UNITED STATES COURT FOR THE
DISTRICT OF KANSAS

| | |
|---|---|
| UNITED STATES OF AMERICA<br><br>and<br><br>THE STATE OF KANSAS, ex rel. KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT,<br><br>*Plaintiffs*,<br><br>v.<br><br>SOUTH BOW (USA) LP f/k/a TRANSCANADA KEYSTONE PIPELINE LP and SOUTH BOW INFRASTRUCTURE OPERATIONS INC. f/k/a TC OIL PIPELINE OPERATIONS INC.,<br><br>*Defendants* | Civ. No. 2:26-cv-2401 |

**COMPLAINT**

Plaintiffs, the United States of America, by the authority of the Attorney General and through the undersigned attorneys, and at the request of the United States Environmental Protection Agency ("EPA"), and the State of Kansas, by and through the Kansas Department of Health and Environment ("KDHE"), file this Complaint and allege as follows:

## I. NATURE OF THE ACTION

1. This is a civil environmental enforcement action against Defendants South Bow (USA) LP, formerly known as TransCanada Keystone Pipeline LP, and South Bow Infrastructure Operations Inc., formerly known as TC Oil Pipeline Operations Inc., related to Defendants' unlawful discharge of at least 12,937 barrels (543,354 gallons) of heavy crude oil (diluted bitumen) from the Cushing Extension of the Keystone Pipeline, which ruptured at a location in

Washington County, Kansas, on December 7, 2022. The pipeline rupture occurred adjacent to Mill Creek, a perennial stream and a tributary of the Kansas River, and the spilled oil flowed into Mill Creek and contaminated the creek and the adjoining shorelines. Oil covered the surface of the creek in an inch-thick layer for three miles downstream, and over two thousand animals were killed or impacted as a result of the spill.

2. The United States seeks civil penalties pursuant to Section 311(b)(7)(A) and (D) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(7)(A) and (D), and injunctive relief pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b).

3. The State seeks civil penalties pursuant to K.S.A. 65-167, 65-170c, 65-170e, 65-170d, and/or 65-171v(e)(1).

## II. <u>JURISDICTION, VENUE, AND AUTHORITY</u>

4. This Court has jurisdiction over this matter pursuant to Sections 309(b) and 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. §§ 1319(b), 1321(b)(7)(E) and (n), and 28 U.S.C. §§ 1331, 1345, and 1355.

5. This Court has supplemental jurisdiction over the claims asserted by the State pursuant to 28 U.S.C. § 1367(a).

6. Venue is proper in the District of Kansas pursuant to the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395, because the violations that are the subject of this action occurred in this District, and Defendants are doing business in this District.

7. Authority to bring the United States' claims is vested in the United States Department of Justice by, *inter alia,* Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

8. Authority to bring the State's claims is vested in the Secretary of KDHE by K.S.A. 65-167 and/or 65-171v(e)(1); vested in the Director of the Division of Environment for KDHE by 65-170d; and vested in the Attorney General of the State of Kansas by 65-170e.

## III. DEFENDANTS

9. South Bow (USA) LP ("South Bow"), formerly known as TransCanada Keystone Pipeline LP ("TransCanada") is the owner of the Cushing Extension of the Keystone Pipeline. It is a Delaware company with its principal office in Houston, Texas.

10. On or about November 5, 2024, TransCanada Keystone Pipeline LP changed its name to South Bow (USA) LP.

11. South Bow Infrastructure Operations Inc. ("SBIO"), formerly known as TC Oil Pipeline Operations Inc. ("TC Oil") is the operator of the Cushing Extension of the Keystone Pipeline. It is a Delaware company with its principal office in Houston, Texas.

12. On or about January 23, 2024, TC Oil Pipeline Operations Inc. changed its name to South Bow Infrastructure Operations Inc.

13. At all times relevant to this Complaint, TransCanada/South Bow and TC Oil/SBIO were subsidiaries of TC Energy Corp., a Canadian corporation.

## IV. FACTS

### A. The December 7, 2022, Spill

14. The Keystone Pipeline is an approximately 3,000-mile-long pipeline system that transports crude oil through Canada and the United States. The Cushing Extension of the Keystone Pipeline is an underground, 36-inch crude oil pipeline that extends approximately 298 miles from Steele City, Nebraska to Cushing, Oklahoma, traveling through Kansas.

