

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

UNITED STATES OF AMERICA

and

THE STATE OF ALASKA,

Plaintiffs,

v.

ADAK PETROLEUM, LLC,

Defendant.

Civil No.

COMPLAINT

The United States of America, acting at the request of National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI), and the State of Alaska, acting at the request of the Alaska Department of Fish and Game (ADFG), the Alaska Department of Natural Resources (ADNR), the Alaska Department of Law (ADOL), and the Alaska Department of Environmental Conservation (ADEC), file this complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action, brought against Adak Petroleum, LLC (Adak) for recovery of damages for injury to, destruction of, loss of, or loss of use of natural resources, under section 1002 of the Oil Pollution Act (OPA), 33 U.S.C. § 2702. Plaintiffs seek damages in order to compensate for and restore natural resources injured by the discharge of fuel oil from a facility into navigable waters in Alaska. Plaintiffs also seek to recover un-reimbursed costs of assessing such damages.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1345 and section 1017 (b) of OPA, 33 U.S.C. § 2717(b).
3. Venue is proper in the District of Alaska pursuant to 28 U.S.C. §§ 121 and 1391(b) and section 1017 (b) of OPA, 33 U.S.C. § 2717 (b), because it is the judicial district in which the discharge occurred.

FACTUAL ALLEGATIONS

4. Adak is an Alaska corporation with headquarters in Anchorage.
5. At all times relevant to this Complaint, Adak owned a 4.8 million gallon underground fuel tank which is part of the Adak fuel storage tank facility on Adak Island in the central Aleutian Islands of Alaska.
6. On January 11, 2010, fuel was being transferred from a tanker at the adjacent loading dock when Adak's fuel tank was overfilled, releasing approximately 142,000 gallons of #2 diesel fuel to navigable waters.
7. On January 11, 2010, fuel from the release entered Helmet Creek, which flows into the small boat harbor at Sweeper Cove. Oil from the discharge was found over 2 km of Helmet Creek and 2.5 acres of associated riparian habitat.
8. On January 11, 2010, some fuel, possibly more than a thousand gallons, flowed from Helmet Creek to Sweeper Cove. Oil from the discharge was found over approximately 9.2 acres of marine habitat and shoreline in Sweeper Cove.
9. Helmet Creek and Sweeper Cove are each navigable-in-fact.

10. Fuel from the incident caused injuries to natural resources, including the oiling of birds, fish, and their habitats, and also had an impact upon recreational uses of natural resources and other public resources.

11. Plaintiffs have incurred costs in assessing damages to natural resources resulting from the discharge. Plaintiffs expect to continue to incur costs into the future.

FIRST CLAIM FOR RELIEF

12. The foregoing paragraphs are incorporated by reference.

13. NOAA, DOI, ADFG, ADNR, ADOL, and ADEC are designated trustees of natural resources damaged by the oil spilled on January 11, 2010, pursuant to section 1006(b) of OPA, 33 U.S.C. § 2706(b). See 40 C.F.R. §§ 300.600 (b)(1), (b)(2), and 300.605.

14. Adak is a “person” within the meaning of section 1001 (27) of OPA, 33 U.S.C. § 701(27).

15. The Adak fuel storage tank facility on Adak Island, including the underground fuel tank from which the discharge occurred, is a “facility” within the meaning of section 1001(9) of the OPA, 33 U.S.C. § 2701(9).

16. The spill of #2 diesel fuel on January 11, 2010, into waters of Helmet Creek and Sweeper Cove, in Alaska, was a “discharge” within the meaning of sections 1001(7) and 1002(a) of the OPA, 33 U.S.C. §§ 2701(7), 2702(a).

17. The #2 diesel fuel released during the spill was “oil” as defined in section 1001(23) of OPA, 33 U.S.C. § 2701(23).

18. Helmet Creek and Sweeper Cove are “navigable waters” within the meaning of section 1001(21) of the OPA, 33 U.S.C. § 2701(21).

19. “Natural Resources” within the meaning of section 101(20) of OPA, 33 U.S.C. § 2701(20), were injured, destroyed, lost, or their use was lost as a result of the discharge of oil from Adak’s facility, including, *inter alia*, the oiling of birds, fish, and their habitats, and also a temporary disruption of recreational uses of natural resources and other public resources.
20. Adak is the “responsible party” within the definition of section 1001(32) of OPA, 33 U.S.C. § 2701(32), for an onshore facility from which oil was discharged because it was the owner and operator of the underground fuel tank at the time the facility discharged oil into navigable waters.
21. Pursuant to section 1002(b)(2) of OPA, 33 U.S.C. § 2702(b)(2), Adak is liable to the United States and to the State for damages for injury to, destruction of, loss of, or loss of use of natural resources, including the reasonable costs of assessing such injury, destruction, loss, or loss of use resulting from the discharge of oil from Adak’s facility.

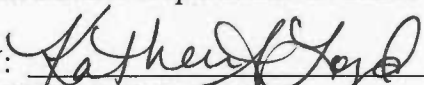
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Award Plaintiffs a judgment against the Defendant for all damages, including assessment costs; and
2. Grant the Plaintiffs such other relief as this Court may deem appropriate.

Respectfully submitted,

THOMAS A. MARIANI, JR.
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

BY: 
KATHERINE A. LOYD
Trial Attorney
United States Department of Justice

Environment and Natural Resources Division
Environmental Enforcement Section
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Telephone: (303) 844-1365
Facsimile: (303) 844-1350
kate.loyd@usdoj.gov

Michael C. Geraghty
Attorney General

BY: Jennifer A. Currie *syd/KAL*
JENNIFER A. CURRIE
Assistant Attorney General
Alaska Department of Law
Environmental Section
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501
Phone - 907-269-5274
Fax - 907-278-7022
jennifer.currie@alaska.gov