

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

UNITED STATES OF AMERICA  
and LOUISIANA DEPARTMENT  
OF ENVIRONMENTAL QUALITY  
and LOUISIANA DEPARTMENT  
OF WILDLIFE AND FISHERIES  
for the STATE OF LOUISIANA,

Plaintiffs,

v.

CITGO PETROLEUM  
CORPORATION, OCCIDENTAL  
CHEMICAL CORPORATION, OXY  
USA INC. and PPG INDUSTRIES,  
INC.,

Defendants.

CIVIL ACTION NO.

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, on behalf of the United States Department of the Interior acting through the United States Fish and Wildlife Service (“DOI/FWS”) and the National Oceanic and Atmospheric Administration (“NOAA”) of the United States Department of Commerce, and the Louisiana Department of Environmental Quality (“LDEQ”) and the

Louisiana Department of Wildlife and Fisheries (“LDWF”), for the State of Louisiana (“State”), file this Complaint in this matter against CITGO Petroleum Corporation, Occidental Chemical Corporation, OXY USA Inc. and PPG Industries, Inc. (collectively “Defendants”) and assert that Defendants, or their legal predecessors in interest, disposed and discharged hazardous substances from their refining and/or petrochemical facilities to the Bayou d’Inde Area of Concern in Calcasieu Parish, Louisiana (“BDAOC”) and that such hazardous substances were released into the environment and have caused injury to, destruction of, or loss of natural resources, including resource services, within the Calcasieu Estuary.

### **INTRODUCTION**

This is a civil action pursuant to: Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607; Section 311(f) of the Federal Water Pollution Control Act (also known as the Clean Water Act or “CWA”), 33 U.S.C. § 1321(f); and the Louisiana Environmental Quality Act, La. R.S. § 30:2025. Plaintiffs seek recovery of damages for the injury to, destruction of, or loss of natural resources, including ecological service losses, under the trusteeship of NOAA, DOI/FWS, LDEQ, and LDWF (collectively referred to as the “Trustees”) within the Calcasieu Estuary, caused by Defendants’ disposals and discharges of hazardous substances to the Bayou d’Inde Area of Concern (as defined below).

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 9607, and Section 311(n) of the CWA, 33 U.S.C. § 1321(n). This

Court has supplemental jurisdiction over state law claims in this action under 28 U.S.C. §1367.

This Court also has personal jurisdiction over the Defendants.

2. Venue lies in the Western District of Louisiana under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), 33 U.S.C. § 1321(n), and 28 U.S.C. § 1391, because these claims arise in connection with a discharge and release and threat of release of hazardous substances which has occurred in this judicial district from facilities within this judicial district.

### **DEFENDANTS**

3. CITGO Petroleum Corporation is a Delaware corporation that does business in this district and owns and operates an oil refinery and a lubricants plant at the Lake Charles Manufacturing Complex located in the vicinity of 4401 Highway 108 S. in Sulphur, Louisiana.

4. Occidental Chemical Corporation is a Delaware corporation that does business in this district and owns and operates, or formerly owned and operated, petrochemical manufacturing facilities located in the vicinity of Highway 108 S. in Sulphur, Louisiana.

5. Subject to a reasonable opportunity for further investigation and discovery, OXY USA Inc. is a Delaware corporation that does business in this district and succeeded the liabilities of an oil refinery that operated in the vicinity of 4401 Highway 108 S. in Sulphur, Louisiana.

6. PPG Industries, Inc. is a Pennsylvania corporation that does business in this district and owns and operates, or formerly owned and operated, petrochemical manufacturing facilities located in the vicinity of Pete Manea Road in Westlake, Louisiana, and in the vicinity of Columbia Southern Road and PPG Drive, Lake Charles, Louisiana.

7. Each of the Defendants is a “person” within the meaning of Sections 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

### **STATUTORY BACKGROUND**

8. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part that:

(1) the owner or operator of . . . a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, (4) . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for – . . . (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss resulting from such a release; . . .

9. The term “natural resources” as defined in CERCLA means “land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, . . . and any State or local government. . . .” 42 U.S.C. § 9601(16).

10. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” except in compliance with, *inter alia*, the conditions and limitations of a National Pollutant Discharge Elimination System (“NPDES”) permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. In 1996, the State of Louisiana was authorized by EPA to administer the federal NPDES program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

11. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), provides that there shall be no discharges of hazardous substances into or upon navigable waters or adjoining shorelines, or which may affect natural resources belonging to, appertaining to, or under the exclusive



management authority of the United States, in such quantities as may be harmful as determined by regulation.

12. Section 311(f)(2) and (4) of the CWA, 33 U.S.C. § 1321(f)(2) and (4), authorize the recovery of the costs of removal of a hazardous substance, including the costs or expenses incurred by the United States or any state in the restoration or replacement of natural resources damaged or destroyed, from any person who owns or operates a facility from which a hazardous substance is unlawfully discharged in violation of Section 311(b), 33 U.S.C. § 1321(b).

13. Section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), provides that “the President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources.”

14. Louisiana Environmental Quality Act, at La. R.S. § 30:2276, provides for recovery of “remedial costs” from, *inter alia*, any person who “was a disposer who disposed of or discharged a hazardous substance or hazardous waste at the pollution source or facility. . . .” within the meaning of La R.S. § 30:2272(12).

### **BACKGROUND OF INVESTIGATIONS**

15. Pursuant to authority under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and state law, the United States Environmental Protection Agency (“EPA”) and the State initiated investigations of the Calcasieu Estuary for environmental contamination caused by industrial activities along the Estuary and its tributaries.

16. On March 31, 1999, EPA commenced a Remedial Investigation of the Calcasieu Estuary pursuant to 40 C.F.R. § 300.430. EPA investigated contamination within the areas of the Estuary encompassing Bayou Verdine, Bayou d'Inde, Coon Island Loop, Clooney Island Loop, Prien Lake, Lake Charles, and the Calcasieu River from the saltwater barrier to Moss Lake. The investigation included the surface water, tributaries, biota, sediment, soils, adjoining shoreline and banks, riparian habitats, and related wetlands in these areas. *Calcasieu Estuary Remedial Investigation, Lake Charles Louisiana*, EPA 2003 ("RI"). The RI identified four Areas of Concern within the Calcasieu Estuary, including the BDAOC. *Id.* at Section 2.6. *See also Calcasieu Estuary Remedial Investigation/Feasibility Study (RI/FS): Baseline Ecological Risk Assessment (BERA)*, MESL 2002.

17. Bayou d'Inde is located in the northern portion of the Calcasieu Estuary, west of the City of Lake Charles, Louisiana. Bayou d'Inde's headwaters originate in the western part of Sulphur, Louisiana and flow primarily east-southeast through heavy commercial and industrialized areas before emptying into the ship channel southwest of Coon Island. Bayou d'Inde is approximately 15 km long and is the major tributary to the Calcasieu River and Coon Island Loop. Several industrial facilities have permitted outfalls that discharge to Bayou d'Inde. Bayou d'Inde flows through the low-lying marsh area called Lockport Marsh, located at the confluence of Bayou d'Inde and the Calcasieu River Ship Channel. Lockport Marsh covers an area of approximately 1.2 km<sup>2</sup>. The middle section of Bayou d'Inde, between the PPG Canal and state highway LA-108, also contains several small, interconnected, low-lying marsh areas. According to the United States Fish and Wildlife Service National Wetland Inventory Map,

Bayou d'Inde is a perennial riverine system. The upper portion of Bayou d'Inde from the headwaters to the confluence of Little Bayou d'Inde has water depths ranging from 1.2 to 2.1 meters. From Little Bayou d'Inde to state highway LA-108, the Bayou has water depths ranging from 2 to 4 meters. Lower Bayou d'Inde is wide and deep, ranging from 24 to 46 meters wide and 2.5 to 5 meters deep. Its depth is greatest from the ship channel to state highway LA-108 where the Bayou has historically been dredged to accommodate barge traffic that travels on the Bayou. RI Report at 7-1.

