

No. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF TRAVIS COUNTY, TEXAS
	§	
MOEX OFFSHORE 2007 LLC,	§	
Defendant	§	____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Now comes the State of Texas ("State"), Plaintiff, by and through its Attorney General, Greg Abbott, on behalf of the People of Texas and the following state agencies: the Texas Commission on Environmental Quality, the Texas General Land Office, and the Texas Parks and Wildlife Department; and would respectfully show the Court as follows:

A. Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

B. Parties

2. Plaintiff is the State of Texas (hereinafter "Texas" or "State").

3. Defendant MOEX Offshore 2007 LLC ("MOEX Offshore"), is a Delaware corporation. No service is necessary at this time.

C. Jurisdiction and Venue

4. This is an action for civil penalties brought under Chapter 26 of the Texas

Water Code and Chapter 40 of the Texas Natural Resources Code. This Court has jurisdiction pursuant to TEX. WATER CODE §§ 7.002 (Vernon Supp. 2011) and 7.105 (Vernon 2008), and TEX. GOV'T CODE § 2001.202 (Vernon 2008).

5. Venue is proper in Travis County pursuant to TEX. WATER CODE § 7.105(c), TEX. NAT. RES. CODE § 40.257(a) (Vernon 2011), and TEX. GOV'T CODE §§ 2001.176 and 2001.202.

D. Background

6. This action arises from the oil spill into the Gulf of Mexico that began on or about April 20, 2010, when explosions and fires destroyed the Mobile Offshore Drilling Unit (“MODU”) *Deepwater Horizon* at the site of the Macondo Well, approximately 50 miles from the Mississippi River delta (the “Deepwater Horizon Incident”). Eleven people aboard the rig lost their lives; many other men and women were injured. Oil from the *Deepwater Horizon* and its appurtenances and/or the Macondo Well flowed into the Gulf of Mexico unchecked for months.

7. Between approximately April 20, 2010, and the date the well was capped, a significant volume of oil was discharged from the *Deepwater Horizon* and its appurtenances and/or the Macondo Well into the Gulf of Mexico, including the territorial waters of Texas, and upon Texas shorelines.

8. The State of Texas owns the water and the bed and shores of the Gulf of

Mexico within the boundaries provided in section 11.012 of the Texas Natural Resources Code, including all land which is covered by the Gulf of Mexico and the arms of the Gulf of Mexico, either at high or low tide. All the beds and bottoms, and products of the beds and bottoms, of the lagoons, bays, and inlets of this State and of that part of the Gulf of Mexico within the jurisdiction of the State are the property of the State of Texas, as well as all fish and other aquatic animal life contained therein, and all wildlife. TEX. NAT. RES. CODE § 11.012(c), TEX. PARKS & WILD. CODE § 1.011(c). Some beaches on the Gulf of Mexico above the high tide line are owned outright by the State of Texas, while on other such beaches the public has a dominant use easement. TEX. NAT. RES. CODE §§ 61.001-.026.

9. Texas law imposes civil penalties, under Chapter 26 of the Texas Water Code and Chapter 40 of the Texas Natural Resources Code, against those who unlawfully discharge oil into or adjacent to the waters of the state. Polluters are strictly liable under these laws, with penalties based in part on the number of days of discharge and in part on the number of barrels of oil discharged. The State thus seeks in this action the imposition of civil penalties for each day of discharge and for each barrel of oil that was discharged from the *Deepwater Horizon* and its appurtenances and/or the Macondo Well into or adjacent to the waters of the state.

10. This action is for civil penalties and related attorneys' fees only. Investigations

of other potential claims, assessment of natural resource damages, and other actions are continuing. Accordingly, the State reserves all claims and causes of action other than those explicitly stated herein.

E. General Allegations

11. At all times material herein, MOEX Offshore held an undivided 10% record title leasehold interest, also known as a “working interest,” in the Macondo Well, acquired through an agreement with the lessee, BP Exploration & Production, Inc.

12. On and after April 20, 2010, oil flowed from the *Deepwater Horizon* and its appurtenances and/or the Macondo Well into and upon the waters of the Gulf of Mexico, including the territorial waters of the State of Texas.

13. The Deepwater Horizon Incident has had direct impacts within the State of Texas including, but not limited to, impacts resulting from the fire, explosion, sinking, and oil spill associated with the *Deepwater Horizon*.

