

a 4-inch oil transfer pipeline (the “Frog Lake pipeline” or the “pipeline”), which is used to pump oil produced in the Frog Lake oil wells from the barge to receiving vessels.

3. In this action, the United States seeks civil penalties and injunctive relief for violations of the Clean Water Act (“CWA”) in connection with unlawful discharges of oil from the Frog Lake and Crocodile Bayou facilities, and stemming from conditions on the barge observed by EPA during a May 2015 inspection.

4. The United States brings thirteen causes of action, including one claim for civil penalties for the oil spills under CWA Section 311(b)(7)(A) or (D), 33 U.S.C. § 1321(b)(7)(A) or (D); one claim for injunctive relief under CWA Section 309(b), 33 U.S.C. § 1319(b); one claim for civil penalties under CWA Section 311(b)(7)(B)(ii) for failure to comply with an order issued by the USCG pursuant to Section 311(e)(1)(B), 33 U.S.C. § 1321(e)(1)(B); and claims for civil penalties for violation of ten regulations promulgated by EPA pursuant to CWA Section 311(j)(1), 33 U.S.C. § 1321(j)(1), enforceable under CWA Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C).

5. LDEQ brings three causes of action seeking civil penalties, injunctive relief, and recovery of State response costs, for violations of the Louisiana Environmental Quality Act, La. R.S 30:2001 *et seq.*, and the regulations promulgated pursuant to that statute.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to Sections 309(b) and 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. §§ 1319(b), 1321(b)(7)(E) and (n); and 28 U.S.C. §§ 1331, 1345, 1355, and 1367.

7. Authority to bring this action on behalf of the United States is vested in the United States Department of Justice by, *inter alia*, 28 U.S.C. §§ 516 and 519.

8. Venue is proper in the Middle District of Louisiana pursuant to Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b), 1321(b)(7)(E); and 28 U.S.C. §§ 1391 and 1395, because the claims arose in this district and Defendant is located and doing business in this district.

THE PARTIES

9. Plaintiff United States of America is acting at the request of the USCG and EPA.

10. The USCG served as the lead federal agency in the oversight of the Frog Lake and Crocodile Bayou oil spill cleanup efforts and issued orders to ORB pursuant to Section 311(e)(1)(B) of the CWA, 33 U.S.C. § 1321(e)(1)(B).

11. EPA conducted an inspection of the Frog Lake barge for compliance with the Spill Prevention Countermeasure and Control (“SPCC”) regulations promulgated by the agency pursuant to Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1).

12. Plaintiff LDEQ served as the lead State agency in the oversight of oil spill cleanup and remediation efforts.

13. Defendant is a Louisiana limited liability company with headquarters located in Lafayette, Louisiana.

STATUTORY BACKGROUND

14. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the “discharge of oil or any hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone . . . in such quantities as may be harmful”

15. Pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), “[a]ny person who is the owner, operator, or person in charge of any . . . offshore facility . . . from

which oil . . . is discharged in violation of paragraph (3), shall be subject to a civil penalty in an amount up to [\$37,500] per day of violation or an amount up to \$[1,100] per barrel of oil”

See also 40 C.F.R. § 19.4 (listing updated penalty rate).

16. Civil penalties can be increased pursuant to Section 311(b)(7)(D) of the CWA, 33 U.S.C. § 1321(b)(7)(D), if the violation results from “gross negligence or willful misconduct.”

17. Enforcement of Section 311 of the CWA supports the national objective to prevent and deter oil spills and “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. §§ 1251(a), 1321(b)(1).

18. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits “the discharge of any pollutant by any person” except in compliance with enumerated sections.

19. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), is the enforcement provision for Section 301(a) and authorizes civil actions for “relief, including a permanent or temporary injunction.”

20. Section 311(b)(7)(B)(ii) provides that any person described in Section 311(b)(7)(A) who “fails to comply with an order pursuant to [Section](e)(1)(B) . . . shall be subject to a civil penalty in an amount up to \$[37,500] per day of violation” *See also* 40 C.F.R. § 19.4 (listing updated penalty rate).

