UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA and STATE OF TEXAS, Plaintiffs, v. ASHLAND INC.; E.I. DU PONT DE NEMOURS AND COMPANY; EXXONMOBIL OIL CORPORATION; EXXON MOBIL CORPORATION; HOUSTON SHIP REPAIR, INC.; KIRBY CORPORATION; KIRBY INLAND MARINE, LP; PHILLIPS 66 COMPANY; and TEXACO INC., Defendants.	Civil Action No. 14-cv-574

JOINT COMPLAINT

The United States of America ("United States"), by the authority of the Attorney General of the United States and through the undersigned attorneys acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Texas ("State"), by and through the Attorney General of Texas, on behalf of the Texas Commission on Environmental Quality ("TCEQ"), file this Complaint and allege as follows:

STATEMENT OF THE CASE

1. The United States brings this Action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9607, for the recovery of response costs that have been and will be incurred by United States Environmental Protection Agency ("EPA") and the United States Department of Justice ("DOJ") in response to releases and threatened releases of

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hazardous substances from the Palmer Barge Superfund Site ("the Site"). Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, the United States also seeks a declaratory judgment on Defendants' liability for response costs and damages that will be binding in any subsequent action or actions to recover further response costs or damages in connection with the Site.

2. The State of Texas brings this Action pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and Section 361.197 of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code § 361.197, for the recovery of response costs that have been and will be incurred by the TCEQ in response to releases and threatened releases of solid waste and hazardous substances at the Site.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345. This Court has supplemental jurisdiction over state law claims in this action pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b)(2), because the claim arose, and the releases of hazardous substances occurred, within the Eastern District of Texas.

THE DEFENDANTS

5. Defendant Ashland Inc. ("Ashland") is a corporation organized under the laws of Kentucky.

6. Defendant E.I. du Pont de Nemours and Company ("du Pont") is a corporation organized under the laws of Delaware.

7. Defendant ExxonMobil Oil Corporation ("ExxonMobil Oil"), formerly Mobil Oil Corporation, is a corporation organized under the laws of New York.

8. Defendant Exxon Mobil Corporation ("Exxon") is a corporation organized under the laws of New Jersey.

9. Defendant Houston Ship Repair, Inc. ("Houston Ship Repair") is a corporation organized under the laws of Texas.

10. Defendant Kirby Corporation ("Kirby Corp.") is a corporation organized under the laws of Nevada.

11. Defendant Kirby Inland Marine, LP ("Kirby Inland Marine") is a limited partnership organized under the laws of Delaware.

12. Defendant Phillips 66 Company ("Phillips 66") is a corporation organized under the laws of Delaware.

13. Defendant Texaco Inc. ("Texaco") is a corporation organized under the laws of Delaware.

FACTUAL BACKGROUND

Site Operation

14. The Site encompasses approximately 17 acres and is located 4.5 miles east-northeast of the City of Port Arthur, Jefferson County, Texas. The Site is bounded to the south by the State Marine of Port Arthur Superfund Site, to the west by Old Yacht Club Road, to the north by vacant property, and to the east by Sabine Lake. Drainage from the Site empties directly into Sabine Lake. The Site is located approximately 0.5 miles southwest of the point where the Neches River enters the Sabine-Neches Canal.

15. From 1982 until 1997, the Palmer Barge Line, Inc. ("Palmer Barge") owned and operated a barge, marine vessel, and marine equipment maintenance and servicing facility on the Site.

16. Primary operations conducted by Palmer Barge at the Site included cleaning, de-gassing, maintenance, and inspection of barges, marine vessels, and marine equipment. Typical cleaning operations (also referred to as "stripping") included the removal of sludge, liquid ("heels"), chemical products, and other residual constituents. Additionally, Palmer Barge conducted marine salvage operations and repairs, off-loaded chemicals (including petroleum products from barges), and operated unlined earthen wastewater impoundments. Palmer Barge stored off-loaded used oil, waste oil, chemicals, and/or wastewater in aboveground storage tanks ("ASTs"), open-top sludge tanks, roll-off boxes, and drums. Palmer Barge also stored fuel oil, gasoline, naptha, and toluene at the Site in ASTs.

