

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

UNITED STATES OF AMERICA and)	
THE STATE OF WISCONSIN,)	
)	
Plaintiffs,)	
)	
v.)	Case No.
)	
TECUMSEH PRODUCTS COMPANY,)	
THOMAS INDUSTRIES, INC., and)	
WISCONSIN PUBLIC SERVICE CORP.,)	
)	
Defendants.)	
_____)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States, acting at the request and on behalf of the National Oceanic and Atmospheric Administration (“NOAA”) and the Department of the Interior (“DOI”), and the State of Wisconsin, by authority of the Attorney General of Wisconsin and acting on behalf of the Wisconsin Department of Natural Resources (“WDNR”), hereby file this Complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action, brought by the United States and Wisconsin (collectively, the “Plaintiffs”) against Tecumseh Products Company (“Tecumseh”), Thomas Industries, Inc. (“Thomas”), and Wisconsin Public Service Corp. (“WPSC”) (collectively, the “Defendants”), under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability

Act (“CERCLA”), 42 U.S.C. § 9607, for recovery of damages for injury to, loss of, or destruction of natural resources resulting from releases of hazardous substances.

2. Each of the Defendants is responsible for historic releases of polychlorinated biphenyls (“PCBs”) or polycyclic aromatic hydrocarbons (“PAHs”) into the environment at the Sheboygan River and Harbor Superfund Site (“Site”) located in the City of Sheboygan Falls, the Village of Kohler, and the City of Sheboygan, Sheboygan County, Wisconsin. Releases of PCBs and PAHs have resulted in injury to various natural resources -- including fish, birds, benthic invertebrates, and aquatic plants -- for which federal and state agencies serve as trustees. Plaintiffs also seek to recover un-reimbursed costs of assessing such damages.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) and (e) of CERCLA, 42 U.S.C. § 9613(b) and (e), and 28 U.S.C. §§ 1331 and 1345.

4. 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 claims arose and the threatened and actual releases of hazardous substances occurred in this district.

BACKGROUND ON THE SITE AND THE STATUTE

5. The Sheboygan River and Harbor Superfund Site encompasses the lower 14 river miles of the Sheboygan River and adjacent floodplain, from Sheboygan Falls downstream to and including the Inner Harbor in Lake Michigan. It was listed on the CERCLA National Priorities List (“NPL”) on or about May 21, 1986 (51 Fed. Reg. 21054 (June 10, 1986)). The Site includes a portion of the WPSC Campmarina MGP Site (“Campmarina Site”).

6. The Campmarina Site is located at 732 N. Water St., Sheboygan, WI on the north bank of the Sheboygan River and was addressed under the Superfund Alternative Approach. The Campmarina Site encompasses 2.3 acres of land adjacent to the Sheboygan River and 4.5 acres of river. The river portion of the Campmarina Site is located within the limits of the larger Sheboygan River and Harbor Superfund Site.

7. Facilities owned and operated by the Defendants discharged PCB and PAH compounds to the River in connection with past industrial activity. PCB and/or PAH contamination was identified in sediments throughout the Site and in sufficient concentrations to cause injury to many types of natural resources, including sediment, vegetation, invertebrates, fish, and birds. In addition to ecological injuries, PCB and PAH contamination of natural resources has resulted in losses to recreational fishing services.

8. CERCLA § 107(f), 42 U.S.C. § 9607(f), authorizes duly-designated Federal and State natural resource trustees to recover natural resource damages (“NRD”), *i.e.* damages for any injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances, including the reasonable costs of assessing such injury. CERCLA § 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), imposes liability for such damages on certain classes of potentially responsible parties (“PRPs”), including current owners and operators of a facility from which there has been a release of a hazardous substance, parties that owned or operated a facility at the time of disposal of a hazardous substance, and parties that arranged for disposal or treatment of a hazardous substance at a facility owned by another party or entity.

9. Under CERCLA, the term “natural resources” includes “land, fish, wildlife, biota, air, water . . . and other such resources belonging to, managed by, held in trust by, appertaining

to, or otherwise controlled by the United States [or] any State or local government” 42 U.S.C. § 9601(16).

10. Natural resources have been injured as a result of releases of hazardous substances – PCBs and PAHs – into the environment at the Site.

