To: Twine, Dyiann[Twine.Dyiann@epa.gov]
Cc: Nixon, Lance[Nixon.Lance@epa.gov]; Coltrain, Katrina[coltrain.katrina@epa.gov]; Peycke, Mark[Peycke.Mark@epa.gov]; Benton, Marvin[Benton.Marvin@epa.gov]
From: Werner, Robert[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FBED641AB0D042D0A5D72B0FCC4EC9EC-WERNER, ROBERT]
Sent: Mon 2/27/2017 5:16:54 PM (UTC)
Subject: Wilcox Oil (06GG) -- FW: Wilcox Oil ---Request to Obtain Federal Complaint
PACER result -- Case #15-cv-523, Docket (Info current as of 2017-02-27).pdf
PACER result -- Case #15-cv-523, Document # 1 - Civil Cover Sheet.pdf
PACER result -- Case #15-cv-523, Document # 68 - Amended complaint filed by Plaintiffs (Bristow First Assembly of God and others).pdf

Dyiann,

Attached are copies of docket for Case # 15-CV-523-TCK (info current as of 2017-02-27), the listed document # 1 (Civil Cover Sheet filed 9/14/2015), and the listed document #68 (amended complaint filed 10/12/2016).

Bob
5.6724

From: Twine, Dyiann
Sent: Monday, February 27, 2017 8:36 AM
To: Werner, Robert <Werner.Robert@epa.gov>; Benton, Marvin <Benton.Marvin@epa.gov>
Subject: FW: Wilcox Oil ---Request to Obtain Federal Complaint

Hey Bob,

I meant PACER.

Thanks
Dyiann

From: Twine, Dyiann
Sent: Friday, February 24, 2017 9:48 AM
To: Werner, Robert <Werner.Robert@epa.gov>
Cc: Benton, Marvin <Benton.Marvin@epa.gov>
Subject: FW: Wilcox Oil ---Request to Obtain Federal Complaint

Good morning Bob,

It's me again needing a favor since I do not have access to CourtLink. Below is an email from Marvin requesting the docket sheet.

Thanks

Dyiann

From: Benton, Marvin
Sent: Thursday, February 23, 2017 6:08 PM
To: Twine, Dyiann <Twine.Dyiann@epa.gov>; Peycke, Mark <Peycke.Mark@epa.gov>
Cc: Coltrain, Katrina <coltrain.katrina@epa.gov>; Nixon, Lance <Nixon.Lance@epa.gov>; Benton, Marvin <Benton.Marvin@epa.gov>
Subject: Wilcox Oil ---Request to Obtain Federal Complaint

Dyiann:

I am following up on what I discussed with
you this morning.

90104634

Please obtain a copy of the federal complaint

that was recently filed involving the
Wilcox Oil SF Site.

The Civil Action Number is 15-CV-523-TCK
and the case was filed in the Northern
District of Oklahoma on or about
June 24, 2015 or June 24, 2016.

I am on leave on Friday February 24th.

If you can locate the complaint please
print it out along with the Civil
Docket sheet.

If the complaint is less than 25
pages please scan it and send it
to me in a PDF via email.

Thanks,

Marvin Benton
Senior Staff Attorney
Superfund Legal Branch
Office Phone: 214-665-3190
benton.marvin@epa.gov

DISCREF

U.S. District Court
U.S. District Court for the Northern District of Oklahoma (Tulsa)
CIVIL DOCKET FOR CASE #: 4:15-cv-00523-TCK-FHM

Bristow First Assembly of God et al v. BP p.l.c. et al
Assigned to: Judge Terence Kern
Referred to: Magistrate Judge Frank H McCarthy
Related Cases: 4:15-cv-00524-TCK-FHM
4:15-cv-00525-TCK-FHM
Case in other court: Creek County Court Clerks, Bristow Division, BCJ-15-00016
Cause: 05:552 Freedom of Information Act

Date Filed: 09/14/2015
Jury Demand: None
Nature of Suit: 240 Torts to Land
Jurisdiction: Diversity

Plaintiff

Bristow First Assembly of God represented by **Allan DeVore**
DeVore & Jorgenson PLC
5709 NW 132ND ST
OKLAHOMA CITY, OK 73142
405-603-8585
Fax: 877-636-8113
Email: allan@devorejorgenson.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ervin Edd Pritchett , Jr
Durbin Larimore & Bialick
920 N HARVEY
OKLAHOMA CITY, OK 73102-2610
405-235-9584

Fax: 405-235-0551
Email: Epritchett@dlb.net
TERMINATED: 09/14/2015
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Jandra Susanne Jorgenson
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405-235-9584
Fax: 405-235-0551
Email: MDarrah@dlb.net
TERMINATED: 09/14/2015
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Mark S Evans *individually, and as parent and next of kin to C.J.E. and B.K.E., minor children*
-
CJE
-
BKE

represented by **Allan DeVore**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ervin Edd Pritchett , Jr
(See above for address)
TERMINATED: 09/14/2015
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jandra Susanne Jorgenson
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lane Rudder Neal
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael J Blaschke
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Micheal L Darrah
(See above for address)
TERMINATED: 09/14/2015
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Christina J Evans *individually, and as parent and next of kin to C.J.E. and B.K.E., minor children* - CJE - BKE

represented by **Allan DeVore**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ervin Edd Pritchett , Jr
(See above for address)
TERMINATED: 09/14/2015
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jandra Susanne Jorgenson
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lane Rudder Neal
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael J Blaschke
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Micheal L Darrah
(See above for address)
TERMINATED: 09/14/2015

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

BP p.l.c. represented by **Archer Scott McDaniel**
McDaniel Acord PLLC
9343 E 95TH CT
TULSA, OK 74133
918-382-9200
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TERMINATED: 10/26/2016
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ATTORNEY TO BE NOTICED

Defendant

Marathon Oil Corporation represented by

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405-552-2235
Fax: 405-228-7435
Email: ken.blakley@mcafeetaft.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Marathon Petroleum Corporation represented by

Kenneth H Blakley
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

represented by

Kinder Morgan, Inc.

Amy Sherry-Fischer
Foliart Huff Ottaway & Bottom
201 ROBERT S KERR AVE 12TH FL
OKLAHOMA CITY, OK 73102
405-232-4633
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PRINCETON, NJ 08542
609-716-6500
Fax: 609-799-7000
Email: ross.lewin@dbr.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Wendell Sandlin
terminated by Order at dkt #[66] on 9/28/16; unterminated by Amended Complaint dkt #[68]

Defendant

Bolin Oil Company
a Partnership comprised of, terminated by Order at dkt #[66] on 9/28/16; unterminated by Amended Complaint dkt #[68]

Defendant

DH Bolin
terminated by Order at dkt #[66] on 9/28/16; unterminated by Amended Complaint dkt #[68]

Defendant

DP Bolin
terminated by Order at dkt #[66] on 9/28/16; unterminated by Amended Complaint dkt #[68]

Defendant

RL Bowlin
terminated by Order at dkt #[66] on 9/28/16; unterminated by Amended Complaint dkt #[68]

represented by **John Louis Randolph , Jr**
Pray Walker PC
100 W 5TH ST STE 900
TULSA, OK 74103-4292
918-581-5500
Fax: 918-581-5599
Email: jrandolph@praywalker.com

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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Fax: 918-581-5599
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ATTORNEY TO BE NOTICED

Robert Mitchener , III
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100 W 5TH ST STE 900
TULSA, OK 74103-4292
918-581-5500
Fax: 918-581-5599
Email: rmitchener@praywalker.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

CW Bolin
terminated by Order at dkt #[66] on 9/28/16; unterminated by Amended Complaint dkt #[68]

Defendant

CW Stradley
terminated by Order at dkt #[66] on 9/28/16;

unterminated by Amended Complaint dkt #[68]

Defendant

Billy Joe Bennett
terminated by Order at dkt #[66] on 9/28/16; unterminated by Amended Complaint dkt #[68]

Defendant

Peggy L Bennett
terminated by Order at dkt #[66] on 9/28/16; unterminated by Amended Complaint dkt #[68]

Defendant

Liberty National Bank
TERMINATED: 09/28/2016
formerly known as Chickasha Bank of Chickasha
TERMINATED: 09/28/2016

Defendant

CP Mercer
terminated by Order at dkt #[66] on

9/28/16;
unterminated by
Amended Complaint
dkt #[68]

Defendant

M Aline Mercer
their subsidiaries, heirs, estates, successors, executors and assigns of the named persons and entities, terminated by Order at dkt # [66] on 9/28/16; unterminated by Amended Complaint dkt #[68]

Defendant

Chickasha Bank of Chickasha

Date Filed	#	Docket Text
06/24/2015		PETITION/COMPLAINT filed in State Court against All Defendants by Mark S Evans, Bristow First Assembly of God, Christina J Evans (sdc, Dpty Clk) (Entered: 09/14/2015)
09/14/2015	1	CIVIL COVER SHEET by Kinder Morgan, Inc. (Sherry-Fischer, Amy) (Entered: 09/14/2015)
09/14/2015	2	NOTICE of Removal from District Court of Creek County, Bristow Division, case number CJ-2015-00016 (paid $400 filing fee; receipt number 1085-1500175) by Kinder Morgan, Inc. (With attachments) (Sherry-Fischer, Amy) (Entered: 09/14/2015)

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09/14/2015	3	STATUS REPORT on Removed Action by Kinder Morgan, Inc. (Sherry-Fischer, Amy) (Entered: 09/14/2015)
09/14/2015	4	ATTORNEY APPEARANCE by Amy Sherry-Fischer on behalf of Kinder Morgan, Inc. (Sherry-Fischer, Amy) (Entered: 09/14/2015)
09/14/2015	5	ATTORNEY APPEARANCE by Larry D Ottaway on behalf of Kinder Morgan, Inc. (Ottaway, Larry) (Entered: 09/14/2015)
09/15/2015	6	MINUTE ORDER by Court Clerk , directing Bristow First Assembly of God and Kinder Morgan, Inc. to file a Corporate Disclosure Statement pursuant to FRCvP 7.1 within seven (7) days of this order, if they have not already done so. The parties shall use the form entitled Corporate Disclosure Statement available on the Courts website (please do not refile if already filed on non-court form unless directed to do so). If you have already filed your Corporate Disclosure Statement in this case, you are reminded to file a Supplemental Corporate Disclosure Statement within a reasonable time of any change in the information that the statement requires. (This entry is the Official Order of the Court. No document is attached.) (sdc, Dpty Clk) (Entered: 09/15/2015)
09/15/2015	7	MINUTE ORDER by Court Clerk , directing BP p.l.c., Marathon Oil Corporation and Marathon Petroleum Corporation to file a Corporate Disclosure Statement pursuant to FRCvP 7.1 within seven (7) days of this order, if they have not already done so. The parties shall use the form entitled Corporate Disclosure Statement available on the Courts website (please do not refile if already filed on non-court form unless directed to do so). If you have already filed your Corporate Disclosure Statement in this case, you are reminded to file a Supplemental Corporate Disclosure Statement within a reasonable time of any change in the information that the

		statement requires. (This entry is the Official Order of the Court. No document is attached.) (sdc, Dpty Clk) (Entered: 09/15/2015)
09/15/2015	8	MOTION to Dismiss Party Kinder Morgan, Inc. by Kinder Morgan, Inc. (Sherry-Fischer, Amy) Modified on 10/28/2015- **STRICKEN per 53** (sac, Dpty Clk). (Entered: 09/15/2015)
09/15/2015	9	BRIEF in Support of Motion (Re: 8 MOTION to Dismiss Party Kinder Morgan, Inc.) by Kinder Morgan, Inc. ; (With attachments) (Sherry-Fischer, Amy) (Entered: 09/15/2015)
09/16/2015	10	CERTIFICATE by Kinder Morgan, Inc. (Sherry-Fischer, Amy) (Entered: 09/16/2015)
09/16/2015	11	SPECIAL APPEARANCE by Stacy L Acord on behalf of BP p.l.c. (Acord, Stacy) (Entered: 09/16/2015)
09/16/2015	12	Unopposed MOTION for Extension of Time to Answer or Otherwise Plead by BP p.l.c. (Acord, Stacy) Modified on 9/17/2015 to correct event (srt, Dpty Clk). (Entered: 09/16/2015)
09/16/2015	13	SPECIAL APPEARANCE by Archer Scott McDaniel on behalf of BP p.l.c. (McDaniel, Archer) (Entered: 09/16/2015)
09/16/2015	14	CORPORATE DISCLOSURE STATEMENT (Other Affiliate: JP Morgan Chase) by BP p.l.c. (Acord, Stacy) Modified on 9/17/2015 to add other affiliate (srt, Dpty Clk). (Entered: 09/16/2015)
09/16/2015	15	SPECIAL APPEARANCE by Miranda Rachelle Calhoun on behalf of BP p.l.c. (Calhoun, Miranda) (Entered: 09/16/2015)
09/17/2015	16	MINUTE ORDER by Judge Terence Kern - *Defendant BP has until October 5, 2015 to answer or otherwise respond to Plaintiffs' Petition/Complaint* ; granting 12 Motion to Accelerate/Extend/Reset Hearing(s)/Deadline

		(s) (Re: 2 Notice of Removal) (This entry is the Official Order of the Court. No document is attached.) (vah, Chambers) (Entered: 09/17/2015)
09/17/2015		NOTICE of Docket Entry Modification; Error: wrong event (Motion to Accelerate/Extend/Reset Hearing (s)/Deadline(s)); Correction: corrected event (Motion for Extension of Time to Answer) (Re: 12 MOTION for Extension of Time to Answer) (srt, Dpty Clk) (Entered: 09/17/2015)
09/17/2015	17	CORPORATE DISCLOSURE STATEMENT by Kinder Morgan, Inc. (Sherry-Fischer, Amy) (Entered: 09/17/2015)
09/18/2015	18	ATTORNEY APPEARANCE by Kenneth H Blakley on behalf of Marathon Oil Corporation, Marathon Petroleum Corporation (Blakley, Kenneth) (Entered: 09/18/2015)
09/18/2015	19	Unopposed MOTION for Extension of Time to Answer *or otherwise Plead* (Re: State Court Petition/Complaint) by Marathon Oil Corporation, Marathon Petroleum Corporation (Blakley, Kenneth) (Entered: 09/18/2015)
09/21/2015	20	MINUTE ORDER by Judge Terence Kern - *Marathon Defendants have until 10/05/15 to answer or otherwise respond to Plaintiffs' Petition/Complaint* ; granting 19 Motion for Extension of Time to Answer (Re: 2 Notice of Removal) (This entry is the Official Order of the Court. No document is attached.) (vah, Chambers) (Entered: 09/21/2015)
09/22/2015	21	CORPORATE DISCLOSURE STATEMENT by Marathon Petroleum Corporation (Blakley, Kenneth) (Entered: 09/22/2015)
09/22/2015	22	CORPORATE DISCLOSURE STATEMENT by Marathon Oil Corporation (Blakley, Kenneth) (Entered: 09/22/2015)
09/23/2015	23	

		Supplemental CORPORATE DISCLOSURE STATEMENT (identifying: Corporate Parent BlackRock, Inc. for Marathon Oil Corporation) by Marathon Oil Corporation (Blakley, Kenneth) (Entered: 09/23/2015)
10/05/2015	24	ANSWER (Re: State Court Petition/Complaint) by Marathon Petroleum Corporation (Blakley, Kenneth) (Entered: 10/05/2015)
10/05/2015	25	ANSWER (Re: State Court Petition/Complaint) by Marathon Oil Corporation (Blakley, Kenneth) (Entered: 10/05/2015)
10/05/2015	26	MOTION to Dismiss *and Incorporated Brief in Support* by BP p.l.c. (With attachments) (McDaniel, Archer) (Entered: 10/05/2015)
10/06/2015	27	SPECIAL APPEARANCE by Micheal L Darrah on behalf of Bristow First Assembly of God, Christina J Evans, Mark S Evans (Darrah, Micheal) (Entered: 10/06/2015)
10/06/2015	28	SPECIAL APPEARANCE by Ervin Edd Pritchett, Jr on behalf of Bristow First Assembly of God, Christina J Evans, Mark S Evans (Pritchett, Ervin) (Entered: 10/06/2015)
10/06/2015	29	RESPONSE in Opposition to Motion (Re: 8 MOTION to Dismiss Party Kinder Morgan, Inc.) by Bristow First Assembly of God, Christina J Evans, Mark S Evans ; (With attachments) (Darrah, Micheal) (Entered: 10/06/2015)
10/09/2015	30	ATTORNEY APPEARANCE by Randall Gene Vaughan on behalf of RL Bowlin (Vaughan, Randall) (Entered: 10/09/2015)
10/09/2015	31	Unopposed MOTION to Accelerate/Extend/Reset Hearing(s)/Deadline(s) *Motion for Extension of Time to Answer Petition* (Re: State Court Petition/Complaint) by RL Bowlin (Vaughan, Randall) (Entered: 10/09/2015)

10/09/2015	32	ATTORNEY APPEARANCE by Robert Mitchener, III on behalf of RL Bowlin (Mitchener, Robert) (Entered: 10/09/2015)
10/13/2015	33	ORDER by Judge Terence Kern - *Defendant, Estate of R.L. Bolin, Deceased is granted an extension of time to answer the Petition until 10 days after the Court rules on the remand issue or the pending Motion to Dismiss, whichever last occurs* ; granting 31 Motion to Accelerate/Extend/Reset Hearing(s)/Deadline(s) (Re: State Court Petition/Complaint) (vah, Chambers) (Entered: 10/13/2015)
10/14/2015	34	NOTICE of Party Name Correction by RL Bowlin (Vaughan, Randall) (Entered: 10/14/2015)
10/14/2015	35	ATTORNEY APPEARANCE by John Louis Randolph, Jr on behalf of RL Bowlin (Randolph, John) (Entered: 10/14/2015)
10/14/2015	36	MOTION to Remand by Bristow First Assembly of God, Christina J Evans, Mark S Evans (With attachments) (Darrah, Micheal) (Entered: 10/14/2015)
10/15/2015	37	MOTION for Leave to File Notice of Supplemental Authority to Plaintiffs' Motion to Remand (Re: 36 MOTION to Remand) by Bristow First Assembly of God, Christina J Evans, Mark S Evans (With attachments) (Darrah, Micheal) (Entered: 10/15/2015)
10/16/2015	38	MOTION for Attorney(s) Ross A. Lewin to be Admitted Pro Hac Vice (paid $75 PHV fee; receipt number 1085-1513397) by Kinder Morgan, Inc. (With attachments) (Sherry-Fischer, Amy) (Entered: 10/16/2015)
10/16/2015	39	MOTION for Attorney(s) Bonnie A. Barnett to be Admitted Pro Hac Vice (paid $75 PHV fee; receipt number 1085-1513422) by Kinder Morgan, Inc. (With attachments) (Sherry-Fischer, Amy) (Entered: 10/16/2015)

10/16/2015	40	MOTION for Attorney(s) P. Leigh Bausinger to be Admitted Pro Hac Vice (paid $75 PHV fee; receipt number 1085-1513425) by Kinder Morgan, Inc. (With attachments) (Sherry-Fischer, Amy) (Entered: 10/16/2015)
10/19/2015	41	MINUTE ORDER by Judge Terence Kern - *re: attorney Ross A. Lewin* ; granting 38 Motion for Admission Pro Hac Vice (This entry is the Official Order of the Court. No document is attached.) (vah, Chambers) (Entered: 10/19/2015)
10/19/2015	42	MINUTE ORDER by Judge Terence Kern - *re: attorney Bonnie Allyn Barnett* ; granting 39 Motion for Admission Pro Hac Vice (This entry is the Official Order of the Court. No document is attached.) (vah, Chambers) (Entered: 10/19/2015)
10/19/2015	43	MINUTE ORDER by Judge Terence Kern - *re: attorney P. Leigh Bausinger* ; granting 40 Motion for Admission Pro Hac Vice (This entry is the Official Order of the Court. No document is attached.) (vah, Chambers) (Entered: 10/19/2015)
10/19/2015	44	Unopposed MOTION for Extension of Time to Reply to Motion Response (Re: 8 MOTION to Dismiss Party Kinder Morgan, Inc.) by Kinder Morgan, Inc. (Sherry-Fischer, Amy) (Entered: 10/19/2015)
10/19/2015	45	SPECIAL APPEARANCE by Jandra Susanne Jorgenson on behalf of Bristow First Assembly of God, Christina J Evans, Mark S Evans (Jorgenson, Jandra) (Entered: 10/19/2015)
10/19/2015	46	MINUTE ORDER by Judge Terence Kern ; setting/resetting deadline(s)/hearing(s): (Replies due by 10/27/2015); granting 44 Motion for Extension of Time to Reply to Motion Response (Re: 8 MOTION to Dismiss Party Kinder Morgan, Inc.) (This entry is the Official

		Order of the Court. No document is attached.) (vah, Chambers) (Entered: 10/19/2015)
10/19/2015	47	SPECIAL APPEARANCE by Robert Allan DeVore on behalf of Bristow First Assembly of God, Christina J Evans, Mark S Evans (DeVore, Robert) (Entered: 10/19/2015)
10/20/2015	48	MINUTE ORDER by Judge Terence Kern ; granting 37 Motion for Leave to File Document(s) (This entry is the Official Order of the Court. No document is attached.) (vah, Chambers) (Entered: 10/20/2015)
10/21/2015	49	NOTICE of Supplemental Authority to Plaintiffs' Motion to Remand (Re: 36 MOTION to Remand) by Bristow First Assembly of God, Christina J Evans, Mark S Evans (Darrah, Micheal) (Entered: 10/21/2015)
10/26/2015	50	MOTION to Withdraw Document(s) (Re: 8 MOTION to Dismiss Party Kinder Morgan, Inc.) by Kinder Morgan, Inc. (Sherry-Fischer, Amy) Modified on 10/27/2015 to correct event (srt, Dpty Clk). (Entered: 10/26/2015)
10/26/2015	51	MOTION for Extension of Time to Answer *Petition* (Re: State Court Petition/Complaint) by Kinder Morgan, Inc. (With attachments) (Sherry-Fischer, Amy) (Entered: 10/26/2015)
10/26/2015	52	RESPONSE in Opposition to Motion (Re: 26 MOTION to Dismiss *and Incorporated Brief in Support*) by Bristow First Assembly of God, Christina J Evans, Mark S Evans ; (With attachments) (Darrah, Micheal) (Entered: 10/26/2015)
10/27/2015		NOTICE of Docket Entry Modification; Error: wrong event (Notice (Other)); Correction: corrected event (Motion to Withdraw Document(s)) (Re: 50 MOTION to Withdraw Document(s)) (srt, Dpty Clk) (Entered: 10/27/2015)
10/27/2015	53	

ED_013222_00000061-00019

		MINUTE ORDER by Judge Terence Kern - *Striking Doc. 8* ; striking/withdrawing document(s); granting 50 Motion to Withdraw Documents(s) (Re: 8 MOTION to Dismiss Party Kinder Morgan, Inc.) (Documents Terminated: 8 MOTION to Dismiss Party Kinder Morgan, Inc.) (This entry is the Official Order of the Court. No document is attached.) (vah, Chambers) (Entered: 10/27/2015)
10/27/2015	54	MINUTE ORDER by Judge Terence Kern - *Defendant Kinder Morgan has until November 16, 2015 to answer or otherwise respond to the Petition* ; granting 51 Motion for Extension of Time to Answer (Re: State Court Petition/Complaint) (This entry is the Official Order of the Court. No document is attached.) (vah, Chambers) (Entered: 10/27/2015)
11/04/2015	55	RESPONSE in Opposition to Motion (Re: 36 MOTION to Remand) by Kinder Morgan, Inc. ; (With attachments) (Sherry-Fischer, Amy) Modified on 11/6/2015 to seal exhibit 8 as it was filed unredacted; counsel will file the redacted version using the Errata/Correction event (sc, Dpty Clk). (Entered: 11/04/2015)
11/06/2015	56	ERRATA/CORRECTION (Re: 55 Response in Opposition to Motion,) by Kinder Morgan, Inc. (With attachments) (Sherry-Fischer, Amy) (Entered: 11/06/2015)
11/09/2015	57	REPLY to Response to Motion (Re: 26 MOTION to Dismiss *and Incorporated Brief in Support*) by BP p.l.c. ; (Acord, Stacy) (Entered: 11/09/2015)
11/16/2015	58	ANSWER (Re: State Court Petition/Complaint) by Kinder Morgan, Inc. (Sherry-Fischer, Amy) (Entered: 11/16/2015)
11/18/2015	59	REPLY to Response to Motion (Re: 36 MOTION to Remand) by Bristow First Assembly of God, Christina J Evans, Mark S Evans ; (Darrah, Micheal) (Entered: 11/18/2015)

04/01/2016	60	SPECIAL APPEARANCE by Melissa Ann East on behalf of BP p.l.c. [Note: Attorney Melissa Ann East added to party BP p.l.c.(pty:dft).] (East, Melissa) (Entered: 04/01/2016)
05/13/2016	61	ORDER by Judge Terence Kern , directing parties to file joint status report (Status Report due by 6/13/2016) (srt, Dpty Clk) (Entered: 05/13/2016)
05/23/2016	62	NOTICE of Matter Under Advisement by Bristow First Assembly of God, Christina J Evans, Mark S Evans (DeVore, Robert) (Entered: 05/23/2016)
05/26/2016	63	ATTORNEY APPEARANCE by Lane Rudder Neal on behalf of Bristow First Assembly of God, Christina J Evans, Mark S Evans [Note: Attorney Lane Rudder Neal added to party Bristow First Assembly of God(pty:pla), Attorney Lane Rudder Neal added to party Christina J Evans(pty:pla), Attorney Lane Rudder Neal added to party Mark S Evans(pty:pla).] (Neal, Lane) (Entered: 05/26/2016)
06/13/2016	64	Joint JOINT STATUS REPORT by Bristow First Assembly of God, Christina J Evans, Mark S Evans (DeVore, Robert) (Entered: 06/13/2016)
08/23/2016	65	NOTICE of Matter Under Advisement (Re: 36 MOTION to Remand) by Bristow First Assembly of God, Christina J Evans, Mark S Evans (DeVore, Robert) (Entered: 08/23/2016)
09/28/2016	66	OPINION AND ORDER by Judge Terence Kern ; granting in part and denying in part 26 Motion to Dismiss; denying 36 Motion to Remand (lmc, Chambers) (Entered: 09/28/2016)
09/29/2016	67	ORDER by Judge Terence Kern , directing parties to file joint status report (Status Report due by 10/12/2016) (srt, Dpty Clk) (Entered: 09/29/2016)
10/12/2016	68	

