1001(23), 33 U.S.C. § 2701(23), defines “oil” as “oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil”

20. OPA Section 1001(21), 33 U.S.C. § 2701(21), defines “navigable waters” as “the waters of the United States, including the territorial sea.”

21. OPA Section 1001(9), 33 U.S.C. § 2701(9), defines “facility” as “any structure, group of structures, equipment, or device . . . used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil.”

22. OPA Section 1002(b)(2)(A), 33 U.S.C. § 2702(b)(2)(A), provides that the damages referred to in subsection (a) of Section 1002, include: “Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage” Such damages are recoverable by federal and state trustees.

23. Pursuant to Section 1001(20) of OPA, 33 U.S.C. § 2701(20), the term “natural resources” comprises “land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States . . . [or] any State”

VII. GENERAL ALLEGATIONS

24. The crude oil storage tank referred to in Paragraph 12 above, is a “facility” within the meaning of OPA Section 1001(9), 33 U.S.C. § 2701(9), because it was and is used for “producing, storing, handling, transferring, processing or transporting oil.”

25. At all times relevant, Defendant was the “owner and operator” of the Facility, within the meaning of OPA Section 1001(26), 33 U.S.C. § 2701(26).

26. “Oil” within the meaning of OPA Section 1001(23), 33 U.S.C. § 2701(23), was discharged from the Facility on October 18, 1998.

27. The discharge of “oil” from the Facility resulted in a discharge into or upon Marcelinas Creek and/or its adjoining shorelines. Marcelinas Creek is a navigable water within the meaning of Section 1002 of OPA, 33 U.S.C. § 2702.

28. Defendant is a “responsible party” as defined in Paragraph 16, above.

29. As a “responsible party,” Defendant is strictly liable to the United States, and to the State of Texas, “for damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage,” resulting from the Incident. 33 U.S.C. § 2702(b)(2)(A).

30. “Natural resources,” as defined in OPA Section 1001(20), 33 U.S.C. § 2701(20), held in trust by federal and state trustees, have been injured, destroyed, or lost as a result of the Incident, within the meaning of 33 U.S.C. § 2702(b)(2). The natural resources and/or services impacted because of the Incident include, but are not limited to, the Marcelinas Creek water column, creek sediments, and benthic organisms living in sediments, riparian habitat, improved and unimproved pasture, and terrestrial biota in and around Marcelinas Creek.

VIII. CLAIM FOR RELIEF

31. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 30 as if fully set forth herein.

32. Defendant’s discharge of oil into or upon navigable waters or adjoining shorelines on October 18, 1998, renders it liable under Section 1002(a) of OPA, 33 U.S.C. § 2702(a), for all damages to natural resources, including but not limited to the reasonable costs incurred by the United States and the State in assessing the damage.

IX. PRAYER FOR RELIEF

WHEREFORE, based upon the allegations in Paragraphs 1 through 30 of this Complaint, Plaintiffs respectfully request that this Court:

1. Enter judgment in favor of the United States and the State of Texas, and against Defendant Koch for damages for injury to natural resources resulting from the Incident, including the costs of assessing such damages; and

2. Grant the Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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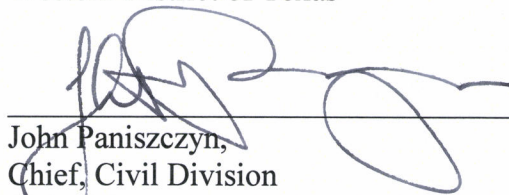
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