11. The Secretary of the Interior (hereinafter included in “DOI”) has been designated as a natural resource trustee for federal trust resources at and near the Site pursuant to 42 U.S.C. § 9607(f)(2)(A), 40 C.F.R. § 300.600, and Exec. Ord. No. 12,580, 52 Fed. Reg. 2923 (Jan. 23, 1987). DOI acts on behalf of the public as a trustee for natural resources, including threatened or endangered species, migratory birds, other fish and aquatic life, and their supporting ecosystems, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States. *See, e.g.*, 40 C.F.R. § 300.600.

12. The Administrator of NOAA (hereafter included in “NOAA”) has been designated as a natural resource trustee for federal trust resources at and near the Site pursuant to 42 U.S.C. § 9607(f)(2)(A), 40 C.F.R. § 300.600, and Exec. Ord. No. 12,580, 52 Fed. Reg. 2923 (Jan. 23, 1987). NOAA acts on behalf of the public as a trustee for natural resources, including threatened or endangered species, other fish and aquatic life, and their supporting ecosystems, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States. *See, e.g.*, 40 C.F.R. § 300.600.

13. WDNR has been designated as a State natural resource trustee for Wisconsin trust resources at and near the Site pursuant to 42 U.S.C. § 9607(f)(2)(B) and 40 C.F.R. § 300.605. WDNR acts on behalf of the public for natural resources, including their supporting ecosystems, within the boundaries of Wisconsin or belonging to, managed by, or appertaining to Wisconsin. 40 C.F.R. § 300.605.

14. Federal trusteeship over natural resources may overlap with that of States. The NCP directs that, where there are multiple trustees, the trustees should coordinate and cooperate in carrying out their responsibilities. 40 C.F.R. § 300.615(a).

15. NRD includes the costs of actions to restore, replace, or acquire the equivalent of the injured natural resources and the reasonable costs of assessing the injury and the associated damages. NRD may also include compensation for interim losses to the public attributable to natural resource injuries from the onset of the injury through their repair or recovery to an uninjured state, adjusted for any mitigation of those injuries by response actions or early restoration actions, and any increase in injuries that may have occurred as a result of response actions.

16. As required by CERCLA Section 301(c), 42 U.S.C. § 9651(c), DOI has promulgated regulations regarding the assessment of NRD and associated restoration activities. Those regulations are codified at 43 C.F.R. Part 11.

17. As expressly provided by CERCLA Section 107(c)(2), 42 U.S.C. § 9607(c)(2), any determination or assessment of damages made by a Federal or State trustee in accordance with DOI's NRD assessment regulations shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding to recover such damages under CERCLA.

18. DOI, NOAA, and WDNR have performed NRD assessment and restoration activities concerning the Site in accordance with DOI's NRD assessment regulations. The assessment activities have included preparation of the *Preassessment Screen and Determination* (2008) and the draft *Restoration Plan and Environmental Assessment* (2017). The Trustees have determined that injuries to natural resources within the Site, including sediment, soil,

invertebrates, fish, reptiles, amphibians, birds, and mammals, were caused by exposure of those resources to PCBs, PAHs, and other contaminants. These injuries resulted in a loss of the ecological and recreational services that assessment area resources would otherwise have provided.

19. The amounts recoverable in an action for NRD under CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), include statutory prejudgment interest on the damages.

ALLEGATIONS RELATING TO DEFENDANTS

General Allegations:

20. Each of the Defendants is a “person,” within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

21. Each industrial facility located or formerly located at the Site is a “facility,” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

22. Each sewer system (including each sewer pipe) located or formerly located at the Site is a “facility,” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

23. The Site is a “facility,” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

24. PCBs are “hazardous substances,” within the meaning of CERCLA Sections 101(14) and 107(a), 42 U.S.C. §§ 9601(14) and 9607(a).

25. PAHs are “hazardous substances,” within the meaning of CERCLA Sections 101(14) and 107(a), 42 U.S.C. §§ 9601(14) and 9607(a).

26. “Natural Resources” within the meaning of Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), have been and/or are being injured, lost, or destroyed as a result of the releases of hazardous substances at the Site.

27. Plaintiffs have incurred costs in assessing damages to natural resources resulting from the releases.

Allegations Concerning Tecumseh Products Co.:

28. Tecumseh and one or more of its corporate predecessors – including Die Cast Corporation – has owned and/or operated an industrial facility (the “Tecumseh Facility”) in Sheboygan Falls, Wisconsin since approximately 1956. Tecumseh and its corporate predecessors are collectively referred to herein as “Tecumseh.”

