

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

Plaintiff,

v.

BOUCHARD TRANSPORTATION
COMPANY, INC.,

TUG EVENING TIDE CORPORATION, and

B. NO. 120 CORPORATION,

Defendants.

Civil Action No.

COMPLAINT

The United States of America, by authority of the Attorney General, acting at the request of the Department of the Interior, U.S. Fish and Wildlife Service (“USFWS”), and the Department of Commerce, National Oceanic and Atmospheric Administration (“NOAA”), brings this complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action brought against Bouchard Transportation Company, Inc., Tug Evening Tide Corporation, and B. No. 120 Corporation (“Defendants”) pursuant to the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2701, *et seq.*, seeking natural resource damages, as specifically identified herein, arising from an oil spill from the Defendants’ tank barge Bouchard No. 120 into or upon navigable waters of the United States and/or adjoining shorelines (the “Oil Spill”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 33 U.S.C. § 2717(b), and section 1017 of OPA, 33 U.S.C. § 2717(b). Venue is proper in this District, pursuant to section 1017 (b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. § 1391(b), because the discharge of oil and natural resource injuries occurred in this District.

DEFENDANTS

3. Defendant Bouchard Transportation Company, Inc., is a New York corporation with its principal place of business in Hicksville, New York. Defendant Bouchard Transportation Company, Inc., was the owner/operator of the tank barge Bouchard No. 120 at the time of the Oil Spill.

4. Defendant Tug Evening Tide Corporation is a New York corporation with its principal place of business in Hicksville, New York. It is/was a wholly-owned subsidiary of Defendant Bouchard Transportation Company, Inc., and was towing the tank barge Bouchard No. 120 at the time of the Oil Spill.

5. Defendant B. No. 120 Corporation is a New York corporation with a principal place of business in Melville, New York. It is/was a wholly-owned subsidiary of Defendant Bouchard Transportation Company, Inc., and the owner of the tank barge Bouchard No. 120 at the time of the Oil Spill.

6. Each Defendant is a “person” within the meaning of Section 1001(27) of OPA, 33 U.S.C. § 2701(27).

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, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines . . . is liable for the removal costs and damages . . . that result from such incident.”

8. Section 1001(32) of OPA, 33 U.S.C. § 2701(32), defines “responsible party” to include, “[i]n the case of a vessel any person owning [or] operating . . . the vessel.”

9. The term “discharge” includes any “ . . . spilling, leaking, pumping, pouring, emitting, emptying, or dumping” pursuant to Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

10. “Damages” for which a responsible party is liable, pursuant to 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 . . .” 33 U.S.C. §§ 2701(5) and 2702(b)(2).

11. Pursuant to Section 1006 of OPA, 33 U.S.C. § 2706, USFWS and NOAA have been designated as trustees for the United States for recovery under OPA for injuries to, destruction of, loss of, or loss of use of natural resources managed or controlled by those agencies.

GENERAL ALLEGATIONS

12. On April 27, 2003, tank barge Bouchard No. 120 was being towed by the tugboat Evening Tide across Buzzards Bay, Massachusetts. The vessels strayed off course and the tank barge grounded on a shoal rupturing the hull of the tank barge, causing the release of tens of thousands of gallons of fuel oil cargo into Buzzards Bay off the shores of Massachusetts and Rhode Island.

13. The aforesaid fuel oil was an "oil" within the meaning of section 1001(23) of OPA, 33 U.S.C. 2701(23).

14. Buzzards Bay and waterways in or near the Bay are "navigable" waters" within the meaning of Section 1001(21) of OPA, 33 U.S.C. § 2701(21).

15. The discharged oil impacted over 100 miles of beach and shoreline of Massachusetts and Rhode Island.

16. The discharge of oil caused injury to, destruction of, loss of or loss of use of the natural resources, as specifically identified herein, belonging to, managed by, controlled by, appertaining to the United States.

17. As a result of the discharge of oil, USFWS and NOAA incurred reasonable costs in assessing the damage to the natural resources specified herein .

18. In *United States, et al. v. Bouchard Transportation Company, Inc.*, Civil Action No. 1:10-cv-11958-NMG (consolidated with 10-111960-NMG and 10-12031-NMG) (D.Mass.), the parties named in this Complaint, as along with the Commonwealth of Massachusetts and the State of Rhode Island, entered into a consent decree ("Consent Decree 1"), which was entered by the Court on May 18, 2011. Consent

Decree 1 settled some of the claims for injuries to natural resources. The claims of the United States for injuries to birds other than Atlantic Coast Piping Plovers (*Choradrius melodus*), assessment costs related thereto, and unpaid and unreimbursed costs of assessment (as those terms were defined in Consent Decree 1), however, were specifically excluded from that settlement.

