

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLIED TRANSPORTATION COMPANY,  
AMERICAN COMMERCIAL BARGE  
LINE LLC, ACBL OLD CO, LLC,  
BASF CORPORATION, BLESSEY  
MARINE SERVICES, INC., CHROMALLOY  
AMERICAN LLC, KIM HOLDINGS, INC.,  
KIRBY CORPORATION, KIRBY  
INLAND MARINE LP, LDL COASTAL  
LIMITED L.P., PARKER DRILLING COMPANY,  
PARKER DRILLING OFFSHORE  
CORPORATION, STOLT-NIELSON USA INC.,  
THE DOW CHEMICAL COMPANY,  
RONALD W. HUDSON, and JACK PALMER,

Defendants.

Civil Action No. 3:20-cv-382

**COMPLAINT**

1. The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") files this complaint and allege as follows:

**NATURE OF THE ACTION**

2. This is a civil action brought pursuant to Sections 106, 107(a) and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606, 9607(a) and 9613(g), as amended by the Superfund

Amendments and Reauthorization Act of 1986 ("CERCLA"). The United States seeks several forms of relief relating to releases and threatened releases of hazardous substances from facilities at the Gulfco Marine Maintenance Superfund Site in Freeport, Texas (the "Site"). The United States alleges that the Defendants are liable for injunctive relief and reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Site pursuant to CERCLA Sections 106, 107(a)(4)(A) and 113(g)(2)(B), 42 U.S.C. §§ 9606, 9607(a)(4)(A) and 9613(g)(2)(B).

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

### **DEFENDANTS**

5. Allied Transportation Company is a Delaware corporation registered to do business in Texas.

6. American Commercial Barge Line LLC is a West Virginia corporation doing business in Texas. American Commercial Barge Line LLC is the successor of National Marine Services

7. ACBL Oldco, LLC is a Delaware corporation and a branch of the American Commercial Barge Line LLC doing business in Texas.

8. BASF Corporation is a Delaware Corporation doing business in Texas.

9. Blessey Marine Service Inc. is a Louisiana corporation doing business in Texas.

10. Chromalloy American LLC is a Delaware Corporation doing business in Texas.

11. Kirby Corporation is a Nevada corporation and is the legal successor in interest to Dixie Carriers, Inc., Scott Chotin, Inc., TPT Transportation, and Hollywood Marine. Kirby Corporation does business in Texas.

12. Kim Holdings, Inc. is a Delaware corporation, a subsidiary of Kirby Corporation, and doing business in Texas.

13. Kirby Inland Marine LP is a Delaware corporation, a subsidiary of Kirby Corporation, and doing business in Texas.

14. LDL Coastal Limited, L.P. is a Texas limited partnership incorporated in 1999.

15. Parker Drilling Company and Parker Drilling Offshore Corporation are Delaware corporations doing business in Texas.

16. Stolt-Nielsen USA Inc. is a Delaware Corporation doing business in Texas.

17. The Dow Chemical Company is a Delaware corporation doing business in Texas.

18. Ronald W. Hudson is a natural person residing in Richmond, Texas.

19. Jack Palmer is a natural person residing in Richmond, Texas.

### **STATUTORY BACKGROUND**

20. CERCLA was enacted in 1980 to provide a comprehensive mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as "response actions." 42 U.S.C. §§ 9604(a), 9601(25).

21. CERCLA authorizes the President to undertake a response action whenever a "hazardous substance is released or there is a substantial threat of release into the environment" or when the release or threat of release may present an imminent and substantial danger to the public health or welfare. 42 U.S.C. § 9604(a)(1).

22. In addition, when the President determines that there may be an imminent or substantial endangerment to the public health or welfare because of an actual or threatened release of hazardous substances, the United States may take such actions as may be necessary to protect the public health and welfare and the environment. The President is specifically authorized to "secure such relief as may be necessary to abate such danger or threat" through a judicial action in the district court and may "issu[e] such orders as may be necessary to protect public health and welfare and the environment." 42 U.S.C. § 9606(a).

23. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

24. CERCLA also provides 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, [and] (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances owned or possessed by such person . . . ." shall be liable for "all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan." 42 U.S.C. § 9607(a).

### **GENERAL ALLEGATIONS**

#### **The Site**

25. The Site is located at 906 Marlin Avenue in Freeport, Brazoria County, Texas. It consists of approximately 40 acres along the north bank of the Intracoastal Waterway between Oyster Creek and the Texas Highway 332 bridge.