15. The Cushing Extension of the Keystone Pipeline is owned by South Bow and operated by SBIO. It was built in 2010 and put into operation in 2011.

16. On or about December 7, 2022, a segment of the Cushing Extension ruptured near Milepost 14 in Washington County, Kansas, about three miles northeast of the city of Washington, Kansas.

17. The location of the rupture was about 75 feet uphill from, and about 90 feet south of, Mill Creek.

18. Mill Creek is a perennial stream and a tributary of the Little Blue River. The Little Blue River is a perennial stream and a tributary of the Big Blue River. The Big Blue River is a perennial stream and tributary of the Kansas River. The Kansas River is a traditionally navigable water.

19. Mill Creek is a relatively permanent water that is connected to a traditionally navigable water.

20. Mill Creek is a "water of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

21. Defendants were pumping heavy crude oil (diluted bitumen) through the pipeline at the time of the spill.

22. Diluted bitumen, also known as "dilbit," consists of a form of crude oil (bitumen) diluted with a solvent (here, EP 2000 Flow Improver). Both the crude oil and the solvent are hazardous to humans and aquatic life on contact.

23. During the spill, at least 12,937 barrels (543,354 gallons) of oil discharged from the pipeline.

24. Defendants' oil discharged from the pipeline and flowed into Mill Creek, where it traveled at least three miles downstream.

25. Defendants' oil polluted Mill Creek and its shoreline. The oil impacted approximately 35 acres of ground surface as well as a 3.65-mile segment of Mill Creek, including soil, vegetation, the creek banks, surface water, and sediment on the creek bottom. Oil was present bank-to-bank on the surface of the water in a layer approximately an inch thick three miles downstream of the rupture.

26. Over 2,700 animals, including fish, birds, mammals, reptiles, and invertebrates, were killed or impacted as a result of the spill. The variety of animals that are known to inhabit the impacted creek area includes the endangered long-eared bat and the monarch butterfly.

27. Defendants' cleanup efforts in Mill Creek to remove surface oil and oil-contaminated sediment, and rewater the creek, took over ten months and involved treatment of more than 54 million gallons of contaminated surface water, recovery of 655,000 gallons of oil (including oil remaining in the pipeline following the rupture), and excavation and removal of approximately 200,000 tons of oil-impacted soil, sediment, and debris.

28. Defendants continue to perform long-term environmental monitoring and remediation activities at the spill site, with oversight by KDHE.

**B. Cause of the Spill**

29. The oil exited the pipe through a circumferential crack near a girth weld in an "elbow" bend in the pipeline. The girth weld was part of a fabricated bend assembly known as "TAG 98."

30. The TAG 98 bend assembly was installed downstream of Mill Creek in December 2010 as part of a project to replace previously installed fittings on the Keystone Pipeline due to quality concerns.

31. During the construction process for the replacement fittings, a large bending stress was applied to the TAG 98 bend assembly that caused it to ovalize (i.e., deform from a circular to oval cross-sectional shape).

32. A post-spill investigation by the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA") attributed the bending stress on TAG 98 to inadequately compacted soil under the pipe, which allowed the unsupported pipe to bend when the excavation was backfilled, and the pipe was buried.

33. Defendants completed a construction caliper inspection in October 2010, before the replacement fittings were installed, to address any pipe damage that may have occurred during construction. However, the construction caliper inspection was not repeated after completing the fitting replacement project, even though thousands of feet of new pipe, and hundreds of new fittings (including the TAG 98 bend assembly) were installed.

34. The ovality in the TAG 98 bend assembly was first identified as a potential area of concern in internal pipe monitoring inspections in December 2012, and that segment was excavated in March 2013. Cutting out and replacing the feature was discussed at that time, but

not pursued, and the segment was not replaced during the excavation. No analyses were done at that time to understand the integrity impacts of the ovality.

35. In 2016, Defendants began ramping up the flowrate in the pipeline segment where the TAG 98 bend assembly was located.

36. On December 5, 2022, only two days before the rupture, Defendants began ramp-up testing to further increase the flowrate in the pipeline segment where the TAG 98 bend assembly was located.

37. Following the spill and during excavation of the ruptured pipeline segment, PHMSA personnel observed that the failed segment rose six to eight inches vertically as overlying soil was removed, indicating the pipeline was under improper loading and stress.