CLAIM FOR RELIEF

19. The above allegations are included in this claim for relief.

20. As a result of the discharge of oil, there has been injury to, destruction of, loss of, or loss of use of “natural resources,” as that term is defined in Section 1001(20) of OPA, 33 U.S.C. § 2701(20), for which the United States is a trustee within the meaning of Section 1006(b) of OPA, 33 U.S.C. § 2706(b). The specific natural resource damages sought by the United State in this action relate to birds other than Atlantic Coast Piping Plovers.

21. As responsible parties for a vessel from which oil was discharged into or upon the navigable waters or adjoining shorelines, the Defendants are liable to the United States under Sections 1002(a) 1002(b)(2)(A) of OPA, 33 U.S.C. §§ 2702(a) and 2702(b)(2)(A), for damages for such injury to, destruction of, loss of, or loss of use of birds other than Atlantic Coast Piping Plovers, as well as the reasonable costs of assessing those damages.

22. The Defendants are also liable for any costs of assessment not settled or paid pursuant to Consent Decree 1.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court:

- A. Award damages to the United States under Sections 1002(a) and 1002(b)(2)(A) of OPA, 33 U.S.C. §§ 2702(a) and 2702(b)(2)(A), for damages for injury to, destruction of, loss of, or loss of use of birds other than Atlantic Coast Piping Plovers, all reasonable costs incurred or to be incurred by the United States in assessing such damages, and any costs of assessment not settled or paid pursuant to Consent Decree 1.
- B. Award the United States its costs of this action.
- C. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff,
v.
BOUCHARD TRANSPORTATION
COMPANY, INC.,
TUG EVENING TIDE CORPORATION, and
B. No. 120 CORPORATION,
Defendants.

COMPLAINT

The Commonwealth of Massachusetts (Commonwealth), by authority of the Attorney General for the Commonwealth, acting at the request of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), brings this complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action brought against Bouchard Transportation Company, Inc., Tug Evening Tide Corporation, and B. No. 120 Corporation (Defendants) pursuant to the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701-2761, and the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. Gen. Laws ch. 21E, §§ 1-22 (Chapter 21E), seeking natural resource damages, as specifically identified herein, arising from an oil spill from the Defendants' tank barge Bouchard No. 120 into

or on navigable waters of the United States and the waters of the Commonwealth and adjoining shorelines in and around Buzzards Bay, Massachusetts (the “Oil Spill”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, and Section 1017 of OPA, 33 U.S.C. § 2717(b). This Court has pendent jurisdiction over the State law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this District, pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. § 1391(b), because the discharge of oil and natural resource injuries occurred in this District.

PARTIES

4. The Plaintiff is the Commonwealth of Massachusetts appearing by and through the Attorney General of the Commonwealth of Massachusetts and the Massachusetts Executive Office of Energy and Environmental Affairs.

5. The Attorney General is the chief law officer of the Commonwealth, with offices at One Ashburton Place, Boston, Massachusetts. She is authorized to bring this action, and to seek the relief requested herein, pursuant to Mass. Gen. Laws ch. 12, §§ 3 and 11D.

6. The Executive Office of Energy and Environmental Affairs (EEA) maintains its principal office at 100 Cambridge Street, Suite 900, Boston, Massachusetts. The EEA Secretary is the Massachusetts official designated to act on behalf of the public as trustee for natural resources managed or protected by the Commonwealth and its agencies. Mass. Gen. Laws ch. 21A, § 2A.

7. Defendant Bouchard Transportation Company, Inc., is a New York corporation with its principal place of business in Hicksville, New York. Defendant Bouchard Transportation Company, Inc., was the owner/operator of the tank barge Bouchard No. 120 at the time of the Oil Spill.

8. Defendant Tug Evening Tide Corporation is a New York corporation with its principal place of business in Hicksville, New York. It is/was a wholly-owned subsidiary of Defendant Bouchard Transportation Company, Inc., and was towing the tank barge Bouchard No. 120 at the time of the Oil Spill.

9. Defendant B. No. 120 Corporation is a New York corporation with a principal place of business in Melville, New York. It is/was a wholly-owned subsidiary of Defendant Bouchard Transportation Company, Inc., and the owner of the tank barge B. No. 120 at the time of the Oil Spill.

10. Each Defendant is a “person” within the meaning of Section 1001(27) of OPA, 33 U.S.C. § 2701(27), and Section 2 of Chapter 21E, Mass. Gen. Laws ch. 21E, § 2.