		AMENDED COMPLAINT against all Defendants (Re: State Court Petition/Complaint) by Mark S Evans, Bristow First Assembly of God, Christina J Evans (Darrah, Micheal) Modified on 10/12/2016 to correct who amended complaint is against (srt, Dpty Clk). (Entered: 10/12/2016)
10/12/2016		NOTICE of Docket Entry Modification; Error: wrong against party selected; Correction: edited docket text to reflect who amended complaint is against (Re: 68 Amended Complaint,) (srt, Dpty Clk) (Entered: 10/12/2016)
10/12/2016	69	JOINT STATUS REPORT by Bristow First Assembly of God, Christina J Evans, Mark S Evans (Darrah, Micheal) (Entered: 10/12/2016)
10/18/2016	70	MINUTE ORDER by Judge Terence Kern *referring the Joint Status Report to Magistrate Judge McCarthy to conduct a scheduling conference and enter a scheduling order*, referring for a scheduling conference to Magistrate Judge McCarthy (Re: 69 Joint Status Report per Local Rule 16.1) (This entry is the Official Order of the Court. No document is attached.) (srt, Dpty Clk) (Entered: 10/18/2016)
10/20/2016	71	MINUTE ORDER by Magistrate Judge Frank H McCarthy , setting/resetting deadline(s)/hearing(s): *Parties are directed to submit a Joint Proposed Case Management Plan by 11/21/2016* (Miscellaneous Deadline set for 11/21/2016) (This entry is the Official Order of the Court. No document is attached.) (tjc, Dpty Clk) (Entered: 10/20/2016)
10/21/2016	72	Unopposed MOTION for Extension of Time to Answer *or Otherwise Respond* (Re: 68 Amended Complaint,) by BP p.l.c., Kinder Morgan, Inc., Marathon Oil Corporation, Marathon Petroleum Corporation (Sherry-Fischer, Amy) (Entered: 10/21/2016)

10/21/2016	73	ORDER by Judge Terence Kern - *Defendants have until 11/7/2016 to file an answer or respond to Amended Complaint.* ; granting 72 Motion for Extension of Time to Answer (lmc, Chambers) (Entered: 10/21/2016)
10/25/2016	74	SPECIAL APPEARANCE by Rhiannon Kay Baker on behalf of BP p.l.c. [Note: Attorney Rhiannon Kay Baker added to party BP p.l.c.(pty:dft).] (Baker, Rhiannon) (Entered: 10/25/2016)
10/25/2016	75	MOTION to Withdraw Attorney(s) *Miranda R. Calhoun* by BP p.l.c. (McDaniel, Archer) (Entered: 10/25/2016)
10/26/2016	76	MOTION to Reconsider (Re: 66 Opinion and Order, Ruling on Motion to Dismiss, Ruling on Motion to Remand) by BP p.l.c. (McDaniel, Archer) (Entered: 10/26/2016)
10/26/2016	77	MINUTE ORDER by Judge Terence Kern - *Motion to Withdraw Attorney Miranda R. Calhoun as counsel of record for Defendant BP p.l.c. (Doc. 75) is granted.* ; terminating attorney Miranda Rachelle Calhoun ; granting 75 Motion to Withdraw Attorney(s) (This entry is the Official Order of the Court. No document is attached.) (lmc, Chambers) (Entered: 10/26/2016)
11/04/2016	78	MOTION to Strike Portions of Amended Complaint by BP p.l.c. (McDaniel, Archer) (Entered: 11/04/2016)
11/04/2016	79	Partial MOTION to Dismiss for Failure to State a Claim by BP p.l.c. (With attachments) (McDaniel, Archer) (Entered: 11/04/2016)
11/07/2016	80	MOTION to Strike Portions of Amended Complaint by Kinder Morgan, Inc. (Sherry-Fischer, Amy) (Entered: 11/07/2016)
11/07/2016	81	Partial MOTION to Dismiss for Failure to State a Claim by Kinder Morgan, Inc. (Sherry-Fischer, Amy) (Entered: 11/07/2016)
11/07/2016	82	

		BRIEF in Support of Motion (Re: 81 Partial MOTION to Dismiss for Failure to State a Claim) by Kinder Morgan, Inc. ; (With attachments) (Sherry-Fischer, Amy) (Entered: 11/07/2016)
11/07/2016	83	Partial MOTION to Dismiss *Amended Complaint And Brief In Support* by Marathon Oil Corporation, Marathon Petroleum Corporation (Blakley, Kenneth) (Entered: 11/07/2016)
11/15/2016	84	ATTORNEY APPEARANCE by Jordyn L Cartmell on behalf of Kinder Morgan, Inc. [Note: Attorney Jordyn L Cartmell added to party Kinder Morgan, Inc.(pty:dft).] (Cartmell, Jordyn) (Entered: 11/15/2016)
11/15/2016	85	Unopposed MOTION for Extension of Time to Respond to Motion (Re: 78 MOTION to Strike, 79 MOTION to Dismiss, 80 MOTION to Strike, 81 MOTION to Dismiss, 83 Partial MOTION to Dismiss *Amended Complaint And Brief In Support*) by Bristow First Assembly of God, Christina J Evans, Mark S Evans (DeVore, Robert) Modified on 11/16/2016 to change prefix text and add links 78-81 (sac, Dpty Clk). (Entered: 11/15/2016)
11/16/2016		NOTICE of Docket Entry Modification; Error: not all links were not created; Correction: created additional links to 78 , 79 , 80 and 81 (Re: 85 Unopposed MOTION for Extension of Time to Respond to Motion) (sac, Dpty Clk) (Entered: 11/16/2016)
11/16/2016	86	RESPONSE in Opposition to Motion (Re: 76 MOTION to Reconsider) by Bristow First Assembly of God, Christina J Evans, Mark S Evans ; (Darrah, Micheal) (Entered: 11/16/2016)
11/16/2016	87	MINUTE ORDER by Judge Terence Kern - *Plaintiffs' Motion for Extension of Time to Respond [Doc. 85] is granted. Responses are due 12/12/2016 and replies are due 12/27/2016.* ; setting/resetting deadline(s)/hearing(s): (Responses due by 12/12/2016, Replies due by

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		12/27/2016); granting 85 Motion for Extension of Time to Respond to Motion (Re: 80 MOTION to Strike Portions of Amended Complaint , 81 Partial MOTION to Dismiss for Failure to State a Claim , 79 Partial MOTION to Dismiss for Failure to State a Claim , 83 Partial MOTION to Dismiss *Amended Complaint And Brief In Support*, 78 MOTION to Strike Portions of Amended Complaint) (This entry is the Official Order of the Court. No document is attached.) (lmc, Chambers) (Entered: 11/16/2016)
11/21/2016	88	NOTICE Joint Case Management Plan by Bristow First Assembly of God, Christina J Evans, Mark S Evans (DeVore, Robert) (Entered: 11/21/2016)
11/21/2016	89	NOTICE Defendants' Proposed Case Management Plan by BP p.l.c., Kinder Morgan, Inc., Marathon Oil Corporation, Marathon Petroleum Corporation (Sherry-Fischer, Amy) (Entered: 11/21/2016)
11/28/2016	90	MOTION to Strike Document(s) (Re: 89 Notice (Other)) by Bristow First Assembly of God, Christina J Evans, Mark S Evans (DeVore, Robert) (Entered: 11/28/2016)
11/29/2016	91	REPLY to Response to Motion (Re: 76 MOTION to Reconsider) by BP p.l.c. ; (With attachments) (McDaniel, Archer) (Entered: 11/29/2016)
12/05/2016	92	MINUTE ORDER by Magistrate Judge Frank H McCarthy *(Courtroom #2, Third Floor)*, setting/resetting deadline(s)/hearing(s): (Scheduling Conference set for 12/13/2016 at 02:00 PM before Magistrate Judge Frank H McCarthy) (This entry is the Official Order of the Court. No document is attached.) (tjc, Dpty Clk) (Entered: 12/05/2016)
12/05/2016	93	MINUTE ORDER by Judge Terence Kern , referring motion(s) to Magistrate Judge McCarthy (Re: 90 MOTION to Strike Document(s)) (This entry is the

		Official Order of the Court. No document is attached.) (lmc, Chambers) (Entered: 12/05/2016)
12/06/2016	94	MOTION for Leave to Appear *Telephonically* by Kinder Morgan, Inc. (Cartmell, Jordyn) (Entered: 12/06/2016)
12/06/2016	95	MINUTE ORDER by Judge Terence Kern , referring motion(s) to Magistrate Judge McCarthy (Re: 94 MOTION for Leave to Appear *Telephonically*) (This entry is the Official Order of the Court. No document is attached.) (lmc, Chambers) (Entered: 12/06/2016)
12/07/2016	96	ORDER by Magistrate Judge Frank H McCarthy ; granting 94 Motion for Leave to Appear (tjc, Dpty Clk) (Entered: 12/07/2016)
12/09/2016	97	RESPONSE in Opposition to Motion (Re: 90 MOTION to Strike Document(s)) by BP p.l.c., Kinder Morgan, Inc., Marathon Oil Corporation, Marathon Petroleum Corporation ; (With attachments) (Sherry-Fischer, Amy) (Entered: 12/09/2016)
12/12/2016	98	RESPONSE in Opposition to Motion (Re: 83 MOTION to Strike Portions of Amended Complaint) by Bristow First Assembly of God, Christina J Evans, Mark S Evans ; (DeVore, Allan) Modified on 12/13/2016 to change link (sac, Dpty Clk). (Entered: 12/12/2016)
12/12/2016	99	RESPONSE in Opposition to Motion (Re: 81 Partial MOTION to Dismiss for Failure to State a Claim , 83 Partial MOTION to Dismiss *Amended Complaint And Brief In Support*, 79 Partial MOTION to Dismiss for Failure to State a Claim) by Bristow First Assembly of God, Christina J Evans, Mark S Evans ; (Darrah, Micheal) (Entered: 12/12/2016)
12/13/2016	100	MINUTES of Proceedings - held before Magistrate Judge Frank H McCarthy: Scheduling Conference held on 12/13/2016 ; striking/terminating deadline(s)/Hearing(s); denying 90 Motion to Strike Document(s) (Court Reporter: C2) (tjc, Dpty Clk) (Entered: 12/13/2016)

12/14/2016	101	SCHEDULING ORDER by Magistrate Judge Frank H McCarthy , setting/resetting scheduling order date(s): (Discovery due by 4/30/2018, Dispositive Motions due by 5/14/2018, Proposed Pretrial Order due by 9/4/2018, Pretrial Conference set for 9/11/2018 at 01:30 PM before Judge Terence Kern, Jury Trial set for 10/15/2018 at 09:30 AM before Judge Terence Kern) (tjc, Dpty Clk) (Entered: 12/14/2016)
12/15/2016	102	Unopposed MOTION for Extension of Time to Reply to Motion Response (Re: 81 Partial MOTION to Dismiss for Failure to State a Claim , 83 Partial MOTION to Dismiss *Amended Complaint And Brief In Support*, 80 MOTION to Strike Portions of Amended Complaint , 79 Partial MOTION to Dismiss for Failure to State a Claim , 78 MOTION to Strike Portions of Amended Complaint) by BP p.l.c., Kinder Morgan, Inc., Marathon Oil Corporation, Marathon Petroleum Corporation (Sherry-Fischer, Amy) (Entered: 12/15/2016)
12/15/2016	103	MOTION to Accelerate/Extend/Reset Hearing (s)/Deadline(s) *Defendants' Motion for Extension of Time to Respond to Plaintiffs' First Set of Discovery* by Marathon Oil Corporation, Marathon Petroleum Corporation (Blakley, Kenneth) (Entered: 12/15/2016)
12/16/2016	104	MINUTE ORDER by Judge Terence Kern - *Defendants' Motion for Extension of Time to File Reply Briefs (Doc. 102) is GRANTED. Defendants' Reply Briefs to Motions to Strike Portions of the Amended Complaint (Docs. 78, 80) and Partial Motions to Dismiss (Docs. 79, 81, 83) are due no later than 1/6/2017.* ; setting/resetting deadline (s)/hearing(s): (Replies due by 1/6/2017); granting 102 Motion for Extension of Time to Reply to Motion Response (Re: 80 MOTION to Strike Portions of Amended Complaint , 81 Partial MOTION to Dismiss for Failure to State a Claim , 79 Partial MOTION to Dismiss for Failure to State a Claim , 83 Partial MOTION to

		Dismiss *Amended Complaint And Brief In Support*, 78 MOTION to Strike Portions of Amended Complaint) (This entry is the Official Order of the Court. No document is attached.) (lmc, Chambers) (Entered: 12/16/2016)
12/16/2016	105	MINUTE ORDER by Judge Terence Kern , referring motion(s) to Magistrate Judge McCarthy (Re: 103 MOTION to Accelerate/Extend/Reset Hearing (s)/Deadline(s) *Defendants' Motion for Extension of Time to Respond to Plaintiffs' First Set of Discovery*) (This entry is the Official Order of the Court. No document is attached.) (lmc, Chambers) (Entered: 12/16/2016)
12/19/2016	106	RESPONSE in Opposition to Motion (Re: 103 MOTION to Accelerate/Extend/Reset Hearing(s)/Deadline(s) *Defendants' Motion for Extension of Time to Respond to Plaintiffs' First Set of Discovery*) by Bristow First Assembly of God, Christina J Evans, Mark S Evans ; (DeVore, Allan) (Entered: 12/19/2016)
12/22/2016	107	MOTION for Leave to File Supplemental Brief to Plaintiffs' Response and Objection to Defendants' Partial Motion to Dismiss (Re: 99 Response in Opposition to Motion,) by Bristow First Assembly of God, Christina J Evans, Mark S Evans (With attachments) (Darrah, Micheal) (Entered: 12/22/2016)
12/22/2016	108	MINUTE ORDER by Judge Terence Kern - *Plaintiffs' Motion for Leave to File a Supplemental Brief to Their Response and Objection to Defendants' Partial Motions to Dismiss (Doc. 107) is granted. Supplemental Brief to Partial Motions to Dismiss (Docs. 79,81,83) shall not exceed five (5) pages.* ; granting 107 Motion for Leave to File Document(s) (Re: 81 Partial MOTION to Dismiss for Failure to State a Claim , 83 Partial MOTION to Dismiss *Amended Complaint And Brief In Support*, 79 Partial MOTION to Dismiss for Failure to State a Claim) (This

		entry is the Official Order of the Court. No document is attached.) (lmc, Chambers) (Entered: 12/22/2016)
12/22/2016	109	Supplemental BRIEF in Opposition of Motion (Re: 81 Partial MOTION to Dismiss for Failure to State a Claim , 83 Partial MOTION to Dismiss *Amended Complaint And Brief In Support*, 79 Partial MOTION to Dismiss for Failure to State a Claim) by Bristow First Assembly of God, Christina J Evans, Mark S Evans ; (With attachments) (Darrah, Micheal) Modified on 12/27/2016 to edit text to reflect this Brief is in opposition (srt, Dpty Clk). (Entered: 12/22/2016)
01/06/2017	110	REPLY to Response to Motion (Re: 78 MOTION to Strike Portions of Amended Complaint) by BP p.l.c. ; (McDaniel, Archer) (Entered: 01/06/2017)
01/06/2017	111	REPLY to Response to Motion (Re: 79 Partial MOTION to Dismiss for Failure to State a Claim) by BP p.l.c. ; (With attachments) (McDaniel, Archer) (Entered: 01/06/2017)
01/06/2017	112	REPLY to Response to Motion (Re: 80 MOTION to Strike Portions of Amended Complaint) by Kinder Morgan, Inc. ; (Sherry-Fischer, Amy) (Entered: 01/06/2017)
01/06/2017	113	REPLY to Response to Motion (Re: 81 Partial MOTION to Dismiss for Failure to State a Claim) by Kinder Morgan, Inc. ; (Sherry-Fischer, Amy) (Entered: 01/06/2017)
01/06/2017	114	REPLY to Response to Motion (Re: 83 Partial MOTION to Dismiss *Amended Complaint And Brief In Support*) by Marathon Oil Corporation, Marathon Petroleum Corporation ; (Blakley, Kenneth) (Entered: 01/06/2017)
01/30/2017	115	MINUTE ORDER by Magistrate Judge Frank H McCarthy ; finding as moot 103 Motion to Accelerate/Extend/Reset Hearing(s)/Deadline(s) (This

		entry is the Official Order of the Court. No document is attached.) (tjc, Dpty Clk) (Entered: 01/30/2017)

PACER Service Center			
Transaction Receipt			
02/27/2017 10:14:33			
PACER Login:	Region6Superfund:2734405:3947196	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	4:15-cv-00523-TCK-FHM
Billable Pages:	13	**Cost:**	1.30

JS 44 (Rev. 12/12)

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

1) BRISTOW FIRST ASSEMBLY OF GOD; 2) MARK S. EVANS and 3) CHRISTINA J. EVANS, individually, and as parents and next of kin to C.J.E. and B.K.E., minor children,

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Michael L. Darrah & E. Edd Pritchett, Jr., Durbin, Larimore & Bialick, 920 N. Harvey, Oklahoma City, OK 73102, 405-235-9584; Allan DeVore & Jandra Jorgenson, DeVore & Jorgenson, PLC, 5709 N.W. 132nd St., Oklahoma City, OK 73142, 405-603-8585; Michael J. Blaschke, Michale J. Blaschke, P.C., 3037 N.W. 63rd Street, Ste. 205, Oklahoma City, OK 73116, 405-562-7771

DEFENDANTS

See attached

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

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

Attorneys *(If Known)*

Attorneys for Kinder Morgan, Inc.: Larry D. Ottaway and Amy Sherry Fischer, Foliart, Huff, Ottaway & Bottom, 201 Robert S. Kerr Avenue, 12th Floor, Oklahoma City, Oklahoma 73102, 405-232-4633

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 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) (For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☒ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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)*:
28 U.S.C. § 1446

Brief description of cause:
Enviromental liability action

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
9/14/2015

SIGNATURE OF ATTORNEY OF RECORD
Amy Sherry Fischer

FOR OFFICE USE ONLY

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

Defendants:

1) BP p.l.c.;
2) MARATHON OIL CORPORATION;
3) MARATHON PETROLEUM CORPORATION;
4) KINDER MORGAN, INC.;
5) WENDELL SANDLIN;
6) BOLIN OIL COMPANY, a Partnership comprised of
7) D.H. BOLIN,
8) D.P. BOLIN,
9) R.L. BOWLIN, and
10) C.W. BOLIN;
11) C.W. STRADLEY;
12) BILLY JOE BENNETT and
13) PEGGY L. BENNETT;
14) LIBERTY NATIONAL BANK f/k/a CHICKASHA BANK OF CHICKASHA; and
15) C.P. MERCER and
16) M. ALINE MERCER; their subsidiaries, heirs, estates, successors, executors and assigns of the named persons and entities.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BRISTOW FIRST ASSEMBLY OF GOD, MARK S. EVANS, CHRISTINA J. EVANS, and Mark Evans, as father and next friend of CHRISTIAN J. EVANS, and BROOKLYN K. EVANS, Plaintiffs,	)
v.	) Case No. 15-cv-523-TCK-FHM
BP p.l.c.; **MARATHON OIL CORPORATION**; **MARATHON PETROLEUM CORPORATION; KINDER MORGAN, INC.**; **WENDELL SANDLIN; BOLIN OIL COMPANY**, a Partnership, comprised of **D.H. BOLIN, D.P. BOLIN, R.L. BOWLIN** and **C.W. BOLIN; C.W. STRADLEY; BILLY JOE BENNETT** and **PEGGY L. BENNETT; CHICKASHA BANK OF CHICKASHA**; and **C.P. MERCER** and **M. ALINE MERCER**; their subsidiaries, heirs, estates, successors, executors and assigns of the named persons and entities, Defendants.	)

AMENDED COMPLAINT

COME NOW Plaintiffs, BRISTOW FIRST ASSEMPLY OF GOD, BRISTOW DIVISION (the "Church"), Mark Evans, Christina Evans, and Mark Evans as next friend of C.J.E. (age 10) and B.K.E. (age 8) (the "Evans Family"), and pursuant to the Court's Order of September 28, 2016 [Doc. 66],[1] hereby amend the Petition they filed on June 24,

[1] Doc. 66 provided that "Plaintiffs' claims against the following Defendants are dismissed without prejudice due to fraudulent joinder: Wendell Sandlin; Bolin Oil Company, a partnership comprised of D.H. Bolin, D.P. Bolin, R.L. Bolin, and C.W. Bolin; C.W. Stradley; Billy Joe Bennett; Peggy L. Bennett; Liberty National Bank, f/k/a Chickasha Bank of Chickasha; C.P. Mercer; and M. Aline Mercer." However, Plaintiffs will make allegations in this Amended Complaint against the dismissed Defendants and

2015 in the District Court of Creek County, Bristow Division, State of Oklahoma, Case No. BCJ-2015-00016. For their claims for relief against Defendants, BP p.l.c. ("BP"), MARATHON OIL CORPORATION and MARATHON PETROLEUM CORPORATION (collectively "Marathon"), KINDER MORGAN, INC. ("Kinder Morgan"), and WENDELL SANDLIN; BOLIN OIL COMPANY, a Partnership, comprised of D.H. BOLIN, D.P. BOLIN, R.L. BOLIN and C.W. BOLIN; C.W. STRADLEY; BILLY JOE BENNETT and PEGGY L. BENNETT; CHICKASHA BANK OF CHICKASHA; and C.P. MERCER and M. ALINE MERCER, their heirs, estates, successors, executors and assigns (collectively "All Defendants"), Plaintiffs allege and state as follows:

1. Plaintiff, Bristow First Assembly of God (the "Church"), is a nonprofit organization, organized and existing under the laws of the State of Oklahoma, with its principal place of activity in Bristow, Oklahoma. The Church owns the following lands in Creek County, Oklahoma, and has used that land for church purposes:

> A part of the Northwest Quarter of the Northwest Quarter (NW/4 NW/4) lying North and West of the right of way of the St. Louis and San Francisco Railway Company, containing seven and one-half (7½) acres, in Section 29, Township 16 North, Range 9 East, LESS AND EXCEPT approximately one-half (1/2) acre thereof conveyed by deed dated February 27, 1917, recorded April 6, 1917, in Book 146, Page 347, executed by Continental Refining Company to St. Louis-San Francisco Railway Company, in Creek County, State of Oklahoma, according to the United States Government Survey thereof.

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will make allegations regarding claims that the Court dismissed, including private nuisance, so as to preserve those claims for review and to avoid any assertion of waiver or abandonment of pleadings.

2. Plaintiff Mark S. Evans is the Church pastor. Mr. Evans, his wife, Christina Evans, and his children, C.J.E. and B.K.E., lived on the Church property until they were advised by the Department of Environmental Quality ("DEQ") on or after July 3, 2013, that their health and safety could be further jeopardized if they continued living and working there. As of the filing of this Amended Complaint, the Evans Family members remain residents of Creek County, Oklahoma.

3. Defendant, BP p.l.c., ("BP") is a corporation organized and existing under the laws of the United Kingdom, with its principal place of business in London, England. Its agent in the United States is BP America Inc., with its principal place of business in Houston, Texas. BP is the surviving and controlling entity, through acquisition or merger, of predecessor entities,[2] which owned or operated lands and/or facilities contributing harmful and hazardous contaminants that are now commingled with the pollutants contributed by the "Operational Defendants," as defined below, which said contaminants and pollutants have injured Plaintiffs. As the surviving successor entity, BP has, at all

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[2] The Prairie Oil & Gas Company was an owner and conducted operations on the property adjacent to the Lane property from approximately March of 1927 through June of 1929. Prairie became Sinclair Oil & Gas Company. Sinclair became Atlantic Richfield Company (ARCO). ARCO became BP.

Sinclair Oil & Gas Company was an owner and conducted operations on the property adjacent to the Lane property, the Lee property and the AOG property beginning in approximately 1929. Sinclair became ARCO. ARCO became BP.

Standard Oil Company of Indiana was an owner and conducted operations on and adjacent to the Lane property, the Lee property and the AOG property beginning in approximately November of 1915 going forward. Standard (Stanolind) became Amoco. Amoco became BP.

times through the history of the properties that are the subject of this litigation, exercised exclusive dominion and control over its and its predecessors' assets, actions and liabilities associated with the lands, facilities, and operations relevant hereto.

4. Defendant Marathon Oil Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Houston, Texas. Defendant Marathon Petroleum Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Findlay, Ohio. Marathon Oil and Marathon Petroleum are collectively referred to herein as "Marathon." The two Marathon Defendants are a split of their predecessor, Marathon Oil Corporation, and are the surviving and controlling entities, through split, acquisition or merger, of predecessor entities,[3] which owned or operated lands and/or facilities contributing harmful and hazardous contaminants that are now commingled with the pollutants contributed by the "Operational Defendants," as defined below, which said contaminants and pollutants have injured Plaintiffs. As the surviving successor, Marathon has, at all times through the history of the properties that are the subject of this

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[3] Marathon Oil Company was an owner and conducted operations on and adjacent to the Lee property and the AOG property from approximately August of 1930 to September of 1936.

The Ohio Oil Company was an owner and conducted operations on and adjacent to the Lee property and the AOG property from approximately December of 1927 to August of 1938. The Ohio Oil Company became Marathon.

Transcontinental Oil Company was an owner and conducted operations on and adjacent to the Lee property and the AOG property from approximately December of 1927 through August of 1930. Transcontinental Oil Company became Marathon.

litigation, exercised exclusive dominion and control over its and its predecessors' assets, actions and liabilities associated with the lands, facilities, and operations relevant hereto.

5. Defendant, Kinder Morgan, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Houston, Texas. Kinder Morgan is the surviving and controlling entity, through split, acquisition or merger, of predecessor entities,[4] which owned or operated lands and/or facilities contributing harmful and hazardous contaminants that are now commingled with the pollutants contributed by the "Operational Defendants," as defined below, which said contaminants and pollutants have injured Plaintiffs. As the surviving successor entity, Kinder Morgan has, at all times through the history of the properties that are the subject of this litigation, exercised exclusive dominion and control over its and its predecessors' assets, actions and liabilities associated with the lands, facilities, and operations relevant hereto.

6. Defendants BP, Marathon, and Kinder Morgan will hereinafter be collectively referred to as the "Operational Defendants."

