

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA

Plaintiff,

v.

Civil Action No. 3:22-cv-132

CHEMICAL WASTE MANAGEMENT,
FRANKLIN INTERNATIONAL, INC.,
INTERNATIONAL PAPER COMPANY,
PROCTER & GAMBLE COMPANY, PPG
INDUSTRIES INC., STREBOR, INC. AND
WORTHINGTON CYLINDER
CORPORATION

Defendants.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, acting at the request, and on behalf, of the United States Environmental Protection Agency (“EPA”) files this Complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought against Chemical Waste Management, Franklin International, Inc., International Paper Company, Procter & Gamble Company, PPG Industries Inc., Strebor, Inc. and Worthington Cylinder Corporation (collectively “Settling Parties” or “Defendants”), pursuant to Sections 106, 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9606, 9607, and 9613 as amended by the Superfund Amendments and Reauthorization Act of 1986 (“CERCLA”).

2. The United States seeks to recover past costs incurred by the United States for response activities undertaken in response to the release and threatened release of hazardous substances from the Tremont Barrel Fill Superfund Site located at 3108 Snyder-Domer Road, German Township, Clark County, Ohio (hereinafter the “Site”).

3. The United States seeks a declaratory judgment, pursuant to CERCLA Sections 113(g)(2), 42 U.S.C. § 9613(g)(2), declaring that Defendants are liable for any future costs that the United States may incur in connection with response actions that may be performed at the Site.

4. The United States seeks injunctive relief requiring Defendants to abate conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment, because of actual or threatened releases of hazardous substances into the environment at and from the Site.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action, and the parties hereto, 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.

6. Venue is proper pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose and the threatened and actual releases of hazardous substances occurred in Clark County, Ohio, a county in this district.

STATUTORY BACKGROUND

7. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other

pollutants and contaminants, and for funding the costs of abatement and related enforcement activities, which are known as “response” actions, 42 U.S.C. §§ 9604(a), 9601(25).

8. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part that

when the President determines that there may be an imminent and substantial endangerment to the public health or 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.

9. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part that, subject to the defenses set forth by the subsection, any “owner and operator of a vessel or a facility,” and

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 any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, shall be liable for . . . all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan.

GENERAL ALLEGATIONS

10. Defendants are “persons” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

11. Defendant Chemical Waste Management is past “owner” and “operator” of the Site because it is a corporate successor to IWD Chemical and IWD Liquid, both of whom are past owners and operators within the meaning of CERCLA Sections 101(20) and 107(a), 42 U.S.C. §§ 9601(20) and 9607(a), of the Site and the former landfill located thereon. *See Responsible Env’t Sols. All. vs. Waste Mgmt., Inc., et al.*, Case No. 3:04cv013, 2011 WL 382617, at *10 (S.D. Ohio Feb. 3, 2011).

12. Defendants Franklin International, Inc., International Paper Company, Procter & Gamble Company, PPG Industries Inc., Strebtor, Inc. and Worthington Cylinder Corporation arranged for disposal or treatment of hazardous substances and/or arranged with a transporter for transport for disposal or treatment, of hazardous substances they owned or possessed, at locations within the Site, which caused the incurrence of response costs, within the meaning of CERCLA Section 107(a)(1)–(4), 42 U.S.C. § 9607(a)(1)–(4).

13. 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).

14. At times relevant to this action, there have been “releases” and “threatened releases” of “hazardous substances” at and/or from the Site, into the environment, within the meaning of CERCLA Sections 101(14), 101(22), and 107(a), 42 U.S.C. §§ 9601(14), 9601(22), and 9607(a). Specifically, there have been “releases” and threatened releases of elevated metals, volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”), and pesticides, all of which are “hazardous substances” within the meaning of CERCLA Sections 101(14) and 107(a), 42 U.S.C. §§ 9601(14) and 9607(a).

15. The United States has incurred costs of removal, remedial actions, and response actions (“response costs”) within the meaning of CERCLA Sections 101(25) and 107(a), 42 U.S.C. §§ 9601(25), and 9607(a), in responding to releases and threatened releases of hazardous substances into the environment at and/or from the Site.

16. The response costs incurred by the United States are not inconsistent with the National Contingency Plan, which was promulgated under CERCLA Section 105(a), 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF

(Cost Recovery by the United States under CERCLA Section 107, 42 U.S.C. § 9607)

17. Paragraphs 1–16 are realleged and incorporated herein by reference.

18. Pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), Defendants are jointly and severally liable to the United States for response costs incurred and to be incurred by the United States in connection with the Site, including enforcement costs, prejudgment interest on such costs, and all future costs of any response actions that may be performed at the Site.

SECOND CLAIM FOR RELIEF

(Claim for Injunctive Relief under CERCLA Section 106, 42 U.S.C. § 9606)

19. Paragraphs 1–16 are realleged and incorporated herein by reference.

20. There is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment and from the Site.

21. Pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), the Defendants are subject to injunctive relief to abate the danger or threat presented by releases or threatened releases of hazardous substances into the environment at and from the Site.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment under CERCLA Section 113(g), 42 U.S.C. § 9613(g))

22. Paragraphs 1–16 are realleged and incorporated herein by reference.

23. CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), specifies that in any action for recovery of costs under CERCLA Section 107, 42 U.S.C. § 9607, “the court shall enter a declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recovery further response costs”

24. Pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), the United States is entitled to entry of a declaratory judgment that the Defendants are jointly and severally liable to the United States for future response costs incurred by the United States in connection with the Site that are not inconsistent with the National Contingency Plan.

PRAYER FOR RELIEF

WHEREFORE, the United States, respectfully requests that this Court:

- A. Enter judgment in favor of the United States and against Defendants, for past response costs incurred by the United States, including prejudgment interest, incurred in connection with response actions in connection with the Site;
- B. Order Defendants to abate the conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment;
- C. Enter a declaratory judgment in favor of the United States pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the Defendants are liable for future costs of any response actions at the Site that are incurred by the United States; and
- D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 19th day of May, 2022,

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