26. The Site operated as a barge cleaning and repair facility from about 1971 to about 1998 under several owners. Barges brought to the facility for cleaning contained the remains – known as "heels" – of, among other chemicals, fuel oil, crude oil, diesel, oil residues, gas oil, benzene, xylene, toluene, cyclo-hexane, cumene, ethyl benzene, styrene, hydrochloric acid, glycols, methanol, butanol, chloroform, perchloroethylene, vinyl chloride, acetone, methyl ethyl ketone, and vinyl acetate.

27. Capacity for a single barge was between 400,000 and 1,000,000 gallons; approximately 300 gallons of heels would remain in the barge after the barge had offloaded its cargo of chemicals. During cleanout at the facility, heels were pumped into one of the four storage tanks located on Site and stored for less than 90 days, and were transported off-site in tank trucks.

28. The hold of each barge was washed with about 9,000 gallons of water or detergent solutions, but a maximum of 25,000 gallons could be required to wash a large

barge, including the holding compartment, and, on average, one barge was cleaned every two days. The wash waters were stored in two temporary tanks (20,000- and 40,000-gallons capacity).

29. From 1971 to 1981, three surface impoundments were used for disposal of the barge wash waters. After 1981, when the impoundments were closed, wash waters were pumped into a floating barge on the Intracoastal Waterway. Once or twice a year the wash water was shipped to EMPAK, Inc. in Deer Park, Texas for disposal by injection well.

30. Marlin Avenue, which runs approximately east to west, divides the Site into two primary areas. The property to the north of Marlin Avenue, or the North Area, consists of undeveloped land and surface impoundments.

31. Beginning in 1971, the impoundments were used for storage of waste oils, caustics, various organic chemicals, and waste wash waters generated during barge cleaning activities.

32. The property south of Marlin Avenue, or the South Area, was developed for industrial uses with multiple structures, a dry dock, sand blasting areas, a former aboveground storage tank ("AST") tank farm, and two barge slips connected to the Intracoastal Waterway. Both the North Area and the South Area of the Site were contaminated as a result of the former barge cleaning operations.

33. The Texas Water Commission, a predecessor of the Texas Commission on Environmental Quality, certified closure of the surface impoundments located in the North Area on August 24, 1982. The closure activities included the removal of liquids and most of the sludges, solidification of approximately 100 cubic yards of residual

sludge that was difficult to excavate, and capping with three feet of clay and a hard-wearing surface (i.e., shell).

34. After 1981, when the impoundments were deactivated, facility operators used floating barges and aboveground storage tanks to store the barge wash waters.

35. EPA proposed the Site for listing on the National Priorities List on September 5, 2002 (67 Fed. Reg. 56794), and it was placed on the List effective May 30, 2003, in a final rulemaking published on April 30, 2003 (68 Fed. Reg. 23077). Pursuant to its authority under Sections 104 and 106 of CERCLA, EPA issued a Unilateral Administrative Order to parties potentially responsible for the contamination, effective July 29, 2005, for performance of a Remedial Investigation to define the nature and extent of contamination at the Site and preparation of a Feasibility Study to identify and screen remedial action alternatives (“RI/FS”).

36. A group known as the Gulfco Restoration Group implemented and/or paid for the work required by the Unilateral Administrative Order. The Gulfco Restoration Group is an unincorporated association doing business in the State of Texas, which consists of Defendants Chromalloy American LLC, Parker Drilling Offshore Corporation, LDL Coastal Limited, L.P. and The Dow Chemical Company. The Group completed the work required by the order in 2011.

37. The Remedial Investigation detected hazardous substances, as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 CFR § 302.4, that have been released to soils and groundwater at the Site, with elevated levels of volatile organic compounds including chlorinated solvents and benzene; semi-volatile organic compounds including naphthalene; polynuclear aromatic hydrocarbons; and metals including arsenic,

iron and lead. Groundwater in the upper two water-bearing units at the Site is contaminated in the area of the closed impoundments in the North Area, but investigations indicate that the contaminated groundwater plume is currently stable and not moving significantly. Site investigations also indicate the likely presence of non-aqueous phase liquids in the contaminated groundwater. The Remedial Investigation also identified hazardous substances contained in ASTs at the AST Tank Farm on Site.

38. EPA issued an Administrative Order on Consent on October 26, 2010 that required the Gulfco Restoration Group to perform a removal action at the Site in November 2010. Pursuant to this Order, the Group characterized and managed the water accumulated in the AST Tank Farm containment areas; removed and disposed of liquid wastes from the tanks; and solidified, removed, and disposed of non-liquid (i.e., solids and sludge) wastes from the ASTs. The Group also demolished the tanks, cleaned and decontaminated the South Containment Area, and excavated contaminated soil from the North Containment Area. The removal action also included an asbestos survey, and the removal and disposal of debris and contaminated soil located inside and east of the containment areas. The Group completed this removal action in March 2011.

