

NOTICE OF INTENT TO PERFORM A NATURAL RESOURCE DAMAGE ASSESSMENT

August 5, 2019

In re: ITC Deer Park Facility Tank Fire “2nd 80’s Fire”

POTENTIALLY RESPONSIBLE PARTY:

Intercontinental Terminals Company LLC

- Pursuant to State and Federal laws, the Texas Commission on Environmental Quality (TCEQ), the Texas Parks and Wildlife Department (TPWD), the Texas General Land Office (GLO), the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Department of the Interior (DOI) (collectively, the Trustees) have authority to perform a natural resource damage assessment (NRDA) related to the releases of hazardous substances as a result of a fire engulfing 9 of the 15 storage tank batteries at the Deer Park facility, near Houston, Texas, owned and operated by the International Terminals Company LLC (ITC). The fire began on March 17, 2019, and continued to burn at the facility until it was initially extinguished on March 20, 2019. On Friday, March 22, 2019, the fire reignited, and damage to the secondary containment for the 80’s tank battery caused a catastrophic breach, releasing an estimated 470,000-523,000 barrels of a mixture of fire water, firefighting aqueous film forming foams (AFFF), and remaining benzene, ethylbenzene, naphtha, xylene, toluene, pyrolysis gas (pygas) and other refined base oils from the storage tanks were released into Tucker Bayou and adjacent waters, sediments, and habitats (Releases). Releases flowed into Buffalo Bayou and were carried out by stream flow and tides into the San Jacinto River, Houston Ship Channel, Carpenters Bayou, Old River, Santa Ana Bayou, and surrounding water bodies (collectively, the Site). Federal and State Trustees have authority to conduct a NRDA pursuant to Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9607(f); Oil Pollution Act, 33 U.S.C. § 2702 (b)(2); Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R §§ 300.600, 300.605; and the CERCLA Natural Resource Damage Assessment and Restoration (NRDAR) regulations, 43 C.F.R. Part 11.¹ This document serves to notify Intercontinental Terminals Company LLC of the Trustees’ intent to perform an assessment of damages for injuries to natural resources and their services resulting from the release of hazardous substances, oil, and other chemicals at and from the ITC Facility into Tucker Bayou and the surrounding area.

¹ For natural resource damages resulting from a discharge or release of a mixture of oil and hazardous substances, trustees must use 43 C.F.R. Part 11. 15 C.F.R. § 990.20(c).

The Trustees have taken the initial step of conducting a Preassessment Screen (PAS) for the Site in accordance with Subpart B – Preassessment Phase, Sections 11.20 – 11.25 of the CERCLA NRDAR regulations. The CERCLA NRDAR regulations provide a method for assessing damages for natural resource injuries resulting from the release of hazardous substances under CERCLA, 42 U.S.C. §§ 9601-9628. Adherence to the methods set forth in the CERCLA NRDAR regulations is not mandatory and does not preclude the Trustees from using alternative assessment methods or arriving at a negotiated settlement with the potentially responsible party.

A copy of the ITC Deer Park Facility Tank Fire Preassessment Screen is enclosed for your convenience (Attachment). The PAS contains, to the extent known, a description of the Site; the hazardous substances, oil, and other chemicals of concern released; the natural resources and associated services under the jurisdiction of the Trustees; and the natural resources and their services potentially injured. The PAS is a public document. The public will be encouraged to provide input into the assessment process, including reviewing and commenting on the development of any assessment plan(s), as well as any restoration actions developed pursuant to the CERCLA NRDAR regulations.

Based on the PAS, the Trustees have made a preliminary determination that the specified criteria in Section 11.23(e) of the CERCLA NRDAR regulations, have been met:

- A release of a hazardous substance has occurred;
- Natural resources for which the TCEQ, TPWD, GLO, NOAA, and DOI may assert trustee authority under CERCLA and OPA have been, or likely have been, adversely affected by the release;
- The quantity and concentration of the released hazardous substances are sufficient to potentially cause injury to those natural resources;
- Data sufficient to pursue an assessment are readily available, or likely to be obtained at a reasonable cost;
- Response actions carried out did not sufficiently remedy the injury to natural resources without further action.

Based upon an evaluation of these five (5) criteria, the Trustees have determined that a NRDA is warranted at the Site in accordance with 43 C.F.R. Part 11, Subparts C and E. The NRDA will assess damages for injuries to natural resources and their services caused by the releases of hazardous substances, oils, and other chemicals including but not limited to benzene, ethylbenzene, naphtha, xylene, toluene, pygas, and other refined base oils.

A preliminary determination has also been made that your company is potentially liable for any natural resource damages as a result of the release of hazardous substances, oil, and other chemicals at and from the Site. Additional information on the background of the Site and the basis of the preliminary determination may be found in the PAS. Pursuant to the CERCLA NRDAR regulations, the Trustees have initiated negotiations with ITC on a cooperative assessment of injuries to natural resources and their services.