

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA	)	
	)	
and	)	
	)	
THE COMMONWEALTH OF PENNSYLVANIA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 4:26-CV-560
	)	
RUTGERS ORGANICS LLC,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT

Plaintiffs, the United States of America, by the authority of the Attorney General and on behalf of the U.S. Department of the Interior (“DOI”), and the Commonwealth of Pennsylvania (“Commonwealth”), acting through the Pennsylvania Fish and Boat Commission (“PFBC”) and the Pennsylvania Game Commission (“PGC”) (collectively “Plaintiffs”), allege as follows:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action against Rutgers Organics LLC (“ROL”) under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607(a), and Section 702(a) of the Pennsylvania Hazardous Site Cleanup Act (“HSCA”), 35 P.S. § 6020.702(a) for damages arising from the injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances at or from the Centre County Kepone Site (the “Site”) in College Township, Centre County, Pennsylvania.

JURISDICTION, VENUE, AND NOTICE

2. This Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 9607(a) and 9613(b) and 28 U.S.C. §§ 1331, 1345 and 1367(a).

3. Venue lies in this district pursuant to 42 U.S.C. § 9613(b), 28 U.S.C. § 1391(b)-(c), because the releases, and damages alleged in the Complaint, occurred within this district.

DEFENDANT

4. ROL is a limited liability corporation organized under the laws of Pennsylvania.

5. At times relevant to these allegations, ROL or its predecessors owned and operated the Site.

STATUTORY FRAMEWORK

CERCLA

6. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in relevant part, that subject only to the defenses set forth in Section 107(b), 42 U.S.C. § 9607(b):

(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 ... 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 ... (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

7. “Facility” is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), to include “any building, structure, ... well, pit, pond, lagoon, impoundment, ditch, landfill, [or] storage container,” as well as “any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.”

8. “Release” is defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), to include “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.”

9. “Disposal” is defined by Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), as having the same meaning as provided in Section 1004 of the Solid Waste Disposal Act. Section 1004(3) of the Solid Waste Disposal Act, 42 U.S.C. § 6903(3), defines “disposal” as “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.”

10. “Natural resources” is defined by Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), to include “land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States ... [and] any State or local government.”

Pennsylvania Hazardous Site Cleanup Act

11. Section 702 of HSCA, 35 P.S. § 6020.702 provides, in relevant part that:

(a) person who is responsible for a release or threatened release of a hazardous substance from a site under Section 701 is strictly liable for . . . (4) Damages for injury to, destruction of or loss of natural resources within this Commonwealth or belonging to, managed by, controlled by or appertaining to the United States, the Commonwealth or a political subdivision. This paragraph includes the reasonable costs of assessing injury, destruction or loss resulting from such a release.

12. Additionally, Section 701 of HSCA, 35 P.S. § 6020.701 provides, in relevant part that:

(a) Except for releases of hazardous substances expressly and specifically approved under a valid Federal or State permit, a person shall be responsible for a release or threatened release of a hazardous substance from a site when. . . (1) The person owns or operates the site. . . (i) when a hazardous substance is placed or comes to be located in or on a site; (ii) when a hazardous substance is located in or on the site, but before it is released; or (iii) during the time of the release or threatened release.

13. “Natural Resources” is defined by Section 103 of HSCA, 35 P.S. § 6020.103, as “Land, fish, wildlife, biota, air, water, groundwater, drinking water supplies and other resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the United States, the Commonwealth or a political subdivision. The term includes resources protected by section 27 of Article I of the Constitution of Pennsylvania.”

14. “Release” is defined by Section 103 of HSCA, 35 P.S. § 6020.103, as “[s]pilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposal into the environment. The term includes the abandonment or discarding of barrels, containers, vessels and other receptacles containing a hazardous substance or contaminant.”

GENERAL ALLEGATIONS

15. The Centre County Kepone Site is located on 32 acres near State College, Pennsylvania. A predecessor company of ROL, Nease Chemical Company (“Nease”), conducted chemical manufacturing at the Site from approximately 1957-2004.

16. Nease disposed of untreated chemical wastes produced in its operations in earthen lagoons. Some of these wastes seeped into the surrounding soil and groundwater.

17. The lagoon wastes were periodically emptied by spraying the liquid wastes onto a large grassy area at the Site known as the “spray field.” This practice also resulted in the contamination of soil and groundwater at the Site.

18. The wastes released into the environment in this manner included volatile organic compounds (“VOCs”) and the pesticides kepone and mirex.

19. Some of these disposed wastes were transported through runoff to a nearby ditch known as the Freshwater Drainage Ditch. The wastes also contaminated two water bodies in the vicinity of the Site, Thornton Spring and Spring Creek.