18. The BDAOC encompasses the upper, middle, and lower portions of Bayou d'Inde, including its fringe marshes and Lockport Marsh, as well as the PPG Canal, and the Coon Island Loop.

19. The RI identified the following hazardous substances, among others, in the surface waters of Bayou d'Inde: metals (including copper, lead, mercury, zinc and nickel), organochlorine pesticides, semi-volatile organic contaminants, and volatile organic contaminants.

The RI also identified the following hazardous substances, among others, in the sediments of Bayou d'Inde: metals (including chromium, zinc and mercury), polycyclic aromatic hydrocarbons ("PAHs"), polychlorinated biphenyls ("PCBs"), polychlorinated dibenzo-p-dioxins/polychlorinated dibenzofurans ("PCDDs/PCDFs"), bis (2-ethylhexyl) phthalate ("BEHP"), Hexachlorobutadiene ("HCBD"), and Hexachlorobenzene ("HCB") and organochlorine pesticides. Additionally, the RI identified the following hazardous substances, among others, in biota in Bayou d'Inde: metals, phenols, PAHs, PCBs, BEHP and dioxin/furans. Hazardous substances were also found in other areas of the Calcasieu Estuary.

20. In accordance with 40 C.F.R. § 300.5, EPA entered into a Superfund Memorandum of Agreement (“MOA”) with LDEQ in May 2003 under which EPA became Lead Agency for the Bayou Verdine Area of Concern and LDEQ became Lead Agency for the BDAOC. The MOA provides that for each Area of Concern there would be a Lead Agency and Support Agency.

21. Pursuant to a Cooperative Agreement between LDEQ and certain potentially responsible parties (“PRPs”) (namely PPG Industries, Inc., CITGO Petroleum Corporation, Occidental Chemical Corporation and Westlake Polymers LP), these PRPs performed a Corrective Action Study for the BDAOC. The Corrective Action Study Report was finalized on August 27, 2009, and it documented the development and evaluation of remedial action alternatives for the BDAOC.

22. On March 26, 2011, LDEQ issued its Decision Document for the Final Remedy of the Bayou d’Inde Site, Calcasieu Parish. The selected remedial action requires actions in four areas of Bayou d’Inde, consisting of in situ capping of sediments in certain areas of the upper main channel (“Area 1”), removal of sediments in the main channel between the PPG Canal and the mouth of Bayou d’Inde (“Area 2”), capping of sediments in certain fringe marshes (“Area 3”), and capping of sediments in a portion of Lockport Marsh (“Area 4”). Pursuant to a Cooperative Agreement signed in 2013 by LDEQ and certain PRPs (namely PPG Industries, Inc., Axiall Corporation, CITGO Petroleum Corporation, Occidental Chemical Corporation, and OXY USA, Inc.), these PRPs agreed to undertake LDEQ’s selected remedial action for Bayou d’Inde (“2013 Cooperative Agreement”).



23. NOAA, DOI/USFWS, LDWF and LDEQ have each been designated a natural resource trustee pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f); Section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5); LAC 43:XXIX.109.A and Subpart G of the National Contingency Plan (“NCP”), 40 C.F.R. §§ 300.600 - 300.615. Under these authorities, and on behalf of the public, the Trustees have acted to assess damages for the injury to, destruction of, or loss of natural resources within the Calcasieu Estuary due to releases of hazardous substances from Defendants’ facilities to the BDAOC.

24. Using the data provided by EPA’s RI for the Calcasieu Estuary, by the Defendants’ additional investigations of the BDAOC, and by the Trustees’ sampling investigation, the Trustees have implemented a natural resource damage assessment (“NRDA”) to evaluate the injury, loss or destruction of natural resources and resource services within the Calcasieu Estuary due to releases of hazardous substances at or from the Defendants’ facilities to the BDAOC.

25. The Trustees’ NRDA is for the waters, sediments, riparian areas, connected wetlands, and associated habitats of the BDAOC and any waters, sediments, riparian areas, connected wetlands, and associated habitats in the Calcasieu Estuary where hazardous substances released to, at, or from the BDAOC came to be located or where natural resources or resource services are or were allegedly affected or impaired by such releases.

