

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

United States of America)	
)	
and)	
)	
State of Maine,)	
)	
Plaintiffs,)	
)	
v.)	Civ. Action No.
)	
Chevron U.S.A. Inc.,)	
)	
Texaco Inc.,)	
)	
Chevron Environmental Management Company,)	
)	
Cumberland Farms, Inc.,)	
)	
and)	
)	
Gulf Oil Limited Partnership,)	
)	
Defendants.)	

COMPLAINT

The United States of America, by authority of the Attorney General acting at the request of the Department of the Interior, U.S. Fish and Wildlife Service (“USFWS”), and the Department of Commerce, National Oceanic and Atmospheric Administration (“NOAA”), and the State of Maine, by authority of the Attorney General of the State acting on behalf of the Maine Department of Environmental Protection (“DEP”), Department of Agriculture, Conservation and Forestry (“DACF”), Department of Inland Fisheries and Wildlife (“DIFW”) and Department of Marine Resources (“DMR”) (collectively, “Plaintiffs”) bring this Complaint and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action brought against Chevron U.S.A. Inc., Texaco Inc., Chevron Environmental Management Company, Cumberland Farms, Inc., and Gulf Oil Limited Partnership (“Defendants”) pursuant to the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. §§ 2701, *et seq.*, and the Maine Oil Discharge Prevention and Pollution Control Law (“Oil Law”), 38 M.R.S. § 552, seeking natural resource damages arising from discharges of oil that occurred starting at least as early as the 1970s at the former Chevron and Texaco marine oil terminal facilities located, respectively, at 799 and 809 Main Road North in Hampden, Maine (the “Oil Discharges”) into or upon navigable waters of the United States and adjoining shorelines and into or upon the land and waters of the State of Maine.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Section 1017(b) of OPA, 33 U.S.C. § 2717(b). Venue is proper in this District, pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. § 1391(b), because the Oil Discharges and natural resource injuries occurred in this District.

3. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367(a) because the state claims are so related to the federal claims as to form part of the same case or controversy.

DEFENDANTS

4. Defendant Chevron U.S.A. Inc. is a Pennsylvania corporation with its principal place of business in San Ramon, California. Chevron U.S.A. Inc. is a subsidiary of Chevron Corporation, a Delaware corporation. From about 1951 to 1986, Chevron U.S.A. Inc. and its corporate predecessors owned real property located at 799 Main Road North in Hampden,

Maine (“Chevron Site”), and Chevron U.S.A. Inc. owned and operated a marine oil terminal facility (expired Oil Terminal Facility License No. 328) at this site, including aboveground and underground oil storage tanks, truck loading racks, a railcar loading rack, marine dock and associated aboveground and underground product piping. The Chevron Site is located on the banks of the Penobscot River.

5. Defendant Chevron Environmental Management Company, a California corporation with its principal place of business in San Ramon, California, is a subsidiary of Defendant Chevron U.S.A. Inc., and participated in cleanup activities resulting from the Oil Discharges.

6. Defendant Texaco Inc. is a Delaware corporation with its principal place of business in San Ramon, California and is a subsidiary of Chevron Corporation, a Delaware corporation. From about 1916 to 1987, Texaco Inc. and its corporate predecessors and affiliates owned real property adjacent to the Chevron Site located at 809 Main Road North in Hampden, Maine (“Texaco Site”), and Texaco owned and operated a marine oil terminal facility (expired Oil Terminal Facility License No. 324) at the site, including aboveground and underground oil storage tanks, a truck loading rack, a railcar loading rack, marine dock and associated aboveground and underground product piping. The Texaco Site is located on the banks of the Penobscot River. In or around 1987, the Texaco Site was conveyed to a Maine corporation that is not a defendant in this action, and an active bulk oil storage facility remains at the site.

7. Defendant Cumberland Farms, Inc. is a Delaware corporation with a principal place of business in Framingham, Massachusetts. In or around 1986, Chevron U.S.A. Inc. conveyed the Chevron Site property to Cumberland Farms, Inc.