7. Defendants, Wendell Sandlin; Bolin Oil Company, a Partnership, comprised of D.H. Bolin, D.P. Bolin, R.L. Bolin and C.W. Bolin; C.W. Stradley; Billy Joe Bennett and Peggy L. Bennett; Chickasha Bank of Chickasha; and C.P. Mercer and M. Aline Mercer, their heirs, estates, successors, executors and assigns, are residents of

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[4] Wilcox Oil Company was an owner and conducted operations on and adjacent to the Lee property, the Lane property and the AOG property from approximately February of 1921 through June of 1966. Wilcox became Tenneco, which became El Paso, which became Kinder Morgan.

the State of Oklahoma and prior interest owners and predecessors of title to the Church land described in ¶1 of this Amended Complaint.

8. Operational Defendants are former operators of an oil refinery and tank farm covering the Church property and lands. Operational Defendants abandoned the lands and/or facilities without assuring their operations had not and would not affect the environment or the persons and property in the surrounding area. Operational Defendants covered up and buried refinery products and chemicals without any notice to Plaintiffs, their predecessors in title or State of Oklahoma regulatory authorities. Operational Defendants acted intentionally and with malice towards the public and persons within the area surrounding the operations, and they engaged in conduct life-threatening to humans, including the individual Plaintiffs herein and others in the area. Each of the Operational Defendants have sought to avoid liability for their wrongdoing by engaging in a corporate shell-game, whereby they have formed straw corporations, transferred assets, attempted to transfer away their obligations and liabilities, attempted to hide and deny their involvement and liability for the wrongdoing in causing pollution to the subject lands and injury to Plaintiffs and others.

9. All Defendants have and had duties to Plaintiffs by virtue of their position as owners of the land and/or as owners/operators of the refinery and tank farm and under the police powers of the State of Oklahoma: (a) to refrain from placing their interests above those of Plaintiffs; (b) to disclose all information to Plaintiffs which would have a material impact upon Plaintiffs' interests; (c) to protect the surface estate from any damage by refinery operations; (d) to refrain from unlawful acts; (e) to not pollute; (f) to

warn Plaintiffs of any risk of harm or danger to persons or property caused by refinery operations; (g) to immediately remove any condition caused by such operations which is dangerous, harmful or damaging to persons or property; (h) to not profit to the detriment of Plaintiffs' interests (including the decrease of expenses by failing to properly conduct operations); and (i) to comply with the statutory and common law of the United States of America and the State of Oklahoma.

10. Operational Defendants were and are under a duty to prevent the contamination, injury, waste and destruction of the Church's property, and/or damages to Plaintiffs by conducting operations so as to prevent such occurrences. Operational Defendants and any other Defendant with actual knowledge of the harmful/hazardous materials released by the Operational Defendants and the harm that those materials were causing have/had a further duty to warn Plaintiffs of any risk of harm or danger to persons or property caused by Operational Defendants' operations, to abate the dangerous conditions and continuing nuisances which they have created, to maintain their properties so as to prevent further damage, to prevent harmful materials from escaping the property onto the property of the Church or others, and to remove any such material from the Church property or the property of others. Defendants other than the Operational Defendants, as subsequent purchasers, owners, occupiers, mortgagees, and sellers of the Church properties, are liable for the damages and other relief sought by Plaintiffs.

11. Water usage on the Church property is provided by springs producing from groundwater aquifers and recharge areas, as well as from ponds, and streams. Upon information and belief, at all times prior to the operations conducted by Operational

Defendants, the water in, under and flowing across Church land was potable, well-suited for human and animal consumption, well-suited for irrigation and well-suited for any future development on said land. Accordingly, the presence of this fresh water enhanced the value of the Church's real property.

12. While acting as operators of the refinery on the Church property and thereafter, Operational Defendants caused and/or allowed oil refinery products and other chemicals to be maintained in such a way as to cause severe pollution and contamination to the surface and subsurface soil and water on the Church land, as well as on adjoining lands, and have created a condition dangerous to the health and safety of Plaintiffs, the Church staff and parishioners and others. Specifically, Operational Defendants knew or should have known that deleterious substances from the refinery and tank farm(s) were flowing on, over, across, and through the soils and aquifers on Church lands and adjoining lands, and causing pollution and a high risk of further pollution to the Church property and other adjoining properties.

13. Despite this knowledge, Operational Defendants: (a) allowed deleterious substances to flow upon the surface and underground and to seep into the subsurface of Church land and adjoining lands by operating the refinery and tank farm(s), by failing to remove deleterious substances, by operating leaking above ground and underground pipelines and tanks for the handling of deleterious substances, by disposing of pollutants onto the surface and into creeks and ponds, by improperly maintaining and operating the refinery, by failing to clean up deleterious substance spills that have occurred from their various facilities, and by causing and permitting severe contamination of the land; and (b)

concealed and failed to disclose such conditions and events to Plaintiffs and their predecessors and failed to warn Plaintiffs and their predecessors of the danger to groundwater, livestock, persons and property arising therefrom. These nuisances arose from the unlawful acts and omissions of duty by the Operational Defendants, whereby they conducted their operations in a manner that polluted the lands and waters of the State of Oklahoma, including the Church property, and endangered the comfort, repose, health and/or safety of Plaintiffs and others or annoyed and injured them, including rendering Plaintiffs insecure in life and the use of property. The Non-operational Defendants, as successor owners of the property, neglected to abate the continuing nuisance created by the Operational Defendants, and are therefore liable in the same manner as the one(s) who first created it, pursuant to 50 Okla. Stat. §5 and common law.

14. The actions of Operational Defendants have created a health hazard to Plaintiffs and the Church parishioners and staff.

15. The amount sought as damages is in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code; however, diversity jurisdiction does not exist in this case because of incomplete diversity between the parties.[5]

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[5] Doc. 66 provided that "Plaintiffs' claims against the following Defendants are dismissed without prejudice due to fraudulent joinder: Wendell Sandlin; Bolin Oil Company, a partnership comprised of D.H. Bolin, D.P. Bolin, R.L. Bolin, and C.W. Bolin; C.W. Stradley; Billy Joe Bennett; Peggy L. Bennett; Liberty National Bank, f/k/a Chickasha Bank of Chickasha; C.P. Mercer; and M. Aline Mercer." However, Plaintiffs will make allegations in this Amended Complaint against the dismissed Defendants and will make allegations regarding claims that the Court dismissed, including private

FIRST CLAIM FOR RELIEF
(NEGLIGENCE)

16. Operational Defendants negligently performed their operations with respect to the refinery and facilities, as aforementioned and in other particulars known by Operational Defendants and as yet unknown to Plaintiffs, and thereby allowed deleterious substances to pollute the Church land and waters. Operational Defendants are under a duty to perform operations so as not to cause pollution. Operational Defendants are also under a duty to not discard or abandon equipment, trash and debris on or under the land. Defendants are also under a duty to clean up the pollution, abandoned equipment, debris, trash and other harmful materials on or under the land, caused by Operational Defendants, which were latent and their impact unknown to Plaintiffs until less than two years prior to the filing of the Petition in Creek County, Oklahoma, and all of which have constituted a continuing nuisance on Church property and on adjacent lands. Defendants have breached their duties, and Plaintiffs have been injured as a result thereof.

17. Operational Defendants acted in gross disregard for the rights of Plaintiffs in conducting their operations and improperly maintaining harmful and hazardous conditions on their lands, which have infiltrated into and/or migrated onto the Church land and the land of others, including actions and inactions which were in violation of state statutes and the rules and regulations of state regulatory bodies designed to protect the subject private lands as well as the public welfare. The actions of Operational Defendants as alleged herein indicate the absence of even slight care on the part of

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nuisance, so as to preserve those claims for review and to avoid any assertion of waiver or abandonment of pleadings.

Operational Defendants to perform their duties to Plaintiffs and thereby constitute gross negligence on the part of Operational Defendants.

18. As a direct result of Operational Defendants' gross negligence and reckless disregard for the rights of Plaintiffs, Plaintiffs are entitled to punitive damages to punish Operational Defendants for their actions and to deter others similarly situated from acting in a like manner.

SECOND CLAIM FOR RELIEF
(NEGLIGENCE PER SE)

19. Operational Defendants' actions, as described above and in other particulars known by Operational Defendants and as yet unknown to Plaintiffs, are direct violations of state and federal statutes, rules and regulations, constitute negligence per se and thereby fix liability on said Operational Defendants. The statutes that Plaintiffs have identified, at the time of the filing of this Amended Complaint, are:

(i) 15 Okla. Stat. §§ 57-60 (Fraud);

(ii) 27A Okla. Stat. §§2-1-102, 2-6-105, §§2-3-501 through 506 (Oklahoma Environmental Quality Code);

(iii) 27A Okla. Stat. §2-5-101 *et seq.*, (Oklahoma Clean Air Act);

(iv) 27A Okla. Stat. §2-6-101 *et seq.*, (Oklahoma Water Quality Act);

(v) 29 Okla. Stat. §7-401 (Wildlife Conservation Code);

(vi) 50 Okla. Stat. §§1-3, 5-8, 10, 13 (Nuisances);

(vii) 52 Okla. Stat. §139 (Agency Jurisdiction of DEQ over pollution and environmental quality standards involving refining and storage);

(viii) 76 Okla. Stat. §§1-4 (Rights of Others/Deceit);

(ix) OK ADC 35:45-1-1 and 1-4 (Water Quality Standards Implementation Plan);

(x) OK ADC 785:45-5-10 and 5-12 and 5-16 (Oklahoma Water Quality Standards);

(xi) 33 U.S.C.A. §§1252, 1311, 1321 (Clean Water Act)

(xii) 42 U.S.C.A. §9601 *et seq.*, (CERCLA).

The instrumentality causing Plaintiffs' injuries was under the exclusive control of Operational Defendants; the pollution of soils and waters on Church property and adjoining properties ordinarily would not occur in the operation of refineries or tank farms absent some negligence on the part of the operators, despite the fact that pollution can occur even when due care has been fully exercised in the operation of the refinery and tank farm facilities; Operational Defendants have superior knowledge of the facts concerning the cause of Plaintiffs' injuries; and Plaintiffs, therefore, specifically plead the doctrine of *res ipsa loquitur* as fixing the liability of Operational Defendants for negligence in the operation of the refineries and the consequent damages to Plaintiffs.

THIRD CLAIM FOR RELIEF
(PUBLIC NUISANCE)

20. Because Operational Defendants' operations have polluted the waters of the State of Oklahoma, the pollution is, under 27A Okla. Stat. §2-6-105(A) and other law, a public nuisance. All Oklahomans have an interest in conserving the waters of the state and protecting, maintaining and improving the quality of waters of Oklahoma for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses as described in

27A Okla. Stat. §2-6-102. Thus, pollution of the waters of the State of Oklahoma injures the entire population of the State of Oklahoma. Therefore, this pollution of the waters of the state affects at the same time a considerable number of people. The extent of the annoyance or damage inflicted upon each individual is unequal. Plaintiffs are specifically injured by the pollution because they own the land and water that has been polluted and/or were exposed to polluted land and water. The pollution caused by Operational Defendants also affects adjoining property owners and tenants. The nuisance created and continued by Operational Defendants is a public nuisance.

FOURTH CLAIM FOR RELIEF
(PRIVATE NUISANCE)[6]

21. The pollution caused to Church property and adjoining properties is, alternatively, a continuing private nuisance under 50 Okla. Stat. §3. Plaintiffs and the Church parishioners and staff members have been harmed, annoyed and inconvenienced by the nuisance created by Operational Defendants. The continuing nuisance created, hidden and maintained by Operational Defendants has caused both permanent and temporary damage to Plaintiffs, Church property and the Church's parishioners and staff.

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[6] Doc. 66 provided that "Plaintiffs' private nuisance claim is dismissed." However, Plaintiffs will make allegations in this Amended Complaint regarding claims that the Court dismissed, including private nuisance, so as to preserve those claims for review and to avoid any assertion of waiver or abandonment of pleadings. Plaintiffs recognize, however, that 50 Okla. Stat. §3 provides that a private nuisance is every nuisance not included in the definition of public nuisance, and if the pollution is determined to be a public nuisance, by definition, a claim for private nuisance would not be available.

FIFTH CLAIM FOR RELIEF
(UNJUST ENRICHMENT)

22. Based on information and belief, Operational Defendants have saved money in failing to prevent pollution, remediate pollution and prevent its spread and adverse effects, all to the detriment of Plaintiffs. Operational Defendants are under an obligation to follow rules and laws that require them to prevent pollution. Operational Defendants have breached their duty to Plaintiffs and, as a result thereof, have been unjustly enriched. Plaintiffs are entitled to recover the money Operational Defendants have saved by not complying with the law and by not protecting the environment.

SIXTH CLAIM FOR RELIEF
(STRICT LIABILITY)

23. Operational Defendants are strictly liable to Plaintiffs for all damages caused by Operational Defendants' actions and inactions, which were in violation of Oklahoma statutes and/or the rules and regulations of Oklahoma regulatory bodies or in the operation of non-exempt hazardous activities. The substances on the properties are highly dangerous substances, many of which are known carcinogens or cause heavy-metal (lead) toxicity to humans and animals. The substances also have a high risk of harming the water, soils and the structures and other personal property on the land. The likelihood that harm would result from the Operational Defendants' activities was great, and that harm did, in fact, occur and created the nation's latest Superfund site. The exercise of reasonable care in the operation of the facilities may reduce, but cannot

eliminate, the risk of harm.[7] Refining and related activities such as those conducted by the Operational Defendants in this case is not a matter of common usage in Oklahoma, as is evident from the fact that only approximately four (4) refineries are currently operated in this state and only approximately 140 refineries are currently operated in the entire United States (with many states having no refineries). The refining and associated tank storage facilities were located in an inappropriate position in an environmentally-sensitive area, where the activities caused pollution to flow downhill, downstream and down gradient, which allowed contamination of a much larger area that would otherwise have been affected. The danger of the pollution and its impact on life and property greatly outweighed any value to the community where the facilities were located.

SEVENTH CLAIM FOR RELIEF
(FRAUD/DECEIT)

24. Operational Defendants operated the refinery and tank facilities in a manner that resulted in unlawful pollution and contamination of the operated properties and adjacent properties, including Church property. The unlawful operations were conducted knowingly and without regard for the consequences to the environment or persons who would be harmed, including Plaintiffs, property owners, land occupiers, guests and

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[7] The American Petroleum Institute (API) conducted an analysis of U.S. oil spillage and determined that, in the decade between 1988 to 1997, averaged annual refinery oil spillage was 15,015 barrels, and in the decade 1998 to 2007, that annual average was 12,136 barrels, reflecting a high risk of releases, even in highly-controlled eras, where governmental oversight and modern leak prevention requirements are routinely employed, unlike in the days of operation of the refineries and associated storage operations in Bristow, Oklahoma, during the first half of the twentieth century. http://www.api.org/oil-and-natural-gas/environment/clean-water/oil-spill-prevention-and-response/%7E/media/93371EDFB94C4B4D9C6BBC766F0C4A40.ashx

others. Operational Defendants misrepresented their activities as being lawful and in compliance with laws, rules and regulations, knowing that the activities were unlawful and violated laws, rules and regulations and were harmful to the environment and to persons and property that would come in contact with the contamination and pollution.

25. During the times they operated and/or owned the facilities described above, and thereafter (with the continuing nuisance that they created, that existed, and that continues to exist), Operational Defendants had a duty of full disclosure of the pollution they had created on the property. Plaintiffs do not know what, if any, affirmative representations were made by the Operational Defendants with respect to the contamination they created, other than those described below; however, the Operational Defendants intentionally withheld vital information, failed to fully and adequately disclose the existence, extent, danger, risk and pervasiveness of the pollution and contamination of the property, covered up and concealed the pollution and contamination and their knowledge of the dangerous conditions, and conveyed the property to the Church's predecessors without full disclosure, knowing the polluted, contaminated and dangerous condition of the property and actively concealing that information, reasonably expecting that their purchasers, future purchasers and other persons would rely upon the deception and fraud of the Operational Defendants and be damaged in that reliance. By concealing and failing to disclose the true information about the condition of the property and about the pollution which existed thereunder, the Operational Defendants committed actual fraud under 15 Okla. Stat. §58 through "the suppression of that which is true by one having knowledge or belief of the fact" and "other act[s] fitted to deceive." By

intentionally breaching their duty to fully disclose, the Operational Defendants committed constructive fraud under 15 Okla. Stat. §59 through gain[ing] an advance to the person in fault, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him." By intentionally breaching their duty "to abstain from injuring the person or property of another or infringing upon any of his rights," the Operational Defendants committed deceit under 76 Okla. Stat. §§1-4. On February 3, 2012, Kinder Morgan, acting through El Paso Corporation (prior to their merger) sent a letter to the Oklahoma Department of Environmental Quality (ODEQ), admitting the chain of ownership of Wilcox Oil Company, but contending that Kinder Morgan's/El Paso's liability had been unilaterally extinguished. That letter was written by Kinder Morgan/ El Paso Corporation on El Paso Corporation letterhead (at the address that currently houses Kinder Morgan's headquarters) and was signed by a lawyer employed by Kinder Morgan/ El Paso Corporation as senior counsel, who purported to sign the letter as the trustee for a "liquidating trust." El Paso Corporation was the trustee and completely and wholly owned and controlled all of the assets and completely controlled the attempt to discharge the liabilities associated with the Wilcox refinery, among other liabilities, even though none of the affected parties at the refinery had ever been given notice of the fraudulent activities of the trustee or the claims Kinder Morgan/ El Paso Corporation was seeking to discharge. On September 12, 2014, Marathon Oil sent a letter (signed by a lawyer employed by Marathon Oil Company and listed as "Group Counsel, Law-Regulatory Compliance") to the U.S. Environmental Protection Agency (EPA), denying that Marathon had any information tying it to the property and

denying liability for the pollution, despite Marathon being a prior operator and succeeding to the interests of the Ohio Oil Company and Transcontinental Oil Company, as described above. Furthermore, Marathon has entered into a voluntary clean-up program for the Transcontinental Refinery (a/k/a the Old Ohio Refinery), which is located directly above the AOG church building between the Lorraine/Wilcox Refinery and the Turner Turnpike.

26. Operational Defendants further entered into complex organizational structuring and restructuring within the corporate families that said Operational Defendants totally controlled and manipulated for their own unlawful purposes, in order to, *inter alia*, hide, conceal, avoid, and misrepresent their liabilities for the pollution and to attempt to discharge their liabilities, while separating and insulating assets and other benefits that would otherwise be subjected to recourse for the liabilities. By way of example, Kinder Morgan, acting under its own name and in its prior existence as Tenneco, Inc., and El Paso Corporation, set up a series of transactional entities to act as "straw" entities to accomplish mergers, acquisitions, divestitures and dissolutions to shift the valuable and beneficial corporate assets to healthy, profitable, core entities, while shifting heavily-burdened assets, obligations and liabilities to the straw entities (which had insufficient value to meet the obligations and liabilities associated with the assets designated for the straw entities). Tenneco attempted to confine the refinery and tank farm assets, obligations and liabilities in straw entities prior to the corporate merger of Tenneco into El Paso (El Paso being the surviving, controlling, merged company, with all Tenneco's assets, obligations and liabilities). El Paso attempted to confine the refinery

and tank farm assets, obligations and liabilities in straw entities prior to the corporate merger of El Paso and Kinder Morgan (Kinder Morgan being the surviving, controlling, merged company, with all El Paso's assets, obligations and liabilities). As part of Kinder Morgan's acquisition and merger of El Paso, Kinder Morgan created corporate structures to further attempt to confine the refinery and tank farm assets, obligations and liabilities in straw entities to avoid the liabilities it inherited as El Paso's survivor in the merger. Kinder Morgan claims that through the years (including during its prior existence as Tenneco and El Paso) its manipulation of corporate obligations and liabilities associated with the refinery and tank farm have been fully discharged through the dissolution of a straw Trust created on behalf of a straw El Paso entity, all controlled and represented by El Paso Corporation and its General Counsel, all being the direct actions of Kinder Morgan (then El Paso).

27. All of these actions and inactions by the Operational Defendants were willful, wanton, malicious, oppressive, deceitful, misleading, grossly negligent and constitute actual fraud, constructive fraud, misrepresentation, and/or deceit under Oklahoma law.

EIGHTH CLAIM FOR RELIEF
(RESTITUTION)

28. The pollution caused by Operational Defendants' actions and inactions has created potential liabilities for the Plaintiffs, as a successor owner of the polluted property and Church family, respectively, which greatly exceed the value of the property in an unpolluted condition, and thus has created a large negative net value for the polluted

property. The Church seeks recovery of the difference in the value of the property in an unpolluted condition and the negative value of the property in its polluted condition.

29. Plaintiffs also seek recovery of damages for personal harm, personal annoyance and inconvenience, endangerment of comfort, health, tranquility and safety of its parishioners and staff, and for Plaintiffs having been rendered insecure in the use of Church property.

NINTH CLAIM FOR RELIEF
(DECLARATORY JUDGMENT/INDEMNIFICATION/CONTRIBUTION)

30. All Defendants are predecessors in title to the Church lands and conveyed the lands to the Church and/or were operators of the facilities that caused pollution on the lands. To the extent Plaintiffs are hereafter made subject to claims for damages, injunctive relief, remediation or other relief resulting from pollution on the land or emanating therefrom, Plaintiffs seek an order declaring the rights of the parties and requiring All Defendants to indemnify Plaintiffs and hold them harmless from any such claims, damages, injunctions or any such other relief.

TENTH CLAIM FOR RELIEF
(INJUNCTION)

31. Plaintiffs seek a mandatory injunction. Plaintiffs are entitled to have the land reclaimed and a full cleanup conducted upon the property so that the soil and water are free from pollution and the areas of erosion are restored to their original condition or a condition as close as possible to original through the use of best practices. Plaintiffs are entitled to have Operational Defendants remove from Church property all deleterious substances as well as all pipeline, tanks, structures and facilities, and restore the land to

its natural condition free of all pollution, erosion, abandoned oilfield equipment and oilfield debris. Plaintiffs allege that some permanent damage will remain after the cleanup of the temporary damage has been completed. The amount of permanent damages will be proven at the time of trial. Plaintiffs seek an Order from this Court requiring Operational Defendants to spend the money necessary to clean up and abate the nuisance caused by their operations.

32. Operational Defendants have a duty to fully test and investigate to determine the nature, extent and source of pollution, to develop a cleanup plan for such pollution, and to fully clean up such pollution. Operational Defendants have breached that duty. Plaintiffs have and will incur costs for investigating, testing and cleanup and are entitled to be reimbursed for such costs. Plaintiffs seek recovery of the expense they incur to test and investigate the nature, extent and scope of the pollution and develop a cleanup plan. Plaintiffs further seek damages in an amount sufficient to restore the property to its original unpolluted condition.

ELEVENTH CLAIM FOR RELIEF
(FEES AND COSTS)

33. Plaintiffs are incurring attorney's fees and costs because of Operational Defendants' negligent and/or willful injury to Church property. Plaintiffs seek recovery of such attorney's fees and costs.

WHEREFORE, premises considered, Plaintiffs pray judgment against Operational Defendants for an abatement order/injunction as described above, and for actual and punitive damages to be proven at trial on the alternative theories described and

any other theory supported by the facts and allowed by law or equity. In addition, Plaintiffs request the award of attorney's fees, interest, the cost of this litigation and such other just and equitable relief as the Court may deem proper.

Respectfully submitted,

/s/ Micheal Darrah _____.
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2016, I electronically transmitted a copy of the attached document to the Clerk of Court using the ECF System for filing and transmittal of Notice to the Court of Matters Under Advisement for More Than Ninety (90) Days. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF recipients:

Kenneth Blakley ken.blakley@mcafeetaft.com
(Attorney for Defendant Marathon)

A. Scott McDaniel smcdaniel@ok-counsel.com
(Attorney for Defendant BP)

Miranda Calhoun mcalhoun@ok-counsel.com
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Stacy L. Acord sacord@ok-counsel.com
(Attorney for Defendant BP)

Melissa East meast@ok-counsel.com
(Attorney for Defendant BP)

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(Attorney for Defendant Kinder Morgan)

Bonnie Barnett bonnie.barnett@dbr.com
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John Randolph, Jr. jrandolph@praywalker.com
(Attorney for Defendant RL Bowlin)

Randall Vaughan rvaughan@praywalker.com
(Attorney for Defendant RL Bowlin)

Robert Mitchener, III rmitchener@praywalker.com
(Attorney for Defendant RL Bowlin)

/s/ Micheal Darrah

To: Appaji, Sairam[appaji.sairam@epa.gov]
Cc: Sullivan, Robert[sullivan.robert@epa.gov]; Coltrain, Katrina[coltrain.katrina@epa.gov]; Luckett, Casey[Luckett.Casey@epa.gov]; Atkins, Blake[Atkins.Blake@epa.gov]; Meyer, John[Meyer.John@epa.gov]
From: Casanova, Rafael[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABE5026E9AEC47688A916637328275E2-CASANOVA, RAFAEL]
Sent: Mon 11/20/2017 8:40:17 PM (UTC)
Subject: RE: Albert Kelly Hometown Superfund Interview Preparations.docx
Albert Kelly Hometown Superfund Interview Preparationsrc.docx

Sai, attached are my comments on OU 2 and OU 5. Let us know if you need anything else. Thanks.

Rafael Casanova, P.G. (Environmental Scientist, Remedial Project Manager)
U.S. Environmental Protection Agency (Region 6)
Superfund Division (6SF-RA)
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Office Telephone # - (214) 665-7437
Office Telephone Toll-Free # - (800) 533-3508
Office Facsimile # - (214) 665-6660
E-Mail - casanova.rafael@epa.gov

From: Appaji, Sairam
Sent: Monday, November 20, 2017 12:42 PM
To: Sullivan, Robert <sullivan.robert@epa.gov>; Casanova, Rafael <Casanova.Rafael@epa.gov>
Subject: FW: Albert Kelly Hometown Superfund Interview Preparations.docx

Bob and Rafael,

Can you take a look at the attachment and see if any edits are needed. This is a request from HQ.

Sai Appaji
Remedial Project Manager
EPA Region 6
214-665-3126

From: Coltrain, Katrina
Sent: Monday, November 20, 2017 11:48 AM
To: Appaji, Sairam <appaji.sairam@epa.gov>; Sullivan, Robert <sullivan.robert@epa.gov>; Casanova, Rafael <Casanova.Rafael@epa.gov>
Subject: Albert Kelly Hometown Superfund Interview Preparations.docx

Please see attached edits.

How has having several contaminated sites in your hometown impacted your perspective on Superfund?