21. Any person who fails or refuses to comply with any regulation issued under Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), shall be subject to a civil penalty of up to \$37,500 per day for each violation, pursuant to Section 311(b)(7)(C). 33 U.S.C. § 1321(b)(7)(C); 40 C.F.R. § 19.4.

22. La. R.S. 30:2076(A)(1) prohibits the discharge into any waters of the State of:

“(a) Any waste or any other substance of any kind that will tend to cause water pollution in violation of any rule, order, or regulation; or (b) Any substance, the discharge of which violates any term, condition, or limit imposed by a permit.”

23. La. R.S. 30:2076(A)(3) prohibits the violation by any person of “any rule or regulation adopted under this Chapter or the terms of any permit or order issued under authority of this Subtitle.”

24. LAC 33:IX.501.A states: “Failure to comply with any of the provisions of these regulations or of the terms and conditions of any permit granted or order issued hereunder constitutes a violation of the act.”

25. LAC 33:IX.1701.B states: “No oily fluids shall be discharged to, or allowed to flow on the ground, or be carried from the original lease in open ditches, or discharged or allowed to flow into any stream, lake or other body of water.”

26. LAC 33:I.3915.A.3 states: “The [DPS 24-Hour Louisiana Emergency Hazardous Materials Hotline] must be immediately notified of any adverse change in the nature or rate of the discharge. Additional notifications must be made for discharges of multiple constituents when they originate from different causes or sources or they are substantially different in nature from the discharges in the initial notification.”

27. LAC 33:I.3925.A states: “Written reports for any unauthorized discharge that requires notification under LAC 33:I.3915.A, 3917, or 3919 shall be submitted by the discharger to [the State Single Point of Contact (“SPOC”)] in accordance with this Section within seven calendar days after . . . the notification required by LAC 33:I.3915.A, 3917, 3919, or 3923, unless otherwise provided for in a valid permit or other department regulation.”

28. La. R.S. 30:2025(E)(1)(a) authorizes civil penalties “of not more than the cost to

the state of any response action made necessary by such violation which is not voluntarily paid by the violator, and a penalty of not more than [\$32,500] for each day of violation. However, when any such violation is done intentionally, willfully, or knowingly, or results in a discharge or disposal which causes irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, such person may be liable for an additional penalty of not more than one million dollars.”

FACTS

The 2013 Frog Lake Oil Spill

29. Defendant owns and operates the oil production facilities in the Frog Lake area of the Atchafalaya River Basin in Iberville Parish, Louisiana.

30. Discharges from ORB’s Louisiana facilities are regulated by Louisiana Pollutant Discharge Elimination System (“LPDES”) General Permit LAG33B065.

31. Defendant owns and operates the Frog Lake barge, which continuously floats on bayou waters and collects and stores oil from the Frog Lake oil wells.

32. Defendant owns and operates the Frog Lake pipeline, which carries oil from the barge to a low-water transfer (load-out) point.

33. The pipeline is located in a wetland area (the “wetland area”) that is totally submerged for several months during the winter and spring of every year.

34. On January 3, 2013, ORB called the State hotline for reporting spills and reported a release of fewer than ten barrels of oil.

35. The National Response Center (“NRC”) is the designated call center for the reporting of releases of hazardous substances. Upon receiving notice of a spill, the NRC contacts the appropriate federal response agencies.

36. On January 9, 2013, the NRC was notified by a third-party organization, the Atchafalaya Basin Keeper, that the organization had detected an oil spill from an unidentified source in the vicinity of ORB's Frog Lake facility (the "2013 oil spill").

37. The NRC notified the local Coast Guard unit, Marine Safety Unit ("MSU") Baton Rouge, as the pre-designated federal On-Scene Coordinator ("FOSC") for the Atchafalaya River Basin, *see* 40 C.F.R. § 300.120, of the 2013 oil spill.

38. On January 9, 2013, the USCG responded to the reported location of the 2013 oil spill. At the time the USCG arrived at the facility, a pool of spilled oil was present at the site.

39. On January 9, 2013, MSU Baton Rouge pollution responders contacted ORB, and the company indicated to the pollution responders that the Frog Lake pipeline had ruptured on January 3, 2013, and had discharged oil, causing the oil spill observed by the responders.

