

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

UNITED STATES OF AMERICA;
SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL, AND SOUTH CAROLINA
DEPARTMENT OF NATURAL
RESOURCES, AS AGENCIES OF THE
STATE OF SOUTH CAROLINA,

Plaintiffs,

v.

EXXON MOBIL OIL CORPORATION,

Defendant.

CIVIL ACTION NO. 2:19-cv-1273-RMG

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States, acting at the request of the National Oceanic and Atmospheric Administration (“NOAA”) and the Department of the Interior (“DOI”), and the Office of the Governor of the State of South Carolina, through the South Carolina Department of Health and Environmental Control (“SCDHEC”) and the South Carolina Department of Natural Resources (“SCDNR”) (collectively, the “State Trustees”), through the undersigned attorneys, file this complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action, brought against Exxon Mobil Oil Corporation (“Defendant”), for recovery of damages for injury to, loss of, or destruction of natural resources under the trusteeship of NOAA, DOI, SCDHEC and SCDNR (collectively, “Plaintiffs” or “Trustees”), under Section 107 of the Comprehensive Environmental Response, Compensation,

and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. § 9607. The State Trustees also seek relief pursuant to the SC Hazardous Waste Management Act, South Carolina Code of Laws, Ann., Section 44-56-200 (Rev. 2018). Plaintiffs seek damages in order to compensate for injury to, destruction of, loss of, or loss of use of certain natural resources resulting from the release of hazardous substances, including, but not limited to, arsenic, copper, lead, mercury and zinc into the soils, sediments, surface water and groundwater at certain “Sites” located in South Carolina. Plaintiffs also seek to recover unreimbursed costs of assessing such damages and planning related restoration.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1345, and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b). This Court has jurisdiction over the subject matter of the State Trustees’ claims under 28 U.S.C. § 1367(a) because the State Trustees’ claims are so related to the United States’ claims that they form part of the same case or controversy. The United States and each State Trustee are authorized to bring this action pursuant to 42 U.S.C. § 9607(f).

3. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b), and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because it is the judicial district in which the releases, threats of releases, or discharges of hazardous substances giving rise to these claims occurred.

DEFENDANT

4. Defendant Exxon Mobil Oil Corporation is a New Jersey corporation.

5. Defendant is a “person” within the meaning of Section 101 of CERCLA, 42 U.S.C. § 9601(21), because Defendant is a corporation.

STATUTORY BACKGROUND

6. The Secretary of the Interior (hereinafter included in “DOI”) has been designated as a natural resource trustee for federal trust resources at and near the Sites pursuant to 42 U.S.C. § 9607(f)(2)(A), 40 C.F.R. § 300.600, and Exec. Ord. No. 12,580, 52 Fed. Reg. 2923 (Jan. 23, 1987). DOI acts on behalf of the public as a trustee for natural resources, including threatened or endangered species, migratory birds, other fish and aquatic life, and their supporting ecosystems, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States. *See, e.g.*, 40 C.F.R. § 300.600.

7. The Administrator of NOAA (hereafter included in “NOAA”) has been designated as a natural resource trustee for federal trust resources at and near the Sites pursuant to 42 U.S.C. § 9607(f)(2)(A), 40 C.F.R. § 300.600, and Exec. Ord. No. 12,580, 52 Fed. Reg. 2923 (Jan. 23, 1987). NOAA acts on behalf of the public as a trustee for natural resources, including threatened or endangered species, other fish and aquatic life, and their supporting ecosystems, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States. *See, e.g.*, 40 C.F.R. § 300.600.

8. The State Trustees are acting in their capacity as Trustees for natural resources which have been affected by the releases of hazardous substances. 40 C.F.R. § 300.605.

9. Federal trusteeship over natural resources may overlap with that of States or Tribes or both. The National Contingency Plan (“NCP”) directs that, where there are multiple trustees, the trustees should coordinate and cooperate in carrying out their responsibilities. 40 C.F.R. § 300.615(a).

10. Damages for injury to natural resources includes the costs of actions to restore, replace, or acquire the equivalent of the injured natural resources and the reasonable costs of

assessing the injury and the associated damages. Damages may also include compensation for interim losses to the public attributable to natural resource injuries from the onset of the injury through their repair or recovery to an uninjured state, adjusted for any mitigation of those injuries by response actions or early restoration actions, and any increase in injuries that may have occurred as a result of response actions.

11. As required by CERCLA Section 301(c), 42 U.S.C. § 9651(c), DOI has promulgated regulations respecting the assessment of injuries to natural resources resulting from the release of hazardous substances and associated restoration activities. Those regulations are codified at 43 C.F.R. Part 11.

12. The Pollution Control Act, S.C. Code of Laws Ann. § 48-1-90(a) (Cum. Supp, 2017) (PCA), provides that “[i]t is unlawful for a person, directly or indirectly, to throw, drain, run, allow to seep or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes and other wastes, except in compliance with a permit issued by [SCDHEC].”

13. Section 48-1-10(1) of the PCA defines “person” to include a corporation.

14. Section 48-1-10(20) of the PCA defines “environment” to include “waters.”

15. Section 48-1-10(2) of the PCA defines “waters” to include “rivers . . . and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction.”