In addition to the sites around Bristow detailed below, there are three current or deleted NPL sites in the Tulsa area:

Compass Industries (Avery Drive), Tulsa

- Compass Industries Landfill is an abandoned facility located in a former limestone quarry.
- It was a municipal landfill between 1972 and the early 1980s.
- During operation, the landfill accepted about 620,000 cubic yards of solid, liquid and sludge wastes, including acids, caustics, solvents and potentially carcinogenic materials.
- Landfilling activities contaminated soil and groundwater with hazardous chemicals.
- Following cleanup, the U.S. Environmental Protection Agency (EPA) took the site off the Superfund program's National Priorities List (NPL) in 2002.
- The fifth five-year review found that the remedy currently protects human health and the environment.
- The City of Sand Springs maintains the site and performs routine maintenance and sampling.
- Risks and pathways addressed by the cleanup include health risks from people ingesting or touching contaminated soil.

Sand Springs Petrochemical Complex, Sand Springs

- The 235-acre Sand Springs Petrochemical Complex site is located one mile south of Sand Springs in Tulsa County, Oklahoma. The site is located on the north bank of the Arkansas River.
- The area was the location of Pierce Petroleum Refinery and Sinclair Refining Company operations from the early 1900s to 1948.
- A variety of other industries operated on site beginning in 1953.
- Several solvent and oil recycling facilities operated on a 5.5-acre portion of the site from 1964 through 1983. This 5.5-acre area is referred to as the Glenn Wynn area.
- Two unlined pits, numerous tanks and drums, and contaminated soils from accidental spills remained on site from the previous recycling operations.
- In December 1980, EPA and state agencies became concerned about the possible contamination at the site.
- Over the next three years, water and soil samples were collected and analyzed to determine any potential risks to human health or the environment. EPA added the site to the NPL in 1986.
- Following emergency actions to protect human health and the environment, and construction of the site's long-term remedy, EPA took the site off the NPL in 2000. Operation and maintenance activities and monitoring are ongoing.
    - The site's long-term remedy included excavation of petroleum waste material, stabilization/solidification of the waste, and placement of 180,000 cubic yards of stabilized material in an on-site landfill.

  - In May 2001, a "tar-like" sludge material was observed on the north bank of the Arkansas River. This material appeared to be associated with the former Sinclair Refinery, and was exposed by erosion in a feature along the north bank of the Arkansas River.
  - A removal action started in 2004 to excavate and remove observed sludge material along the banks of the Arkansas River. The removal action finished in 2006.
- Risks and pathways addressed by the cleanup include health risks from people ingesting or touching contaminants in soil, wastes and groundwater.
- The site was addressed through federal, state and potentially responsible party actions.
- EPA has conducted several five-year reviews of the site's remedy. These reviews ensure that the remedies put in place protect public health and the environment, and function as intended. The most recent review completed in July 2015 concluded that the remedy continues to be protective of human health and the environment.

Tulsa Fuel and Manufacturing, Collinsville

- The 61-acre Tulsa Fuel and Manufacturing site is located in Collinsville in Tulsa County, Oklahoma.
- A zinc smelter operated at the site from 1914 to 1925. Historical smelting operations contaminated soil, sediment and surface water with hazardous chemicals.
- Smelting operations used nine furnaces, which were believed to be fueled by nearby natural gas wells. Other main structures of the smelter included a mechanical kiln building, a condenser room and a laboratory. A two-million-gallon-capacity surface reservoir was used in conjunction with the condenser room during operations. Large amounts of ore were stored on site in waste piles. The site was abandoned in the 1920s.
- EPA has selected a cleanup plan for the site. Construction of the remedy began in August 2014.
- The site's long-term remedy includes on-site consolidation and capping of soil, sediment and waste material. Remedial design is complete.
- Construction of the remedy began in August 2014. Construction is scheduled for completion in September 2016.
- Risks and pathways to be addressed by the cleanup include health risks from people ingesting or touching contaminants in soil, sediment and surface water.
- The site is being addressed through federal and state actions.
- Remediation of the contaminated media will reduce current and future human health and ecological risks associated with on-site and some off-site contaminants.
- Moreover, revitalization of the area will encourage reuse and redevelopment planning. ODEQ is currently managing and overseeing some off-site contamination activities of another smelter with a PRP under a voluntary cleanup program in Collinsville.

How involved have you been with the Superfund site and contaminated sites in Bristow?

We are assuming that by "Superfund site" they are referring to Wilcox Oil Company, which is a site in Bristow that is currently on the NPL.

Wilcox Oil Company Superfund Site, Bristow

- The 140- to 150-acre Wilcox Oil Company site is located in Bristow and includes the inactive and abandoned Lorraine and Wilcox Oil Refineries.
- The property was used as a crude oil refinery from approximately 1915 to 1963.
- Refinery operations contaminated soil and sediment and left behind waste material.
- The site is located at West 221st Street South about 0.35 miles east of U.S. Highway 66. About 2,404 people live within a mile of the site and about 6,134 people live within four miles of the site. The site area is mostly rural and primarily residential. The site includes a church and seven residential properties.
- The site's remedial investigation and feasibility study (RI/FS) is ongoing.
- Until a complete site investigation and risk assessment are complete, the location of the contamination, the amount of the contamination, and the potential health risks associated with that contamination is unknown.
- The remedial investigation data will be used to conduct a site-specific human health risk assessment and an ecological risk assessment.
- Areas of concern where refinery waste is present have been fenced to restrict trespassing and potential contact with the refinery waste.
- The potential contaminants of concern include lead and organic compounds (Total Petroleum Hydrocarbons and Polycyclic Aromatic Hydrocarbons). These potential contaminants of concern are found in soil, sediment, and waste material.
- The site is being addressed through federal actions.
- The site was placed on the National Priorities List on December 12, 2013. Since that time, EPA completed two searches to find potentially responsible parties to do the work. No potentially responsible parties agreed to do the work, and as a result, EPA received funding to begin the RI/FS for the Site.
- EPA is working closely with ODEQ to plan and implement investigation activities. In addition, EPA and ODEQ are working closely with residents, tribes, and the community to provide site updates and share information.
- The RI/FS phase of the Superfund Process is expected to take approximately 2-3 years.
- Properties of concerned residents were sampled in May and June 2015. Soil data from the residential areas was reviewed to assess the potential for immediate human health risks. All results and concerns were discussed with the residents in October 2015. At this time, no immediate health risks are identified.
- EPA's removal team completed the removal of oil waste material association with one of the tanks used to store crude oil in the east tank farm. This area is located in the front yard of one of the residential properties within 250 feet of the home. The removal of oil waste material began on September 27, 2017, and was completed on October 12, 2017. Approximately 1300 tons of oil waste material was removed. The area was backfilled with clean dirt, seeded, and new trees planted.~~Properties where refinery waste is present at the surface are fenced and locked to deter trespassing and potential contact.~~

Lorraine Refinery Site (Parent Site: Wilcox Oil Company):

https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0606909

Archived Sites

Creeco Mill and Elevator Company:
https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0605169
Kwikset Locks Inc: https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0601176
Nu-Chrome Plating: https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0605014
Ohio Oil Refinery: https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0605082

Since taking this position, have you visited the Wilcox site, Kwikset or the other sites, or talked with people around the sites?

See above for information on Wilcox, Kwikset, and other sites in Bristow and Tulsa.

Oklahoma's Tar Creek site is well known for the Picher-Cardin buyout. Did your task force look at any changes to the policies on buy-outs?

Tar Creek (Ottawa County), Ottawa County, Oklahoma

- Lead and zinc mining activities first began at the site in the early 1900s.
- Rapid expansion of mining activities occurred during the 1920s and mining activities reached their peak around 1925. Each mine holding usually had its own mill. During the 1930s, large central mills came into operation, and most mining operations stopped operating their own mills.
- During the peak of mining activities, 130,410 tons of lead and 749,254 tons of zinc were produced annually.
- Large-scale underground mining activities ended in 1958. Smaller mining operations continued in the Picher Field through the 1960s. All mining activities at the site ceased in the 1970s.
- Risks and pathways addressed by the cleanup include health risks from people ingesting, touching or inhaling contaminants in soil.
- As of April 2016, there is insufficient information to determine the potential human health risks related to surface water and sediment exposure. EPA is working to characterize sediment and surface water throughout the lower Spring and Neosho River basins as well as understand the potential risks associated with exposures to surface water and sediment through a Human Health Risk Assessment (HHRA). This is a coordinated effort between Region 6, Region 7, 3 states (Oklahoma, Missouri, Kansas), eight Tribes (Quapaw Tribe, Peoria Tribe, Ottawa Tribe, Miami Nation, Eastern Shawnee Tribe, Wyandotte Nation, Seneca-Cayuga Nation, and Cherokee Nation), and the community. OU5 includes 7 watersheds covering approximately 437 square miles and 119 river miles within Oklahoma, Kansas, Missouri, and 8 tribal areas.
- The site has five operable units:
    - *OU-1:* Addresses the surface water degradation by the discharge of acid mine water and the threat of contamination of the Roubidoux Aquifer, the regional water

supply, by downward migration of acid mine water from the overlying Boone Aquifer through abandoned wells connecting the two.
  - The final remedy for OU-1, selected in 1984, included use of diking and diversion structures to stop the surface water of Tar Creek from entering the two collapsed mine shafts in Kansas, which were identified as the main inflow points. The remedy also included plugging 83 abandoned wells. Construction activities finished in December 1986. Groundwater monitoring is ongoing.
  - *OU-2:* Addresses residential areas. The long-term remedy for OU-2, selected in 1997, included remediation of residential yards and High Access Areas.
  -
  - In May 2004, the State of Oklahoma implemented a relocation program for families with children under the age of seven.
  - *OU-3:* Addressed abandoned laboratory chemicals at the former Eagle-Picher Office Complex in Cardin, Oklahoma. One hundred and twenty containers of chemicals were removed as part of a removal response action. No further action is necessary.
  - *OU-4:* Addresses source materials, rural residential yard contamination, transition zone soil contamination and contamination in water from rural residential wells. The selected remedy also includes relocation.
  - OU-4 includes an additional area, called the Catholic 40. The area is a 40-acre tract of land owned by the Quapaw Tribe that has cultural and historical significance. Historical structures include remnants of a Catholic church and school built in 1893. The cleanup of the Catholic 40 was funded by the EPA and conducted by the Quapaw Tribe of Oklahoma under a cooperative agreement with the EPA. This cleanup was significant because it was the first tribal-led cleanup in the nation performed by a Tribe on property that they own. The cleanup included the excavation, hauling, and disposal of 107,000 tons of source material or chat. ~~The cleanup will also include site restoration and bank stabilization of Beaver Creek.~~
  -
  -
  - *OU-5:* OU-5 addresses sediment and surface water. EPA is working with 3 states, 8 tribes, and the community as part of multi-regional effort to characterize sediment and surface water throughout the lower Spring and Neosho River basins.
- Since the cleanup of residential properties began, approximately 2,887 residential yards and public properties in Ottawa County have been cleaned up.
- ~~More than 570 acres~~ of land have been cleaned up and made available for future reuse.
- EPA continues to work with project contractors to implement the Superfund Job Training Initative (Super JTI) in Northeast Oklahoma.
  - Super JTI provides job-readiness training and employment opportunities for underserved citizens living in communities affected by Superfund sites.
  - The Tar Creek program generated 250 interested candidates of which 26 were selected for training.
  - A number of graduates were hired by project contractors.
  - One success story: A graduate has worked on OU4 site projects since 2010. As a result of his outstanding performance, he was hired as a full-time employee by EPA's contractor CH2M HILL in July 2010.

- EPA has conducted five-year reviews at the site. The most recent review concluded that response actions at the site are in accordance with the remedy selected by EPA and that the remedy continues to be protective of human health and the environment in the short term.

To: Appaji, Sairam[appaji.sairam@epa.gov]; Sullivan, Robert[sullivan.robert@epa.gov]; Casanova, Rafael[Casanova.Rafael@epa.gov]
From: Coltrain, Katrina[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C65407B58D44284B50F869DF1274022-COLTRAIN, KATRINA]
Sent: Mon 11/20/2017 5:47:57 PM (UTC)
Subject: Albert Kelly Hometown Superfund Interview Preparations.docx
Albert Kelly Hometown Superfund Interview Preparations.docx

Please see attached edits.

To: Coltrain, Katrina[coltrain.katrina@epa.gov]; Hebert, Michael[hebert.michael@epa.gov]; Torres, Michael[torres.michael@epa.gov]; Mueller, Brian[Mueller.Brian@epa.gov]
From: Appaji, Sairam[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=24D66DC0536543A29CA32661250A9EA9-APPAJI, SAIRAM]
Sent: Mon 11/20/2017 4:37:10 PM (UTC)
Subject: FW: COB 11/29 - Request for Interview - Albert "Kell" Kelly
Albert Kelly Hometown Superfund Interview Preparations.docx

Please review the attached information for your sites for accuracy and current information. If you have any changes please correct and send it to me.

Thanks

Sai Appaji
Remedial Project Manager
EPA Region 6
214-665-3126

From: Meyer, John
Sent: Monday, November 20, 2017 10:34 AM
To: Appaji, Sairam <appaji.sairam@epa.gov>; Coltrain, Katrina <coltrain.katrina@epa.gov>; Hebert, Michael <hebert.michael@epa.gov>; Torres, Michael <torres.michael@epa.gov>; Mueller, Brian <Mueller.Brian@epa.gov>
Subject: FW: COB 11/29 - Request for Interview - Albert "Kell" Kelly
Importance: High

This time with attachment

John C Meyer
Remedial Branch Chief
Superfund Division
214.665.6742

From: Poore, Christine
Sent: Monday, November 20, 2017 8:48 AM
To: Meyer, John <Meyer.John@epa.gov>
Cc: Siedschlag, Gregory <Siedschlag.Gregory@epa.gov>; Edwards, Jennifer <Edwards.Jennifer@epa.gov>
Subject: FW: COB 11/29 - Request for Interview - Albert "Kell" Kelly
Importance: High

Hi John,
Per the email below, Kell has an interview with E&E coming up. We've been asked to provide information supporting the questions below. Can you please take a look at the attachment and provide revisions to Greg (cced on this email), with a cc to me and Jenn Edwards by COB tomorrow? Sorry for the short turn-around!
Thanks!
Christine

From: Siedschlag, Gregory
Sent: Friday, November 17, 2017 4:57 PM
To: Fitz-James, Schatzi <Fitz-James.Schatzi@epa.gov>; Ammon, Doug <Ammon.Doug@epa.gov>; Anderson, RobinM <Anderson.RobinM@epa.gov>; Hovis, Jennifer <Hovis.Jennifer@epa.gov>; Poore, Christine <Poore.Christine@epa.gov>
Cc: Duteau, Helen <Duteau.Helen@EPA.GOV>; Gartner, Lois <Gartner.Lois@epa.gov>; Bucci, Anthony <bucci.anthony@epa.gov>
Subject: RE: COB 11/29 - Request for Interview - Albert "Kell" Kelly

Importance: High

Hi all,

Anthony and I pulled together write-ups for as many sites as we could. Some of these sites are non-NPL and don't have any info on the site pages, so we'll need to go back to the regions on those.

Christine: Could you work with Region 6 on getting bullets on the non-NPL sites, and make sure that all the info we pulled from the site webpages is up-to-date, and see if they have anything they want to add?

Jen: If needed, could you also ask your Region 6 liaison to do the same? (Also, if someone has an electronic copy of the liaison list handy, could you send that to me? ;)

Please send me any regional input by COB Tuesday so I can turn this back around to OLEM on Wednesday.

Many thanks,

Greg Siedschlag
Outreach and Communications Specialist
Office of Superfund Remediation and Technology Innovation
U.S. Environmental Protection Agency
Office: (703) 603-9044
Cell: (571) 255-0284
Follow us on Twitter @EPALand
https://www.epa.gov/superfund

From: Fitz-James, Schatzi
Sent: Friday, November 17, 2017 10:27 AM
To: Ammon, Doug <Ammon.Doug@epa.gov>; Anderson, RobinM <Anderson.RobinM@epa.gov>; Hovis, Jennifer <Hovis.Jennifer@epa.gov>; Poore, Christine <Poore.Christine@epa.gov>
Cc: Duteau, Helen <Duteau.Helen@EPA.GOV>; Siedschlag, Gregory <Siedschlag.Gregory@epa.gov>; Gartner, Lois <Gartner.Lois@epa.gov>
Subject: FW: COB 11/29 - Request for Interview - Albert "Kell" Kelly
Importance: High

FYI

From: Colip, Matthew
Sent: Friday, November 17, 2017 10:23 AM
To: OLEM OSRTI Press <OLEM-OSRTI-Press@epa.gov>
Subject: DDL: COB 11/29 - Request for Interview - Albert "Kell" Kelly
Importance: High

Good morning OSRTI,

Mike Soraghan (E&E News) is looking to interview Kell Kelly. He'd like to do the interview in person, and needs it by December 8th. Liz Bowman asked OMR to set it up, so it doesn't sounds like there's an approval issue. Barry is also aware.

Please provide background information on the sites referenced in the questions below by COB Wednesday, 11/29 so we can provide to OPA in advance of their interview date (TBD).

How has having several contaminated sites in your hometown impacted your perspective on Superfund?
How involved have you been with the Superfund site and contaminated sites in Bristow?
Since taking this position, have you visited the Wilcox site, Kwikset or the other sites, or talked with people around the sites?
Oklahoma's Tar Creek site is well known for the Picher-Cardin buyout. Did your task force look at any changes to the policies on buy-outs?

I'll keep you updated if I hear more about this,

Thanks,
Matt

Matthew Colip
Office of Communications, Partnerships and Analysis
Office of Land and Emergency Management (OLEM)
U.S. Environmental Protection Agency
Office: 202-566-2641
Mobile: 202-597-1887
Follow us on Twitter @EPALand

How has having several contaminated sites in your hometown impacted your perspective on Superfund?

In addition to the sites around Bristow detailed below, there are three current or deleted NPL sites in the Tulsa area:

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- Landfilling activities contaminated soil and groundwater with hazardous chemicals.
- Following cleanup, the U.S. Environmental Protection Agency (EPA) took the site off the Superfund program's National Priorities List (NPL) in 2002.
- The fifth five-year review found that the remedy currently protects human health and the environment.
- The City of Sand Springs maintains the site and performs routine maintenance and sampling.
- Risks and pathways addressed by the cleanup include health risks from people ingesting or touching contaminated soil.

Sand Springs Petrochemical Complex, Sand Springs

- The 235-acre Sand Springs Petrochemical Complex site is located one mile south of Sand Springs in Tulsa County, Oklahoma. The site is located on the north bank of the Arkansas River.
- The area was the location of Pierce Petroleum Refinery and Sinclair Refining Company operations from the early 1900s to 1948.
- A variety of other industries operated on site beginning in 1953.
- Several solvent and oil recycling facilities operated on a 5.5-acre portion of the site from 1964 through 1983. This 5.5-acre area is referred to as the Glenn Wynn area.
- Two unlined pits, numerous tanks and drums, and contaminated soils from accidental spills remained on site from the previous recycling operations.
- In December 1980, EPA and state agencies became concerned about the possible contamination at the site.
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- Following emergency actions to protect human health and the environment, and construction of the site's long-term remedy, EPA took the site off the NPL in 2000. Operation and maintenance activities and monitoring are ongoing.
    - The site's long-term remedy included excavation of petroleum waste material, stabilization/solidification of the waste, and placement of 180,000 cubic yards of stabilized material in an on-site landfill.

  - In May 2001, a "tar-like" sludge material was observed on the north bank of the Arkansas River. This material appeared to be associated with the former Sinclair Refinery, and was exposed by erosion in a feature along the north bank of the Arkansas River.
  - A removal action started in 2004 to excavate and remove observed sludge material along the banks of the Arkansas River. The removal action finished in 2006.
- Risks and pathways addressed by the cleanup include health risks from people ingesting or touching contaminants in soil, wastes and groundwater.
- The site was addressed through federal, state and potentially responsible party actions.
- EPA has conducted several five-year reviews of the site's remedy. These reviews ensure that the remedies put in place protect public health and the environment, and function as intended. The most recent review completed in July 2015 concluded that the remedy continues to be protective of human health and the environment.

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- The 61-acre Tulsa Fuel and Manufacturing site is located in Collinsville in Tulsa County, Oklahoma.
- A zinc smelter operated at the site from 1914 to 1925. Historical smelting operations contaminated soil, sediment and surface water with hazardous chemicals.
- Smelting operations used nine furnaces, which were believed to be fueled by nearby natural gas wells. Other main structures of the smelter included a mechanical kiln building, a condenser room and a laboratory. A two-million-gallon-capacity surface reservoir was used in conjunction with the condenser room during operations. Large amounts of ore were stored on site in waste piles. The site was abandoned in the 1920s.
- EPA has selected a cleanup plan for the site. Construction of the remedy began in August 2014.
- The site's long-term remedy includes on-site consolidation and capping of soil, sediment and waste material. Remedial design is complete.
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- Risks and pathways to be addressed by the cleanup include health risks from people ingesting or touching contaminants in soil, sediment and surface water.
- The site is being addressed through federal and state actions.
- Remediation of the contaminated media will reduce current and future human health and ecological risks associated with on-site and some off-site contaminants.
- Moreover, revitalization of the area will encourage reuse and redevelopment planning. ODEQ is currently managing and overseeing some off-site contamination activities of another smelter with a PRP under a voluntary cleanup program in Collinsville.

How involved have you been with the Superfund site and contaminated sites in Bristow?

We are assuming that by "Superfund site" they are referring to Wilcox Oil Company, which is a site in Bristow that is currently on the NPL.

Wilcox Oil Company Superfund Site, Bristow

- The 140- to 150-acre Wilcox Oil Company site is located in Bristow and includes the inactive and abandoned Lorraine and Wilcox Oil Refineries.
- The property was used as a crude oil refinery from approximately 1915 to 1963.
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- The site is located at West 221st Street South about 0.35 miles east of U.S. Highway 66. About 2,404 people live within a mile of the site and about 6,134 people live within four miles of the site. The site area is mostly rural and primarily residential. The site includes a church and seven residential properties.
- The site's remedial investigation and feasibility study (RI/FS) is ongoing.
- Until a complete site investigation and risk assessment are complete, the location of the contamination, the amount of the contamination, and the potential health risks associated with that contamination is unknown.
- The remedial investigation data will be used to conduct a site-specific human health risk assessment and an ecological risk assessment.
- Areas of concern where refinery waste is present have been fenced to restrict trespassing and potential contact with the refinery waste.
- The potential contaminants of concern include lead and organic compounds (Total Petroleum Hydrocarbons and Polycyclic Aromatic Hydrocarbons). These potential contaminants of concern are found in soil, sediment, and waste material.
- The site is being addressed through federal actions.
- The site was placed on the National Priorities List on December 12, 2013. Since that time, EPA completed two searches to find potentially responsible parties to do the work. No potentially responsible parties agreed to do the work, and as a result, EPA received funding to begin the RI/FS for the Site.
- EPA is working closely with ODEQ to plan and implement investigation activities. In addition, EPA and ODEQ are working closely with residents, tribes, and the community to provide site updates and share information.
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Nu-Chrome Plating: https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0605014
Ohio Oil Refinery: https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0605082

Since taking this position, have you visited the Wilcox site, Kwikset or the other sites, or talked with people around the sites?

See above for information on Wilcox, Kwikset, and other sites in Bristow and Tulsa.

Oklahoma's Tar Creek site is well known for the Picher-Cardin buyout. Did your task force look at any changes to the policies on buy-outs?

Tar Creek (Ottawa County), Ottawa County, Oklahoma

- Lead and zinc mining activities first began at the site in the early 1900s.
- Rapid expansion of mining activities occurred during the 1920s and mining activities reached their peak around 1925. Each mine holding usually had its own mill. During the 1930s, large central mills came into operation, and most mining operations stopped operating their own mills.
- During the peak of mining activities, 130,410 tons of lead and 749,254 tons of zinc were produced annually.
- Large-scale underground mining activities ended in 1958. Smaller mining operations continued in the Picher Field through the 1960s. All mining activities at the site ceased in the 1970s.
- Risks and pathways addressed by the cleanup include health risks from people ingesting, touching or inhaling contaminants in soil.
- As of April 2016, there is insufficient information to determine the potential human health risks related to surface water and sediment exposure. EPA Regions 6 and 7 are working to develop and complete a human health risk assessment and characterization report.
- The site has five operable units:
    - *OU-1:* Addresses the surface water degradation by the discharge of acid mine water and the threat of contamination of the Roubidoux Aquifer, the regional water supply, by downward migration of acid mine water from the overlying Boone Aquifer through abandoned wells connecting the two.
    - The final remedy for OU-1, selected in 1984, included use of diking and diversion structures to stop the surface water of Tar Creek from entering the two collapsed mine shafts in Kansas, which were identified as the main inflow points. The remedy also included plugging 83 abandoned wells. Construction activities finished in December 1986. Groundwater monitoring is ongoing.
    - *OU-2:* Addresses residential areas. The long-term remedy for OU-2, selected in 1997, included remediation of residential yards and High Access Areas.
    - In May 2004, the State of Oklahoma implemented a relocation program for families with children under the age of seven.

  - *OU-3:* Addressed abandoned laboratory chemicals at the former Eagle-Picher Office Complex in Cardin, Oklahoma. One hundred and twenty containers of chemicals were removed as part of a removal response action. No further action is necessary.
  - *OU-4:* Addresses source materials, rural residential yard contamination, transition zone soil contamination and contamination in water from rural residential wells. The selected remedy also includes relocation.
  - OU-4 includes an additional area, called the Catholic 40. The area is a 40-acre tract of land owned by the Quapaw Tribe that has cultural and historical significance. Historical structures include remnants of a Catholic church and school built in 1893.
  - Cleanup will include the excavation, hauling, and disposal of 107,000 tons of source material or chat. The cleanup will also include site restoration and bank stabilization of Beaver Creek.
  - *OU-5:* OU-5 addresses sediment and surface water. EPA Region 6 is working with EPA Region 7 as part of multi-state effort to characterize sediment and surface water throughout the Spring and Neosho River basins.
- Since the cleanup of residential properties began, approximately 2,887 residential yards and public properties in Ottawa County have been cleaned up.
- More than 570 acres of land have been cleaned up and made available for future reuse.
- EPA continues to work with project contractors to implement the Superfund Job Training Initative (Super JTI) in Northeast Oklahoma.
  - Super JTI provides job-readiness training and employment opportunities for underserved citizens living in communities affected by Superfund sites.
  - The Tar Creek program generated 250 interested candidates of which 26 were selected for training.
  - A number of graduates were hired by project contractors.
  - One success story: A graduate has worked on OU4 site projects since 2010. As a result of his outstanding performance, he was hired as a full-time employee by EPA's contractor CH2M HILL in July 2010.
- EPA has conducted five-year reviews at the site. The most recent review concluded that response actions at the site are in accordance with the remedy selected by EPA and that the remedy continues to be protective of human health and the environment in the short term.

