

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

_____)	
UNITED STATES OF AMERICA, and)	
)	
THE STATE OF TEXAS,)	
)	
Plaintiffs,)	
)	Civil Action No. <u>SA-15-CV-676</u>
v.)	
)	
KOCH PIPELINE COMPANY, L.P.,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America (United States), by the authority of the Attorney General, and through the undersigned attorneys, acting on behalf of the Secretary of the United States Department of the Interior, and the State of Texas (Texas), acting on behalf of the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department, and the Texas General Land Office, file this Complaint and allege as follows:

I. NATURE OF THE ACTION

1. This is a civil action brought pursuant to the Oil Pollution Act (OPA), 33 U.S.C. § 2701, et seq., for damages for injury to, destruction of, loss of, or loss of use of, certain natural resources, and the costs of assessment thereof, against Koch Pipeline Company, L.P., in connection with the October 18, 1998, release of 963 barrels of crude oil from Defendant's former crude oil receiving station (Facility) in Karnes County, Texas (Incident).

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter and the parties hereto, pursuant to OPA Section 1017(b), 33 U.S.C. § 2717(b); and 28 U.S.C. §§ 1331 and 1345.

3. This Court has personal jurisdiction over the Defendant because the Facility is located within the jurisdictional boundaries for the United States District Court for the Western District of Texas, as established by Congress under 28 U.S.C. § 124(d)(4).

4. Venue is proper in this District, pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. §§ 1391, and 1395, because this is the judicial district in which the Incident and resulting natural resource damages occurred.

III. AUTHORITY

5. The United States Department of Justice has the authority to bring this action on behalf of the Department of the Interior Fish and Wildlife Service (DOI/FWS) under 28 U.S.C. §§ 516 and 519.

6. The United States brings this action on behalf of the Department of the Interior (DOI), a federal agency that has been delegated authority by the President to act on behalf of the public with respect to natural resources and their supporting ecosystems belonging to, appertaining to, managed by, or controlled by the United States. Exec. Order No. 12580, as amended by Exec. Order No. 12777; Section 1006 of OPA, 33 U.S.C. § 2706; and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300.600.

7. The State of Texas joins this action on behalf of the Texas Commission on Environmental Quality (TCEQ), the Texas Parks and Wildlife Department (TPWD), and the Texas General Land Office (GLO), state agencies that have been designated by the Governor of Texas to act on behalf of the public as trustees for natural resources, including their supporting

ecosystems, within the boundary of the state or belonging to, managed by, controlled by, or appertaining to such state. 33 U.S.C. § 2706(b)(3), and the NCP, 40 C.F.R. § 300.605.

8. The United States, through the DOI's Fish and Wildlife Service (FWS), and the State of Texas, through TCEQ, TPWD and GLO are Trustees for a variety of natural resources in and around the Defendant's former Facility, located in Karnes County, Texas. 33 U.S.C. § 2706.

IV. DEFENDANT

9. Koch Pipeline Company, L.P. is a Delaware limited partnership licensed to do business in Texas.

10. At all times relevant, Defendant owned and operated a crude oil receiving station located in Karnes County, Texas.

11. Defendant is a "person" within the meaning of OPA Section 1001(27), 33 U.S.C. § 2701(27).

V. STATEMENT OF FACTS RELATING TO NATURAL RESOURCE DAMAGES

12. Defendant formerly owned and operated a 50,000-barrel tank as part of a crude oil receiving station, located approximately 400 feet from Marcelinas Creek in Karnes County, Texas. Marcelinas Creek is a perennial stream, which flows into the San Antonio River, which in turn feeds into the Guadalupe River, a major water source for the San Antonio Bay Estuary, and the Gulf of Mexico beyond.

13. On October 18, 1998, 963 barrels of crude oil discharged from the Facility, about 783 of which escaped the Facility's containment system and entered Marcelinas Creek where floodwaters carried the crude oil several miles downstream to a collection point just below the creek's intersection with County Road 237. The floodwaters transported the oil beyond the banks of the creek, coating vegetation and the riparian area downstream with oil as the waters receded.

14. This unauthorized discharge of oil resulted in an injury or harm to “natural resources” throughout the area of the spill, within the meaning of OPA Section 1001(20), 33 U.S.C. § 2701(20), including resources under the trusteeships of the DOI, TCEQ, TPWD and GLO. The discharge has resulted in harm to, injury to, destruction of, loss of, or loss of use of, natural resources including, but not limited to, surface water, migratory bird species, freshwater wetland habitat, riparian vegetation, multiple tree species, understory, coastal and native grasses, and the banks of the creek in the vicinity of the Incident.

VI. STATUTORY BACKGROUND

15. OPA Section 1002(a), 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 . . . is liable for the damages . . . specified in subsection (b) that result from such incident.”