38. Defendants replaced the ruptured segment of pipe and resumed operation of the pipeline on December 29, 2022, under reduced operating pressure and other conditions imposed in safety protocols issued by PHMSA.

**COUNT 1**
**By the United States**
**Civil Penalties for Violation of CWA Section 311(b)(3) – Oil Discharge**
**33 U.S.C. § 1321(b)**

39. Paragraphs 1 through 38 are realleged and incorporated herein.

40. Section 311(b)(3) of the CWA prohibits the "discharge of oil or any hazardous substances (i) into or upon the navigable waters of the United States [or] adjoining shorelines . . . in such quantities as may be harmful . . . ." 33 U.S.C. § 1321(b)(3).

41. Pursuant to Section 311(b)(7)(A) of the CWA, "[a]ny person who is the owner, operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of paragraph (3), shall be subject to a civil penalty . . . ." 33 U.S.C. § 1321(b)(7)(A).

42. Civil penalties can be increased pursuant to Section 311(b)(7)(D) of the CWA, if the violation results from "gross negligence or willful misconduct." 33 U.S.C. § 1321(b)(7)(D).

43. Enforcement of these provisions supports the national objective to prevent and deter discharges of oil and "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. §§ 1321(b)(1), 1251(a).

44. Each Defendant is a "person" within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

45. The Cushing Extension of the Keystone Pipeline is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

46. Defendant South Bow is the owner of the onshore facility from which oil was discharged within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

47. Defendant SBIO is the operator of the onshore facility from which oil was discharged within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

48. The spilling of oil from the Keystone Pipeline on December 7, 2022, constituted a "discharge" of oil within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

49. The discharge was of "oil" within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

50. The discharge of oil into Mill Creek was into or upon the navigable waters of the United States within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

51. The discharge was in a quantity "as may be harmful" within the meaning of Section 311(b)(3) and (4) of the CWA, 33 U.S.C. § 1321(b)(3)-(4), and 40 C.F.R. § 110.3. The spilled oil also caused, *inter alia*, an oil film or sheen upon or discoloration of the surface of the

water and adjoining shorelines and caused deposition beneath the surface of the water and upon adjoining shorelines.

52. Defendants' discharge of oil violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

53. Defendants are each liable for civil penalties of up to $2,364 per barrel of oil discharged under 33 U.S.C. § 1321(b)(7)(A) or, if it is proven that the violation was the result of gross negligence or willful misconduct, not more than $7,093 per barrel of oil discharged under 33 U.S.C. § 1321(b)(7)(D). *See* 40 C.F.R. § 19.4 (establishing the listed per-barrel civil penalty amounts, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, for penalties assessed after January 8, 2025).

## COUNT 2
## By the United States
## Injunctive Relief Under CWA Section 309(b)
## 33 U.S.C. § 1319(b)

54. Paragraphs 1 through 38 are realleged and incorporated herein.

55. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits "the discharge of any pollutant by any person," subject to exceptions not applicable here.

56. Defendants' discharge of oil from the Keystone Pipeline was an unlawful discharge of a pollutant within the meaning of CWA Section 301(a).

57. On information and belief, unless enjoined, such discharges from the Keystone Pipeline are likely to recur in the future.

58. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes this civil action for "appropriate relief, including a permanent or temporary injunction."

59. Defendants are liable for injunctive relief pursuant to Sections 301(a) and 309(b) of the CWA.

**<u>COUNT 3</u>**
**By the State of Kansas**
**Civil Penalties Under K.S.A. 65-167**

60. Paragraphs 1 through 38 are incorporated herein by reference.

61. K.S.A. 65-164 prohibits the discharge of any sewage into any of the waters of the state.

62. K.S.A. 65-167, in applicable part, establishes a penalty for "the willful or negligent discharge of sewage… by any person, company, corporation, institution, municipality or federal agency, into any of the waters of the state without a permit, as required by this act, or in violation of any term or condition of a permit issued by the Secretary of [KDHE], or in violation of any requirements made pursuant to K.S.A. 65-164, 65-165 or 65-166, and amendments thereto."

63. Each Defendant is a "person", "company", "corporation", and/or "institution" within the authority of K.S.A. 65-164 through K.S.A 65-171y.

64. The spilling of oil from the Keystone Pipeline on December 7, 2022, constituted a "discharge" as defined by K.S.A. 65-161(B).