Rebecca K. Skiba
Group Counsel
Law-Regulatory Compliance

Marathon Oil Company
5555 San Felipe Street
Houston, TX 77056

Telephone: 713/296-2584
Mobile: 713/962-9058
Fax: 713/513-4425
Email: rkskiba@marathonoil.com

Marathon Oil

September 12, 2014

Marvin Benton
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
benton.marvin@epa.gov

Dear Mr. Benton:

The purpose of this letter is to respond to EPA's letter to Marathon Oil Company dated July 28, 2014 (EPA Notice Letter) alleging Potentially Responsible Party (PRP) status with respect to the Wilcox Oil Superfund Site in Creek County, Oklahoma (Site). This letter indicates that EPA believes that Marathon Oil Company is a PRP as the successor to "Marathon Oil Company," which leased a crude oil tank at the site in 1936 (1936 Marathon Oil Company). As we discussed earlier this month, Marathon Oil Company separated its upstream and downstream businesses into two separate companies – Marathon Oil Company (MOC) and Marathon Petroleum Company (MPC) in 2011. At this point, and given the paucity of information tying either company to the Site, we have not been able to determine whether MOC or MPC should take the lead on this matter. Therefore, MOC will continue to correspond with EPA on this matter until such time as a final decision can be made as to which company will handle this matter.

While we are not unwilling to continue good faith negotiations with EPA on this matter, we would like to understand further why EPA believes Marathon Oil Company to be a PRP with respect to the Site. We were not provided with any evidence that we owned or operated the refineries that appear to have caused the contamination. Therefore, we would appreciate further discussion with EPA on our alleged liability with respect to the Site. I can be reached at 713-296-2584 or rkskiba@marathonoil.com to discuss further, and would welcome the opportunity to have a better understanding of EPA's position in this matter.

Sincerely,

Connie Jones
on behalf of

Rebecca Skiba

9526372

Rec'd
by MBenton
Dec 18 2019
via fed ex

EL PASO ENERGY E.S.T. COMPANY

December 12, 2019

VIA OVERNIGHT MAIL

Marvin Benton, Esq.
Senior Staff Attorney
Office of Regional Counsel (6RC-S)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: General Notice Letter Addressed to El Paso Energy E.S.T. Company
Wilcox Oil Refinery Superfund Site
Bristow, Creek County, Oklahoma

Dear Mr. Benton:

I write on behalf of the El Paso Energy E.S.T. Company (the "Trustee"), the Trustee of the EPEC Oil Company Liquidating Trust (the "Trust"), to respond to the General Notice Letter ("GNL") for the Wilcox Oil Refinery Superfund Site (the "Site"), dated October 30, 2019, which the Trustee received on November 12, 2019. In that letter, the United States Environmental Protection Agency ("EPA") alleged that the Trustee is a "prior owner of the Site." The only document referenced to support this allegation is the EPEC Oil Company Liquidating Trust Agreement, dated March 9, 2001 (the "Trust Agreement").

The Trust Agreement was provided to EPA by Kinder Morgan, Inc. as part of its January 7, 2013 response to EPA's CERCLA § 104(e) Information Request dated October 25, 2012. As an initial matter, it is not clear why there was a gap of nearly seven years between EPA's receipt of this document and the Agency's issuance of the GNL allegedly based on that document. Moreover, the Trust Agreement does not mention the Site or its ownership and thus provides no evidence that the Trustee is a "prior owner of the Site" as asserted in the GNL.

In fact, neither the Trustee nor the Trust ever owned or held any property interest in any of the parcels within the Site. Indeed, EPA's own title search of the parcels within the Site did not identify either of those entities as an owner or holder of any property interest at any point in time. *See* Toeroek Associates, Inc., *Draft Title Search Report, Wilcox Oil Superfund Site*, EPA Doc. No. 9611767 (April 8, 2014). In light of the above, the Trustee respectfully requests that EPA provide specific information that supports its allegation of prior ownership set forth in the GNL.

Please be further advised that any EPA claim for CERCLA liability is untimely. The Trustee is legally obliged to comply with the terms of the Trust Agreement which established the Trust to provide for the payment and satisfaction of certain obligations of the EPEC Oil Company following its dissolution pursuant to Delaware law on December 18, 1998. In

compliance with Delaware law, the Trust Agreement further established a Claims Assertion Date of December 18, 2008. EPA failed to assert a claim prior to the Claims Assertion Date, and the Trustee lacks the capacity to authorize payment or settlement of any EPA claim first asserted against the Trust after the Claims Assertion Date.

Very truly yours,

Adam S. Forman

Adam S. Forman

Vice President and Secretary
El Paso Energy E.S.T. Company as Trustee of
the EPEC Oil Company Liquidating Trust

September 29, 2017

VIA FEDEX DELIVERY

Mr. Lance Nixon, Enforcement Officer
Superfund Enforcement Assessment Section (6SF-TE)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: Request for Information Related to Wilcox Oil Superfund Site

Dear Mr. Nixon:

Enclosed please find Kinder Morgan, Inc.'s ("Kinder Morgan") Response to your Information Request, dated August 2, 2017 and received by Kinder Morgan on August 4, 2017, issued pursuant to Section 104(e) of the Comprehensive Environmental Response Compensation and Liability Act, regarding the Wilcox Oil Superfund Site in Bristow, Oklahoma. This Response is due on October 3, 2017 pursuant to an extension of time agreed to by EPA counsel Marvin Benton on August 29, 2017.

If you have any questions, please do not hesitate to contact me at 303-914-4634 or nancy_vanburgel@kindermorgan.com.

Very truly yours,

Nancy Van Burgel, Esq.
Assistant General Counsel
Kinder Morgan, Inc.

ED_013222_00000114-00001

WILCOX OIL SUPERFUND SITE

INFORMATION REQUEST TO KINDER MORGAN, INC.

General Objections

Kinder Morgan asserts the following general objections to the Information Request. These objections are hereby incorporated into each response, and to the extent that Kinder Morgan responds to any questions to which it objects, that response is made subject to and without waiving such objections.

1. Kinder Morgan objects to the Information Request to the extent it seeks information not within its possession, custody or control.

2. Kinder Morgan objects to the Information Request as vague, overbroad and unduly burdensome to the extent that it calls for information about settlements, claims, or payments unrelated to the Site.

3. Kinder Morgan objects to the Information Request to the extent it seeks information protected by the attorney-client privilege, work-product doctrine, and/or any other applicable privilege or doctrine.

4. Kinder Morgan specifically reserves the right to supplement, modify, or amend this response, as its internal document search efforts are currently ongoing.

Specific Response

1. Please provide the full name, mailing address and phone number of the Respondent.

Response: Kinder Morgan, Inc.
c/o Nancy Van Burgel, Esq.
Assistant General Counsel
370 Van Gordon Street
Lakewood, CO 80228
Phone: (303) 989-1740
Fax: (303) 984-3333

2. For each person answering these questions on behalf of the Respondent provide full name, title, business address and business telephone and fax number.

Response: See Response to Request No. 1.

3. If the Respondent wishes to designate an individual for all future correspondence concerning this Site, including legal notices, please provide the individual's name, address, telephone number and fax.

Response: See Response to Request No. 1.

4. If the EPEC Oil Liquidating Trust ("Liquidating Trust") still exists, please state the current net worth of the trust and the dollar value of any assets or monies that may have been distributed by the trust.

Response: The EPEC Oil Liquidating Trust (the "Trust") does continue to exist and to pay Plan Obligations including Plan Claims as those terms are defined in the EPEC Oil Company Liquidating Trust Agreement (the "Trust Agreement") (previously produced under Bates Nos. KMI0000179-208). Under the Trust Agreement, Plan Claims were required to be submitted in advance of the Claims Assertion Date, which was defined to be December 18, 2008 and which was ten years after the dissolution of EPEC Oil Company (the "Company"). In addition to utilizing certain recoveries from insurance policies and other rights and claims of the Company or the Trust to satisfy Plan Obligations including Plan Claims, the Trust has arranged for the payment of Plan Obligations including Plan Claims by way of the agreement by El Paso Tennessee Pipeline Co. ("EPTP") to pay Plan Obligations on behalf of the Trust or to transfer an amount to the Trust sufficient to pay Plan Obligations. (See Undertaking Agreement entered into among EPEC Oil Company, Midwestern Gas Transmission Company, EPTP and the Trust, dated March 9, 2001, Bates Nos. KMI0000616-28, copy enclosed). EPTP's aforementioned obligation is capped at $93 million. Ibid.

A precise calculation of the Trust's historical payments and reserves for Plan Obligations remains subject to continuing accounting and reconciliation and is not currently known. However, based on currently available information, we estimate that, as of June 2017, the Trust has paid and reserved for future payment a total of approximately $71.8 million in Plan Obligations. Please note that this is a good faith estimate subject to final confirmation, that the estimate is subject to revision based on such factors as future claims experience and the continuing evaluation of reserves and that we will supplement this response if materially different information becomes available.

5. Please attach copies of any lists, charts or documents indicating the names of entities to whom assets or financial payments have been distributed from the Liquidating Trust.

Response: The Liquidating Trust has not made and has no current plans to make any distributions of its assets.

6. Please attach copies of any schedules, lists, charts or documents regarding timeframes for current or future payments to entities from the Liquidating Trust.

Response: See Response to Request No. 5.

7. Does the Liquidating Trust currently have any insurance coverage?

Response: After diligent inquiry, Kinder Morgan has not identified any current insurance policy that would provide the Liquidating Trust with available insurance coverage responsive to any EPA claims pertaining to historic releases at the Wilcox Oil Superfund Site. To the extent that responsive policies are located in the future, Kinder Morgan will provide a supplemental response to this Request.

8. If the Liquidating Trust currently has insurance coverage what is the amount of the coverage?

Response: See Response to Request No. 7.

9. Did the Liquidating Trust have insurance coverage that is no longer in effect?

Response: After diligent inquiry, Kinder Morgan has not identified any past insurance policy that would provide the Liquidating Trust with available insurance coverage responsive to any EPA claims pertaining to historic releases at the Wilcox Oil Superfund Site. To the extent that responsive policies are located in the future, Kinder Morgan will provide a supplemental response to this Request.

Please be advised, however, that as described in Kinder Morgan's January 7, 2013 Response to EPA's Information Request, WXC Company (created as a wholly owned subsidiary of Tennessee Gas Transmission Company) acquired assets from Wilcox Oil Company in May 1964. (*See* January 7, 2013 Response for additional details on that transaction and subsequent transactions.) The assets acquired by WXC Company from Wilcox Oil Company as part of that 1964 transaction included insurance policies that Wilcox Oil Company had purchased. *See* Bill of Sale (Insurance), previously produced under Bates no. W0000414-18. Kinder Morgan does not have copies of any of these insurance policies within its possession, custody or control and does not know whether any of those policies would provide any coverage that would be available to respond to any EPA claims pertaining to historic releases at the Wilcox Oil Superfund Site.

10. If insurance coverage ever existed for the Liquidating Trust, what was the time period that coverage began and when did it end?

Response: See Response to Request No. 9.

11. Please provide the names of all financial institutions, insurance companies or business entities associated with providing, insuring, underwriting or involved in providing financial assurance for the Liquidating Trust.

Response: There are no financial institutions, insurance companies or business entities that are providing financial assurance for the Liquidating Trust.

12. Has the Oil Liquidating Trust ever distributed any monies to any of its corporate shareholders?

Response: The Liquidating Trust has no corporate shareholders. In addition, no distributions have been made to any party from the Liquidating Trust.

13. When EPEC Oil created its Liquidating Trust, did EPEC Oil or Kinder Morgan Incorporated ever notify the Oklahoma Department of Environmental Quality of the existence of the Liquidating Trust?

Response: On February 3, 2012, Scott J. Miller, Esq., representing the Trustee for the Liquidating Trust sent a letter to Amy Brittain of the Site Remediation Section of ODEQ, informing her in writing of the existence of the Liquidating Trust. *See* Bates No. KMI-0000629-30, enclosed.

14. When EPEC Oil created its Liquidating Trust, did EPEC Oil or Kinder Morgan Incorporated ever notify the U.S. Environmental Protection Agency of the existence of the Liquidating Trust?

Response: On January 7, 2013, in response to an Information Request issued by EPA on October 25, 2012, Nancy Van Burgel, Esq., on behalf of Kinder Morgan, Inc., informed EPA of the existence of the Liquidating Trust and provided EPA with the operative documents related to the Trust. *See* Response to EPA Information Request, dated Jan. 7, 2013, Response Nos. 5 and 8.

15. Did EPEC Oil or Kinder Morgan Incorporated ever inform the Oklahoma Department of Environmental Quality of the Liquidating Trust claim assertion date of December 18, 2008?

Response: The February 3, 2012 correspondence from Scott J. Miller, Esq., representing the Trustee for the Liquidating Trust to Amy Brittain of the Site Remediation Section of ODEQ discussed the Claims Assertion Date of December 18, 2008. See Bates No. KMI-0000629-30, enclosed.

16. Did EPEC Oil or Kinder Morgan Incorporated ever inform the U.S. Environmental Protection Agency of the Liquidating Trust's claim assertion date of December 18, 2008?

Response: Kinder Morgan's January 7, 2013 response to EPA's Information Request included the EPEC Oil Company Liquidating Trust Agreement, which establishes the Claims Assertion Date of December 18, 2008. *See* Bates Nos. KMI0000179-208.

17. Did EPEC Oil or Kinder Morgan ever designate funding in the Liquidating Trust for payment of existing or contingent environmental liabilities?

Response: Funding for the Liquidating Trust's payment of environmental liabilities is designated on a case-by-case basis as claims are asserted and determined

to be payable under the terms of the EPEC Oil Company Liquidating Trust Agreement.

a. If so what was the amount of funding provided for disposition of existing or contingent environmental liabilities?

Response: See Response to Request No. 17.

18. When did EPEC Oil or Kinder Morgan Incorporated receive actual or constructive notice that environmental contamination may have occurred at the site?

Response: The first notice that the Liquidating Trust received that environmental contamination may have occurred at the Wilcox Oil site was via the ODEQ's October 31, 2011 letter to Tenneco, Inc. EPEC Oil never received notice, as that entity had been dissolved for more than a decade by the date of the ODEQ letter. Kinder Morgan did not have access to any information related to the Wilcox Oil site until it acquired El Paso Corporation in May 2012.

19. How did EPEC Oil or Kinder Morgan become informed of environmental contamination at the site?

Response: See Response to Request No. 18.

UNDERTAKING AND AGREEMENT

This Undertaking and Agreement (the "Agreement") is entered into this 9th day of March, 2001 by and among EPEC Oil Company, a dissolved Delaware corporation (the "Company"), Midwestern Gas Transmission Company, a Delaware corporation ("Midwestern") and the sole stockholder of the Company, El Paso Tennessee Pipeline Co., a Delaware corporation ("EPTP"), and EPEC Oil Company Liquidating Trust, a Delaware common law trust (the "Trust").

WHEREAS, the Company was dissolved on December 18, 1998 upon the filing of a certificate of dissolution pursuant to Section 275 of the Delaware General Corporation Law (the "DGCL") with the Secretary of State of the State of Delaware;

WHEREAS, the Company, by action of its board of directors, adopted a Plan of Distribution, effective as of December 18, 1998, in furtherance of its obligations under Section 281(b) of the DGCL, which Plan of Distribution was amended and restated by the Company, by action of its board of directors, effective March 9, 2001 (the "Plan").

WHEREAS, pursuant to the Plan, the Company has established the EPEC Oil Company Liquidating Trust (the "Trust"),

WHEREAS, Midwestern is the holder of all of the issued and outstanding shares of Common Stock of the Company;

WHEREAS, one of the remaining assets of the Company is an intercompany receivable from New Midwestern, Inc. in the amount of approximately $93 million (the "NMI Receivable");

WHEREAS, the Company has other assets, including but not limited to insurance policies and rights and various claims, demands, rights and causes of action and choses in action;

WHEREAS, in accordance with the Plan, the transfer of the NMI Receivable to Midwestern in full satisfaction and discharge of the Company's obligations to make additional liquidating distributions to Midwestern is conditioned upon (i) the Company and Midwestern entering into this Agreement and the undertaking contained herein by EPTP to refund to the Trust or to pay amounts in connection with Plan Obligations (as defined herein), subject to the terms, conditions, and limitations set forth in the Plan and this Agreement, and (ii) the agreement of the Trust to administer claims on behalf of the Company and otherwise to conduct and administer the orderly winding up of the Company's business and affairs, all pursuant to the terms hereof and the Trust Agreement (as hereinafter defined); and

WHEREAS, the parties hereto desire to establish this Agreement.

1. DEFINITIONS.

1.1 "Agreement" means this Undertaking and Agreement.

1.2 "Claims Assertion Date" means December 18, 2008.

1.3 "Code" means the Internal Revenue Code of 1986, as amended.

1.4 "Contingent or Conditional Contract Claim" means any claim against the Company, asserted prior to the expiration of the Claims Assertion Date, for any obligation under the terms of any contract or agreement entered into between the Company and any other Person or Persons prior to the Effective Date, which contractual obligation, as of the Effective Date, was contingent upon the occurrence or nonoccurrence of future events or was otherwise conditional or unmatured.

1.5 "DGCL" has the meaning set forth in the Recitals.

1.6 "Effective Date" means March 9, 2001.

1.7 "Final Judgment" means (i) a judgment, order, or other decree issued by any state or federal court or government agency of competent jurisdiction located in one of the states, territories, or possessions of the United States or in the District of Columbia or by any foreign court of competent jurisdiction, which judgment, order, or other decree has not been reversed or stayed and as to which the time for appeal has expired and as to which no appeal or petition for review, rehearing, or certiorari is pending or with respect to which any appeal has been finally decided and no further appeal or petition for certiorari can be taken or granted (including by reason of the fact that the time for taking such further appeal or petition has expired); or (ii) a stipulation or other agreement (including any binding arbitration award) that has the effect of any such final judgment, order, or other decree.

1.8 "Future Action Claim" means any claim against the Company or the Trust that, based on facts known to the Company or the Trust on or before December 18, 2001, is likely to arise or become known prior to the expiration of the Claims Assertion Date and that

is the subject of an action, suit, or proceeding to which the Company or the Trust is made a party after the Effective Date but prior to the expiration of the Claims Assertion Date.

1.9 "Future Fees and Expenses" means all costs and expenses, including, but not limited to, reasonable fees and expenses of attorneys, investigators, experts, and consultants, incurred by or on behalf of the Company or the Trust on and after the Effective Date in connection with (1) Plan Claims, (2) any claims that the Company or the Trust may determine should be asserted by or on behalf of the Company or the Trust, and (3) any other acts, activities, or transactions that either the Company or the Trust shall reasonably determine are necessary or useful with respect to the winding up of the Company's business and affairs.

1.10 "Incurred But Not Reported Claim or Loss" or "IBNR" means all costs and expenses associated with a claim or loss, the damage or injury associated therewith having taken place in whole or in part, but which claim or loss has not been reported to the Company as of the Effective Date.

1.11 "Payment and Refunding Period" means the Effective Date through and including the Termination Date.

1.12 "Pending Action Claim" means any claim against the Company that is the subject of a pending action, suit, or proceeding to which the Company is a party as of the Effective Date.

1.13 "Person" means an individual, partnership, limited liability company, corporation, trust, estate, association, or any other entity.

1.14 "Plan" means the Amended and Restated Plan of Distribution of EPEC Oil Company, dated as of March 9, 2001.

1.15 "Plan Claim" means (1) any Pending Action Claim, (2) any Future Fees and Expenses; (3) any Contingent or Conditional Contract Claim, (4) any Future Action Claim, or (5) any other claim against the Company or the Trust that, based on facts known to the Company or the Trust on or before December 18, 2001, is likely to arise or become known prior to expiration of the Claims Assertion Date and that is asserted prior to expiration of the Claims Assertion Date; provided, however, that the term "Plan Claim" excludes all claims and obligations paid or otherwise satisfied in full by or on behalf of the Company prior to the Effective Date.

1.16 "Plan Obligation" means (a) any Pre-Existing Obligation, and (b) any Plan Claim that (i) has been determined by the Company or the Trust to be properly payable by the Company or the Trust or (ii) has been reduced to a Final Judgment or that has been settled pursuant to a written settlement agreement between the claimant or potential claimant and the Company or the Trust, which agreement fully and finally settles such Plan Claim (but need not settle all claims pending between the claimant and the Company or the Trust) and which agreement is binding and final as to such Plan Claim and any Person claiming through such claimant.

1.17 "Pre-Existing Obligation" means an obligation incurred by the Company prior to the Effective Date that has been determined by the Company prior to the Effective Date to be properly payable but that has not been paid in full as of the Effective Date.

1.18 "Termination Date" shall be the later of (i) the date on which all Plan Obligations have been finally determined and paid (as determined by the Trustee in its sole discretion), the Claims Assertion Date has passed, and the Final Liquidating Distribution (as defined in the Trust Agreement), if any, has been made in accordance with Section 8.2 of the Trust Agreement and (ii) January 30, 2009.

1.19 "Trust Agreement" means the EPEC Oil Company Liquidating Trust Agreement dated March 9, 2001.

1.20 "Trustee" means El Paso E.S.T. Company, a Delaware corporation, or any successor trustee of the Trust, serving as trustee of the Trust pursuant to the terms of the Plan and the Trust Agreement.

2. DISTRIBUTION OF RECEIVABLE; TRUST ASSETS AND OBLIGATIONS.

(a) In accordance with the Plan and this Agreement, in full satisfaction and discharge of the Company's obligations to make liquidating distributions to Midwestern in accordance with Section 281 of the DGCL, the Company shall distribute to Midwestern all of the Company's right, title, and interest in and to the NMI Receivable, subject to the terms, conditions, and limitations set forth in the Plan and this Agreement. Midwestern hereby agrees to accept the NMI Receivable, subject to the terms, conditions, and limitations set forth in the Plan and this Agreement, in full satisfaction and discharge of the Company's obligations to make liquidating distributions to Midwestern. Midwestern hereby further agrees to distribute the NMI Receivable to EPTP, the holder of all of the issued and outstanding capital stock of Midwestern, on or before March 9, 2001, in the form of a

distribution in connection with a plan of liquidation under Section 332 of the Code, and as part of a deemed liquidation of EPTP as a consequence of an election under Section 338(h)(10) of the Code.

(b) All other Company assets and obligations shall become assets and obligations of the Trust.

3. UNDERTAKING.

(a) In consideration of the designation of EPTP as the primary beneficiary of the Trust and the rights of EPTP in respect thereof, EPTP hereby agrees that in the event that at any time during the Payment and Refunding Period the Trust has insufficient funds to pay Plan Obligations, EPTP shall advance or pay to the claimant on behalf of the Trust or advance or refund to the Trust so that it may pay a claimant, an amount sufficient to pay in full any such Plan Obligations; provided, however, that in no event shall the aggregate amount that EPTP is obligated to refund to the Trust or to pay to claimants on behalf of the Trust in respect to Plan Obligations pursuant to this Agreement exceed $93 million.

(b) None of the Trustee, or any agent or employee of the Trust, or any director, officer, agent, or employee of the Company, Midwestern, EPTP, or the Trustee, shall be liable for the payment of any expense, liability, or obligation of the Company or the Trust and no Person shall look to any of the foregoing Persons for payment of any such expense, liability, or obligation. Except to the extent expressly provided in subsection (a) hereof, neither Midwestern nor EPTP shall be responsible for the payment of any expense, liability, or obligation of the Company or the Trust, and no Person shall look to Midwestern or EPTP

for the payment of any such expense, liability, or obligation except with respect to EPTP, as expressly provided in subsection (a) hereof.

(c) Nothing herein shall be construed as requiring Midwestern or EPTP to hold separately or otherwise in segregated accounts any or all of the NMI Receivable transferred to Midwestern in accordance with the Plan and this Agreement.

(d) Nothing herein shall supplant, amend or modify an obligation expressed or implied in any insurance policy issued to or covering the Company, the Trust or any claimant or beneficiary of the Company or the Trust. Any payment made pursuant to this Section 3 shall be treated as an advance pending receipt of insurance proceeds in the event that the Company, the Trust, or any beneficiary asserts that any policy of insurance available to the Company, the Trust, or any beneficiary of the Trust is responsive in lieu of or in conjunction with any payment provided for herein.

4. ESTABLISHMENT OF THE TRUST.

Pursuant to the terms of the Plan, the Company shall establish the Trust to administer Plan Claims, to pay or provide for the payment or satisfaction of Plan Obligations, and otherwise to conduct and administer the orderly winding up of the Company's business and affairs in accordance with Sections 278 and 281 of the DGCL, subject to the terms, conditions, and limitations set forth in the Plan, the Trust Agreement, and this Agreement. In consideration of its obligations pursuant to this Agreement, EPTP shall be the initial primary beneficiary of the Trust and shall have all rights and obligations of the primary beneficiary pursuant to the terms and conditions of the Trust Agreement.

5. NO CHANGE IN EXISTING RIGHTS OR OBLIGATIONS.

Nothing herein shall constitute or shall effectuate an amendment, alteration, or modification of any contract, right, or obligation of the Company, nor shall anything herein constitute or effectuate an assignment of any contract, right, obligation, or proceeds thereof of the Company, except as explicitly provided for herein or as required or provided by law.

6. ASSIGNMENT.

No party shall assign this Agreement or its rights or obligations hereunder without the prior written consent of the other parties; provided, however, that the Company may assign or transfer its rights and obligations hereunder to the Trust, and the Trust may succeed by operation of law or otherwise to the rights and obligations of the Company hereunder, and the written consent of the parties hereto shall not be necessary to effectuate such assignment, transfer, or succession; and provided further that to the extent permitted by law, following the establishment of the Trust, the consent of the Company shall not be required for any party to assign this Agreement or its rights or obligations hereunder.

7. BINDING EFFECT.

This Agreement shall be binding on the parties hereto and their respective successors, assigns, and legal representatives, including any successor entity of the Company.