8. Defendant Gulf Oil Limited Partnership is a Delaware partnership with a principal place of business in Wellesley, Massachusetts. In or around 1995, Cumberland Farms, Inc. conveyed the Chevron Site property to Gulf Oil Limited Partnership, which was a subsidiary of Cumberland Farms, Inc. until late 2015. Gulf Oil Limited Partnership currently owns the Chevron Site.

9. Each Defendant is a “person” within the meaning of Section 1001(27) of OPA, 33 U.S.C. § 2701(27) and within the meaning of 38 M.R.S. § 542(9).

STATUTORY BACKGROUND

10. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides that “each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines . . . is liable for the removal costs and damages . . . that result from such incident.”

11. Section 1001(32) of OPA, 33 U.S.C. § 2701(32), defines “responsible party” to include, “[i]n the case of an onshore facility (other than a pipeline), any person owning or operating the facility.”

12. The term “discharge” includes any intentional or unintentional “. . . spilling, leaking, pumping, pouring, emitting, emptying, or dumping” pursuant to Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

13. “Damages” for which a responsible party is liable, pursuant to Section 1002(a) of OPA, 33 U.S.C. § 2702(a), include, “[d]amages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage . . .” 33 U.S.C. §§ 2701(5) and 2702(b)(2).

14. Pursuant to Section 1006 of OPA, 33 U.S.C. § 2706, USFWS and NOAA have been designated as trustees for the United States for recovery under OPA for injuries to, destruction of, loss of, or loss of use of natural resources managed or controlled by the United States.

15. “Natural resources” under OPA include those natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and any State. 33 U.S.C. § 2701(20).

16. Pursuant to the Oil Law, 38 M.R.S. § 552(2), “any person, vessel, licensee, agent or servant . . . who permits or suffers a prohibited discharge or other polluting condition to take place is liable to the State for . . . other damage incurred by the State, including damage for injury to, destruction of, loss of, or loss of use of natural resources, the reasonable costs of assessing natural resources damage and the costs of preparing and implementing a natural resources restoration plan. In any suit to enforce claims of the State under this section, to establish liability, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing or suffering the discharge or licensee responsible for the discharge.”

17. The term “discharge” in the Oil Law means “any spilling, leaking, pumping, pouring, emitting, escaping, emptying or dumping.” 38 M.R.S. § 542(4).

18. The DEP, DACF, DIFW and DMR have been designated to act on behalf of the public as the State of Maine trustees for natural resources.

GENERAL ALLEGATIONS

19. Starting as early as the 1970s, large quantities of oil were discharged at and from the Chevron Site and Texaco Site into or upon the land, groundwater, intertidal area, and the adjacent Penobscot River and its adjoining shoreline.

20. The Oil Discharges contained “oil” within the meaning of Section 1001(23) of OPA, 33 U.S.C. 2701(23) and within the meaning of 38 M.R.S. § 542(6).

21. The Penobscot River is a “navigable water” within the meaning of Section 1001(21) of OPA, 33 U.S.C. § 2701(21).

22. Under Maine law, 38 M.R.S. §§ 465(3) and 467(7)(A), the affected segment of the Penobscot River is designated a Class B surface water, which is managed with a goal of providing unimpaired wildlife habitat of sufficient quality to support all indigenous aquatic life, use as drinking water supplies, fishing, recreation in and on the water, and industrial processes.

23. The affected segment of the Penobscot River is habitat for many bird, mammal, invertebrate and fish species including the Gulf of Maine Distinct Population Segment of Atlantic Salmon (*Salmo salar*) and Shortnose Sturgeon (*Acipenser brevirostrum*), both of which are listed as endangered species by federal agencies.

24. Discharges of free-phase oil in proximity to the Chevron Site and Texaco Site, and into the Penobscot River, have been reported intermittently between 1973 and 2008.

25. Numerous discharges of oil and dissolved-phase oil constituents to soil, sediment, groundwater, pore water, and surface water have been documented as part of the federal and State Trustees’ assessment.

26. The Oil Discharges impacted several acres of land as well as sediment in the adjoining Penobscot River.

27. The Oil Discharges caused injury to, destruction of, loss of or loss of use of natural resources belonging to, managed by, controlled by, or appertaining to the United States or the State, which include the waters of the United States and the waters of the State of Maine; aquatic life therein; and lands and shoreline adjacent thereto.