16. Pursuant to OPA Section 1001(32), 33 U.S.C. § 2701(32), “responsible party” means . . . (B) In the case of an onshore facility . . . any person owning or operating the facility.”

17. OPA Section 1001(14), 33 U.S.C. § 2701(14), defines “incident” as “any occurrence . . . involving one or more . . . facilities . . . resulting in the discharge . . . of oil.”

18. Pursuant to OPA Section 1001(7), 33 U.S.C. § 2701(7), “discharge” is defined as “any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emptying, or dumping.”

19. OPA Section 1001(23), 33 U.S.C. § 2701(23), defines “oil” as “oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil”

20. OPA Section 1001(21), 33 U.S.C. § 2701(21), defines “navigable waters” as “the waters of the United States, including the territorial sea.”

21. OPA Section 1001(9), 33 U.S.C. § 2701(9), defines “facility” as “any structure, group of structures, equipment, or device . . . used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil.”

22. OPA Section 1002(b)(2)(A), 33 U.S.C. § 2702(b)(2)(A), provides that the damages referred to in subsection (a) of Section 1002, include: “Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage” Such damages are recoverable by federal and state trustees.

23. Pursuant to Section 1001(20) of OPA, 33 U.S.C. § 2701(20), the term “natural resources” comprises “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 . . . [or] any State”

VII. GENERAL ALLEGATIONS

24. The crude oil storage tank referred to in Paragraph 12 above, is a “facility” within the meaning of OPA Section 1001(9), 33 U.S.C. § 2701(9), because it was and is used for “producing, storing, handling, transferring, processing or transporting oil.”

25. At all times relevant, Defendant was the “owner and operator” of the Facility, within the meaning of OPA Section 1001(26), 33 U.S.C. § 2701(26).

26. “Oil” within the meaning of OPA Section 1001(23), 33 U.S.C. § 2701(23), was discharged from the Facility on October 18, 1998.

27. The discharge of “oil” from the Facility resulted in a discharge into or upon Marcelinas Creek and/or its adjoining shorelines. Marcelinas Creek is a navigable water within the meaning of Section 1002 of OPA, 33 U.S.C. § 2702.

28. Defendant is a “responsible party” as defined in Paragraph 16, above.

29. As a “responsible party,” Defendant is strictly liable to the United States, and to the State of Texas, “for damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage,” resulting from the Incident. 33 U.S.C. § 2702(b)(2)(A).

30. “Natural resources,” as defined in OPA Section 1001(20), 33 U.S.C. § 2701(20), held in trust by federal and state trustees, have been injured, destroyed, or lost as a result of the Incident, within the meaning of 33 U.S.C. § 2702(b)(2). The natural resources and/or services impacted because of the Incident include, but are not limited to, the Marcelinas Creek water column, creek sediments, and benthic organisms living in sediments, riparian habitat, improved and unimproved pasture, and terrestrial biota in and around Marcelinas Creek.

VIII. CLAIM FOR RELIEF

31. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 30 as if fully set forth herein.

32. Defendant’s discharge of oil into or upon navigable waters or adjoining shorelines on October 18, 1998, renders it liable under Section 1002(a) of OPA, 33 U.S.C. § 2702(a), for all damages to natural resources, including but not limited to the reasonable costs incurred by the United States and the State in assessing the damage.

IX. PRAYER FOR RELIEF

WHEREFORE, based upon the allegations in Paragraphs 1 through 30 of this Complaint, Plaintiffs respectfully request that this Court:

1. Enter judgment in favor of the United States and the State of Texas, and against Defendant Koch for damages for injury to natural resources resulting from the Incident, including the costs of assessing such damages; and

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

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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

Nathaniel Douglas
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division

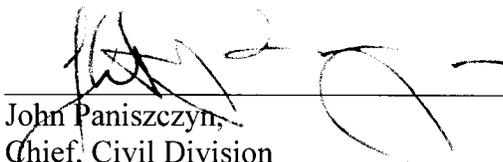
Dated: August 7, 2015



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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 the State of Texas

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 United States Department of Justice, P.O. Box 7611, Washington DC 20044; Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711

DEFENDANTS
 Koch Pipeline Company, L.P.

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

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

Attorneys (If Known)
 Barclay Nicholson, Norton Rose Fulbright US LLP, 1301 McKinney, Suite 5100, Houston, Texas 77010

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

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

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)

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 <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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPRIETARY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <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))	<input type="checkbox"/> 375 False Claims Act <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 <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	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

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

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, 33 U.S.C. Section 2701 et seq.

Brief description of cause:
Oil spill into Marcelinas Creek, Karnes County, Tx, October 1998.

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 August 6, 2015 SIGNATURE OF ATTORNEY OF RECORD [Signature]

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