F. First Claim – Chapter 26 of the Texas Water Code

14. The allegations in the preceding paragraphs are realleged and incorporated herein by reference.

15. MOEX Offshore is a “person” within the meaning of TEX. WATER CODE §§ 26.001(25) & 26.121.

16. The oil and other substances discharged into the Gulf of Mexico constituted

“waste” within the meaning of TEX. WATER CODE §§ 26.001(6) and “industrial waste” within the meaning of TEX. WATER CODE §§ 26.001(11) & 26.121(a)(1).

17. In the alternative, the oil discharged into the Gulf of Mexico was “other waste” within the meaning of TEX. WATER CODE §§ 26.001(12) & 26.121(a)(2).

18. The Deepwater Horizon Incident and the associated release of oil from the *Deepwater Horizon* and its appurtenances and/or the Macondo Well, and its migration into Texas waters, was a depositing, draining, emitting, running, seeping or other release or disposal; or involved the causing, allowing, permitting or suffering of such acts or omissions; and was therefore “to discharge” and a “discharge” within the meaning of TEX. WATER CODE §§ 26.001(20) & 26.121(a), respectively.

19. The Gulf of Mexico within the territorial boundaries of Texas, and the estuaries, wetlands, marshes and coastal waters inside or bordering on the State, are “water” or “water in the state” within the meaning of TEX. WATER CODE §§ 26.001(5) & 26.121.

20. Oil that was spilled from the *Deepwater Horizon* and its appurtenances and/or the Macondo Well flowed, drifted or migrated into Texas waters. Accordingly, the Macondo Well, and the area between the well and the territorial waters of Texas, were “adjacent to” Texas waters within the meaning of TEX. WATER CODE § 26.121.

21. The oil and other substances released by the Deepwater Horizon Incident

altered the physical, chemical or biological quality of, or caused the contamination of, water in the state and rendered the water harmful, detrimental, or injurious to humans, animal life or property, or to public health, safety or welfare, and impaired the usefulness or the public enjoyment of the water; and therefore caused “pollution” within the meaning of TEX. WATER CODE §§ 26.001(14) & 26.121(a).

22. Thus, by discharging oil into the Gulf of Mexico and allowing it to drift into the territorial waters of Texas, MOEX Offshore discharged industrial waste into or adjacent to water in the State, in violation of TEX. WATER CODE § 26.121(a)(1).

23. In the alternative, by these acts and omissions MOEX Offshore discharged “other waste” into or adjacent to water in the State, which caused pollution of water in the State, without any certified water quality management plan approved by the State Soil and Water Conservation Board, or water pollution and abatement plan approved by the TCEQ, in violation of TEX. WATER CODE §§ 26.121(a)(2).

24. By these acts and omissions, MOEX Offshore caused, suffered, allowed, or permitted the discharge of a waste or the performance of an activity in violation of TEX. WATER CODE §§ 26.121(c).

25. For each act of violation and each day of violation of these sections of Chapter 26 of the Texas Water Code, MOEX Offshore is liable for a civil penalty of not less than \$50 nor greater than \$25,000, as provided by TEX. WATER CODE § 7.102. Each day of a

continuing violation is a separate violation. *Id.*

26. The State asks for judgment against MOEX Offshore for civil penalties, within the range allowed by law, for these violations of Chapter 26 of the Texas Water Code.

G. Second Claim – Chapter 40 of the Texas Natural Resources Code

27. The allegations in the preceding paragraphs are realleged and incorporated herein by reference.

28. The MODU *Deepwater Horizon* was a watercraft or contrivance used or capable of being used as a means of transportation on water, and was thus a “vessel” within the meaning of TEX. NAT. RES. CODE §§ 40.003(20) & (28).

29. At all material times prior to the Deepwater Horizon Incident, the MODU *Deepwater Horizon* was a “vessel,” a “terminal facility” and/or a “facility” capable of being used to drill offshore wells, within the meaning of Chapter 40 of the Texas Natural Resources Code. *See* TEX. NAT. RES. CODE §§ 40.003(23), (28).

30. At all times material herein, the Macondo Well with its appurtenances was an offshore pipeline, structure, equipment or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge of oil could threaten coastal waters, and was therefore a “terminal facility” or “facility” within the meaning of Chapter 40 of the Texas Natural Resources Code. *See* TEX. NAT. RES. CODE § 40.003(20), (23).