17. Operations at the Site resulted in the release, or threatened release, of various hazardous substances in the soil and groundwater at the Site, which were in the form of, or were contained within, volatile organic compounds, semi-volatile organic compounds, poly-chlorinated biphenyls, pesticides, and metals. Those hazardous substances included aldrin, aroclor-1254, arsenic, benzene, benzo(a)pyrene, benzo(a)anthracine, benzo(b)flouranthene, butyl benzyl phthalate, dieldrin, 4,4'-DDD, 4,4'-DDE, 4,4'-DDT, heptachlor epoxide, lead, methoxychlor, naphthalene, and pentachlorophenol.

Site Investigation and Clean-up

18. The Texas Natural Resource Conservation Commission ("TNRCC") - now, the Texas Commission on Environmental Quality) ("TCEQ") - conducted an investigation of the Site in December of 1996. The TNRCC observed advanced deterioration of ASTs, drums, and storage containers, and the un-attended storage of hazardous materials upon the property. The TNRCC recommended the Site to EPA for additional assessment and investigation. In March of 1998, EPA, along with the TNRCC, conducted an investigation at the Site to identify potential

sources of hazardous material and to sample soil and sediments. Analysis showed that the samples collected contained numerous hazardous substances, including aldrin, aroclor-1254, arsenic, benzene, benzo(a)pyrene, benzo(a)anthracine, benzo(b)flouranthene, butyl benzyl phthalate, dieldrin, 4,4'-DDD, 4,4'-DDE, 4,4'-DDT, heptachlor epoxide, lead, methoxychlor, naphthalene, and pentachlorophenol.

19. In October of 1999, EPA conducted an Expanded Site Inspection, and discovered hazardous substances, including aldrin, aroclor-1254, arsenic, benzene, benzo(a)pyrene, benzo(a)anthracine, benzo(b)flouranthene, butyl benzyl phthalate, dieldrin, 4,4'-DDD, 4,4'-DDE, 4,4'-DDT, heptachlor epoxide, lead, methoxychlor, naphthalene, and pentachlorophenol onsite and in the adjoining Sabine Lake.

20. In July of 2000, EPA placed the Site on the National Priorities List ("NPL"), the list of the nation's highest priority cleanup sites. At that time, an estimated total volume of 546,000 gallons of material was present in on-site containers and drums.

21. Between September 4, 2000 and January 3, 2001, EPA conducted a Time Critical Removal Action (the "Removal Action"). The Removal Action involved waste removal, water treatment, separation of oil from water, and sludge stabilization. Approximately 25,000 gallons of water was treated on-site, 500 cubic yards of sludge was stabilized, and 100,000 gallons of oil/styrene were separated and removed from the Site.

22. On September 30, 2002, EPA Region 6 issued an Administrative Order on Consent to several potentially responsible parties ("PRPs") – du Pont; Texaco; Kirby Inland Marine; Kirby Inland Marine Inc. of Louisiana; and Ashland – to conduct a Remedial Investigation ("RI") and Feasibility Study ("FS") for the Site.

23. The RI was conducted during the time period of July 2003 through February 2004. The RI Report was completed on July 2, 2004.

24. The RI Report identified the following chemicals of concern in surface soils at the Site: aldrin, aroclor-1254, arsenic, benzene, benzo(a)pyrene, benzo(a)anthracine, benzo(b)flouranthene, butyl benzyl phthalate, dieldrin, 4,'-DDD, 4,4'-DDE, 4,4'-DDT, heptachlor epoxide, lead, methoxychlor, naphthalene, and pentachlorophenol.

25. EPA published a notice of the completion of the FS and of the proposed plan for Remedial Action ("RA") on July 27, 2005, and provided opportunity for public comment on the proposed RA.

