

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA and)
STATE OF LOUISIANA,)
)
Plaintiffs,)
)
v.)
)
CITGO PETROLEUM CORPORATION,)
)
Defendant.)

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, acting at the request of the United States Department of Commerce’s National Oceanic and Atmospheric Administration (“NOAA”) and the United States Department of the Interior (“DOI”) through the United States Fish and Wildlife Service (“FWS”), and the State of Louisiana (the “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”), through the undersigned attorneys, file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought against Defendant CITGO Petroleum Corporation (“CITGO” or “Defendant”) for recovery of damages for injury to, destruction of, loss of, or loss

of use of natural resources, under Sections 1002(a) and 1002(b)(2)(A) of the Oil Pollution Act (“OPA”), 33 U.S.C. §§ 2702(a) and 2702(b)(2)(A), 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 and restore natural resources injured by CITGO’s oil discharge from its refinery in Lake Charles, Louisiana, on or about June 18 and 19, 2006. Plaintiffs also seek to recover unreimbursed costs of assessing such damages.

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 . . . 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)(B) of OPA, 33 U.S.C. § 2701(32)(B), defines “responsible party” to include, in the case of an onshore facility, “any person owning or operating the facility.”

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

corporation.

7. Section 1001(9) of OPA, 33 U.S.C. § 2701(9), defines “facility” to mean “any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil.”

8. Section 1001(24) of OPA, 33 U.S.C. § 2701(24), defines “onshore facility” to mean “any facility . . . of any kind located in, on, or under, any land within the United States other than submerged land.”

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.”

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 . . . facilities . . . 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 . . . terminal facility 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 a terminal facility . . . ; or [a] person operating a terminal facility by lease, contract, or other form of agreement.”

La. R.S. 30:2454(20)(b).

20. “Terminal facility” includes any “waterfront . . . pipeline, structure, equipment, or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge from the facility could threaten waters of the state”

La. R.S. 30:2454(28).

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, [and] petroleum” 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 CITGO'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 CITGO'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, 26, and 27 are realleged and incorporated herein.

29. CITGO 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, beginning on or about June 18, 2006, CITGO was the owner and operator of the CITGO refinery in Lake Charles, Louisiana, including its refinery's wastewater treatment unit and related storage tanks.

31. CITGO's refinery in Lake Charles, including its wastewater treatment unit and related storage tanks, is an "onshore facility" within the meaning of Section 1001(24) of OPA, 33 U.S.C. § 2701(24).

32. CITGO was the "responsible party" for the onshore facility within the meaning of Section 1001(32)(B) of OPA, 33 U.S.C. § 2701(32)(B).

33. On or about June 18 and 19, 2006, CITGO discharged millions of gallons of waste (or “slop”) oil and oily wastewater (collectively, “oil”) from two wastewater storage tanks at its wastewater treatment unit. The ten-million-gallon tanks were designed to serve as storm surge tanks, but CITGO for years had been improperly using the tanks to accumulate oil, sludge, and oily wastewater at its treatment unit. Oil overflowed from the top of the two tanks during a rainstorm. The secondary containment berm around the tanks was faulty and failed in multiple places, allowing oil to flow into and upon the adjacent Indian Marais waterway and shorelines and then into the Calcasieu River and the estuary and adjoining shorelines.

34. At least 54,000 barrels (2,268,000 gallons) of waste (or “slop”) oil and untold millions of gallons of oily wastewater flowed into the waterways during the incident.

35. After trial in a related Clean Water Act enforcement action, the district court determined that the cause of the oil discharge was CITGO’s gross negligence in the operation and maintenance of its wastewater treatment plant and the lack of sufficient storage and treatment capacity. The district court found that CITGO’s oil spill was “massive, excessive, and a tragedy.”

36. CITGO’s spilling of oil on or about June 18 and 19, 2006, was a “discharge” within the meaning of Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

37. 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).

38. CITGO’s oil discharge was into navigable waters of the United States.

39. CITGO, the United States, and the State responded to the spill and conducted and monitored cleanup efforts, which took months to complete.

40. CITGO’s oil discharge polluted a significant portion of the Indian Marais,

Calcasieu River, and the estuary. The waterways and approximately 150 miles of shoreline were contaminated with oil, including marsh, beach, residential, and industrial areas, and a wide variety of natural resources were harmed by the discharged oil.

41. Numerous types of birds and aquatic and terrestrial life are known to inhabit the areas impacted by the oil discharge. Aquatic organisms include, but are not limited to, finfish, crustaceans, and shellfish. Wildlife species include, but are not limited to, resident and migratory birds, furbearers, aquatic mammals, alligators, and turtles.

42. The discharged oil killed birds and fish and other aquatic life and contaminated aquatic and shoreline habitats. During the oil spill response and cleanup, dead birds and marine organisms, including fish and invertebrates, were observed in the oiled waterways and along the shoreline. Oil traveled downriver from the refinery as well as upriver due to tidal influences.

43. CITGO's oil discharge disrupted commerce and navigation along the Ship Channel and the Intracoastal Waterway, forced the closure of the ship channel for ten days, and curtailed recreational uses of the impacted river and estuary.

44. CITGO's 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 marsh, subtidal, and intertidal habitats and a wide variety of aquatic life, birds, and terrestrial life.

45. The Trustees for the United States and the State are coordinating natural resource injury assessment and restoration efforts. To assess natural resource injuries, the Trustees have conducted extensive field work and research and analysis. The Trustees are using information from the response and assessment work, including field observations, analysis of the specific oil

chemistry involved in the discharge, oil toxicity from literature and studies, and modeling. The Trustees are using this information to determine the compensatory restoration requirements for the oil discharge.

46. Plaintiffs have incurred costs in assessing injuries to natural resources resulting from CITGO's oil discharge.

47. Pursuant to Section 1002(a) and (b)(2) of OPA, 33 U.S.C. § 2702(a) and (b)(2), CITGO is liable to the United States and to the State Trustees 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 CITGO's onshore facility as alleged herein.

SECOND CLAIM FOR RELIEF

Natural Resource Damages under Section 2480 of OSPRA

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

49. 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.*

50. CITGO was the owner and operator of its Lake Charles refinery and, as such, is the "responsible party" under OSPRA. La. R.S. 30:2454(22).

51. The oil discharge from CITGO's storage tanks at its refinery, on or about June 18 and 19, 2006, 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).

52. 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.

53. The State Trustees have incurred costs in assessing damages to natural resources resulting from the unauthorized discharge of oil.

54. Pursuant Section 2480 of OSPRA, La. R.S. 30:2480, CITGO 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 CITGO's onshore facility as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Award Plaintiffs a judgment against Defendant CITGO Petroleum Corporation for all 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; and
- B. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

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