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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
THE SHERWIN-WILLIAMS COMPANY,)	<u>COMPLAINT</u>
)	
Defendant.)	
_____)	

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

NATURE OF THE ACTION

1. This is a civil action brought against The Sherwin-Williams Company under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and

Liability Act, as amended, (“CERCLA”), 42 U.S.C. §§ 9606, 9607. In this action, the United States seeks (a) the recovery of unreimbursed costs incurred through September 30, 2017, by the United States in response to releases and threatened releases of hazardous substances into the environment at or from the Sherwin-Williams/Hilliards Creek Superfund Site, the Route 561 Dump Site, and the United States Avenue Burn Superfund Site in Gibbsboro and Voorhees, New Jersey (collectively, the “Sites”), other than costs that are to be reimbursed under previously entered into administrative orders on consent, and (b) the performance by The Sherwin-Williams Company of the response actions selected by EPA in the September 29, 2017 Record of Decision for the remediation of soils and sediments at the United States Avenue Burn Superfund Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the parties under 28 U.S.C. §§ 1331 and 1345 and Sections 106, 107, and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613(b).

3. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases or threatened releases of hazardous substances that gave rise to these claims occurred in this district, and because the Sites are located in this district.

DEFENDANT

4. The Sherwin-Williams Company (“Sherwin-Williams”) is an Ohio corporation, and its principal place of business is in Cleveland, Ohio.

5. Sherwin-Williams is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. At relevant times, Sherwin-Williams conducted operations relating to paint and varnish manufacturing at the Sites and owned property within the Sites, including the area where paints and varnishes were manufactured.

SITES DESCRIPTION

7. The Sherwin-Hilliards Creek Superfund Site (“SW/HC Site” or “Hilliards Creek Site”), in Gibbsboro and Voorhees, New Jersey, includes, but is not limited to, the Former Manufacturing Plant (“FMP”) area, Hilliards Creek, and Kirkwood Lake. The approximately 20-acre FMP area of the Hilliards Creek Site is located in the vicinity of Foster Avenue, Clementon-Gibbsboro Road, and United States Avenue, in Gibbsboro, New Jersey. The FMP area consists of commercial structures and undeveloped land and includes the southern portion of Silver Lake. Hilliards Creek flows from Silver Lake through the FMP area, continues downstream through residential and undeveloped areas, and then empties into Kirkwood Lake. Kirkwood Lake, located in Voorhees, New Jersey, is approximately 25 acres, with residential properties located along its northern shore.

8. The Route 561 Dump Site (“Dump Site”), in Gibbsboro, New Jersey, is approximately eight acres and is located about 700 feet to the southeast of the FMP area. A small creek named the White Sand Branch flows through the Dump Site towards the United States Avenue Burn Superfund Site.

9. The United States Avenue Burn Superfund Site (“Burn Site”), in Gibbsboro, New Jersey, is approximately 19 acres and is located directly south and east of the FMP area. It includes a portion of the White Sand Branch, a portion of a small creek named Honey Run Brook, and Bridgewood Lake. Bridgewood Lake flows into Hilliards Creek.

STATUTORY BACKGROUND

10. 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 such abatement and related enforcement activities, which are known as “response” actions, 42 U.S.C. §§ 9604(a), 9601(25).

11. Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), provides:

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. . . .

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

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, [and]
- (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,

* * *

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 . . .

13. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the United States is also authorized to seek injunctive relief necessary to abate the imminent and substantial endangerment to the public health or welfare, or the environment, that may result from an actual or threatened release of a hazardous substance at or from a facility.

GENERAL ALLEGATIONS

14. The FMP area in Gibbsboro, New Jersey, was originally developed in the 1800s for use as a sawmill and then a grain mill. In 1851, John Lucas & Company, Inc. (“Lucas”) purchased the property and converted the mill into a paint and varnish manufacturing facility.