26. The Record of Decision ("ROD") for the Site was signed in September of 2005. The ROD selected a remedy that included excavation of contaminated soil and surface material for off-site disposal, sampling of excavated areas to confirm that contamination had been removed, plugging and abandonment of on-site monitoring wells, removal of sludge from the ASTs, decontamination and demolition of the ASTs, and establishment of institutional controls.

27. On June 6, 2007, EPA approved the RA Work Plans and issued a Unilateral Administrative Order to Ashland, du Pont, Exxon, Kirby Corp., Phillips 66, and Texaco, requiring these entities to perform clean-up operations at the Site.

28. Under EPA supervision, Ashland, du Pont, Exxon, Kirby Corp., Phillips 66, and Texaco hired a subcontractor who conducted the RA during the months of August and September of 2007. Final waste disposal activities were completed in 2008.

29. On February 6, 2012, the Site was removed from the NPL.

30. EPA continues to monitor and verify the effectiveness of the RA by conducting ongoing Five-Year Reviews ("FYRs") at the Site. The first FYR is complete, and the first FYR Report for the Site was issued in September of 2012.

FEDERAL LAW GOVERNING CLAIM FOR RELIEF

31. Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), authorizes EPA to remove or arrange for removal of, and provide remedial action relating to, any release or threatened release of any hazardous substance, or to take any other response measure that EPA deems necessary to protect the public health or welfare or the environment.

32. Section 104(b)(1) of CERCLA, 42 U.S.C. § 9604(b)(1), authorizes EPA to gather information it deems necessary or appropriate to identify the existence and extent of the release (or threatened release) of any hazardous substance, and the extent of danger to the public health or welfare or to the environment. In addition, EPA may undertake actions it deems necessary or appropriate to plan and direct response actions, to recover response costs, and to enforce CERCLA actions.

33. Under Executive Order 12,580, *Superfund Implementation*, issued on January 23, 1987, and as authorized by Section 115 of CERCLA, 42 U.S.C. § 9615, the President has delegated his authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), to the Administrator of EPA to arrange for the cleanup of hazardous waste or to conduct investigations and studies as necessary to determine the need for, and extent of, such a cleanup.

34. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section [*i.e.* 42 U.S.C. § 9607(b)] –
>
> . . .
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment,

> of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances
>
> . . . shall be liable for
>
> (A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan;
>
> . . .
>
> (D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

35. The National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") for the removal of oil and hazardous substances provides the "procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants . . . ." 42 U.S.C. § 9605(a). The NCP is codified at 40 C.F.R. Part 300.

36. Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4), provides that "[t]he amounts recoverable in an action under this section shall include interest on amounts recoverable under subparagraphs (A) through (D)."

37. Liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), is strict and joint and several.

38. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2), entitles the United States to obtain a declaratory judgment on liability for future response costs: "[T]he court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."

THE UNITED STATES' CLAIM FOR RELIEF

39. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and as used in Section 107 of CERCLA, 42 U.S.C. § 9607.

40. Aldrin, benzo(a)pyrene, benzo(a)anthracine, butyl benzyl phthalate, 4,4'-DDD, 4,4'-DDE, 4,4'-DDT, dieldrin, heptachlor epoxide, lead, methyloxychlor, naphthalene, and pentachlorophenol are "hazardous substances" within the meaning of Sections 101(14) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9607(a), and the regulations referenced therein, 40 C.F.R. § 302.4.

41. There have been "releases" and "threatened releases" of aldrin, benzo(a)pyrene, benzo(a)anthracine, butyl benzyl phthalate, 4,4'-DDD, 4,4'-DDE, 4,4'-DDT, dieldrin, heptachlor epoxide, lead, methyloxychlor, naphthalene, and pentachlorophenol at the Site within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), 9607(a).

42. "Disposal" of hazardous substances (within the meaning of Sections 101(29) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(29), 9607(a)), including aldrin, benzo(a)pyrene, benzo(a)anthracine, butyl benzyl phthalate, 4,4'-DDD, 4,4'-DDE, 4,4'-DDT, dieldrin, heptachlor epoxide, lead, methyloxychlor, naphthalene, and pentachlorophenol, occurred at the Site.

