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2021 Flare That Led to Closure of Refinery Did Not Contain Hazardous Components, Ocean Point Says as it Heads Off Civil Suits Seeking Water Distribution Continuation

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Smoke billowed west as massive flare incident at Limetree Bay was happening on Wed. May 12, 2021 By. ERNICE GILBERT/ V.I. CONSORTIUM

Ahead of a scheduled hearing early next month, Limetree Bay Ventures, LLC, ([Ocean Point Terminals](#)) is asking a federal judge to toss out applications for preliminary injunctions in four civil suits that have been filed against it.

The lawsuits, filed in 2021, are in response to the [several petrochemical releases](#) that occurred during the brief operational window of St. Croix's refinery, which misted neighboring communities with fine droplets of oil.

The plaintiffs, each of whom represents one of a putative class, reportedly want the court to ensure Ocean Point continues the water distribution program that was begun by itself and the refinery following the refinery's shutdown and bankruptcy. They also want Ocean Point to conduct remediation of property they say has been contaminated by the petrochemical spray from the refinery.

However, Ocean Point is [pushing back](#), saying firstly that the plaintiffs are deliberately conflating two separate business entities, secondly that the water program was ended in accordance with the initial agreement made with affected residents, and thirdly that evidence submitted by the plaintiffs does not prove any contamination linked to the refinery releases exists on the properties in question.

"Plaintiffs' water, soil and ground sampling data shows almost complete non-detection of contaminants and those few samples with detection are either inconsistent with or unlikely to be petroleum products and/or are well below human health safety thresholds," Ocean Point said.

In the filing, which was submitted on February 21, 2023, Ocean Point makes the distinction between itself and Limetree Bay Refinery (LBR). Although admittedly owned by the same entity, Senior Counsel Akeel St. Jean argues that Ocean Point "is and has always been a separate and distinct legal entity" from LBR.

The filing supports this claim by attaching the Environmental Protection Agency's Notice of Violation sent to LBR in 2021, which references the 2018 agreement between the Government of the Virgin Islands and LBR. In that agreement, it is stipulated that GVI will "enter into a new Refinery Operating Agreement to reflect that the Refinery and the Refinery Site will be acquired, held and operated by" LBR instead of Ocean Point, as a "standalone facility."

Secondly, while Ocean Point acknowledges that it was a participant in the water distribution program that was begun by both entities following the 2021 refinery releases. In mediation between the bankrupt LBR and several St. Croix residents, the court codified and expanded the program, stipulating that Ocean Point and the debtors of the now-bankrupt LBR distribute potable water at specified locations on St. Croix from Monday through Saturday, at a cost capped at \$180,000 monthly. Each household in the area covered under the agreement was eligible to receive up to 20 gallons of water per week.

The distribution program, bankruptcy judge David Jones ordered at the time, could be terminated unilaterally by Ocean Point and LBR if the mediation process was terminated prior to December 1, 2021.

Now, Ocean Point argues that is exactly why it ended its participation in the water distribution program - the parties withdrew from mediation.

With respect to the demand for remediation, Ocean Point argues that evidence submitted by the plaintiffs' expert was shoddily collated and, when examined more rigorously, does not demonstrate any level of contamination that can be linked to the refinery's adverse events in 2021.

On this issue, they rely on analysis of their own expert, Dr. Karen Murray, managing scientist in the Environmental & Earth Sciences group of Exponent, an engineering and scientific consulting firm. Murray is disputing the findings of Dr. Marco Kaltofen, who took over 100 samples of “soils, cisterns, roofs, and other allegedly affected areas of certain properties located in the allegedly impacted areas”. Kaltofen, the principal investigator and president of Boston Chemical Data Corporation, then analyzed the samples and reportedly found contamination from the 2021 refinery emissions events.

However, Dr. Murray criticizes the lack of supporting documentation attached to Dr. Kaltofen’s declaration of contamination - no lab results or related data summaries were attached. She says she was able to examine the data, however, due to Exponent being hired by Ocean Point's insurers in connection with the mediation that was going on at the time. Dr. Murray was then hired directly by Ocean Point earlier this month, and received a data set that she said was substantively the same.

The underlying data, Murray argues, does not support Kaltofen’s assertions. “To support his statement, Dr. Kaltofen would need to show, first, that petroleum is present in these samples and second, that the petroleum is linked to a specific source (in this case, Limetree). He did neither of these things.”

The parties - Ocean Point and the four plaintiffs representing their putative classes - are scheduled to be in court on March 2 for a hearing on whether the preliminary injunctions in question will be upheld or dismissed, ahead of the main trial on the substantive issues.