8. AMENDMENT.

This Agreement or any part hereof shall not be modified, supplemented, or amended in any way unless agreed to by each of the parties hereto in writing; provided, however, that, to the extent permitted by law, following the establishment of the Trust, the consent of the Company shall not be required to modify, supplement, or amend this Agreement.

9. CHOICE OF LAW.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without regard to its conflict of law principles; provided, however, that this provision shall not affect the law applicable to the resolution or discharge of any insurance claim or right or any loss, claim, demand, causes of action or choses in action associated therewith.

10. JURISDICTION.

Each of the parties hereto hereby irrevocably consents to the jurisdiction of the Courts of the State of Delaware (including, without limitation, the Court of Chancery of the State of Delaware) in connection with any action, suit, or proceeding relating to the administration, construction, or enforcement of this Agreement or the Plan, or the performance of the parties' respective rights, duties, or obligations under this Agreement or the Plan. Each of the parties hereto irrevocably consents to service of process of the courts of the State of Delaware in connection with any such action, suit, or proceeding by first class United States mail, registered or certified, return receipt requested, postage prepaid, to the address at which it is to receive notice in accordance with Section 11 of this Agreement.

11. INCORPORATION OF PLAN.

The terms and conditions of the Plan shall be deemed to be incorporated herein by reference as if fully set forth herein.

12. NOTICE.

Any notices to the parties hereto shall be addressed as follows, or to such other address or addresses as may hereafter be furnished by any such party by like notice to the other party:

To the Company: EPEC Oil Company
El Paso Building
1001 Louisiana Street
Houston, Texas 77002
Attn: Corporate Secretary
Fax: (713) 420-4099

To Midwestern: Midwestern Gas Transmission Company
El Paso Building
1001 Louisiana Street
Houston, Texas 77002
Attn: Corporate Secretary
Fax: (713) 420-4099

To EPTP: El Paso Tennessee Pipeline Co.
El Paso Building
1001 Louisiana Street
Houston, Texas 77002
Attn: Corporate Secretary
Fax: (713) 420-4099

To the Trust
or the Trustee: c/o El Paso Energy E.S.T. Company
El Paso Building
1001 Louisiana Street
Houston, Texas 77002
Attn: Corporate Secretary
Fax: (713) 420-4099

All such notices shall be in writing and shall be personally delivered or sent by first class United States mail, registered or certified, return receipt requested, postage prepaid.

13. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute but one and the same instrument.

14. ENTIRE AGREEMENT.

This Agreement and the Plan together contain the entire agreement of the parties relating to the subject matter hereof.

15. HEADINGS.

The headings used in this Agreement are inserted for convenience of reference only and shall neither constitute a portion of this Agreement nor in any manner affect the construction of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

EPEC OIL COMPANY

By: H. Brent Austin
Name: H. Brent Austin
Title: President

MIDWESTERN GAS TRANSMISSION COMPANY

By: H. Brent Austin
Name: H. Brent Austin
Title: Executive Vice President

EL PASO TENNESSEE PIPELINE CO

By: H. Brent Austin
Name: H. Brent Austin
Title: Executive Vice President

EPEC OIL COMPANY LIQUIDATING TRUST

By: El Paso Energy, E.S.T. Company, as Trustee and not in its individual capacity

By: H. Brent Austin
Name: H. Brent Austin
Title: Executive Vice President

445064v3

elpaso

February 3, 2012

RECEIVED
FEB 06 2012
LAND PROTECTION DIVISION
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certified Mail CM/RRR (7008 0150 0001 9140 0806)
Amy Brittain
Site Remediation Section
Land Protection Division
Oklahoma Department of Environmental Quality
P. O. Box 1677
Oklahoma City, OK 73101-1677

Re: Former Wilcox Oil Company Refinery, Bristow, Oklahoma
Response on Behalf of EPEC Oil Company Liquidating Trust

Dear Ms. Brittain:

We have received your letter of October 31, 2011 concerning the above-referenced site. As you know, we also met with you and others with the Oklahoma Department of Environmental Quality (ODEQ) on December 14, 2011. At that meeting, you provided us information and documents concerning the site, and we obtained other documents from the files of ODEQ and EPA Region 6 following that meeting. We have carefully reviewed that information and those documents, and for the reasons provided below, we must respectfully decline to participate in the investigation and remediation of the site.

Wilcox Oil Company, Tenneco Oil Company, EPEC Oil Company, and the EPEC Oil Company Liquidating Trust

As you indicated in your October 31 letter, the site, at least in part, was formerly a refinery that was owned and operated by Wilcox Oil Company. In the early 1960s, Wilcox Oil Company sold the refinery and the associated real property. In 1964, after Wilcox Oil Company's sale of the refinery, WCX Company purchased the assets of Wilcox Oil Company. In July 1964, WCX Company was re-named Wilcox Oil Company, and that Wilcox Oil Company was merged into Tenneco Oil Company in 1965. In the 1994 Preliminary Assessment prepared by ODEQ, ODEQ recognized that Wilcox Oil Company had owned and operated the refinery until November 1963 and that a Wilcox Oil Company had been merged into Tenneco Oil Company in the 1960s. *Preliminary Assessment of the Wilcox Oil Company located in Bristow, Creek County, Oklahoma*, December 15, 1994, pp 5-6.

Following these events, Tenneco Oil Company was renamed as EPEC Oil Company in the mid-1990s, and on December 18, 1998, EPEC Oil Company was dissolved pursuant to Delaware law. As part of the dissolution process, EPEC Oil Company created the EPEC Oil Company Liquidating Trust on March 9, 2001 to facilitate the liquidation and orderly wind up of

El Paso Corporation
1001 Louisiana Street Houston, Texas 77002
PO Box 2511 Houston, Texas 77252.2511
tel 713.420.2131

the business and affairs of EPEC Oil Company. Pursuant to the trust agreement, the trustee for the EPEC Oil Company Liquidating Trust is authorized to resolve claims asserted against EPEC Oil Company, so long as such claims were asserted on or before December 18, 2008 (referred to as the "Claims Assertion Date" in the trust agreement).

Wilcox Refinery Claim is After the Claims Assertion Date.

We have reviewed the documents provided by ODEQ and EPA and our internal files and documents, and we can find no record that ODEQ, EPA, or anyone else asserted any claim or provided any notice concerning this site to any Tenneco or El Paso entity prior to your October 31, 2011 letter. I also asked that question in our December 14 meeting, and I believe your response was that no such notice or claim had been provided or asserted by ODEQ prior to your letter. This is despite the fact that by December 15, 1994, fourteen years before the Claims Assertion Date, ODEQ had noted in one of its own reports that Tenneco Oil Company was a successor-by-merger to Wilcox Oil Company and that Tenneco Oil Company still had operations in Oklahoma. *Preliminary Assessment of the Wilcox Oil Company located in Bristow, Creek County, Oklahoma*, December 15, 1994, pp 5-6. This same information was also noted in the March 1997 report prepared for EPA Region 6. *Expanded Site Inspection Report, Wilcox Oil Company, Bristow, Creek County, OK, EPA CERCLA I.D. No.: OKD001010917*, March 1997, page 2-3.

As noted above, your October 31, 2011 letter is almost three years after the Claims Assertion Date. As such, the trustee for the EPEC Oil Company Liquidating Trust does not have the authority to participate in the investigation or the remediation of the site, and therefore, we must respectfully decline to participate in the investigation or remediation of the site.

If you wish to discuss or have any questions, please contact me at (713) 420-2336.

Sincerely,

Scott J. Miller
Senior Counsel
Representing the Trustee for the
EPEC Oil Company Liquidating Trust

cc: Barbara Rausch, Esq. (ODEQ)

AMENDED AND RESTATED PLAN OF DISTRIBUTION OF

EPEC OIL COMPANY

This Amended and Restated Plan of Distribution of EPEC OIL COMPANY, a dissolved Delaware corporation (the "Company"), is dated as of March 9, 2001.

WHEREAS, the Company was dissolved on December 18, 1998 upon the filing of a certificate of dissolution pursuant to Section 275 of the General Corporation Law of the State of Delaware (the "DGCL") with the Secretary of State of the State of Delaware.

WHEREAS, the Board of Directors of the Company adopted a plan of distribution in accordance with Section 281(b) of the DGCL by resolutions effective as of December 18, 1998;

WHEREAS, the Company has remaining assets in the form of an intercompany receivable from New Midwestern, Inc. (the "NMI Receivable") in the approximate amount of $93 million, and in the form of insurance policies and rights and various claims, demands, rights, causes of action, and choses in action;

WHEREAS, the Board of Directors has determined to amend and restate the original plan of distribution in its entirety as set forth herein;

WHEREAS, the Board of Directors has determined that the Company has sufficient assets to satisfy all of its claims and obligations in full and, therefore, in accordance with Section 281(b) of the DGCL, the Company desires to make provision for the payment of all claims and obligations that have not previously been paid; and

WHEREAS, the Company, Midwestern Gas Transmission Company, a Delaware corporation and the sole stockholder of the Company ("Midwestern"), El Paso Tennessee Pipeline Co. ("EPTP") and EPEC Oil Company Liquidating Trust (the "Trust"), have entered into an Undertaking and Agreement, effective contemporaneously herewith, a copy of which is attached hereto as Exhibit A (the "Undertaking and Agreement").

NOW, THEREFORE, the Company adopts the following Plan of Distribution;

ARTICLE I

Definitions

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Article I.

1.1 "Claims Assertion Date" means December 18, 2008.

1.2 "Company" means EPEC Oil Company, a dissolved Delaware corporation.

1.3 "Contingent or Conditional Contract Claim" means any claim against the Company, asserted prior to the expiration of the Claims Assertion Date, for any obligation under the terms of any contract or agreement entered into between the Company and any other Person or Persons prior to the Effective Date, which contractual obligation, as of the

Effective Date, was contingent upon the occurrence or nonoccurrence of future events or was otherwise conditional or unmatured.

1.4 "Effective Date" means March 9, 2001.

1.5 "Final Judgment" means (i) a judgment, order, or other decree issued by any state or federal court or government agency of competent jurisdiction located in one of the states, territories, or possessions of the United States or in the District of Columbia or by any foreign court of competent jurisdiction, which judgment, order, or other decree has not been reversed or stayed and as to which the time for appeal has expired and as to which no appeal or petition for review, rehearing, or certiorari is pending or with respect to which any appeal has been finally decided and no further appeal or petition for certiorari can be taken or granted (including by reason of the fact that the time for taking such further appeal or petition has expired); or (ii) a stipulation or other agreement (including any binding arbitration award) that has the effect of any such final judgment, order, or other decree.

1.6 "Future Action Claim" means any claim against the Company or the Trust that, based on facts known to the Company or the Trust on or before December 18, 2001, is likely to arise or become known prior to expiration of the Claims Assertion Date and that is the subject of an action, suit or proceeding to which the Company or the Trust is made a party prior to the expiration of the Claims Assertion Date.

1.7 "Future Fees and Expenses" means all costs and expenses, including, but not limited to, reasonable fees and expenses of attorneys, investigators, experts, and consultants, incurred by or on behalf of the Company or the Trust on and after the Effective Date in

connection with (1) Plan Claims, (2) any claims that the Company or the Trust may determine should be asserted by or on behalf of the Company or the Trust, and (3) any other acts, activities, or transactions that either the Company or the Trust shall reasonably determine are necessary or useful with respect to the winding up of the Company's business and affairs.

1.8 "Incurred But Not Reported Claim or Loss" or "IBNR" means all costs and expenses associated with a claim or loss, the damage or injury associated therewith having taken place in whole or in part, but which claim or loss has not been reported to the Company as of the Effective Date.

1.9 "Payment and Refunding Period" means the Effective Date through and including the Termination Date.

1.10 "Pending Action Claim" means any claim against the Company that is the subject of a pending action, suit, or proceeding to which the Company is a party as of the Effective Date.

1.11 "Person" means an individual, partnership, corporation, trust, estate, association, or any other entity.

1.12 "Plan" means this Plan of Distribution.

1.13 "Plan Claim" means (1) any Pending Action Claim, (2) any Future Fees and Expenses, (3) any Contingent or Conditional Contract Claim, (4) any Future Action Claim, or (5) any other claim against the Company or the Trust that, based on facts known to the Company or the Trust on or before December 18, 2001, is likely to arise or become known

prior to expiration of the Claims Assertion Date and that is asserted prior to the expiration of the Claims Assertion Date; provided, however, that the term "Plan Claim" excludes all claims and obligations paid or otherwise satisfied in full by or on behalf of the Company prior to the Effective Date.

1.14 "Plan Obligation" means (a) any Pre-Existing Obligation, and (b) any Plan Claim that (i) has been determined by the Company or the Trust to be properly payable by the Company or the Trust or (ii) has been reduced to a Final Judgment or that has been settled pursuant to a written settlement agreement between the claimant or potential claimant and the Company or the Trust, which agreement fully and finally settles such Plan Claim (but need not settle all claims pending between the claimant and the Company or the Trust) and which agreement is binding and final as to such Plan Claim and any Person claiming through such claimant.

1.15 "Pre-Existing Obligation" means an obligation incurred by the Company prior to the Effective Date that has been determined by the Company prior to the Effective Date to be properly payable but that has not been paid in full as of the Effective Date.

1.16 "Protected Party" means any Person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, including any action or suit by or in the right of the Company or the Trust to procure a judgment in its favor, by reason of the fact that such Person is or was the Trustee, or an officer or director of the Company or of the Trustee.

1.17 "Termination Date" shall be the later of (i) the date on which all Plan Obligations have been finally determined and paid (as determined by the Trustee in its sole discretion), the Claims Assertion Date has passed, and the Final Liquidating Distribution, if any, has been made in accordance with Section 8.2 of the Trust Agreement and (ii) January 30, 2009.

1.18 "Trust Effective Date" shall have the meaning set forth in Section 2.6 hereof.

1.19 "Trust" means the EPEC Oil Company Liquidating Trust established pursuant to the Trust Agreement.

1.20 "Trust Agreement" means the EPEC Oil Company Liquidating Trust Agreement in substantially the form attached hereto as Exhibit B, with such modifications as may be approved by the Board of Directors of the Company prior to the execution of the Trust Agreement.

1.21 "Trustee" means the trustee of the Trust, and any successor trustee, serving pursuant to the terms and conditions of the Trust Agreement.

1.22 "Undertaking and Agreement" has the meaning set forth in the recitals.

ARTICLE II

Transfer of NMI Receivable, Undertaking, and Establishment of the Trust

2.1 Not later than March 9, 2001, the Company shall distribute to Midwestern, in full satisfaction and discharge of its obligation to make liquidating distributions to Midwestern as the sole stockholder of the Company, all the Company's right, title and interest in and to the NMI Receivable in exchange for which Midwestern simultaneously

shall (i) surrender its stock certificate for cancellation, and (ii) deliver a fully executed Undertaking and Agreement.

2.2 As provision for any Plan Obligations for which the Company is or may become liable, and in order to provide for the orderly and expeditious winding up of the business and affairs of the Company, Midwestern, the Trust and EPTP have agreed to execute the Undertaking and Agreement. Pursuant to the Undertaking and Agreement, in consideration of the designation of EPTP as the primary beneficiary of the Trust and the rights of EPTP in respect thereof, EPTP will undertake to advance, refund to the Trust, or pay all amounts in connection with Plan Obligations for which the Company or the Trust may become liable during the Payment and Refunding Period, subject to the terms, conditions, and limitations set forth in such Undertaking and Agreement. In no event shall the aggregate amount that EPTP is obligated to refund or pay in connection with Plan Obligations pursuant to the Undertaking and Agreement exceed $93 million. EPTP's obligations under the Undertaking and Agreement to advance, refund to the Trust, or pay all amounts in connection with Plan Obligations for which the Company or the Trust may become liable during the Payment and Refunding Period shall terminate upon expiration of the Payment and Refunding Period.

2.3 The Board of Directors of the Company has determined that EPTP's obligation under the Undertaking and Agreement constitutes reasonable provision for the satisfaction of Plan Obligations in accordance with Section 281(b) of the DGCL.

2.4 If at any time during the Payment and Refunding Period, the Company or the Trust shall become liable in connection with any Plan Obligation, the Company or the Trust shall demand that EPTP advance, refund, or pay such amount as may be required under the Undertaking and Agreement in connection with such Plan Obligation, such refunding or payment to proceed in accordance with the terms and conditions and subject to the limitations set forth in this Plan and the Undertaking and Agreement.

2.5 On or prior to the Trust Effective Date, the Company and the Trustee shall execute and deliver the Trust Agreement. The Trust Agreement is incorporated herein by reference as if the terms of the Trust Agreement were fully set forth herein. Any conflict between the terms and conditions of this Plan and the terms and conditions of the Trust Agreement shall be resolved by the enforcement of the terms and conditions of this Plan.

2.6 On March 9, 2001 (the "Trust Effective Date"), in full satisfaction and discharge of the Company's obligations with respect to Plan Obligations, the Trust shall succeed, by operation of Delaware law and pursuant to the Plan, to all of the Company's right, title, and interest in and to (i) the Undertaking and Agreement, (ii) all of the Company's other assets as of the Trust Effective Date (other than the NMI Receivable), including but not limited to all insurance policies, rights and proceeds relating thereto, all claims, demands, causes of action and choses in action, including without limitation contribution claims, cross-claims, subrogation claims, equitable contribution and indemnity claims, such as but not limited to claims advanced in *Kern County Land Co v California Union Ins. Co.*, No 991097 (Cal. Sup. Ct., San Francisco Cty.), claims arising under any and

all environmental statutes, rules and regulations, IBNR, and related contractual, quasi-contractual, extra-contractual and common law theories of recovery, and (iii) any other assets to which the Company would otherwise have been entitled after the Trust Effective Date. On the Trust Effective Date, the Trust shall agree to be bound by the terms and provisions of this Plan and to satisfy in accordance with the terms of this Plan and the Trust Agreement all Plan Obligations and the Company shall have no further financial or other responsibility with respect thereto.

2.7 On or after the Trust Effective Date, the Trust shall, as appropriate, defend, prosecute, participate in, or otherwise take action in connection with any action, suit, or proceeding involving the Company or the Trust. The Trust or Trustee may appear or take action in any such action, suit, or proceeding in the name of and on behalf of the Company, and formal substitution shall not be required unless required by applicable law, local rules of practice, or court order. On and after the Trust Effective Date, the Trustee shall make all decisions with respect to the administration of the affairs of the Trust, the winding up of the business and affairs of the Company, the management and administration of Plan Claims, and the payment and satisfaction of Plan Obligations, and shall make all decisions with respect to actions, suits, or proceedings involving the Company or the Trust, all in accordance with the terms of this Plan and the Trust Agreement, and neither the Company, nor its directors or officers shall have further financial or other responsibility therefor.

ARTICLE III

Cancellation of Certificates and Beneficiaries of Trust

3.1 At the close of business on the Effective Date, all certificates evidencing the outstanding capital stock of the Company shall be canceled and the holder thereof shall have no further rights with respect to the assets of the Company other than the right to receive the distribution pursuant to Section 2.1 hereof.

3.2 (a) Except as otherwise provided in subsection (b) of this Section 3.2, or by subsequent court order or amendment hereto, EPTP, in consideration for its obligations pursuant to the Undertaking and Agreement, shall be the primary beneficiary of the Trust. This provision shall not affect the payment of insurance proceeds to or on behalf of the insureds under the Company's insurance policies, and nothing herein shall constitute an assignment of any insurance policy, right or proceeds therein. To the extent required by law, beneficiaries of the Trust shall also include those persons or entities entitled to receive or receiving insurance proceeds from insurance policies held by the Trust or to which the Trust has rights or access, but only to the extent of such beneficiaries' interest therein

(b) Interests in, or rights to distributions, if any, under the Trust shall be transferable only in accordance with the terms of the Trust Agreement.

ARTICLE IV

Administration

4.1 The Company prior to the Trust Effective Date, and the Trustee on and after the Trust Effective Date, shall be responsible for the administration, management, and distribution of assets in accordance with the terms of this Plan.

4.2 The Company or the Trustee, as the case may be, shall timely file such income tax and other returns and statements as required to comply with applicable provisions of the Internal Revenue Code and of any state or local law and any regulations promulgated thereunder.

4.3 (a) Prior to the Trust Effective Date, the Company, and on and after the Trust Effective Date, the Trustee shall indemnify out of the assets of the Company or the Trust, as the case may be, any Protected Party against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement or otherwise actually or reasonably incurred by such Protected Party in connection with any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action or suit by or in the right of the Company or the Trust) if such Protected Party acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company or the Trust and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that a Protected Party

did not act in good faith and in a manner that such Protected Party reasonably believed to be in or not opposed to the best interests of the Company or the Trust, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) Prior to the Trust Effective Date, the Company, and on and after the Trust Effective Date, the Trustee shall indemnify out of the assets of the Company or the Trust, as the case may be, any Protected Party against expenses (including attorneys' fees) actually and reasonably incurred by such Protected Party in connection with the defense or settlement of any action or suit by or in the right of the Company or the Trust to procure a judgment in its favor if such Protected Party acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company or the Trust, except that no indemnification shall be made in respect to any claim, issue, or matter as to which such Protected Party shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duty to the Company or the Trust unless and only to the extent that a court of competent jurisdiction (including the court in which such action or suit was brought) shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such Protected Party is fairly and reasonably entitled to indemnity for such expenses that such court shall deem proper.

(c) To the extent that a Protected Party has been successful on the merits or otherwise in the defense of any action, suit, or proceeding referred to in subparagraphs (a)

and (b), or in the defense of any claim, issue, or matter therein, such Protected Party shall be indemnified by the Company or the Trustee, as the case may be, out of the assets of the Company or the Trust, as the case may be, against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

(d) Unless ordered by a court of competent jurisdiction, any indemnification under subparagraphs (a) and (b) shall be made prior to the Trust Effective Date, by the Company, and on and after the Trust Effective Date, by the Trustee, only upon a determination that the indemnification of the Protected Party in question is proper in the circumstances because he or she has met the applicable standards of conduct set forth in subparagraphs (a) and (b). Such determination shall be made by independent legal counsel in a written opinion.

(e) Expenses (including attorneys' fees) reasonably incurred by a Protected Party in defending a civil, criminal, administrative, or investigative action, suit, or proceeding may be paid prior to the Trust Effective Date, by the Company, and on and after the Trust Effective Date, by the Trustee, out of the assets of the Company or the Trust, as the case may be, in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the Protected Party in question to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Company or the Trust as authorized by this Section.

(f) The indemnification and advancement of expenses provided by this Section shall not be deemed exclusive of any other rights to which any Protected Party may

otherwise be entitled, and shall continue as to a Person who has ceased to be a Protected Party and shall inure to the benefit of the heirs, executors, administrators, and successors of such Protected Party.

(g) Notwithstanding anything herein to the contrary, any claim for indemnification or the advancement of expenses by a current or former director or officer of the Company pursuant to the terms of the Company's certificate of incorporation, the Company's bylaws, any agreement between such director or officer and the Company, or Section 145 of the DGCL, which claim arises by reason of any transaction, event, occurrence, action, inaction, or decision occurring on or before the Effective Date or by reason of any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative arising by reason of such transaction, event, occurrence, action, inaction, or decision, shall be treated as a Contingent Contractual Claim under this Plan and shall be governed by the Company's certificate of incorporation, the Company's bylaws, the agreement between such officer or director and the Company, and/or Section 145 of the DGCL, as the case may be.

(h) Notwithstanding anything herein to the contrary, the provisions herein regarding indemnification shall not supplant, alter, amend or modify any other indemnification, defense or hold harmless agreement or obligation expressed or implied by law or contract including without limitation any and all such obligations expressed or implied in insurance policies issued to or covering the Company, any insured under such policies (including "named insureds" and "additional insureds"), and any beneficiary of the

Trust Any such defense or indemnification shall take precedence over any indemnity expressed herein and any payment pursuant to this provision shall be treated as an advance pending receipt of insurance proceeds in the event that any insurance policy of the Company, the Trust or any beneficiary of the Trust is responsive in lieu of or in conjunction with any indemnity expressed herein.

ARTICLE V
Miscellaneous

5.1 The headings used in this Plan are inserted for convenience of reference only and neither constitute a portion of the Plan nor in any manner affect the construction of the provisions of the Plan.

5.2 The situs of this Plan and of all assets held and administered in accordance with this Plan shall be deemed to be in the State of Delaware. The rights, duties, and obligations arising under the Plan and all questions relating to the validity or construction of this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware; provided, however, that this provision shall not affect the law applicable to the resolution or discharge of any insurance claim or right or any loss, claim, demand, cause of action or chose in action associated therewith.

5 3 This Plan may be modified, supplemented, or amended at any time prior to the expiration of the period set forth in Section 278 of the DGCL by the Company and after expiration of such period, by the Trust, provided, however, that should any modification, supplement, or amendment of this Plan require the modification, supplement, or amendment

of the Trust Agreement or the Undertaking and Agreement, such modification, supplement, or amendment of this Plan shall require the consent of the Persons required to consent to or agree upon such modification, supplement, or amendment of the Trust Agreement or the Undertaking and Agreement, as the case may be.

5.4 This Plan shall terminate on the Termination Date.

EPEC OIL COMPANY,
a dissolved Delaware corporation

By: H. Brent Austin
Name: H. Brent Austin
Title: President

445065v3

DrinkerBiddle&Reath LLP

Ross A. Lewin
609-716-6614 Direct
609-799-7000 Fax
Ross.Lewin@dbr.com

APR 2 3 REC'D

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A Delaware Limited Liability Partnership

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TEXAS
WASHINGTON D.C.

April 20, 2018

VIA OVERNIGHT MAIL

Marvin Benton, Esq.
Senior Staff Attorney
Office of Regional Counsel (6RC-S)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: General Notice Letter Addressed to Kinder Morgan, Inc.
Wilcox Oil Refinery Superfund Site
Bristow, Creek County, Oklahoma

Dear Mr. Benton:

I write on behalf of Kinder Morgan, Inc. ("Kinder Morgan") in response to the General Notice Letter ("GNL") for the Wilcox Oil Refinery Superfund Site (the "Site"), dated March 27, 2018, which Kinder Morgan received on March 29, 2018. In that letter, the United States Environmental Protection Agency ("EPA") alleged that Kinder Morgan is a "prior owner of the Site[,]" referencing as evidence Kinder Morgan's January 7, 2013 response to EPA's CERCLA § 104(e) Information Request dated October 25, 2012 (the "104(e) Response").