39. Based on the RI/FS, EPA selected a ground water control and monitoring remedy for groundwater contamination in its September 29, 2011 Record of Decision (“ROD”) for the Site. The estimated present worth cost of the remedy is \$230,000. The major components of this groundwater remedy are:

- a. Review and evaluation of the current restrictive covenants prohibiting groundwater use at the Site and requiring commercial/industrial land use



at the Site, and protection against indoor vapor intrusion for building construction on Lots 55, 56, and 57;

- b. Modification of the existing Institutional Controls (ICs) to: address any issues identified with the current restrictive covenants after review; identify the type and location of hazardous substances; identify the location of the existing cap and restrict actions that might affect the integrity of the cap; and any other necessary modifications;
- c. A cap (already in place) over the former surface impoundments;
- d. Annual ground water monitoring, and monitoring as a part of the Five-Year Reviews, to confirm stability of the affected ground water plume; and
- e. Implementation of an Operation and Maintenance Plan to provide ground water monitoring and inspection/repair of the cap covering the former surface impoundments.

40. The RI identified CERCLA hazardous substances that have been released to soils and groundwater at the Site. Accordingly, the Site is an "area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located" and meets the definition of a "facility" found at 42 U.S.C. §§ 9601(9); 9601(22).

41. Through November 30, 2014, EPA had incurred \$2.2 million in past response costs. Interim response costs quantified since then total at least \$235,562. EPA projects that its future costs will be approximately \$230,000.

### **Site Owners and Operators**

42. Gulfco Marine Maintenance, Inc. operated a barge cleaning operation at the Site from 1971 through 1979.

43. From 1971 to 1979, Chromalloy American Corporation operated the facility using the business name "Gulfco Marine Maintenance, Inc."

44. In 1973, Gulfco Marine Maintenance, Inc. changed its name to Gulfco, Inc. Gulfco, Inc. was merged into Chromalloy American Corporation before 1979.

45. Fish Engineering and Construction, Inc., owned the Site from 1979 until 1989. It has since gone out of business.

46. Hercules Offshore Corporation (later doing business under the name Hercules Marine Services Corporation) owned and operated a barge cleaning operation at the Site from 1989-1999.

47. On September 1, 1993, Hercules Offshore Corporation conveyed the Site tracts to Hercules Real Estate Corporation. The tracts subsequently were sold as part of the Chapter 7 bankruptcy of Hercules Marine Services Corporation in 1999.

48. In 1997, Parker Drilling Company bought the stock of Hercules Offshore Corporation.

49. In 1998, Parker Drilling Company was merged into Hercules Offshore Corporation.

50. On April 1, 1999, the name of the Hercules Offshore Corporation changed to Parker Drilling Offshore Corporation.

51. In 1999, LDL Coastal Limited, L.P. acquired Hercules Marine Services Corporations' interest in the Site from the Trustee of the Chapter 7 Bankruptcy Estate of

Hercules Marine Services Corporation. Since 1999, LDL Coastal Limited, L.P., has owned a portion of the Site, including Track numbers 21, 21A, 21B, 22, 23, 24, 25, 55, 57, and 58 of Subdivision Number 8, Brazos Coast Investment Company Subdivision, formerly utilized for cleaning of barges.

52. Ron Hudson and Jack Palmer, individuals, have been the joint owners of Lot 56, the location of the former surface impoundments within the Site, since 1997.

**Companies that Arranged for Disposal at the Site**

53. The Dow Chemical Company operated a chemical plant in Texas approximately one mile from the Site. During the relevant time period, the Dow Chemical Company sent its barges containing its product to the Site for cleaning.

54. The Dow Chemical Company barges cleaned at the Site carried hazardous substances, including chloroform, acetone, ethylbenzene, styrene, trichloroethane, trichloroethylene, cumene, methylene chloride, diethylene glycol, carbon tetrachloride, caustic, ethylene dichloride, methanol, butanol, propylene dichloride, toluene, propylene glycol and benzene. During cleaning, product heel from these barges was removed from the barges and placed in tanks, and wash water from the cleanout was placed either in surface impoundments at the Site or in a barge.

55. BASF Corporation operated a manufacturing facility in Freeport, Texas, and sent barges from its Freeport facility to the Site for cleaning before 1997. The barges BASF Corporation sent to the Site for cleaning contained, among other things, cyclohexane. During cleaning, product heel from these barges was removed from the barges and placed in tanks, and wash water from the cleanout was placed either in surface impoundments at the Site or in a barge.