16. Section 48-1-10(6) of the PCA defines “other wastes” to include chemicals.

17. Section 48-1-90(B)(1) of the PCA provides that “[A] person who discharges organic or inorganic matter into the waters of this State as described in subsection A [Section 48-

1-90(A)] to the extent that the fish, shellfish, aquatic animals, wildlife or plant life indigenous to or dependent upon the receiving waters or property is damaged or destroyed is liable to the State for the damages.”

GENERAL ALLEGATIONS

18. Exxon is the current or former owner or operator of nine “Sites” located in South Carolina: the Atlantic Phosphate Works Site, the Stono Phosphate Site and the Swift Agri-Chem Site located on the Ashley River in Charleston; the Lambs Fertilizer Site and the Wando Phosphate Mill Site located in Charleston; the Port of Baldwin Mines Site located in Port Royal; the Georgia Chemical Works Site located in Ponpon; the Virginia Carolina Chemical Company Site located in Blacksburg; and the Virginia Carolina Chemical Company Site located in Greenville (collectively the “Sites”).

19. Generally, the Sites were operated as phosphate fertilizer plants.

20. Under their respective authorities, and on behalf of the public, the Trustees implemented a natural resource damage assessment to evaluate the injury, loss or destruction of natural resources and resource services at and near the Sites due to releases of hazardous substances at or from the Defendant’s former phosphate fertilizer plants. The results of the NRDA show that some of the nine Sites evinced injury to natural resources.

FIRST CLAIM FOR RELIEF

State and Federal Claim: Natural Resource Damages under CERCLA

21. Paragraphs 1 through 20 are re-alleged and incorporated herein by reference.

22. Defendant is liable as the "owner and operator" of the Sites under 42 U.S.C. § 9607(a)(1) or as a "person who at the time of disposal of hazardous substances owned or operated" the Sites, under 42 U.S.C. § 9607(a)(2).

23. Each of the Sites is a “Facility” within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. There have been “releases” and “threatened releases” within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), 9607(a), at and from the Facilities, including, but not limited to, releases of arsenic, copper, lead, mercury and zinc.

25. “Hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, including arsenic, copper, lead, mercury and zinc, have been released at and from the Facilities.

26. “Natural resources” within the meaning of Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), have been or are being injured, lost, or destroyed as a result of the releases of hazardous substances at and from at least some of the Sites. Such natural resources include, but are not limited to, the soils, sediments, surface water, and biological organisms at or near the Sites.

27. Plaintiffs have incurred costs and continue to incur costs in assessing damages to natural resources resulting from the releases and planning related restoration.

28. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendant is liable to the United States and to the State Trustees for damages for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances at and from the Facilities, including the reasonable costs of assessing such injury, destruction, or loss and planning related restoration.

SECOND CLAIM FOR RELIEF

State Claim: Natural Resources Damages under Section 48-1-90 of the PCA

29. Paragraphs 1 through 20 are re-alleged and incorporated herein by reference.

30. Defendant is a “person” as defined in the PCA, S.C. Code of Laws Ann. § 48-1-10(1), because it is a corporation.

31. Contaminants at the Sites are “other waste” as defined in the PCA, S.C. Code of Laws Ann. Section 48-1-10(6) because they are chemicals.

32. Surface waters and groundwaters at the Sites are “waters” within the definition of S.C. Code of Laws Ann. § 48-1-10(2) and are bodies of water wholly or partially within or bordering the State of South Carolina.

33. The release of chemicals into waters and groundwater at the Sites was not in compliance with any permit issued by SCDHEC.

34. The release of chemicals into waters and groundwater at the Sites was an unlawful discharge of waste into the environment, including waters, of the State of South Carolina in violation of the PCA, S.C. Ann. Section 48-1-90(a).

35. The release of chemicals damaged or destroyed fish, shellfish, aquatic animals, wildlife, or plant life indigenous to or dependent upon the surface waters and groundwater at the Sites.

36. Pursuant to S.C. Code of Laws, Section 48-1-90(b) of the PCA, Defendant is liable to the State Trustees for damages resulting from the unlawful discharge of waste from the release as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Award Plaintiffs a judgment against the Defendants for all damages and assessment costs;
2. Award the Plaintiffs their costs of this action; and
3. Grant Plaintiffs such other relief as this Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

SHERRI A. LYDON
UNITED STATES ATTORNEY

By: /s/ Lee E. Berlinsky
LEE E. BERLINSKY, Fed ID #05443
Assistant United States Attorney
151 Meeting Street, Suite 200
Charleston, SC 29401
(843) 266-1600
lee.berlinsky@usdoj.gov

ELLEN M. MAHAN
DEPUTY SECTION CHIEF

/s/ Steven O'Rourke
STEVEN O'ROURKE
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611 Washington, D.C. 20044-7611
(202) 514 2779
steve.orourke@usdoj.gov

**FOR THE SOUTH CAROLINA
DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL:**

/s/ Susan A. Lake

Chief Counsel

South Carolina Department of Health and
Environmental Control

Federal Bar Number 2583

2600 Bull Street

Columbia, SC 29201

**FOR THE SOUTH CAROLINA
DEPARTMENT OF NATURAL RESOURCES:**

ALVIN A. TAYLOR

Director

SC Department of Natural Resources

/s/ Shannon Bobertz

SHANNON BOBERTZ

Chief Legal Counsel

SC Department of Natural Resources

Federal Bar Number 9399

P. O. Box 167

Columbia, SC 29202

Bobertz@dnr.sc.gov

Telephone: (803) 734-4006