

§ 9607(a)(4)(C), seeking recovery of damages for injury to, loss of, or destruction of natural resources, including recovery of the costs of assessing such injury and damages and the future costs of overseeing and monitoring restoration actions, as a result of releases and threatened release of hazardous substances into the environment at or from the Greens Bayou Site (Site) located at 2237 and 2239 Haden Road in Houston, Harris County, Texas. The State of Texas also seeks relief under the Texas Water Code (“TWC”) §§ 26.261 *et seq.*

JURISDICTION AND VENUE

2. This Court has personal jurisdiction over the Parties and has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) because the release or threatened release of hazardous substances that gives rise to the action occurred in this District.

DEFENDANTS

4. Defendants are “persons” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and also within the meaning of Section 26.263(5) of the TWC.

5. GB Biosciences Corporation (“GB Biosciences”), is a Delaware corporation registered to do business in the State of Texas. GB Biosciences operates an agricultural chemicals plant at 2239 Haden Road in Houston, Texas.

6. ISK Magnetics, Inc. (“ISK”) is a Delaware corporation registered to do business in the State of Texas. ISK currently owns the property at 2237 Haden Road in Houston, Texas.

7. Occidental Chemical Corporation (“OCC”) is a New York corporation registered to do business in the State of Texas. OCC is a successor by merger in 1987 to Diamond Shamrock Chemicals, a former owner and operator of industrial plants at the Site located at 2239 and/or 2237 Haden Road.

CERCLA STATUTORY BACKGROUND

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

- (1) the owner and operator of a vessel or facility, [and]
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . .
- (4) . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for –
. . . .
(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release . . .

GENERAL ALLEGATIONS

9. The Greens Bayou Site covers an area of approximately 217 acres and is located at 2237 and 2239 Haden Road in the city of Houston in Harris County, Texas. Haden Road roughly divides the site into two areas consisting of the operating facilities (approximately 134 acres) and a largely undeveloped tract of land (approximately 83 acres).

10. The Site consists of two industrial plants as well as surrounding industrial and undeveloped properties, the Harris County Flood Control Ditch, and Greens Bayou in Houston, Texas.

11. The industrial plants at 2237 and 2239 Haden Road were previously owned and operated by Diamond Shamrock Chemicals Company from the 1950s until 1983. Diamond Shamrock conveyed its interest in the 2237 and 2239 Haden Road properties in July 1983.

12. OCC is a successor in interest through merger to Diamond Shamrock Chemicals Company.

13. GB Biosciences acquired the industrial plants at 2237 and 2239 from SDS Biotech Corporation in 1986 and owned both plants until 1998. GB Biosciences remains the owner and operator of 2239 Haden Road.

14. ISK Magnetics leased from GB Biosciences in 1995, and then acquired in 1998, the plant at 2237 Haden Road. From approximately 1995 to 2001, ISK operated a magnetic iron oxide manufacturing plant at 2237 Haden Road. ISK currently owns approximately 86 acres of the Site.

15. Chemical products were manufactured at the plants, including the hazardous substances dichlorodiphenyltrichloroethane (“DDT”) and Lindane which were discontinued by 1970. Other substances were produced, utilized, stored, or disposed of at the Site, including chloral, chloral hydrate, dimethyl tetrachloroterephthalate (Dacthal), monosodium methyl arsenate, disodium methyl arsenate, and magnetic iron oxide, arsenic, cyanide, and polychlorinated biphenyls (“PCBs”). Historical operations at the Site have resulted in releases of hazardous substances at or from the Site, such as DDT, dichlorodiphenyldichloroethylene (“DDE”), and dichlorodiphenyldichloroethane (“DDD”).

16. Defendants have undertaken certain cleanup measures to address contamination impacting Greens Bayou.

17. In 2007, Defendants entered into a Memorandum of Agreement (“MOA”) with the federal and state trustees (collectively “the Trustees”) to perform a cooperative, restoration-based assessment to address potential natural resource injuries at the Site.

18. The Trustees’ assessment of these injuries to natural resources, including their estimates of interim losses and the restoration projects proposed to compensate for those losses, is identified in the Final Damage Assessment and Restoration Plan/Environmental Assessment (“DARP/EA”) for the Site, dated December 14, 2008.

19. As a result of this assessment, the Trustees determined that hazardous substances released at or from the Site injured benthic sediment habitat and organisms, aquatic habitats and organisms, terrestrial wildlife, habitat for state and federally protected species, including migratory birds and waterfowl, and other resources.

20. The selected restoration actions described in the DARP/EA will result in the replacement of benthic resources lost and/or injured due to exposure to hazardous substances releases as well as to response activities associated with the removal of contaminated sediments from Greens Bayou. The selected restoration actions will also result in the replacement of terrestrial resources lost and/or injured due to response activities associated with the Site.