31. The oil released from the *Deepwater Horizon* and its appurtenances and/or the Macondo Well was “crude oil” within the meaning of TEX. NAT. RES. CODE § 40.003(6), and was therefore “oil” within the meaning of TEX. NAT. RES. CODE §§ 40.003(17), (20) & (26) and 40.251(c).

32. The Deepwater Horizon Incident was reasonably anticipated to present an imminent and substantial danger to the public health or welfare, within the meaning of TEX. NAT. RES. CODE § 40.003(12), and was therefore a discharge of a “harmful quantity” of oil.

33. The Deepwater Horizon Incident caused the presence of harmful quantities of oil in coastal waters or in adjacent waters, and therefore caused “pollution” within the meaning of TEX. NAT. RES. CODE § 40.003(21).

34. The Deepwater Horizon Incident occurred in the waters of the Gulf of Mexico within the jurisdiction of the State of Texas, or waters contiguous thereto navigable by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo, and was therefore in “coastal waters” within the meaning of TEX. NAT. RES. CODE § 40.003(2).

35. The Deepwater Horizon Incident was an intentional or unintentional act or omission by which harmful quantities of oil were spilled, leaked, emitted, or dumped into or on coastal waters of Texas, or at a place adjacent to coastal waters where, unless controlled or removed, an imminent threat of pollution to coastal waters would exist,

and was therefore a “discharge of oil” within the meaning of TEX. NAT. RES. CODE § 40.003(8).

36. The discharge of oil in the Deepwater Horizon Incident was not authorized by any state or federal rule, permit or order, and was therefore an “unauthorized discharge of oil” within the meaning of TEX. NAT. RES. CODE § 40.003(26).

37. By holding a leasehold interest or working interest in the Macondo Well, MOEX Offshore owned, operated or chartered a vessel, or owned or operated a terminal facility by lease, contract, or other form of agreement, and was therefore an “owner” or “operator” within the meaning of TEX. NAT. RES. CODE § 40.003(18).

38. As owner of a leasehold interest or working interest in the Macondo Well, MOEX Offshore was an owner or operator of a vessel or terminal facility from which an unauthorized discharge of oil emanated, and was therefore a “person responsible” within the meaning of TEX. NAT. RES. CODE §§ 40.003(20)(A) and 40.251(c).

39. In the alternative, MOEX Offshore was an “other person” who caused, allowed, or permitted an unauthorized discharge of oil, and thus was a “person responsible” within the meaning of TEX. NAT. RES. CODE §§ 40.003(20)(C) and 40.251(c).

40. As a person responsible for an unauthorized discharge of oil, MOEX Offshore is subject to civil penalties of not less than \$250 nor more than \$25,000 for each day of the discharge, or not more than \$1,000 per barrel of oil discharged, as provided by TEX.

NAT. RES. CODE § 40.251(c).

41. These civil penalties are cumulative of all other applicable penalties, remedies, and enforcement and liability provisions. TEX. NAT. RES. CODE § 40.253.

42. The State asks for judgment against MOEX Offshore for civil penalties, within the range allowed by law, for these violations of Chapter 40 of the Texas Natural Resources Code.

H. Attorneys' Fees

43. The allegations in the preceding paragraphs are realleged and incorporated herein by reference.

44. The State has incurred attorneys' fees, court costs, and investigative costs in relation to this proceeding.

45. The State is entitled to recover its reasonable attorneys' fees, court costs, and investigative costs, as allowed by TEX. WATER CODE § 7.108.

46. The State is also entitled to recover reasonable attorneys' fees under TEX. NAT. RES. CODE § 40.255(b).

47. The State asks for judgment against MOEX Offshore for reasonable attorneys' fees, court costs, and investigative costs related to this proceeding.

I. Prayer

48. Wherefore, the State of Texas prays that:

- a. Defendant be served with citation;
- b. Defendant be required to appear herein and answer this petition within the time specified by law;
- c. The State have judgment against Defendant for civil penalties within the range allowed by statute;
- d. The State recover its reasonable attorneys' fees, court costs, and investigative costs related to this proceeding; and
- e. That the Court grant the State such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of February 2012.

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