

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

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| UNITED STATES OF AMERICA and |) |
| STATE OF LOUISIANA, |) |
| |) |
| Plaintiffs, |) |
| |) |
| v. |) |
| |) |
| CITGO PETROLEUM CORPORATION, |) |
| |) |
| Defendant. |) |
| <hr/> |) |

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, acting at the request of the United States Department of Commerce’s National Oceanic and Atmospheric Administration (“NOAA”) and the United States Department of the Interior (“DOI”) through the United States Fish and Wildlife Service (“FWS”), and the State of Louisiana (the “State”), appearing through the Louisiana Oil Spill Coordinator’s Office, Department of Public Safety & Corrections (“LOSCO”), Louisiana Department of Natural Resources (“LDNR”), Louisiana Department of Environmental Quality (“LDEQ”), Louisiana Department of Wildlife and Fisheries (“LDWF”), and the Louisiana Coastal Protection and Restoration Authority (“CPRA”), through the undersigned attorneys, file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought against Defendant CITGO Petroleum Corporation (“CITGO” or “Defendant”) for recovery of damages for injury to, destruction of, loss of, or loss

of use of natural resources, under Sections 1002(a) and 1002(b)(2)(A) of the Oil Pollution Act (“OPA”), 33 U.S.C. §§ 2702(a) and 2702(b)(2)(A), and Section 2480 of the Louisiana Oil Spill Prevention and Response Act (“OSPRA”), La. R.S. 30:2480. Plaintiffs seek damages in order to compensate for and restore natural resources injured by CITGO’s oil discharge from its refinery in Lake Charles, Louisiana, on or about June 18 and 19, 2006. Plaintiffs also seek to recover unreimbursed costs of assessing such damages.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and Section 1017(b) of OPA, 33 U.S.C. § 2717(b). The Court also has supplemental jurisdiction over the State law claim pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), and Section 1017(b) of OPA, 33 U.S.C. § 2717(b), because Defendant resides and does business in this district and the oil discharge occurred in this district.

STATUTORY BACKGROUND

The Oil Pollution Act of 1990

4. Section 1002(a) of OPA, 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 or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in [33 U.S.C. § 2702(b)] that result from such incident.”

5. Section 1001(32)(B) of OPA, 33 U.S.C. § 2701(32)(B), defines “responsible party” to include, in the case of an onshore facility, “any person owning or operating the facility.”

6. Section 1001(27) of OPA, 33 U.S.C. § 2701(27), defines “person” to include a

corporation.

7. Section 1001(9) of OPA, 33 U.S.C. § 2701(9), defines “facility” to mean “any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil.”

8. Section 1001(24) of OPA, 33 U.S.C. § 2701(24), defines “onshore facility” to mean “any facility . . . of any kind located in, on, or under, any land within the United States other than submerged land.”

9. Section 1001(23) of OPA, 33 U.S.C. § 2701(23), defines “oil” to mean “oil of any kind or in any form, including petroleum.”

10. Section 1001(7) of OPA, 33 U.S.C. § 2701(7), defines “discharge” to mean “any emission (other than natural seepage), intentional or unintentional,” and to include “spilling, leaking, pumping, pouring, emitting, emptying, or dumping.”

11. Section 1001(21) of OPA, 33 U.S.C. § 2701(21), defines “navigable waters” to mean “the waters of the United States, including the territorial seas.”

12. Section 1002(b)(2) of OPA, 33 U.S.C. § 2702(b)(2), provides that the “damages” referred to in Section 1002(a) of OPA, 33 U.S.C. § 2702(a), include “[d]amages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.”

13. Section 1001(20) of OPA, 33 U.S.C. § 2701(20), defines “natural resources” to include “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 (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government.”

14. Section 1001(14) of OPA, 33 U.S.C. § 2701(14), defines “incident” to mean “any occurrence or series of occurrences having the same origin, involving one or more . . . facilities . . . resulting in the discharge . . . of oil.”

The Louisiana Oil Spill Prevention and Response Act

15. The purpose of OSPRA is to assist the State of Louisiana “in fulfilling its duties to protect, conserve, and replenish the natural resources of th[e] state in accordance with Article XI, Section 1 of the Constitution of Louisiana.” La. R.S. 30:2453(A).

16. It is the intent of OSPRA “to support and complement the Oil Pollution Act of 1990 (P.L. 101-380) and other federal law, specifically those provisions . . . relating to the responsibilities of state agencies designated as natural resource trustees. The legislature intends [OSPRA] to be interpreted and implemented in a manner consistent with federal law.”

La. R.S. 30:2453(B).

17. OSPRA provides that a responsible party shall make full payment or initiate restoration, rehabilitation, replacement, or mitigation of damages to natural resources after completion of an assessment of natural resource damages and the amount of the damages by the state agencies designated as natural resource trustees. La. R.S. 30:2480(G).

18. “Responsible party” means “[t]he owner or operator of a . . . terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate.”

La. R.S. 30:2454(22)(a). “Responsible party” also includes any person “who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.” La.

R.S. 30:2454(22)(c).

19. “Owner” or “operator” means “[a]ny person owning a terminal facility . . . ; or [a] person operating a terminal facility by lease, contract, or other form of agreement.”

La. R.S. 30:2454(20)(b).

20. “Terminal facility” includes any “waterfront . . . pipeline, structure, equipment, or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge from the facility could threaten waters of the state”

La. R.S. 30:2454(28).

21. “‘Unauthorized discharge of oil’ means any actual or threatened discharge of oil not authorized by a federal or state permit.” La. R.S. 30:2454(29).

22. “‘Discharge of oil’ means an intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters of the state or at any other place where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal waters of the state.” La. R.S. 30:2454(7).

23. “‘Oil’ means oil of any kind or in any form, including but not limited to crude oil, [and] petroleum” La. R.S. 30:2454(18).

24. “‘Damages’ means and includes “damages for injury to, destruction of, or loss of natural resources as defined in [OSPRA], includ[ing] the reasonable and any direct, documented cost to assess, restore, rehabilitate, or replace injured natural resources, or to mitigate further injury, and their diminution in value after such restoration, rehabilitation, replacement or mitigation, which shall be recoverable by the state of Louisiana.” La. R.S. 30:2454(5)(a).

25. “‘Natural resources’ means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, groundwater supplies, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state.” La. R.S. 30:2454(17).

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