21. The Trustees have incurred costs in assessing the injury to natural resources which remain unreimbursed.

FIRST CLAIM FOR RELIEF

(Recovery of Damages for Injuries to Natural Resources Under CERCLA)

22. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

23. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were stored and disposed of at the Site.

25. Defendant OCC is the legal successor in interest to Diamond Shamrock Chemicals Company which owned and operated chemical manufacturing plants on the Site at 2237 and 2239 Haden Road during the period that hazardous substances were treated, stored, and disposed there.

26. Defendant GB Biosciences formerly owned and operated the plant at 2237 Haden Road, and it currently owns and operates a chemical manufacturing plant at 2239 Haden Road, each from which hazardous substances were treated, stored, and disposed at the Site.

27. Defendant ISK Magnetics owns the facility at 2237 Haden Road. From approximately 1995 to 2001, it operated a magnetic iron oxide plant at 2237 Haden Road from which hazardous substances were treated, stored, and disposed of at the Site.

28. There were “releases” and “threatened releases” of hazardous substances within the meaning of Sections 101 (22), 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), 9606(a), and 9607(a), into the environment at and from the facility.

29. The release or threatened release of hazardous substances at or from the facility caused injury to, destruction of, or loss of natural resources, within the meaning of Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607 (a)(4)(C).

30. The natural resources that have been injured, destroyed, or lost as a result of the release of hazardous substances from the facility include migratory birds, their supporting

ecosystems, and other natural resources as that term is defined in 42 U.S.C. § 9601(16), for which Plaintiffs are trustees.

31. Plaintiffs have incurred and continue to incur costs related to the assessment of the loss of natural resources for which Plaintiffs are trustees.

32. Defendant OCC is within the class of liable persons described in Section 107(a) (2) of CERCLA, 42 U.S.C. § 9607(a) (2), because it owned and/or operated a facility at the Site during the time of disposal of hazardous substances there.

33. Defendant GB Biosciences is within the class of liable persons described in Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), because it owns and operates an industrial plant at the Site from which hazardous substances have been disposed there and it formerly owned and/or operated another facility at the Site during the time of disposal of hazardous substances there.

34. ISK Magnetics is within the class of liable persons described in Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. 9607(a)(1) and (2), because it currently owns and previously operated an industrial plant at the Site at which hazardous substances have been disposed.

35. Pursuant to Section 101(a)(4)(C) of CERCLA, 42 U.S.C. 9607(a)(4)(C), Defendants are liable to the United States for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, resulting from actual or threatened releases of hazardous substances.

SECOND CLAIM FOR RELIEF

(State Law Claim Texas Water Code (“TWC”) §§ 26.261 *et seq.*)

36. Paragraphs 1 through 35 are realleged and incorporated herein by reference.
37. The Site is a “facility” within the meaning of Section 327.2 of Title 30 of the Texas Administrative Code (TAC), 30 TAC §327.2.
38. Hazardous substances within the meaning of Section 26.263(4) of the TWC were stored at or disposed of at the Site.
39. Each Defendant is a “responsible person” within the meaning of Section 26.263(6) of the TWC.
40. There were “discharges or spills” within the meaning of Section 26.263(1) of the TWC at or from the Site.
41. The discharge or spill at or from the Site into Greens Bayou and the nearby area where the hazardous substances came to be located has caused injury to, destruction of, and loss of land and aquatic resources held in trust or owned by the state within the meaning of Section 26.265(d) of the TWC.
42. The State has incurred and is continuing to incur costs related to determining the impacts of the spill on the environment and natural resources as well as for the restoration of land and aquatic resources held in trust or owned by the state within the meaning of Section 26.265(d) of the TWC.
43. Pursuant to Section 26.265(d) of the TWC, Defendants are liable to the State for the reasonable costs of conducting reasonable and necessary scientific studies to determine the impacts of the spill on the environment and natural resources and to determine the

manner in which to respond to spill impacts including the reasonable costs incurred in restoration of land and aquatic resources held in trust or owned by the state.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

1. In favor of Plaintiffs against Defendants, jointly and severally, pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), and Section 26.265(d) of the TWC, for all damages for injury to, destruction of, or loss of natural resources, including the unreimbursed past, present and future costs of assessing such injury, destruction, or loss, the costs of restoring, replacing, rehabilitating, and/or acquiring the equivalent of those injured resources, and the past, present, and future diminution in value of those resources pending restoration or replacement;
2. Enjoining Defendants to take appropriate action necessary to protect and restore the injured, destroyed or lost natural resources;
3. Awarding the United States and the State their costs of this action; and

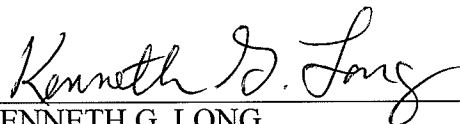
4. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES



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