40. On or about January 11, 2013, the Coast Guard (as FOSC) established a Unified Command to oversee cleanup operations.

41. On February 8, 2013, ORB submitted its spill report to the SPOC.

42. The spill report submitted on February 8, 2013, to the SPOC by ORB estimated the spill volume as substantially larger than 10 barrels.

43. On October 23, 2013, the FOSC issued Administrative Order #14-001 to ORB. The Order required ORB to submit a written recovery, containment, and remediation plan addressing the 2013 oil spill, either prior to the return of the seasonal submersion or by December 6, 2013, whichever occurred first.

44. ORB submitted a written recovery, containment, and remediation plan on December 20, 2013, fourteen days past the due date.

45. The seasonal submersion returned in January of 2014.

46. As a result of the Frog Lake pipeline rupture, at least 1,000 barrels of oil were discharged.

47. Spilled oil from the 2013 spill continues to persist in the soil and flow into waterways in the Frog Lake area of the Atchafalaya River Basin.

48. The body of water and wetlands where the Frog Lake facility is located is part of, a tributary of, or adjacent to the Atchafalaya River and Atchafalaya River Basin.

The 2015 Frog Lake Oil Spill

49. On or about September 29, 2015, a piston on the Frog Lake barge pumping system failed, resulting in a discharge of oil into the waters surrounding the barge.

50. The discharge was of approximately ten barrels of oil.

The Frog Lake Oil Storage and Production Barge Inspection

51. On May 18, 2015, EPA conducted an SPCC inspection (the “inspection”) of the Frog Lake barge and found multiple violations.

52. At the time of the inspection, oil was pooled on the deck of the barge and equipment was covered in oil.

53. At the time of the inspection, the barge curbing was insufficiently high to prevent water or other discharges from spilling over the side of the barge.

54. At the time of the inspection, ORB’s secondary containment system, a sump system, was full of oil, not draining properly, and not hooked up to an automatic pump. Additionally, the facility did not have the capability to drain rainwater or discharge to the sump.

55. At the time of the inspection, discharge from the sump was causing an oil sheen to be present in the water surrounding the barge and there were multiple other areas of sheen around the barge.

56. At the time of the inspection, ORB had not implemented a regularly scheduled preventive maintenance, inspection, and testing program for the sump system installed at the facility.

57. At the time of the inspection, ORB had not scheduled or conducted discharge prevention briefings for oil-handling personnel at the facility.

58. At the time of the inspection, ORB had failed to test or inspect pollution prevention equipment and systems at the facility and had not used simulated discharges for testing and inspecting human and equipment pollution control and countermeasure systems.

59. At the time of the inspection, no written procedures for inspecting and testing pollution prevention equipment and systems were present at the facility or in the written SPCC plan.

60. At the time of the inspection, ORB had failed to equip containers located on the barge with suitable corrosion protection, and both the barge and equipment (including the oil tanks) were corroded in areas.

61. At the time of the inspection, ORB had failed to protect from corrosion all piping appurtenant to the barge.

62. At the time of the inspection, ORB had failed to protect the sub-marine piping appurtenant to the barge against environmental stresses and other activities.

63. At the time of the inspection, ORB had not inspected or tested the facility's sub-marine piping.

64. At the time of the inspection, no training, inspection, or testing records of any kind were present at the facility.

65. At the time of the inspection, ORB had not conducted pollution prevention

training, inspection, or testing required by 40 C.F.R. § 112.

The 2015 Crocodile Bayou Oil Spill

66. On or about October 26, 2015, oil was discharged from Defendant's Crocodile Bayou facility into an unnamed canal connected to the Atchafalaya River.

67. The discharge was of approximately two barrels of oil.

68. The unnamed canal into which the oil discharged from Defendant's Crocodile Bayou facility is part of, a tributary of, or adjacent to the Atchafalaya River and Atchafalaya River Basin.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Civil Penalties for Violations of CWA Section 311(b) - Oil Discharges
33 U.S.C. § 1321(b)**

69. The preceding paragraphs are incorporated herein.

70. Defendant is an "owner or operator," within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

71. Defendant is a "person," within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

72. Defendant is the "owner, operator, or person in charge" of the facilities from which oil was discharged, within the meaning of Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A).