STATUTORY BACKGROUND

The Oil Pollution Act of 1990

11. 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, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines . . . is liable for the removal costs and damages . . . that result from such incident.”

12. Section 1001(32) of OPA, 33 U.S.C. § 2701(32), defines “responsible party” to include, “[i]n the case of a vessel, any person owning [or] operating . . . the vessel.”

13. The term “discharge” includes any “spilling, leaking, pumping, pouring, emitting, emptying, or dumping” pursuant to Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

14. “Damages” for which a responsible party is liable, pursuant to 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” 33 U.S.C. §§ 2701(5), 2702(b)(2).

15. Pursuant to Section 1006(b)(3) of OPA, 33 U.S.C. § 2706(b)(3), the EEA Secretary has been designated as trustee for the Commonwealth for recovery under OPA for injuries to, destruction of, loss of, or loss of use of natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Commonwealth and its agencies. Mass. Gen. Laws ch. 21A, § 2A.

**Massachusetts Oil and Hazardous
Material Release Prevention and Response Act**

16. Section 5 of Chapter 21E provides that “the owner or operator of a vessel or a site from or at which there is or has been a release of oil or hazardous material . . . shall be liable, without regard to fault, . . . to the [C]ommonwealth for all damages for injury to and for destruction or loss of natural resources, including the costs of assessing and evaluating such injury, destruction or loss, incurred or suffered as a result of such release or threat of release.” Mass. Gen. Laws ch. 21E, §§ 5(a)(1), 5(a)(ii).

17. Section 2 of Chapter 21E defines “owner or operator” as, “in the case of a vessel, any person owning, operating or chartering by demise such vessel.” Mass. Gen. Laws ch. 21E, § 2.

18. The term “release” includes “any spilling, leaking . . . discharging . . . dumping or disposing into the environment.” Mass. Gen. Laws ch. 21E, § 2.

19. The term “environment” includes “waters[] [and] land . . . of the [C]ommonwealth.” Mass. Gen. Laws ch. 21E, § 2.

20. The term “waters of the Commonwealth” includes “all waters within the jurisdiction of the [C]ommonwealth, including . . . coastal waters.” Mass. Gen. Laws ch. 21E, § 2.

GENERAL ALLEGATIONS

21. On April 27, 2003, the tank barge Bouchard No. 120 was being towed by the tugboat Evening Tide across Buzzards Bay, Massachusetts. At the time, the tank barge Bouchard No. 120 was loaded with No. 6 fuel oil.

22. During the transit, the vessels strayed off course, and the tank barge struck a rock outcropping, which ruptured the hull of the tank barge and caused the release of tens of thousands of gallons of fuel oil cargo into Buzzards Bay off the shores of the Commonwealth and Rhode Island.

23. The No. 6 fuel oil released from the tank barge Bouchard No. 120 was “oil” within the meaning of Section 1001(23) of OPA, 33 U.S.C. § 2701(23), and Section 2 of Chapter 21E, Mass. Gen. Laws ch. 21E, § 2.

24. Buzzards Bay and the waterways in or near the Bay are “navigable waters” within the meaning of Section 1001(21) of OPA, 33 U.S.C. § 2701(21), and are also “waters of the [C]ommonwealth” within the meaning of Section 2 of Chapter 21E, Mass. Gen. Laws ch. 21E, § 2.

25. The discharged oil impacted over 100 miles of beach and shoreline of the Commonwealth and Rhode Island and numerous birds and other wildlife.

26. Birds and other wildlife are natural resources belonging to, managed by, held in trust by the Commonwealth. *See, e.g.*, Mass. Gen. L. c. 21, § 1; 33 U.S.C. § 2701(20).

27. The discharge of oil caused injury to, destruction of, loss of, or loss of use of the natural resources, including certain bird species as specifically identified herein, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Commonwealth.

28. As a result of the discharge of oil, the Commonwealth incurred reasonable costs in assessing and evaluating the damage to the natural resources specified herein.

29. In *United States v. Bouchard Transportation Company, Inc.*, Civil Action No. 1:10-cv-11958-NMG (consolidated with Civil Action Nos. 10-111960-NMG (the Commonwealth’s case) and 10-12031-NMG (Rhode Island’s case)) (D. Mass.), the Commonwealth, together with the United States and the State of Rhode Island, entered into a consent decree (Consent Decree 1), which was entered by the Court on May 18, 2011. ECF Dkt. No. 19 (C.A. No. 1:10-cv-11958-NMG). Consent Decree 1 settled some of the Commonwealth’s claims for injuries to natural resources. The claims of the Commonwealth for injuries to birds other than Atlantic Coast Piping Plovers (*Choradrius*

melodus), assessment costs related to those claims, and unpaid and unreimbursed costs of assessment (as those terms were defined in Consent Decree 1), however, were specifically excluded from that Consent Decree and the associated Complaint and thus preserved for future resolution.