43. As a result of the releases or threatened releases of hazardous substances from the Site, the United States has incurred and will continue to incur response costs, including the costs of removal and a remedial action, as defined in Sections 101(23), (24) and (25) of CERCLA, 42 U.S.C. §§ 9601(23), (24) and (25), and as used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

44. The United States has undertaken and may undertake response actions in the future at the Site to protect the public health, welfare, or the environment, including removal and remedial actions, in response to releases or threatened releases of hazardous substances, pollutants, or contaminants, within the meaning of Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9607.

45. Defendants Ashland, du Pont, Exxon, ExxonMobil Oil, Houston Ship Repair, Kirby Corp., Kirby Inland Marine, Phillips 66, and Texaco are "persons" within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607.

46. Ashland by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Ashland.

47. Du Pont by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by du Pont.

48. ExxonMobil Oil by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by ExxonMobil Oil.

49. Exxon by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Exxon.

50. Houston Ship Repair by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Houston Ship Repair.

51. Texaco by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Texaco.

Kirby Corp. and Its Predecessors

52. Brent Transportation Company; Chotin Carriers, Inc.; Dixie Offshore Transportation Company; K-Sea Transportation Corporation; Scott Chotin, Inc.; and TPT Transportation, Inc. are "persons" within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607.

53. Brent Transportation Company, either independently or through its predecessors-in-interest, by contract, agreement, or otherwise arranged for the disposal or treatment at the Site

of hazardous substances owned or possessed by Brent Transportation Company or its predecessors-in-interest. Accordingly, Brent Transportation Company is jointly and severally liable under Section 107(a)(3).

54. Chotin Carriers, Inc., either independently or through its predecessors-in-interest, by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Chotin Carriers, Inc., or its predecessors-in-interest. Accordingly, Chotin Carriers, Inc. is jointly and severally liable under Section 107(a)(3).

55. Dixie Offshore Transportation Company, either independently or through its predecessors-in-interest, by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Dixie Offshore Transportation Company or its predecessors-in-interest. Accordingly, Dixie Offshore Transportation Company is jointly and severally liable under Section 107(a)(3).

56. K-Sea Transportation Corporation, either independently or through its predecessors-in-interest, by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by K-Sea Transportation Corporation or its predecessors-in-interest. Accordingly, K-Sea Transportation Corporation is jointly and severally liable under Section 107(a)(3).

57. Scott Chotin, Inc., either independently or through its predecessors-in-interest, by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Scott Chotin, Inc., or its predecessors-in-interest. Accordingly, Scott Chotin, Inc., is jointly and severally liable under Section 107(a)(3).

58. TPT Transportation, Inc., either independently or through its predecessors-in-interest, by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by TPT Transportation, Inc., or its predecessors-in-interest. Accordingly, TPT Transportation, Inc., is jointly and severally liable under Section 107(a)(3).

59. Subject to a reasonable opportunity for further investigation and discovery, Kirby Corp. is the successor-in-interest to the following entities: Brent Transportation Company; Chotin Carriers, Inc.; Dixie Offshore Transportation Company; K-Sea Transportation Corporation; Scott Chotin, Inc.; and TPT Transportation, Inc.

Kirby Inland Marine and Its Predecessors

60. Hollywood Marine, Inc.; Dixie Carriers, Inc.; Coastal Towing, Inc., and Kirby Inland Marine Inc. of Louisiana are "persons" within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607.

61. Hollywood Marine Inc., independently or through its predecessors-in-interest, by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Hollywood Marine Inc. or its predecessors-in-interest. Accordingly, Hollywood Marine Inc. is jointly and severally liable under Section 107(a)(3).

62. Dixie Carriers Inc., independently or through its predecessors-in-interest, by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Dixie Carriers Inc. or its predecessors-in-interest. Accordingly, Dixie Carriers Inc. is jointly and severally liable under Section 107(a)(3).