73. The pipeline, barge, and Crocodile Bayou oil production facility are "offshore facilities" within the meaning of Section 311(a)(11) of the CWA, 33 U.S.C. § 1321(a)(11).

74. The spilling of oil from the Frog Lake and Crocodile Bayou facilities constitutes

“discharges” of oil within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

75. The discharges were of Louisiana crude oil, which is “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

76. The Frog Lake area into which oil spilled is a “navigable water of the United States” within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

77. The Crocodile Bayou is a “navigable water of the United States,” within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

78. The Atchafalaya River Basin is a “navigable water of the United States” within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

79. The Atchafalaya River is a “navigable water of the United States” within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

80. Defendant’s Frog Lake and Crocodile Bayou discharges caused sheen upon and discoloration of water surfaces and adjoining shorelines, and caused sludge or emulsion to be deposited beneath the surface of the waters and upon adjoining shorelines. Thus, the quantities discharged were in quantities “as may be harmful” within the meaning of Section 311(b)(3) and (4) of the CWA. 33 U.S.C. § 1321(b)(3) & (4); 40 C.F.R. § 110.3.

81. Defendant’s Frog Lake and Crocodile Bayou discharges of oil violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

82. Defendant is liable for civil penalties of up to \$1,100 per barrel discharged under CWA Section 311(b)(7)(A), 33 U.S.C. § 1321(b)(7)(A), or, if it is proven that the violations resulted from gross negligence or willful misconduct, not more than \$4,300 per barrel discharged under Section 311(b)(7)(D), 33 U.S.C. § 1321(b)(7)(D). *See* 40 C.F.R. § 19.4 (increasing per-barrel civil penalty amounts based on Civil Monetary Penalty Inflation Adjustment Rule).

SECOND CAUSE OF ACTION

Injunctive Relief under CWA Section 309(b) 33 U.S.C. § 1319(b)

83. The preceding paragraphs are incorporated herein.

84. Defendant is a “person,” within the meaning of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

85. Defendant’s oil that spilled is a “pollutant,” within the meaning of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

86. The “discharges” of Defendant’s oil, within the meaning of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), reached waters of the United States.

87. Defendant did not have a permit to discharge the oil into waters of the United States.

88. Defendant’s discharges of oil violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

89. Because Defendant unlawfully discharged a pollutant into waters of the United States in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), Defendant is liable for injunctive relief pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

THIRD CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(B)(ii), failure to comply with an Order issued pursuant to Section 311(e)(1)(B)

90. The preceding paragraphs are incorporated herein.

91. The Coast Guard issued Administrative Order 14-001 to ORB, pursuant to Section 311(e)(1)(B) of the CWA, 33 U.S.C. § 1321(e)(1)(B).

92. Defendant was in noncompliance with Administrative Order 14-001 for the period

of December 6, 2013, through December 20, 2013, for failing to submit a written recovery, containment, and remediation plan by the required deadline.

93. Defendant's noncompliance with Administrative Order 14-001 is a violation of Section 311(b)(7)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(7)(B)(ii).

94. Defendant is liable for civil penalties of up to \$37,500 for the fourteen (14) days it was in violation of Section 311(b)(7)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(7)(B)(ii).

FOURTH CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(C), failure to comply with 40 C.F.R. § 112.7(c)

95. The preceding paragraphs are incorporated herein.

96. Pursuant to its authority under Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), EPA promulgated spill prevention regulation 40 C.F.R. § 112.7(c).

97. 40 C.F.R. § 112.7(c) requires that the owner or operator of an offshore facility must "provide appropriate containment and/or diversionary structures or equipment to prevent a discharge[.]"

98. Defendant's failure to provide appropriate containment or diversionary structures capable of preventing a discharge from the barge facility is a violation of 40 C.F.R. § 112.7(c).

99. Defendant is liable for civil penalties of up to \$37,500 per day under Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), for violation of 40 C.F.R. § 112.7(c).

FIFTH CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(C), failure to comply with 40 C.F.R. § 112.7(e)

100. The preceding paragraphs are incorporated herein.

101. Pursuant to its authority under Section 311(j)(1) of the CWA, 33 U.S.C.

§ 1321(j)(1), EPA promulgated spill prevention regulation 40 C.F.R. § 112.7(e).