20. As a result of these releases of VOCs, kepone, and mirex from the Site, natural resources in Spring Creek, including aquatic organisms and their habitat under the trusteeship of the Plaintiffs, have been injured.

21. The U.S. Environmental Protection Agency (“EPA”) placed the Site on the National Priorities List in 1983. 48 Fed. Reg. 40658, 40666 (September 8, 1983). EPA and ROL and/or its predecessors investigated contamination at the Site. Eventually, EPA issued two Records of Decision prescribing specific actions to respond to the release or threat of release of hazardous substances at the Site.

22. ROL and its predecessors have implemented EPA-mandated response actions at the Site pursuant to two CERCLA remedial design/remedial action consent decrees. The first was entered by the Court in 1997. *United States of America v. Rutgers Organics Corp.*, No. 96-2128 (M.D.Pa. April 16, 1997) (as modified by an agreement and order entered by the Court on May 7, 2008). The second was entered in 2011. *United States of America v. Rutgers Organics Corporation*, No. 10-2113 (M.D.Pa. March 8, 2011). However, the response actions implemented pursuant to these consent decrees have not addressed all injuries to natural resources arising from the release of hazardous substances from the Site.

23. Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300.600, DOI, through the United States Fish and Wildlife Service (“FWS”), has been delegated authority to act as Federal Trustee

for certain natural resources impacted by hazardous substances released from the Site, including natural resources in Spring Creek.

24. Pursuant to 107(f) of CERCLA, 42 U.S.C. § 9607(f) and The National Contingency Plan, 40 C.F.R. § 300.605, the Pennsylvania Fish and Boat Commission (“PFBC”) and the Pennsylvania Game Commission (“PGC”) have been delegated authority to act jointly as Commonwealth Trustee for certain natural resources impacted by hazardous substances released from the Site, including natural resources in Spring Creek.

25. The Trustees have undertaken various natural resource damage assessment activities in the vicinity of the Site, including Spring Creek. The Trustees have determined that hazardous substances have been released into the environment from the Site, and that natural resources, including benthic invertebrates, fish, and birds have been injured by exposure to hazardous substances released from the Site.

26. Plaintiffs have incurred natural resource damage assessment costs and expenses related to releases of hazardous substances from the Site.

27. Plaintiffs have incurred, and will continue to incur, costs for restoration, planning and implementation, and monitoring related to developing and implementing a restoration plan pursuant to CERCLA Section 111(i).

FIRST CLAIM FOR RELIEF: CERCLA SECTION 107(a)

28. The allegations of the foregoing paragraphs are realleged and incorporated by reference.

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

30. VOCs, kepone, and mirex are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

31. Hazardous substances were “disposed” of at the Site within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29).

32. ROL is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

33. ROL and/or its predecessors owned and operated the Site at the time of disposal of certain hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

34. There have been “releases” of hazardous substances from the Site, and therefore from a facility, into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), including releases of hazardous substances which entered Spring Creek.

35. Releases of hazardous substances from the Site have caused injury to, destruction of, or loss of “natural resources” under the trusteeship of the Plaintiffs within the meaning of Sections 101(16) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(16) and 9607(a).

36. Plaintiffs have incurred costs in assessing the injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances from the Site within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

37. ROL is liable to Plaintiffs for damages resulting from the injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the releases of hazardous substances from the Site pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

38. Plaintiffs have satisfied all required conditions precedent to the initiation of the action.

SECOND CLAIM FOR RELIEF: HSCA SECTION 702(a)

39. The allegations of the foregoing paragraphs are realleged and incorporated by reference.

40. ROL and/or its predecessors owned and operated the Site at the time of the release of certain hazardous substances (VOCs, kepone, and mirex), making them a responsible “person” within the meaning of Section 701 HSCA, 35 P.S. § 6020.701.

41. The releases of hazardous substances from the Site caused injury to, destruction of or loss of natural resources within the Commonwealth within the meaning of Section 702 of HSCA, 35 P.S. § 6020.702.

42. Pursuant to Section 702(a) of HSCA, 35 P.S. § 6020.702(a), ROL is liable to Plaintiffs for damages for injury to, destruction of or loss of natural resources within this Commonwealth or belonging to, managed by, controlled by or appertaining to the United States, the Commonwealth or a political subdivision, including the reasonable costs of assessing injury, destruction or loss resulting from such a release.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs request that this Court:

(1) Enter a judgment in favor of Plaintiffs against ROL pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and HSCA Section 702(a), 35 P.S. § 6020.702 for all damages for injury to, destruction of, or loss of natural resources resulting from the releases of hazardous substances from the Site, including the reasonable costs of assessing such injury, destruction, or loss resulting from those releases and discharges;

- (2) Award the Plaintiffs their costs of this action; and
- (3) Grant such other relief as this Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

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