

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA and
STATE OF LOUISIANA,

Plaintiffs,

v.

AMERICAN COMMERCIAL BARGE
LINE LLC

Defendant.

CIVIL ACTION NO.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, acting at the request of the National Oceanic and Atmospheric Administration (“NOAA”), the United States Department of the Interior (“DOI”) through the United States Fish and Wildlife Service (“FWS”), and the United States Department of Commerce (“Commerce”), and the State of Louisiana (“State”), appearing through the Louisiana Oil Spill Coordinator’s Office, Department of Public Safety & Corrections (“LOSCO”), Louisiana Department of Natural Resources (“LDNR”), Louisiana Department of Environmental Quality (“LDEQ”), Louisiana Department of Wildlife and Fisheries (“LDWF”), and the Louisiana Coastal Protection and Restoration Authority (“CPRA”) (collectively, the “Trustees”), through the undersigned attorneys, file this Complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action, brought against Defendant American Commercial Barge Line LLC (“ACBL”), for recovery of damages for injury to, loss of, or destruction of natural

resources under Sections 1002(a) and (b) of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(a) and (b)(2), and Section 2480 of the Louisiana Oil Spill Prevention and Response Act (“OSPRA”), La. R.S. 30:2480. Plaintiffs seek damages in order to compensate for injury to, destruction of, loss of, or loss of use of certain natural resources resulting from an oil spill caused by the collision of the ocean-going tanker M/V TINTOMARA with ACBL’s tanker barge DM-932 under tow by the M/V MEL OLIVER on the Mississippi River near New Orleans, Louisiana in July 2008. 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 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 supplemental jurisdiction over the State law claim pursuant to 28 U.S.C. § 1367.

3. 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

The Oil Pollution Act of 1990

4. 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.”

5. 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.”

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

7. 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.”

8. Section 1001(26) of OPA, 33 U.S.C. § 2701(26), defines “owner or operator” to mean “in the case of a vessel, any person owning, operating, or chartering by demise, the vessel.”

9. 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, [and] fuel oil.”

10. 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.”

11. 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.”

12. 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.”

13. 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.”

14. 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.”

The Louisiana Oil Spill Prevention and Response Act

15. The purpose of OSPRA is to assist the State of Louisiana “in fulfilling its duties to protect, conserve, and replenish the natural resources of th[e] state in accordance with Article XI, Section 1 of the Constitution of Louisiana.” La. R.S. 30:2453(A).

16. It is the intent of OSPRA “to support and complement the Oil Pollution Act of 1990 (P.L. 101-380) and other federal law, specifically those provisions . . . relating to the responsibilities of state agencies designated as natural resource trustees. The legislature intends [OSPRA] to be interpreted and implemented in a manner consistent with federal law.” La. R.S. 30:2453(B).

17. OSPRA provides that a responsible party shall make full payment or initiate restoration, rehabilitation, replacement, or mitigation of damages to natural resources after

completion of an assessment of natural resource damages and the amount of the damages by the state agencies designated as natural resource trustees. La. R.S. 30:2480(G).

18. “Responsible party” means “[t]he owner or operator of a vessel . . . from which an unauthorized discharge of oil emanates or threatens to emanate.” La. R.S. 30:2454(22)(a).

“Responsible party” also includes any person “who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.” La. R.S. 30:2454(22)(c).

19. “Owner” or “operator” means “[a]ny person owning, operating, or chartering by demise a vessel[.]” La. R.S. 30:2454(20)(a).

20. “‘Vessel’ includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges.” La. R.S. 30:2454(30).

21. “‘Unauthorized discharge of oil’ means any actual or threatened discharge of oil not authorized by a federal or state permit.” La. R.S. 30:2454(29).

22. “‘Discharge of oil’ means an intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters of the state or at any other place where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal waters of the state.” La. R.S. 30:2454(7).

23. “‘Oil’ means oil of any kind or in any form, including but not limited to crude oil, petroleum, [and] fuel oil” La. R.S. 30:2454(18).

24. “Damages” means and includes “damages for injury to, destruction of, or loss of natural resources as defined in [OSPRA], includ[ing] the reasonable and any direct, documented cost to assess, restore, rehabilitate, or replace injured natural resources, or to mitigate further

injury, and their diminution in value after such restoration, rehabilitation, replacement or mitigation, which shall be recoverable by the state of Louisiana.” La. R.S. 30:2454(5)(a).

25. “‘Natural resources’ means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, groundwater supplies, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state.” La. R.S. 30:2454(17).

26. NOAA and FWS are the designated United States trustees of natural resources injured by ACBL’s oil discharge 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 19, 1991).

27. The Louisiana trustees, LOSCO, LDNR, LDEQ, LDWF, and CPRA (collectively, the “State Trustees”) are designated by the Governor of Louisiana as State trustees of natural resources injured by ACBL’s oil discharge pursuant to Section 1006(b)(3) of OPA, 33 U.S.C. § 2706(b)(3), and 40 C.F.R. § 300.605.

FIRST CLAIM FOR RELIEF

Natural Resource Damages under Section 1002 of OPA

28. Paragraphs 1 through 14 and 26 through 27 are realleged and incorporated herein.

29. ACBL is a corporation and a “person” within the meaning of Section 1001(27) of OPA, 33 U.S.C. § 2701(27)

30. At the time of the oil discharge, ACBL was the “responsible party” as owner of the tanker barge DM-932 and tug M/V MEL OLIVER within the meaning of Section 1001(32)(A) of OPA, 33 U.S.C. § 2701(32)(A).

