

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA and
STATE OF TEXAS,

Plaintiffs,

v.

KIRBY INLAND MARINE, LP,

Defendant.

Case No. 3:21-cv-335

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and acting at the request of the Department of the Interior through the Fish and Wildlife Service (“FWS”) and the National Park Service (“NPS”) and the Department of Commerce (“DOC”) through 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 injuries 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. Plaintiffs seek to recover natural resource damages (“NRD”) for injuries resulting from the March 2014 discharge of oil that occurred in the Houston Ship Channel from an oil barge owned and operated by Kirby.

2. The oil spill occurred on March 22, 2014, after a Kirby towboat pushing two Kirby oil barges tried to cross in front of a 585-foot-long deep-draft bulk cargo ship that was traveling in the Houston Ship Channel in the vicinity of the Texas City Y crossing. The lead Kirby oil barge was struck, a tank ruptured, and approximately 4,000 barrels (168,000 gallons) of marine fuel oil spilled into the waters of the Houston Ship Channel. The oil flowed out of the Channel, into Galveston Bay, and then spread into the Gulf of Mexico and down the Texas coastline.

3. Approximately 160 miles of shoreline were oiled as a result of the spill, including sensitive marsh habitat, the national wildlife refuge on Matagorda Island, Mustang Island State Park, and Padre Island National Seashore. Natural resources killed or harmed by the spill include birds, dolphins and other marine life, waters of the United States and the State, marshes, beaches, and subtidal habitats. The spill also resulted in losses to recreational users of the marine and coastal environment in the spill impact area, which stretched from Galveston-area beaches to beaches as far south as Padre Island National Seashore near Corpus Christi.

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

JURISDICTION AND VENUE

5. 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.

6. 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

7. 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.”

8. 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.”

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

10. 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.”

11. 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.”

12. 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.”

13. 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.”

14. 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.”

15. 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.”

16. 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.”

17. The trustees for the natural resources injured by the oil discharge include DOI through FWS and NPS and DOC through NOAA, on behalf of the United States,

and TGLO, TCEQ, and TPWD on behalf of the State of Texas (collectively, the “Trustees”).

18. DOI through FWS and NPS and DOC through NOAA are the designated United States trustees 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))).

19. TGLO, TCEQ, and TPWD are designated as state 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.

20. 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.

FACTS

A. The Source of the Oil Discharge

21. Kirby owned and operated the towboat the *Miss Susan* at the time of the oil discharge on March 22, 2014.

22. The *Miss Susan* measures 70 feet long, 28 feet across, and 10 feet deep, and is an 1,800-horsepower towing vessel weighing 131 gross tons.

23. Kirby owned and operated the oil barges the *Kirby 27705* and the *Kirby 27706*, which were connected to and being pushed by the *Miss Susan* at the time of the



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