102. 40 C.F.R. § 112.7(e) requires that the owner or operator of a regulated facility must “[c]onduct inspections and tests . . . in accordance with written procedures that [the owner or operator] or the certifying engineer develop for the facility . . . [and] must keep these written procedures and a record of the inspections and tests . . . with the SPCC Plan for a period of three years.”

103. Defendant’s failure to conduct inspections is a violation of 40 C.F.R. § 112.7(e).

104. Defendant’s failure to keep inspection records with the SPCC plan at the barge facility is a violation of 40 C.F.R. § 112.7(e).

105. Defendant is liable for civil penalties of up to \$37,500 per day under Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), for violation of 40 C.F.R. § 112.7(e).

SIXTH CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(C), failure to comply with 40 C.F.R. § 112.7(f)

106. The preceding paragraphs are incorporated herein.

107. Pursuant to its authority under Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), EPA promulgated spill prevention regulation 40 C.F.R. § 112.7(f).

108. 40 C.F.R. § 112.7(f)(1) requires an owner or operator of a regulated facility to train oil-handling personnel in the following areas: “operation and maintenance of equipment to prevent discharges; discharge prevention protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the SPCC plan.”

109. 40 C.F.R. § 112.7(f)(3) requires that an owner or operator of a regulated facility must “[s]chedule and conduct discharge prevention briefings for [] oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility.”

110. Defendant's failure to provide any of training required under 40 C.F.R. § 112.7(f)(1) to oil-handling personnel or to schedule or conduct discharge prevention briefings violated 40 C.F.R. § 112.7(f).

111. Defendant is liable for civil penalties of up to \$37,500 per day under Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), for violation of 40 C.F.R. § 112.7(f).

SEVENTH CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(C), failure to comply with 40 C.F.R. § 112.11(c)

112. The preceding paragraphs are incorporated herein.

113. Pursuant to its authority under Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), EPA promulgated spill prevention regulation 40 C.F.R. § 112.11(c).

114. 40 C.F.R. § 112.11(c) requires that “[f]or facilities employing a sump system, [an owner or operator] . . . must employ a regularly scheduled preventive maintenance inspection and testing program to assure reliable operation of [its] liquid removal system and [sump] pump start-up device.”

115. Defendant's failure to provide a regularly scheduled preventive maintenance, inspection, and testing program to assure reliable operation of the sump pump system at the barge facility is a violation of 40 C.F.R. § 112.11(c).

116. Defendant is liable for civil penalties of up to \$37,500 per day under Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), for violation of 40 C.F.R. § 112.11(c).

EIGHTH CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(C), failure to comply with 40 C.F.R. § 112.11(g)

117. The preceding paragraphs are incorporated herein.

118. Pursuant to its authority under Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), EPA promulgated spill prevention regulation 40 C.F.R. § 112.11(g).

119. 40 C.F.R. § 112.11(g) requires that an owner or operator of a regulated facility must “[e]quip containers with suitable corrosion protection.”

120. Defendant’s failure to equip containers on the barge facility with suitable corrosion protection is a violation of 40 C.F.R. § 112.11(g).

121. Defendant is liable for civil penalties of up to \$37,500 per day under Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), for violation of 40 C.F.R. § 112.11(g).

NINTH CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(C), failure to comply with 40 C.F.R. § 112.11(h)

122. The preceding paragraphs are incorporated herein.

123. Pursuant to its authority under Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), EPA promulgated spill prevention regulation 40 C.F.R. § 112.11(h).

124. 40 C.F.R. § 112.11(h) requires that the owner or operator of a regulated facility must “[p]repare and maintain at the facility a written procedure within the Plan for inspecting and testing pollution prevention equipment and systems.”

125. Defendant’s failure to maintain written procedures for inspecting and testing pollution prevention equipment and systems at the barge facility is a violation of 40 C.F.R. § 112.11(h).

126. Defendant is liable for civil penalties of up to \$37,500 per day under Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), for violation of 40 C.F.R. § 112.11(h).

