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U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
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SOUTHERN DISTRICT OF INDIANA
LAURA A. BRIGGS
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. RAYBESTOS PRODUCTS COMPANY, Defendant.	1:07-cv-0374-DFH-TAB Civil Action No. _____

COMPLAINT

The United States of America ("United States"), by authority of the Attorney General of the United States and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

1. This is a civil action brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a). The United States seeks to recover costs that have been or will be incurred in connection with the release or threatened release of hazardous substances at or from sites knows as the Shelly Ditch Reaches 1 - 3 Superfund Site, the Shelly Ditch Reach 4 Superfund Site, and the Sugar Creek Remedial Site, all located in Crawfordsville, Montgomery County, Indiana. The Reaches 1 -3 Site, the Reach 4 Site and the Sugar Creek Remedial Site are collectively referred to as "the Sites."

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607(a) and 9613(b).

3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), as the actual or threatened release of hazardous substances that gives rise to the claim occurred in this judicial district.

DEFENDANT

4. The defendant, Raybestos Products Company ("Raybestos"), is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is located in Crawfordsville, Indiana.

SITE DESCRIPTION AND FACTUAL BACKGROUND

5. Beginning in or about 1951 and continuing to the present, Raybestos has operated a facility located at 1204 Darlington Avenue, Crawfordsville, Indiana ("the Facility") at which it manufactures friction plates for automatic transmissions. Three culverts, or outfalls, located on the west perimeter of the Facility empty into Shelly Ditch. Shelly Ditch is an intermittent stream which is approximately 6,200 feet long and ultimately discharges into Sugar Creek.

6. The Shelly Ditch Superfund Site ("Reaches 1 - 3 Site") encompasses approximately 16 acres and is located at Shelly Ditch from the Conrail Railroad tracks near the Facility. The Shelly Ditch Reach 4 Superfund Site ("Reach 4 Site") encompasses approximately 6 acres and is located at Shelly Ditch from Whitlock Avenue west to the culvert under the CSX railroad tracks for a distance of approximately 1,700 feet. The Sugar Creek Remedial Site

includes Reach 5 of Shelly Ditch and the Sugar Creek, Walnut Fork, and Little Sugar Creek waterways.

7. Raybestos has discharged hazardous substances, including polychlorinated biphenyls ("PCBs") and lead, into the three culverts on the west perimeter of the Facility, which in turn discharged into Shelly Ditch and Sugar Creek.

8. In 1995 and 1996, the Indiana Department of Environmental Management ("IDEM") collected samples in Shelly Ditch the analysis of which revealed elevated levels of PCBs and lead. In 1998 and 1999, IDEM inspectors collected samples from Respondent's outfall discharges and culverts that lead to Shelly Ditch the analysis of which revealed the presence of PCBs.

9. In 2000, U.S. EPA performed a site assessment along Shelly Ditch and collected samples of the soils and sediments. For purposes of this assessment EPA divided Shelly Ditch into five reaches or geographic areas. Chemical analysis revealed elevated concentrations of PCBs and lead from many of the samples.

10. In December 2000, U.S. EPA issued Respondent an Unilateral Administrative Order, which was modified in January 2001 ("Modified UAO") to require removal work in only Reaches 1 to 3 of Shelly Ditch. The Modified UAO required Raybestos to, among other things, remove and dispose of contaminated soils and sediments from Reaches 1 - 3 in Shelly Ditch. U.S. EPA performed oversight of the work that Raybestos performed under the Modified UAO. Raybestos complied with the Modified UAO and completed this work in July 2003.

11. In 1996, 1999, 2001 and 2005, U.S. EPA and Raybestos conducted sampling of soils and sediments in Reach 4 of Shelly Ditch the analysis of which revealed the presence of PCBs and lead.

12. Raybestos has also conducted sampling of Reach 5 of Shelly Ditch and in Sugar Creek downstream of its confluence with Shelly Ditch the analysis of which revealed the presence of no PCBs above 1.4 parts per million.

13. In February, 2007, U.S. EPA and Raybestos entered into an Administrative Order on Consent which provides for Raybestos to perform a time critical removal action at the Reach 4 Site under which, among other things, Raybestos will remove contaminated soils and sediments from the Reach 4 Site above designated cleanup levels.

14. There was a "release" or "threatened release" of a hazardous substance at or from the Sites within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

15. The actions taken by the United States in connection with the Sites constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). The United States has incurred over $500,000 in unreimbursed costs at the Sites.

CLAIM FOR RELIEF

16. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

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

> (1) the owner or operator of a vessel or facility;
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport

for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at a facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such persons, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan; . . .

18. The Defendant is liable, pursuant to Section 107(a)(3), 42 U.S.C. § 9607(a)(3), as a person who arranged for disposal or treatment of hazardous substances at the Sites.

19. The Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20. The Sites are each a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. The response costs incurred by the United States in connection with the Sites were not inconsistent with the National Contingency Plan ("NCP"), which was promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is codified at 40 C.F.R. Part 300, et seq.

22. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the Defendant is liable to the United States for costs incurred or to be incurred by the United States in connection with the Sites, for which the United States seeks judgment, including prejudgment interest.

PRAYER FOR RELIEF

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

1. Enter judgment against the Defendant for response costs incurred or to be incurred by the United States in connection with the Sites [same question], together with interest thereon;

2. Award such other relief as this Court deems just and proper.

Respectfully submitted,

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