65. The oil discharged constitutes "sewage" as defined by K.S.A. 65-164(b).

66. The waters of Mill Creek where such sewage was discharged constitutes "waters of the state" as defined by K.S.A. 65-161(a).

67. The Secretary of KDHE finds Defendants negligently discharged oil into Mill Creek and are, therefore, subject to penalties pursuant to K.S.A. 65-167.

68. The penalty for the negligent discharge of sewage "shall be not less than $2,500 and not more than $25,000, and a further penalty of not more than $25,000 per day for each day the offense is maintained." K.S.A. 65-167.

## COUNT 4
**By the State of Kansas**
**Civil Penalties under K.S.A. 65-170d**

69. Paragraphs 1 through 38 are incorporated herein by reference.

70. Pursuant to K.S.A. 65-170d, in applicable part, any person who violates any effluent standard or limitation or any water quality standard or other rule and regulation promulgated pursuant to K.S.A. 65-171d and amendments thereto may be subject to a penalty in an amount of up to $10,000 for each violation. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

71. The KDHE promulgated certain regulations pursuant to K.S.A. 65-171d that establish effluent standards, limitations, and/or water quality standards for surface water at K.A.R. 28-16-28b *et seq*.

72. K.A.R. 28-16-28e(b) states, in applicable part:

> "(1) Surface waters shall be free, at all times, from the harmful effects of substances that originate from artificial sources of pollution and that produce any public health hazard, nuisance condition, or impairment of a designated use….
> "(4) Surface waters shall be free of floating debris, scum, foam, froth, and other floating materials directly or indirectly attributable to artificial sources of pollution….
> "(5) Oil and grease from artificial sources shall not cause any visible film or sheen to form upon the surface of the water or upon submerged substrate or adjoining shorelines, nor shall these materials cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines….
> "(6) Surface waters shall be free of deposits of sludge or fine solids attributable to artificial sources of pollution..."

73. Petroleum-related contamination caused by the oil spill has impacted the surface water of Mill Creek and its tributaries in violation of K.A.R. 28-16-28e(b). Contaminants of potential concern include total petroleum hydrocarbons, low range hydrocarbons, medium range hydrocarbons, high range hydrocarbons, volatile organic compounds, semi-volatile organic compounds, and metals.

74. The Director of KDHE finds Defendants' discharge into Mill Creek resulted in violation of effluent standards, limitations, and/or water quality standards of the State of Kansas.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, the United States of America and the State of Kansas, respectfully request that this Court:

A. Enter a judgment that Defendants are liable to the United States for civil penalties pursuant to Section 311(b) of the CWA and assess civil penalties of up to $2,364 per barrel discharged pursuant to Section 311(b)(7)(A) or, if the violation is found to be the result of gross negligence or willful misconduct, no more than $7,093 per barrel discharged pursuant to Section 311(b)(7)(D);

B. Enter a judgment that Defendants are liable to the United States for all appropriate injunctive relief pursuant to Sections 301(a) and 309(b) of the CWA and award injunctive relief against each defendant as appropriate;

C. Enter a judgment that Defendants are liable to the State of Kansas for civil penalties of up to $10,000 for each violation of Kansas Water Pollution Control Laws and up to $25,000 for each negligent discharge of sewage, of which each day such violations are maintained constitute a separate violation; and

D. Grant the United States and the State such other relief as the Court deems just and proper.

Respectfully Submitted,

FOR THE UNITED STATES

ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Dated: 7/10/2026

/s/ Erika M. Wells

ERIKA M. WELLS
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
202-532-3258
erika.wells@usdoj.gov

RYAN A. KRIEGSHAUSER
United States Attorney
District of Kansas

Dated: 7/10/2026

/s/ Christopher Allman

CHRISTOPHER ALLMAN
Assistant United States Attorney
Chief, Civil Division
District of Kansas
500 State Avenue, Suite 360
Kansas City, KS 66101
913-551-6684
Chris.allman@usdoj.gov

FOR THE STATE

Dated: 7/10/2026

/s/ John N. Truong

JOHN N. TRUONG
Sr. Attorney, Environmental Practice Group
Special Assistant Attorney General, State of KS
Kansas Dept. of Health and Environment
1000 SW Jackson St., Suite 560
Topeka, Kansas 66612
(785) 296-1698
(785) 559-4272 (fax)
john.truong@ks.gov