

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

GAETANO ASSOCIATES LP,
CHARLES A. GAETANO CONSTRUCTION
CORPORATION.

Defendants.

CIVIL ACTION NO. 6:19-cv-1162 (TJM/ATB)

COMPLAINT

The United States of America, by and through the undersigned attorneys, by the authority of the Attorney General of the United States and at the request of and on behalf of the United States Environmental Protection Agency ("EPA") for Region 2, files this complaint and alleges the following:

NATURE OF ACTION

1. This is a civil action brought under Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9607 and 9613(g)(2) ("CERCLA"). In this action, the United States seeks to recover costs incurred and to be incurred by the United States in response to releases or threatened releases of hazardous substances at or from the Charlestown Mall Site ("Site"), located at 2205 Bleecker Street, Village of Frankfort, Herkimer County, New York.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1345, and Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), and 9613(b).
3. Venue properly lies in the Northern District of New York under 28 U.S.C. §§ 1391 and 1395, 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 this claim occurred in this district, and because the Site is located in this district.

DEFENDANTS

4. Defendant Gaetano Associates LP (“Gaetano Associates”) is a limited partnership organized under the laws of the State of New York. Its principal place of business was 311 Turner St., Utica, NY 13501. Gaetano Associates LP converted to Gaetano Associates LLC in May 1995.
5. Defendant Gaetano Construction Corporation (“Gaetano Construction”) is a corporation organized and existing under New York law and is currently located at 258 Genesee St., Utica, NY 13502. Gaetano Construction leased and occupied a part of the Site from approximately 1985 to 2007.

STATUTORY BACKGROUND

6. CERCLA was enacted in 1980 and provides 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).
7. Under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), 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 a 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. 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, [and]
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment...of hazardous substances owned or possessed by such person, by any other party or entity, at any facility...owned or operated by another party or entity and containing such hazardous substances...

* * *

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....

9. Under Section 101(14)(B) of CERCLA, 42 U.S.C. § 9601(14)(B), a “hazardous substance” means “any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this Title....”

10. Asbestos is a “hazardous substance” as defined in Section 101(14)(B) of CERCLA, 42 U.S.C. § 9601(14)(B).

11. Polychlorinated biphenyls are a “hazardous substance” as defined in Section 101(14)(B) of CERCLA, 42 U.S.C. § 9601(14)(B).

12. Volatile organic compounds are a “hazardous substance” as defined in Section 101(14)(B) of CERCLA, 42 U.S.C. § 9601(14)(B).

13. Under Section 101(22) of CERCLA, 42 U.S.C. § 9601, a “release” means “any 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)...”

14. Under Section 101(29) of CERCLA, 42 U.S.C. § 9601, the term “disposal” shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (“SWDA”), 42 U.S.C. § 6903.

15. Under Section 1004(3) of SWDA, the term “disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

16. Under Section 101(9) of CERCLA, 42 U.S.C. § 9601, a “facility” means “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...”

GENERAL ALLEGATIONS

Site Background

17. The Site consists of approximately 14.5 acres along the border between Utica and Frankfort, New York, located just east of Turner Street and between Bleecker Street and Route 5.
18. Over the years, a variety of commercial and industrial activities took place on the Site, which once consisted of about 15 interconnected brick buildings.
19. In 1977 Charles A. Gaetano bought a portion of the Site that is located in Utica, Oneida County, New York. Mr. Gaetano purchased the remaining portion of the Site that is located in Frankfort, Herkimer County, New York in June 1979.
20. In April 1979, Mr. Gaetano created Gaetano Associates LP and served as its general partner.
21. Gaetano Associates LP owned and operated the Site from April 1979 until March 1995.
22. Gaetano Associates LP converted into a limited liability company in March 1995.
23. The ownership and operation of the Site was transferred to Gaetano Associates LLC as part of the conversion.
24. Gaetano Associates LLC owned the Site from March 1995 to September 2005.
25. Gaetano Associates LLC operated the Site from March 1995 to on or about October 2007.
26. Gaetano Construction was a tenant at the Site and operated the Site from on or about March 1985 to December 2007.
27. Many buildings at the Site have been and remain in disrepair since the 1980s.

Cleanup Activities at the Site

28. The New York State Department of Environmental Conservation (“DEC”) and the New York State Department of Labor (“DOL”) conducted a site investigation in 2008 and discovered asbestos containing material (“ACM”) on the Site.

29. In October 2008, DEC requested EPA perform a removal site evaluation (“RSE”).

30. On or about November 5, 2008, DEC and EPA executed a search warrant in order to evaluate asbestos contamination as well as transformers that were reportedly damaged by past demolition activities. During this joint DEC-EPA investigation, the agencies discovered a release of polychlorinated biphenyls (“PCBs”) and ACM throughout the Site. The agencies also found several electrical transformers that were leaking or had been opened and their contents released on the floor of the building.