26. The Trustees’ assessment of injuries to natural resources, including interim ecological service losses, will be utilized to develop a restoration plan to compensate for the injury, loss or destruction of natural resources and resource services.

### **GENERAL ALLEGATIONS**

27. During the relevant period, Defendant CITGO Petroleum Corporation (“CITGO”) has owned and/or operated a crude oil refinery and a lubricants plant at the Lake Charles Manufacturing Complex located at or in the vicinity of 4401 Highway 108 S, Sulphur, Louisiana. The CITGO facility is bordered to the East by the Calcasieu River and to the north by Bayou d’Inde. The oil refinery and lubricants plant were constructed in the 1940s and then operated by a predecessor in interest to Citgo known as Cities Services Company. In March 1983, Cities Services Company transferred ownership of the Lake Charles oil refinery to CITGO. Also in March 1983, Cities Services Company transferred its 65% ownership interest in Cit-Con Corporation, which owned the lubricants plant, to CITGO. CITGO acquired the remaining interest in the lubricants plant in 2002. CITGO owns and operates the oil refinery and the lubricants plant. It has also operated a propylene fractionation unit at the Complex. Its products include fuels, lubricants and petrochemicals.

28. During the relevant period, the lubricants plant and the propylene fractionation unit discharged waste streams to Bayou d’Inde. RI at 7-7. During CITGO’s lubricants plant operations, and operations of its predecessors in interest, “hazardous substances,” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14), including, *inter alia*, zinc, phenols and toluene, were disposed and released into the BDAOC through, among other events, unpermitted leaks and spills during operations, and discharges through one or more permitted outfalls (Outfall 001 and 002) into Bayou d’Inde in violation of permit limits then in effect under Louisiana Pollution Discharge

Elimination (“LPDES”) permit LA0005941, as amended. The RI determined the presence of various hazardous substances in Bayou d’Inde sediments near CITGO Outfall 001.

29. Additionally, CITGO and its predecessors have operated numerous unlined surface impoundments, including hazardous waste management units, at the lubricants plant to store or treat process wastes, and these impoundments are regulated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”). Subject to a reasonable opportunity for further investigation and discovery, these impoundments may also be a source of contamination to the BDAOC.

30. During the relevant period, Occidental Chemical Corporation (“Occidental”) owned and operated petrochemical facilities at the Lake Charles Manufacturing Complex located in the vicinity of 4300 Highway 108 S. in Sulphur, Louisiana. In December 1982, a subsidiary of Occidental Petroleum Corporation (“OPC”) merged with Cities Services Company, which owned a refinery and petrochemical business at the Lake Charles Manufacturing Complex. In March 1983, Cities Services Company transferred its Lake Charles refinery and its marketing and transportation assets to a subsidiary that became CITGO Petroleum Corporation, but it retained the petrochemical business (consisting of two ethylene/propylene plants and two polyethylene plants). Also in 1983, Cities Services Company transferred certain assets, including the two ethylene/propylene plants and two polyethylene plants, to Cities Service Oil and Gas Corporation (“CSOGC”).

31. In 1985, Occidental acquired CSOGC’s remaining petrochemical business, consisting of two ethylene/propylene plants and one polyethylene plant, from CSOGC. In 1987, Occidental

sold the polyethylene plant to Westlake Polymers Corporation, but it retained the two ethylene/propylene plants.

32. Beginning in the mid-1980s through the present, OCC leased one ethylene/propylene (olefins) plant (EP-1) to CITGO which operated it as part of the Propylene Fractionation Unit. Occidental operated the second ethylene/propylene (olefins) plant (EP-2) from the EP-2 restart in 1986 until May 1998. Occidental held LPDES permit LA0069850 for the ethylene/propylene plant at least through this period.