28. The Oil Discharges caused injury to, destruction of, loss of or loss of use of natural resources, for which the State may seek damages pursuant to the Oil Law at 38 M.R.S. § 552(2), and which include, but are not limited to, groundwater, intertidal area, and the Penobscot River and its adjoining shorelines, and organisms living therein.

29. As a result of the Oil Discharges, the federal and State trustees have incurred reasonable costs in assessing the damage to natural resources caused by the Oil Discharges and will incur costs to prepare and implement a natural resources restoration plan.

FIRST CLAIM FOR RELIEF
Oil Pollution Act of 1990

30. The above allegations are included in this claim for relief.

31. As a result of the Oil Discharges into or upon navigable waters or adjoining shorelines, within the meaning of Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2701(b)(2)(A), there has been injury to, destruction of, loss of, or loss of use of “natural resources,” as that term is defined in Section 1001(20) of OPA, 33 U.S.C. § 2701(20), for which the United States and the State of Maine are trustees within the meaning of Section 1006(b) of OPA, 33 U.S.C. § 2706(b). The natural resource damages sought by the United States and the State of Maine under OPA in this action relate to: 1) aquatic resources (i.e., aquatic habitats, the water column, subtidal sediment areas; and living organisms that reside in or utilize those aquatic

habitats; and services provided by those habitats and living organisms); 2) recreational resources (i.e., the human use of natural resources by members of the public for recreational activities, including fishing and boating); and 3) shoreline resources (i.e., intertidal habitats including mudflats and mixed course and fine substrates; living organisms that reside in or utilize those intertidal habitats; and the services provided by those habitats and organisms).

32. As a responsible party for a facility from which oil was discharged into or upon the navigable waters or adjoining shorelines, each of the Defendants is liable to the United States and the State of Maine under Sections 1002(a) and 1002(b)(2)(A) of OPA, 33 U.S.C. §§ 2702(a) and 2702(b)(2)(A), for damages for such injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing those damages.

SECOND CLAIM FOR RELIEF

Maine Oil Discharge Prevention and Pollution Control Law

33. The above allegations are included in this claim for relief.

34. As a result of the Oil Discharges into land and waters of the State, there has been “injury to, destruction of, loss of, or loss of use of natural resources,” within the meaning of 38 M.R.S. § 552(2), for which the State of Maine is a trustee. The natural resource damages sought by the State in this action relate to: 1) aquatic resources (i.e., aquatic habitats, the water column, subtidal sediment areas; and living organisms that reside in or utilize those aquatic habitats; and services provided by those habitats and living organisms; as well as groundwater and services provided by groundwater); 2) recreational resources (i.e., the human use of natural resources by members of the public for recreational activities, including fishing and boating); and 3) land and shoreline resources (i.e., upland and intertidal habitats including mudflats and mixed course and fine substrates; living organisms that reside in or utilize those habitats; and the services provided by those habitats and organisms).

35. As a person or licensee who permitted or suffered prohibited discharges of oil into or upon the land, groundwater, intertidal area, and the Penobscot River and adjoining shoreline to take place, or as a licensee with vicarious liability under the Oil Law for the acts of certain other entities, each of the Defendants is liable to the State of Maine under 38 M.R.S. § 552 for damages for injury to, destruction of, loss of, or loss of use of, natural resources, as well as the reasonable costs of assessing those damages and the costs of preparing and implementing a natural resources restoration plan.

PRAYER FOR RELIEF

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

- A. Award damages to the United States and the State under Sections 1002(a) and 1002(b)(2)(A) of OPA, 33 U.S.C. §§ 2702(a) and 2702(b)(2)(A), for damages for injury to, destruction of, loss of, or loss of use of the natural resources and all reasonable costs incurred or to be incurred by the United States in assessing such damages.
- B. Award damages to the State under the Oil Law, 38 M.R.S. § 552, for damages for injury to, destruction of, loss of, or loss of use of natural resources, the reasonable costs of assessing natural resources damage, and the costs of preparing and implementing a natural resources restoration plan.
- C. Award the United States and State its costs of this action.
- D. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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