31. EPA completed the RSE in November 2009 which confirmed the release of asbestos, PCBs, and volatile organic compounds (“VOCs”) to the environment.

32. On August 16, 2010, EPA began a removal action at the Site. Among other actions, EPA removed and disposed of hazardous waste and demolished dilapidated or contaminated buildings. EPA and its contractors completed the removal action and demobilized from the Site on December 19, 2011.

33. As of August 2013, EPA has incurred more than \$5 million in response costs associated with the Site. None of these response costs have been recovered by the United States. The United States may continue to incur response costs in connection with the Site.

SPECIFIC ALLEGATIONS

34. The Site is a location where hazardous substances have been deposited, stored, disposed of, placed or otherwise have come to be located, and therefore is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

35. The asbestos, PCBs, and VOCs (such as tetrachloroethylene and trichloroethylene) found at the Site are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

36. At times relevant to this action, there have been “releases” and “substantial threats” of releases of various “hazardous substances” into the environment at or from the Site, within the meaning of CERCLA Sections 101(14), 101(22), 104(a), and 107(a), 42 U.S.C. §§ 9601(14), 9601(22), 9604(a), 9607(a).

37. The Defendants are each a “person,” within the meaning of Sections 101(21) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(21) and 9607(a).

Defendants CERCLA Section 107(a) Liability

38. Defendant Gaetano Associates is an “owner” of the Site at the time of “disposal” of hazardous substances, within the meaning of CERCLA Sections 101(20)(A) and 107(a)(2), 42 U.S.C. §§ 9601(20)(A), 9607(a)(2).

39. Defendant Gaetano Construction is an “operator” of the Site at the time of “disposal” of hazardous substances, within the meaning of CERCLA Sections 101(20)(A) and 107(a)(2), 42 U.S.C. §§ 9601(20)(A), 9607(a)(2).

40. The work that EPA performed at the Site constitutes a “response” action, under Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

41. As an owner and/or operator of the Site at the time of disposal of hazardous substances, Defendants Gaetano Associates and Gaetano Construction are liable for all response costs incurred and to be incurred that are not inconsistent with the NCP under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and 40 C.F.R. Part 300.

42. As a result of the releases or threatened releases of hazardous substances at or from the Site, the United States has incurred and may continue to incur response costs, within the meaning of Sections 101(25) and 107 of CERCLA, 42 U.S.C. §§ 9601(25) and 9607, to respond to the releases or threatened releases of hazardous substances at or from the Site.

43. The response costs incurred by EPA in connection with the Site were incurred in a manner not inconsistent with the NCP.

44. The United States has not been reimbursed for any of the response costs it has incurred to date.

CLAIM FOR RELIEF

45. The preceding paragraphs, above, are re-alleged and incorporated herein by reference.

46. Defendant Gaetano Associates is a person who at the time of disposal of a hazardous substance owned or operated a facility from which there was a release or threatened release of a hazardous substance, which has caused the United States to incur response costs.

47. Defendant Gaetano Construction is a person who at the time of disposal of a hazardous substance owned or operated a facility from which there was a release or threatened release of a hazardous substance, which has caused the United States to incur response costs.

48. Under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), the Defendants are jointly and severally liable to the United States for all costs incurred and to be incurred by the United States in connection with the Site, including enforcement costs and interest on all such costs.

49. Under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment on liability against the Defendants for response costs or damages that will be binding on any subsequent action or actions to recover further response

costs or damages in connection with the Site under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

REQUEST FOR RELIEF

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

A. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), enter judgment in favor of the United States holding the Defendants jointly and severally liable for unrecovered response costs, including enforcement costs, incurred by the United States with respect to the Site, plus interest thereon;

B. Under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), enter a declaratory judgment that the United States is entitled to a declaratory judgment on liability against the Defendants for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages in connection with the Site under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a);

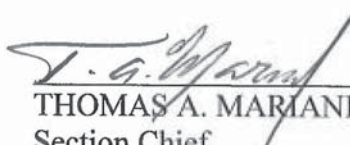
C. Award the United States its response costs in bringing this action, including the costs of this enforcement action, costs of attorneys' time for this enforcement action, and other expenses; and,

D. Grant such other relief as this Court may deem just and proper.

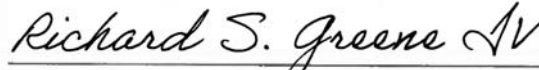
Respectfully submitted,

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09-29-2019
Dated


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9/19/2019
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