

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
UNITED STATES OF AMERICA and)	
STATE OF RHODE ISLAND AND)	
PROVIDENCE PLANTATIONS,)	
)	
Plaintiffs,)	Civil Action No.
)	
v.)	
)	
EW HOLDING CORP. and K-SEA)	
TRANSPORTATION CORP.,)	
)	
Defendants.)	
_____)	

COMPLAINT

The United States of America ("United States"), 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 Commerce ("DOC") and the Secretary of the United States Department of the Interior ("DOI"), and the State of Rhode Island and Providence Plantations ("State"), on behalf of the Rhode Island Department of Environmental Management ("RIDEM"), brings this complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action, brought pursuant to Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702(b)(2)(A), and R.I.G.L. ch. 46-12.5.1, for damages for injury to natural resources and assessment costs arising from an oil spill in the waters of Block Island Sound,

State of Rhode Island, on January 19, 1996 (the "North Cape Oil Spill"). The spill occurred when the tug Scandia caught fire while towing the barge North Cape, in Block Island sound off southern Rhode Island. Both vessels grounded on the Rhode Island shoreline. As a result of the spill, approximately 828,000 gallons of #2 fuel oil spilled from the barge North Cape into the waters of Block Island Sound off Matunuck Point, along the shores of Rhode Island and Ninigret National Wildlife Refuge, and into the coastal salt ponds, causing injuries to natural resources.

JURISDICTION AND VENUE

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 33 U.S.C. § 2717(b). The Court has supplemental jurisdiction over the claims brought under State law. Venue is proper in this district, pursuant to 33 U.S.C. § 2717(b) and 28 U.S.C. § 1391(b), because the discharge and natural resource injuries occurred in this district.

DEFENDANTS

3. Defendant EW Holding Corp. is a New York Corporation with a principal place of business located at 3245 Richmond Terrace, Staten Island, New York 10303. EW Holding Corp. is a successor by merger to Odin Marine Corporation and Thor Towing Corporation. Odin Marine Corporation was the owner of the tank barge North Cape at the time of the North Cape Oil Spill and Thor Towing Corporation was the owner of the tug Scandia at the time of the North Cape Oil Spill.

4. Defendant K-Sea Transportation Corp. is a New York Corporation with a principal place of business located at 3245 Richmond Terrace, Staten Island, New York 10303. K-Sea Transportation Corp. was formerly known as Eklof Marine Corporation and is the successor in interest to Eklof Marine Corporation. Eklof Marine Corporation was the operator of the tank barge North Cape and the tug Scandia at the time of the North Cape Oil Spill.

GENERAL ALLEGATIONS

5. On January 19, 1996, the tug Scandia caught fire while towing the barge North Cape in Block Island Sound off of southern Rhode Island. Both vessels grounded on the Rhode Island shoreline. As a result of the grounding, approximately 828,000 gallons of No. 2 fuel oil were released from the barge North Cape into the coastal and offshore environments.

6. The Secretaries of DOI and DOC have been designated by the President as the trustees for the United States for recovery under OPA for damages to natural resources managed or protected by those agencies. 40 C.F.R. § 300.600. The Director of RIDEM has been designated by the Governor of the State of Rhode Island and Providence Plantations as the trustee for the State for recovery under OPA for damages for natural resources.

7. The North Cape Oil Spill caused (a) damage to the waters of the United States and the State of Rhode Island, to aquatic life therein, to lobster habitats, and to lands and beaches adjacent thereto, both public and private, waterfowl,

finfish, crustaceans and other fauna which feed and rely upon the impacted areas for survival; and (b) the destruction and contamination of vegetation and microorganisms which form the basis of the food chain and habitats for a number of flora and fauna located in the vicinity of the spill.

8. DOI, DOC and RIDEM have incurred reasonable costs in assessing the damage to natural resources caused by the spill.

FIRST CLAIM FOR RELIEF

9. Plaintiffs incorporate the allegations in Paragraphs 1 through 8.

10. There has been injury to and loss of natural resources, and/or a loss of the use of natural resources, from the discharge of oil as a result of the North Cape Oil Spill, within the meaning of Sections 1001(20) and 1002(b)(2)(A) of OPA, 33 U.S.C. §§ 2701(20) and 2702(b)(2)(A), for which the United States and/or the State are trustees within the meaning of Section 1006(b) of OPA, 33 U.S.C. § 2706(b).

11. Defendants are liable to the United States and/or the State under Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), for damages for injury to, destruction of, loss of, or loss of use of, natural resources, as well as the reasonable costs of assessing the damages.

SECOND CLAIM FOR RELIEF

12. The State incorporates the allegations in Paragraphs 1 through 8.

13. Defendants are liable to compensate the State, pursuant to R.I.G.L. ch. 46-12.5.1, for the adverse environmental

effects caused by the North Cape Oil Spill, for the costs of restoration of the environment injured by the North Cape Oil Spill, and for the costs that the State has incurred in connection with the detection, investigation and correction of the North Cape Oil Spill.

PRAYER FOR RELIEF

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

1. Find the Defendants liable to the United States and/or the State under Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), for all damages for injury to, destruction of, loss of, or loss of use of natural resources within the trusteeship of the United States and/or the State caused by the North Cape Oil Spill, and all reasonable costs incurred or to be incurred by the United States or the State in assessing such damages.

2. Find the Defendants liable to compensate the State, pursuant to R.I.G.L. ch. 46-12.5.1, for the adverse environmental effects caused by the North Cape Oil Spill, for the costs of restoration of the environment injured by the North Cape Oil Spill, and for the costs that the State has incurred in connection with the detection, investigation and correction of the North Cape Oil Spill.

3. The United States and the State further request that the Court grant such other relief as the Court may deem just and proper.

Respectfully Submitted,

FOR THE UNITED STATES:

 6/26/00

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

 7/5/00

DONALD G. FRANKEL
Trial Attorney
Environmental Enforcement Section
Department of Justice
One Gateway Center
Suite 616
Newton, MA 02458
(617) 450-0442

MARGARET E. CURRAN
United States Attorney
District of Rhode Island

MICHAEL IANNOTTI
Assistant United States Attorney
50 Kennedy Plaza
8th Floor
Providence, Rhode Island 02903
(401) 528-5477

FOR THE STATE:

Mary E. Kay

MARY E. KAY (Bar #2942)
Deputy Chief Legal Counsel
Rhode Island Department of
Environmental Management
235 Promenade Street
Providence, R.I. 02908

OF COUNSEL:

MARGUERITE MATERA
Office of General Counsel
National Oceanic and Atmospheric Administration
U.S. Dept. Of Commerce
1 Blackburn Drive
Gloucester, MA 01931

MARK BARASH
Office of the Solicitor
United States Department of the Interior
One Gateway Center
Suite 612
Newton, MA 02158-2802