63. Coastal Towing, Inc., either independently or through its predecessors-in-interest, by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of

hazardous substances owned or possessed by Coastal Towing, Inc., or its predecessors-in-interest. Accordingly, Coastal Towing, Inc., is jointly and severally liable under Section 107(a)(3).

64. Kirby Inland Marine Inc. of Louisiana, independently or through its predecessors-in-interest, by contract, agreement, or otherwise, arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Kirby Inland Marine Inc. of Louisiana or its predecessors-in-interest. Accordingly, Kirby Inland Marine Inc. of Louisiana is jointly and severally liable under Section 107(a)(3).

65. Kirby Inland Marine is the successor-in-interest to Hollywood Marine Inc., Dixie Carriers Inc., Coastal Towing, Inc., and Kirby Inland Marine Inc. of Louisiana.

Phillips 66 and Its Predecessors

66. ConocoPhillips Company, Continental Oil Company, and Conoco Inc. are "persons" within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607.

67. ConocoPhillips Company, by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by ConocoPhillips Company. Accordingly, ConocoPhillips Company is jointly and severally liable under Section 107(a)(3).

68. Continental Oil Company, by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Continental Oil Company. Accordingly, Continental Oil Company is jointly and severally liable under Section 107(a)(3).

69. Conoco Inc., by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by Conoco Inc. Accordingly, Conoco Inc. is jointly and severally liable under Section 107(a)(3).

70. Phillips 66 is a successor-in-interest of ConocoPhillips Company, Continental Oil Company, and Conoco Inc.

Response Costs Incurred

71. The United States has incurred response costs in connection with remediating the Site. EPA incurred response costs, including but not limited to, costs of a removal action performed in August of 2000, in responding to releases or threatened releases of hazardous substances from the Site. Response costs incurred by both EPA and DOJ include, but are not limited to, costs of monitoring, assessing and evaluating the release or threat of release of hazardous substances from the Site, and any and all incidental costs leading to the issuance of the ROD published in September of 2005. Those costs totaled $3,433,142.17 through August 25, 2012.

72. The United States has incurred since August 25, 2012, and continues to incur, response costs in responding to releases or threatened releases of hazardous substances at the Site.

73. The response actions taken by the United States were not inconsistent with the NCP.

74. The Defendants are each jointly and severally liable to the United States under Section 107(a)(3) for all response costs incurred and to be incurred by the United States relating to the Site, including enforcement actions and pre-judgment interest on all such costs, pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(g)(2).

STATE'S FIRST CLAIM FOR RELIEF

75. Paragraphs 1 through 74 are re-alleged and incorporated herein by reference.

76. As of October 25, 2012, the TCEQ had incurred Superfund response costs of $143,094.00 at the Site.

77. The State has also incurred reasonable and necessary attorneys' fees, costs and expenses in investigating and prosecuting this case.

78. The State, acting on behalf of the TCEQ with respect to its claim for response costs, is a "State" within the meaning of Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(4)(A).

79. The actions taken by the State in connection with the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with which the State has incurred costs. The State will continue to incur costs for response actions in connection with the Site.

80. The costs incurred by the State in connection with the Site are not inconsistent with the NCP, codified at 40 C.F.R. Part 300.

81. Pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a), Defendants are jointly and severally liable to the State for all response costs incurred and to be incurred by the State in connection with the Site, including prejudgment interest.

82. The State asks for judgment against Defendants for its CERCLA response costs.

STATE'S SECOND CLAIM FOR RELIEF

83. Paragraphs 1 through 82 are re-alleged and incorporated herein by reference.

84. Each Defendant is a "person" within the meaning of Sections 361.003(23) and 361.271 of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code §§ 361.003(23) and 361.271.

85. Each hazardous substance, waste, or contaminant found at the Site was a "discarded material" and thus a "solid waste" within the meaning of Sections 361.003(34) and 361.271 of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code §§ 361.003(34) and 361.271.

