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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
)
 v.)
)
 NORTH SLOPE BOROUGH,) Case No. 3:22-cv-00059-JWS
)
)
 Defendant.)
)
)
 THE STATE OF ALASKA,)
)
)
 Non-Aligned Party)
 Joined Pursuant to)
 33 U.S.C. § 1319(e))
)

COMPLAINT

(This is a civil action arising under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, and the Clean Water Act, 33 U.S.C. § 1251 *et seq.*)

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NATURE OF ACTION

1. The United States of America (“United States”), by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

2. This is a civil action brought pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a) and (g), and Sections 309(b) and 311(b)(7) and (e) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and 1321(b)(7) and (e) against the North Slope Borough (hereinafter “NSB” or “Defendant”). Defendant is a municipality and a political subdivision of Alaska. The United States seeks injunctive relief and the assessment of civil penalties for environmental violations relating to the storage of oil and the treatment, storage, and disposal of hazardous waste at more than 70 facilities across 10 communities within NSB, including Anaktuvuk Pass, Atqasuk, Utqiagvik, Kaktovik, Nuiqsut, Point Hope, Point Lay, Wainwright, Deadhorse, and Prudhoe Bay (collectively the “Communities”).

3. The State of Alaska is joined in this action as a nominal party under Section 309(e) of the CWA, 33 U.S.C. § 1319(e). The United States reserves all claims that it may have against the State of Alaska under Section 309(e), 33 U.S.C. § 1319(e).

JURISDICTION AND VENUE

4. This Court has jurisdiction over the parties and the subject matter of this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Sections 309(b),

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311(b)(7)(E), (e), and (n) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), (e), and (n); and 28 U.S.C. §§ 1331, 1345, and 1355.

5. Venue is proper in this judicial district pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Sections 309(b), 311(b)(7)(E), (e), and (n) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), (e), and (n); and 28 U.S.C. §§ 1391(b), 1395(a), because Defendant is located in this judicial district and the violations asserted herein occurred in this judicial district.

AUTHORITY

6. Authority to bring this civil action is vested in the Attorney General of the United States, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Section 506 of the CWA, 33 U.S.C. § 1366, 28 U.S.C. §§ 516 and 519, and Section 10(a) of Exec. Order No. 12777, 3 C.F.R., 1991 Comp., p. 351.

NOTICE TO THE STATE

7. Notice of the commencement of this action has been given to the State as required by Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

STATUTORY AND REGULATORY BACKGROUND

The Clean Water Act

8. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

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Spill Prevention, Control, and Countermeasure Regulations

9. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), authorizes the President to promulgate regulations establishing methods, procedures, and equipment to prevent discharges of oil from onshore facilities and contain such discharges when they do occur. This authority was delegated to EPA. Exec. Order No. 11735, 3 C.F.R., 1971–1975 Comp., p. 793; Exec. Order No. 12777, 3 C.F.R., 1991 Comp., p. 351.

10. Pursuant to Section 311(j) of the CWA, EPA promulgated Oil Pollution Prevention regulations, also known as the Spill Prevention, Control, and Countermeasure Regulations (“SPCC Regulations”). The SPCC Regulations are codified at 40 C.F.R. Part 112.

11. The SPCC Regulations apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products with an aboveground storage capacity greater than 1,320 gallons which could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. 40 C.F.R. §§ 112.1(b) and 112.1(d)(2).

12. A “person” is an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. 33 U.S.C. § 1362(5).

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13. An “owner or operator” is any person owning or operating an onshore facility. 40 C.F.R. § 112.2.

14. A “facility” is any mobile or fixed, onshore or offshore building, property, parcel, lease, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and oil waste treatment. *Id.*

15. “Non-transportation-related” facilities include “Oil storage facilities” and “Industrial, commercial, agricultural or public facilities which use and store oil.” *Id.*

16. An “onshore facility” means any facility of any kind located in, on, or under any land within the United States, other than submerged lands. *Id.*

17. “Oil” means oil of any kind or in any form, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil. *Id.*

18. “Storage capacity” means the shell capacity of the container. *Id.*

19. “Discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, except in compliance with a permit under Section 402 of the CWA. *Id.*

20. “Navigable waters” means waters of the United States, including the territorial seas. *Id.* In turn, “waters of the United States” has been defined to include, among other things, waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject

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