

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA and  
STATE OF TEXAS,

Plaintiffs,

v.

INTERCONTINENTAL TERMINALS  
COMPANY, LLC

Defendant.

CIVIL ACTION NO. 4:24-cv-01207

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Secretary of the United States Department of the Interior (“DOI”) and the Secretary of the United States Department of Commerce, through the National Oceanic and Atmospheric Administration (“NOAA”), in their capacity as natural resource Trustees, and Plaintiff State of Texas, on behalf of the Texas Commission on Environmental Quality (“TCEQ”), the Texas Parks and Wildlife Department (“TPWD”) and Texas General Land Office (“GLO”) (collectively, the "State"), bring this civil action to redress certain damages to natural resources for which Intercontinental Terminals Company, LLC (“ITC”) is liable.

STATEMENT OF THE CASE

1. The United States and the State of Texas bring this civil action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of

1980 (“CERCLA”), as amended, 42 U.S.C. § 9607, for the recovery of damages for injury to, destruction of, or loss 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 the release, or threatened release, of hazardous substances into the environment at or from ITC’s terminal facility, located at 1943 Independence Parkway South, Deer Park, Harris County, Texas ( “Terminal Facility”).

### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this Complaint pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345. The United States and the State of Texas are authorized to bring this action pursuant to 42 U.S.C. § 9607(f).

3. This Court has personal jurisdiction over ITC. ITC is headquartered in this District, and it does business here, including via its onshore operations at the Terminal Facility.

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

### THE DEFENDANT

5. ITC is a limited liability company that is registered to do business in the State of Texas and organized under the laws of Delaware. ITC is wholly owned by Mitsui & Co., Ltd., a Japanese company.

6. ITC is a “person” within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607.

ITC'S TERMINAL FACILITY

7. ITC is, and was at all times relevant to this Complaint, the owner and operator of the Terminal Facility.

8. ITC's business operations at the Terminal Facility include storing and transferring bulk liquids and gasses, including petrochemicals. Approximately 230 storage tanks are located at the Terminal Facility. Each tank can hold between 8,000 - 160,000 barrels of materials, with a total onsite storage capacity of approximately 12 million barrels. The Terminal Facility is equipped with both rail and truck access, ship docks, barge docks, and pipeline connections.

GENERAL ALLEGATIONS

**The Tank Fire**

9. On March 17, 2019, a fire ignited within the 2nd 80's Tank Farm at the Terminal Facility. The tank farm consists of fifteen 80,000-barrel capacity storage tanks containing petrochemical products and hazardous substances, including naphtha, xylene, toluene, pyrolysis gas, gasoline blendstock, and base oil. The fire engulfed an aboveground storage tank containing naphtha and spread to several adjacent tanks within the tank farm. The fire continued to burn for three days until it was initially extinguished on March 20, 2019.

10. On March 22, 2019, the secondary containment wall surrounding the tank farm breached. Hundreds of thousands of barrels of a mixture of the petrochemical products from the tanks along with fire water and firefighting foam released into a nearby ditch, which drains into Tucker Bayou.

11. The released substances flowed from Tucker Bayou into surrounding waterways, including Buffalo Bayou and the Houston Ship Channel.

12. On the day the secondary containment wall breached, the fire also reignited and spread to released materials remaining in the drainage ditch.

13. The fire was fully extinguished – six days after it first began – before reaching any of the major waterways.

14. The fires, which occurred at the Terminal Facility, and the resulting releases are collectively referred to as the “Tank Fire.”

15. Because of the Tank Fire, schools and parks were closed, and the public was restricted from recreating outdoors. Shelter-in-place orders were issued for several days by the City of Deer Park and nearby City of Galena Park, Texas. The San Jacinto Festival, which occurs annually, was also cancelled.

16. Transportation was also limited due to the Tank Fire. Numerous roads were closed, and the Houston Ship Channel was partially and temporarily closed to vessel traffic. The Lynchburg Ferry, which crosses the channel, was out of service to the public for approximately 41 days.

17. Substances released at or from the Terminal Facility, included, but were not limited to, benzene, xylene, and toluene, which are “hazardous substances” within the meaning of Sections 101(14) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9607(a), and the regulations referenced therein, 40 C.F.R. § 302.4.

#### **Injury to, Destruction of, or Loss of Natural Resources**

18. The release, or threatened release, of hazardous substances at or from the Terminal Facility resulted in injury to, destruction of, or loss of various natural resources and their services, including, but not limited to, marsh, aquatic habitats and species, avian species, and other natural resources as that term is defined in Section 101(16) of CERCLA, 42 U.S.C

§ 9601(16), for which Plaintiffs are trustees, including effects to human use/recreation resulting from impacts to these natural resources.

FEDERAL LAW GOVERNING CLAIM FOR RELIEF

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

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section [*i.e.* 42 U.S.C. § 9607(b)] –

(1) the owner and operator of a ... facility, [or]

(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[.]

20. Section 107(a) of CERCLA, 42 U.S.C. § 9607, also provides that “[t]he amounts recoverable in an action under this Section shall include interest on the amounts recoverable under” subparagraph (C).

21. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607, ITC is strictly liable.

22. Under Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), liability for “an injury to, destruction of, or loss of natural resources under [Section 107(a)(C)] shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State[.]”

23. Pursuant to Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A), the President has designated the Secretary of the Interior and Secretary of Commerce as the federal

trustees for various natural resources, including those at issue here. *See* Executive Order No. 12,580, as amended by Executive Order No. 13,016, 61 Fed. Reg. 45871 (Aug. 28, 1996); 40 C.F.R. § 300.600(b)(2).

24. Pursuant to Section 107(f)(2)(B) of CERCLA, 42 U.S.C. § 9607(f)(2)(B), Governors of the State of Texas have designated the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department, and the Texas General Land Office as trustees for various natural resources, including those at issue here.

25. The United States and the State of Texas have incurred costs in the assessment of natural resource damages related to the Tank Fire at the Terminal Facility.

#### CLAIM FOR RELIEF

26. Paragraphs 1 through 25 are incorporated herein by reference.

27. ITC's Terminal Facility is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and as used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), because it is a "site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located[.]"

28. ITC is a current "owner or operator" of a facility within the meaning of Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(1).

29. There have been "releases" or "threatened releases" of hazardous substances at or from ITC's Terminal Facility within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).

30. The release, or threatened release, of hazardous substances at or from ITC's Terminal Facility resulted in injury to, destruction of, and loss of natural resources within the meaning of Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

31. The natural resources that have been injured, destroyed, or lost as a result of the release of hazardous substances from ITC's Terminal Facility are "natural resources" as that term is defined in 42 U.S.C. § 9601(16), for which the United States and the State are trustees.

32. The Defendant is liable to Plaintiffs for natural resource damages resulting from releases of hazardous substances pursuant to 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court:

1. Enter judgment in favor of the United States and the State against ITC for damages for injury to natural resources resulting from the releases of hazardous substances at or from ITC's Terminal Facility, including the cost to restore, replace, rehabilitate, and/or acquire equivalent natural resources, the value of lost services resulting from the injury to resources, the reasonable cost of assessing injury to the natural resources and resulting damages, and the Trustees' restoration planning costs as well as interest, in accordance with Sections 107(a) and (f) of CERCLA, 42 U.S.C. § 9607(a) and (f); and
2. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

**FOR THE UNITED STATES OF AMERICA**

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division

United States Department of Justice

*/s/ Hannah L. Frazier*

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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

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

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 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.