56. Kirby Corporation, its legal predecessors in interest, and its subsidiaries Kim Holdings and Kirby Inland Marine sent barges to the Site for cleaning. Those barges contained, among other things, the hazardous substances acetone, benzene, ethylbenzene, toluene, xylene, and methylene chloride. During cleaning, product heel from these barges was removed from the barges and placed in tanks, and wash water from the cleanout was placed either in surface impoundments at the Site or in a barge.

57. Stolt-Nielsen USA Inc. sent barges containing, among other things, sodium hydroxide, a hazardous substance, to the Site for cleaning. During cleaning, product heel from these barges was removed from the barges and placed in tanks, and wash water from the cleanout was placed either in surface impoundments at the Site or in a barge.

58. The American Commercial Barge companies or their predecessors sent barges containing hazardous substances, including benzene, cyclohexane, toluene, and acetone to the Site for cleaning. During cleaning, product heel from these barges was removed from the barges and placed in tanks, and wash water from the cleanout was placed either in surface impoundments at the Site or in a barge.

59. Blessey Marine Service Inc. operates and operated an inland tank and barge-towing service that sent barges containing hazardous substances to the Site for cleaning. During cleaning, product heel from these barges was removed from the barges and placed in tanks, and wash water from the cleanout was placed either in surface impoundments at the Site or in a barge

60. Allied Transportation Company operated an inland tank and barge-towing service that sent barges containing hazardous substances to the Site for cleaning. During

cleaning, product heel from these barges was removed from the barges and placed in tanks, and wash water from the cleanout was placed either in surface impoundments at the Site or in a barge.

**FIRST CLAIM FOR RELIEF**  
**(Recovery of Response Costs)**

61. The preceding allegations are included in this claim for relief.

62. CERCLA provides that, "[n]otwithstanding any other provision or rule of law, and subject only" to the statutorily defined defenses the following categories of persons shall be liable for . . . all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan . . . ": (a) "the owner and operator" of the facility; (b) "any person who at the time of disposal of any hazardous substance owned or operated" the facility; and (c) "any person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances owned or possessed by such person . . . . 42 U.S.C. § 9607(a).

63. Each Defendant is a "person" within the meaning of 42 U.S.C. § 9601(21).

64. The Site is a "facility" within the meaning of 42 U.S.C. § 9607(a).

65. Defendants LDL Coastal Limited, L.P., Jack Palmer, and Ron Hudson are persons who own the Site.

66. Defendants Chromalloy American Corporation and Parker Drilling Company are persons who owned or operated the Site at the time of disposal of hazardous substances at the Site.

67. Defendants Allied Transportation Company, American Commercial Barge Line LLC, ACBL Oldco, LLC, BASF Corporation, Chromalloy American LLC, Kim

Holdings, Inc., Kirby Corporation, Kirby Inland Marine LP, Stolt-Nielson USA Inc., and The Dow Chemical Company are each a person who arranged for disposal or treatment of a hazardous substance, owned or possessed by such person, at the Site within the meaning of 42 U.S.C. § 9607(a)(3).

68. The United States has incurred response costs in connection with response actions at the Site, pursuant to 42 U.S.C. § 9604. The United States continues to incur response costs, including enforcement costs associated with the recovery of funds expended in response to the releases and threatened releases of hazardous substances at the Site.

69. The response actions taken and the response costs incurred by the United States at the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

70. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), also provides that “[t]he amounts recoverable in an action under this Section shall include interest on the amounts recoverable under subparagraphs (A) through (D).”

71. Each of the Defendants is jointly and severally liable to the United States for all unreimbursed response costs incurred by the United States in connection with the Site pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

72. Each of the Defendants also is jointly and severally liable to the United States for any further response costs that the United States incurs in connection with the Site pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2).

**SECOND CLAIM FOR RELIEF**  
**(Injunctive Relief)**

73. The preceding allegations are included in this claim for relief.

74. The Environmental Protection Agency has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at and from the Site.

75. Pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), the Defendants are subject to injunctive relief to abate the danger or threat presented by releases or threatened releases of hazardous substances into the environment at and from the Site.

### **PRAYER FOR RELIEF**

WHEREFORE, the United States respectfully requests that the Court:

1. Enter judgment in favor of the United States and against the Defendants, jointly and severally, for all unreimbursed response costs incurred by the United States in connection with the Site;
2. Enter a declaratory judgment in favor of the United States and against the Defendants for any further response costs that the United States may incur in connection with the Site;
3. Order the above-named Defendants to abate the conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment;
4. Award the United States and the State their costs of this action; and

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

Respectfully submitted,

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*/s/ Andrew A. Bobb*

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