15. Sherwin-Williams purchased Lucas in the early 1930s and expanded operations at the facility. Sherwin-Williams continued to operate the paint and varnish manufacturing facility until 1978. Various products were manufactured at the facility, including dry colorants, varnishes, lacquers, resins, and oil-based and water-based (emulsion) paints. Historic features at the FMP area included production and warehouse buildings, a railroad line spur, above-ground storage tanks, drum storage areas, and wastewater lagoons.

16. In its operations at the Hilliards Creek Site, Sherwin-Williams used numerous substances that are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) (“hazardous substances”), including, but not limited to, lead and arsenic, and disposed of wastes containing such hazardous substances.

17. Sherwin-Williams disposed of wastes generated from the manufacturing plant containing hazardous substances, including, but not limited to, lead and arsenic, in Hilliards Creek, which runs through the FMP area, and in wastewater lagoons in the FMP area.

18. The Hilliards Creek Site, including the FMP area, is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Contamination with hazardous substances, including, but not limited to, lead and arsenic, has been found at the Hilliards Creek Site, including, but not limited to, the FMP area, Hilliards Creek, Kirkwood Lake, and some residences in close proximity to the FMP area or within the floodplain of Hilliards Creek or Kirkwood Lake. There has been, and continues to be, a “release” or a “threatened release” of “hazardous substances” into the “environment” at or from the Hilliards Creek Site, as those terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601.

20. In the course of its operations, Sherwin-Williams also disposed of wastes that contained hazardous substances, including, but not limited to, lead and arsenic, at the Dump Site, which neighbors the FMP area. The Dump Site was used to dispose of paint wastes from the FMP.

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

22. Contamination with hazardous substances, including, but not limited to, lead and arsenic, has been found at the Dump Site and in two residences in close proximity to the main Dump Site property. There has been, and continues to be, a “release” or a “threatened release” of “hazardous substances” into the “environment” at or from the Dump Site, as those terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601.

23. In the course of its operations, Sherwin-Williams also disposed of wastes that contained hazardous substances, including, but not limited to, lead and arsenic, at the Burn Site, which neighbors the FMP area. The burn area portion of the Burn Site was used to dispose of and burn paint wastes from the FMP area. The landfill portion of the Burn Site was used for the storage of sludge from the FMP’s wastewater treatment system. The railroad track area of the

Burn Site, which is currently an abandoned railroad line, was previously used by Sherwin-Williams to transport materials to and from the FMP.

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

25. Contamination with hazardous substances, including, but not limited to, lead and arsenic, has been found at the Burn Site. There has been, and continues to be, a “release” or a “threatened release” of “hazardous substances” into the “environment” at or from the Burn Site, as those terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601.

26. Sherwin-Williams ceased operations at the FMP in 1977-78. It sold the FMP area property to a private developer in 1981.

27. In the mid to late 1990s, the New Jersey Department of Environmental Protection (“NJDEP”) requested that EPA undertake enforcement, oversight, and other responsibilities with regard to the Sites.

28. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the Burn Site was listed on the CERCLA National Priorities List (“NPL”), codified at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1999, 63 F.R. 51882. The Hilliards Creek Site was listed on the NPL by publication in the Federal Register on March 19, 2008, 73 F.R. 14719.

29. In 1999, EPA and Sherwin-Williams entered into an administrative order on consent (“AOC”) for Sherwin-Williams to conduct, subject to EPA oversight, Remedial Investigation and Feasibility Study (“RI/FS”) work for the Sites (EPA Region 2 AOC Index No. II CERCLA-02-00-2035) (“RI/FS AOC”).

30. EPA is addressing the cleanup of the Sites in several phases called operable units (“OUs”).

31. In 2017, Sherwin-Williams completed an RI/FS for soil and sediment contamination at the Burn Site. EPA selected a remedy for soil and sediment contamination at the Burn Site in a Record of Decision executed on September 29, 2017 (“Burn Site OU2 ROD”). The selected Burn Site OU2 remedy includes excavation, transportation, and disposal of certain contaminated soils and sediments, installation of engineering controls including vegetated soil covers in the Burn Site fenced area, restoration and revegetation in the White Sand Branch and Honey Run Brook flood plain, stream bank revegetation and restoration, and institutional controls at the Burn Site.

