

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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UNITED STATES OF AMERICA and)
STATE OF LOUISIANA,)
)
Plaintiffs,)
)
v.	Case No. <u>2:18-cv-10727</u>)
)
HESS CORPORATION,)
)
Defendant.)
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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”), and the State of Louisiana (the “State”), appearing through the Louisiana Oil Spill Coordinator’s Office, Department of Public Safety (“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 Hess Corporation (“Hess” or the “Defendant”)¹ 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”),

¹ Hess Corporation operated as the Amerada Hess Corporation prior to May 2006.

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 Hess’s crude oil discharge from its offshore platform in Block 51 of Breton Sound, Plaquemines Parish, Louisiana, on or about June 12, 2005.

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 a substantial part of the events or omissions giving rise to the claim occurred in this judicial 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)(C) of OPA, 33 U.S.C. § 2701(32)(C), defines “responsible party” to include, in the case of an offshore facility, “the lessee or permittee of the area in which the facility is located.”

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(22) of OPA, 33 U.S.C. § 2701(22), defines “offshore facility” to mean “any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.”

9. Section 1001(23) of OPA, 33 U.S.C. § 2701(23), defines “oil” to mean “oil of any kind or in any form, including petroleum.”

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(8) of OPA, 33 U.S.C. § 2701(8), defines “exclusive economic zone” to include “the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983.” Pursuant to the Presidential Proclamation, the exclusive economic zone “extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.” 97 Stat. 1557.

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 “offshore 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).

FIRST CLAIM FOR RELIEF

Natural Resource Damages under Section 1002 of OPA

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

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

28. At the time of the oil spill, beginning on or about June 12, 2005, Hess was the owner and operator of the offshore platform, including the storage tank located on the platform, at Block 51 of Breton Sound, Plaquemines Parish, Louisiana (“Block 51”).

29. On or about June 12, 2005, Hess’s offshore platform at Block 51, including the storage tank located on the platform, was an “offshore facility” within the meaning of Section 1001(22) of OPA, 33 U.S.C. § 2701(22).

30. Hess’s offshore facility at Block 51 is located approximately 13.5 miles off the coast of Louisiana and is within the exclusive economic zone of the United States.

31. Hess was the “responsible party” for the offshore facility within the meaning of Section 1001(32)(C) of OPA, 33 U.S.C. § 2701(32)(C).

32. On or about June 12, 2005, Hess discharged crude oil into the waters of the Gulf of Mexico from Hess’s Block 51 offshore facility. The oil spilled from a storage tank located on the offshore platform into Breton Sound. The incident resulted in an estimated discharge of 12 barrels of crude oil (504 gallons) into the waters of the Gulf of Mexico.

33. The spilling of crude oil on or about June 12, 2005, into the waters of the Gulf of

Mexico was a “discharge” within the meaning of Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

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

35. Hess discharged oil into the “exclusive economic zone” of the United States within the meaning of Section 1001(8) of OPA, 33 U.S.C. § 2701(8).

36. On June 13, 2005, United States Coast Guard officials conducting surveillance in Breton Sound discovered oil on the shoreline and in the marshes of West Point Breton Island (the “Island”), located within the Breton National Wildlife Refuge (the “Refuge”). The Refuge is located within Breton Sound. Breton Sound and the barrier islands serve as critical nursery habitat for numerous species and provide many other ecological services.

37. As a result of the discharge, critical nesting habitat, sandy beach, back barrier marsh dominated by black mangrove, and fauna were exposed to oil.

38. Numerous types of sea birds and aquatic life are known to inhabit the oiled areas. 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, and turtles.

39. On June 14, 2005, federal and State natural resource trustee agencies were mobilized to assess the extent of oil exposure, collect carcasses, and rehabilitate affected fauna, where possible. Juvenile brown pelicans were among the fauna most affected by the discharge, with oil covering 80-90 percent of their bodies and severely impacting the brown pelican nesting colony.

40. On June 16, 2005, all active cleanup activities were completed at the Island, with the exception of the absorbent boom removal and recovery.

41. FWS estimated that the oil spill killed well over one thousand juvenile brown pelicans.

42. Hess's oil discharge caused injury to, destruction of, loss of, or loss of use of "natural resources" within the meaning of Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

43. FWS is the designated United States trustee of natural resources injured by Hess's discharge of oil 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).

44. 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 the discharge of oil from Hess's offshore facility pursuant to Section 1006(b)(3) of OPA, 33 U.S.C. § 2706(b)(3), and 40 C.F.R. § 300.605.

45. The trustees for the United States and the State are coordinating injury assessment and restoration efforts.

46. Plaintiffs have incurred costs in assessing injuries to natural resources resulting from the oil spill.

47. Pursuant to Section 1002(a) and (b)(2) of OPA, 33 U.S.C. § 2702(a) and (b)(2), Hess 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 Hess's offshore 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. Hess was the owner and/or operator of the Block 51 offshore platform, a “terminal facility,” in the Gulf of Mexico and, as such, is the “responsible party” under OSPRA. La. R.S. 30:2454(22).

51. The reported release of an estimated 12 barrels of crude oil from Hess’s offshore platform, including the storage tank located on the platform, on or about June 12, 2005, 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, including but not limited to juvenile brown pelicans and their critical nesting habitat.

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, Hess 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 Hess’s offshore terminal facility as alleged herein.

PRAYER FOR RELIEF

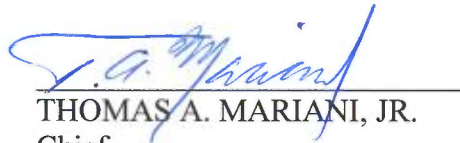
WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Award Plaintiffs a judgment against Defendant Hess 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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