UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. LUDLOW'S SAND & GRAVEL, CO., INC. and G. Kevin Ludlow, Defendants.	)	**COMPLAINT** Civil Action No. _____

The United States of America, by authority of the Attorney General of the United States and through the undersigned counsel, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought by the United States pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606 and 9607(a) ("CERCLA"). By this action, the United States seeks to recover costs it has incurred and will continue to incur in response to the release and threatened release of hazardous substances at or from the Ludlow Sand and Gravel Superfund Site in Paris, New York ("Site").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and pursuant to 28 U.S.C. §§ 1331(a) and 1345.

3. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district and defendants are found in this district.

DEFENDANTS

4. Defendant Ludlow's Sand and Gravel Co., Inc. is a corporation organized pursuant to and existing under the laws of New York. Ludlow's Sand & Gravel, Co., Inc. was incorporated on April 20, 2004, and its principal place of business is in the Town of Paris, Oneida County, New York.

5. Defendant G. Kevin Ludlow owned a portion of the Site known as the "Landfill Parcel" between November 2, 1973 and July 14, 1982. Through a conveyance from his mother, Grace Ludlow, on July 2, 2002, G. Kevin Ludlow acquired a separate portion of the Site known as the "North Gravel Pit," which was subsequently conveyed to Defendant Ludlow's Sand and Gravel Co., Inc. on June 1, 2004. G. Kevin Ludlow resides at 2230 Holman City Road in Clayville, NY 13322.

6. At the time of the transfer of the North Gravel Pit parcel to Ludlow's Sand and Gravel Co., Inc., the corporation was wholly owned by G. Kevin Ludlow and had no discernible assets other than the North Gravel Pit parcel and an adjoining parcel. Hence, G.

Kevin Ludlow is the alter ego of Ludlow's Sand and Gravel and if this corporate form is not disregarded an unjust and inequitable loss may result to the United States.

GENERAL ALLEGATIONS

7. The Ludlow Sand and Gravel Superfund Site, located in Paris, New York, is a former sand and gravel quarry and landfill.

8. Dumping practices at the Site included the disposal of bulk liquid industrial waste at both the Landfill parcel (Operable Unit 1) and the North Gravel Pit parcel (Operable Unit 2) of the Site.

9. "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of at the Site and have come to be located at the Site. These hazardous substances included, without limitation, volatile organic compounds, heavy metals, polychlorinated biphenyls ("PCBs") and phenols.

10. The Site is a "facility" within the meaning of CERCLA, Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

11. Defendant, Ludlow's Sand and Gravel Co., Inc., is a "person" within the meaning of CERCLA, Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

12. Defendant, G. Kevin Ludlow, is a "person" within the meaning of CERCLA, Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. There were and are "releases," and the threat of continuing releases of hazardous substances, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), into the air, soil, and groundwater at the Site.

14. The Site is listed as a hazardous substance site on the National Priorities List ("NPL") promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. part 300, App. B.

15. The President's function of making a determination of an imminent and substantial endangerment under Section 106 of CERCLA, 42 U.S.C. §9606, has been delegated to the Administrator of EPA pursuant to Executive Order 12580, as amended. The Administrator, in turn has delegated this authority to EPA Regional Administrators by Delegation 14-14-A, effective November 1, 2001.

16. On March 31, 2003, NYDEC issued a Record of Decision (ROD) for the North Gravel Pit, in which it found that the presence of hazardous substances may present an imminent and substantial endangerment at the Site. The ROD also selected a remedy which addresses PCB contaminated soil located below the water table through solidifying the soil *in-situ*.

17. The EPA Regional Administrator concurred with the ROD.

18. The United States EPA is now the lead government agency implementing the North Gravel Pit remedy. The releases or threatened releases of hazardous substances at or from the Site have caused EPA to incur "response costs," as defined by Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a). The United States will continue to incur response costs in connection with the Site.

19. The response costs incurred by EPA in connection with the Site were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF

20. Paragraphs 1 through 19, inclusive, are realleged and incorporated herein.

21. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) provides, in pertinent part, that:

> (1) the owner and operator of a vessel or a facility,
>
> . . . from which there is a release, or a threatened release which causes the incurrence of responses costs, of a hazardous substance, shall be liable for –
>
> (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

22. Pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), G. Kevin Ludlow and Ludlow's Sand and Gravel Co., Inc. are owners and operators of a facility from which there is a release or threatened release of hazardous substances, and are jointly and severally liable to the United States for the costs that have been, and will continue to be incurred, in response to such release or threatened release at the Site, including enforcement costs, and interest on all such costs.

SECOND CLAIM FOR RELIEF

23. Paragraphs 1 through 22, inclusive, are repeated and realleged as though fully set forth herein.

24. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) provides, in pertinent part, that:

> (2) any person who at the time of disposal of any hazardous substances owned or operated any facility at which such hazardous substances were disposed of,

> . . . from which there is a release, or a threatened release which causes the incurrence of responses costs, of a hazardous substance, shall be liable for –
>
> (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

25. Pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), G. Kevin Ludlow is a person who at the time of disposal of hazardous substances owned or operated the facility at which such hazardous substances were disposed of, from which facility there was a release or threatened release of hazardous substances, and is jointly and severally liable to the United States for the costs that have been and will continue to be incurred in response to such release or threatened release at the Site, including enforcement costs, and interest on all such costs.

THIRD CLAIM FOR RELIEF

26. Paragraphs 1 through 25 are incorporated by reference.

Section 106 of CERCLA, 42 U.S.C. § 9606, provides, *inter alia*, that:

> [W]hen the President determines that there may be an imminent and substantial endangerment to the public health and welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

27. EPA has determined that the remedy selected in the March 31, 2003 ROD is necessary to abate the danger or threat at the Site.

28. Defendants, by virtue of their liability under Section 107 of CERCLA, and the determination that conditions at the Site may present an imminent and substantial endangerment to the public health and welfare or the environment because of the actual or threatened release of hazardous substances at the Site, are jointly and severally liable to undertake the remedial action identified in the March 31, 2003 ROD.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

1. Enter judgment in favor of the United States against the Defendants, jointly and severally, for all costs incurred and to be incurred by the United States for response actions relating to the Ludlow Sand and Gravel Superfund Site, and

2. Order Defendants, jointly and severally, to perform the remedial action for the Site selected in the ROD issued March 23, 2003.

3. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

GLENN T. SUDDABY
United States Attorney
Northern District of New York
United States District Court
P.O. Box 7198
100 S. Clinton Street
Syracuse, NY 13261-7198

Date:

WILLIAM H. PEASE
Assistant United States Attorney
Northern District of New York

Date:

ELLEN M. MAHAN
Deputy Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 2143
Washington, DC 20530

Date: 7/30/7

DAVID L. GORDON
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Bar Roll #: 105909

OF COUNSEL:

GEORGE SHANAHAN
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, New York 10007-1866
(212) 637-3184