

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

)
UNITED STATES OF AMERICA and)
STATE OF TEXAS,)
)
Plaintiffs,)
)
v.)
)
FLINT HILLS RESOURCES)
INGLESIDE, LLC,)
)
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 the Interior (DOI), through the United States Fish and Wildlife Service (FWS), the Department of Commerce’s National Oceanic and Atmospheric Administration (NOAA), and the United States Coast Guard, and the State of Texas, appearing through the Office of the Texas Attorney General on behalf of the Texas General Land Office (TGLO), the Texas Commission on Environmental Quality (TCEQ), and the Texas Parks and Wildlife Department (TPWD), file this Complaint and allege as follows:

NATURE OF THE CASE

1. This is a civil action brought against Flint Hills Resources Ingleside, LLC, (Flint Hills or Defendant) related to the unlawful discharge of oil from Defendant’s Ingleside terminal into Corpus Christi Bay on December 24, 2022.

2. In the first claim, the United States and the State seek recovery of damages for injury to, destruction of, loss of, or loss of use of natural resources, under Section 1002 of the Oil Pollution Act (OPA), 33 U.S.C. § 2702. On the night of December 24, 2022, oil discharged from one of Flint Hills' pipes on a dock at its Ingleside crude oil terminal along the edge of Corpus Christi Bay. An estimated 335 barrels (over 14,000 gallons) of crude oil discharged directly into the Bay. Natural resources impacted by the spill include birds, sea turtles and other marine life, waters of the United States and the State, and marsh and beach areas. The United States and the State seek damages under OPA to compensate for and restore natural resources injured by the oil discharge as well as recovery of their unreimbursed assessment and restoration planning costs.

3. In a separate second claim, the United States, on behalf of the Coast Guard, seeks civil penalties for the oil discharge pursuant to Section 311(b)(7)(A) and (D) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(7)(A) and (D).

JURISDICTION AND VENUE

4. The Court has jurisdiction over the subject matter of the OPA claim pursuant to 28 U.S.C. §§ 1331 and 1345 and Section 1017(b) of OPA, 33 U.S.C. § 2717(b). The Court has jurisdiction over the CWA claim pursuant to Section 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n), and 28 U.S.C. §§ 1331, 1345, 1355. The Court also has jurisdiction over Defendant.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1395, OPA Section 1017(b), 33 U.S.C. § 2717(b), and CWA Section 311(b)(7)(E), 33 U.S.C. § 1321(b)(7)(E), because Defendant resides and does business in this district and the oil

discharge occurred in this district.

STATUTORY BACKGROUND

6. 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.”

7. 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”

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

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

10. 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.”

11. 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.”

12. 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.”

13. 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.”

14. 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.”

15. 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, facilities, or any combination thereof, resulting in the discharge . . . of oil.”

16. The trustees for the natural resources injured by the oil discharge include DOI and NOAA on behalf of the United States, and TGLO, TCEQ, and TPWD on behalf of the State of Texas (collectively, the “Trustees”).

17. DOI, through FWS, and NOAA are the designated United States trustees 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 22, 1991)).

18. TGLO, TCEQ, and TPWD are designated as trustees by the Governor of Texas pursuant to Section 1006(b)(3) of OPA, 33 U.S.C. § 2706(b)(3), and subpart G of the NCP, 40 C.F.R. § 300.605.

19. Pursuant to OPA, the Trustees are acting on behalf of the public to seek damages for the injury to, destruction of, loss of, or loss of use of natural resources resulting from the Defendant's discharge of oil.

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

21. Pursuant to Section 311(b)(7)(A) of the CWA, “[a]ny person who is the owner, operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of paragraph (3), shall be subject to a civil penalty” 33 U.S.C. § 1321(b)(7)(A).

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

23. Enforcement of these provisions 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. §§ 1321(b)(1), 1251(a).

FACTS

24. At the time of the oil discharge, Defendant Flint Hills was the owner and operator of the facility that discharged the oil at issue in this case.

25. On December 24, 2022, oil was discharged into Corpus Christi Bay from one of Defendant's pipes at its Ingleside crude oil terminal. The 3-inch-diameter pipe was located on Dock 5 at the facility and was connected to the sump pump and piping used to transfer crude oil to the terminal.

26. Use of the sump pump had been discontinued several months earlier, but Flint Hills left the valve open on the pipe connecting it to the crude oil transfer line. Water and oil remained in the pipe.

27. The pipe ruptured in multiple places along the dock during a freeze event on December 24, 2022.

28. Although there was a freeze warning in the area, Flint Hills did not execute its freeze protection procedure for that particular pipe.

29. Upon rupture of the pipe, water and oil flowed into the Bay, including oil backflowing from the open crude oil transfer piping into the leaking sump piping on the dock.

30. Flint Hills reported to TGLO that the incident resulted in an estimated discharge of 335 barrels (over 14,000 gallons) of crude oil into Corpus Christi Bay.

31. Crude oil that is spilled into the environment is known to be harmful to terrestrial and aquatic life.

32. Numerous types of birds and aquatic life are known to inhabit the areas

polluted by the oil discharge.

33. During the oil spill response and cleanup, oiled and dead birds and aquatic life, including sea turtles, were observed in the water and at several locations along the shoreline.

34. Flint Hills, the United States Coast Guard, and the State responded to the spill and conducted and monitored cleanup efforts.

35. The Trustees for the United States and the State are coordinating injury assessment and restoration efforts.

36. To assess natural resource injuries, the Trustees are using information from the response and assessment work, including field observations, oil chemistry, oil toxicity injury information from literature, and modeling. The Trustees are using this information to determine the compensatory restoration requirements for the oil spill.