31. ACBL’s tanker barge DM-932 is a “vessel” within the meaning of Section 1001(37) of OPA, 33 U.S.C. § 2701(37).

32. On or about July 23, 2008, the tug M/V MEL OLIVER was pushing tanker barge DM-932 upriver on the Mississippi River. DM-932 was carrying 9,983 barrels (419,286 gallons) of #6 fuel oil. At the same time, the M/V TINTOMARA was sailing downriver on the Mississippi River. As the M/V MEL OLIVER and M/V TINTOMARA closed, the M/V MEL OLIVER began an arcing turn to port and crossed in front of the M/V TINTOMARA. The M/V TINTOMARA struck barge DM-932, causing the release of an estimated 6,734 barrels (282,828 gallons) of #6 fuel oil into the waters of the Mississippi River over a two-week period.

33. The spilling of oil from tanker barge DM-932 was a “discharge” within the meaning of Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

34. All of the oil released during the incident was “oil” within the meaning of Section 1001(23) of OPA, 33 U.S.C. § 2701(23).

35. The Mississippi River is a “navigable water” of the United States within the meaning of Section 1001(21) of OPA, 33 U.S.C. § 2701(21).

36. The incident occurred during a high water event along the Mississippi River and oil was transported downstream rapidly. As the waters receded, oil became stranded in the batture between the river and the adjacent levees, on rip-rap, in crevices in rip-rap, and along the shoreline.

37. The discharged oil spread more than 100 miles downriver and covered over 5,000 acres of shoreline habitat, although large amounts of the #6 fuel oil remained present near the incident site.

38. As a result of the discharge, the United States Coast Guard closed the River from RMM 98 (just upriver from New Orleans) to the Southwest Pass Sea Buoy. The closure was in place from July 23, 2008 until July 29, 2008, affecting commerce and human use activities such as recreational fishing and shoreline use.

39. The incident also generated several days of public complaints related to the oil odors from the spill.

40. ACBL, the United States, and the State responded to the spill and conducted and monitored cleanup efforts. The discharge lasted until August 10, 2008, when final salvage efforts were completed.

41. The oil discharge polluted portions of the Mississippi River and the batture between the river and the adjacent levees, rip-rap, crevices in rip-rap, and along the river's shoreline.

42. The oil discharge caused injury 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 United States or the State within the meaning of Section 1001(20) of OPA, 33 U.S.C. § 2701(20), including riverine batture habitat, aquatic/water column organisms, birds, and marsh, and resulted in lost recreation and lost use of marsh restoration material.

43. NOAA and FWS have incurred costs in assessing injuries to natural resources resulting from the oil spill, including costs related to restoration planning.

44. Pursuant to Section 1002(a) and (b)(2) of OPA, 33 U.S.C. § 2702(a) and (b)(2), ACBL is liable to the United States and to the State for damages for injury to, destruction of, loss of, or loss of use of natural resources, including the reasonable costs of assessing such injury, destruction, loss, or loss of use resulting from the discharge of oil from ACBL's vessel as alleged in this Complaint.

SECOND CLAIM FOR RELIEF

Natural Resource Damages under Section 2480 of OSPRA

45. The preceding paragraphs are realleged and incorporated herein by reference.

46. The Louisiana trustees, LOSCO, LDNR, LDEQ, LDWF, and CPRA serve as State Trustees under OSPRA according to La. R.S. 30:2451, *et seq.* and La. Admin. Code tit. 43, part XXIX, *et seq.*

47. ACBL was the owner and operator of tanker barge DM-932 and, as such, is the "responsible party" under OSPRA. La. R.S. 30:2454(22).

48. The oil discharge from tanker barge DM-932 on or about July 23 through August 10, 2008 was not authorized by a federal or state permit and therefore constitutes an "unauthorized discharge of oil" under OSPRA. La. R.S. 30:2454(29).

49. The unauthorized discharge of oil caused injury to, destruction of, or loss of natural resources managed, held in trust, and/or regulated by the State Trustees.

50. The State Trustees have incurred costs in assessing damages to natural resources resulting from the unauthorized discharge of oil, including costs related to restoration planning.

51. Pursuant Section 2480 of OSPRA, La. R.S. 30:2480, ACBL is liable to the State Trustees for natural resource damages, including the reasonable cost of assessing such damages, resulting from the unauthorized discharge of oil from ACBL's vessel as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Award Plaintiffs a judgment against the Defendant for all damages for injury to, destruction of, loss of, or loss of use of natural resources, including reimbursement of Plaintiffs' assessment and restoration planning costs; and

2. Grant Plaintiffs such other relief as this Court may deem appropriate.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

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*Counsel for the State of Louisiana provided consent for the placement of her electronic signature on this pleading.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA and
STATE OF LOUISIANA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Scott M. Cernich, USDOJ, PO Box 7611, Wash., D.C.
20044 Ph: 202-514-0056; Stephanie C. Morris, La. Oil
Spill Coord. Off., PO Box 66614, Baton Rouge, LA 70896

DEFENDANTS

AMERICAN COMMERCIAL BARGE LINE LLC

County of Residence of First Listed Defendant Jefferson
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

John A.V. Nicoletti, Esq., Nicoletti Hornig & Sweeney, Wall
Street Plaza, 88 Pine St., 7th Floor, New York, NY 10005

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702(a) and (b)(2); Louisiana Oil Spill Prevention and Response Act ("OSPR"), La. R.S. 30:2480
Brief description of cause:
Civil action for recovery of damages for injury to, loss of, or destruction of natural resources under OPA and Louisiana OSPRA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
October 4, 2021

SIGNATURE OF ATTORNEY OF RECORD
/s/ Scott M. Cernich

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____