

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Civil Action No.

UNITED STATES OF AMERICA, and
STATE OF NORTH DAKOTA,

Plaintiffs,

v.

BELLE FOURCHE PIPELINE COMPANY,

Defendant.

COMPLAINT

The United States of America (“United States”), by the authority of the Attorney General of the United States, and on behalf of the United States Environmental Protection Agency (“EPA”) and the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (“PHMSA”); and the State of North Dakota (the “State”), on behalf of the North Dakota Department of Environmental Quality (“NDDEQ”), file this complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action against Belle Fourche Pipeline Company (“Belle Fourche” or “Defendant”).
2. Defendant owns and operates hundreds of miles of buried pipelines that gather and transport crude oil in North Dakota, Montana, and Wyoming.

3. In late 2016, one of those pipelines ruptured in Billings County, North Dakota, approximately 20 miles northwest of the city of Belfield, resulting in the discharge of approximately 14,400 barrels of crude oil, including into an unnamed tributary to Ash Coulee Creek, Ash Coulee Creek itself, the Little Missouri River, and their adjoining shorelines (the “Ash Coulee Spill”), in violation of the Clean Water Act (“CWA”), regulations promulgated pursuant to the Pipeline Safety Act (“PSA”) (referred to herein as the “Federal Pipeline Safety Regulations”), and North Dakota state law.

4. The United States seeks injunctive relief, civil penalties, and punitive damages for Defendant’s violations of the Clean Water Act and the Federal Pipeline Safety Regulations pursuant to, respectively, Sections 309 and 311 of the CWA, 33 U.S.C. §§ 1319 and 1321, and Section 60120 of the PSA, 49 U.S.C. § 60120.

5. The State seeks injunctive relief and civil penalties for violations of North Dakota law pursuant to N.D. Cent. Code §§ 61-28-04(22), 61-28-08, 23-29-04(8), 23-29-11, and 23-29-12. The State also seeks recovery of its costs relating to the Ash Coulee Spill pursuant to N.D. Cent. Code §§ 23-31-01 (recodified as 23.1-10-01 in 2019 and then repealed in 2021, 2021 N.D. Sess. Laws, ch. 212, § 19) and 23.1-10-12 (effective 2021).

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to Sections 309(b), 311(b)(7)(E), and 311(n) of the CWA, 33 U.S.C. §§ 1319(b), 1321(b)(7)(E), and 1321(n); Section 60120(a)(1) of the PSA, 49 U.S.C. § 60120(a)(1); and 28 U.S.C. §§ 1331, 1345, and 1355.

7. This Court has supplemental jurisdiction over the claims asserted by the State pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this District pursuant to Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); Section 60120(a)(1) of the PSA, 49 U.S.C. § 60120(a)(1); and 28 U.S.C. §§ 1391 and 1395, because the violations that are the subject of this action occurred in this District, and Defendant is located and does business in this District.

9. Authority to bring the United States' claims is vested in the United States Department of Justice by Section 506 of the CWA, 33 U.S.C. § 1366; Section 60120 of the PSA, 49 U.S.C. § 60120; and 28 U.S.C. §§ 516 and 519.

10. Authority to bring the State's claims is vested in NDDEQ by N.D. Cent. Code §§ 61-28-04, 61-28-08, 23-29-04(8), 23-29-11, and 23-29-12. NDDEQ was established on April 29, 2019, and became the State agency responsible for the administration and enforcement of the environmental protection programs, laws, and rules previously administered and enforced by the North Dakota Department of Health's Environmental Health Section. Pursuant to 2017 N.D. Laws ch. 199, § 1, the North Dakota Department of Health's interest in the causes of action alleged in the Complaint were assigned to NDDEQ. For purpose of the Complaint, the term "NDDEQ" includes the North Dakota Department of Health for activities occurring prior to April 29, 2019, and for statutes and rules in effect prior to April 29, 2019. Due to the transition, the statutes in N.D. Cent. Code ch. 23-29 have moved to N.D. Cent. Code ch. 23.1-08, and the rules in N.D. Admin. Code arts. 33-16 and 33-20 have moved to 33.1-16 and 33.1-20. Because the violations began prior to April 29, 2019, NDDEQ references N.D. Cent. Code ch. 23-29 and N.D. Admin. Code arts. 33-16 and 33-20 in this Complaint, but for activities ongoing after the transition, NDDEQ also alleges violations of the nearly identical statutes in N.D. Cent. Code ch. 23.1-08 and rules in N.D. Admin. Code arts. 33.1-16 and 33.1-20.

DEFENDANT

11. Belle Fourche is a Wyoming corporation.

12. Belle Fourche owns and operates the Bicentennial Pipeline, which includes a segment that gathers and transports crude oil between the Skunk Hill pump station in Billings County, North Dakota and the Bicentennial pump station in McKenzie County, North Dakota (the “Skunk Hill to Bicentennial Segment”).

13. Belle Fourche is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5); Section 60101(a)(17) of the PSA, 49 U.S.C. § 60101(a)(17); and N.D. Cent. Code §§ 61-28-02(5) and 23-29-03(11).

FEDERAL STATUTORY AND REGULATORY REQUIREMENTS

Clean Water Act

14. Section 301(a) of the Clean Water Act prohibits the discharge of any pollutant, including oil, by any person, except as authorized by and in compliance with other sections of the Act. 33 U.S.C. § 1311(a).

15. The Clean Water Act authorizes the United States to “commence a civil action for appropriate relief, including a permanent or temporary injunction,” for violations of Section 301 of the Act. 33 U.S.C. § 1319(b).

16. Another section of the Clean Water Act, Section 311(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or environment of the United States. 33 U.S.C. § 1321(b)(3).

17. The President, through a delegation to EPA, has determined that quantities of oil that may be harmful, for purposes of Section 311, include discharges that (a) violate applicable

water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines. 40 C.F.R. § 110.3.

18. Anyone violating Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), is subject to a civil penalty. The penalty for a spill in December 2016 (when the Ash Coulee Spill began) is up to \$6,215 per barrel of oil discharged where the violation was the result of gross negligence or willful misconduct, and up to \$2,072 per barrel in other cases. 33 U.S.C. § 1321(b)(7)(A) and (D); 40 C.F.R. § 19.4.

Federal Pipeline Safety Regulations

19. Pursuant to Section 60102(a) of the PSA, PHMSA has promulgated regulations prescribing, among other things, minimum safety standards for pipeline operation and maintenance. 49 U.S.C. § 60102(a).

20. As relevant here, these regulations are codified at 49 C.F.R. Part 195 (the “Federal Pipeline Safety Regulations”).

21. The Federal Pipeline Safety Regulations contain requirements that apply to operators of hazardous liquid pipelines that could affect a “high consequence area.” 49 C.F.R. § 195.452.

22. The Federal Pipeline Safety Regulations define “high consequence area” (“HCA”) to include an “unusually sensitive area.” 49 C.F.R. § 195.450. An unusually sensitive area, in turn, is defined as “a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release.” 49 C.F.R. § 195.6.

23. The Federal Pipeline Safety Regulations define drinking water and ecological resources, for purposes of identifying unusually sensitive areas. A drinking water resource is defined to include the water intake for a “community water system” and the “source water protection area” for a community water system. 49 C.F.R. § 195.6(a). An ecological resource is

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