TENTH CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(C), failure to comply with 40 C.F.R. § 112.11(i)

127. The preceding paragraphs are incorporated herein.

128. Pursuant to its authority under Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), EPA promulgated spill prevention regulation 40 C.F.R. § 112.11(i).

129. 40 C.F.R. § 112.11(i) requires that an owner or operator of a regulated facility must “[c]onduct testing and inspection of the pollution prevention equipment and systems at the facility on a scheduled periodic basis”

130. Also pursuant to 40 C.F.R. § 112.11(i), an owner or operator “must use simulated discharges for testing and inspecting human and equipment pollution control and countermeasure systems.”

131. Defendant’s failure to test or inspect its pollution control and countermeasure systems is a violation of 40 C.F.R. § 112.11(i).

132. Defendant’s failure to use simulated discharges for testing and inspecting pollution control and countermeasure systems is a violation of 40 C.F.R. § 112.11(i).

133. Defendant is liable for civil penalties of up to \$37,500 per day under Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), for violation of 40 C.F.R. § 112.11(i).

ELEVENTH CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(C), failure to comply with 40 C.F.R. § 112.11(n)

134. The preceding paragraphs are incorporated herein.

135. Pursuant to its authority under Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), EPA promulgated spill prevention regulation 40 C.F.R. § 112.11(n).

136. Pursuant to 40 C.F.R. § 112.11(n), the owner or operator of a regulated facility must “[p]rotect all piping appurtenant to the facility from corrosion”

137. Defendant’s failure to protect from corrosion all piping appurtenant to the barge facility is a violation of 40 C.F.R. § 112.11(n).

138. Defendant is liable for civil penalties of up to \$37,500 per day under Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), for violation of 40 C.F.R. § 112.11(n).

TWELFTH CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(C), failure to comply with 40 C.F.R. § 112.11(o)

139. The preceding paragraphs are incorporated herein.

140. Pursuant to its authority under Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), EPA promulgated spill prevention regulation 40 C.F.R. § 112.11(o).

141. 40 C.F.R. § 112.11(o) requires that the owner or operator of a regulated facility must “[a]dequately protect sub-marine piping appurtenant to the facility against environmental stresses and other activities”

142. Defendant’s failure to protect the sub-marine piping appurtenant to the barge against environmental stresses and other activities is a violation of 40 C.F.R. § 112.11(o).

143. Defendant is liable for civil penalties of up to \$37,500 per day under Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), for violation of 40 C.F.R. § 112.11(o).

THIRTEENTH CAUSE OF ACTION

Civil Penalties for Violation of Section 311(b)(7)(C), failure to comply with 40 C.F.R. § 112.11(p)

144. The preceding paragraphs are incorporated herein.

145. Pursuant to its authority under Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), EPA promulgated spill prevention regulation 40 C.F.R. § 112.11(p).

146. 40 C.F.R. § 112.11(p) requires that the owner or operator of a regulated facility must “[m]aintain sub-marine piping appurtenant to the facility in good operating condition at all times” and must “inspect and test such piping for failures” periodically and on a regular schedule.

147. 40 C.F.R. § 112.11(p) also requires that documentation of inspection and testing of sub-marine piping must be kept at the regulated facility.

148. Defendant’s failure to inspect or test sub-marine piping at the facility is a violation of 40 C.F.R. § 112.11(p).

149. Defendant’s failure to keep documentation of testing or inspection at the barge is a violation of 40 C.F.R. § 112.11(p).

150. Defendant is liable for civil penalties of up to \$37,500 per day under Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), for violation of 40 C.F.R. § 112.11(p).

FOURTEENTH CAUSE OF ACTION

LDEQ Civil Penalties for Violations of Louisiana Environmental Quality Act

151. The preceding paragraphs are incorporated herein.

152. Defendant’s unauthorized Frog Lake and Crocodile Bayou discharges of oil are violations of La. R.S. 30:2076(A)(1) and (A)(3), LAC 33:IX.501.A, LAC 33:IX.1701.B and

Defendant's LPDES General Permit.

153. Defendant's failure to notify the State hotline for reporting oil spills immediately of any adverse change in the nature or rate of the discharge in connection with the 2013 Frog Lake spill is a violation of La. R.S. 30:2076(A)(3) and LAC 33:I.3915.A.3.