29. The Tecumseh Facility discharged wastewater containing PCBs directly to the Sheboygan River while the Facility was owned and operated by Tecumseh.

30. Tecumseh, therefore, owned and operated a facility at the time of disposal of hazardous substances at that facility, and there were releases of hazardous substances from that facility to the environment at the Site.

31. In light of the foregoing, Tecumseh is liable to Plaintiffs in this action under CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

Allegations Concerning Thomas Industries:

32. Thomas Industries and one or more of its corporate predecessors has owned and/or operated an industrial facility (the “Thomas Facility”) in Sheboygan, Wisconsin since the late 1950’s. Thomas Industries and its corporate predecessors are collectively referred to herein as “Thomas.”

33. At various times while owned and operated by Thomas, the Thomas Facility discharged wastewater containing PCBs directly to the Sheboygan River and to the City of Sheboygan wastewater treatment plant which discharged to the Sheboygan River.

34. Thomas, therefore, owned and operated a facility at the time of disposal of hazardous substances at that facility, and there were releases of hazardous substances from that facility to the environment at the Site.

35. In light of the foregoing, Thomas is liable to Plaintiffs in this action under CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

Allegations Concerning Wisconsin Public Service Corp.:

36. WPSC and one or more of its corporate predecessors owned and/or operated a manufactured gas plant (the “WPSC Facility”) within the Campmarina Site from approximately 1872 to 1929. WPSC and its corporate predecessors are collectively referred to herein as “WPSC.”

37. The WPSC Facility discharged wastewater containing PAHs to the Sheboygan River while the WPSC Facility was owned and operated by WPSC.

38. WPSC, therefore, owned and operated a facility at the time of disposal of hazardous substances at that facility, and there were releases of hazardous substances from that facility to the environment at the Site.

39. In light of the foregoing, WPSC is liable to Plaintiffs in this action under CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

FIRST CLAIM FOR RELIEF

40. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

41. Releases of PCBs and PAHs into the environment at the Site have resulted in injury to, destruction of, or loss of natural resources under Federal trusteeship and of natural resources under State trusteeship. Federal and State trusteeships of injured natural resources at the Site overlap.

42. Plaintiffs have incurred reasonable costs of assessing the injury, destruction, or loss of natural resources resulting from releases of hazardous substances to the Site and into the environment at the Site.

43. Each of the Defendants is jointly and severally liable to the United States and the State of Wisconsin for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such damages and the injury, destruction, or loss resulting from releases of hazardous substances to the Site and into the environment at the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter a judgment in favor of Plaintiffs and against the above-named Defendants, jointly and severally, for damages and all costs or expenses incurred by Plaintiffs in the assessment or restoration of natural resources injured, lost or destroyed as a result of the release or threatened release of hazardous substances at the Site;

2. Enter a declaratory judgment in favor of Plaintiffs and against the above-named Defendants, pursuant to 28 U.S.C. § 2201, that the Defendants are jointly and severally liable for any future costs or expenses incurred by the United States in the restoration or replacement of natural resources damaged or destroyed as a result of the release or threatened release of

hazardous substances at the Site, including natural resource damage assessment costs and costs of implementing natural resource restoration activities

3. Award Plaintiffs their costs of this action; and
4. Grant such other and further relief as the Court deems just and proper.

For the United States of America

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

Place an "X" in the appropriate box (required): ☐ Green Bay Division ☒ Milwaukee Division

I. (a) PLAINTIFFS

United States of America and State of Wisconsin

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jeffrey Spector, US Dept. of Justice, P.O. Box 7611, Washington, DC, 20044-7611; 202-514-4432 and (see attachment)

DEFENDANTS

Tecumseh Products Co.; Thomas Industries, Inc.; Wisconsin Public Service Corp.

County of Residence of First Listed Defendant Sheboygan

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

David Mandelbaum, Greenberg Traurig LLP, 2700 Two Commerce Sq., Philadelphia, PA 19103, 215-988-7813 and (see attachment)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 CERCLA, 42 USC Section 9607

Brief description of cause:
 Natural resource damages

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
 4,500,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
 12/12/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING FEE JUDGE MAG. JUDGE

Civil Cover Sheet Attachment

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