33. Equistar Chemicals, LP, a limited partnership joint venture between Occidental, Millennium Chemical and Lyondell Chemical Co., assumed operation of the EP-2 olefins plant in May 1998 under a lease from Occidental and operated the EP-2 plant through at least 2001 when the EP-2 plant was idled. Following Equistar's bankruptcy in 2009, the bankruptcy court determined that Occidental remained the owner of the EP-2 olefins plant. Thereafter, Glenn Springs Holdings Inc., a subsidiary of OPC, managed the idled EP-2 plant on behalf of Occidental until the sale of the EP-2 plant in 2015. Occidental also sold the EP-1 plant property in 2015.

34. During the relevant period, Occidental owned and operated the EP-2 olefins plant and owned the EP-1 olefins plant leased to and operated by CITGO. During operations at its EP-2 olefins plant, "hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14), including, *inter alia*, benzene, sulfuric acid, naphthalene, and mercury, were disposed and released into the BDAOC through, among other events, leaks and spills at the Facility, or discharges through



permitted Outfalls into Bayou d'Inde in violation of permit limits then in effect under LPDES permit LA0069850, as amended. Additionally, unlined surface impoundments at the Occidental EP-2 plant were found to contain hazardous substances. Groundwater beneath the East and West impoundments was found to be contaminated with xylene, toluene and benzene. The RI Report states that the East and West impoundments had once contained waste PCB sludge and that an apparent source of PCBs in Reaches 2 and 3 of Bayou d'Inde is the Occidental impoundments. *See* RI Report at 7-9 and 7-71.

35. Subject to a reasonable opportunity for further investigation and discovery, Occidental may also be liable for the acts of its predecessor in interest, Cities Services Company, for disposals and releases of hazardous substances at the petrochemical facilities during the years prior to the acquisition.

36. In April 1988, CSOGC changed its name to OXY USA Inc. Subject to a reasonable opportunity for further investigation and discovery, OXY USA, Inc., succeeded to certain liabilities of CSOGC and its predecessors in interest related to petrochemical operations at the Lake Charles Manufacturing Complex. Such liabilities include, subject to a reasonable opportunity for further investigation and discovery, liability for disposals and release of hazardous substances into the BDAOC during operations of its predecessors in interest.

37. During the relevant period, PPG Industries, Inc. ("PPG") owned and operated petrochemical manufacturing plants located at the Lake Charles South Manufacturing Complex in the vicinity of Pete Manea Road in Westlake, Louisiana, and in the vicinity of Columbia Southern Road and PPG Drive, Lake Charles, Louisiana on the West Bank of the Calcasieu

River. Southern Alkali Corporation, a subsidiary of Pittsburgh Plate and Glass, acquired the plants in or about 1947 in order to manufacture chlorine and caustic soda. PPG acquired full ownership of the plants in about 1968 and manufactured a variety of chlorinated hydrocarbons and precipitated silica since that time. PPG added manufacturing units to the complex over time.

38. During the relevant period, PPG operated three process areas in the vicinity of Bayou d'Inde and Lockport Marsh. The chlor-alkali plant, the derivatives plant, and the chloralkali/silicas area. PPG was authorized through LPDES permit LA0000761 to discharge process wastewater from several outfalls into Bayou d'Inde, the Calcasieu River and Bayou Verdine. Outfall 001 discharges treated process wastewater from its three manufacturing plants, incinerator scrubbers and the waste treatment unit into the PPG Canal and Bayou d'Inde. During these operations, "hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14), including, *inter alia*, mercury, sodium hydroxide, copper, bromoform, hexachlorobenzene, and hexachlorobutadiene, were disposed and released into the BDAOC through, among other events, spills and discharges in excess of then in effect under LPDES permit LA0000761, as amended. Additionally, the RI Report at 7-71 notes that PCBs were detected in Bayou d'Inde near the mouth of the PPG Canal, and that "PCBs are handled and disposed of through incineration at PPG and localized air deposition is likely." PPG also discharges hazardous substances to the Calcasieu River upstream of the confluence of the Calcasieu River and Bayou d'Inde.

