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Attorneys for Plaintiff, the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

J. DANIEL STEVENS, as trustee of the
Fifam Trust,

Defendant.

Civ. No. 2:18-cv-00402-PMW

COMPLAINT

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

STATEMENT OF CASE

1. This is a civil action brought pursuant to § 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 environmental cleanup costs of at least \$605,900 that have been incurred by the United States in response to the release or threatened

release of hazardous substances at or from the North Salt Lake Hazmat Site (“the Site”) located in Salt Lake City, Utah.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. §§ 1331, 1345 & 1355.

3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) & (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this District.

DEFENDANT

4. Defendant J. Daniel Stevens is trustee of the Fifam Trust. The Fifam Trust was established September 8, 2010 to manage the assets of the Trust, including the land on which the Site is located.

5. The Defendant is a “person” within the meaning of § 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. The Fifam Trust is material to the disposition of this case and is therefore properly before this Court.

7. The Fifam Trust is the current owner of the land on which the Site is located.

STATUTORY AND REGULATORY BACKGROUND

8. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances, pollutants, or contaminants and for funding the costs of such abatement and related enforcement activities, which are known as “response” actions. 42 U.S.C. §§ 9604(a) & 9601(25).

9. Under Section 104(a)(1) of CERCLA, as amended:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment....

42 U.S.C. § 9604(a)(1).

10. Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), defines “hazardous substance.”

11. Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines the term “release” to include, among other things, “spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)....”

12. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President’s delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

13. In pertinent part, § 107(a) of CERCLA provides:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section—

- (1) the owner and operator of a vessel or a facility... shall be liable for—
 - (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian Tribe not inconsistent with the national contingency plan....

42 U.S.C. § 9607(a).

14. In pertinent part, § 101(20)(A) of CERCLA defines “owner and operator” as, “in the case of an onshore facility... any person owning or operating such facility.” 42 U.S.C. § 9601(20)(A).

15. In pertinent part, § 101(17) defines “onshore facility” as “any facility... of any kind located in, on, or under, any land or nonnavigable waters within the United States.” 42 U.S.C. § 9601(17).

16. Section 101(9) of CERCLA defines a “facility” as:

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

42 U.S.C. § 9601(9).

17. In pertinent part, § 101(21) of CERCLA defines a “person” as an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body. 42 U.S.C. § 9601(21).

18. Section 101(23) of CERCLA defines “removal” as:

the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release.

42 U.S.C. § 9601(23).

19. The National Contingency Plan, created pursuant to § 105 of CERCLA, 42 U.S.C. § 9605, is codified at 40 C.F.R. part 300.

GENERAL ALLEGATIONS

20. The Site, consisting of approximately one half acre, is located at 915 West 1500 North, Salt Lake City, Utah.

21. Norman Fife, doing business at Fifco, Inc., operated a junkyard at the Site from at least 1988 until at least 2007 and periodically manufactured small items for the U.S. Department of Defense.

22. Between 1985 and 2007, Norman Fife and FifeCo, Inc. entered into a number of contracts under which Mr. Fife and FifeCo, Inc. acquired surplus property from the U.S. Department of Defense.

23. The surplus property acquired by Mr. Fife and FifeCo, Inc. included “hazardous substances” within the meaning of CERCLA, including without limitation, acetone, asbestos, cadmium, hexane, hydrazine, methyl ethyl ketone, trichloroethylene, toluene, and xylene.

24. Pursuant to the terms of contracts between Mr. Fife or FifeCo, Inc. and the United States, Mr. Fife and FifeCo, Inc. were required to immediately resell any hazardous materials acquired from the DOD and were prohibited from storing hazardous materials at the Site.

25. Notwithstanding the terms of the contracts between Mr. Fife and FifeCo, Inc. and the United States, numerous containers of hazardous materials came to be located at the Site.

26. On September 20, 2010, ownership of the Site was conveyed to the Fifam Trust, which continues to own the Site.

27. At no time did Mr. Fife, Mr. Stevens, FifeCo, Inc., or the Fifam Trust have a permit authorizing the storage, treatment, or disposal of hazardous substances at the Site.

28. On June 4, 2013, the Salt Lake City Fire Department discovered leaking containers of hazardous materials at the Site and requested assistance from the Utah Department of Environmental Protection, which in turn requested assistance from the EPA.

29. The EPA obtained consent from Mr. Stevens to access the property on June 5, 2013.

30. Upon entering the Site on June 5, 2013, the EPA discovered abandoned barrels and other containers containing hazardous substances, releases of vapors containing hazardous substances, numerous leaks and spills of hazardous substances, and soils contaminated with hazardous substances.

31. On July 10, 2013, the EPA issued a general notice letter informing Mr. Stevens, as trustee of Fifam Trust, of the potential liability for response costs at the Site.

32. On July 22, 2013, the EPA determined that a threat to public health, welfare, or the environment existed due to the actual or threatened release of hazardous substances into the environment from the Site. The EPA approved a time-critical removal action to remove hazardous materials from the Site.

33. Between July 23, 2013 and December 17, 2013, the EPA removed more than 9,000 abandoned containers of hazardous substances from the Site.

34. On May 7, 2014, the EPA sent to Defendant a Notice of Federal Superfund Lien. The lien was recorded pursuant to § 107(l) of CERCLA, 42 U.S.C. § 9607(l), with the Salt Lake County Recorder on September 22, 2014 in book number 10261 at pages 8124–26, as entry number 11917149.

35. Mr. Fife is deceased, and FifeCo, Inc.’s corporate charter has expired.

CLAIM FOR RELIEF

36. The preceding paragraphs are re-alleged and incorporated herein.

37. The substances identified in ¶ 23 of this complaint, as well as other substances found in abandoned or leaking containers at the Site, are “hazardous substances” within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601(14).

38. There were “releases” within the meaning of § 101(22) of CERCLA, 42 U.S.C. § 9601(22), and the threat of continuing releases of hazardous substances into the environment at and from the Site.

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

40. The United States performed a “removal” action at the Site.

41. Defendant J. Daniel Stevens, as trustee of the Fifam Trust, is the current owner of the Site.

42. In the course of undertaking response actions regarding the release or threatened release of hazardous substances at the Site, the United States has incurred response costs, within the meaning of § 101(25) of CERCLA, 42 U.S.C. § 9601(25), in excess of \$605,900.

43. The response actions taken and the response costs incurred by the United States at the Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

44. Defendant, in his capacity as trustee of the Fifam Trust, is jointly and severally liable to the United States pursuant to § 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs of response actions, including enforcement costs incurred by the United States in connection with the release of hazardous substances at the Site, including interest thereon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

A. Order Defendant, jointly and severally, to cause the Fifam Trust to reimburse the United States for the cost of the response actions taken at the North Salt Lake Hazmat Site, under § 107(a) of CERCLA, 42 U.S.C. § 9607(a);

B. Award the United States its costs in this action; and

C. Award other relief as this Court deems just and proper.

Respectfully Submitted,



NATHANIEL DOUGLAS

Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

5/24/2018

Date

/s/ Daniel S. Smith

DANIEL S. SMITH

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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.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

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

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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 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):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.