37. Plaintiffs have incurred costs in assessing injuries to natural resources resulting from the oil spill and in their initial restoration planning.

CLAIM ONE

Natural Resource Damages under OPA Section 1002 33 U.S.C. § 2702

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

39. Flint Hills is the “responsible party” for the facility and the oil discharge within the meaning of Section 1001(32)(B) of OPA, 33 U.S.C. § 2701(32)(B).

40. Flint Hills is a corporate entity and a “person” within the meaning of

Section 1001(27) of OPA, 33 U.S.C. § 2701(27).

41. Flint Hills' pipe is a "facility" within the meaning of Section 1001(9) of OPA, 33 U.S.C. § 2701(9).

42. The spilling of oil from Flint Hills' pipe was a "discharge" within the meaning of Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

43. The substance that discharged from Defendant's pipe released during the incident was "oil" within the meaning of Section 1001(23) of OPA, 33 U.S.C. § 2701(23).

44. Corpus Christi Bay is a "navigable water" of the United States within the meaning of Section 1001(21) of OPA, 33 U.S.C. § 2701(21).

45. 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 subtidal and intertidal habitats and aquatic life.

46. Pursuant to Section 1002(a) and (b)(2) of OPA, 33 U.S.C. § 2702(a) and (b)(2), Defendant Flint Hills 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 Defendant's facility as alleged in this Complaint.

CLAIM TWO

**Civil Penalties for Violation of CWA Section 311(b)(3) – Oil Discharge
33 U.S.C. § 1321(b)(3)**

47. Paragraphs 1 through 5 and 20 through 37 are realleged and incorporated herein.

48. The United States brings Claim Two for civil penalties on behalf of the Coast Guard pursuant to Section 311(b) of the Clean Water Act, 33 U.S.C. § 1321(b).

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

50. Defendant’s dock and associated piping is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

51. Defendant is the owner and operator of the onshore facility from which oil was discharged within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

52. The spilling of oil from Defendant’s pipe on December 24, 2022, constituted a “discharge” of oil within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

53. The discharge was of “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

54. The discharge of oil into Corpus Christi Bay was into or upon the navigable waters of the United States within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

55. The discharge was in a quantity “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), and 40 C.F.R. § 110.3. The spilled oil also caused, *inter alia*, an oil film or sheen upon or discoloration of the surface of the water and adjoining shorelines and caused deposition beneath the surface of the water and upon adjoining shorelines.

56. Defendant’s discharge of oil violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

57. Defendant is liable for civil penalties of up to \$2,233 per barrel discharged under CWA Section 311(b)(7)(A), or, if it is proved that the violations are the result of gross negligence or willful misconduct, not more than \$6,696 per barrel discharged under Section 311(b)(7)(D). *See* 33 C.F.R. § 27.3 (establishing, effective after January 13, 2023, that the per-barrel civil penalty amounts were increased to the listed amounts by the Civil Monetary Penalty Inflation Adjustment Rule for the period at issue here).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Enter a judgment against Defendant Flint Hills Resources 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;

B. Enter a judgment that Defendant is liable to the United States for civil penalties pursuant to Section 311(b) of the Clean Water Act and assess civil penalties of up to \$2,233 per barrel discharged pursuant to Section 311(b)(7)(A) or, if the violation is

found to be the result of gross negligence or willful misconduct, no more than \$6,696 per barrel discharged pursuant to Section 311(b)(7)(D); and

C. Award Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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

/s/ Jason T. Barbeau
JASON T. BARBEAU
Attorney-in-charge
Senior Trial Attorney (D.C. Bar No. 468200)
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
(202) 616-8908 (telephone)
(202) 616-6584 (facsimile)
jason.barbeau@usdoj.gov

ALAMDAR HAMDANI
United States Attorney
Southern District of Texas

DANIEL DAVID HU
Chief, Civil Division (Texas Bar No. 10131415)
United States Attorney's Office
Southern District of Texas
1000 Louisiana, Suite 2300
Houston, TX 77002

Phone: (713) 567-9518
E-mail: daniel.hu@usdoj.gov

Of Counsel:

Sarah Shattuck, Attorney-Advisor
U.S. Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
Washington, DC 20240

Jared Piaggione, Attorney-Advisor
National Oceanic and Atmospheric Administration
Office of General Counsel
Natural Resources Section
1315 East-West Highway
SSMC3, Suite 15106
Silver Spring, MD 20910

Heather Kennealy, Attorney Advisor
U.S. Coast Guard, Office of Claims and Litigation
2703 Martin Luther King Junior Avenue, SE STOP 7213
Washington, DC 20593

LT Larissa Tiller, Senior Staff Attorney
U.S. Coast Guard
USCG Eighth District (dl)
500 Poydras Street
New Orleans, LA 70130

FOR THE STATE OF TEXAS:

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

KELLIE E. BILLINGS-RAY
Chief, Environmental Protection Division

** s/ Clark C. Reeder*

CLARK C. REEDER
Assistant Attorney General
State Bar No. 24118678
Southern District Bar No. 3863343
Clark.Reeder@oag.texas.gov

Office of the Attorney General of Texas
Environmental Protection Division
P.O. Box 12548, MC-066
Austin, TX 78711-2548
Telephone: 512-463-2012
Facsimile: 512-320-0911

COUNSEL FOR THE STATE OF TEXAS ON BEHALF OF
THE TEXAS GENERAL LAND OFFICE, THE TEXAS
PARKS AND WILDLIFE DEPARTMENT, AND THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY

* Counsel for the State of Texas provided consent for the placement of his electronic signature on this pleading.