

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 1:18-cv-99
v.	)	
	)	
HILLCREST INDUSTRIES, INC.,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency (EPA), alleges as follows:

**NATURE OF THE ACTION**

1. This civil action for recovery of costs is filed under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607, against the Hillcrest Industries, Inc. (Defendant or Hillcrest) in connection with the release or threatened release of hazardous substances into the environment at or from a parcel of property owned and operated at all relevant times by Defendant, which is located at 40 Favor Street, Attica, New York (Facility) and is within the Westinghouse Foundry (a.k.a. Hillcrest Recycling) Superfund Site (Site) located in Attica, New York.

## **JURISDICTION AND VENUE**

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

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

## **DEFENDANT**

4. On or about March 7, 2002, Defendant was incorporated as a for-profit corporation in the State of New York. Hillcrest's business operations include the processing of glass fragments into beads for use in reflective road striping and processing boiler slag material into abrasive blast media. Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Defendant is the owner, within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), of the Facility, which is located in the Village of Attica, Town of Attica, County of Wyoming and State of New York. The Facility is more particularly identified in the Wyoming County Clerk's Office records as Lot Nos. 10 and 11, Township 10, Range 2, Section 12 bearing tax identification numbers 6.14-3-46.2 and 6.15-1-47.1. The street address of the Recycling Facility is 40 Favor St, Attica, NY 14011.

## STATUTORY BACKGROUND

6. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances as well as 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).

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

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 ...

8. 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 and certain Division Directors of EPA have been re-delegated this authority.

9. Under 40 C.F.R. § 300.415(b)(1), when there is a threat to the public health or welfare of the United States or the environment, EPA may take any appropriate removal action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release of hazardous substances.

10. Under 40 C.F.R. § 300.415(b)(2), factors EPA may consider to determine the appropriateness of a removal action include actual or potential exposure to nearby human

populations, animals, or the food chain from hazardous substances, pollutants, or contaminant and the threat of fire or explosion.

### **GENERAL FACTUAL ALLEGATIONS**

11. The Facility is located at 40 Favor St, Village of Attica, Town of Monroe, Wyoming County, New York.

12. The Facility is located in a mixed commercial/residential area and is adjacent to residential neighborhoods to the northwest, north, northeast and east of the Facility. An elementary school is located approximately 2,100 feet northeast of the Facility and Attica High School is located approximately 2,500 feet east of the Facility.

13. Defendant has owned and operated the Facility since at least 2002.

14. Defendant collects boiler slag material, recycled glass, and plastic material at the Facility. Hillcrest processes the boiler slag material into an abrasive substance and also processes recycled glass, plastic, and paper into abrasives and reflective additives for road marking paint and reflective road striping beads.

15. As part of the operation of the Facility, Defendant stores glass and plastic material in piles at the Facility.

16. At relevant times, Defendant stored glass and plastic material in a large pile that covered more than an acre and was at least forty feet high.

17. In or about May 2012, a smoldering fire started in the interior of the pile at the Facility that eventually raised the internal temperature of the pile as high as 700 degrees Fahrenheit.

18. Under the direction of the New York State Department of Environmental Conservation (DEC), Hillcrest tried to reduce the internal temperature of the pile and extinguish the smoldering fire by injecting water, carbon dioxide, and nitrogen into the pile and by also applying a spray-on concrete material, known as Posi-Shell®, to the top of the pile.

19. By September 2012, Hillcrest was unsuccessful in its attempts to lower the internal temperature of the waste pile and extinguish the smoldering fire.

20. Acting under the authority granted in 40 C.F.R. § 300.415(b)(1), EPA mobilized to the Site on September 12, 2012, to begin a time-critical removal action.

21. Beginning on September 13, 2012, EPA set up air sampling and analysis stations at the Facility and in the surrounding community. The air monitoring results showed elevated concentrations of hazardous substances, particularly volatile organic compounds (VOCs) such as benzene, styrene, ethylbenzene, and toluene, being released from the burning pile at the Facility as well as in the surrounding community.

22. By September 21, 2012, EPA assumed the lead from DEC for oversight of Hillcrest's efforts to extinguish the smoldering fire. Hillcrest continued efforts to address the smoldering fire by applying water, carbon dioxide and/or nitrogen, all of which failed to put out the smoldering fire.

23. On September 26, 2012, EPA directed Hillcrest to dismantle the pile into smaller piles to extinguish the smoldering fire.

24. On or by October 14, 2012, the smoldering fire was extinguished.

25. EPA continued to check on the pile at the Facility and monitor the air until demobilizing from the Facility on October 22, 2012.

26. The ongoing smoldering fire at the Facility was a threat to the public health or welfare or the environment under Section 104(a) 42 U.S.C. § 9604(a) and as identified in 40 C.F.R. 300.415(b).

27. As a result of the release of hazardous substances and the threat the ongoing smoldering fire posed to the public health or welfare at the Site, EPA conducted a response action and has incurred response costs, within the meaning of Sections 101(25) of CERCLA, 42 U.S.C. § 9601(25). Specifically, the primary activities that comprised EPA's response action included: (a) directing and overseeing Defendant's actions to extinguish the fire at the Facility; and (b) conducting air monitoring at the Facility and in the surrounding community

28. On August 12, 2015, EPA sent a letter notifying Defendant of its liability under Section of 107(a) of CERCLA, 42 U.S.C. § 9607(a) and demanding reimbursement of the \$685,641.61 of costs EPA incurred in response costs plus any and all interest recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607 with interest accruing from the date of the letter and interest on all other costs accruing from the date of expenditure.

29. The Defendant, Hillcrest, is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(9).

30. The Site includes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), because it is a place where hazardous substances have been "deposited,

stored, disposed of, or placed, or otherwise come to be located” on the Facility. 42 U.S.C. § 9601(9).

31. As a result of the smoldering fire at the Facility, there has been a “release” within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and threatened releases, of a “hazardous substance” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), at or from the Facility because benzene, styrene, ethylbenzene, and toluene are among the hazardous substances listed in the regulations promulgated under CERCLA at 40 C.F.R. §302.4, App. A and at the Facility there has been “emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment...” of these hazardous substances. 42 U.S.C. § 9601(22).

32. The United States has incurred at least \$685,641.61 in response costs, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to respond to the releases or threatened releases of hazardous substances at the Site.

33. The response action taken and costs incurred by EPA in connection with the Site are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, which was promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is codified at 40 C.F.R. Part 300.

#### **CLAIM FOR RELIEF**

34. Paragraphs 1-34 are re-alleged and incorporated herein by reference.

35. 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) [T]he owner and operator of a vessel or a facility, 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 –  
all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the National Contingency Plan  
...

36. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendant, Hillcrest, is liable to the United States for \$685,641.61 in response costs incurred regarding the Site, including enforcement and prejudgment interest on such costs.

**PRAYER FOR RELIEF**

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

A. Enter judgment in favor of the United States, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding Defendant liable for unrecovered response costs incurred by the United States in connection with the Facility, in an amount totaling at least \$685,641.61, plus interest and enforcement costs;

- B. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), enter declaratory judgment on Defendant's liability for response costs that will be binding on any subsequent action or actions to recover further response costs.
- C. Grant the United States such other relief as the Court deems just and proper.

Dated:

Respectfully submitted,

ELLEN M. MAHAN  
Deputy Section Chief  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section

January 19, 2018  
Dated

*s/ Richard S. Greene IV*  
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