

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action under CERCLA Section 113(b), 42 U.S.C. § 9613(b) (exclusive original jurisdiction), and under 28 U.S.C. §§ 1331 (federal question) and 1345 (United States as a plaintiff).

4. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), because the releases or threatened releases from the Site that give rise to the claims herein occurred in this District.

5. This action is properly filed in the Northern Division of this District pursuant to Local Rule 3.2 because the Site is located in Gogebic County, Michigan, the Defendant is located in Gogebic County, Michigan, and the claims arose in Gogebic County, Michigan.

STATUTORY BACKGROUND

6. 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) and 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 of EPA have been re-delegated this authority.

9. 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 . . . not inconsistent with the national contingency plan . . .

10. The term “owner or operator” is defined in Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A) as “. . . in the case of an onshore or an offshore facility, any person owning or operating such facility . . .”

11. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides that in any action for recovery of costs under Section 107 of CERCLA, “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 recovery further response costs or damages.”

FACTUAL BACKGROUND

12. The Site is located on the northwest corner of Hemlock Street and West Ayer Street in the City of Ironwood, Gogebic County, Michigan. It is bounded by the Montreal River to the west and an ATV and snowmobiling trail to the north, and is approximately 2.1 acres in size.

13. The Defendant operated a manufactured gas plant at the Site from approximately 1911 until sometime in the 1960s.

14. Maps and photos indicate that the Site included a retort room, coke and coal storage, crude oil storage, and gas storage.

15. The plant operated using a carbureted water gas process. The maps indicate that the processes used at the Site were typical for the era. These processes generally included heating coke or coal in a closed vessel or retort into which steam was injected. A flammable gas mixture of methane and carbon monoxide was produced. Coal tar would condense out of the gas at various stages during the gas production.

16. Upon information and belief, the surface structures at the Site were demolished and removed during the 1970s and 1980s and the Defendant used the Site to store inoperable equipment and debris.

17. The Michigan Department of Environmental Quality (“MDEQ”) conducted an inspection at the Site in 2010, which found that the surface and subsurface soils in the historical operating area of the Site contained gross tar and manufactured gas plant process waste contamination, including volatile organic compounds, semivolatile organic compounds, and inorganic containments exceeding the MDEQ Part 201 Residential Direct Contact Criteria and Groundwater Surface-water Interface Criteria.

18. EPA conducted inspections in 2010 and 2012. EPA found coal tar and other manufactured gas plant waste buried at the Site. This waste included volatile and semivolatile organic compounds.

19. EPA found that the waste was migrating into the groundwater and surface water. Toxicological testing conducted on aquatic biota indicated that the waste was significantly impacting the health of the Montreal River. Additional sampling by EPA and the Wisconsin

Department of Natural Resources demonstrated that contamination from the Site was migrating downstream, and mortality impacts were seen in the river area adjacent to the Site.

20. Sampling from the various inspections described in paragraphs 17 through 19 above documented the presence of multiple hazardous substances as defined in Section 101(14) of CERCLA including polyaromatic hydrocarbons, such as benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, and dibenzo(a,h)anthracene, as well as lead, arsenic, and cyanide. *See* 42 U.S.C. § 9601(14), 40 C.F.R. 401.15, and 40 C.F.R. 302.4.

21. EPA determined that the conditions at the Site presented an imminent and substantial threat to the public health or welfare, and the environment, and met the criteria for a time-critical removal action.

22. EPA selected a response action which was memorialized in an Action Memorandum dated August 9, 2012. EPA and its contractors started the time-critical removal action on August 22, 2012.

23. EPA's response activities at the Site involved excavating and properly disposing of over 15,000 tons of contaminated soil and manufactured gas plant waste and backfilling and grading the excavation area. The response also included engineering controls, such as the installation of a rock wall, vegetative cover, exposure barrier, concrete sealants on remaining structures, rip rap along the bank of the Montreal River, and installation of a permanent marker.

24. EPA incurred approximately \$3 million in expenses in conducting its response activities at the Site.

CLAIM FOR RELIEF

25. The Site, formerly a manufactured gas plant operated by Defendant, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. Defendant is a “person” within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21), because it is a municipality.

27. Defendant is the “owner or operator” of the Site within the meaning of CERCLA Section 101(20)(A), 42 U.S.C. § 9601(20)(A), because it operated a manufactured gas plant at the Site during the plant’s years of operation. Defendant owned the Site during the years of the plant’s operation and continues to own the Site now.

28. There have been “releases” and/or “threatened releases” and there have been disposals of hazardous substances at and from the Site during Defendant’s operation and ownership of the Site including Polyaromatic hydrocarbons, such as benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, and dibenzo(a,h)anthracene, as well as lead, arsenic, and cyanide.

29. As a result of the releases or threatened releases at the Site, EPA conducted “response” activities at the Site within the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25), that are not inconsistent with the National Contingency Plan.

30. As of May 10, 2018, EPA has incurred unreimbursed past costs of approximately \$3 million.

31. Under CERCLA Section 107(a), 42 U.S.C. 9607(a), Defendant is liable for EPA’s unrecovered past response costs incurred in connection with the Site, plus accrued interest on all such costs, and any additional response costs EPA may incur in connection with the Site.

32. Under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to declaratory judgment on liability against Defendant for response costs incurred in the future in connection with the Site, plus accrued interest on all such costs.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in Paragraphs 1 through 32, the United States respectfully requests that this Court:

1. Enter judgment in favor of the United States against the City of Ironwood for response costs incurred by the United States relating to the Site, including enforcement costs and prejudgment interest, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a);
2. Enter a declaratory judgment in favor of the United States against the City of Ironwood for all response costs incurred by the United States in the future relating to the Site, including enforcement costs and interest, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g);
3. Award the United States the costs of this action; and
4. Grant such other relief as this Court may deem just and proper.

Respectfully Submitted,

Karen Dworkin
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

/s/ Lauren D. Grady
Lauren D. Grady
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-2794
lauren.grady@usdoj.gov

Andrew B. Birge
Acting United States Attorney
Western District of Michigan

Nicole L. Mazzocco
Assistant United States Attorney
Western District of Michigan
330 Ionia Avenue, N.W.
Suite 501
Grand Rapids, MI 49503-2549

Of Counsel:

Richard L. Nagle
Assistant Regional Counsel
U.S. EPA, Region 5

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