154. Defendant's failure to submit to the SPOC within seven (7) days a written report in connection with the 2013 Frog Lake spill is a violation of La. R.S. 30:2076(A)(3) and LAC 33:I.3925.A.

155. As a result of Defendant's violations, Defendant is liable under La. R.S. 30:2025 for a civil penalty of not more than the cost to the State of any response action made necessary by these violations which is not voluntarily paid by the violator, and a penalty of not more than \$32,500 for each day of violation, and if it is established that any violation was done intentionally, willfully, or knowingly, or resulted in a discharge or disposal which caused irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, Defendant may be liable for an additional penalty of not more than \$1,000,000.

FIFTEENTH CAUSE OF ACTION

LDEQ Recovery of Response Action Costs

156. The preceding paragraphs are incorporated herein.

157. LDEQ has incurred response action costs associated with the discharges. None of these costs has been paid by the Defendant to date.

158. Pursuant to La. R.S. 30:2025(E)(1)(a), Defendant is liable to the LDEQ for LDEQ's response action costs incurred in responding to the discharges.

SIXTEENTH CAUSE OF ACTION

Injunctive Relief under the Louisiana Environmental Quality Act

159. The preceding paragraphs are incorporated herein.

160. The LDEQ is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. *Jurisich v. Jenkins*, 749 So. 2d 597 (La. 1999).

161. The discharge described above violated the Louisiana Environmental Quality Act and the regulations promulgated thereunder. Defendant is subject to appropriate injunctive relief pursuant to La. R.S. 30:2025(E)(1)(a).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter judgment that Defendant is liable to the United States for civil penalties pursuant to 311(b) of the Clean Water Act and assess civil penalties of up to \$1,100 per barrel discharged for the Frog Lake and Crocodile Bayou oil spills pursuant to Section 311(b)(7)(A), or if the violations resulted from gross negligence or willful misconduct, not more than \$4,300 per barrel discharged pursuant to Section 311(b)(7)(D);

B. Enter judgment that Defendant is liable to the United States for all appropriate injunctive relief pursuant to Section 309(b) of the Clean Water Act and award injunctive relief against Defendant as appropriate;

C. Enter judgment that Defendant is liable to the United States for civil penalties pursuant to 311(b)(7)(B)(ii) of the Clean Water Act and assess civil penalties of up to \$37,500 for the fourteen days that Defendant failed to comply with Coast Guard order AO 14-001;

D. Enter judgment that Defendant is liable to the United States for civil penalties pursuant to 311(b)(7)(C) of the Clean Water Act and assess civil penalties of up to \$37,500 per day for each of Defendant's violations of spill prevention regulations identified during EPA's May 2015 inspection of Defendant's Frog Lake barge;

E. Enter judgment that Defendant is liable to LDEQ for its unpaid response costs, all appropriate injunctive relief, and civil penalties of not more than \$32,500 for each day of violation, and if it is established that the violations were done intentionally, willfully, or knowingly, or resulted in a discharge or disposal which caused irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, an additional penalty of not more than \$1,000,000, pursuant to La. R.S. 30:2025(E)(1)(a).

F. Award the United States and LDEQ their costs of this action; and

G. Award the United States and LDEQ such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES:


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


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FOR THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

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By  _____

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JS 44 (Rev. 11/15)

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
 Louisiana Department of Environmental Quality

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Emily C. Powers, USDOJ - ENRD, 601 D St. NW Washington DC 20004
 (202) 616-3168; Dwana King, Louisiana Department of Environmental
 Quality, P.O. Box 4302, Baton Rouge, LA 70821-4302, (225) 219-3985

DEFENDANTS
 ORB Exploration, LLC

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

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

Attorneys (If Known)
 Timothy Hardy, V. Joyce Matthews
 Roedel Parsons Koch Blache Balhoff & McCollister
 8440 Jefferson Highway, Suite 301, Baton Rouge, LA 70809

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 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"/> 840 Trademark 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 <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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
33 U.S.C. s 1251 et seq. (Clean Water Act)

Brief description of cause:
Seeking federal and state civil penalties, injunctive relief, and state response costs for oil spills and other violations

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 4/21/16 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____