86. The release of hazardous substances, waste and contaminants at the Site was a discharging, depositing, dumping, spilling, leaking, or placing of solid waste into or on land or water, so that the solid waste or any constituent thereof might be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner, and was thus a "disposal" within the meaning of Sections 361.003(7) and 361.133 of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code §§ 361.003(7) and 361.133.

87. The Site is a tract of land on which solid waste was disposed of and is thus a "solid waste facility" within the meaning of Sections 361.003(36) and 361.271 of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code §§ 361.003(36) and 361.271.

88. Each Defendant owned or operated a solid waste facility at the time of processing, storage, or disposal of solid waste, or arranged to process, store, or dispose of solid waste at a facility; or accepted solid waste for transport to a facility; and is thus a "person responsible for solid waste" within the meaning of Tex. Health & Safety Code § 361.271(a) and a "responsible party" within the meaning of Tex. Health & Safety Code § 361.197(d).

89. The action taken by the TCEQ at the Site was a "remedial action" or "removal" within the meaning of Tex. Health & Safety Code §§ 361.003(29)-(30) and 361.133(c).

90. The funds expended by the TCEQ for its response actions were taken from the Hazardous and Solid Waste Remediation Fee Account, established at Tex. Health & Safety Code § 361.133(a).

91. The funds expended by the TCEQ were for expenses concerning compliance with CERCLA and the federal Superfund Amendments and Reauthorization Act of 1986, within the meaning of Tex. Health & Safety Code § 361.133(c)(3)(A).

92. Additionally, or in the alternative, the funds expended by the TCEQ were expenses concerning the cleanup or removal of a spill, release, or potential threat of release of a hazardous substance where immediate action was appropriate to protect human health and the environment, within the meaning of Tex. Health & Safety Code § 361.133(c)(5).

93. Thus, the funds contributed by the TCEQ were "costs of an action taken under Section 361.133(c)(1), (2), (3), (5) or (6)," within the meaning of Tex. Health & Safety Code § 361.197(d).

94. Accordingly, the TCEQ should recover from the Defendants all of its costs expended in relation to the Site, as allowed by Tex. Health & Safety Code § 361.197(d).

95. The State asks for judgment against the Defendants for its response costs under the Texas Solid Waste Disposal Act.

STATE'S CLAIM FOR ATTORNEYS' FEES

96. Paragraphs 1 through 95 are re-alleged and incorporated herein by reference.

97. The State has incurred reasonable attorneys' fees, reasonable costs to prepare and provide witnesses, and reasonable costs of investigating and assessing the Site, and asks that those fees and costs be recovered from the Defendants as allowed by Tex. Water Code § 7.108, Tex. Gov't Code § 402.006(c), and Tex. Health & Safety Code § 361.341.

PRAYER FOR RELIEF

WHEREFORE, the United States and the State respectfully request that this Court:

A. Enter judgment, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),

in favor of the United States against Defendants jointly and severally for all response costs incurred and to be incurred by the United States relating to the Site, including pre-judgment interest on all such costs incurred;

B. Enter judgment, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in favor of the State against Defendants jointly and severally for all response costs incurred and to be incurred by the State relating to the Site, including pre-judgment interest on all such costs incurred;

C. Enter a judgment, pursuant to Section 361.197(d) of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code, § 361.197(d), in favor of the State and against Defendants jointly and severally for all response costs incurred by the State in relation to the Site;

D. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding on any subsequent action or actions to recover further response costs or damages, declaring Defendants liable for future response costs incurred by the United States or the State in relation to the Site;

E. Award the United States and the State their costs of this Action;

F. Award the State its reasonable attorneys' fees in this Action; and

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

Respectfully submitted,

FOR THE UNITED STATES:

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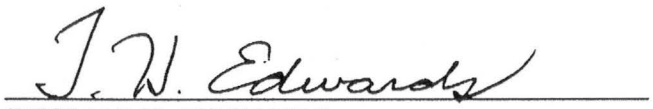

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