39. PPG has operated numerous surface impoundments to treat, store or dispose of process wastes. There have been documented releases to surface waters from at least three of the surface

impoundments – the PPG Canal, the South Terminal Landfill and the North Dock. Sediments in the units and groundwater beneath these and other units are contaminated with hazardous substances. Accordingly, PPG disposed of hazardous substances that were released into groundwater and surface water.

**FIRST CLAIM FOR RELIEF**

(LIABILITY FOR INJURIES TO NATURAL RESOURCES UNDER CERCLA)

40. Paragraphs 1- 39 are realleged and incorporated herein by reference.
41. The Calcasieu Estuary is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
42. CITGO’s lubricant plant at the Lake Charles Manufacturing Complex constitutes a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
43. Occidental’s ethylene/propylene plant at the Lake Charles Manufacturing Complex constitutes a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
44. The petrochemical plants owned and operated by OXY USA’s predecessors in interest, Cities Service Company and City Service Oil and Gas Corporation, at the Lake Charles Complex, constitute a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
45. PPG’s chlor-alkali plant, derivatives plant, and chloralkali/silicas area constitute a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

46. Defendants, or legal predecessors in interest, disposed of “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), at or from their facilities into the BDAOC.

47. Like hazardous substances have been found in the BDAOC.

48. There have been “releases” of “hazardous substances” within the meaning of Sections 101(14) and (22), 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9601(14) and (22), 9606(a), and 9607(a), into the environment at and from Defendants’ facilities into the BDAOC.

49. The releases of hazardous substances at or from the Defendants’ facilities to the BDAOC caused injury to, destruction of, or loss of natural resources within Calcasieu Estuary, under the trusteeship of the Federal and State Trustees, within the meaning of Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607 (a)(4)(C) and 42 U.S.C. § 9601(16).

50. Plaintiffs have incurred and continue to incur costs related to the assessment of the injury to, destruction and loss of natural resources in the Calcasieu Estuary from such releases.

51. Defendants are each within one or both classes of liable persons described in Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), as the current owners or operators of one or more facilities, and/or as owners and operators of facilities during the time of disposal of hazardous substances, from which there has been a release of hazardous substances to the BDAOC, and/or as the legal successor in interest to the owner and operator at the time of disposals of hazardous substances released to the BDAOC.

52. Pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. 9607(a)(4)(C), Defendants are each jointly and severally liable to Plaintiffs for damages for injury to, destruction of, or loss of



natural resources within the Calcasieu Estuary, including the reasonable costs of assessing such injury, destruction, or loss, resulting from actual releases of hazardous substances to the BDAOC.

**SECOND CLAIM FOR RELIEF**

((NATURAL RESOURCE DAMAGES UNDER CWA))

53. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

54. At times relevant to this action, each of the Defendants, or a predecessor in interest, was an “owner or operator of an onshore facility” from which “hazardous substances” were “discharged . . . into or upon navigable waters of the United States or adjoining shorelines,” in “harmful quantities” within the meaning of Sections 311(a)(2), (6), (10) and (14), 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(a)(2), (6), (10) and (14), 1321(b)(3), and 1362(5).

55. At times relevant to this action, each of the Defendants, or a predecessor in interest, was an “owner or operator of an onshore facility” from which “hazardous substances” were “discharged” in “harmful quantities” and “which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States” within the meaning of Sections 311(a)(2), (6), (10) and (14), 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(a)(2), (6), (10) and (14), 1321(b)(3), and 1362(5).

56. Pursuant to Section 311(f)(5) of the CWA, 33 U.S.C. § 1321(f)(5), agencies of Plaintiffs are the designated trustees of the natural resources injured in the Calcasieu Estuary.

57. The discharges of hazardous substances from Defendants’ facilities to the BDAOC have affected, damaged or destroyed natural resources in the Calcasieu Estuary under the trusteeship

of the Federal and State Trustees, within the meaning of Section 311(f)(4) and (5) of the CWA, 33 U.S.C. § 1321(f)(4) and (5).

58. Plaintiffs, acting as Trustees, have incurred and continue to incur costs for the restoration or replacement of natural resources damaged or destroyed as a result of the discharges of hazardous substances to the BDAOC, including natural resource damage assessment costs and costs of implementing natural resource restoration activities, within the meaning of CWA Section 311(f)(4), 33 U.S.C. § 1321(f)(4).