32. Sherwin-Williams is obligated under the RI/FS AOC to complete the RI/FS work for the Sites, which at this time EPA has divided into three additional OUs. These are an OU focused on Hilliards Creek Site soil and sediment contamination, an OU focused on the surface waterbodies at the Sites, and an OU focused on groundwater contamination pertaining to the Hilliards Creek Site. After the RI/FS for each additional OU is completed, EPA plans to select the remedy in a ROD. The following three RODs are planned at this time: SW/HC Site Soils ROD; Waterbodies ROD; and SW/HC Site Groundwater ROD. EPA may later determine that further OUs are necessary.

33. In undertaking response actions to address the release or threat of release of hazardous substances at the Sites, the United States has incurred and will continue to incur “response costs” as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), with respect to “removal” or “remedial” action as defined in Section 101(23) and (24) of CERCLA, 42 U.S.C. § 9601(23) and (24).

34. The United States has incurred at least \$2,020,071 through September 30, 2017, in response costs with respect to the Sites that have not been reimbursed.

35. The response costs incurred by the United States in connection with the Sites were incurred in a manner not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF

Cost Recovery under CERCLA Section 107

36. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

37. Sherwin-Williams is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as a person who owned or operated facilities at a time of disposal of hazardous substances at each such facility, from which there has been a release or threat of release of hazardous substances at the Sites, for response costs incurred by the United States in connection with each of the Sites.

38. Sherwin-Williams owns at least one property at the Sites, from which there has been a release or threat of release of hazardous substances. Sherwin-Williams is also liable under Section 107(a)(1), 42 U.S.C. § 9607(a)(1), with respect to property Sherwin-Williams owns at the Sites.

39. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Sherwin-Williams is liable to the United States for response costs incurred by the United States, including enforcement costs and interest, relating to the Sites, that have not been reimbursed.

40. The United States is entitled to a declaratory judgment on liability against Sherwin-Williams, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding in any subsequent action to recover further response costs incurred by the United States with respect to the Sites.

SECOND CLAIM FOR RELIEF

Injunctive Relief under CERCLA Section 106(a)

41. Paragraphs 1 through 40 are re-alleged and incorporated herein by reference.

42. EPA has determined that the actual and threatened releases of hazardous substances, including, but not limited to, lead and arsenic, at or from the Burn Site in connection with its soils and sediments may constitute an imminent and substantial endangerment to public health or welfare or the environment.

43. Implementation of the response actions selected in the Burn Site OU2 ROD is necessary to abate the danger to public health or welfare and the environment posed by the actual and threatened releases of hazardous substances, including, but not limited to, lead and arsenic, at or from the Burn Site in connection with its soils and sediments.

44. Sherwin-Williams is liable for the performance of the response actions selected in the Burn Site OU2 ROD under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

PRAYER FOR RELIEF

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

- a. Enter judgment in favor of the United States and against Sherwin-Williams, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for unreimbursed response costs incurred by the United States relating to the Sites, other than costs that are to be reimbursed under previously entered into administrative orders on consent (the RI/FS AOC and the Dump Site AOC), including enforcement costs and prejudgment interest;

- b. Enter a declaratory judgment on Sherwin Williams' liability that will be binding in any subsequent action for recovery of further response costs relating to the Sites, under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2);
- c. Enter an order under Section 106 of CERCLA, 42 U.S.C. § 9606, requiring Sherwin-Williams to perform the remedial design and remedial action selected in the Burn Site OU2 ROD;
- d. Award the United States its costs and fees in this action;
- e. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATION UNDER LOCAL CIVIL RULE 11.2

In accordance with 28 U.S.C. § 1746, I hereby certify, under penalty of perjury, that the matter in controversy in the foregoing Complaint is not the subject of any other action pending in any court, or any pending arbitration or administrative proceeding.

s/ Elizabeth Yu
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