

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

ASTORIA MARINE CONSTRUCTION
COMPANY,

Defendant.

Civil No. 3:19-cv-337

COMPLAINT

INTRODUCTION

1. This is a civil action by plaintiff the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), under Section 107(a) and 113(g)(2), of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9607(a), 9613(g)(2), against Astoria Marine Construction Company (“Defendant”).

2. Plaintiff seeks to recover response costs EPA incurred in responding to releases and threats of releases of hazardous substances at or from the Astoria Marine Construction Company Superfund Site (“Site”) in Astoria, Oregon.

JURISDICTION AND VENUE

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

4. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this district because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district.

DEFENDANT

5. Defendant is an Oregon corporation with its primary place of business in Astoria, Oregon. Defendant is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

RELEVANT FACTS

6. Defendant was founded in 1924 to manufacture and repair wooden-hulled ships and boats at the Site. It has operated at the Site since its founding.

7. Under Defendant’s ownership and operation, Site operations have included sandblasting and painting, resulting in the release and disposal of hazardous substances including heavy metals.

8. In 1996, the Oregon Department of Environmental Quality detected metals in Site soil and found petroleum in Site water.

9. In 1999, EPA completed a preliminary assessment, which concluded that further investigation was warranted. In 2008 and 2009, EPA performed a phased site investigation.

10. In March 2011, EPA proposed the Site for placement on the National Priorities List (NPL). The NPL is a national list of hazardous waste sites posing the greatest threat to human health, welfare, and the environment.

11. In 2012, EPA agreed to defer listing the Site on the NPL to allow the State of Oregon to take the lead on completing the cleanup. Since then, the Oregon Department of Environmental Quality has acted as the lead agency overseeing Site cleanup. Cleanup activity at the Site is on-going.

LEGAL BACKGROUND

12. Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) & (b), provide that whenever any hazardous substance is released into the environment, or there is a substantial threat of a release, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of such hazardous substance, and to undertake such investigations, monitoring, surveys, testing or other information gathering as necessary to identify the existence and extent of the releases and the extent of the danger to public health or welfare or to the environment.

13. 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 or operator of a vessel or a facility,
- (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 or a State or an Indian Tribe not inconsistent with the national contingency plan . . .

14. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides: “In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

GENERAL ALLEGATIONS

15. The Site and the places where hazardous substances released from the Site have come to be located each constitute a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been generated, treated, stored, or disposed of at the Site.

17. There are and were, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), releases and threatened releases of hazardous substances into the environment at and from the Site.

18. As a result of the releases or threatened releases at and from the Site, the United States incurred “response” costs as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), for actions taken in response to the releases or threatened releases from the Site. The United States may continue to incur response costs in connection with the Site.

19. To date, the costs incurred by the United States pursuant to CERCLA Section 104, 42 U.S.C. § 9604, in responding to releases or substantial threats of release of hazardous

substances at the Site total at least \$650,000. The funds required to pay the United States' costs have been drawn from the Hazardous Substances Superfund. *See* 26 U.S.C. § 9507.

20. The United States has not been reimbursed for all of the response costs it incurs for the Site.

21. The response costs incurred by the United States were incurred in a manner not inconsistent with the National Contingency Plan. 40 C.F.R. Part 300.

CLAIM FOR RELIEF
CERCLA COST RECOVERY

22. Paragraphs 1 through 21 are incorporated here.

23. Defendant owns and operates the Facility, and operated and/or owned the Facility during the time of the disposal of hazardous substances at the Facility, within the meaning of Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

24. Hazardous substances have been released at and from the Facility into the environment within the meaning of Sections 101 and 107 of CERCLA, 42 U.S.C. §§ 9601, 9607.

25. The United States' actions in response to the release or threatened release of hazardous substances from the Facility constitute "removal" and "remedial" actions as defined by Sections 101(23) and 101(24) of CERCLA, 42 U.S.C. §§ 9601(23) and 9601(24), for which the United States has incurred costs.

26. Defendant is therefore liable under Section 107(a)(1) and (2) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(2), 9613(g)(2), for all costs incurred by the United States in response to releases and threatened releases of hazardous substances at and from the Site.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

A. Enter an Order holding Defendant liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred by EPA in response to releases and threats of releases hazardous substances at the Site;

B. Enter declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), holding Defendant liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs to be incurred in the future by EPA at the Site; and

C. Grant such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

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