59. Section 311(f)(2) and (4) of the CWA, 33 U.S.C. § 1321(f)(2) and (4), authorizes the recovery of the costs of removal of oil or a hazardous substance, including the costs or expenses incurred by the federal and state trustees in the restoration or replacement of natural resources damaged or destroyed, from any person who owns or operates a facility from which oil or a hazardous substance is unlawfully discharged in violation of Section 311(b).

60. Pursuant to CWA Sections 311(f)(4)-(f)(5), 33 U.S.C. § 1321(f)(4)-(f)(5), the Defendants are each jointly and severally liable to the Plaintiffs for all past and future costs or expenses incurred by the Plaintiffs in the restoration or replacement of natural resources damaged or destroyed as a result of the discharges from their facilities to the BDAOC, including natural resource damage assessment costs and costs of implementing natural resource restoration activities in the Calcasieu Estuary.

**THIRD CLAIM FOR RELIEF**

(LIABILITY UNDER LA. R.S. TITLE 30)

61. Paragraphs 1 through 39 are realleged and incorporated herein by reference.
62. The Secretary of LDEQ has determined that there may be an imminent and substantial endangerment to health or the environment because of the release and threatened release of hazardous substances to the BDAOC within the meaning of La. R.S. 30:2276(A).
63. Pursuant to La. R.S. 30:2276 (F), Defendants are each jointly and severally liable to undertake such injunctive relief as may be necessary to abate the danger or threat from the hazardous substances released in and about the BDAOC.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- a. In favor of Plaintiffs and against Defendants, jointly and severally, pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), and/or La. R.S. 30:2276(F), for all damages for injury to, destruction of, or loss of natural resources within the Calcasieu Estuary, including the unreimbursed past, present and future costs of assessing such injury, destruction, or loss, the costs of restoring, replacing, rehabilitating, and/or acquiring the equivalent of those injured resources, and the past, present, and future diminution in value of those resources pending restoration or replacement, due to the release of hazardous substances from Defendants' facilities to the BDAOC;
- b. In favor of Plaintiffs against Defendants, jointly and severally, pursuant to Section 311(f)(2) of the CWA, 33 U.S.C. § 1321(f)(2), for reimbursement of the costs of removal

incurred, and to be incurred, by the United States and/or the State for the removal of hazardous substances discharged by Defendants to the BDAOC.

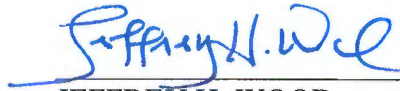
c. In favor of Plaintiffs against Defendants, jointly and severally, pursuant Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4), for all costs and expenses incurred in the restoration or replacement of natural resources damaged or destroyed as a result of Defendants' discharges of hazardous substances to the BDAOC, including unreimbursed natural resource damage assessment costs and the costs of implementing resource restoration activities and/or acquiring the equivalent of those injured resources, and the past, present, and future diminution in value of those resources pending restoration or replacement;

d. Enjoining Defendants to take appropriate action necessary to protect and restore the injured, destroyed or lost natural resources.

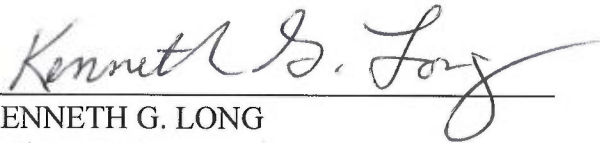


- e. Awarding the United States and the State their costs of this action; and
- f. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice



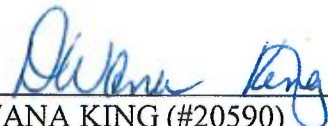
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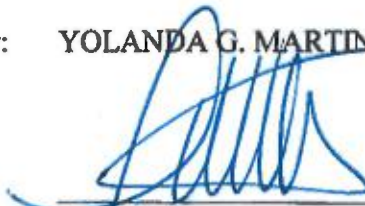
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