

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA and the)
STATE OF TEXAS,)
)
Plaintiffs,)
)
v.)
)
KIRBY INLAND MARINE, LP,)
)
Defendant.)

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, acting at the request of the National Oceanic and Atmospheric Administration (“NOAA”), and the State of Texas (the “State”), appearing through the Office of the Texas Attorney General on behalf of the Texas General Land Office (“TGLO”), the Texas Commission on Environmental Quality (“TCEQ”), and the Texas Parks and Wildlife Department (“TPWD”), file this Complaint and allege as follows:

NATURE OF THE CASE

1. This is a civil action brought against Defendant Kirby Inland Marine, LP (“Kirby” or “Defendant”) for recovery of damages for injury to, destruction of, loss of, or loss of use of natural resources, under Section 1002 of the Oil Pollution Act (“OPA”), 33 U.S.C. § 2702. On May 10, 2019, oil in the form of a gasoline blending stock known as reformat was discharged from Kirby’s tank barge 30015T during a collision with the tanker ship *Genesis River* near Bayport, Texas. Oil discharged from the Kirby barge into the Houston Ship Channel and proceeded to impact portions of the Ship Channel, Galveston Bay, and the Texas coastline.

Plaintiffs seek damages under OPA to compensate for and restore natural resources injured by the oil discharge. Plaintiffs also seek to recover their unreimbursed assessment and restoration planning costs.

JURISDICTION AND VENUE

2. The 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 jurisdiction over Defendant.

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

4. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides that “each responsible party for a vessel or 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)(A) of OPA, 33 U.S.C. § 2701(32)(A), defines “responsible party” to include, in the case of a vessel, “any person owning, operating, or demise chartering the vessel.”

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

7. Section 1001(37) of OPA, 33 U.S.C. § 2701(37), defines “vessel” to mean “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.”

8. 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.”

9. 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.”

10. 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.”

11. 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.”

12. 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.”

13. 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 vessels . . . , resulting in the discharge . . . of oil.”

14. The trustees for the natural resources injured by the oil discharge include NOAA on behalf of the United States, and TGLO, TCEQ, and TPWD on behalf of the State of Texas (collectively, the “Trustees”).

15. NOAA is designated as a trustee pursuant to Section 1006(b)(2) of OPA,

33 U.S.C. § 2706(b)(2), Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) (40 C.F.R. § 300.600, *et seq.*) and Executive Order 12580 (3 C.F.R., 1987 Comp. p. 193, 52 Fed. Reg. 2923 (January 23, 1987) as amended by Executive Order 12777 (56 Fed. Reg. 54757 (October 22, 1991))).

16. TGLO, TCEQ, and TPWD are designated as trustees by the Governor of Texas pursuant to Section 1006(b)(3) of OPA, 33 U.S.C. § 2706(b)(3), and subpart G of the NCP, 40 C.F.R. § 300.605.

17. Pursuant to OPA, the Trustees are acting on behalf of the public to seek damages for the injury to, destruction of, loss of, or loss of use of natural resources resulting from the discharge of oil.

CLAIM FOR RELIEF

Natural Resource Damages under Section 1002 of OPA

18. The preceding paragraphs are realleged and incorporated herein by reference.

19. On May 10, 2019, oil in the form of a gasoline blending stock known as reformate was discharged into the Houston Ship Channel from Kirby’s tank barge 30015T during a collision with the 755-foot tanker ship *Genesis River* near Bayport, Texas. Kirby’s barge 30015T was connected to another Kirby tank barge, and both barges were being pushed by the Kirby towing vessel *M/V Voyager*. The bow of the *Genesis River* cut through the double hull of Kirby’s barge 30015T and ruptured two of the barge’s oil storage tanks. Oil discharged from the barge into the waterway and polluted parts of the Houston Ship Channel, Galveston Bay, and the Texas coastline.

20. Chemical components of reformate are known to be harmful to terrestrial and aquatic life.

21. Kirby is the “responsible party” for Kirby’s tank barge 30015T within the meaning of Section 1001(32)(A) of OPA, 33 U.S.C. § 2701(32)(A).
22. Kirby is a corporate entity and a “person” within the meaning of Section 1001(27) of OPA, 33 U.S.C. § 2701(27).
23. At the time of the oil discharge, Kirby was the owner and operator of the tank barge 30015T.
24. Kirby’s tank barge 30015T is a “vessel” within the meaning of Section 1001(37) of OPA, 33 U.S.C. § 2701(37).
25. The spilling of oil from the Kirby tank barge was a “discharge” within the meaning of Section 1001(7) of OPA, 33 U.S.C. § 2701(7). Kirby reported to TGLO that the incident resulted in an estimated discharge of 14,278.14 barrels (about 600,000 gallons) of oil into the waterway.
26. The reformatite released during the incident was “oil” within the meaning of Section 1001(23) of OPA, 33 U.S.C. § 2701(23).
27. The Houston Ship Channel and Galveston Bay are “navigable waters” of the United States within the meaning of Section 1001(21) of OPA, 33 U.S.C. § 2701(21).
28. The oil discharge polluted portions of the Houston Ship Channel, Galveston Bay, and the Texas coastline where it washed ashore roughly between Red Bluff and Eagle Point.
29. Numerous types of aquatic life are known to inhabit the areas impacted by the oil discharge.
30. Kirby, the United States Coast Guard, and the State responded to the spill and conducted and monitored cleanup efforts.
31. The oil discharge caused injury to, destruction of, loss of, or loss of use of

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.