

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THE NEW MEXICO NATURAL RESOURCES
TRUSTEE AND NEW MEXICO OFFICE
OF NATURAL RESOURCES TRUSTEE

Plaintiffs,

v.

Civil Action No. _____

FRONK OIL COMPANY, Inc.

Defendants

COMPLAINT

The New Mexico Natural Resources Trustee and New Mexico Office of Natural Resources Trustee file this complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action under Section 1002 of the federal Oil Pollution Act, as amended (“OPA”), 33 U.S.C. § 2702 et seq.(2018), and the New Mexico Natural Resources Trustee Act, NMSA 1978, Sections 75-7-1 to -5 (1993, as amended through 2007), to recover from Defendant Fronk Oil Company, Inc. (Defendant) damages for the injury to, destruction of, or loss of natural resources, including lost ecological services, resulting from releases and the threat of releases of oil into the Cimarron River near Eagle Nest, New Mexico.

JURISDICTION AND VENUE

2. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 33 U.S.C. § 2717 (2018). The Court also has personal jurisdiction over the Parties.
3. Venue is proper in the District of New Mexico under 28 U.S.C. § 1391(b) (2018); and OPA Section 1017(b), 33 U.S.C. § 2717(b) (2018) inasmuch as it is the federal judicial district where the discharge has occurred, and in which the affected natural resources are located.

PLAINTIFFS

4. The New Mexico Natural Resources Trustee (Trustee) has been designated by the Governor of the State to act on behalf of the public as trustee for natural resources belonging to, managed by, controlled by, or appertaining to the State, pursuant to provisions of federal law. NMSA 1978, § 75-7-2 (A) (2007). The Office of Natural Resources Trustee (ONRT) is the State agency headed by the Natural Resources Trustee. NMSA 1978 § 75-7-2 (B) (2007). The New Mexico Attorney General is the legal representative of the Trustee and ONRT pursuant to NMSA 1978 Section 75-7-3(B)(3) (2004).

DEFENDANT

5. Defendant Fronk Oil Co., Inc. is a corporation doing business in the State of Texas, who owned and operated a tanker truck involved in an accident in New Mexico that was the cause of the discharge of oil as defined in OPA. 33 U.S.C. § 2701(23) (2018).

STATUTORY AUTHORITY

6. Section 1002 of OPA provides in pertinent part as follows
 - (a) Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from

which oil is discharged . . . into or upon the navigable waters . . . is liable for . . . damages specified in subsection (b) that result from such incident.

(b) Covered removal costs and damages

* * * *

(2) Damages. The damages referred to in subsection (a) are the following:
(A) Natural resources. Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

* * * *

33 U.S.C. § 2702 (2018).

GENERAL ALLEGATIONS

7. On December 27, 2016, a Fronk Oil tanker truck carrying petroleum products was involved in an accident approximately 5 miles east of Eagle Nest, New Mexico, causing a release of approximately 1,100 gallons of unleaded gasoline and diesel fuel into the Cimarron River located in the Colin Neblett Wildlife Management Area of the Cimarron Canyon State Park.
8. Investigations by the Surface Water Quality Bureau of the New Mexico Environment Department (Department) and the New Mexico Department of Game and Fish found concentrations of petroleum constituents at concentrations above drinking water standards; evidence that an estimated 300-400 fish had been killed, and evidence of uptake into fish tissue of polycyclic aromatic hydrocarbons.
9. The New Mexico Department of Game and Fish restricted public access and prohibited angling on a 1.5 mile stretch of the river from the time of the accident until May 25, 2017.
10. The Department required corrective action pursuant to the New Mexico Water Quality Act, NMSA 1978, Sections 74-6-1 to -17 (1967, as amended through 2019), which Defendant performed at its own expense and in accordance with Nationwide Permit No. 38 issued by the U.S. Army Corps of Engineers under federal Clean Water Act Section 404. The

Department issued a Final Closure Letter to Defendant on December 4, 2017. The Army Corps of Engineers approved the Certificate of Completion for the Nationwide Permit No. 38 on October 30, 2020.

11. Notwithstanding the Corrective Action taken, the release of petroleum products resulted in injuries to, destruction of, and loss of use of natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State, including but not limited to the loss of angling opportunity pending completion of the clean-up.

CLAIM

(Natural Resources Damages under Section 1002 of OPA)

12. Plaintiffs re-allege paragraphs 1 through 11.
13. Defendant owned and operated a motor vehicle (defined as a facility under 33 U.S.C. § (9)) from which oil was discharged into a navigable water in New Mexico.
14. Under OPA Section 1002(a) and (b), 33 U.S.C. § 2702 (a) and (b) (2018), Defendant is liable to Plaintiffs for damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage.

PRAYER FOR RELIEF

Plaintiffs request that this Court enter judgment against Defendant and:

- (1) Defendant to pay to Plaintiffs' damages for the injury to, destruction of, and loss of natural resources pursuant to OPA Section 1002(a) and (b)(2)(A) (2018) within the trusteeship of the State of New Mexico, caused by releases of oil into waters of the United States within the State of New Mexico.
- (2) Order Defendant to reimburse Plaintiffs for reasonable costs they have incurred in their assessment of the injury to natural resources and damages for such injury caused by

releases of oil into waters of the United States within the State of New Mexico as required under OPA Section 1006(d)(1)(C) (2018) (Complaint: ONRT v. Fronk Trucking, Inc.)

FOR THE NEW MEXICO NATURAL
RESOURCES TRUSTEE

/s/ Bill Grantham

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