At the outset, it is important to point out that the circumstances surrounding the issuance of the GNL to Kinder Morgan appear rather irregular. EPA issued the GNL more than five years after receiving the documents upon which the GNL is allegedly based, a delay that is out of keeping with Agency practice. Moreover, as noted below, the GNL is based on a factual predicate that is verifiably incorrect, is not supported by the materials referenced in the GNL and is contradicted by EPA's own work product pertaining to the Site.

Please be advised that Kinder Morgan has never owned or held any property interest in any of the parcels within the Site. The 104(e) Response referenced by EPA contains no information to suggest otherwise. Furthermore, EPA's own title search of the parcels within the Site did not identify Kinder Morgan as an owner at any point in time. *See* Toeroek Associates, Inc., *Draft Title Search Report, Wilcox Oil Superfund Site*, EPA Doc. No. 9611767 (April 8, 2014).

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In light of the above, Kinder Morgan respectfully requests that EPA withdraw the GNL. In the alternative, Kinder Morgan respectfully requests that EPA provide specific information to support its allegation of prior ownership set forth in the GNL.

Very truly yours,

Ross A. Lewin

RAL/aem

91896844.3

KINDER MORGAN INC.

January 15, 2016

BY FEDERAL EXPRESS AND BY E-MAIL

Ben Banipal, P.E., Branch Chief
Technical and Enforcement Branch
Superfund Division
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: Second Request for Information
Wilcox Oil Superfund Site
Bristow, Creek County, Oklahoma

Dear Mr. Banipal:

Please be advised that I am in receipt of your letter dated January 5, 2016 constituting a Second Request for Information from Kinder Morgan, Inc. ("Kinder Morgan") pursuant to Section 104(e) of CERCLA with respect to the Wilcox Oil Superfund Site in Bristow, Creek County, Oklahoma. As your letter reflects, Kinder Morgan responded to EPA's initial Request for Information under my cover letter of January 7, 2013, which was date stamped received by EPA on January 8, 2013.

The Second Request for Information in your January 5, 2016 letter contains the following question:

> If the EPEC Oil Liquidating Trust still continues to exist, please state the current net worth of the trust and the dollar value of any assets or monies that may have been distributed from the trust.

The answer to this question is as follows:

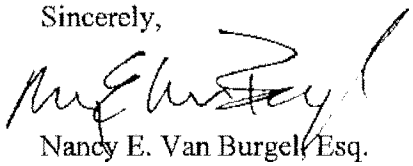
The EPEC Oil Liquidating Trust (the "Trust") does continue to exist and to pay Plan Obligations including Plan Claims as those terms are defined in the EPEC Oil Company Liquidating Trust Agreement (the "Trust Agreement") (previously produced under Bates Nos. KMI0000179-208). Under the Trust Agreement, Plan Claims were required to be submitted in advance of the Claims Assertion Date, which was defined to

be December 18, 2008 and which was ten years after the dissolution of EPEC Oil Company (the "Company"). In addition to utilizing certain recoveries from insurance policies and other rights and claims of the Company or the Trust to satisfy Plan Claims, the Trust has arranged for the payment of Plan Claims by way of the agreement by El Paso Tennessee Pipeline Co. ("EPTP") to pay Plan Obligations on behalf of the Trust or to transfer an amount to the Trust sufficient to pay Plan Obligations. (See Undertaking Agreement entered into among EPEC Oil Company, Midwestern Gas Transmission Company, EPTP and the Trust, dated March 9, 2001, Bates Nos. KMI0000616-28). EPTP's aforementioned obligation is capped at $93 million. Ibid.

A precise calculation of the Trust's historical payments and reserves for Plan Obligations remains subject to review, audit, accounting and reconciliation and is not currently known. However, based on currently available information, we estimate that the Trust has paid and reserved for future payment approximately $68.6 Million in Plan Obligations. Please note that this is a good faith estimate, that the estimate is subject to revision based on such factors as future claims experience and the continuing evaluation of reserves, and that we will supplement this response if new or revised information becomes available.

If you have any questions, please contact the undersigned at (303) 914-4634 or at nancy_vanburgel@kindermorgan.com. Thank you for your attention to this matter.

Sincerely,



Nancy E. Van Burgel, Esq.
Assistant General Counsel
Kinder Morgan, Inc.

cc: Mr. Marvin Benton, Esq., Senior Counsel, EPA
(Via E-Mail)

83947799.1

To: Benton, Marvin[Benton.Marvin@epa.gov]; Featherson, Clarence[Featherson.Clarence@epa.gov]
Cc: Nixon, Lance[Nixon.Lance@epa.gov]
From: Coltrain, Katrina[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6C65407B58D44284B50F869DF1274022-COLTRAIN, KATRINA]
Sent: Fri 3/1/2019 12:51:52 PM (UTC)
Subject: FW: El Paso / KM
20190228175324856.pdf
Kraft-Murphy Case.SOL.Delaware.pdf

All, see attached documents. These were sent over by the property owner and his attorney. I will hold on the call until after looking at these.

Katrina Higgins-Coltrain
Remedial Project Manager
US EPA Region 6
LA/OK/NM Section (6SF-RL)
1445 Ross Avenue
Dallas, Texas 75202
214-665-8143

From: Mark S. Evans <mark@cag.church>
Sent: Thursday, February 28, 2019 5:51 PM
To: Coltrain, Katrina <coltrain.katrina@epa.gov>
Cc: Benton, Marvin <Benton.Marvin@epa.gov>; Michael Blaschke <mblaschke@thelawgroupokc.com>
Subject: El Paso / KM

Katrina,

Thank you for your time this afternoon. I have attached a copy of our court order that shows the Kinder Morgan and El Paso connection *(please see attached document below).* Here is an additional link to Judge Terrance Kern's ruling on the motion filed by Kinder Morgan:

http://www.okenergytoday.com/2018/10/judge-disqualifies-okc-law-firm-in-bristow-superfund-lawsuit/

I spoke with my attorney, Mike Blaschke, after we talked and he has included a copy of a case in 2013 where a dissolved corporation (Delaware Corporation) was still held liable. The judge ruled that under 8 Del. C. 279, *"Delaware's dissolution statues impose no applicable statue of limitations that would time-bar claims against a dissolved corporation by third parties." (Page 3).* They also state that there is no shield that protects a dissolved corporation form liability *(Page 24).*

Hope this helps. I so appreciate all that you and the EPA are doing to help clean up our church property and residence. Please feel free to contact Mike if you need any further information on our federal case or our upcoming depositions. Thanks also for all your help with my test results data request.

Have a blessed evening,

Mark Evans

Begin forwarded message:

From: Michael Blaschke <mblaschke@thelawgroupokc.com>
Subject: FW: Message from "RNP0026736EF373"
Date: February 28, 2019 at 5:02:28 PM CST
To: "Mark S. Evans (mark@cag.church)" <mark@cag.church>

Attached is portion of court order that recites facts as to KM and El Paso. Also attached is case law stating deadline of

El Paso to bring claims does not work against us. I have cited this to EPA before. KM has no claim to stop us on time issues. If they did, they would have filed motion

-----Original Message-----
From: scanner@sullivanlawcenter.com [mailto:scanner@sullivanlawcenter.com]
Sent: Thursday, February 28, 2019 11:53 AM
To: Michael Blaschke
Subject: Message from "RNP0026736EF373"

This E-mail was sent from "RNP0026736EF373" (MP 2852).

Scan Date: 02.28.2019 17:53:24 (+0000)
Queries to: scanner@sullivanlawcenter.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BRISTOW FIRST ASSEMBLY OF GOD, *et al.*,	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 15-CV-523-TCK -FHM**
	)	
BP p.l.c.; MARATHON OIL CORPORATION; MARATHON PETROLEUM CORPORATION; KINDER MORGAN, INC., *et. al*,	)	
	)	
Defendants.	)	

OPINION AND ORDER

Before the Court is Defendant Kinder Morgan Inc.'s Motion to Disqualify Plaintiffs' Counsel Durbin Larimore & Bialick ("DLB") and for Discovery. (Doc. 178) and Plaintiff's Application for Leave to File Sur-Reply (Doc. 190). Both motions are opposed.

Motion to Disqualify Plaintiffs' Counsel (Doc. 178)

I. Factual Background

Plaintiff Bristow First Assembly of God (the "Church"), an Oklahoma nonprofit organization, owns real property in Creek County, Oklahoma (the "Church property"). The Church's pastor, Plaintiff Mark S. Evans, his wife Christina J. Evans and their children, C.J.E. and B.K.E., lived on the Church property until they allegedly were advised by the Department of Environmental Quality that continuing to do so could jeopardize their health and safety. On June 24, 2015, Plaintiffs filed a Petition in the District Court of Creek County, Oklahoma, alleging, *inter alia*, claims of negligence, nuisance, trespass, fraud and strict liability. On September 14,

2015, Defendant Kinder Morgan removed the case to this Court pursuant to 28 U.S.C. §1332(a) on the basis of diversity jurisdiction. (Doc. 2). Subsequently, the Court denied a Motion to Remand filed by plaintiffs, granted in part defendant BP's Motion to Dismiss and gave Plaintiffs leave to file an amended complaint. (Doc. 66).

The Amended Complaint asserts claims for negligence, negligence per se, public nuisance, private nuisance, unjust enrichment, strict liability, fraud/deceit, restitution, declaratory judgment, injunction and fees and costs. (Doc. 68). Discovery in the case is underway, with a cutoff date of June 24, 2019. (Doc. 205).

The Church property—also known as the Wilcox Site—is part of a former refinery site in Bristow. Refinery operations on the Church property ceased approximately 80 years ago. Since 1994, the Wilcox Site has been the subject of governmental investigation by the Oklahoma Department of Environmental Quality ("ODEQ") and the United States Environmental Protection Agency ("EPA"). In 2013, the Wilcox Site was added to the National Priorities List established under the Comprehensive Environmental Responsibility, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9001 *et seq.*

The El Paso Corporation ("El Paso") has been a wholly-owned subsidiary of Kinder Morgan since May 2012. El Paso first learned of the Wilcox Site in late 2011, when it received a letter from ODEQ stating that the Wilcox Oil Company had operated a crude oil refinery at the site from the 1920s to the early 1960s; Wilcox Oil Company had merged with Tenneco Oil Company in 1965; and El Paso Energy Corporation acquired Tenneco Oil Company in 1996. (Doc. 178-1). ODEQ requested El Paso to discuss with it the possibility of entering into a Voluntary Cleanup or Brownfields program to address environmental contamination at the site. *Id.*

In November 2011, El Paso retained Mr. Kearney, then a partner at the GableGotwals firm, to investigate ODEQ's allegations. Mr. Kearney represented El Paso during a December 14, 2011, meeting with ODEQ, and subsequently worked with two other GableGotwals attorneys to investigate and prepare a response to ODEC's claims. In a February 3, 2013, letter drafted by the GableGotwals attorneys and signed by Scott J. Miller, Senior Counsel at El Paso, the company declined to participate in the remediation of the Wilcox Site. (Doc. 178-2).[1]

Plaintiffs are represented in this case by three law firms: DLB, Devore & Jorgenson, PLC, and Michael J. Blaschke, P.C. Kinder Morgan recently learned that Mr. Kearney, now a partner at DLB, participated in the legal work performed for El Paso by GableGotwals, and sent Plaintiffs' counsel a letter identifying the alleged conflict of interest and demanding that all three firms withdraw. The firms declined to do so. On May 1, 2018, Kinder-Morgan filed its Motion to Disqualify Plaintiffs' Counsel Durbin Larimore & Bialick and for Discovery.[2] The same day, Kinder-Morgan filed a Motion to Stay Discovery Pending Resolution of Motion to Disqualify and for Discovery. (Doc. 179). The Court denied the Motion to Stay Discovery on August 10, 2018. (Doc. 202).

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[1] The letter explained that Wilcox Oil Company had owned and operated the refinery until November 1963, and was subsequently merged into Tenneco Oil Company in the 1960s. (Doc. 178-2 at 1). Tenneco was renamed as EPEC Oil Company in the mid-1990s, and was dissolved on December 18, 1998. *Id.* As part of the dissolution process, EPEC Oil Company created the EPEC Oil Company Liquidating Trust on March 9, 2001. Pursuant to the trust agreement, the trustee for the liquidating trust was authorized to resolve claims asserted against EPEC Oil Company so long as such claims were asserted on or before December 18, 2008—the so-called "Claims Assertion Date" in the trust agreement. *Id.* at 1-2. The Liquidating Trust claimed that by December 15, 1994, ODEQ had noted in one of its own reports that Tenneco Oil Company was a successor-by-merger to Wilcox Oil Company and that Tenneco still had operations in Oklahoma. *Id.* at 2.

[2] On April 25, 2018, Mr. Kearney filed a Motion to Withdraw as Counsel of Record for Plaintiffs. (Doc. 175). The Court granted the motion on April 27, 2018. (Doc. 177).

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF KRAFFT-MURPHY COMPANY, INC., A Dissolved Delaware Corporation	§	No. 85, 2013
ROBERT F. ANDERSON, *et al.*,	§	Court Below: Court of Chancery of the State of Delaware
Petitioners/Intervenors Below, Appellants,	§	C.A. No. 6049
v.	§	
KRAFFT-MURPHY COMPANY, INC.,	§	
Respondent Below, Appellee.	§	

Submitted: August 21, 2013
Decided: November 26, 2013

Before **STEELE**, Chief Justice, **HOLLAND, BERGER, JACOBS,** and, **RIDGELY,** Justices, constituting the Court *en Banc.*

Upon appeal from the Court of Chancery. **REVERSED and REMANDED.**

Raeann Warner and Jordan J. Perry, Esquires, Jacobs & Crumplar, P.A., Wilmington, Delaware; Jeffrey P. Wasserman, Esquire, Ciconte, Wasserman & Scerba, LLC, Wilmington, Delaware; Of Counsel: Jennifer L. Lilly, Esquire (*argued*), The Law Offices of Peter G. Angelos, P.C., Baltimore, Maryland; Daniel A. Brown and Eileen M. O'Brien, Esquires, Brown & Gould, LLP, Bethesda, Maryland, for Appellants.

Francis J. Murphy, Esquire, Murphy & Landon, Wilmington, Delaware; Of Counsel: Joseph L. Ruby, Esquire (*argued*), Lewis Baach PLLC, Washington, DC, for Appellee.

JACOBS, Justice:

I. INTRODUCTION

This is an appeal from a judgment of the Court of Chancery in an action to appoint a receiver for Krafft-Murphy Company, Inc. (the "Corporation"), a dissolved Delaware corporation, under 8 *Del. C.* § 279. The Petitioners-Below/Appellants, who are tort claimants in lawsuits pending against the Corporation in other jurisdictions, seek the appointment of a receiver to enable them lawfully to pursue those claims against the Corporation in those other courts. The Corporation (as Respondent-Below/Appellee) argues that because it holds no assets other than unexhausted liability insurance policies, Delaware law does not authorize the appointment of a receiver and that, in any event, it is not necessary to appoint one. The Court of Chancery granted summary judgment in favor of the Corporation. The Petitioners timely appealed.

The case raises two interrelated questions of first impression in this Court, plus a third question directly addressed by settled Delaware law. First, does a contingent contractual right, such as an insurance policy, constitute "property" within the meaning of 8 *Del. C.* § 279? Second, does Delaware's statutory corporate dissolution scheme (8 *Del. C.* §§ 278-282) contain a generally applicable statute of limitations that time-bars claims against a dissolved corporation by third parties after the limitations period expires? Third, after 8 *Del. C.* § 278's three

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year winding-up period expires, does a dissolved corporation have the power to act absent a court-appointed receiver or trustee?

We conclude that under 8 *Del. C.* § 279, contingent contractual rights, such as unexhausted insurance policies, constitute "property" of a dissolved corporation, so long as those rights are capable of vesting. We further hold that Delaware's dissolution statutes impose no generally applicable statute of limitations that would time-bar claims against a dissolved corporation by third parties. Finally, we hold that the existence of the "body corporate" continues beyond the expiration of the statutory winding-up period of 8 *Del. C.* § 278 for purposes of conducting litigation commenced before the expiration of that period. But, for litigation commenced after the expiration of that statutory period, a dissolved corporation may act only through a receiver or trustee appointed under 8 *Del. C.* § 279.

Because the judgment of the Court of Chancery rests on legal determinations inconsistent with these holdings, we reverse the judgment and remand the case for further proceedings in accordance with this Opinion.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. The Parties

The Corporation is a dissolved Delaware corporation that, before its dissolution in 1999, engaged in the plastering business in the Washington, D.C. metropolitan area. Beginning in 1989, the Corporation was named as a defendant

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in hundreds of asbestos-related personal injury lawsuits. The Corporation's defense both in this Delaware proceeding, and in the personal injury lawsuits in other jurisdictions, is being funded and directed by the Corporation's liability insurers in accordance with the applicable insurance policies.

The original Petitioners-Below, who are asbestos claimants represented by a Baltimore, Maryland law firm, have asbestos-related personal injury claims pending against the Corporation in other jurisdictions. During the Court of Chancery proceedings in this case, other tort claimants, represented by a different law firm, were permitted to intervene. The original Petitioners-Below and the Intervenors-Below are referred to collectively as "Petitioners."

B. Facts

The material facts are not disputed. The Corporation was formed in Delaware in 1952. Although the Corporation was primarily a plastering company, it also supplied and installed Sprayed Limpet Asbestos, an asbestos-containing product. That activity exposed the Corporation to significant liability risk, and ultimately caused it to be named as a defendant in hundreds of asbestos-related lawsuits.

While it was fully operational, the Corporation obtained primary liability insurance from various insurance companies, including Travelers Casualty and Surety Company, CNA Insurance Company, and Great American Insurance

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Company (collectively, the "Insurers"). The applicable insurance policies obligate the Insurers to defend the Corporation in suits for damages covered by the policies, and also to indemnify the Corporation against covered third party claims. The coverage available under those insurance policies has not been exhausted.

The Corporation ceased operations in 1991, and in 1999 it formally dissolved, pursuant to 8 *Del. C.* § 275. The Corporation did not elect to notify creditors of its dissolution under the procedure set forth in 8 *Del. C.* § 280. Nor did the Corporation make any provisions for claims of future creditors and claimants, utilizing the procedure set forth in 8 *Del. C.* § 281(b). All parties agree that the Corporation's only assets are its unexhausted insurance policies.

C. The Asbestos Proceedings and the § 279 Petition

In 2010, the Corporation began filing motions in other courts to dismiss asbestos-related claims commenced more than ten years after its dissolution.[1] The underlying basis of those motions was that because the Corporation has been dissolved for more than three years, it is no longer amenable to suit as a matter of Delaware law.[2]

The Petitioners responded to those motions to dismiss by (*inter alia*) filing, in the Court of Chancery, a verified petition for the appointment of a receiver for a

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[1] *In re Krafft-Murphy Co., Inc.*, 62 A.3d 94, 96-97 (Del. Ch. 2013).

[2] *Id.* at 97.

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dissolved corporation under 8 *Del. C.* § 279. The Corporation moved to dismiss the Petition on grounds of insufficient service of process and failure to state a claim upon which relief can be granted. On November 9, 2011, the Court of Chancery granted the Petitioners' motion to perfect service of process and denied the Corporation's motion to dismiss.[3]

On August 1, 2012, the Corporation moved for summary judgment. In response, the Petitioners moved for judgment on the pleadings. By Opinion dated February 4, 2013, the Court of Chancery granted the Corporation's motion for summary judgment and denied the Petitioners' motion for judgment on the pleadings.[4]

D. The Court of Chancery Opinion

During the Court of Chancery proceedings, the Insurers represented to the court that the Corporation would continue to litigate and defend against all third party claims filed *less* than ten years after its dissolution.[5] For that reason (the Corporation argued), it was unnecessary to appoint a receiver to facilitate the litigation of those claims. As for claims filed *more* than ten years after the Corporation dissolved—claims that the Corporation had moved in various courts to

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[3] *Id.*

[4] *Id.* at 96.

[5] *Id.* at 104 n.56.

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dismiss—the Corporation argued that it held no assets ("property") that would justify the appointment of a receiver.[6] Accepting the Insurers' argued-for distinction between those two sets of claims, the Court of Chancery held that claims filed more than ten years after the date of dissolution were time-barred and should be dismissed,[7] and that claims filed less than ten years after the date of dissolution could proceed without a court-appointed receiver.[8]

More specifically, the court accepted the Corporation's assurances (made by its Insurers) that it would continue to defend against all claims that were filed within ten years of the date of dissolution. On that basis, the court determined that with respect to those claims, the petition to appoint a receiver "depend[ed] upon . . . a factual scenario that is hypothetical and speculative," and, therefore, was not "justiciable."[9]

Regarding claims filed after the tenth anniversary of the dissolution, the Vice Chancellor noted that under 8 *Del. C.* § 279, a receiver may be appointed at any time if the dissolved corporation has "still existing property interests."[10] The

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[6] *Id.* at 98.

[7] *In re Krafft-Murphy Co., Inc.*, 62 A.3d at 104-05.

[8] *Id.* at 104 n.56. Petitioners' claims against the Corporation were all filed more than three years after the Corporation's dissolution.

[9] *Id.*

[10] *Id.* at 101, 102-03 (quoting *In re Citadel Indus., Inc.*, 423 A.2d 500, 506 (Del. Ch. 1980)).

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court concluded, however, that the Corporation held no existing property interests, reasoning as follows:[11] The Corporation's liability insurance policies would have value, and constitute "property" under § 279,[12] only if the Corporation could be potentially held liable to third parties, which would trigger coverage under the policies.[13] However, the court determined, Delaware's dissolution statutes (8 *Del. C.* §§ 278-282) operate to extinguish a dissolved corporation's liability after ten years from the date of dissolution, because those provisions establish a ten year outer limit within which a dissolved corporation can potentially be held liable for third party claims.[14] Therefore, the Corporation could not be "liable for tort suits . . . brought after ten years," and as a consequence, the liability insurance policies "are not as a matter of law undistributed assets in relation to claims commenced more than ten years after dissolution."[15] Lastly, the court concluded,

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[11] *Id.* at 105.

[12] Although the 8 *Del. C.* § 279 refers to "property," many Delaware courts, including the Court of Chancery in this proceeding, have used the term "assets" when interpreting § 279. In this Opinion, we use the statutory term "property."

[13] *In re Krafft-Murphy Co., Inc.*, 62 A.3d at 103.

[14] *Id.* at 104.

[15] *Id.* at 104-05. The court distinguished this case from *In re Texas Eastern Overseas, Inc.*, 2009 WL 4270799 (Del. Ch. Nov. 30, 2009) *aff'd*, 998 A.2d 852 (Del. 2010) (*TEO*), where the Court of Chancery found that liability insurance policies constituted "property" for the purposes of 8 *Del. C.* § 279. The Vice Chancellor explained that because the lawsuits at issue in *TEO* were filed seven years after dissolution, the policies still had potential value. *Id.* at 106. Moreover, he reasoned, the parties in *TEO* did not directly address whether insurance policies constituted "property" under § 279. *Id.* at 105.

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defending against litigation claims for which the corporation cannot be held liable is not part of the Corporation's "unfinished business."[16]

III. THE PARTIES' CONTENTIONS AND THE STANDARD OF REVIEW

A. The Contentions on Appeal

Petitioners claim that the Court of Chancery legally erred by not appointing a receiver for the Corporation, for two separate reasons. First, Petitioners claim that the Court of Chancery erroneously concluded that, with respect to claims filed more than ten years after the Corporation's dissolution, the unexhausted liability insurance policies do not constitute "property" that would justify appointing a receiver under 8 *Del. C.* § 279. Second, Petitioners claim that the court erroneously concluded that, because the Insurers had undertaken to continue defending those claims on the Corporation's behalf, the Petition was not "justiciable" with respect to claims filed less than ten years after dissolution.

To support their first claim, Petitioners argue as follows: Delaware courts have consistently held that contingent rights constitute "property" for purposes of 8 *Del. C.* § 279. Moreover, the applicable Delaware corporate dissolution statutes (8 *Del. C.* §§ 280-282) do not operate to extinguish a dissolved corporation's liability to third parties. All that those statutes do is specify how directors of a dissolving

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[16] *Id.* at 105.

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corporation must provide for the post-dissolution distribution of assets, to enable the corporation's shareholders and directors to avail themselves of a "safe harbor" from post-dissolution liability. Those provisions do not constitute, nor do they operate as, a statute of limitations that would time-bar third party claims against a dissolved corporation. Finally, and in any event (the Petitioners urge), §§ 280-282 are inapplicable because the Corporation never complied with either provision, and because no third party claimant is seeking redress against the Corporation's directors or shareholders.

In support of their second claim of error, Petitioners argue that by declining to appoint a receiver to defend against claims filed less than ten years after dissolution, the Court of Chancery contravened 8 *Del. C.* § 278, under which a dissolved corporation loses all power to act after the statutory three year winding-up period expires. Because any continued activity by a dissolved corporation (as a "body corporate")—including participating in litigation—after § 278's three year period expires is statutorily *ultra vires*, a receiver or trustee must be appointed to lawfully wind up the corporation's affairs.

The Corporation vigorously contests these claims.

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B. The Issues

The parties' contentions raise several issues. The first is whether a receiver[17] may be appointed for a corporation that has been dissolved for more than ten years and whose assets consist solely of unexhausted liability insurance policies. That issue raises two subsidiary questions: (i) whether contingent contractual rights—here, unexhausted liability insurance policies—constitute "property" that would justify the appointment of a receiver under 8 *Del. C.* § 279; and (ii) if so, whether those contingent rights in this case can ever vest. We conclude that contingent contractual rights constitute "property" within the purview of § 279 if they possibly could vest at a future time. Here, the Corporation's right to recover under the liability insurance policies will vest only if the dissolved corporation could be held liable to third parties. That potential liability issue requires us to address whether (as the Corporation argues) the statutory provisions governing dissolution (*i.e.*,§§ 278-282) operate as a general statute of limitations that time-bars all third party claims against a dissolved corporation after the limitations period expires. If they do, then the Corporation

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[17] 8 *Del. C.* § 279 authorizes the Court of Chancery to appoint a receiver or a trustee. Because the Petitioners seek the appointment of a receiver—and for brevity's sake—we refer primarily to a "receiver" in this Opinion. Our analysis, however, is equally applicable to the appointment of a trustee.

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could not be liable for those claims, and the Corporation's right to recover under the policies on those claims would never vest.

The final question is whether, after the expiration of the three year period described in 8 *Del. C.* § 278, a receiver must be appointed to enable a dissolved corporation lawfully to defend against litigation commenced after the expiration of the three year statutory period.