CAUSES OF ACTION

COUNT I: THE DEFENDANTS ARE JOINTLY AND SEVERALLY LIABLE FOR DAMAGES TO NATURAL RESOURCES UNDER OPA.

30. The Commonwealth realleges and incorporates by reference the averments of paragraphs 1–29.

31. As a result of the discharge of oil, there has been injury to, destruction of, loss of, or loss of use of “natural resources,” as that term is defined in Section 1001(20) of OPA, 33 U.S.C. § 2701(20), for which the Commonwealth is a trustee within the meaning of Section 1006(b)(3) of OPA, 33 U.S.C. § 2706(b)(3). The specific natural resource damages sought by the Commonwealth in this action are to birds other than the Atlantic Coast Piping Plovers.

32. The Defendants are owners and/or operators of a vessel from which oil was discharged into or on waters and land of the Commonwealth. 33 U.S.C. §§ 2701(7), (32), 2702(a).

33. As responsible parties for a vessel from which oil was discharged into or on the navigable waters or adjoining shorelines, the Defendants are liable to the Commonwealth under Sections 1002(a) and 1002(b)(2)(A) of OPA, 33 U.S.C. §§ 2702(a), 2702(b)(2)(A),

for damages for such injury to, destruction of, loss of, or loss of use of birds other than Atlantic Coast Piping Plovers, as well as the reasonable costs of assessing those damages.

34. The Defendants are also liable under OPA for any costs of assessment not settled or paid pursuant to Consent Decree 1.

COUNT II: THE DEFENDANTS ARE JOINTLY AND SEVERALLY LIABLE FOR DAMAGES TO NATURAL RESOURCES UNDER MASS. GEN. LAWS CH. 21E.

35. The Commonwealth realleges and incorporates by reference the averments of paragraphs 1–29.

36. As a result of the release of oil into or on waters of the Commonwealth or its adjoining shorelines, within the meaning of Section 5(a)(ii) of Chapter 21E, Mass. Gen. Laws ch. 21E, § 5(a)(ii), there has been injury to, destruction of, loss of, or loss of use of natural resources for which the Commonwealth may seek to recover damages. The specific natural resource damages sought by the Commonwealth in this action are to birds other than the Atlantic Coast Piping Plovers.

37. The Defendants are owners and/or operators of a vessel from which oil was released into or on waters and land of the Commonwealth. Mass. Gen. Laws ch. 21E, §§ 2, 5(a)(1), 5(a)(ii).

38. As owners and operators of a vessel from which oil was discharged into or on the waters of the Commonwealth or its adjoining shorelines, the Defendants are liable to the Commonwealth under Section 5(a)(ii) of Chapter 21E, Mass. Gen. Laws ch. 21E, § 5(a)(ii), for all damages for such injury to, destruction of, loss of, or loss of use of, birds other than Atlantic Coast Piping Plovers, as well as the costs of assessing and evaluating

such injury, destruction, or loss, incurred or suffered by the Commonwealth as a result of such release.

39. The Defendants are also liable under Chapter 21E for any costs of assessment not settled or paid pursuant to Consent Decree 1.

REQUEST FOR RELIEF

WHEREFORE, the Commonwealth respectfully asks that this Court:

A. Award damages to the Commonwealth under Sections 1002(a) and 1002(b)(2)(A) of OPA, 33 U.S.C. §§ 2702(a), 2702(b)(2)(A), for injury to, destruction of, loss of, or loss of use birds other than Atlantic Coast Piping Plovers, all reasonable costs incurred or to be incurred by the Commonwealth in assessing such damages, and any costs of assessment not settled or paid pursuant to Consent Decree 1.

B. Award damages to the Commonwealth under Section 5(a)(ii) of Chapter 21E, Mass. Gen. Laws ch. 21E, § 5(a)(ii), for injury to, destruction of, loss of, or loss of use of birds other than Atlantic Coast Piping Plovers, all costs incurred or to be incurred by the Commonwealth in assessing and evaluating such damages, and any costs of assessment not settled or paid pursuant to Consent Decree 1.

C. Award the Commonwealth all of its costs to maintain this action.

D. Grant such other relief as the Court deems just and proper.

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Respectfully submitted,

COMMONWEALTH OF
MASSACHUSETTS

By its attorneys,

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/s/ Seth Schofield

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