C. The Standard of Review

This Court reviews a trial court's decision to grant summary judgment *de novo*.[18] Summary judgment may be granted only if, based on the undisputed material facts, the moving party is entitled to judgment as a matter of law.[19] Here, because there are no material facts in dispute, the only issues presented are questions of law that involve the proper interpretation of the statutes governing the dissolution and winding-up of a Delaware corporation.

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[18] *Alvarez v. Castellon*, 55 A.3d 352, 354 (Del. 2012) (citing *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 191 (Del. 2009)).

[19] *Motorola, Inc. v. Amkor Tech., Inc.*, 849 A.2d 931, 935 (Del. 2004) (citing *Rhudy v. Bottlecaps, Inc.*, 830 A.2d 402, 405 (Del. 2003)).

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We also review *de novo* a trial court's interpretation of statutory provisions.[20] As the Court of Chancery correctly observed:

> In interpreting a statute, Delaware courts must ascertain and give effect to the intent of the legislature. If the statute is found to be clear and unambiguous, then the plain meaning of the statutory language controls. The fact that the parties disagree about the meaning of the statute does not create ambiguity. Rather, a statute is ambiguous only if it is reasonably susceptible of different interpretations, or if a literal reading of the statute would lead to an unreasonable or absurd result not contemplated by the legislature. If a statute is ambiguous, however, courts should consider the statute as a whole, rather than in parts, and read each section in light of all others to produce a harmonious whole. Courts also should ascribe a purpose to the General Assembly's use of statutory language, and avoid construing it as surplusage, if reasonably possible.[21]

IV. ANALYSIS

A. Dissolution under the Delaware General Corporation Law

At common law, dissolution marked a corporation's "civil death," and all actions against the corporation abated.[22] The statutory provisions found in 8 *Del. C.* §§ 278-282 supplant and supersede the common law, by prolonging a corporation's existence and its exposure to liability.[23] Those same provisions also

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[20] *Bay City, Inc. v. Williams*, 2 A.3d 1060, 1061 (Del. 2010) (citing *Del. Bay Surgical Servs. v. Swier*, 900 A.2d 646, 652 (Del. 2006)).

[21] *In re Krafft-Murphy Co., Inc.*, 62 A.3d at 100 (footnotes and quotations omitted).

[22] *In re RegO Co.*, 623 A.2d 92, 95 (Del. Ch. 1992).

[23] *See In re Citadel Indus., Inc.*, 423 A.2d 500, 503 (Del. Ch. 1980) ("[S]tatutory authority is necessary to prolong the life of a corporation past its date of dissolution.").

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shield a dissolved corporation's directors and shareholders from liability in specified circumstances.[24] To facilitate the winding-up of a dissolved corporation's affairs, § 278 extends the (post-dissolution) corporate existence for three years.[25] Section 279 independently authorizes the appointment of a receiver "at any time" for specified purposes.[26] Sections 280-281(b) outline planning procedures whereby a corporation must provide for future post-dissolution claims, pay existing claims, and distribute any remaining assets to shareholders.[27] Finally, §§ 281(c) and 282 provide a "safe harbor" from liability to directors and shareholders of corporations that have complied with § 281(a) or (b).[28]

B. A Receiver May Be Appointed to Defend Against Claims Filed More Than Ten Years After Dissolution

Petitioners claim that the Court of Chancery erred by concluding that the Corporation did not hold any "property" that would justify the appointment of a receiver. We agree, for the following reasons: 8 *Del. C.* § 279 authorizes the appointment of a receiver to continue a dissolved corporation's winding-up

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[24] *See In re RegO Co.*, 623 A.2d at 96-97 (explaining that §§ 280-282 "recognize[] rights in unknown future corporate claimants" and provide a safe harbor for directors and shareholders of dissolved corporations).

[25] 8 *Del. C.* § 278 (2011).

[26] *Id.* § 279.

[27] *Id.* §§ 280-281(b).

[28] *Id.* §§ 281(c), 282.

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process—which may involve participating in litigation—in cases where the corporation has undistributed "property."[29] Under Delaware law, contingent contractual rights, such as unexhausted liability insurance policies, are "property" within the meaning of 8 *Del. C.* § 279 if and to the extent that they are capable of vesting.[30] Here, the Corporation's liability insurance policies are capable of vesting, because no statutory provision governing corporate dissolution operates to time-bar claims made by—and thereby terminate or extinguish a dissolved corporation's potential liability to—third parties.

1. A Receivership Appointment Under Section 279

Sections 278 and 279 of the Delaware General Corporation Law ("DGCL") both operate to enable a dissolved corporation to wind up its affairs. Section 278 prolongs the existence of the "body corporate" for three years after dissolution to enable the dissolved corporation to wind up its business, which includes participating in litigation.[31]

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[29] *In re Citadel Indus., Inc.*, 423 A.2d at 506; *See also In re Texas E. Overseas, Inc.*, 2009 WL 4270799, at *3-4 (Del. Ch. Nov. 30, 2009) *aff'd*, 998 A.2d 852 (Del. 2010); *In re Dow Chem. Int'l Inc.*, 2008 WL 4603580, at *1-2 (Del. Ch. Oct. 14, 2008).

[30] The Court of Chancery did implicitly acknowledge that an insurance policy could constitute "property" if the insured could be held liable to third parties on covered claims. *In re Krafft-Murphy Co., Inc.*, 62 A.3d at 103, 105.

[31] 8 *Del. C.* § 278 relevantly provides that "[a]ll corporations . . . shall . . . be continued, for the term of 3 years from such expiration or dissolution or for such longer period as the Court of Chancery shall in its discretion direct, bodies corporate for the purpose of prosecuting and

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After § 278's three year period expires, § 279 empowers the Court of Chancery to oversee and facilitate (by appointing a trustee or receiver) the completion of the dissolved corporation's unfinished business.[32] Under § 279, the Court of Chancery may appoint a receiver, at any time, to: (i) "take charge of the corporation's property," (ii) "collect the debts and property due and belonging to the corporation," (iii) "appoint an agent or agents," and (iv) "do all other acts . . . necessary for the final settlement of the unfinished business of the corporation."[33] Thus, § 279 enumerates the purposes for which a receiver may be appointed, which include administering the "still existing property interests of a dissolved corporation."[34]

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defending suits, whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities and to distribute to their stockholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit or proceeding begun by or against the corporation either prior to or within 3 years after the date of its expiration or dissolution, the action shall not abate by reason of the dissolution of the corporation; the corporation shall, solely for the purpose of such action, suit or proceeding, be continued as a body corporate beyond the 3-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Court of Chancery."

[32] *In re Citadel Indus., Inc.*, 423 A.2d at 504-05.

[33] 8 *Del. C.* § 279.

[34] *In re Citadel Indus., Inc.*, 423 A.2d at 506 ("Where there are no undistributed assets against which to effect a recovery, § 279 provides little solace to one possessing an after-discovered claim against a dissolved corporation."); *See also Addy v. Short,* 89 A.2d 136, 140 (Del. 1952) (interpreting a predecessor statute); *In re Texas E. Overseas, Inc.*, 2009 WL 4270799, at *3-4; *In re Dow Chem. Int'l Inc.*, 2008 WL 4603580, at *1.

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2. *Contingent Property Rights Constitute "Property" Under Section 279*

Having held that a receiver may be appointed in cases where a dissolved corporation holds undistributed property, we turn to the next question: do unexhausted liability insurance policies held by a dissolved corporation constitute "property" within the meaning of § 279? In *Addy v. Short*, this Court held that assets—*i.e.*, "property"—of a dissolved corporation include both vested and contingent rights.[35] Therefore, a receiver can be appointed for a dissolved corporation that holds only contingent rights.[36] Although *Addy* dealt with contingent rights in land, its reasoning is equally applicable to contingent rights in personalty. Both kinds of contingent rights have potential value to their holders.

Here, the insurance policies obligate the Insurers to pay "all sums which the insured shall become legally obligated to pay as damages" covered by the policies.[37] Because the Corporation is exposed to asbestos-related liabilities, those policies represent significant potential indemnification value to the Corporation.[38] And, because the Corporation held those policies before it dissolved, they

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[35] *Addy*, 89 A.2d at 140.

[36] *Id.*

[37] *In re Krafft-Murphy Co., Inc.*, 62 A.3d at 103 (quoting language from Krafft-Murphy's insurance contracts).

[38] *See Addy*, 89 A.2d at 140 (explaining that a property interest is "none the worse" for being "wholly contingent").

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constitute "property" of the Corporation within the purview of § 279.[39] In *In re Texas Eastern Overseas, Inc.* (which this Court affirmed), the Court of Chancery recently so concluded.[40] There, that court held that unexhausted insurance policies constituted "property" that permitted the court to appoint a receiver for a dissolved corporation under § 279. That holding correctly states Delaware law, and we reaffirm it.

3. The Dissolution Statutes Do Not Extinguish The Corporation's Liability To Third Parties

The second issue is whether the Corporation's contingent rights under the insurance policies are capable of vesting? We conclude that they are, because no statutory provision governing corporate dissolution operates to extinguish the Corporation's potential liability to third parties by time-barring those parties' claims.[41]

Nothing in § 278 operates as a statute of limitations that would bar claims or extinguish a dissolved corporation's liability to third parties. It is the case—and our courts have frequently held—that as a *body corporate* a dissolved corporation

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[39] *Addy*, 89 A.2d at 141 (distinguishing *McBride v. Murphy*, 124 A. 798 (Del. Ch. 1924) because *McBride* involved a post-dissolution acquisition of rights).

[40] *In re Texas E. Overseas, Inc.*, 2009 WL 4270799, at *6.

[41] We note that the Court of Chancery Opinion acknowledged that § 278 probably does not cut off corporate liability after three years. *In re Krafft-Murphy*, 62 A.3d at 104.

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ceases to exist and is not amenable to suit after the expiration of § 278's three year period.[42] From that it does not follow, however, that § 278 extinguishes the corporation's underlying liability to third parties. To the contrary, § 279 enables a dissolved corporation to (through a receiver) "sue and *be sued*" after the expiration of the § 278 three year period.[43] That is, § 279 establishes that the expiration of § 278's three year period does not extinguish the dissolved corporation's underlying liability.

Sections 280(c) and 281(b) also undermine any argument that § 278 operates as a general statute of limitations. Those provisions require a dissolved corporation to set aside assets for the payment of claims against the corporation that may arise or become known five to ten years after dissolution.[44] Those requirements demonstrate that the "legislature intended to recognize the potential for corporate liability based on claims asserted . . . five to ten years after dissolution."[45]

Nor do §§ 280-282 operate to cut off a dissolved corporation's liability. Those statutory provisions offer directors of dissolved corporations two alternate

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[42] *In re Citadel Indus., Inc.*, 423 A.2d at 504, 507; *see In re RegO Co.*, 623 A.2d at 96.

[43] *City Investing Co. Liquidating Trust v. Continental Cas. Co.*, 624 A.2d 1191, 1195 (citing *Addy*, 89 A.2d at 140).

[44] 8 *Del. C.* §§ 280(c)(3), 281(b).

[45] *In re Krafft-Murphy Co., Inc.*, 62 A.3d at 104.

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pathways to discharge their fiduciary duties to existing and future claimants, while also enabling the corporation to make distributions during its corporate winding-up activities.[46] Sections 280-281(a) accomplish that by permitting a dissolving corporation to follow a court-supervised process[47] under which the corporation: (i) gives notice to persons with existing, contingent, conditional or unmatured claims;[48] (ii) sets aside "security" both for pending, contingent, conditional or unmatured claims[49] and for claims likely to arise or become known to the corporation within five years after the date of dissolution or such longer period of time as the Court of Chancery may determine not to exceed 10 years after the date of dissolution;[50] and (iii) distributes to shareholders any assets that remain after claims have been paid or provided for as set forth in § 281(a).[51]

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[46] *In re Transamerica Airlines, Inc.*, 2006 WL 587846, at *7 (Del. Ch. Feb. 28, 2006). Upon dissolution, directors of a corporation owe fiduciary duties to creditors as well as shareholders. *Gans v. MDR Liquidating Corp.*, 1990 WL 2851, at *9 (Del. Ch. Jan. 10, 1990).

[47] 8 *Del. C.* § 280.

[48] *Id.* § 280(a)-(b).

[49] *Id.* § 280(b)(2) and (c)(1)-(2).

[50] *Id.* § 280(c)(3).

[51] *Id.* § 281(a).

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Alternatively, § 281(b) offers a dissolving corporation an unsupervised, "default"[52] procedure under which the corporation must, within three years of dissolution, "adopt a plan of distribution" that reasonably provides for: (i) all claims known to the corporation, (ii) any suits pending against the corporation, and (iii) claims that "are likely to arise or to become known to the corporation or successor entity within 10 years after the date of dissolution."[53] Section 281(b) provides that any assets that remain after the dissolved corporation has paid existing claims and provided for pending and future claims "shall be distributed to the stockholders of the dissolved corporation."[54] Compliance with either §§ 280-281(a) or § 281(b) shields directors and shareholders of the dissolved corporation from post-dissolution liability to third party claimants.[55]

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[52] We refer to § 281(b) as a default procedure, because a dissolving corporation that does not follow §§ 280-281(a) is statutorily required to follow the procedure prescribed by § 281(b).

[53] 8 *Del. C.* § 281(b).

[54] *Id.*

[55] *Id.* §§ 281(c), 282; *In re RegO Co.*, 623 A.2d at 97 (noting that following the court-supervised procedure affords directors of a dissolving corporation greater protection because "compliance with [§ 281(b)]'s standard, "reasonably likely to be sufficient" will, in principle at least, always be litigable"). Section 281(b) imposes on dissolving corporations a stand-alone obligation to adopt a plan of dissolution before the expiration of § 278's three year period. But, the only consequence of non-compliance with that provision is that the directors and shareholders of the dissolved corporation will be denied the benefit of the safe harbors afforded by §§ 281(c) and 282. Thus, a primary benefit that flows from compliance with § 281(b) would appear to be the availability of those safe harbors.

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To be precise, those provisions do time-bar certain claims against a dissolved corporation—but only in specified, narrow circumstances. Section 280(a)(2) bars any claim in cases where a known, existing claimant, who was given actual notice by the dissolving corporation as prescribed in § 280(a)(1), fails to present the claim to the corporation "by the date referred to in paragraph (a)(1)c . . . ."[56] Subparagraph 4 similarly bars claims against a dissolved corporation brought by a claimant whose presented claim was rejected by the corporation and who "does not commence an action, suit or proceeding with respect to the claim no later than 120 days after the mailing of the rejection notice."[57] On the face of these statutes, only the above-described two categories of claims—but no others—are time-barred.

Nor do the five and ten year claims planning periods outlined in §§ 280(c)(3) and 281(b) operate more broadly to extinguish a dissolved corporation's liability. By concluding otherwise, the Court of Chancery misread those statutes. The only statutes that address liability in relation to those five and ten year periods are §§ 281(c) and 282. Section 281(c) provides that "***[d]irectors*** of a dissolved corporation . . . which has complied with [the court-supervised or default distribution procedures] shall not be personally liable to the claimants of the

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[56] 8 *Del. C.* § 280(a)(2).

[57] *Id.* § 280(a)(4).

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dissolved corporation."[58] Section 282 limits the liability of the ***shareholders*** of a dissolved corporation that has complied with either the court-supervised or the default claims planning procedures. These provisions concern only the liability of directors and shareholders—not the liability of the dissolved corporation.

Moreover, the legislative history of §§ 280-281 establishes that the five and ten year claims planning periods were not intended to operate as general statutes of limitation. The primary benefit of, and incentive for, complying with either the court-supervised (§§ 280-281(a)) or the "default" (§ 281(b)) claims planning procedures is the "safe harbor" protection available to the directors and shareholders of the dissolved corporation.[59] The 1990 amendments to §§ 280(c) and 281(b) required a dissolving corporation to provide for claims "likely to arise or to become known to the corporation . . . prior to the expiration of applicable statutes of limitation."[60] The General Assembly clearly contemplated that a dissolved Delaware corporation could continue to be liable to third parties long after its formal dissolution. Nonetheless, the imprecision of the planning period language in the 1990 versions of §§ 280(c) and 281(b) ("prior to the expiration of applicable statutes of limitation") made it difficult for directors to take advantage

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[58] *Id.* § 281(c) (emphasis added).

[59] *See Gans*, 1990 WL 2851, at *8.

[60] 67 Del. Laws, c.376, §§ 24, 27 (1990).

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of that protection in the case of "long-tail" tort claims, because those statutory provisions "in effect, provide[d] no limitation for planning . . . purposes."[61] To provide the needed precision, the Delaware General Assembly amended §§ 280(c) and 281(b) in 1994 to require that a dissolving corporation provide for claims likely to arise "within 5 years" (§ 280(c)) or "within 10 years" (§ 281(b)) from the date of dissolution.[62] The synopsis of the amendments to §§ 280 and 281 explained that those changes "provide[d] a temporal limitation on the claims for which a dissolved corporation . . . must make provision . . . ." That same synopsis explained that other amended provisions of § 280 (*i.e.*, § 280(a)(2) and (4)) "barred" certain claims. Had the General Assembly intended the ten year period to operate as a limitations time bar, that body would have clearly expressed that intent in either the synopsis or in the statutory language.

The Court of Chancery's conclusion that §§ 280-282 shield the dissolved corporation from liability finds no support in those statutes' plain language or legislative history.[63]

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[61] *In re RegO Co.*, 623 A.2d at 102 n.27; *see also* 2 DAVID A. DREXLER ET AL., DELAWARE CORPORATION LAW AND PRACTICE § 38.05[5] (2012).

[62] 69 Del. Laws, c.266, §§ 15, 20 (1994).

[63] *See* 1 R. FRANKLIN BALOTTI & JESSE A. FINKELSTEIN, THE DELAWARE LAW OF CORPORATIONS & BUSINESS ORGANIZATIONS § 10.18 (3d ed. 2011) (explaining that the court-supervised procedure under §§ 280-281(a) "does not operate as a statute of limitations and does not extinguish any claims . . . against the dissolved corporation").

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4. *The Corporation's Contrary Arguments*

The Corporation advances four arguments as support for the Court of Chancery's determination that the liability insurance policies do not constitute "property" of the Corporation. First, the Corporation argues that, because §§ 280 and 281 do not require a dissolving corporation to set aside assets for claims that may arise after ten years from the date of dissolution, those provisions necessarily extinguish a dissolved corporation's post-dissolution liability to third parties after the ten year period expires.[64] That argument lacks merit.

The apparent premise of the Corporation's argument is that, because §§ 281(a) and (b) require a dissolved corporation to distribute to its shareholders any "remaining assets" not set aside for or paid to claimants, the dissolved corporation will have no assets after ten years from the date of dissolution from which late-arriving claimants could recover. That premise is misconceived. A determination of the "remaining assets" that can be distributed to shareholders must be based on the distributable assets that exist, and on the dissolving corporation's estimates of the value of pending and future claims, at the time the plan of distribution is adopted. If the assets set aside to provide for pending claims and for claims likely to arise within ten years after dissolution exceed the value of

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[64] The Corporation also claimed during oral argument that the liability of a dissolved corporation is extinguished upon the expiration of the three year winding-up period provided for in § 278.

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the claims actually brought within that period, the dissolved corporation will continue to have net assets on the tenth anniversary of its dissolution. Moreover, even after any initial distribution to shareholders, the dissolved corporation could continue to hold any contingent assets that would vest thereafter to satisfy creditor claims. There is no statutory requirement that the dissolved corporation *must* distribute to shareholders all assets that remain after any initial asset distribution to creditors or shareholders.[65]

The Corporation's argument would also lead to results that are inconsistent with a ten year time bar. Because (in the Corporation's view) the planning procedure under § 281(b) leaves no assets available for claims brought after ten years from the date of dissolution, § 281(b) must (the Corporation contends) operate as a general ten year statute of limitations. But, § 281(b) requires only that a dissolving corporation provide for claims that are "*likely* to arise . . . within 10 years after the date of dissolution"—not *all* claims that *will* arise.[66] The Corporation's interpretation would also bar claims that were unforeseen at the time of dissolution yet were timely because they were brought within ten years after dissolution.

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[65] *See* DREXLER ET AL., *supra* note 61, § 38.05[6].

[66] 8 *Del. C.* § 281(b) (emphasis added).

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Ultimately, neither the plain language nor the legislative history of §§ 280-282 support the conclusion that those provisions operate as a ten year statute of limitations.

Second, the Corporation argues that § 279 does not subject the Corporation to third party liability, because liability insurance cannot be considered a "property right" in the absence of a final judgment against the insured.[67] As support, the Corporation cites decisions of courts of other jurisdictions.[68] But, the cited decisions interpret statutes that are dissimilar to Delaware's. Two of those cases, *Blankenship v. Demmler Mfg. Co.* and *In re All Cases Against Sager Corp.*, turned on the interpretation of the Illinois dissolution statute,[69] which explicitly barred claims against a dissolved corporation filed more than five years after dissolution.[70] The courts in *Sager* and *Blankenship* held that where a dissolved corporation is

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[67] The Corporation also argues that the defense and resolution of newly commenced lawsuits does not constitute "unfinished business" under § 279. Petitioners do not argue that a receiver should be appointed to settle "unfinished business" independent of the Corporation's undistributed property. Thus, we do not address whether the defense of newly filed lawsuits would constitute "unfinished business" under § 279 in the absence of undistributed property.

[68] The Corporation also points to a passing mention of liability insurance in the dicta of *In re Citadel*, addressing whether a dissolved corporation may be revived under § 278, as evidence that insurance policies are not considered "property" under 8 *Del. C.* § 279. *In re Citadel Indus., Inc.*, 423 A.2d at 506. We find this evidence unpersuasive.

[69] *In re All Cases Against Sager Corp.*, 967 N.E.2d 1203, 1210 (Ohio 2012); *Blankenship v. Demmler Mfg. Co.*, 411 N.E.2d 1153, 1156 (Ill. App. Ct. 1980).

[70] *In re Sager*, 967 N.E.2d at 1210. At the time *Blankenship* was decided, the relevant statutory period was two years. *Blankenship*, 411 N.E.2d at 1156.

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immune from suit, insurance policies have no value.[71] However, because the Delaware dissolution statutes impose no such time bar, *Blankenship* and *Sager* are inapposite.

Third, the Corporation contends that the recent decision in *In re Texas Eastern Overseas, Inc.* (*TEO*)[72] is distinguishable and does not accurately state Delaware law. The Corporation argues that in *TEO*, the insurance policies had value because the relevant claims were filed less than ten years after dissolution, whereas the claims at issue here were filed more than ten years after dissolution. That is a distinction without a difference. As we have held, the expiration of ten years does not operate to extinguish a dissolved corporation's liability to third parties. The Corporation also points to the Court of Chancery's observation in a footnote that its holding would "avoid a reordering of societal risk allocation from the insurers."[73] That observation (the Corporation argues) evidences a faulty understanding of Delaware public policy. We need not address this argument, because our holding in this case does not rest on policy-based considerations.

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[71] *In re Sager*, 967 N.E.2d at 1210-11; *Blankenship*, 411 N.E.2d at 1157. The case applying Michigan law cited by the Corporation similarly deals with a dissolution statute that explicitly bars claims filed after a certain point. *Gilliam v. Hi-Temp Products Inc.*, 677 N.W.2d 856, 874 (Mich. Ct. App. 2003).

[72] *In re Texas E. Overseas, Inc.*, 2009 WL 4270799.

[73] *Id.* at *5 n.37.

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The Corporation next argues that allowing the lawsuits to proceed through the office of a court-appointed receiver would violate Delaware's prohibition against direct actions against insurers. This argument fails because the Corporation has not shown how the appointment of a receiver would lead to a direct action against the Insurers. The named defendant in Petitioners' asbestos claims is, and would continue to be, the (insured) Corporation. A receiver would simply participate in the litigation on the dissolved Corporation's behalf.

C. A Receiver Must be Appointed for the Dissolved Corporation to Participate in Litigation Brought More than Three Years After Dissolution

Lastly, we hold that the Court of Chancery erred by accepting the Insurers' representation that the Corporation would continue to litigate those claims filed within ten years of the Corporation's dissolution, and by concluding, based on that representation, that that assurance rendered the Petition "non-justiciable." As a pure matter of statutory law, the Corporation presently lacks any authority to continue managing the winding-up of its business, which includes defending lawsuits brought against it. Only if a receiver is appointed can the Corporation lawfully obtain that authority.

After the expiration of § 278's three year winding-up period, the dissolved Corporation ceased to exist as a "body corporate," and lost the power to conduct its

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own affairs.[74] From that point onward, the Corporation continued "solely for the purpose of [any] action, suit or proceeding" commenced before the expiration of the three year period.[75] For all other purposes, including defending lawsuits brought against it after the three year period, the Corporation ceased to exist as a "body corporate," and by statute lost its authority to manage its unfinished business.[76] That the Corporation's Insurers are continuing to defend those lawsuits on the Corporation's behalf cannot re-infuse the Corporation with a legal existence that by statute has terminated. The only means by which the Corporation may become re-empowered to defend its interests in the litigation is through the appointment of a receiver under § 279.[77] Consequently, the Court of Chancery erred by denying relief under § 279 based on the assurances of a non-existent, dissolved corporation's insurers that they would continue to defend against pending litigation. It follows that to hold that those assurances rendered the Petition "non-justiciable" was also legal error. The availability—indeed the

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[74] *In re Citadel Indus., Inc.*, 423 A.2d 500, 504 (Del. Ch. 1980) (citing *Harned v. Beacon Hill Real Estate Co.*, 80 A. 805 (Del. Ch. 1911) *aff'd sub nom. Harned v. Beacon Hill Real Estate Co.*, 84 A. 229 (Del. 1912)).

[75] 8 *Del. C.* § 278.

[76] *In re Citadel Indus., Inc.*, 423 A.2d at 503-04, 507.

[77] *See In re Dow Chem. Int'l Inc.*, 2008 WL 4603580, at *1 ("[O]nce the three-year period has expired and there is no pending litigation or assets to be disposed of, the Court no longer has discretion to 'continue' the corporate existence under § 278."); *In re Citadel Indus., Inc.*, 423 A.2d at 504, 507.

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necessity—of a court-appointed receiver under § 279 made the Petition ripe for judicial determination.

V. CONCLUSION

For the foregoing reasons, we reverse the grant of summary judgment and remand to the Court of Chancery for further proceedings in accordance with this Opinion. Jurisdiction is not retained.

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